COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2009

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

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PART 5

	Page
Department of Justice	**1**
Federal Bureau of Investigation	**71**
Drug Enforcement Administration	**115**
Bureau of Alcohol, Tobacco and Firearms	**159**
Office of Justice Programs, Community Oriented Policing Services, Office of Violence Against Women	**203**
Bureau of Prisons; U.S. Marshals Service; Office of the Federal Detention Trustee	**277**

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COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2009

THURSDAY, APRIL 3, 2008.

DEPARTMENT OF JUSTICE

WITNESS

MICHAEL B. MUKASEY, U.S. ATTORNEY GENERAL

CONGRESSMAN OBEY OPENING REMARKS

Mr. OBEY [presiding]. Well, good morning, everybody. Good morning, Mr. Attorney General.

Mr. MUKASEY. Good morning.

Mr. OBEY. Good to see you again.

Mr. MUKASEY. Good to see you.

OPENING STATEMENT OF MR. OBEY

Mr. OBEY. I would like to welcome everyone to this morning's hearing on the Department of Justice. Our witness today will be Attorney General Michael B. Mukasey.

Sir, when you became Attorney General, you inherited a Department rife with problems. The most troubling of those has been the infiltration of partisan politics in the Department's legal counsel, management decisions and operations.

You are well aware, I think, of congressional concern about the partisan arm twisting that led to the authorization of the Administration's warrantless wire tapping program, as well as the parsing of words that has been used to justify the CIA's use of torture in its interrogation program.

Last year, there were also severe concerns about White House involvement in the firing and hiring of U.S. Attorneys. With the Presidential election coming this year, many Americans are concerned about the Civil Rights Division's capacity and willingness to investigate and enforce the " Voting Rights Act" in cases of voter suppression.

Unfortunately, politicization is only the tip of the iceberg in terms of management challenges at the Department of Justice. We have seen a steady stream of incidents across the Department in which senior leadership has abdicated its oversight and management responsibilities.

I want to make clear I am not talking about you. I am talking about things that happened largely before you came on board.

Over a period of several years, as you know, FBI agents have gained unauthorized access into the phone, banking, and credit

records of American citizens, all without detection or redress by senior managers at either the FBI or the Department of Justice.

The Bureau of Prisons faces a critical operating shortfall this year, and allegations have been raised that the Department has handed out juvenile justice grants to cronies rather than to deserving applicants identified through fair, merit-based competitive processes.

We get a lot of lectures, frankly, from the White House about congressional earmarking practices. It seems to us that under a variety of disguises, the same practices are being practiced in spades in many of the agencies down on the executive end of Pennsylvania Avenue.

The Administration again proposes to slash funding for state and local law enforcement and crime prevention grants despite clear indications that crime rises during economic downturns. The White House proposes even deeper cuts to state and local law enforcement than last year, to the tune of $1.6 billion below the current year funding level. I do not know of a single sheriff in the United States who agrees with that recommendation.

With respect to federal law enforcement initiatives, the funding you have requested for " Adam Walsh Act" sex offender apprehension and immigration enforcement appears to represent only a passing thought. In addition, nearly every element of your Department is severely undercut by a lack of resources to deploy an interoperable wireless communications network around the country, a critical shortfall identified in the aftermath of the 9/11 tragedy and still not deployed today.

Continued growth in the FBI and the federal prison system is starving other critical functions at your Department in my judgment, activities such as criminal enforcement, litigation, administrative support and infrastructure deployment.

This trend, in my view, must be addressed sooner rather than later if there is to be any significant hope of a Department of Justice comprised of more than the FBI and the Bureau of Prisons in the very near future.

So we look forward to hearing your views on these and on any other issues that either you or members of the Committee choose to bring up. Again, we appreciate your appearance here today.

Before we begin with your statement, I would like to ask the Subcommittee's Ranking Member, Mr. Frelinghuysen, for any comments he might have.

OPENING STATEMENT OF MR. FRELINGHUYSEN

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

Mr. Attorney General, I join Chairman Obey in welcoming you this morning for your first appearance before our Committee to discuss your 2009 budget.

First, I want to recognize and extend my sincere appreciation to the men and women of the Justice Department who ably carry out their responsibilities to protect our country from terrorism and crime each and every day. We owe them a debt of gratitude.

I would also like to recognize your public service career, not only as an attorney within the Justice Department, but your service on the Federal bench.

As the Chairman has said, for 2009, you are seeking discretionary appropriations totaling $22.85 billion for the Department, a reduction of 514 million or 2.2 percent from the fiscal year 2000 level.

While the request includes large and critically needed enhancements in national security and counter-terrorism money for those programs especially at the FBI and increased investments for criminal justice programs on our Southwest border, the budget also contains very deep and damaging cuts to assistance programs to state and local law enforcement, indeed our partners and your partners in some very important efforts.

In addition, the Committee will act soon on the Administration's pending supplemental request, so I will have some questions about the Department's pending supplemental request of $146.7 million for Iraq, Afghanistan, the Global War on Terror.

As you are aware, that request was formulated, I think, about 18 months ago and I am sure there are some updates you can provide us so we are operating on the latest and most current information.

Again, like the Chairman, I welcome you here for your testimony this morning. Thank you.

Mr. OBEY. Mr. Attorney General, why don't you proceed. We will put your full statement in the record. Take whatever time you feel you need to tell us what you want to tell us, and then we will get to the questioning.

Mr. MUKASEY. Well, I would like to make just a brief statement before the questioning.

Good morning, Chairman Obey, and——

Mr. OBEY. Take whatever time you need.

Mr. MUKASEY. Well, I do not want to run a lot of clock here.

OPENING STATEMENT OF ATTORNEY GENERAL MUKASEY

Good morning, Chairman Obey, Ranking Member Frelinghuysen, and members of the Subcommittee. I am here today appearing before you to present the President's fiscal year 2009 budget for the U.S. Department of Justice.

In my recent return to the Department in November, I have confirmed what I had hoped and expected to find, which is men and women who are talented, hard working, and dedicated to fulfilling the Department's mission.

As you are aware, the Department is charged with defending the interests of the United States according to the law, ensuring public safety against threats both foreign and domestic, seeking just punishment for law-breakers, assisting our state and local partners, and ensuring fair and impartial administration of justice for all Americans.

During my tenure, I have looked for opportunities to work with Congress to ensure that the Department is provided with statutory and other tools that are necessary to fulfill our mandate. The Department relies on the funding from this Committee to pursue our mandate and to enhance our efforts in the areas that need it.

And, Mr. Chairman, I want to thank you and the other members of the Committee for your continued support of the Department, and I very much look forward to continuing to work with you and

members of this Subcommittee to advance a budget that will help us to achieve our mission.

My written statement, which you have put in the record, addresses the Department's budget request and goals in some detail. But I would like to take just a few minutes to highlight a few priorities.

The Department's budget request for fiscal year 2009 is $22.7 billion. Those funds will allow us to accomplish our mission and to focus on several of the priorities that I have discussed in other settings. These are national security, violent crime, immigration and border security, and public corruption.

The President's fiscal year 2009 budget request reflects a six percent total increase over the fiscal year 2008 enacted budget for the law enforcement and prosecution programs within the Department.

I want to mention briefly four particularly important elements of the President's budget proposal.

First, the proposal increases the resources that are dedicated to national security and counter-terrorism efforts by $492.7 million which includes resources necessary to expand and improve the counter-terrorism programs of the newly created National Security Division within the Department and the Federal Bureau of Investigation.

Since the devastating attacks September 11, 2001, the Department has mobilized its resources to help protect the nation. In that time, this Committee has strongly and repeatedly shown its support of the Department's efforts in the War on Terror. And, again, we appreciate those efforts.

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

Third, the budget request plans to support essential federal detention and incarceration programs that provide the infrastructure necessary to the Department's law enforcement personnel and prosecutors to carry out their responsibilities.

As programs such as Project Safe Neighborhoods and the Southwest Border Enforcement Initiative investigate and prosecute dangerous criminals, the Department has to be ready to confine those individuals in a safe, secure, and humane environment.

Finally, the budget funds current base operations and reflects the Department's strategy to work in partnership with state, local, and tribal authorities, and target funding to address the most significant needs of those communities.

It is our collective obligation to ensure that our resources, whether expanded on federal efforts or in support of our state and local partners, are used wisely and in a way that is calculated to achieve the most significant impact.

Chairman Obey, Representative Frelinghuysen, and members of the Subcommittee, I want to thank you for this chance to present the fiscal year 2009 budget. With your continued support, the men and women of the Department of Justice who are protecting and serving this country can continue to do their jobs and ensure that justice is served.

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

I thank you for inviting me here today, and I would be pleased to provide answers to the questions that you have. Thank you.

[Written statement of Michael B. Mukasey, Attorney General of the United States follows:]

STATEMENT OF MICHAEL B. MUKASEY
ATTORNEY GENERAL OF THE UNITED STATES
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

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

APRIL 3, 2008

Good morning Chairman Obey, Ranking Member Frelinghuysen, and Members of the Subcommittee. It is my pleasure to appear before you today to present the President's FY 2009 Budget for the U.S. Department of Justice (Department). Before I begin, I would like to thank you for your continued support of the Department's mission and your recognition of the important work that we do.

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

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

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

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

Understanding that our time together is limited, my testimony today highlights key budget priorities that support our efforts to enhance national security and protect our homeland. I will also discuss the Department's proposal to target state and local funding in a way that supports these priorities and leverages our limited resources.

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

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

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

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

I. National Security: Protecting the American People by Preventing Terrorist Acts

As I testified during the Department's oversight hearings earlier this year, since the terrorist attacks of September 11, 2001, the first priority of the Justice Department has been to protect Americans from the threat of international terrorism. All aspects of what the Department does, from budget, to allocation of resources, to policy development and legislative priorities, must continue to reflect this critical aspect of our mission and the reality of the world in which we live. According to the National Intelligence Estimate released last summer, al Qaeda has "protected or regenerated key elements of its Homeland attack capability" and continues to look for "prominent....targets with the goal of producing mass casualties...." As a result, the Department must continue to work aggressively to investigate and prosecute terrorists, and we must do so effectively and efficiently. To that end, the Department has expended substantial time, energy, and

resources in improving and streamlining the organization and operations of its counterterrorism assets. In just two years, the Department has created and brought into full operation the National Security Division (NSD), which is dedicated to centralizing and improving the Department's ability to carry out its primary national security functions. Similarly, the FBI has dramatically improved and, in some instances, completely recreated its counterterrorism and intelligence collection activities. These improved efforts have allowed the Department to utilize its resources and its expertise to investigate, thwart, and prosecute terrorist conspiracies more swiftly and more effectively.

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

A. National Security Division

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

B. Federal Bureau of Investigation

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

involving weapons of mass destruction, protect the security of the Nation's cyber systems, and add 280 new agents and 271 new intelligence analysts.

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

Promoting partnerships both here and abroad is critical to the success of many initiatives. Since September 11, the Department of Homeland Security has supported the establishment of approximately 35 operational fusion centers. These fusion centers foster information-sharing between local, state, and federal partners to identify and assess emerging threats to the United States. The Department of Justice has been an integral partner in these efforts and has dedicated personnel and resources to the fusion centers. Together, we have been able to leverage existing information-sharing tools and resources. The FBI request includes funds to provide secure connectivity to fusion centers. Further, our partners in the war against terror extend beyond our borders and enhancements totaling $5.7 million will not only provide resources for the fusion center program, but also to expand the Legal Attaché program overseas.

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

C. Improved Communications Capabilities

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

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

II. Southwest Border Initiative

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

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

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

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

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

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

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

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

With an increase in detainees and immigration court hearings, comes the need for additional prosecutors. To meet this need, the President's FY 2009 Budget requests an additional $8.4 million for the U.S. Attorneys to support 83 new positions, including 50 Assistant U.S. Attorneys who will prosecute cases along the Southwest Border. Prosecutors will be focused on human smuggling, drug smuggling, homicide, robbery,

immigration, hostage taking, money laundering, and immigration violation cases. To support the additional attorneys, paralegals will also be hired to help keep pace with the mounting workload which is expected to increase by 200 percent over the 12,000 felony cases filed in FY 2007. This increase is attributed to more Border Patrol agents who are expected to generate an estimated 24,000 criminal immigration cases during the next two years.

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

III. Supporting Essential Federal Detention and Incarceration Programs

Since the beginning of this Administration, the Department has successfully increased its enforcement efforts in several key areas. These enhanced enforcement efforts have led to significant increases in the federal detention and prison populations. For example, through the Project Safe Neighborhoods (PSN) initiative, the Department has doubled the number of prosecutions for federal firearms crimes over the past seven years. As a result of programs such as PSN, the Federal government has taken on defendants who would have been prosecuted and imprisoned by state and local authorities, resulting in harsher penalties. To enable the Department to continue its focus on programs such as PSN, the Department requires additional funds to support adequate infrastructure to hold those who are arrested and successfully prosecuted. The President has requested $67.1 million for the FY 2009 budget in order to respond to this need.

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

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

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

day in FY 2001 to $11.91 in FY 2007 for the more than 200,000 inmates in the Federal Prison System system, which includes 114 minimum, low, medium, and high security facilities.

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

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

IV. Supporting our State, Local, and Tribal Partners in the Fight Against Crime

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

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

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

In order to build on the success of that $75 million investment, the President's FY 2009 Budget requests $200 million for the Violent Crime Reduction Partnership

Initiative. The Initiative will address violent crime through multi-jurisdictional law enforcement partnerships like those funded this past fall and will use competitive grants to combat a jurisdiction's specific violent crime problems. The program is designed to address crimes that range from drug trafficking to gang activity and to address the crime problems of both large and small communities. In addition to providing necessary funds to those localities that need assistance, the program is designed to retain the flexibility to adjust to changing trends in criminal behavior.

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

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

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

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

V. Conclusion

Chairman Obey, Representative Frelinghuysen, and Members of the Subcommittee, I want to thank you for this opportunity to present the President's

FY 2009 Budget. As you know, my tenure in the Department to date has been brief, but over the past several months my knowledge of, and respect for, the men and women who are protecting and serving this country has only grown. And it is with your continued support that they can continue to do their jobs to ensure that justice is served.

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

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

Mr. OBEY. Thank you very much.

Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

Mr. Attorney General, you and I come from a part of the country, the New York, New Jersey region where we view September 11, 2001 perhaps a little bit differently than other parts of the country.

And so when we talk about your budget and the centerpiece of your budget is counter-terrorism and intelligence, I do not think anyone views it in the abstract.

I have said in a number of hearings, 700 New Jersians died on that day. I do not forget it. I know that your main mission is to make sure that it never happens again. You are working hard to prevent it, apprehend those responsible for it, and I know doing whatever you can to prosecute those that we find to be responsible for those acts.

BUDGET PRIORITIES

You are proposing $493 million in new investments. The vast majority of that is in the Federal Bureau of Investigation, the FBI.

You mentioned in your fuller testimony the national intelligence estimate and the renewed threat of an Al-Qaeda capability and their intention to carry out its act.

What to your mind are the most areas in which the Department intends to focus the resources you are seeking to prevent further such attacks?

Mr. MUKASEY. Well, the money that you mentioned is focused, as you mentioned, principally on the FBI, which is that agency within the Department of Justice that is charged with intelligence gathering.

I should add that that is a relatively new mission of the FBI that was begun really or gotten more robust after September 11. And we have also, as I mentioned, stood up a new National Security Division within the Department of Justice.

The money that you mentioned, the almost $493 million, will be used, among other things, to hire 280 agents at the Bureau, 271 intelligence analysts, and as well as resources for DEA, the Office of the Inspector General, and law enforcement wireless communications, which are the radios that are necessary to ensure interoperable communication.

Mr. FRELINGHUYSEN. Director Mueller told us, the Committee, that his top priority was more people. You have mentioned the numbers.

Is our best investment against terrorism more of these skilled agents and analysts? How do you view their work?

Mr. MUKASEY. There are enormous resources, as you know, from the various agencies across the intelligence community in gathering information. What is necessary is people who can gather information in ways other than are gathered by those intelligence agencies and also people who can evaluate the information. If the information piles up unevaluated, it does not do us any good.

So we need to get both people who can gather information and people who can evaluate the information that is coming from other partners in the intelligence community, as well as information that is gathered domestically, and integrate it with all the other infor-

mation that we are gathering that is coming in from the CIA, the Defense Intelligence Agency, and other agencies, and put it into a coherent picture.

TRAINING FACILITIES

Mr. FRELINGHUYSEN. This is not necessarily a parenthetical, but, you know, we are going to go hire new agents and analysts, but we do not appear to have enough training facilities for them. One of the missing links here is the needed money for a new FBI Academy.

Mr. MUKASEY. I believe the Director testified yesterday. I am not certain precisely which funds would be used for the Academy, but I believe that the FBI can train, has trained, and will continue to train, and also rely on having some of its agents pass through other intelligence gathering agencies so that there would be folks who would go through the CIA and so on. So there would be some training that goes on as part of that process as well.

Mr. FRELINGHUYSEN. Well, not only do they train their own people, they also work pretty closely with local law enforcement, and I think we can all verify here, in a bipartisan fashion, that we need more money for construction. It would be good to have your endorsement because we want the best skilled people that are out there.

Thank you very much, Mr. Chairman.

Mr. OBEY. Would the gentleman yield?

Mr. FRELINGHUYSEN. Yes. Be happy to.

Mr. OBEY. Let me simply emphasize that it is our concern that the agencies will, if they have to make a choice between infrastructure and personnel, pursue adding personnel. We understand the reasons for that.

But I think it is safe to say that many of us on the Committee feel that we run the risk of neglecting the infrastructure that is needed to support these added personnel, and we would hope that the Department would take that into strong consideration as it participates in budget decisions.

Mr. MUKASEY. We certainly will. And I appreciate that point being made.

Mr. OBEY. Mr. Kennedy.

DRUG COURTS

Mr. KENNEDY. Thank you. Welcome, Mr. Attorney General.

You have heard the expression the 800-pound gorilla in the room or elephant in the room, although the identity of the 800-pound gorilla tends to vary.

Mr. MUKASEY. Right. Exactly.

Mr. KENNEDY. Well, obviously in our country, often it is sitting in front of us and, yet, we overlook it. And in our prison system, we have more people incarcerated in our country than even China in spite of the fact that we are always bemoaning the fact their human rights record is abysmal and we are debating in our own country whether to boycott the elections. And we are constantly looking at other countries and complaining about their human rights record.

But on a per capita basis, we have more people incarcerated in our country than China does. It says a lot about, you know, our prison record. And the fact is that we have people incarcerated in our country at such record numbers because of our drug laws.

And, yet, in this budget that you submitted, we zero out drug courts. And this is in spite of the fact that 68 percent of those at the time of arrest test positive for one of five drugs. And this is in spite of the fact that within three years of being let out of prison, people's recidivism rate is back into prison and in large measure because of drugs.

The war on drugs is just a farce as you know being a former judge. This is the big elephant in the middle of the room.

What I want to ask is what your opinion is on, as the lead law enforcement officer in the nation, what we should be doing as a nation to address the fact that our prisons have become a public health institution of last resort because of the failure of our public health system to address really a public health issue, which is, addiction as a public health issue. What do you think of it as criminalizing really a public health issue?

Mr. MUKASEY. The fact is that Congress has passed statutes that criminalize the sale of drugs. And I want to stress that we do not prosecute possession and use cases. That is not what the Justice Department is about. We are about stopping the people who are making tons of money out of ruining other people's lives.

Mr. KENNEDY. So why zero out the drug courts?

Mr. MUKASEY. Well, I think it is something of an overstatement to say that we have zeroed out the drug courts. What we tried to do with that program as well as other programs is to put them into a more coherent framework of essentially four categories, violent crime reduction, Byrne public safety protection, child safety and juvenile justice, and violence against women.

And what we would ask for is that various programs submit applications for grants, which we will evaluate, which will include drug courts. We are bound to include drug courts, we have to include them under one or more of those categories. So we are not ceasing to address that problem.

Just a parenthetical comment. I do not know whether it was part of your question, but I do not think our incarceration rate reflects a bad comparison with the human rights record of China. The people who are incarcerated in the United States are incarcerated after trials or guilty pleas.

Mr. KENNEDY. And I understand that. I understand that.

Mr. MUKASEY. They have a totalitarian society, so they do not really need a high incarceration rate. They do it in ways that—we do not want to, we do not want to reduce our prison population that way. I think we can agree on that.

And I realize that was not part of your question, but I thought I wanted to address it. But we do not underestimate——

JUVENILE JUSTICE GRANTS

Mr. KENNEDY. But when we cut the Juvenile Justice and Delinquency Prevention Program, which your budget does, which helps us avert a high incarceration rate, it is an indictment on our society to lower the number of people we put in prison. Your budget

cuts the dollars that we have to avoid a high incarceration rate in our country.

Mr. MUKASEY. I think one has to recognize that, as I said, one of the things we have done is to put into four categories the various grants that we have given out under a myriad of cross-cutting and intersecting programs. One of them is $185 million for Child Safety and Juvenile Justice.

But that does not really stand alone. It stands along with our own efforts that involve task force efforts directed, for example, at an unprecedented number of gun prosecutions and other task force prosecutions that we carry on.

So what we are trying to do is, number one, rationalize and coordinate grants and, number two, coordinate them with our own Justice Department enforcement efforts, that we have got a kind of doubling of resources.

Mr. KENNEDY. But I do not know whether the experts in the field have consulted with you on that, but did the juvenile justice folks in the field say that the JAIBG Program and Title 5 needed to be reformed, because from what I have understood, they have worked very well over the years?

I did not hear an outcry that they were not working and somehow they were not being made available for the kinds of prevention efforts that were needed to be made available for and, therefore, needed to be rolled into this kind of lump sum block grant that you say they needed to be rolled into.

Mr. MUKASEY. As to those two specific matters, I think I am going to need to get back to you because I do not want to——

Mr. KENNEDY. Right.

Mr. MUKASEY [continuing]. Either try to grope for the materials in here or give a general answer that is not responsive. So I will try to get back to you with regard to those two specific programs.

[The information follows:]

JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT (JAIBG) PROGRAM AND TITLE V

The Department is not aware of any sentiments or calls from the states to reform either the Title V Community Prevention Block Grants or Juvenile Accountability Block Grants (formerly JAIBG) programs. In fact, in their annual reports and recommendations to the President and Congress and to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Administrator for the years 2004 through 2007, the Federal Advisory Committee on Juvenile Justice (FACJJ) made no recommendations regarding these two programs beyond requesting that Congress either increase or maintain their annual funding levels.

The annual reports of the FACJJ are available at: *http://www.facjj.org/annualreports.html.*]

Mr. KENNEDY. Okay. Well, thank you, and look forward to that answer. That would be great.

Mr. OBEY. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mr. Attorney General, I want you to know how much I admire the work you have done. You have just done a magnificent job as our new Attorney General, and very proud of the work that you and your office are doing and look forward to supporting your budget request.

I am pleased to see that you have asked for enough money that you look like you will be in a position, if we are able to fully fund

that, and certainly I will do my best to see that that happens, that you can support the work of our Border Patrol agents and our other law enforcement officers along the border.

SOUTHWEST BORDER

I represent the State of Texas, the west side of Houston, and we have for a number of years, my constituents, everybody in the state, I know it is a concern of the country, but particularly in Texas, been just apoplectic over the lack of enforcement of our immigration laws, especially of our laws at the border.

There have been an increasing number of extremely dangerous criminals coming across the border, MS13 gang members, the human and drug smugglers. Slavery still exists. I did not fully appreciate that until I had been to the border and seen the tragic circumstances of people coming here for economic reasons who are literally held in slavery. And pirates still exist. They prey on each other.

It is the wild west, but today the Comanches are carrying machine guns and satellite phones and infrared binoculars. It is a scary place. There is a war going on down there, as you know, sir, and I have been devoting as much time as I can as a member of Congress, as a member of this Committee to help support law enforcement to find effective, thoughtful ways to secure the border, and have been very pleased with the work the Border Patrol is doing.

This Congress has supported the Border Patrol and given them so much money, in fact, that the officers, the sector chiefs, the Border Patrol agents along the border have, as Chief Gilbert in the Tucson sector told me, that the Border Patrol has been so generously and so well-funded by the Congress that they have like Napoleon outrun their supply train in many cases.

And that is something, Mr. Chairman, I hope we will work on here because the U.S. prosecutors, the U.S. Marshal Service is going to need help to help support this because truly like Napoleon in many ways, the Border Patrol has outrun the supply train.

In the Del Rio sector and in the Laredo sector, Mr. Chairman and Mr. Attorney General, the Border Patrol in working with the U.S. Attorney's Office has implemented an extremely successful policy that I have been working arm and arm with Ciro Rodriguez and Henry Cuellar with the full support of the local community which is 96 percent Hispanic.

In the Del Rio sector, they have begun a policy called Operation Streamline in which they are arresting and prosecuting essentially 100 percent of everybody they arrest with, of course, obvious exceptions for officers using their good judgment. If it is a woman with children, they do not throw them in jail. If they are somebody that is sick, they are using good judgment.

But in the Del Rio sector as a result of that, Mr. Attorney General, the crime rate in Del Rio has fallen 76 percent. The number of illegal apprehensions is down to the lowest level they have seen since 1973 when they first began to keep statistics.

In the Laredo sector, I was able to persuade the Sector Chief there, Carlos Cario, who is a good man, they have a terrible crime problem in Laredo with the drug war going on across the border.

Sector Chief Cario has implemented Operation Streamline and the results have been similar. They have seen a dramatic drop in the crime rate and a similar drop in illegal crossings. I am working to get it rolled out in Brownsville.

What I am leading up to, sir, is I made a trip to Tucson, Arizona in early February and met with the Border Patrol Chief there. I had understood they were interested in doing Operation Streamline out there.

And, Mr. Chairman, I mentioned to you and Mr. Frelinghuysen before, but I was dumbfounded to discover that in the Tucson sector, which has the largest number of illegal crossings in the country, there is an absolutely out of control drug smuggling problem.

The drug smugglers are so bold, in fact, that they have actually set up observation posts in the U.S. soil on top of hilltops where they put observers with satellite phones and infrared. They are actually watching our agents and telling the smugglers where the officers are.

So I went to Tucson to find out firsthand how I could help them with Operation Streamline and was dumbfounded to discover, and what I am about to tell you is absolutely—I still could not believe it myself, had to quadruple check it—if you are arrested by a Border Patrol Agent in the Tucson sector carrying less than a quarter ton of dope, you have a 99.6 percent chance of being home in time for dinner and never going to jail because the U.S. Attorney's Office is not prosecuting them.

And it is deeply disturbing. And when you look at the prosecution rates up and down the border, obviously the Tucson sector has got a huge problem. The Border Patrol is arresting over 50 percent of the people coming across the border.

And the U.S. Attorney in that sector was, I have to tell you, completely unhelpful, aggressively unhelpful in providing me information. I went there with hat in hand, how can I help you. They would not even talk to me. They were literally aggressively unhelpful is the most polite way I can put it.

I have met with your folks at the Department of Justice and grateful to know that this budget request you have given us will help, but I wanted to particularly ask you, sir, if you could just direct some personal attention, because I know what a good man you are. You are focused on law enforcement.

A .39 percent prosecution rate this year, .14 percent prosecution rate last year is not a matter of not enough resources. I mean, that is a policy decision of somebody in the U.S. Attorney's Office out there, because I looked at the evidence room.

The U.S. Attorney in Tucson actually notified the Border Patrol that they were only going to prosecute a very narrow range of violent cases, a very narrow range of cases. Anybody else was not going to be prosecuted.

And the Border Patrol officers asked for clarification, we want it in writing, and the U.S. Attorney actually sent out a memo to the Border Patrol saying that if you arrest anybody with less than 500 pounds, we are not going to prosecute.

And I asked the officers how long did it take the smugglers to come in with loads at 499 or less and they said about 48 hours. The loads of dope that are in the evidence room in Tucson are all below

500 pounds. They even had a 28-pound load of cocaine that the U.S. Attorney would not prosecute.

And Mr. Attorney General I really admire what you are doing and I know that you folks are doing your best, but Tucson is a hemorrhage. It is like we have got a bleeding artery in Tucson that is going to need your personal attention.

Quick example. The Border Patrol has invested tens of millions of dollars in unmanned aerial vehicles. They have got state-of-the-art UAVs, the ones that they are using in Iraq, based at Fort Huachuca. I went and saw them.

And the proud officers there working in the trailer, they showed me videos of arrests that they have made two o'clock in the morning. The Border Patrol agents are vectored out to intercept a caravan of smugglers coming in, one that was carrying a thousand pounds of dope.

The UAV saw them in Mexico in the vehicles, tracked them crossing the border with armed men with machine guns escorting them. They vector in the Border Patrol agents at two o'clock in the morning out in that dangerous desert. These proud Border Patrol agents go out with helicopters, vehicles. They go in. They make the arrest. Everything is on film, unbroken. They give it to the U.S. Attorney in Arizona and she says, no, I am not going to prosecute.

So what this does, of course, it is utterly demoralizing to the officers. The smugglers are laughing at us out there. And it is a terrible problem.

And I hope that if you could, please, talk to me a little bit about what can you do, your office personally to make sure that we stop the bleeding in Tucson, and that sector is absolutely out of control, and get this prosecution rate of .4 percent up.

Mr. MUKASEY. A couple things. First of all, I am familiar with, principally by discussion, with the successes in Del Rio and elsewhere in Texas.

Mr. CULBERSON. Like Laredo.

Mr. MUKASEY. And Laredo that you mentioned.

Mr. CULBERSON. And we are working on Brownsville, I hope with your help. The local community would love to have your help in Brownsville because they are ready.

Mr. MUKASEY. I hope to help with Brownsville. But respectfully, those numbers in Del Rio and Laredo and presumably in Brownsville are much, much smaller than the numbers involved in Tucson.

And we have had great success in Del Rio and Laredo in large part because of the nature of the people who are coming over in those areas who turn out to be people who are simply looking for work and people to whom the fact of a criminal prosecution, whether they get a little bit of time or, I mean, even as little as two weeks or 30 days is a major message because they simply did not think of their activity as criminal.

Mr. CULBERSON. And it is a federal crime. If they come back again, it is a felony and they are barred forever. So there is real meaning to that prosecution rate even if it is for a few days.

Mr. MUKASEY. Right. Move up, however, to Tucson——

Mr. CULBERSON. Yes, sir.

Mr. MUKASEY [continuing]. Which I actually visited on my trip. I made a trip to the border and to Mexico.

Mr. CULBERSON. Okay.

Mr. MUKASEY. Their numbers are enormous. And my experience did not coincide with yours. I think I need to revisit this by phone or otherwise insofar as this supposed 500-pound threshold.

My understanding is that when they get people, the backpackers who use diversion and then come across with their backpacks, put it all together and ship it up to cities north, those people are being prosecuted. That the percentages that you refer to are the other folks who are not involved in that kind of activity. They do, in fact, take quite seriously, the smuggling of marijuana and other drugs.

Mr. CULBERSON. Unfortunately, I think your local office might have put on a good dog and pony show. I poked around a lot. I went around and got off the radar and poked around. The evidence room is full of loads under 500 pounds. I would love to work with you on this and I want to be supportive and helpful.

Mr. MUKASEY. I understand that you do and I would be happy to work with you.

Mr. OBEY. Mr. Schiff.

Mr. CULBERSON. Thank you.

Mr. SCHIFF. Thank you, Mr. Chairman.

EXECUTIVE PRIVILEGE

Mr. Attorney General, I want to ask you a few questions about the subpoena power of the Department and the courts and the Congress.

When the Department subpoenas witnesses to come before the Grand Jury, I take it they have an obligation to appear before the Grand Jury. They can make a claim of privilege once they get there, but they are required to appear before the Grand Jury; are they not?

Mr. MUKASEY. As to Grand Jury subpoenas?

Mr. SCHIFF. Yes.

Mr. MUKASEY. Yes.

Mr. SCHIFF. If they want to make a claim of privilege, they would have to particularize it and say that as to this question or this document, that is a matter of attorney-client privilege or some other privilege and I am not required to provide that?

Mr. MUKASEY. And Grand Jury proceedings are secret.

Mr. SCHIFF. Right. When you were on the Federal bench, if someone was subpoenaed to come into your courtroom and testify, I take it they were required to appear in your court and make a claim of privilege if they had one to make? They could not simply——

Mr. MUKASEY. Absent a successful motion to strike the subpoena, in which case it would happen.

Mr. SCHIFF. But absent that, they could not simply fail to appear?

Mr. MUKASEY. Correct.

Mr. SCHIFF. Why does the same principle not apply when the Congress issues a subpoena to the executive? Why is the executive not required to appear and to make a claim of privilege and make a particularized claim and say as to this question, this is covered by executive privilege, as to that question, I can testify?

Mr. MUKASEY. I think what you are talking about is subpoenas that I testified about before the Oversight Committee relating to in

particular people immediately around the President who were subpoenaed, as to whom there was long-standing OLC authority to the effect that their testimony was privileged under executive privilege and that that privilege embraced, because they were people who would directly advise the President, embraced essentially no necessity to appear because what they were being asked to do was to discuss their advice to the President which was privileged.

Mr. SCHIFF. Mr. Attorney General, as we have seen in the case of the torture issue, the opinions of the Office of Legal Counsel are often wrong and they are often repudiated.

I would take it if someone were subpoenaed to appear in your court when you were judge, notwithstanding that they had the opinion of their own attorney, that what they had to say was privileged, the fact that their own attorney might advise them to say it was privileged does not preclude them from having to go to court and make the argument why their testimony is privileged.

So why is it different in the case of the executive and particularly in the case of a former executive official?

Mr. MUKASEY. I reviewed the particular opinions relating to the subpoenas that I think you are talking about and I believe they are valid.

I think what is different is, in large part, the fact that we are talking oddly about two matters. One is congressional oversight. The other is executive privilege. Oddly neither of which is provided for directly in the Constitution, but both of which are implicit in the Constitution.

Mr. SCHIFF. But, you do not deny the power of the Congress to subpoena someone to come and testify, right?

Mr. MUKASEY. We do not.

Mr. SCHIFF. The only question is whether the privilege applied. How can it be the policy of the Department, how can it be legal to take the position that we can simply fail to appear and not have to particularize any claim of privilege based on our own internal opinion?

Mr. MUKASEY. I think when you are talking about people who were directly involved in advising the President—we are not talking about people who are lower down in the executive—but people who were directly involved in advising the President, the principles are somewhat different.

Mr. SCHIFF. Well, they can make those arguments, I would assume, when they appear before Congress, when they are asked a particular question, that this question was the subject of discussion with the executive and, therefore, is privileged.

The President has asserted, with respect to some of the things that the Congress was interested in, that he was not party to the discussions, and so presumably there would be areas of testimony that would not be within the realm of executive privilege.

So how can we make that determination in a vacuum?

Mr. MUKASEY. Even if the President is not himself a direct participant, there is a decision-making process within the White House that has been found to be the subject of executive privilege.

Mr. SCHIFF. That is probably exactly correct, but that would not apply to every question about every issue and cannot be made, I think, in isolation within the executive.

If I can ask you also, Mr. Attorney General, ask you to put your federal judicial hat on again. The Congress disagreed with your opinion——

Mr. MUKASEY. It would have to be a violation of——

Mr. SCHIFF. Well, just for the purpose of today, the Congress disagreed with the opinion of the Office of Legal Counsel. It found that the failure to appear constituted contempt. According to the statute, that when the Congress makes that finding, it is the United States Attorney whose duty it shall be to bring the matter before the Grand Jury for its action. Once it is brought before the U.S. Attorney, the statute says that that U.S. Attorney shall bring the matter before the Grand Jury.

Now, when, as a federal judge, have you interpreted the word shall in such clear terms to mean may? What is the basis for instructing the U.S. Attorney that the requirement that he shall bring it before the Grand Jury is somehow discretionary?

Mr. MUKASEY. I think the basis is set forth in an OLC opinion which says essentially that when there has been a finding of a valid claim of executive privilege, a United States Attorney could not under those circumstances, that is when there has been a finding that the claim of executive privilege was valid, could not under those circumstances bring a contempt proceeding.

Mr. SCHIFF. Do you not see how this would inoculate the executive in every circumstance because presumably whenever the executive operates consistant with what its own attorneys tell it, they would then instruct the U.S. Attorney not to enforce any type of a contempt citation?

It seems to me that the issue would be placed before the Grand Jury to decide. By the executive taking the position that we can write our own legal opinion to justify the failure to appear and that we can write our own legal opinion to justify the failure to enforce our failure to appear, the executive inoculates itself from any enforcement mechanism by the Congress.

Mr. MUKASEY. Respectfully, I do not think that inoculation is necessarily a hundred percent effective because, as I understand it, and I do not know this to be the fact, but I have read that there is to be a lawsuit relating to those subpoenas and that matter will be decided in court.

Mr. SCHIFF. Well, there is a lawsuit. We had to take that extraordinary step.

The problem that I am pointing out here is that as the chief law enforcement officer for the country, I do not think you can take the position that an answer to a lawful subpoena, the executive can simply fail to appear on the basis of its own attorney's view and it can instruct its own attorneys not to enforce contrary to the explicit language of the statute when it does so.

Mr. MUKASEY. I certainly agree with you as an across-the-board matter that that should not happen. But in these particular cases for reasons that we have outlined, we think it should and that matter is going to be resolved in court. There have been previous cases involving assertions of executive privilege and they have been sustained at times, overridden at times.

And one case that comes strongly to mind is the United States versus Nixon where the same material was subpoenaed by a Grand

Jury and by a congressional committee, and where the issue broke was that, as to the Grand Jury subpoena, the subpoena was upheld and the objection was overridden. And as to the congressional subpoena, essentially the same material, the objection was sustained.

Mr. OBEY. Mr. Ruppersberger.

Mr. SCHIFF. Thank you, Mr. Chairman.

Mr. RUPPERSBERGER. Interesting legal debate for both. You can tell you both know your issues. Probably both lawyers too.

Mr. SCHIFF. I plead guilty.

Mr. RUPPERSBERGER. Okay. I want to try to get into three areas, if I can quickly, but maybe I might not be able to.

ADAM WALSH ACT

The first thing, Congresswoman Deborah Wasserman-Schultz and Senator Biden have asked me to raise this issue with you.

You are aware that the 2006 "Adam Walsh Act" directed the Attorney General to deploy technology to Internet crimes against children. There is a great program, a Wyoming program that has been very successful about bringing together the different jurisdictions and really has helped make a lot of cases. You now want to expand that program.

We want to make sure that the Wyoming program stays in place until the new program is up and running and it works. We have had a lot of issues, as you know, in the FBI with the problems with our technology.

So my question to you is, are you going to maintain the Wyoming program until a new program is up and running and has been tested?

Mr. MUKASEY. I cannot speak directly to the Wyoming program because I am not familiar with it. I would be happy to get back to you specifically with regard to that.

However, we do work very closely with an entity called NCMEC, which is the National Center for Missing and Exploited Children out in Alexandria. And if anybody has not paid a visit out there——

Mr. RUPPERSBERGER. Yeah, but I do not want to get into that. I am going to ask you the question because I have to get to some other areas.

Can you give us a commitment that you will maintain the Wyoming program? You have won a national award for this or the Justice Department has won an award for being effective, and we do not want to do away with one program because we are starting another one that does not work yet.

Mr. MUKASEY. One thing I can promise you is that I will look into it and get back to you in writing if I have to. I am not going to comment on a program with which I am not familiar.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. RUPPERSBERGER. Okay. I would suggest you look at it very closely and hopefully you will follow the suggestions that we have given you.

FISA, as you know, is the legislation to reform the government's ability to engage in wire tapping. I am on the Intelligence Committee as is Mr. Schiff, and I do represent NSA. NSA is in my district. I spend a lot of time at NSA.

So a lot of my constituents work at NSA. And anyone who works in the field of intelligence should know exactly what the law is. They should have the ability not to worry about whether something is in a gray area. So it is so important that we move ahead with FISA.

We have now worked out a lot of issues. I think the biggest problem started when we tried to undertake the FISA legislation. It was the issue of the courts.

And you as a judge and a lawyer know that our forefathers created a great system of government with checks and balances. And, you know, I personally felt very strongly as a former prosecutor also that we needed the court whenever you have a wire tap for the check and balance. And I think we have resolved most of that issue now.

I think what it comes down to with respect to FISA right now is the Senate bill that is giving full immunity versus our House bill that is not going to give full immunity.

And by the way, I believe that it is more, and I know my colleague, Mr. Schiff, believes this way, that it is not as much about the immunity with me. It is about whether or not anybody in the government really broke the law. And, unfortunately, there is a lot that we can't say because of issues being classified, that really these companies can protect themselves.

So now we are in a position where we are asking, will you and the Administration be willing to negotiate on this issue so we can get beyond this back-and-forth bickering. It is for our national security. It is for the people that work in this field every day. And we have got to have a consensus and move on in dealing with national security.

Where are we, and will you be willing to negotiate and work with us so we can get this behind us?

Mr. MUKASEY. I am not directly the person doing the discussing, but I should tell you that, first of all, as to the need for certainty, I could not agree with you more. That is a significant part of the problem underlying the immunity debate.

Secondly, nobody, nobody is talking about immunity for government activity. This is immunity under two circumstances, one in which a carrier did not participate. And I think everybody can agree that if they did not participate, there should be no lawsuit.

Secondly, a situation which a carrier received from the government a notification that they were being asked by the President to do something that was lawful and that served national security, under those circumstances, yes, immunity was requested.

And these people need to know on a certain ongoing basis whether they are protected or not because, otherwise, their cooperation with us—and it is not just as to electronic surveillance. Private entities cooperate with the intelligence community across a broad area and cooperate voluntarily.

But they are not charitable institutions. They are not governmental institutions. They have responsibilities to their boards. And if they are going to be sued whenever they provide that kind of cooperation, their only response is going to be and has to be "Make us do it."

Mr. RUPPERSBERGER. I agree with you on that issue.

Mr. MUKASEY [continuing]. To be resolved.

Mr. RUPPERSBERGER. Okay. I agree with you on that issue. However, the votes are not there on our side at this point. So part of our system of government is about working out issues and compromise. And this is too important an issue.

So really my question to you, understanding the fact you might not be integrally involved in negotiation, would you be willing to use your position as Attorney General to sit down and to try to work a compromise as it relates to this FISA Bill? It needs to move forward.

Mr. MUKASEY. I think anything that can be discussed should be discussed. But I do not think we can cut bone simply in the interest of achieving a compromise.

Mr. RUPPERSBERGER. There are some other issues that I do not want to talk about now that could be resolved. You know, unfortunately because of the fact that we have classified information, we cannot talk about it.

But, you know, we need good faith here. There are a lot of issues out there with the President and his interpretation of authorities, but this needs to move forward.

Okay. Let me get into one other area that—yes.

Mr. OBEY. Only if it will take 30 seconds. Your time is up. Did you want to——

CYBER SECURITY

Mr. RUPPERSBERGER. Yeah. Real quick, because I will say it. Cyber security, very important issue. We are being attacked on a regular basis by China and Russia and we need to be aggressive. They could cut down our banking institution. But we are moving forward in this arena.

I think it is very important that the Attorney General get involved and start discussing the issues of civil liberties and privacy and those issues so we do not get into a FISA situation. We have a lot to do here, but we also have to deal with civil liberties.

I think we do not have a road map as it relates to cyber. We need a road map. And I think you in your position, you have to focus on where we are going to be in this regard.

Mr. MUKASEY. One answer, amen.

Mr. RUPPERSBERGER. Was that 30 seconds, Mr. Chairman?

Mr. OBEY. What?

Mr. RUPPERSBERGER. Was that 30 seconds?

Mr. OBEY. That was just fine.

Mr. RUPPERSBERGER. Good.

Mr. OBEY. Mr. Rogers.

Mr. ROGERS. Mr. Chairman, thank you.

Attorney General, welcome.

Mr. MUKASEY. Thank you.

SENTENCING GUIDELINES

Mr. ROGERS. I want to ask you about the recent decision by the Sentencing Commission for crack cocaine offenders that allows the offenders in prison prior to November 2007 to petition a federal judge to have their sentences retroactively reduced accordingly. The sentencing guidelines had employed a hundred-to-one ratio that treated 100 grams of powder cocaine the same as one gram of crack cocaine for purposes of sentencing convicted cocaine offenders.

My questions to you relate to that. What impact will that decision have on drug-related and violent crime in the U.S. and what impact will it have on the prosecution of cocaine offenders in the future?

Mr. MUKASEY. I do not want to be alarmist about this, but the fact is as you know, we were against the amendment of the guidelines retroactively for a number of reasons.

First of all, crack offenders, because of the nature of that business, were among some of the most violent offenders in the prison system. To release them prematurely, we thought, without the benefit of the reentry programs and other programs designed to reintroduce them to society in a way that minimizes the chances of recidivism was a mistake.

Secondly, it was in the large, unfair to take the cohort probably least deserving of a retroactive application of the optional feature of the guidelines that has now been read in by the Supreme Court and give that group the benefit of optional application of the guidelines, whereas others were in on mandatory sentences that were going to hold regardless.

Third, the sentences that had been imposed on those folks were the result of cases that had been built in large measure on the assumption that the crack cocaine sentences were what they were going to be.

We answered pleas from communities where people were literally being held hostage by the presence of violent crack dealers in their communities.

We went in. We made cases based on the crack statutes and the crack guidelines as they existed at the time, were able to forego problems that might be presented, for example, by figuring out who in the gang was responsible for the weapons at the stash house and so forth and made cases that were built on the existence of the guideline system as it was at the time. Those sentences are now being reconsidered with other considerations in mind.

And it seems that we did a substantially good job at that and to the point where the concern has now turned from the communities that were besieged to the people who are in prison. And we just think that was a mistake for those reasons.

The numbers are going to accelerate as these people come out. Frankly, I hope predictions of dire results are wrong. But it is not hard to see that people who come out after a crack sentence are going to go back to their neighborhoods and they are going to find one of two things, either the spot they occupied is unoccupied, in which case it is back to business, or the spot is occupied, in which case there may very well be violence.

Mr. ROGERS. Well, I share your worry and fear that the worst may happen.

According to the Sentencing Commission about 19,500 inmates sentenced between 1991 and 2007 would be eligible to seek a reduced sentence and the average sentence reduction would be 27 months or about 17 percent.

That is a big number, 19,500 crack offenders thrown back into our cities and communities. That is a rather large number; is it not?

Mr. MUKASEY. It is a big number. And I should point out that so far as the reduction you spoke of, that is, I think, based on the assumption that the reduction would be limited to a two point adjustment.

Once a person like that comes up for resentencing, the level of the reduction really depends on a decision by the judge, the guidelines being optional at this point. If the judge can provide a reason, the judge can go down as far as he or she wants. So that assumes only two points. It could be more.

Mr. ROGERS. So these requests, are they being made already?

Mr. MUKASEY. They are being made. In fact, in one jurisdiction, as soon as the new retroactive guidelines were announced, the judge did not wait for the effective date. He said that because the effective date is itself optional, he might as well do it right now and did it.

Mr. ROGERS. How many have been released so far?

Mr. MUKASEY. So far, I cannot give you a hard number. I will try to find that. It was three in that case.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. ROGERS. My information as of March the 5th was that more than 400 requests have been processed by BOP and they are already releasing inmates.

Mr. MUKASEY. That is——

Mr. ROGERS. Do you know how many would be eligible for release in the near future?

Mr. OBEY. Last question.

Mr. MUKASEY. I think that the number is around 1,600.

Mr. ROGERS. My information is 4,000 inmates would be eligible for release within one year of March 3rd, 2008.

Mr. MUKASEY. I was working with the smaller near future.

Mr. ROGERS. Yes.

Mr. OBEY. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

And welcome, Attorney General Mukasey.

WORKER ABUSES

This week, members of the Congress have been briefed by H2B workers from India about horrendous worker abuses that they have suffered in Texas and Mississippi at the hands of the Signal International Corporation.

They were promised green cards and family Visas and close to 600 workers gathered 20,000 U.S. dollars, their life savings, only to be provided with H2B Visas, temporary Visas, wage and hour violations, inadequate facilities, cramped living quarters, isolation, constant surveillance by armed guards, and threats of deportation for those who reported these abuses. I am aware that the workers have reported these abuses to the Department of Justice.

Could you confirm that DOJ is conducting a serious investigation into this case? And I hope that DOJ is the lead on the investigation on these cases, that they are and not immigration customs enforcement. And how will DOJ ensure that these H2B workers will be able to fully participate in the investigation given their current vulnerabilities?

The other section of my question in this area is I am concerned about whether the DOJ is generally putting effort into investigating these types of labor trafficking cases and how many past investigations have been conducted involving labor abuses of guest workers by U.S. corporations and recruiters and how many of these cases have been prosecuted and what were the results?

The current temporary worker program in the United States permits serious abuses to occur. What is the protocol for investigating cases that involve guest workers given their particular situation and vulnerabilities? And later I have another question on Korean immigrants.

Mr. MUKASEY. I have heard about it, but I am not familiar with it to the point of being able to discuss it, the particular case that you mention, and I would like to get back to you further on that.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committtee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Although from the facts you describe, it sounds like a fraud investigation might conceivable be warranted. But I would like to know more about it and will respond in writing about that.

The Department's response to the situation of workers who are brought here and kept essentially in slavery—and when I was district judge, I prosecuted a woman who headed what was called the snakehead operation and kept people in virtual slavery. She is doing a substantial sentence as a result of that. And people who worked with her are doing substantial sentences as a result of that.

Mr. HONDA. Thank you.

Mr. MUKASEY. But the particular case you mention is something that came to my attention the other day. I have not gotten into the details of it and I should not respond without knowing that. The same is true for the numbers that you asked for.

Mr. HONDA. Right. We will look forward to working with you very closely because of the seriousness of the case and its implications.

IMMIGRATION FRAUD

My second question, Mr. Attorney General, is, over a 12-year period, a long-time INS supervisor accepted over half a million dol-

lars in bribes from immigration consultants in exchange for green cards he later authorized.

In 1999, the four immigration consultants were convicted for their participation in this green card scam that affected some 275 Korean immigrants based on the testimony of the corrupt INS officer, who paid a fine and only received probation.

As a result of this fraudulent scheme conducted by this INS official and immigration consultants, hundreds of these Korean immigrants are facing uncertainty for almost eight years now. They are facing deportation hearings and undue anxiety after building their lives in California for the past two decades.

And I am sure that the Department comes across cases of immigration fraud such as this where innocent victims may be subject to deportation proceedings.

How does the Department handle these cases to ensure that the innocent victims are not punished for the wrongdoings of corrupt officials and middlemen? Is there a collaboration with the Department of Homeland Security to ensure that the lives of innocent victims are not destroyed and families not separated?

Mr. MUKASEY. The way cases are built has to vary on a case-by-case basis. And as you point out in your question, the responsibility for what happens to people who are here and are undocumented is principally that of DHS rather than DOJ.

That said, we try to prosecute people who are principally responsible for schemes like the one that you mentioned.

And, again, calling on my experience as a district judge, I tried somebody who was a guard over at 26 Federal Plaza who was conning people into believing he had authority. He, too, is serving time in jail.

Mr. HONDA. I do not want to be disrespectful, but I just want to make use of the time. The point is that this case was shifted over to DHS because of the shifting of responsibilities.

My question is, if we are pursing justice and in your preamble, you talked about ensuring justice and even though it goes over to DHS, when these cases are prosecuted and we go after and punish the perpetrators, why would the victims be victimized again when they are up for review of their green cards, and why could we not argue on their behalf and say let us put them in another situation and treat them as if none of these things have happened so that they can be dealt with in a way that there were no other situation that was negative on their behalf?

Mr. MUKASEY. I think that it should be the responsibility of the Department to call to the attention of anybody who adjudicates their situation at DHS. The cooperation that they have provided to the Justice Department in prosecuting cases and in disclosing this kind of thing, I would be surprised if that were not taken into account.

Mr. HONDA. I wrote a letter to the previous Attorney General, Ashcroft, asking for that consideration, even a communication to DHS indicating that or even suggesting that they be treated in a way that would recognize their situation and not be treated as if they were part of that fraud.

Mr. MUKASEY. It is our policy to call cooperation to the attention of any authority that deals with somebody who cooperates, whether

it is DHS or the Bar Association or anybody else. And I do not see why it should vary here. I will——

Mr. HONDA. I would like——

Mr. OBEY. The gentleman's time is about to expire.

Mr. HONDA. Thank you very much.

PROSECUTORIAL ABUSE

Mr. OBEY. Mr. Attorney General, the court a long time ago in a famous case observed that the power to tax is the power to destroy. I think that people would also agree that the power to prosecute is the power to destroy.

When the FBI Director was before this Committee two days ago, I told him about something I witnessed in Wisconsin when I was in the legislature, an event in which a Democratic Attorney General's Office in the State of Wisconsin, in my view, engaged in prosecutorial abuse. In the process, they virtually destroyed the career of the Republican leader in the State Legislature.

I have now witnessed the exact opposite case where it seems to me that if not prosecutorial abuse, at least prosecutorial spectacularly bad judgment virtually destroyed the career of an innocent woman and enabled millions of dollars of demagoguery to be directed against an incumbent Democratic Governor.

I do not know if you have ever heard of Georgia Thompson. She is a 59-year-old single woman, an employee of the State of Wisconsin. If you lived in Wisconsin, you would certainly have heard of her because she was prosecuted by the U.S. Attorney for the Eastern District of Wisconsin. Her prosecution was, in turn, used as the central issue in the Republican party's efforts to unseat the Democratic incumbent Governor.

Of the $7.6 million spent by the party in that race, $4 million was spent on TV ads talking about the fact that she had been indicted and somehow trying to drag the Governor into the controversy.

She was a career civil servant. She was not on the Governor's staff. She worked for the State for years before the current Governor was even elected. Yet, the prosecution contended that she had awarded a contract out of political favoritism, and the U.S. Attorney, operating in an atmosphere which we often see in which anyone accused of a political crime is automatically assumed to be guilty, unfortunately succeeded in getting a conviction, and she was sent to prison for 18 months until the case got before the Appeals Court.

I think it is fair to characterize the reaction of the three judges on that court as being appalled at the prosecution and the judgment exercised by the U.S. Attorney in that instance.

After 20 minutes of oral arguments, Judge Diane Wood told your Department's attorneys, " I have to say it strikes me that your evidence is beyond thin. I am not sure what your actual theory in this case is." The judges then called the prison from the courtroom and demanded that the woman be released immediately.

Now, your Department released some documents months ago which included an e-mail by Craig Don Santo. I believe he is in charge of the Department's Election Crimes Branch. His e-mail

asks how in heck did this case get brought. That is a question which I would still like to have the Department of Justice answer.

Georgia Thompson is now out of prison. She is back at work. She lost her home. She lost a year of her life. But the guy who brought this case, Stephen Biskupic, where is he? He is still the U.S. Attorney for the Eastern District of Wisconsin.

So your Department continues to invest him or invest in him, I should say, the power to destroy people's lives if he makes a serious misjudgment.

Now, we all make mistakes. I have been around long enough to see a lot of prosecutorial abuse. However, it is very hard to understand how any thoughtful or balanced prosecutor could have allowed this to happen.

Prosecutors, as you know, have a job not just to prosecute but to also assure that justice is done in the process. It sure as hell does not appear to have been done in this case.

Now, that case would be less disturbing to me if there were not examples of perhaps similar situations in other jurisdictions. I do not want to even get into the Alabama, I believe it was, Governor who was prosecuted recently. I guess that case is now open again.

When we see some of the activities associated with that case, it frankly makes one wonder. I am not qualified to reach any conclusions on that case, and I do not want to even get into it. It is not my job.

But it is my job representing the State of Wisconsin to speak out when I see something that amounts to a travesty of justice, and that sure as hell was the case in the case of this woman who was doomed before, thankfully, the Appeals Court finally recognized an injustice and demanded that it be corrected immediately.

I would like to know when there is going to be an accounting for those missteps. The only people who can provide that accounting, in my view would be the Justice Department.

I recognize that this did not occur on your watch, but you have got the kind of reputation that leads me to believe that you would care about correcting something like this. I would like to know what we can expect from the Justice Department.

Mr. MUKASEY. I do care about it. I will take a look into the facts surrounding the prosecution. To the extent that I can disclose them without violating Grand Jury secrecy, I will try to do that in a way that answers your question.

[The information follows.]

Question. Will there be an accounting from the Justice Department for missteps in the Prosecution of Georgia Thompson in the Eastern District of Wisconsin?

Answer. The Office of Professional Responsibility initiated an investigation into the circumstances surrounding the prosecution of Georgia Thompson after the Seventh Circuit reversed her conviction in United States v. Thompson, 484 F.3d 877 (7th Cir. 2007). The investigation is pending. We will advise you of the results after OPR has completed its investigation.

Mr. OBEY. I just think it is important. We all talk about accountability, but it is important that people who are lodged with the power to impose accountability are also themselves accountable. That certainly so far has not seemed to be the case in this instance.

I have a number of other questions that I have to get through for the record and they will take some time, so why do I not ask

each of you if you have any other questions you want to ask before I get into those.

Oh, Chaka, I did not see you walk in. Sorry about that. Why don't I yield to you for five minutes.

Mr. FATTAH. Thank you, Mr. Chairman.

Thank you and let me welcome you to the Committee.

Mr. MUKASEY. Thank you very much.

EAVES-DROPPING ON MRS. KING

Mr. FATTAH. I have one question that is on my mind having not much to do with your appropriations request. But nonetheless we are at the 40th anniversary of the death of Dr. King.

The Department which you now lead a few months back acknowledged that for years after Dr. King's death, his widow, his late widow now, Coretta Scott King, was eavesdropped on by the Justice Department for no apparent reason.

That acknowledgment from the Department of Justice was a factual acknowledgment. And I would like to know what your opinion of that circumstance is? And I think it would be important to put on the record now, you know, the facts surrounding that.

Mr. MUKASEY. I do not know precisely of the circumstances relating to the eaves-dropping on Mrs. King. I have read, obviously as we all have, of the former FBI Director having eaves-dropped on Dr. King. And if the circumstances were anything like that, it is just as reprehensible.

Mr. FATTAH. But this is after Dr. King's death and it is an acknowledgment from your Department. We will leave the record open and perhaps you could make some comment to the Committee on this matter.

[The information follows:]

EAVESDROPPING BY THE JUSTICE DEPARTMENT ON CORETTA SCOTT KING

As reflected in documents released pursuant to the Freedom of Information Act, Coretta Scott King was never the target of electronic surveillance by the FBI. In 1968 documentation, the FBI Director expressly directed that no investigation be initiated on Mrs. King, and other documents during that time period indicate that the FBI had not, in fact, investigated Mrs. King. During the late 1960's, when the FBI was investigating a long-time member of the Communist party, it appears that on a very limited number of occasions electronic surveillance targeting that person involved conversations between that target and Mrs. King. As indicated above, that did not result in an investigation of Mrs. King herself.

The information contained in these FBI files was collected during an earlier era in our history when different concerns drove the government, the news media, and public sentiment. Today's laws and other legal guidelines strictly limit the circumstances in which investigations may be initiated and various investigative techniques, including electronic surveillance, may be used. Many of the investigations and techniques used in times past are no longer either lawful or appropriate and would therefore not be initiated today.

Mr. MUKASEY. I will.

Mr. FATTAH. Thank you.

Mr. OBEY. I would like to have the Committee take a five or ten-minute break before we resume questioning.

[Recess.]

Mr. OBEY. Mr. Frelinghuysen.

SUPPLEMENTAL FUNDING

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman. In the time remaining, I would like to get from you, Mr. Attorney General, what you really need in this budget. I know you have highlighted some areas. I raised the issue of supplemental. It has been a while since your submission. I think what? Eighteen months ago. I think you were looking for $146.6 million to support a variety of needs.

Mr. MUKASEY. I think what we need principally is for the 2008 spending plan to be fully funded. That would go a long way toward making sure that we can do what we need to, be assured that the money is going to be there, and spend it in an intelligent way rather than, you know, having to go helter skelter toward the end. I would deeply appreciate the funding of the 2008 spending.

Mr. FRELINGHUYSEN. But the money is focused, I think, on Iraq and Afghanistan.

Mr. MUKASEY. So far as the $100.7 million that the 2008 supplemental that you requested, this is for FBI, U.S. Marshals, CREM, DEA, for agents, attorneys and operations in Afghanistan and Iraq.

I was over in Iraq. I saw what our people are doing over there and in cooperation I should add with -they are really they are helping us with that and sponsoring it. But our people are doing terrific things towards helping their courts function and putting the law into the law and order formulation over there. And we need that money to help.

Mr. FRELINGHUYSEN. It doubles the 2007 supplemental, but it is absolutely essential for your DOJ people.

Mr. MUKASEY. It is absolutely essential for them because they are literally putting their lives on the line. And I spoke the other day with five FBI agents who were injured over there and they are really putting their lives on the line.

Mr. FRELINGHUYSEN. So the dollar amount you are seeking here would be that amount or?

Mr. MUKASEY. One hundred point seven million dollars.

NATIONAL SECURITY DIVISION

Mr. FRELINGHUYSEN. All right. So you are not asking anything in addition to that. You highlighted in your testimony the work of the relatively new National Security Division. You are basically looking for maintaining the same staffing level. What can you say about the coordinating role that division is playing with counter terrorism and interacting with the FBI?

I know there are certain things you can't talk about. You have mentioned some of, at least one success, but how is that effort of coordination and interaction occurring?

Mr. MUKASEY. The National Security Division coordinates all our activities with regard to FISA applications, all our activities with regard to prosecutions of counter terrorism. I guess one of the best pieces of evidence I can give is that the Assistant Attorney General in charge of the National Security Division has been now asked to go over to the White House to serve to replace Fran Townsend. The compliments don't come much more concretely than that.

We have taken a number of otherwise independently functioning portions of the Justice Department and put them in that Division

and stood it up within a relatively short period of time. And the person who did that, was principally responsible for it, was Ken Wainstein. He has now been asked to serve over in the White House and we are going to have somebody new put in charge of it. But it is functioning to do all the coordinating, all our relationships with the FISA Court which are very important, as well as our counter terrorism prosecutions.

Mr. FRELINGHUYSEN. We want to talk -

Mr. MUKASEY. And evaluation of the intel that comes in as well. So it is the nerve center.

INTEGRATED WIRELESS NETWORK

Mr. FRELINGHUYSEN. One of your other nerve centers and another key to addressing counter terrorism is this integrated wireless network. I looked over the Inspector General's report and 79 percent of the Department of Justice's radios are not airwave compliant. Ninety- five percent lack the mandated security; 73 are obsolete. In the overall scheme of things you are not asking for a lot of money. Some of it is sort of a repair job. And then you are putting about half of the $43 million into new technology.

We are obviously interested in supporting this effort. We know the need for interoperability, but some of those IG's statistics and reports are pretty disturbing.

Mr. MUKASEY. We need to look to put it very succinctly, we need to be able to talk to one another. We need to be able to talk to the State and locals. If we can't do that then our efforts are necessarily helter skelter.

Mr. FRELINGHUYSEN. Well, my gut feeling, as a lay person, you are not asking for enough money. What is going to be the life cycle cost of what we are talking about here?

Mr. MUKASEY. I am going to have to get back to you with regard to that specific number. I mean, I was a liberal arts major myself, and I can't get in as far into the technology as I would like. I would be happy to respond afterwards to the precise number that you have asked for and the life cycle.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. FRELINGHUYSEN. We are supportive for the reasons that I have stated. We want to give you the tools that you need. The thought that some how you would be unable to meet all the things that you need to meet because of the lack of assets is quite disturbing.

Thank you, Mr. Chairman.

Mr. OBEY. Mr. Schiff.

EXECUTIVE PRIVILEGE

Mr. SCHIFF. Thank you, Mr. Chairman. I want to discuss for a moment the situation with the DNA evidence. Before I do, I do want to make one final point on the discussion we had earlier on the subpoena issue.

And that is to raise a concern about what to me is a disturbing circularity in the arguments on this issue. That we don't want to have to appear. We request our own lawyers to give an opinion. Our own lawyers tell us we don't have to appear. We don't appear. We are held in contempt. The statute says that shall be brought before the Grand Jury. We don't bring it before the Grand Jury because our legal opinion says that the failure to appear was okay. And it just goes around in a circle.

And the problem I see is that I think this undermines the Department of Justice. I think it undermines the Congress and I think it undermines the checks and balances of the system. I understand this is a position you have taken on this issue, but I would just urge that in other contexts that we not employ the circularity of reasoning that is flowing from these Office of Counsel opinions. They should not be the first and last word about the obligations of the Department.

DNA

Turning to DNA. I understand that the FBI has a backlog of about 200,000 convicted offender DNA samples. The backlog increased substantially in 2006 when a new law took effect requiring that a greater category of felons be required to submit DNA samples. There is another law that will take effect later in this year or 2009 that will again expand the number of samples that we take. The fiscal year 2009 request is a little over $30 million. That to me seems far short of what will be necessary to bring that backlog down.

So the first question I have is, is that going to be adequate to get rid of the backlog particularly with the new law kicking in?

The second thing I want to ask is a lot of our States and localities have a tremendous backlog of their own. And some cities, I saw a report that the City of Oakland, for example, half of the rape kits have gone un-analyzed, which to me is a tragedy of enormous proportions. That we could be taking rapists off the street, serial rapists off the street. And we are not, even though the evidence is sitting there in a lab un-analyzed.

The President a few years ago announced with great fanfare an initiative to spend over $200 million a year for five years to do away with that backlog around the country. But this year all the funding for DNA has been rolled in with the Byrne Grant program that funds everything else. And the sum of all of those programs is about $200 million. So it has got to be a fraction of what the President said he wanted to do some years ago and the backlog problem hasn't gone away.

So I want to ask your thoughts about that. And then finally one last DNA question. I am working on legislation that would try to make greater use of the private labs which localities are turning to. And when a private lab analyzes an offender sample, not a case for example that is more complicated, but just a swab from an offender, it provides that to a local crime lab. The local crime lab can't upload in the system to see if there is a match with this suspected murderer or rapist until there is a 100 percent technical review of what the private lab did.

And I am interested to know if the Department would support a legislative change that would allow the State lab to upload that sample prior to the technical review being done. The technical review would still have to be done at some point. But my understanding is in every case where there is a hit because you upload a sample they take a new sample from the offender anyway to double check the work.

So it is not like it is going to mis-identify someone or you won't have to repeat the test anyway. But the loss of that time means that someone that has committed a violent crime is still on the street committing other violent crimes before you take them off the street. So I would be interested to know if you would support that kind of legislative change.

Mr. MUKASEY. Obviously, we will take a look at the legislation and give it serious evaluation. As to the DNA problem that you mentioned, I think a large part of it relates to getting in place regulations that do two things. One, impose standards on labs so that we can say that once we get results they are reliable, but secondly, don't impose standards that are so high that no lab can meet them. I am told that we are close to getting the regs in place that do that and that will help correct for that problem. And hopefully help clear up that backlog which I am told we can do assuming that we get our act together as far as getting regulations in place.

Mr. SCHIFF. Now I assume you are referring to the private labs when you talk about that standards or are you referring to the State and local crime labs?

Mr. MUKASEY. I am referring to State and local crime labs.

Mr. OBEY. The gentleman's time has expired. Mr. Culberson.

EXECUTIVE PRIVILEGE

Mr. CULBERSON. Thank you, Mr. Chairman. Mr. Attorney General, my hero is Thomas Jefferson and one of the few things I disagreed with him on was he believed that the President could decide the constitutionality of whatever he did himself. That it shouldn't go to the Supreme Court. And that is tough. And I have said I tend to agree to Mr. Schiff's analysis. It is difficult, I think, for the executive branch to determine itself whether or not what they submit to Congress is executive privilege. I would like to see that get the courts myself as soon as it could.

OPERATION STREAMLINE

But, Mr. Attorney General, I also wanted to ask follow up on Operation Streamline, because it is so important for the safety of the country that, that border be secure. And I would suggest it is the real win/win solution I think we have all been looking for, because Streamline has the support of the local community. The community in Del Rio and Laredo is just thrilled with it. It works in those communities. I mentioned Brownsville to you. I would love to have your help in rolling it out in Brownsville.

BORDER PATROL AGENT PROSECUTIONS

But the contrast between the work that is being done in Brownsville and I can tell you in Tucson is very distressing, particularly

when the country sees in and I can tell you the whole country knows about the case of the two border patrol agents, Ramos and Compean. When I visited Nashville the guy that was driving the cab took me to the airport. As soon as he, you know, found out I was a member of Congress his first question was, " What are you doing to get those border patrol agents Ramon and Compean out of prison?" He didn't get their names right, but he knew who they were.

And I wanted to ask you specifically about those agents as you know, it was not on your watch, but they were accused of hiding evidence in a shooting. They shot a drug dealer who was carrying a million dollars worth of drugs. The guy escaped into New Mexico. The prosecutor out there threw the book at these guys. They were thrown in and prosecuted a maximum, given 11 -ten to 12 years in prison. Their lives are destroyed. I am reminded of them listening to Chairman tell you about the case in Wisconsin, their lives are destroyed. They were denied an appeal bond. The U.S. attorney out there in the Western District would not even permit an appeal bond for these guys to get out.

And I think about Scooter Libby who was pardoned because the punishment he was given didn't fit the crime. He had already suffered enough. And certainly in this case those agents the punishment did not fit the crime. And they certainly suffered enough. Why couldn't we, you recommend to the President that border patrol agents Ramos and Compean be pardoned for the same reason that Scooter Libby was pardoned?

Mr. MUKASEY. Well I think that case is on appeal. I don't generally get involved in or comment on cases on appeal. We have a Pardon Attorneys Office and those applications go through that office. That office reports to the Deputy Attorney General and not to me. But any such application can be pursued through that office. The case again is on appeal.

Mr. CULBERSON. It is extremely important, I think, for the nation, for law enforcement officers. That case it is not just another case. It is one that everyone in the nation knows about. This has rung everybody's bell from coast to coast. It is one that everyone knows about. It is a terrible injustice. Those two officers, if they have certainly obviously done something wrong, but the punishment doesn't fit the crime.

I just want to ask if you could personally, we have written you a letter, Congressman Ted Poe, Congressman Rohrabacher and I and a number of others have written you a letter asking you to personally review that. Could I ask you, please sir, to personally review their case and see if you can't recommend that they be Officers Ramos and Compean be pardoned.

Mr. MUKASEY. The President has the power to pardon regardless of any recommendations from anybody. And so far as the Justice Department is concerned, those applications have to go through the Pardon Attorneys Office to the Deputy. And I have——

Mr. CULBERSON. But could you make a personal inquiry? This one would really help, I think, morale of the border patrol. It would be a great signal to the nation that these guys have suffered enough and we need to get, you know, get them out of prison.

Mr. MUKASEY. The only comment I can make on that case is that it is on appeal. And that the President has the power to pardon.

OPERATION STREAMLINE

Mr. CULBERSON. Okay. Following up on what is going on Tucson. I can tell you that the Border Patrol has offered to help the U.S. Attorney there with a border patrol a facility, and I just want to make sure this is on the record, because I am not sure that when you visited that they might not have told you this.

But the Border Patrol has a facility right there in Tucson that they could handle up to 140 cases a day. It is an auxiliary building. It has got a room in it that can easily be converted to a courtroom. There has already been a memorandum of understanding signed between the Marshall Service and the Border Patrol that would convert that building into a processing facility for Operation Streamline.

It doesn't even require the U.S. Attorney to provide any prosecutors. The Border Patrol will handle it with the Marshall Service. They can handle 100 to 140 cases a day. The U.S. Attorney has been resistant. You have got a serious problem with that U.S. Attorney in Arizona. The prosecution rate is just absolutely outrageous at .4 percent. The officers and the Border Patrol making arrests know that 99 percent of their cases are going to be turned loose and yet we are throwing the book at Ramos and Compean. It is a terrible problem and I really want to urge you to get personally involved. You are a man of great integrity. Everyone respects you and admires you.

And I thank you for what you have done so far. And I know my time is about up, but I look forward to working with you. And if you could please bore in on Tucson and help us roll out Operation Streamline from Brownsville to San Diego, the nation will be safer, we will keep the criminals out, the terrorists. And I think, Mr. Chairman, once that program is in place, I think anything is possible in immigration reform.

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

Mr. CULBERSON. Thank you.

Mr. OBEY. Mr. Honda.

WORKER ABUSE

Mr. HONDA. Thank you, Mr. Chairman. Just a followup on a previous conversation on the Indian workers. I asked if we could figure out how we can help the workers to be able to participate in an investigation because of their vulnerabilities and their status. And perhaps you can, your Office can get back to us on that. And then the victims of labor trafficking. I believe that they are being surveyed by ICE officers. And so it would be very, very important that these folks are not deported during the case. And their testimony and their presence may be necessary. And so I was wondering what the protocol that might be followed by DOJ would be.

DETENTION STANDARDS

And there is another arena that I was concerned about and that is the detention standards of immigration detainees held under

your prison. I understand that DOJ has refused to adopt DHS detention standards which acknowledge there are big differences between convicted criminals and non-citizens held for civil proceedings that are pending in the immigration system.

I guess the question would be why doesn't or why hasn't DOJ adopted the DHS detention standards?

Mr. MUKASEY. That is not, the question of detention standards in facilities, I guess like Oakdale, Louisiana, and others, is not one that I have looked into specifically. I will look into that and get back to you.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. HONDA. Okay. Thank you very much.

Mr. OBEY. Mr. Price.

EXTRATERRITORIAL JURISDICTION

Mr. PRICE. Thank you, Mr. Chairman. General, welcome to our Subcommittee. I add my word of welcome and want to take up with you a matter that, you may or may not be aware, I have been working on for a number of years. That is the obstacles that prevent your Department from investigating and prosecuting criminal incidents allegedly involving contractors and subcontractors employed by the United States government overseas, particularly in areas of conflict such as Iraq and Afghanistan.

As you know, your Department and also the Departments of State and Defense, have now publicly acknowledged that one obstacle to effective investigation and prosecution is a vague and probably incomplete extraterritorial legal jurisdiction for dealing with such acts.

The House has passed corrective legislation. This bill is now held up in the Senate, one factor apparently being Administration objections. But I hope we can count on your full support to get whatever problems need to be dealt with, dealt with, and to get this legislation on the books since three executive departments have publicly acknowledged the need for it.

Today, I would like to leave aside for the moment the question of which contractors are not covered under existing jurisdiction and deal with those who are. Because there is no question that U.S. extraterritorial jurisdiction does now extend to a significant universe of contractors, including all contractors working for the Department of Defense or in support of Defense Department missions in areas of contingency operations including Iraq and Afghanistan.

So I am interested in what you are doing with your present authority: what the Department of Justice's current efforts look like to investigate and prosecute allegations of misconduct by contractors that are currently covered under extraterritorial jurisdiction, including the Military Extraterritorial Jurisdiction Act.

First, since Operation Iraqi Freedom began, how many incidents involving alleged violent misconduct in Iraq has your Department investigated? And in how many of these cases have suspects been indicted? And in how many have convictions been achieved?

I would appreciate your furnishing those statistics now if you can, for the record if you cannot. And we would appreciate also comparable statistics for incidents in Afghanistan.

Mr. MUKASEY. I will furnish those statistics for the record. I would simply point out that we have prosecuted cases, but that as I am sure you would recognize, the difficulty of investigating cases that arise in a war zone and bring successful prosecutions is fairly substantial.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Also, unlike military prosecutions of people who may be involved in improper behavior, we have a much narrower set of choices when it comes to prosecuting people. I mean military people can be prosecuted for everything from conduct unbecoming an officer to other kinds of violations that are lesser than criminal violations. Criminal violations have to come up to a pretty high standard.

So it is correspondingly more difficult and then at the same time when you are investigating cases that arise in the war zone, getting evidence, getting witnesses, making sure that you have got a chain of custody and so forth to get all those into court is not an easy task. We have done it. And I will provide you with the statistics.

Mr. PRICE. Have you done it just in rough estimate? Have you done it anymore than just a handful of cases?

Mr. MUKASEY. I don't know what constitutes a handful and I am reluctant to say that it has been more than a handful. We have done it in a couple of cases. But the conviction rates have not been, I believe, have not been substantial in large measure because of the difficulty that I referred to.

But I would like to get you the hard numbers and not simply sit here and work from memory.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. PRICE. Well, there is no issue as to whether this is difficult. We understand that it is difficult. It is very challenging, but it is also true that we have more contract employees now in Iraq than we have troops. I mean we are deeply, deeply involved in this contracting. Those aren't all security contractors, admittedly, but the contract employees outnumber them in the tens of thousands. And so you would no doubt agree that this is a significant challenge, a significant problem. And your own Department has said that you need enhanced authority, presumably enhanced assets.

And that is my next question.

Mr. OBEY. The gentleman's time has expired. I am sorry, but——

Mr. PRICE. If I could, Mr. Chairman, I would like to submit additional questions for the record.

Mr. OBEY. Absolutely.

Mr. PRICE. And get those questions addressed. Thank you.

Mr. OBEY. Absolutely. Mr. Latham.

LAW ENFORCEMENT GUIDANCE

Mr. LATHAM. Thank you, Mr. Chairman and welcome the General here. Last fall the GAO noted that, overall, U.S. law enforcement entities charged with assisting foreign governments, foreign nations in dealing with terrorists, lacked any coordinated guidance. GAO noted defined roles as far as responsibilities in assistance in fighting terrorism, identifying, disrupting and prosecuting terrorists.

Could you give me your opinion as to what has been done to address this? Are there any U.S. laws that are obstacles to coordination like the GAO stipulated?

Mr. MUKASEY. I am not familiar with the GAO report that you mention and I would really need to take a look at it and respond to you in a supplemental way. I am sorry I don't know the report.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

INTERNATIONAL ORGANIZED CRIME AND TERRORISM

Mr. LATHAM. Okay. If you would, I would appreciate it. On another note, can you talk about the coordination between organized crime and terrorist entities today, recognizing that we are in an open hearing here, obviously. We can't talk about everything, but try to keep it in an appropriately general level. The connection between international organized crime and terrorism is one that we have encountered more than once.

The international organized criminals will sell anything to anybody and buy anything from anybody. And that includes terrorists. And so we found even with such seemingly routine criminal matters as intellectual property violations, you find that somebody who is selling counterfeit intellectual, that is counterfeit bags or sneakers or whatever, is selling them on behalf of somebody who has been using the money and laundering the money and using it for terrorist related activities.

Those people have one thing in common, that is a desire to move as much money around as possible. And there is no particular effort about what they sell or how they sell it, including weapons, including counterfeit electronic parts for weapons systems and so forth. And I don't want to get—can you——

Mr. MUKASEY. There is a lot of——

Mr. LATHAM [continuing]. You probably can't publically identify where the worst violators would be or the regions where they are.

Mr. MUKASEY. The problem exist to a substantial degree in parts of the former Soviet Union and in the People's Republic of China to name only two.

Mr. LATHAM. Right. Okay. I will submit some more questions for the record, Mr. Chairman. Thank you.

Mr. OBEY. Thank you. Mr. Attorney General, I have got about 16 questions to which I need to get answers, and we have got time for about four of them. So I will submit the rest for the record.

EARMARKS

Let me start with this one. As I said earlier, we are getting a lot of, in my view, gratuitous advice from the White House about how the Congress should proceed with respect to earmarks. In 2007 Congress did not earmark State and local law enforcement grant programs. We were assured that the Department would award discretionary grants in a fair, competitive fashion, yet today we have a lot of questions about the process in awards of the Part E discretionary Juvenile Justice grants for 2007.

A number of grantee applicants are alleging that the priorities and criteria published in the official solicitation were not ultimately the same as those used to award the grants. The newspaper Youth Today has also published what appears to be raw scores for the evaluation of these grants, which, if accurate, indicate that none of the top six applicants with the highest reviewer scores received grant awards. They were passed over in favor of lower scoring entities.

A number of questions flow from that. Although these events certainly occurred previous to your tenure, do you know how the Part E Juvenile Justice grants were awarded in 2007? Should we be concerned that the grants were handed out to cronies instead of being fairly competed and awarded? Did the Department use an external peer review panel to evaluate these applications? If not, what was the internal review process? Was it conducted by the Juvenile Justice Office staff?

Mr. MUKASEY. Without getting into details of which I am not familiar, I can tell you what I do know about that matter that you have mentioned.

Number one the Youth Today article was a subject of an inquiry from Congress to which I understand we are going to respond. The scores to which you refer are one basis and an important basis, but not the only basis on which grants were awarded. We also take into account geographic considerations.

Mr. OBEY. That is interesting, because Congress does the same thing when we engage in the earmarking process. Somehow that is supposed to be considered illegitimate.

Mr. MUKASEY. No it is not illegitimate. What we are doing is trying to make sure that we get money to not only to the large cities, but also the smaller municipalities. We have got $90 million out to 106 separate jurisdictions. Some of which are very small. So that we make sure that money gets used in a wide variety of places for problems that really need to be solved.

As I said, the scores are one indication, but not the only indication. And we try to not to be in a situation where we have got a mechanical process where we are awarding grant writing instead of real needs.

That said, the situation that you mentioned warranted examination and we have gotten an inquiry about it. We are going to respond.

[The information follows:]

PART E DISCRETIONARY JUVENILE JUSTICE GRANTS

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), in the Office of Justice Programs (OJP), awards formula, block, and discretionary grants directly

to states, units of local government, Indian tribal governments, and private organizations to administer selected programs. These grant awards support an array of activities, including preventing delinquency, supporting state and community efforts to prevent and respond to delinquency, holding youthful offenders accountable for their behavior, and protecting children from abuse, neglect, and exploitation. In Fiscal Year 2007, OJJDP posted 32 solicitations, under which OJJDP made 488 grant awards totaling more than $383 million.

In FY 2007, six solicitations were posted for grants to be awarded under Part E of the Juvenile Justice and Delinquency Prevention Act. Specifically, these solicitations are the FY 2007 National Solicited Juvenile Justice Programs; FY 2007 National Juvenile Justice Program; FY 2007 Substance Abuse Prevention and Intervention Programs; FY 2007 Project Safe Childhood Programs; FY 2007 Prevention and Intervention Programs; and FY 2007 High-Risk Youth Offender Reentry and Family Strengthening Initiatives.

For all of the FY 2007 solicitations, except the National Solicited Juvenile Justice Programs, a peer review process was used to identify sound proposals that addressed a broad array of needs. In addition to the peer review scores, OJJDP was mindful of the Department's priority areas and whether funding had been provided in the past for similar programs or proposals. Additionally, attention was given to proposals that encouraged cutting edge improvements, held the promise of significant impact, focused on helping children most in need, and aimed to reduce the numbers of minority children who have contact with the law enforcement system. Funds were awarded to support local prevention and intervention efforts and national-scope projects designed to combat delinquency, reduce child victimization, and promote innovations in the administration of juvenile justice. Emphasis was placed on programs that would increase collaboration with state and local governments and community and faith-based organizations to build effective programs and services for juveniles and their families.

Experts, to include in-house and external reviewers, evaluated the applications to determine whether the proposals met the requirements set forth in the solicitations. Each applicant received a score that was measured only against the solicitation criteria. This pool became the universe from which the Assistant Attorney General for OJP, in consultation with the Administrator of OJJDP, selected programs to be funded.

Mr. OBEY. All right. Thank you. I have two more questions on this point for the record. Now let me turn to another subject.

MONITORSHIP CONTRACTS

Recent news reports have brought to light the Department's widespread use of lucrative no-bid contracts to monitor compliance with out of court settlements and deferred prosecution agreements in criminal cases. The most notable of those is a contract worth up to $52 million awarded by the New Jersey U.S. Attorney to former Attorney General John Ashcroft's consulting firm. According to the Washington Post, the number of corporate monitors has risen seven fold since 2001. Since the initiation of those reports, it apparently took nearly two months for the Department to issue guidelines for the selection and use of these arrangements. What took so long? Were there no departmental policies on oversight mechanisms in place before March 11? Since 2001, how many of these no-bid contracts have been awarded? What is the status of your internal review of these contracts?

Could you also provide for the record a full accounting of these contracts including their value, how they were awarded, and their current status?

Mr. MUKASEY. First of all, examination of monitorship contracts was under, was a matter that was a departmental concern well before the story that you mentioned hit the newspapers.

Mr. OBEY. Good.

Mr. MUKASEY. So I guess, well not so good maybe, because you asked what took so long. I guess what I am telling is it took longer even than you suggested. But we took this up. We were taking this up with the Attorney General's Advisory Committee which consists of U.S. Attorneys across the country. And on March 7, we issued a set of best practices for the appointment of monitors. I should also point out that the money that you mention comes from the entity being monitored. This is not public money in any case in which a monitor is appointed. We are not talking about the giving out of public funds, we are talking about money that comes out of the entity being monitored.

Monitorships arise in a variety of situations from a labor union that was doing things it shouldn't have done, it needs a monitor to non-prosecution agreements in connection with a——

Mr. OBEY. Well in response to that I would simply say that I know my argument isn't with you, but it is with the White House Budget Office and the political geniuses down there who are finding unique ways to set double standards. They argue, for instance, that earmarks add to federal spending. They do not. What earmarks do is simply move dollars from one place to another within ceilings established by the Committee, and a single member of Congress can knock the entire bill off the floor if the bill exceeds the amount that was allocated.

So I welcome your response, but I wanted to get that on the record to illustrate the view from the other end of the avenue.

Mr. MUKASEY. I understand that perspective is a great deal in these matters. But under the further of the issue of monitors, they arise in a wide variety of situations from labor unions to private entities where there are non-prosecution agreements or where there are deferred prosecution agreements. And one size, in other words, doesn't fit all.

What we are trying to do is get a set of best practices that end up with every monitor having to be approved by the Deputy Attorney General, which achieves it seems to me two things. One is uniformity. And the second is political accountability. And that is what we have tried to put in place.

Mr. OBEY. Well our point is simply that these apparently are no-bid contracts, and I think one would have to admit that when you see one of such size provided to a former Attorney General and his associates, that sort of becomes a poster child for concern, just as the "bridge to nowhere" did in congressional discussions.

Mr. FRELINGHUYSEN. Will the gentleman yield?

Mr. OBEY. Sure.

Mr. FRELINGHUYSEN. With all due respect, a former U.S. Senator from the State you mention was awarded a similar contract. Hopefully, we are making some progress that future such arrangements are indeed reviewed.

Mr. OBEY. Amen.

Mr. FRELINGHUYSEN. Amen. Thank you.

GRANT FUNDING

Mr. OBEY. Let me turn to something that was discussed somewhat earlier this morning. As you know, for 2008 Byrne JAG was funded at $170.4 million, a 67 percent cut below the 2007 funding

level of $520 million. A high profile campaign has been launched by coalition groups including the National Criminal Justice Association, the National Sheriffs Association and the International Chiefs of Police to seek emergency supplemental funding to restore Byrne JAG to $600 million, the fiscal year 2008 House-passed level.

Why are all those folks wrong?

Mr. MUKASEY. What we are trying to do is to coordinate the granting of money and get away from formulas and getting to a situation where we put the money in a focused way and take into account as well our own law enforcement efforts within the Department. That is what we have been trying to do.

We have made some provision for Byrne JAG grants. On the other hand, strict formulas that allocate in ways that we don't think are responsive, aren't of as much help particularly in lean budgetary times. I mean recognizing that everybody can always use more money and I am not arguing with the people who say they can. But what I am saying is that what we have tried to do, given particularly the lean budget times we are working within is to coordinate on the one hand our own law enforcement efforts which have tended to be more successful when they are in the nature of task force efforts, with grants, when they are grants to local and state police forces in such a way that difficult problems get solved.

ANTITRUST DIVISION

Mr. OBEY. Let me turn to the Antitrust Division, which has, as you know, an operating shortfall of $7.3 million for the current year. What is the impact on the Division's pre-merger filing and criminal investigations? Do you intend to seek a reprogramming to address the shortfall? Assuming that $7.3 million is restored, is the 2009 request sufficient to maintain current services at the 2008 funding level?

Mr. MUKASEY. I believe the 2009 request is sufficient. I mean the strong point here is that we are funding our base. There has been in the Antitrust Division a hiring freeze that hopefully we can loosen up. We believe that we have been able to meet the requirements that are imposed on the Antitrust Division. But nonetheless, we are going to welcome the return to a normal budget when, and if, it comes.

COUNTERTERRORISM OVERSIGHT

Mr. OBEY. On counterterrorism oversight and the FBI's abuse of National Security Letters. As you know, the Justice Inspector General, in a report issued in March, was highly critical of the FBI's use of NSLs from 2003 to 2005. Last month the IG issued a follow up report looking into the FBI's use of those NSLs in 2006. Unfortunately, he found a similar pattern of abuses, including unauthorized data collections, under-reported violations and noncompliance with statutory mandates. The new report praises the FBI for its commitment to preventing these abuses and notes the Department's attempts in 2007 to improve guidance, training and oversight, but the IG apparently is not ready yet to say that these steps are sufficient. He noted that, " Several of the FBI's and the Department's corrective measures are not yet fully implemented and it is

too early to determine whether these measures will eliminate the problems."

The IG was required by the Congress to undertake both of the studies conducted so far. If we were to require yet another report to assess 2007, do you believe we would see the same issues appear again?

Mr. MUKASEY. I believe based on what the IG himself said, you would see an improvement. The IG reported that he believed that the steps that were being put in place by the Bureau and I—it is important to keep in mind the dates that you just referred to. The earlier study concerned an early period. The second study concerned a later period, but neither study concerned a period that followed the implementation of the corrective measures that were suggested.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

And the IG had generally positive things to say about those corrective measures. My own belief is that we would see an improvement. Are we going to see perfection? I seriously doubt it in this life. But I think that if we do see problems we will see them as being a whole lot smaller and subject to further tweaks. We are certainly open to that.

Mr. OBEY. I have two more questions on this point for the record, which I would appreciate your answering. Again, the Department is sponsoring an NSL Working Group to evaluate how NSL-derived records are used, stored and disseminated. According to the IG's March 2008 report, the Working Group initially declined to set limits on the use or retention of NSL-derived information beyond the FBI's existing general data policies. We understand this recommendation was withdrawn, and the NSL Working Group is continuing its work.

When do you expect the NSL Working Group to submit a revised report and recommendations?

Mr. MUKASEY. I don't know precisely when that is expected, but I can find out how close they are. Generally projected dates for completion of projects that don't have strict time lines is a very difficult matter. At least I knew that when I was a judge people would ask me when I was going to decide a case and I could never give a satisfactory answer. But I am going to find out when they expect to have that study completed.

Mr. OBEY. Again, I have three more questions on this point for the record.

With that, let me simply say that I will submit the rest of these for the record. It is afternoon. We are expecting votes very shortly. I appreciate your appearance here today.

Does anybody have any last parting questions before we shut it down?

Mr. FRELINGHUYSEN. No, thank you, Mr. Chairman.

Mr. OBEY. All right. Thank you all. Thank you, Mr. Mukasey.

Mr. MUKASEY. I really appreciate the opportunity to appear. Thank you very much.

Mr. OBEY. Good to have you.

QUESTIONS SUBMITTED FROM CHAIRMAN OBEY
Department of Justice House Hearing
April 3, 2008

Southwest Border Enforcement Initiative

QUESTION: One of the few new initiatives in the Department's FY 2009 budget request is $100 million and 265 additional positions devoted to the Southwest Border. These resources, which are spread among 8 different components, are intended to address violent crime, drug trafficking and other criminal activity in border districts, as well as to better position DOJ to meet the increasing workload generated by DHS immigration enforcement efforts. Roughly speaking, how much are we currently spending on these activities along the border?

ANSWER: The Department will spend approximately $2.6 billion during FY 2008 on immigration and Southwest Border activities. This amount includes $639 million for law enforcement in the border region, $363 million for prosecution, litigation, and immigration review, $30 million for the Southwest Border Prosecution Program, administered by the Office of Justice Programs, and $1.6 billion for incarceration of criminal aliens and detention expenses. The President's FY 2009 Budget provides $2.8 billion for these activities, including the $100 million Southwest Border Enforcement Initiative.

QUESTION: How much of a dent can $100 million put in the problem? Is this just a drop in the bucket compared to your real needs?

ANSWER: The $100 million Southwest Border Enforcement Initiative provides resources in the most needed areas in order to maintain an appropriate balance between law enforcement, prosecution, and incarceration so that no dimension of our criminal justice process is overburdened. The Department has demonstrated its serious commitment to the law enforcement concerns along the Southwest Border, a commitment that extends well beyond the $100 million initiative. As it has in the past, the Department will continue to dedicate resources to address the violence and the trafficking of drugs, guns, and humans along the Southwest Border.

QUESTION: This initiative is being sold as a coordinated multi-component program. What kind of coordination took place across the Department to ensure that each of the pieces of this initiative fit together into a coherent whole?

ANSWER: The Department of Justice worked closely with our components and the Office of Management and Budget through the budget process to ensure that the President's FY 2009 Budget request for the Southwest Border was a coherent package. Throughout the process, funding decisions took into consideration the workload drivers for each component.

QUESTION: For the pieces of the initiative that are driven by workload at DHS, what kind of coordination did you do with that agency to ensure that the initiative you've proposed is sufficient? How did you translate proposed increases in DHS

activity into specific numbers of additional Marshals, US Attorneys and detention beds?

ANSWER: As stated previously, the Department worked closely with DOJ components and the Office of Management and Budget through the budget process to ensure that the President's FY 2009 Budget request for the Southwest Border reflected a balance between law enforcement, prosecution, and incarceration efforts. This included taking into consideration DOJ workload associated with DHS initiatives.

QUESTION: Secretary Chertoff is asking for nearly $500 million to hire an additional 2,220 new Border Patrol Agents and support staff. Do you really believe that DOJ will be able to keep pace with the resulting workload with the increases you're proposing? What about workload that might result from any additional changes in immigration policy, such as the expansion of zero tolerance initiatives along the border?

ANSWER: The Department's efforts along the Southwest Border extend beyond the $100 million requested in the Southwest Border Enforcement Initiative. Including the $100 million, the President's FY 2009 Budget provides $2.8 billion for law enforcement, prosecution, and incarceration along the Southwest Border. DOJ will continue to collaborate with DHS to ensure that resource and workload issues do not hinder our common objectives. The impact of any change in immigration policy is unknown at this time and will have to be reviewed as specific immigration policy changes are considered. The House CJS Appropriations Subcommittee staff has been provided an Immigration Metrics spreadsheet that will enable them to estimate DOJ resource impacts resulting from increased DHS agents along the border.

An Impending Crime Wave

QUESTION: According to the most recent FBI Uniform Crime Report, violent crime continues to rise outside metropolitan areas and in small towns of less than 25,000. However, other studies paint a more complex picture of violent crime in America. One recent study by some of the nation's governors and Third Way, a non-profit policy institute, asserts that a crime wave is looming. The study cites as evidence several leading indicators such as the large number of ex-offenders who will return to their communities in the next few years and an upcoming spike in the young adult population. How do you explain why violent crime is stable or decreasing in big cities but rising in small communities?

ANSWER: According to the FBI's Preliminary Semiannual Uniform Crime Report (UCR) data for the first months of 2007, each of the violent crime offense categories (murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault) decreased in the first 6 months of 2007 when compared to data for the same 6 month period in 2006. Murder decreased 1.1 percent, forcible rape declined 6.1 percent, robbery decreased 1.2 percent, and aggravated assault decreased 1.7 percent. However, some of our smaller communities saw a slight increase in the rate of violent crime, such as nonmetropolitan counties (1.1%) and cities with populations of 10,000 to 24,999 (1.1%).

The UCR Program is a voluntary city, county, state, tribal, and federal law enforcement program that provides a nationwide view of crime based on the submission of statistics by law enforcement agencies throughout the country. Since crime is a sociological phenomenon influenced by a variety of factors, the FBI discourages data users from ranking those reporting law enforcement agencies and using the data as a measurement of law enforcement effectiveness.

The Department recognizes that there is no one-size-fits-all solution to fighting crime. Often, the best strategies draw on local knowledge and culture that only people living in those unique communities can provide. Wherever it exists, the men and women of the Department of Justice are committed to reducing violent crime through federal initiatives and assistance to our state and local partners.

QUESTION: Is a new crime wave coming? If so, how are you preparing to fight it?

ANSWER: While the FBI's 2007 Preliminary Semiannual Uniform Crime Report (UCR) suggests that violent crime remains near historic lows, some communities continue to face violent crime challenges. The Department is committed to preventing and combating crime wherever it exists.

The Department is dedicated to assisting our state and local partners in combating violent crime. Included in the President's FY 2009 budget request is $200 million to fund the Violent Crime Reduction Partnership Initiative which supports community-driven responses to increases in violent crime. The Department will also continue its existing initiatives, such as Project Safe Neighborhoods and the Ten Site Comprehensive Anti-Gang Initiative. These programs team federal and local law enforcement, prosecutors, and community members to enforce the law and prevent crime.

Additionally, the Department is committed to fighting violent crime, gun smuggling, and illicit drug trafficking on the U.S. Southwest Border and the FY 2009 President's Budget provides $100 million to combat these criminal activities.

QUESTIONS SUBMITTED FROM CHAIRMAN OBEY
Department of Justice House Hearing
April 3, 2008

Assets Forfeiture Fund

QUESTION: What are the factors that have allowed the Department to so dramatically increase the size of your AFF rescission over the last 7 or 8 years?

ANSWER: The underlying factor that has allowed the Department to increase the size of the AFF rescission over the last several years is the success of the Asset Forfeiture Program (AFP). The mission of the AFP is to use asset forfeiture to disrupt and dismantle criminal enterprises, deprive wrongdoers of the fruits and instruments of criminal activity, deter crime, and restore property to crime victims while protecting individual rights.

The growth of monies deposited into the AFF, and resulting excess balances available for rescission are achievable, in large part, by the support the Administration has received from Congress to allow us to significantly enhance our investments in investigative, litigative, and other forfeiture-related capabilities of the agencies participating in the AFF. These investments have increased our ability to target the proceeds of large scale criminal organizations involving a variety of criminal activities, including corporate fraud, cases concerning public corruption, fraud in the United Nations Oil-for-Food program, Internet gambling, international narcotics trafficking focused on illegal drug proceeds, money laundering, and other specified unlawful activities. One of the many law enforcement benefits is the deposit of the proceeds of forfeited property into the AFF.

Historically, the Administration has advocated rescissions against and within levels of available Assets Forfeiture Fund (AFF) Super Surplus funds. (The technical term for the Super Surplus is "excess unobligated balances.") By their very nature, AFF Super Surplus funds are excess to the ongoing operational needs of the forfeiture program.

QUESTION: The AFF program provides equitable sharing of funds to state and local law enforcement agencies who have participated in joint investigations with DOJ. Will a rescission of this size impact your ability to provide resources to state and local agencies through the equitable sharing program?

ANSWER: The Department has identified excess unobligated Assets Forfeiture Fund balances, also known as "super surplus," from FY 2007 and prior year balances that are sufficient to cover the proposed $285 million rescission in FY 2009. Therefore, at this time the Department does not anticipate a negative impact upon the equitable sharing program.

QUESTION: You don't actually know the size of the AFF "super surplus" until the end of a given year. How can you be so confident in your estimate of "super surplus" funds available for rescission so far in advance? What if collections turn out lower than projected or you're hit with an unexpected liability for returning forfeited assets?

ANSWER: The Department has several ways to mitigate the risks that your question raises. We are continually reviewing and analyzing financial data, including deposits to the AFF and to the asset forfeiture program's holding account, called the Seized Asset Deposit Fund (SADF), and program obligation and expense data from our financial system. In addition, we examine data from the Consolidated Asset Tracking System, which provides us with case-specific information on pending deposits and obligations that involve significant equitable sharing distributions, as well as large third party distributions to victims. The SADF is a holding account whereupon seized cash is deposited pending the official order of forfeiture. (The SADF is a holding account whereby the monies on deposit are in dispute. They are not available for governmental purposes until a final order of forfeiture is obtained. The current SADF balance is $1.24 billion, as of March 31, 2008.) For the most part, the SADF cash balances usually end up being forfeited, and the monies are transferred into the AFF and are available for program expenses. Therefore, the SADF balance is a good indicator of future deposits into the AFF.

The AFF's organic statute also provides authority to the Department with the following authority:

"For the purpose of determining amounts available for distribution at year end for any fiscal year, "excess unobligated balance" means the unobligated balance of the Fund generated by that fiscal year's operations, less any amounts that are required to be retained in the Fund to ensure the availability of amounts in the subsequent fiscal year for purposes authorized under paragraph (1)." [28 U.S.C. 524(c)(8)(D)]

This allows the Department to retain unobligated AFF balances for cases where monies have been forfeited and deposited into the AFF, but pending legal matters cause us to maintain sufficient balances to cover the possibility of an adverse ruling against the government. We also maintain balances for pending equitable sharing distributions and third party payments where it is probable the monies will be expended, but the approval of such payments make take many months to clear, and often cross fiscal year boundaries. In addition, we also maintain adequate balances to cover critical program operational expenses, such as the overtime salaries and equipment of state and local task force law enforcement officers under the Federal agencies participating in the Fund, essential information technology expenses of the program and the salaries of administrative government personnel dedicated to forfeiture program.

The Department employs the above techniques to continuously monitor and maintain the fiscal health of the AFF over a multi-year period of time and mitigate the risks inherent in your question.

QUESTION: In the absence of this rescission, the "super surplus" funds would be available for the Department to use for any number of other purposes. If we choose not to take this rescission, what areas would you identify as priorities for investment with the retained "super surplus" funds?

ANSWER: As you correctly indicate, Congress provided to DOJ the authority to make use of declared Assets Forfeiture Super Surplus (AFF/SS) funding for virtually any purpose, subject to advance notification [28 USC 524 (c)(8)(E)]. In recent years the administration has requested and Congress has enacted significant rescissions of AFF/SS funds to cover the costs of critical law enforcement program enhancements within anticipated base level resources, thus avoiding the necessity for requesting additional new budget authority for high priority program increases.

The availability of AFF/SS balances as a source of funding for unforeseen funding problems in the operational year permits the Department the capability of focusing resources on problem areas without needing to strip resources from other authorized program functions through a reprogramming. The Department cannot predict, in advance, where the unforeseen needs will be in FY 2009, but will work with OMB and Congress as such needs arise.

QUESTIONS SUBMITTED FROM CHAIRMAN OBEY
Department of Justice House Hearing
April 3, 2008

Name Check Program

QUESTION: USCIS recently took steps to bypass the FBI name check process for certain categories of applicants if the FBI could not complete the name check process within established timelines. Was DOJ consulted by USCIS in the development of this policy? Does DOJ agree with USCIS' decision?

ANSWER: While the FBI's National Name Check Program section was not consulted by the USCIS with respect to the policy referenced in the question, such a decision would appropriately be made by the name check "customer," in this case the USCIS. Contrary to the indication in the question, the referenced policy does not result in bypassing the FBI's name check process; the name check will still be conducted, and the result will be provided to the USCIS.

QUESTIONS SUBMITTED FROM CHAIRMAN OBEY
Department of Justice House Hearing
April 3, 2008

Antitrust Division – FY 2008 Funding Shortfall

QUESTION: The Antitrust Division has an operating shortfall of $7.3 million for the current year. What is the impact on the Division's premerger filing and criminal investigations?

ANSWER: The Antitrust Division is investigating large numbers of civil and criminal matters, and many of these investigations are nearing resolution through consent decree or proceeding to trial. Already on schedule are a near record 10 criminal trials in 2008; continuing investigations in the Division's already highly successful air cargo and passenger surcharge matters (in which a phenomenal total of almost $1 billion in criminal fines will be imposed in 2008); important matters in high-tech consumer and business goods; matters associated with military procurement and fuel oil transfer; critically important matters in key financial, communication, health care, energy and real estate markets; and a large number of matters associated with common consumer goods.

The Division is hoping to address the funding shortfall through a reprogramming, spending restrictions within the Division, and other remedies through the Department.

Through various spending restrictions already in place, including a nationwide hiring freeze, the Division has realigned its enforcement activities, focusing key staff and resources on matters of highest priority. Fewer attorneys, paralegals and support staff are available to address these matters; industry-matter experts and contract staff to code and key data are increasingly restricted; and travel to interview witnesses and attend training is limited. All of this will significantly affect the timely and effective enforcement of the antitrust laws, potentially delaying proposed merger decisions, limiting Division investigations and prosecutions, and reducing criminal fines and penalties.

QUESTION: Do you intend to seek a reprogramming to address this shortfall?

ANSWER: Yes. The Department of Justice submitted a $4.2 million reprogramming request to cover a portion of the projected $7.3 million shortfall. The Office of Management and Budget (OMB) approved the reprogramming request on April 30, 2008 and it was subsequently sent to the House Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, on May 6, 2008 for further action.
Other measures within the Department are being taken to address the remaining $3.1 million shortfall.

QUESTION: Assuming that the $7.3 million is restored, is the FY 2009 request sufficient to maintain current services at the FY 2008 funding level?

ANSWER: Yes.

QUESTION SUBMITTED FROM CHAIRMAN OBEY
Department of Justice House Hearing
April 3, 2008

Funding Requests for a National Integrated Wireless Network

QUESTION: DOJ's request for law enforcement wireless communications in FY 2009 is $122 million, which is in line with your historical requests for this account. We understand, however, that you expect to start requesting hundreds of millions of dollars per year, beginning next year, to fully implement an Integrated Wireless Network. If wireless communications are such a dire need, why are you waiting until FY 2010 to start requesting significant amounts of funding for your wireless plan? Why not start right now?

ANSWER: We are ready to start right now. A program of this size and scope requires a solid foundation for moving forward. We have invested a reasonable amount of time and effort to plan for a multi-year, nation-wide system development and deployment program that efficiently leverages our existing base of legacy technologies, ensures we support on-going law enforcement communications needs, and manages the major risks inherent with in a large scale communications system deployment/conversion program. The Department recognizes there are many competing communications needs within Justice, other federal departments and the nation. Based on the criticality of this program and the fragile state of our legacy systems, the Department has developed plans to accelerate an Integrated Wireless Network (IWN) as funding becomes available. Our ability to operate and maintain our legacy law enforcement wireless communications environment and replace it with the current technology of IWN is critical to our law enforcement mission and officer safety. The Department's Wireless Management Office is working with General Dynamics (the Integrated Wireless Network Systems Integrator) and law enforcement components - Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and United States Marshals Service (USMS) - to ensure alignment/concurrence with all stakeholders. We believe that extraordinary cooperation has been achieved and significant progress has been made toward defining an affordable solution that meets minimal baseline capabilities among our Component agencies.

$25 Million Purchasing Capabilities for Deployment of Integrated Wireless Network

QUESTION: Despite your large projected needs, your FY 2009 request contains only a $44 million enhancement to the wireless program. Of this amount, only $25 million is intended for the deployment of an Integrated Wireless Network to offer true interoperability. What kind of capabilities can $25 million buy us?

ANSWER: Planning for FY 2009 includes the design and deployment of a tactical wireless communications system within the local National Capital Region (approximately 25 mile radius around Washington, DC). Our $25 million investment would leverage the technical and functional "lessons learned," and the benefits realized

from our development/operation of the Integrated Wireless Network system pilot in the Pacific Northwest (Seattle, WA):

- Significant improvements in communications capabilities and system efficiencies, with dramatic reductions in spectrum resources (50%) and facilities (60%) needed to meet law enforcement operational requirements.
    - Improved Coverage - all of our law enforcement components would have the same (and larger) communications coverage "footprint" across the region.
    - Greater number of law enforcement users and better cost/performance efficiencies across the system.
    - Consolidated, single network –our law enforcement components would be using the same converged communications network and able to effortlessly and quickly communicate among one another on a regular basis, as well as during emergency situations. This offers significant public safety and national security benefits, and supports our counterterrorism communications requirements which are not adequately addressed by today's obsolete system.
    - Quality of Service – the quality of communications among/between agents wills be dramatically improved due the replacement of our obsolete and separate legacy systems.
    - Reliability/Dependability - service outages and other operating problems that currently (and regularly) plague our current systems will be addressed and resolved using today's commercially available and proven technologies.
    - Flexibility (Intra or Inter-Agency Communications) – for the first time we will be able to easily communicate with local and state law enforcement partners. This is a significant benefit directly addressing several recommended action items from the 9/11 Commission.
    - Security – our antiquated system security, based upon older, obsolete security protocols, will be replaced to bring us "up to date" and satisfy our secure communication mandates which we cannot currently satisfy with our separate legacy systems.
    - Functionality - designed expressly for the law enforcement community and in compliance with the Federal Information Security Management Act (FISMA) security requirements and the National Telecommunications and Information Administration's (NTIA) Narrowband Mandate. Provides for:
        - Ease of use during high stress situations,
        - Seamless roaming as mission demand dictates,
        - Hand-held coverage in the major metropolitan areas, vehicle coverage along the highways and in rural/tribal communities,
        - Talk Groups for specialized applications, surveillance, hostage rescue, counterterrorism, etc.
- Multiple departments - Department of Justice, Department of Homeland Security, and Department of Treasury - and agencies can use one system, while maintaining communications segregation with on-demand interoperability with Federal-State-Local-Tribal partners.

Moving Project Outyear Costs to FY 2008 and FY 2009

QUESTION: If you could move up some of your large projected outyear costs into FY 2008 and FY 2009, how much could you prudently spend, and what would that achieve in terms of new capabilities?

ANSWER: If such funding was accelerated, we could prudently and efficiently spend approximately $175 million in additional, outyear funding during FY 2008 and FY 2009 to undertake major design and development tasks for the Department's new integrated solution – the Integrated Wireless Network (IWN). We would do this as follows:

- For FY 2008, we would invest approximately $45 million of additional, outyear funding:
    - $25 million in funds to immediately address and resolve urgent operational communications deficiencies in the Midwest/Chicagoland area. This area represents one of the oldest, weakest areas among our multiple legacy systems and requires enhancement as quickly as possible.
    - We would invest an additional $20 million in the Integrated Wireless Network infrastructure development, mostly directed to the development of nation-wide "interoperability gateways" that would establish the core foundation for system cross communication for future Integrated Wireless Network investments. The development of interoperability gateways would integrate the Midwest/Chicagoland region with Washington, DC. These gateways would also provide unprecedented on-demand interoperability between Federal, State and Local law enforcement across both regions.

- In FY 2008, we would also move $15 million in system development funding from FY 2009 to FY 2008 to "jump start" the Washington, DC area build-out. (Note that this $15 million is not outyear money, and therefore, not part of the $45 million figure. The $15 million would come from the $25 million investment intended for the deployment of an Integrated Wireless Network in FY 2009).

- For FY 2009, we would start by investing the remaining $10 million in the National Capital Region funds originally scheduled for FY 2009. (Note this $10 million is also not outyear money). We would then invest approximately $130 million of additional, outyear funding, and these investments would fall in three major areas: We would invest $60 million to complete system development for the Midwest/Chicagoland Region; We would also invest $40 million to complete system development for the National Capital Region build out, including the major expansion of the system's coverage to greater Baltimore and Richmond; Finally, we would invest $30 million to complete system development of the Northwest Region, including integration with surrounding states.

QUESTIONS SUBMITTED BY REPRESENTATIVE HONDA
Department of Justice House Hearing
April 3, 2008

Inmate Health Care

QUESTION: In December 2005, NPR did a shocking exposé on the death of a Jamaican immigration detainee Richard Rust due to inadequate medical care. What concrete steps have been taken at BOP facilities to improve health care policies and practices? How much of the budget is allocated for improving health care practices in the prisons?

ANSWER: The circumstances of Richard Rust's death and after actions are as follows:

Richard Rust (Register Number 21491-265) was an immigration detainee confined at the Federal Detention Center (FDC), which is one of the facilities in the Federal Correctional Complex in Oakdale, Louisiana. He was a citizen of Jamaica. Mr. Rust died on May 29, 2004.

On the evening of May 29, 2004, the actions of detainees near the Leisure Center drew the attention of staff working in the area. Staff went to the area and observed Mr. Rust lying motionless on the floor of the barbershop located within the Leisure Center. The initial responders announced a medical emergency and contained the situation.

A nurse issuing medication at another location within the Complex responded to the Leisure Center within five minutes of when detainee actions alerted staff of a problem in the Leisure Center. The nurse began cardiopulmonary resuscitation (CPR) and directed that an ambulance be summoned. Approximately 12 minutes later, local Emergency Medical Technicians (EMT) arrived at the institution and were en route to the Leisure Center. CPR continued as local EMTs assumed Mr. Rust's care and transported him to a community hospital where he was pronounced dead.

An outside consultant conducted an external mortality review on September 1, 2004. Those findings are summarized as follows. Autopsy results for this 34-year old male inmate indicated the cause of death was cardiac arrhythmia associated with an acute exacerbation of heart failure, massive dilated and hypertrophic cardiomyopathy, and interstitial fibrosis of the heart. Mr. Rust had arrived at FDC Oakdale on February 3, 2004 having no history of heart disease. On May 29th, medical assistance was summoned when he was found unresponsive with faint pulse, and no respirations. CPR and the Emergency Medical System were initiated. The inmate was transported to the community hospital. All resuscitation efforts were unsuccessful. The consultant found that care was appropriate and there were no quality of care concerns.

The initial responders to this event did not immediately administer CPR. CPR was initiated upon the nurse's arrival on the scene. The Bureau is currently implementing additional CPR procedures that will expand CPR training and certification for all institution staff.

In FY 2007, the BOP spent a total of $736.4 million on inmate health care. This amount provided the health care to 167,323 federal inmates housed in the BOP facilities. Included in this amount are expenses to improve clinical outcomes and contain costs.

The BOP continuously takes initiatives to improve inmate health care. Health care in the BOP is subject to external and internal oversight. External reviews are regularly conducted by the Joint Commission on Accreditation of HealthCare Organizations, the nation's predominant standards setting and accrediting body in health care, and by the American Correctional Association. Internal reviews are conducted on an on-going basis through: program and policy compliance reviews, peer reviews of physicians, psychiatrists, and dentists, patient service surveys, and inmate Administrative Remedies.

QUESTION SUBMITTED FROM RESPRESENATIVE FRELINGHUYSEN
Department of Justice and Census Bureau
April 3rd, 2008

Life Cycle Cost Estimate to Implement a National Integrated Wireless Network

QUESTION: A key counterterrorism item is developing an integrated wireless network (IWN). The budget includes $44 million but that only achieves the creation of a limited IWN in the Washington, DC area. Your testimony states that the Department intends to implement the IWN on a nationwide basis over the next several years. What is the life cycle cost estimate of doing that, and how long would it take?

ANSWER: A modernization effort of the Integrated Wireless Network (IWN) requires a consistent level of funding for the 6 year deployment at a total cost of $1.23 billion. The Nationwide program to develop the Integrated Wireless Networks (IWN) is based upon leveraging the current law enforcement wireless networks. The Department intends to consolidate the four law enforcement components - Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and United States Marshals (USMS) - into one integrated network, and also modernize the integrated network with security improvements and technical enhancements. This consolidated network will provide the foundation for a cost effective upgrade program to ultimately support the interoperability requirements across our federal law enforcement components, as well as to allow communications with state and local law enforcement partners.

QUESTIONS SUBMITTED FROM REPRESENTATIVE FRELINGHUYSEN
Department of Justice House Hearing
April 3, 2008

United States Parole Commission Workload

QUESTION: The Parole Commission has jurisdiction over 11,000 Federal and D.C. offenders. How much of the Commission's workload is related to Federal offenders versus D.C. offenders?

ANSWER: In FY 2007, the most recent year for which complete data is available, the Commission had jurisdiction over 1,600 Federal offenders incarcerated in Federal prisons; 2,502 Federal offenders on parole; 3,075 incarcerated D.C. offenders eligible for parole; 3,530 D.C. offenders under parole; and 2,300 D.C. offenders under supervised release.

With regard to the population under its jurisdiction, the Commission conducts parole hearings, makes release decisions, issues letters of reprimand, conducts revocation hearings, conducts administrative appeals, responds to legal actions brought against it, conducts reprimand sanction hearings, review cases for disposition, issues warrants for arrest, etc. In FY 2007, 25% of such activities involved federal offenders and 75% involved D.C. offenders.

United States Parole Commission's Partnerships with Other
District of Columbia Law Enforcement Agencies

QUESTION: How closely does the Commission work with D.C. law enforcement agencies?

ANSWER: The following agencies support the Commission in its mission to make parole and supervised release decisions for the D.C. offender population.

D.C. Agencies

- Metropolitan Police Department – provides arrest records and appears as witness at hearings.
- D.C. Department of Corrections – coordinates movement of prisoners for revocation/probable cause hearings and provides space for hearings

Federally funded D.C. Agencies

- Superior Court of the District of Columbia – provides the Commission with judgment orders for offenders sentenced to prison with a term of supervised release to follow
- Court Services and Offender Supervision Agency for the District of Columbia – supervises the offenders serving a term of supervised release in the District of Columbia and provides presentence reports.
- Criminal Justice Coordinating Council for the District of Columbia – provides policy guidelines and facilitates interaction between law enforcement agencies in the District of Columbia.

Federal Agencies

- Federal Bureau of Prisons (BOP) – houses the inmates, provides inmate progress reports and provides hearing rooms and teleconferencing equipment necessary to conduct hearing dockets.
- U.S. Probation office – supervises federal offenders on parole.
- U.S. Marshals Service – serves warrants issued by USPC and transport prisoners to hearing locations.
- U.S. Attorneys Office- prosecuting agency for D.C. Code offenders.

Adequacy of funding for United States Parole Commission in FY 2008 and FY 2009

QUESTION: Does the Commission have sufficient resources in fiscal year 2008 and in the fiscal year 2009 budget request to effectively manage both its Federal offender and D.C. offender workload?

ANSWER: Yes, however, FY 2008 Appropriation of $11,462,000 was 6% (or $732,000) below the President's request level of $12,194,000 resulting in realignment of resources and staffing to meet statutory demands.

For FY 2009, President's Request of $12,570,000 will be sufficient to operate at current services level.

QUESTIONS SUBMITTED BY REPRESENTATIVE FRELINGHUYSEN
Department of Justice House Hearing
April 3, 2008

United States Trustees

QUESTION: Bankruptcy filings are at their highest daily rate since bankruptcy reform legislation was enacted in 2005. Does the U.S. Trustee System Fund have sufficient resources to address this workload during fiscal year 2008? Does the fiscal year 2009 budget request sufficient resources to address this level of workload in fiscal year 2009? If bankruptcy filings continue to increase during fiscal year 2009, how will the U.S. Trustees manage this workload? Has the Department of Justice fully implemented the reforms called for in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005?

ANSWER: The FY 2008 Consolidated Appropriations Act, P.L. 110-161, provided an appropriation of $209,763,000, of which $20,000,000 was derived from prior year unobligated balances from funds previously appropriated. To operate in FY 2008 within the appropriated level, the U.S. Trustee Program (Program or USTP) imposed a hiring freeze (with limited exceptions) on approximately 100 authorized positions; plans to reduce onboard staff by 20 positions before the end of the fiscal year; and cut funding for automation and information technology support, debtor audits, planned studies and evaluations, training, equipment replacements, and other categories. Additionally, the USTP has had to streamline and reprioritize its work in order to satisfy its statutory obligations. Assuming filings for FY 2008 remain in the 950,000 projected range, the Program believes it will be able to perform core duties at the FY 2008 appropriations level.

Bankruptcy filing projections included in the FY 2009 budget request reflect the impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). During FY 2005 (pre-BAPCPA), bankruptcy filings approached 1.7 million. In FY 2006, during the two weeks leading up to the October 17, 2005, effective date of the BAPCPA, more than 600,000 cases were filed, almost 57 percent of the total FY 2006 filings. Immediately after BAPCPA implementation, filings dropped significantly and, during the remainder of FY 2006, only about 460,000 cases were filed. Filings have been trending upward, however, in FY 2007, filings were still only about one-half of pre-BAPCPA levels. Bankruptcy filings during the first half of FY 2008 reflect a steady increase over the previous fiscal year. Trend analysis indicates that bankruptcy filings in all chapters will continue to increase in FY 2009, but that they will remain below the pre-BAPCPA level.

The FY 2009 budget requests a total appropriation of $217.4 million for the USTP. The budget request estimates that the appropriation will be offset by $167.7 million in fee collections received during FY 2009 and that $49.7 million of the total will be derived from prior year balances in the U.S. Trustee System Fund. The USTP anticipates that filings will continue to increase gradually during FY 2009. With the

staffing and spending cuts implemented in FY 2008, an appropriation of $217.4 million will permit the Program to address its projected FY 2009 workload. Should filings exceed projections, the USTP would work through the Department and the Office of Management and Budget to address the increased workload.

Over the past three years, the USTP has fully implemented and enforced the substantial new requirements of the BAPCPA. For example, the USTP is conducting a more transparent and objective test to determine a consumer debtor's eligibility for chapter 7 relief, scrutinizing applications of credit counselors and debtor educators to ensure that only qualified providers are approved to offer these services to debtors, supervising audits of chapters 7 and 13 cases, and enforcing new provisions to hold corporate managers more accountable after their companies file for bankruptcy relief. The Program has also worked to complete the studies and reports mandated by the Act.

In carrying out the BAPCPA and other statutory mandates, the Program is guided by a simple principle: to faithfully carry out the law as written by Congress and to do so with prudence, discretion, and sound legal judgment. While the USTP believes that objective evidence suggests it has met the challenge to fully implement the BAPCPA, its work is far from over and every day brings new challenges to refine efforts and improve upon performance for the benefit of all stakeholders in the bankruptcy system.

QUESTION SUBMITTED FROM RESPRESENATIVE ADERHOLT
Department of Justice and Census Bureau
April 3rd, 2008

Timeline and Cost for Integrated Wireless Network (IWN)

QUESTION: Interoperability has been a catch word since the devastation of 9/11. I know that there has been a large effort to get our state and local agencies on interoperable networks, but I believe that there has been no similar effort to achieve the same for the federal agencies, until the establishment of the Integrated Wireless Network (IWN). What is your timeline for rolling out the IWN and what is the estimated cost to implement it on a nationwide basis?

ANSWER: The modernized Integrated Wireless Network (IWN), under the umbrella of the Law Enforcement Wireless Communications Program, will provide nationwide communications and interoperability for Department of Justice Federal law enforcement agencies. IWN will assure reliable and secure communications to support the daily missions of Bureau of Alcohol, Tobacco and Firearms (ATF), Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and United States Marshals Service (USMS). IWN will also provide the ability for Federal law enforcement personnel to interoperate with state/local/tribal first responders.

A modernization effort such as IWN requires a consistent level of funding for the 6 year deployment at a total cost of $1.23 billion. The current Fiscal Year 2009 budget will only allow for the implementation within the Washington DC National Capitol Region (25 mile radius). Yearly operations and maintenance costs of approximately $90 million will be required to support the legacy radio systems.

Limited or significantly reduced funding will result in the continued non-compliance with air-wave and security regulations, costly maintenance of antiquated equipment, and increased risk factors to mission effectiveness and agent safety. The immediacy of this need is driven by DOJ's critical law enforcement mission and operational needs, particularly as they relate to our national security responsibilities.

TUESDAY, APRIL 1, 2008.

FEDERAL BUREAU OF INVESTIGATION

WITNESS

ROBERT S. MUELLER, III, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

OPENING REMARKS

Mr. OBEY. Good morning everyone. I think we will get started. Let me welcome everyone to the hearing this morning on the Federal Bureau of Investigation's fiscal year 2009 budget request. Our witness today will be Robert Mueller, Director of the FBI.

Director Mueller, this Committee has more than doubled your agency's annual budget since 2001. Its given you hundreds of millions of dollars in supplemental money. It has bailed out the agency on several occasions when the agency has made multi-million dollar mistakes. A significant number of those mistakes came before your tenure, I understand that. All of this has come at a significant cost to the rest of the Department of Justice, where criminal enforcement, litigation and state and local assistance have suffered in the budget year after year. And I would point out that this year the President is again recommending a $1.6 billion reduction in state and local law enforcement. It is very hard to justify an increase in any of the other agencies in this bill when those kinds of reductions are being contemplated.

Given the amount of support that this Subcommittee has provided to your agency it is disappointing to see the numerous occasions on which money has been wasted and authorities have been abused. Let me say simply that I can think of no two government agencies that are more central to the healthy functioning of a democracy than the Attorney General's Office and the FBI. My brother in law is a former DA. He was shot in the line of duty a number of years ago, and I think that I have seen enough of law enforcement problems through him through the years to have a healthy respect for each and every person who enforces the law, be they members of local police, or members of any state or federal agency. They put their lives on the line and it is far from the easiest job in the world to enforce this country's laws.

I can think of nothing more corrosive to a democracy than to have the American public lose confidence in the determination of either the Attorney General's Office or the FBI to abide by the law. And yet we have seen a number of instances where the law has certainly been bent. Three weeks ago we received a report from the Justice Inspector General documenting significant abuses and deficiencies in the FBI's use of National Security Letters. This is the second year in a row that we have had such a report, and this year's findings are, to say the least, unsettling. Unauthorized col-

lections, undercounted violations, inconsistent compliance with statutory obligations, and many more.

Even worse, we know that there is more news on the way which is of concern. The IG is still working on an assessment of the FBI's use of so called exigent letters, which were used to obtain information through misrepresentation, and blanket NSLs, which apparently were attempts to retroactively justify the illegal use of the exigent letters. This cavalier approach toward legal protections may have temporarily gained the agency some useful investigative information, but it had a long term cost to our rights and to our trust and to our government's credibility.

Today is April 1st. This is the thirty-ninth anniversary of my election to Congress. I was elected on April Fools' Day, it could not have happened any other day. But one of the things I have learned through the years is a very unpleasant fact. When I am often asked by college students what is the most disturbing thing that I have learned in the years that I have been in the Congress, I tell them that the most disturbing thing that I have learned is the government has routinely lied to me and to the Congress of the United States. All you have to do is to go back to Lyndon Johnson's days in Vietnam, trace it through Richard Nixon's days, and a number of more recent examples.

But the second most disturbing thing that I can think of is to discover that almost on a regular basis we see agencies of the United States government that do not appear to have complied with the requirements of law. And it think it puts us at a tremendous disadvantage, because it means that our constituents lost faith in not just the agencies involved but all of government. And I think we need to know that this kind of conduct is not going to happen again and we need to know that we will have something more than pleasant assurances that some of these incidents with respect to NSL programs or FISA collections will not be occurring in the future.

We also have a number of concerns about your budget, which you and I touched on yesterday. But in the interest of time let me forego comments on those for the moment and simply ask Mr. Frelinghuysen for any comments he might have before we begin.

Mr. FRELINGHUYSEN. Thank you, Chairman Obey. Director Mueller, I join the Chairman in welcoming you to appear this morning to testify on your 2009 budget. I am pleased we are holding this hearing today, particularly since we did not have the opportunity to hear your testimony on last year's budget request. For 2009 you are seeking an appropriation of $7.1 billion, an increase of $450 million or 6.8 percent. We look forward to your testimony on the new increases you are seeking as well as on the FBI's continuing transformation activities to fulfill its role as our key domestic counter terrorism and intelligence agency.

In addition the Committee will act soon on the administration's pending supplemental request. In this Subcommittee's jurisdiction the FBI has by far the largest supplemental request at $100 million. However, that request was formulated almost a year and a half ago, so perhaps there are some updates you can give us this morning and provide us concerning those requirements.

Lastly, I would like you to pass on to your people the deep appreciation all of us have for their hard work. The responsibility of your

agents, your analysts and support staff to protect the nation from terrorism and crime is perhaps the most important activity we support in this overall federal budget. We recognize the tireless efforts required to carry out those missions both at home and today very much abroad as well. But the work is often dangerous, sometimes underappreciated and misunderstood, but essential to keeping us safe.

While I have not been here thirty-nine years, I have been here fourteen years, and I think you know my father served as a member of Congress for twenty-two years. So my perspective of the FBI is I have not lost faith in you. I have great faith in the work of the FBI, its proud history. There have perhaps been a few missteps along the way but I think you have done your level best. I know of you. You enjoy a good reputation as a very honorable and outstanding person. I think you have done your level best to make those corrections. So I admire you for that, and with the Chairman I welcome you this morning for your testimony. Thank you, Mr. Chairman.

Mr. OBEY. Mr. Director, why do you not proceed? We will put your full statement in the record. Take whatever time you wish and then we will proceed to the questioning.

Mr. MUELLER. Thank you, Mr. Chairman. Let me start by congratulating you on your anniversary. Congressman Frelinghuysen, it is a pleasure to be here. I have a very short statement. Thank you for including my longer statement with the numbers in the record. I do have a short statement and then if you will allow me, I will address a couple of the items that you mentioned at the outset.

What I would like to do in this opening statement is put in context the request for this year. As I know everyone on this Committee is aware, the FBI's top three priorities are counterterrorism, counterintelligence, and cyber security. These priorities are critical to our national security and the FBI's vital work as a committed member of the intelligence community. Important too are our efforts to protect our communities from the very real threat of crime, especially violent crime. In the counterterrorism arena, Al Qaeda and related groups continue to present a critical threat to the homeland, So too do self-radicalized home-grown terrorists and home grown extremists. They are difficult to detect, often using the Internet to train and operate. At home, through our domestic Joint Terrorism Task Forces and abroad with our Legal Attachés and international partners, we together share real time intelligence to fight these terrorists and their supporters. An important aspect of the fight against terrorists is the threat of weapons of mass destruction, and the FBI's commitment to our Render Safe Mission to prevent, prepare for, and respond to the threat of WMD in the United States. With your support we will continue our work in this critical area.

With regard to the counterintelligence threat, protecting our nation's most sensitive secrets from hostile intelligence services or others who would do us harm is also at the core of the FBI mission. We reach out to businesses and universities, we join forces with the intelligence community, and we work closely with the military to help safeguard our country's secrets.

Cyber threats to our national security and the intersection between cyber crime, terrorism, and counterintelligence is increasingly evident. Today the FBI's cyber investigators focus on these threats and we partner with government and industry through our sponsorship of a program called InfraGard, an alliance of more than 23,000 individual and corporate members who help identify and prevent cyber attacks.

I am mindful of your abiding interest in the FBI's progress in building an intelligence program while combating these threats. The FBI has made a number of changes in the last several years to enhance our capabilities. Today's intelligence is woven through every FBI program and every operation. Utilizing this intelligence, we have successfully broken up terrorist plots across the country, from Portland, Oregon; Lackawanna, New York; Torrance, California; and Chicago, Illinois; to the more recent- last year's Fort Dix and JFK plots. We have increased and enhanced working relationships with international partners, sharing critical intelligence to identify terrorist networks and disrupt planned attacks. With your assistance, we have doubled the number of intelligence analysts on board and tripled the number of linguists. We have tripled the number of Joint Terrorism Task Forces, from thirty-three in 2001 to over 100 now, combining the resources and expertise of the FBI and the intelligence community, military, state, local, and tribal law enforcement.

Another important part of the FBI mission is quite clearly our work against criminal elements in our communities, very often in task forces with our federal, state, local, and tribal partners. Public corruption remains the FBI's top criminal investigative priority. In the past two years alone we have convicted over 1800 federal, state, and local officials for abusing the public trust.

Similarly our work to protect the civil rights guaranteed by our Constitution is a priority, which includes fighting human trafficking as well as our focus on the civil rights cold case initiative.

Gangs and violent crime continue to be as much a concern to the FBI as it is for the rest of the country. The FBI's 141 Safe Streets Gang Task Forces leverage the knowledge of state and local police with federal resources and contemporary investigative techniques. The FBI also sponsors fifty-two additional Violent Crime and Interstate Theft Task Forces, as well as sixteen Safe Trails Task Forces targeting crime in Indian Country.

The FBI combats Transnational Organized Crime in part by linking the efforts of our nation's 800,000 state and local police officers with international partners through the FBI's over sixty FBI Legal Attache offices.

Finally, major White Collar Crime, from corporate fraud to fraud in the mortgage industry, clearly continues to be an economic threat to the country. In recent years, the number of FBI pending cases, including those associated with subprime lending, has grown nearly 50 percent to over 1,200 cases. Roughly half of these have losses over $1 million and several have losses greater than $10 million. We will continue to work to identify large scale industry insiders and criminal enterprises engaged in systemic economic fraud.

We recognize that for the past 100 years of the FBI's history, our greatest asset has been our people. We are building on that history

with a comprehensive restructuring of our approach to intelligence training for both our professional Intelligence Analyst cadre as well as for new FBI agents coming out of Quantico. We have and will continue to streamline our recruiting and hiring processes to attract persons having the critical skills needed for continued success.

I also remain committed to ensuring our employees have the Information Technology (IT) infrastructure they need to do their jobs, and this includes the continuing successful development of the SENTINEL Case Management System as well as other IT upgrades.

I am very aware of your concerns that we always use legal tools given to the FBI fully, but also appropriately. For example, after the Department of Justice review of the use of National Security Letters, we instituted internal oversight mechanisms to ensure that we, as an organization, minimize the chance of future lapses. Among the reforms was the creation of a new Office of Integrity and Compliance within the Bureau, reporting to the Deputy Director to identify and mitigate potential risk.

In closing, the FBI recognizes that it is a National Security service, responsible not only for collecting, analyzing, and disseminating intelligence, but most particularly for taking timely action to neutralize threats to this country, be it from a terrorist, a foreign spy, or a criminal. And in doing so, we also recognize that we must properly balance civil liberties with public safety in our efforts, and will continually strive to do so.

Mr. Chairman, you did comment at the outset on the National Security Letters issue and the report that was issued most recently by the Inspector General. And I will tell you that the report did cover part of 2006, before we had put in place the modifications to assure that this will not happen again. I also believe that with a fair reading of that report you will see that the Inspector General found that we have done a great deal to resolve the problems and appear to be on track to make certain this does not happen again, although he does quite obviously hold out the expectation of further reviews by himself. But I do believe we have addressed that fully.

I also understand your concerns, but I know you would understand that the heart of what the Bureau stands for is integrity, and you can expect from anybody in the Bureau, myself included, absolute honesty in whatever is said to you, whether it be in this hearing or otherwise.

[Written statement of Robert S. Mueller III, Director of the Federal Bureau of Investigation 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

April 1, 2008

Good morning, Chairman Obey, Ranking Member Frelinghuysen, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the President's FY 2009 budget for the Federal Bureau of Investigation (FBI). I would also like to thank you for your continued oversight of the Bureau and for your efforts to ensure our success as we pursue the shared goal of making America safer.

After the attacks of September 11, 2001, the FBI's priorities shifted dramatically as we charted a new course, with national security at the forefront of our mission. The intervening seven years have seen significant changes at the FBI, and we have made remarkable progress. Today, the FBI is a stronger organization, combining greater capabilities with a longstanding commitment to the security of the United States, while at the same time upholding the Constitution and the rule of law and protecting civil liberties.

2009 BUDGET REQUEST

The FY 2009 budget for the FBI totals 31,340 positions and $7.1 billion, including program increases of 1,129 new positions (280 Special Agents, 271 Intelligence Analysts, and 578 Professional Support) and $447.6 million. These resources are critical for the FBI to perform its national security, criminal law enforcement, and criminal justice services missions. Most importantly, the additional funding requested will continue to build upon our on-going efforts to integrate and cement our intelligence and law enforcement activities. These resources will allow us to create an awareness of, and become receptors for change in threats, and have the ability to make immediate adjustments in priorities and focus in an environment where national security threats and crime problems are constantly changing and shifting.

Guiding the development of the FBI's budget strategy are six enterprise-wide and interdependent capabilities that the FBI needs to effectively perform its national security, criminal investigative, and criminal justice services missions. These end-state capabilities are:

- *Domain and Operations*: A mature enterprise capability for employing intelligence and analysis to identify and understand the national security threats and crime problems challenging America, and developing and executing operational strategies to counter these threats and crime problems;
- *Surveillance*: A surveillance (physical, electronic, human source) and operational technology capability to meet operational requirements;
- *Partnerships*: An established and productive network of partnerships with local, state, federal, and international law enforcement and criminal justice agencies;

- *Leveraging Technology*: An enhanced capability for providing forensic, operational technology, identification, biometric, training, and criminal justice services to the FBI workforce and our local, state, federal, and international partners;
- *Workforce*: A professional workforce that possesses the critical skills and competencies (investigative, technical, analytical, language, supervisory, and managerial), experiences, and training required to perform our mission; and
- *Infrastructure*: A safe and appropriate work environment and information technology to facilitate the performance of the FBI's mission.

The FBI's 2009 budget strategy builds upon both current knowledge of threats and crime problems and a forward-look to how we anticipate terrorists, foreign agents and spies, and criminal adversaries are likely to adapt tactics and operations in a constantly evolving and changing world. This forward-look helps inform and determine the critical operational and organizational capabilities the FBI must acquire over the same time period to remain vital and effective in meeting future threats and crime problems.

We also linked our budget plan to the FBI's Strategy Management System to ensure the investments in new resources were tied to our strategic vision and goals.

I will highlight some of the key components of our budget request below.

DOMAIN AND OPERATIONS

In order for the FBI to be successful, we must be able to fully utilize our intelligence analysis techniques to establish a mature enterprise capability for identifying and understanding the national security threats and crime problems facing the United States, and to develop and execute operational strategies to counter these threats and problems.

This budget requests 568 new positions (190 Special Agents, 158 Intelligence Analysts, and 220 Professional Support) and $131.0 million to improve intelligence analysis and conduct intelligence-driven terrorism investigations and operations. These resources will enable the FBI to conduct investigations to prevent, disrupt and deter acts of terrorism and continue to strengthen working relationships with our federal, state and local partners; provide support to the National Virtual Translation Center, which serves as a clearinghouse to facilitate timely and accurate translation of foreign intelligence for elements of the Intelligence Community; leverage and expand existing Foreign Terrorist Tracking Task Force (FTTTF) operations to support all National Security Branch (NSB) mission areas to include Counterintelligence, Weapons of Mass Destruction (WMD), Domestic and International Counterterrorism, and Intelligence; and address growth in the number of terrorism and counterintelligence-related computer intrusion cases.

The National Counterterrorism Center's WMD Threat Assessment, 2005 – 2011 reaffirmed the intent of terrorist adversaries to seek the means and capability to use WMD against the United States at home and abroad. Within the U.S. Government, the FBI has been assigned responsibility for Render Safe operations involving WMD in the National Capital Region and for the rendering safe of deliberate deployments of WMD throughout the remainder

of the United States. To carry out its critical responsibilities in the area of WMD, the FBI must continue to build the capacities and capabilities of its Render Safe Program while ensuring that the FBI is adequately staffed and equipped to forensically respond to a terrorist incident, whether it be Chemical, Biological, Radiological, or Nuclear. The FBI's FY 2009 budget includes 132 positions (43 Special Agents and 89 Professional Support) and $65.8 million to enhance the FBI's capabilities to prevent, prepare for, and respond to the threat of WMD. These resources will allow the FBI to enhance strategic partnerships with foreign intelligence, law enforcement, security, public health, agricultural, chemical, and other public and private sector agencies and organizations that are vital to the early detection of a potential WMD incident.

The FBI's FY 2009 budget for Domain and Operations also includes an enhancement of 211 positions (35 Special Agents, 113 Intelligence Analysts, and 63 Professional Support) and $38.6 million to support investigative, intelligence, and technical requirements of the Comprehensive National Cybersecurity Initiative.

The threat of cyber-related foreign intelligence operations to the U.S. is rapidly expanding. The number of actors with the ability to utilize computers for illegal, harmful, and possibly devastating purposes continues to rise. Cyber intrusions presenting a national security threat have compromised computers on U.S. Government, private sector, and allied networks. The FBI is in a unique position to counter cyber threats as the only agency with the statutory authority, expertise, and ability to combine counterterrorism, counterintelligence, and criminal resources to neutralize, mitigate, and disrupt illegal computer-supported operations domestically. The FBI's intelligence and law enforcement role supports response to cyber events at U.S. government agencies, U.S. military installations, and the broader private sector.

SURVEILLANCE

Shifting from a reactive criminal prosecution approach to a prevention and intelligence-driven focus in our counterterrorism program is taxing the FBI's capacity to gather intelligence through both physical and electronic surveillance. The capacity to carry out extended covert court-authorized surveillance of subjects and targets is absolutely critical to the FBI's counterterrorism and counterintelligence programs. Surveillance activities – physical and electronic – give us insight into and awareness of our adversaries, which, in turn, create opportunities to identify sleeper cells, disrupt support networks and communications, and recruit assets. We need a vigorous surveillance capacity to keep on top of known and emerging targets. Additionally, we must be able to develop and deploy new operational technologies and techniques to counter a more technically sophisticated adversary and to exploit and share the information we gather.

In FY 2009, we seek an enhancement of 145 positions (10 Special Agents and 135 Professional Support) and $88.5 million to strengthen surveillance capabilities. These resources will enable the FBI to increase the number of physical surveillance teams; replace aging surveillance aircraft; develop new techniques and tools to address emerging technologies; meet demands for new audio and data collection and upgrade or replace obsolete digital collection system equipment and components; and develop new techniques and tools for tactical operations.

PARTNERSHIPS

The FBI prides itself on establishing and maintaining a productive network of partnerships with local, state, federal, and international law enforcement and criminal justice agencies. In order to do this, we must enhance our capability and capacity to collect, manage, analyze, and share information within the FBI and with our Intelligence Community (IC), law enforcement, and allied partners. The FY 2009 budget includes 3 positions (2 Special Agents and 1 Professional Support) and $5.7 million to expand the FBI's presence overseas to obtain intelligence relative to threats involving the homeland; open and staff a new Legal Attaché office in Algiers, Algeria, which will address a significant number of counterterrorism cases and leads in that region; and enhance the FBI's ability to participate in state and local intelligence Fusion Centers, which have become an important component in maintaining the flow of information between and within Federal, State, local, and Tribal governments.

LEVERAGING TECHNOLOGY

Technology is the cornerstone to fulfilling the FBI mission as well as creating efficiencies for both FBI personnel and our Intelligence and Law Enforcement Community partners. Leveraging technology will allow the FBI to provide forensic, analytical, and operational technology capabilities to FBI investigators and analysts, law enforcement officers, and the intelligence community. Without enhanced resources to invest in applied research, development, knowledge building, testing, and evaluation, the FBI will not be able to take advantage of emerging technologies or adapt to a constantly changing and evolving threat and operational environment.

For example, the use of DNA technology continues to be an important tool for law enforcement; it not only helps identify suspects, but it can also be used to ensure innocent persons are not wrongly convicted of a crime. The FBI Laboratory continues to support forensic exploitation analysis for FBI investigations, state and local cases, and terrorist identification from Improvised Explosive Devices (IEDs) obtained from in-theater operations in Iraq and Afghanistan. The FBI's FY 2009 budget includes 52 Professional Support positions and $32.1 million for DNA-related initiatives and enhanced counterterrorism and forensic analysis support for FBI investigations. The failure to provide timely examination results can affect information available for prosecutors during trials or negotiating plea agreements, or can cause a delay in the gathering of intelligence to support the identification of terrorists and their associates, which could impact the safety of the U.S. troops overseas. By enhancing the forensic capabilities of the FBI Laboratory, the FBI will be better positioned to solve crimes and offer assistance to partner law enforcement agencies.

The FBI must also keep pace with evolving technology. Currently, all wireless carriers in the United States are upgrading their networks to 3rd Generation wireless technology. This upgrade will radically transform voice, internet, email, short message service, multimedia services and any future services from circuit-switched data to packet transferred data. The FBI, along with the rest of the Intelligence Community, has created a Joint Wireless Implementation

Plan, which will allow us to provide the field with advanced tools and technologies as well as provide adequate training on the use of duly authorized wireless intercept and tracking tools. The FY 2009 budget includes $4.1 million to assist us in keeping abreast of this cutting edge technology and the ability to counter the technology posed by our adversaries.

WORKFORCE

The FBI remains committed to a professional workforce that possesses the critical skills and competencies (investigative, technical, analytical, language, supervisory, and managerial), experience, and training required to perform our mission. With an expanding mission and a growing workforce there will be an increase in workforce-related challenges that need addressing. We must be able to attract strong candidates to fill Special Agent, Language Analyst, Intelligence Analyst, and Professional Support positions, bring these candidates on-board in a timely manner, and provide them with professional training.

The FY 2009 budget includes 18 positions and $43.6 million to address these workforce requirements, including resources for National Security Branch Training, which will enable the FBI to expand the number of Domestic Human Intelligence (HUMINT) Collection Courses, develop and deliver a HUMINT training program that specifically addresses terrorist organizations, and provide training to Cyber investigators on national security-related computer intrusions; the Foreign Language Proficiency Pay Program (FLP3), which will dramatically increase the FBI's recruitment and retention of highly qualified language professionals, especially those with expertise in Arabic, Urdu, and Chinese; pay modernization efforts, which will align FBI efforts more closely to the pay modernization plans established by the Office of the Director of National Intelligence (ODNI); and the FBI's Personnel Security Program, which will expedite the investigation, adjudication, and polygraph examination for prospective FBI employees and contractors.

As a leader in the Intelligence and Law Enforcement Communities, the FBI must be equipped to hire, train, and pay the specialized cadre of personnel that the FBI employs.

INFRASTRUCTURE

Critical to the success of the FBI's mission are safe and appropriate work environments and state-of-the-art information technology (IT). Over the years, the FBI has made substantial investments to upgrade its information technology architecture, including the purchase of computer workstations and software for employees and networks for connectivity both within the FBI and with external partners. Additionally, the FBI is moving forward to invest in upgrading field and training facilities to ensure secure and adequate workspace. However, the FBI still faces gaps in its capacity to support all of its critical projects and initiatives. Continued investments are needed to close the gaps to ensure the availability of critical FBI IT systems, applications, facilities, and data in the event of a disaster. The FY 2009 budget includes $38.2 million to continue to develop facilities and IT support and services.

The FBI prides itself on its ability to share information in a timely manner. The FY 2009 budget includes resources to enhance and extend the unclassified network (UNet) and integrate it with the Law Enforcement Online, as well as upgrade our IT disaster recovery locations. This funding will enable the FBI to increase information sharing capabilities within the Bureau as well as with outside entities, like the Intelligence Community. Additionally, this funding will support the creation of backup IT capabilities to be available in the event of a catastrophic disaster.

The FBI's budget also includes upgrades to our field facility infrastructure, expansion of the FBI Academy, and security for field office expansion. The FBI is in dire need of adequate space for FBI personnel and the large number of FBI-led, multi-agency task forces such as Joint Terrorism Task Forces, Safe Streets Task Forces, Health Care Fraud Task Forces, and Field Intelligence Groups. These resources will support the FBI's facility requirements to ensure adequate, safe, and secure working environments. The budget also includes resources to consolidate FBI records at the Central Records Complex (CRC). The CRC will enable us to efficiently locate and access all of our records quickly, thus allowing us to more effectively process name checks.

STRATEGIC EXECUTION TEAM: IMPROVEMENT OF FBI'S INTELLIGENCE PROGRAM

Before closing, I would like to tell the Committee about our Strategic Execution Team (SET) and describe some of the changes that team has brought about toward improving FBI intelligenee activities. This team exemplifies the commitment of the men and women of the FBI to successfully integrating our intelligence and law enforcement activities.

We recently completed a comprehensive self-assessment of our intelligence program and concluded that we need to move further and faster to enhance our capabilities. In consultation with the President's Intelligence Advisory Board, we began working to examine how we can accelerate our progress and we have identified a number of areas where we are focusing our efforts.

We have created a SET of field and headquarters personnel to help drive implementation of needed changes across the organization. The SET team includes approximately 90 agents, analysts, and other professional staff, from FBI Headquarters and roughly 27 field offices. This team has focused its initial efforts on three critical areas: intelligence operations, human capital, and program management.

With the guidance of the SET, we are restructuring our Field Intelligence Groups (FIGs), so they can better coordinate with each other, with street agents, and with analysts and agents at FBI Headquarters. Drawing from the best practices we identified, we have developed a single model under which all FIGs will function, to increase collaboration between intelligence and operation, and to provide accountability for intelligence gathering, analysis, use, and production. The model can be adjusted to the size and complexity of small, medium, and large field offices.

To enhance our collection capabilities, we are taking a two-pronged approach. First, we must ensure we are taking full advantage of our current collection capabilities in terms of what we know through our case work, and what we could know if we asked our existing source base the right questions. Tactical analysts will work with investigative squads, in all program areas, to ensure that collection plans are executed, and to help squads identify opportunities to address the intelligence requirements of the office.

Second, to enhance the picture of a threat developed through our investigations, the FIG will include a team of specially trained agents who will collect intelligence to meet requirements, conduct liaison with local partners, and focus on source development.

In terms of human capital, we have refined the Intelligence Analyst career path, including training, experiences, and roles that are required to develop a cadre of well-rounded and highly proficient analysts. We have also established core intelligence tasks for all Special Agents, further defined the Special Agent intelligence career path, and tailored individual development plans for all agents. Finally, we have developed a university recruiting program to hire additional intelligence analysts with targeted skill sets. We received hundreds of applications as a result of this effort.

We in the FBI are mandated by the President, Congress, the Attorney General, and the Director of National Intelligence to protect national security. For nearly 100 years, the FBI has used intelligence to solve cases; today, however, we rely on our agents and analysts working hand-in-hand with colleagues across the country and around the world to collect intelligence on multiple, inter-related issues. With the authority and guidance provided by the Intelligence Reform and Terrorism Prevention Act and other directives and recommendations, the FBI has implemented significant changes to enhance our ability to counter the most critical threats to our security.

Today, we are building on our legacy and our capabilities as we focus on our top priority: preventing another terrorist attack. It is indeed a time of change in the FBI, but our values can never change. We must continue to protect the security of our nation while upholding the civil rights guaranteed by the Constitution to every United States citizen.

When I speak to Special Agents upon their graduation from the FBI Academy, I remind each one that it is not enough to prevent foreign countries from stealing our secrets – we must prevent that from happening while still upholding the rule of law. It is not enough to stop the terrorist – we must stop him while maintaining civil liberties. It is not enough to catch the criminal – we must catch him while respecting his civil rights. The rule of law, civil liberties, and civil rights – these are not our burdens; they are what make us better.

CONCLUSION

Mr. Chairman, I would like to conclude by thanking you and this Committee for your service and your support. Many of the accomplishments we have realized during the past seven years are in part due to your efforts and support through annual and supplemental appropriations.

From addressing the growing gang problem to creating additional Legal Attaché offices around the world, 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 in the years to come as we continue to develop the capabilities we need to defeat the threats of the future.

Mr. OBEY. Thank you. Mr. Frelinghuysen.

FBI TRANSFORMATION

Mr. FRELINGHUYSEN. Do you yield to me for questions, Mr. Chairman? Thank you very much. You have implemented, is an understatement, a pretty dramatic transformation since September 11, 2001. Obviously the emphasis is on our counter terrorism mission. What are your top priority areas that you are focusing on?

Mr. MUELLER. Well, in this particular budget, the 2009 budget, we have requested a number of positions for special agents, analysts, and professional support for our National Security mission. We have requested 145 positions for surveillance. We find as our cases grow, the necessity of having a professional surveillance cadre has come to the forefront, and we have not requested this volume in the past for surveillance positions. And our third area is resources to enhance our workforce training and the handling of human sources. Specialized training and initiatives weigh into both national security as well as the criminal side of the house. So our three main areas in this budget are additional positions for national security, which will relieve some of the tension we have in, cannibalizing the criminal side of the house to pay for national security. Secondly it is surveillance, and third funding for training, particularly when it comes to specialized training in the national security field.

Mr. FRELINGHUYSEN. The training falls under what you would call the human capital management area?

Mr. MUELLER. It does.

Mr. FRELINGHUYSEN. In reading over your testimony in the section on surveillance, this just struck me, "shifting from a reactive criminal prosecution approach to a prevention and intelligence driven focus in our counter terrorism program is taxing the FBI's capacity to gather intelligence through both physical and electronic surveillance." I mean, that sort of says to me, as a layperson, that as this transformation is occurring maybe something has to give here between what you have been traditionally doing and things that you have actually focused and concentrated your efforts on since September 11th.

Mr. MUELLER. In the past, I think we have been amongst the best in the world at collecting information for a prosecution, to go into a courtroom. And we have tended in the past to look at pieces of information and determine whether those pieces of information are admissible in the courtroom. In the wake of September 11th, we understand that our obligation is not just to investigate a case or a terrorist act after it has happened, but prevent that terrorist attack, which requires us to identify individuals who are taking steps to undertake a terrorist attack before that attack occurs. To do that we need intelligence. We need analysts. We need the surveillance capabilities to run an intelligence operation to not only capture the conversation through technology, whether it be e-mail or the phones, but also to back it up with surveillance.

As we develop this capacity, which I would say it augments what we have done in the past——

Mr. FRELINGHUYSEN. This is also the issue of making your case solid.

Mr. MUELLER. Well yes, it is. But the recognition has to be that we have tremendous capabilities in the Bureau. We have to augment those capabilities with the gathering of intelligence, the exchange of intelligence with our counterparts in the CIA, DIA, NSA, and the like, and build our capabilities to be a domestic intelligence agency at the same time we are a domestic law enforcement agency, understanding that as we grow those capabilities we have to do it within the framework of the Constitution, applicable statutes, and the Attorney General Guidelines.

Mr. FRELINGHUYSEN. You also say in that paragraph, and I do not mean to take words out of context, "We need a vigorous surveillance capacity to keep on top of known and emerging targets." I assume we should have every confidence that we are well placed in that regard?

Mr. MUELLER. We are well placed in that regard. But quite often we will find we will have, if you take a case such as Lackawanna, New York, and Torrance, California, where we have a group of individuals, and we have substantial predication that they are working together to undertake a terrorist attack. We have to pull resources from elsewhere in the country to do the type of investigation and follow up of the organization that would be necessary to gather the information we need ultimately to disrupt that plot. That means surveillance teams from around the country. It means individuals who, assuming we have either a FISA wire or a Title III wire, the individuals who are capable of putting up and monitoring those wires. And they are very personnel intensive to do that kind of in depth investigation. Consequently, while we are pushing the resources around the country to do this, as our work expands we need the resources to accomplish this.

Mr. FRELINGHUYSEN. And lastly, my time is limited, but your budget request is linked to the new Strategy Management System?

Mr. MUELLER. Yes.

Mr. FRELINGHUYSEN. How will that system enable you to align your budget with these emerging threats and trends?

Mr. MUELLER. Over the last two and a half years we developed a Strategy Management system that focuses on our priorities. Anyone in the organization who feels that they need additional capabilities has to link that request to one of the priorities that we have agreed upon in our Strategic Management System. And then we prioritize, under the Strategic Management System, to make certain that we are focused on that which is most instrumental to us being successful in the missions that have been given to us. We will tell you, as was pointed out I believe by the Chairman, and I think everyone knows, in the wake of September 11th, focusing on our particular priorities, there are a number of criminal priorities we cannot focus on. And we have to identify those priorities and align the budget, the personnel, the recruiting, the hiring, the training, the career development, to those priorities as they are established in our strategic management plan.

Mr. FRELINGHUYSEN. So it is a Strategic Management System but humans are still the ones that are running it?

Mr. MUELLER. Always.

Mr. FRELINGHUYSEN. Got it. Thank you, Mr. Chairman.

Mr. OBEY. Mr. Schiff.

DNA EVIDENCE

Mr. SCHIFF. Thank you, Mr. Chairman. Mr. Director, I appreciate your being here. I spent six years as Assistant U.S. Attorney and worked extensively with the FBI on counter espionage and corruption cases and I have a tremendously high regard for the people in your agency. There are a number of areas I want to cover. I was, very concerned, as our Chairman indicated, with some of the problems that I have seen, where the NSLs, more specifically where the exigent letters saying, "Provide us these records," that there is an exigency, that there is a grand jury subpoena forthcoming, when in fact there was no grand jury even impaneled, let alone a subpoena forthcoming. That did not sound at all like the FBI that I had the pleasure of working with. I want to ask you about that.

Before I turn to that, one of the areas that I am also interested in is the use of DNA evidence. There has been a very substantial backlog of DNA samples which is expected to get a lot worse when the new law kicks in and a broader pool of convicts and arrestees will be within those required to be sampled. In the budget request there is a request of only a little over $30 million. I do not see how that will be enough to try to deal with the backlog we have now, let alone the backlog we can anticipate when the new law kicks in later this year or in 2009. Do you know what the current backlog is of DNA samples? Do you have a sense of what resources would really be necessary to eliminate that backlog?

Mr. MUELLER. I would have to get you those specifics but I can also tell you that we are still recovering from the changes in law in 2005, which added a substantial number of individuals that we would need to process. Clearly it is going to occur again. We put into the budget that which we think we could utilize, and hopefully build upon in years to come. I would have to get you both the figure on the backlog as well as a break down of what it would cost to remove that backlog.

[The information follows:]

DNA SAMPLES

As of March 2008, the FBI has a backlog of 231,488 convicted offender samples. The FBI is working with resources provided in the FY 2008 budget to control this backlog. However, additional resources requested in the FBI's FY 2009 budget will be necessary to reduce this backlog and help to prevent future backlogs. The requested resources include:

- 36 positions and $20.8 million to expand the capacity of the Federal Convicted Offender Program (FCOP). This will allow the FBI to reduce the backlog and process increased submissions expected as a result of the USA Patriot Act of 2001, the Justice for All Act of 2004, and the DNA Fingerprint Act of 2005. Funding would provide additional technical personnel, space, and equipment to support the processing of samples.
- 6 positions and $735 thousand to perform Combined DNA Index System testing and quality assurance.

The FY 2009 budget also requests additional funding for other related improvements to the FBI's DNA program.

- 3 positions and $1.2 million to enhance the functionalities of the National Missing Persons DNA Database, which is part of the FBI's Combined DNA Index System.
- 2 positions and $7.9 million to address the increased volume of mitochondrial DNA casework related to items submitted by the Terrorist Explosive Device Analytical Center.

The FBI will work with DOJ, OMB, and Congress to ensure the appropriate level of resources to eliminate the backlog and provide for timely processing of future samples.

Mr. SCHIFF. I would very much like to get that. This is such a powerful tool. There is perhaps no other tool like it in the sense that you can directly correlate and say, "If we clear up this backlog we can anticipate getting x number of thousand new hits. We get that many thousand new hits that means we can take that many murderers and rapists off the street." We can say, I think with absolute certainty if we do not eliminate the backlog there will be people who will be raped by serial rapists that we could have taken off the street that we can identify now. We have the power and we may have even collected the rape kits or the offender's DNA but not have had a chance to analyze it yet. So I would look forward to getting that information and would love to work to see if we can get the resources necessary to really deal with this and make sure that, at least vis-a-vis the most serious offenses, law enforcement can get those samples analyzed very quickly.

Can you share with me on the——

Mr. MUELLER. Can I just add one other point?

Mr. SCHIFF. Yes.

Mr. MUELLER. One of the other things we are looking at is advances in technology to expedite the examinations and some of the process, the DNA process, that would also eliminate the backlog. Not just the additional personnel, but we are looking hard at technology being also a contributing factor to removing that backlog. And we can brief you on that as well.

Mr. SCHIFF. Wonderful. One other issue that is related to that, the state and local law enforcement have a tremendous backlog problem as well, probably greater than yours. One of the obstacles they face is that when, like a local police department in my district, they do not have a facility themselves, they have to go to the County Sheriff's Department. That often takes so long that they go to a private lab, which is very expensive to do. I guess there is a 100 percent requirement of review of the private lab's work by the County, but when the County uses the same private lab for its overflow without evidently the same requirement. I think, according to a National Institute of Justice study, some of these 100 percent review requirements are adding tremendous cost without improving accuracy. I would love to work with your office as well on that issue.

On the issue of the exigency letters, specifically can you share what the audit has found? Or what you have found? Or what steps have been taken to try to ensure that we do not have a situation again where you have agents telling phone companies or others, "We need these records, it is an emergency, you are going to get a grand jury subpoena," when in fact there is no grand jury even impaneled?

Mr. MUELLER. We are working jointly with the IG in an investigation of the exigent letters and that is still under investigation. So I cannot get too far in depth into the investigation. There are a couple of things I can tell you. Back when the IG report came out, we issued a ban against the use of them. So they have not been used once we became aware of the extent of the use in the

IG report last year. I will say that my understanding is the practice arose, first of all, in New York and was to a certain extent imported to headquarters as a result of the shift of primacy for handling a case from the field office back to headquarters. And the practice arose from persons using forms without reading the forms. This is my understanding; it is not by way of excuse. But it was transported from New York and was utilized here without the appropriate attention to what was happening, and to assure that whatever representation was made in a piece of paper as to what was going to happen was in fact true. As I said, the investigation is ongoing and I will see what the IG recommends in terms of whatever further steps need to be taken to assure that this practice does not grow in another way.

I will tell you one other thing that we have found that I think covers not just National Security Letters but other areas as well. And that is, while we would establish procedures, we did not have a mechanism to assure that the procedures were being followed. So we established an Office of Integrity and Compliance to look at those areas where there is weakness or potential weakness to identify them early on and address them. So when Congress passes a statute and requires that we adhere to certain procedures in the future, we will not only set forth procedures within the Bureau but we will make certain that we have red teams and others who are looking to assure, throughout the organization, that the procedures are indeed being followed. The lesson we have learned from this episode is that it is insufficient to issue procedures without also having a mechanism to assure that the procedure is being followed in our fifty-six field offices and in our 400 resident agencies.

FISA

Mr. SCHIFF. I appreciate that. This colors our view of the whole FISA debate when we see some of the authorities we have already provided with the NSLs or in other areas without adequate safeguard and abuses. It certainly colors how we view the additional requests in FISA. Thank you, Mr. Director, I appreciate your testimony. Thank you, Mr. Chairman.

Mr. OBEY. Mr. Aderholt.

NEW TECHNOLOGY

Mr. ADERHOLT. Thank you, Mr. Chairman. Thank you, Mr. Director, for being here. Going back to the technology aspect that you addressed in your testimony, you discussed the aspect about working with the local law enforcement officers, and in some of these cases that this new technology would provide forensic, analytic, and operational technologies. In what sense do you, when you say with the local law enforcement officers, in what sense do you all work with those? And how do you make a priority for the cases on the local level?

Mr. MUELLER. Well if you look, we have fourteen Regional Computer Forensics Laboratories around the country in which federal, state, and local authorities all work together to prioritize the computer forensics in a particular area. And they have been tremendously successful. Again, if you are looking at the narrow range of cyber issues where we do not have the Regional Computer

Forensics Laboratories, our agents spend a great deal of time with state and local law enforcement, both on training, exchanging new methods of doing the forensics, and helping each other out. I think most state and local law enforcement agencies would tell you that keeping up with the change in technology is tremendously difficult for a smaller jurisdiction. We do what we can to assist. As I said, the Regional Computer Forensics Laboratories have been tremendously successful throughout the country, and I think if you talk to any state and local law enforcement entity that participates in those laboratories they would be very positive in their views. And as I said, where we do not have one we look to help as best we can on a particular issue.

As I have indicated to the Chairman in the past, I am a great believer in working on task forces, that we leverage our capabilities by sitting shoulder to shoulder with state and local law enforcement and with other agencies. And my own belief is that to the extent the mode of addressing the threats in our communities or indeed overseas can be funded across the board. It is beneficial to the American public, not just to the FBI.

Mr. ADERHOLT. You indicated in your testimony that you plan to open a new Legal Attache Office in Algiers, Algeria to address a significant number of counter terrorism cases and leads in that region. Of course, currently Algiers is covered by the Attache in Morocco. Will Algiers now have its own office? Or will responsibility for countries such as Tanzania and Niger shift into this office as well?

Mr. MUELLER. Well, I am not certain what other countries would be covered by the office that we put in Algiers. Over the last year, year and a half, the capabilities of Al Qaeda in the Maghreb after it has become associated with Al Qaeda have been substantial. We have great concern that as the capabilities of Al Qaeda in the Maghreb have grown, so too has the possibility of individuals with joint passports, say with France and Algeria, could find a way into Europe and then be an e-ticket away from JFK Airport here in the United States because it is a visa waiver country. So the first chance you get to see the individuals coming in is at the airport.

We have developed a good working relationship with our counterparts in Algeria, and this is the next step in the building of that relationship to address this new phenomenon, the new threats that come out of the Maghreb.

[The information follows:]

LEGAT ALGERIA

The Legat Algeria will cover the following terrorities; Chad, Niger, Tunisia,and Libya.

Mr. ADERHOLT. So the bombings and Al Qaeda connection has definitely been a factor in that?

Mr. MUELLER. Yes.

Mr. ADERHOLT. That is all I have, Mr. Chairman, thank you.

Mr. OBEY. Mr. Ruppersberger.

NATIONAL SECURITY BRANCH

Mr. RUPPERSBERGER. Director Mueller, good to have you here. I know we have had numerous conversations in the Intelligence Committee and private conversations about particular issues.

The first issue I would like to talk about today is the National Security Branch. Basically I guess that is our domestic CIA, and the FBI has the responsibility for standing up this group. The FBI is clearly our top law enforcement agency, and the culture has been to investigate, arrest, convict. And now we are going into an intelligence mode, which is an entirely different culture. And this, I believe, it has been, what, four years now that we have attempted to stand up the National Security Branch?

Mr. MUELLER. It was three.

Mr. RUPPERSBERGER. Three or four years, and I think that you have an individual from the CIA that I respect a lot, and is with you, and working with you to help stand up. How are we doing as far as the change in the type of agent or investigators you have to hire? How are we training our people in this National Security Branch? And another thing from a point of view to motivate people to become full time in intelligence in the FBI is to have a line of promotion. I make an analogy that in fire departments where you have paramedics who are a small group, and then you have the firefighters that are a large group, a lot of paramedics were trained to be paramedics and yet they want to switch over because they can get promoted quicker on the other side. How are you dealing with standing up the National Security Branch?

Mr. MUELLER. We are in the process, in the next six months to nine months, of executing a number of projects that have been in the making for a period of time. We have a Field Intelligence Group in every one of our fifty-six field offices. We have had them for several years. But we have adopted a standard Field Intelligence Group structure that is going to be in place in various iterations throughout the country. What this does is enable us to do a better job of recruiting, hiring, and training to particular job positions within the Field Intelligence Groups. We also have a look first of all at the analyst side. We have undertaken a substantial recruiting drive for analysts in many of the top colleges around the country. We are building a career path for the analyst cadre all the way to the top.

Mr. RUPPERSBERGER. We talk about collecting intelligence but it is so important to analyze it.

Mr. MUELLER. It is.

Mr. RUPPERSBERGER. And I know it is difficult in the beginning when you have FBI agents and then you have analysts. And it is almost a different profession to analyze. Can you address how are you motivating and getting the analysts that you need to do the job? To analyze the information that is collected?

Mr. MUELLER. We have had no problems in getting applicants for the analyst positions. We have a good retention rate. But as I said, we have undertaken a special recruiting drive to hire in excess of 400 this year. We had approximately 1,000 analysts in 2001. We have doubled that almost to 2,000, or a little above 2,000 analysts, who have remarkable pedigrees in terms of their capabilities. What

we are finding is that the relationship between the agent and analyst is improving day by day. We have a remarkable cadre of analysts with whom I work day in and day out. They are well trained, contribute a lot, and they have the respect of the agents. And increasingly we as an organization understand that we need a number of specialized skills in order to be successful. One of those are the analysts. On the agent side of the house, we have just changed our new agents course to enhance yet again the emphasis on intelligence, and secondly we have developed career paths for each of the National Security Branch professional areas.

Mr. RUPPERSBERGER. Let me say this. Your fiscal year 2009 request includes eighteen positions and $43.6 million to address these workforce requirements. How much of that request is for training in the National Security Branch?

Mr. MUELLER. Almost all of it is for the National Security Branch. Very little of it is solely on the criminal side of the house. I will tell you, though, the criminal agents need the training as much as anybody. And to a certain extent one of the things that was pointed out by the Chairman in his remarks is the criminal side of the house, whether it be ours or the Department of Justice, budgets have been squeezed, one would say cannibalized, by the necessity for building up the national security side of the house. I am the first one that believes we have to build up the national security side of the house. We have done it by taking away from the criminal programs. And as was pointed out, we are squeezing in the Department of Justice. The funds are coming, I think appropriately so, to the FBI, but are squeezing out some of the other programs in the Department of Justice that should be funded.

FY 2009 BUDGET NEEDS

Mr. RUPPERSBERGER. We are about finished. All right, well I have got a couple of other questions but I am going to ask you just one more question. I know that you are part of the administration, and the President determines the budget, and that you have to honor that budget. But I am going to ask you the question that I think is important, especially with all that is going on with the FBI, the JTTF, the Joint Terrorism Task Force, setting up the National Security Branch, is there anything that is not in the President's budget that you feel is important or a high priority that we should look at to increase that budget?

Mr. MUELLER. Going through the budget process, as this Committee would know as well as any, you go through a prioritization process. And so the top priorities that we have addressed have gone through the Department of Justice, have gone through OMB, and become part of the President's budget. Quite clearly we could, in programs, have requested and could utilize additional funds. But we have gone through the prioritization process and what you have before you in the President's budget are the top priorities for the Bureau.

Mr. RUPPERSBERGER. So that was a nice answer as a Director of the FBI protecting the President's budget. I appreciate the answer.

Mr. MUELLER. Well, I will be a little bit more forthcoming in that regard in the sense that one of the challenges for us is to enhance training. And we have somewhat outmoded buildings that were es-

tablished, or built I think in Quantico back in the 1970's. I would like to bring on additional instructors, have the capability, the physical capability, to add training capacity as we go through this transformation. Another area that I can assure that you will be hearing from us in future years is that we need funding to address the advance in technology where we need to collect in terms of intercepting, and you have cell phones and a number of more innovative communications mechanisms that require building up the expertise in the Bureau that I think we are going to have to address down the road.

Mr. RUPPERSBERGER. Okay, thank you.

Mr. OBEY. I have a whole series of questions that need to be asked, but before I get to those so that we can keep it more systematic, I would like to have another five minute round for the other members of the Subcommittee. So Mr. Frelinghuysen?

GWOT SUPPLEMENTAL REQUEST

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman. Let me thank your people for giving me a tour of your Quantico operation. I must say I have quite a lot of school districts in New Jersey that you have antiquated facilities, and certainly you need some upgrades there. You have got to balance it between other needs out there. What do you call it? Squeezing or taxing? It is a pretty difficult task, to balance all of those interests. I mentioned in my initial remarks the supplemental. Can you talk a little bit about what your needs are there? Can you put some flesh on the bones?

Mr. MUELLER. Without going too far into detail, our presence in Iraq and Afghanistan relates to our contributions when it comes to interviewing detainees. And we have a substantial role in evaluating IEDs and running them through forensics, DNA, and fingerprints for instance, and providing the results back to the military. We do sensitive site exploitations when a safe house is taken. We then go in and help with the exploitation of the information using the techniques that we have developed over the years in our law enforcement capacity. What we are seeking in the supplemental is equipment that enables us to participate as I have described. Body armor, armored vehicles, airlift support, generators, evidence collection materials, other areas of——

Mr. FRELINGHUYSEN. The dollar amount you are looking for at this juncture?

Mr. MUELLER. $100 million.

Mr. FRELINGHUYSEN. $100 million——

Mr. MUELLER. Yes.

Mr. FRELINGHUYSEN. Would you anticipate that you would be coming in with a larger figure?

Mr. MUELLER. Well this was a figure, as I think you or others have pointed out, of some time ago but what we have on the table at this point is $100 million.

SENTINEL

Mr. FRELINGHUYSEN. I want to shift briefly to the SENTINEL program, one of your biggest challenges. I have been on the Committee fifteen months but there has been a lot of challenge and

frustrations relative to the automation of your case files and case management system. Can you give us an update?

Mr. MUELLER. Certainly. The——

Mr. FRELINGHUYSEN. As to where we stand? Obviously this is an issue, and the Chairman alluded to it, oversight issues. Give us a sort of a synopsis of where we stand on this system.

Mr. MUELLER. It is a system that is going to take approximately four years to develop, and it is called SENTINEL. The first phase was successfully deployed in June of last year. And since that deployment of Phase One we have had twelve separate additional builds on Phase One. We are well into Phase Two, and Phase Two is on schedule to begin implementation in the spring. It is within the planned cost. I really do not think there are many in the way of programs that have as much oversight as this particular program.

Mr. FRELINGHUYSEN. I know. Just for the record, what is the last estimate for the current life cycle cost?

Mr. MUELLER. Generally in the range of $335 million. It may run a little bit over that, in the sense that we have developed an incremental development strategy as opposed to a straight phased strategy which will mean that we want and will get earlier in the cycle enhancements to SENTINEL.

Mr. FRELINGHUYSEN. I thought the last estimate was $425 million?

Mr. MUELLER. That may be with O and M.

Mr. FRELINGHUYSEN. Yes.

Mr. MUELLER. I think the total value of the contract with Lockheed Martin is $335 million over six years and we anticipate, still anticipate, delivering full capacity in 2010.

Mr. FRELINGHUYSEN. What do you see as additional funding requirements?

Mr. MUELLER. I would have to get back to you on that. But again it would be on the end.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable etablished by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. FRELINGHUYSEN. I understand you have deployed two of the most critical deliverables in Phase One, a web-based portal and word boxes and summarize cases and leads. Are you satisfied with the quality of the Phase One products?

Mr. MUELLER. Yes.

Mr. FRELINGHUYSEN. What have you learned based on staff use?

Mr. MUELLER. The staff use is not as high as we would like at this juncture because, really the core of the program is coming in Phases Two and Three. The heart of it is to take the base information we have in what is called ACS, make it first of all available through the SENTINEL program, but then migrate that data to other databases. The problem we face, and many companies face, is that the database, the ACS database is an antiquated database. The persons who knew that database way back around are few and far between. And much of the funding in upgrading goes to identifying the pathways by which you can migrate the data into the new

database. As I said, we are on target both in terms of time and money in Phase Two. My expectation is there may be, as we go down the line and we bring in earlier pieces of the program, that there may be, a very modest enhancement in terms of cost.

Mr. FRELINGHUYSEN. The recommendations from the IG came out within August. I think there were nine? One was limit the scope and duration of future project phases to make them more manageable. Where do those recommendations stand?

Mr. MUELLER. Well, we decided one of the lessons we learned in Phase One is that the phased structure, where you go for a period of time building it up and then all of a sudden, push it out to the field, is not as beneficial as incremental development. So we have shifted to an incremental development with various increments during the phases. So, as I said, Phase One has had, twelve additional builds in the incremental development. So as opposed to doing it in straight phases, we are doing it incrementally. Some people call it spiral development or incremental development, based on what we learned in Phase One, which will make it more efficient and will enable us to push out to the field enhancements earlier than we had anticipated when we started the project.

One of the problems with a project like this, and one of the problems I believe that you have with new government projects such as this, is you get locked into a project early on with requirements, which you need in order to have a contract that is structured and you can meet the gates. On the other hand, technology changes, capabilities change over the period of the contract, and your challenge is to keep the contract within budget, make use of the new technology that comes along in the meantime, but assure that you come to the finish line on time and under budget and utilize whatever mechanisms you can to enhance your abilities to get your people what you need in terms of technology as you go through that project cycle.

Mr. FRELINGHUYSEN. It would be an understatement to say the Committee is not following this with interest and all sorts of language in the omnibus to provide greater direction and reports. We wish you would keep us posted. Thank you, Mr. Chairman.

Mr. MUELLER. Well if I might add, there is not a lack of oversight on this project. We have GAO, we have the IG, we have OMB, we have a number of congressional committees, and——

Mr. FRELINGHUYSEN. We want the system to work.

Mr. MUELLER. And anytime you need, or would like, a briefing, we are happy to give them. We try to give them periodically, every couple of weeks, and we will offer them to the staff whenever they need more insight into how the project is going.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

Mr. OBEY. Mr. Schiff.

GANGS

Mr. SCHIFF. Thank you, Mr. Chairman. Mr. Director, my district is the Los Angeles district and we are facing a problem that has become increasingly nationwide and in fact crosses international borders, and that is dealing with gangs. Back when I was with the U.S. Attorneys we did very little gang prosecution. It was mostly a state and local issue. But as gangs have proliferated and become

national and international and gotten more heavily involved in the drug trade I know that is changing.

Senator Feinstein has a bill that passed the Senate. I have got a slightly different version here in the House that would invest a substantial sum in prevention to try to keep kids out of trouble on the front end. It would also invest a substantial sum on the back end in getting law enforcement additional resources to deal with the gang problem with programs like Hydra and others. It would also establish a RICO like statute specifically for dealing with gangs, so that prosecutors do not have to resort to something that was designed with the Mafia in mind to deal with a very different criminal structure. And I wonder if you could share your thoughts on the FBI's increasing role in dealing with this problem, and why that has been necessary, as well as whether you think these tools in terms of a statute that is more on point than RICO for dealing with gangs, whether that would be something of value to federal law enforcement?

Mr. MUELLER. I believe very strongly, to the extent that the FBI can assist state and local law enforcement in reducing violent crime in the cities, the FBI should. We certainly cannot supplant state and local law enforcement whose principal responsibility is to address it. But to the extent that whether through technology, intelligence, or federal statutes, we can assist, we should.

Consequently since September 11th, through one of our priorities Transnational-1, International Organized Criminal Groups, we have addressed gangs as well as our violent crime program. We have over 180 Safe Street Task Forces around the country. I believe, the most effective and efficient way of addressing it is to combine the resources of state and local law enforcement with the FBI because we have the jurisdiction across the town lines, the city lines, the state lines, and now international lines.

If you take something—if you take a gang such as MS–13 they started in Los Angeles. Los Angeles and El Salvador basically, but it spread to Guatemala, Honduras, and Mexico, and then across the country.

Our ability to gather the intelligence and make it available to Bill Bratton in Los Angeles for instance I think is important in assuring his success in addressing gangs in Los Angeles. We now have a task force. We have task force members down in El Salvador that are assisting the El Salvadorians in collecting fingerprints and putting together databases that can be useful in addressing the gang structures in the United States.

That is the type of effort that I think is important. I would also go back to a belief that state and local law enforcement should be funded in my mind with the view towards funding going to participation in task forces, because that is the way you are most effective.

As to the other question, in terms of the statute, I think I agree with you that we continue targeting criminal enterprises who, have elements that make it difficult in many situations to address the configuration of gangs as we see them on the streets in America today.

I am not familiar with your legislation but we should be seeking, additional capabilities to address the differing gang structures that

we see around the United States, which are, as you point out, somewhat different from the narcotics trafficking gangs of the past and the mob, the mafia.

Mr. SCHIFF. Let me ask you on the terrorism front. My colleague, Mr. Ruppersberger's, mentioned the cultural change that FBI has had to undertake in going from a law enforcement agency that also did counterespionage to a heavy focus on gathering information in terms of potential domestic terrorism.

Part of the changes, you know, that have been required to make are institutional within the FBI. But part of the broader changes are—involve information sharing and the attempt to make sure that we can connect the dots and to use an overused expression. Part of that, improvising some of the laws about when you could share information that was derived in criminal investigation with people doing intelligence and vice versa.

Can you share your thought on how that has worked out? Are there any remaining impediments to your ability to get the information you need from the intelligence community to do your job, or conversely information you derive, and on the criminal side from sharing that with those that need to know in the intelligence community? Are there any remaining legal obstacles that we should be aware of? Are there any legal or otherwise that we should be focused on?

Mr. MUELLER. In that particular area, I can't think off the top of my head another area which we need to open to enhance better sharing. I would have to get back to you. I would have to think about that.

But I will say since September 11th, the Patriot Act and certain rulings of the FISA Court, have broken down the walls that were there before within the FBI, in other words, on the intelligence side of the house. That counterintelligence cannot talk to criminal and vice versa. But also between the FBI and the CIA, DIA, NSA, and the like. Those have, in large part broken down, and appropriately so.

You are also seeing, at the same time, the growth of entities such as the National Counterterrorism Center. They understand that we collect information under different authorities.

Once that information is collected, it has to be integrated in order to get a clear picture of the threats, because many of the threats to the United States now may well come from outside, whether it be cyber or terrorism or the like.

And without that, that integration of information, we cannot get the picture. So I think we have come a far way. There is one inhibitor. I am not going to say we are perfect, it is less institutional, far less institutional now than in the past. Now, I will have somebody, or my counterparts will have somebody, who has not seen the light and we have to address those individual instances. The institutional chasm has been addressed.

Mr. ADERHOLT. Thank you, Mr. Chairman. I think the Director just addressed my question on interagency cooperation. So I will go ahead and pass for right now.

Mr. OBEY. All right. Mr. Ruppersberger.

WEAPONS OF MASS DESTRUCTION

Mr. RUPPERSBERGER. I think in 2006 that the Bureau established a new headquarters directorate for weapons of mass destruction. And I think that is very positive. I think even the country isn't aware of what is probably our biggest threat, nuclear threats, and the components that might be coming in from an al-Qaeda situation or other countries.

The directorate's mission, I understand, is going to be to basically identify, deter, disrupt, and respond to WMD threats. And then coordinate with Department of Energy, both domestically and internationally.

How will this year's budget request for the directorate further this objective?

Mr. MUELLER. I know we have in the budget additional requests for personnel, 30 agents, 20 support, for a total of 50 at $15 million. And so each year we are seeking to enhance the personnel we have in the WMD Directorate.

So yes, we are looking for 50 positions that includes 30 agents to be coordinators in the field. And, again, each year starting when we set up the directorate, we have sought funds and generally had received the funds not only for the directorate, but also for our Render Safe Mission.

Mr. RUPPERSBERGER. Is part of that mission to identify where components of nuclear bombs and fertilizer are purchased in different parts of the world? I know that the CIA and other agencies are looking at that. Are you working with them in that regard?

Mr. MUELLER. Oh, yes. We are looking at both counter-proliferation as well as establishing tripwires in the United States so that we trigger persons who are seeking to either build or to buy components of nuclear devices.

But we have not forgotten about the biological and chemical weapons. And the directorate addresses not just nuclear but bio and chemical as well.

Mr. RUPPERSBERGER. Okay.

Mr. MUELLER. Developing the expertise so we have the tripwires out there to identify it and then can move very quickly to render any device safe before it can——

Mr. RUPPERSBERGER. And one other——

Mr. MUELLER [continuing]. Trigger.

NARCOTICS

Mr. RUPPERSBERGER [continuing]. Area I want to get into, since 9/11, rightfully so, we needed to really step up what we do from a resource point of view in dealing with the issue of terrorism. And I believe strongly that the best defense against terrorism is intelligence.

But as a result of that it seems to me that there have been a lot of resources that have not been given in the area of narcotics. If you look across this country, and this is just my opinion, but our citizens are more impacted by narcotics than anything else and that causes violent crime. And the resources just don't seem to be going there.

I know that you have some jurisdiction, DEA has total jurisdiction. DEA is all over the world attempting to deal with drug trafficking. But it seems to me that the narcotics situation now is getting worse instead of better.

We have Afghanistan which has more poppies coming up now than ever in the history of the world. South America is really, really gearing up. And what concerned us in the beginning in the intelligence field was that the cartels would connect with al-Qaeda and the cartels with money. Al-Qaeda and some of the extremists sometimes seem to be more religious. But now those two seem to be combining together.

Where are you, the FBI, as far as your priorities as it relates to narcotics? Are you getting the resources that you need for narcotics? Are you still working very closely with DEA and state and local law enforcement as it relates to the issue of the large cartels and also in the domestic area?

Mr. MUELLER. Well, the bottom line is that I had to transfer approximately 900 agents from our criminal program to our national security in the wake of September 11th. And those agents have not been replaced.

Mr. RUPPERSBERGER. That is a very serious problem. Do you believe this?

Mr. MUELLER. Pardon?

Mr. RUPPERSBERGER. Do you believe that is a serious problem?

Mr. MUELLER. Well, I believe it is. Although I do believe the DEA has covered some of the shortfall. We still require—

Mr. RUPPERSBERGER. Have you seen DEA's budget by the way?

Mr. MUELLER. I have not.

Mr. RUPPERSBERGER. It is not real good.

Mr. MUELLER. I understand that from my counterpart. But I have not seen it.

But, no, we still participate in a number of drug cases, particularly through the OCDETF Program.

But one thing that we did have and still do have is 400 resident agencies around the country. So our coverage was somewhat more than other agencies.

In terms of the intersection between narcotics trafficking and terrorism, we have seen it certainly in Colombia with the FARC. You see it to a certain extent in Afghanistan, certainly with the Taliban. And it is an issue that is principally in the purview of the DEA. But needless to say, human resources would enhance our participation in that area.

But as I said, we had to prioritize in the wake of September 11th. And this was a result of our prioritization.

Mr. OBEY. Mr. Culberson.

Mr. CULBERSON. Thank you, Mr. Chairman. Director Mueller, I just want to tell you what a huge fan I am of you and the FBI. It is a great comfort to know that you are there. The superb job that you do is deeply appreciated by I know everybody on this Committee and in the country.

I want to ask you about two areas in particular. First of all, CIS has actually adopted a new policy that I wanted to ask you to comment on. That they are no longer going to issue green cards before

the FBI completes a background check, which seems to me to be a bad idea.

And I just wanted you to comment on it. If you thought that was prudent, particularly since once the green card is issued that it is the responsibility of the government to prove that the aliens should not be in the country. It will sort of flip the burden of proof and allow this person in before you have been able to do your part.

Mr. MUELLER. I must say that I am not familiar with the details and the rationale. I understand that may have been the case but I really don't feel prepared to talk about that decision.

SOUTHWEST BORDER

Mr. CULBERSON. Okay. Maybe if I could also ask you to do this is specific request. And I think you and the FBI could make a significant different right away.

I had a chance to go to Tucson. I have been working up and down the border with my friends, Congressman Ciro Rodriguez, Congressman Henry Cuellar. We have successfully been able to get a policy called Operation Streamline expanded from Del Rio to Laredo where the Border Patrol is enforcing existing law and arresting everyone who comes across the border illegally.

So essentially a zero-tolerance program that is very successful. The local community loves it, because the crime rate has dropped about 76 percent in the Del Rio sector. It has got broad-based support among local officials. The local community is delighted with it. Illegal crossings in the Del Rio sector are the lowest they have been since 1973 when they began keeping statistics.

And in the process of working with my colleagues in Texas to get that program rolled out along the Texas border, we are working on Brownsville next, I visited Tucson, because I had heard that Tucson has about half of the arrests in the country where illegal border crossings are made in the Tucson sector. I know you are aware of that.

And I was mortified to discover in talking to the sector chief there, Robert Gilbert, a good man with the Border Patrol, he gave me these statistics. I went to the booking station, talked to the officers.

It turns out that the people arrested—if you are arrested in Tucson carrying up to 500 pounds of dope, you have a 99.6 percent chance of never going to jail and in fact being home in time for dinner, quite literally. They are turning them all loose. I have no idea. I just was thunderstruck.

The U.S. Attorney in Tucson sector will not do anything to attempt to try to reverse that. They are turning loose literally 99.6 percent of everybody arrested in the Tucson sector, even if they are carrying up to 500 pounds. The evidence room is stuffed with loads of dope that are 500 pounds or less. It is unbelievable.

So my good friend from Maryland is exactly right about the narcotics problem. We know you have testified. We have seen evidence that the terrorists are attempting to use these smuggling routes to enter the United States.

What I was going to suggest specifically, because I know you may not be familiar with that, so I just wanted to ask—I think it would be very productive for the FBI. I noticed in your request to this

Committee, you are asking for 568 new positions, a number of special agents, intelligence analysts, 228 professional support to enable the FBI to work more closely with federal, state, and local partners.

I would suggest if you could to think about assigning an FBI agent to sit in the booking room of Tucson sector. They had a State Department employee there part time, because the Border Patrol was so desperate to get some help that they had a State Department official there to look for visa violations so they could hold these guys or anything, because the U.S. Attorney is turning them all loose.

This is something I am going to explore with this Subcommittee with the Attorney General tomorrow. And I have been—I am working something up, Mr. Chairman and Mr. Frelinghuysen, for you and the other Committee members so we can look at sector by sector.

It never occurred to me. I was assuming an arrest was made. I know you do when an arrest is made by an FBI agent that you assume it is a good arrest. That the person is going to be at least presented to a grand jury and there is going to be some effort at prosecution.

From what I understand, the U.S. Attorney in Tucson is even turning loose over 90 percent of your arrests. They are turning them loose when your folks makings arrests. They are cutting them loose.

Are you aware of this problem number one? And number two, is there something you can do? Can the FBI assign some additional people there to help the Border Patrol in identifying people that, A, might be a terrorist threat or a dangerous criminal that the U.S. Attorney is just letting walk out the door?

Mr. MUELLER. As I think I indicated before, I am not familiar with the

Mr. CULBERSON. This is——

Mr. MUELLER [continuing]. Issue, but will look into that.

[The information follows:]

ASSIGNMENT OF AGENT IN TUCSON SECTOR

The FBI has a number of Organized Crime Drug Enforcement Task Forces and Safe Street Task Forces along the southwest border that work with state, local, and other federal law enforcement agencies to address the problem of drug smuggling across the southern border.

Although an arrest may not be prosecuted by a U.S. Attorney, the criminal is not necessarily released into the community. Many suspects who are arrested are processed for deportation through Customs and Border Patrol; other are handed over to state and local justice systems for processing.

The FBI concentrates resources on making the largest impact possible. The FBI works cooperatively with law enforcement partners along the border to target the criminal enterprises behind the smuggling crime problem. If the arrest cannot be prosecuted by the U.S. Attorney, the FBI makes every effort to ensure that justice is served and that the best intelligence possible is gathered to dismantle the enterprise responsible.

Mr. CULBERSON. Okay. It is apparently going on in the San Diego sector. Director, I understand that they are turning loose literally almost everybody. This is dumbfounding to me.

I have been meeting with the Department of Justice and attempting to try to find some resolution. They tell us in the budget

request they have submitted to this Committee will help resolve that. But in the meantime, there has been no effort to change the .39 percent prosecution rate, which is deeply disturbing.

In the brief time that I have got left, I wanted to ask you if you could to talk to us a little bit about the threat that the Homeland Security Secretary has talked to us about that al-Qaeda is recruiting Caucasians, people from Western Europe, that we might not—that would be more difficult for us to respond.

Can you talk to us about the changing nature of the type of people that al-Qaeda is trying to sneak into the country?

Mr. MUELLER. I can speak generally, because it is an open session, to the fact that Al-Qaeda is utilizing portions of Afghanistan in federally administered tribal area of the Fatah for smaller training camps.

The information we do have is that they are recruiting westerners, because they believe that persons with a valid passport, with either a European country or North American passport, will more easily pass scrutiny and be able to enter the United States. That is a current threat that we, the CIA, NSA, and ODNI are all concerned about.

Mr. CULBERSON. Have you seen any additional evidence of this? Since the last time we visited last year and the year before I asked you about the FBI had seen indications of individuals from countries with known al-Qaeda connections changing their Islamic surnames either to Hispanic or other surnames.

Could you talk to us a little bit more about that and how many examples of that type of identify change you have seen?

Mr. MUELLER. I have no further information on that, sir.

Mr. CULBERSON. Okay. I would like to work with someone in your office, in conclusion, Mr. Chairman, you have been generous with the time, to work with you on this Tucson problem.

And I think the FBI could do a world of good assigning an agent, maybe rotating him out in those booking rooms, in the Tucson sector and the San Diego sector. I think in the Laurenceberg also, which is the El Paso area. It is frankly appalling that the U.S. Attorney is not prosecuting arrests that you agents are making. It is ATF; it is FBI; it is DEA, and above all the Border Patrol.

It is just astounding to me. And I know that it will be a real concern to you and your agents as well. And I would like to work with you to help try to resolve that.

Mr. MUELLER. I must say I have not heard that was a problem. I would have thought that if there was a problem about it I would have heard about it. But we will look into that. And get back to you, sir.

Mr. CULBERSON. Thank you very much. Thank you, Mr. Chairman.

Mr. OBEY. Mr. Latham.

CYBERCRIME

Mr. LATHAM. Thank you, Mr. Chairman, and welcome. We just opened a cybercrime facility in Iowa that deals with identify theft, child pornography, child predators. I just would like to have you maybe elaborate more on what is being done in that area.

I don't think we are putting enough attention to this issue myself. You talk to some of the parents who have had children subjected to child predators and they believe that they can find a lot of these predators beforehand online. Additionally they believe that we are not doing what we should. If you could elaborate or what initiatives you think that we should be doing or that you are doing, that would be great.

Mr. MUELLER. Well every one of the U.S. Attorney's offices around the country, as well as every one of our offices, have some form of task force with state and local law enforcement to address this.

And of course we have had a program called the Innocent Images Program for number of years. Our cases have grown expodentially over the years to address the proliferation of child pornography on the internet.

As I may have indicated previously, state and local law enforcement often lack the resources to address this, because it takes some capability, not only investigative capability, but the understanding and additional capability of understanding and knowing how to investigate on the internet.

Consequently, in each of these task forces around the country, we combine our expertise with the expertise that is developing in state and local law enforcement.

We also have 14 Regional Computer Forensics Laboratories that are spread around the country. The forensics, which can be very time consuming, are conducted by our agents along with state and local law enforcement. That has been tremendously helpful.

I see the problem getting worse as more persons utilize the Internet and more predators gravitate to the Internet. Several weeks ago, we took down a group of individuals here in the United States but also with our counterparts in Australia, Germany and the U.K., who had something along the lines of 400,000 child pornographic images that they would trade utilizing a specialized server with encryption. That arrest was substantial.

It indicates that it is not just us working alone. It is us working together with our counterparts in countries such as Australia, Germany, and the U.K. in this particular case. So it is an issue that is going to be with us for a period time.

Mr. LATHAM. You know, the parents in some of these very high profile cases have been in my office as well as those of other members. And, you know, they basically say there are systems available to track these people today.

And I just am very concerned that we are not doing everything we can to go after these people. Some of the cases are so horrible, to see what has happened to these children. The forensics are what is being explored in Ankeny, Iowa, through the area community college. I believe there is cooperation with the FBI and local and state enforcement.

But I would just encourage you to do everything possible. I think it is one of the most horrible crimes we should attack.

But I will quit there for the moment anyway, Mr. Chairman.

Mr. OBEY. Mr. Fattah.

SURVEILLANCE

Mr. FATTAH. Thank you, Mr. Chairman. I have something very positive to say. First and foremost, I want to thank you for the FBI's assistance in Philadelphia in terms of what has been a fairly significant violent crime and definitely a homicide rate increase over the last couple of years. We now have a decline in the homicide rate. The FBI has been working very closely with the local police department and the task force with DEA. I want to thank you for that publicly and on the record.

I want to raise one other concern with you slightly off the budget. The issue is that your office acknowledged the surveillance of the late Coretta Scott King a few months back. And even after—obviously, she was no longer with us. I thought that appropriate to be publicly acknowledged. And I want to thank the agency for doing so.

Obviously, the eavesdropping was wrong. However, I didn't hear that in the announcement. There was a factual announcement versus the one that, years after the death of Dr. King acknowledged that wiretapping and eavesdropping on a woman who had broken no laws was inappropriate.

And so even though I appreciate the candor, I didn't hear any suggestion in the acknowledgment that it was wrong.

Mr. MUELLER. Well, what I can tell you is that the Bureau today is a somewhat different Bureau than it was before. And my hope would be that we would treat any similar circumstances far differently.

Mr. FATTAH. Thank you very much. Thank you, Mr. Chairman.

Mr. OBEY. Mr. Director, I have about ten different subjects that I need to cover, so I will try to make the questions as short as possible. If you can do the same with the answers, I would appreciate it.

NSL VIOLATIONS

First of all, with respect to the NSL violations, let me simply ask a series of questions on this point. Is this the last time that we are going to hear about the FBI's abuse of those authorities, or are we going to get a similar report about your use of those NSLs in 2007?

Second question, an internal FBI audit, as I understand it, found out that the NSL violation rate in FBI field offices was two percent higher than the rate originally documented by the Office of the Inspector General. In the most recent report, the OIG found fault with your audit methodology and determined that the violation rate was still higher.

What are you doing to ensure that we have an accurate baseline on the violation rate so that we can use that to evaluate your progress?

Mr. MUELLER. Well, I answered the first question. And my open expectation is that this is a last time you will see an FBI or an OIG report that reflects the practices in some of the offices. It wasn't all of the offices. Some of the offices that occurred in 2006. The last IG report covered 2006. It was required by Congress to cover that period.

And as I indicated before, the report said since that time, we have taken substantial steps to assure that it would not occur again. So, I would not expect that it would.

In terms of the rate, there had been some disagreements with the Inspector General in terms of what is deemed to be a risk or not a risk, an error.

I will say that in the wake of the IG report, we directed a ten percent audit of all of our offices, which was way beyond what the IG had done for the purposes of getting our own baseline much more throughly throughout the country. And I am not sure whether it was 2.7 we found slightly more than the IG did or not. I would have to check that.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

An example of some of the disagreement many of these instances where we would send out a request, an NSL letter, and the communications carrier would respond with information that was beyond the request.

Now, this was not initially our responsibility, but we did have a responsibility to identify what was within the request and that which was not in the request, to sequester it, and to make certain it was not used or didn't go in our databases.

We had some differences of opinion on how you would treat that particular issue, because many of the ones that he had come up with in that kind of circumstance, which is different than our—not having the appropriate approval, which is a different category. So, yes, there were disagreements with the IG, but I think they were relatively minimal. And we were on the same track in terms of evaluating our progress.

Mr. OBEY. So you just raised the question of third-party errors. I will get to that in a minute. But before I do that, let me ask you a different question.

You placed a lot of emphasis on the fact that the FBI is committed to implementing the recommendations for corrective actions. But most of those actions rely on the FBI itself to actually accomplish them.

And the Inspector General report singles out turnover among middle management as one of the causes of noncompliance. But what are the corrective actions to address that problem? What are you doing to blunt the effect of high middle management turnover?

Mr. MUELLER. When you look at those—I look at those statistics periodically. It depends to a certain extent how you define middle management. But in our SES ranks, the turnover is less than it has been over the last ten years.

Inevitably in an organization such as ours as, well as in an organization such as the military, persons move through various stages of their careers and spend maybe two to three years in a particular position as they move up the ranks.

That is a problem, because when persons go through the ranks, there may be an unwillingness to take ownership of problems that

you get when you are there. And you don't take ownership of it, because you are going to leave two or three years down the road.

What we have done to address that is what I have talked about before is to assure compliance, because if persons from the Compliance Office are routinely looking at the procedures in place they have to assure that the procedures are being adhered to by the current occupant of that particular position.

But that was a weakness. It was a weakness that contributed to the issues we had with national security. And I think we have addressed that with the Compliance Office.

Mr. OBEY. I have two more questions on that point that I would like you to respond to for the record regarding third-party errors. The IG's report gives us the impression that the FBI does not have consistent procedures for handling information that is mistakenly provided under an NSL.

The result is that some agents are compounding third-party errors by uploading unauthorized information into FBI systems or sharing that information with other parties.

Do you have a firm, consistent policy now for the disposition of unauthorized collections?

Mr. MUELLER. I think it definitely was a problem in the past, but we have changed our policies to address that.

Mr. OBEY. Will you expand on that for the record?

Mr. MUELLER. I would have to get back to you on the details. I know that is one of the issues that we have addressed by requiring agents to make certain that they review the documents that are provided by the third-party carriers and make certain that they are relevant in the ambit of the NSL. When that is not the case, to take appropriate action where those are, outside say the time period requested. And that means not uploading it, not utilizing them, and sequestering them until a determination can be made, or in some cases where they become necessary as the investigation goes along, issuing additional NSLs.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. OBEY. It is our understanding that the NSL Working Group has declined to set limits on the use or retention of NSL-derived information beyond the FBI's preexisting general data policies. First of all, is that correct?

Mr. MUELLER. I am not certain that it has reached a definitive decision on that. I know the IG is concerned about the work that he perceives has not been done by the group to fully address this issue. And I am not certain of where the group is at this juncture in terms of addressing that particular issue.

Mr. OBEY. Well our concern is that this could mean that an individual's NSL-derived information can be uploaded into FBI systems and retained for extended periods of time, even if that person is subsequently determined to no longer be of investigative interests.

The IG recommended that the NSL Working Group reevaluate these recommendations and try to find a better balance. Will the

FBI, as a Working Group member, commit to reexamining this issue and forming a more measured data use and retention policy?

Mr. MUELLER. Yes. I have indicated to the IG we will. Absolutely.

Mr. OBEY. And what do you think the time frame will be on that?

Mr. MUELLER. I am really uncertain on that. I would have to get back to you on that, sir.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

INTERROGATION TECHNIQUES

Mr. OBEY. Okay. With respect to harsh interrogation techniques, it is my understanding that the FBI is due some credit on this issue. The FBI has refused to allow its agents to engage in harsh or enhanced interrogation techniques. And the FBI has even pulled its agents out of joint interrogations with the CIA when FBI personnel witnessed methods that violated the Bureau's internal policies.

Is that an accurate statement?

Mr. MUELLER. Yes.

Mr. OBEY. Would you state for the benefit of the Committee, why you think it is good policy for the FBI to not engage in or even witness the types of harsh interrogation techniques that are suggested?

Mr. MUELLER. Our longstanding policy prohibits the use of any coercive techniques. And over the years we have come to the belief that policy is appropriate and sufficient to our mission. Understanding that our mission traditionally, and in most cases, has been applicable to the work that we do within the United States or with the view towards the information only being used in a courtroom.

But we believe that one needs to develop rapport with the individual being interviewed. And that has been the method we have used. We have prohibited the use of coercive methods, and we believe that is sufficient and appropriate to our mission.

Mr. OBEY. Well, I appreciate that. And I commend you for that response.

I will submit a couple of questions to you for the record on this point. And then let me turn to our friend FISA.

FISA SURVEILLANCE

How common is it for an information provider to give the FBI more information than is requested when executing a FISA order?

Mr. MUELLER. Well in execution of a FISA order, I think it is uncommon. I would have to go back and ask that particular question. But I think it is very uncommon, because there is a court order that general counsel usually has, and the company has the responsibility of providing the information within the ambit of that court order.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within

the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Attaching that to national security letters was relatively common. And I say "relatively" in terms of the errors that we looked at in the national security letter issue. It was relatively common that the errors would be third-party errors because their accounting systems or their internal bill keeping systems would enable them very easily to respond to a request for telephone calls on a particular number for a particular time period. And that time period may well not have matched up with the time period requested in the subpoena.

It was easy for the third-party carrier to just give us everything. I would say it is far, far less of a problem when it comes to responsiveness to a FISA order. But I would have to get back to you on that.

Mr. OBEY. Did anyone notify the holders of the accounts in question that they had been inadvertently collected?

Mr. MUELLER. No.

Mr. OBEY. Why?

Mr. MUELLER. In part because it would disclose ongoing investigations.

Mr. OBEY. Well, I have two more questions for you on this point.

I mean, the reason we raise it is that a New York Times article last month reported that in the course of a FISA surveillance operation, the FBI inadvertently received access to the email messages of an entire computer network instead of the single email address that was approved through the FISA court.

It seems to me that when something like that occurs it raises interesting questions about what the target ought to be told.

Mr. MUELLER. I understand your concern in that regard.

Mr. OBEY. Unpaid bills. For the record, how many FBI wiretaps do you believe were dropped due to nonpayment of bills?

Mr. MUELLER. I don't think there were any wiretaps that—well, I take that back. I think if I recall correctly, and I would have to go recheck the report, but I think the IG identified five instances where that may have occurred. I believe we investigated them.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

We found two instances where in 2002 that occurred. But that in neither case did—was the investigation adversely affected as a result of that.

There were 16 recommendations from the Inspector General. And we have resolved—at this juncture I think closed one or more or otherwise resolved all 16 of those recommendations.

TERRORIST WATCH LIST

Mr. OBEY. Okay. On the question of terrorist watch list reporting, the Justice IG, as I understand it, has released a new report. And in that report he found that the FBI was not always providing updated nominations when new information became known about

an individual, including information that should have resulted in the individual being removed from the watch list.

When will you finally have all the necessary procedures in place to ensure that people who are mistakenly on the watch list will promptly be removed from the list?

Mr. MUELLER. Well, I believe there was some delay in getting information on that. My belief is that we have addressed that at this juncture.

And I would have to get back to you with more specifics on that one.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. OBEY. One more question on that. Again, as I understand it, the OIG review was done in concert with reviews by other IGs and agencies that also participate in the terrorist watch listing process. Can you tell us anything about the findings of those other reports? Do they indicate any additional problems with information sharing that you and the FBI and other watch list——

Mr. MUELLER. I did read the report. It did mention the experiences of other agencies. I did not focus on that. I do think that the procedures we have in place for the most part were valid and appropriate. As you pointed out and as the IG pointed out, there was a delay in getting information if I recall correctly that should have been updated from the particular record of individuals. My belief is that we have addressed that.

MISTAKEN IDENTITIES

Mr. OBEY. Let us move to the question of mistaken identities. In recent years, the FBI mistakenly linked an Oregon lawyer to a terrorist bombing in Spain, wrongly suspected the security guard who found a bomb in the Atlanta Olympic bombing, wrongly arrested several men for the Yosemite murders, and shot a 20-year-old Baltimore man when he was mistaken for a bank robber.

Why do these mistaken identity cases persist? What is the FBI doing to avoid those mistakes? And what kind of public affairs standards are in place to guide what an investigator can say to the media about a suspect's presumed guilt or innocence?

Mr. MUELLER. Well, addressing the last question. The guidance says that the case should not be discussed, except for certain limited exceptions prior to return of an indictment or the filing of an arrest. Then whatever is said should be within the parameters of that charging document where the statement is always made. Until conviction of the individuals, they are entitled to the presumption of innocence.

With regard to the number of cases that you have listed as mistaken identity, I think if you look at each of them it has been a different set of circumstances. The shooting in Baltimore was an agent in a very fluid situation who believed that the individual that he was pursuing was indeed a criminal. That was a mistake in a very fluid situation. It was a wrong. But it was a very fluid situation.

The circumstance of the fingerprints in Oregon was a completely different type of mistake whereby the individual had fingerprints that were very close to fingerprints found on a package at one of the Madrid stations. Our examiner did not do the type of thorough evaluation that should have been done.

We brought in, in that particular case, an outside panel of experts to see what happened, why it went wrong in this particular place, and put in procedures to assure it would not happen again.

So in each of these cases of mistaken identity, we have looked at and put into place procedures to assure they would not happen again to the extent that we can give that assurance.

Mr. OBEY. Let me digress for a moment to explain to you why it personally gets under my skin when I see information come out in the general public implying that someone has been involved in a crime, and then we find out afterwards it was false information. This story is going to take a little time.

When I was in the Wisconsin Legislature, I was subpoenaed to appear before a grand jury to testify about what I knew about the conduct of the Republican floor leader in the Assembly. I had been told by the Attorney General that no one would know that I was coming to that grand jury until I actually appeared.

One hour after I had been given that assurance, my name was all over the radio in Wisconsin, with the AP reporting that I was to be called before the grand jury. No indication that I was not a target. No indication that I was being called to testify about what someone of the opposite party had done, about which I knew nothing. Yet I can assure you that within 24 hours, there were a hell of a lot of people in the entire State of Wisconsin who thought I had been guilty of something, or I wouldn't be called before a grand jury.

It took about four months before the information became public enough that people had their impression corrected.

Now that is just a minor, little example of what happens to someone called as a witness in a case. You can imagine the turmoil when people's lives are literally ruined. There will always be people who think that the parties in the Atlanta case, or in the other fingerprinting case in Spain, were guilty.

So it seems to me that the government has a special obligation to be damn careful before they ruin somebody's life through mistaken information or carelessness.

I really want to know what the agency is doing to make certain that that simply does not happen again and that you have adequate guidelines to make sure that some loudmouth doesn't accidentally loose that information on the American people.

Mr. MUELLER. I agree with your view of the issue and the problem. Whenever that occurs, we conduct an investigation. I take what action is necessary to address what I would consider that misconduct.

I will tell you also that I think we do have an obligation to put out the information as to the innocence of a particular person. When I was Chair in the Department of Justice, if that did happen, it happens in this town, there are a lot of people that talk unfortunately.

If that happened, the lawyer could send a letter saying is my target either a subject or a target in an investigation. We would be very quick to send a letter back saying no.

So the person could say, I was called into the grand jury, but I am neither a subject nor a target of the investigation and have the word of the Justice Department if that is the case.

So, I share your concern about those issues. I wish it did not happen. I also can tell you it is unfortunate that we do make mistakes in our investigations and investigations are not always clean. We hope to do as thorough and efficient investigation as we can to determine the persons who deservedly will face some form of process and to assure that others who may have been under the shadow of that investigation are outside that shadow.

DEVELOPMENT OF BUDGET REQUEST

Mr. OBEY. Okay. I raised this with you yesterday on your budget. The FBI, in your new budget request, is requesting funding for 41 different initiatives, some as small as a million dollars.

As I told you yesterday, it seemed to us that that is quite a scattershot approach, especially when increases for your agency are essentially being financed by cutbacks in aid to state and local law enforcement. We are looking for an indication that the agency's budget request is in fact disciplined.

I know you would like to respond to that and give your view. So why don't you go ahead.

Mr. MUELLER. Well, each of our budget requests fits into a category that is essential to our growth as an organization, as we augment our law enforcement capabilities with intelligence capabilities.

We are requesting additional people for weapons of mass destruction, confidential human source validation, the field investigations. All within the category of domain and operations.

There are a number of areas under surveillance, whether it be technical surveillance in which we have to keep up with technology, or physical surveillance where we have to augment our capabilities in the physical surveillance arena.

Infrastructure, we have to build. One of the things that we recognize is we have to build the capability in our offices to handle growth. As we become more a part of the intelligence community in Washington, we have to have the capability to handle top secret information in all of our offices, which means building the infrastructure.

Regarding technology, DNA was mentioned today. We are requesting $30 million to address the backlog in DNA. I talk about partnerships, the fusion centers, the counterterrorism operations, which include the Joint Terrorism Task Forces are exactly the vehicles that I think we can maximize not only our effectiveness, but the effectiveness of state and local law enforcement where the crimes they see in their communities transcend the borders of those communities. The Bureau has the jurisdiction to conduct the investigation with them throughout the United States or internationally.

Lastly, in the workforce, the key to our growth is developing the recruiting capabilities to hire, to train, the career development in

each of our specialized areas, whether it be cyber, intelligence, source development. That requires the growth of our workforce to do it.

In the past, we have done a very good job with new agents. Our new agent training at Quantico is probably second to none. We do a very good job with the National Academy, where we bring in every quarter 250–300 state and local law enforcement.

But we have not built up the capacity to train beyond that. Training career paths for agents or analysts to provide the type of training we need for our intelligence cadre. Those are the areas that we put forth in our budget.

While we have itemized them and some of them are small enhancements, they all fit in to our strategic management system outline of what we need to make the Bureau a flexible, adaptable organization for the threats of the future.

Mr. OBEY. Before I ask you these last questions, let me ask you if you have any other questions.

CNC

Mr. FRELINGHUYSEN. Mr. Chairman, I was wondering if Mr. Mueller could expand on the cyber initiative. That is one of your largest initiatives. Could you talk a little bit about why that is so important? And obviously within the bounds of this room how you are going to be using all of these employees.

Mr. MUELLER. Well, cyber expands across a number of particular venues. It could be fraud schemes now moved to the internet.

You have the capability of those who want to target our infrastructure, whether it be the energy infrastructure or the electricity infrastructure where you can utilize the internet to infect systems.

You have a number of countries, as well as individuals seeking to extricate information from our banking system, from our commercial enterprises, either to gain intellectual property or obtain information that would enable them to undertake some fraudulent scheme. You have terrorists using the internet now to communicate, to train, to introduce persons of the same ideology to others.

You have to develop defensive mechanisms within the United States to protect that information that is and flows on the internet.

Our piece is the investigative piece. And we do it in conjunction with the NSA, with DOD and on a task force.

The funds that we are seeking will help us both in terms of the training, in terms of the personnel, in terms of the computer capabilities that we need to be effective as the threat of— in each of these areas grows in the years ahead.

Mr. FRELINGHUYSEN. You are tripling the staff. You are doubling the budget. The key people are your cyber intelligence analysts. Tell us a little bit about them?

Mr. MUELLER. Yes. Any one of them——

Mr. FRELINGHUYSEN. Who do you have out there? What does the landscape look like?

Mr. MUELLER. You have——

Mr. FRELINGHUYSEN. This is really one of your largest initiatives. And that is something that we want to be supportive of.

Mr. MUELLER. It is all part of the Administration's address of the cyber challenge in the future of which we play a substantial role.

We need new persons in the organization who not only are knowledgeable of technology today, but can continuously keep up with the technology as it expands tomorrow.

Mr. FRELINGHUYSEN. You will bring on over 100 people here.

Mr. MUELLER. Yes.

Mr. FRELINGHUYSEN. I assume you are pretty confident you are going to meet that target?

Mr. MUELLER. Without a question of doubt.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

Mr. OBEY. Sure. Mr. Latham.

Mr. LATHAM. I will pass.

Mr. OBEY. Okay. I have a whole series of questions I will submit to you for the record.

Mr. MUELLER. Okay.

INTELLIGENCE ANALYST STAFFING

Mr. OBEY. Let me just wind it up by asking you a question on two subjects. With respect to intelligence analysts, what were your hiring goals for analysts in fiscal year 2007? Did you meet them based on your end-of-the-year on board level? How close were you to the authorized level? Also what is the current attrition rate for intelligence analysts? And what are you doing to lower attrition?

Mr. MUELLER. Let me just ask for a second. Last year, I think we came within five percent of our goal. This year the hiring goal is 461.

And as I said, we have an initiative addressing the recruiting and the hiring of the enhance analytical cadre this year.

I would have to get back to you on the retention rate. We just had a survey that was actually a part of DOD survey in terms of the retention. And we did quite well. Not as well as others in the intelligence community, but we are always looking for ways to enhance the—our retention rate.

INTELLIGENCE ANALYST RETENTION

The Department is working expeditiously on this response and will transmit it to the Committee on Appropriations as soon as it is complete.

There is tremendous competition out there in as much as a number of agents are looking or agencies are looking for analysts. I will tell you that almost all our agents like working with the FBI, enjoy the work that they do there, and want to stay.

Part of it is for us it is building—as was alluded to by yourself or Congressman Ruppersberger is building up the career paths for analysts so that they replicate the career paths that other intelligence agencies and have been for a number of years. That is one of the things that we are working on hard.

INTERNATIONAL ACTIVITIES

Mr. OBEY. Okay. One last question on international activities. I am told that the NYPD's intelligence division established its own international program in 2002 and now has personnel in ten locations worldwide.

Why does someone like NYPD have an intelligence or counterterrorism issue overseas that shouldn't be run through the FBI?

Mr. MUELLER. Well, Ray Kelly——

Mr. OBEY. Why do they think they have to establish another program?

Mr. MUELLER. Well, I think there are probably two reasons. I haven't talked to Ray Kelly about it. But I am not certain if I were in his position I wouldn't do the same thing if I had the resources to do it.

First of all, their officers overseas intersect with their direct counterparts in terms of developing new ways of addressing terrorism. So it is a learning mechanism for NYPD to see what other police departments do where this would not be high on the list of our legal attaché offices.

Secondly, it gives him immediate return on a particular incident. Whereas ours would come through the security service or from our counterpart through our legal attaché and through our New York office.

So, in terms of speed of response and information as well as the opportunity to learn the best practices of other police departments, he has done that for a number of years. And I am not sure in his position I wouldn't be doing the same thing, again, if I had the resources.

STATE AND LOCAL PARTNERSHIPS

Mr. OBEY. All right. Let me ask you one last question. I know you are concerned about the state of budgets for state and local law enforcement. What are the impacts of a billion and a half dollar cut in state and local law enforcement funds? What are the negative impacts of that on local law enforcement? And do those impacts net back on you or the Justice Department in general in terms of your work in dealing with crime?

Mr. MUELLER. I think I would refer you to the state and local law enforcement about the impacts on their particular departments from those cuts.

From our perspective to the extent that the police departments do not have the funding, we have fewer participating on task forces. For many communities in the United States, terrorism is not an immediate issue. But for the country as a whole, it is tremendously important that we integrate the capabilities of the Bureau and state and local law enforcement to understand if a Mohammed Atta is moving into the community or others who would undertake a terrorist attack.

It does not give an immediate response or the capability to state and local law enforcement when they are facing their own budgets. What is primary for them is reducing violent crime and the like.

Consequently, we see the impact in terms of fewer personnel participating in our Joint Terrorism Task Forces, which I think are tremendously important in addressing the threats of today. We have to do it together as partners shoulder to shoulder.

Mr. OBEY. Okay. Thank you for your time. We are out of time. But we will be submitting a number of questions for the record. Thanks.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided

to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

WEDNESDAY, MARCH 12, 2008.

DRUG ENFORCEMENT ADMINISTRATION

WITNESS

MICHELE M. LEONHART, ACTING ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

OPENING REMARKS

Mr. MOLLOHAN. The hearing will come to order. Good morning. I would like to welcome Michele Leonhart, Acting Administrator of the Drug Enforcement Administration, to discuss DEA's fiscal year 2009 budget request. We appreciate your testimony, Ms. Leonhart, and commend you for your services both as Deputy Administrator and Acting Administrator while the top position at DEA remains unfilled.

The last few fiscal years have been difficult ones for DEA. Due to shifting priorities within the administration, we have seen less emphasis on criminal enforcement matters such as drug trafficking and violent crime. This lack of emphasis has been apparent in DEA's proposed budgets which have included offsets and other reductions, particularly in the area of State and local assistance. The committee has attempted to help where possible by rejecting or scaling back proposed offsets and providing funds to mitigate the impact of a longstanding hiring freeze, but we were not able to go as far as some might have liked.

The President's fiscal year 2009 request for DEA is $1.9 billion, an increase of 4 percent and includes 21 million for new enforcement operations and diversion control efforts. I am encouraged that this year's budget request does not include any harmful offsets to DEA's services, but I am also not entirely convinced that this budget provides everything needed to continue making progress in the fight against drug trafficking and related crimes. I am interested to hear your thoughts on the adequacy of your request and how you intend to get the best possible results through the initiatives you have proposed.

Your written testimony will be made a part of the record and we will invite you to make your oral presentation, but first I would invite Mr. Frelinghuysen, the subcommittee's ranking member, for any comments he would like to make.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman. Ms. Leonhart, welcome aboard and your team this morning. At the onset I would like to commend you and your employees for the important and often dangerous work you do every day, both domestically and overseas, to protect American communities from the scourge of drug trafficking. You are also increasingly making yourselves indispensable in our counterterrorism efforts. So please pass along from all of our committee members this committee's thanks and the

Congress' thanks. And congratulations on your apprehension of the merchant of death in Thailand, Viktor Bout. Just the name puts a chill in your blood.

Overall you are requesting $1.94 billion, an increase of 4.2 above the current year. For fiscal year 2008 the committee was able to increase your funding at least to the level where you were able to lift your hiring freeze. We were disappointed that we couldn't do more, quite honestly. I understand that during the freeze there was a considerable loss of agents. I am sure we will hear more about that in the course of our discussion and that you are reversing some of those losses. I will have questions about what resources are requested or required to fill those vacancies and bring you up to full strength, and again I welcome you.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Ms. Leonhart, thank you.

Ms. LEONHART. Chairman Mollohan, Ranking Member Frelinghuysen and members of the subcommittee, it is my pleasure to discuss the President's 2009 budget request for the Drug Enforcement Administration. I want to thank the subcommittee for its support, which has allowed DEA to resume hiring and restoring our Mobile Enforcement Team program. I have been a DEA Special Agent for almost 28 years and I have had the privilege to fight the drug war with some of the most talented, creative and courageous people.

DEA agents work their whole career to inflict severe damage to the drug trade, and I am proud to report we are doing that kind of harm like never before. We know we have hurt traffickers because demand is at its lowest levels in years. 860,000 fewer teenagers are using illicit drugs now than 6 years ago.

We are now experiencing a sustained period in which drug prices increased and purities fell, demonstrating that the illicit drug delivery system is under considerable stress and suggesting insufficient supply. During 2007, the average price for a pure gram of cocaine increased 21 percent and the purity decreased 20 percent. For meth the price increased 84 percent and the purity decreased 26 percent. Shortages of cocaine have been reported in at least 37 United States cities.

Quest data released today further demonstrate this trend. In the last year, 19 percent fewer workers tested positive for cocaine and 22 percent fewer for meth than in 2006.

We know what we are doing is working when we see that traffickers have been forced to delay or suspend their activities, divert their routes, change their modes of transportation, and even jettison their drug loads. We have achieved these tremendous successes as a result of a perfect storm of enforcement, working closely with Colombia and Mexico in a true tripartite environment to simultaneously launch drug enforcement and military action against the highest level traffickers and unprecedented attacks on the financial foundation of the drug trade, resulting in the amount of revenue DEA denies to drug traffickers going from $1.6 billion in 2006 to a staggering $3.5 billion in revenue denied just last year.

I am happy to report that we are currently surpassing last year's record numbers, and it is the convergence of intense pressure placed on meth producers and traffickers thanks in part to national legislation passed by Congress, strong laws passed by many States

and joint enforcement efforts. Seizures of domestic meth superlabs dropped 93 percent over the past 5 years. Seizures of small domestic toxic labs dropped 73 percent from the peak in 2003. This success is due in large part to DEA designing and successfully implementing a revolutionary enforcement strategy, attacking transit zone routes in the Western hemisphere.

The plan was devised by seasoned DEA agents who, using our agency's 35 years of experience, calculated innovative ways to cause traffickers to make mistakes. We then capitalize on those mistakes and disrupt their traditional transportation lines for drugs, money and chemicals. We force traffickers to change their operating procedures and put them into an uncertain reactive mode, which has resulted in unprecedented money and drug seizures and arrests of druglords.

With our drug flow attack strategy, which we call DFAS, we went from playing checkers to playing chess. This perfect storm of enforcement has flooded traffickers with obstacles, resulting in a reduction in the drug supply across the country. But we are not claiming all out victory, many challenges remain, chief among them prescription drug abuse.

What we are claiming is that innovative, sustained drug enforcement is working and to build on these efforts we look to you for help. I don't come to you with just a concept or an idea on paper that might work. I come to you with the proven strategy that has already yielded tremendous results and contributed to a decreased drug supply in neighborhoods across America.

But we want to do more. With an additional $20 million investment in DFAS, we can address a critical missing piece, an end game capability. This is the enhanced ability to move law enforcement officers and resources to remote locations very quickly, to get cops to the fight when large amounts of drugs are moving by air, land and sea, and there is no time to lose. With that we will have the flexibility and mobility to beat traffickers at their own game.

On behalf of the men and women of DEA, I thank you again for your unwavering support last year and ask for your support once again to help us achieve even more dramatic results in the fight against drugs.

Thank you.

[Statement of the honorable Michele M. Leonhart, Acting Administrator Drug Enforcement Administration follows:]

STATEMENT OF
THE HONORABLE MICHELE M. LEONHART, ACTING ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE
AND RELATED AGENCIES

MARCH 12, 2008

Chairman Mollohan, Ranking Member Frelinghuysen, and Members of the Subcommittee:

Good morning, and thank you for inviting me to testify on behalf of the President's Fiscal Year (FY) 2009 budget request for the Drug Enforcement Administration (DEA). I have spent my entire professional career in the very rewarding field of law enforcement. In 1980, I began my career at DEA, and in 2004, I was honored to be named the agency's Deputy Administrator. Since November 2007, I have been serving as the Acting Administrator following the retirement of the former Administrator, Karen Tandy.

It is my pleasure to discuss our drug law enforcement work both abroad and here at home, as well as our support of counter-terrorism activities. DEA's mission is to protect the American people from global drug traffickers whose sole motive is the desire for profit and whose activities breed and beget one thing only – human tragedy. The resources you provide us through our 2009 budget request will significantly help DEA accomplish our mission. I look forward to discussing the future of DEA with you today.

First and foremost, I want to take a moment to express my deep appreciation to the subcommittee on behalf of all of us at DEA, for the resources you provided in the FY 2008 appropriation. The increase in funding enables us to resume recruiting and hiring Special Agents; we now have five Basic Agent Training classes scheduled for 2008. Additionally, we will boost our ranks of critical support staff and expand our array of enforcement tools, thus allowing us to maintain our long-held drug enforcement leadership role.

Two vital measurements of drug enforcement success are a decline in illegal drug use and a reduction in the availability of the drugs. DEA has seen continued progress in these efforts over the past year. Aggressive drug law enforcement results in limited supply and an increased price for drugs. Furthermore, it provides a deterrent effect that may be a factor in contributing to the decline in drug use. The statistics that follow reflect a very positive trend and encouraging news for all of us. Efforts to reduce the demand for illegal drugs coupled with strict enforcement of our drug laws have gone a long way toward achieving the goal of a drug-free America.

DRUG USE: A CONTINUED DECLINE

The 2007 Monitoring the Future national survey, conducted by the University of Michigan and sponsored by the National Institute on Drug Abuse – NIDA, indicates that overall, illicit drug use by American teens continues to show a decline. 860,000 fewer teenagers are using illicit drugs now than in 2001 – a 24 percent decline. Current marijuana use by teens has dropped by 25 percent since 2001, and methamphetamine use has plummeted 64 percent since 2001. Current use of Ecstasy is half what it was in 2001 (54 percent decline), and current use of steroids by teens has dropped by a third. Between 1985 and 2007, cocaine use among high school seniors has dropped more that 60 percent.

The most recent data from workplace drug tests (conducted by Quest Diagnostics) indicated an unprecedented reduction in cocaine use among America's workers. A 2007 mid-year report reveals a 15.9 percent decline in the number of drug test positives for cocaine among the combined U.S. workforce during the first six months of 2007 compared to 2006 (.58 percent January – June 2007 v. .69 percent in calendar year 2006). It is also worth noting that since 2000, drug tests positives for cocaine have hovered consistently in the .70 percent to .75 percent range until 2007.

ENFORCEMENT SUCCESS AND CHALLENGES

DEA's enforcement success can be attributed to taking a comprehensive approach to the law enforcement challenges we face. While DEA participates in all levels of investigations, our efforts are focused on undermining, disrupting, and dismantling the largest and most sophisticated global drug trafficking and money laundering organizations. These organizations not only funnel illegal drugs to our communities, but leave corruption, violence, and instability in their wake.

Intelligence-driven law enforcement, which has been critical to our success, not only allows us to target all levels of the drug, money and precursor chemical supply chain, it has become increasingly vital to maintaining national security. Over the last year, DEA has had some noteworthy accomplishments; with success comes the ability to identify new challenges and we are committed to meeting those in the months and years ahead.

Combating the Diversion of Legitimate Controlled Substances

In contrast to the positive news about the declining use of illegal drugs, the non-medical use of prescription drugs continues at alarming rates. According to the NIDA survey, prescription drugs are the second most abused category of drugs – behind only marijuana. DEA's Office of Diversion Control is very aggressively fighting the abuse of prescription drugs on all fronts by identifying and exploiting the vulnerabilities in the supply chain where controlled substances and chemicals can be diverted into the illicit market. In FY 2007, DEA initiated 1,736 criminal and complaint investigations

(including Internet and non-Internet cases) targeting the trafficking in controlled pharmaceuticals. During that time period, DEA Special Agents, Diversion Investigators, and Intelligence Analysts dedicated 1,087,000 work hours to diversion investigations, a five percent increase over FY 2006.

As part of our effort to attack rogue Internet pharmacies that are supplying millions of doses of licit drugs, DEA has sought to disrupt the supply chain that makes diversion by these rogue Internet pharmacies possible. To that end, DEA has undertaken an important initiative to educate wholesale distributors, and when necessary, pursue administrative, civil, or other criminal action against wholesalers that distribute excessive amounts of controlled pharmaceuticals. Since beginning the initiative, DEA has suspended the registrations of seven wholesale distributors, four of which were owned by two Fortune 500 companies.

During FY 2007, DEA also issued Immediate Suspension Orders to 10 Internet pharmacies operating in the State of Florida. These pharmacies were diverting millions of dosage units of hydrocodone across the United States. Nine of these pharmacies chose to surrender their registration or shut down business rather than face a hearing. The tenth pharmacy did not prevail at its hearing and ultimately lost its DEA registration. DEA has also immediately suspended the registrations of five other pharmacies engaged in diversion via the Internet. In addition to taking action to suspend or revoke the registrations of wholesale distributors, DEA, in coordination with United States Attorneys offices, is pursuing civil penalty cases against a number of distributors.

In September 2007, DEA announced the conclusion of Operation Raw Deal, the largest steroid enforcement action in U.S. history. Led by DEA, and in conjunction with law enforcement in nine countries and eight other federal agencies, Operation Raw Deal targeted the underground trade of anabolic steroids, human growth hormone, and insulin growth factor, and it involved the identification of approximately 96 websites predominately linked to Chinese manufacturers/distributors of raw steroid powder. 143 federal search warrants were executed on targets nationwide, resulting in 124 arrests and the seizure of 56 steroid labs across the United States. In total, 11.4 million steroid dosage units were seized, as well as 242 kilograms of raw steroid powder of Chinese origin. In addition, $6.5 million was seized, as well as 25 vehicles, 3 boats, 27 pill presses, and 71 weapons.

Denying the Drug Revenue/Seizing the Assets

DEA makes it a priority to deny drug trafficking organizations the profits of their illegal trade. For the first quarter of FY 2008 alone, revenue denied totaled $926.2 million. That amount exceeds the first quarter FY 2007 total by $340.8 million or 58 percent, and exceeds the first quarter FY 2006 total by $531.5 million or 135 percent. In FY 2007, DEA denied traffickers a total of $3.5 billion in proceeds. Those results exceeded our five-year goal of taking $3 billion from the drug trafficking organizations, which we did not expect to achieve until FY 2009. Total cash seizures amounted to

$798 million and seized assets totaled $1.1 billion. Internet investigations alone resulted in the seizure of $39.2 million in cash, bank accounts, property, and computers, an impressive 317 percent increase over FY 2006 ($9.4 million). The number of high-value cash seizures (those over $1 million) was 82, a 30 percent increase over fiscal 2006. Furthermore, the value of the seized assets we shared with our state and local partners in FY 2007 was $326 million, a $107 million increase over the past two fiscal years.

Attacking the Major Drug Trafficking Organizations

As the nation's only single-mission federal drug law enforcement agency, DEA targets the top narcotics trafficking organizations in the world. Our goal is to attack them with the force and might necessary to dismantle them completely or to cause major disruptions in their operations. Since the inception of the Priority Targeting Program in FY 2001, DEA has initiated 6,861 investigations against priority target organizations, as of September 30, 2007. Of the 6,861 investigations, 2,037 (or 30 percent) of the targeted organizations have been dismantled, a 36 percent increase over cumulative FY 2006 dismantlements. Additionally, a total of 1,555 organizations, or 23 percent, have been disrupted and closed, a 36 percent increase over cumulative FY 2006 disruptions. It is worth noting that in FY 2007 alone, eight of the 114 priority target organizations with links to terrorism were dismantled and seven were disrupted and closed. Currently, 46 organizations appear on the FY 2008 list of Consolidated Priority Target Organizations (CPOTs) – the most wanted global traffickers/money launders. 78 percent (36) of the 46 CPOTs have been indicted and 20 percent (9) have been arrested.

Driving up Price/Driving down Purity

Over this past year, narcotics investigators across the country began to report to DEA increases in the price and decreases in the purity of cocaine and methamphetamine. This reporting represents a significant change from previous years. DEA collects and analyzes data for purposes of identifying meaningful trends. Price and purity data is gathered through DEA's System to Retrieve Information on Drug Evidence (STRIDE). Data that was extracted for all domestic cocaine purchases for the calendar year 2007 revealed a 21 percent increase in average price per pure gram (from $96.58 to $1117.22) and a 10 percent decline in average purity (from 67 percent to 60 percent). The domestic methamphetamine purchases during the same period revealed an 84 percent increase in average price per pure gram (from $152.39 to $280.06) and a 26 percent decline in purity (from 57 percent to 42 percent). These data confirm the initial reports DEA received from narcotics investigators, and show a trend that suggests a shortage of cocaine and methamphetamine may be occurring in the United States. These results can be attributed to a number of factors, including the success of our Drug Flow Attack Strategy - which I will discuss shortly, our priority targeting, our international partnerships especially with Mexico and Colombia, our attack on the money flow, and our foreign and domestic enforcement operations.

Strengthening International Partnerships

Key to successful drug law enforcement is having close working relationships with our local, state, federal, and international partners. DEA has continued to expand our relationships, particularly on the international level, to enhance our capacity to engage successfully in highly effective enforcement actions. With the Drug Flow Attack Strategy (DFAS), DEA has implemented an innovative, multi-agency strategy, designed to significantly disrupt the flow of drugs, money, and chemicals between the source zones and the United States. This is accomplished by attacking vulnerabilities in the supply, transportation systems, and financial infrastructure of major drug trafficking organizations. This strategy calls for aggressive, well-planned, and coordinated enforcement operations in cooperation with host-nation counterparts in global source and transit zones.

Recognizing that the United States cannot control its borders by merely enforcing the immediate border, the DFAS incorporates a "defense in depth" component by attacking the source and transit zones as mentioned above. The enforcement arm of the Drug Flow Attack Strategy, called *Operation All Inclusive* (OAI), has successfully been applied internationally in three deployments and is in the middle of a fourth. Based on the results produced by the execution of these operations, we have experienced in the United States a decrease in availability, increases in the price, and a decrease in the purity of street drugs.

The transit zone, Central America, has been the key to the successful execution of the strategy. The majority of the seizures produced under *Operation All Inclusive* have occurred in the transit zone. Because of its geographical location, all of the illicit drugs either produced in or transported from the source zone either travel past, through or over the transit zone, making it the perfect "choke point" to attack.

Mexico and Central America have critically important roles in the U.S. counter-drug strategy. Today, 41 of the 46 organizations on the CPOT list are based in Latin America. Of this total, 15 or 33 percent are Mexican drug trafficking organizations, and 20 or 43 percent are Colombian organizations.

The role of Mexico in U.S. counter-drug policy is unique. This is due to its geographic proximity, the large shared land border, and the fact that Mexico produces much of the methamphetamine, heroin and marijuana consumed by Americans. The U.S. interagency community estimates that approximately 90 percent of the cocaine currently entering the U.S. transits Mexico. Typically, seizures of cocaine in transit to Mexico are measured by the metric ton. Seizures of cocaine in the United States that originated from Mexico, however, are regularly less than 100 pounds, which indicates that traffickers view Mexico as a safe haven for the storage of these large drug shipments. With regard to bulk currency, which represents the proceeds of illicit drug trafficking, an estimated $8 - $25 billion is smuggled out of the United States and into Mexico.

The Administration of Mexican President Calderon has taken dramatic and positive

steps to address the drug problem, including the mobilization of tens of thousands of police and military forces to target the major drug trafficking cartels. The Mexican government, for example, extradited more than 80 narcotics traffickers to the United States in 2007, including several high level traffickers, such as CPOT Osiel Cardenas Guillen, the leader of the very violent Gulf Cartel. Furthermore, Mexico has undertaken extraordinary regulatory actions to curtail the flow of chemicals used in the production of methamphetamine, and is collaborating and cooperating with U.S. law enforcement as never before. These actions are in addition to the law enforcement successes we reported to you last year, such as the world record $207 million seized by Mexican law enforcement officials as a result of intelligence provided by DEA.

The Government of Mexico's commitment has been demonstrated in both words and deeds since the earliest days of the Calderon Administration. While we have identified key counterparts and specially trained vetted units that are both reliable and competent to address the threats posed by illegal drugs, the broader systems need reform and support. The Merida Initiative, proposed by the Administration in October 2007, provides this much needed support to address what may be a singularly unique opportunity to consolidate gains and advance counter-drug objectives.

The nexus between drugs and terrorism, particularly terrorism financing, has been well documented, particularly in Colombia. Because of this connection, DEA plays a central role in U.S. anti-terrorism efforts by striking at the infrastructure of foreign terrorist organizations. Colombia has been instrumental in our mutual battle against the Revolutionary Armed Forces of Colombia (FARC), a terrorist organization that uses drug trafficking and abduction to finance its operations. Since 2002, DEA investigations have led to the indictments of 63 FARC leaders, members, and associates.

This success has continued over the past year. In 2007, we saw the conviction of a high ranking FARC member, as well as the arrest of an international arms trafficker who intended to supply millions of dollars worth of weapons to the FARC. The arms trafficker is listed on Iraq's Most Wanted List for his support of the former Iraqi regime. DEA also worked with the Colombian National Police to facilitate the destruction of several FARC cocaine laboratories, one of which was capable of producing two tons of cocaine monthly. Concurrently in 2007, while working with our Colombian counterparts, three CPOTs were captured and extradition proceedings are pending. As a result, over half a billion dollars in cash and assets were stripped from the North Valley Cartel, which is regarded as one of the most powerful and violent drug syndicates in the world.

DEA's international efforts are not limited to this hemisphere. In Afghanistan, DEA is working to assist the Afghan government with the reduction of illicit drugs trafficked from the country, is helping to institute self-reliant counter drug operations in the country, is supporting U.S. efforts against insurgents and terrorism by targeting those terrorist organizations that benefit from drug proceeds, and is promoting long-term stabilization of the country and the region. Along with our Afghan counterparts and the

Coalition forces, we have had much success in identifying, disrupting, and dismantling the highest level of Afghan drug trafficking organizations, their leaders, their infrastructure, and their illicit assets. This includes the arrests of eight Afghan High-Value Targets. Our Kabul Country Office is supplemented by the FAST program (Foreign-deployed Advisory and Support Teams), which focuses on advising, training, and mentoring DEA's Afghan counterparts in the National Interdiction Unit (NIU) of the Counter Narcotics Police – Afghanistan (CNP-A). Between 2005 and 2007, DEA assisted with 144 arrests/detainment of targets for violations of Afghan and U.S. narcotics laws and/or terrorist-related offenses, the seizures of 51.3 metric tons of opium, 6.6 metric tons of heroin, 362 kilograms of morphine base, 14.5 metric tons of chemicals, and 144.9 metric tons of hashish.

DEA continues to lead Operation Containment, a very successful 19-country law enforcement initiative that we launched in 2002. As part of this initiative, a five-year investigation culminated in the 2007 return of Taliban-linked enemy combatant Mohammad Essa to the United States from Afghanistan. Upon his return to the United States, Essa, a U.S. resident, was arrested and charged with conspiring to import approximately $25 million worth of heroin from Afghanistan and Pakistan into the United States and other countries. In addition, between December 2005 and October 2007, on more than 19 occasions, DEA has provided actionable intelligence that has deterred hostile acts, including rocket and IED (improvised explosive devices) attacks, against U.S. and Coalition personnel and interests inside Afghanistan. Furthermore, on January 23, 2008, DEA provided additional testimony to a federal Grand Jury in the District of Columbia, which resulted in the issuance of an indictment charging Khan Mohammed with violations of Title 21 USC 960(a) (Narco-Terrorism). This represents the first Afghan defendant charged with this offense and only the fourth 960(a) indictment charge in the United States.

Leading and Supporting Anti-Methamphetamine Initiatives

The DEA anti-meth strategy combines domestic and international enforcement, precursor chemical control, the identification and cleanup of large and small toxic laboratories, and an aggressive attack on the money flow. We continue to focus our enforcement efforts on the major organizations involved in methamphetamine trafficking. From FY 2006 to FY 2007, active meth cases increased by 30 percent, cases initiated increased by 48 percent, and dismantlements increased by 18 percent. These efforts have yielded positive results. As of February 1, 2008, the number of super labs (clandestine labs with a production capacity of 10 pounds or more of methamphetamine within a production cycle) seized in the United States dropped from 144 in calendar year 2002, to 11 in calendar year 2007, a 93 percent decrease. With regard to seizures of small toxic laboratories, the number has dropped from a peak of 10,146 in 2003, to 2,732 in 2007, a 73 percent decrease. Furthermore, as a result of stringent state laws and the implementation of the 2005 Combat Methamphetamine Epidemic Act (CMEA), DEA has seen a 70 percent reduction in clandestine lab incidents since their peak in 2004. (Incidents are defined as clandestine labs, dumpsites, and equipment removals.)

Conducting clandestine laboratory training is another component of our strategy, and in FY 2007, we trained 1,221 DEA employees and state and local officers throughout the United States. Additionally, during FY 2007, we provided clandestine laboratory training for more than 1,200 of our foreign counterparts, including more than 650 Mexican officials. In further support of DEA's training in this area, a new clandestine laboratory training facility is under construction, with a target completion date of July 2008. Finally, DEA continues to enforce the provisions of the CMEA governing the regulation of, among other things, the retail over-the-counter sales of ephedrine, pseudoephedrine, and the chemicals commonly found in cough, cold, and allergy products. In 2007, DEA made the first arrest in the nation for a violation of the act, which involved the purchase of 29 grams of ephedrine within a single month – three times more than allowed by law.

FISCAL YEAR 2009 BUDGET REQUEST

For FY 2009, DEA is requesting a total of $2.6 billion ($1.9 billion in the Salaries and Expenses Account, $244 million in the Diversion Control Fee Account, and $379 million for OCDETF investigation activities and other reimbursable agreements). A total of 10,814 positions, of which 5,252 are Special Agent positions, are requested from these funding sources. For the Salaries and Expenses Account, this request represents an increase of $79 million over FY 2008, and was developed with the goal of advancing DEA's enforcement strategy in the most efficient and effective manner.

In addition, I would like to express my strong support for the Department's $43.9 million request for law enforcement wireless communications (Integrated Wireless Network Deployment), which would begin the replacement of outdated legacy equipment with narrowband compliant technology, as well as legacy stand alone component networks with a new and improved single network. These replacements are a step toward much needed improvements in security, range and interoperability, and are critical to the life and safety of DEA Special Agents and our state and local partners. Of the amount requested, DEA would receive $9 million in FY 2009 and $9 million in FY 2010.

The FY 2009 DEA request includes funding for one multifaceted program enhancement, which is comprised of six elements grounded in intelligence-driven enforcement, multilateral cooperation, sequential enforcement operations, and end-game capability. Five of the six elements are funded under the Salaries and Expenses Account, and the Diversion Control Fee Account funds one element.

In summary, DEA is requesting $21 million and 41 positions, including 30 Special Agents to enhance our DFAS program with the objective of dramatically increasing our impact on drug availability, while also promoting the security of the United States and our borders. The DFAS has consistently measured up to and exceeded all expectations and, as I stated earlier, is one of the factors responsible for the drop in drug availability

in FY 2007. This requested budget enhancement will strengthen DFAS in a very substantive way by ensuring an increase in the frequency of synchronized operations that are supported by flexible and mobile assets.

Salaries and Expenses Account

1. FAST Expansion ($7 million and 20 positions, including 18 Special Agents and two Intelligence Analysts).

DEA's Afghanistan FAST strategy entails advising, training, and mentoring our Afghan counterparts in the NIU of the CNP-A. Using a revised model, the increased funding would establish two additional teams available for deployment in the Western Hemisphere and other threat locations.

Each ten-member team (nine Special Agents and one Intelligence Analyst) would be deployed up to six months annually. The teams' assignment would be to assist DEA's Country Office personnel and host nation counterparts in Central America, South America, and the Caribbean by bringing additional investigative expertise and resources to bear on important enforcement and training efforts in this primary drug producing and trafficking region.

2. Strategic Drug Flow Enforcement Operations ($2 million – Operation All Inclusive deployment).

Operation All Inclusive (OAI), a large-scale enforcement operation in the source, transit, and arrival zones, is the cornerstone of the DFAS. To date, there have been four OAI deployments, all of which have resulted in very significant interdictions and seizures and forced traffickers to delay or suspend their activities, divert their routes, change their modes of transportation, and even jettison loads. As these deployments continue, we fully expect our enforcement operations to result in an increased reduction in drug availability. The $2 million request would fund the travel, aviation support, intelligence collection, and host nation support associated with an expanded OAI deployment.

3. Tactical Aircraft and Personnel ($8.9 million and three Special Agent pilots).

This program increase would allow the purchase of one new Bell 412 twin-engine helicopter to support interdiction operations in the transit zone, including FAST deployments, and would aid air, maritime, and land drug trafficking investigations. Aircraft such as the Bell 412 are critical to the success of operations that often take place over water or in remote jungle regions. The remaining funds would be used to cover the three pilots, their equipment and related expenses.

4. Southwest Border Enforcement ($2.5 million and 16 positions, including 9 Special Agents and two Intelligence Analysts).

DEA has long played a central role in the counter narcotics strategy to combat the violent drug trafficking organizations along our border with Mexico. Our close partnership with Mexico over the years has paid dividends in the areas of seizures, money laundering, arrests, and extraditions. This request will allow us to add investigative and support personnel in locations in close proximity to the southwest border for purposes of targeted enforcement operations in the arrival zone.

5. Open Source Analysis ($150,000 and one position).

Intelligence derived from publicly available sources, including books, newspapers, periodicals, broadcast media, and the Internet is known as open source intelligence. It is a valuable investigative tool used by DEA and throughout the Intelligence Community. This request would allow DEA to hire one Intelligence Analyst whose duty would be to manage, exploit, and integrate DEA's open source intelligence capabilities.

Diversion Control Fee Account (DCFA)

DEA's FY 2009 request includes $244 million under the DCFA, a $5.2 million increase over FY 2008. As stated above, the DCFA request provides funding for one element under the DFAS plan.

DFAS initiative – Transit Zone Precursor Chemicals Diversion ($498,000 and one Diversion Investigator position).

Disrupting the flow of pharmaceutical controlled substances and precursor chemicals between the source zones and the United States is a major tenet of the DFAS. Due to the very strong regulatory measures Mexico is taking to choke off the flow of chemicals, the enforcement focus has shifted to Central America. To address the specific challenge of the diversion of chemicals originating in Asia and Europe through Guatemala to methamphetamine super labs located in Mexico and the United States, DEA proposes to assign a Diversion Investigator to the agency's Guatemala City Country Office. The position would be devoted to investigative activities aimed at targeting and disrupting those organizations in the region that are responsible for transiting precursor chemicals through Guatemala.

CONCLUSION

The multifaceted aspects of drug trafficking: production, precursor chemical

acquisition, smuggling (air/sea/land), distribution, and money laundering, cannot occur in a vacuum; they need a favorable environment in which to function. That environment, like any business, licit or illicit, needs to be conducive for operations to thrive. Remote areas, vast expanses of ocean, weak or non-existent institutions, and corrupt officials provide favorable conditions for trafficking in cocaine, methamphetamine and heroin. In our lifetime, we have seen established institutions in Mexico, Colombia, Afghanistan, and elsewhere under siege by drug traffickers because, unlike legitimate business, drug traffickers can use violence and intimidation to ensure bottom-line success.

Mr. Chairman, Ranking Member Frelinghuysen, and Members of the Subcommittee, DEA has a unique role in the drug law enforcement community in that we direct our attacks on the world's drug trafficking organizations. Our Drug Flow Attack Strategy, as I stated earlier, has been enormously successful in impacting the flow of drugs, money, and chemicals between the source zones and the United States. By driving down the availability of illegal drugs in the United States through our national and international efforts, DEA is having a very direct impact that is felt right here at home in our own neighborhoods and communities. The support from this subcommittee has been vital to all of DEA's work to attack illegal drugs in a comprehensive manner, and we look forward to your continued support as we meet the challenges ahead.

This concludes my remarks. I am happy to answer any questions you may have.

ADEQUACY OF FY 2009 REQUEST

Mr. MOLLOHAN. Thank you for the tremendous job you are doing, and your presentation there reflects that, and your record leading up to your testimony is clear that you are all doing a great job. The committee was pleased to support you all last year and understand the necessity for you to have adequate resources.

As I mentioned in my opening statement, I was encouraged to see the DEA's fiscal year 2009 budget request includes new money for DEA without accompanying offsets, and we hope that these increases will allow you to build on the support that the Congress provided in 2008.

With that being said, we know that the administration sometimes proposes budgets that don't provide enough base support to maintain the prior year's service level. Does DEA's fiscal year 2009 request contain all the necessary funding to sustain the level of operations that Congress provided in the 2008 bill?

Ms. LEONHART. Yes, Chairman, we are happy with the President's budget. It includes resources to maintain the hiring that we will do this year. That was our most important piece that will allow us to have agent and non-agent hiring. It also continues the funding Congress provided to restore a portion of our meth program.

The base adjustments will ensure we keep pace with our increasing costs. And the one initiative we are asking for is a very small initiative, but it is our highest funding priority. So we are very satisfied with our budget request.

Mr. MOLLOHAN. What about balance between your major activities, international enforcement, domestic enforcement, State and local law enforcement, diversion control? Do you have a balance in your request?

Ms. LEONHART. I am glad that you asked me that. As a seasoned agent looking at that budget and being involved in the budget, I can say it looks like it is heavy on international, but being a drug agent I can tell you that we cannot just look at the picture down here. We can't on the domestic end do damage to these cartels and take drugs off our streets without really focusing on the international front. So the balance is there. What we are asking for with our new threat on prescription drugs, what we are asking for in the diversion fee account, allows us—I will get into that later about what we are going to use that money for—that allows us to attack our biggest threat now domestically, which is prescription drugs.

At the same time our budget request now is asking for a piece to help out our drug flow attack strategy. By having these resources we will be able to attack in the source zone and transit zones in the western hemisphere before cocaine and these drugs ever reach Mexico. This helps out every community in the United States. The loads that are sent by these cartels, Mexican and Colombia cartels, through the transit zone to Mexico are in the metric tons. The seizure you see down here is the world's largest seizure of cocaine. I will talk about that in a minute. This is how it arrives in Mexico. But when it comes across the border, it is coming in carloads with 40 to 50 kilos at a time and going out to our cities. We need a defense in depth where we are attacking the cartels and we

are doing what we can in the transit zone. We are protecting our borders by this strategy.

So as a domestic agent who has worked all over the country, done a lot of undercover cases, and I consider myself a street agent, I can tell you that I could never round up enough police officers and task force officers to seize that much cocaine.

Mr. MOLLOHAN. We are going to stick to the 5-minute rule in the first round so all members have a chance in the first round, and then members can take more time in the second round.

If other members don't ask about your career in the second round, I am going to ask about it because it sounds very interesting.

Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Mr. Chairman, I would like to yield to Mr. Rogers.

PRESCRIPTION DRUG ABUSE

Mr. ROGERS. I thank you for the courtesy. I have another hearing that I have to attend at Homeland Security, which is my main subcommittee, but I wanted to be sure and be here at least for the opening part of your testimony. And I want to thank my colleague for yielding me this time and being very courteous.

Like the chairman, I think DEA does a fantastic job and you are leading this organization at a very critical time. I appreciate your focus; at least part of your focus is on prescription drug abuse. In my district in southern and eastern Kentucky we were ground zero for that; in the U.S. we lead the country in prescription drug abuse. In 2005, a story by a statewide newspaper gave rise to an organization which has been unbelievably successful. UNITE seeks to mobilize citizenry, church groups, and we have been able to get 35 undercover agents that so far have arrested nearly 2,500 pushers with a 98 percent conviction rate. Therefore, counselors at schools, drug treatment centers, vouchers for poor people who can't afford treatment that have treated 1,100 people. There are drug courts in every county now and they have 1,470 people who have participated.

But the big story was the amount of seized drugs, with DEA's help and all other law enforcement officials, has been phenomenally successful. So far they have taken out of circulation 9,000 grams of cocaine, 74,000 pills, 197 grams of marijuana, you name it. But I wanted to compliment DEA for the tremendous cooperation that we have between UNITE and the DEA agents.

Once the FBI pulled out of law enforcement and entered anti-terrorism, something that I think all of us feared at the outset would be a problem, DEA stepped up on drug enforcement. Karen Engle, the Director of the UNITE operation, says, "The DEA is our most supportive agency, they are the best Federal agency by far in terms of helping us get the bigger dealers." just a word of thanks for the great cooperative effort in my part of Kentucky.

But I wanted to ask you about prescription drug abuse, which in my area is the biggest problem. I think you said nationally it is the same. These are deadly. We were having a death a week of kids in the emergency rooms of our hospitals because of prescription drug abuse, and it is still going on. A lot of these people are elderly

citizens who have a legitimate prescription for painkillers, but who take a portion of their prescription and sell it off making tons of money.

OxyContin still is one of the most abused drugs, a good drug for terminally ill patients for severe pain. But the FDA refuses to change the prescription rules under which OxyContin can be prescribed. It should be just for severe, terminally ill patients, severe pain, but FDA allows it to be prescribed for common pain. It is extremely addictive and extremely difficult drug to get off of once you are hooked. It has been a deadly problem in my part of country.

But the biggest source I am told now by the agents of UNITE and your folks as well, investigative agents, is off the Internet by a few unscrupulous pharmacies and doctors. People get on the Internet and order a supply of whatever they want. The most dangerous job in my district a while back was not coal mining, although that is dangerous. You know what the most dangerous job in my district was? Driving a UPS or FedEx delivery truck, loaded with drugs ordered off the Internet. People will stop at nothing to get those drugs and they were hijacking these trucks. It is an incredible situation.

So prescription drug abuse on the Internet is most severe issue. Kentucky ranks seventh in the Nation for per capita unintentional drug poisoning fatalities. But guess what State is first, Mr. Chairman.

Mr. MOLLOHAN. I was afraid you would ask me that.

Mr. ROGERS. West Virginia is number 1 in the Nation for per capita unintentional drug poisoning mortalities. Kentucky has 11.6 per 100,000. I don't know what yours is, but it is higher.

The number of Internet pharmacies selling controlled prescription drugs from 2006 to 2007 increased by 70 percent, 342 went up to 581. Eighty-four percent of these pharmacies do not require a prescription to purchase drugs, and of those that do, 57 percent accepted a faxed prescription. So it is a major problem. I wonder what you might think about that, Madam?

Ms. LEONHART. Thank you, Congressman, for recognizing the problem that we have with the prescription drugs. Let me start by saying a lot of what I have learned over the last 5 years on prescription drugs came from Mike Sapp from the Kentucky State police.

Mr. ROGERS. Yes.

Ms. LEONHART. So I know exactly what you are talking about when you talk about the FedEx trucks. We invited him to sit on a committee for IAW, and at two meetings a year he tells us about what is happening in Kentucky. And I can tell you both West Virginia, which is leading the country, and Kentucky, we learn more from your local law enforcement about what is going to show up next around the country when it comes to prescription drugs. So let me tell you a little bit about what we are going to do about it and have been doing about it.

This is a new area for law enforcement officers. You know most of us don't have a lot of experience on a computer. We spend our time going after drug dealers. So we have spent the last 4½, 5 years educating our agents on how to best combat this problem and

how to go after these rogue Internet sites. You are absolutely right when you say it is a problem.

I will give you an example. Rogue Internet sites, 95 percent of what they sell is controlled substances. A real pharmacy, a brick and mortar pharmacy, in this country typically only sells about 11 percent. Their prescriptions for controlled substance only add up to about 11 percent. So we have had to look very hard at what we are going to do and very quickly bring our agent workforce and our task force officers we work with up to speed on this problem.

What we have done is convert 100 vacant diversion investigator positions over to agents, to bring agents into the diversion program. They bring with them the law enforcement authority. So like a Mike Sapp, they can go out and investigate these. It is organized crime is what it is. We have already begun that.

We also are asking for a $4 million increase for our online investigation for SOD to do wire taps on these pharmacies. We realize that we also need to look internationally and we need an extra diversion investigator in Guatemala. We have found that we have had cases coming out of Guatemala and Belize where, on the Internet, because they are uncontrolled when they are international, our citizens are buying drugs using a credit card. These drugs are coming in from these foreign countries illegally and nobody knows if they are counterfeit, nobody knows if they are really safe. So we have looked at it from the international standpoint.

We also looked at what we are going to do domestically and we came up with a strategy. If you go on the computer and you type in hydrocodone no prescription, you will get about a thousand hits. And when you go through those websites you can't tell if those are tied to one person or one organization, but this is how they advertise. So we have done a couple of things. Instead of chasing the ants at the picnic we have decided we had to find out what the chokepoint was and use that and we found the perfect chokepoint about a year ago and we have had success.

There are only a handful of major wholesalers that are the distributors to these pharmacies. So we have turned our cases against them and have had quite a bit of success. Not only are we able to stop the distributor who is supplying the drugs that someone is buying from these Internet pharmacies, but there is also a real pharmacy behind the Internet pharmacy. The Internet pharmacy is nothing but a broker, someone who goes out and buys doctors and buys a pharmacy and says I will pay you, doctor, $200 a script if you will sit there all day and push the button and approve these prescriptions. So it is big business and we have gone after the wholesalers, these distributors under our distributor strategy, and we are shutting down Internet pharmacies and brick and mortar pharmacies. And two of the wholesalers we just shut down are a part of Fortune 500 companies and this has sent this message that you better know who you are distributing to.

We are in the works now on some settlements and quite soon we will probably see one of the largest settlements civilly the DEA has ever had going after the wholesalers. We have taken a different look at it and we realized that our diversion investigators that do not have law enforcement authority can only investigate. They can't do search warrants, they can't do surveillance, they can't

make arrests. They need to be side by side with agents and with intelligence analysts, and that is the way we are going to get ahead of this problem.

Mr. ROGERS. I appreciate the chairman and the ranking member's indulgence to allow me to go first here and I have used up my time.

Mr. MOLLOHAN. Do you have another one?

Mr. ROGERS. I wanted to quickly point out two things. One, I think there needs to be a new Federal law that grants DEA more authority to go after illegal Internet pharmacists. In Kentucky, UNITE took busloads of people to lobby this bill through the State. They passed a statute that says that no one can ship drugs to a patient without the patient having had a face-to-face meeting with the doctor who prescribed the medicine. If an Internet pharmacy ships drugs into the State without having done what I just said, we can seize the drugs. We have had raids on UPS and FedEx warehouses under that new law, and it really has had a big effect. I wonder what you might think about the need for a Federal statute that governs the same practice?

Ms. LEONHART. You are absolutely right. There are loopholes, especially with the face-to-face doctor piece. I am aware that there is legislation right now addressing these Internet gaps, S. 980, and I hope that Congress will learn more about this and act on this legislation. That would significantly help our efforts.

Mr. ROGERS. Is there a need for such a law?

Ms. LEONHART. Absolutely.

Mr. ROGERS. Do you think it would be effective?

Ms. LEONHART. Absolutely.

Mr. ROGERS. Well, the biggest source of drug abuse in my area and I think probably the country is Internet prescription drug accessibility. Tons and tons of drugs have been coming in. We have made a dent in that with this new State law, but without an equivalent Federal law the States across the border from my State can get those Internet drugs in and they quickly come across the State line. There needs to be a Federal law that would do much of what I said Kentucky's new statute does.

I want to thank you for your focus and I think one reason why you are being so successful is you have been a street agent and you know what is out there. It is not a pretty sight, and there is a lot of kids that are now orphaned by parents who have become drug abusers and they are the most pitiful people who are victims of these crimes.

Thank you for your great work. I want to thank the chairman and the ranking member again for indulging me.

Mr. MOLLOHAN. Thank you, Hal. You are doing a great job down there in Kentucky.

Mr. ROGERS. Thank you.

Mr. MOLLOHAN. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. I would think you might want to go to one of your members and I would like to go after one of your members, Mr. Chairman. Thank you.

Mr. MOLLOHAN. Mr. Aderholt.

METHAMPHETAMINE

Mr. ADERHOLT. Thank you. It is good to have you here before the subcommittee today. When I walked in I was just noticing your chart here with methamphetamine and of course cocaine as well, but methamphetamine is an issue that probably more affects the area that I represent. I represent a district in northern Alabama, and methamphetamine has been an issue that we have dealt with a lot. We have seen a number of these mom and pop labs that have sprung up and have been on the increase here recently. Probably with my law enforcement, methamphetamine is the biggest issue they deal with, not only from a drug standpoint, but probably any issue that they deal with. I guess what I would like to talk with you about or get your thoughts on is how can DEA in particular trains or assists these local agents? I understand there are some parts of the country where methamphetamine is not the issue, there are pockets of the country that are worse than the others, but the part of country where you have a high rate of incidents with methamphetamine, it is a real problem and those of course are the ones that need the real work. So just in ways that you see DEA reaching out to those local drug enforcement officers on a local level, because a lot of them are not trained and, as you know, with methamphetamine it is not a cheap thing to deal with, especially when you have these labs that have been set up. It is rather expensive to go in and try to take down these labs.

So just your thoughts on that and ways you could work with local law enforcement agencies on this issue.

Ms. LEONHART. A couple of things. First, a good portion of my career has been spent on the West Coast in California. I remember the very first lab I ever hit in my career was in 1986 in Festus, Missouri and I remember saying I never wanted to hit another lab again. I went out to California and it was a very regular occurrence that we took down meth labs. This is before we saw the introduction of Mexican traffickers into the methamphetamine business.

But when you go back to the late eighties, DEA and the California Narcotic Officers Association and Bureau of Narcotic Enforcement were really the first to start training classes for State and locals. That has been going on since the mid-eighties, and about 10 years ago it started to show up in the Midwest. Your area is saturated. I am aware of that. I have even been down to talk to the U.S. Attorneys in that region to try to find out what we can do.

Taking from what those original training classes were, how to safely take down a clan lab, DEA has trained over 1,200 State and locals and special agents over the past year. We are going to train about another thousand next year.

What I talked to the U.S. attorneys about was, since you're being inundated with Mexican methamphetamine now, that we take some of these lab teams in the Southeast that have been taught how to attack a lab and all the safety issues and turn some of that training into basic investigations on Mexican trafficking organizations. Most of the finished product, even though you are still seeing labs in Alabama, is coming from Mexico. I also know in Alabama the good news is when I looked in the database 129 clan labs were

seized last year that were recorded to the database in 2006. In 2007 it was 69, so something has happened there. There was a shift on the small toxic labs, but I think we have to do all we can to train our State and local officers.

The way the Mexican traffickers traffic meth is different than the way meth is trafficked by the Beavis and Butthead, the mom and pop lab operators. So we've identified it and we are going to do something about it and we have a clan lab facility that is opening up in July, and we will be able to do a lot for our State and local partners.

Mr. ADERHOLT. Where will that be?

Ms. LEONHART. In Quantico.

Mr. ADERHOLT. One thing that would be helpful to us is just when you do have meetings with the U.S. Attorney or locals, let us know those are going on because a lot of times people don't realize that Washington is doing something about it and we want to let them know that, our local enforcement agencies, that Washington is very intuned to that issue. So do you foresee when this facility opens in the summer, do you foresee there will be programs where law enforcement can come up for training?

Ms. LEONHART. Yes, we are planning on being able to train about a thousand State and local officers.

Mr. ADERHOLT. Well, like I said, this is probably an issue that law enforcement deals with the most in north Alabama and has the most difficulty with. If your office could just contact our office and let us know so that we can make sure that our local enforcement knows how to tap into this resource, it would be very helpful.

Ms. LEONHART. I will do that.

Mr. ADERHOLT. Thank you.

Mr. FRELINGHUYSEN. I would like to if I could.

Mr. MOLLOHAN. Sure.

INTERNATIONAL OPERATIONS

Mr. FRELINGHUYSEN. I like your language. You know, perfect storm of enforcement. When you talk about drug flow attack strategy you are basically underlying the fact that this is an all out war. And should we say our enemies are in a variety of domestic and foreign. And even though some may be imbecilic, many are very well organized and I assume have the ability to move money around pretty quickly, and they use the Internet for more than prescription drugs. They use the Internet and their cell phones to communicate the same way. And I am sure there is interaction obviously between the terrorism and vast amounts of money that come from drugs.

Could you talk a little bit about the degree of international cooperation? I know that is a big issue here. In some countries we seem to have some major investments. We were heavily involved or vested in Plan Colombia, some good things happened there. How would you characterize international cooperation? Are some countries in the state of denial? Who is stepping up the plate to assist you?

Ms. LEONHART. Right away I have to say Colombia and Mexico. Being a drug agent for 28 years and having lost one of our partners, kidnapped and murdered in Mexico, and having worked on

the southwest border in San Diego for a number of years, I would never have in my lifetime believed that we would have this kind of cooperation from Mexico that we have seen in the last year and a half. It started under President Fox, but under President Calderon we have really seen action. I say that because I also need to talk about Colombia. Over the last year we are a tripartite partnership; it is our three countries.

DEA has met with Mexico over the last 4 years to explain to them what they are going to start seeing once we did so much damage to the super labs out West. We knew that there would be a shift. So we started working with our Mexican counterparts. And at that time we really didn't have anybody to share intelligence with. It was really on a relationship-to-relationship basis. We had no true partners in Mexico, we didn't have anybody. It was hit or miss whether you could trust giving someone some information and working an investigation with you, but that has all changed.

We have talked to Mexico about the Colombia experience and actually forged a relationship there. We had an executive forum and we brought in Colombia to sit down with the Mexican officials to talk about their experiences and the fight that they have had against these cartels. And it is amazing what has happened. Mexico and Colombia are learning from each other and it is funny because we got it together years after the traffickers did. In the mid-nineties, the Colombians and Mexicans hooked up and they knew they could make a lot of money and they could saturate our country with cocaine if they worked together. And here we are 2006, 2007 and 2008 and we are just starting to work together with Mexico.

Mr. FRELINGHUYSEN. So you have a degree of optimism?

Ms. LEONHART. Absolutely.

Mr. FRELINGHUYSEN. The basic facts are these people are armed and dangerous. If you look at the Mexican political situation, they will take out anybody, including your people that stand in their way. The fear and intimidation hasn't gone away and obviously if a policeman is paid 50 bucks a month for their job and the cartel would offer them 2,000 bucks a week or something, it is pretty difficult to fight that. But you are, and through your testimony, commending both Colombia leadership and Mexican leadership for their full participation?

Ms. LEONHART. Absolutely. What they are doing to attack these cartels that are all shipping drugs here is unbelievable. From the coke end they are making record seizures in Colombia, they are making record seizures in the transit zone.

Mexico, that is a world record cocaine seizure that Mexico made last October.

AFGHANISTAN

Mr. FRELINGHUYSEN. We congratulate you for this. I know our members want to speak. Many members look at the poppy crop in Afghanistan and the inability for us to come up with a strategy to sort of control it and we know all the things that it has allowed terrorists to do. I don't want to shift gears here but in many ways we may be achieving some major things in our hemisphere. Obviously, there are other parts of the world where it has been pretty

difficult to deal with an issue which is so visible. Would you like to comment? I know you have agents over there, FBI has people over there doing dangerous work.

Ms. LEONHART. I would definitely like to comment on Afghanistan. In fact we have the largest law enforcement presence in Afghanistan, we have 8 agents, 3 analysts and 3 pilots over there. But a lot of people look at Afghanistan and only think of poppy and think it is a bad news story. Afghanistan, if you hear it from our perspective, it is an amazing story. We are helping the Afghanistan country reduce drug trafficking and secure their country. Just several years ago there was no police force, there were no judges, there were no jails, there was nothing. And we got our boots on the ground there a couple of years ago and we have been standing up the police forces there, a narcotic police force to some day be the DEA of Afghanistan. And DEA's role is not eradication, but our role is going after the biggest and the baddest of druglords who are responsible for that poppy, and that money will fund the Taliban and terrorists.

So we have looked over the last several years at all the successes there. Who would have thought we would already have an extradition of a druglord from Afghanistan? But we have had it. In fact we have four traffickers here facing U.S. courts and sitting in U.S. jails. We have also seen DEA and the Afghans go after the leaders, the infrastructure and illegal assets in Afghanistan. The only thing that prevents us from doing more over there is it is a war zone and it is hard for us to get around. We need the ability to get out to those other provinces and collect intelligence and bring the NIU, the National Interdiction Unit, out there with us. We are living with them, we are training them, we are mentoring them and have brought them on operations. There are seizures and arrests, there are actual convictions, and we are bringing defendants to the new court system and that is working. So it is not all about eradication.

Mr. FRELINGHUYSEN. Thank you for highlighting that. I was aware of some of it when I was over there. Somebody told me that, the indisputable fact that people view the poppy production and our inability to figure out how to eradicate it is sort of a failure on our part in terms of our work over there. But obviously your people have been doing good work. Thank you very much.

Mr. MOLLOHAN. Thank you very much.

Mr. Ruppersberger.

Mr. RUPPERSBERGER. How does it feel to be at the top; it is a lot tougher at the top, isn't it?

Ms. LEONHART. I think it is every agent's dream to run their agency, but it is hard to believe.

DRUGS AND TERRORISM

Mr. RUPPERSBERGER. I just want to say before I start I have a lot of respect for the DEA. I think the agents are all very committed, they work hard, they go into a lot of dangerous places, but they get good results. So your whole agency does an outstanding job and you do it without a lot of resources. It is kind of what we are talking about here today.

I would like to talk about the DEA's role in the war against terror. You mentioned some of the issues, but terrorism just isn't over

in Afghanistan and Iraq. We have issues in South America with the FARC and issues with Thailand, Indonesia. By the way, I want to acknowledge DEA's role in taking down probably one of the top gun dealers. I guess the ATF were jealous, but you were out there.

Do you want to explain a little bit before I get into some of these issues what happened there and why you were in a position to take down one of the top drug dealers in the world who was supplying guns and ammunition to a lot of our enemies and terrorists?

Ms. LEONHART. A lot of people do not know that DEA plays a role in the war on terror. We are perfectly situated because we have the largest presence overseas. We are in over 80 offices in over 60 countries. In all of those country offices we are developing intelligence and working with informants on a daily basis. So it is interesting. We have had 2 cases where we have taken down some of the world's largest terrorists. You were talking about Viktor Bout, the one we just arrested last week. There is another one, Monzer al-Kaza, who we put the cuffs on in Spain this past June.

Mr. RUPPERSBERGER. Who is he?

Ms. LEONHART. He is one of the world's largest arms traffickers.

Mr. RUPPERSBERGER. You are going to get a lot of complaints from ATF if you don't watch it. They have an inferiority complex sometimes anyhow, when they get less than you do.

Ms. LEONHART. They are our friends. He was on Iraq's top 10 list, because of what he was doing supplying arms to the prior regime. He was involved in the Achille Lauro and got away with it. He is an international trafficker that slipped through justice two or three different times. Both of these cases were done in the same way and they were done with old fashioned police work. Informants were developed and we had intel collection on both arms dealers that went way back. With the first one, Monzer al-Kazar goes back to the seventies and eighties. Both have had some dealing in the drug world and both are hungry and greedy for money. So with DEA's informants, DEA's plethora of informants, these were all undercover meetings, these were all undercover scenarios, both were the same. These two gentlemen were willing to sell to anybody for the right price. They had those shoulder missiles, they had weapons, and they believed that they were dealing with leaders of the FARC in Colombia, who were looking for arms.

And one of the gentleman, even undercover, asks the informants posing as the FARC are you against America? And the undercover of course said, we are against America. He said then, I will deal with you. So both of these gentleman are not friends to our country and we were very, very proud of our agents that traveled all over the world, who just put together two amazing cases. Everybody is shaking their heads saying how did you do that, but this is just good old fashioned narcotics work.

Mr. RUPPERSBERGER. From the street up, informant sources and everything else?

Ms. LEONHART. Yes.

Mr. RUPPERSBERGER. Throughout the years we have always been concerned about the drug cartels and drug organizations combining with terrorism. I just met this last Sunday with the head of your intelligence branch and the clear indication he gave us is we now have that issue going on, drugs are starting to fund terrorism. You

are the only U.S. agency whose single mission is drug law enforcement. You have from what I understand a consolidated priority list of top organizations in the world that you are targeting that deal with narcotics; is that correct?

Ms. LEONHART. That is correct.

Mr. RUPPERSBERGER. What characteristics do you use to evaluate these groups? If you can't say because of an intelligence point of view, let me know, but who generally are on that list? We have South America, you mentioned Colombia and Mexico, we have the Afghanistan issue, we have issues in Thailand and Indonesia. Where are you as it relates to that and try to make it quick because I don't know how much more time I have. I do want to get into your funding and also how you are dealing and what organizations you see are involved with terrorists.

Ms. LEONHART. Yes, there is a list. We call it the CPOT list. It is the biggest and baddest, it is the kingpins around the world. You will find kingpins from the East and Middle East. You will find them from Asia, Colombia and Mexico. The majority are from Colombia and Mexico. It is an interagency process. The agencies under the OLDETF program get together twice a year. We bring in the intel community and we share intelligence. We nominate the biggest and the baddest. In fact, DEA is responsible for nominating over 90 percent of those CPOTs. Then by nominating them, we all agree as agencies that we will put our resources and our efforts towards them. Our own agents know that the number one case they can make, what they need to strive for is developing intelligence, sharing that intelligence, aiming their enforcement efforts at cases, domestic cells that are linked to those international——

Mr. RUPPERSBERGER. How many of those organizations that you have targeted are financing terrorist activities or terrorist groups themselves, such as the FARC?

Ms. LEONHART. You would be surprised. Eighteen of the 46 biggest and baddest on the list are linked to terrorism.

Mr. RUPPERSBERGER. What part of the world?

Ms. LEONHART. All over.

Mr. RUPPERSBERGER. So Afghanistan?

Ms. LEONHART. Not only those linked to the FARC and the AUC in South America, but a number are linked to the druglords in Afghanistan, and we have put some of them in jail.

Mr. RUPPERSBERGER. The last time I was in Kandahar, where a lot of this is occurring, I saw that the British were kind of taking command and control more than we were at that time. If that is the case, are the Brits working closely with you, do they understand the DEA role? When I was there it was the British military. Can you comment on that?

Ms. LEONHART. Those relationships have gotten better.

Mr. RUPPERSBERGER. There was a problem for a while.

Ms. LEONHART. It is a war zone and everybody is there. The country is split up and everybody has their own responsibilities and there was no coordination mechanism. There is now.

Mr. RUPPERSBERGER. Okay.

Ms. LEONHART. We have all come together and we sit at a table and we bring our intelligence and we identify who the top targets should be, and those are what we call the HVTs.

Mr. RUPPERSBERGER. Your budget request is 2.6 billion. What part of your budget address is the CPOT and is that including your international enforcement budget of 400 million?

Ms. LEONHART. Our budget has one major piece and that is the drug flow attack strategy. The drug flow attack strategy is all about the CPOT. It is all about doing damage to those organizations by stopping their flow of drugs, by making them change their behavior. Domestically, our agents work on priority targets and the CPOTs are the highest targets they can work. The DFAS is what goes down into the source countries in the transit zone and takes the intelligence it has developed, foreign and domestic, and goes after the transportation of the drugs by these organizations. We have domestic cases we can get U.S. indictments on those CPOTs and we are asking for a fast team for the Western hemisphere so——

Mr. RUPPERSBERGER. What countries in the Western hemisphere?

Ms. LEONHART. South America, Central America, Mexico all the way to our southwest border. So it is actually to assist us in securing the border. We are making sure——

Mr. RUPPERSBERGER. In that regard you are making use of UAVs also? We had a discussion last year about UAVs.

Ms. LEONHART. You did bring that up last year and we have had discussions about it. And at this point, we are in such need of a helicopter that we feel priority-wise——

Mr. RUPPERSBERGER. Why are you in need of a helicopter? Just to get your agents from one spot to another quicker?

Ms. LEONHART. Our drug flow attack strategy requires us to be able to lift and shift. And you cannot do that without helicopters. It requires us to be on the ground where we need to be at a certain time to interdict the drugs, to make the arrests, to work with our foreign counterparts.

Mr. RUPPERSBERGER. How many do you have now, helicopters?

Ms. LEONHART. We have five helicopters all being used for different things.

Mr. RUPPERSBERGER. Especially in the western hemisphere?

Ms. LEONHART. Yes.

Mr. RUPPERSBERGER. Can you piggyback on the military?

Ms. LEONHART. We have been assisted by military assets. And the interagency has been helpful, but the problem is we have too many instances where we are tracking a drug load and nobody is available to help us go out there.

Mr. RUPPERSBERGER. Right.

Ms. LEONHART. So we are needing to look for that helicopter and a FAST team that we can dedicate to the western hemisphere just like we have our teams in Afghanistan.

Mr. RUPPERSBERGER. I am going to have one more question because my time is up and I will probably have to talk to you again.

We know the Administration especially is acting and probably have more leverage over them than the Administration. My own personal opinion is that in this world, drugs is a more serious problem than terrorism. And, yet, it seems all of our resources are going into fighting terrorism.

And I am on the Intelligence Committee, so I see where a lot of that money goes. But I just think that we have really underfunded the entire DEA budget. What you need to do is important and the fact that you do so well with what you have is great.

Now, I know you have to stand up for your budget, but if you have an opportunity to let us know what your priorities are that are not in this budget, I do not know how you do that, a little secret note or something, but I think this Committee and I know the Chairman really feels strongly about trying to support and give the resources to DEA because of how serious the problem is to our country and our world, but also the fact that what you do get, you do it well.

Thanks.

Ms. LEONHART. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Ruppersberger.

Mr. Honda.

BUSINESS PARTNERSHIP

Mr. HONDA. Thank you.

And thank you for your work. I know that law enforcement is very complicated and complex and global and where chemistry plays a big part of the manufacturing of drugs which differs from the production of the kinds of drugs that you are talking about, both of which need a lot funding, a lot of training, a lot of education, and support.

And I agree with my colleague that if you do not take care of business, terrorism will find other sources. I am not on the Intelligence Committee, but it is common sense.

I have had some experience in addressing some of these things that we look at in terms of meth labs and how complicated that gets and looking at over-the-counter kinds of drugs that can be used to create illicit drugs or even becoming aware that there are some over-the-counter drugs that you can ingest illegally, but your body converts that into the same reaction as the illicit drugs too. I guess some people call it date rape drugs and things like that.

So it is a complicated area for law enforcement and for policymakers. And in the area of policymaking, I would like to just spend a little time here in terms of being precise because in a democracy, we want to get the bad guys and get rid of them. At the same time, we want to be able to protect our community and that is what makes law enforcement so like teaching. It is not as simple as it seems and you cannot write scripts for TV, TV consumption.

So I just want to make sure that you knew that I understand the complexity of the breadth of your job.

Having said that, some of the things that I get concerned about is terminologies. And I learned one today, choke point. I assume that that is a place where you look at where a lot of the activities are going on in internet traffic.

And so, you know, being aware of that, then I guess those of us who are policymakers need to understand when we do policy here that we need to look at how technology can be misused, too, because I guess technology could be considered agnostic. It is the users that make it legal, illegal, or social or antisocial.

And you mentioned how Fortune 500s are contributing to the problem. I suspect that it is unknowingly they are doing this or am I wrong?

Ms. LEONHART. In one case where we are talking about supplying a pharmacy, DEA has even done training with the company on what they needed to look for.

Mr. HONDA. So initially they did not know, but they were selling their products to somebody who has an insatiable appetite for a certain product.

And then you are saying that you are educating them and saying you got to be looking for these kinds of benchmarks. Ask yourselves, you know, why there is such a peak in the sales on some kinds of drugs. I think that is what you are saying.

And so you get Fortune 500s that are being educated and that these are over-the-counter kinds of things, but they have to be watched.

In California what we did, we have had statutes that said after a certain amount, you have to get, you know, some kind of a paper like prescriptions or something like that, so we can have a paper trail.

Is that what you did also on this kind of a thing?

Ms. LEONHART. We have a couple of things. I was a special agent in charge in your area, in San Francisco, and also Los Angeles and I know the controls that California came up with very early on methamphetamine.

We have a number of controls. One of the things we do is we use technology. We call it the ARCOS database and it will show us what is ordered from pharmacies, pharmacies ordering from wholesalers. We are able to track that and from that, we are able to show where there are anomalies. And when there is a particular pharmacy that is ordering up more or a distributor who is ordering up more drugs than necessary——

Mr. HONDA. Kind of a diagnostic tool and it gives you some sort of information and——

Ms. LEONHART. Yes.

Mr. HONDA. And I think that is smart. And I was the Chair of that Committee when we were working with you guys on that. I think that we have learned a lot, but we are still behind the curve because they seek to learn other things.

But as we move through this process, we educate Fortune 500s, we educate the pharmacist, and then what comes out of there is the bad guys. I mean, if pharmacists have knowledge that they are selling a certain kind of product over the counter that is an inordinate amount, you know, they should be made aware. And I think that is part of your education process.

And then I guess the other products, too, like you said kitty litter, things like that, terminologies that are used to identify, certain kinds of products that are used to make methamphetamines.

Where I am going with this, and you probably understand where I am going with this, is that we have watchdog groups in our communities, you know, watching our communities and making sure that they are getting a fair shake.

And I think that one of the things that we found is that in the effort of law enforcement, sometimes businesses get targeted and

this is the area that I want to know what is it that you do in terms of training your personnel in how to operate properly because that is what we require law enforcement to do, follow laws also.

But also what do you do to engage the community to educate them as you do the Fortune 500s, the key things that they have to watch out for so that they do not get involved in unknowingly selling over-the-counter drugs, so that they can be part of the law enforcement process because we believe that policing is at least 50 percent community and 50 percent law enforcement where you guys get to carry the guns? But, you know, we have to have knowledge.

Can you tell me what you do in the area of education in these communities and have you had problems in the past that you learned from that you could share with us?

Ms. LEONHART. Well, I will tell you that the education that we are doing with Fortune 500 companies we are also doing with your neighborhood pharmacies, your neighborhood retail outlets, your mom-and-pop stores.

And I think back with the, especially in California in your area, what we did early on with the meth epidemic when all of a sudden, it was pseudoephedrine that they needed out of the retailers. I remember we had citizen meetings to alert people that they could be living next to someone who is producing meth. We went around to store owners. We talked to them. We told them here is what to look for. You can be our eyes and ears.

We have worked with community coalitions all across the country. So we have done what we can on the education piece. Even on the internet, we now try to help kids. Google and Yahoo have put banners on so that if someone is trying to buy drugs on the internet, they will get a banner that comes up. And it has happened a couple millions of times.

Mr. HONDA. Right. Excuse me for interrupting, but——

Ms. LEONHART. Sure.

Mr. HONDA [continuing]. I guess I am looking for when we talk about educating the law enforcement agents on drugs because you are hiring 1,000 of them, you are training them in the area of enforcement. The flip side of that is educating the community and talk about mom and pops. In this country, we have a lot of language, ethnic folks who run these programs.

What program and what curricula do you have within the DEA that requires you to make sure that your educational effort is also in the community whom you want to have your partners?

Ms. LEONHART. Well, number one——

Mr. HONDA. Do you have one or you do not?

Ms. LEONHART. We have——

Mr. HONDA. If you do not, do you need help with that?

Ms. LEONHART. We can always do better at that, but we actually do have groups. I know when I was in Los Angeles and if there was an issue in a certain community, I knew who I could call to help us with that community. So that is something that our 21 field divisions' SACS use.

Mr. HONDA. So that is SOP? That is a standard that you have—is it institutionalized? I mean, I know I could trust you do to that, but not everybody is you. And so you have to convert that into

some statute or some institutionalized practice so that it becomes SOP in terms of working in the communities.

Ms. LEONHART. Well, actually, we have something called best practices where when we get together with our special agents in charge, some of these issues are brought up, how to deal with a certain type of store, how to deal with a certain type of retailer I remember when there was a big to-do about how to deal with tack and feed stores because they were actually supplying meth traffickers and did not know it.

Mr. HONDA. Yeah. Let me get a little more definitive——

Ms. LEONHART. Okay.

Mr. HONDA [continuing]. And talk about language, culture, besides just the kind of store activities, you know, tack and feed stores, I understand. But then if it is owned by, say an Indo-American whose language is an Indian language.

And if that is the only language that they have and they have a level of exchange and that is the level of their proficiency and someone comes in using street language and they do not understand what the language means, but they do know that they want a certain product, they will sell it. And they will sell it without knowing what it might be used for, but they, in many instances, they have been arrested for the sale because the agent used street language regarding purchasing the product.

Those are the kinds of things I am most concerned about and if people are educated, then it is not entrapment. It is knowledge. But if they have no idea what they are talking about, but they want to make a sale, I think that that requires a lot more work with the community.

We wrote a letter indicating that even when the agents had said that, you know, they were told to target a community and in that community, there was X amount of stores and of that X amount, the majority were run by Indo-Americans, and so they were pretty much targeted.

Now, a community that gets hit like that cannot feel but say that they have been racially profiled. And I think that, like I say, in a democracy, as law enforcement agents, we still have to be cognizant of how we go about, you know, combating drugs and those kinds of things.

And that is the community level. You have got the international level with the other kinds of drugs, but methamphetamine is probably one of those things that you can do it in your kitchen. And that is why this is so important.

And the response I got was not satisfactory. I say that because it was dismissed by saying that the judge had dismissed the case and that there was no racial profiling involved, but the fact is that it was a procedural dismissal rather than based upon the facts.

So I just want to let you know that as a policymaker, I support the mission and I want to help. But in doing so, I want to make sure that this becomes something of the past and that we make sure that racial profiling in a country that has so many diasporas that it makes it more complicated and it could be a source of help from us because we can count on them to help us. But I do not want them to feel targeted in a country that they came to with an expectation of due process.

Thank you, Mr. Chairman.

Ms. LEONHART. Racial profiling will not be tolerated at DEA. I now believe I know the case you are talking about. And we have done a number of things to include a video that is mandatory that our agents watch, not only agents, but diversion investigators and anybody that could be interacting with the community.

Mr. HONDA. Sure. And I appreciate that. That is half the coin. The other half is educating the community on making sure that is done and the community always stands ready to be a partner.

Ms. LEONHART. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Honda.

MEASURING SUCCESS

Ms. Leonhart, I want to talk a little bit about how you measure results, what results you are achieving and what indicators we should be looking at.

Statistics on drug abuse trends are often used as evidence of the impact of enforcement efforts. However, drug use data tells us more about the individual users than about traffickers and the overall market.

Other than usage data, what do you believe are the best indicators of DEA's impact on drug trafficking into and within the United States?

Ms. LEONHART. I guess you are asking me how does DEA self-assess and what indicators do we look at? Because of our mission, it will always be what damage have we done to the traffickers. It will always be how many organizations did we identify, how many did we target, how many did we disrupt, how many did we dismantle, what were the arrests. It will always be about the money, the financial end.

We cannot forget that drug trafficking is big business like a Fortune 500 company. And, in fact, it brings in more money than Bill Gates and Oprah and Donald Trump combined.

So how do we define success? It is when we are stripping money away from those traffickers. And, in fact, we had a banner year in 2007 stripping $3.5 billion away from the traffickers, meaning we took that money so that could not go back to the traffickers to make their next cycle of drugs.

I think success is spelled by what are you doing with the legitimate, the banking end. And we have had three cases this year that are just remarkable. Union Bank of California forfeited $21.6 million because we caught them not doing their part to prevent money laundering. The same with American Express Bank International. They forfeited $55 million. And at the same time, a case we had against the Segay Corporation, they forfeited $15 million.

Bulk cash is the primary way that these, at least western hemisphere cartels, are getting money back. And this year, we seized a record amount of cash, $700 million was seized.

So it is working with our international partners. It is being able to partner up and do Intel sharing. It is those kinds of partnerships that then lead to drug seizures. We had record drug seizures. Not only did we have $207 million cash seized in Mexico, but they followed up with this 23.5 metric tons that I brought the picture in

on, the world's record cocaine seizure. Both those seizures were all done because DEA passed intelligence to them.

Mr. MOLLOHAN. Obviously we would all like to think that the supply side efforts, if you will, in some way impact the demand side by reducing drug use. And at the end of the day, collectively all of our efforts are directed at reducing drug use in the country. And that is a very elusive goal. That is a very hard thing to achieve.

But I am interested in knowing, do you think about it in those terms? Do you think about it in terms of are we really reducing the availability of drugs on the street?

I see that you measure it in terms of increasing the price and decreasing the purity, which is a supplier's response obviously to the lack of availability of the drugs.

How does that translate, or does it translate, into a decrease in use? And what should happen in conjunction with your very impressive efforts to achieve that last result, a decrease in use? What needs to happen on the other end remedially and from a law enforcement standpoint or whatever, in your overall experience?

Ms. LEONHART. Well, I can tell you the reason we call what we have just experienced the perfect storm is because all those things have converged for the first time, at least the first time in my career, where we can develop a strategy and operation and we did it out of hide. We wanted to test it out. We did it. And the first time we did it, we saw results.

Since 2001, drug usage by teens has been going down, going down in every category. And now we have Quest data that shows that American workers' drug use is going down. And if you plot out the drug usage and you look at what DEA was doing, what our state and local partners were doing, we are priority targeting, we are doing a better job of not just taking this guy off the street and that guy off the street, but strategizing on how to affect the supply. And we have.

In our drug flow attack strategy, the centerpiece of it is called Operation All Inclusive. We did it. The first time we did it, we saw that we had a change in price and purity. So we thought we would do it again, we would do it a little bit longer. We brought in more partners. We did it and we had substantially more significant change in price, change in purity at the same time we are seeing use rates go down.

So that is why I brought this chart in, to really show that when we can have a—we, by our enforcement actions, by our partnering with Colombia and Mexico, with our domestic agents going after that money, attacking that money that is going back down into Mexico, when all those things converge, that we see a rise in the price. We see 37 cities like Boston who has a 60 percent increase in cocaine——

Mr. MOLLOHAN. Say that again. When you take Boston who has had a 60 percent increase in——

Ms. LEONHART. Price.

Mr. MOLLOHAN. Price of cocaine.

Ms. LEONHART. Price of cocaine——

Mr. MOLLOHAN. Right.

Ms. LEONHART. Eighty—I am sorry. Eighty-six percent increase in price in cocaine. When you take New York, whose price of a kilo of cocaine doubled.

Mr. MOLLOHAN. So you are able to associate your efforts and your strategies with a decrease in use directly through the—and you think it is this scarcity that the suppliers or traffickers on the street translate into higher prices and less purity? And you do associate that with a depression of demand?

Ms. LEONHART. Yes.

Mr. MOLLOHAN. And use?

Ms. LEONHART. Yes.

Mr. MOLLOHAN. Really?

Ms. LEONHART. It is not the only indicator, but if——

Mr. MOLLOHAN. But if——

Ms. LEONHART [continuing]. All of those things together——

Mr. MOLLOHAN. Right.

Ms. LEONHART [continuing]. And we watched it. We have sustained this over a year now because we have done those operations.

Mr. MOLLOHAN. Right.

Ms. LEONHART. And every time we have done that operation, we have seen a change to the market.

Mr. MOLLOHAN. That is a very impressive linkage which I really would like to follow up with you some other time to understand it more clearly and to see what programs in or outside of DEA might complement that.

This Committee funds a lot of efforts that interactively impact drug use in the country, which is the ultimate thing we want to decrease. I want to understand your perspective on that more clearly. But that is very impressive—your efforts, in and of themselves, are impressive, including the seizure, what you are doing and a number of other things.

But how your effort translates into a decrease in the use of drugs and how you can measure that is something I would like to follow up on. I am going to have to go vote here in a couple minutes. But before I do, I want to talk a little bit about your efforts and your programs in Afghanistan.

Our efforts in Afghanistan are effective and certainly laudable. And it sounds like you are prototyping strategies and techniques that you are interested in applying to the western hemisphere; is that correct?

Ms. LEONHART. That is correct.

Mr. MOLLOHAN. Ten percent of the heroin consumed in America, in the United States of America, comes from Afghanistan; is that correct?

Ms. LEONHART. We believe about 10 percent comes——

Mr. MOLLOHAN. About 10 percent?

Ms. LEONHART [continuing]. From that region, yes.

Mr. MOLLOHAN. And where does the other 90 percent come from?

Ms. LEONHART. Primarily Colombia and Mexico.

Mr. MOLLOHAN. Okay. What are you doing in Afghanistan now that you would like to apply to your enforcement efforts in the western hemisphere?

Ms. LEONHART. We started what we call the FAST Program in Afghanistan, Foreign Advisory Support Teams. And these are

teams of agents that in a new environment can go in, can mentor and teach our police counterparts on drug enforcement so that they can then be our partners while we are there and when we are no longer there. We need to do the same thing in the western hemisphere.

I just came back from a trip to the Dominican Republic. And these are folks that are being killed on drug loads coming out of Colombia and Venezuela. And they do not have the resources and they do not have the ability to stand up without other partners.

So we had an operation. We call it Operation Rum Punch. And we ran that operation using a FAST that we brought back from Afghanistan just to try it, brought them down to Hispaniola. They worked with these folks in Haiti which is difficult and with our folks in the Dominican Republic. And what they were able to accomplish was they ran one of these Operation All Inclusives. They were able to find a way to go after drug loads where before there was no end game there. There was no one there to interdict the drugs.

Mr. MOLLOHAN. I apologize. I have to go. Just continue with that answer, Mr. Frelinghuysen.

Mr. FRELINGHUYSEN [presiding]. Thank you.

Just to get a little bit of clarity, the issue of purity, the seizure there, maybe I have been watching too much CSI Miami or whatever, but where do you measure the purity?

You measure the purity when you make a seizure and then you might measure the purity when, let us say, you apprehend somebody on the street. I know you are doing the job which to some extent shows that things are less pure. If you could just briefly elaborate on the purity issue.

Ms. LEONHART. I think I am going to have to explain how we do this. Obviously when we have the drug loads like that, they are coming up and they are basically pure.

Mr. FRELINGHUYSEN. They are pure? And then it goes into other hands and then because of the value, it is diluted?

Ms. LEONHART. What we have been able to do is the two tests of what is happening with the market is to look at the universe of drug buys in the country, the retail drug buys on the street. Well, our laboratory gets all that information.

Mr. FRELINGHUYSEN. So you buy in LA, you know, Newark?

Ms. LEONHART. All over the country.

Mr. FRELINGHUYSEN. I mean, anywhere?

Ms. LEONHART. All over the country. So what we did is we started looking at those and we ended up with about 14,000 drug purchases that we could look at that were from all over the country. And we looked at those for price and for purity. And then our statisticians got it down to the pure gram. And they were able to show these shifts in price and purity.

Mr. FRELINGHUYSEN. And the conclusion is that because of your disruption and your major efforts that shall we say things are working in our favor because of the——

Ms. LEONHART. Absolutely. When you run an operation and you do it three times and each time the longer you do it, the more results you get and on top of that, you have informants coming forward and saying the traffickers are having to raise their costs be-

cause you are making them go all the way out past the Galapagos Islands to come in, so their transportation costs are more. We know we have caused their behavior to change and——

Mr. FRELINGHUYSEN. And I think that is commendable. But the last time I checked, people are operating in the Dominican Republic and Haiti with somewhat impunity? I mean, those have always been points where drugs—is that not accurate or——

Ms. LEONHART. That is accurate, but——

Mr. FRELINGHUYSEN. So I sort of want to build this into my whole question about your drug flow strategy because, actually, we are dealing with money here. You have requested an increase of $21 million, a portion of which would be for the hiring of 30 special agents which I am sure you badly need, a new helicopter, but also the money would be used for one of the FAS teams that you referred to——

Ms. LEONHART. That is correct.

Mr. FRELINGHUYSEN [continuing]. One for Afghanistan and one for this hemisphere. Would in working in this hemisphere this FAST be focusing on places like the Dominican Republic and Haiti where you already, I assume, have people on the ground?

Ms. LEONHART. So I can clarify, both teams would be in the western hemisphere.

Mr. FRELINGHUYSEN. They would be? All right.

Ms. LEONHART. Yes. If all of a sudden, especially with the threat from Colombia and Venezuela, all the drug loads are now going up to the Dominican Republic, that tells us we need to use a FAST team, go in and work with our partners in the Dominican Republic and we can do some damage to those drug loads.

Mr. FRELINGHUYSEN. We have partners or God only knows how you describe our relationship with what is going on in Haiti. I mean, is there anything being built there that we could see a light at the end of the tunnel?

Ms. LEONHART. We need a FAST team so that we can work. Haiti was more difficult, but we did an operation there. We did Operation Rum Punch there. So we——

Mr. FRELINGHUYSEN. You are working there?

Ms. LEONHART. We are working there.

Mr. FRELINGHUYSEN. I would like to sort of change the focus here relative to your hiring freeze that I mentioned earlier. Your fiscal year 2007 appropriations level required a hiring freeze. Obviously if you are not hiring, your workforce is shrinking.

Do you know how many staff you lost during the hiring freeze?

Ms. LEONHART. Yes. We lost about 600 people, 251 of them were special agents. And that is on top of about 1,000 vacancies that we had when we went into August of 2006 before we even implemented the hiring freeze.

Mr. FRELINGHUYSEN. We provided money. I think parts of the Department of Justice got money and then you got sort of left off the list. We provided funding in the fiscal year 2008 supplemental and about, I think, ten million this year specifically to lift the freeze.

Maybe I already know the answer, but will the funding be sufficient to fill your vacant positions?

Ms. LEONHART. That funding, and I have got to thank you all for that, was quite a morale booster for our folks when we could lift the freeze. That will still leave us about 52 agents short from where we were before the freeze.

Mr. FRELINGHUYSEN. So you are short?

Ms. LEONHART. When we do the hiring and, in fact, we have an agent class going on right now, as we hire in 2008, by the time we get to the end of the year, we will still be about 52 agents short.

Mr. FRELINGHUYSEN. How much money would you need? How much money would that represent?

Ms. LEONHART. That is $4 million.

Mr. FRELINGHUYSEN. In order to hire the 52?

Ms. LEONHART. That is one agent class and that costs $4 million.

Mr. FRELINGHUYSEN. All right. Maybe I will yield, Mr. Chairman. Thank you very much.

Mr. MOLLOHAN [presiding]. Thank you.

AFGHANISTAN EXPANSION

Let me pick up, and I do not know if Mr. Frelinghuysen picked up where I left off before I went to vote, but you are requesting additional support in Afghanistan. And before I leave Afghanistan, I want to ask you about that.

You are considering the addition of up to 67 new DEA personnel in Afghanistan, but the proposal has not been finalized and transmitted? Is that under review in DEA and would you talk with us about that?

Ms. LEONHART. If the Administration wants us to expand in Afghanistan, we are exploring ways to do that. We have determined that to do what we need to do to get out to all the provinces and to be able to work with and stand up the police capacity there with the NIU and CNP Alpha, it would take about 67 agents.

Mr. MOLLOHAN. Well, what is the mission that we are fulfilling with that initiative or would we be fulfilling?

Ms. LEONHART. Absolutely the organizational attack, going after the drug lords.

Mr. MOLLOHAN. We would be building Afghanistan's capability or——

Ms. LEONHART. Well, these are drug lords that are also funding terrorism. So it is developing the police force there, but also we were out of that country for quite a while. We need to develop intelligence. We need to go after those drug lords because that money from the drugs being sold out of Afghanistan is funding terror.

Mr. MOLLOHAN. So this is a real anti-terrorism mission principally? I mean——

Ms. LEONHART. It is drugs and terror. You cannot separate them.

Mr. MOLLOHAN. Hard to separate them. How much money are you associating with that initiative? Is that going to be a request of this committee? Is it in your request in any way?

Ms. LEONHART. It is still being planned.

Mr. MOLLOHAN. Would we anticipate an amendment to your request for 2009?

Ms. LEONHART. All I know is that we are going to have a plan and that will be worked through the NSC.

Mr. MOLLOHAN. Is there a time? Are you supposed to be responsive in some way within some timeframe?

Ms. LEONHART. No. I just know——

Mr. MOLLOHAN. So it is not something the committee is going to expect to be asked of for fiscal year 2009?

Ms. LEONHART. I do not believe so. I do not know——

Mr. MOLLOHAN. You do not know at this time?

Ms. LEONHART. I do not know.

DRUG FLOW ATTACK STRATEGY REQUEST

Mr. MOLLOHAN. Okay. Your request for two new FAST teams to serve the western hemisphere, your budget request is $7 million for 20 positions. Does that achieve the goal of creating two FAST teams for the western hemisphere?

Ms. LEONHART. Yes, it does.

Mr. MOLLOHAN. And does this request come—Mr. Ruppersberger asked you about helicopters there and had to go—does that request come with a request for a helicopter?

Ms. LEONHART. It comes with the request for one Bell 412.

Mr. MOLLOHAN. Can you do all that for $7 million?

Ms. LEONHART. It is $20 million.

Mr. MOLLOHAN. Okay.

Ms. LEONHART. Twenty point six million, 40 positions, 30 of which are agents that would stand up two teams that would——

Mr. MOLLOHAN. Twenty agents?

Ms. LEONHART. Thirty agents.

Mr. MOLLOHAN. Thirty agents.

Ms. LEONHART. Two teams.

Mr. MOLLOHAN. Okay.

Ms. LEONHART. I can run through what that package would be if you would like.

Mr. MOLLOHAN. Sure. Please.

Ms. LEONHART. The $20.6 million would be for 40 positions, 30 agents. It would cover the FAST expansion, which is seven million, which is two teams. That would be nine agents and one intelligence analyst per team. It would then give the operating money, $2 million, for us to do one of these operations that I just explained.

It would also give us three agent pilots and a Bell 412 helicopter to achieve that lift and shift I was talking about. It would also fund, with $2.5 million, it would give us 16 positions for the southwest border. And that would be nine agents and two Intel analysts. And it would give us one analyst position to help work with the Intel community on an open source project.

Mr. MOLLOHAN. To what extent do you work with the military for your transportation needs, particularly your air transportation needs?

Ms. LEONHART. It depends on what country. We depend on them pretty heavily, did early on in Afghanistan. They have supplied helicopters for the NIU. So now they have a way to lift there and we have our own aircraft there.

Mr. MOLLOHAN. In Afghanistan?

Ms. LEONHART. In Afghanistan.

Mr. MOLLOHAN. And DEA employees operate those helicopters or does the military operate them?

Ms. LEONHART. We have a King Air aircraft and one helicopter with a contract pilot.

Mr. MOLLOHAN. In addition to that, you rely upon military transportation for air transportation in Afghanistan?

Ms. LEONHART. Right now if our agents need to get out to one of the other forward operating bases, one of the things they do is wait in line to go with the military unless we can fly. And we are also limited in how much we can fly there.

Mr. MOLLOHAN. So having your own equipment enhances your ability to do your mission because you do not rely upon availability from some other——

Ms. LEONHART. Absolutely.

Mr. MOLLOHAN. And that is also true in the western hemisphere?

Ms. LEONHART. It is definitely true in the western hemisphere because for instance, we are going to spend a lot of time with Guatemala working up their capabilities. We know there is a shift happening. They do not have all the resources to assist us.

Having that one helicopter for these two FAST teams—the two teams are deployed one at a time, is what we would need. So we are not depending on—for instance, CBP to fly us. We have depended on other agencies and the military to help us with these operations.

Mr. MOLLOHAN. How much of this request is the helicopter?

Ms. LEONHART. The helicopter is a part of that 8.9 million, the helicopter plus three agent pilots that go with it, with the operating and maintenance money and money for them to deploy.

Mr. MOLLOHAN. If you were to take the helicopter out of your request, how much money would that take out of your request?

Ms. LEONHART. Seven.

Mr. MOLLOHAN. And to what extent would that degrade your capability to do your mission?

Ms. LEONHART. That helicopter is key to these teams being able to move around.

Mr. MOLLOHAN. You would not be able to have that supplied by the military, for example?

Ms. LEONHART. I think what would happen is what we saw over the last year where there are drug loads that we are tracking that we cannot follow because no one is available. There is no end game there without having our own lift.

Mr. MOLLOHAN. Would you propose to own this helicopter or rent it from a contractor?

Ms. LEONHART. We would be buying this helicopter. It would be a part of our fleet.

Mr. MOLLOHAN. I am going to leave activities along the southwest border to Mr. Culberson. Let me ask you quickly about state and local assistance.

The DEA's 2009 budget does not appear to include any program increases for state and local assistance. It is difficult to tell, however, because some programs that I would consider state and local assistance, such as MET and state and local law enforcement training, are no longer included in DEA's state and local assistance decision unit total.

Can you quantify how much DEA intends to spend in 2009 on state and local assistance, to include training and MET, and compare that to DEA's spending in 2008?

Ms. LEONHART. There is about $6.5 million in the state and local decision unit that would be funding for clan lab cleanup, state and local clan lab training, and the Domestic Cannabis Eradication Program.

Mr. MOLLOHAN. In your 2009 request?

Ms. LEONHART. Yes.

Mr. MOLLOHAN. And how does that compare with 2008?

Ms. LEONHART. Similar to what was enacted.

Mr. MOLLOHAN. Do you think the state and local request is sufficient?

Ms. LEONHART. I think if I can explain what we do with state and local, you will see that while it may not show up here, it is showing up in other places.

Mr. MOLLOHAN. Sure.

STATE AND LOCAL ASSISTANCE

Ms. LEONHART. Our state and local training, for instance, does not fit under this decision unit. It is in the domestic enforcement decision unit. And we have trained 42,276 state and locals in 2007 with that money. So we are giving a lot of assistance. It just does not show up in that decision unit.

Through our State and local taskforce program we run 218 State and local taskforces. We have got a program that is almost 35 years old. We have over 1,650 agents in that, but along with them 2,130 taskforce officers and we pay their overtime.

We also have vetted 8,000 federal, State and local officers to have access by telephone to the El Paso Intelligence Center. So that is assistance that doesn't show up there. And 1,800 of those State and locals have web access now in our new web based epic portal system.

Demand reduction provides assistance to communities and we have got nine positions for demand reduction that do a lot of work with the coalitions. And then thanks to you, you restored the MET Program. You restored not the full MET Program, but we have got at least a third of it back.

Mr. MOLLOHAN. Talk with us a little bit about how you value your State and local partnerships and how important you think it is for DEA to support State and local law enforcement. And then, my specific question was, whether you believe that your State and local assistance request in the budget is sufficient, however you would like to talk about that. You have made it clear that the DEA supports State and local through its budget.

Having said that, is that enough and do you recommend more assistance? And if so, where?

Ms. LEONHART. I would say that I can't imagine DEA doing their mission without the State and locals. I was a Baltimore police officer. I learned about DEA through the State and local program. I know we have got a strong State and local program that is doing wonders for our State and local partners.

And what I didn't mention that I do need to mention is that we do a number of things for State and locals. They have worked more

with us over the last couple of years on these bigger cases and we have attacked those assets and the revenue from these drug organizations. We stripped them of $3.5 billion last year. Seven hundred million of that was actual cash going south.

We have shared in 2007 already $326 million with the State and locals. So they work a case with us, we share back. So that is another way that we share and that is an 18 percent increase over the year before.

So we are giving back to State and locals. There is nothing that we do in DEA that isn't with our State and local partners.

Mr. MOLLOHAN. Okay. And my question is, do you see areas that you can increase support to State and local agencies and would that be useful to you? And where would you add if you were to recommend that?

Ms. LEONHART. Well we think the President's budget is sufficient. It is a good budget for us.

Mr. MOLLOHAN. I know. But I am asking you, as a law enforcement officer, where is your relationship with State and local most important? And where could it be stronger? And where would you fund that if you were to enhance those relationships? Just forget a second about the President's request and answer as a law enforcement officer thinking operationally.

Ms. LEONHART. I think it will hurt that we only have enough in the MET Program to stand up ten teams instead of 22. I think that is probably the best way for us to help the State and local. That being said, with the third of MET that you gave us we are trying to figure out how to get the best bang for the buck and be able to help as many people as possible.

Mr. MOLLOHAN. Where else?

Ms. LEONHART. Allowing us to do our priority target cases helps State and local.

Mr. MOLLOHAN. How do we help you do that?

Ms. LEONHART. They don't have the resources. They don't have the ability often times to go to those other jurisdictions and especially on the foreign side. So they often bring us cases——

Mr. MOLLOHAN. They?

Ms. LEONHART. The State and locals bring us cases they have worked up to a certain point. And we partner with them and we bring their case further.

Those are those multi-jurisdictional cases. So the money that is already in the budget helps and what we are doing domestically always helps State and locals. And that is why we can share more and more with them.

Mr. MOLLOHAN. Mr. Culberson.

SOUTHWEST BORDER OPERATIONS

Mr. CULBERSON. Thank you, Mr. Chairman. Thank you very much for your work, Administrator Leonhart. I wanted to make sure I understood you. You said a moment ago that your agents have intercepted about, was it, $700 million in cash going south?

Ms. LEONHART. Our cash seizures in 2007 were about $700 million in cash.

Mr. CULBERSON. That is extraordinary. And you, I know, share that with local law enforcement agencies when the arrest is made

in cooperation with one of them. Whatever portion of that fund you kept for yourself you can then turn around and use for DEA operations, right?

Ms. LEONHART. No. That is not correct, unfortunately.

Mr. CULBERSON. What do you do with it? I know in Texas at least when a local agency picks up a load of cash, arrest someone with a nice boat or a car, you know the sheriff will be driving a new car.

Ms. LEONHART. Yeah.

Mr. CULBERSON. Do you guys get to keep that cash?

Ms. LEONHART. All DEA can take is enough to do the processing of the asset. And then the rest of that money goes into the assets forfeiture fund.

Mr. CULBERSON. You should be able to buy some helicopters with that. Maybe that is something we ought to look at and work on.

You all do magnificent work. I am so impressed with what you do. And one of the requests that I submitted to you, if I could for someone on your staff to help expedite this for me. And I would really like to know of the people who are arrested by DEA agents along the Southwest border, if you could tell us by U.S. Attorney area, what percentage of those people arrested are actually prosecuted by the U.S. Attorney?

And the reason I ask the question is because my colleagues will be dumbfounded to hear this. I mentioned it briefly to the Chairman and Mr. Frelinghuysen. But when I visited Tuscan in earlier February, I was dumbfounded to discover that if you are, you are not even going to believe this. You probably are aware of this. This is unbelievable.

If you are arrested carrying a quarter ton of dope in the Tuscan sector by the Border Patrol, you have a 99.6 percent chance of being home in time for dinner and never being prosecuted. True fact. Unbelievable but true.

The evidence room is wedged with loads of dope that are all under 500 pounds, of course. The U.S. Attorney actually sent out a memo to the Border Patrol stating that we will only prosecute a very narrow range of cases. And by the way, if a smuggler is carrying less than 500 pounds, a quarter ton, they will not be prosecuted. And I asked the Border Patrol how long it took the smugglers to start sending the loads in at 499 pounds and less. And they said about 48 hours.

It is a disturbing and just, I frankly, was just thunderstruck. And the U.S. Attorney there, frankly, won't do anything about it. And it is appalling, Mr. Chairman. It is something I want to pursue with the Attorney General quite vigorously. And I have been working on this and have some suggestions and ideas. I am already begun to work with the Border Patrol and the U.S. Marshals and opening up. And there is an administrative facility in the Tucson sector that the Border Patrol can open it up, literally, within 60 days and have a courtroom operating there and process up to 140 people.

In the event, are you familiar with this problem in the Tuscan sector? I understand that it is not just the Border Patrol, but your agents. I have had reports from your agents as well as FBI and ATF at the U.S. Attorney in Arizona will not prosecute perfectly

good arrests that your officers are just apoplectic over a very bad, bad problem with the U.S. Attorney in Arizona. Could you talk about that?

Ms. LEONHART. What I would like to do, I have new staff in the area. I would like to discuss that with——

Mr. CULBERSON. Okay.

Ms. LEONHART [continuing]. Them and find out.

Mr. CULBERSON. Please follow up because we will pursue it. I think we have the Attorney General before this Committee in early April, Mr. Chairman, I think. And I will be working with you and the staff and we are going to take this by the smooth handle as my hero Mr. Jefferson always said. Do this the right way. But we have got a bad, bad problem with prosecutions in Arizona. Your agents make good arrests and did you know, for example, I want to make sure you are aware of this one, put this in your notes. That a 1,000 pound load of dope was the Border Patrol's unmanned aerial vehicles tracked it. Saw it in Mexico. It comes across the border, a 1,000 pounds in a little convoy. The Border Patrol vectors agents out to intercept it. They make the arrest. The U.S. Attorney said, "No, we are not going to prosecute."

Twenty-eight pounds of cocaine is sitting in the evidence room in the Tuscan Border Patrol Office. And they were prosecuted. In any event, this is an urgent problem and I bring it your attention, because it is something I know your agents are concerned with as well.

Also let me ask, because we have got a vote and the Chairman's been always indulgent with his time with me. Your fast teams that you deploy to foreign countries, Afghanistan and elsewhere to take out, you know, drug lords. I asked last year about, and I am not sure if you are aware of this or not, but there is apparently anywhere between 50 and 100 manned observation posts in Southern Arizona manned by lookouts for the drug smugglers who tell the smugglers where the Border Patrol or DEA is about to intercept a load.

I was told that you guys were going to make an effort to take those out. Can you tell us how many of those, have you taken those out? They have got repeater stations, satellite phones, night vision, binoculars. These guys are heavily armed and they are on U.S. soil, you know, semipermanent locations. They move around, of course, but can you talk to me about that? And what has been done to take those out?

Ms. LEONHART. I would have to talk to CBP about that because it would primarily be their responsibility, however, in cases where in our investigations we come across counter surveillance, people that had a load and were vectoring it in, we have indicted them and made them a part of our case. I don't know if these are the same ones you are talking about, but they have been made a part of our investigation.

Mr. CULBERSON. Thank you. You can follow up with me afterwards, because I know we are short of time.

But on the asset forfeiture fund, is that money distributed by statute? Is that a statutory requirement, or is DEA entered into an agreement that just that money you seized, the $700 million, the portion of it that does not go to the local agency or to some other

law enforcement, it goes into the asset forfeiture. Is that by statute?

Ms. LEONHART. I believe it is statutory.

Mr. CULBERSON. Someone is nodding back there.

Ms. LEONHART. I believe it is statutory that no more than 20 percent can go to the federal agencies for processing.

Mr. CULBERSON. Okay. That is something worth pursuing, Mr. Chairman. And cash only would help the agency, but I know that the drug smugglers—that really hurts them. They can regrow the dope or recreate it, but it's the money that really zings them. And congratulations, that is a magnificent number. And keep up the good work.

Thank you.

Mr. HONDA. Thank you, Mr. Chairman. This whole hearing has been very educational and I appreciate it.

We were talking about—and I will submit mine in terms of question, get a written response back on it. You talked about racial profile education. Then you must have a protocol that you have established. Could you share that with us—the protocol regarding profiling and working with individuals with limited English.

And if there is any work being done on capturing information post arrest. What the demographics are of the groups that are arrested.

And then if you have initiatives by your Department that increases the exposure to the different communities that are language communities and would love to be of some help also in that area.

Thank you, Mr. Chairman.

ELECTRONIC PRESCRIPTIONS

Mr. MOLLOHAN. Thank you, Mr. Honda. Ms. Leonhart, does the DEA believe that there is a workable, secure way for physicians to prescribe controlled substance prescriptions electronically?

I understand you are engaged in the rule making on this subject.

Ms. LEONHART. Yes. And I can tell you we did come up with what we think would be a solution and we have sent that forward.

Mr. MOLLOHAN. Is the proposed rule published?

Ms. LEONHART. No.

Mr. MOLLOHAN. When do you plan to publish the proposed rule?

Ms. LEONHART. It went up the end of February for a 90-day review.

Mr. MOLLOHAN. Going up? What does that mean?

Ms. LEONHART. OMB.

Mr. MOLLOHAN. Goes to OMB. For a 90-day review?

Ms. LEONHART. Yes. And we can't, of course, publish it until it is approved by OMB.

Mr. MOLLOHAN. And when do you anticipate that happening?

Ms. LEONHART. I think we sent it up about the 13th of February. So we would be expecting something within the 90 days.

Mr. MOLLOHAN. From OMB?

Ms. LEONHART. Yes.

Mr. MOLLOHAN. So you are talking about summer. Then you publish a 30 or 60-day comment period. And then you would anticipate——

Ms. LEONHART. Right. There would have to be a comment period.

Mr. MOLLOHAN. So would you, and you may not know the answer to this, but would you anticipate the finalization of a promulgated rule by the end of this year?

Ms. LEONHART. We don't know what OMB will say.

Mr. MOLLOHAN. You have no indication?

Ms. LEONHART. We don't have an idea. And when we do go to publish and I have been surprised on other things, that the comments that come back sometimes cause to have to rework it.

Mr. MOLLOHAN. Well this is really important. I am following up on Mr. Rogers line of questioning. The experience he has had and the good work he has done down in Kentucky further impresses upon me just how important this is.

Is there any way accelerate this initiative?

Ms. LEONHART. What we can do is go back and see if there is any chance of getting it back earlier than the 90 days. But OMB does have 90 days to do it. And then there is that established period for the publication.

Mr. MOLLOHAN. Right.

Ms. LEONHART. But we understand that you are looking for something pushed.

Mr. MOLLOHAN. Okay. Well great.

Mr. FRELINGHUYSEN. Before we conclude, I think we are headed in that direction. I want you to put in a plug for the mobile enforcement teams here. I mean we have seen a huge precipitous decline here. What do we have—ten?

Ms. LEONHART. We had 22.

Mr. FRELINGHUYSEN. Twenty-two. I think members of Congress are keenly interested in seeing what we can do to restore that to that number.

Mr. MOLLOHAN. Well that was the area that——

Mr. FRELINGHUYSEN. We were in to that area a little bit, but I think we need to——

Mr. MOLLOHAN. No, I mean that is the area that she said needed more support, Mr. Frelinghuysen. Right?

Ms. LEONHART. Right.

Mr. MOLLOHAN. Sort of. Indirectly. We could discern. [Laughter.]

Ms. LEONHART. Hypothetical. [Laughter.]

Mr. MOLLOHAN. Hypothetically. I think we got it. And Mr. Frelinghuysen has been a champion for you on that topic.

Ms. LEONHART. You all have. Thank you very much.

Mr. MOLLOHAN. Thank you. That is all the questions. Thank you to everyone who was here today and to your tremendous agents out there in the field. I can't imagine a more dangerous law enforcement activity. And I thank you for your time up here and we hope to be able to support you in every way that we can.

And with that, we thank you.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

WEDNESDAY, APRIL 9, 2008.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

WITNESS

MICHAEL J. SULLIVAN, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

OPENING STATEMENT OF MR. MOLLOHAN

Mr. MOLLOHAN. The hearing will come to order. Well, good afternoon and I would like to welcome, again, Michael Sullivan, Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives to discuss his agency's fiscal year 2009 budget request. We are very pleased to see you again, Mr. Sullivan, and thank you for your time. We would also like to thank you for generously loaning us one of your special agents, Scott Sammis. Scott is doing a great job. He is fitting in very well, and we appreciate your loaning him to us.

We are used to seeing relatively modest budget requests from your agency so it is no major surprise to me that the administration's fiscal year 2009 budget has less than $1 million in new initiatives for ATF. What I did find surprising was the fact that in addition to denying ATF any significant new growth, this budget request makes permanent at least $21 million in cuts that are being carried forward from this fiscal year. It is not clear to me why the administration seems to place such a low priority on federal law enforcement, but that is the conclusion that I have to draw from proposed budgets like yours. There does not seem to be any other explanation for the lack of investment in our major law enforcement components. It certainly cannot be due to a lack of work waiting to be addressed by you. You cannot go more than a few days without hearing another story about violent crime and gang activity in our cities, or violence and criminal activity along our southwest border. ATF would have a role in addressing both of these problems, as well as attending to the regulatory needs of the firearms and the explosives industries. So it appears to me that we have plenty of need for additional resources at ATF rather than multi-million dollar cuts.

I recognize that ATF does not control its own budget destiny so I am sure that decisions that went into this year's proposal were not the result of ATF's own recommendations. We are looking forward to hearing how you intend to manage your agency at the budgeted level, and to talking about alternatives that might better position you to meet the demand for your services.

Before we begin, Mr. Sullivan, I would like to first offer the Subcommittee's Ranking Member, Mr. Frelinghuysen, an opportunity to provide his own opening statement. Mr. Frelinghuysen.

OPENING STATEMENT OF MR. FRELINGHUYSEN

Mr. FRELINGHUYSEN. Mr. Sullivan, welcome this afternoon to talk about your 2009 ATF budget. I, or I should say we, would like to commend you and the men and women who stand behind you. You do a remarkable job. It is some very dangerous work every day to fight illegal arms trafficking and violent crime. We know you work very closely with agents of the FBI and DEA. You are all professionals. Quite honestly, I think in some of the budget deliberations you have been given the short end of the stick and as best we can we are going to try to remedy that. You are also playing a very important role in preventing and responding to terrorism. You are part of that comprehensive plan to attack terrorism. In particular, a critical role you are playing in Iraq relative to the IED problems.

You are requesting an appropriation of a little over $1 billion, an increase of about $43.7 million, or 4.2 percent. However, you are dealing right now with a fiscal year 2008 appropriation that is basically frozen at the fiscal year 2007 level, which is $37 million below a current services level. The Committee will be interested to hear what steps you are taking to absorb those cuts and what the impacts are on your staff and operations.

In addition, I will have some questions about your operations in Iraq and the accompanying supplemental request which is being put together. I also want to ask about the important work you are doing to combat arms trafficking across the southwest border, which has fueled a horrifying increase in violent crime and drug trafficking in that part of our country. Again, I welcome you and thank you for your service and the dedication of the agents that work with you.

Mr. SULLIVAN. Thank you.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Mr. Sullivan, your written statement will be made a part of the record, and you can proceed with your oral testimony.

OPENING REMARKS OF DIRECTOR SULLIVAN

Mr. SULLIVAN. Thank you very much, Mr. Chairman and Mr. Frelinghuysen. I have a very brief opening remark that I would like to make. And I want to start by acknowledging our appreciation for the work of this Subcommittee and for your support of ATF and for the comments you both have made today in support of the Bureau of Alcohol, Tobacco, Firearms and Explosives and most importantly for the support of the people, the men and women that make up our Bureau. I mean, that really is the strength of ATF. It is our hardworking, dedicated men and women on the front lines as ATF agents, investigators, and support people.

ATF's expertise in investigating firearms crimes, bombings, and arsons is a valuable asset in the federal government's efforts to keep our nation's citizens and our neighborhoods safe. As part of that effort, ATF has had a steady increase of prosecution referrals over the past number of years. And I think this is remarkable in light of the fact that our resources at ATF have been held rel-

atively flat over the last number of years. But we have had a threefold increase in matters being referred for federal prosecution.

A couple of noteworthy examples of our efforts include a recent investigation and operation in Baltimore, Maryland, and in New Jersey. They both dealt with dismantling two Bloods street gangs engaged in firearms and narcotics trafficking. As a result of our operations conducted with the assistance of our state and local partners, over twenty-eight individuals were indicted in Baltimore City and twenty-five individuals were arrested in New Jersey. These are just two of countless examples throughout the country that reflect ATF's leadership in addressing violent crime.

I would like to thank the Subcommittee for its support of ATF during the fiscal year 2008 budget process. ATF is acutely aware of the competing priorities that face the Subcommittee and appreciates the funding it received. However, as already mentioned, we received the exact same level of funding in fiscal year 2008 that we did in fiscal year 2007, resulting, as pointed out, in a shortfall of $37 million. And that has required us to make some difficult decisions, including the canceling of two of our new classes, one for investigators to support the regulatory side of our business and the other for new agent hires. We have also reduced the number of previously announced support positions, and we have had to limit the funding for our permanent change of station transfers. And that does have a long term impact on the Bureau as you are moving people for professional development, as well as the needs of the organization, moving folks from the field to headquarters and also moving folks from headquarters to the field.

This shortfall of $37 million will have a direct impact on our operations, including reducing our violent crime task force participation as well as our major case funding, equipment replacement, purchase of evidence and information, and the services that we provide to our industry partners. On the operational side, we will not be able to fund at least two of our violent crime impact team expansions planned in fiscal year 2008. A tracking center has reduced its contract of size, which could impact our turnaround time on firearm trace requests. As the year progresses it may become more challenging for us to sustain some of our complex investigations, such as those involving firearms trafficking conspiracies, and diversion activities that can require significant resources. We obviously have to prioritize ATF resources and expenditures in fiscal year 2008 a bit differently than we originally planned, based on our anticipated budget.

A less than level service appropriation has reduced the amount of training we are able to provide to our state and local partners. For example, ATF's Explosives Detection Canine Training Program, which is internationally recognized and is also in significant demand, has been cut by nearly 35 percent. This will result in fewer state and local partners receiving canines than had been originally planned. Also, due to the current backlog of state and local partners requiring ATF trained canines, the time to delivery is also going to be extended from a range of two to three years to up to potentially five years.

ATF also has reduced its Advanced Explosives Destruction Techniques course, which we offer for our state and local bomb techni-

cians, by 50 percent. Currently, there are more than 1,000 bomb technicians waiting for this training to safely handle and dispose of seized explosives. The training classes that ATF provides to state and local law enforcement agencies are not offered by other DOJ components and are both necessary and highly sought after by our state and local partners.

But notwithstanding this $37 million shortfall, ATF stands at the forefront on addressing violent crime both here and abroad. For fiscal year 2009 ATF is requesting $1,027,814,000 and 4,978 positions, of which just over 2,400 will be field agents. This request includes $948,000 and twelve positions for program improvements. The funding and the positions will allow ATF to continue to protect our neighborhoods from the horrors, the risks, and the victimization of violent crime, and safeguard our nation from the threat of terrorism. The program improvement funding of $948,000 will increase our ability to inspect and engage the firearms dealers and pawnbrokers along the southwest border, helping to reduce the illicit firearms trafficking and violence along the U.S./Mexican border.

Mr. Chairman, Congressman Frelinghuysen, distinguished members of the Subcommittee, on behalf of the men and women of ATF I want to thank you and your staff for your support of our crucial work. With the backing of this Subcommittee, ATF, the federal law enforcement/regulatory agency whose primary mission is combating violent crime, can continue to build on its accomplishments, making our nation even more secure. The funding we have requested for fiscal year 2009, including the increase for operations on the southwest border, is an important investment in this cause. And we look forward to working with you and members of your Committee in pursuit of our shared goals. Thank you.

[The information follows:]

Statement of Michal J. Sullivan
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

Before the House Committee on Appropriations
Subcommittee on Commerce, Justice, Science and Related Agencies

April 9, 2008

Chairman Mollohan, Congressman Frelinghuysen, and distinguished Members of the Subcommittee, I am pleased to appear before you today to discuss the President's Fiscal Year (FY) 2009 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.

ATF's MISSION

As you know, ATF is a law enforcement agency within the Department of Justice (DOJ). We are dedicated to reducing violent crime, preventing terrorism and protecting our Nation. We have the dual responsibilities of enforcing Federal criminal laws and regulating the firearms and explosives industries. The combined efforts of our special agents and industry operations investigators (IOIs) allow ATF to effectively identify, investigate and recommend for prosecution violators of Federal firearms and explosives laws, as well as to ensure that Federal firearms and explosives licensees are operating within established rules and regulations. As firearms and explosives are among the preferred tools of terrorists, ATF's expertise and jurisdiction in those issues play an important role in the United States' efforts to prevent and respond to acts of terrorism.

In pursuit of our mission, ATF actively fosters partnerships with the firearms and explosives industries and other Federal, State, local and international law enforcement agencies. Such partnerships, which are fundamental to our strategic approach, greatly increase the efficiency and effectiveness 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 work to make those relationships even stronger.

RECENT ACCOMPLISHMENTS

ATF's expertise in investigating firearms crimes, bombings and arson is a valuable asset in the Federal government's efforts to keep citizens and their neighborhoods safe. Over the past twenty years, ATF has increased its efficiency and workload, targeting its resources to address changing needs across the country. Doing more with less, working smarter, measuring success, enhancing accountability, and

thinking outside the box to develop and evaluate effective and new approaches to our mission—these are the hallmarks of ATF. And the results have led to safer communities and an improved quality of life for our law abiding citizens.

A noteworthy example of our efforts is the recent roundup of violent gang members operating in Baltimore, Hagerstown and the Eastern Shore of Maryland. On the morning of February 25th, ATF's Baltimore Violent Crime Impact Team (VCIT) lead more than 100 law enforcement personnel, including ATF agents and State and local police officers to execute seven search warrants and 22 arrest warrants on members of the Tree Top Piru Bloods (TTP Bloods) gang. The operation was the culmination of a long-term joint investigation by ATF, the U.S. Attorney, the Baltimore City State's Attorney, the Baltimore City and County Police Departments, and numerous other local law enforcement agencies throughout Maryland. In total, 28 individuals were indicted as a result of the investigation for charges that include racketeering, drug trafficking and gun crimes. Moreover, the indictments include allegations of five murders in Maryland and conspiracy to obstruct a State murder trial. The defendants charged with drug trafficking face a maximum penalty of life in jail, while the defendants charged with racketeering face a maximum penalty of 20 years in prison.

In New Jersey, ATF conducted Operation First Blood, an OCDETF case, in partnership with the Essex County/Federal Gang Suppression Task Force. This investigation targeted the violent criminal activity of various "sets" of the Bloods street gang operating in the areas of Newark and Asbury Park, New Jersey. Over the course of this year-long investigation, 13 firearms were purchased, including three assault weapons and one machine gun. The investigation culminated in the arrest of 25 individuals for various Federal and State firearm and narcotics violations.

These cases demonstrate how ATF focuses our investigative resources towards dismantling violent street gangs and other criminal organization and their leaders. This was a strategic operation that went beyond street level arrests, inflicting a significant blow to a violent narcotics gang in Baltimore. It also demonstrates the strength of our partnerships with local, State and Federal law enforcement and prosecutors.

The power of ATF's partnerships is also illustrated by the success of Project Safe Neighborhoods, an ongoing and comprehensive initiative to reduce gun and gang crime in America. This initiative has brought together ATF's resources and skills with state and local law enforcement, as well as community partners, and has led to more than a 100% increase in federal firearms prosecutions during the seven years since its inception, when compared with the seven years prior.

I now would like to take this opportunity to highlight some of our accomplishments over the last fiscal year. In FY 2007, ATF initiated criminal investigations in the following areas:

- 4,381 gang-related investigations;
- 25,695 firearms cases, including illegal possession and firearms trafficking;
- 3,421 arson and explosives cases, including bombing and attempted bombing cases;

- 134 alcohol and tobacco diversion cases (including 4 cases linked to terrorist activity) ; and
- 25 explosives thefts.

ATF's VCITs program partners our special agents with State and local law enforcement to focus on bringing to justice the "worst of the worst" violent offenders. With the recent announcement of the opening of the Jackson, Mississippi VCIT, ATF is now operating 30 VCITs across the Nation with a 31st VCIT planned for Memphis, Tennessee.

In FY 2007, ATF explosives detection canine teams participated in 549 investigative searches, safeguarded over 16 million spectators at major events, and recovered 405 firearms, more than 24,000 shell casings, 92 pounds of explosives, more than 25,000 pounds of low explosives, and 238 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) performed traces on more than 285,000 firearms for our agents and our law enforcement partners. Our National Integrated Ballistic Information Network (NIBIN) imaged over 200,000 bullets and casings, which resulted in over 5,000 matches. 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 2,696 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 2007, ATF conducted 15,280 inspections of FFLs and 3,291 inspections of FELs. We also processed:

- 556,779 National Firearms Act (NFA) registrations;
- 37,119 FFL applications and renewals;
- 3,823 FEL applications and renewals; and
- 10,324 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 international. In FY 2007, we provided PSN training for 5,283 Assistant U.S. Attorneys, State and local prosecutors, State and local police officers and sheriffs, and ATF special agents. We provided training for 1,313 members of the international law enforcement community. We also trained:

- Approximately 2,200 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;

- Nearly 600 law enforcement personnel, including 440 State and local investigators and bomb squad personnel, in explosives-related courses, including post-blast investigations;
- Approximately 500 explosives detection canine teams on National Odor Recognition Testing (NORT) and approximately 600 on peroxide-based explosives; NORT also includes the Scientific Working Group on Dog and Orthogonal Detectors Guidelines (SWGDOG) certification;
- 517 personnel in arson-related courses; and
- 114 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 this Subcommittee's support, we will build upon these accomplishments.

ATF is moving forward with the construction of a permanent facility to house the National Center for Explosives Training and Research (NCETR) at Redstone Arsenal in Huntsville, Alabama, with completion of the facility anticipated in FY 2010. With NCETR, we will have an unprecedented opportunity to align national explosives-training activities with cutting-edge research and information-sharing capabilities. NCETR will create a unique and dynamic environment designed to promote training and research partnership and to ensure that law-enforcement officers, emergency-responders, and other specialists benefit from explosives training that is informed by the most current scientific research and intelligence. The NCETR will play an important role in ensuring that our Nation is fully prepared to prevent and respond to IED attacks.

FY 2009 BUDGET REQUEST

I would like to thank the Subcommittee for their support of ATF during the FY 2008 budget process. ATF is aware of the competing priorities that faced the Subcommittee and appreciates the funding it received. For FY 2009, ATF is requesting $1,027,814,000 and 4,978 positions, of which 2,428 are agents. This request includes $1,026,866,000 and 4,966 positions for current services, as well as $948,000 and 12 positions for program improvements. These necessary funds will allow ATF to continue to protect our neighborhoods from the scourge of violent crime and safeguard our Nation from the threat of terrorism. The additional funding we are seeking in FY 2009 will enhance our ability to inspect the firearms industry to help reduce illicit firearms trafficking along the Southwestern Border of the United States.

SOUTHWEST BORDER INITATIVE

The U.S.-Mexican border is the principal arrival zone for most illicit drugs smuggled into the United States, as well as the predominant staging area for the subsequent distribution of drugs throughout the country. Firearms are an integral part of

these criminal enterprises. They are the "tools of the trade" that drug traffickers use against each other as well as against Mexican and American law enforcement officials and innocent civilians on both sides of the border. Our investigations reveal that Mexican drug traffickers have aggressively turned to the United States as a source of firearms. As a result, firearms now are being routinely transported from the United States into Mexico. This issue, which obviously affects citizens of both countries, was highlighted earlier this year in discussion between Attorney General Mukasey and Mexican Attorney General Eduardo Medina-Mora Icaza. Stemming the flow of trafficked firearms across the border is an important priority for the Department and one that ATF is uniquely suited to address.

ATF has been investigating firearms trafficking and working on the Southwest Border for more than 30 years. As the sole agency that regulates Federal Firearm Licenses (FFL), we are continually locating, investigating and eliminating sources of illicitly trafficked firearms and the networks that are used to traffic them. While most FFLs are law abiding small business owners, we are mindful that corrupt dealers do exist. Unfortunately, this minority of FFLs can greatly impact the violence along the border and in Mexico.

Project Gunrunner is ATF's ongoing Southwest Border strategy to combat firearms-related violence perpetrated by warring drug trafficking organizations in border cities such as Laredo, Texas, and Nuevo Laredo, Mexico. It is a comprehensive investigative, enforcement and interdiction strategy, incorporating our expertise, regulatory authority and investigative resources to attack the problem domestically and internationally. It includes special agents and IOIs dedicated to the issue, as well as outreach efforts with the firearms industry and other law enforcement agencies to reinforce the importance of identifying and reporting suspected illegal purchases and other sources of firearms intended for Mexico.

Through bilateral forums, such as the annual Senior Law Enforcement Plenary sessions with Mexico, ATF and the Mexican government jointly develop operational strategies and policies to minimize the firearms-related violence afflicting communities on both sides of the border. ATF's Mexico City Office has developed working partnerships with Mexican law enforcement counterparts, and in FY 2008, is providing training and other assets, such as ATF's eTrace system, to help the Mexican government effectively counteract the firearms-related violence caused by drug traffickers. Currently, ATF has a request pending before Congress for an additional $4.5 million to develop Spanish eTrace and deploy it to Mexico. Specifically, the deployment of eTrace in Mexico is being expanded to the nine U.S. Consulates and 31 Mexican States. We also are increasing our presence with additional special agents stationed in border cities in Mexico such as Monterrey.

On January 31st, Attorney General Michael B. Mukasey announced the Administration's Southwest Border Initiative, a comprehensive, Department-wide plan to combat the flow of illegal immigration, drugs, crime proceeds and firearms across the Southwestern Border of the United States. New funding for the initiative is included in the Department's FY 2009 budget request. The $948,000 and 12 IOIs ATF is requesting as part of this initiative will assist in the implementation of a focused inspection program

to identify suspicious purchasers, traffickers and non-compliant licensees that may be sources of illegally trafficked firearms used by violent criminals.

Specifically, the additional IOIs will work to identify and prioritize for inspection those FFLs with a history of noncompliance that represents a risk to public safety. Moreover, utilizing ATF trace data analyses, they will prioritize for inspection those FFLs with numerous unsuccessful traces and a large volume of firearms recoveries in the targeted high-crime areas. This focused inspection effort will assist in the identification and investigation of straw purchasers and the traffickers who employ them. In addition, the IOIs will work to improve relations with firearms industry members, enhance voluntary compliance, and promote licensees' assistance in preventing firearms diversion by conducting training and outreach activities with FFLs in the targeted areas.

I also would like to note that, as part of Project Gunrunner, ATF plans to add additional special agents, IOIs and analyst positions from our base resources. Specifically, we will be assigning to the region 35 newly-hired special agents and reassigning 15 IOIs and a number of senior special agents. We also will add four intelligence research specialists (IRSs) and two investigative assistants to the El Paso Intelligence Center (EPIC) to support the initiative, along with one additional IRS for each of the four border field divisions. These research specialists and investigative assistants will enhance the 12 requested IOIs' and the 15 reassigned IOIs' ability to conduct firearms industry inspections and assist agents with criminal investigations.

CLOSING

Chairman Mollohan, Congressman Frelinghuysen, distinguished Members of the Subcommittee, on behalf of the men and women of ATF, I again thank you and your staff 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 2009, including the increase for operations along the Southwest Border, is an important investment in this cause. We look forward to working with you in pursuit of our shared goals.

ATF FY 09 BUDGET SHORTFALL

Mr. MOLLOHAN. Well, that is a sobering presentation. Did you make that case up through the agency and the Department and to OMB?

Mr. SULLIVAN. In terms of 2008 I thought we made a pretty compelling case for the figure that was proposed by the administration and supported by both the House and the Senate. And I actually served in the Massachusetts legislature, so I felt reasonably confident of the number that would come out of a conference committee, believing that the range was somewhere between the low number and the high number. We felt pretty confident that we were going to do all the things that we originally planned for 2008. And when the final number came out of conference committee, it was $37 million short of our anticipation.

So in terms of the impact of the $37 million, there was really no need to talk about those sobering comments as we anticipated our budget was being supported——

Mr. MOLLOHAN. Well, except that to restore that funding and those services in 2009, and then provide for sustainment of that into 2009 and beyond.

Mr. SULLIVAN. Well, obviously there are the internal deliberations with regard to the budget process. And they ask for the components being looked at in terms of both level service as well as expansion opportunities in light of the significant challenges that we are all facing. We are pleased to get $16 million of the $37 million restored to our base budget. As I understood it, when the $37 million was cut out of the 2008 appropriations then the services would be expected to be cut by a corresponding amount. Otherwise, you would have a significant structural deficit. So the plan obviously for 2008 is to spend $37 million less than we anticipated.

Mr. MOLLOHAN. And your request for 2009 carries that forward.

Mr. SULLIVAN. Well, it does because the base number, obviously, is adjusted going forward as I understand it.

Mr. MOLLOHAN. Yes, based on that.

Mr. SULLIVAN. Right.

Mr. MOLLOHAN. In other words, your 2009 request does not ask for a replacement of those funds and those services in order to build on that as a base into 2009. So I guess the question is, do you believe this is a sustainable budget for ATF going forward?

Mr. SULLIVAN. Well, it is over $1 billion. With this year's budget just over $1 billion plus. We will manage to those budget numbers. But I suspect it is like every single component that comes before this Committee. With more funding we would be able to do more things. With less funding we are going to have to do fewer things. You know, identify in some general terms, the areas that we have to cut back on in 2008 because of the $37 million shortfall that we were not anticipating. But you obviously have infrastructure, probably the last thing that you would address in tough budget times, that you delay with the hope at some point in time there might be some funding to address it. So you make the adjustments in terms of your spending plan based on the areas where it is going to hurt the least in the short term.

Now, maybe in the long term it is going to cost us a little bit more money at some point to get caught up. But we will have a budget number and hopefully the Committee would support the President's request. We would have a budget number that would allow us to restore some of those items we talked about in terms of cuts in 2008, with that $16 million increase the level of services in 2009 from 2008.

Mr. MOLLOHAN. Okay. Did you argue for more money to restore some of those services by increasing your 2009 request to accommodate the 2008 cuts and provide for that as a base into next year's funding and beyond?

Mr. SULLIVAN. I am confident that we had put together a proposal that was significantly more than what ultimately came out of OMB. There were a lot of items that we put as areas that we felt should be a priority from a planning perspective. We also understand and appreciate that the pie is a fixed-size pie, and it is a matter of trying to determine competing priorities.

Mr. MOLLOHAN. Which pie is fixed?

Mr. SULLIVAN. Well, the whole pie in terms of the whole appropriations for the Department of Justice. And I am looking specifically at the Justice pie. I will tell you, we have got great support from the administration. We have got great support from the Department.

Mr. MOLLOHAN. You think this is great support?

Mr. SULLIVAN. Well, considering where we are at——

Mr. MOLLOHAN. Great. What would be tremendous support? Would tremendous be more than great?

Mr. SULLIVAN. Well——

Mr. MOLLOHAN. If you get supported any more like this, you are not going to exist.

Mr. SULLIVAN. Well, the increase from 2008 to 2009 is larger than the increase to sustain level services from 2008 to 2009. So I believe that that is certainly a step in the right direction. You know, if we had the $37 million in our base budget for 2008, we would be in better shape in 2009. No question about it.

Mr. MOLLOHAN. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Mr. Chairman. So OMB did give you a little more money, though? They did give you $16 million more. So there is a little bit of a, not much, of a cushion? But OMB gave you about half of that $37 million back, just so we get that clear for the record. But tell me, the canceling of classes, you have a class, how many people would be in a class for the investigators? How many would be agents? And when is the last time you have canceled classes? I assume every year, between you and DEA and FBI, you need to have a class, I mean——

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN. Is this the first time that there have been classes canceled?

Mr. SULLIVAN. I believe that there were classes canceled back in fiscal year 2006 because of some of the budget challenges ATF was facing.

Mr. FRELINGHUYSEN. How many people in these classes?

Mr. SULLIVAN. Twenty-four.

Mr. FRELINGHUYSEN. Twenty-four agents? And——

Mr. SULLIVAN. Twenty-four investigators.

Mr. FRELINGHUYSEN [continuing]. Twenty-four investigators?

Mr. SULLIVAN. Our class size, standard class size, is twenty-four.

Mr. FRELINGHUYSEN. I could not really figure out the transfers issue. That was a little bit convoluted.

Mr. SULLIVAN. I am sorry about that.

Mr. FRELINGHUYSEN. How does that work?

Mr. SULLIVAN. The cost of——

Mr. FRELINGHUYSEN. The ability, is that the ability to move people around?

Mr. SULLIVAN. Yes. Yes, because it——

Mr. FRELINGHUYSEN. Could you explain that a little bit?

Mr. SULLIVAN. I would be pleased to do so. Agents coming into, I think, all federal law enforcement agencies sign a mobility agreement. ATF, probably compared with most of our counterpart federal law enforcement agencies, does not relocate agents that frequently.

But we think from an operational perspective, we have to move about a hundred agents or supervisors or managers a year. It is because of the needs of the individuals and the needs of the organization. The cost of moving people is very expensive. Because of the changes in our budget appropriation in 2008, we had to significantly reduce the number from somewhere; our goal was 140. We are going to be under 100 this year. We are going to reduce those moves by about forty. So for example, if you have an opening in a part of the country that can only be filled with an agent, that opening may stay open. I'm not talking about a brand new agent, but talking about transferring an agent because we just do not have the funds to do it, or a supervisory position.

Mr. FRELINGHUYSEN. So the transfer would be to add somebody with more experience? Or it would be just a transfer in order to fulfill the need in that part of the country?

Mr. SULLIVAN. It could be because somebody was brought into headquarters in a significant position, and it has a domino effect in terms of trying to backfill for her replacement. And then from there, you know, his replacement.

Mr. FRELINGHUYSEN. You say there will be cuts to the Violent Crime Impact Teams. How many teams do we have and are the two losses in teams that would have been set up? Or are those existing teams?

Mr. SULLIVAN. We have right now thirty. We have our thirty-first planned, I think, for Memphis, Tennessee. Our plan was to have at least two additional ones rolled out in 2008 beyond the thirty-one that we will have in place this fiscal year. We have no funding to do it so two teams that had been planned, we are not going to be able to execute at this time.

Mr. FRELINGHUYSEN. Obviously needed. A little more information on the Arson and Post-Blast Training. That is integral with the ATF Trained Canine. I mean, that is a pretty devastating cut, 30 percent?

Mr. SULLIVAN. On the——

Mr. FRELINGHUYSEN. And this is the whole issue of your partnering with local sheriffs, county prosecutors——

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN [continuing]. Local police departments, state police, your fellow federal agents?

Mr. SULLIVAN. Yes. All of the above. ATF, at least within the Department of Justice, is the Department of Justice law enforcement agency that trains explosive detection canines for all the Department of Justice components, including the FBI, Marshals, DEA. Because of the expertise we have developed in the area of canine training, and because of the demand in a post–9/11 environment to do explosive detection work, the state and local partners have a real interest in acquiring explosive detection canines. Because they are internationally recognized, and the ATF-trained canines do such a proficient job, they are in demand. Our ability to meet that demand, obviously, has——

Mr. FRELINGHUYSEN. Has been severely——

Mr. SULLIVAN [continuing]. Declined by 35 percent.

Mr. FRELINGHUYSEN. Well, that is pretty huge.

Mr. SULLIVAN. Substantial.

Mr. FRELINGHUYSEN. Even within the freezes and reductions that you have had to make, you are increasing resources, and I assume that is as a result of congressional direction, on our southwest border. I guess it is fair to say as you increase that, there is a war going on there, and you are major participants on our side.

Mr. SULLIVAN. Right.

Mr. FRELINGHUYSEN. You know, I assume there are going to be corresponding reductions around the country?

Mr. SULLIVAN. Yes. I mean, there are going to have to be other position vacancies in other parts of the country left unfilled for a longer period of time. We have asked for volunteers within ATF, because of the fact that we do not have money available to transfer some folks. And I am proud to say twelve people volunteered to be permanently transferred to the border to try to help stem weapons being illegally trafficked into Mexico and the violence along the border.

PROJECT GUNRUNNER

Mr. FRELINGHUYSEN. Can you give us some statistics on Project Gunrunner? Obviously, drugs are being sent north. There are a lot of guns and money trafficked back and forth into Mexico. I have seen it reported that 90 percent of the 12,000 crime guns confiscated in Mexico over the last three years were traced to the United States. Are those numbers accurate? Where have you found these guns coming from?

Mr. SULLIVAN. The number of guns is accurate, but likely understated in terms of the percentage of crime guns recovered in Mexico being sourced out of the United States. I would say at a minimum it is 90 percent and in fact might be even higher than 90 percent. The weapons that are recovered in Mexico as crime guns can be traced to every single state, but predominantly are from Texas, Southern California, and Arizona. Those are the three principal source states for crime guns in Mexico.

Now interestingly, you know, the more focus we put on the border and on those source states, and based on our relationships with the licensed dealers and pawn brokers on the border identifying weapons of choice, trace requests are now finding the source being

further and further north. So these organizations that are principally drug trafficking organizations operating out of Mexico sending their drugs north are looking to send their cases and their weapons south, knowing that there is a great focus on the border in terms of the weapons trafficking piece. So they are using people to essentially acquire weapons further and further north hoping that they are going to stay under the radar screen. And that is where weapons trafficking groups become critically important, to link up the source and the demand.

Mr. FRELINGHUYSEN. And life is complicated even more by the lack of funding for the center that looks at this tracing data.

Mr. SULLIVAN. We are actually investing our resources, or prioritizing our resources, on the border. There is no question about it. We think that that is really one of the hot spots, and we have several hot spots, but that is clearly one of them. And even in spite of the $37 million shortfall, from our perspective in terms of our planned operating budget for 2008, we continue to add more resources on the border. It is obviously at the expense of something else because our resources are not unlimited. But at the Intelligence Center at El Paso, we have actually staffed up additional analysts to help assist in the analytical work between what is being recovered in Mexico and what we have for investigative leads in the United States and in farming those leads out.

Now the concern you have in terms of limited resources is making sure that those leads are followed up in a timely fashion. Fortunately, we have a great relationship with our counterparts in Mexico. They have been extremely helpful in terms of——

Mr. FRELINGHUYSEN. It is a lot better than it used to be.

Mr. SULLIVAN. Absolutely.

Mr. FRELINGHUYSEN. Everything we have read and——

Mr. SULLIVAN. They are committed.

Mr. FRELINGHUYSEN. Yes.

Mr. SULLIVAN. They have come to appreciate the value of tracing the recovered crime guns. So we are getting great intel from our counterparts in Mexico, and we are getting great support with our state and local partners and our federal law enforcement partners on the border as well.

Mr. FRELINGHUYSEN. Just satisfy my curiosity, I know the Chairman wants to get back in here, are you using technology? That was unheard of five years ago to expedite your investigations and your analysis of this huge national problem. Particularly, what is coming across the border that is now coming in greater quantities than ever?

Mr. SULLIVAN. We are using all the technology tools that are legally available to ATF to use to enhance our investigations. We are doing a much better job on the analytical side as well. On the tracing side we have gotten much more sophisticated in terms of being able to do that analytical work to really hone in on some of the areas that can be most troublesome. We are able to identify the weapons of choice, which is very helpful as we go out and meet with our licensed dealers and pawn brokers so that they can be helpful in terms of trying to stem the flow of weapons into Mexico and the crime that has erupted along the border. So, but we are

also using good old shoe leather as well and getting out there and essentially acquiring——

Mr. FRELINGHUYSEN. That is why you need people.

Mr. SULLIVAN [continuing]. People.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

DOJ SOUTHWEST BORDER INITIATIVE

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen. The Department of Justice has requested $100 million for the Southwest Border Initiative, Department-wide, and your enhancement is $1 million. Is that for the southwest border?

Mr. SULLIVAN. It is. It is actually $948,000 and twelve positions.

Mr. MOLLOHAN. Your responsibility in all of that is to look at the gun running or illegal gun trafficking. Is that correct?

Mr. SULLIVAN. Well, it is violent crime and obviously we do that by looking at what is going on on the weapons trafficking piece between the United States and Mexico. Obviously, trafficking those weapons into Mexico is a crime.

Mr. MOLLOHAN. Describe your responsibility——

Mr. SULLIVAN. I am sorry?

Mr. MOLLOHAN. I am sorry to interrupt you. Describe ATF's responsibility in the Southwest Border Initiative.

Mr. SULLIVAN. I think it is to address violent crime, what is contributing to violent crime, along the U.S. southwest border and recognizing Mexico as an important friend and ally. And if we are contributing to violent crime problems in Mexico, to see what we can do to assist them in addressing the violent crime problems. Now, what is contributing to that, obviously, is the weapons trafficking piece. And so it would appear that our biggest role is looking at what and who are responsible for trafficking weapons between the United States and Mexico. And the violence, as you know, is on both sides of the border. It is not just violent in Mexico, which is a significant enough problem. But it is also violence on our side of the border as well. So it is violent crime that is being triggered because of the weapons trafficking piece.

Mr. MOLLOHAN. So I am hearing that fulfilling your responsibilities pursuant to the Southwest Border Initiative is going to cost you in excess of $1 million, which is your piece of the $100 million initiative?

Mr. SULLIVAN. Absolutely. And I think——

Mr. MOLLOHAN. That implies that you are going to be taking resources from other areas in the ATF to meet that responsibility. In other words, you are going to have the responsibility——

Mr. SULLIVAN. Right.

Mr. MOLLOHAN [continuing]. Of the initiative.

Mr. SULLIVAN. Right.

Mr. MOLLOHAN. The initiative is going to create additional activity for you on the southwest border in excess of the $1 million that you are requesting for this enhancement, correct?

Mr. SULLIVAN. Oh, no question about it.

Mr. MOLLOHAN. So where are those resources going to come from within ATF? What is going to suffer elsewhere in the fulfillment of your overall responsibilities?

Mr. SULLIVAN. Well, as the head of ATF I think it is incumbent upon me, with the advice and input of my senior leadership team as well as the men and women throughout ATF, to establish the priorities in terms of how we are going to invest $1 billion of taxpayer money into supporting our mission. The southwest border is clearly a hot spot. It is incumbent upon us to make sure that we are giving as many resources as we can to address that problem. And I look at ATF as being the lead federal law enforcement agency to try to address that problem. And we are not doing it alone. We are getting some great support from DEA, FBI, ICE, state and local partners.

The $1 million, the $948,000 and the twelve positions, is a program enhancement. We certainly welcome that additional funding and those additional positions. But I think I estimated that it is costing us, I think, at least $10 million a year more addressing the southwest border. So where does that come from? It comes from considering the other things we are doing as a lower priority compared to the southwest border. It comes from having to cancel a class of investigators. It comes from having to cancel a class of agents. It delays some investments in the infrastructure. It delays some of the investment I would be doing in the NIBIN Program, for example, in the ballistics imaging. I mean, there is a tradeoff, obviously. I could do less on the border and do more someplace else. But I have determined, and I think it is a good decision, that the southwest border needs, you know, significant attention on the part of ATF. And we have gotten great support from folks within ATF that recognize that the border really is the hot spot.

Mr. MOLLOHAN. Okay. What I am trying to get at is, for your 2009 budget request, you are requesting $1 million in additional funds for the Southwest Border Initiative.

Mr. SULLIVAN. Yes.

Mr. MOLLOHAN. But your activities are going to be considerably in excess of that. And are you telling us about $10 million?

Mr. SULLIVAN. I think approximately $10 million. But I would be happy to try to get you a better number, Mr. Chairman. I will say this. In addition to all the resources we had on the border in fiscal year 2007, I am adding thirty-five additional agents on the border in fiscal year 2008. No additional funding to do that. I am adding fifteen additional investigators on the border in 2008. No additional funding to do that. So at a minimum, when I look at 2007 versus 2008, I am adding fifty additional agents and investigators and I think about six additional intelligence analysts. A few to be assigned to the El Paso Intelligence Center and one each for the field divisions that are located on the southwest border.

Mr. MOLLOHAN. I wish I had asked it like that.

Mr. SULLIVAN. I am sorry.

Mr. MOLLOHAN. No, no. I am sorry. I appreciate your being forthcoming, and that is what I was trying to get at. So will you do that same analysis for 2008 versus 2009? How many more agents and how many more investigators you are adding in 2009 in response——

Mr. SULLIVAN. Sure.

Mr. MOLLOHAN [continuing]. To the need, whether it is the Southwest Border Initiative or not?

Mr. SULLIVAN. Yes, I would be happy to do that. I do not have those numbers at the top of my head and at this point in time I am not sure that there is a plan to have that type of incremental increase on the border planned for in fiscal year 2009 beyond the thirty-five, fifteen, and then the additional twelve positions that have been offered up.

Mr. MOLLOHAN. Okay. So——

Mr. SULLIVAN. I would be happy to take a look at it to see whether or not a plan essentially has, in light of this budget and the other priorities, additional resources. But I can get back to you on that question.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. MOLLOHAN. Okay. So part of the ramp-up for the Southwest Border Initiative has already either taken place or is in the planning process for 2008?

Mr. SULLIVAN. It is in process——

Mr. MOLLOHAN. So you have already accommodated or plan to accommodate those budgetary impacts on other areas of your agency?

Mr. SULLIVAN. That is correct. Now, some of that obviously does not happen on the first day of 2008.

Mr. MOLLOHAN. Yes.

Mr. SULLIVAN. So some of those costs would be less than a twelve-month cost in 2008 but would be a twelve-month cost in 2009. So there will be some further impact in the 2009 budget, to have all of those additional resources on the border in a full fiscal year in 2009 where we may not have had them on the border, actually on board, for the full fiscal year in 2008.

Mr. MOLLOHAN. Mr. Culberson? I will just bet he has some questions about the southwest border.

OPERATION STREAMLINE

Mr. CULBERSON. Thank you, Mr. Chairman. I really appreciate what you do, Director Sullivan, and all of the officers that work with you. And the Chairman and Mr. Frelinghuysen are right. This is an area of particular concern to my constituents and me. The lawlessness down there, you know, is rampant. The problems are legion, and your role is a very vital part of bringing stability to it. And I will do everything I can working with the Chairman and the members to make sure that we get you the funding you need to play that role. And it is, I know the million dollars, $948,000 and the twelve additional officers, that you are asking for is a good start. But it is kind of like one little brick in the wall.

I am particularly concerned about a problem I discovered in a personal visit to the Tucson sector in early February as a part of an effort that we started in Texas. It is working very well, Operation Streamline, which is an enforcing effort, to enforce existing law with existing personnel, existing resources. The Border Patrol has been able to intercept and, with the help of the U.S. Attorney in those sectors, prosecute essentially 100 percent of everybody

that they arrest. And the result has been a 76 percent drop in the crime rate in the Del Rio sector. The arrest rate in Del Rio is at the lowest level they have seen since they started keeping statistics in 1973. It is a remarkable program and the Hispanic community on the border there, 96 percent Hispanic, overwhelmingly supports it because the streets are safe.

Now I know that you all have a role in that. I mean, as a piece of the puzzle. It is a team effort not only with the border patrol but the U.S. Marshals Service, the local sheriffs, God bless them, the judges, the prosecutors. It is a team effort and you are a key part of that.

The problem that I encounter that I wanted to ask you about is the U.S. Attorney in the Tucson sector, I discovered, is systematically refusing to prosecute cases that are brought to her by the border patrol. In fact, of those arrests made by the border patrol in the Tucson sector, our U.S. Attorney has a policy that if you are caught carrying less than 500 pounds—better way to say it. If you are caught carrying less than a quarter ton of dope in the Tucson sector by the border patrol, the U.S. Attorney will not prosecute you. You are going to have an excellent chance of being home in time for dinner, in fact. They do not; all they lose is the load and a little time.

It is unbelievable. It had never occurred to me to ask whether or not they are being prosecuted. Any arrest that you officers make you assume is going to be prosecuted, whether it be a sheriff or city police or ATF. So I wanted to ask you, and obviously this may not be something you know right off the top of your head, but I would like to work with you or whoever on your staff can talk to me about the prosecution rate of when you make an arrest, or one of your officers makes an arrest, on the southwest border, what is the percentage of those arrests that are prosecuted, presented to a grand jury, or pursued, or just dropped. I mean, not even pursued by the U.S. Attorney?

It is far more than just the Tucson sector. I understand in California the prosecution rate is near zero. In Tucson the prosecution rate is .4 of 1 percent of the people arrested by the border patrol. Obviously that puts the officers' lives in danger. The criminals are laughing at us. The smugglers actually have set up permanent observation posts in southern Arizona because of the lack of enforcement in that area. So it is a real concern. Are you familiar? Is this a problem with any of your, have you picked up reports from your officers in the field on the southwest border having trouble getting U.S. Attorneys to prosecute arrests that your officers make?

Mr. SULLIVAN. No, Mr. Culberson, I have not. And I would think in terms of actual ATF arrests we would probably be pretty close to 100 percent of those cases being prosecuted.

Mr. CULBERSON. Good.

Mr. SULLIVAN. It is very rare to get a probable cause arrest. Typically it is by complaint or charged by indictment. We look at our declination prosecution rates by each of our field divisions. And nationwide they average somewhere between 90 and 95 percent with matters that are referred by ATF for federal prosecution.

Mr. CULBERSON. They use good judgment. They make an arrest, they are going to be prosecuted.

Mr. SULLIVAN. Exactly. But that is hand in glove with working with the U.S. Attorney's Office as they identify and determine what their local demands are, and working with your state and local counterparts.

Mr. CULBERSON. Right.

Mr. SULLIVAN. And even in the areas of declination, it could be because somebody has determined it does not rise to a federal interest, or it could be counts, we have multiple counts——

Mr. CULBERSON. Yeah, that is to be expected, 5 or 10 percent.

Mr. SULLIVAN. Yeah, so——

Mr. CULBERSON. But actually in Tucson, and I brought this to the attention of the Attorney General the other day, it is literally .4 percent. They release everybody. They are all gone and they just laugh at us. So——

Mr. MOLLOHAN. Will the gentleman yield?

Mr. CULBERSON. Yes, sir.

Mr. MOLLOHAN. Who released everybody?

Mr. CULBERSON. The U.S. Attorney will not prosecute. Of all the arrests made by the border patrol in Tucson, they only prosecute .4 of 1 percent. So 99.6 percent of the people arrested by the border patrol no matter what——

Mr. MOLLOHAN. These are federal arresting officers——

Mr. CULBERSON. Yes, sir.

Mr. MOLLOHAN [continuing]. And federal prosecutors?

Mr. CULBERSON. Yes, the U.S. Attorney in Arizona declines prosecution of 99.6 percent. So everybody goes free. It is unbelievable and it is wide open. And they are pouring through. And the Border Patrol officers are going crazy, Mr. Chairman, as you can imagine. And I even found a way, in fact I want to work with you Mr. Chairman and the members, I think there is a way that we perhaps with Chairman David Price's help, maybe we can help with, he is giving me a look over there. I think I found a way maybe the Border Patrol can help with this prosecution problem because they might be able to help with administrative facilities, processing facilities. It is a terrible problem. I am glad you are not experiencing it. You can imagine how those Border Patrol officers feel.

Mr. SULLIVAN. Sure.

Mr. CULBERSON. I just got a DVD today that you guys ought to see of the smugglers coming across the border in Tucson like army ants. They actually look like those leaf cutter ants. They are all lined up, hundreds of them, coming over and none of them were arrested.

Mr. MOLLOHAN. A DVD?

Mr. CULBERSON. It is a DVD that was taken by an unmanned aerial vehicle. And the officers are actually making arrests. There were 1,000 pounds of dope picked up by the unmanned aerial vehicle, tracked it all the way in from Mexico, the U.S. Attorney declined prosecution. It is an incredible situation that I am looking forward to working with you, Mr. Chairman, Chairman Price, there is I think a win-win solution to this.

Mr. MOLLOHAN. Will the gentleman yield again?

Mr. CULBERSON. Yes, sir.

Mr. MOLLOHAN. Are any of those arrests turned over to state and local authorities for prosecution?

Mr. CULBERSON. A small percentage are turned over. The local county jails are just full to the brim. They do not have any capacity to handle them. But everyone who is arrested carrying less than 500 pounds, they are released. They are just turned loose.

Mr. MOLLOHAN. Less than 500 pounds of what?

Mr. CULBERSON. Marijuana. If they are picked up with less than a quarter ton of dope they are turned loose. The evidence room is full of loads that are 499 pounds or less. It took the smugglers about forty-eight hours to figure out the procedure. And it is a bad problem. You are right, the southwest border is key and you all are a key part of it.

Mr. SULLIVAN. Thank you.

Mr. CULBERSON. And I look forward to helping you, sir. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Culberson. We have on the Subcommittee a person who has jurisdiction over some of that. Mr. Price.

Mr. PRICE. Thank you, Mr. Chairman. And I would agree with Mr. Culberson that there is a great deal of overlap between the subject matter of this Committee and that of our Homeland Security Subcommittee. In fact, my line of questioning comes out of that same realization.

Mr. Director, I want to welcome you and thank you for the good work you and your agents do every day. I want to focus on your testimony regarding Project Gunrunner and the ATF's involvement in stopping the flow of illegal guns into Mexico, which is apparently the direction in which the guns flow, not the reverse for the most part. As you know, Congress is currently considering a request for the first installment of what will total $1.4 billion in assistance to Mexico to support its efforts against narco-trafficking and organized crime. For this so-called Merida Initiative to succeed it is essential that we enhance whatever efforts are needed on this side of the border to reduce demand and stop the smuggling of guns and drug precursors from the U.S. to Mexico. I realize this is not entirely your jurisdiction, but a good chunk of it may be, and that is what I want to concentrate on.

I commend you for recognizing this imperative in your testimony and for the steps ATF has already taken to bolster its presence along the southwest border. I wonder, however, whether an additional sixty-two personnel, the twelve new investigators you are requesting in the 2009 budget and the fifty reassigned personnel you mentioned, are enough to sufficiently address the flood of weapons across the border which some of your agents have called "an iron river of guns into Mexico." I would also like to learn more about your strategy for combating smugglers.

So let me ask you three interrelated questions as briefly as I can. My understanding is that a great many of the guns trafficked come from gun shows, which according to the laws of the states along the border are less regulated than other gun sales. Now I understand you cannot change state laws, and I understand that federal laws are deficient in this regard. But what is ATF doing under its present authority to monitor guns purchased at gun shows, which apparently do end up in large numbers as part of this iron river

of guns? Might you, for example, routinely station agents at these gun shows?

Secondly, in addition to the support you provide to Mexico through the eTrace system, to what extent do you have the authority to coordinate and cooperate with Mexican law enforcement agencies in cross border investigations of gun trafficking networks? If this authority does not exist, should you seek such authority? If it does exist, to what extent is it working?

And finally, regarding the so-called Tiahrt Rider, which as you know has been added to appropriations bills each year, to what extent are you prohibited from sharing gun trace data relating to cross border gun trafficking with state and local authorities, with public watchdog groups, or with other federal agencies? What measures are you taking within the confines of existing regulations to ensure that state and local authorities have access to trace data that might help identify and prosecute correct gun dealers involved in trafficking these weapons? Can you share with us how many gun traces you have performed at the request of the Mexican government in the last fiscal year?

GUN SHOW ENFORCEMENT

Mr. SULLIVAN. Thank you, Mr. Price. In terms of the gun show monitoring, ATF obviously with limited resources tried to identify strategically if there was a particular gun show of concern based on intelligence, based on tracing information, based on source information. I think there were about 6,000 gun shows, if I remember correctly, last year. And we actively investigated somewhere between 2 and 3 percent of those gun shows based on intelligence information. So it was intelligence driven efforts at the gun shows. And we will continue to do that. As intelligence identifies the source of the guns coming from any particular gun show, or potentially people selling at the gun show, or even licensed dealers at the gun show, we will continue to operate investigations at those targeted gun shows.

Mr. PRICE. And that is based on intelligence about gun trafficking in general? Or gun trafficking of the sort I described into Mexico?

MEXICAN GUN TRACING

Mr. SULLIVAN. Well, gun trafficking into Mexico as well as gun trafficking generally. If the gun trafficking information leads us back into a particular location, obviously that would be reason to open up an investigation and to do some additional investigative work. It could be source information as well as purchasers who are identified to find out the circumstances in which they purchased weapons, for whom, and how. And it could be, you know, as a result of other cases it opens up in a particular investigation against a gun show.

On the issue concerning eTrace, right now we have established eTrace in Mexico at, I believe, nine of the consulate offices. We also have a memorandum of agreement with the Attorney General's Office in Mexico to assist them on tracing guns. We recognize that we could be more effective within the country of Mexico in tracing guns if we had what is referred to as Spanish eTrace, eTrace in

Spanish as opposed to English. We are successful in less than 50 percent of the trace requests coming out of Mexico, and we think part of the problem is language. If we can implement Spanish eTrace, it would significantly improve our efficiency in tracing weapons that are recovered in Mexico. I think around 7,000 weapons were traced last year in Mexico. Do you mind if I turn to see if somebody has a better number? Yes, it is between 6,000 and 7,000 weapons that were traced out of Mexico.

It has taken us a while to convince our partners in Mexico of the value of tracing. You know, from their perspective if you can stop the weapons coming into Mexico then there would be no need to trace. So they are encouraging us to put more effort on the interdiction of the weapons from the United States into Mexico. And I think over the last year they have come to understand and appreciate that the information from the trace actually leads to the source, and we can then shut down some of these weapons trafficking organizations. And we know that most of them are linked to the drug trafficking organizations. So we have a dual motive. We can address both the drug trafficking and the weapons trafficking with a number of these investigations.

TIAHRT AMENDMENT

On the Tiahrt Amendment I guess that has been passed as language now, it is a permanent part. From my perspective as a former state prosecutor or serving as the United States Attorney in Massachusetts, it is important to have those types of restrictions in place that treat the tracing information as law enforcement sensitive information. So it is not subject to public information type of requests. There is nothing that limits my ability to share information that we have within ATF with our law enforcement partners. The language that was added in I think the last budget appropriation makes it clear we can share this information with our foreign law enforcement partners as well, like Mexico. And we think it that was important to make that clear so that there be no misunderstanding in terms of our ability to share this information with a foreign government, like Mexico or Colombia or Canada, where we are doing a lot of work on weapons tracing.

So what do we do? We essentially promote the availability of this information. We trace about 250,000 crime guns a year in the United States. A lot of those have been requested by local law enforcement. In addition to just the information concerning that individual gun trace request in terms of who purchased it, from what FFL, we can what we refer to as aggregate analytical reporting information for a jurisdiction. For a municipality for a region for example, for a sheriff's department that has regional responsibilities, and statewide. Like within the State of New Jersey for the fusion center, they are able to essentially get statewide information concerning weapons that are recovered in New Jersey that are considered crime guns. We can complete the analytical analysis. And then it provides them, I think, some substantial leads to do state investigations. It certainly provides us some substantial leads to do federal investigations. So from my perspective there is no limitation with regard to the language. And the language, I think, was

improved to make it clearer that we can share this information with foreign law enforcement agencies.

Mr. PRICE. Mr. Chairman, I expect my time has expired. I will have a couple of additional questions for the record, but I thank the Director for his response.

Mr. SULLIVAN. Thank you.

Mr. MOLLOHAN. If I might follow up on your testimony with regard to Tiahrt, and then respond to Mr. Price's question. You said something in words to the effect that treats information, and I guess that is trace data information, as law enforcement sensitive without restricting its ability to be shared in appropriate law enforcement cases domestically or with foreign law enforcement. Is that correct?

Mr. SULLIVAN. Yes. That is my understanding. And that is the way that we have been interpreting the Tiahrt Amendment and that is the way we have been sharing information with law enforcement partners.

Mr. MOLLOHAN. So it is your testimony that you support the Tiahrt language that was included as a rider on our Appropriation Bill for 2008?

Mr. SULLIVAN. Yes, absolutely.

Mr. MOLLOHAN. Mr. Ruppersberger.

Mr. RUPPERSBERGER. I am sorry I was late. I have a lot of hearings. First, I do want to say that I think that federal law enforcement both ATF and DEA, do a tremendous job with the resources that we have. I mean, the testimony that I did miss that was given stated that you are doing a lot with a little, and you are doing a great job.

Mr. SULLIVAN. Thank you.

Mr. RUPPERSBERGER. I was a former prosecutor also and I tell you, you give me either an ATF or a DEA agent, or a city street cop, they can really do the job. So I know you are doing a lot with less.

I wanted to discuss a couple of things. First thing, I also wanted to congratulate you on the investigation, I think using a Strike Force concept, you worked with state and local law enforcement in Baltimore on the Bloods gang. It was very successful. And so I think you asked somebody from my staff, who is behind me, to observe the operation with other staff, and I think that is good. Because we as Members cannot be everywhere, but our staff does a lot of good work, and it is good for their morale and for them to see, and they are working with you. So congratulations on that.

Mr. SULLIVAN. Thank you.

WEAPONS OF MASS DESTRUCTION AND TERRORISM

Mr. RUPPERSBERGER. Now all we have to do is make sure the prosecutors get the convictions, and we will go on with that.

From an intelligence point of view, and you mentioned this a little bit, how much do you work with Department of Energy or maybe FBI on weapons of mass destruction? Are you focused at all in that area? Are they talking to you? Where are you with respect to those issues?

Mr. SULLIVAN. I am not sure I am prepared to answer that question in terms of the Department of Energy.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. RUPPERSBERGER. Well, one of our biggest threats, especially terrorist threats throughout the world are weapons of mass destruction, nuclear bombs being made, smart bombs, that type of thing. And, you know, we are trying to get intelligence throughout the world before they leave a port of embarkation. But you also know, unfortunately we have the drug cartels combining now with the terrorist groups, especially coming from Mexico and places like that. Are you working at all in that arena? I do not know. That is why I am asking you.

Mr. SULLIVAN. Well, to the extent that we——

Mr. RUPPERSBERGER. You do not have to answer. If you do not know the answer tell me.

Mr. SULLIVAN. Well, I do know that we participate in the Joint Terrorism Task Forces. That, most of the FBI, you know, field division offices——

Mr. RUPPERSBERGER. By the way, let me stop you and I do want you to answer the question. I believe the Joint Terrorism Task Force is probably one of the best mechanisms we have right now to fight terrorism, because you have federal, state, and local all working together. Do you have an opinion on that?

Mr. SULLIVAN. Oh, I agree with you. I think it has opened up the avenues of communication between the state and locals and the federal law enforcement agencies, in particular, the FBI. And prior to the expansion of the Joint Terrorism Task Forces, I think state and locals always saw the flow of information one way and never knew whether or not some of this information that was flowing was actually being exploited. Now they are sitting at the table and they can see exactly what is happening with that information. As is happening through fusion centers that are being set up throughout the country, typically state by state. So we have agents that are assigned to the Joint Terrorism Task Force.

We have a significant investment in the TEDAC Program, which is a joint FBI/ATF effort to take a look at explosive devices. Most that are coming out of the theaters of Iraq and Afghanistan are IED type components as opposed to what you describe as weapons of mass destruction.

I would say clearly if in the course of our investigation of weapons trafficking, if in the course of the investigation of a drug trafficking case connected to weapons, we uncovered any investigative or intelligence information concerning weapons of mass destruction, we would immediately engage the FBI as the lead law enforcement agency on national security and anti-terrorism efforts.

Mr. RUPPERSBERGER. Okay.

Mr. SULLIVAN. I am not sure that we are engaged beyond that but I would be happy to find out for you.

GANGS

Mr. RUPPERSBERGER. Well, let us get back to something that you do do and, I think, do it well. And that is the issue of gangs. We

know we have a serious problem on the west coast, and it is starting to develop a lot on the east coast right now. The Chairman and I worked very closely on a project last year. We were able to fund a new pilot program from Philadelphia to North Carolina to focusing on gangs such as the Crips, Bloods and MS–13.

Part of that program will be working with all those jurisdictions and using technology and software packages that will be just-in-time pictures. A lot of time there is a lot of movement in the gangs. And the ability to be able to communicate on a regular basis, between federal, state, and local law enforcers is important.

And I guess you haven't been contacted yet. But I think the FBI is going to be the coordinating lead agency. Are you aware of that program that we have just——

Mr. SULLIVAN. I can't say that off the top of my head. But obviously ATF has decades of experience dealing with gangs. You mentioned Crips, Bloods, and MS–13.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

The two most significant MS–13 investigations in this country, the ones that actually reached back to El Salvador, were both ATF-led investigations, including electronic surveillance in El Salvador.

So we have significant experience dealing with gangs. And you look at the success in the Violent Crime Impact Teams in addressing gangs in some of those hotspot communities across the country, whether they are prison gangs, whether they are regional gangs, whether they are national/international gangs.

You know I look at this as being the highest priority for ATF. I talk about ATF's highest priority being addressing violent crime. And gangs obviously significantly contribute to the violent crime challenges, especially in the urban communities around the country.

Mr. RUPPERSBERGER. Let me ask you this. What from a gang focus of what you do in specializing in gangs, what resources do you need to be able to effectively do what you need to do? And you don't have a lot now. I know that. But from a resource perspective, what do you need, wiretaps, money, more agents? Where are we with respect to gangs?

Mr. SULLIVAN. Well certainly doing things like electronic surveillance is very expensive. It is labor intensive. The investigations are longer term. I don't have the numbers in front of me. But if you look over the last several years, ATF's participation with your prosecutor counterparts has substantially increased over the last several years, looking at principally gangs using all the sophisticated tools that are available.

Gangs are becoming more and more difficult to infiltrate. We have done it historically. What we would consider to be long-term, undercover operations. And a lot of that experience was developed dealing with the outlawed motorcycle groups. And we have expanded that. We have folks that have gone undercover with MS–13. I am not sure there are a lot of other federal agencies that can say that.

So we use all the tools that are available to us. But in terms of how do we address it, we address it I think——

Mr. RUPPERSBERGER. More about what resources you might need that we could look at as an Appropriation Committee.

Mr. SULLIVAN. Well, we have 31 Violent Crime Impact Teams set up or nearly setup already. I mentioned earlier during my testimony we are going to do at least two more.

Mr. RUPPERSBERGER. Yeah. Let me ask you this, what was your funding last year for that?

Mr. SULLIVAN. I am not sure if we actually get special funding for Violent Crime Impact Teams.

Mr. RUPPERSBERGER. Well, I will ask the question another way. What is the increase from last year's violent crime to this year as far as funding is concerned?

Mr. SULLIVAN. Well we didn't get an increase in terms of——

Mr. RUPPERSBERGER. You didn't get an increase?

Mr. SULLIVAN. In terms of violent crime, we get a level service budget, 2008 to 2009.

Mr. RUPPERSBERGER. Okay.

Mr. SULLIVAN. So we didn't get an increase in terms of addressing violent crime.

Mr. RUPPERSBERGER. That is not a line item? That is not a direct line item that comes out of your general budget?

Mr. SULLIVAN. Exactly. And it costs us I think somewhere between $2.5 and $3.5 million for each Violent Crime Impact Team that we set up. So we do that out of a direct appropriation in terms of prioritizing our resources.

Mr. RUPPERSBERGER. Do you feel that is your most effective tool in fighting the gang problem?

Mr. SULLIVAN. I think it is extraordinarily successful when you look at the statistics in terms of the number of gang members that have actually been charged and prosecuted and the number of weapons that have been recovered.

Mr. RUPPERSBERGER. I would like to hear from you. You probably said this. Let me ask you this, if anybody behind you knows either, what is the increase from last year's budget to this year's budget or ATF budget?

Mr. SULLIVAN. The total increase is $16 million that reflects the less-than-level service funding we had. We had level service and we had a level budget, from 2007 to 2008, not a level service budget. So that calculated to about a $37 million shortfall in fiscal year 2008 based on a level service budget. Sixteen million dollars of that was included in the fiscal year 2009 appropriation, the total appropriation for a billion.

Mr. RUPPERSBERGER. Sir, I am not interested in the money as much as the increase. So really that money was put back in to make it whole?

Mr. SULLIVAN. Sixteen of the thirty seven million.

Mr. RUPPERSBERGER. I mean this is pretty——

Mr. SULLIVAN. Could I just mention the number of——

Mr. RUPPERSBERGER. Pretty bad.

Mr. SULLIVAN. Could I talk about the success of the Violent Crime Impact Teams? We launched them in 2004. We have actually arrested over 13,400 gang members. These are card carrying

members of gangs. Twenty-six hundred and fifty of them are what we refer to as the worst of the worst of these gang members. We recovered over 16,400 firearms. And that was done by a small number of Violent Crime Impact Teams.

We have grown them from 2004 to 2008 up to 30. But the first time out I think we had six or eight cities that we considered for Violent Crime Impact Teams. We are not up to 31. These numbers I think are extraordinary considering the small presence.

Mr. RUPPERSBERGER. The bang for the buck, is that what you are trying to tell us?

Mr. SULLIVAN. The return on investment I think is substantial in terms of the——

Mr. RUPPERSBERGER. It is substantial. It is just incredible what your budget is. You know, there is nothing we can do at this point. You have the President's budget. It is about priorities. But, you know, you have to take care of home base.

And to not be able to expand when we have—drugs clearly in my opinion are the worst problem we have in the world as far as the impacts on people and crime. Terrorism is difficult. We have to deal with it. But it seems that all the money is being taken away from the enforcement of drugs and gangs. And most of the gangs are doing drugs. And that is part of where they are.

But, you know, we have to deal with what we have to deal with. It is just from our perspective, if there was an increase in your budget, would you put—where would your priority be? Would it be in the gang task forces or the violent crime task forces we were talking about?

Mr. SULLIVAN. Yeah. We——

Mr. RUPPERSBERGER. That would be your number one?

Mr. SULLIVAN. Well, we would clearly expand the Violent Crime Impact Teams beyond what we have presently in place, because that is a very successful model to address violent crime.

And as I travel the country, what I hear from, local chiefs and our counterparts in law enforcement is, that model is very successful.

Mr. RUPPERSBERGER. What is that?

Mr. SULLIVAN. Law——

Mr. RUPPERSBERGER. I am teasing you. You flew out of Boston, right?

Mr. SULLIVAN. How could you tell? The southwest border obviously could do with more resources. We would put more resources on the southwest border also.

Mr. RUPPERSBERGER. All right. Well it is—I think from where I am sitting, I mean, I think you have done a great job with the resources——

Mr. SULLIVAN. Thank you.

Mr. RUPPERSBERGER [continuing]. That you have. You are getting good results. Your numbers are there. I just hope that hopefully maybe we can reevaluate where your budget is, where ATF's—I mean where DEA's budget is, because of the results you are getting with not a lot, which really shows good leadership at the top and the people working for ATF are doing a great job. Thank you.

Mr. SULLIVAN. Thank you.

Mr. RUPPERSBERGER. That was a kiss up.

Mr. SULLIVAN. Thank you.

Mr. MOLLOHAN. Mr. Frelinghuysen.

GUN DEALERS ALONG THE BORDER

Mr. FRELINGHUYSEN. I just wanted to get a few figures here. How many licensed U.S. gun dealers are there in the southwest border region?

Mr. SULLIVAN. I think around 7,000 licensed dealers.

Mr. FRELINGHUYSEN. And I think related, the ATF conducts firearm seminars with a lot of the federal firearm licensees. I understand on an annual basis or at least in fiscal year 2007, about 3,700 industry members attended the outreach events.

How many in that neck of the woods participate in those seminars? I am not sure there is a correlation. But I just wondered. Obviously, these federal licensees need to be protective of their licenses. They need to do whatever they need to——

Mr. SULLIVAN. Right.

Mr. FRELINGHUYSEN [continuing]. Keep your full confidence so they can be gainfully employed. How would you take a look at those along the border that are U.S. gun dealers?

Mr. SULLIVAN. We made a concerted effort over the last year. We have a plan to inspect all the licensed dealers on the border within three years.

Mr. SULLIVAN. Exactly. It is——

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN. So we are making some progress.

Mr. SULLIVAN. We ended up inspecting a third of those 7,000 last year. The plan is another third this year and another third the following year. The reception we are getting from the licensed dealers on the border has been extremely positive. They are likewise concerned about somehow being used in the weapons trafficking problems between the United States and Mexico.

So that much I think goes a long way for them to understand and appreciate some of the problems and challenges we face on the border.

Mr. FRELINGHUYSEN. Included in the Project Gunrunner is a presence of ATF personnel in diplomatic posts in Mexico. You have four in Mexico City.

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN. Two in Monterrey. Any others? We have consulates, don't we?

Mr. SULLIVAN. I think that is it at this point. The two in Monterrey are actually new. That was something we did in, I believe, late 2007, early 2008. We did that obviously out of our direct appropriations.

And you can imagine it is very expensive to put folks in a foreign country. But we thought it was the best way to continually develop our relationships with our counterparts in Mexico.

Mr. FRELINGHUYSEN. You are providing Mexican officials with—as we have discussed, accessed your eTrace weapons——

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN [continuing]. Tracing data. Is that information currently available to our consulates as well?

Mr. SULLIVAN. Yes. Nine of the consulate offices are equipped for e-Tracing.

Mr. FRELINGHUYSEN. And is that information of value to any other of your ATF operations around the world, or is this just sort of southwest border concentrated?

Mr. SULLIVAN. In terms of tracing?

Mr. FRELINGHUYSEN. I am sort of generally speaking about technology.

Mr. SULLIVAN. Oh, the technology is——

Mr. FRELINGHUYSEN. You own the waterfront here.

Mr. SULLIVAN. Right.

Mr. FRELINGHUYSEN. And we are hugely proud of what you do. I just wondered in the overall scheme of things. You know, you've obviously got a presence in Baghdad. And you are doing some things with IEDs.

I know you have ATF representatives doing a great job in Bogota.

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN. I just wondered whether there is any value in information flow here.

Mr. SULLIVAN. Yes. And in fact we are doing it. You know, out of Bogota, Colombia, we are doing trace requests for Central and South America. We recovered crime guns to see the source of those crime guns. We are doing it regularly in Canada as well, and also in Europe. You mentioned Baghdad. We are tracing weapons recovered in Iraq also.

So the technology and the information that flows from tracing is being used worldwide.

Mr. FRELINGHUYSEN. I was reading the *New York Times* the other day. And I saw two pages in the advertisement section where the DEA is getting all sorts of money from asset forfeiture. I mean, they listed everything, houses and cars and things that had been confiscated.

Where do you fit into the overall scheme of things? What do you get in terms of your fair share for all the work your people do when they put their shoulder to the wheel?

Mr. SULLIVAN. I think there is a formula that is generated at least at the Department of Justice level and maybe beyond in terms of a piece of the asset forfeiture. I am not sure if it is referred to as a super surplus that they push back to the agencies. And you are obviously limited in how you can utilize those funds.

You can't hire personnel for them. You can hire with them. You can hire contract services. You can use some of that money to enhance training and professional development to allow for further asset forfeiture types of claims.

We are recovering significant assets through the forfeiture provisions. Obviously with these combined weapons in drug cases where there are cash, cars, and properties, but also in the whole tobacco diversion piece where we do significant sophisticated investigations, they sometimes yield very significant asset forfeiture recoveries. They go into a general fund. And then eventually we get some of those funds back. It——

Mr. FRELINGHUYSEN. I was interested whether you are getting your fair share. And you specifically are slated to receive $4.5 mil-

lion from the assets forfeiture funds to translate your eTrace database——

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN [continuing]. Into Spanish.

Mr. SULLIVAN. Yes.

Mr. FRELINGHUYSEN. Is that in the process of being done or——

Mr. SULLIVAN. I understand it is pretty close to being done. I am not sure if at this time it is here for the Congress to authorize. I think that is part of that super surplus piece that may require Congressional approval.

It is $4.5 million. I don't think that any objections have been raised to utilize the funds to develop the Spanish eTrace. So I think it is in the final stages of approval. But I would be happy to check on that and get back to you and let you know where it is.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

ATF ACTIVITIES IN IRAQ

Mr. FRELINGHUYSEN. Moving over to Iraq, we appropriated $4 million in emergency supplemental in fiscal year 2007 to support your presence in Iraq. Can you describe what you have been able to do with those dollars?

And first of all, you have a dangerous job. Then you add in obviously being in a war zone.

Mr. SULLIVAN. Right.

Mr. FRELINGHUYSEN. How are things developed there? And I assume you are partnering with should we say all the aforementioned.

Mr. SULLIVAN. Yes. First and foremost, I am equally proud of the fact that ATF agents and others have volunteered for assignments in Iraq. And they typically rotate in for 90 days.

They bring a certain expertise, you know, principally in the area of explosive devices and post-blast investigations. We have an MOU with the Department of Defense to train military personnel before they go into that theater to assist them in conducting a post-blast investigation.

You can imagine they have a very short window of time to collect evidence in a war zone as a result of an IED. We have as much time as we want domestically. So they go in there. They try to recover the critical components.

Mr. FRELINGHUYSEN. Yes, before somebody contaminates it.

Mr. SULLIVAN. Or somebody essentially decides that they are going to execute the people who are responding to an explosive device incident. So we train up the military. We train up the Iraqi police in explosive detection and post-blast investigation. We have done some work on explosive detection, principally with canines.

We are also assisting in developing strategies to do criminal investigations with the Iraqi police in the military as well.

So we are doing all the things we are doing with our domestic partners. We are dealing with the military, the United States military.

Mr. FRELINGHUYSEN. And you are doing it in Afghanistan as well?

Mr. SULLIVAN. We are. Recently we were asked by the military to deploy resources to Afghanistan because of the great success we have had in this partnership with the military. We are also part of the group that is called LEXL, which is a group in Iraq and Afghanistan that is grabbing the explosive devices themselves, doing the forensic work there, and then sending it back here domestically to the TEPAC operation.

Mr. FRELINGHUYSEN. Been over there.

Mr. SULLIVAN.[continuing]. At Quantico.

Mr. FRELINGHUYSEN. Yes. This is where they sort of examine the——

Mr. SULLIVAN. The component parts.

Mr. FRELINGHUYSEN. And all the stuff.

Mr. SULLIVAN. Exactly.

Mr. FRELINGHUYSEN. They are pretty amazing. It is an amazing process, mind boggling.

Mr. SULLIVAN. What is amazing about it is that type of intelligence opens up significant investigative leads in terms of the types of components that are being developed, whether it's a new technology, but also importantly who might be the source of these IEDs.

So it is important in terms of what is happening in Iraq, but it translates into important information domestically as well and as part of our role in having responsibility for the United States Bomb Data Center. This information, once it is no longer considered classified, will be available for our state and local law enforcement partners through our U.S. Bomb Data Center, our Arsons, Bombing, and Explosives Data Center.

Mr. FRELINGHUYSEN. Remarkable.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen.

GRADUATED SANCTIONS

Mr. MOLLOHAN. I know that you are interested in amending the law to give you greater options with regard to your investigation and sanctioning of licensed firearms dealers. We talked about that a little bit last year.

Mr. SULLIVAN. Yes.

Mr. MOLLOHAN. Could you tell us if there are any statutory or regulatory initiatives underway to give ATF greater flexibility and a gradation of sanction with regard to violations or alleged violations committed by firearms licensees?

Mr. SULLIVAN. I am not aware of any off the top of my head. And I will see if somebody might be able to whisper in my ear that there might be something. I know it was part of a more comprehensive bill last year to allow the sanction provisions, which would include suspension or fining for infractions we thought were less than those required for outright revocation.

But I am not aware of a bill being pursued right now by the Department. If you wouldn't mind, Mr. Chairman, maybe I could just ask Mr. Ford.

Mr. MOLLOHAN. Please.

Mr. SULLIVAN. Yes, I am told that last year's crime bill has not been reintroduced. And it was included in last year's crime bill by the Department of Justice.

Mr. MOLLOHAN. Do you support having a gradation of sanctions?

Mr. SULLIVAN. Oh, absolutely. I think it would be a very useful tool. I mean presently it is all or nothing. I mean we get——

Mr. MOLLOHAN. What does that mean?

Mr. SULLIVAN. Well, I mean, the choices we have right now are to continue to allow whatever violations are occurring, or to revoke the license.

Now I will say this, that most of the FFLs, the licensed dealers, when they know that they are doing something that is outside the regulations, such as not collecting all the information that is absolutely necessary, work to be in compliance.

When I look at the breakdown of our inspections, about 40 percent of the licensed dealers that we inspect have no violations. That means that 60 percent have some level of violations. Not all 60 percent warrant revocation. And we don't revoke that 60 percent. We revoke somewhere around one to two percent of the licensed dealers that we inspect.

That means that there are about 58 or 59 percent with whom we work very hard to get them into compliance. Now you might get a licensed dealer who just continues to ignore their obligations.

So the only recourse you have as a regulatory agency is to either ignore it or to revoke. And it would be nice, if they weren't willing to essentially work with you, to at least have a tool to, say, suspend them or fine them. And maybe that would get their attention to change their behavior.

Mr. MOLLOHAN. Do you know how many firearm licensees there are across the country?

Mr. SULLIVAN. Depending on the category of license in terms of collectors and dealers, I think the total number is about 100,000. I think about 60 plus thousand are considered licensed dealers themselves.

We inspected just over 10,000 of those licensed dealers last year. That is up substantially from two years ago. Two years ago we inspected about 5,000. Last year we inspected about 10,000. I think we are being much more efficient with regard to our inspection operations. We have done it with the same number of resources we had in fiscal year 2005 as we had in fiscal year 2007.

Mr. MOLLOHAN. So that would suggest you are inspecting on a six-year cycle every firearms dealer in the country.

Mr. SULLIVAN. About. I just want to make sure I am accurate with the information. I think——

Mr. MOLLOHAN. If you are not you can——

Mr. SULLIVAN. I want to correct it if I am inaccurate. I mentioned there are 100,000 that are considered collectors and dealers combined and about 60 plus thousand that are dealers alone. I am not sure if that 60,000 reflects that total population or just the dealers themselves.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

You know, the OIG looked at our inspection process a couple of years ago and suggested that we should be inspecting dealers every three years. That that is a good business practice. You have to make sure the dealers are in compliance. We were averaging about one inspection every 11 years based on the time table, the model, and the number of inspections that we were doing two years ago.

I mentioned we were able to double. So it could be we have gone from 11 down to once every six years. So your numbers might be accurate in terms of where we are.

Mr. MOLLOHAN. Are you continuing to pursue a change in the law to allow you to have a gradation of sanctions for firearms licensees violations?

Mr. SULLIVAN. Only to the extent that we have communicated to the Department of Justice that it is an important tool. I can't sit here and tell you we advocated it strongly.

Mr. MOLLOHAN. But you do support it——

Mr. SULLIVAN. We do.

Mr. MOLLOHAN [continuing]. Personally.

Mr. SULLIVAN. Yes, I do.

Mr. MOLLOHAN. And it is a position of ATF that they would support——

Mr. SULLIVAN. Absolutely.

EXPLOSIVES RULEMAKING

Mr. MOLLOHAN. Are you having a problem promulgating rules?

Mr. SULLIVAN. Yes, a serious problem. And, I think the facts speak for themselves. It is taking us far too long to address these issues. And I believe this came up the last time we met.

At that point in time, we either had one or two writers at ATF. We have doubled those resources. We have two right now. We have two in the pipeline. We are on the verge of hiring both of those, one person refused. Long story short——

Mr. MOLLOHAN. I am sorry, one person what?

Mr. SULLIVAN. One person refused the position. So we will have three compared to I think one that we had a year ago. But the process takes far too long.

And I can't sit here and suggest that it has been a priority on the part of ATF to invest the necessary resources. There is a commitment going forward clearly to make sure that they have sufficient resources to address this in a much shorter period of time.

And my goal, absent some extraordinary circumstances, is to complete the process in terms of ATF's involvement within the matter of two years. Some of these, obviously, are less technical, have much less impact, amd could be done in a shorter period of time, but on average it would be two years. That would be a substantial improvement over where we are at presently.

Mr. MOLLOHAN. Last year when we finished our hearing with ATF, I felt confident that you were really going to address the rule making backlog issue. Why did I feel confident in that?

Mr. SULLIVAN. Because I think I expressed my own confidence in getting this done as well. And my frustration is how long it takes us to get qualified individuals recruited and hired at ATF. And it is an internal ATF challenge. I am not sure if——

Mr. MOLLOHAN. These are lawyers you are hiring, aren't they? Do they process your rule making?

Mr. SULLIVAN. I don't believe that they are all lawyers.

Mr. MOLLOHAN. See there is the problem. You need to hire lawyers.

Mr. SULLIVAN. Well, that point was actually——

Mr. MOLLOHAN. We are out there begging for jobs.

Mr. SULLIVAN. Well, that point was actually made to me in the last couple of days when we were looking at this issue that they need a lawyer as part of this process. And we are not going to go outside and hire a lawyer. We have a counsel office at ATF. And we made a commitment that we were going to take somebody from our counsel's office. And their exclusive responsibilities are going to be in the rule making part of our business. And that is all they are going to have on their plate.

So I was confident, Mr. Chairman. And I am embarrassed to tell you that we have not been successful in terms of getting this done in the last year. But there is a commitment.

Mr. MOLLOHAN. When you walked out of here did you just forget about it for 12 months?

Mr. SULLIVAN. No. We actually advertised the positions. We are going to double the size of the resources we had. People shared with me that that would essentially resolve the problems, and it didn't. I have nobody to fault by myself. I am the Director of ATF. And——

Mr. MOLLOHAN. I am not trying to do that. All I am trying to do is reaffirm a commitment to work with you to seriously get it done.

Mr. SULLIVAN. Right.

Mr. MOLLOHAN. It is my fault as well, because I didn't follow up with it and ask you how you were doing two months later. If you don't mind, I would like to follow up and ask you two months from now or two weeks from now how you are doing with it.

I want to know how we can help you or if we can specifically direct money. I think it is a really serious issue.

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Mr. SULLIVAN. Yes.

Mr. MOLLOHAN. You have got serious industries out there. I know pretty well that they want to cooperate with you and want to work with you. They just want to get the rules finalized. Once they get them finalized, they can work with them.

Mr. SULLIVAN. I would welcome the inquiry two months from now, because I think it would make it clear, if it has not already been clearly communicated, that this is a priority internally and externally as well.

Mr. MOLLOHAN. Well let us know if you need additional resources specified for this function or dedicated to it from the Committee.

But thank you for your candor. I do look forward to working with you on that.

Mr. Fattah.

NFA REGISTRATIONS

Mr. FATTAH. Thank you, Mr. Chairman. This half a million on National Firearm Act Registrations, is that up or down, you know, how would you characterize that relative to your past performance?

Mr. SULLIVAN. Excuse me for one second.

Mr. FATTAH. Yes.

Mr. SULLIVAN. I am going to have to—I apologize. I don't know whether or not that number——

Mr. FATTAH. That is fine.

Mr. SULLIVAN. We will make sure we get back with a response to that question.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

REGULATION OF POTENTIALLY EXPLOSIVE COMMODITIES

Mr. FATTAH. On the explosive detection canine teams, there has been some concern. I also serve on—the Subcommittee on Homeland—Defense. The use—of items in the past we would not have thought about being utilized for explosion, some of them are readily available at your neighborhood store.

Is that concern shared by ATF? I mean, I know you are doing what you can on the kind of normal stuff. But——

Mr. SULLIVAN. Sure. Well, I think we share a concern about readily available components that could be utilized in some type of explosive device.

Mr. FATTAH. Is there anything more that we can do through your agency in terms of that issue, or is that not easily done given the fact that these are easily purchased items?

Mr. SULLIVAN. Well I think your point is well taken. It is a difficult thing to grapple with, because these are regular commodities that are available. And how do you regulate regular commodities independent of one another?

Mr. FATTAH. Yeah.

Mr. SULLIVAN. I do know that there is a study that hopefully is going to be published and available to Congress in which we participated. It is an old study. And I am even uncomfortable raising it at this time.

Mr. FATTAH. Mm-hmm.

Mr. SULLIVAN. It really talks about the other components that are readily available and the potential impact to be utilized. But that might provide at least some direction——

Mr. FATTAH. Right.

Mr. SULLIVAN [continuing]. From ATF's perspective and some of the researchers' perspective on a range of options that are available.

FIREARMS ACOUSTIC DETECTION

Mr. FATTAH. I am from Philadelphia. But Mayor Menino in Boston has been—looking at this issue of—I think it is called Shot Stopper. But it is essentially a camera system that in some way identifies in some acoustic system—identifies where shots are fired and communicates that to police so that when there is a shot in a particular area, and a lot of different people tell the police it came from five different directions, then this technology helps the system identify exactly where when we deal with neighborhood crime where shots are being fired from and it helps direct the police.

Is that something ATF is aware of? Do you have an opinion about it? Do you think other cities should look at it? Do you have any comment now or later on the record?

Mr. SULLIVAN. I am familiar with it. And I actually had a demonstration. I can't remember exactly which city it was. It wasn't Boston.

Mr. FATTAH. Okay.

Mr. SULLIVAN. It was through our efforts in Project Safe Neighborhoods, where they actually acquired it through a vendor. I think there are several vendors that offer this type of technology. It is almost virtual, real-time identification.

It is a fairly expensive technology to utilize, especially if you are going to keep it hard wired to certain locations, it becomes very expensive. But it is a very useful tool.

In some instances you get false reports in terms of the location of the firing. In some instances, you don't get reports at all. And the shots fired technology allows law enforcement to quickly respond. And as a result of that, ballistics evidence is recovered. Witnesses are identified. And cases potentially are opened and investigated, and suspects are successfully charged.

So the technology I think has a great deal of promise. And I know ATF, at a number of locations around the country with state and local partners, has utilized that technology. And I know at least one location where through Project Safe Neighborhoods, they actually funded the acquisition of the equipment itself.

Mr. FATTAH. Thank you. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Mr. Price.

Mr. PRICE. Thank you, Mr. Chairman. Mr. Director, I would like to return to this area of cross-border trafficking and some of the possible intersections with our homeland security concerns.

SHARING AGGREGATE FIREARMS TRACING DATA

First just briefly to go back to this question of the Tiahrt Amendment and the effect it has on the sharing of gun trace data. I just want to check this impression with you.

My understanding is that this data, the use of which is law-enforcement specific as you stressed, that state and local law enforcement offices of course involved in an investigation are—have access to this data. My understanding is though that the restrictions have

had more to do with efforts to gain the bigger picture or efforts to establish patterns, trends in trafficking and in other— in other gun crimes.

So I wonder what kind of aggregate data are available and to whom. Is that where these restrictions kick in? And is that of any concern to you? I am aware, of course, that this data could be misused or could be mischaracterized.

But a kind of blanket prohibition, which is apparently what we have in place, may also shut off, for example, legitimate academic researchers or for that matter state and local law enforcement personnel who might want to be gaining this bigger picture. For example, on the pattern that we are talking about, cross border gun trafficking.

So that is the concern I think some have raised. And I wonder if you would care to reflect on it?

Mr. SULLIVAN. Sure. I think there is a clear perception out there that it is a misunderstanding of the restrictions of the Tiahrt Amendment. The points that you made in terms of how important this aggregate tracing information could be to law enforcement——

Mr. PRICE. Mm-hmm.

Mr. SULLIVAN [continuing]. Are not lost on me. I think somewhere along the line we lost the public debate about whether or not this restriction prevented law enforcement from getting access to critical information that affected public safety in communities.

Mr. PRICE. Mm-hmm.

Mr. SULLIVAN. We lost the debate, but it is not because they can't get access to the information. And it may be helpful at some point to share with the Committee the types of reports that we make available to local law enforcement.

And I will give you one example, the State of New Jersey. And I use New Jersey, because Colonel Fuentes decided he was going to set up a fusion center. And as part of his fusion center, he wanted the capacity to do each trace in the State of New Jersey. He had statewide jurisdiction. That means state police in New Jersey can conduct an investigation about any place in New Jersey.

We provide for every crime gun that is recovered in New Jersey, it is traced through the fusion center using eTrace. And he can generate as a result of his efforts, or we can generate on his behalf, a wide range of aggregate information, including the information that shows weapons being sourced from outside the State of New Jersey.

So, for example, he will know where those guns are coming from, including which FFLs were the source of those guns. Now he also understands as a law enforcement agent that that in and of itself doesn't necessarily imply that that FFL has done anything wrong.

Mr. PRICE. Right.

Mr. SULLIVAN. But if you have multiple sales coming from an FFL, it may at least make you curious in terms of what is happening there. If you are looking at multiple purchases with regard to an individual in that state and the guns are showing up in another state, then there could be an interest in opening up an investigation targeting that individual.

Mr. PRICE. Certainly. That is the sort of inference I am talking about. Well I just speak for myself. I think that kind of assessment

would be very useful. And I would be very grateful if you could furnish that to us, because as you say, there is a debate about this, which sometimes is pretty arcane.

And so I think the kind of—the kind of gun trace data in law enforcement specific instances and in the aggregate, the way you utilize and share that data, and with whom, and what kind of restrictions apply to you, and whether there are any instances in which you think that it is undesirable or hinders you, I think that sort of assessment would be very, very useful.

So I appreciate your clarification.

Mr. SULLIVAN. Congressman, you mentioned researchers as well. You know, beyond that information we think is law enforcement sensitive. We have a lot of information we collect that we don't believe is law enforcement sensitive.

Mr. PRICE. Well, that would be—there are, of course, legitimate academic researchers, public policy analysts who may or may not feel that they are not getting the data they need.

But there too, what kind of limits you observe, what kind of limits you understand the law to impose, would be—would be helpful I think to clarify where you draw the line and what—and then compare that with what some of the other users of this data and some of the analysts of this particular provision of the law have said.

Mr. SULLIVAN. Yes. We publish annually on our website aggregate tracing information state by state.

Mr. PRICE. Mm-hmm.

Mr. SULLIVAN. So, for example, people in Massachusetts who are curious about crime guns recovered in Massachusetts can go on the ATF website and look at crime guns recovered in Massachusetts, the numbers which law enforcement agencies are tracing crime guns in Massachusetts, the type of weapons that are being recovered as crime guns, and the sources, the source states, of those crime guns.

There was a period of time where that information was not being publicly shared with the non-law enforcement community. But it wasn't because Tiahrt Amendment prevented us from doing it.

Mr. PRICE. Mm-hmm.

Mr. SULLIVAN. It was almost a perfect storm. It was at a time when our budget was challenging. And we decided instead of spending the money for developing those types of reports on an annual basis, that we would put those monies someplace else.

But, obviously, it became apparent to me that there was a great deal of public interest and a lot of misinformation out there in terms of what we could and couldn't do under the Tiahrt Amendment. It was important to get the information to the public that had an interest in knowing what was going on with recovered crime guns as quickly as we could. And beyond that, making sure that we are pushing out aggregate— analytical reports to our law enforcement partners.

Mr. PRICE. Thank you. We will look forward to your assessment of that.

COORDINATION WITH DHS ALONG THE BORDER

Let me move on and ask. You testified, as I understood you earlier, that you were having some increased success in getting the Mexican authorities to deliver confiscated firearms. And I think you used the term six to seven thousand weapons traced with Mexican-supplied information. Over what period of time is that?

Mr. SULLIVAN. That was last year.

Mr. PRICE. Last year, that is what I thought.

I would also be interested to learn what discussion you have had with other agencies. And this gets into the homeland security angle, other agencies regarding cooperation in addressing this cross-border gun trafficking.

For example, I understand the Bureau of Customs and Border Protection focuses cargo inspections more on cargo entering the country, obviously, than the cargo leaving the country.

Have you had any conversations with CBP about that regarding the need for enhanced inspection, in some cases, of outgoing cargo? What coordination exists between ATF and the FBI in terms of targeting organized crime rings involved in this activity? Are there other examples of successes or gaps in interagency coordination that you would want to cite?

Mr. SULLIVAN. Let me start with CBP. And Mr. Basham to his credit very early on called a meeting of all the federal law enforcement agencies that had assets on the southwest border to make sure that we were not unnecessarily duplicating effort. We have a great partnership with CBP. We are both using the El Paso Intelligence Center to point in intelligence and obtain intelligence reports.

We are working very closely with CBP on strategic efforts for the outbound traffic, the traffic going to Mexico. There is a big difference between the traffic coming into the United States and the traffic going into Mexico. The traffic coming into the United States has been stopped. For the traffic going into Mexico, it is an exception for those vehicles to be stopped.

So we are working with CBP to do targeted enforcement on the border itself based on the intelligence and investigative leads we have. We are using our explosive detection canine dogs in conjunction with CBP.

ICE, obviously, has significant assets on the border as well, principally to address immigration-type violations. They have the best teams on the border. We have taken ATF agents and embedded them with the best teams on the border as well to ensure that we are not unnecessarily duplicating effort or conflicting with one another.

We have a great partnership with DEA. Obviously, as I mentioned earlier, the weapons trafficking organizations are tied into the drug trafficking organizations and with the FBI in the work on violent crime.

Obviously, we do a lot in the area of gangs and guns on the border. The FBI has some assets and resources as well. We partner with the FBI.

So I think we are all trying to work as cooperatively as we possibly can on the border. That is not to say on occasion we don't

have a dust up or a misunderstanding on how some of these matters should be addressed. But all in all, I think there is a concerted effort to work together.

Mr. PRICE. Any gaps you would direct us to?

Mr. SULLIVAN. I can't think of any off the top of my head in interagency relationships. I want to get back just to Mexico for a second.

It did take us a while to educate and inform Mexico on the value of tracing. But clearly they understand it. A couple of years ago I think we traced about 2,000 weapons out of Mexico. And last year we were up to 7,000.

It is a little bit confusing in terms of who gets ownership of these weapons in Mexico from the local police, to the national police, to the military. And we are trying to work through some of those issues as well. We are working with Mexico to get imbedded officers or agents from Mexico that have the proper security clearance to work on the teams with ATF agents to make sure that there is an immediate sharing of investigative leads and intelligence information.

We are taking the intelligence we learn from the EPIC, the El Paso Intelligence Center, in daily, giving briefing reports to Mexico as well.

I will tell you, our relationship with Mexico, Mexico law enforcement and the Attorney General of Mexico, couldn't be better.

Mr. PRICE. Thank you. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Getting back to Mexico, staying on Mexico for a minute. There was a statement. I read the Department of Justice summaries on the that is—war that is going on in that border. The use of what they call the FN–57s, these Belgian weapons, the "cop killers." I mean, obviously, from everything I have read, they have an infinite amount of money.

But I was staggered by what was attributed to the Mexican ambassador. And I quote, it says here, he "Has said that as many as 2,000 weapons enter Mexico from the U.S. each day." Is that an accurate or is that an exaggeration?

Mr. SULLIVAN. Well I can't say it is an exaggeration. I can't say it is accurate. I think the challenge that is we just don't know. And, you know, until we know exactly how many crime guns are being recovered in Mexico, it may be very difficult for us to estimate the number of weapons that are being trafficked into Mexico.

We do know that 7,000 does not reflect all the crime guns that are trafficked into Mexico. And it doesn't reflect all the crime guns that are actually recovered in Mexico. We are moving in the right direction.

Mr. FRELINGHUYSEN. How would you characterize the Calderon campaign against, these cartels?

Mr. SULLIVAN. I would say heroic, heroic. I think they are doing a phenomenal job at great cost. Human lives are being lost because of the extraordinary efforts of the Mexican government.

Mr. FRELINGHUYSEN. Certainly that is my opinion. And lastly, whatever happened to the Merida Initiative? This was to provide Mexico with 500 million in equipment and training. But whatever happened to that?

Mr. SULLIVAN. I can't speak——

Mr. FRELINGHUYSEN. It went off the radar screen or——

Mr. SULLIVAN. I can't speak to that. I do know that we are training counterparts in Mexico. We are training in the area of post-blast investigations. They have an interest in explosive detection canines. They are looking to set up a canine training center. We are training them on weapons tracing information as well.

So at ATF without any direct funding in our budget, we are utilizing our expertise with our counterparts in Mexico.

Mr. FRELINGHUYSEN. And lastly, I want to thank you for setting up a new field division in New Jersey. And just in case the record shows that it is because I served on this Committee it did not happen as a result of that. It was in the works long before I got on this Committee. But I want to thank you for your efforts in the New York and New Jersey region and in particular for the new office.

Mr. SULLIVAN. Well, thank you for saying that. And that effort started before I arrived as well. There were a lot of people who worked very, very hard. We set up two additional field divisions in 2008, in Denver, Colorado, which is a four-division state, and in New Jersey.

Prior to that New Jersey was supported by the New York and Philadelphia field division offices. Clearly with a population of I think around nine million and some of the challenges, it was very apparent to me that a field division in New Jersey was critically important from a strategic perspective.

And there is a cost associated with that. And that cost originally was planned out of that $37 million level service budget. And it was still a high enough priority from our perspective to make sure we got it done. We had great support, you know, from our colleagues in New Jersey.

Mr. FRELINGHUYSEN. Good. Well we thank you and recognize you and the people that stand behind you.

Mr. SULLIVAN. Thank you.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you. Mr. Director, we very much appreciate your good work in leading this fine organization. And we appreciate the good work of everybody who is in it, both those sitting here and those who are all over the place representing the best interests of the country, sometimes in very dangerous jobs.

We want you to know we appreciate that. We understand how lean your budget is and how lean your request is given your responsibilities. We want to be as sympathetic as possible.

You have got really good advocates. You have got Dennis Dauphin whose services considerably benefitted this subcommittee last year, and you have Scott Sammis here right now. So I know you are all positioned very well. We will see how it all turns out. Want to be responsive.

Again, thank you for your testimony here today.

Mr. SULLIVAN. Thank you, Mr. Chairman. And Dennis played a role in preparing for this hearing. And I will tell you, he was a lot tougher than you were. And I thank you for that. Thank you for your courtesies.

Mr. MOLLOHAN. I don't know what that means.

Mr. SULLIVAN. Thank you for your courtesies, and your interest in ATF, and your support for our mission.

Mr. MOLLOHAN. Thank you, Mr. Director.

Mr. SULLIVAN. Thank you.

Mr. MOLLOHAN. There will be some questions for the record. Thank you.

Mr. SULLIVAN. Thank you.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

TUESDAY, MARCH 11, 2008.

OFFICE OF JUSTICE PROGRAMS, COMMUNITY ORIENTED POLICING SERVICES, OFFICE ON VIOLENCE AGAINST WOMEN

WITNESSES

JEFFREY SEDGWICK, ACTING ASSOCIATE ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS

CARL PEED, DIRECTOR, COMMUNITY ORIENTED POLICING SERVICES

CINDY DYER, DIRECTOR, OFFICE ON VIOLENCE AGAINST WOMEN

OPENING REMARKS OF THE CHAIRMAN

Mr. MOLLOHAN. This hearing will come to order. Good morning, everyone. Thank you all for being here. We welcome our panel of three Department of Justice witnesses to the Subcommittee on Commerce, Justice, Science, and Related Agencies, the first hearing this year on justice matters.

Today we will examine the Administration's fiscal year 2009 budget request for the State and Local Law Enforcement Grant programs of the Office of Justice Programs, the Office of Community Oriented Policing Services, and the Office on Violence Against Women.

Two years ago, Americans were taken aback to learn that violent crime had spiked across the nation in 2005 and 2006 for the first time in more than a decade. The FBI's recent preliminary uniformed crime report findings may indicate some good news for jurisdictions where the number of violent crimes reported has declined in the first half of 2007 as compared to the same period in 2006. However, it is not all good news. Violent crime is still rising in many areas, including in many medium-sized cities and small towns.

In the face of a shaky economy and tremendous state and local law enforcement and crime prevention needs, it is as important now as it ever has been to ensure that every federal dollar is spent wisely.

The President's budget slashes state and local law enforcement and crime prevention grant programs by more than $1.6 billion below the fiscal year 2008 funding level of $2.7 billion.

The Administration proposed roughly $1.1 billion for four ill-defined consolidated grant programs. It is the same plan essentially that Congress rejected last year except that the funding level requested now is $400 million less than the President asked for then.

Our first witness is Jeffrey Sedgwick, who was named Acting Assistant Attorney General for the Office of Justice Programs on January the 3rd, 2008. Dr. Sedgwick also continues to serve as Director of the Bureau of Justice Statistics within OJP.

As head of OJP, Dr. Sedgwick is responsible for providing federal leadership to develop the nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims.

Carl Peed is Director of the Office of Community Oriented Policing Services. A career law enforcement officer, Mr. Peed is charged with ensuring that the COPS Program advances effective community policing practices to improve public safety across state, local, and tribal law enforcement agencies.

Our final witness is Cindy Dyer, the new Director of the Office of Violence Against Women, confirmed to this post on December the 19th, 2007. Ms. Dyer is responsible for providing federal leadership to develop and support the capacity of state, local, tribal, and nonprofit entities in preventing and responding to violence against women.

You had a lot of support on the floor of the House last year and in this Committee, I might say.

We look forward to your testimony, all of you. Your written statement, I understand it is combined, will be made part of the record. And I now call on Mr. Frelinghuysen before we ask that you make your oral presentations.

OPENING REMARKS OF CONGRESSMAN FRELINGHUYSEN

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

I join the chairman in welcoming you all this morning.

Overall, the Chairman has said the budget request for state and local assistance programs represents a pretty dramatic reduction from current and historical levels. Not counting rescissions in emergency funding, the fiscal year 2009 request is a billion dollars, a reduction of 1.5 billion or 60 percent below the current level.

Like last year, you are proposing to consolidate the remaining funding into four new unauthorized multipurpose grant programs. We look forward to hearing today about what you are proposing to cut and eliminate and why you think such dramatic reductions are appropriate.

And, again, welcome. Thank you.

Thank you, Mr. Chairman.

Mr. SEDGWICK. Good morning, Representative Ruppersberger. Good morning, Dutch, and Ranking Member Frelinghuysen.

[The information follows:]

WRITTEN TESTIMONY FOR THE
OFFICE OF JUSTICE PROGRAMS
OFFICE ON VIOLENCE AGAINST WOMEN
OFFICE OF COMMUNITY ORIENTED POLICING SERVICES
FISCAL YEAR 2009 BUDGET REQUEST
HOUSE APPROPRIATIONS SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
MARCH 11, 2008

Chairman Mollohan, Ranking Member Frelinghuysen, and distinguished Members of the Committee: The Department of Justice appreciates the opportunity to testify before this Subcommittee regarding the Administration's proposed Fiscal Year (FY) 2009 budget request for the Office of Justice Programs (OJP), the Office on Violence Against Women (OVW), and the Office of Community Oriented Policing Services (COPS). My name is Jeffrey L. Sedgwick, and I am the Acting Assistant Attorney General for OJP. I am honored to be here today with OVW Director Cindy Dyer, and COPS Director Carl Peed.

OJP, OVW and COPS work in close partnership with entities across the criminal justice spectrum, including states and local governments, Tribes, national law enforcement organizations, victim advocates, researchers, and many more. Together, we identify the most pressing challenges confronting the justice system and provide state-of-the-art knowledge, information sharing, training and coordination, as well as innovative strategies and approaches for dealing with these issues. Together we provide leadership in developing the nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. Together we also offer guidance and resources for combating terrorism, one of the Department's highest priorities.

We are, and continue to be, committed to providing our state, local, and tribal criminal justice partners with the knowledge, tools, and abilities they need to successfully perform their jobs and make America's communities safer for our citizens. But we also recognize the need for spending restraint and that we must make tough choices. Resources are limited and we must adopt an approach that allows us to be adaptable and flexible. To do this we need to target resources to the areas with the greatest need and where they can do the most good. This year's budget request for more than $1.6 billion, including the Crime Victims Fund and the Public Safety Officers' Death Benefits Program, will allow the Department to tackle our Nation's most pressing challenges and support top priority initiatives.

One of the most significant changes proposed in the Department's submission is the reorganization and consolidation of more than 70 existing grant programs into four distinct, multi-purpose grant programs. It's worth noting that all federally recognized Indian tribes and Native American communities would be eligible to receive funding under these grant programs and would be encouraged to apply. In September 2007, OJP implemented a new Tribal Grants Policy, which will help Native communities seeking OJP resources through our competitive grant solicitation process.

The four proposed grant programs are 1) the Violent Crime Reduction Partnership Initiative; 2) the Byrne Public Safety and Protection Program; 3) the Child Safety and Juvenile Justice Program; and 4) Violence Against Women Grants. These four new discretionary grant programs would award funding through a highly competitive grant process.

Violent Crime Reduction Partnership

Between 1993 and 2005, the violent crime victimization rate declined nearly 60 percent. During the same period, property crime victimization rates declined by over 50 percent. While recent FBI Uniform Crime Reports data shows some recent fluctuation of crime rates, the violent crime rate during this Administration is still well below historical levels and lower than during the previous decade. Preliminary FBI data also point to a decline in violent crime for the first half of 2007. Despite these positive trends, many challenges still exist. Some regions and communities continue to experience increases in violent crime. As Attorney General Mukasey recently said, "The nature of crime varies not only from one city to another, but even from one block to the next. So it is at the block level that much of the work has to happen."

The Department is following through on the Attorney General's commitment to assist state and locals. We are working with our state and local partners to identify problems and develop meaningful strategies to reduce and deter crime. Through the Violent Crime Reduction Partnership Initiative, we have provided funds to states and localities for multi-level violent crime task forces to tackle the areas of greatest need. These task forces bring together state and local law enforcement agencies to address specific violent crime problems with focused strategies, including intelligence-led policing. In FY 2007, OJP awarded over $75 million to 106 sites in 37 states through this program.

The President's FY 2009 budget requests $200 million for the Violent Crime Reduction Partnership Initiative. Funding would continue to be used to help communities address high rates of violent crime by forming and developing effective multi-jurisdictional law enforcement partnerships between local, state, tribal, and federal law enforcement agencies. These partnerships are designed to disrupt criminal gang, firearm, and drug activities, particularly those with a multi-jurisdictional dimension. Additionally, OJP will target this funding to respond to local crime surges it detects through its ongoing research.

Byrne Public Safety and Protection Program

This year, the President's budget proposal includes $200 million for a simplified and streamlined grant program that would combine the funding streams of several programs into the new Byrne Public Safety and Protection Program.

In keeping with the Department's mission "to ensure public safety against threats foreign and domestic," this initiative consolidates OJP's most successful state and local law enforcement assistance programs into a single, flexible, competitive discretionary grant program.

This approach would help state, local, and tribal governments develop programs appropriate to the particular needs of their jurisdictions. Through the competitive grant process, OJP would continue to assist communities in addressing a number of high-priority concerns, such as;

1.) reducing violent crime at the local levels through the Project Safe Neighborhoods initiative;
2) addressing the criminal justice issues surrounding substance abuse through drug courts, residential treatment for prison inmates, prescription drug monitoring programs, methamphetamine enforcement and lab cleanup, and cannabis eradication efforts;
3) promoting and enhancing law enforcement information sharing efforts through improved and more accurate criminal history records;
4) improving the capacity of state and local law enforcement and justice system personnel to make use of forensic evidence, and reducing DNA evidence and analysis backlogs;
5) addressing domestic trafficking in persons;
6) improving and expanding prisoner re-entry initiatives; and
7) improving services to victims of crime to facilitate their participation in the legal process.
In addition to state, local and tribal governments, non-government entities will also be eligible for funding under this program.

Child Safety and Juvenile Justice Program

The Department remains committed to fighting child pornography and obscenity, and to protecting children from trafficking and other forms of exploitation. OJP continues to provide leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. We support states and communities in their efforts to develop and implement effective prevention and intervention programs as well as improve the juvenile justice system.
In FY 2007 alone, investigations funded through the Internet Crimes Against Children (ICAC) Task Force program led to 2,350 arrests and nearly 10,500 forensic investigations.

Additionally, OJP's AMBER Alert program is a proven success and has helped rescue more than 389 children nationwide. More than 90 percent of those recoveries have occurred since AMBER Alert became a nationally coordinated effort in 2002. With 50 statewide AMBER plans in place, and expansion of the program into Indian Country, we are meeting President Bush's goal of a National AMBER Alert network. As the National AMBER Alert Coordinator, I am committed to ensuring that we have a strong and seamless network in place to protect our children.

To further our commitment to protecting our Nation's most vulnerable population, the FY 2009 budget includes $185 million for the new Child Safety and Juvenile Justice Program. The new initiative consolidates existing juvenile justice and exploited children programs, such as the ICAC Task Force program, into a single, flexible grant program. The new Child Safety and Juvenile Justice Program would focus on key priorities including reducing juvenile delinquency and crime, improving juvenile justice systems, helping child victims, promoting school safety, and reducing incidents of child exploitation and abuse, including those facilitated by the use of computers and the Internet.

The initiative would also support state, local and tribal community efforts to develop and implement effective, coordinated prevention and intervention juvenile programs that protect public safety, hold offenders accountable, and provide treatment and rehabilitative services tailored to the needs of juveniles and their families.

Prevention and Prosecution of Violence Against Women and Related Victim Services Program

The Office on Violence Against Women (OVW) administers financial support and technical assistance to communities around the country that are creating programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault and stalking. Its mission is to provide national leadership to improve the Nation's response to these crimes through the implementation of the Violence Against Women Act (VAWA). In 2003, Congress established OVW as a separate and distinct office within the Department.

Currently OVW administers one formula grant program and eleven discretionary grant programs. These grant programs fund States, local governments, tribal governments, and nonprofit organizations to help communities across America develop innovative strategies to respond to violence against women. With OVW funding, communities are forging effective partnerships among federal, state, local and tribal governments, and between the criminal justice system and victim advocates, and are providing much-needed services to victims. Taken together, these programs address a host of different issues that communities face in responding to violence against women, including: the unique barriers faced by rural communities; the importance of training police, prosecutors, and court personnel; the critical need of victims for legal assistance, transitional housing, and other comprehensive services; and the high rate of violence against women in Indian country.

For Fiscal Year 2009, the President's Budget requests $280 million for OVW, which would remain a separate office within the Department of Justice. This request proposes to consolidate funding from a myriad of programs into a single, flexible program. This new approach will allow OVW—working with its partners—to better tailor the resources delivered to a given community to sustain domestic violence prevention efforts, protect and restore victims, and hold perpetrators accountable for their crimes.

COPS Office

The FY 2009 President's Budget proposes to merge the COPS Office with the Office of Justice Programs (OJP). Community Policing Development Program funds from the COPS Office have helped state, local and tribal law enforcement agencies reduce crime through improved partnerships with the communities they serve, with techniques that are designed to solve problems, and by offering new ways to modernize and transform their law enforcement agencies.

Merging COPS staff with OJP will allow for better coordination of training and other assistance for state and local law enforcement. The COPS staff in OJP would be responsible for administering almost 7,000 active grants and for managing the Community Policing Development (CPD) Program, for which $4 million is requested as a separate, standalone program under OJP's State and Local Law Enforcement Assistance appropriation.

Other OJP Programs

There are several ongoing initiatives within OJP which I would like to highlight, specifically the Regional Information Sharing System and the efforts of the Office for Victims of Crime, the Bureau of Justice Statistics, and the National Institute of Justice.

As I noted at the outset, one of the Department's highest priorities is the prevention, investigation, and prosecution of terrorist activities against U.S. citizens and interests. The Department plans to support anti-terrorism and other law enforcement efforts through the Regional Information Sharing System (RISS). This year, we have requested $34.2 million in total funding for this important initiative. This funding will be used to provide increased intelligence and forensic services for State and local law enforcement. RISS is comprised of six regional intelligence centers operating in mutually exclusive geographic regions that include all 50 States, the District of Columbia, and U.S. Territories. These regional centers facilitate and encourage information sharing and communications to support member agencies' investigative and prosecution efforts by providing investigative support and training, analytical services, specialized equipment, secure information sharing technology, and other services to over 6,000 municipal, county, state, and federal law enforcement agencies nationwide.

The Office for Victims of Crime (OVC) will continue to provide federal leadership in assisting victims of crime and their families. The President's $590 million request will allow OVC to provide federal funds in the form of formula grants to the states to support victim compensation and assistance programs across the Nation. OVC provides training for diverse professionals who work with victims' rights and services, and educate the public about victim issues. OVC also enables victims of federal crimes to participate fully in the criminal justice process. It distributes funds to nonprofit organizations, federal, and military criminal justice agencies, and tribal governments to support both training for service providers and direct services for victims, including crisis counseling, temporary shelter, and travel expenses incurred in going to court.

As you are aware, I also have the honor of serving as Director of OJP's Bureau of Justice Statistics (BJS), which continues its mission to collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government. This data is critical to federal, state, local, and tribal policymakers in combating crime and ensuring that justice is both efficient and evenhanded. BJS is midway through a long-term effort to review and redesign its statistical products in order to make them as useful as possible to the criminal justice community. We are working with the National Academy of Sciences to examine the ways that BJS statistics are used by Congress, executive agencies, the courts, state and local agencies, researchers, and others. Through this process we hope to determine the impact of BJS programs and how they can be improved.

In FY 2009, the President is requesting $53.0 million in total funding for BJS, which will support collecting and analyzing statistical data on crime, criminal offenders, and the operations of justice systems at all levels of government. BJS also provides financial and technical support to state governments to develop capabilities in criminal justice statistics, improve criminal history records, and implement crime identification technology systems.

OJP's National Institute of Justice (NIJ) is dedicated to the mission of advancing scientific research, development, and evaluation to enhance the administration of justice and public safety. One of NIJ's highlights from last year was its the launch of the National Missing and Unidentified Persons System, a new national database for matching unidentified human remains with records of missing persons. For Fiscal Year 2009, the Department is requesting $34.7 million for NIJ. This funding will support research and development programs, demonstrations of innovative approaches to improve criminal justice, development and testing of new criminal justice technologies, evaluation of the effectiveness of justice programs, and dissemination of research finding to practitioners and policymakers.

Mr. Chairman, the FY 2009 budget proposal would enable the Department to continue to work with our state, local, and tribal partners to more effectively target federal assistance to areas with the greatest need. It would strengthen our mission of providing federal leadership in developing the nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. Thank you again for inviting us to testify on the President's proposed Fiscal Year 2009 budget request. Ms. Dyer, Mr. Peed and I welcome the opportunity to answer any questions you or other Members of the Subcommittee may have. Thank you.

OPENING REMARKS OF ACTING ASSISTANT ATTORNEY GENERAL

My name is Jeff Sedgwick, and I am the Acting Assistant Attorney General for the Office of Justice Programs. I appreciate the opportunity to testify before this Subcommittee regarding the Administration's fiscal year 2009 budget request for OJP.

OJP works in close partnership across the criminal justice spectrum, including state and local governments, tribes, national law enforcement organizations, victim advocates researchers, and many more. Together, we identify the most pressing challenges confronting the justice system. Together we provide leadership in developing the Nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims.

We are and continue to be committed to providing our state, local and tribal criminal partners with the knowledge, tools, and abilities they need to make America's communities safer for our citizens. But, we also recognize the need for spending restraint and that we must make tough choices. Resources are limited and we must adopt an approach that allows us to be adaptable and flexible.

The President's fiscal year 2009 budget request for OJP is $1.4 billion. The proposal outlined in the budget submission will allow OJP and its bureaus and program offices to more effectively target resources to the areas with the greatest needs and where they can do the most good.

PROPOSED GRANT CONSOLIDATION

One of the most significant proposals in this year's budget request is the consolidation of more than 70 existing programs into three distinct, multipurpose, and highly-competitive grant programs. These are the Violent Crime Reduction Partnership, the Byrne Public Safety and Protection Program, and the Child Safety and Juvenile Justice Program.

Due in large part to the hard work of local law enforcement, the Nation's crime rates are well below historical levels and lower than during the previous decade. Despite these positive trends, many challenges still exist. Some regions and communities continue to experience increases in violent crime.

As Attorney General Mukasey recently said, the nature of crime varies not only from one city to another but even from one block to the next. So, it is at the block level that much of the work has to happen.

The Department is following through on the Attorney General's commitment. We are working with our state and local partners to identify problems and develop meaningful strategies to reduce and deter crime.

Through the Violent Crime Reduction Partnership Initiative, we have provided funds to states and localities for violent crime task forces to tackle the areas of greatest need. These task forces bring together state and local law enforcement agencies to address specific violent crime problems with focused strategies, including intelligence-led policing. In fiscal year 2007, OJP awarded $75 million to 106 sites in 37 states through this program.

The President's fiscal year 2009 budget requests $200 million for the Violent Crime Reduction Partnership Initiative. Funding would continue to be used to help communities address high rates of violent crime by forming and developing multi-jurisdictional law enforcement partnerships to disrupt criminal gang, firearm, and drug activities.

The President's budget proposal also includes $200 million for the Byrne Public Safety and Protection Program. This initiative consolidates most of OJP's state and local law enforcement assistance programs into a single flexible, competitive discretionary grant program.

OJP will continue to assist communities in addressing a number of high-priority concerns such as reducing violent crime at local levels through the Project Safe Neighborhood initiatives, addressing criminal justice issues surrounding substance abuse through Drug Courts, and methamphetamine enforcement and lab cleanup.

Through the new Byrne Program, we will also focus on promoting and enhancing law enforcement information sharing, improving the capacity of state and local law enforcement to deal with DNA evidence and analysis backlogs, addressing domestic trafficking in persons, improving and expanding prisoner reentry initiatives, and improving services to victims of crime.

The President is also requesting $185 million for the Child Safety and Juvenile Justice Program. This initiative will allow OJP to assist state and local governments in addressing multiple child and juvenile justice needs, such as reducing child exploitation and abuse, including those facilitated by the internet, improving juvenile justice outcomes, and addressing school safety needs.

Mr. Chairman, the fiscal year 2009 budget request and the proposed grant programs I have discussed today will enable OJP to more effectively target assistance to areas with the greatest need and allow for adjustments in funding priorities in response to emerging trends in crime and justice issues.

The new grant programs will also provide state, local, and tribal governments with increased flexibility and using grant funds to best meet the unique needs of their communities.

We are confident that our proposed budget reflects these priorities and will strengthen our mission.

Mr. Chairman, thank you again for the opportunity to testify today and I am happy to answer any questions.

OPENING REMARKS OF DIRECTOR PEED

Mr. PEED. Mr. Chairman, members of the Subcommittee, my name is Carl Peed. I am the Director of the Office of Community Oriented Policing Services or better known as COPS.

I am very pleased to appear before you today on behalf of the Department of Justice's Office of Community Oriented Policing Services.

As a 25-year veteran of law enforcement, I am proud to lead an organization whose mission is to support state and local law enforcement in their efforts to reduce crime through community policing.

The Administration's proposed budget for fiscal year 2009 includes $4 million for community policing development. The Depart-

ment will use these funds to work closely with law enforcement executives and other leaders in the field to reduce crime by developing and implementing community policing strategies.

These resources will enable DOJ to build upon and further leverage the resources that COPS has for law enforcement over the past 13 years.

Examples of how we use community policing development funds to support the field exists in two executive sessions that we have supported within the past month. One session addressed a stop snitching phenomenon and the other addressed campus public safety issues.

The stop snitching phenomenon of the past years poses a significant challenge to law enforcement because it actively undermines the ability of police to prevent and solve crime and it encourages public distrust of police.

Unfortunately, understanding the damage that this phenomenon is creating, the COPS Office awarded a grant to the Police Executive Research Forum to conduct this session which attracted law enforcement executives from California to Texas to Florida to up and down the east coast, including D.C., Baltimore, Philadelphia, some jurisdictions in New Jersey, and Boston. And we also had the U.S. Attorney's Office from Baltimore there as well as faith-based organizations.

The lessons learned during the session were combined to create a White Paper that will help law enforcement agencies and communities throughout the country respond to the stop snitching phenomenon.

The executive session on campus safety was convened so that federal agencies and campus law enforcement executives can develop strategies that effectively address the public safety concerns of our Nation's colleges and universities.

As high-profile events such as Virginia Tech, Northern Illinois University, Delaware State, or even Pepperdine where you have wildfires, the need for coordinated efforts such as these is to develop national campus public safety standards and strengthen partnerships between federal agencies and campus law enforcement. This is critical.

And I might just advise you that the Department of Justice has not been immune from these very tragic events. The Department of Justice lost an attorney on the University of South Carolina campus at the National Advocacy Center several years ago, as well as a former colleague of ours in the Department of Justice in the COPS Office was gunned down at the Appalachian Law School down in southwest Virginia.

In all, COPS has invested more than $1.3 million in campus safety initiatives that have convened campus law enforcement executives to develop best practices and establish campus safety partnerships and provide training and technical assistance to campus law enforcement officials.

Community policing strategies which include partnerships, problem solving, and organizational transformation have helped American law enforcement agencies reduce crime by engaging their communities and building partnerships to meet new and existing challenges.

I look forward to continuing to support the Nation's law enforcement agencies by advancing community policing with the community policing development funds in the 2009 budget.

So thank you very much for allowing me to be here and I look forward to answering questions.

Mr. RUPPERSBERGER [presiding]. Ms. Dyer.

OPENING REMARKS OF DIRECTOR DYER

Ms. DYER. I am honored to be here today with my colleagues to testify before the Subcommittee regarding the Administration's proposed fiscal year 2009 budget request for the Office on Violence Against Women, OVW.

My name is Cindy Dyer and I currently have the privilege of serving as the Director of OVW. The mission of OVW is to provide federal leadership to reduce violence against women and to administer justice for and strengthen services to all victims of domestic violence, dating violence, sexual assault, and stalking.

Since 1995, OVW has awarded over $3 billion in grants and cooperative agreements to enable communities to enforce protection orders, provide legal assistance, and other services to victims, provide intensive training to police officers, prosecutors and judges, and support local efforts to respond to violence against women.

During this Administration, OVW has presided over an unprecedented expansion of the types of services funded and the level of funding awarded.

Since the reauthorization of VAWA in 2000, our programs have enabled communities to increase their efforts to help some of the most vulnerable victims, including the elderly and those with disabilities and to provide supervised visitation centers for victims and their children.

In addition, in the 2008 "Omnibus Appropriations Act," Congress has appropriated funds for the Department to implement another six new grant programs which will enhance services for victims of sexual assault, young victims, children exposed to violence, and victims with culturally and linguistically specific needs.

As OVW administers these programs, we are also working to address ongoing challenges in the field, such as expanding efforts to assist victims of sexual assault and better responding to the critical problem of violence against women in Indian Country.

We know our funds are making a difference and are reaching victims. In the six-month reporting period from January to June of 2006, OVW's discretionary program grantees reported that they served more than 119,000 victims of domestic violence, dating violence, sexual assault, and stalking.

In calendar year 2006, subgrantees of our Stop Violence Against Women Formula Grant Program reported serving over half a million victims.

Before coming to OVW, I served for 14 years as the chief prosecutor of the Family Violence Division of the Dallas County District Attorney's Office.

In addition, in that position, I managed several OVW grants, one directly to Dallas County from OVW's Arrest Program, and three subgrants from the State of Texas from OVW's Stop Violence Against Women Formula Grant Program.

From this experience, I know how vitally important these funds are to local communities. With the Arrest Program grant to Dallas County, we were able to form an effective, coordinated community response involving the District Attorney's Office, the local women's shelter, the Dallas Police Department, and a nonprofit provider of civil legal services for victims.

Because of this coordinated community response, which was made possible as a result of VAWA funds, I can personally tell you that the way domestic violence cases are managed in Dallas, Texas has improved dramatically.

The fiscal year 2009 President's budget requests $280 million for OVW, a significant reduction from the amounts sought in recent years. I know that this year's budget recommends reductions to OVW grant programs that our sister agencies have been experiencing for the past several years.

I can assure you that OVW will leverage its resources so that it can continue to support programs that keep victims safe and hold batterers accountable.

Thank you for allowing me this opportunity to testify and I welcome any questions from the Committee.

OPENING STATEMENT OF CONGRESSMAN RUPPERSBERGER

Mr. RUPPERSBERGER. Thank you. I will start and then we will go back and forth.

I said this last year and I will say it again this year, that I think the cuts or the budget requests from the President for Office of Justice, the COPS Program, and Office of Violence Against Women are unacceptable.

We have a lot of priorities out there. We know it. We have issues that are out there with Iraq and Afghanistan and all the areas that we are dealing with, but we also have to remember home base.

I also understand that you are here on behalf of the Administration and, if I was the President, I would want you to support my budget. But I am going to ask you these questions anyhow for the record.

You know, the federal government plays a significant role. I was a prosecutor for close to ten years, and the Office of Domestic Violence might not be as funded as it is in a lot of other jurisdictions because you have murders, rapes and robberies, and you need to fund those special areas. This is where the federal monies really do help. And I think when the monies are there, and as you just pointed out, Ms. Dyer, that those monies have helped and have really made a difference.

You know, we are shortchanging our local law enforcement. We have had a lot of successes recently. I am from Baltimore. I mean, just last week we had ATF and state and local agencies working together on a gun, and gang case. Last year we had a project request make it out of this Committee that to have a focus on gang violence from Philadelphia to North Carolina. I mean, this is where the federal government really needs to step in.

I am also concerned about the President's cuts. I think the grants go from funding levels from 2.6 billion to a little over one billion. That is totally unacceptable to continue what we need to do. We have issues in our streets also.

The other thing that concerns me, and then I will get to my questions, in addition to the reduced amount requested, we have concerns about consolidating all the grants into a few larger grant programs.

Now, this is going to result in potential grantees competing against programs that are dissimilar. So you are pitting good intentions against each other. You know, we are going backwards in our communities instead of forwards. And as we know, security and safety is a high priority.

All right. Attorney General Sedgwick.

Mr. SEDGWICK. Sedgwick. You can call me Jeff.

Mr. RUPPERSBERGER. Well, with a name like Ruppersberger, I have got to get it right.

EFFECT ON OJP OF DECREASE IN FUNDING

How do you expect, and I kind of know where your answer is going to be, but I have got to do it for the record, how do you expect state and local law enforcement agencies to be as successful as they have been in the past with less than half of the resources available to them in 2008? It is going to be interesting to hear your answer to that one.

Mr. SEDGWICK. It——

Mr. RUPPERSBERGER. Fiscal year 2008, one billion reduced to .4 billion, a difference of $601 million. Good luck.

Mr. SEDGWICK. If the question——

Mr. RUPPERSBERGER. Oh, yeah. Could you use the microphone too?

Mr. SEDGWICK. Yes. If the question is will state and local law enforcement be able to do as much as they have in the past with appropriations or funding cuts to OJP, I think the answer is pretty obvious no, they are not going to be able to.

However, I would call your attention—but, I mean, obviously we all know what the impact of shifting priorities is. The thing that I would point to, there are two things that I would point to here.

One is that the budget for the Department of Justice reflects a conscious choice on the part of leadership in the Department to protect core functions of the Department of Justice that include, as you mentioned in Baltimore, work by ATF, DEA, FBI, and so on, are important in terms of affecting local law enforcement problems.

For example, the ability of the federal government to protect borders and to prevent drugs from being brought into the country across, for example, the Mexican border has a direct impact on the state and local law enforcement.

Similarly, the ability of the Department of Justice, through a core function of it like the Bureau of Prisons, to incarcerate persons for drug or gun or gang offenses that otherwise would fall on state and local budgets is an important support for local law enforcement.

So I think part of what you are seeing here is a conscious decision on the part of Department leadership, which I support, that says the Department must do the core functions of the Department of Justice because those impact or cascade down to the state and local government.

And then the second part of it is, with the reduced funding that we have, is the Department making sure that its core functions are properly supported. Our obligation then is to take the amount of money that we are given and the Department prioritizes its funds and makes sure that those funds are spent well. And that is the whole logic behind seeking to combine programs into broader categories that are flexible and also competitive.

One of the things that we know in the Department of Justice, and I was lucky enough to participate in the 18 city tour a little over a year ago where we went around and looked at and toured a variety of cities to ask questions about the increase in crime that was reported in the 2005 UCR.

One of the things that we learned is needs differ from community to community. And their violent crime increase that was measured in 2005 was confined largely to murder and robbery, not to rape and assault. It varied by region of the country. It varied by city size. Even within cities, the crime problems could be identified to hot spots, particular blocks.

And so we think, you know, with the kind of strained financial times that we are in, the appropriate response to that is to be able to target funds to where they will do the most good, recognizing we are not dealing with a national crime wave. We are dealing with hot spots that are distributed across the country in different sorts of ways.

So that is the logic behind the budget.

IMPACT OF DRUGS ON CRIME

Mr. RUPPERSBERGER. Well, good try. Do you feel that drugs have a major impact on crime in the country?

Mr. SEDGWICK. What we are seeing is drugs, guns, and gangs.

Mr. RUPPERSBERGER. And it seems to me that, and I can say this in the intelligence community also, that the issue of terrorism is really something we have to deal with. No question.

But if you really want to look at what is probably the largest problem that we have as it relates to crime, it is drugs. Drugs throughout the world and the impact that it has on crime, on victims, and that type of thing. But we will move on with that.

Mr. Peed, where were you in law enforcement?

Mr. PEED. Fairfax County, Virginia.

Mr. RUPPERSBERGER. Okay. What was your job?

Mr. PEED. I served 25 years there, ten as the Sheriff of Fairfax County.

Mr. RUPPERSBERGER. Okay. Did you take advantage of the COPS Program when you were——

Mr. PEED. Yes, sir. We had some fingerprint technology or the AFIS System is one of the things that we had.

RISE IN JUVENILE CRIME

Mr. RUPPERSBERGER. One of the things I have noticed, we have again another cut in the COPS Program. And I do not want to put you in a bad position, but one of the things that we also have to deal with now which has become very prevalent is juvenile crime.

Would you agree that juvenile crime has started to escalate and that we are having some serious problems with respect to that?

Mr. PEED. I think that any time you have young people, I think you are going to have those issues. So as the population of young people increase, I think you are going to have those issues.

Mr. RUPPERSBERGER. Are you aware of the fact that you are having a lot of issues as it relates to gang violence? Actually, we have juveniles recruited in middle school, and this has gotten to be a pretty serious issue.

Mr. PEED. As Dr. Sedgwick said, it is guns, gangs, and drugs.

Mr. RUPPERSBERGER. Which is unfortunate because child safety and juvenile justice grants in this budget is down by more than half. Right now fiscal year 2008, and it was, which is not a lot to begin with, $383 million, and right now we are down to 185 million.

Where would you put that money?

Mr. PEED. Are you talking about the OJP?

Mr. RUPPERSBERGER. Since we are cutting it in half and you talked about priorities, to which jurisdiction are we going to cut half of this money that would go to juvenile crime in this country? If you cannot answer it, that is fine.

Mr. PEED. I cannot answer. I think that would fall under the Office of Juvenile Justice.

TARGETING OF FUNDING

Mr. RUPPERSBERGER. Just trying to prove a point. I know the position you are in, so I am trying to be nice. Just trying to make a point.

One other thing. Ms. Dyer, how many grants do you expect your office to provide in fiscal year 2008? Do you have any——

Ms. DYER. I honestly do not know.

Mr. RUPPERSBERGER. Okay. Has violence against women gone down significantly in the last year?

Ms. DYER. No.

Mr. RUPPERSBERGER. And, yet, we are getting a cut? Okay. No further questions.

Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. So we understand, the reason we have these massive cuts, the rationale behind it is that we are trying to protect core programs. Is that what you said?

Well, for many of us in Congress, the Office of Justice Programs, the office of Violence Against Women programs, and the COPS programs are pretty important. We regard that as the core and you are proposing a major consolidation and you are cutting basically 60 percent of the budget for these programs. Would you agree?

Mr. SEDGWICK. Yes.

Mr. FRELINGHUYSEN. You raised the issue of money being well spent. Is there any problem with the way the dollars have been spent in any of your programs? Has there been any audit that has pointed up the fact that some of these programs are not well managed, that there is some lack of accountability?

Mr. SEDGWICK. The question of whether or not money is well spent by a particular grantee is different from the question whether or not the existing structure allows us to target resources to the areas that have the greatest needs. It is slightly different.

Mr. FRELINGHUYSEN. But just targeting resources to those who have the greatest need, you do not feel that the Office of Justice Programs and the COPS programs and the Office of Violence Against Women program are not areas of the greatest need?

Mr. SEDGWICK. No. Quite to the contrary. I believe that the Office of Justice Programs addresses areas of great need. And there are other needs that the Department of Justice's Office of Justice Programs also addresses.

So the question is really saying, are the needs that are addressed by the Office of Justice Programs greater in terms of their priority of importance than the needs that are addressed by the FBI, the Bureau of Prisons, the Executive Office of U.S. Attorneys, the U.S. Marshals, the DEA, ATF, and so on. Okay?

I can vigorously advocate for the programs in the Office of Justice Programs.

Mr. FRELINGHUYSEN. Please do.

Mr. SEDGWICK. But I also understand that Department leadership has a broader range of responsibility than I do as Assistant Attorney General for Office of Justice Programs and they may see things differently than I do because, quite frankly, I do not really worry much about the Bureau of Prisons or the FBI or the Executive Office of U.S. Attorneys. I have my hands full with the programs within the Office of Justice Programs.

FUNDING UNDER GRANT CONSOLIDATION

Mr. FRELINGHUYSEN. Indeed you do. It is not in your budget. Can you give us an idea of how much of a reduction we can expect in money for the Drug Courts, victims of human trafficking, grants, gang prevention, child abuse, prosecution, southwest border prosecution, or any of the other programs that have always had separate budgets?

Mr. SEDGWICK. If the President's budget is accepted, the proposal to consolidate 70 odd grant programs into a small number of broader, more flexible programs, no, I will not be able to tell you that because essentially those particular programs, how much is allocated to each of those needs will depend on the quality of the proposals and the prioritization of the proposals that are received under each of these three broad categories in OJP.

So, quite frankly, I mean, this is a different way of thinking about the problem. You no longer will be able to say, okay, how much will go to, say, Drug Courts or human trafficking. We will not actually know that until we run the solicitations and get the proposals from state and local governments saying in my jurisdiction, this is the greatest need that we have and this is what we propose to do about it.

So we will not know in advance how much will be allocated to each of those. The allocation will be based on the quality of the proposals that are received from State and local government as they identify what are the greatest needs in their jurisdiction.

Mr. FRELINGHUYSEN. So underlying your view that you are leaving open the possibility that under a newly-devised competitive process some of these programs could possibly be eliminated?

Mr. SEDGWICK. Funding for those particular purposes might not occur if state and local governments do not apply and say this is the most significant need in our jurisdiction.

Mr. FRELINGHUYSEN. I do not think there will be any problem with anybody. Everyone is eager to apply and these are still identifiable needs that are in the community.

Mr. SEDGWICK. But it will depend on each state and local community saying this is the most significant need in our community. It is at least conceivable to me, unlikely, but it is conceivable to me that, for example, no jurisdiction might write an application and say the most important project in my particular or the most important need in my particular jurisdiction is a Drug Court. That is conceivable. All right?

And if no one says this is the most pressing need in my jurisdiction to have a Drug Court——

Mr. FRELINGHUYSEN. But all in all, the Drug Courts have been enormously successful and the issue of human trafficking, if anything, may be not true in all congressional districts, is a huge issue. Gang prevention, is often associated with urban areas, but in reality, is out in suburbia big time.

Mr. SEDGWICK. I do not disagree with you saying each of these programs——

Mr. FRELINGHUYSEN. One of the issues, of course, is the ability of some degree of stable funding. You really cannot fight on these problems unless law enforcement has some feeling that there is going to be financial stability.

That is why whenever annually this budget comes up, the Administration proposes and we dispose, and I think we are probably inclined to do what we have done in the past. I think that is the way it should be.

Thank you, Mr. Chairman.

Mr. MOLLOHAN [presiding]. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

I guess I just do not envy you right now. A couple of reasons. It sounds like you are supposed to perform a mission and you have an important mission, and you do not have enough money to do it; is that correct?

Mr. SEDGWICK. If your question is, could I do more good with more money, absolutely. But there is not a single person in the Executive Branch who would answer that question the same way.

ALLOCATION OF OVW FUNDS

Mr. HONDA. And so you approach eliminating programs under for example the "Violence Against Women Act," some of the funding for which was put together to direct money to minority communities? And given that directive to eliminate programs plus what you call your core directive, how are you going about allocating the funds?

Ms. DYER. The "Violence Against Women Act," you are correct that currently there are several grant programs within the "Violence Against Women Act" that our office administers. All of those grant programs will remain. They will remain as eligible purpose areas within the new broader, competitive program.

And so they are still there. Communities can still request grant funding focusing on those eligible purposes areas. So nothing that is currently available for funding will not be available under the new competitive program.

Mr. HONDA. Say that last part again.

Ms. DYER. None of the grant programs, for example, those that specifically address culturally and linguistically specific populations, there is a grant program just for that area. That grant program will remain in the new competitive grant as an eligible purpose area. Communities can still request a grant with that specification.

Mr. HONDA. How much money is in their pot?

Ms. DYER. There is not a specific amount of money per grant program as there is now.

Mr. HONDA. How much money is in that collective pot?

Ms. DYER. Two hundred and eighty million dollars.

Mr. HONDA. I think it is ten percent set aside. Was there not a specific percentage that was supposed to be set aside for that?

Ms. DYER. Currently under the current grant program, there is a specific amount of money in, for example, the culturally and linguistically specific grant program. I do not know how much money it is. There is not a specific set aside——

OVW TIMELINE FOR GRANT DISBURSEMENT

Mr. HONDA. What I hear from the community is that they are not able to access it, access any of those funds. And they are having difficulty, I guess, getting any kind of response. What is going on there?

Ms. DYER. Tell me which community are you referring to that is not able to access the funds.

Mr. HONDA. In general, the minority community who are applying for those funds are not getting any responses. So what is being told of these folks who are applying for these grants?

Ms. DYER. Well, every grantee that submits an application, the Office on Violence Against Women does not determine who is awarded the grant funds. It is done by a peer review team of experts within the field of domestic violence and sexual assault. They get all the applications for funding and they rank them based on need and based on their proposal and the likelihood of success.

Mr. HONDA. So you are telling me that when they apply for the grants, the applications are accepted and there is a process that you are following and they have a timeline that they are given so that they have time certain that they can count on?

Ms. DYER. There is a scoring process that——

Mr. HONDA. There is no time definite by which time they can be told, you know, whether their grant is going to be awarded or not?

Ms. DYER. Yes.

Mr. HONDA. There is?

Ms. DYER. Yes, there is. Everybody is notified of whether or not their grant application was awarded or not after the peer review process has occurred.

Mr. HONDA. And when does that start or has that started?

Ms. DYER. Each grant currently is posted. Generally speaking, they are going to go online January, February. Some of them will go online even earlier than that.

And grantees like me when I was down in Dallas will write our application and submit it and then as soon as the budget is finalized by Congress and we know how much money, OVW knows how much money they have to give out in grants, then they fund those that scored the highest. And the notices go out that your grant application was accepted or was denied. And those notices go out in my experience as a grantee in around August.

Mr. HONDA. So last year's grants have been allocated and this year's are being——

Ms. DYER. Yeah. Right now there are still applications being sifted and——

Mr. HONDA. They will know by August whether they have been granted?

Ms. DYER. Well, I just became the Director in January. My experience as a grantee was that we got notice of whether or not we got our grant in about August.

Mr. HONDA. In spite of the fact that we are not sure whether we are going to have a budget or not?

Ms. DYER. Well, that is one of the reasons that I think the notices were not sent out to the grantees earlier because the Office on Violence Against Women or other grant-making offices cannot make definite determinations about which grants are going to be funded until they know how much money they have to give out.

Mr. HONDA. But could you not operate based upon an assumption that at the minimum we look at the President's budget?

Ms. DYER. Well, no. We do not make promises about grants going out until we know how much money we have to give.

Mr. HONDA. So, actually, nothing happens then?

Ms. DYER. I am sorry?

Mr. HONDA. Nothing happens. I mean, you ran a program.

Ms. DYER. Yes.

Mr. HONDA. And you have to meet deadlines. You have to meet payroll. You have to meet programs. If you do not know any of those information, how do you run a program?

Ms. DYER. Well, you do not start the grant until you find out whether or not your application was funded.

Mr. HONDA. Well, you have to submit it before——

Ms. DYER. Right.

Mr. HONDA. Right?

Ms. DYER. Yeah. You submit it.

Mr. HONDA. I assume they are all submitting them now and they have to wait until August, right?

Ms. DYER. Yes. You know, they will find out whether or not their grant was accepted usually in the summer. We found out in about August.

Mr. HONDA. What is the fiscal year that those programs run on?

Ms. DYER. Well, some programs run on calendar year and some run on a fiscal year. My program in Dallas ran on a fiscal year starting in October.

Mr. HONDA. Okay. Do you understand where I am going with this? You ran a program.

Ms. DYER. Yes.

Mr. HONDA. I am sure you must have wrung your hands.

Ms. DYER. Oh, sure. I wish I would know much earlier, but generally the granting agencies, they could not tell us whether our grant was going to be funded until they knew how much money they had to give out.

Mr. HONDA. Okay. It just seems like with the experiences all of you have in the field that there is some sense that or a process that you can address some of the concerns that they have out in the field in terms of meeting their deadlines and at least give some sense of minimum funding. And then if there is more, then you add to that. But it sounds like nothing is occurring right now until you find out whether you have a budget or not.

Did we have a budget last year?

Ms. DYER. Yes. And when the budget was announced, that is when the grant notices, that is when I found out, for example, in Dallas that we had gotten a grant application.

Mr. HONDA. I forgot. When was that? Do you remember the date that was announced?

Ms. DYER. No, sir. I do not know. I was in Dallas at the time. I really do not know when the budget was announced last year, no.

Mr. HONDA. Okay. Thank you.

Mr. MOLLOHAN. Mr. Fattah.

Thank you, Mr. Honda.

Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman.

GRANT CONSOLIDATION PROPOSAL

So let me just see if I understand. You want to consolidate 70 existing grant programs.

I guess my first question is that given that there are just a few months left in this Administration, why would you think it useful to spend a lot of energy in this consolidation process versus just trying to fairly administer the programs as they exist now? We are rearranging the deck chairs in the last few months of a two-term Administration.

Mr. SEDGWICK. I think the impetus behind this proposal is based on what we learned looking quite closely at crime trends in the United States.

You all may remember that when the first uptick happened in 2005 that there were reports from various organizations that, you know, this is a gathering storm, this is, you know, a new crime wave.

I mean, one of the advantages of working in the Office of Justice Programs is it contains both the Bureau of Justice Statistics and the National Institute of Justice. And we operate very much on a knowledge-to-practice model.

So we have access in the Office of Justice Programs to the people who have devoted their entire lives to benchmarking crime trends in the United States and looking at key indicators of crime and criminal justice across the board.

And so one of the things that we did when this uptick occurred in 2005 which came as a shock because we had grown used to approximately 12 consecutive years of crime decreases, so this all

came as a shock, and we went out and said, okay, let us first of all look at the crime data, UCR data from the FBI based on administrative records, let us look at the data from the National Crime Victimization Survey administered by the Bureau of Justice Statistics that talks directly to victims, and let us see if we cannot understand, let us drill down into this and see if we cannot pick up indicators of what is going on out there, and if we can understand, is this a reversal of a long-term trend that has lasted for more than a decade?

That is to say are we launched upon an increasing trend now that is going to go out for several years? Is this just a minor blip?

Mr. FATTAH. My question is a simple one and it is not a trick question. It is just that you have only a few months left.

Mr. SEDGWICK. Sure.

Mr. FATTAH. And this Administration is going to be exiting and a new Administration is going to be coming in. These existing programs have been authorized by the Congress, you know, in the women against abuse area, and very specific focused efforts.

And so I am trying to figure out why you would spend your energy, and I am sure there is a good reason, but in trying to kind of rearrange the structure of things now. That is the kind of work normally done at the beginning of an Administration.

Mr. SEDGWICK. Well, the crime increased actually in 2005, in the second term of this Administration, and basically we are recommending this based on what we learned from that experience.

We continue to think that for this Administration and for Administrations to come in the future, so long as the crime pattern in the United States continues the way it is now, where you have, you know, some regions experiencing increases and not others, some city sizes experiencing increases and not others, some blocks in a particular city increasing, you know, experiencing increased violent crime and not others, a flexible, broad-based competitive process that allows state and local governments to come to us and say in my jurisdiction, this is the most important problem, I want to ask for funds for this particular problem, is a smarter way to approach things rather than to present an array of 70 odd programs and say to local jurisdictions irrespective of what your problem is, the only way you can get money is to come ask for money within one of these categories——

APPLICATIONS FOR FUNDING

Mr. FATTAH. Let me ask you a different question before my time runs out. For the Committee, which ones do you receive too few applications versus the resources that are available?

Mr. SEDGWICK. Not off the top of my head.

Mr. FATTAH. And there were not any programs against domestic violence? Were there programs where money went languishing because there were no applications for them?

Ms. DYER. No, not that I am aware of.

Mr. FATTAH. All right. Are you aware of any?

Mr. PEED. No, sir.

Mr. FATTAH. Throughout the array of 70 programs?

Mr. SEDGWICK. Actually, I can think of one example.

Mr. FATTAH. Okay.

Mr. SEDGWICK. Okay? The Bureau of Justice Statistics administers a program helping state and local governments build criminal history records of stalking and domestic violence. For the past several years, we have had money available in that particular grant program and we have not had a sufficient number of requests for that money to be able to give it away.

So we have been carrying over a couple of million dollars every year in the Bureau of Justice Statistics because state and local governments are not submitting proposals for that particular purpose even though we have money available.

Mr. FATTAH. And is there any understanding about why? Is it something about the design of the program? Is the money too limited? Is the need not great enough?

Mr. SEDGWICK. I would have to go back and look at and talk to the unit head that administers that particular program. I know he has been very aggressive at trying to market this.

In fact, we have even, when states submit requests for criminal history improvement projects and we have not enough money left in that category to fund them, we suggested that they rewrite their proposals for this other pot of money. And we still have not been able to give it away.

Mr. FATTAH. One last question on the COPS Program in particular. The 12-year decline seemed to correlate with the advent of the federal government assisting cities and local communities through the COPS Program with putting 100,000 additional police officers on the street.

BENEFITS OF MORE COPS ON THE STREETS

And then the Administration decided to go in a different direction that somehow left COPS for better, I guess. In the analysis that has been done looking at the uptick, did we look at whether there was a correlation with the decline in officers on the street?

I know in my own city there was a definite downturn when we had the help of the COPS Program. And when that help moved away, we had an uptick. So if you would comment, that would be helpful.

Mr. PEED. We all know that crime is a very complex issue. And, of course, along with the advent of the creation of the COPS Office in 1993, also there were a lot of other things that happened at the same time, the truth in sentencing, three strikes and you are out, you know, no parole, those kind of initiatives which led to higher incarceration rates.

With regard to an evaluation, there have been 12 studies that I know of the COPS Office, including two think tanks in Washington, universities such as Yale, Nebraska, University of Maryland, as well as the GAO. So there is at least 12 studies I know out there. And some come up with different responses in terms of their, you know, having an impact on crime.

So the GAO came up and said for every dollar spent, there has been some correlation. I have forgotten the exact number, but if you are interested, I can get it to you.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided

to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. FATTAH. If you would supply that to the Chairman.

I think my time has run out, Mr. Chairman. Thank you very much.

Mr. MOLLOHAN. Thank you, Mr. Fattah.

The President's budget slashes state and local law enforcement and crime prevention grant programs by more than $1.6 billion below the fiscal year 2008 funding level of $2.7 billion.

Mr. Sedgwick, in your testimony, you state that your agency will, "Provide leadership in developing the nation's capacity to prevent and control crime," and, "Improve the criminal and juvenile justice systems."

EFFECT OF FUNDING DECREASE ON OJP/COPS

And I am skeptical about how effectively that can be done with a proposed cut of 66 percent below the current year funding level for OJP and the COPS Program when there are a number of studies, which I want to talk with you a little bit about, who looking over the hill say that we need additional resources in these areas.

Could you respond to that?

Mr. SEDGWICK. Will we be able to do less with the fiscal year 2009 budget than we are going to be able to do with the fiscal year 2008 budget? Sure. Yes.

Can we still demonstrate leadership? Can we still target those monies? Can we still leverage fewer dollars, work smarter with the money we have? Sure, we can. And that is basically the structure of this budget request.

What we are asking for, and, actually, we had an experience with this in fiscal year 2007 with the continuing resolution, where we were able to run several very competitive solicitations that targeted money to areas of demonstrated need. We think that experience was a success.

Mr. MOLLOHAN. But——

Mr. SEDGWICK [continuing]. I agree with that, that it was a success.

Mr. MOLLOHAN. I think you all did a responsible job under those circumstances. But there is a matter of scale here, is there not?

Mr. SEDGWICK. Sure, there is.

Mr. MOLLOHAN. Reaching every community; is there not?

Mr. SEDGWICK. Well, yes, there is.

Mr. MOLLOHAN. Which, otherwise, you are really just developing a series of pilot projects for which state and local folks do not have enough money to implement.

Mr. SEDGWICK. Well——

Mr. MOLLOHAN. Let me give you a chance to respond.

Mr. SEDGWICK. Well, you know, it can be phrased that way and I certainly understand——

Mr. MOLLOHAN. Is that accurate or inaccurate?

Mr. SEDGWICK. Well, the way I would phrase it is to say, look, what is the federal leadership role? Is it to assume responsibility for state and local law enforcement or is it to leverage federal dollars to fund promising best practices and——

Mr. SEDGWICK [continuing]. Then put a spotlight on those and say to other jurisdictions if you have a gang problem, you should look at this model.

DRUG COURTS

Mr. MOLLOHAN. Right. But let us be fair here. Given the request that the President has in 2009 or given the amount of money that the Congress came forward with in the 2008 Omnibus, we are not taking over state and local law enforcement.

You allude to the notion that with any one of these budgets we are taking over state and local law enforcement, that is not at issue. The level at which we are going to try to fund these programs will not take over state and local law enforcement. It will actually just support some prototype programs to ramp them up. And Drug Courts is an excellent example, I think. You were talking about that program a little earlier, how wonderfully effective some of the statistics suggest that program has been. Well, under this budget request, drug court programs would receive precious little support across the nation than there is now.

Mr. SEDGWICK. Well, I am not sure it is fair to say that there would be precious little support for Drug Courts because, like I said, if state and local governments are writing grant applications or proposals and saying a Drug Court responds to the most pressing law enforcement need in my jurisdiction——

Mr. MOLLOHAN. Well, you know, I am glad we are talking about Drug Courts because I heard you say that in response to a couple other questions. I do not know a community in the country that that is not a problem.

Now, it may be some community that the judges are not temperamentally inclined to and committed to the time and effort that it takes to do a Drug Court Program. There may be lots of those. But I think there are very few communities where, some alternative approach to treating the problem of drugs and recidivism and the crime that is associated with it is not needed.

So I think that is really good. I like us talking about that because I think that makes a really good case.

Mr. SEDGWICK. May I——

Mr. MOLLOHAN. Please.

Mr. SEDGWICK [continuing]. Because I think this is an important issue. I think it is also important to say, and we heard this certainly when we were out talking to the 18 cities that we toured, in many cities, they would talk about how problems of staffing and, you know, time in U.S. Attorneys' offices, bounced cases that had been handled by the U.S. Attorney——

Mr. MOLLOHAN. I am not following that. Say that again.

RANGE OF ADMINISTRATION FUNDING PRIORITIES

Mr. SEDGWICK. In many cities that we visited, we heard that cases that had been handled by U.S. Attorneys, for example, gun cases, are no longer being handled by U.S. Attorneys' offices because of resource problems. Shortages in U.S. Attorneys' offices then bounced those cases back into State courts where in many cases, gun laws were less stringent, penalties were less stringent.

Word went out on the street and guns came back. The feds are no longer prosecuting gun cases. Guns came back.

We heard of cases where because of limitations in the capacity in the Federal Bureau of Prisons individuals were not going to federal prison anymore. They were winding up now being prosecuted and incarcerated at the State level imposing costs on state and local government.

So a piece of this whole proposal that is in front of you, if you look just at OJP's budget, what you see are dramatic cutbacks. But if you then step back for a second and say, well, wait a second, part of the reason why there is less money in OJP is because there is more money going to U.S. Attorneys, there is more money going to U.S. Marshals, there is more money going to the FBI, there is more money going to the DEA, the ATF, and so on, so that just as an example, right now there is about one and a half billion dollars being spent by the Federal Bureau of Prisons to incarcerate persons for crimes that would otherwise wind up being incarcerated in the state prisons. That is a direct benefit to state and local government that should be added on top of what is in my mind in the budget we are looking at. So——

Mr. Mollohan.

Mr. SEDGWICK [continuing]. Part of this is a question of are state and local governments better served by giving money directly to state and local government at the risk of starving core functions of the Department of Justice, whether it is U.S. Attorneys, Bureau of Prisons, the FBI, the DEA, or is shifting money to those core functions alleviating pressures that would otherwise fall on——

Mr. MOLLOHAN. See, we are having a different debate here, however. This is the debate that you get from OMB and I do not know what, your pass back is from them. You ought to be advocating as we would be inclined to advocate for more dollars.

This is the OMB argument you are giving us. You have got a smaller pie, so, you know, do not expect to spend the money unless the Congress gives it to you in ways that you did last year.

But because you are advocating for fewer resources does not make it right and it does not mean that the federal government should not be involved in these programs more as a matter of fact. And the argument you are making suggests from my standpoint that we ought to be working ahead of these problems with some preventive and remedial programs with additional resources.

I know you have advocated for these program changes. Your predecessor did last year. Your testimony reflects it and supports it. I want to give you every chance to justify your recommendation. I think there is precious little support for it, if any, on this Subcommittee, so I am not sure we need to spend a whole lot of time on that issue.

So I would like to yield at this time, to Mr. Schiff who has just joined us.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

DNA INITIATIVE

Mr. Sedgwick, I want to ask you a couple questions about our DNA efforts. First, as a former prosecutor, I have been a strong

proponent of our expanded use of DNA. I think it is one of the most powerful tools that we have.

The President some years ago touted the DNA initiative as one of his hallmark criminal justice measures. He originally proposed over $230 million in federal funding for the initiative in 2004 and called for continuing this level of funding for five years.

Both last year and this year, however, the President has not requested any funds for the DNA initiative. The program instead appears to be rolled into the Byrne Public Safety and Protection Program, and the President has only asked for $200 million for the entire program. It appears that he has either zeroed out the DNA initiative or made a dramatic reduction in the amount of resources by forcing it to compete with everything else in the Byrne Grant Program.

How much of the $200 million for this one grant program do you believe should be devoted to DNA backlog elimination and how did you arrive at that number?

I also wanted to see if you have any updated estimates on the national backlog. I know when it was last done in 2003, the numbers were very substantial. I think it was then estimated between 500,000 and a million convicted offender samples that were owed but not yet collected.

TIMELINESS OF DNA SAMPLE ANALYSIS

Finally, one of the issues that I am researching right now is that a lot of states and cities that are having trouble getting their samples analyzed in a timely way are using private labs at great expense.

There was a requirement, however, by the FBI, that crime labs perform in-house technical reviews of a hundred percent of database samples from contract labs. We are trying to find out whether this is still necessary or wise.

In a 2005 memo from the NIJ Director to the Deputy AG, the memo confirmed that the burden of these requirements has increased the backlog of convicted offender samples, costing millions of dollars, and forced crime labs to remove staff from analyzing rape kits and other forensic samples.

I wonder if you could comment on whether we might eliminate or revise those requirements to assist local communities in getting timely analysis of DNA.

Mr. SEDGWICK. Okay. So you had three questions. One on funding and one on the size of the backlog and one on, kind of, states turning in frustration to private labs because of its inability to——

Mr. SCHIFF. Right, and whether we should, like in Los Angeles, as I understand it, if you use a private lab, you cannot upload into the system. However, the Sheriff's Department in L.A. uses private labs for its overflow that are uploaded into the system.

So if you are a city that works with the county, you can go to the same lab that the county uses for its overflow and it gets uploaded in the system, but you cannot upload your samples in the system. That does not make a lot of sense.

If you could comment on those requirements and whether we ought to consider revising or eliminating them.

One thought I had was we could license these labs at an expense that the labs themselves would pay so that the FBI or DOJ would certify that a lab uses the correct practices and then allow those labs to upload into the system.

Mr. SEDGWICK. Let me take your questions in the order that you posed them.

First of all, the funding question is, you are entirely correct. The DNA program gets folded into the Byrne Public Safety category under the President's proposed budget.

What level of funding will go to DNA projects and particularly the elimination of the backlog would depend on how many jurisdictions apply for funding under that particular category and say this is the project that we want to fund. This is our highest priority. It is at the state and local level. Okay?

So I cannot tell you how much money would be devoted to DNA in any particular year. It would depend on state and local jurisdictions identifying that as their need and asking for it, requesting it.

In terms of the size of the backlog, with your agreement, can I get back to you on that because I want to give you accurate figures?

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. SCHIFF. That would be great.

Mr. SEDGWICK. I would like to talk to the Director of NIJ and see what our backlog looks like.

On your third question, the issue of kind of the problem of using private labs and whether or not the findings from a private lab can be uploaded into the system, as you were describing that, I am thinking, well, I do know and, you know, we have talked about this problem of only recognized law enforcement agencies with ROI numbers are able to upload DNA results into the database which would explain, you know, why the Sheriff's Office can do it, but the lab cannot directly do it.

But I am puzzled by the argument or by the, and I take what you are——

Mr. SCHIFF. Well, it——

Mr. SEDGWICK [continuing]. Mentioning to be true, I am a little perplexed why it would be that the Sheriff's Office can upload results from a private lab, but the LAPD cannot, because my understanding of the restriction on who actually can enter things into the database is that you have to have an ROI, that is you have to be a recognized law enforcement agency.

Mr. SCHIFF. Well, we will follow-up with you on it. I just sat down with the City of Glendale, they are working on developing their own regional DNA lab, but they work through the county of Los Angeles. When they cannot get samples back quick enough from the county, they to considerable expense to themselves, contract with a private lab. It is the same private lab that the county uses for its overflow.

Mr. SEDGWICK. Right.

Mr. SCHIFF. When the county uses that as the overflow lab, they can still upload their samples. They will not allow the samples that Glendale contracts with the same lab to be uploaded by them or by the City of Glendale because they were analyzed by a private lab.

Even though it is a law enforcement agency that would be uploading them, not the lab itself, because they were analyzed by a private lab, not at the county lab, they are not permitted to do it.

Mr. SEDGWICK. That sounds very strange to me. So I would be happy to work with you and figure out what is going on there and, you know, if there is an appropriate tweak in the legislation that would eliminate that problem.

Mr. SCHIFF. Do you understand the issue and I do not know if this is a separate issue, of the crime labs being required to perform in-house technical reviews of a hundred percent of the database samples from the contract labs? Do you know what is involved with that?

Mr. SEDGWICK. No.

Mr. SCHIFF. Okay.

Mr. SEDGWICK. But I can look into that as well.

Mr. SCHIFF. Okay. All right. Well, I will follow-up with you on both of those.

Mr. SEDGWICK. Be happy to work with you on that.

Mr. SCHIFF. I want to thank the Chairman for his strong support of the DNA Program and his restoration of funds last year to the full level of the House authorization. I thank you, Mr. Chairman. I yield back my time.

Mr. MOLLOHAN. Thank you, Mr. Schiff.

Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

SCAAP PROGRAM

Mr. Sedgwick, can we talk a little bit about the SCAAP Program?

Mr. SEDGWICK. Sure.

Mr. FRELINGHUYSEN. Once again, you propose to eliminate all the money. I think we put in 410 million last year. In your budget materials, you say the finding of "results not demonstrated."

Can you comment about that? Does the Administration have a basic objection to the program or its execution? I mean, we are going to have it.

Mr. SEDGWICK. Right.

Mr. FRELINGHUYSEN. So if there are some basic objections, what would you do to perhaps modify it and change it to be somewhat more in line with the Administration's views?

Mr. SEDGWICK. I think at this point, the Administration's proposal not to seek funding for the SCAAP Program is based, first of all, as you correctly note, on an OMB finding that results were not demonstrated from the program. So there is a question of the recipients of the money being able to demonstrate results from that money, that is that——

Mr. FRELINGHUYSEN. What are your views of the results not demonstrated?

Mr. SEDGWICK. At this point, I have no reason to disagree with the assessment that was done by OMB. I think part of the problem here is that the program currently is structured as essentially a revenue sharing program.

Mr. FRELINGHUYSEN. Which reflects the reality?

Mr. SEDGWICK. Right. Well, here is part of the problem with a revenue sharing program from our point of view. This is separate from the issue of how broadly funds are distributed.

If a program is competitive, all right, and recipients need to show results, which is typically an expectation when you have a competitive grant program, okay, you need to say up front what you are going to do with the money, what results you anticipate, and then it is the function of our grant monitors and our program assessment office to make sure that grantees receiving money do, in fact, achieve the results and do spend the money for the purposes they said they were going to spend it for.

Revenue sharing programs travel down a rather different trajectory. You can look at it as, okay, this is almost like a Block Grant. I get this money and I do not really——

Mr. FRELINGHUYSEN. So that the Administration knowing we are going to restore this money, are you coming up with some sort of realistic way other than the manner you have described? In other words, if we are going to give the money, what would you suggest are the possible modifications?

Mr. SEDGWICK. I would——

Mr. FRELINGHUYSEN. I am going to wade into the whole issue of best practices in a few minutes, but——

Mr. SEDGWICK. Sure.

Mr. FRELINGHUYSEN [continuing]. If you know Congress feels that this program is important, what would the Administration suggest to modify it other than just annually go out there to try to scrap it?

Mr. SEDGWICK. I think if it were changed from a revenue sharing model to a competitive discretionary award process, that would enhance the quality of the proposals that we get and it would also enhance our confidence that the grantees were achieving the results that we wanted to see and you wanted to see when you initiated the program. I think that would be number one.

The other purpose is, as I understand it, the SCAAP Program was originally designed with the intent, the legislative intent of the program was to defer correction related expenses that were incurred by state and local governments as a result of incarcerating illegal aliens.

As the program is currently designed, any law enforcement purpose is sufficient justification for use of the SCAAP funds, not corrections. So, again, this may be a matter of taking, you know, the legislation authorizing the SCAAP Program and tightening the eligibility to make it clear that these funds are only available for incarcerating illegal aliens, not any law enforcement purpose.

So I think, you know, if it is the will of the Congress to continue the SCAAP Program, then I would suggest that, first of all, it be very clear that this is a competitive process and the legitimate use of the funds that are appropriated under SCAAP must be confined

to a narrower range of activities, particularly incarceration expenses for illegal aliens.

Mr. FRELINGHUYSEN. Fair enough. On the issue of best practices, last year, we had a substantial discussion with your predecessor. A lot of money has gone out of the door, billions of dollars for state and local law enforcement. We really never developed a single national nationwide repository of information about what works.

What have you been working on in this area?

Mr. SEDGWICK. Certainly within the OJP, one of the divisions of labor, I earlier mentioned in answering an earlier question, that OJP works a knowledge to practice model. So we take very seriously the notion of best practices as well as key indicators of benchmarks.

Kind of the dividing line between benchmarks and best practices which sometimes can be kind of hazy is best practices are what NIJ does through its research agenda that identifies best practices.

For benchmarks, that is primarily what the BJS does. Now, both BJS and NIJ have very aggressive dissemination programs. We are working on and we right now make available and disseminate through the National Criminal Justice Research Service or the Reference Service, NCJRS, access to all of the research that is done by the National Institute of Justice, as well as all of the statistical studies that are produced by the Bureau of Justice Statistics in addition to research reports that come out within the Office of Juvenile Justice and Delinquency Prevention, BJA, and so on.

So we do currently have a central clearinghouse. We are working very aggressively to make sure that they reach out, market more effectively to our stakeholder groups. That has been a consistent theme of my tenure as Director of the Bureau of Justice Statistics and I am pushing that to OJP as well.

Mr. FRELINGHUYSEN. Does your budget request include funds?

Mr. SEDGWICK. Yes.

Mr. FRELINGHUYSEN. What sort of funds specifically?

Mr. SEDGWICK. The specific for NCJRS, we would have to get back to you with how much we are spending on that.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. FRELINGHUYSEN. I assume we are spending more as a result of your attention to this——

Mr. SEDGWICK. We will be making——

Mr. FRELINGHUYSEN [continuing]. Issue?

Mr. SEDGWICK [continuing]. Sure that there is adequate funding——

Mr. FRELINGHUYSEN. We had substantial discussion about this last year.

Mr. SEDGWICK. Right. And like I said, the notion of reaching out, being more aware of our stakeholders and what our stakeholder information needs are and how they can best be met, not simply in terms of the means of dissemination, but also, you know, the content of dissemination.

RISS PROGRAM

Mr. FRELINGHUYSEN. One of the needs of sharing information is your RISS Program.

Mr. SEDGWICK. Correct.

Mr. FRELINGHUYSEN. But——

Mr. SEDGWICK. Right.

Mr. FRELINGHUYSEN [continuing]. You are proposing a 15 percent reduction.

Mr. SEDGWICK. Well, RISS is, you know——

Mr. FRELINGHUYSEN. Well, I understand that, yes.

Mr. SEDGWICK. RISS is really designed to be a law enforcement information sharing.

Mr. FRELINGHUYSEN. Yes.

Mr. SEDGWICK. So in terms of a kind of a broader dissemination of best practices, I doubt many of our stakeholder groups would think of going to RISS.

Mr. FRELINGHUYSEN. Yes, I realize that. But why is RISS funding reduced?

Mr. SEDGWICK. Well, RISS is folded into one of the other larger programs, I believe. Let me check that. Oh, actually, you are right. RISS is a separate——

Mr. FRELINGHUYSEN. It is not only a separate, but in addition, you are about to roll out an index, a national data exchange. What is the difference between the——

Mr. SEDGWICK. Between RISS and index?

Mr. FRELINGHUYSEN. Yes.

Mr. SEDGWICK. Index is a national information exchange system administered through the FBI. RISS is a regional information sharing system that operates on a regional basis and has been funded and run primarily through BJA.

So they are slightly different in the sense of whether or not both in terms of who administers it and who the line item would show up, in whose account the line item would show up. But they are also different in the sense of being a national index versus a regional.

Mr. FRELINGHUYSEN. How are both of those systems different than what is available off the shelf commercially that police and law enforcement can access?

Mr. SEDGWICK. Okay. As I understand it in both the case of index and RISS, these are law enforcement information sharing. We would probably call them law enforcement intelligence, okay, which is rather different from what a best practice is.

Best practice is okay if you want to address this particular problem in your jurisdiction, what is likely to be the most effective strategy for doing that. Okay?

Our stakeholders looking for best practices would gravitate to one of three places. They would either be headed toward the Bureau of Justice Statistics——

Mr. FRELINGHUYSEN. One of the issues of best practices, obviously they have the best information——

Mr. SEDGWICK. Sure.

Mr. FRELINGHUYSEN [continuing]. And intelligence.

Mr. SEDGWICK. Right. I absolutely agree with you. But they would also gravitate to the web site of the National Institute of Justice or if they wanted a central clearinghouse that had all of the research reports and all of the program reports that grew out of any OJP funded program, they would be gravitating toward NCJRS.

Mr. FRELINGHUYSEN. Will the local law enforcement people be fed into Index?

Mr. SEDGWICK. Yes.

Mr. FRELINGHUYSEN. That is state and local?

Mr. SEDGWICK. Yes. My understanding is that the Index Program is being built very much as a replacement to the old Miber system.

Mr. FRELINGHUYSEN. Will it cost them?

Mr. SEDGWICK. What?

Mr. FRELINGHUYSEN. Will it cost them? Will there be costs to local law enforcement for their participation?

Mr. SEDGWICK. That is a question that is best directed to the FBI——

Mr. FRELINGHUYSEN. Yes.

Mr. SEDGWICK [continuing]. And Director Bush, Assistant Director Bush.

Mr. FRELINGHUYSEN. Okay. Thank you, Mr. Chairman.

SCAAP PROGRAM

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen.

Mr. Sedgwick, You have described a very different program than I understand SCAAP to be. And so, first of all, I would like to ask you do you know just sitting right there without referencing the statute what the criteria for SCAAP reimbursement is?

Mr. SEDGWICK. No, I do not.

Mr. MOLLOHAN. Okay. So in your testimony before, you described the reimbursement and the purposes of SCAAP, as far more than a correctional reimbursement program. You described it as almost a, I think you did use the words an entitlement or——

Mr. SEDGWICK. No. I said it was——

Mr. MOLLOHAN. Revenue sharing.

Mr. SEDGWICK. It is a revenue sharing program.

Mr. MOLLOHAN. Okay. But not necessarily or exclusively tied to corrections—expense reimbursement?

Mr. SEDGWICK. Correct.

Mr. SEDGWICK. The way that program has been administered to this point, and I believe the program is administered conformable to the statute, is that it has allowed reimbursement to go out to jurisdictions for law enforcement purposes that go beyond narrow correctional.

Mr. MOLLOHAN. Reimbursement?

Mr. SEDGWICK. Yes.

Mr. MOLLOHAN. Reimbursement. Well, it is my understanding that actually states and locals submit for reimbursement under SCAAP, only for correctional purposes.

And really my question is, are you someone who can definitively answer this question and testify to that point? And if not, maybe there is somebody behind you that can. It is fine if you cannot. No witness can answer all questions. So are you?

Mr. SEDGWICK. Can you answer the question?

Can you repeat the question, please?

Mr. MOLLOHAN. Are you as a witness here capable of telling the Committee what is the criteria based upon which the federal government reimburses state and locals under the SCAAP Program?

Mr. SEDGWICK. I can tell you that prior to fiscal year——

Mr. MOLLOHAN. No, no. I am asking if you are the person who can definitively testify on this point, because I just do not want to spend time on it if you are not——

Mr. SEDGWICK. Okay.

Mr. MOLLOHAN [continuing]. Because we can submit it. We can get it for the record. I just think you are——

Mr. SEDGWICK. If you would prefer, I would be happy to get back to you with answers.

Mr. MOLLOHAN. It is not my preference. It is your level of comfort and whether you can do it or not. Of course, I want to know. I want to know what is the criteria upon which the Department of Justice reimburses state and locals for under the SCAAP Program. And it is a big program. It is an important program. There is a huge demand for it.

If you think we are not going to fund SCAAP, believe me, I can tell you we are going to because we experienced a little revolt on the floor of the House of Representatives last year, so——

Mr. SEDGWICK. If you want very detailed——

Mr. MOLLOHAN. I just want——

Mr. SEDGWICK. If you want a very detailed——

Mr. MOLLOHAN. Okay. Let us get it for the record.

Mr. SEDGWICK. We can get it for the record.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. MOLLOHAN. Okay. Fair enough.

Mr. SEDGWICK. I can tell you that prior to fiscal year 2006, there was no requirement for recipients to use SCAAP funding to address law enforcement or correctional issues. Beginning with fiscal year 2006, Section 1196 of the "Violence Against Women and the Department of Justice Reauthorization Act" requires that SCAAP funds must be used for correction purposes. That is a relatively recent——

Mr. MOLLOHAN. Okay. All right. Well, so the 2006, the 2007——

Mr. SEDGWICK. Beyond that——

Mr. MOLLOHAN. No, no, no.

Mr. SEDGWICK [continuing]. I can get you all the detail you would like.

Mr. MOLLOHAN. So you are saying that indeed under SCAAP, the federal government can now, regardless of what happened pre-fiscal year 2006, that now can only reimburse for correctional related expenses?

Mr. SEDGWICK. Right.

Mr. MOLLOHAN. So your test——

Mr. SEDGWICK. Mr. Chairman——

Mr. MOLLOHAN. So it is not revenue sharing?

Mr. SEDGWICK. It is going towards direct costs. It means it is going toward direct costs.

Mr. MOLLOHAN. Well, it is at least part sharing.

Mr. SEDGWICK. Revenue sharing has a whole different implication.

Mr. MOLLOHAN. I appreciate the gentleman raising the issue. Has the Administration recommended under this request elimination of the SCAAP Program?

Mr. SEDGWICK. Yes.

Mr. MOLLOHAN. Well, that is a really big hole that we are going to have to fill. It goes along with a number of other big holes.

SOUTHWEST BORDER INITIATIVE

Also, you are eliminating funding for the Southwest Border Prosecutors Initiative; are you not? This is a huge issue, illegal immigration and the federal government addressing illegal immigration. And it creates huge strains upon state and local law enforcement and corrections people.

Is the Administration taking the position that securing the border and apprehending and processing criminal aliens is not in part at least a federal responsibility?

Mr. SEDGWICK. No. Actually, quite to the contrary. I am glad you brought that up because——

Mr. MOLLOHAN. Well, thank you. I am——

Mr. SEDGWICK. No. It is actually a wonderful opening to, you know, reinforce a point that I made earlier. The Southwest Border Protection Initiative is defunded in this particular budget.

If you will look at the larger Department of Justice Budget, you will see there is a Southwest Border Enforcement Initiative that has been added. It, though, is funded through and operated by——

Mr. MOLLOHAN. Do we have a "not invented here" problem? I mean——

Mr. SEDGWICK. The what?

Mr. MOLLOHAN. The one border initiative is a congressional initiative and the other is an Administration initiative and it does the same thing or——

Mr. SEDGWICK. No. Actually, it shifts the focus. The new enforcement initiative is actually a joint cooperative project of the Executive Office of the U.S. Attorneys, ICE, and a variety of other federal agencies.

So essentially what has happened is rather than funding border enforcement through grants to state and local government, that money is now being shifted to federal officials to take greater responsibility, Mr. Chairman.

Mr. MOLLOHAN. Okay. We will look at that distinction carefully.

SCAAP PROGRAM

Let me just come to a little closure on the SCAAP Program. Now that you understand and we understand that SCAAP is dedicated to reimbursement for correctional expenses incurred by state and local jurisdictions because of the criminal alien burden that they have had to assume, do you take the same position with regard to SCAAP, that it should be eliminated?

Mr. SEDGWICK. I think the case for continuing SCAAP would be stronger if we are able to demonstrate results from SCAAP.

Mr. MOLLOHAN. What results?

Mr. SEDGWICK. Well, we have an existing part evaluation——

Mr. MOLLOHAN. I mean, they are incarcerating people. I mean, this is a reimbursement program. It is not a remedial program. This is a straight out, you are incurring expenses because the federal government is failing its responsibility along the border to control illegal immigration. Therefore, we recognize that is a burden you are assuming because it is a federal failure. We are going to reimburse you to that extent. You cannot get around that logic, right? That is great. What a victory. Wonderful. All right.

Well, there are a lot of people. One of them is probably sitting right over—all right.

VIOLENT CRIME

Violent crime trends, we have, as you pointed out, a mixed result with regard to the violent crime statistics. We have a decrease in some number of violent crimes and then we have an increase in a subset of crimes related to medium-sized cities and small towns of less than 25,000. I really just want to get that on the record.

Mr. SEDGWICK. Absolutely. You are completely correct.

Mr. MOLLOHAN. What is going on there; do you know?

Mr. SEDGWICK. That is a really good question and it is something that we spend a lot of time in the Department of Justice working on. Whether or not what we are looking at is differential effects of kind of professionalization of law enforcement because one of the——

Mr. MOLLOHAN. I am sorry. Say that again.

Mr. SEDGWICK. Differentials in the professionalization of law enforcement.

Mr. MOLLOHAN. Differentials in the——

Mr. SEDGWICK. Yeah.

Mr. MOLLOHAN. What does that mean?

Mr. SEDGWICK. One of the things that we are looking at is the larger cities have been more quick to adopt policing and some of the new techniques. COMPSTAT and so on, you know, are more solidly entrenched in larger cities——

Mr. MOLLOHAN. So some of the strategies and technologies are more implemented in the larger jurisdictions? Is that your testimony?

Mr. SEDGWICK. That is a hypothesis. Okay.

Mr. MOLLOHAN. Is that one being looked at? I mean, is that one you subscribe to?

Mr. SEDGWICK. Absolutely.

Mr. MOLLOHAN. And so——

Mr. SEDGWICK. Not that I subscribe to. Is it one that we are looking at? Absolutely.

Mr. MOLLOHAN. One that might have validity?

Mr. SEDGWICK. I would tell you right now that this is a topic of great interest to the Department and great interest to folks in, you know, the kind of research and statistics parts of the Department of Justice because many of the trends that we are seeing break

with past trends. That is to say you are not seeing the same things that we have seen in the past.

Mr. MOLLOHAN. So we are doing a good job at law enforcement in these jurisdictions that you just described, typically larger, more sophisticated in the sense of having better equipment, technology, and maybe strategies, and perhaps that is pushing crime over to the smaller jurisdictions?

Mr. SEDGWICK. It may be a displacement effect.

Mr. MOLLOHAN. Displacement, yes.

Mr. SEDGWICK. That is another hypothesis that is out there. There are speculation and hypotheses about the kind of social controls in small towns versus large cities. I would have to tell you at this point we have not reached any conclusions.

Mr. MOLLOHAN. Who is looking at that?

Mr. SEDGWICK. The Bureau of Justice Statistics is certainly looking at that. The National Institute of Justice is certainly looking at that. In fact, I can tell you right now that there is a joint initiative between the National Institute of Justice and the Bureau of Justice Statistics, in both agencies, to significantly increase the emphasis that they are putting on law enforcement, precisely because we are aware of the fact that our knowledge base in law enforcement is not what it should be——

Mr. MOLLOHAN. Do you anticipate reaching any conclusions before we mark up this bill or before the end of the fiscal year?

Mr. SEDGWICK. The end of the fiscal year?

Mr. MOLLOHAN. We ought to be sensitive to that and to the extent you can advise the Committee and update the Committee, that would be very helpful as we mark up our bill.

Mr. SEDGWICK. Certainly what we are seeing.

IS THERE A CRIME WAVE AND WHERE DOES IT EXIST

Mr. MOLLOHAN. Mr. Peed, can you comment on the crime wave and where it exists, where it does not exist, and your thoughts about it.

Mr. PEED. I think as Dr. Sedgwick said, it is not across the country in its entirety. It is in certain communities across the country, not just in certain communities, but certain neighborhoods within communities.

An example is, you know——

Mr. MOLLOHAN. Now, what is the "it" you are describing?

Mr. PEED. The it? Crime patterns, crime transfer within certain communities, violence in particular.

Mr. MOLLOHAN. And crime increases?

Mr. PEED. And crime increases in certain communities, yes.

Mr. MOLLOHAN. Fair to call it a crime wave in certain communities?

Mr. PEED. Yes, indeed. It is not necessarily in your larger metropolitan areas like Los Angeles, Chicago, or New York City, but it is sometimes those more, as you were saying earlier, some of those more mid-sized cities.

Mr. MOLLOHAN. I had the Mayor of LA come up here with his Chief of Police, made some very compelling arguments in a meeting with him about the crime wave in LA.

Mr. PEED. They just had a resurgence in violence that they could not explain and they primarily attribute it to the gangs there.

Mr. MOLLOHAN. So LA is an anomaly in this trend?

Mr. PEED. It is a very recent phenomenon just in the last two months or so, three months.

Mr. MOLLOHAN. So LA has had an uptick in violent crime?

Mr. PEED. Yes, LA did which under Chief Bratton, he had had successes and declines for about five consecutive years and all of a sudden, he saw this trend within about a two-month period of time.

Mr. MOLLOHAN. Are you working with them?

Mr. PEED. With LA? We work with all the jurisdictions across the country on——

Mr. MOLLOHAN. I know you do, but are you working with LA?

Mr. PEED. We are working with them on some issues, yes.

Mr. MOLLOHAN. What issues are you working in LA?

Mr. PEED. Internal Affairs, ethics in law enforcement. Internal Affairs is one of the issues.

Mr. MOLLOHAN. How about their gang problem?

Mr. PEED. We have worked with their Mayor out there. We held a Gang Conference out there with their Mayor and we produced a gang tool kit. We produced a gang reference card for parents, one of our most popular documents, so we are working on that issue.

Mr. MOLLOHAN. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

And I do want to follow-up on the Chairman's questions on the SCAAP Program. But before we leave the subject of DNA, which I raised earlier, I just want to make one comment in terms of the budget for DNA analysis.

I understand the point you were making, Mr. Sedgwick, about, I guess, how much of the funds ultimately go to law enforcement for DNA will depend on how much they prioritize it among the requests. But by forcing the departments to compete or have the priorities for overtime, compete with communications equipment, compete with backlogged DNA, they are in a lose-lose situation.

And I think we have seen unfortunately a number of times the Administration wants to cut something, it consolidates it in a single program and the cut is invisible. You cannot say how much is DNA being cut. You could tell it has been cut because it was being funded more than all of the Byrne Grants put together, but it does not have the same accountability because you cannot say that, in fact, it is being cut 50 percent or 75 percent until after the fact.

And I just hate to put our departments in the position of having to try to prioritize whether they have interoperable communications equipment or whether they can timely analyze rape kits.

And I do not know, Ms. Dyre, if you have a sense of where we are in terms of the backlog of rape kits. When there were last some published figures a few years ago, the backlog was 169,000 rape cases. Do you have any sense of where we are with that now?

Ms. DYER. No. I understand your question, but I do not know the answer to it.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided

to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. SCHIFF. Okay. Well, we will follow-up with you on that as well as on the issue of the hundred percent technical analysis of the private labs.

In terms of SCAAP, last year, I was very concerned about some severe delays in the SCAAP reimbursement process. As you may know, it took 16 months from the application deadline for reimbursements before states and localities received the 2006 funds. That meant that costs that were incurred during the 12-month period ending in June of 2005 were not reimbursed to states and localities by the federal government until August of 2007.

When we inquired about this delay, I heard, you know, directly from people at OJP and DHS very conflicting explanations, each blaming the other for the mess, one saying that they were waiting for data, I think OJP saying they were waiting for data from DHS, DHS telling us they sent the data, then OJP telling us that, well, oh, actually, yes, we did get the data, it turns out after all, but it was not the data we really needed, DHS then telling us that, in fact, the data that they said that they needed is data they do not need. And the long and the short of it is it took an eternity to get reimbursed.

Now, the following fiscal year happily, the 2007 reimbursements almost went out before the 2006 ones. They went out in December of 2007. It only took five months. And I wanted to ask in a hopeful way, was the 2006 issue a one-time occurrence? Do we have it down? Can we rely on a quick turnaround?

As the Chairman says, there will be enormous pressure to restore the SCAAP Program. The question is, how much of it can we expect that the communication between OJP and DHS has now improved so that you know what you need from them, they know what they need to provide you?

Mr. SEDGWICK. Yes. It has improved dramatically. I happen to know the circumstances in 2006 quite well because one of my staff members in BJS is responsible for cleaning and analyzing the data to turn over to BJA to run the formula to distribute the funds. So I am intimately aware of the circumstances that produced the bill in 2006. I think it is safe to say, I would be very surprised if those circumstances were occurring. You can say a one-time horror show. We do not need to go into the details up here. It was quite an exercise.

Mr. SCHIFF. Well, I am glad that that has been corrected. I am going to hold you to it, as you might imagine.

INTELLECTUAL PROPERTY ENFORCEMENT

One other area I wanted to raise with you all is an issue of great importance to my constituents and many others around the country and that is the issue of intellectual property enforcement.

And I was in the U.S. Attorney's Office for six years. I know, you know, if you get a lot of competing priorities, it is hard to prioritize intellectual property when you have got violent crime and you have got gang issues and you have got drugs.

One of the things that we have been exploring is trying to get the local law enforcement authorities involved to try to help. There are certain aspects of the IP enforcement they can do.

And we worked on some language last year to try to establish or incentivize a grant program where the federal government could incentivize localities to investigate and prosecute IP.

And I wanted to ask what your thoughts are with that? Is that something that we can pursue? Is that viable? How are you keeping up with the increasing proliferation of piracy cases and what more can we do about it?

Mr. SEDGWICK. I have to say at this point, that has not arrived in the Office of Justice Programs as a priority issue. It is a good example of new challenges that arise periodically, whether it be identity theft, human trafficking, and/or cyber crime. Intellectual property theft, I think, is an excellent example.

We have, at this point, I have to confess, not addressed that issue at all.

Mr. SCHIFF. Well, I would like to work with you and Commerce to see what we can do to step that up to make sure it is very much on your plate.

You know, we are constantly coercing our trading partners to crack down on IP theft.

Mr. SEDGWICK. Sure.

Mr. SCHIFF. And it is becoming more difficult to do that when they can point at the IP theft going on in our own country.

I had a meeting recently with some parliamentarians in Mexico who were talking about how, yes, there are a lot of pirated DVDs being sold in Mexico, but they are actually imported in California from China and brought across the border. And if you can stop them from getting into the U.S., we can stop them from getting into Mexico.

So we will follow-up with you, but——

Mr. SEDGWICK. We would be happy to work with you on that.

Mr. SCHIFF [continuing]. We would like to try to step up those efforts.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Ms. Dyer——

Ms. DYER. Yes, sir.

OVW RECENT STATISTICS

Mr. FRELINGHUYSEN [continuing]. How are you? When I meet with my local prosecutors, they tell me the reports of rising numbers of domestic violence cases. Could you talk a little bit about what you see out there, the statistics? I know it is an issue of better reporting. How would you characterize your analysis of some of the pretty startling and disturbing statistics?

Ms. DYER. With regard to the——

Mr. FRELINGHUYSEN. Obviously, with the backdrop being your budget.

Ms. DYER. I understand the context. I am aware of the increasing numbers. People often ask me, both when I was a prosecutor and now that I am up in DC, is there more crime? Is there more report-

ing? I think that there is a little bit of both. There is a number of things going on.

Number one, I do think that there is a piece of this that there is more violence in our society overall. It is more reported, and I do think that in some respects that can actually increase the amount of violence. But I don't think that that is the sole reason for the increase in reports.

I think that a lot of the reason for the increase in reporting is actually for a good thing. And that is because there is more talk about it. It is more acceptable to talk about it, and there are more resources out there for victims.

We encourage victims to report. And now we say you should report and help will come.

Mr. FRELINGHUYSEN. The police have to—at least in New Jersey. I am not sure other jurisdictions. The police have to report and don't physicians?

Ms. DYER. That varies by state.

Mr. FRELINGHUYSEN. It does?

Ms. DYER. Yes. Texas, for example, does not have a mandatory reporting for doctors. And that is actually—many states do and many states do not. In all states, it is encouraged for physicians and police officers to arrest or report. And I do think that because of the increase in services that are available, because help is available, more victims do reach out and accept it. And that is a very good thing.

Mr. FRELINGHUYSEN. You currently run a discretionary program to encourage state, local, and tribal governments and courts to treat domestic violence, dating violence, sexual assault, and stalking as a serious violation.

Do you have statistics on this specific program?

Ms. DYER. The discretionary grant?

Mr. FRELINGHUYSEN. On the number of arrests and prosecutions?

Ms. DYER. The——

Mr. FRELINGHUYSEN. And what happens, given your budget's scenario to this program and to the STOP Grant Program?

Ms. DYER. Well, what we have is in each of those programs, every grantee has to turn in a progress report every six months. And those progress reports are collected, and stored, and analyzed by the Muskie School in Maine. I gave some of those numbers in my brief opening.

So, yes, we do have accessible to us the number of victims who are served and the number of arrests that are made, the number of prosecutions, and number of convictions that we get.

Mr. FRELINGHUYSEN. Do you have any general comments in regard to those statistics? What do those statistics show?

Ms. DYER. The statistics show?

Mr. FRELINGHUYSEN. What you said earlier.

Ms. DYER. That OVW is definitely benefitting communities. A lot of victims are receiving services, and a lot of defendants are being arrested and prosecuted.

Mr. FRELINGHUYSEN. Your largest program is your STOP Grant Program?

Ms. DYER. Yes.

GRANT CONSOLIDATION

Mr. FRELINGHUYSEN. You are proposing to eliminate it in your budget.

Ms. DYER. It is consolidated with the other discretionary grant programs.

Mr. FRELINGHUYSEN. Well if you eliminate it, what do you plan to replace it with?

Ms. DYER. Well, it is not eliminated in that states could not apply for a large sum of money. What is eliminated is the formula that automatically sends a certain amount of money to the states.

Mr. FRELINGHUYSEN. The formula, correct me if I am wrong, 25 percent goes to law enforcement, 25 percent to prosecutors, 5 percent to courts, and 30 percent to victim services.

Ms. DYER. Yes. But——

Mr. FRELINGHUYSEN. Is there another formula?

Ms. DYER. Yes.

Mr. FRELINGHUYSEN. Would you comment on that formula, and what happens? What would you replace it with? Assuming that the formula that I described does have some merit, I assume people made a judgment call.

Ms. DYER. The formula that I am referring to was the formula that determines how much money each state receives. That they are then able to turn around and give out in sub-grants.

The formula that you are talking about is the amount of money that when those states are turning around and giving them out in sub-grants, that they have to focus the money towards.

Mr. FRELINGHUYSEN. So if we cut this—cut your budget——

Ms. DYER. Yes.

Mr. FRELINGHUYSEN [continuing]. The formula that gives money out to the states, the present formula——

Ms. DYER. Yes.

Mr. FRELINGHUYSEN [continuing]. For each of the battered women's shelters, I mean, they are crying the blues right now.

Ms. DYER. Yes.

Mr. FRELINGHUYSEN. So your——

Ms. DYER. Yes. This would prevent——it is true. Under the consolidated, flexible program, that the President's budget requests, there would not be a definite number going out to the states.

Mr. FRELINGHUYSEN. Not only not a definite number, but a much lower number, dollar number.

Ms. DYER. A lower dollar number due to the reduction in the overall budget. I would anticipate that most states, Texas, California, and most states, are going to apply to OVW, because that formula program becomes a——

Mr. FRELINGHUYSEN. They will be applying, but they will be waiting in line with other——

Ms. DYER. That is correct.

Mr. FRELINGHUYSEN. It is?

Ms. DYER. That is correct. It would be competitive, and they would be competing against other.

Mr. FRELINGHUYSEN. Right. It is pretty difficult to run a program and have some degree of stability in that type of environment.

Ms. DYER. That is correct. There would not be that formula percentage that they currently have.

RESTRAINING ORDERS

Mr. FRELINGHUYSEN. The last question, and since you have devoted a good portion of your career, would you comment on the whole issue of restraining orders? You know, to me at times, I am not a lawyer, it seems that they don't work.

And would you comment on the whole issue of people who abuse—husbands who abuse, men who abuse, fleeing to other jurisdictions? And our inability to find out where they are.

Ms. DYER. I——

Mr. FRELINGHUYSEN. And prosecute them. What are you doing in that area? And what is the Department of Justice doing? We have a lot of constituents.

Ms. DYER. Yes, sir.

Mr. FRELINGHUYSEN. And it makes me explosively angry. I just wondered if you would comment.

Ms. DYER. Yes, sir. With regard——

Mr. FRELINGHUYSEN. Just on the general issue of restraining orders——

Ms. DYER. Okay.

Mr. FRELINGHUYSEN [continuing]. Not restraining.

Ms. DYER. I——

Mr. FRELINGHUYSEN. And are there statistics that people—that the Department of Justice collects relative to situations like this?

Ms. DYER. With regard to the issue of protective orders or restraining orders, we usually call them protective orders, and whether or not they are effective, they are effective for most victims. They are absolutely not effective for all victims, and they are not bullet-proof vests.

For most victims who have abusers who have something to lose, an abuser who has a job, an abuser who has, you know, a house or some sort of, you know, rent, it is very effective for him, because that abuser does not want to get picked up, and go to jail, and risk losing his job and risk not being able to pay his mortgage or his rent. So for those victims, restraining orders are very, very effective.

We did a study in Dallas, not a OVW study, a study in Dallas. And 85 percent of victims who obtained a protective order through the DA's Office said that their lives were markedly improved. And that they were safer once they got it. So that is good, but it is not 100 percent.

For victims whose abusers are just complete losers, who have no job, no house, or who have terrible criminal records to begin with, protective orders frequently are not very effective, because these people do not have anything great to lose by being arrested and put in jail. They get low-bid bologna and warm Kool-Aid. It is not that bad for them.

For these people who have terrible previous criminal records, they say, "Look, I got a misdemeanor violation of protective order. I am improving." I am getting—you know, so for those people, those victims are not. And that is why every victim who comes in

to get a protective order, we say, "Good for you. This is going to help you, but you need to do other things to keep you safe as well."

The other thing I will say is that protective orders are very good at stopping harassment, calls, misdemeanor assaults. They are not good—they are not very good at stopping murders, because I haven't had a defendant yet say, well, I would kill you dead if it weren't for that violation of a protective order I could get on my record. I am willing to commit felony murder, but I am not going to do it, because I don't want to get a violation of a protective order.

Well, that doesn't make any—as you can see, it is very effective at stopping stalking, misdemeanor assaults, harassment. It is not that effective at stopping murder. And that is why those victims need to get a protective order, but also go to shelters.

Mr. FRELINGHUYSEN. The ability to pursue people, you know, into——

Ms. DYER. Yes.

Mr. FRELINGHUYSEN [continuing]. Other jurisdictions.

Ms. DYER. Very good——

Mr. FRELINGHUYSEN. Just very briefly. My time is up.

Ms. DYER. I can talk faster.

Mr. FRELINGHUYSEN. Please, go right ahead.

Ms. DYER. Yes. That is a big problem, because right now communities are supposed to put all of their protective orders on NCIC. Many communities have access to NCIC, but they just simply cannot agree as to who is the one to do it. And I don't have the staff. And I don't have the time. And I don't want to. And many communities do not put their protective orders on NCIC as they should.

Now some communities have a very good reason for not putting their protective orders on NCIC. Those in tribal communities that don't have access to it. They have a good reason.

NATIONAL PROTECTIVE ORDER REGISTRY

Now one thing that we have considered is, you know, should we have some sort of a national protective order registry that would be more Internet based, as opposed to NCIC based. And that would be more easily accessible by the police officer at 2:00 in the morning who is responding to the scene of a domestic violence case. I think that there is great interest in that.

I personally have a great interest in that, because that is a very big problem, not only in places like this where people live in Virginia, work in Maryland, and go to school in DC. That is a huge problem. But even in Texas. I live in Dallas, but I work in Tarrant County. And even those two things don't often communicate. And so there is a huge problem with that. And I think that we should look into the possibility of a national registry that is more internet based.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen.

Mr. Sedgwick, are you familiar with the think tank, Third Way?

Mr. SEDGWICK. Yes.

REPORT—IMPENDING CRIME WAVE

Mr. MOLLOHAN. Are you familiar with their report "The Impending Crime Wave: Four Dangerous New Trends and How to Stop Them"?

Mr. SEDGWICK. Yes. I have it sitting on my desk.

Mr. MOLLOHAN. Well good. And the report cites as evidence of this new crime wave looming, surging youth population more vulnerable to the internet age, large number of ex-offenders being returned to the communities.

Mr. SEDGWICK. Pardon?

Mr. MOLLOHAN. Is there a new crime wave coming?

Mr. SEDGWICK. Will crime rates churn up again some time in the future?

Mr. MOLLOHAN. No, no, no. I am asking more specifically. You deal with these statistics. You look at these reports. You know, you are the expert. Do you anticipate a new crime wave? Are these analyses and conclusions valid? To what extent are they valid or not valid?

Mr. SEDGWICK. We would—the Bureau of Justice Statistics, which I also direct, we don't make predictions. In part because the track record for making predictions in criminal justice is pretty poor to be blunt with you.

I will tell you that, one of the issues that if I were to say of the things that we look at and we see in the data in the Bureau of Justice Statistics that give us pause, I would probably point to three things that are issues that we have called to the attention of Department leadership. And said these things need to be monitored very carefully.

Mr. MOLLOHAN. With regard to future crime?

Mr. SEDGWICK. Future crime rates.

Mr. MOLLOHAN. Okay.

OJP STUDIES ON CRIME RATE AND RECIDIVISM

Mr. SEDGWICK. One is there is 2.2 million persons in confinement in the United States, incarcerated. Okay? Ninety five percent of them will be released and will return to their communities. Okay? We know a fair amount about the recidivism rate for persons who have been incarcerated. And it is uncomfortably high.

We don't know as much about what works in terms of rehabilitative services as we would like to know. This has been one of the toughest topics in criminal justice to solve.

Mr. MOLLOHAN. You are going to enumerate these, aren't you? And you have them in your head, so you won't forget them.

Mr. SEDGWICK. Yes. I

Mr. MOLLOHAN. I asked you——

Mr. SEDGWICK. Sure.

Mr. MOLLOHAN. With regard to the recidivism issue——

Mr. SEDGWICK. Pardon?

Mr. MOLLOHAN [continuing]. Are you all looking at that?

Mr. SEDGWICK. Absolutely. In fact, one of the things that we just did in the Bureau of Justice Statistics is reorganized the way we are structured to put greater emphasis on three topics.

One is law enforcement, one is adjudication, and one is recidivism and reentry. So this is a major emphasis for us, because we know that, you know, we have a huge number of persons coming back to communities.

Mr. MOLLOHAN. Who is looking—specifically what office or what individuals are looking at this in the department?

Mr. SEDGWICK. Well, the Bureau of Justice Statistics is certainly looking at it. The National Institute of Justice is certainly looking at it.

Mr. MOLLOHAN. That is looking at to determine if we are going to have such a resurgence based upon——

Mr. SEDGWICK. No. This——

Mr. MOLLOHAN [continuing]. Recidivism.

Mr. SEDGWICK. I thought you were asking about what agencies within the Department of Justice are looking at this problem of recidivism and reentry.

Mr. MOLLOHAN. I did.

Mr. SEDGWICK. Okay.

Mr. MOLLOHAN. What you told me I thought sounded like a statistical analysis. And I was going to ask you is there somebody looking at it from a programmatic perspective?

Mr. SEDGWICK. Not only the National Institute of Justice but also the National Institute of Corrections.

Mr. MOLLOHAN. Are looking at that programmatically?

Mr. SEDGWICK. Yes. Now this is an important issue for the Department.

Mr. MOLLOHAN. Yes. And we want you to share your concerns with us.

Mr. SEDGWICK. Sure.

Mr. MOLLOHAN. And your knowledge about it.

Mr. SEDGWICK. Sure.

Mr. MOLLOHAN. But my question is is somebody looking at it in the sense of what should we do about it programmatically?

Mr. SEDGWICK. Oh, absolutely. What——

Mr. MOLLOHAN. Who is looking at that part of it?

Mr. SEDGWICK. Well, what should we do about it?

Mr. MOLLOHAN. No, no. I am saying who is looking at that issue programmatically in the Department of Justice?

Mr. SEDGWICK. Well, you mean what offices are looking at it?

Mr. MOLLOHAN. Yeah, exactly.

Mr. SEDGWICK. Where would we go to say——

Mr. MOLLOHAN. No, I mean you say—you say you are looking at it. I mean, statistically you are saying boy we are looking at this. You know, 95 percent are going to be out in so many years. And we have a certain recidivism rate. That suggest that we are going to have a bump increase in crime.

Mr. SEDGWICK. Certainly. We will be——

Mr. MOLLOHAN. Okay. So that is the statistical analysis. And that is the warning.

Mr. SEDGWICK. Right.

Mr. MOLLOHAN. So my question is okay, we are looking at that. And we are warning——

Mr. SEDGWICK. So the next question is what works to offset those pressures.

Mr. MOLLOHAN. Yes, sir.
Mr. SEDGWICK. Okay.
Mr. MOLLOHAN. And who is looking at——
Mr. SEDGWICK. The National Institute of Justice.
Mr. MOLLOHAN. Okay.
Mr. SEDGWICK. Okay? And also the National Institute of Corrections.
Mr. MOLLOHAN. Okay. You threw me off here.
Mr. SEDGWICK. Do you want me to finish my other two points that we were——
Mr. MOLLOHAN. No. I want to explore that. And I want you to remember your other two points.
Mr. SEDGWICK. Okay.
Mr. MOLLOHAN. That is why I asked you if you would remember that, because I won't. And if you give them to me. And I can't write down.
But I think it is really important. And it is wonderful that you all have that expertise over there. So what should we do with that? What preventive programs are out there? Are we looking at it from a preventive standpoint?
Mr. SEDGWICK. Absolutely.
Mr. MOLLOHAN. Okay. Well who tells us that?
But who comes up and tells us? We ought to be looking over the hill here. And I don't want to ask it that way. I just want to know who is looking at it? And what should we be doing about it?
Mr. SEDGWICK. Well——
Mr. MOLLOHAN. I am just looking for the advice.
Mr. SEDGWICK. All I am saying is, if you hold hearings on the topic, we will come.
Mr. MOLLOHAN. Okay.
Mr. SEDGWICK. If you were to hold a hearing and say we want to know what you all are thinking about in terms of——
Mr. MOLLOHAN. Fair enough.
Mr. SEDGWICK. We will come.
Mr. MOLLOHAN. And we should do that. Okay.
Mr. SEDGWICK. But——
Mr. MOLLOHAN. Do you have any thoughts on, short of our holding a specific hearing on that? And I think that is a really good suggestion.
Mr. SEDGWICK. The other option is——
Mr. MOLLOHAN. It is a huge issue.
Mr. SEDGWICK [continuing]. We could always have your staff contact the Office of Communications, the Office of Public——
Mr. MOLLOHAN. Okay. Well we will do——
Mr. SEDGWICK. And say these are things that we are interested in. Can you send people up to talk to us about them?
Mr. MOLLOHAN. Well, we will do that too. And maybe you are not prepared to talk about it specifically here.
Mr. SEDGWICK. About recidivism?
Mr. MOLLOHAN. Yeah. And the programs that you all are looking at to address the potential recidivism or the recidivism that your statistics suggest we are going to be looking at.
Mr. SEDGWICK. If you want to talk about recidivism, I would much prefer to send up to you——

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. MOLLOHAN. Okay, fair enough.

Mr. SEDGWICK a table——

Mr. SEDGWICK [continuing]. To understand folks from the National Institute of Justice and the National Institute of——

Mr. MOLLOHAN. Okay. Well you have told us—you told us where to go. Fair enough. Okay, the other two——

Mr. SEDGWICK. I hope I didn't tell you where to go.

Mr. PEED. Can I take the question?

Mr. MOLLOHAN. Yeah, please Mr. Peed.

COPS ON RECIDIVISM ISSUE

Mr. PEED. Recognizing that about—the recidivism rate is, of course——

Mr. PEED. Recognizing that recidivism, of course, is over 60 percent, what we did was work with the IACP. In prior years, the probation—it was—it basically said this was a probation/parole problem or somebody else's problem.

Chiefs did not necessarily see it as their issue. We thought that chiefs should take it as their issue, because if there is additional crime in their communities as a result of reentry, the 600,000 or so people coming back that they should be aware of it. And should be taking some response, have a response to that.

So the IACP has been able to convince all of their 18,000 agencies out there, at least they are trying to convince them, that reentry is an issue that all chiefs across the country, chiefs and sheriffs, should be aware of.

Secondly, the Urban Institute has done some research on this. And the Urban Institute did some work to try to look at targeting where offenders return to, if they return to like the hot spots. If they return to the same communities they came from.

So the Urban Institute has done some work. And the Police Foundation did the same thing. The Police Foundation did some research looking and trying to convince law enforcement organization across the country that they needed to map, crime map, where offenders were returning. So that they could see if crime statistics are starting to go up in those communities. They had some areas where—if crime starts to occur, they would say is it because of all the people heading back into that community.

So that is just a thought. Just to take a little pressure off Dr. Sedgwick.

Mr. MOLLOHAN. No, no. I don't want to put any pressure on Dr. Sedgwick. What I am hearing with that testimony is that we are putting the local police—we are saying you better be on high alert, because there are going to be a lot of folks. But that is still policing. That to me is not really addressing the——

Mr. SEDGWICK. The root causes?

Mr. MOLLOHAN. The root causes of the problem. Are we looking at root causes?

Mr. PEED. Actually, the——

Mr. MOLLOHAN. That is candid. Well, we will forget you. We are back to Mr. Sedgwick. [Laughter.]

Mr. SEDGWICK. I should also mention that OJP also participates, many of our agencies. For example, BJA funds a fair amount of programming in prisoner relocating. So there are a number of different OJP agencies that are involved in this particular issue quite deeply.

But also OJP participates in the Administration's Prisoner Reentry Initiative, which is a collaborative effort between the Departments of Education, Labor, Health and Human Services, and Housing and Urban Development, as well as the Department of Justice, to address exactly this problem, because quite frankly what we know about successful reentry and the elimination of recidivism leads to the kind of pushing back of the time to failure. So that people stay in the community longer before they go back to crime if in fact they do.

It requires some pretty simple things, you know, literacy, a job, housing, healthcare. I mean one of the things that was shocking to us when we were looking at prison populations was the very high levels of mental health problems among persons incarcerated in the United States.

So, you know, if you think about all of the kind of factors that go into enhancing the likelihood that a released inmate will come back to the community successfully and stay clean as opposed to go back to the old habits that got them incarcerated in the first place, this is really a multi-disciplinary kind of across the department effort that is currently under way.

And we would be happy to kind of share——

Mr. MOLLOHAN. Well, and maybe we want more specifically. But just to get on the record, there is a new national study released last month by the Pew Center. It found for the first time in U.S. history more than one in ninety-nine adults is currently in jail, which is more than 2.3 million people.

Mr. SEDGWICK. Right.

Mr. MOLLOHAN. Boy, is that sobering. That is in and of itself, a statement of failure—as a society.

The report said that, "Fifty states spent more than $49 billion on corrections last year, up from $11 billion 20 years earlier. Furthermore, the recidivism rate remains basically unchanged. About 95 percent of all incarcerated individuals will eventually leave prison. And the Bureau of Justice Statistics," which you are close to, "estimates that two-thirds of all released prisoners will commit new offenses within three years."

Is that statistic accurate?

Mr. SEDGWICK. Yes, that is true. That particular statistic you see across research projects.

Mr. MOLLOHAN. Well doesn't that just drive you to say, there is something systemic going on here? And we are not addressing it? And we are warning police chiefs that there is going to be this

wave. But we are really not addressing it. And we have programs in this Committee that address this.

But the President's budget request zeros out funding for existing offender reentry, for drug courts, for state drug treatment program grants. That is not a good thing, is it?

GRANT CONSOLIDATION

Mr. SEDGWICK. Well, again, you are saying it zeros out funding for programs. Programs are being consolidated. So your ability to tie a certain amount of money to a set program under the President's proposed budget, right? It breaks that—but that is different from saying it zeros out, right?

It is still possible for state and local agencies to apply for funds for reentry programs. So it is not that no money will go to reentry anymore.

Mr. MOLLOHAN. No. But it is substantially less in that consolidation.

Mr. SEDGWICK. Right.

Mr. MOLLOHAN. There are substantially less funds available for those programs.

Mr. SEDGWICK. I can't dispute that.

Mr. MOLLOHAN. Yeah. And you don't like that. You want more funds. I know you do. I know you do. I am not testifying for you. I am going to give you a chance to answer that. Should we have more resources in these remedial areas? This is your one chance to testify in the United States Congress what you really believe about this.

Mr. SEDGWICK. Well, you know, as I said, my charge is to——

Mr. MOLLOHAN. Support the President's budget.

Mr. SEDGWICK. Well, yes.

Mr. MOLLOHAN. I know. But I am asking——

Mr. SEDGWICK. I am part of the Administration.

Mr. MOLLOHAN. Let me ask you——

Mr. SEDGWICK. But also I will go back to an answer I gave you previously, Chairman Mollohan. And I appreciate what you are asking.

Could I do more good with more money? Absolutely. Can I with confidence say I can do more good with those additional funds than any other office of the Department of Justice? No, I can't say that, because I don't sit in that chair.

The leadership has to make——

Mr. MOLLOHAN. I am going to accept your first answer as satisfying my question, because I think you went as far as you feel comfortable going. And you clearly said that we need more money. And I think those are things we do want on the record here. Not as I got you, but we really want it on the record. It is, you know, a problem here.

Let me go through some things here. Juvenile justice and missing children's programs, lot of support for that up here. The budget proposes to eliminate existing missing children and juvenile justice programs and replace them with a new $185 million consolidated program. Here is another case of consolidation and cutting funds.

Congress appropriated $434 million for these programs, $50 million for missing children and $384 million for juvenile justice pro-

grams, including Secure Our Schools, Victims of Child Abuse Act Programs, Title V Gang, and Alcohol Prevention Programs, and the new Competitive Youth Mentoring Grants Program.

Your budget represents a $240 million cut in addition to the consolidation. What will not be funded if Congress were to approve the President's proposal, as I just summarized?

Mr. SEDGWICK. What will not be funded is any existing program for which the state and local government does not submit an application and say this is our highest need. If nobody asks for something. You know, look, the whole idea of this approach, and you are exactly right.

Mr. MOLLOHAN. Well, then——

Mr. SEDGWICK. This is applied consistently across——

Mr. MOLLOHAN. But you are not going to be able to fund everything that is requested.

Mr. SEDGWICK. We want to.

UNFUNDED PROGRAMS

Mr. MOLLOHAN. Obviously, you are not going to fund things that aren't requested.

Mr. SEDGWICK. We won't fund things that aren't requested. And we won't be able to fund everything that is requested.

Mr. MOLLOHAN. Yes.

Mr. SEDGWICK. So we will have to make tough decisions. And that is what we get paid for, in this format people apply. They say this is our need. They demonstrate. They document the need. They demonstrate an awareness of what best practices are and address that need. And are willing to adopt those best practices.

And based on the quality of their analysis of the problems they have and their ability and willingness to adopt best practices to address that, we will fund the proposals until our money runs out.

Mr. MOLLOHAN. Let me ask you about

Mr. SEDGWICK. Sure.

BEST PRACTICES SERVING GRANTEES

Mr. MOLLOHAN [continuing]. Communicating best practices. How does OJP, your bureau's offices, coordinate to serve grantees? For example, if I were the mayor of a town and I had a growing gang problem, how would I get advice? Would I have to go hunting around for the programs? Is there a one-stop office clearinghouse that would give me advice and give me direction?

Mr. SEDGWICK. There are actually links on the OJP website. And to each of our programmatic office websites—that steer people to grants and to the way in which to apply for those grants.

Mr. MOLLOHAN. And that was plural, right?

Mr. SEDGWICK. Yes.

Mr. MOLLOHAN. There are different—well——

Mr. SEDGWICK. There are——

Mr. MOLLOHAN [continuing]. Last year we talked a little bit about one-stop shopping and one-stop assistance. So someone wouldn't have to go through and guess. Is there such a thing? Are you developing a one-stop shop?

Mr. SEDGWICK. There is grants.gov. Okay, which is a one-stop shop for all federal grants. Which is a searchable database that al-

lows you to go in and enter keywords. And you get back from the search engine all of the federal grant programs that are out there that address that particular problem, irrespective of what department those programs are housed in.

I think equally important for grantees is not simply to know that there is a grant program out there that has an open period for submission. But also to know that there are staff in the appropriate office that are prepared to pick up the phone and, you know, answer a question, counsel an applicant on how best to put together a proposal, prepare to discuss funding priorities and so on, and to share insight into what have constituted successful applications in past cycles.

One of the things that we are really proud of in OJP is the willingness of our staff to deal with stakeholders and applicants in a spirit of, we want to help you get this money.

Mr. MOLLOHAN. Is there this one-stop shop clearinghouse resource?

Mr. SEDGWICK. Well, there is—like I said, there is grants.gov, which is one stop for the entire federal government and a searchable database.

Mr. MOLLOHAN. But there is not for Office of Justice Programs?

Mr. SEDGWICK. To the best of my knowledge——

Mr. MOLLOHAN. Do you think that would be helpful?

Mr. SEDGWICK. I am not sure whether—what the value added of having one for OJP when there is already one that is searchable for the entire federal government.

Mr. MOLLOHAN. I don't know the answer to that. But——

Mr. SEDGWICK. Yeah. I mean, it——

Mr. MOLLOHAN [continuing]. Your answer is you don't have it. I would think it would be a higher level of expertise, an expertise in depth to be able to refer people. But you don't have it so.

Mr. SEDGWICK. We certainly have links to grants in each of the program offices that do make grants.

Mr. MOLLOHAN. Well, that is the question actually I wanted to ask of Ms. Dyer and Mr. Peed.

COORDINATION BETWEEN OJP, COPS, AND OVW

How do the Office on Violence Against Women and COPS Office coordinate with one another and OJP? What steps are being taken to ensure better collaboration across the agencies and with grantees? Are you all looking at that?

Ms. DYER. Well, we have biweekly meetings with the Associates Office where not only does Jeff come on behalf of OJP, but each of the directors of his individual components are there too, so NIJ, SMART, Carl is there. So every two weeks we get together.

Additionally, in the Office on Violence Against Women, we have another federal interagency counsel that—where we get together with other people, even outside of the Department of Justice, who deal with violence against women issues, most notably Health and Human Services. We end up partnering with them on several things.

And so we do try to get together to make sure that we are aware of what the other agencies are doing. And that we can work collaboratively.

Mr. MOLLOHAN. Mm-hmm. Mr. Peed, do you want to respond to that?

Mr. PEED. Yes. We do meet every two weeks. And as a matter of fact, we have got a meeting this afternoon after we conclude this meeting.

But I think we know—at least I know about our—we work very close with all our partners over in the Office of Justice Program. It is not unusual for me to call up Domingo and partner on an issue or NIJ. We are partnering with NIJ now on a potentially DNA initiative that wants to shift—you talk about in terms of the policy issues that—the privatization of labs. So we want to look at it from a research policy, best practices approach.

And we have a resource information center, a RIC that we call it, where people can go to that site and order products all the time. So they can go there and look and see what products are available. And order products that will address their issue that is most concern to them.

We also, at least in——

Mr. SEDGWICK. Isn't that a one-stop shop resource?

Mr. PEED. I think for our office it is. Yes. For all our guidelines, all our products like the ones I brought here today, they can order any of those products. Go into that resource information center.

But I also reach across government agencies. We reach over to the Department of Homeland Security and work well with DHS. We had a great project last year working with the Office of Information out of the White House and the Department of Homeland Security on an intelligence summit with IACP. So we were able to bring together about 130 people from state and local government, federal government, working across agencies.

So I think it is basically a lot of good relationships. You know, I don't hesitate to call Dr. Sedgwick or anyone over in BJA or NIJ or OJP to sit down and talk about an issue. It has been, from my perspective, it has been very successful. They have been good partners.

COPS COMMUNITY OUTREACH

Mr. FRELINGHUYSEN. Following up, I am all for good relationships. Where do we stand relative to interoperability issues? What are we putting out on the street that realistically can communicate with a neighboring town or city? What are you doing?

Mr. PEED. With our appropriations, we have had grant solicitations by major statistical areas of the country, the MSAs. We have provided grants for people who are willing to work with multi-disciplinary groups, as well as multi-jurisdictional groups, to bring about interoperability for those regions.

To date, we have invested probably about $250 million in interoperable solutions.

Mr. FRELINGHUYSEN. So would your—with this budget scenario, what you have been doing would be less under this budget scenario, considerably less.

Mr. PEED. Well, the Department of Homeland Security has picked up on many of those initiatives as far as interoperability.

NATIONAL INSTITUTE OF CORRECTIONS

Mr. FRELINGHUYSEN. Just for the aforementioned National Institute of Corrections is funded under the Bureau of Prisons; is that right?

Mr. SEDGWICK. Right.

Mr. FRELINGHUYSEN. For $22 million. Isn't it proposed to be eliminated under the President's budget?

Mr. SEDGWICK. It is actually proposed for the programs of the National Institute of Corrections to be moved into OJP.

Mr. FRELINGHUYSEN. So this is another one of these issues here where everybody has to go out there and compete? So the National Institute of Corrections would have to be out there competing with another similar institute, which you head up?

Mr. SEDGWICK. No. Well——

Mr. FRELINGHUYSEN. Yes.

Mr. SEDGWICK. Ask that question again.

Mr. FRELINGHUYSEN. Well, the National Institute of Corrections, the money for it is going to be zeroed out under your budget. Is it proposed to be eliminated?

Mr. SEDGWICK. The functions of the National Institute—as I understand it, the National Institute of Corrections is being moved from the Bureau of Prisons into the Office of Justice Programs. And its functions absorbed by other agencies within OJP that currently do very similar work.

Mr. FRELINGHUYSEN. So what does that tell us? So the view is that there is another statistic gathering?

Mr. SEDGWICK. Or research. There are other groups——

Mr. FRELINGHUYSEN. Groups that could absorb what they are doing, which is a nice way of saying they are being eliminated?

Mr. SEDGWICK. Well it is saying that their functions are being absorbed into other agencies that are doing similar work. So there is a consolidation.

Mr. FRELINGHUYSEN. I think I like my take on it.

Mr. SEDGWICK. Okay.

SEXUAL PREDATORS

Mr. FRELINGHUYSEN. Back to Mr. Peed. Our fiscal year 2008 funding bill included money for a new program that related to arresting, prosecuting, and managing sexual predators. Where do we stand on that program? And where is this program going to go under this budget scenario?

Mr. PEED. Congress authorized $15.6 million to start this new program. And it is basically three parts. One part was to transfer funds, $850,000 over to the Sex Offender Register. The other part was to transfer $4.1 million to support the Adam Walsh Act. Those two funds would go to the Office of Justice Programs.

The other, remaining fund, $10.6, in our authorizing statute, it asked us to develop a program to address those issues that you just said, to address, prosecute sex offenders.

And in doing so, Congress asked us to do two things. One was to meet and coordinate with the National Center for Missing and Exploited Children. We have already completed that. We have al-

ready met with them to talk about the program. And they are very excited about it.

The second thing was they asked us to do was to work with U.S. Attorneys. We have already made some contacts with a number of U.S. Attorneys on that issue.

And so we will be developing, as soon as our spending is approved, grants for state and local law enforcement, to address that issue.

Mr. FRELINGHUYSEN. What will happen to your spending plans under the scenario we have been discussing here?

Mr. PEED. I don't know. And maybe we will get something—I don't think it will address it in its entirety. It may address—there may be a small percentage of it that might having some bearing on small part of it. I don't know.

Mr. FRELINGHUYSEN. I am not sure that answers my question.

Mr. PEED. Oh.

Mr. FRELINGHUYSEN. Given the budget scenario here.

Mr. PEED. I think it pretty much remains intact.

Mr. FRELINGHUYSEN. It does?

Mr. PEED. I think so. There might be some rescission or some——

Mr. FRELINGHUYSEN. I am looking towards this fiscal year.

Mr. PEED. In 2009?

Mr. FRELINGHUYSEN. Yes, that time frame.

Mr. PEED. We would be managing the 2008 grants during the 2009 time frames. So I don't think there is any funding in that particular program for 2009.

Mr. FRELINGHUYSEN. So there is no money in there?

Mr. PEED. Not that I am aware of.

RESCISSIONS

Mr. FRELINGHUYSEN. On the area of rescissions, our fiscal year Appropriations Bill handed you a pretty large rescission of your prior year balances. Between OJP and COPS, over $185 million was rescinded. In the past, these recisions were intended to scoop up money that was left unspent. And be obligated after grants to terminate it.

I understand that you have only deobligated about $10 million in the first quarter of this year. Do you anticipate being able to recover enough funds from the old grants to meet these rescission targets? And if you are unable to find the money in the old grants, how will you meet the rescissions that were enacted into law?

Mr. SEDGWICK. Okay. If you are talking about the rescission for fiscal year 2008, we did——

Mr. FRELINGHUYSEN. Yes, I am.

Mr. SEDGWICK. We currently have sufficient carryover balances to meet the $87.5 million rescission that we have in OJP.

How we will meet the $100 million rescission for fiscal year 2009, I can't really tell you until we get later into the fiscal year. But at this point, yes, we do have sufficient carryover balances to meet the fiscal year 2008 rescission.

Mr. FRELINGHUYSEN. But we could then potentially have much deeper cuts here.

Mr. SEDGWICK. In?

Mr. FRELINGHUYSEN. Going forward here with these rescissions.

Mr. SEDGWICK. Well right now the only two rescissions I know of are fiscal year 2008. And that is $87.5 million that we do currently have the funds to cover. For fiscal year 2009, the $100 million proposed rescission, we don't really—we are going to have to continue to evaluate our available balances during the rest of this fiscal year before we make a final decision.

Mr. FRELINGHUYSEN. Well is it your intention that you would use these rescissions to reduce the appropriated levels for state and local programs if Congress adds to your request?

Mr. SEDGWICK. Well, add to our request for fiscal year——

Mr. FRELINGHUYSEN. If you don't have enough money from the terminated grants——

Mr. SEDGWICK. Right.

Mr. FRELINGHUYSEN [continuing]. Would you possibly take that sort of action?

Mr. SEDGWICK. We might have to. I mean, quite frankly to meet a rescission——

Mr. FRELINGHUYSEN. Well, in the interest of full disclosure, this is obviously part of our——

Mr. SEDGWICK. We really only have two places to go. One is unobligated carryover funds. And the other is the obligations. And one of the things that I think people should know is that we have made dramatic progress in eliminating the backlog of unclosed out grants.

So historically, meeting rescission was not particularly challenging, because we had a lot of unclosed out grants that we could close out, deobligate the funds, and meet rescission amounts out of those close outs.

Due to some very hard work within OJP to come current on grants and to do a better job of managing grants, particularly in light of the Inspector General's report that kind of grant monitoring was one of the top ten management challenges for the Department of Justice, we took that very seriously. We have closed out about 16,000 grants out of our backlog.

That means that, the amount of money that is going to be there in deobligation, going out into the future, is going to be less than the standard. So this is for us a serious management challenge that we do worry about.

You know, the rescission amounts keep staying at a high level. And deobligations fall off as we eliminate our backlogs. And more closely monitor our existing grants to make sure that grantees are spending the money at an appropriate rate so that they spend everything they ask for and achieve the goals that they ask for during the period of the grant. We are not going to have any deobligations. And we won't have a lot to carry over. And that will cause some problems.

Mr. FRELINGHUYSEN. So it is important to have this matter out on the table.

Mr. SEDGWICK. Oh, yeah.

Mr. FRELINGHUYSEN. And we appreciate the clarification.

Mr. SEDGWICK. Absolutely.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman.

OJP MANAGEMENT AND ADMINISTRATION

Mr. MOLLOHAN. Mr. Sedgwick, with the exception of the $12.7 million request for crime victims fund management and administration, the President's fiscal year 2009 budget does not present direct costs for management and administration for OJP programs.

And we need to understand those requirements to determine proper funding levels. And I want to ask you if you would commit to working with the staff in a very transparent way so we can work through these issues. And so that we can understand these numbers.

Mr. SEDGWICK. Yes. We are more than happy to work with you to the best of our ability to clarify those issues.

Mr. MOLLOHAN. Okay. Please tell us about the progress in the schedule for awarding Congressionally directed Byrne and juvenile justice grants.

Mr. SEDGWICK. For this fiscal year?

Mr. MOLLOHAN. Yes, for 2008.

Mr. SEDGWICK. Yes. Right now what we are waiting for in terms of processing grants, we obviously can't process any grant until we get a spend plan approved.

So we are in many cases for very many of the competitive grant programs, solicitations have already been issued. Grant proposals have been received. We are simply waiting to see whether or not the spend plan that we have proposed is accepted. At which point we can begin processing grants.

Mr. MOLLOHAN. The spending plan as you have submitted here?

Mr. SEDGWICK. Yes. I believe it came up last week.

Mr. MOLLOHAN. And the COPS program as well? Byrne juvenile justice grants, and COPS program.

CONGRESSIONALLY DIRECTED FUNDS

Mr. PEED. The COPS programs, again, when the spending plan is approved, we will—we have about—if you are referring to the directed—the congressionally Directed Fund?

Mr. MOLLOHAN. That is precisely what I am talking about.

Mr. PEED. You have 683 Congressionally directed funds. We have $205 million in technology and $61 million in methamphetamine. And so we have already reached out to the sponsors of those grants. As soon as the spending plan—the spending plan is approved, we will be reaching out to the grantees.

Mr. MOLLOHAN. And you are not waiting for the—for approval of the spend plan in order to reach out to the grantees in these other programs, are you, Mr. Sedgwick?

Mr. SEDGWICK. Not at all.

Mr. MOLLOHAN. So you are reaching out to them?

Mr. SEDGWICK. Oh, yeah.

Mr. PEED. Same as here. We have already reached out to grantees too.

COMMUNITY POLICING

Mr. MOLLOHAN. Yeah, okay. Mr. Peed, community policing, you have had vast experience. Just for the record, tell us what community policing means. What is it?

Mr. PEED. Community policing, if you ask different people across the country, you would come up with different terms. We have narrowed our definition. I think it is what we refer to as the umbrella of community policing, because there are lots of good tactics and strategies out there that fall under the definition of community policing.

Our definition basically includes three things. The basic is partnerships, partnering with your community members, or other stakeholders within your community, problem solving skills, working on problem solving, identifying the problem of working with your community to solve it, and organization transformation, which means you hire the right people, you train them correctly, you would employ them correctly.

Mr. MOLLOHAN. The local law enforcement agency does all of this?

Mr. PEED. Right. And you empower those people to make decisions at the lowest level possible.

Mr. MOLLOHAN. How do we know it works?

Mr. PEED. We have—again, getting back, we have had 12 evaluations. And some have suggested that it may. And some have come up with mixed results. But there is also one by GAO—by the GAO.

But I think if you talk to the professionals in the field, they like many of the strategies that they use. Whether it is working in task forces, whether working with partners, whether working with hot spots.

So I think if you talk to professionals in the field, if they can identify what works for them. And sometimes it may be a little bit different. But it also usually has some component of that problem solving and partnerships.

Mr. MOLLOHAN. Well you have a unique perspective. You have been to state and local level.

Mr. PEED. Mm-hmm.

Mr. MOLLOHAN. Right? Where was that?

Mr. PEED. In Fairfax County, Virginia.

Mr. MOLLOHAN. And you have been the Director of the COPS program.

Mr. PEED. I have been there for six and a half years.

COPS PERSPECTIVE ON COMMUNITY POLICING

Mr. MOLLOHAN. I was going to ask how long you were there, six and a half years. So that is really great experience. What is your perspective?

Mr. PEED. Oh, I think the community policing does work at the local level. Again, getting back to I think any community that partners with any law enforcement organization that partners with their community, they have got to have their community support in many cases to go and solve problems.

I like the definition that Dean Esserman out of Providence uses. And basically when he is trying to solve issues in that community, he wants to go and meet with that community rather than do a sweep or some other things. You know, where he is going to go and do an enforcement effort without going to the community and identifying the problem and helping that community agree and solve that issue for them. So I think it works.

Mr. MOLLOHAN. Not to make a long answer out of it, but if you were to, for the record, state some lessons learned from your experience, total experience, regarding community policing, what would be some of those lessons learned?

Mr. PEED. I think public hearings in the communities of interest. And I would share with you one of our examples is back following the Rodney King incident in L.A., I worked with our Circuit Court Judge and our prosecutors to go into minority communities to hold public hearings on that particular incident so that they wouldn't lose trust in their law enforcement organization.

Mr. MOLLOHAN. Sounds like engaging the community.

Mr. PEED. Yes, sir.

Mr. MOLLOHAN. Genuinely engaging the community. What are some of the significant unmet needs of state and local law enforcement?

Mr. PEED. After a 25 year history or career in law enforcement, I can always tell you that you won't find many law enforcement organizations in the country that don't say they need more resources. So they always will tell you they need more resources, whether it is technology, or——

Mr. MOLLOHAN. You know, I am really not asking what they would tell me. I mean, we will probably have some of them in here telling us.

I am respecting your background. And I want to know what you—how you personally and professionally answer that question. Sort of as an expert witness.

Mr. PEED. Okay. I have been an expert witness before. And it is difficult.

Mr. MOLLOHAN. Well you are right here too. And this is easy so.

LAW ENFORCEMENT UNMET NEEDS

Mr. PEED. Yes. So you are asking me what I think the needs are of law enforcement?

Mr. MOLLOHAN. Mm-hmm. I am asking you what you think are the most significant unmet needs, however you define that.

Mr. PEED. One is employable personnel. According to the standards that have been set by the majority of law enforcement organizations in this country, they are having difficulty finding the people that they feel that they need to hire.

Mr. MOLLOHAN. Training, socialization, cultural, attitude?

Mr. PEED. Yes, sir.

Mr. MOLLOHAN. All those?

Mr. PEED. All those.

Mr. MOLLOHAN. Really? We are having trouble filling law enforcement at the state and local level with those kinds of people.

Mr. PEED. As a matter of fact, one of the questions that when I have asked—on a new LIMA study is to look at the issues of how many vacancies there are in the country and their ability to fill positions. It takes sometimes ten months to hire a position.

Mr. MOLLOHAN. Does that suggest that there is a need in our community educational institutions?

Mr. PEED. I think——

Mr. MOLLOHAN. Let me just finish asking. I mean, I know you are ahead of me. But for criminal justice programs particularly in the personnel training area?

CRIMINAL JUSTICE PROGRAMS IN HIGH SCHOOLS

Mr. PEED. I believe that criminal justice programs in high school would be very, very——

Mr. MOLLOHAN. High school?

Mr. PEED. In high school.

Mr. MOLLOHAN. Wow.

Mr. PEED. Because many times those kids are going to get in trouble before they turn 21. And you have got to get to them earlier on before they turn 21.

Mr. MOLLOHAN. You have got to let them know if you want to work in law enforcement, you need not to get in trouble. Is that a course, or just the police going in and saying, hey look? Or maybe colleges that have such programs going in and say if you are interested in getting into our criminal justice program, it is not only how smart you are and how dedicated, it is what your record looks like.

Mr. PEED. I think——

Mr. MOLLOHAN. That is a really good suggestion.

Mr. PEED [continuing]. The high schools, the Cadets, the Explorer Scouts, all of those programs, I think, are helpful for law enforcement.

Mr. MOLLOHAN. And what is another significant need for state and local law enforcement?

Mr. PEED. Besides hiring?

Mr. MOLLOHAN. Mm-hmm. Besides the right personnel, as I understood you just testified.

Mr. PEED. Let me think about it.

Mr. MOLLOHAN. Sure, yes. This is your opportunity to tell us.

Mr. PEED. I think turnover is another issue for law enforcement. I think there is more turnover in law enforcement than the law enforcement groups would like.

Mr. MOLLOHAN. What is the solution to that?

SALARY AND BENEFITS FOR LAW ENFORCEMENT PERSONNEL

Mr. PEED. Again getting back to hiring and training the right people. Maybe it is just our era of what this particular group that we are hiring.

Mr. MOLLOHAN. Say that again.

Mr. PEED. This era. The generation Xers, the generation Yers. Those kind of folks that change jobs every four years or so. So I think that is a challenge for law enforcement.

Mr. MOLLOHAN. Well, how do you address that is what I am asking?

Mr. PEED. Again, getting back to hiring, and training, and maybe even looking at salary and benefits across the country.

Mr. MOLLOHAN. Maybe?

Mr. PEED. Maybe.

Mr. MOLLOHAN. That is in question in your mind?

Mr. PEED. Some jurisdictions are better than others.

Mr. MOLLOHAN. And do jurisdictions that pay more—pay higher salaries, do they have less of a problem with turnover?

Mr. PEED. I am sure that——

Mr. MOLLOHAN. Is it that straightforward?

Mr. PEED. Probably. And they probably will jump from a lower paying jurisdiction to a higher paying jurisdiction.

Mr. MOLLOHAN. Yes. I have seen that when our federal jobs come into our area. There is a pretty discernable move to go work there, federal prisons or federal institutions.

Any other significant unmet needs?

Mr. PEED. Not that I know of.

Mr. MOLLOHAN. Just for the record, I really would like you to respond to that. And then what is the appropriate federal role? Your opinion, if you can give it to us.

Mr. PEED. Getting back to the poll, I think for small amounts of discretionary spending, we can have a huge impact on the field. And so in our situation, we have got—in the 2009 budget, $4 million. And I don't look lightly on that $4 million, because I think we can do a tremendous job with that $4 million. We can work with the IACP, and the Major City Chiefs, and the Major County Sheriffs, and the International Association of Campus Law Enforcement Organizations. We can work with them on significant projects that will impact the field. So that is an area I would like——

COPS HIRING GRANTS

Mr. MOLLOHAN. I am going to have a number of questions for you for the record, methamphetamine, technology, training. But two questions I would like to ask you. In 2008, we reinstituted the COPS hiring grants program. How will the 2008 hiring grants be dispersed?

Mr. PEED. We intend to follow our requirements of making it a national program. We intend to follow the population split of 150,000 above and 150,000 below so that 50 percent of them. So we will be going out to small and rural areas. So every state will have an opportunity to apply. Small and rural would be able to apply.

TRIBAL LAW ENFORCEMENT

Mr. MOLLOHAN. Okay. And I have some other questions associated with that question I would appreciate you answering for the record. I have to ask the question about tribal law enforcement, which is something I think we need to pay more attention to their needs. Tribal governments have some of the highest needs of any law enforcement agencies.

And please tell us how existing OJP and COPS programs meet the unique needs of these police forces?

Mr. PEED. In the—on the——

Mr. PEED. In our 2008 budget, we have $15 million for tribal. And we expect to make grants directly to our law enforcement—

Mr. MOLLOHAN. Are you sure about that?

Mr. PEED. Fifteen million dollars in—maybe 14.7 or 14.8. But——

[The information follows:]

FY 2008 TRIBAL FUNDING FOR THE COPS OFFICE

In FY 2008, the COPS Office was appropriated $15.040 million to assist with Tribal law enforcement efforts.

Mr. MOLLOHAN. If that is not accurate, then correct it for the record, please.

Mr. PEED. Right. And so we will be making grants to tribal law enforcement organizations.

Mr. MOLLOHAN. That is your request.

Mr. PEED. In 2008. In 2008 that is our appropriation.

Mr. MOLLOHAN. That is your appropriation. What is your request?

Mr. PEED. For 2009?

Mr. MOLLOHAN. Yes.

Mr. PEED. We will be merged into the broader core programs. And they will be able to apply the tribes for grants.

Mr. MOLLOHAN. Yes, okay. Dr. Sedgwick.

Mr. SEDGWICK. Yes.

Mr. MOLLOHAN. Do you have an answer to that question?

Mr. SEDGWICK. Tribal?

Mr. MOLLOHAN. Tribal——

Mr. SEDGWICK. On tribal grants?

Mr. MOLLOHAN. Yes.

Mr. SEDGWICK. A couple of things that we tried to get in OJP to address the demonstrable needs in tribal country. One is—and actually these are kind of parent organization. We have a Tribal Justice Advisory Group. It has now met twice. That advises us and consults with us on outstanding need in tribal country. And also concerns that they have about difficulties applying for funding through OJP programs.

Paired with that is a Justice Program Council on Native American Affairs that is made up of representatives of each of the OJP program offices, where we meet and discuss on a regular basis the concerns that have been raised by the Tribal Advisory Group.

We are very pleased that we have just instituted a tribal grants policy that is applicable to all of the program offices in OJP. So we are actually moving pretty aggressively on the direction of meeting the needs in tribal country.

Again, within the structure of the fiscal year 2009 budget, you do not see set-asides for tribal. However, given our awareness of the needs in tribal country, within any one of these broad funding categories, proposals received from tribal country, would be entertained very seriously, because of our recognition that in many cases they are lagging far behind non-tribal.

Mr. MOLLOHAN. Yes, they sure are. And we are not doing enough. And I know you agree with that. But just for the record, your request would not only consolidate these programs, they would also cut the funding that would be available for them.

Mr. SEDGWICK. They cut the overall funding. That is true.

Mr. MOLLOHAN. Yes.

Mr. SEDGWICK. Whether or not that would mean a real decrease in funding——

Mr. MOLLOHAN. In any particular program remains to be seen. But what is true is it will—it will result in a decrease somewhere.

Mr. SEDGWICK. Right.

Mr. MOLLOHAN. Significantly. Yes, thank you.

Ms. Dyer, regarding violence against women programs on the House floor last year. I don't know that we had any area of the bill where there were more amendments seeking to increase the funding.

But there is a lot of support, because there is a lot of demand and need out there. My issue is how we impact, with the resources we have, how we actually impact every single community in America, because I don't think we do.

I am out there holding office hours. And I remember office hours I held in Preston County, West Virginia, which is a rural county. I met with a group, a non-profit group that was attempting to establish a home. And some of the stories they told just really emphasized—gave back up to the statistics.

For when I get back, I would like for you to think about this question:

How do we with the federal resources we have impact violence against women in all jurisdictions, in all areas of the country?

And I am going to go vote. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN [presiding]. Thank you, Mr. Chairman.

While you are writing down the Chairman's request, let me just put my oar in the water too. Do you connect to the Veterans Administration?

COORDINATION WITH DOD, VETERANS ADMINISTRATION AND OVW

Ms. DYER. With the what?

Mr. FRELINGHUYSEN. The Veterans Administration and the Department of Defense, relative to the whole issue of soldiers coming home?

Ms. DYER. Yes.

Mr. FRELINGHUYSEN. Do you have a connectivity?

Ms. DYER. Yes, we do. In fact——

Mr. FRELINGHUYSEN. These issues?

Ms. DYER. Yes.

Mr. FRELINGHUYSEN. Where is it at? How does that exist?

Ms. DYER. Specifically with the Department of Defense, we work with—we actually met with them recently. And one of my friends from when I was a prosecutor, who worked at APRI, is in charge of their sexual assault unit. Her name is Teresa Scalzo.

And we have an ongoing relationship. We have even talked about doing some specific trainings, what we call "institutes." That would be specifically toward military bases, victims of domestic violence whose husbands have returned from overseas. And so we do have a contact there. And we do have a good connection there.

Mr. FRELINGHUYSEN. The statistics have obviously those that—because they are serving abroad, have—their marriage is totally broken or pretty staggering—added obviously issues that they bring back with them.

Ms. DYER. Yes.

Mr. FRELINGHUYSEN. You know from the battle field. I know the VA has set up in some veterans hospitals some units to deal with those that have been victims of sexual violence.

But on the larger issue of spouse battering, wife battering, you are connected to both the VA and the Department of Defense?

Ms. DYER. I know of our connection to the Department of Defense. I have met with them. I know the names of the people there. I do not know about the VA. And I am not aware. I would be happy to look into it. But I do not know if we have a contact there, or if we meet with them.

Mr. FRELINGHUYSEN. It would be worthy of your consideration. There is supposed to be "a seamlessness" between active duty and then there are Guard and Reserve who obviously go back to being citizen soldiers.

I think there are some huge problems there. Not that you don't have enough on your plate, but maybe you would add another.

JAG GRANTS AND IMPACT OF CUT

We have not discussed something which is pretty important to all of us, the Members of Congress, the JAG grants. The fiscal year 2008 Omnibus Bill cut the JAG grants by $340 million, not a process that didn't involve a lot of pain. They basically cut the program by two thirds.

By any definition, JAG is the flagship grant program that supports probably the broadest range of criminal justice activities and distributes funds based on population, crime statistics.

We have gone over the crime statistics issue. Every member of Congress has heard from a broad coalition of groups seeking to restore this funding.

What do you see, Mr. Sedgwick, particularly as the impact of the cut, particularly on the work of multi-jurisdictional operations related to drugs and gang task forces?

Mr. SEDGWICK. In fiscal year 2009?

Mr. FRELINGHUYSEN. Yes.

Mr. SEDGWICK. This fiscal year? Obviously, you know, the reduction in the appropriated amounts for the JAG Program is going to have a significant impact. Interestingly enough, it is a little difficult to say where the burden is going to fall.

The JAG cutback, in part because I know Domingo Herraiz who heads our office of the Bureau of Justice Assistance has been looking at how Justice Assistance grants that are typically given over to state assistance agencies or to state planning agencies are then in turn distributed to local government.

And I know he has been concerned that the money that is distributed through Justice Assistance, in many cases, is going to places other than local law enforcement. In some cases, it is going to victims assistance centers that are also eligible for funding through the Office for Victims of Crime. And in some cases, to other actors in the criminal justice community.

But I think the——

Mr. FRELINGHUYSEN. There are, in fact, a lot of purpose areas for which this money is spent.

Mr. SEDGWICK. There are indeed.

Mr. FRELINGHUYSEN. And there may be some victims centers, and that may be good. But there is, obviously, ongoing——

Mr. SEDGWICK. Right.

Mr. FRELINGHUYSEN [continuing]. Work that is being done relative to drug operations

Mr. SEDGWICK. Sure. No, I——

Mr. FRELINGHUYSEN [continuing]. Gangs. I mean, what is your take on what it all means?

Mr. SEDGWICK. Well——

Mr. FRELINGHUYSEN. And more importantly, if you aren't going to fund it in your budget, what is going to replace what we have now?

Mr. SEDGWICK. Well, in fiscal year 2008——

Mr. FRELINGHUYSEN. Yes.

Mr. SEDGWICK [continuing]. We can only spend what we were appropriated. So, you know——

Mr. FRELINGHUYSEN. Well, going forward.

Mr. SEDGWICK. Well, going forward, you know, our recommendation is if we are now in an environment of—you know, if we are in tightened circumstances with less money to spend, our position is the country is best served by a flexible approach that allows us to target the reduced areas of greatest need.

I think our concern is that——

OJP PRIORITIES

Mr. FRELINGHUYSEN. So which of the purpose areas would you classify as the greatest need?

Mr. SEDGWICK. Well, this kind of gets back to a question that Chairman Mollohan answered or asked me. And I answered one-third of it.

Mr. FRELINGHUYSEN. Well, let us maybe hear the other two-thirds.

Mr. SEDGWICK. The record will—within the other two——

Mr. FRELINGHUYSEN. He will be happy to have the response, even in his absence.

Mr. SEDGWICK. Here are the other two-thirds——

Mr. FRELINGHUYSEN. Yes. [Laughter.]

Mr. SEDGWICK. I mean, the things that I will be looking at very clearly as priorities would be prison reentry. We would certainly be looking at gangs, drugs, and guns, and the intersection of all those three things.

One of the two things that we picked up that significantly concerned us when we started looking at the violent crime picture in some detail in 2005 was an earlier onset of violence of juveniles.

I mean it used to be the case that you could typically—if you mapped out the typical criminal career, what you would see is juveniles would start at a fairly young age, typically in the property crimes. And wouldn't graduate into or cross over into committing their first violent crime until much later in their teen years.

JUVENILE CRIME

One of the things that we picked up in our 18-city tour was in jurisdictions that were having violent crime increases, they spoke over and over again about an earlier onset of violent crime and the inability of the unpreparedness of state juvenile justice systems to deal with violent felons. In one case in particular in Norfolk, they were taking about a juvenile in Norfolk who at age 11 had already committed two homicides.

They simply said at that point, the difficulty that they are facing in Norfolk is the state juvenile justice system is simply not pre-

pared to deal with an 11 year old who has committed two murders, understandably.

That is certainly something that, you know, kind of raised our eyebrows both, because we could see it in the statistics as well as in anecdotes.

The other thing, quite frankly, is the greater willingness of the increased propensity to use a firearm in the course of a violent crime. Even in communities where there were fewer violent crimes, people were seeing a greater percentage of violent crimes involved the use of a firearm, which, of course, means a greater potential for a fatality. You know, for a really damaging outcome.

So, you know, if I were to kind of say priority areas that are——

Mr. FRELINGHUYSEN. You you are going to be replacing the old JAG program with something new, which falls under the consolidated umbrella. You are suggesting that those would be several of the areas, which you would put——

Mr. SEDGWICK. Absolutely.

Mr. FRELINGHUYSEN [continuing]. At the top of your list.

VIOLENT CRIME REDUCTION PARTNERSHIP INITIATIVE

Mr. SEDGWICK. Yes. One of the new, kind of broad categories in the fiscal year 2009 budget, is a $200 million commitment to a violent crime partnership initiative or an anti-violent crime partnership initiative, which is really an expansion of something that we have run in fiscal year 2007.

We had $75 million to distribute. I referred to this in my opening statement to create partnerships, to leverage federal dollars, to use federal dollars to leverage state and local dollars, create partnerships across jurisdictions to address communities that had significant violent crime problems.

Mr. FRELINGHUYSEN. Have you taken a look at some of the proposals of the State Attorney Generals that have put forward as their priority list? And are they similar to—are they similar to yours?

Mr. SEDGWICK. I actually have not had an opportunity to look at their priorities.

Mr. FRELINGHUYSEN. I would suspect that very few State Attorney Generals haven't reached out to the Members of Congress over the last——

Mr. SEDGWICK. Right.

Mr. FRELINGHUYSEN [continuing]. Few months. I mean, every conceivable law enforcement organization——

Mr. SEDGWICK. Sure.

Mr. FRELINGHUYSEN [continuing]. Has. And I hope that some of their recommendations will fall into your inbox.

Mr. SEDGWICK. I am sure they will. Thank you, Mr. Chairman. I will get them into my inbox.

Ms. DYER. Excuse me, may I take a quick break?

Mr. MOLLOHAN. Absolutely, let us take a ten-minute break.

Ms. DYER. Thank you very much.

Mr. MOLLOHAN. I apologize.

[Recess.]

Ms. DYER. I think that the best way to do it is in two different ways. One you would directly, and number two you would do it indirectly. We do it directly by providing grants to communities. And it is important to get into what I call the cracks and crevices of the community. That is where we are actually giving money to shelters and giving money to prosecutor's offices and various agencies.

Mr. MOLLOHAN. No. But that doesn't get us to all.

Ms. DYER. Well, that is why I kind of have my thought broken down into the direct help in the form of those grants. Indirectly, we can help victims by increasing training to officers. Also, we can train the trainer, where the trainer can then go out and train further within their communities.

Mr. MOLLOHAN. Who are the trainers?

Ms. DYER. We will have experts in the field, from different service providers like the Justice Project, the Prosecutors Research Institute, and the National District Attorneys Association. They will then do the training and train the trainers training.

Mr. MOLLOHAN. Is that happening?

Ms. DYER. Yes.

Mr. MOLLOHAN. For example, in West Virginia or some other state, how does it get down to the county level?

Ms. DYER. Well——

Mr. MOLLOHAN. And is it?

Ms. DYER [continuing]. I will give you a personal example. I was a trainer for the American Prosecutors Research Institute. They do a very small program where they would bring in 50 prosecutors at a time from around the country. They would really give these guys lots of information, PowerPoints. Then those people could then go back out into their communities and be trained within their county or within the neighboring county.

Mr. MOLLOHAN. You are talking about state and local prosecutors?

Ms. DYER. Yes, I am. Because the vast majority of domestic violence crimes are prosecuted by state and local prosecutors not the federal prosecutors.

Mr. MOLLOHAN. Okay. And that is a natural perspective for you to have, given your background. What about the service to the victim part of it, the resources to the victim and the expertise in the programs available at the local level for the victim in addition to the punishment of the offender?

Ms. DYER. Those are crucial. In fact, for nine years, one night a week I met and worked as a volunteer at my local women's shelter. For nine years I was there. When the victims would call in I would tell them, this is the room you will be in. This is the color of the comforter. The soup is going to be good, because I made it myself.

Mr. MOLLOHAN. Where was that?

Ms. DYER. Genesis Women's Shelter at Dallas, Texas.

Mr. MOLLOHAN. Do you know where west Dallas is?

Ms. DYER. People also say, "Do you know where west Dallas is?"

Mr. MOLLOHAN. I spent a summer there one year.

Ms. DYER. And so we—that is the crucial part. You can't just depend on law enforcement. You can't go it alone. And you have to

fund. You have to do a dual thing where you have to fund. I am a proponent of, to some extent, funding the pilot programs. These really best practices to allow places like Brooklyn or Chicago to have a good program for victims. And that is good. But we also need to make sure that down in Texas has some service for victims. I am not proponent of putting all of the money that we ever get, whether it is 280 or 400 million into just the certain programs. We need to do just some core services too.

RURAL GRANTS

Mr. MOLLOHAN. Well, rural America has this problem in spades. I can only imagine that in some ways these women are more distant to the help.

Ms. DYER. Yes.

Mr. MOLLOHAN. Maybe that is not right. But I know they are distant from the help. I mean, they are isolated. They are in the country literally.

Ms. DYER. They don't have as many access to——

Mr. MOLLOHAN. Are you focusing on that population?

Ms. DYER. Absolutely. One of our current grant programs and in the new President's request, it would remain a purpose area is specifically the rural program.

Mr. MOLLOHAN. Okay. Just take that grant program, that is a new proposed program?

Ms. DYER. No. It is one that you have been funding.

Mr. MOLLOHAN. Okay. What is the name of it?

Ms. DYER. The Rural Program.

Mr. MOLLOHAN. Oh, sorry. Okay. How much money is in that? I can tell you.

Ms. DYER. Forty million dollars in 2008.

Mr. MOLLOHAN. Okay. Forty million four hundred and twenty thousand dollars, right? Yeah. Okay. So that program is available for rural——

Ms. DYER. That one is just available for rural.

Mr. MOLLOHAN. Yes.

Ms. DYER. Of course, many rural places to apply for other grants.

Mr. MOLLOHAN. What is the demand on that program?

Ms. DYER. It is very competitive. That particular grant program is very competitive.

Mr. MOLLOHAN. So there are a lot of applications you turn down?

Ms. DYER. Yes, for rural areas.

Mr. MOLLOHAN. And there are so many more that don't even apply to them. We have got to develop a strategy to actually get to—I don't know how you get the people that aren't even applying, which is most people, most areas, most jurisdictions. How do we get to them?

Ms. DYER. We have been trying to do a good job. We take advantage of any opportunities to speak.

Mr. MOLLOHAN. I know, but that——

Ms. DYER. I was out at midnight the other night.

Mr. MOLLOHAN. And you would do a terrific job. But I will tell you, I don't know how you do that. The programmatics, maybe you get a——

Ms. DYER. Well we try to—we do as much as we can. Let people know that, you know, the program is out there. As a community, it is very important. My coworker, Becky, and she is our coordinator. She is out in the country all the time, you know, saying there are programs.

The other thing that we are doing is we are doing a thing with the Ad Council. It is kind of a public service announcement. The idea is it is going to be directed really towards teenage violence, because, number one, teens are more likely to be abused than adults are. Our daughters are more in danger than we are.

And, number two, so that we can get to them before it becomes a situation where they have children with this person, and they are married to this person, and they are really stuck trying to get out. So that is one thing that we are doing.

I know from working at the shelter, I am telling you, whenever Oprah did a program on domestic violence or, whatever it was, if there was a CBS special or a Hallmark, or whatever, our calls would be up.

Mr. MOLLOHAN. Yes, that is a way to get to it.

Well, I have a number of questions here, which I am going to submit for the record. And many of them are directed for you.

We are very appreciative of the appearance of the witnesses today. I thought it was a really good hearing from our standpoint. And we do appreciate the good work you do.

You are all doing great work with not enough resources. So we look forward to working with you in the future. And if you would be responsive to the staff this week.

Ms. DYER. Yes, sir.

Mr. MOLLOHAN. We would appreciate it. Thank you for everything.

Ms. DYER. Thank you.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

QUESTIONS SUBMITTED FROM CONGRESSMAN HONDA
Office of Justice Programs, Community Oriented Policing Services, and the Office of Violence Against Women
March 11, 2008

VAWA of 2005 grant program

QUESTION: The Violence Against Women Act of 2005 increased federal funding to organizations that provide culturally and linguistically specific services. These grant programs were established in part to ensure that federal resources are distributed equitably to racial and ethnic minority communities. How is this provision being implemented to ensure that minority communities are receiving an equitable share of this funding?

ANSWER: In the Violence Against Women Act of 2005 (VAWA 2005), Congress authorized the Attorney General to establish a new grant program to enhance culturally and linguistically specific services for victims of domestic violence, dating violence, sexual assault, and stalking. Pub. L. No. 109-162, §121 (codified as amended at 42 U.S.C. § 14045a). At present, the Office on Violence Against Women (OVW) is still developing this new program. To assess the current state of culturally and linguistically specific services for victims and to identify gaps in services, OVW has held two focus groups. One focus group included representatives from the deaf and hard-of-hearing community. The second group included representatives from such culturally specific organizations as the Sisters of Color Ending Sexual Assault, the National Latino Alliance for the Elimination of Domestic Violence, the Asian Pacific Islander Institute on Domestic Violence and the Shimtuh/Korean Community Center for the East Bay. As OVW continues to shape this program, the Office will continue to seek input from these and other relevant constituencies.

QUESTION: What percentage of this funding is going to organizations that serving ethnic and racial minority populations?

ANSWER: Although Congress authorized the new Culturally and Linguistically Specific Services program in VAWA 2005, appropriations for this program were not made until FY 2008. Accordingly, as noted above, OVW is still developing the grant program and has not yet made any awards. OVW expects to issue a solicitation for this new program by the end of FY 2008 and to begin rolling out culturally and linguistically specific grants by the end of the second quarter of FY 2009. Once these awards are made, OVW would be happy to provide a list of grants made, including recipient organizations, award amounts, and geographic location of communities to be served.

QUESTION: Please provide the committee with a breakdown of this funding by linguistic and cultural background, and geographic location of communities served.

ANSWER: OVW is still developing the grant program and has not yet made any awards. Once these awards are made, OVW would be happy to provide a list to the Committee.

QUESTIONS SUBMITTED BY REPRESENTATIVE DELAURO
Appropriations Hearing on the Office for Violence Against Women, Office of Community Oriented Policing Services, and Office of Justice Programs
March 11, 2008

Reduced Funding for and Restructuring of OJP, OVW, and COPS Budgets

QUESTION: The president's FY2009 budget severely cuts funding to core programs in the Department of Justice including Byrne/JAG grants, the COPS program, and authorized programs for the Violence Against Women Act. The President again has severely decreased funding for VAWA and state and local law enforcement by requesting that over 70 such programs be consolidated into four competitive grant programs. Under this proposed budget, the state of Connecticut would lose $1.8 million and 33 police officers. This consolidation would force states to pit various law enforcement and VAWA priorities against each other. It would also eliminate stable funding sources that states and jurisdictions count on when they budget their priorities.

With violent crime on the rise, how does the department justify these drastic cuts?

ANSWER: Although overall rates of violent crime did increase slightly during 2005 and 2006, there is some good news about recent trends in violent crime. According to the FBI's Preliminary Semiannual Uniform Crime Report (UCR), released on January 7, 2008, the Nation experienced a 1.8 percent decrease in violent crime during the first six months of 2007, compared to the same period in 2006. While these statistics are encouraging, OJP leadership is aware that high rates of violent crime persist in certain communities and is strengthening its efforts to assist communities in combating violent crime.

The restructuring of existing programs into three broad multi-purpose grant programs will improve OJP's ability to target assistance to those recipients demonstrating the greatest need for it and improve its ability to focus funding on key criminal justice priorities. For example, OJP is demonstrating its commitment to helping communities fight violent crime through the new Violent Crime Reduction Partnership. Unlike previous programs that assisted communities in this area (such as the JAG Program), this program will focus its efforts on a single issue and promote a proven anti-crime strategy – the creation and development of effective multi-jurisdictional law enforcement task forces – to generate the greatest possible return on the Federal funds invested in it.

In contrast to the JAG Program's formula-driven funding mechanism, the Violent Crime Reduction Partnership will use a competitive discretionary grant process. This process will require applicants to demonstrate their need for funding and ensure that the strongest, best-thought-out proposals receive priority in the funding process. This improved funding process will help OJP ensure that the limited funding available for violent crime initiatives is put to its best possible use.

The Byrne Public Safety and Protection Program and the Child Protection and Juvenile Justice Program, the other two new multipurpose programs proposed in OJP's FY 2009

President's Budget request, follow a similar strategy. By focusing funding on a limited number of high-priority justice issues, encouraging the adoption of proven programs and strategies for addressing these issues, and implementing a competitive discretionary grant process, these programs will help OJP and its state, local and tribal partners make the most of the limited funds available to them.

QUESTIONS SUBMITTED BY REPRESENTATIVE ADERHOLT
Office for Violence Against Women, Office of Community Oriented Policing Services, and Office of Justice Programs
March 11, 2008

Supplemental Appropriations for Drug Enforcement Programs

QUESTION: Our drug enforcement units simply cannot survive without help from these federal sources. What is your position on including additional funds for the Byrne/JAG program in a supplemental appropriation bill for FY 08?

ANSWER: Under the President's consolidated grant proposal, state and local law enforcement could compete for $200 million in Byrne Public Safety and Protection Program assistance, which can be used for the same purposes as the Byrne Justice Assistance Grant formula program, and $200 million in Violent Crime Reduction Partnership Initiative funds, which much like the JAG program, will fund multi-jurisdictional partnerships to tackle serious crime.

WEDNESDAY, MARCH 12, 2008.

BUREAU OF PRISONS; U.S. MARSHALS SERVICE; OFFICE OF THE FEDERAL DETENTION TRUSTEE

WITNESSES

HARLEY G. LAPPIN, DIRECTOR, BUREAU OF PRISONS
JOHN F. CLARK, DIRECTOR, U.S. MARSHALS SERVICE
STACIA A. HYLTON, FEDERAL DETENTION TRUSTEE, OFFICE OF THE FEDERAL DETENTION TRUSTEE

OPENING REMARKS BY CONGRESSMAN MOLLOHAN

Mr. MOLLOHAN. The hearing will come to order. Good afternoon to everyone. We welcome a panel of three Department of Justice witnesses to this hearing on the fiscal year 2009 budget request for the Bureau of Prisons, the U.S. Marshal Service, and the Office of the Federal Detention Trustee. We will begin with testimony from Mr. Harley G. Lappin, the Director of the Bureau of Prisons, and proceed then to other agencies in sequence.

Mr. Lappin, first of all I want to begin by expressing my personal and the Subcommittee's condolences to you upon the passing of your dad. That is a very difficult thing. And it is a great testament to you and to him that you are here fulfilling your responsibilities in this circumstance. My dad died when we were considering a bill, a very important bill. I believe it was a Steel Loan Guarantee Bill on the floor, and I was carrying it, Senator Byrd had carried it on the Senate side. And we were doing it that night. And I know, I know your feeling about that and how it really is an honor to your father that you fulfill those responsibilities under those circumstances. So especially welcome to the hearing today.

Mr. Director, lately it is hard to open the newspaper without seeing a news article or a commentary on recent studies on the explosive growth of prisoners incarcerated in federal, state, and local prisons and jails over the last twenty years. As in the states, the Bureau of Prisons is faced with rising inmate populations and rising fixed costs and aging infrastructure. We look forward to working with you to address these challenges and we want to compliment you and your staff on the tremendous job you are doing in the face of scarce resources. And we want you to know that we look forward to your testimony to see where those places are that you need special help and timely, and so that we can be responsive.

Your written statement will be made a part of the record. We look forward to your oral testimony. And before calling upon you to deliver that I would like to call upon our fine Ranking Member Mr. Frelinghuysen for any comments that he might have.

Mr. FRELINGHUYSEN. No comments other than to echo the sentiments and sympathy of the Chairman, and thank you for your good work and all those who stand behind you each and every day doing

some very tough work on behalf of our nation. Often unrecognized, underappreciated, and that not only goes to you but to those who follow behind you to testify today. Thank you very much, Mr. Chairman.

Mr. MOLLOHAN. Mr. Lappin.

Mr. LAPPIN. Thank you both for your sympathy for my Father, I appreciate that very much, and certainly for the fine comments recognizing the wonderful staff who work in the Federal Bureau of Prisons who do a great job each and every day. But good afternoon to both of you and the other members who I am sure will arrive over the course of time.

OPENING STATEMENT OF HARLEY G. LAPPIN

Chairman Mollohan, Congressman Frelinghuysen and other members of the Subcommittee. I am pleased to appear before you today to discuss the President's 2009 Budget Request for the Bureau of Prisons. Let me first begin by thanking you for your support of the Bureau of Prisons. We particularly appreciate the new construction resources provided in the 2008 Omnibus Bill, which allow us to move ahead with three much needed new prisons. I look forward to continuing our work with you and the Subcommittee.

Last year, in reference to your article that you mentioned, the inmate population in the Bureau of Prisons increased by 7,400 inmates. We expect a net growth of 5,000 to 7,000 inmates per year over the next several years. Our current population is over 201,000 inmates. The Bureau facilities are operating at 37 percent above rated capacity system-wide.

Our highest priorities continue to be filling staff positions that have direct contact with inmates and bringing on new beds to reduce crowding to assure that federal inmates continue to serve their sentences in safe, secure, and humane environments. In 2007, the Bureau of Prison's inmate to staff ratio was 4.92 inmates to one employee. The average of the five largest state systems was 3.33 inmates to one employee, based on the latest comprehensive data available from the states.

During the past three years we have implemented a number of initiatives to streamline operations and reduce costs. These actions involved permanent changes to BOP operations and reduced costs about $270 million over the three-year period. We eliminated over 2300 positions, closed four federal prison camps, restructured medical care levels, and consolidated inmate designation and sentence computation functions as well as human resource functions at a central location in Texas. In addition to these permanent actions, we have reduced travel, equipment, vehicles, and training expenditures. These reductions average more than $100 million per year and continue in 2008. Unfortunately, the rising cost of healthcare remains a serious issue, comparable to what is occurring in the private sector despite our efforts to contain costs.

Almost all federal inmates will be released back into the community. We have released an average of 50,000 inmates per year back to U.S. communities over the past few years, a number that continues to increase as the inmate population continues to grow. Our goal is to ensure that prior to their release, these inmates receive

needed job skill training, work experience, education, counseling, and other assistance. Federal Prison Industries, one of our most important correctional programs, provides inmates with job skill training and work experience thereby reducing recidivism and avoiding undesirable idleness during the inmate's incarceration. We expect Section 827 of the recently enacted Defense Authorization Bill to result in a decline in sales for the FPI program and potentially result in the loss of up to 6,300 jobs.

The 2009 Budget Request is $5.436 billion for operations in our Salaries & Expenses (S&E) budget, and $95.8 million for our Buildings & Facilities (B&F) budget. For S&E, a total of $67 million in program increases is requested to contract for new private beds for low security criminal aliens, and to provide a marginal cost adjustment for some additional inmates. The increases are offset by a proposal to eliminate $28 million in funding for the National Institute of Corrections and other expenses.

For B&F, this budget continues base level funding for new construction at $25.2 million and a Modernization and Repair program at $70 million. One-third of our 114 institutions are over fifty years old and present significant modernization and repair costs that we must prioritize and address each year.

Mr. Chairman, our goal is to continue to run safe and secure prisons. This requires adequate front line staffing in our prisons and adding prison beds to reduce overcrowding. We believe the 2009 request will better help the Bureau to meet these requirements. The inmate population will continue to increase and so will our challenges to provide for their safe, secure, and cost effective incarceration.

Let me thank you again, Mr. Chairman, and members of the Subcommittee, for your continued support. I look forward to working with you and the Committee on the significant challenges facing the BOP and our Budget Request. Thank you.

[Written statement of Harley G. Lappin, Director of the Federal Bureau of Prisons]

STATEMENT OF HARLEY G. LAPPIN
DIRECTOR OF THE FEDERAL BUREAU OF PRISONS
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

March 12, 2008

Good afternoon Chairman Mollohan, Ranking Member Frelinghuysen and Members of the Subcommittee:

It is a pleasure to appear before you today to discuss the President's fiscal year (FY) 2009 budget request for the Federal Bureau of Prisons (BOP). Let me begin by thanking you, Chairman Mollohan, Congressman Frelinghuysen, and other members of the Subcommittee for your support of the BOP. I look forward to continuing our work with you and the Subcommittee.

As you are aware, 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. The majority of our inmates are offenders sentenced in the Federal district courts. In addition, we provide assistance to and have close working relationships with the Office of the Federal Detention Trustee and the U.S. Marshals Service, as the Bureau houses approximately one-fourth of the pre-trial and in-transit holdover population in our detention units and facilities. We also incarcerate D.C. felons, sentenced in Superior Court, Immigration and Customs Enforcement (ICE) prisoners, as well as a small number of state and local prison system inmates.

FY 2009 Request

The President's FY 2009 budget request for the BOP totals $5.532 billion. Of this amount, $5.436 billion is for operations, in the Salaries and Expenses (S&E) budget, and $95.8 million is for our Buildings and Facilities (B&F) budget.

For Salaries and Expenses:

A total of $67.1 million in program increases is requested for the S&E appropriation to: 1) contract for 4,000 new private beds to house low security criminal aliens, funded for half a year; and 2) provide funding for a population adjustment for some additional inmates. These increases are offset by a $28 million decrease, eliminating funding for the National Institute of Corrections (NIC) and other expenses in the decision unit.

The BOP's FY 2009 budget request is restructured in accordance with the President's Management Agenda and the Government Performance and Results Act. The new structure better reflects the actual program costs by decision unit. It eliminates the separate Management and Administration decision unit, thereby condensing the budget from four to three decision units. This moves the BOP closer to performance based, transparent budgeting by further integrating budget and performance and improving efficiency.

For Buildings and Facilities:

This budget request provides a total of $95.8 million for base operations. The budget funds the Modernization and Repair base program at $70.6 million and the New Construction base program at $25.2 million.

Currently, there are over 201,000 inmates in Bureau of Prisons (BOP) custody, approximately 1,000 more than the end of FY 2007. Approximately 83 percent of the inmate population is confined in Bureau-operated institutions, while 17 percent are managed in contract care, primarily private sector prisons. Most of our Federal inmates (54%) are serving sentences for drug trafficking offenses. The remainder of the population consists of inmates convicted of weapons offenses (14%), immigration law violations (10%), violent offenses (9%), fraud (4%), property crimes (4%), sex offenses (2%), and other miscellaneous offenses (3%). The average sentence length for inmates in BOP custody is 9.8 years. Approximately 7 percent of inmates in the BOP are women, and approximately 26 percent are not U.S. citizens.

The BOP operates 114 institutions at four basic security levels -- minimum, low, medium, and high. This also includes one maximum-security prison for the less than 1 percent of the inmates who require that level of security. The graduated security categorization allows us to assign an inmate to an institution in accordance with his or her individual security needs. These needs are determined by our inmate classification system, which yields an inmate security classification of minimum, low, medium, and high. Inmates also are designated to facilities that meet program needs or other requirements (such as health care); and we operate a number of detention centers and units that confine pre-trial and pre-sentenced offenders.

Our agency has no control over the number of inmates who come into Federal custody, the length of time they stay in prison, or the skill deficits they bring with them. We do have control, however, over how inmates occupy their time while incarcerated. We use this time to affect how inmates leave our custody and the impact they will have upon their return to the community. Virtually all Federal inmates will be released back to the community at some point. Most need job skills training, work experience, education, counseling, and other assistance (such as drug abuse treatment, anger management, and parenting skills) if they are to successfully reenter society. We have released an average of 50,000 inmates per year back into U.S. communities over the last few years, a number that continues to increase as the inmate population continues to grow.

The Federal Inmate Population

The most significant increases in the inmate population have occurred in the last 2 decades. While we are no longer experiencing the dramatic population increases of between 10,000 and 11,400 inmates per year that occurred from 1998 to 2001, the increases are still significant and include average annual increases of over 7,200 inmates per year for the last 6 years (from 2002 to 2007).

In 1930 (the year the Bureau was created), we operated 14 institutions for just over 13,000 inmates. By 1940, the Bureau had grown to 24 institutions and 24,360 inmates. The number of inmates did not change significantly for 40 years, and in 1980, the total population was 24,640 inmates.

From 1980 to 1989, the inmate population more than doubled to almost 58,000. This growth resulted from enhanced law enforcement efforts along with legislative reform of the Federal criminal justice system and the creation of a number of mandatory minimum penalties. During the 1990s, the population more than doubled again, reaching approximately 134,000 at the end of 1999 as the BOP experienced the effect of efforts to combat illegal drugs, firearms violations, and illegal immigration. As a result of the National Capital Revitalization and Self-Government Improvement Act of 1997, the BOP became responsible for the District of Columbia's sentenced felon inmate population. Almost immediately, we began gradually transferring sentenced felons from the District of Columbia into BOP custody. In 2001, we also began accepting custodial responsibility of newly-sentenced D.C. felon inmates.

In FY 2007, the inmate population increased by 7,436, and a net growth of 5,000 to 7,000 inmates per year is projected to continue over the next several years. Our current population of approximately 201,000 inmates is expected to increase to over 213,000 by the end of fiscal year 2009.

Institution Crowding

The size of the BOP inmate population exceeds what we have determined to be the rated capacity of our prisons. Currently, we are at 37 percent above rated capacity in Federal prisons of all security levels. As in past years, we will continue to increase the number of beds and take a variety of steps to mitigate 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, controlled movement, and staff training.

The BOP's highest priorities continue to be filling staff positions that have direct contact with inmates and adding beds to ensure that Federal inmates serve their sentences in a secure and humane environment. It is also vital to maintain inmate reentry programs such as drug treatment, education, and work programs.

Counterterrorism

The BOP continues to implement strategies to enhance management controls related to the confinement of convicted inmates and detainees that were convicted of terrorism or associated with terrorist organizations. Specifically, the BOP has made substantial progress toward translating and analyzing a greater scope of communications sent and received by Federal inmates in the BOP's custody and sharing intelligence with other law enforcement agencies. First, the BOP has consolidated and centralized intelligence activities in a single counterterrorism (CT) office. As a result, the analysis of issues related to managing and monitoring inmates classified as international or domestic terrorists is standardized and more concentrated attention can be devoted to this effort. BOP staff are required to monitor 100 percent of incoming and outgoing social correspondence of all inmates linked to terrorism and other high risk inmates. Mail will not be delivered to or sent from such inmates until after it is read (and translated, if necessary) and analyzed for intelligence purposes. Intelligence from other sources, including the National Joint Terrorism Task Force

(NJTTF), and local Joint Terrorism Task Forces (JTTFs) will continue to be used to better manage and monitor BOP's high-risk and terrorist inmates.

Funding for this counterterrorism initiative is included in the President's Global War on Terrorism supplemental request. For FY 2008, the requested level will provide $9.1 million mostly for contract translation services and CT related surveillance equipment.

The BOP has established a Communications Management Unit (CMU) that houses inmates who, due to their current offense, conduct, or other verified information require increased monitoring of communications to and from persons in the community in order to protect the security and orderly operation of BOP facilities, and to protect the public. These inmates include, but are not limited to, those who have been convicted of, or associated with, involvement in international or domestic terrorism.

In its efforts to directly avert prison radicalization, the BOP continues to assume the lead role in managing the NJTTF Correctional Intelligence Initiative (CII) through the assignment of two staff to the Federal Bureau of Investigations' (FBI) Counterterrorism Division. The CII program provides shared strategic intelligence and indicators regarding radicalization and recruiting, national and local terrorism trends, characteristics of groups known to be engaged in terrorist activities, and a compendium of the national experience in terms of effective universal counter measures (best practices). Intelligence information is shared with other Department of Justice components and relevant task forces to ensure a coordinated approach to dealing with acts of terrorism. For example, the BOP provides intelligence information regarding contractors, volunteers, and religious service providers who have, or are suspected of having, terrorist ties or attempting to radicalize and recruit under the guise of contractor and volunteer religious service providers.

Streamlining

As the Subcommittee is aware, during the past three years the BOP has implemented a number of initiatives to streamline operations and reduce costs. These actions involved permanent changes to BOP operations and reduced costs about $270 million over the three year period (2005 – 2007). For example, we eliminated over 2,300 positions, closed 4 Federal Prison Camps, consolidated human resource functions at a central location in Grand Prairie, Texas, restructured medical care levels, and consolidated inmate designation and sentence computation functions at a central location in Grand Prairie, Texas.

In addition to taking the permanent actions described above, we also have reduced expenditures for travel, equipment and replacement vehicles, and training. For the last three fiscal years (2005 – 2007), these annual reductions implemented by the BOP averaged more than $100 million and we have continued these in FY 2008.

Modernization and Repair and Inmate Supervision

One-third of the BOP's 114 institutions are over 50 years old (37 as of January 2008). These institutions present significant modernization and repair costs that we have to prioritize and address each year. The older facilities are less amenable to some of the technological and architectural improvements afforded through the design of our newer institutions.

Beginning in the early 1970s with the construction of the Federal Correctional Institution in Morgantown, West Virginia, we changed our basic prison architectural design to support the principle of direct supervision of inmates -- a principle that the BOP and other correctional agencies have held since that time. Our contemporary prison design affords greater efficieney in staffing

because it allows staff to oversee increased numbers of inmates and results in a more efficient inmate-to-staff ratio.

This is especially important in relation to our emphasis on inmate programs and our "correctional worker first" philosophy. Regardless of the specific discipline in which a staff member works, all employees are "correctional workers first." This means that everyone is responsible for the security of the institution. All staff are expected to be vigilant and attentive to inmate accountability and security issues, to supervise the inmates working in their area or participating in their program, to respond to emergencies, and to maintain proficiency in custodial and security matters, as well as in their particular job specialty.

All employees in our institutions are law enforcement officers. This means both custody and non-custody staff are responsible for inmate supervision and institution security. As a result, we do not require the level of custody staff in program areas that exist in many prisons. In some State correctional systems where custody staff are distinguished from non-custody staff, classrooms, work areas, and recreation areas must have a correctional officer as well as the teacher, work supervisor, or recreation specialist. Using the "correctional worker first" concept has allowed us to operate with an inmate-to-custody staff ratio (10.1 to 1) that is more than double the average (4.7 to 1) of the five largest State correctional systems. This reduced custody staffing allows us to maintain a substantial number of staff who provide inmate programs, giving offenders the opportunity to gain critical skills and training necessary for a successful return to society.

Based on 2006 data, the latest comprehensive data available from the states, a comparison of BOP's inmate-to-staff ratio for all S&E staff was 4.91 to 1 versus the average of the five largest states of 3.33 to 1. For FY 2007, the BOP's inmate-to-staff ratio increased to 4.92 to 1, whereas 10 years ago this ratio was at 3.57 to 1.

The BOP studied eight years of data which indicated that a one percentage point increase in a Federal prison's crowding (inmate population as a percent of the prison's rated capacity) corresponds with an increase in the prison's annual serious assault rate by 4.09 assaults per 5,000 inmates. Also, an increase of one inmate in a prison's inmate-to-custody staff ratio increases the prison's annual serious assault rate by 4.5 assaults per 5,000 inmates.

Inmate Health Care

The rising cost of health care is a serious issue facing the BOP. Despite our efforts to contain costs, BOP's health care expenditures continue to grow in a manner comparable to what is occurring in the private sector. We have seen the cost increase from $9.16 per inmate per day in FY 2001 to $11.91 per inmate per day in FY 2007. Pharmaceutical costs account for a substantial portion of our medical expenditures.

The BOP has undertaken several initiatives that allow us to continue to provide quality health care in the face of rising costs. We have instituted a Medical Classification System that identifies inmates' medical, mental health, and forensic needs and assigns them to facilities with appropriate in-house and community health care resources. Through this system, we are ensuring the most efficient use of our scarce health care resources. The BOP employs staffing guidelines that emphasize the use of appropriate, yet cost-conscious staffing.

The BOP is making use of technologies to expand our ability to provide access to particular health care services throughout our institutions, regardless of availability at the local level. We have also begun implementation of an electronic medical record system, with partial deployment completed at 68 institutions.

All institutions have telehealth capabilities through our Wide Area Network to provide health care services and exchange information. We are using telehealth primarily for clinical and consultant services in psychiatry, but plan to expand to other areas such as orthopedics, wound care, physical therapy, social services, nutrition counseling, psychology services, dentistry, cardiology, dermatology, podiatry, obstetrics and gynecology, and oncology. Forty-five of our institutions currently have access to digital x-ray interpretation through teleradiology services.

As required by law and to mirror community practice, the BOP charges a co-payment fee ($2.00) for health care services provided in conjunction with a health care visit requested by the inmate. Preventive health care, emergency services, prenatal care, diagnosis and treatment of chronic infectious diseases, mental health care, and substance abuse treatment are exempt from the fee. No inmate is refused medical treatment for lack of ability to pay the co-payment, and treatment decisions are based on the inmate's medical condition, not on his or her ability to pay. Implementation of the co-payment has resulted in decreased reliance by inmates on "sick call" for unnecessary visits and has allowed clinicians to focus on preventive health measures and treatment of chronic conditions.

Health care in the BOP is subject to external and internal oversight. External reviews are regularly conducted by the Joint Commission on Accreditation of HealthCare Organizations, the nation's predominant standards setting and accrediting body in health care, and by the American Correctional Association. Internal reviews are conducted on an on-going basis through: program and policy compliance reviews, peer reviews of physicians, psychiatrists, and dentists, patient service surveys, and inmate Administrative Remedies.

Mental Health Treatment Programs

The BOP estimates that approximately 15.2 percent of the new inmates admitted to general population at low, medium, and high security levels have some type of mental illness (other than substance abuse). All inmates entering a BOP institution are screened within 24 hours of arrival for indicators of psychological disturbance (e.g., mental health treatment history, substance abuse treatment history, suicidal behavior, psychotic symptoms). When psychological disturbance is suspected, staff members refer the inmate to a psychologist for prompt and appropriate follow-up.

The vast majority of mentally ill inmates in the system are maintained in regular institutions. While the number of mentally ill inmates in any one institution may be small, the unique needs of this special population and their potential for disruptive behavior, suicidal behavior, or other mental deterioration dictates that they be closely monitored. The BOP offers a stratified approach for the delivery of mental health services to mentally ill inmates. This stratified approach is comparable in many ways to the system of mental health care found in most communities. In such systems, severely troubled individuals are cared for in inpatient treatment facilities. Less troubled individuals typically receive ongoing care in the least restrictive environment available. Further, mentally ill inmates receive additional attention in community transition planning and release preparation to ensure continuity of needed services as they return to the community.

National Institute of Corrections (NIC) responsibilities for the Prison Rape Elimination Act

Since 1997, NIC has provided assistance to federal, state, and local correctional agencies addressing the issue of staff sexual misconduct. With the passage of Public Law 108–79, the Prison Rape Elimination Act (PREA) in FY 2003, there has been a marked impact on the efforts to reduce sexual misconduct in corrections facilities. When the initiative started, only a handful of states had

legislation specifically prohibiting sexual interaction between correctional staff and offenders. The Federal government and, at this point in time, all states, have laws specifically prohibiting sexual interaction between correctional staff and offenders.

The BOP/NIC continues its responsibilities as mandated by section 5 of the PREA of 2003. Section 5 charges the Institute with providing information and assistance to federal, state, and local correctional systems 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. Also, an annual report is prepared for Congress which discusses the activities of all Department agencies with PREA mandates.

Inmate Reentry

The Bureau of Prisons philosophy has always been that inmates should be held responsible for the behavior that led to their incarceration and for participating in self-improvement programs that will provide them with the skills they need to be productive, law-abiding citizens upon release. Preparation for reentry begins on the first days of an inmate's incarceration. The vast majority of our inmate programs and services are geared toward helping inmates prepare for their eventual release.

We provide many self-improvement programs, including work in prison industries and other institution jobs, education, vocational training, substance abuse treatment, observance of faith and religion, psychological services and counseling, a specific Release Preparation Program, and other programs that impart essential life skills. We also provide other structured activities designed to teach inmates productive ways to use their time.

Our own rigorous research has found that inmates who participate in Federal Prison Industries are 24 percent less likely to recidivate and 14 percent more likely to be employed after release; 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.

A 2001 study by the Washington State Institute for Public Policy helps put this research into a cost-benefit context. That study evaluated the costs and benefits of a variety of correctional, skills-building programs. Regarding programs that we have found to have a positive effect on recidivism, 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. Thus, 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. Approximately 16 percent of the BOP's work-eligible inmates who are confined in institutions with a Federal Prison Industries (FPI) factory work in the FPI program.

FPI is one of the BOP's most important correctional programs. The goal of the FPI program is to provide inmates with job skills training and work experience, thereby reducing recidivism and avoiding undesirable idleness during these inmates' confinement. The FPI program creates the opportunity for inmates to gain specific work skills and a general work ethic -- both of which can lead to viable, sustained employment upon release -- through the day-to-day experience of working in one of a number of FPI factories.

Section 827 of the Department of Defense Authorization Bill will have both an immediate and long term impact upon the FPI program. Section 827 of that law requires DOD to use competitive procedures for procurement of any product for which FPI has a significant share of the market. The Bill goes on to define significant share of the market as five percent. This is a vast reduction from the 20 percent threshold established several years ago. While it is expected that sales in some product areas may decline, the total impact of this provision on FPI is difficult to predict in total until it has been fully implemented and may occur over a period of time. Depending upon variables relating to implementation, and other unknown factors, however, we believe it could potentially impact up to 6,300 inmate jobs (27% of current inmate workers). The resulting inmate idleness could cause significant new challenges for the BOP as the agency would potentially face the need to replace one of its most important correctional programs for reducing recidivism in up to 35 factories nationwide.

Education, Vocational Training, and Occupational Training

The BOP offers a variety of programs for inmates to enhance their education and to acquire marketable skills to help them obtain employment after release. All institutions offer literacy classes, English as a Second Language, adult continuing education, parenting classes, recreation activities, wellness education, and library services.

With a 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. Many institutions offer a limited number of the more traditional college courses -- courses that would lead to a bachelor's degree -- however, inmates must pay for these courses.

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.

Substance Abuse Treatment

Our substance abuse treatment program includes drug education, non-residential drug abuse treatment, residential drug abuse treatment, and community transition treatment.
Inmates must participate in a drug abuse education course if:

(1) there is evidence in their pre-sentence investigation report that alcohol or drug use contributed to the commission of their offense;

(2) they violated supervised release, parole, conditions of placement in a residential reentry center, or conditions of home confinement as a result of alcohol or drug use; or

(3) the sentencing judge recommended that they participate in a drug abuse treatment program during incarceration.

Participants in the drug abuse education course learn the connection between drugs and crime; are taught to distinguish drug use, abuse, and addiction; and acquire the information they need to help them avoid criminal thinking errors. Inmates who need further treatment are encouraged to participate in non-residential or residential drug abuse treatment, as appropriate.

Non-residential drug abuse treatment is 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 treatment 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.

We estimate that approximately 40 percent of inmates entering the BOP system have a drug use disorder and require residential drug abuse treatment. Of these, 92 percent volunteer to participate in residential treatment. Although 54 percent of all BOP inmates are incarcerated for drug trafficking offenses, these offenders are no more likely than any other type of inmate to require residential drug abuse treatment.

Participants in the residential drug abuse treatment program have been diagnosed with a drug use disorder by a doctoral-level psychologist. Participants in the program live together in a unit reserved for drug abuse treatment to ensure treatment is not interrupted by general population inmates and can occur during evening hours when necessary. The residential drug abuse treatment program is a minimum of 500 hours over 9 to 12 months and includes a half-day of treatment and a half-day work assignment 5 days per week.

Treatment targets major criminal/drug-using risk factors, especially anti-social/pro-criminal attitudes, values, beliefs, and behaviors. The BOP targets these anti-social/pro-criminal behaviors by reducing anti-social peer associations; promoting positive family relationships; increasing self-control, self-management, and problem solving skills; ending drug use; and replacing behaviors such as lying, stealing, and aggression with pro-social alternatives. The residential drug abuse treatment program is available in 58 Bureau institutions.

The treatment is provided toward the end of the sentence -- approximately 36 months before release. Accordingly, at any given time, there are a substantial number of inmates who are identified as having a need and are not yet enrolled in a residential drug abuse treatment program.

The residential drug abuse treatment program includes a community transition treatment component. As part of community transition treatment and to help ensure a seamless transition from the institution to the community, the BOP provides a treatment summary to the community supervision and treatment agencies to ensure a continuity of treatment.

In Fiscal Year 2007, the BOP provided residential drug abuse treatment to 80 percent of eligible inmates before their release from custody. Due to insufficient expansion, this was the first year that the BOP was unable to meet the 100-percent requirement of the Violent Crime Control and Law Enforcement Act of 1994, which requires the BOP (subject to the availability of funds) to provide residential substance abuse treatment to all eligible inmates.

Adam Walsh Child Protection and Safety Act

In accordance with the Adam Walsh Child Protection and Safety Act, the BOP is expanding the number of programs available to sex offenders as required. Within the BOP, an estimated 14,000 inmates (7% of the Federal prisoner population) have been identified as sex offenders. The BOP reviews inmate files to determine whether necessary conditions are met for civil commitment as a sexually dangerous person. Inmates are identified and reviewed, and undergo a range of risk assessments and psychological reviews, the results of which are utilized to determine a probability of risk for committing another sexual offense. Those identified as being at higher risk of sexual recidivism are reviewed by a Certification Review Panel, who determine whether to certify the individual as a sexually dangerous person. When a federal court concludes an individual is a sexually dangerous person, the BOP ensures the individual is placed in a treatment program for sexual offenders.

Specific Pro-Social Values Programs

Based on the success of the residential substance abuse treatment program, we have implemented a number of other programs to address a variety of needs among certain segments of the inmate population (including younger offenders and high-security inmates). These programs use the same approach as the residential drug abuse treatment program. They 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.

Observance of Faith and Religion

Our institutions accommodate religious services and programs for inmates of the approximately 30 faiths represented within the population. Religious programs are led or supervised by staff chaplains. Contract spiritual leaders and community volunteers assist BOP personnel in providing religious programs. Our chaplains oversee worship services and self-improvement programs, such as the study of sacred writings, spiritual development, and religious workshops. BOP chaplains also provide pastoral care, spiritual guidance, and counseling to inmates. Upon request and approval, inmates may receive visits and spiritual counseling from community representatives.

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 integrate their faith with other dimensions of their life in order to assist them with their personal growth and their reintegration into the community. The program strives to contribute to an inmate's personal transformation; to bring reconciliation to the inmate, his or her victims, and the community; and to reduce recidivism.

Life Connections programs are currently underway at FCI Petersburg, USP Leavenworth, FCI Milan, USP Terre Haute, and FMC Carswell. Our Office of Research and Evaluation has completed several 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.

Maintaining Ties through Visiting, Telephones, and Correspondence

We know how important it is for inmates to maintain contact with their family and friends while in prison -- research has shown that maintaining ties with family contributes to an offender's avoidance of crime following release from prison. Visiting, telephone privileges, and correspondence are three activities that help inmates maintain family and community ties while incarcerated. Inmates may have contact visits with their family, friends, attorney, and other special visitors except in our administrative maximum security prison, where all visiting is non-contact. Inmates also maintain contact with the community through telephone calls. Except for pre-arranged calls to an attorney, all calls are recorded and are subject to monitoring by staff. Inmates also maintain outside contacts by writing and receiving letters. Staff inspect general mail for contraband and randomly read incoming mail for general security purposes. Staff do not read appropriately-identified special mail (from attorneys, Members of Congress, embassies and consulates, the courts, the Department of Justice, other Federal law enforcement officers, governors, and State attorneys general), but it is inspected for contraband in the presence of the inmate.

We are continuing implementation of an inmate messaging system called TRULINCS that gives offenders limited and controlled capabilities to exchange electronic correspondence with family and friends without having access to the Internet. All incoming and outgoing messages are screened for key words and assessed by investigative staff.

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 in more than 60 institutions. Employment resource centers 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 (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. They allow inmates to gradually rebuild their ties to the community, and they allow correctional staff to supervise offenders' activities during this important reentry phase. Some inmates are placed in home confinement for a brief period at the end of their prison terms -- they serve this portion of their sentences at home under strict schedules, curfew requirements, telephonic monitoring, and

sometimes electronic monitoring. The use of residential reentry centers is an important component of corrections because research has shown that inmates who release through halfway houses are less likely to recidivate.

Conclusion

Mr. Chairman, as I mentioned earlier, our highest priority needs are to increase front line staffing at our prisons and add prison beds, thereby reducing crowding. We recognize that there are competing demands for federal dollars in FY 2009. We believe the President's request will better help the Bureau to meet the challenges we face now and better prepare for the future. The inmate population will continue to increase well into the foreseeable future, and so will our challenges to provide for their safe, secure and cost effective incarceration.

I would like to thank you again, Mr. Chairman, and Members of the Subcommittee for your continued support. You have consistently worked to provide resources necessary to safely and securely incarcerate the federal inmate population. I look forward to working with you and the Committee on our FY 2009 request.

FY 2008 NEEDS

Mr. MOLLOHAN. Thank you, Mr. Lappin. Mr. Lappin, this hearing is about the Bureau of Prisons' fiscal 2009 request, however, you have some immediate needs for this year, for 2008, and I would like to talk with you a little bit about that. I would like for you to tell us about that situation. How immediate is the Bureau of Prisons' need and is the $240 million reprogramming that the Department has sent up here sufficient to solve your current problems?

Mr. LAPPIN. We appreciate your recognition of the challenge we face, and it is significant. We currently, as you have learned from the reprogramming request, have a need for an additional $240 million to carry out our responsibilities for the rest of this fiscal year. If you look at how this could happen and why it happened, you will find a variety of issues. If you look at the increase from 2007 to 2008, at the end of the day it was about $55 million which wouldn't cover the pay increase. Again, there are lots of priorities in the government and many needs. Decisions were made based on those priorities, but at the end of the day we feel as though we are going to need an additional $240 million.

Mr. MOLLOHAN. What are the biggest cost drivers? Can you talk about that?

Mr. LAPPIN. Staff and salaries, salaries and expenses. I mean nearly 70 percent of our expenses are for salaries and benefits for employees. The $240 million would cover the number of employees we currently have employed, the overtime associated with their responsibilities, some of the operational costs, especially medical, and a few others. It is my opinion that $240 million will get us very close. We will do our best to live within the $240 million that is added to the budget.

We will monitor closely and we are working very closely with the Department of Justice staff. They are listening very well to our concerns and issues, and have recognized the need for the reprogramming request. We are taking other initiatives in the Bureau to reduce costs. We have reduced overtime funding. We have reduced equipment funding and vehicle funding. We have delayed a couple of programs. We have reduced the relocations associated with staff transfers. We have reduced some training. We have then assumed some other salary savings through staff vacancies.

Mr. MOLLOHAN. Let me back up a little bit.

Mr. LAPPIN. Sure.

STAFFING

Mr. MOLLOHAN. Talk to us in more detail about the staff situation. More inmates, less staff? I know from my visiting with employees in West Virginia on several occasions, just hearing them anecdotally talk about it. They talk about being on call every week, twice a week for overtime. They are tired, and they also have been associating that with incidents that, in their minds, are associated with the overtime and the understaffing. But if you would, in your opening remarks you talked a little bit about ratios. And I did not get all that, but the feds are four-point-something to one employee?

Mr. LAPPIN. Yes, right now. And again, let me just say that I continue to believe that we are running a safe, secure prison system, and not without its challenges. And it is because of those great folks out there in the field, each and every day, sacrificing, by working additional overtime, by coming in when there is a need to come in when we have concerns, disruptions, so on and so forth. They just do a great job and we continue to fare well. But there is a limit.

Mr. MOLLOHAN. Let us look at the numbers first.

Mr. LAPPIN. Our ratio right now is 4.92 inmates to every employee.

Mr. MOLLOHAN. And what was it last year or the year before? Do you know?

Mr. LAPPIN. Oh, last year we were at about 4.91. The year before, 4.87. In 1997 we were at 3.57.

Mr. MOLLOHAN. That was in when? 1997?

Mr. LAPPIN. In 1997 we were at 3.57 inmates per employee.

Mr. MOLLOHAN. There must be some ratio that the correctional experts identified, the textbook ratio. What is the textbook ratio?

Mr. LAPPIN. Well, I am not sure. There is not really a ratio. We have been asked, "Help us define a ratio." And why it is so difficult is it depends on the designs of your institutions and what posts you consider absolutely necessary. Because the vast majority of correctional organizations, the majority of our staff are run on rosters. You identify what work you want done, you tie to that a number of assignments posts, and based on the number of posts it drives the number of employees.

Mr. MOLLOHAN. And modern corrections, new facilities, you ought to be able to do them more efficiently?

Mr. LAPPIN. Yes, new institutions you can manage safely—more efficiently.

Mr. MOLLOHAN. So you would expect this number to, I do not know whether you talk about this increase or decrease, but you would expect the ratio to involve fewer employees?

Mr. LAPPIN. Without a doubt, some of the increase has resulted from newer design facilities that are more efficient and more effective in watching more inmates with fewer people.

Mr. MOLLOHAN. Yes. So in the modern prison system, or the mixed prison system that you operate, can you tell us what the correct ratio should be?

Mr. LAPPIN. I really cannot. We were working on an evaluation of how to come up with the number for us, and it might vary from system to system. I do not want it to get any larger. I can tell you that. I think we are at our limit. I would like to see that level come down, and that is why——

Mr. MOLLOHAN. Whoa, whoa, what level come down?

Mr. LAPPIN. I would like to see the ratio come down.

Mr. MOLLOHAN. The ratio come down?

Mr. LAPPIN. From 4.92 to a number less than that. That is, I want to add more staff.

Mr. MOLLOHAN. Okay, well we have to put dollars to need here, and so we need, I would love to have a little more guidance than that.

Mr. LAPPIN. We will certainly provide that. Again, we are working on an evaluation as to how we come to a number.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. MOLLOHAN. Yes. Because while it is anecdotal for my constituents to come in and say, you know, "This is too much," and they are not whiners, really, that suggests to me that it is too much. And they can talk about it in the terms they can talk about it, but to be able to translate that into a budget, for you, and into appropriations for us, it needs to be a little more tangible. And if we had help on that that would give us backup and you as well. The states are operating at 3.33. Did I get that right?

Mr. LAPPIN. Yes, what we do, we look at the five largest states, California, Texas, Florida, New York, and Michigan.

Mr. MOLLOHAN. Is that a relevant, are you making a comparison here?

Mr. LAPPIN. Well we are just trying to help put it in perspective, how we compare to other similar systems.

Mr. MOLLOHAN. Okay, but I want to know what to do with these numbers. Am I to look at this and say, "Well, 4.91 employees, okay we are operating a modern prison system, or a mixed prison system, it is not all modern, in federal, and the states are 3.33 on an average." Am I supposed to look at that and say, "Gee, we ought to get to 3.33?"

Mr. LAPPIN. Let me answer that. I do not think we need to get to 3.33. In fact, I think we can operate at a level higher than the 3.57 in 1997, because we have had a lot of newer prisons over the course of that time.

Mr. MOLLOHAN. Right.

Mr. LAPPIN. So let me kind of help put it in perspective. For us to get to 3.57, where we were ten years ago, we would have to add 9,000 employees. I do not think there is a need to do that. But you are correct, you need some guidance. Where do we fall on this range? And we will continue to provide to you that information as we conduct this evaluation to see if we can come up with some more accurate assessment of where we think we need to be.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. And without a doubt, I am concerned at this ratio. I still think we are doing a great job, but certainly on the backs of the great employees we have. There is a limit. And that is why one of our priorities is to continue to fund those positions at the local level for direct, for staff having direct contact with inmates to try to bring that ratio down.

Mr. MOLLOHAN. Yes, well for the record, I think you are doing a great job. And I think the members of this Subcommittee think you are doing a great job, and there needs to be some advocacy for appropriate funding. Mr. Frelinghuysen?

INMATE POPULATION

Mr. FRELINGHUYSEN. We know you are doing a difficult job. You have given us some of the staggering figures in terms of the in-

crease in the federal inmate population. Could you just talk for a couple of minutes about some other characteristics of that population? Age, different characteristics that make up the overall mix in terms of ethnic background, race, what are some of the figures that are out there?

Mr. LAPPIN. Age, race, ethnicity is pretty much similar.

Mr. FRELINGHUYSEN. And have they shifted?

Mr. LAPPIN. Those have not shifted significantly.

Mr. FRELINGHUYSEN. They are?

Mr. LAPPIN. Let me give you an idea. About 56 percent of the federal inmate population is white, 40 percent is black, 1.7 percent Asian, 1.8 percent Indian. Of that it is 31 percent Hispanic, so a combination of some folks who are African American, black, Hispanic. Age has really not fluctuated much. You know, we are around a thirty-five average age.

Mr. FRELINGHUYSEN. Thirty-five years of age?

Mr. LAPPIN. I think that is what it is. It is pretty close to that. What has changed, though, the characteristics that have changed are—let me back up to types of offenses. We continue to see the majority of the offenders coming in for drug related offenses. About 52 percent to 53 percent of the offenses are drug related. And then followed by weapons at about 14 percent.

Mr. FRELINGHUYSEN. That drug related figure is a pretty——

Mr. LAPPIN. I am sorry?

Mr. FRELINGHUYSEN. That drug related is a pretty——

Mr. LAPPIN. 53.9 percent drug related.

Mr. FRELINGHUYSEN. And that is, let us say ten years ago that might have been considerably lower, or?

Mr. LAPPIN. Well, that was probably in the middle of the whole War on Drugs. That is when we were ramping up, getting a lot of folks. But you know, if you go back fifteen years, it is much larger. We have seen a significant increase in weapons. Offenders coming into us with weapons violations, that is up to 14 percent followed by immigration.

Mr. FRELINGHUYSEN. What percentage, for instance, would be involved in——

Mr. LAPPIN. For weapons?

Mr. FRELINGHUYSEN. No, in let us say Bloods, Crips, and MS–13?

Mr. LAPPIN. I am going to jump to that in just a second.

Mr. FRELINGHUYSEN. Okay.

Mr. LAPPIN. I just want to mention one other, one huge increase in the number of sex offenders. In fact, we today have about 14,000 sex offenders in prison. So that has really been an emphasis of the Department of Justice, besides drugs, firearms, sex offenses. And then of course, immigration has been for some years with INS originally, now BICE, so on and so forth, border patrol.

The inmates themselves we are seeing, we continue to see a younger, more aggressive, more violent, more gang oriented offender coming to the Bureau of Prisons. Which couples with our need, I think, to look closely at this ratio of staff to inmates. More inmates, fewer staff, more aggressive inmates, you know, that does not, more——

Mr. FRELINGHUYSEN. That could translate into a potential disaster.

Mr. LAPPIN. Yes, I mean I think there are some challenges there.

Mr. FRELINGHUYSEN. Yes.

Mr. LAPPIN. Without a doubt, we recognize that. So we are seeing those types of offenders. Without a doubt, gangs are quite a challenge. Between disruptive group members and security threat group members, which we categorize the gangs into, it is quite a challenge at most all locations, if not all. This is complicated somewhat by the emergence of the Hispanic gangs, especially from the Mexican nationals where they play by different rules and can be very disruptive.

Mr. FRELINGHUYSEN. So in the prison system, and I have read about it, there is a unity of purpose when you are in there with somebody who is part of your gang.

Mr. LAPPIN. There is.

Mr. FRELINGHUYSEN. Yes.

Mr. LAPPIN. So what we try to do is thin them out, control them by size, by structure, by control. But what we have seen emerge over the last few years, unlike I think fifteen, twenty years ago, is the emergence within institutions of these little cliques. You know, a group of folks from Baltimore or a group of people from Little Rock, who if they are not associated with other gangs might just join together. And those fall more into the security threat groups on occasion, just run of the mill, makeshift associations that can tend to be a challenge.

Without a doubt gangs are one of our bigger challenges. We are currently reevaluating the management of gangs in our institutions. We believe that we have got to do a better job of balancing those gangs among the 114 institutions. In doing so it is going to disrupt a long and steadfast philosophy of trying to put all the offenders as close to home as possible. To do that, to balance them, it is going to result in some offenders being further from home than they were before. And so we had to compromise there a little bit. First and foremost, we have got to run safe prisons.

BUDGET SITUATION

Mr. FRELINGHUYSEN. Your budget situation, obviously, has been somewhat complicated. While you have a pending reprograming seeking $240 million we shorted you about $100 million somewhere along the line. So it is a good reason we have a reprogramming. I live in the New York-New Jersey metropolitan area. I must say I hear quite a lot of ads on the local radio station, 1010, for the New York Department of Corrections. So, obviously, you are in the job field out there. There are, should we say, competitors. As tough as the work is, maybe that is a sign that other institutions are competing for good people to take impossible jobs.

Mr. LAPPIN. It is. I think in the long term for the Bureau of Prisons, you know, when I look, when people ask me, "Director, what is one of your greatest concerns for the Bureau in five, ten, fifteen years?" I think it is our continued ability to hire, recruit, and retain qualified folks. Because there is going to be more competition for those folks. But we still do very well in most locations. It is very much a challenge in the higher cost areas, New York, Brooklyn,

San Francisco, San Diego, Chicago. We have more turnover there than elsewhere. Fortunately, the system as a whole is kind of misleading; because as a whole we have relatively low turnover. But if you separate out those high cost of living areas, you will find that those areas, greater turnover, more of a challenge to continue to keep the rolls filled. California is a huge challenge. Competing with much higher wages in the State Department of Corrections in California and the issues they are facing there, we are struggling there filling just the base positions at certain locations. That is one reason why we increased their pay a little bit, just to try to recruit and retain more staff.

Mr. FRELINGHUYSEN. Thank you for that overview. It has been valuable. Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen. Mr. Aderholt.

PRISON CHAPEL LIBRARY

Mr. ADERHOLT. Thank you for being here today. I know that in your job you get a lot of questions and a lot of complaints and many things, as I know in my job I do from time to time. But I want to just take a minute and express my appreciation to you for your leadership on the Prison Chapel Library Project. That was, I understand an issue, and I know that you stepped in and resolved that issue very quickly and very effectively. I know several people that were greatly concerned about that, and I believe that you handled that in an excellent manner. So let me just say the word is getting around that you had done an excellent job in that. In that instance I know of, and I am sure in many other instances, but I did want to point out that it has been an issue that was a very big concern to a lot of people. So thank you for your work on that.

Mr. LAPPIN. Thank you, sir. We apologize that it happened in the first place. There were competing priorities. But I wanted to ensure the public and the Department, that we had appropriate materials in those libraries. And over the course of seventy-seven years some of those libraries have grown to great size. And through the course of those years maybe not quite as much oversight as we would like. I am pleased that the folks that had concerns approached the Department of Justice, approached the Bureau of Prisons, raised those issues. We sat down with them and resolved the issue. I think to everyone's satisfaction. I appreciate you recognizing that.

INQUIRY FROM A CONSTITUENT

Mr. ADERHOLT. Well, thank you again. It did not go unnoticed, so thank you for that. As you can imagine, as a member of Congress, I get contacted from time to time from constituents that have all types of concerns. Sometimes it is concerns that I can help them with and sometimes there are concerns that are completely out of my hands. But sometimes they feel like their Congressman is the person that they elected to reach out to federal agencies, in particular, and to be an advocate for them. And I do think that is a large part of the job that we have here in Congress, that we are an advocate for a lot of people that sometimes do not know where to go for answers and questions.

I received an email, well actually a phone call and then I asked her to follow up with an email. It is regarding a situation with a

prisoner that, and I will just read it briefly to you and I just want to ask your response, and maybe how would be the best way we could respond to her and what the policy is in this case. It says, "Per our conversation yesterday, my husband is due to be released to Alabama on June 20, 2008. His caseworker has informed me that his time will be rounded up nine days and he will not be in Alabama until June 29, 2008. This is a new rule that the caseworker in Manchester, Kentucky has started since she became the new caseworker. We are asking that you help us get my husband back to Alabama on June 20th, not the 29th. He will have served his perfect time on the 20th." She just called me very demoralized. He had been there a year at the time of our conversation. Of course, nine days does not sound like a whole lot to me or you but, I know this particular family has a ten year old daughter, and it has been sort of an easy case in the beginning but that is beside the point. But in a situation like that, do the individual prisons have the discretion to release him at a different date? Or what could you tell me about that?

Mr. LAPPIN. First of all, we appreciate your involvement. And we welcome you to call us, send us emails, and let us assist you with responding to your constituents.

Mr. ADERHOLT. Well, Tom Kane knows that I call from time to time.

Mr. LAPPIN. Is that right?

Mr. ADERHOLT. Yes, so——

Mr. LAPPIN. Well, we ought to bring Tom up here. Seriously, the caseworker locally does not have the authority to make that adjustment. That work is done by our sentence computation staff who have the background, the experience, the expertise, to adjust a sentence computation and to determine the day the individual should get out. If you give me the email with the person's name, we will go right to the sentence computation center, ask them what if any changes were made and why, as related to applicable law. It could be that somebody miscalculated, made an error on some some good time or some jail time. But if you give it to us we will get back to you——

Mr. ADERHOLT. That would be great. And like I said, you know, sometimes they may have been given wrong information as well. But again, like I say, nine days does not seem like a whole lot to me or you but for someone who has been away from their family and they have served the appropriate time, that can be very demoralizing. And they just have some questions about the system, and they feel the unfairness. And we understand when a sentence is handed down and they have to serve the appropriate time. But beyond that we, I thought it was only fair to check into that. So after today I will get you the contact information on this. And if you could please help me try to find out some information, my constituent would be very happy.

Mr. LAPPIN. I will give you my card, or you could send it to Tom Kane.

Mr. ADERHOLT. Well, either one of you. So——

Mr. LAPPIN. Because you are right. Nine days is nine days. We want them out on the day the law says they should be released from prison.

Mr. ADERHOLT. Okay.

Mr. LAPPIN. Our goal is to have 100 percent of them released on that day. We would be more than happy to look into it.

Mr. ADERHOLT. Thank you, I appreciate that. That is all I have.

Mr. MOLLOHAN. Mr. Rogers.

RATED CAPACITY/OVERCROWDING

Mr. ROGERS. Thank you, Mr. Chairman. Mr. Director, welcome to you and to all your staff. I have been told that you are 37 percent overcrowded. Is that an accurate figure?

Mr. LAPPIN. We are 37 percent over rated capacity.

Mr. ROGERS. Over what?

Mr. LAPPIN. Over rated capacity.

Mr. ROGERS. Do you mind if I call that overcrowded?

Mr. LAPPIN. Okay.

Mr. ROGERS. What would be your target?

Mr. LAPPIN. 15 to 17 percent. That is our target.

Mr. ROGERS. Over your rated capacity?

Mr. LAPPIN. And so, let me kind of put it in perspective. What does that mean? What does 17 percent mean over rated capacity? That means that every cell in the entire Bureau of Prisons has two inmates in it, and we believe in that goal. It may be a long term goal, there is no way we are going to get there overnight, but our goal would be that we get to the point where cells that were built of a certain size, which is a standard size—you have got a couple new prisons in Kentucky, they are a standard size—for a cell of that size it is appropriate for two inmates to be housed in those cells long term. At 17 percent, every cell in the Bureau of Prisons would have two inmates in those cells.

Now realize there are some inmates that cannot be housed with anyone. So for those that require single cells, it is going to push into other cells three inmates. We are okay with that. There are certain inmates that we could temporarily house in that manner. Our target is 17 percent.

Mr. ROGERS. Well, if you are 37 percent over now and you want to be at 17 percent, that is a 20 percent difference.

Mr. LAPPIN. Yes.

Mr. ROGERS. That is not insignificant. That is a huge, huge undertaking, correct?

Mr. LAPPIN. Well, it is. And we have faced this over a number of years. And believe me, the Congress, the Administration; let us go back a bit. In 1980, 26,000 were inmates in the federal prison system. Today, 201,000 inmates. The Administration and the Congress have provided for us very well through the majority of those years. Provided funding, provided positions, as the prison system grew. And so we have been very fortunate. But then again the population continues to grow. And without a doubt, we have to continue to decide, how are we going to absorb those additional inmates? Do we continue to build prisons? Are there other ways to offset some of that growth? And so, you are right, it would be a long term plan. But again, that is our target.

STAFFING

Mr. ROGERS. Well, that spans the time I have been in Congress. And I have been on this Subcommittee I think twenty-three or four years of that time, and I have watched the population grow. And have watched directors over the years wrestle with that problem as inmate population kept growing and growing. And it is not getting any better. You say your inmate to staff ratio is 4.92, that is the highest ever, is it not?

Mr. LAPPIN. Well, you know, at least in my tenure we know what it is back to 1997. We were at 3.57 in 1997, we are 4.92. So my guess is this is probably the highest ratio we have had in modern history.

Mr. ROGERS. And how many employees short of the minimum number required for safe operations are you?

Mr. LAPPIN. How many, what is the minimum number for safe operation?

Mr. ROGERS. Yes, how short are you of people?

Mr. LAPPIN. Well, it kind of relates to the question that the Chairman asked a few minutes ago. Yes, what is the right ratio? And again, we are working on what the right ratio is. Our target this year is to have about, 35,400 employees employed, or the compensation and overtime to the equivalent of about 35,400 employees. So if we do not have full-time positions, we are probably going to extend the equivalent of what is not filled in overtime to accomplish the work. Because we are really at the point where if someone does not come to work, we must fill that post with someone.

Mr. ROGERS. I want you to make it simple for me.

Mr. LAPPIN. Okay.

Mr. ROGERS. Do you have the minimum number of employees for safe operations? Do you have enough employees for safe operations?

Mr. LAPPIN. This year the number we have identified is 35,400.

Mr. ROGERS. For safe operations?

Mr. LAPPIN. That is the number we want, yes. I mean, we do not have that number right now. Let me explain. We do not have that number right now. We are about 1,200 shy of that. However, we compensate for that through overtime, so technically, we have got that many employees. Therefore, we believe we continue to run safe and secure operations. We do not want to see that ratio increase any more. And that is why we have drawn, or targeted, that number of employees. If you know the equivalent in overtime——

Mr. ROGERS. If you do not have overtime, if you disregard overtime, and you are paying people straight pay, how many people short of safe operations would you be?

Mr. LAPPIN. Again, we do have the overtime so we continue to run.

Mr. ROGERS. If you did not have it?

Mr. LAPPIN. I think we are staffed at about 34,100. Is that about right?

Mr. ROGERS. I will ask you a real simple question. I want a simple answer. With no overtime, if you did not pay overtime, and you are paying people straight pay——

Mr. LAPPIN. 1,200.

Mr. ROGERS. Short?

Mr. LAPPIN. Yes.

Mr. ROGERS. For safe operations?

Mr. LAPPIN. Well, I would not say for safe. We make adjustments internally. Certainly I can take more risks, for example, at minimums and lows. So what we will do is we will run shorter at minimums and lows where the inmates are less risky and we will staff up at medium and highs to make sure that those institutions run and have the adequate number of people they need. So we have that flexibility. But if you ask what is the number, the minimum number we want this year? I am 1,200 short of that number.

STUN/LETHAL FENCES

Mr. ROGERS. Well staffing or budget shortfalls have led several prisons, including McCreary County, Kentucky, the newest one in my area, to install what they call stun fences in lieu of managed central surveillance towers. Some people believe that tower surveillance is preferable with eyes on——

Mr. LAPPIN. Sure.

Mr. ROGERS. And I assume you agree with that?

Mr. LAPPIN. I believe the stun lethal is the direction we should go.

Mr. ROGERS. Is what?

Mr. LAPPIN. Is the direction we should go. Let me just say, let me give you an example of why I think that. One, stun lethal or lethal fences have been in operation in corrections for twenty, twenty-five years. There was resistance in the Bureau to moving in that direction. But when we looked at our cost savings initiatives, we went and assessed those locations, looked at the operations that occurred there for fifteen, twenty years, and realized they could provide the same level of security at those locations without manning the towers. Many of the staff in towers that are operated cannot see inmates because many of the rec yards are internal now. So the staff in towers cannot see into the rec yards because the buildings are in their way. Unlike the old prisons where the rec yard was more open to the public, or more open to the fence.

So, you know, we could have a long debate, and I am sure there will be many discussions. We believe that if the funding is available it would be wise of us to. Again, technology changes all the time. And this is a technology advancement that we think has merit, that we think we will continue to run safe and secure prisons and not jeopardize the community. And so we are firmly behind the stun lethal fences, whether we have the funding or not because we think it is a more efficient way to operate the prisons.

Mr. ROGERS. Mr. Chairman, I have other questions that I will defer to a later time.

ACTIVATION OF FCI POLLOCK

Mr. MOLLOHAN. There will be other rounds. For those who may not have voted, there are forty-five seconds on this vote. Mr. Lappin, if, again, we have a $240 million reprogramming request. If additional funding is provided at the Department's request level, will the new medium security prison FCI Pollock in Louisiana be activated in the year 2008?

Mr. LAPPIN. We are currently activating Pollock. It will not have inmates in 2008. But we are currently planning on ramping up, slowly, the staffing for Pollock.

Mr. MOLLOHAN. Okay. So the answer is, even if you do not get this reprogramming, even if you do not get this infusion of $240 million, Pollock will be activated?

Mr. LAPPIN. If we do not get the $240 million we will do the most we can at Pollock to begin the activation. I will not deny that activation will be slowed significantly if we do not get the $240 million.

Mr. MOLLOHAN. Okay, I am going to step back then. What is activation in your definition so that we can operate off the same understanding?

Mr. LAPPIN. Once we begin an activation it takes us about six to eight months, depending on some variables, to get to the point where we begin accepting inmates.

Mr. MOLLOHAN. Okay, and what is the moment of activation? When you start accepting inmates? Or when you start getting administrative people in the prison——

Mr. LAPPIN. Well we begin to, I guess that is a good point. When we begin hiring people in my mind is when the activation begins. Opening the prison with inmates is when you begin taking inmates. So that period between activation and bringing on inmates is about six months in most cases. If we get into a community where we are struggling hiring locally, then sometimes it is extended somewhat.

Mr. MOLLOHAN. Okay, well I am trying to tie this to your request, or the Department's request, for reprogramming of $240 million which you have received. And I am trying to understand, if additional funding is provided at the requested level, will Pollock be activated in fiscal year 2008 or will it be activated anyway, and what do you mean by that?

Mr. LAPPIN. If we get the additional funding, obviously that activation will go much faster. By the end of fiscal year 2008 my guess is we could be very close to fully staffed.

Mr. MOLLOHAN. And if you do not get it what——

Mr. LAPPIN. Then we can begin to bring inmates in soon thereafter. If we do not get it, it is going to slow down the staffing.

Mr. MOLLOHAN. But you will still staff it?

Mr. LAPPIN. We will still staff it as high as we can given the other limitations. Again, obviously if we do not get the $240 million we are going to be struggling to continue other operations. It will slow, I am not going to ramp up as fast a prison we are not using——

Mr. MOLLOHAN. Well, let me ask you this. If you are on the brink, and I know you are so that is not the debate here, if you are on the brink of operating a safe prison system or not operating a safe prison system, or on the margins of that, if you activate a new prison which will result in, I do not know, another thousand, 1,200, 1,500 employees?

Mr. LAPPIN. 1,500? I am sorry.

Mr. MOLLOHAN. I am talking about——

Mr. LAPPIN. 1,500 inmates, about 300 employees.

Mr. MOLLOHAN. 300 employees?

Mr. LAPPIN. 300 employees.

Mr. MOLLOHAN. Okay, so if right now you are on the edge with regard to funding S&E, how can you activate a prison without this infusion and bring on 300 employees more?

Mr. LAPPIN. You are correct. I mean, it is a very good point and that is why I say we would slow that activation. We would not hire as many. If we do not get the funding without a doubt it is going to be later in the year, or next fiscal year, before we actually begin to bring on inmates.

Mr. MOLLOHAN. I feel like I am trying to help you here, but——

Mr. LAPPIN. I know you are——

Mr. MOLLOHAN [continuing]. I feel like I am having a hard time doing it. It is probably my——

Mr. LAPPIN. No, you are absolutely correct. We are in a financial dilemma. We are cautiously moving forward. We are being very careful in what we spend. We are not aggressively pushing Pollock given the fact we are in this dilemma. If our sense is we are going to get the funding then we will certainly speed that up.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

FUNDING/REPROGRAMMING

Mr. MOLLOHAN. Okay. I do not think I have to do anymore on that. I think I understand. I have some information from the employees, the employee representatives, that if you were not to receive this additional money, $240 million, $280 million, $300 million, that you would have to actually cut correctional staff in 2008. Do you agree or disagree with that statement?

Mr. LAPPIN. Well, I have two choices there. If we did not get the additional funding, obviously, if we do not get additional funding there is no way we could save that amount of money in operations. So given that, for us to live within the mark that we currently have, we would have to eliminate staff. That is one choice. The other choice is to go deficient.

Mr. MOLLOHAN. I'm sorry?

Mr. LAPPIN. The other choice is to go deficient.

Mr. MOLLOHAN. Oh, go deficient.

Mr. LAPPIN. Deficient.

Mr. MOLLOHAN. So you are up against it here. The fiscal year 2009 request of $5.436 billion for salaries and expenses represents an increase of 7.6 percent over the current year. Given the current year's shortfall, is this request adequate to meet basic BOP requirements in fiscal year 2009?

Mr. LAPPIN. As I expressed earlier, the increase from 2007 to 2008 was about $55 million. So clearly, this is a much larger increase from 2008 to 2009, which is going to serve us extremely well. And hopefully we can get that or close to that mark. However, it will continue to be a challenge for us. I think it will serve us well. I think we will be in a better situation, certainly, in a much better situation than we are this year. It will still, I think, require us to act very cautiously, look for efficiencies, prioritize our responsibilities and focus on the highest priorities.

But yes, I think if we can get that mark we are going to be in a much better situation than we are this year. It may still require some strategies to gain efficiencies, but I think we could get through that——

Mr. MOLLOHAN. Does the 2009 request take into account the possibility of this reprogramming request being granted? In other words, would the reprogramming request, say you were to get $240 million, be annualized in the 2009 request?

Mr. LAPPIN. I do not believe that will happen. What I think is——

Mr. MOLLOHAN. No, no, "will happen." The question is——

Mr. LAPPIN. It is not built in.

Mr. MOLLOHAN. Okay, so the answer is no.

Mr. LAPPIN. That is correct.

Mr. MOLLOHAN. So if you were to, if the Justice Department's reprogramming request at $240 million were approved then would we anticipate receiving an amended budget request for 2009 to annualize the approval of that request? Of the 2008 supplemental request?

Mr. LAPPIN. On behalf of the base for 2009. Although there was a $100 million 2008 reduction through the Congress.

Mr. MOLLOHAN. I am going to forget that big long question I just asked. Are you answering it?

Mr. LAPPIN. I am going to answer it. I just want to make sure that the base in 2009 is $100 million more than what we actually got in 2008. Because when the 2009 budget was built they added back in the $100 million.

Mr. MOLLOHAN. Okay, what about, all right, you are telling me $100 million——

Mr. LAPPIN. That is right.

Mr. MOLLOHAN [continuing]. Would be accounted for in the base, and it would be annualized for 2009 in your 2009 request?

Mr. LAPPIN. One hundred million more.

Mr. MOLLOHAN. Okay, so there would be $140 million that would not be taken into account and would not be annualized in your 2009 request? Correct?

Mr. LAPPIN. Correct.

Mr. MOLLOHAN. So for that amount would we expect an amended budget request for 2009? If we were to approve the $240 million would there be a request for—well, let me ask it.

Mr. LAPPIN. We do not anticipate that, no.

Mr. MOLLOHAN. You do not anticipate what?

Mr. LAPPIN. An amended request for another $140 million.

Mr. MOLLOHAN. Well then, how are you going to pay for, in 2009, the increased funding, which is basically for S&E——

Mr. LAPPIN. Sure.

Mr. MOLLOHAN [continuing]. Which will occur in 2009, how are you going to pay for it in 2009?

Mr. LAPPIN. Well, one we could work within the Department to identify other funding, possibly. But the other thing is, we may not see as many inmates. We anticipate some reduction in the number of inmates because of the crack amendment impact, the guideline amendment. Let us take an example currently.

Mr. MOLLOHAN. But you are so far down on employees right now if you let every adjusted sentence adjust and release early, you would still be short of employees, would you not?

Mr. LAPPIN. But again, there are other things——

Mr. MOLLOHAN. What is the answer to that question? And then you can elaborate.

Mr. LAPPIN. Would we still be short of——

Mr. MOLLOHAN. Yes, sir. Of employees?

Mr. LAPPIN. Not necessarily.

Mr. MOLLOHAN. Oh boy, I am really confused.

Mr. LAPPIN. Well, it is actually $140 million. In the way you calculated it——

Mr. MOLLOHAN. Did I ask the right question here?

Mr. LAPPIN. You did ask the right question.

Mr. MOLLOHAN. Okay, thank you.

Mr. LAPPIN. We believe that with the higher number, the President's number——

Mr. MOLLOHAN. Right.

Mr. LAPPIN [continuing]. And the fact that the base started a little higher than what was actually enacted, okay?

Mr. MOLLOHAN. Okay. All right.

Mr. LAPPIN. You would assume we would be about $140 million short.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. What we can not gain through, continue to gain through efficiency in operational areas for some of that $140 million. If not, we will work with the Department to identify what funding we might need beyond that. If it requires a reprogramming request, we would certainly submit one. But certainly starting off from this point we do not anticipate that, in hopes that we can gain those efficiencies through some of the strategies that we have. We will work with the Department. And if there is a need, we would ask for more funding. Obviously, we are not shy about that. We forwarded a $240 million reprogramming to you this time. We would make the same assessment once we got into 2009.

Mr. MOLLOHAN. You may not be shy but I would say the, the Department is reluctant. Thank you. Boy, I tell you, Mr. Frelinghuysen, saved by the bell.

RECIDIVISM

Mr. FRELINGHUYSEN. Mr. Lappin, I just wanted to pick up one more figure. The number of people who come through your operation that have been in prison before or have come up through the juvenile system and had some degree of incarceration?

Mr. LAPPIN. The number of people?

Mr. FRELINGHUYSEN. Yes. In other words, of the population——

Mr. LAPPIN. Not prior records?

Mr. FRELINGHUYSEN. With prior records, yes.

Mr. LAPPIN. I do not know that number off the top of my head. I may be able to find that number for you through our research department. I can tell you our recidivism rates——

Mr. FRELINGHUYSEN. Yes.

Mr. LAPPIN [continuing]. Are about 40 percent in the federal prison system. So we are releasing 62,000, 63,000 inmates a year, of

50,000 of those returning to the United States we are seeing a return of about 40 percent. Which really, in my opinion, is significant. I mean, we would love to see it lower. We have seen that number come down over the last few years. If you look at the states, they have about 65 percent recidivism rates. We attribute the difference to the many, many BOP programs that are offered. The inmates are improving their skills in educational and vocational work, and more important are going home better prepared to face reality. But I will work with our research folks——

Mr. FRELINGHUYSEN. Right.

Mr. LAPPIN [continuing]. To see if we can give you a number, the number of inmates coming into our system with prior records.

[The information follows:]

INMATES WITH PRIOR RECORDS

Of the 77,804 inmates designated during calender year 2007, 54,807 (70%) had a prior record, as indicated by U.S. Sentencing Commission's Criminal History Score.

CRACK SENTENCING AMENDMENT

Mr. FRELINGHUYSEN. You started down this path, the impact of the crack amendment?

Mr. LAPPIN. Yes.

Mr. FRELINGHUYSEN. Just briefly, because I want to get into where you stand relative to the counterterrorism unit and things like that.

Mr. LAPPIN. As of, this week, Tuesday, we had processed 1,522 orders to reduce sentences. Of those, 793 were immediate releases. 729 shortened the sentence, but not to an immediate release so those inmates have some time remaining. I do not know exactly how much. Now that we have started the process our sense is that this fiscal year, between now and the end of September, we will probably release about 1,500 to 2,000 more inmates than we would have without the adjustment. We believe next year will probably be around 2,500 to 3,000. So there are 19,500 offenders who are potential candidates for reduction.

Mr. FRELINGHUYSEN. Well you said that in terms of drug related you gave us a figure of 14,000 earlier.

Mr. LAPPIN. No, that was sex offenders.

Mr. FRELINGHUYSEN. Oh, excuse me, sex offenders.

Mr. LAPPIN. And 52 percent of our offenders are drug offenders.

Mr. FRELINGHUYSEN. Okay.

Mr. LAPPIN. But many of those offenders have convictions on things other than crack—powder cocaine, methamphetamine, marijuana. So of the 52 percent of the offenders, there are about 19,500 who may fall into the category of being eligible for a sentence reduction. We anticipate, at least the sentencing commission's projections reflect, that about 12,000 of those could be released over the next five years, earlier than they would have been. The other 6,000 or 7,000 are going to be spread out over the course of about fifteen or twenty years. So it is going to slow down significantly over the first five years.

Mr. FRELINGHUYSEN. And they will be monitored after their departure?

Mr. LAPPIN. My assumption is the majority of them have supervised release. And my guess is we have some statistics of those that do not. But the vast majority of the offenders come into our custody and then have supervised release. So they do not lose that when they release early, it just picks up a little earlier. They continue to be supervised.

COUNTERTERRORISM

Mr. FRELINGHUYSEN. Okay. Could we focus for a few minutes? We provided you with $17 million last year to establish the counterterrorism unit. Where do we stand? How is the effort going? I know you have a pending supplemental of, what, $9 million? Is that right? Update us on it.

Mr. LAPPIN. I am very pleased with the progress we have made, not just on the counterterrorism unit but on our management of terrorist offenders. Last year when we spoke there were some concerns over the monitoring of mail, phones, and so forth. The ramp up of the counterterrorism unit is going quite well. We are doing a better job of monitoring mail and phones given that mandate. The other thing we have done is we have——

Mr. FRELINGHUYSEN. You may have to direct that to the Chairman.

Mr. LAPPIN. I will do that. We have ramped up communications management units. Now that we know we are going to have these folks long term, a lot of the more serious offenders, terrorists, were housed at ADX Florence. We found that some of those, although they needed closer monitoring, did not need the security requirements at Florence. So we are ramping up two communications management units that are less restrictive but will ensure that all the mail and phone calls of those offenders are monitored on a daily basis.

CRACK SENTENCING AMENDMENT

Mr. MOLLOHAN. The new sentencing, or some decisions impacting the sentencing guidelines, would impact the length of the sentences for crack cocaine convictions and incarcerations? If that happens, you are going to be releasing drug addicted offenders more quickly, correct? Addicted offenders.

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. Does that suggest that somebody is going to have to take care of that problem on some percentage basis? I mean, they are not all going to walk out and stay clean.

Mr. LAPPIN. Right.

Mr. MOLLOHAN. So what should we be anticipating? What should you be anticipating programmatically, or planning for programmatically? And what should we be anticipating in the treatment area? Should we be increasing the treatment intensity? The after care? The halfway house? How should we be doing this, particularly since folks are being released early?

Mr. LAPPIN. Well these folks that are being released immediately, unfortunately some of them will return to the community without treatment. That is unfortunate.

Mr. MOLLOHAN. Well, that is really unfortunate.

Mr. LAPPIN. Very unfortunate. And given that, I would certainly be working with, we need to be working with probation, the folks that are supervising those folks. Some of them will release, unfortunately, without halfway house opportunity. Now this is a very small percentage of the entire group. It will only affect those that are releasing right now, and that we anticipate releasing with in eighteen months.

Mr. MOLLOHAN. Are you releasing people right now that you were anticipating releasing in eighteen months?

Mr. LAPPIN. That we were anticipating?

Mr. MOLLOHAN. Yes.

Mr. LAPPIN. Absolutely.

Mr. MOLLOHAN. So this policy is in effect immediately?

Mr. LAPPIN. In November the Sentencing Commission made a decision, actually December, to adjust by two levels the crack guidelines, crack sentencing guidelines, and postponed its implementation until March 3. It asked judges to please wait until March 3, give the prisons and other probation, marshals, other folks, time to prepare for what could be a wave of early releases. And so there was kind of a waiting period. But some of these folks may be in drug treatment now, because they were nearing the end of their sentence. A few of them may not have gotten into drug treatment yet. And their sentence was shortened to the point that they are releasing with either only a portion of that treatment completed, or possibly none. But again, it will only affect those that are releasing right now.

Mr. MOLLOHAN. Not only, though. I am all for a reconsideration of our sentencing guidelines. But is it mandatory that you release from the prison prisoners who fall into this category even if they have not received drug treatment? Or have——

Mr. LAPPIN. We have no choice. The judge reduces their sentence, we must release them.

Mr. MOLLOHAN. Can they be released contingent upon their staying clean after they are released and going through a program that requires testing?

Mr. LAPPIN. I assume the court could put conditions on that release.

Mr. MOLLOHAN. And when you say "the court?"

Mr. LAPPIN. The court.

Mr. MOLLOHAN. You are talking about federal courts? The individual courts? It would be up to the discretion of the individual judge?

Mr. LAPPIN. Correct. Now, again, hopefully after this first wave, as I mentioned of the 1,500 we have received orders on 729 of them did not release. So what we will do with those, 729, we will immediately look at their new release date. And if they are recommended for drug treatment and they are volunteering for drug treatment, we are going to put them at the top of the list, and we will immediately put them in drug treatment.

Mr. MOLLOHAN. Doing these things individually like that, is not the way to do it. We ought to be looking at what are the consequences of this action, however well intentioned. And I am totally in favor of more sympathetic treatment to people who are in jail because of drug use offenses. But it needs to be looked at in the

context of the different situations we are putting people in and the likelihood of their being successful or failing in those situations.

Mr. LAPPIN. Well, without a doubt, it was a negative consequence of the decision. Because some of these folks will leave——

Mr. MOLLOHAN. Well, they will be right back in.

Mr. LAPPIN [continuing]. Without completion of treatment. And just let me say, I mean, we are struggling a little bit in the drug treatment area. We unfortunately——

DRUG TREATMENT PROGRAM

Mr. MOLLOHAN. Well, I want to get that. What about the needs, additional resource needs, to intensity the treatment for those who are still going to be in long enough to experience treatment? Do we need to think about the supplemental, increasing your funding in that area? 2008–2009?

Mr. LAPPIN. Let me get the number for you here. This was the first year since the requirement was imposed, that we treat 100 percent of the inmates who require drug treatment, and volunteer for drug treatment, that we were unable to treat all of the offenders. We treated probably 18,000 offenders this past year. We needed to treat 22,000. So we——

Mr. MOLLOHAN. And that is because of lack of resources?

Mr. LAPPIN. We did not have enough drug treatment specialists to increase the number of classes to accommodate that.

Mr. MOLLOHAN. Okay, is that a problem you face, you are describing a 2008 problem?

Mr. LAPPIN. We still have that problem.

Mr. MOLLOHAN. Were you describing 2007? Just when you said that was the first year? Okay. What about 2008? What is your circumstance in 2008?

Mr. LAPPIN. We still have a 7,000 inmate backlog for drug treatment.

Mr. MOLLOHAN. Okay. Does the Department of Justice request for the $240 million reprogramming include funds for adequate drug treatment of all the inmates that require it?

Mr. LAPPIN. I have to go back and check exactly what was included in that $240 million?

Mr. MOLLOHAN. So you are not sure you can answer that question?

Mr. LAPPIN. I will answer that. What we have done is, getting back to what we need——

Mr. MOLLOHAN. Would you get back to the Committee for the record?

Mr. LAPPIN. I will do that.

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Mr. MOLLOHAN. Soon? Before we do our supplemental? And before we address your reprogramming request?

Mr. LAPPIN. I will do that.

Mr. MOLLOHAN. I really want to know the answer to this. Your testimony indicates that 40 percent of inmates entering the BOP

system have a drug use disorder and require residential drug abuse treatment. Do you agree with that?

Mr. LAPPIN. That is pretty close.

Mr. MOLLOHAN. In fiscal year 2008, BOP was only able to provide treatment to 80 percent of eligible inmates instead of the 100 percent requirement established by the Violent Crime Control and Law Enforcement Act of 1994. Do you agree with that? Treated 80 percent instead of 100 percent that were mandated under the authorization?

Mr. LAPPIN. That is probably pretty close.

Mr. MOLLOHAN. How much additional funding is needed to be in compliance with this law?

Mr. LAPPIN. We need about another eighty positions. And about $10 million in funding to work off the backlog and treat 100 percent. The eighty positions are included in the $10 million.

Mr. MOLLOHAN. Now have you followed these individuals in a way that would allow you to tell us what percentage of the participants succeed in remaining drug free after treatment and after release?

Mr. LAPPIN. Yes.

Mr. MOLLOHAN. Well, what is——

Mr. LAPPIN. Well, as I indicated our recidivism rate is about 40 percent. We have recidivism research on all of our programs. Our drug treatment, vocational training——

Mr. MOLLOHAN. Well, that was not exactly my question.

Mr. LAPPIN. And we see a reduction of about 16 percent, from our 40 percent——

Mr. MOLLOHAN. My question was how many remaining drug free? Do you have a kind of follow up program——

Mr. LAPPIN. Yes.

Mr. MOLLOHAN [continuing]. That would allow you to say how many remain drug free?

Mr. LAPPIN. Well, I do not know the exact number. I can tell you what percent, which the percent coming back is probably about 30 percent of those folks coming back versus 40 percent without treatment.

INMATE MEDICAL CARE

Mr. FRELINGHUYSEN. One of your biggest cost drivers in your S & E account is inmate medical care. We sort of touched on it. I think the last couple of years you have needed reprogramming to cover those costs. And you have a large increase for fiscal year 2009. Now what is the total amount budgeted in the package before us today for medical care?

Mr. LAPPIN. Medical care?

Mr. FRELINGHUYSEN. Yes.

Mr. LAPPIN. We spent about $730 million last year. I think we got close to $800 million in requirements this fiscal year.

Mr. FRELINGHUYSEN. Why the increase?

Mr. LAPPIN. The rising cost of healthcare——

Mr. FRELINGHUYSEN. Right.

Mr. LAPPIN [continuing]. And aging. You know, although the average age remains about the same, we have a lot more older inmates. It is also because we tend to get a lot more younger in-

mates. So the average age stays about the same, but we have more older inmates, more care issues, more needs, and healthcare costs continue to increase.

Mr. FRELINGHUYSEN. I cannot imagine a more difficult environment to provide inmate medical care. How much of it is provided in the institution and how much of it is related to being placed in other settings? I obviously assume these people are armed or not necessarily. They may be dangerous, but they obviously have to be guarded to protect other patients.

Mr. LAPPIN. Our goal is to perform as much of that care as we can in our institutions. But without a doubt, we cannot provide the full range of services. We have a break down of inside and outside healthcare. We will get that to you for the record. I do not have the exact number. But our goal is to provide as many of those services in our institutions. We have done a number of things to be more efficient. For example——

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Mr. FRELINGHUYSEN. And those who provide it are MDs?

Mr. LAPPIN. Oh, absolutely.

Mr. FRELINGHUYSEN. Yes.

Mr. LAPPIN. Our healthcare structure, includes medical doctors, PAs and nurses, with their support staff. But it is really a combination service. We provide the base level staffing to perform the basic functions necessary in medical. We oftentimes have contracted at each location with hospitals surrounding the facility to assist us with needs that we cannot provide there. What we have done is we realized, we finally realized, that we could not provide the same level of healthcare at all 114 prisons, given the fact that some were in very rural locations. Some were in locations where we really could not get very good deals at the local hospitals. So we basically went to structured care level facilities. So we have institutions now that have very healthy inmates. We have institutions that have less healthy, we have institutions with more ill inmates, and we have those that need hospitalization. So there was a couple things there. One, we could not get good contracts at local hospitals. Two, we could not hire the people we needed. We were in rural area. It was difficult to get the professional staff. And so we tried to put more healthy inmates there so you have less of a need.

Mr. FRELINGHUYSEN. So the bottom line is you are doing your utmost to control the cost?

Mr. LAPPIN. I would be happy to provide for the record the strategies we deployed over the last three or four years to control costs. But even with that, our costs continue to increase.

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CROWDING ISSUES

Mr. FRELINGHUYSEN. Getting back to the issue of overcrowding, I understand you recently completed a study tying increases in crowding and inmate to staff ratios to increase in serious assaults. Can you tell us a little bit about, share the results of that study?

Mr. LAPPIN. We did do an evaluation of the impact on crowding and staffing on violent incidents. And let me give you an example. Let me explain a serious assault. A serious assault, is oftentimes when somebody has to go to the hospital. They need medical care. They could die, or they are very seriously injured. So you have got varying levels of assaults in the institutions. You have serious assaults, and you have less serious assaults. So the study was relevant to serious assaults.

Mr. FRELINGHUYSEN. There are assaults, prisoner to prisoner and there are assaults prisoner to the prison staff. Make the distinction, if you could, in your response.

Mr. LAPPIN. Currently, we do it by rate per 5,000. Without a doubt, if you look at the actual numbers from year to year to year, the numbers are increasing but primarily driven by the fact that you have more inmates. So you would expect the number to go up. But if you look at it by rate, right now our rate of serious assaults on staff is 1.8 per 5,000 inmates. And on inmates, inmate on inmate serious assaults, is 10 assaults per 5,000 inmates. What that study reveals, is if you increase crowding by 1 percent, you should expect, I think, 4 or 4.09 more assaults per 5,000 than if it remained at the original level. If you increase the ratio of inmates to staff by one inmate, you are going to see an increase of assaults by about 4.5 per 5,000. If you lowered the ratio we would assume that there would be some lowering of that. So we know that crowding and level of staffing has an impact on the number of serious assaults. Obviously that's why we are monitoring very closely that ratio, of inmates to staff as well as crowding.

Mr. FRELINGHUYSEN. So are there certain institutions that have historically had the most serious assaults between inmates and prison staff? Are there some that are up there historically?

Mr. LAPPIN. We monitor that very closely. You are right. It kind of goes in waves. It fluctuates. But there are a couple of locations where we have had more serious incidents than others. Let me give you an example. I just recently responded to the Chairman, specifically on homicides and assaults at certain penitentiaries. In that response, excuse me——

Mr. FRELINGHUYSEN. I am glad you have quite a lot of water provided.

Mr. LAPPIN. But you know what? If I run out of water——

Mr. FRELINGHUYSEN. All that water, it looks like it is from the spring but it is actually from the Anacostia.

Mr. LAPPIN. But if we run out of water and I am done, just give me a second, I will be done here in a second.

Mr. FRELINGHUYSEN. Okay.

Mr. LAPPIN. One particular institution was USP Beaumont. And without a doubt we have got concerns at that particular institution. And it has gone on several years. The staff there have done a wonderful job in very challenging circumstances. I give them enormous

credit. On the other hand, I am concerned about their reaction to some of the training that is provided, some of the direction. And this goes to all of the staff. I am not talking about just management, I am talking about all of the staff. So given that, we are going to make an adjustment there, temporarily. We are going to bring down the security level. We are going to give them a break, and we are going to bring down the level of high security inmates there. We are going to reduce the number of inmates then we are going to do some training. We are going to ensure that the folks are properly trained, ready to go, and then we will begin to transition back.

So certainly when we see those incidents, let me give you the whole story. His other question was these newer institutions, you are seeing some serious assaults there. And we are. And that, I guess, certainly is the challenge of opening a high security institution with your most risky inmates and lots of less experienced people. So we have gone into those locations and done additional training. We are very pleased with the reaction of those staff. We are confident that level of incidents will come down and be more consistent with other penitentiaries. But without a doubt, when we see this increase occurring over time, we try to intervene and do what we can to reduce those levels of incidents and concerns. That is a great question.

PROGRAMS TO REDUCE RECIDIVISM

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen. Well, we have talked about inmate substance abuse treatment. And I would like for the staff to be able to follow up with you and your staff, Mr. Director, about that so that we know exactly what the situation is and what appropriation demands would be to make it better. Offender recidivism, as we talked about, is at a 40 percent rate. Other than drug treatment, what programs does the Bureau of Prisons offer, which you think have an impact in reducing, recidivism and what more should we be doing in those or other areas?

Mr. LAPPIN. Yes. Without a doubt, Prison Industries is one of these programs. Of the inmates who participate in Prison Industries, we see fewer of them coming back than the run of the mill inmate. Also inmates who get a GED, and inmates who get vocational training. And to be quite honest with you, even though we do not yet have the results of other specialty programs that improve social values, improve decision making, we anticipate that we are going to see similar results in those programs as well. So too other psychology programs, we have some other specialty programs, and we have faith-based programs. The bottom line is, those inmates are volunteering for those programs. That is the first step towards improving their skills and abilities. They are acknowledging, "Hey I have issues. I need to deal with those issues."

Mr. MOLLOHAN. Yes, I get the feeling we have a very progressive management in the Bureau of Prisons. For all of these programs, we do not have enough resources to implement the programs that we need and certainly to run them at a scale that makes them available to all eligible, willing prisoners.

Mr. LAPPIN. We monitor our waiting lists in all these areas. We are managing the GED waiting list very well. We are managing the

vocational training waiting list well. Obviously we have already talked about drug treatment and the backlog we have there. It is unfortunate that there are thousands and thousands of inmates who release from prison never participating in Prison Industries where they learn, work skills, that is a trade. They learn what it means to get up on time and be at a certain assignment and be held accountable for the work that you do. Work skills that many of them lack when they come to prison.

Mr. MOLLOHAN. Mr. Lappin, I would like you to submit for the record references which discuss this matter. Academic references, case study references, which talk about all of these, I call them remedial programs, and to the extent they are available what impact they have on recidivism.

Mr. LAPPIN. We will do that.

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Mr. MOLLOHAN. And also the quality of life of incarcerated people. And then I would like to follow up, perhaps at a hearing, or otherwise, and understand those issues. So I have a lot of questions in those areas. Some of them we will submit for the record. But I do want to mention, or give you an opportunity to talk about the importance of the Prison Industries Program. I understand that is particularly effective at providing skills for inmates when they are released and works to reduce recidivism. Is that accurate?

Mr. LAPPIN. That is accurate. This was reflected by the research we have done on inmates who participate in a Prison Industries Program for as little as six months.

Mr. MOLLOHAN. How many inmates in the federal prison system ever participate in a Prison Industries Program?

Mr. LAPPIN. Today there are 23,000 inmates working in Prison Industries.

Mr. MOLLOHAN. What is the percentage of your population?

Mr. LAPPIN. 18 percent of the eligible inmates who could be in Prison Industries.

Mr. MOLLOHAN. 18 percent of the eligible inmates?

Mr. LAPPIN. 18 percent of the eligible inmates.

Mr. MOLLOHAN. Yes.

Mr. LAPPIN. Our goal is 25 percent.

Mr. MOLLOHAN. Why? Does that reach all of them?

Mr. LAPPIN. It does not.

Mr. MOLLOHAN. Well why is that your goal? Why is your goal not to reach 100 percent of those who are eligible?

Mr. LAPPIN. I am confident if we ever reach that goal, we will set a new goal. But it has been the goal for many years. Our proposal would be that all eligible inmates——

Mr. MOLLOHAN. And that is a factor, really, of resources, that also the push back you get from the private sector with regard to Prison Industries, is that correct?

Mr. LAPPIN. And some legislation that has been passed that has limited our ability to continue to grow and provide additional work opportunities in Prison Industries.

Mr. MOLLOHAN. Yes, I think that is very shortsighted because the cost to society is real and the savings to society would be, I think, equally or more real if we did engage inmates in more skill——

Mr. LAPPIN. I mean, we recognize the concern. The concern is we are taking jobs away from law abiding citizens and businesses. We do not want to do that.

Mr. MOLLOHAN. Yes.

Mr. LAPPIN. We are more than happy to explore work opportunities that have less, if any, impact on businesses in the United States. Let me give a quick example, call centers. Most of that work has been done in other countries. We have brought some of that work back and inmates are now answering 411 calls for information, all public information. It is a wonderful area. They work in shift work. In advance of going into that program they receive education where we help them eliminate slang from their language——

Mr. MOLLOHAN. Yes, I do not want to go into too much of that but you have certainly affirmed the usefulness of the program and I would like to follow up for the record, and to follow up otherwise.

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HEALTHCARE COSTS

Quickly on healthcare costs, because we have not included, and Mr. Ruppersberger has not had a chance to question and Mr. Rogers wants an additional chance. But I do want to talk about healthcare cost increases. The budget includes large increases for healthcare, $40 million just for healthcare inflation and a requested increase for population adjustment. 32 percent is for medical care and supplies, I understand. What is the total amount budgeted for prison healthcare in 2009?

Mr. LAPPIN. I think it is $770 million.

Mr. MOLLOHAN. What has been the annual cost growth for medical services?

Mr. LAPPIN. I think at about 9 percent. I think that is, other than personnel, it is about a 9 percent increase from year to year, over the last couple of years.

Mr. MOLLOHAN. I understand that we are not adequately providing healthcare to all inmates in the prison system. Or that is my belief. Is that accurate?

Mr. LAPPIN. I do not agree.

Mr. MOLLOHAN. Okay.

Mr. LAPPIN. I believe we are providing adequate healthcare.

Mr. MOLLOHAN. What about all these drug offenders? Hepatitis, are they all being treated adequately for any drug related diseases such as hepatitis?

Mr. LAPPIN. We very closely track infectious diseases. We know exactly how many HIV offenders there are, that we are aware of, and under risk assessment we test hepatitis, chronic hepatitis B, chronic hepatitis C. We know exactly how many offenders——

Mr. MOLLOHAN. Okay, would you submit a detailed answer for the record? Mr. Ruppersberger?

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GANGS AND COUNTERTERRORISM

Mr. RUPPERSBERGER. Just a couple questions. On the issue of gangs and counterterrorism in prison, I just, I am from the Baltimore area, and ATF working with local law enforcement just had a bust of a Blood gang member and it has turned out, I believe, the key, the head of the operation was running the whole gang operation out of a state prison in Western Maryland. Also the issue of terrorism. And those are two subject matters that are different. You have gangs on the one area, Crip/Blood and whatever else you have, and then the terrorism issue. Are you working with the other federal agencies, both intelligence and FBI, ATF, DEA to deal with that? What are you doing and how are you dealing with it? It is my understanding you are dealing with it a lot better than state prisons.

Mr. LAPPIN. We all have our challenges. But I have to say I thank our staff locally. This is the key, you need support from the top. And we have great support from FBI, DEA, U.S. Marshals, in effective communication back and forth on offenders who are coming into our custody or leaving our custody, who have associations with disruptive groups or security threat groups, which is the generic term for all the gangs. We operate in conjunction with the Marshals, the FBI, the Sacramento Gang Intelligence Unit in Sacramento, California, which is kind of the clearing house.

Mr. RUPPERSBERGER. And the Marshals are the——

Mr. LAPPIN. The Marshals, the FBI, they are part of that organization.

Mr. RUPPERSBERGER. Kind of like a strike force?

Mr. LAPPIN. It is, and in fact it is housed in the same building as the California gang intelligence unit. And they work collaboratively on identifying people who are coming into our system, and leaving our system. So we know who is coming as best we can, and they know who is leaving as best they can. I think over the last three or four years the communication has been enhanced significantly. A greater flow of information, great work locally and nationally on that type of issue.

Mr. RUPPERSBERGER. Do you coordinate with the JTTF in that regard too?

Mr. LAPPIN. We have permanent members. We have two permanent seats on the National Joint Terrorism Task Force.

Mr. RUPPERSBERGER. Okay, good.

Mr. LAPPIN. And our staff are actually the liaisons for all corrections, federal, state, and local. More applicable to terrorists, but certainly getting involved in some of the gang issues. Locally where we have prisons, many of our wardens or representative of the warden are on the local JTTFs so that they are involved locally as well.

Let me just transition a little bit. Let me back up. Without a doubt, as I said earlier, the management of the gangs continues to be a challenge. More of them, more younger offenders, more violent, more gang associations, so it is troublesome for us. And we are currently stepping back, reevaluating how we are managing those gangs, and the gathering of information. We record all the phone calls, we monitor as many as we can. We read mail, especially on high profile inmates. Our classification system takes into account gang participation. So certainly those at the higher levels end up in more structured, and more controlled environments.

Mr. RUPPERSBERGER. Let me stop you right there. If you have identified a gang leader. Do you have a policy on cell phones in federal prisons?

Mr. LAPPIN. Yes.

Mr. RUPPERSBERGER. What is that?

Mr. LAPPIN. None.

CONTRABAND AND STAFF SEARCHES

Mr. RUPPERSBERGER. None, okay. So the other issue. It seems where we are having problems are corruption with respect to the prison guards. And again, this is more state than federal, so I am focusing more on my knowledge of the state prison. Do you have an issue there? And if you do, what protocols do you use to identify that?

Mr. LAPPIN. It is as much a challenge for us as it is locally. That is, the introduction of contraband, some of which comes in through other inmates or families, some comes in through staff who have decided to break the law, unfortunately. We have recently implemented, I guess it was until January we did not search our staff coming to and from work. We now search all our staff entering work.

Mr. RUPPERSBERGER. So that is a protocol?

Mr. LAPPIN. Obviously we will be doing a better job of stopping the introduction of metal, cell phones, those types of issues. It is still going to be a challenge. We are working closely with a number of organizations to identify equipment to help us detect phones in prisons. So it is a big challenge for us. And the smaller the phones get and the less metal that is in them it is going to be more of a challenge.

TERRORISTS

Let me transition real quickly to terrorists. We have got about 211 international terrorists. If you throw in the domestic terrorists the number goes up to a little over 1,200. As I mentioned earlier to one of the other questions I think——

Mr. RUPPERSBERGER. Where are these terrorists from, by the way? What countries?

Mr. LAPPIN. You know, primarily the Middle East.

Mr. RUPPERSBERGER. Okay.

Mr. LAPPIN. But there are some international terrorists from other countries. I could get you, I could get a break down very easily and submit it to the record. I think today we are doing a much better job than we were doing a year ago and the year before that. We know more, we have increased resources. We are monitoring

100 percent of the phones and mail for those inmates, it is required for those that we have concerns about. We have in place contracts with companies or to assist us with interpreting. We struggle trying to find resources to bring into the system, to hire people. So we now have contracts in place to complete the interpretations that are required. We have a system to classify those individuals, so that we have them at appropriate security levels and locations to monitor and oversee their incarceration, and what contacts they have both in and outside of prison.

[The information follows:]

CITIZENSHIP OF INTERNATIONAL TERRORISTS

International Terrorists Incarcerated in BOP institutions are citizens of following countries:

Afghanistan, Algeria, Angola, Belize, Canada, Colombia, Croatia, Cuba, Denmark, Ecuador, Egypt, France, Gaza Strip*, Haiti, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Kuwait, Lebanon, Morocco, Pakistan, Saudi Arabia, Somalia, Spain, Sri Lanka, Sudan, Syria, Tanzania, Trinidad, Turkey, United Kingdom, United States, Yemen, and Yugoslavia (Serbia).

*Not a country.

Mr. RUPPERSBERGER. Okay. Thank you.

Mr. MOLLOHAN. Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman. Back briefly to the staff versus prisoner ratio. Have you noticed any change in the number of incidents of violence or disorder as your staff ratio has increased?

Mr. LAPPIN. If you look at the rate of serious incidents over time, you will see peaks and valleys. But the trend has been a slight increase in the rate of serious assaults. So we have not seen a significant increase. There has been more of an increase at higher security institutions, a concern of ours. I think what concerns me more is the increase in the severity of those incidents. We are seeing more serious assaults. When we have serious assaults they are more serious, I think, now than in the past. We have had a rash of homicides. We have had, as of today, nine homicides this fiscal year. We had twelve last year in 2007. We had four in 2006, and we had twelve in 2005. Let me give you the three prior years, for 2004, 2003, and 2002. We had four, three, and three. So we have seen an increase in the severity of the serious assaults. We have also seen a severity of those assaults that occur on staff, a huge concern of ours.

So, again, the number is a little deceiving. When you look at the rate, you do not see a huge increase. You would assume there would be given more inmates, and fewer staff. On the other hand we are very concerned about the severity of the assaults that are occurring. And we are trying to address those issues by identifying those offenders who behave in that manner and getting them into higher security institutions for greater control and custody.

NON-U.S. CITIZEN INMATES

Mr. ROGERS. Deportable aliens.

Mr. LAPPIN. Yes.

Mr. ROGERS. How do you handle that?

Mr. LAPPIN. Of the 201,000 inmates, almost 52,000 are non-U.S. citizens. 22,000 of those are incarcerated in private contract facili-

ties. We determined some years ago that would be an appropriate use of private contract facilities. So 22,000, of the low security offenders, low security criminal aliens are the only offenders that are there, primarily. There is a small group of D.C. offenders in one facility, about 600 to 700. So the vast majority of the offenders in private corrections are low security, criminal aliens. The rest of them, the balance, are housed in our low facilities. What we cannot get into our private contract low facilities are in our low facilities. The majority of what remains are in mediums and highs because of violence or escape history, or disruptive behavior.

Mr. ROGERS. Well, I want to know about deportable.

Mr. LAPPIN. Yes.

Mr. ROGERS. Those that can be deported.

Mr. LAPPIN. They are, and obviously they first stay at locations around the Bureau. We have a cooperative agreement with the Bureau of Immigration and Customs Enforcement where they actually have staff on site. And we try to concentrate the individuals who are being considered for deportation, who are coming up on the end of their sentence, we try to concentrate them at those locations around the Bureau. There are institution hearing programs officers from the BICE agency who review and determine whether or not that person is going to be deported. We also work with them and have a facility in Oakdale, Louisiana where many of these offenders are ultimately transferred. If there is a decision to be deported, many of them end up in Oakdale, Louisiana where we then, again, work with the immigration staff to have them deported to their country of residence. There are some folks who we are unable to deport because the country of residence will not accept them. And some of them remain in our custody. Oftentimes BICE takes them back into their custody to house them as detainees. But a small portion of them remain in our custody as long term detainees. We are working closely with BICE for a reimbursable agreement on those few that remain in our custody. Oftentimes the ones that stay with us have health issues or at a higher security level than what they want to put in some of their detention facilities.

Mr. ROGERS. Well, I am trying to figure out a place to help you reduce the population. So aliens, noncitizens who are serving time in a federal prison, you do not have the authority to deport them short of them serving their time here?

Mr. LAPPIN. No, I do not.

Mr. ROGERS. Should you and would you like to?

Mr. LAPPIN. Well, I think that is an issue for the Department of Justice.

Mr. ROGERS. You have a feeling about it, surely.

Mr. LAPPIN. Well, again, I am open to any strategy to help us maintain safe, secure prisons. I certainly have no problem assisting or working with the Department to determine if this is a viable option, and with the Bureau of Immigration and Customs Enforcement.

Mr. ROGERS. Now one-third of your prisons are over fifty years old?

Mr. LAPPIN. Yes.

Mr. ROGERS. And require very significant upgrades and maintenance because of that, obviously. But in your testimony you also in-

dicate that the prisons constructed since the seventies reflect a modernized architectural design to support the principle of direct supervision of inmates. In other words, increased efficiency.

Mr. LAPPIN. Increased visibility.

Mr. ROGERS. But requiring fewer personnel per prisoner.

Mr. LAPPIN. If you compare institutions designed prior to that, you are going to see the need for more staff per inmate than in the newer facilities.

Mr. ROGERS. Now, the President's Budget Request includes only $95 million for construction, which includes maintenance of these older prisons especially, which is some indication that your facilities budget is going to become even more backlogged. Repair projects deferred, projects already in construction delayed, not to mention new construction. Is that not counterproductive? If a new prison is going to save you a lot of manpower, they are more efficient. They were designed that way, right? So does it not make sense to phase out some of the really old ones that are not efficient and need a lot of repair in favor of a newer facility?

Mr. LAPPIN. I cannot argue that point. Clearly there are some of our older facilities that are very expensive to continue to operate. But our dilemma has been that we have never had the opportunity to close them because we have too many inmates.

Mr. ROGERS. Yes.

Mr. LAPPIN. We could not take them offline.

Mr. ROGERS. Have you ever closed one?

Mr. LAPPIN. Yes, we have. In fact, we just closed four institutions a year ago. Four older, very small, inefficient, minimum security camps. But over the course of seventy-seven years we have closed a number of prisons. Alcatraz, McNeil, well, we did not close McNeil we gave it to the State. There are a number of different institutions. We have a list of institutions that have been closed over the years.

Mr. ROGERS. Yes.

Mr. LAPPIN. But certainly an area of concern. There are two aspects of the B and F budget. Certainly new construction is one issue. M and R is the other issue.

Mr. ROGERS. Let me briefly follow up.

Mr. LAPPIN. And we certainly have to prioritize very cautiously funding for modernization and repair because of the number of older prisons and the cost of reconstruction and modernization. So it is an area we really have to prioritize well. Without a doubt we are concerned about the funding level in that area.

TELE-HEALTH

Mr. ROGERS. Let me follow up briefly on the Chairman's questioning about medicine, healthcare. I remember from years ago we were talking about telehealth and telemedicine in the prisons. That has probably been fifteen years or so. I do not think we have moved very far along in that time, have we?

Mr. LAPPIN. Well, we have some. Not as far as we would like to have moved. We do quite a bit of telepsychiatry. We are doing some telehealth in certain locations where we have a contract with a community hospital or an organization that can assist us with that. But without a doubt, we are not where we would like to be. I think

that has been limited some by our funding challenge. I mean, without a doubt some of the things that we would like to do have been slowed, given the funding challenges that we have had over the last three or four years.

Mr. ROGERS. Well, it just makes all the sense in the world to me to try to utilize telemedicine in the prisons, saving manpower and expenses and malingering prisoners who use this as an excuse to take a ride out in the country one day a week.

Mr. LAPPIN. Let me mention something we see evolving though. I mean, you are right, fifteen, twenty years ago we saw a greater need. But what has occurred over the last ten, fifteen years or more, is community hospitals who are willing to come to the facility to provide service. That has had a huge impact because in the past typically we took the inmates to the hospital. But we have now arranged services through contracts for them. Let us take FMC Butner in Raleigh, North Carolina. We have several contracts locally where on a given day somebody shows up to do certain types of services for inmates. And we will have all the inmates prepared. Contractors spend an entire day so it is efficient for them. Given that we have seen more of a transition to that type of provision of services, not to say that telehealth is not an option, but we certainly see a bit of a transition ongoing via the priorities and the available manner to provide services.

Mr. ROGERS. You could stop a lot of prisoners saying, "I am sick. I want to go to the doctor or the hospital just to get a free ride into town or day out of the cell." I am sure if you said to that same person, "Okay, come to this next cell and we will hook you up with a doctor across town or across the countryside here," I would say you would have fewer prisoners saying they were sick, one. Two, you do not have to have your staff accompany that prisoner all day long out there, wasting time, so it makes every bit of sense in the world to try to save some money. Now the FCC has just awarded over $417 million for the construction of sixty-nine statewide or regional broadband telehealth networks in forty-two states and three U.S. territories. It seems like a grand time for you to make your big move.

Mr. LAPPIN. I would love to have that information. We would welcome an opportunity to chat with them.

Mr. ROGERS. With whom?

Mr. LAPPIN. Make connections with the people. I was unaware of this. And if there is funding for the advancement of telehealth we will certainly look into it and see how it can be utilized.

Mr. ROGERS. Well I would challenge you to do that. No one is going to come and lay it on your table. You are going to have to go after it.

Mr. LAPPIN. Absolutely.

Mr. ROGERS. There has been awarded a big sum of money for the FCC to expand the telehealth network, which could save you tons and tons of staff and money.

REIMBURSABLE AGREEMENT WITH BICE

Mr. LAPPIN. You know, you mentioned a few minutes ago about the long term detainees. I can tell you for sure the ones that we keep in our custody typically are individuals who have huge med-

ical issues, because BICE may not have the locations available, or the resources to provide it. So what we need from them, as an example, is a reimbursable agreement with BICE to pay for the cost of those individuals. But we will certainly look into, this opportunity to see if we can enhance our——

Mr. ROGERS. If you could get back to us with some report on how you are proceeding, I would appreciate that.

Mr. LAPPIN. I will do that.

[The information follows:]

Telehealth Programs

Current BOP Telehealth Programs: As of March 2008, five BOP institutions are providing telepsychiatry services to 12 other BOP institutions who do not have psychiatrists. Two additional institutions have provided telepsychiatry services in the past, but have put a temporary hold on telepsychiatry programs, due to staff psychiatrist vacancies.

Institutions Providing Telepsych Services	**Institution Receiving Services**
FMC Butner	FCI Cumberland
USP Lompoc	FDC Honolulu
USMCFP Springfield	USP Lewisburg, USP Lee, USP Terre Haute, USP Big Sandy, USP Allenwood, USP Hazelton, USP Florence, ADX Florence
USP Atlanta	FCI Edgefield
FDC Philadelphia	FCI Elkton
FMC Carswell (temp hold, due to vacancies)	FCI Seagoville
FMC Rochester (temp hold due to vacancies)	FPC Yankton, MCC Chicago, FCI Waseca

FMC=Federal Medical CenterFCI=Federal Correctional Institution
USP=United States PenitentiaryFDC=Federal Detention Center
FPC=Federal Prison CampADX=Administrative Maximum Security
MCC=Metropolitan Correctional CenterUSMCFP=US Medical Center for Federal Prisoners

FMC Lexington receives specialty telemedicine consultation services from their contract hospital provider.

FCI Cumberland patients receive HIV specialty consultations via telephone and/or videoconference from Johns Hopkins.

Also, FCI Safford and FCI Tuscon are discussing the feasability of telehealth with their comprehensive contract provider, who has an existing telehealth program.

BOP Telehealth Committee: The BOP formed a telehealth committee in January 2008. The committee's first objective was to survey all institutions to determine their telehealth capabilities and which patient health needs are not being met through existing comprehensive medical contracts. The committee will then evaluate the cost effectiveness of hiring some physician specialists to provide telehealth services throughout BOP and also using existing telehealth/telemedicine programs and networks to provide additional services.

Obstacles to Telehealth Programs: The main obstacle to telehealth programs is physician licensing. A physician must have a license in the state where the patient is located. This often prevents the BOP from using existing telemedicine programs, because they are not located in the

same states where our institutions needing telehealth services are located. Preliminary research by the BOP Telehealth Committee also indicates, in a few cases, there are telehealth programs in the same states as our institutions, but existing telehealth programs are not able to accept our patient volumes or do not meet the BOP's information technology security requirements.

The BOP also wants to ensure telehealth programs are used only to supplement patient care services that are not provided through existing healthcare contracts with local hospitals. We depend upon these local hospitals to provide emergency care services, surgical services and other patient care that must be provided in person. If the BOP carves out additional medical services from these contracts, prices are likely to increase.

Mr. ROGERS. And I would be happy to try to help the gentleman and I am sure all of us would. Thank you, Mr. Chairman.

Mr. LAPPIN. And with the BICE issue.

Mr. MOLLOHAN. Thank you, Mr. Rogers.

Mr. ROGERS. Thank you.

Mr. MOLLOHAN. Mr. Aderholt, we are about ready to move onto our next witness. We have three hearings. Do you have any?

Mr. ADERHOLT. No, you all can move on and I will get ready for the next witness.

Mr. MOLLOHAN. I know the Director will welcome any questions for the record from any of us.

Mr. ADERHOLT. I have some for the record. I know you would love to stay longer, but——

Mr. LAPPIN. I am running out of water.

Mr. MOLLOHAN. Director Lappin, again, thank you for appearing before us particularly under these circumstances. And we look forward to working with you and your fine staff. We appreciate the great job they do and we look forward to working with you as we mark up this bill and 2008 supplementals reprogrammings and try to get the Bureau of Prisons the resources they need to do their job. Thank you for appearing here today.

Mr. LAPPIN. I appreciate your listening and assisting us. We look forward to working with you.

Mr. MOLLOHAN. Next the Committee is going to turn to the Director of the U.S. Marshals Service to present the U.S. Marshals Service budget.

[Recess]

Mr. MOLLOHAN. All right, we will resume the hearing. Now we are going to turn to Mr. John Clark, the Director of the U.S. Marshals Service. Mr. Clark, welcome. We thank you for your time, Director Clark, and we look forward to your testimony. Based on your proposed budget increases we expect to hear a lot about your workload in the Southwest Border districts. We have all heard about the challenges you are facing in that region and we are aware that even more significant challenges are on the horizon as a result of changing immigration enforcement policy. Today we have to discuss your ideas and proposals for addressing those challenges. At the same time, we recognize that the Marshals Service has many more mission requirements than just prisoner security along the Southwest Border. We are anxious to discuss these other requirements as well, including Adam Walsh enforcement, courthouse security and judicial threat assessments. Your written statement will be made a part of the record. We will invite you, after Mr. Frelinghuysen has an opportunity for an opening statement, to summarize your testimony and to be responsive to questions. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman. Welcome and thank you for running a good operation, the U.S. Marshals Service. So a great job on your team. Thank you.

Mr. CLARK. Thank you.

Mr. MOLLOHAN. Mr. Clark.

Mr. CLARK. In the interest of time I will try to speed it along as fast as I can. Chairman Mollohan, Congressman Frelinghuysen, other members of the panel and Subcommittee, thank you for al-

lowing me to come here today. I am here today as the Director and as a career Deputy U.S. Marshal, representing more than 4,600 men and women of the United States Marshals Service. Our employees are located in ninety-four judicial districts nationwide and six regional fugitive task forces, three foreign offices, and headquarters. I am also here to represent the many clients that we serve in the Marshals Service, including the judiciary, the public, other Federal investigative agencies, and our state and local partners. The Marshals Service needs your help now more than ever.

In 2006, we worked together to pass the Adam Walsh Act. The Act requires the federal government to help state, local and tribal entities standardize and link sex offender registries. Through the Marshals Service's unique constitutional authority and proven success at catching fugitives, the law also mandates Deputy U.S. Marshals to investigate, locate, and apprehend sex offenders who fail to register. This enforcement mission adds, according to conservative estimates, 100,000 additional fugitives to our current workload. We have already shown that we can be creative and effective at catching fugitives. Operation Falcon, Fugitive Safe Surrender, and regional task forces are excellent tools we use to carry out this mission. Catching sex offenders is a mission that Deputy U.S. Marshals have taken to heart. We have been told that each offender has, on average, ten victims. Every second we are delayed in looking for one of these predators is another second they can use to repeat their crime against society's most vulnerable and valuable resource, our children.

Last year, both the House and Senate marks for the Marshals Service contained resources for the Adam Walsh Act. The funding was denied. This year I urge you to honor the memory of Adam Walsh, Megan Kanka, Jessica Lunsford, Polly Klaas, Jacob Wetterling, and the thousands of other current and future victims of unregistered sex offenders.

This year I also ask you to remember the unique role the Marshals Service plays in protecting our judicial process: the fundamental principle that witnesses, judges, assistant U.S. attorneys, and defense attorneys, can all operate freely without fear of harm or retribution. Over the past years we have seen a 69 percent increase in threats to the judiciary. Currently we have only thirty-five people who are dedicated full-time to analyzing threats against those 7,700 officials.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Further, we have never lost a witness in the Witness Security Program who followed our guidelines. We are taking care of over 17,000 witnesses and their families. The number keeps growing since we are good at what we do. This service that we provide is part social worker, part probation officer, and a large part bodyguard. It is an excellent program and motivates witnesses to cooperate. The government has achieved an 89 percent conviction rate using protected witness testimony.

Another example of why we need your help this year is the Southwest Border. The five judicial districts that are along the Southwest Border handle over one-third of the entire prisoner population. Thank you for the positions you appropriated to us in 2008 to help with our mission there. I also appreciate your support with the additional positions for the U.S. Border requested for 2009, which will assist with the ever increasing workload. The workforce has not kept up with the increased workload, we send deputies to the Southwest Border on temporary travel orders for weeks at a time to maintain operations. That means they are not able to do their jobs in their home districts, not able to catch fugitives, not helping your state and local police, and not keeping courts running smoothly. As you know we answer to the federal judges. When they hold court they set the docket and we have to be there with prisoners in hand.

I also ask you to remember the role that the Marshals Service plays when it comes to ensuring the safety and security of both the general public and employees in our federal courthouses. In some older courthouses, deputies are forced to walk prisoners through public hallways, open areas, and use public elevators. This situation causes some obvious safety and security concerns and needs to be addressed.

Finally just let me say that we do not conduct counterterrorism or counter intelligence investigations, but someone has to protect witnesses and detain accused terrorists. Someone has to protect the courthouses and court officials where terrorists stand trial. Someone has to investigate and apprehend violent criminals who are terrorizing our communities. And that someone is a Deputy U.S. Marshal and that is why I am here today. So thank you for giving me the opportunity to speak on behalf of the men and women of the Marshals Service. I look forward to taking your questions now.

[Written statement of John F. Clark, Director, United States Marshals Service]

STATEMENT OF
THE HONORABLE JOHN F. CLARK, DIRECTOR
UNITED STATES MARSHALS SERVICE

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE,
AND RELATED AGENCIES

March 12, 2008

Chairman Mollohan, Ranking Member Frelinghuysen, and Members of the Subcommittee, I appreciate the opportunity to discuss the President's Fiscal Year 2009 budget request for the United States Marshals Service (USMS). As you know, the missions of the Service are diverse, the challenges we face significant, and our accomplishments many. I look forward to discussing how we, together, can address the critical issues facing our organization and provide the resources necessary to meet its growing demands, in the competent and professional manner the public expects.

I am here today on behalf of the more than 4,600 men and women of the United States Marshals Service located in 94 districts nationwide, six Regional Fugitive Task Forces, three foreign offices and our headquarters, as well as the myriad clients we serve including: the judiciary; other federal investigative agencies; our state and local partners and the public at large.

For FY 2009 the USMS requests 4,644 positions, 4,523 FTE (excluding reimbursable FTE) and $933.1 million for our Salaries and Expenses appropriation and Construction appropriation. This includes a program enhancement of 73 positions and $12.7 million to address critical Southwest Border requirements and international investigative activity in Mexico.

As a career deputy marshal, I can assure you that all of us take our fiduciary responsibilities very seriously. Whether protecting judges in high-threat situations, apprehending dangerous felons or safeguarding prisoners, we are committed to doing the best we can with the resources at hand. What follows is an overview of the services we provide in support of our core missions.

Fugitive Investigations and Apprehensions

Fugitive apprehension is among our most dangerous—and rewarding—activities. It benefits all our clients, particularly the general public, and fosters a sense of cooperation, achievement, and community among our law enforcement partners.

Using the full complement of assets at our disposal - - everything from targeted, direct involvement to the "force-multiplier" effect of the district, regional and state and local task forces and international fugitive apprehension - - over 94,000 felons were arrested by the Service and its partners in 2007. More than 36,000 violent felons, gang members and sexual predators have been arrested since the inception of one focused and targeted effort: ***Operation FALCON*** (Federal and Local Cops Organized Nationally). In terms of overall performance, we remain the most effective and productive federal fugitive hunters in the nation, arresting more federal fugitives than any other agency.

In addition to our active law enforcement network, we continue to obtain valuable results through our partnership with the media and help from the general public in pursuit of fugitives, particularly as a result of our **15 Most Wanted** profiled on ***America's Most Wanted*** television program. Our participation in the Department of Justice's Organized Crime Drug Enforcement Task Force (OCDETF) program has also been an effective resource in the apprehension of fugitives. The President's 2009 OCDETF budget request includes six new deputy marshals to increase OCDETF apprehensions domestically and in Mexico. In the last five years, our international extraditions have grown at an accelerated rate with 772 extraditions in 2007, more than twice the number from 2002.

The following activities demonstrate how we apply our investigative techniques, resourcefulness, and coordinated efforts to provide vital services and outreach to safeguard communities and their environments.

Protecting America's Communities and Preventing Crime

The ***Adam Walsh Child Protection and Safety Act*** is landmark legislation that protects America's children and families. It authorizes the USMS to help state, local, tribal, and territorial authorities to locate and apprehend non-compliant sex offenders; investigate violations of the criminal provisions of the Act; and identify and locate sex offenders relocated as a result of major disasters, such as Hurricane Katrina.

With the unanimous passage of this legislation, Congress entrusted us with a solemn responsibility, one that we are diligently working to fulfill. The task we face is formidable. It is estimated that there are more than 630,000 registered sex offenders in the United States, and at least another 100,000 who have failed to comply with registration requirements.

To carry out these new missions, we established the Sex Offender Apprehension Program and designated a program management office to direct and coordinate the implementation of the Act within the agency. The USMS also designated sex offender investigation coordinators in each district office and Regional Fugitive Task Force to establish and maintain effective contacts with sex offender registration authorities, corrections officials, and other law enforcement agencies throughout the country.

Since passage of the Act, the USMS has opened more than 1,300 cases for violations of the Act and arrested over 240 individuals for violating its provisions. I share your concern, as well as the public's, that these predators be brought to justice as quickly as possible.

I also want to recognize the USMS's efforts aimed at preventing crimes. In FY 2007, we formalized our involvement in the **G.R.E.A.T.** (Gang Resistance, Education, and Training) program, which focuses on providing life skills to students in high-risk environments to help them avoid using delinquent behavior and violence to solve their problems. The program has four components – elementary school, middle school, families, and summer – and all four are being delivered by USMS personnel.

The USMS also intends to expand its ***Fugitive Safe Surrender*** program in FY 2008. Authorized under the ***Adam Walsh Act, Fugitive Safe Surrender*** is a creative, non-violent and highly-successful approach to fugitive apprehension. The goal is to reduce the risk to law enforcement officers who pursue fugitives, to the neighborhoods in which they hide, and to the fugitives themselves. This program does not provide amnesty; instead, it encourages persons wanted for non-violent felony or misdemeanor crimes to voluntarily surrender in a faith-based or other neutral setting. Partnering with state and local law enforcement, the judiciary, and the religious community, the USMS has undertaken a total of seven successful ***Fugitive Safe Surrender*** operations in Cleveland, Ohio; Phoenix, Arizona; Indianapolis, Indiana; Akron, Ohio; Nashville, Tennessee; Memphis, Tennessee; and Washington, D.C. Together, these operations resulted in the voluntary surrender of nearly 6,500 individuals wanted on outstanding warrants.

Protecting Judges and the Judicial Process
Using New Intelligence Investigative Techniques

Our protection of the judiciary and the courts remains every bit as challenging. Today the USMS is dealing with a significant escalation in threats against the federal judiciary; up 69 percent in five years. Last year we protected more than 7,000 court officials; secured over 2,200 courtrooms; and received and analyzed 1,145 threats to the court family. In the last three years, we have significantly increased our threat intelligence and analysis capabilities, and have added much-needed resources to our Office of Protective Intelligence (OPI), which is responsible for reviewing and analyzing intelligence and facilitating the day-to-day sharing of threat intelligence information with federal, state, and local law enforcement agencies.

I am proud to say that by gathering protective intelligence, the USMS has moved from a reactive to a proactive response for investigating threats and inappropriate communications against judges and prosecutors. In September 2007, the USMS established the Threat Management Center (TMC) to improve the coordination of protective intelligence information. The TMC is a centralized location that collects, analyzes, and disseminates protective intelligence, both classified and unclassified, in a timely manner to assess and mitigate potential threats directed at members of the judicial

process. The TMC also facilitates information sharing with other federal law enforcement and intelligence agencies including the Federal Bureau of Investigation (FBI), the Department of Homeland Security (DHS), and the Central Intelligence Agency (CIA) as well as state and local law enforcement agencies that have protective responsibilities.

High-Threat Trial Security

High-threat trials generally involve international or domestic terrorists, drug kingpins, violent gang members, organized crime figures, or defendants in civil matters with a high degree of notoriety. An increasing number require enhanced security efforts such as: more deputies in court, armored vehicles, and security perimeters around courthouses to secure trial participants from internal and external threats. Some of these assets are extremely specialized and very expensive, but they are literally life-saving tools.

These proceedings also require extensive operational planning and support from specially-trained and equipped personnel. In some cases, Deputy U.S. Marshals from our Special Operations Group (SOG) are deployed to provide the highest level of security possible. Because of the long duration of most of these trials, it is frequently necessary to provide personnel from other districts on a temporary basis. These situations, particularly long-term requirements, present added challenges for those districts providing the temporary support. They continue to face all their ongoing demands, but with fewer resources. As long as the United States continues to fight terrorism around the world, and terrorists or other defendants are in this country to face trial, the complexity of the operations and threat levels associated with these cases will be a continuing challenge for the USMS.

This January, convicted terrorist José Padilla was sentenced in federal court in Miami, Florida. In order to support his lengthy trial, the USMS expended considerable resources increasing perimeter security, setting up additional barricades, coordinating with local authorities to close street traffic, arranging armored motorcades for prisoner transport, upgrading surveillance cameras, and providing additional personnel through several rotations of specially-trained Deputy Marshals. We are currently securing over a dozen such trials, and are anticipating several more this year.

The increase in gang-related trials also presents many challenges for the USMS. Prosecutions of defendants associated with the Aryan Brotherhood, the "Mexican Mafia," the Mara Salvatrucha (MS-13) and other gangs or drug organizations continue. Far more violent than the average prisoner, these gang members require extra security when they are transported and produced for trial and various hearings. In addition to the potential threats in the courtrooms, these defendants present additional challenges in USMS cellblocks, and must be separated from co-defendants or segregated from the regular prisoner population because of their history of violence or risk of escape.

Infrastructure Challenges

A key to safeguarding these high-threat or high-profile prisoners, as well as other detainees, is physical security. The increasing number of detainees being presented for prosecution along the Southwest Border and elsewhere underscores the need for courthouse safety. This includes assessing and addressing courthouse security in all infrastructure areas including: space to move prisoners throughout a court facility; courtrooms; cellblocks; and sally ports. We have an ongoing requirement to renovate and repair many of these facilities to ensure healthy, safe, and secure conditions. The USMS utilizes the National Security Survey (originally developed in 1997 and updated every three years) to assist with prioritizing renovation projects.

Safety and security remain paramount. You may remember the Brian Nichols incident (which occurred in the Fulton County, Georgia Courthouse in March 2005); his murderous rampage resulted in the deaths of a Superior Court judge, the court reporter, a sheriff's deputy and a U.S. Customs Agent. Every day the USMS works to ensure a level of security that will help avoid such an incident in the federal system. However, in view of the surging prisoner population and the concomitant strain on our physical resources, maintaining such security is becoming increasingly problematic.

On the Southwest Border, many cellblocks and holding facilities are strained to double or triple their designed capacity. Under such conditions every aspect of security, health and sanitation are stretched beyond acceptable limits.

Witness Security Program

Among the most successful USMS responsibilities is the administration of the Federal Government's Witness Security Program. This program provides for the security, health, and safety of Government witnesses and their immediate dependents whose lives are in danger as a result of their testimony against drug traffickers, organized crime members, and terrorists. Since inception of the program, using protected witnesses has resulted in an 89 percent conviction rate.

Since 1970, more than 8,000 witnesses and over 9,700 family members have entered the program and have been protected, relocated, and given new identities by the USMS. The successful operation of this program is widely recognized as providing a unique and valuable tool to the Government's war against major criminal conspirators and organized crime, as well as its efforts to thwart the influence of international terror organizations. Additionally, approximately 70 percent of new participants are gang-related, creating new challenges for the program.

A significant number of new case participants are foreign-born. Relocating foreign nationals and ensuring their assimilation in a new community presents a host of difficult issues to overcome, including language and cultural barriers, requiring additional training for our Witness Security personnel. We are also increasingly called upon to

provide advice and training to our counterparts in foreign countries. During the last three years, personnel assigned to the Witness Security Program have assisted countries such as Austria, the Bahamas, Bosnia-Herzegovina, Chile, Colombia, Guatemala, Kosovo, Mexico, Moldova, Panama, Russia, Serbia, and Thailand in the establishment and training of witness security units.

I am pleased to report that no program participant who has followed the security guidelines of the program has been harmed while under the active protection of the USMS. I urge Congress to continue its support for this critical mission.

Operations Support

The Service Operations Support Division (OSD) is designed to provide the emergency and tactical support services in response to emergencies, disasters, and at times of heightened law enforcement. Its missions and responsibilities range from securing the Strategic National Stockpile, developing and maintaining plans for Continuity of Operations/Continuity of Government, National Response, and internal security, to operating the Explosives Detection Canine Program, the Communications Center and Emergency Operations Center. OSD also provides peer support in the event of a critical incident, shooting, or other stressful occurrence, such as the events of January 9, 2008, when Deputy U.S. Marshals from the District of Columbia Superior Court discovered the decomposing bodies of four young girls during a routine eviction.

Another major component of OSD is the aforementioned Special Operations Group (SOG), which is principally comprised of specially-trained Deputy U.S. Marshals in districts throughout the country. SOG manages the Emergency Medical Program and plays a crucial role in high-risk judicial proceedings. SOG members were instrumental in the successful apprehension of Ed and Elaine Brown, the New Hampshire tax evaders who were arrested peacefully last summer after a prolonged holdout. In addition to their basic duties supporting both district operations and headquarters, SOG members are deployed to Iraq and Afghanistan in support of the Department of Justice and Department of State initiatives in ***Operation Iraqi Freedom*** and ***Operation Enduring Freedom***. Enhancing security for the courts, judiciary, and witnesses has been SOG's focus in these arenas. SOG deputies also continue to be deployed, domestically and internationally, in support of other national interests, many of which involve national security.

Southwest Border Enforcement and Prisoner Detention Services

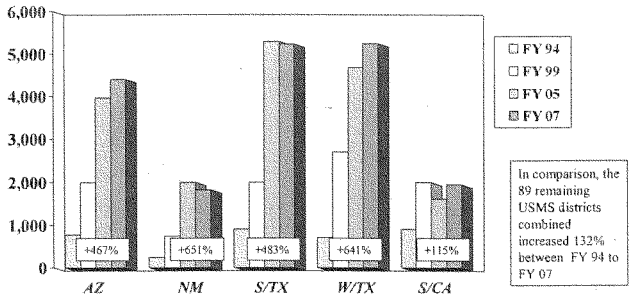
Undoubtedly one of the most acute challenges facing the USMS is continuing to provide essential security and detention services in support of Southwest Border (SWB) immigration initiatives. Concentrated efforts such as Operation Streamline, Operation Linebacker, and Arizona Denial Prosecution are designed to sweep the border of illegal aliens. These initiatives are taxing the resources of every federal, state, and local prosecutorial and law enforcement agency in the region, from San Diego to San Antonio and every sub-office in between.

With arrests and prosecutions soaring, the USMS is dealing with the increased challenge of processing, producing, housing, and transporting a growing number of federal detainees – while at the same time fulfilling all of our other law enforcement missions. I am grateful that the FY 2008 Consolidated Appropriations Act provided the USMS with $15 million in emergency funding to address the SWB. However, our continued support of this mission requires additional resources. Consequently, the FY 2009 budget requests 73 positions (including 52 Deputy Marshals) and $12.7 million for SWB district offices, including additional leased transportation vehicles. These resources will help to alleviate the crushing burden that the USMS is experiencing along the SWB.

Between 2000 and 2007, the average daily prisoner population in the Southwest Border districts increased by 72 percent. In fact, since FY 1994, the USMS average total prisoner population has risen 187 percent, whereas the Southwest Border districts' total population has grown a staggering 428 percent. Currently, these five districts[1] all rank within the top six USMS districts in terms of the largest prisoner populations (with the other being the Southern District of New York), and together these five districts have an average of more than 18,600 prisoners in custody on any given day.

[1] Southern District of California, District of Arizona, District of New Mexico, Western District of Texas, and Southern District of Texas.

USMS Population Growth up 428% in Southwest Border Districts FY 94 – FY 07



The sheer number of prisoners in the custody of these five districts makes finding sufficient detention space particularly challenging. The high volume of individuals coming through our cellblocks puts a constant strain on our workforce and requires our districts to be extremely creative in their daily management of resources and personnel. Despite our best efforts, we find ourselves increasingly forced to supplement our workforce with contract guards and temporary duty personnel from other USMS districts.

There are no signs of this upward trend abating. This year, the Customs and Border Patrol is funded to hire an additional 3,000 agents, which will drastically increase our workload. Already under severe strain, without the necessary and critical resources requested in the President's budget, the USMS will continue to experience major challenges in managing this increased prisoner population.

Information Technology

Sharing information within and among law enforcement agencies is critical to the continued support of law enforcement missions in today's world. The USMS needs access to our own systems, commercially-available databases, state and local information technology (IT) systems, and federal and departmental IT systems like the National Center for Missing and Exploited Children (NCMEC) sex offender registries. The ability to share information requires a robust, secure telecommunications and applications infrastructure and more IT staffing to provide 24/7 support across the nation for task force and judicial security operations.

Increasing the operational workload directly and permanently increases the need for IT throughout the USMS. Our use of high-speed telecommunications, networking,

and the Internet affects how well we hunt fugitives, handle cases involving missing or exploited children, provide security to judicial proceedings, and investigate threats. Our operational workload is consistently driven upward by cases and arrests generated by our sister federal law enforcement agencies, U.S. Attorneys' offices, and Southwest Border immigration initiatives. Our reliance on IT increases accordingly.

Current IT challenges facing the USMS include supporting SWB initiatives by collecting and providing appropriate information despite the lack of connectivity among the various federal agencies, as well as improving ongoing efforts to enhance and integrate our own internal information systems.

Our internal challenges are quite daunting. The Justice Detainee Information System (JDIS) is being designed to unite the various USMS law enforcement information systems into a modern, web-enabled application. JDIS contains vital, harmonized operational data to facilitate data sharing with other government entities and enable prompt identification and analysis of links between various personnel and incidents to potentially avoid or avert situations in which a judge, prisoner, or deputy is at risk.

Conclusion

Chairman Mollohan, Congressman Frelinghuysen, and Members of the Subcommittee, on behalf of the men and women of the United States Marshals Service, thank you for your ongoing support of our programs. I hope that I have given you a comprehensive overview of our Agency's mission that will be valuable as you consider your priorities for FY 2009 appropriations.

I am proud to say that during my time as Director, we have made significant progress in achieving our goals and meeting our priorities. We have addressed concerns expressed by the federal judiciary and Members of Congress related to judicial security, and we have built upon our successful track record of reducing the number of violent felons in our communities. We also have achieved positive results in our less visible program areas, such as training our Deputy Marshals, criminal investigators, threat investigators, and administrative employees.

I know that there is still much to do. I am committed to ensuring that we are efficient stewards of the resources you have entrusted to us, and I look forward to working with you to improve our performance in areas that are critical to domestic security and to build upon the successes we have already achieved. I need your assistance in providing the resources that will allow the United States Marshals Service to continue its tradition as the most versatile federal law enforcement agency. The men and women who proudly wear "America's Star" and the clients they serve deserve nothing less.

ADEQUACY OF FY 2009 REQUEST

Mr. MOLLOHAN. Thank you, Mr. Clark. The Marshals Service has quite an extensive list of responsibilities. I imagine that you have to do plenty under the best of circumstances. But you are currently facing unprecedented increases in your workload due to stricter immigration enforcement, higher judicial threat reporting, and a vast new mandate for sexual offender apprehension. I understood in your opening remarks, you indicated that you were assigning Deputy Marshals to hot spot areas and they were not able to do this, not able to do that, not able, repeat that sentence for me, will you please?

Mr. CLARK. Essentially, Mr. Chairman, we have Deputy Marshals on special assignment going around the country. Some may be working on high threat trials, as for example in Miami. The resources that we may need there requires us to oftentimes bring Deputy Marshals from some other districts to help. On any given day, we have numerous special assignments around the country.

Mr. MOLLOHAN. Is that because you are stretching resources?

Mr. CLARK. Yes, that is one way to put it. We are stretching some resources. What we are able to do in the special assignment process is to move or bring in Deputy Marshals from districts that perhaps do not currently have a significant workload.

Mr. MOLLOHAN. Repeat those "nots" for me then again. I did not get them all down. They were not able, not able to do this, not able to do that. What did you say there in your opening remarks?

Mr. CLARK. Essentially, if you can bear with me a second to find it——

Mr. MOLLOHAN. I want to hear it again so I do want to bear with you.

Mr. CLARK. Okay, one moment.

Mr. MOLLOHAN. Sorry, thank you.

Mr. CLARK. I think it starts here. Since the workforce has not kept up with the increased workload we send deputies to the Southwest Border on temporary travel orders for weeks at a time to maintain operations. That includes, by the way, the other examples that I just gave you. That means they are not able to do their jobs in their home districts. For example, not catching fugitives, not helping state or local police in their law enforcement duties and not keeping courts running smoothly. We also answer to the federal judges and when they hold court they require us to be there at that particular time.

Mr. MOLLOHAN. Okay, well I think I have heard that right then. You are stretching resources beyond the point that you can be able to fulfill all of the responsibilities you currently have.

Mr. CLARK. Yes.

Mr. MOLLOHAN. You have projected increases for, and I repeat, stricter immigration enforcement, higher judicial threat reporting, and a vast new mandate with regard to sexual offender apprehension. Given your current situation, and given what you are looking at in the future, do you believe that your 2009 budget request is sufficient to allow you to fully enforce all of your mandated responsibilities?

Mr. CLARK. Mr. Chairman, we were disappointed with the 2007 continuing resolution in that we did not see the resources to enforce the Adam Walsh Act. We continued to be disappointed in 2008 when the positions were not continued in the Omnibus Bill in Conference. We were initially looking for start up positions of approximately fifty-four positions and $8 million. This year the President's budget calls for additional resources to support the Southwest Border, which handles about 34 percent of our pretrial detainees.

Mr. MOLLOHAN. I want to share your disappointment in 2007. I want to share your disappointment in 2008. We wish the President had negotiated with the Congress as that process is supposed to work in a normal environment. I also want an answer to my questions. Do you believe that your 2009 budget request is sufficient to allow you to fully enforce all of your mandated responsibilities?

Mr. CLARK. We certainly need additional resources to adequately implement all of these various missions. Our five year plan for, the Adam Walsh Act includes 100 Deputy Marshals for each of the next five years to successfully complete operations.

Mr. MOLLOHAN. Okay, well let me suggest that I hear you answering no. Your 2009 budget request is not sufficient to fully enforce all of your mandated responsibilities. Please feel free to correct me if I misheard that.

Mr. CLARK. That is correct. We——

Mr. MOLLOHAN. Thank you. If not, then where do you anticipate cutting back in order to work within your budgeted level?

Mr. CLARK. Well for example on our enforcement operations, where we use our congressionally-funded regional task forces. We have a force multiplier there with the state and local police that greatly enhance our capabilities. For example to succeed with the Adam Walsh Act despite no funding, we have about 2,700 sex offenders thus far.

ADAM WALSH ENFORCEMENT

Mr. MOLLOHAN. Well one of the places you are going to cut back with is your Adam Walsh. I mean, you have how many non-compliant sex offenders?

Mr. CLARK. By conservative estimates about 100,000.

Mr. MOLLOHAN. How many FTEs do you have working on that job?

Mr. CLARK. Right now, Deputy Marshals work on a collateral duty basis in addition to their other responsibilities investigating fugitives. That workload is melded into their current workload. So while no one may necessarily be saying, "I work solely Adam Walsh Act cases," we have a number of Deputy Marshals nonetheless performing those duties.

Mr. MOLLOHAN. No, my question was how many FTEs do you have assigned to performing your Adam Walsh mission?

Mr. CLARK. Currently we have about five, I believe, that are reassigned to——

Mr. MOLLOHAN. And how many Adam Walsh offenders do you have out there?

Mr. CLARK. There are approximately 100,000 according to the National Center for Missing and Exploited Children.

Mr. MOLLOHAN. Okay.

Mr. CLARK. I am sorry, I just——

Mr. MOLLOHAN. This is harder than it should be. I feel like that is a real good example of where you are going to be cutting back, or not hiring personnel to meet a responsibility. Am I wrong about that?

Mr. CLARK. Well, what we are hoping to do, and again these are positions that we hope to see in the future, is to be able to start the process of building up those task forces with people who can work solely on Adam Walsh Act investigations.

Mr. MOLLOHAN. How many people would you have to have dedicated to that responsibility to adequately fulfill that mission?

Mr. CLARK. Our five year plan is based on projections we receive from the National Center for Missing and Exploited Children. Additionally, we know the current caseload to be from the states that have provided their statistics. Our five year plan would call for about 100 Deputy Marshals for each of the next five years.

Mr. MOLLOHAN. Do you think that the budget is appropriately balanced between your four major lines of business? Judicial security, fugitive apprehension, witness security, prisoner security and transportation?

Mr. CLARK. Adequately balanced, if I understand your question correctly. Yes, in the sense of working in all those programs so that at the end of the day everything is being done that we have on the workload "to-do" list.

Mr. MOLLOHAN. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Getting back to the Adam Walsh Act, why did you not request money specifically?

Mr. CLARK. Well, this particular——

Mr. FRELINGHUYSEN. I understand that you obviously have priorities. You are doing all sorts of things, your traditional missions, and this is a relatively new one.

Mr. CLARK. Sure. In the initial 2008 President's Budget request, we requested positions for the Adam Walsh Act, and as I mentioned a moment ago we were hoping to see those fifty-four positions and $8 million. That fell by the wayside in the Omnibus Bill. So we did not receive those——

Mr. FRELINGHUYSEN. Well, if it fell by the wayside why did you not pick it up and add a little more emphasis to it?

Mr. CLARK. Well, I had been championing the cause——

Mr. FRELINGHUYSEN. I know you have.

Mr. CLARK [continuing]. Of receiving as much as we can get for our five year plan to properly enforce the Adam Walsh Act. As the 2009 budget came together the emphasis was more strongly towards the priorities on the Southwest Border, which I think arguably after listening to Mr. Lappin and others that we certainly have a need there with 34 percent of our workload. So we are pleased on the one hand to receive that, but we are disappointed in the sense of——

Mr. FRELINGHUYSEN. Well the Southwest Border notwithstanding, there is a pretty strong sentiment in this Committee and outside this Committee that the purposes for which the Adam Walsh Child Protection Act and Safety Act, that we hope that at least you would ask for some money.

Mr. CLARK. Yes. Yes. And it is my intent to keep pushing to receive adequate resources to operate that program.

Mr. FRELINGHUYSEN. Well the best way to receive adequate resources is to highlight your commitment, which you are doing orally, but perhaps in your budget documents that you would like to fulfill what Congress has strongly suggested is an important need out there.

Mr. CLARK. Understood.

WITNESS AND JUDICIAL PROTECTION

Mr. FRELINGHUYSEN. Shifting here, I understand that the Marshals Service, and let me commend those that are there, has personnel in Iraq and Afghanistan providing security and witness protection for courts in those countries. We want to commend you and your people for providing this very dangerous but incredibly important service that is integral to the establishment of the rule of law in those countries. The administration's pending war supplemental proposes a $7 million appropriation to the Marshals Service for costs associated with your deployments in Afghanistan. Is this not basically a State Department mission that you are performing?

Mr. CLARK. Well, the particular duties we have been performing in Iraq and in Afghanistan——

Mr. FRELINGHUYSEN. It is a type of nation building here.

Mr. CLARK. One of the duties that we are responsible for, is helping to establish a more robust judicial presence there. We are working with the Iraq government to get a rule of law established, in addition to providing services protection for witnesses, particularly for example those who testified in such events as the Saddam Hussein trial. So some of the things that we are performing and doing, I believe, are uniquely situated to be a Marshals Service mission.

Mr. FRELINGHUYSEN. Well you are uniquely situated, but in reality you are doing the work of the State Department.

Mr. CLARK. Well the State Department, I believe, has the greater responsibility for those kinds of things. But we, by nature of our expertise and accomplishments in those areas, were asked to provide the service for the governments there.

Mr. FRELINGHUYSEN. I do not want to take away from what I think we all have a huge respect, anybody who works in those environments. Talk about our judiciary potentially being under fire, your people, I am sure, risk their lives all the time protecting the few jurists that are willing to stand up Sunni or Shiite, and perhaps a few Kurds, but you are doing a remarkable job. For the record it might be good to take a shot across the board at the State Department.

I just want to clarify the Witness Protection numbers again. You said in your statement that there were 17,000? You have given new identities to how many? I have a figure here, 8,000.

Mr. CLARK. We have in the Program——

Mr. FRELINGHUYSEN. But you protect, relocate, and have given new identities to how many witnesses? As opposed to those who come with them, their families?

Mr. CLARK. Well, the number that you have is more adequately describing those who get the new identities and new document changes.

Mr. FRELINGHUYSEN. You mentioned a figure of 17,000. That would be the combined, if you were to take the 8,000 witnesses and the over 9,700 family members? Is that right?

Mr. CLARK. Correct. The family members would make up the bulk of that, and not in every case do they or would they get a different identity or be relocated in the same way as what we would refer to as the principal.

Mr. FRELINGHUYSEN. How much money is spent in this area? And how much more do you need?

Mr. CLARK. I do not have that figure off the top of my head and I am not sure if someone on my staff does. That may be something I will have to get back to you on in terms of the total figure. I know it is a multimillion——

Mr. FRELINGHUYSEN. We have provided you with some additional positions in 2005 and I think additional ones in fiscal year 2006. Do you need additional resources?

Mr. CLARK. Actually, I am just referring to the number you just asked me, it is about $32 million, Congressman, on the annualized amount to run that program. In terms of the additional positions for the program, it is my estimation right now that we are handling that program and it is staffed and managed quite well. We do have people that continue to come into the program, but we also have some individuals who for a variety of reasons are not in it anymore. So on the one hand we have some new inductees coming in and there are also some others who eventually come out. So we are able to manage that, and we thank you for the——

Mr. FRELINGHUYSEN. And lastly, just briefly, the judicial protection, you are putting in quite a lot of home intrusion detection systems. Have a good number been installed? And I assume there are quite a lot of, there are costs related to administering this program?

Mr. CLARK. That is correct, Congressman. Of the initial group of approximately 1,600 judges that asked for a home alarm, some changed their mind for their own personal reasons along the way. There are roughly 1,500 now that have received a home intrusion alarm. We had those alarms installed. The feedback we have received there has been very, very positive. The monitoring costs, which are now built into our budget, to make sure those alarms are appropriately monitored, have been going well. Like any new program within the government it took a few rough bumps in the road to get it going well, but we have the alarms in. The feedback from the judges, all that I have spoken to, has been very, very positive.

Mr. FRELINGHUYSEN. Okay, thank you Mr. Chairman.

Mr. MOLLOHAN. Thank you. Mr. Aderholt.

OCDETF

Mr. ADERHOLT. Thank you, Mr. Chairman, and thank you Director Clark for being here, and thank you for stopping by my office a few days ago so I had a chance to visit before this hearing here today. In your testimony you had discussed, or had mentioned, about your participation in the Department of Justice Organized

Crime Drug Enforcement Task Force Program, and how effective that has been in the apprehension of fugitives. You mentioned that you have included six new Deputy Marshals to help out with this effort. Are six Deputies enough to really accomplish the goal that you are trying to achieve in this particular——

Mr. CLARK. Yes, it is. In fact, the program itself has received some enhancements in recent times. This enhancement, of course, will help even further, particularly with the organized crime and drug enforcement fugitives that flee to Mexico and the areas where we have already established some foreign field offices. So I believe this level of enhancement will go a long way.

Mr. ADERHOLT. How many are currently working on that, Deputies, or Marshals, are working on the project currently?

Mr. CLARK. I believe it is around thirty, somewhere in that ballpark.

Mr. ADERHOLT. Mm-hmm. And so basically just in a nutshell, if you could just tell the Committee and explain exactly how this program actually operates and how it would work?

Mr. CLARK. Sure. The Organized Crime and Drug Enforcement Task Force is a multi-agency task force. The Marshals Service is one of the participants. Our area of expertise, the resource we bring to the table, if you will, is our fugitive apprehension mission. So frequently what we are doing, within that Task Force is looking for a drug fugitive. If the individuals are wanted on federal warrants, charged with some type of a drug violation, U.S. drug violation, or someone the DEA has identified as a major drug offender, but their whereabouts are unknown. The men and women who work in this program help the larger Task Force to find those individuals who are charged under federal law with violating the drug law.

Mr. ADERHOLT. All right, thank you. That is all I have right now.

SOUTHWEST BORDER ACTIVITIES

Mr. MOLLOHAN. Thank you, Mr. Aderholt. Mr. Clark, your testimony clearly describes your struggles with keep pace with the workload being generated in the Southwest Border districts by DHS enforcement activities. Now unfortunately, those struggles are only likely to intensify. At the levels proposed in the President's fiscal year 2009 budget request, the number of Border Patrol agents will have doubled since 2001. But the Marshals staffing will have increased at less than a fifth of that rate over that same period. You have proposed a $13 million enhancement to address these workload challenges, and I want to make sure I understand the scale of what you are requesting. A couple of questions. Will this $13 million enable you to merely catch up on existing workload? Or will it allow you to also keep pace with further scheduled DHS enforcement increases? As you project those requirements out, is $13 million enough to meet them?

Mr. CLARK. Our projections are based on what we believe will be coming from the U.S. Border Patrol and their apprehensions. This is entirely different in relation to the workload that we will incur, because not every one of those individuals that the Border Patrol would bring in would necessarily go through the full federal judicial process; to take them to a hearing, to be incarcerated, to need-

ing bed space, and so on and so forth. So there is sort of an offset, even though the Border Patrol and DHS have been increasing apprehensions. We feel, based on what we received through the 2008 process, and are now requesting in 2009, that this will help us to keep pace with what we project will be coming through.

I am appreciative particularly of the Committee is recognizing the fact that all the Southwest Border initiatives that are sometimes labeled under immigration reform do have an impact on the entire judicial system; of course, the federal judges, the probation officers, and the like—whom I sometimes call the downstream effect. So we have been working very closely with the Border Patrol, DHS, and others to make sure we are discussing and talking through how to, handle the increased workload that will be coming through.

Mr. MOLLOHAN. What is the workload that you anticipate? What is the workload increase and how do you measure it? When you see DHS activities increasing, what is the impact upon your workload?

Mr. CLARK. Well, there are a number of things that, I think, come into play there. The U.S. Attorney's desire to—

Mr. MOLLOHAN. Let me ask you, have you looked at those and have you quantified it? Have you looked at that workload increase and have you quantified it?

Mr. CLARK. We have quantified some figures, and I know that we have looked at data that will affect our agency's——

Mr. MOLLOHAN. Can you share that with me right now?

Mr. CLARK. I cannot right now. I do not have that readily available. I would be pleased to provide it for—

Mr. MOLLOHAN. Are your budget estimates based upon those numbers?

Mr. CLARK. Yes, in many respects they are. We have individuals that, have been working with the Border Patrol, DHS, and others to try to project what we think——

Mr. MOLLOHAN. Your workload increase because of the additional activity that is involved with DHS enforcement increases?

Mr. CLARK. That is correct. We also know that we will have a couple of spots along the Border that have higher projections than others. Tucson comes to mind. In fact, the workload there I think, even for DHS, is predominantly located in that one sliver of Border. So——

Mr. MOLLOHAN. But you have done that exercise? Your agency? You have——

Mr. CLARK. We have looked at data. We have looked at numbers. We have looked at what we believe to be——

Mr. MOLLOHAN. And your budget requests and the budget you are requesting here is based upon those projections?

Mr. CLARK. Yes. We can provide some correlation between what we sense could be future workload requirements for us as compared to what we think DHS is doing, which is quite extensive in some ways.

Mr. MOLLOHAN. Does your request take into consideration the impact of Operation Streamline?

Mr. CLARK. Yes. We have discussed Operation Streamline and other, as we sometimes refer to them, targeted enforcement initia-

tives with the Customs and Border Patrol. Of course Tuscan, Arizona is one such area.

Mr. MOLLOHAN. Okay. But your request has taken that into account? You know that?

Mr. CLARK. Yes. In terms of, Operation Streamline and other targeted enforcement——

Mr. MOLLOHAN. The Marshals Service has taken that increase in effect, into account as it has come up with this budget request? And the budget you are requesting here is based upon those projctions?

Mr. CLARK. Yes, and we can provide some correlation between what we sense could be future workload requirements for us as compared to what we think DHS is doing, which is you know extensive in some ways.

Mr. CLARK. Yes. We have looked at budget or, I'm sorry, at workload correlation between those types of programs, Operation Streamline and other DHS initiatives that run through the Border Patrol. We are trying to align our resources to that.

Mr. MOLLOHAN. Okay. I will have some other questions in that area to submit for the record.

A few more questions about the Adam Walsh Enforcement. You indicated that you have dedicated five positions exclusively to Adam Walsh Enforcement. Is that correct?

Mr. CLARK. It is actually three.

Mr. MOLLOHAN. Oh, okay.

Mr. CLARK. I stand corrected.

Mr. MOLLOHAN. Well three is probably just as inadequate as five to try to deal with 100,000 people.

How many are tasked with Adam Walsh Enforcement as a collateral duty?

Mr. CLARK. In our 94 judicial districts we have identified a coordinator in each of those districts. In many of our districts that are located in States that have a higher volume of unregistered sex offenders, we have more than that. So in essence that number is the minimum working collateral duties.

And then our six regional fugitive task forces have identified the individuals who are supporting the Adam Walsh Act enforcement. That is the reason we have been able to make some positive impact on apprehension of the unregistered——

Mr. MOLLOHAN. It still sounds daunting to me to try to meet that responsibility with the number of people who you have assigned to it.

Do you agree or disagree with that?

Mr. CLARK. It is daunting. I do agree, and we would, again, look forward to the support of the Committee.

Mr. MOLLOHAN. Why didn't you request Adam Walsh Enforcement resources for 2009, or did you? Did you request that to OMB?

Mr. CLARK. We did make a request for the funding and the positions that we would need. A lot of it, again going back to what I referred to as a start up cost, that we had projected in the 2008 budget and hoped to continue the momentum through 2009. But priorities for funding, as many things——

Mr. MOLLOHAN. Other areas crowded it out.

Mr. CLARK. Went to Southwest Border.

Mr. MOLLOHAN. From your perspective, as a law enforcement officer, what would be required to fully implement the Adam Walsh Act?

Mr. CLARK. Our projections, based on what we are referring to as our five year plan, would be 100 Deputy Marshals over each of the next five years. What we——

Mr. MOLLOHAN. Accumulative?

Mr. CLARK. An accumulative total.

Mr. MOLLOHAN. A hundred first year, two hundred, second year, three hundred fourth year?

Mr. CLARK. Yes. That is correct. With the emphasis to place those positions in those districts, within those, States that we know have the highest volume and——

Mr. MOLLOHAN. Those are new Marshals?

Mr. CLARK. Yes, they would be new Deputy Marshals. Then we would, of course, take experienced investigators to place them to——

Mr. MOLLOHAN. Do you have an estimate of the cost associated with full implementation?

Mr. CLARK. I do, I believe, somewhere. I may have to get back to you. Yes, it would be about $130 million.

Mr. MOLLOHAN. And that is no where in your request for 2009?

Mr. CLARK. No, it is not.

Mr. MOLLOHAN. What is the status of your efforts to create a National Sex Offender Targeting Center to collect, distribute, and use intelligence to identify, locate, and apprehend offenders?

Mr. CLARK. We are working to get that established now with the National Center for Missing and Exploited Children. We already have, through our headquarters efforts, a process underway to get that going. It will allow us, through the collection of data and shared data from the National Center which also collects from a number of the States that will be participating, the capability to target individuals that are unregistered.

So that is coming along well, but we certainly would like to see it improve even more.

THREATS AGAINST THE JUDICIARY

Mr. MOLLOHAN. Right. Thank you. The Marshals Service is reporting that the number of threats against federal judges and prosecutors has risen every year since 2003, with 2008 on pace to be the highest year yet. The Judicial Conference has identified this as a major concern. Do you agree?

Mr. CLARK. We believe it still is on the increase due to a number of factors. One of them is that we are doing, we the Marshal Service, a much better job of tracking, collecting, and even educating the judges and others about how to report threats.

Similarly, the judges and others we protect are doing a better job of reporting. So some of the spike, I believe, is due to education, better reporting, and a better collecting of that information to our new Threat Management Center.

Mr. MOLLOHAN. That being the case, do you agree that there is a workload increased associated with this increase threat?

Mr. CLARK. There has been a steady increase through this collection of more cases and more threats. I think over the last five years it has been about 63 percent overall.

Mr. MOLLOHAN. Yes. My number is 69 percent.

Mr. CLARK. Sixty-nine percent, yes.

Mr. MOLLOHAN. And funding has only marginally increased with inflationary adjustments, is that correct?

Mr. CLARK. Yes. Overall funding, yes, has——

Mr. MOLLOHAN. Is there a problem there? How are you going to keep pace with that growing threat when your funding is only keeping pace with inflation?

Mr. CLARK. Well, the number of positions that we would need to fully staff our Threat Management Center and other places will include the resources to be able to do that. It is predominately at our headquarters level, where we would be able to do that because that is where our new Threat Management Center is located.

Mr. MOLLOHAN. And that is going to allow you to manage this increase with only inflationary increases in funding?

Mr. CLARK. We have real lines——

Mr. MOLLOHAN. No, no. What is the answer to that question?

Mr. CLARK. Well, we certainly could use the support of the Committee to help us in that regard.

Mr. MOLLOHAN. Well, I want to help you. I want to support you, but I want an answer to that question. Is it yes or no? Can you keep pace with that threat just asking for inflationary increases?

Mr. CLARK. Well, I am concerned about the capability to keep pace.

Mr. MOLLOHAN. Okay.

Mr. CLARK. If things keep increasing as those indicators seem to predict——

Mr. MOLLOHAN. Fair enough.

Mr. CLARK [continuing]. We would want to make sure that our capabilities similarly increase. We have concluded a substantial amount of reform on how we are doing this process now.

Mr. MOLLOHAN. Right. But you still have a backlog. Do you have a pending backlog of threats?—well let me ask you this: What is the current status of the backlog of pending threat assessments?

Mr. CLARK. We have reduced that down to nearly nothing and I don't know what the exact number is now, but we have taken a substantial reduction.

Mr. MOLLOHAN. Since the Justice Inspector General's October 2006 report?

Mr. CLARK. That is correct.

Mr. MOLLOHAN. In your response to the most recent OIG report on Judicial Security, the Marshals indicated that there are several new protective intelligence initiatives you would like to implement by 2010. Could you provide us with some details about these plans and describe how you intend to pay for them without an additional funding request?

Mr. CLARK. Future requests will be based on projecting what we thought would be necessary to keep pace.

Mr. MOLLOHAN. The Protective Intelligence Initiative that you would like to implement by 2010. That is what I am talking about.

Mr. CLARK. Which will also help support the new Judicial Security Improvement Act and——

Mr. MOLLOHAN. Right.

Mr. CLARK [continuing]. Would include additional threat investigators, for example. Those are the individuals that I think I mentioned a bit ago who are actually in our field offices doing full-time threat investigation on those individuals that we protect.

So that would be one of the key components to implementing that.

Mr. MOLLOHAN. Okay. Mr. Frelinghuysen, do you have any other questions?

Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. Just a little clarification on the Adam Walsh Act. Under Public Law 109–248, July 24, 2006, "The attorney general shall use the resources of federal law enforcement including the United States Marshals Service to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements."

We have 100,000 figure. Are those figures in State registration hands? I thought we were moving toward the National Registry. Can you clarify that for me?

Mr. CLARK. The figures that I have provided are predominately from State registries. The National Center for Missing and Exploited Children conducted extensive surveys in all 50 States and received the numbers that indicate what they currently had in registries.

What the Adam Walsh Act will seek to do, as you pointed out, is to have more of a national registry process to get everyone, as you might use the phrase, on the same sheet of music, so that all States are essentially doing the same kinds of things with the registration process.

Mr. FRELINGHUYSEN. But that is not your job. I assume the main burden is on the Department of Justice overall to encourage the creation of a national registry.

One of the issues we have discussed here in terms of Violence Against Women Act is that people take off and go off into different jurisdictions. And, obviously many of the parents that weigh in with us and with you, I am sure, point up the fact that, well obviously we respect people's privacy. When somebody is a known sex abuser of children there ought to be some way on a national basis to locate them in a registry. So we are not there yet. I assume, that is a general goal?

Mr. CLARK. The Targeting Center in conjunction with our efforts with the National Center for Missing and Exploited Children will help tie that together. As you pointed out a moment ago, just to clarify, the Marshals Service is what I prefer to as the enforcement arm of the Adam Walsh Act.

So our job will be, more specifically, to go out and locate those who are not in compliance with the Act and whose whereabouts are unknown and to track them down and to account for them.

Mr. FRELINGHUYSEN. Okay. Thank you, Mr. Chairman.

COURTHOUSE FACILITY IMPROVEMENTS

Mr. MOLLOHAN. Congress has invested over $80 million in Marshals construction funding between 2000 and 2006. During that time the percentage of federal courthouses and court occupied facilities meeting minimum security standards rose from six to 29 percent. However, the Marshals fiscal year 2009 budget proposes only $2 million for necessary construction projects.

How many additional courthouses or court occupied facilities can meet minimum security standards with only a $2 million construction budget?

Mr. CLARK. We have, Mr. Chairman, a number of facilities that need some security improvements. By that I mean things like surveillance cameras, barricades, screening devices and the like. In a number of our courthouses, as mentioned a moment ago, are aged buildings. They are in need of some updates and upgrades and a variety of these security measures.

So we look at that list in sort of a priority basis. It is a rather extensive list. We don't know the exact number of courthouses all across the country in the federal system that need that but we do go out to rate and rank those courthouses to be able to see——

Mr. MOLLOHAN. What do you call that? Security inventory lists?

Mr. CLARK. Security surveys that we conduct to look at facilities that we believe would need——

Mr. MOLLOHAN. Have you looked at every facility in the country?

Mr. CLARK. We have.

Mr. MOLLOHAN. And do you have that list?

Mr. CLARK. I don't have it with me, but it is something we can provide in terms of materials to the Committee to consider what courthouses that we feel are in need of such security.

Mr. MOLLOHAN. You have a comprehensive list. Do you have a dollar figure associated with necessary security enhancements to each facility?

Mr. CLARK. I can perhaps provide that to you.

Mr. MOLLOHAN. Well first of all do you have it?

Mr. CLARK. We have conducted a national security survey, again, of all the facilities.

Mr. MOLLOHAN. And have you associated a dollar amount necessary to bring those facilities up to some reasonable security standard?

Mr. CLARK. Yes. I would have to get back to the Committee on that.

Mr. MOLLOHAN. Would you submit that list for the record please?

Mr. CLARK. I would be happy to.

Mr. MOLLOHAN. Do you know what that number is?

Mr. CLARK. I was trying to look at a note on this. I believe there was—if you can bear with me for one moment.

Mr. MOLLOHAN. Certainly.

Mr. CLARK. Roughly 230, I believe.

Mr. MOLLOHAN. Two hundred and thirty facilities?

Mr. CLARK. Yes. Out of, I don't see the full number here.

Mr. MOLLOHAN. But the total number that needed attention would be 230?

Mr. CLARK. Yes. In varying degrees.

Mr. MOLLOHAN. Yes.

Mr. CLARK. Now some——

Mr. MOLLOHAN. And so you have whatever degrees, but you have associated a number with all those. Do you have a total? What would be the cost of bringing them all up?

Mr. CLARK. Yes. It was just provided here. It looks like about $88 million for——

Mr. MOLLOHAN. Eighty-eight million?

Mr. CLARK. Yes. For——

Mr. MOLLOHAN. It is going to take you a long time to get there with a $2 million request every year.

Mr. CLARK. I agree.

Mr. MOLLOHAN. How many of those represent really critical security problems—and maybe all of them do.

Mr. CLARK. I don't have the percentage broken down that way, but I know that many of the courthouses built back in the turn of the century or back in the 1920s and 1930s. In the District I previously served in Richmond, Virginia, for example, that courthouse is dated back to the Civil War.

So there are places like that in America that have courthouses that are in need of some substantial work.

Mr. MOLLOHAN. Yes. You describe it as, ". . . being stretched beyond acceptable limits," in your testimony, don't you?

Well we appreciate that. Does the Administrative Office of the U.S. Courts support your construction budget request?

Mr. CLARK. Yes. We have a very good working relationship with them. They are generally supportive of all of our efforts to——

Mr. MOLLOHAN. They support a $2 million request as being adequate?

Mr. CLARK. I would—you would probably would have to ask Mr. Duff that. I believe he would want to see more in that account to be able to do that, of course. Mr. Duff being the Head of the Administrative Office.

Mr. MOLLOHAN. We have additional questions for the record. And we have asked you to submit some things for the record. And if you would kindly do that, we would appreciate it.

We very much appreciate the tremendous job you do, both personally in your organization and all those marshals that are out there putting themselves on the line for us. They do a great job and we appreciate it. And we look forward to working with you to try to meet your real needs.

Mr. CLARK. I really appreciate it.

Mr. CLARK. Thank you both.

Mr. MOLLOHAN. Thank you.

OPENING STATEMENTS ON OFFICE OF THE FEDERAL DETENTION TRUSTEE

And next we will hear from our final witness of the day, Stacia Hylton, Federal Detention Trustee.

Ms. Hylton, we are very pleased to have you here today. We thank you for your time. We appreciate your patience with us. And we look forward to your testimony.

The Office of Federal Detention Trustee and the Marshals Service are largely in the same boat with respect to surging workload

in Southwest Border districts. We understand that enhanced immigration enforcement has put an enormous strain on your resources and challenges you to think creatively about how you manage a constantly increasing detainee population.

We are interested to hear your thoughts about this problem and discuss how your proposed budget increases will help you address it. We also hope to spend time talking about the state of detention housing and transportation services generally. Your written statement will be made a part of the record. I invite you to summarize that in your oral presentation. But before that I would like to call on our Ranking Member, Mr. Frelinghuysen, for his comments.

Mr. FRELINGHUYSEN. Welcome. Thank you for being here and thanks for your patience.

Thank you, Mr. Chairman.

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen. Ms. Hylton.

Ms. HYLTON. Good afternoon, Chairman and Congressman Frelinghuysen. Thank you very much. It is a pleasure to appear before you to discuss our President's 2009 budget request. Your continued support in this account is appreciated.

In addressing the budget, I would like to discuss some of the challenges we face in the detention community, along with our successes. To begin with, I am pleased to report that our current projections for the remainder of 2008 are right in line with the appropriated funds we received. We have worked diligently on improving the effectiveness of the detention program and our forecasting model to assure this account is in alignment with appropriated funds.

As you recall, unfunded requirements can produce a notable shortfall as we have seen in 2004 and 2005. However, over the past three years OFDT has launched numerous successful cost avoidance initiatives that have allowed us to manage the account more effectively by reducing the time in detention. These initiatives enabled OFDT to continue to meet the increase of new arrests while better containing the funding requirements for the existing population. As a result, OFDT was able to return significant unobligated balances to Congress in the last budget cycle.

I would emphasize, however, that we have incorporated these cost savings initiatives into our 2008 and 2009 budget request by adjusting the population projection to account for these efficiencies. At the same time, we have developed aggressive performance measures to ensure that we stay on track to keep costs contained. Therefore, our goal of bringing the account into better alignment with appropriated funds is reflected in the current 2008 budget, demonstrating the success of our efforts.

The 2009 budget request is based upon the trends experienced over the last several years coupled with a considerable increase in immigration activities. However, OFDT does not anticipate any unobligated balances to be carried over from 2008 to 2009 to mitigate the unknowns. Our current concerns are law enforcement and immigration initiatives that may occur outside the Department's budget process that could cause significant detention population increases.

The 2009 request, which totals $1.3 billion, represents an increase of $69 million above the 2008 appropriation. This request

will require diligence in managing the time in detention. We must ensure that sentenced designated prisoners can move swiftly into BOP beds. We anticipate that there is little or no room for outside initiatives of which we were unaware of during the development of this budget. Problematic too, would be an inability to move sentenced prisoners into federal prison beds.

Resources are only a part of the challenge for the detention community. Capacity planning for adequate detention and prison beds is critical. In meeting the federal detention space requirements, I believe that the best value for the Government nationwide remains the balanced usage of Federal, local, and private detention bed space.

Intergovernmental Agreements have been and continue to be a good approach for housing USMS federal detainees due to the need to locate detention beds within federal court cities. In an effort to continue building the relationships with local governments, we rolled out electronic Intergovernmental Agreements (eIGA) in 2008. This initiative fully automated the paperwork for IGAs reducing numerous hours of cumbersome processing for both State and Federal Government workers. It has been a great success and we are very proud of it.

In our constant drive to improve detention, we are taking a number of steps to ensure efficient capacity planning by leveraging technology, streamlining processes and driving economies of scales across government. We have outlined a number of these in our 2009 budget request. I would like to highlight a major initiative for 2009 that we have in our budget that is imperative to containing our cost. If you recall, e-Designate, which automated the post sentencing prisoner paperwork, has been fully implemented. We now turn our attention to seeking improvements in the transportation infrastructure that will reduce the "choke points" in the system.

We will accomplish this by implementing our concept of regional and ground transfer centers that will be strategically located nationwide. Utilizing ground and air movements more effectively by region will have a significant impact on the efficiencies of scheduling and capacity capabilities. Each location is identified not only to provide the best location for the transportation system, but also to address critical bed space shortages in certain judicial districts.

While we have realized improvements in detention and stabilized the account, diligence in the daily management of detention and transportation resources remains imperative. We are constantly strengthening the infrastructure and creating a more effective environment for the detention communities. With approximately 190,000 new arrests annually an effective infrastructure and management are critical to ensuring costs are contained within appropriated levels. What still remains to be addressed is the full impact of law enforcement initiatives throughout the system that need to be accepted within the budget process in order to reduce the volatility we have seen in this account over the years. We are grateful for the spirit of cooperation from the leadership of the United States Marshals Service and the Federal Bureau of Prisons.

In closing, we appreciate the resources that Congress provides to OFDT and your support and your leadership.

Mr. Chairman, this concludes my remarks and I am pleased to answer any question that you may have.

[Written statement of Stacia Hylton, Federal Detention Trustee]

STATEMENT OF
STACIA HYLTON, FEDERAL DETENTION TRUSTEE,
DEPARTMENT OF JUSTICE
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE
AND RELATED AGENCIES

March 12, 2008

Chairman Mollohan, Ranking Member Frelinghuysen, and Members of the Subcommittee:

Good afternoon and thank you for the opportunity to testify on behalf of the President's Fiscal Year (FY) 2009 Budget request for the Office of the Federal Detention Trustee (OFDT), Department of Justice, totaling nearly $1.3 billion, a majority of which is for detention services and close to $33 million is for the Justice Prisoner and Alien Transportation System (JPATS).

Securing our Nation's borders, continuing the war on drugs, reducing violence and gangs in our neighborhoods, and protecting our children from sexual predators are all important initiatives that have a direct impact on the increased need for detention and prison space at the state and federal level. Your continued support is appreciated. The ultimate success of new law enforcement strategies depends upon the ability of each agency to bring to bear the appropriate resources at each stage of a case – investigation, arrest, judicial process, detention, transportation, and incarceration. Increasing the resources of one facet without considering the requirements of others can impede efforts to accomplish stated goals.

In 2005, Congress directed the OFDT to assume the responsibility of managing the (JPATS) to ensure equality among agencies while allowing unimpeded prisoner transportation operations. In December 2007, Congress approved OFDT's proposed organization incorporating this directive. In general, the new organization structure, which includes the position of Assistant Trustee for Transportation, provides better alignment to support increased emphasis on strategic planning, outcome measurement, improved projection methodologies, and strengthened financial management.

I would like to discuss some of the challenges we face in the detention community, along with some of our successes, and the FY 2009 budget request. To begin, I am pleased to report that our current projections for the remainder of FY 2008 are right in-line with the appropriated funds received. We have worked diligently on improving detention program effectiveness and on our forecasting population model in order to ensure this account is in alignment. However, this account can be very volatile due to a number of variables,

including, but not limited to rising costs for detention beds in mission critical locations and aggressive law enforcement initiatives implemented outside the budget cycle.

Over the past three years, OFDT has launched numerous successful cost avoidance initiatives that have allowed us to manage the account more effectively by reducing time in detention. These initiatives, which have been taken into account in OFDT's budget request, enabled OFDT to continue to meet the increase of new arrests while better containing the funding requirements for the population. I emphasize that we have already accounted for the efficiencies that we anticipate will be realized in the detention account. We also have adjusted the population projections to incorporate these efficiencies and established aggressive performance measures to ensure they stay on track to keep costs down.

The FY 2009 budget request is based upon the trends in growth experienced over the last several years, and OFDT should be able to mitigate the normal variables always experienced in detention. OFDT does not anticipate any unobligated balances from FY 2008 that can be carried over into FY 2009. Therefore, our concern is with law enforcement and immigration initiatives that occur outside of the budget process and cause significant detention population increases.

The Federal Government relies on various methods to house detainees. Detention bed space for federal detainees is acquired "as effectively and efficiently as possible" through: (1) federal detention facilities where the government pays for construction and subsequent operation of the facility through BOP; (2) Intergovernmental Agreements (IGAs) with State and local jurisdictions who have excess prison/jail bed capacity and receive a daily rate for the use of a bed; (3) private jail facilities where a daily rate is paid per bed; and, (4) the Cooperative Agreement Program (CAP), where capital investment funding is provided to State and local governments for guaranteed bed space in exchange for a daily rate.

I believe that the best value for the Government, nationwide, is to balance the use of federal, local, and private detention bed space. IGAs have been and continue to be a good approach to housing federal detainees due to the variance in bed space requirements from district-to-district. More importantly, the IGAs assist OFDT in locating detention beds close to federal court cities which provide efficiencies for the United States Marshals Service (USMS) who carry out the daily operational mission of detention. Of the 56,290 total average daily population in FY 2007, 65% were housed in state and local facilities, 21% in BOP facilities, and 13% in private detention facilities.

As those statistics indicate, state and local government facilities are incredibly important to us. Available capacity in these facilities over the past few years has been declining due to competing priorities in the local government budgets, thereby reducing jail expansions in some locations. We are currently focusing our efforts to strategically work with local governments in an effort to establish and maintain cost-effective, safe, secure, and humane facilities for those in federal custody. OFDT is taking a number of steps by leveraging technology, streamlining work and driving economies of scale through effective capacity planning. These are further explained in our budget request.

A key strategy for OFDT in stabilizing this account has been to take every opportunity to mitigate the growth in the detainee population through improvements to infrastructure that reduce the time in detention. Toward that goal, we have increasingly established cross government solutions, mostly through technology, to streamline the workload across participating agencies. For example, our first of a number of projects undertaken to reduce time in detention was eDesignate, now implemented in all judicial district and territories. Reducing time in detention has had a significant impact on detention resources by allowing the system to take in more detainees, freeing up much needed bed space in court cities, and easing the pressure on detention funding. Time in detention peaked at 186 days and is projected to fall to 118 days in FY 2009, at which time the total cost avoided is projected to reach nearly $35 million.

DSNetwork, a multifaceted, full-service internet site for detention services, is another key initiative. The network permits authorized detention stakeholders to access information regarding procurement, availability of bed space for federal use, and detention facility data. Detention services include the Electronic Intergovernmental Agreement (eIGA), the Facility Review Management System (FRMS), the Multi-year Acquisition Plan (MAP) and the Detention Services Schedule (DSS) as part of OFDT's Quality Assurance Program (QAP) FRMS is a web-based application that standardizes, records, and reports the results of Quality Assurance Reviews (QARs) performed at private contract and high-volume IGA facilities. FRMS has been used successfully in numerous QARs and will provide the basis for data and trend analysis. MAP, a web-based system available for detention agency long-range planning, reached full implementation in FY 2008. DSS, which will focus on detention bed space and services, is still under development.

We are also aggressively seeking improvements to the transportation infrastructure that will reduce "choke points" in the system. In 2006, OFDT developed a concept of increasing available in-transit housing through Regional Transfer Centers (RTC) and Ground Transfer Centers (GTCs). After the success of our pilot project with the Grady County jail as an overflow facility for the Federal Transfer Center (FTC) in Oklahoma City, OFDT determined that additional RTCs and GTCs strategically located nationwide would further reduce the dependence on the Federal Transfer Center (FTC) in Oklahoma. Additional RTCs and GTCs will provide better scheduling capabilities, better utilization of transportation modes, and further reduce time in detention.

Following the model of Grady County, OFDT facilitated an agreement with a San Bernardino, California facility, which also provides for ground transportation between the airlift and facility, and transportation to other close proximity BOP facilities. Most recently we activated the Robert Deyton facility outside Atlanta, Georgia. OFDT's strategy is to increase the number of RTCs and analyze other heavy detention population areas. The goal is to have a total of 2,000 relatively low-cost transfer center beds available by the end of FY 2008.

DOJ has increasingly turned to the private sector to provide bed space in those areas where bed space is unavailable in federal, state, or local facilities. To provide for future detention needs, as well as to provide housing to support the expansion of RTCs/GTCs, two

new facilities will be constructed and are scheduled to be on-line in FY 2009. The Nevada Detention Center will provide approximately 1,000 beds to support the court city of Las Vegas, Immigration and Customs Enforcement, and JPATS. The new Laredo, Texas, Detention Center will provide approximately 1,500 beds to support the court city of Laredo and, once operational, will provide beds for a GTC, a staging area for in-state designations, and for "short-term" sentenced prisoners.

Each of these locations has not only addressed in-transit beds, but is determined to be strategically located to serve locations that were experiencing difficulties with detention and prison beds, so that federal and local governments have the ability to capitalize on economies of scale, by working closely together.

An important facet of the conditions of confinement is ensuring appropriate medical care for detainees at or near detention facilities. Rising medical costs puts an even greater burden on the detention community's already significant challenge to provide a uniform approach at the best value to the Government, while minimizing the cumbersome process for field operations. To the extent possible, the USMS leveraged a re-pricing strategy to address such costs. OFDT enhanced this approach by awarding a national managed-care medical contract to provide a uniform, systematic approach that reduces staff work hours and tracks medical savings nationwide.

Seeking to lessen the requirements for detainee bed space, where possible, OFDT continues to enhance the Federal Judiciary's program of alternatives to pretrial detention; such as: electronic monitoring, halfway house placement, and drug testing and treatment. Historical data indicates that the federal detention account would have incurred costs of over $28 million had the defendants been detained in secure facilities rather than utilizing an alternative to detention.

Concurrent with the desire to create efficiencies within detention is the need to ensure that facilities utilized by the Federal Government provide for the safe and secure confinement of detainees. This is especially challenging considering the large number of state, local and private facilities in use. OFDT developed the QAP, which includes QARs and the FRMS, to ensure that facilities providing detention bed space to the Federal Government meet a minimum confinement standard. This program has been developed to span across various detention agencies and is tied to performance-based contracts, validating that expenditures are in line with the services required by the contract.

While we have been successful in improving the detention infrastructure and stabilizing the detention account, diligence in the daily management of detention and transportation resources is still required. Through these and other initiatives discussed, we are constantly strengthening infrastructure and creating a more effective environment for the detention communities. When we can strategically plan for the full impact of law enforcement initiatives, we will see a reduction in the volatility we have seen previously in this account over the years. In closing, we are grateful for the spirit of cooperation from the leadership of the United States Marshals Service and the Federal Bureau of Prisons.

Fiscal Year 2009 Budget Request

For FY 2009, the President's Budget requests $1.3 billion ($1.26 billion for detention services and $33 million for JPATS transportation). A total of 24 positions are requested to be funded. This request represents an increase of $69 million over the FY 2008 appropriation. The requested increase includes: approximately $86 million for adjustments-to-base, $38 million for program increases and $54 million in program offsets.

The Average Daily Population (ADP) projected for detention for FY 2009 is 60,821 based on estimated bookings. OFDT projected for a sizeable increase in general immigration activities in FY 2009. The Congress recently ordered the immediate expansion of DHS' *Operation Streamline,* which has the potential to significantly impact detention requirements. OFDT does not have sufficient information to determine the actual impact of this initiative, additional growth resulting from the expansion of this program is not included in the projected ADP.

The resources that Congress provides to OFDT and to other detention agencies are critical to our success. All of us in the detention community are grateful to the Chairman and to members of the Subcommittee for your support and leadership.

Mr. Chairman, this concludes my remarks. I would be pleased to answer any questions.

FY 2009 POPULATION PROJECTIONS

Mr. MOLLOHAN. Your fiscal year 2009 request totals $1.3 billion including $38 million to address the increased number of detainees generated by the DHS enforcement efforts. You have based your budget largely on a projection of the average daily detainee population, which you estimate to be 60,821 average daily detainees in 2009.

How did you calculate your average daily population projections?

Ms. HYLTON. Our average daily population projections incorporate time in detention and new arrests coming in. Time in detention, of course, is generated by the type of offense, similar to the way BOP forecasts their population. For example, drugs will create a longer time in detention because of the complexity of the case. Immigration initiatives and offenses will move quicker through the system, so it is a balance of that time in detention incorporated with those offenses that we have seen in the trend.

Mr. MOLLOHAN. I am looking at a chart that has your actuals up until 2008. But it doesn't have what you have projected for those years. How accurate have those projections proved to be?

Ms. HYLTON. We are very pleased on the projections.

Mr. MOLLOHAN. Okay.

Ms. HYLTON. We have put a lot of work into the projections; however, we are faced with the fact of the unknown coming towards us.

Mr. MOLLOHAN. No, no. I know. But how accurate have your projections proven to be in the past, your projections?

Ms. HYLTON. I am pleased to say this year we are right on the mark.

Mr. MOLLOHAN. This year being?

Ms. HYLTON. 2008.

Mr. MOLLOHAN. 2008.

Ms. HYLTON. And for 2009.

Mr. MOLLOHAN. Well what about 2007? Or do you know? You may not know.

Ms. HYLTON. On the population forecasting?

Mr. MOLLOHAN. On your average daily population forecasting.

Ms. HYLTON. I feel that 2007 was——

Mr. MOLLOHAN. I think that would be hard to do.

Ms. HYLTON. To project out?

Mr. MOLLOHAN. Accurately.

Ms. HYLTON. It is a challenge, but one that we try to get right.

Mr. MOLLOHAN. I am just trying to get how——

Ms. HYLTON. What I want to say is that I feel we have come further in the process; however there are always the unknown risks. I think the one thing we have accomplished in the forecasting model is the fact that we have actually blended what we see coming in staffing and on board levels for law enforcement and prosecutors instead of just using trend analysis. We have blended this into our process.

Mr. MOLLOHAN. So you think that is going to improve your projections even more?

Ms. HYLTON. Oh, absolutely. I feel we have already seen improvement. I am very pleased with what we are seeing in 2008.

The third factor that we have included that never existed before is that we now project out the savings of the time in detention for each major invictive. It is that time in detention that drives this account. For example five days for 60,000 people equates to $20 million.

So, it is all about time for us. We are pleased that we put these performance measures in place. Three factors of trends, staffing on-board, and time-in-detention have improved our projections.

Mr. MOLLOHAN. And those external factors you mentioned in your testimony?

Ms. HYLTON. Those are our greatest risks.

Mr. MOLLOHAN. And one of them is this Operation Streamline which I was asking some of our other witnesses about. Are projections associated with that activity incorporated in your calculations?

Ms. HYLTON. No, sir.

Mr. MOLLOHAN. Could that drastically impact your cost?

Ms. HYLTON. It could.

Mr. MOLLOHAN. What other external factors might there be that were not taken into consideration?

Ms. HYLTON. There are two things that could greatly impact 2009. I was waiting for your question of 2009 being sufficient.

Mr. MOLLOHAN. I just want this little question in between that.

Ms. HYLTON. We have allowed a 12 percent growth in 2009 for immigration based on the 2008 actuals. We feel that the growth is sizeable and it is in line with what has taken place. It is in line with what we see.

Mr. MOLLOHAN. So how does all that impact your 2009 request? Why is your 2009 request——

Ms. HYLTON. Our 2009 request has a 12 percent growth for immigration offenses. If anything was to occur outside that it would not be incorporated in our 2009 request. Operation Streamline is unclear to us.

Mr. MOLLOHAN. But you know it is going to generate activity.

Ms. HYLTON. It is going to generate activity.

Mr. MOLLOHAN. And it is not included in your calculation.

Ms. HYLTON. What we are seeing today as Operation Streamline has been incorporated is our 2009 request can handle that. Anything additional to how it exists today——

Mr. MOLLOHAN. You will be looking at a supplemental or an amended budget request?

Ms. HYLTON. Yes.

Mr. MOLLOHAN. For 2009, if I am reading this correctly, you have projected ADP and budgeted ADP. The Projection is 60,821 and budgeted is 59,222. It is not a big difference but why do you budget on a lower number than is projected? Or am I right? Do you budget on a lower number than is projected?

Ms. HYLTON. We take into consideration some of the efficiencies we feel like we can build on like last year. I don't want to be repetitive, but we often recalculate that projection——

Mr. MOLLOHAN. Well you can be repetitive because repetition is a really good way to learn things.

Ms. HYLTON. We recalculate this account quarterly and in fact, just ran our numbers in preparation for today, to make sure that the forecast is on track.

Mr. MOLLOHAN. I get the bottom line. So are you comfortable with this request based upon those projections?

Ms. HYLTON. I am.

Mr. MOLLOHAN. And you are asking less than you actually project?

Ms. HYLTON. I am, based on two factors. Would you allow me to——elaborate

Mr. MOLLOHAN. Please. Absolutely.

Ms. HYLTON. There are two risks associated with the 2009 request that you have in front of you. I am requesting the support for the BOP supplemental, which I am so pleased to see moving through the process.

Without that, this account is at great risk. We have to have adequate prison beds to move detainees to. As I explained, you can see how quickly the cost becomes $20 million, for five days.

Mr. MOLLOHAN. Do you know where that BOP request came from? Do you know where they are getting that money?

Ms. HYLTON. I can't speak to that.

Mr. MOLLOHAN. I was just wondering if you had a comment on where it came from.

Ms. HYLTON. I am sorry, I don't.

Mr. MOLLOHAN. Okay.

Ms. HYLTON. I was pleased to hear about it today. You know it is one of those things we have been following and I know that it just recently came through.

Mr. MOLLOHAN. Okay.

Ms. HYLTON. BOP having adequate bed space and being able to secure their prisons is so important to our ability to move fast. It is all about moving fast in detention. The faster we can move, the faster we can get them into prisons the more we contain those costs. That is critical to us and so your support is greatly appreciated. If the reprogramming does not occur that does pose a challenge for this account. In essence, the other risk is the potential for the unknown. We have recently heard that Congressman Culberson who is not here, has put forth numbers for Operation Streamline.

Again, and I can't say it enough, as I have tried to lay out over the last several months, the Department has significantly addressed immigration. The U.S. Attorneys are prosecuting at a strong pace. Bookings grow every year. We took this into account, but if the numbers are comparable discussed over the last 30 to 60 days, we would be in heavy discussions with your staff about the difficulties it poses.

So those are the two risks for 2009. I am pleased to say that even with the projection from last night that we see ourselves closer to the budgeted request. When we start the budget request there is a 4.6 variance on projections. As we go through this process and recalculate we get to this point where we are down to a 2.1 percent variance. We are much closer to accurately projecting detention needs. I don't know if that helps but that is why we ran that number right before we came.

Mr. MOLLOHAN. You sound convincing. [Laughter.]

Ms. HYLTON. We did this last year.

Mr. MOLLOHAN. What?

Ms. HYLTON. We did this last year. I really do feel that it is an appropriate request.

Mr. MOLLOHAN. Yes.

Ms. HYLTON. I do point out those risks. They are throughout my oral and written testimony and they are very, very real.

Mr. MOLLOHAN. Thank you. Mr. Frelinghuysen.

Mr. FRELINGHUYSEN. What sort of variance on projections are you talking about here? Are we talking about population or are we talking about budget?

Ms. HYLTON. I am talking about population. As we get closer to the budget year, the forecast on population has an error factor of 2.1 on either side. As we get closer we get more recent numbers, and are able to use them until the end of February in 2008 to formulate projections. When we start the budget process, we are using half of 2007. So now we have real numbers because, in detention, it is all about what we are seeing today.

Mr. FRELINGHUYSEN. Well I think you are doing a pretty good job on it, although I have to say that it is a little difficult to figure out exactly what your true funding needs are. You know, you have in your, and I quote from the later part of your statement. "When we can strategically plan for the full impact of law enforcement initiatives we will see a reduction in the volatility we have seen previously in the account over the years."

What does that mean exactly?

Ms. HYLTON. I appreciate the opportunity to clarify that for you.

Mr. FRELINGHUYSEN. Because I think you will get more volatility because I assume when you go to OMB you come in with one number and then the back and forth here.

Ms. HYLTON. As you go through the budget process new initiatives are developed all the time. For example DHS may very well develop an initiative tomorrow and decide that is what they want to enforce, which would be information unknown to us.

The point is that in a budget process the more we can strategically plan from the start of the initiative to the end—the full front end of law enforcement and prosecution and the back end of the process which is the Marshals Service, detention, and prison beds the better our protection. The more comprehensively we can do that, the more we reduce the volatility of the account and the possibility of anyone having to come forward to request supplementals or other funding sources.

So I think that as a government as we——

Mr. FRELINGHUYSEN. So when you appeared before OMB what did you put before them?

Ms. HYLTON. We put forward what we were seeing at that point. I am focused on immigration because that right now is the risk factor. We have projected based on what the Department's objectives were in prosecuting immigration and we allowed for a sizeable growth of 12 percent.

We have seen immigration grow incrementally over the years from nine percent growth to a 12 percent growth.

I feel that, when we appeared before OMB and as we appear today, we are in line with that.

INTERGOVERNMENTAL AGREEMENTS

Mr. FRELINGHUYSEN. All right. Tell us a little more about these IGAs. I am looking over your testimony. [Laughter.]

Mr. FRELINGHUYSEN. But intergovernmental agreements tell me a little bit about this. I think most of us have some knowledge of that because you look for any space where you can shoe horn somebody in.

Ms. HYLTON. That is correct.

Mr. FRELINGHUYSEN. And then there are other issues in terms of the proper reimbursement level.

And how many do you have? I assume you have what 100s, 1,000s or how many?

Ms. HYLTON. We do have 1,900 agreements of which, at any given time, 1,200 are utilized. Numbers go up and down based on the need and the availability within the State and local government.

Mr. FRELINGHUYSEN. And were it not for those IGAs which have been going on for what, 30, 40 years or?

Ms. HYLTON. That is correct.

Mr. FRELINGHUYSEN. Yes.

Ms. HYLTON. That is correct.

Mr. FRELINGHUYSEN. You would be up the creek.

Ms. HYLTON. We would be because, in all honesty, it is advantageous to use private industry in locations where we can capitalize on economies of scales, places where we have 4,000 prisoners. It wouldn't be advantageous to outsource and look for 30 beds.

And so that is where our State and local relationships are so critical. Sixty-five percent of our population are in those IGAs.

Mr. FRELINGHUYSEN. Yes.

Ms. HYLTON. IGA's are intergovernmental agreements that we enter into and sign with the counties and city governments. It is actually a win/win across the board for all of us. It does support our county and local governments by partnering. Then provide the beds and we pay for that in a daily rate.

We cannot speak enough about the positive impact that it has on this account. We were very pleased. One of the reasons we note the eIGA is that we really felt that county governments and city governments have been so appreciative of that initiative because it automated the entire process.

Those IGAs are worse than any tax documents that anyone would have to fill out. They are very intricate and complicated. Automating the IGA Application Process has reduced a lot of hours.

Mr. FRELINGHUYSEN. We compliment you on what you call e-Designate and DSN Network.

Ms. HYLTON. Thank you.

Mr. FRELINGHUYSEN. But there are some jurisdictions who when they take a look at these intergovernmental agreements understandably feel that there are a lot of other associated costs that sort of go into looking after these populations. I know that your people do those calculations. I assume there is some uniformity.

Ms. HYLTON. There is and of course those costs are taken into account. The county is able to represent the cost of operating that facility and that is what becomes the basis for the negotiations.

We look to pay our freight for those beds and we negotiate with the counties an acceptable rate.

Mr. FRELINGHUYSEN. Well I know in my neck of the woods there has been some, you have done your homework.

But thank you.

Ms. HYLTON. I think the IGA will also help with that. It allows the counties to better reflect their operating cost and that is what we want to accomplish. The——

Mr. FRELINGHUYSEN. Well I know that is the goal.

Ms. HYLTON. Yes.

Mr. FRELINGHUYSEN. You look to the local law enforcement to do, you know, a fairly across the board——

Ms. HYLTON. We do.

Mr. FRELINGHUYSEN [continuing]. Evaluation of what the real costs are.

Ms. HYLTON. There are States, such as New Jersey, where the State and county governments are feeling the pressure and can't expand. This is something that is real for us. Our focus in 2008 and 2009 on county governments is on how we can best support and keep that infrastructure at the county level, because we know we couldn't survive without it.

We try to embrace and work with the counties to help them stay whole, but they have their own competing priorities of education, growth, and highways. So the expansion of jail beds becomes difficult and there is more of a push to get into those beds and it impacts us.

Mr. FRELINGHUYSEN. Okay. Thank you, Mr. Chairman. Thank you.

Mr. MOLLOHAN. Thank you, Mr. Frelinghuysen. Mr. Frelinghuysen, looking around this room, you and I are probably the only ones here who even know there are such things as Carter liver pills.

They don't even—they never heard of them.

Ms. HYLTON. Who is Carter?

Mr. MOLLOHAN. Who is Carter? What are liver pills?

Ms. HYLTON. I am just kidding.

Mr. MOLLOHAN. Okay. I am confused. I think I heard you say that you are fine for 2008?

Ms. HYLTON. Yes, sir.

Mr. MOLLOHAN. What is this $60 million base program cost adjustment in your summary of requirements?

Doesn't that suggest you need this adjustment?

Ms. HYLTON. Mr. Chairman, rather than answer that inaccurately, would that be something I could get back to you on?

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

Mr. MOLLOHAN. Certainly.

Ms. HYLTON. Yes. When we get into adjustments to base——

Mr. MOLLOHAN. Okay.

Ms. HYLTON [continued]. And the base costs.

Mr. MOLLOHAN. All right.

Ms. HYLTON. If that wouldn't be inconvenient, I would prefer to get back to you with an answer.

Mr. MOLLOHAN. Sure.

Ms. HYLTON. Thank you.

EFFICIENCY SAVINGS

Mr. MOLLOHAN. And how did you arrive at the $54 million efficiency reduction for fiscal year 2009? And what is an efficiency reduction? How do you get to it? How do you compute it?

Ms. HYLTON. One reason I highlighted those regional transfer centers and the ground transfer centers when I spoke earlier was to show one of the ways we tried to reduce time in detention and how many days we can reasonably achieve in that budget year.

Our goal with transportation is to reduce time-in-detention by four to five days. When you see an efficiency tag like that, we are trying to drive that efficiency. I believe we will accomplish this goal through the regional transfer and ground transfer centers.

Mr. MOLLOHAN. That is very commendable, but it would have to be tied to something. You have to work hard at it. Hope is not enough.

Ms. HYLTON. That is true.

Mr. MOLLOHAN. I have heard.

Ms. HYLTON. I will be the first to say that would be a challenge. That will be a challenge for us.

Mr. MOLLOHAN. This is an estimate that you don't have a lot of confidence in.

Ms. HYLTON. It is an estimate that I will frankly say is contingent upon adequate prison beds and no radical shifts in what we have projected for immigration or law enforcement of initiatives—especially those that evolve outside of this budget cycle.

I truly believe today versus even four weeks ago that if the prison beds move forward in the supplemental and immigration stays with the current growth pattern, the $54 million efficiency reduction can be achieved.

Mr. MOLLOHAN. How?

Ms. HYLTON. I believe I can reduce the time in detention by another four or five days, but we have to have beds to get into.

Mr. MOLLOHAN. Because you can push them into other beds?

Ms. HYLTON. Yes, sir.

Mr. MOLLOHAN. Okay. But that is based on a lot of contingencies.

Ms. HYLTON. Yes everything is.

Mr. MOLLOHAN. It sounds like quite a wag, is what it sounds like.

The fact that you are requesting, simultaneously with this efficiency reduction, a $60 million get well adjustment to make up for costs in the 2008 budget makes it very problematic; I am not sure you can depend on that adjustment and I am not sure it is something we should rely on in our considerations of your budget request.

Ms. HYLTON. It is difficult when we get to the adjustments-to-base issues in this account, because just as everything has rising

costs associated with our daily living, the same is true for prisons and detention. Inflationary costs can raise a potential problem in this account.

Mr. MOLLOHAN. You are not suggesting the $60 million get well is unintended inflationary costs?

Ms. HYLTON. No, I am not.

Mr. MOLLOHAN. Mr. Frelinghuysen.

Thank you very much for your good work and if anybody can achieve those efficiency cost reductions, we know you can. So we will look forward to working with you as we mark up our budget.

Thank you very much for your good——

Ms. HYLTON. I appreciate both of you for your time and for staying here today for me.

Mr. MOLLOHAN. Well let me finish complementing you and then you can do that. And I was just going to say thank you for all your hard work, we appreciate it and we look forward to working with you as we mark up this bill.

Ms. HYLTON. Okay. Thank you, sir, very much.

Mr. MOLLOHAN. Thank you, Ms. Hylton.

[CLERK'S NOTE.—The Department of Justice was unable to provide answers to the questions submitted by the Committee within the timetable established by the Committee. Submissions provided to the Committee subsequent to the printing of this official record have been retained in the Committee's permanent files.]

QUESTIONS SUBMITTED BY CHAIRMAN MOLLOHAN
Office of the Federal Detention Trustee
March 12, 2008

General

QUESTION: You testified that your FY 08 projections are in line with your appropriated levels, meaning that you have sufficient funding in FY 08 to accommodate your population. However, the FY 09 request includes a $60 million base program adjustment that is described as necessary to make up for FY 08 cuts. Why do you need a program adjustment to make up for FY 08 if your FY 08 projections are in line with your appropriation?

ANSWER: The Office of the Federal Detention Trustee's budget requirement for any given fiscal year is always based on the most current information available regarding the detainee population at the time. OFDT's anticipated needs are then technically presented in the budget. Thus, when the FY 2009 budget was originally formulated, the base for the presentation was the FY 2008 President's Budget and the anticipated need was $1.3 billion. Before the FY 2009 budget request was submitted to the Hill, the FY 2008 Consolidated Appropriations Act was passed and OFDT's enacted level was $60 million lower than the President's FY 2008 Budget request, the net effect of which was to reduce OFDT'S FY 2009 total requirements. Since the requirement remained at $1.3 million, the $60 million was merely an adjustment to maintain the formulated level of need for FY 2009.

Population Projections

QUESTION: Please provide OFDT's projected and actual average daily populations for each of the last 5 fiscal years.

ANSWER: Projecting the average daily population (ADP) for the detention account is a challenging exercise due to the complexity and dynamic nature of the many variables that are involved in calculating the projections. For example, prior to formulating a budget for a given fiscal year, detention projections are calculated using reliable trend analyses comprised of several leading indicators such as: types of bookings; time in detention; law enforcement and attorney staffing levels; and other criteria which are factored into the projection with a significant degree of accuracy. However, there are a number of other influences such as special law enforcement and prosecutorial initiatives which are frequently established outside of the budget process (and usually after the budget year decisions have been made) that have substantial influence on detention needs. For this reason, population projections are in a fairly constant state of flux and require periodic adjustments based upon these variables. The following chart depicts the ADP projections from FY 2004 through FY 2009:

ADP Projections						
Fiscal Year	**President's Budget**	**November Recalculation**	**February Recalculation**	**May Recalculation**	**July Recalculation**	**Actual**
2004	* 45,010	48,499	49,598	49,698	49,855	49,712
2005	* 50,001	46,310	55,115	54,312	53,801	54,121
2006	60,558	58,362	57,745	56,972	56,610	56,413
2007	62,920	61,816	57,352	56,673	56,615	56,290
2008	63,145	59,001	56,821			** 56,821
2009	60,821					** 60,651

* ADP as presented in the budget was reduced to correlate to resources; the account experienced significant shortfalls in FY 2004 and 2005.
** Current Estimate

It is important to note that the budgets for FY 2006 and 2007 were formulated prior to OFDT designing and implementing a number of cost avoidance projects that ultimately reduced the ADP by reducing time in detention. The FY 2008 and 2009 budgets (which were developed in FY 2006 and 2007) are the first formulations to factor in the efficiencies that were achieved as a result of these measures.

QUESTION: The OFDT FY 09 enhancement request is part of a larger Department-wide southwest border initiative. What kind of coordination took place across the Department to create this multi-component border initiative and ensure that the different pieces fit together into a coherent whole?

ANSWER: The Department of Justice (DOJ) worked closely with the Office of Management and Budget during the fall of 2007 to ensure that a comprehensive budget request was included as part of the President's FY 2009 budget request to Congress. The OFDT has been providing regular programmatic and statistical updates to the Justice Management Division to ensure that senior departmental leaders are kept abreast of how Southwest Border initiatives impact the OFDT. At the local level, the funding will be used to accommodate an anticipated increase in the number of detainees placed in non-federal facilities along the Southwest Border. These resources will be utilized to fund the costs associated with providing housing, care and transportation of detainees.

Recognizing that the Department of Homeland Security's secure Border initiatives have a direct and significant impact on DOJ components, the FY 2009 request includes $100 million for the Southwest Border including new resources for: the United States Marshals Service (USMS); Executive Office for U.S. Attorneys; Bureau of Alcohol, Tobacco, Firearms and Explosives; Criminal Division; Executive Office of Immigration Review; Drug Enforcement Administration; and Organized Crime Drug Enforcement Task Force.

QUESTION: What is the level of coordination between OFDT and DHS when estimating the impact of DHS enforcement activity? What is the mechanism by which this coordination takes place?

ANSWER: The OFDT and the U.S. Customs and Border Patrol (CBP) have facilitated multiple discussion on how to effectively and efficiently detain and transport illegal immigrants apprehended along the Southwest Border. For example, during initial operations in the Tucson and Yuma sector of the Border, the CBP estimated that 25-30 arrests per day (in each city); however, 35-40 arrests were made. Shortly thereafter, CBP announced that they would like to increase their arrests to 100 detainees per day in Tucson alone. After further discussion and negotiations with the CBP, it was agreed that there was inadequate space to detain this magnitude of illegal immigrants. The CBP agreed upon the apprehensions of 40 illegal immigrants in the Yuma sector and 60 within the Tucson sector. Through these type of negotiations and mutual consideration, the OFDT has been able to handle this increase population with existing resources. .

Detention Capacity Planning

QUESTION: How do federal, state/local, and private facilities rank in terms of average jail day costs?

ANSWER: The Federal Bureau of Prisons (BOP) operates all Federal facilities that house Federal detainees. BOP estimates an average daily cost of $72.44 per inmate. OFDT anticipates that by FY 2009, private facilities will cost an average of $93.06 a day versus an average of $68.35 for state and local facilities. In a straight cost analysis comparison, it would appear that private facilities are generally the most expensive detention facilities for the USMS to use. However, this type of comparison does not represent a true picture upon which to measure costs since private facilities are routinely acquired in locations where federal, state and local facilities are generally unavailable; therefore, competitive options for detention are extremely limited or do not exist at all. Additionally, these locations tend to be in high real estate areas that have significant cost impact such as: New York, Arizona, Nevada, and San Diego. This being the case, the OFDT seeks to capitalize on and achieve economies of scale, whenever and wherever possible, to mitigate the costs associated with detention bed space.

QUESTION: Would OFDT like to see a long term shift in the split of detainees between federal facilities, state/local facilities and private facilities? What kind of constraints might prevent you from making any such long term shift?

ANSWER: As conveyed in the Trustee's written and oral statement, OFDT believes that the best value for the Federal Government would be the balanced use of federal, local, and private detention bed space. OFDT does not determine the type of facility for any specific site by preference. The OFDT determines the best location by evaluating program requirements and then determining the best value to the Government. Section 119 provides OFDT the freedom to acquire bed space at the best economical value to the Government.

QUESTION: Does OFDT believe the revitalization of the CAP program will make a substantial impact in the availability of state and local detention space? If so, can you quantify that impact?

ANSWER: The revitalized Cooperative Agreement Program (CAP) provides resources to select state and local governments to renovate, construct, and equip detention facilities in return for guaranteed bed space for a fixed period of time for federal detainees in or near federal court cities. This program is important because it gives OFDT another asset to negotiate for bed space and guarantees beds in difficult situations, which can occur even with the smallest amount of beds. Though the impact on quantity will be negligible, nevertheless, the possibility of acquiring bed space where none is currently available (and/or alternative facilities are located a great distance away from the courts) could make a significant difference for USMS operations.

QUESTION: Will all agreements under the revitalized CAP now include a fixed per diem rate, with standardized increases over the life of the agreement?

ANSWER: OFDT's goal for CAP policies is to best leverage CAP agreements for a long-term, fixed per diem rate which allows for per diem rate increases within a fixed acceptable margin of growth, mirroring the length of the agreement. We are looking to control cost increases in comparison to the past when the number of beds were guaranteed, but the per diem rate was not; the local government holding the CAP agreement was allowed to request per diem increases in the same manner as other state and local governments holding IGAs (standard agreements). However, CAP agreements cannot be standardized; negotiations are individualized and some negotiations may not be as successful as others, depending on the severity of the bed situation.

QUESTION: How much funding within the FY 09 request will be used for the revitalized CAP program? How much additional detention space will that provide?

ANSWER: Currently, OFDT's appropriation language provides up to $5 million of the appropriation for the CAP program. Although numerous applications have been submitted, specific sites have not yet been selected. Presently, OFDT has identified 10 to 15 court cities that have either the most critical shortage of bed space, an expiring CAP, or a new requirement with no viable alternative. In addition, OFDT is targeting 700 beds and anticipates that there will be a minimum of 60 percent -- or 420 beds -- available after negotiations have concluded.

Detention Confinement Standards

QUESTION: Why is OFDT projecting a decrease in the number of facilities compliant with minimum confinement standards between 2007 and 2009?

ANSWER: We did not anticipate being able to achieve 100 percent compliance in FY 07 since the Quality Assurance Review (QAR) Program is still a relatively new initiative and some initial crossover from year to year is to be expected. It is often difficult to identify clear-cut goals at the outset of a newly-created program. However, as the program becomes more established over time, one has a better opportunity to assess current targets

(as a result of more available and reliable data) and to ascertain reasonable adjustments with which to measure its success. We do not envision attaining 100% compliance at this early stage of the program. Nevertheless, as data becomes more available and dependable, we will raise the bar in establishing achievable targets with specific, measurable outcomes.

QUESTION: Looking at data from prior years and OFDT's projections for 2008 and 2009, it appears that private facilities are more likely to be in compliance with the minimum confinement standards? Does OFDT believe this is the case, and, if so, why?

ANSWER: Private facilities are more likely to be in compliance with the minimum confinement standards because they are contractually bound to meet the minimum standards or face financial penalty. Private contractor performance evaluation and compensation is based upon each facility's ability to demonstrate alignment with the standards.

QUESTION: Does OFDT inspect every facility that houses federal detainees, or only those that house some minimum number of detainees? If the latter is true, how does OFDT verify the quality of facilities where only a small number of detainees are housed?

ANSWER: OFDT has developed a comprehensive QAR Program that ensures all facilities are reviewed and/or inspected. OFDT conducts QARs annually at: private facilities; high volume IGA facilities (average daily population of 500 plus); any facility that has had a significant incident; and, special requests by detention agencies. All other facilities have an annual inspection conducted by USMS field representatives. OFDT has developed an automated Facility Review Management System (FRMS) which captures 560 checklist data elements for each facility reviewed. These data elements reflect specific points of compliance required to meet the Federal Performance-Based Detention Standards. As this data continues to be gathered, FRMS will generate the data necessary to not only document improvements in the quality of confinement but will enable in-depth analysis of potential problem areas. With such information garnered from each inspection (regardless of the number of detainees housed at the facility), reviewers will be able to thwart the growth of negative trends by expanding specific areas of review. The consistent gathering of data and analysis gives us the tools necessary to ensure that our detainees' confinement is not only safe, secure and humane, but that the quality of such interim care in on a continuous path of improvement.

QUESTION: What steps are taken when deficiencies are noted? Has OFDT ever stopped placing detainees in a particular facility because of repeat violations of the confinement standards?

ANSWER: When a facility review notes deficiencies, the facility is required to submit a corrective action plan addressing these deficiencies to OFDT. However, when a review identifies an area "at risk," an immediate corrective action must be in place before the review team leaves the facility the day it is identified. Follow-up reviews are conducted at facilities that had key standards identified as "at risk" and/or "deficient." The USMS districts directly monitor all at risk or deficient areas to ensure corrective actions remain in

place and that the facility is operating in a safe, humane and secure manner. To date, facilities have been very cooperative in taking the corrective actions necessary to remove an "at risk" rating. As a result, OFDT has not had to remove or stop placement of detainees at any particular facility.

Alternatives to Detention

QUESTION: On average, how do the per day costs of housing a prisoner through traditional secure detention compare with the per day costs of utilizing a detention alternative?

ANSWER: The cost of detention alternatives is substantially less, on average, than secure detention. During FY 2007, the Federal Judiciary expended approximately $2.4 million of OFDT funds to supervise 3,226 criminal defendants for a total of 564,545 days. The average cost per day for detention alternatives for these 3,226 defendants was $4.25, as compared to $69.30 for secure detention (including detention-related services). (The Administrative Office of the United States Courts estimates that the cost per day for pretrial supervision for FY 2007 was approximately $5.65).

QUESTION: How many detainees are currently in various alternatives to detention?

ANSWER: In FY 2007, there were 6,979 defendants released pending adjudication with release conditions that included only substance abuse testing; 9,994 were for substance abuse testing and treatment; and, 5,520 for home confinement with or without electronic monitoring.

QUESTION: Does OFDT expect to increase the use of alternatives to detention in FY 09, and, if not, why?

ANSWER: In 2008, the OFDT, in cooperation with the Judiciary, initiated a study of policies and practices relating to pretrial release and detention with the specific objective of identifying classes of criminal defendants who are currently detained but who might otherwise be good candidates for the alternatives to detention program. It is the expectation of the OFDT and the Judiciary that the results of this study could be used by the Judiciary to fashion guidance for Federal judges and Magistrate judges on the increasing use of detention alternatives. If this new guidance is promulgated by the Judiciary, additional funding may be warranted. The Trustee speaks regularly with the Administrative Office of the United States Courts and members of the Judiciary and participates on panels, along with employees from various Pretrial Services offices and Magistrate Judges, to continue to enhance this program.

As way of background, prior to the establishment of the OFDT, the USMS provided the Judiciary with $1 million annually to support the alternatives to detention program. With the establishment of OFDT, the Detention Trustee initially increased funding to the Judiciary to $2 million. Following the proven success of the program and the good working relationship between OFDT and the Judiciary, funding was increased in 2006 to $4 million. OFDT will continue to make up to $4 million available annually to the Judiciary to support the alternatives to detention program. During 2006 and 2007, the Judiciary was not able to obligate all of the available money. It is OFDT's expectation that

the Administrative Office of the United States Courts will work closely with the district courts to take full advantage of the available funding.

Justice Prisoner and Alien Transportation System

QUESTION: What specific plans does OFDT have in place to increase the efficiency of JPATS operations in FY 09? What impact will these efficiencies have on total cost per prisoner?

ANSWER: The OFDT, in cooperation with JPATS, the United States Marshals Service, other government agencies, and private entities, has established Regional Transfer Centers (RTCs) to facilitate the movement of sentenced prisoners to designated correctional institutions. Establishing such hubs expands the transit infrastructure. They will improve the transportation system, reduce in-transit time, and expand ground transportation capabilities. These hubs increase Federal Transfer Center (FTC) capabilities by strategically placing additional housing close to airlift sites. The also reduce detention costs with the advent of the eDesignate system, the Federal Courts, USMS, and BOP are all able to process designations and initiate faster movement of prisoners to their commitment locations. Movement requests, both ground and air, will be put into eDesignate, which will allow agencies to see immediately where problems may exist and allow for quick resolution.

QUESTION: OFDT is projecting that the average age of the JPATS fleet will be 24 years in FY 09. When does OFDT anticipate having to replace these aging aircraft? When you do so, will the JPATS revolving fund sufficiently cover any increased leasing costs?

ANSWER: JPATS currently owns four aircraft. Although the average age of JPATS aircraft will be 24 years in FY09, it is necessary to look at the ages of the individual aircraft to get a better picture. The chart below depicts the aircraft age as of FY08 and in FY09. It should be noted that the Beech 99 Aircraft (tail number N80275) is the oldest aircraft in the JPATS fleet at 39 years of age in FY09. This represents a significant age differential to the remainder of the fleet and skews the average age. Removing the Beech 99 from the average leaves an average age of 18 for JPATS-owned aircraft in FY09.

Owned Aircraft	Year	FY09 Age
Hawker N2032	1990	19
Hawker N2033	1987	22
Beech 99 N80275	1970	39
Saab 2000 N92225	1996	13
Average Age Owned		**23.25**

JPATS currently has no plans to replace the Beech 99 aircraft. It is well suited to the current environment and there are no adequate replacements on the market. In this particular case, the chronological age of the aircraft is not relative to structural integrity. The Beech 99 has extremely low accumulated flight hours and flight cycles; approximately

one third of the typical hours and cycles of a Beech 99 in commercial service. The same is true for the SAAB 2000 and the Hawkers.

Furthermore, the soon-to-be awarded Long Term Lease (LTL) will provide a fleet of transport category aircraft with an anticipated average age of 15.5. This would give JPATS an average fleet age, owned and leased aircraft, of approximately 19.5 years in FY09.

When JPATS determines that it is necessary to upgrade or increase our fleet, there are two alternatives. The first alternative is to purchase aircraft from JPATS' Capital Program with no impact to lease costs or customer rates; this alternative is currently only viable for smaller aircraft. The second alternative is to lease replacement aircraft. For lease aircraft there are two primary considerations: age and practical availability in the industry. Aircraft availability for aircraft manufactured after 1995 drops sharply and the expense is considerably greater. Lease costs would be dependent on the prevalent market rates and funding would be dependent on customer need and flight hour projections.

QUESTIONS SUBMITTED BY REPRESENTATIVE HONDA
Federal Bureau of Prisons
March 12, 2008

Detention Standards

QUESTION: It is my understanding that the Bureau of Prisons (BOP) does not apply the Department of Homeland Security's (DHS') Detention Standards to aliens in BOP custody pending immigration removal proceedings including at large facilities under DHS contract such as the facility in Oakdale, Louisiana, the site of the shameful and notorious death of Jamaican immigration detainee Richard Rust due to inadequate medical care, which was publicized in a shocking expose by National Public Radio (NPR). *See* http://www.npr.org/templates/story/story.php?storyId=5022866. The death of Richard Rust led Congress to commission an investigation by the Government Accountability Office into health care for immigration detainees which is on-going http://www.npr.org/programs/atc/features/2005/dec/gaoletter/gaoletter.pdf BOP officials reportedly refused to cooperate with NPR in the story.

According to the American Bar Association (ABA), BOP refused to accept the application of the Detention Standards to BOP facilities after they were promulgated by Legacy Immigration and Naturalization Service (INS) in November 2000 with ABA cooperation, claiming that DOJ's core justice standards were sufficient for immigration detainees.

However, the DHS Detention Standards are materially different from the DOJ core justice standards since they recognize that immigration detainees are not convicted criminals serving sentences but aliens pending civil immigration removal proceedings. According to the Executive Office for Immigration Review (EOIR), without the right to government-appointed counsel, approximately 90% of detained aliens lack representation in their often compelling claims to relief from removal including asylum for victims of persecution and torture due to their indigence and facilities' remote locations. The DHS Detention Standards recognize the unique circumstances of immigration detainees given the pendancy of their immigration proceedings and need to access pro bono counsel and immigration law materials for case preparation. For example, the DHS Detention Standards provide access to free phone calls for immigration detainees to non-profit legal service organizations and access to designated immigration law materials in the law libraries. Additionally, it is my understanding that unlike the BOP standards, under the DHS visitation standard, detainees cannot be strip-searched after attorney visitation absent reasonable, individualized suspicion of contraband.

What was and remains to be the legal authority for BOP to house DHS immigration detainees under DHS contract while refusing to apply the DHS Detention Standards to its facilities?

ANSWER: The legal authority for BOP to house DHS immigration detainees is 18 U.S.C. 4042. The detainees are being detained by ICE and temporarily housed by the BOP with the expectation that they will be removed by ICE in a very short time frame. As of April 3, 2008 the BOP houses a total of 201,060 inmates. Out of this number, 547 are Immigration Detainees. These detainees are housed in BOP facilities; therefore BOP standards are applied. All BOP facilities are accredited by American Correctional Association (ACA) and ordinarily provide more programs than required by Immigration and Customs Enforcement (ICE).

QUESTION: How many DHS immigration detainees does BOP house on a daily basis and in which specific facilities?

ANSWER: As of April 3, 2008, there were 547 immigration detainees in 36 facilities. Three BOP federal detention centers: Honolulu, Hawaii; Guaynabo, Puerto Rico; and Oakdale, Louisiana, house 457 of these detainees with the rest spread-out in small numbers in thirty three facilities.

QUESTION: In light of Richard Rust's death, what concrete steps have been taken at BOP facilities housing DHS detainees such as Oakdale, Louisiana to improve health care policies and practices to prevent further needless casualties?

ANSWER: Detainees held in BOP institutions are provided medical care on site. When a BOP facility cannot adequately treat an inmate's condition, the inmate is sent to a community hospital under contract with the BOP.

Richard Rust (Register Number 21491-265) was an immigration detainee confined at the Federal Detention Center (FDC), which is one of the facilities in the Federal Correctional Complex in Oakdale, Louisiana. He was a citizen of Jamaica. Mr. Rust died on May 29, 2004.

On the evening of May 29, 2004, the actions of detainees near the Leisure Center drew the attention of staff working in the area. Staff went to the area and observed Mr. Rust lying motionless on the floor of the barbershop located within the Leisure Center. The initial responders announced a medical emergency and contained the situation.

A nurse issuing medication at another location within the Complex responded to the Leisure Center within five minutes of when detainee actions alerted staff of a problem in the Leisure Center. The nurse began cardiopulmonary resuscitation (CPR) and directed that an ambulance be summoned. Approximately 12 minutes later, local Emergency Medical Technicians (EMT) arrived at the institution and were en route to the Leisure Center. CPR continued as local EMTs assumed Mr. Rust's care and transported him to a community hospital where he was pronounced dead.

An outside consultant conducted an external mortality review on September 1, 2004. Those findings are summarized as follows. Autopsy results for this 34-year old male inmate indicated the cause of death was cardiac arrhythmia associated with an acute exacerbation of heart failure, massive dilated and hypertrophic cardiomyopathy, and interstitial fibrosis of the heart. Mr. Rust had arrived at FDC Oakdale on February 3, 2004 having no history of heart disease. On May 29, medical assistance was summoned when he was found unresponsive with faint pulse, and no respirations. CPR

and the Emergency Medical System were initiated. The inmate was transported to the community hospital. All resuscitation efforts were unsuccessful. The consultant found that care was appropriate and there were no quality of care concerns.

The initial responders to this event did not immediately administer CPR. CPR was initiated upon the nurse's arrival on the scene. The Bureau is currently implementing additional CPR procedures that will expand CPR training and certification for all institution staff.

QUESTION: In the wake of a DHS Office of Inspector General's (OIG) recent report, "Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities" (December 2006) which demonstrated DHS' own lack of compliance with its own Detention Standards, *The Washington Post* and local and national advocacy groups including the American Bar Association have called for the elevation of the DHS Detention Standards to binding regulations to provide for the safe and secure detention of aliens in DHS custody. What is BOP's experience with regulations governing inmates that would be helpful to inform the development of DHS Detention Standards into regulations? For example, have regulations which benefit inmates generated significant litigation and interfered with penalogical flexibility and discretion? Or have regulations instead helped reinforce staff professionalism and adherence to policies and procedures? What can DHS learn from your experience of regulations applicable to inmates?

ANSWER: Much of BOP policy is codified, and changes to policy are frequently made when a regulation is modified. There is also much policy that is not found in the Code of Federal Regulations or Federal Criminal Codes, but it is mandatory at BOP because it is policy. For BOP it means that every staff member is expected to be a professional and adhere to policies, and with certainty knows there is accountability and a consequence for his/her action.

QUESTIONS SUBMITTED BY REPRESENTATIVE ROGERS
Federal Bureau of Prisons
March 12, 2008

Contract Confinement

QUESTION: Currently, 17% of the inmate population is housed in contract confinement, representing a $25-billion investment and almost $4 billion in annual costs. What steps is BOP taking to ensure it is maximizing cost efficiencies and savings with contract confinement?

ANSWER: As of March 27, 2008, 17.3% (34,847) of BOP inmates are housed in contract confinement, at a total annual operating cost of nearly $800 million in FY 2008. The majority of these beds were not constructed by the BOP, thus avoiding capital expenditure. The BOP is committed to contracting out for low security criminal aliens, and continues to increase its use of secure contract facilities as a means of handling inmate crowding. The BOP utilizes fair and open competition to fulfill the contract bed space requirement, to provide quality services at the best price for the taxpayers.

In May 2006, the BOP issued a solicitation to contract for over 7,000 beds, to replace four Intergovernmental Agreements (IGAs) that were expiring. The BOP awarded multiple contracts to five offerors to house low security criminal aliens. As a result of this competition, the BOP was able to acquire 7,654 beds for $13 million less than the annual amount that would have been paid had the IGAs been renewed.

The BOP will continue to use open competition in the future to obtain additional beds for this special population to maximize the best price and quality for the taxpayers.

WITNESSES

	Page
Clark J.F	277
Dyer, Cindy	203
Hylton, S.A	277
Lappin, H.G	277
Leonhart, M.M	115
Mueller, R.S., III	71
Mukasey, M.B	1
Peed, Carl	203
Sedgwick, Jeffrey	203
Sullivan, M.J	159

INDEX

DEPARTMENT OF JUSTICE

U.S. Attorney General Michael B. Mukasey

	Page
Adam Walsh Act	26
Antitrust Division	48, 58
Assets Forfeiture Fund	54
Border Patrol Agent Prosecutions	39
Budget Priorities	16
Counterterrorism Oversight	48
Cyber Security	28
Detention Standards	41
DNA	38
Drug Courts	17
Earmarks	45
Eaves-dropping on Mrs. King	35
Executive Privilege	23, 37, 39
Extraterritorial Jurisdiction	42
Foreign Intelligence Surveillance Act	27
Grant Funding	47
Immigration Fraud	31
Impending Crime Wave	52
Inmate Health Care	62
Integrated Wireless Network	37, 59, 61, 64, 69
International Organized Crime and Terrorism	44
Juvenile Justice Grants	18, 45
Law Enforcement Guidance	44
Monitorship Contracts	46
Name Check Program	57
National Security Division	36
Opening Statement of Chairman Obey	1
Opening Statement of Representative Frelinghuysen	2
Opening Statement of Attorney General Mukasey	3
Operation Streamline	39, 41
Prosecutorial Abuse	33
Questions Submitted by Chairman Obey	51
Questions Submitted by Representative Aderholt	69
Questions Submitted by Congressman Frelinghuysen	65, 67
Questions Submitted by Congressman Honda	62
Sentencing Guidelines	29
Southwest Border	20, 51
Supplemental Funding	36
United States Parole Commission	65, 66
United States Trustees	67

Page
Worker Abuses 30, 41
Written Statement of Attorney General Mukasey 6

FEDERAL BUREAU OF INVESTIGATION

Director Robert S. Mueller

Assignment of Agents in Tucson Sector 100
CNC 111
Cybercrime 101
Development of Budget Request 110
DNA Evidence 86
DNA Samples 86
FBI Transformation 84
FISA 88
FISA Surveillance 106
FY 2009 Budget Needs 91
Gangs 94
GWOT Supplemental Request 92
Intelligence Analyst Staffing 112
International Activities 112
Interrogation Techniques 106
Legat Algeria 89
Mistaken Identities 108
Narcotics 97
National Security Branch 90
New Technology 88
NSL Violations 103
Opening Statement of Congressman Frelinghuysen 72
Opening Statement of Chairman Obey 71
Opening Statement of Director Mueller 73
SENTINEL 92
Southwest Border 99
Surveillance 103
State and Local Partnerships 113
Terrorist Watch List 107
Weapons of Mass Destruction 97
Written Statement of Director Mueller 76

DRUG ENFORCEMENT AGENCY

Acting Administrator Michele M. Leonhart

Adequacy of FY 2009 Request 129
Afghanistan 136
Afghanistan Expansion 150
Business Partnership 141
Drugs and Terrorism 137
Drug Flow Attack Strategy Request 151
Electronic Prescriptions 157
International Operations 135
Methamphetamine 134
Measuring Success 145
Opening Statement by Chairman Mollohan 115
Opening Statement by Congressman Frelinghuysen 115
Opening Statement by Acting Administrator Leonhart 116
Prescription Drug Abuse 130

Page
Southwest Border Operations 154
State and Local Assistance 153
Written Statement by Acting Administrator Michele M. Leonhart 118

BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

Director Michael J. Sullivan

ATF Activities in Iraq 189
ATF FY 2009 Budget Shortfall 169
Coordination with DHS Along the Border 198
Explosive Rulemaking 192
Firearms Acoustic Detection 195
Gangs 183
Graduated Sanctions 190
Gun Dealers along the Border 187
Gun Show Enforcement 180
Mexican Gun Tracing 180
NFA Registrations 194
Opening Statement by Chairman Mollohan 159
Opening Statement by Congressman Frelinghuysen 160
Opening Statement by Director Sullivan 160
Operation Streamline 176
Project Gunrunner 172
Regulation of Potentially Explosive Commodities 194
Sharing Aggregate Firearms Tracing Data 195
Southwest Border Initiative 174
Tiahrt Amendment 181
Weapons of Mass Destruction and Terrorism 182
Written Statement by Director Sullivan 163

OFFICE OF JUSTICE PROGRAMS, COMMUNITY ORIENTED POLICING SERVICES, OFFICE ON VIOLENCE AGAINST WOMEN

Acting Associate Attorney General Jeffrey Sedgwick, Office of Justice Programs (OJP)
Director Carl Peed, Community Oriented Policing Services (COPS)
Director Cindy Dyer, Office on Violence Against Women (OVW)

Allocation of OVW Funds 220
Applications for Funding 224
Assistance to Victims of Abuse 269
Benefits of More COPS on the Streets 225
Best Practices Serving Grantees 253
Community Policing 259
Congressionally Directed Funds 259
Coordination between OJP, COPS, and OVW 254
Coordination with DOD, Veterans Administration and OVW 265
COPS Community Outreach 255
COPS Hiring Grants 263
COPS on Recidivism issue 250
COPS Perspective on Community Policing 260
Criminal Justice Programs in High Schools 262
DNA Initiative 228
Drug Courts 227
Effect of Funding Decrease on OJP ICOPS 226
Effect on OJP of Decrease in Funding 216

Page
Funding Under Grant Consolidation 219
Grant Consolidation 244, 252
Grant Consolidation Proposal 223
Impact of Drugs on Crime 217
Intellectual Property Enforcement 241
Is There a Crime Wave and Where Does it Exist 239
JAG Grants and Impact of Cut 266
Juvenile Crime 267
Law Enforcement Unmet Needs 261
National Institute of Corrections 256
National Protective Order Registry 246
OJP Management and Administration 259
OJP Priorities 267
OJP Studies on Crime Rate and Recidivism 247
Opening Remarks of Acting Assistant Attorney General 211
Opening Remarks of Director Peed 212
Opening Remarks of Director Dyer 214
Opening Statement by Chairman Mollohan 203
Opening Statement by Congressman Frelinghuysen 204
Opening Statement by Congressman Ruppersberger 215
OVW Recent Statistics 242
OVW Timeline for Grant Disbursement 221
Proposed Grant Consolidation 211
Questions Submitted by Congressman Honda 272
Questions Submitted by Representative Aderholt 275
Questions Submitted by Representative DeLauro 273
Range of Administration Funding Priorities 227
Reduced Funding for and Restructuring of OJP, OVW, and COPS Budgets 273
Report-Impending Crime Wave 247
Rescissions 257
Restraining Orders 245
Rise in Juvenile Crime 217
RISS Program 234
Root Causes of Crime 251
Rural Grants 270
SCAAP Program 231, 235, 237
Salary and Benefits for Law Enforcement Personnel 262
Sexual Predators 256
Southwest Border Initiative 237
Supplemental Appropriations for Drug Enforcement Programs 275
Targeting of Funding 218
Timeliness of DNA Analysis 229
Tribal Law Enforcement 263
Unfunded Programs 253
Violent Crime Reduction Partnership Initiative 268
Violence Against Women Act of 2005 Grant Program 272
Violent Crime 238
Written Statement for OJP, COPS, and OVW 205

Page

BUREAU OF PRISONS, U.S. MARSHALS SERVICE, OFFICE OF THE FEDERAL DETENTION TRUSTEE

Director Harley G Lappin, Bureau of Prisons (BOP)
Director John F Clark, US Marshals Service (USMS)
Federal Detention Trustee Stacia A Hylton, Office of the Federal Detention Trustee (OFDT)

Activation of FCI Pollock 301
Adam Walsh Enforcement 338, 347
Alternatives to Detention 371
BOP Funding/Reprogramming 303
BOP Recidivism 305
Bureau of Prisons Budget Situation 296
Bureau of Prisons FY 2008 Needs 292
Bureau of Prisons Staffing 292, 300
Citizenship of International Terrorists 318
Contraband and Staff Searches 317
Contract Confinment 377
Counterterrorism 307
Courthouse Facility Improvements 348
Crack Sentencing Amendment 306, 307
Crowding Issues 312
Detention Capacity Planning 368
Detention Confinement Standards 369
Detention Standards 374
Drug Treatment Program 309
Efficiency Savings 364
Gangs and Counterterrorism 316
Healthcare Costs 315
Inmate Medical Care 310
Inmate Population 294
Intergovernmental Agreements 362
Inquiry from a Constituent 297
Justice Prisoner and Alien Transportation System 372
Non-US Citizen Inmates 318
OCDETF 341
OFDT FY 2009 Population Projections 358
Opening Remarks by Chairman Mollohan 277
Opening Statement of John F Clark, USMS 325
Opening Statement of Harley G Lappin, BOP 278
Opening Statements on Office of the Federal Detention Trustee 349
Population Projections 366
Programs to Reduce Recidivism 313
Prison Chapel Library 297
Questions Submitted by Chairman Mollohan 366
Questions Submitted by Congressman Honda 374
Questions Submitted by Representative Rogers 377
Rated Capacity/Overcrowding 299
Reimbursable Agreement with BICE 321
Southwest Border Activities 342
Stun/Lethal Fences 301
Tele-health 320
Tele-health Programs 323
Terrorists 317

Page
Threats Against the Judiciary 345
USMS Adequacy of FY 2009 Request 337
Witness and Judicial Protection 340
Written Statement of John F Clark, USMS 328
Written Statement of Harley G Lappin, BOP 280
Written Statement of Stacia Hylton, OFDT 353

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