

S. HRG. 112-697

# *Senate Hearings*

*Before the Committee on Appropriations*

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## Commerce, Justice, Science, and Related Agencies Appropriations

*Fiscal Year* 2013

112<sup>th</sup> CONGRESS, SECOND SESSION

H.R. 5326/S. 2323

DEPARTMENT OF COMMERCE  
DEPARTMENT OF JUSTICE  
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
NONDEPARTMENTAL WITNESSES

Commerce, Justice, Science, and Related Agencies Appropriations, 2013 (H.R. 5326/S. 2323)

**COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL YEAR  
2013**

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**HEARINGS**

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

**H.R. 5326/S. 2323**

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE AND JUSTICE, AND SCIENCE, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2013, AND FOR OTHER PURPOSES

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**Department of Commerce  
Department of Justice  
National Aeronautics and Space Administration  
Nondepartmental Witnesses**

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**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2013**

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**THURSDAY, MARCH 8, 2012**

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

The subcommittee met at 10:01 a.m., in room SD-124, Dirksen Senate Office Building, Hon. Barbara Mikulski (chairman) presiding.

Present: Senators Mikulski, Leahy, Feinstein, Lautenberg, Pryor, Brown, Hutchison, Shelby, Alexander, Murkowski, and Graham.

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

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

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, everybody. The Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee (CJS) will come to order. This morning, we welcome the Attorney General of the United States, and as is the usual and customary way, Senator Hutchison and I will make opening statements. We'll go to you, Mr. Attorney General, for yours, and you may summarize. With unanimous consent, all statements will be included in the record.

Senator Shelby, our colleague and former ranking member on this subcommittee, has a banking hearing. With Senator Hutchison's concurrence, we'll go right to Senator Shelby for the first question.

Senator HUTCHISON. Okay.

Senator MIKULSKI. Does that sound okay?

Senator SHELBY. Thank you.

Senator MIKULSKI. And then we will observe Senators in their order of arrival, and we expect robust participation. We're going to strictly adhere to the 5-minute rule.

So, having laid the groundwork, I just want to say good morning and welcome to our first CJS subcommittee hearing, the Attorney General of the United States, in which we will hear his presentation on the Department of Justice (DOJ) budget.

We have a very positive relationship with the Attorney General. He's brought to the Justice Department the experience of a career

prosecutor. He's been dedicated to fighting violent crime and terrorism. He knows that he is pioneering work now, working with our administration, on how to deal with the new and emerging threat of cybersecurity, which is, how do we protect our citizens, and his views and recommendations on protecting our civil liberties.

Well, Mr. Attorney General, before we get into the numbers and the money, I would just like to thank you, and in thanking you, I want to thank all the hardworking men and women who do work at DOJ. There are 116,000 employees who work there; 25,000 are Federal agents, and people work at the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), the U.S. Marshals Service (USMS), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). We have 20,000 prison guards and correctional staff, and 10,000 prosecutors and investigators. They've had some amazing accomplishments, which I'll talk about when I get to my question period.

But we want to thank them, because every day and every way, they stand sentry, either to do prevention and intervention, to make sure they are out on the street, doing traditional violent crime work, to really being all over the world, and then fighting issues related to white collar crime.

As the chair of the CJS Subcommittee, I have three priorities when examining the budget: communities security, how does the budget support the mission of keeping our communities safe; national security, what resources are needed to keep America safe; and then, oversight and accountability. No boondoggles on the watch of this subcommittee. And I want to make sure the Justice Department has what it needs to do its mission.

As I looked at the President's budget, I noted that there was only one new initiative, and that's the expansion of mortgage and financial fraud. That request is \$611 million. It is a modest \$5 million targeted increase, and we are going to want to hear more about that. Because we, in our own State of Maryland, have seen such a rising number of scams, and schemes, and predatory lending practices, and we need to know what you want to do with the money.

We can't have a strong, economically vibrant community unless they're safe, whether it's in our neighborhoods, whether it's protecting small business on Main Street. So, I want to know how the budget will keep America safe at home on Main Street.

The request for \$2 billion for grants to State and local law enforcement, I wonder if it's sufficient. This is \$32 million less than the 2012, and we might have to consider, you know, reorganizing priorities. The State and local funding seems to have borne the brunt of budget cuts. Since 2010, grants have been cut by \$1 billion in local funding. Now, part of this was the axe and acts of the Congress itself.

Many of my colleagues don't realize that cuts have consequences in discretionary spending. So, we need to hear your view on what we can do. We know the Government Accountability Office (GAO) has recommended that you should conduct a review and eliminate unnecessary duplication. We support that.



We also want to work in community security at the protecting of our children. One of the areas of bipartisan support is in the money to catch predators who use the Internet to stalk children, break up children's pornography rings, and track down and arrest these child molesters. We understand you are requesting \$328 million, and we'll look forward to seeing how you will allocate that, and what to do.

The Southwest Border—my colleague, Senator Hutchison, has worked assiduously in that area. I want to know that this is not only bipartisan support—we think it ought to be nonpartisan to support our border, and I'll let her raise those questions in there.

In the area of cyberthreats, our Nation faces a growing and pervasive threat overseas, from hackers, cyberspies, and cyberterrorists. We need safe and resilient networks. We worry about online banking and commerce, the safety of our power grids, air traffic control systems, digitized records.

Yesterday, with the administration, the Senate held a cyber exercise. The majority of the Senators were there to listen to an exercise on an attack on a major city's power grid. It was chilling. It was terrifying to know what happened there, and what we could do to protect it. So, we need to know about cyber.

#### PREPARED STATEMENT

Finally, I want to know how the Justice Department is improving its accountability to taxpayers. You know, you've gotten a bad rap—some of them, about lavish banquets, cost overruns, the Inspector General doing its audits—and it should. So, we want to know how we stand sentry over the money we do spend.

We have very specific questions, but with the number of people here, I'm shortening my statement.

[The statement follows:]

#### PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

Good morning and welcome to our first Commerce, Justice, Science, and Related Agencies (CJS) Subcommittee hearing. We begin our examination of the President's fiscal year 2013 budget by welcoming Attorney General Eric H. Holder, Jr.

Today, we'll discuss how the Justice Department's fiscal year 2013 budget request strengthens national security and counter terrorism; protects the safety, security, and rights of U.S. citizens; and ensures taxpayer dollars are used wisely.

We have a very positive relationship with Attorney General Holder. He has brought to the Justice Department the experience of a career prosecutor dedicated to protecting the American people from terrorism and violent crime. Welcome back, Attorney General Holder, and thank you for joining us today.

I want to begin today's hearing by thanking all of the hardworking men and women of the Justice Department's 119,000 civil servants:

- the 25,000 Federal agents of the Federal Bureau of investigation (FBI);
- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF);
- the Drug Enforcement Agency (DEA);
- the U.S. Marshals Service (USMS)—and the people who support those agents;
- the 20,000 prison guards and correctional staff; and
- the 10,000 prosecutors, investigators, and legal experts.

They've had some amazing accomplishments during the last year. USMS arrested more than 12,000 fugitive sex offenders. DEA agents put more than 3,000 drug traffickers out of business. FBI dismantled 366 criminal enterprises involved in white collar crimes. U.S. Attorneys collected \$6.5 billion in criminal and civil penalties.

They are the guardians of our justice system, but they are often overlooked and undervalued. I want them to know that the CJS Subcommittee knows and appreciates what they do every day.

The President's fiscal year 2013 budget request for the Department of Justice (DOJ) totals \$27.1 billion, which is \$110 million less than the fiscal year 2012 level. The budget request also includes \$368 million in cuts to prior year funding for core Federal law enforcement functions and grants. This year's budget also relies more heavily than ever on payments into the Crime Victims Fund, which will finance 30 percent of the Department's operating budget in fiscal year 2013. The request reflects the stringent reality of our times.

As chairwoman of the CJS Subcommittee, I have three priorities when examining the budget for the Justice Department. The first is community security. How does the budget support the mission of keeping our communities safe? The second is national security. What resources are needed to keep America safe from terrorism? And finally, oversight and accountability. Are tax dollars being spent wisely?

I want to make sure that the DOJ has what it needs to uphold the rule of law and to protect this country from predatory attacks.

There is only one new initiative in the Department's budget request this year—an expansion of mortgage and financial fraud task forces. Our economy depends on the integrity of our financial markets. Our neighborhoods and communities have been rattled by mortgage fraud schemes and scams.

The budget request includes \$611 million to fight mortgage and financial fraud, including a modest \$55 million targeted increase to hire new FBI agents, new attorneys, new specialized support staff, and new forensic accountants and in-house investigators. This will also be used to combat financial and mortgage fraud, going after the schemers and scammers who prey on hardworking families and destabilize neighborhoods.

We can't have strong, economically vibrant communities unless they are safe. So I want to know how the budget request keeps Americans safe here at home. The request is \$2 billion for grants to State and local law enforcement. This is \$32 million less than fiscal year 2012.

State and local funding has borne the brunt of budget cuts. Since 2010, grants have been cut by \$1.5 billion, or 43 percent. This is a time when we must be frugal. Tough choices have to be made. The CJS Subcommittee is committed to making sure our police are not walking a thin blue line. We need to know which grants are truly most effective and which programs we need to take a closer look at before reinvesting American taxpayers' dollars in them.

A recent Government Accountability Office report recommended that the Attorney General should conduct an assessment to better understand which grant programs overlap with one another to prevent unnecessary duplication. I think that is an excellent recommendation, and I encourage the Attorney General to complete this analysis.

I know how committed the Attorney General is to keeping children safe from abuse, sexual predators, and cyber stalkers. The budget request includes \$328 million to catch predators who use the Internet to stalk children, break up child pornography and prostitution rings, and track down, arrest, and prosecute child molesters.

The FBI and USMS have crucial roles. FBI's Innocent Images initiative targets sexual predators who use the Internet to distribute child pornography. USMS are charged with tracking down and arresting an estimated 100,000 unregistered sex offenders.

The Adam Walsh Act called for 500 new Deputy U.S. Marshals to carry out this mission. But since 2010, we've been able to prevent furloughs and layoffs, but we've been in a holding pattern of 160 new Marshals. I want to make sure we're putting the right resources in the right places to protect children from these despicable predators.

The Department's budget request includes more than \$1.8 billion for Federal law enforcement efforts, including the DEA, ATF, FBI, and USMS, to dismantle drug cartels that smuggle illegal drugs, guns, and humans along the border, and terrorize citizens and neighborhoods with fear and intimidation.

Drug trafficking-related homicides in Mexico continue climbing. There were a sickening 12,100 murders in Mexico last year, up 86 percent since 2009. We are very concerned about spillover violence. I want to know if the funds requested are sufficient to shut down the flow of firearms into Mexico, and to stop drugs and violence from coming into the United States from Mexico.

Our Nation faces a growing and pervasive threat overseas from hackers, cyber spies, and cyber terrorists. We need safe and resilient networks to protect our online banking and commerce, electrical and power grids, air traffic control systems, and digitalized records.

At the Justice Department, more than 1,500 personnel are working to prevent a broad range of cyber threats, such as computer intrusions, Internet fraud, intellectual property theft, and online child pornography; and to identify the perpetrators.

The FBI is tasked with the most urgent cyber security responsibilities. They are on the front lines collecting intelligence and investigating computer intrusions that threaten our critical technology infrastructure. We will hear more details about this next week, when FBI Director Robert S. Mueller, III testifies before this subcommittee. But I want to know what you see as the Justice Department's role as a key guardian of our Nation's cyber security.

Finally, I want to know how the Justice Department is improving accountability of taxpayer dollars so that every \$1 spent to secure our communities is \$1 well-spent. The subcommittee has taken steps to prevent waste, fraud, and abuse; prohibit funds for lavish banquets; control cost overruns; and require the Inspector General to do random audits of grantees. I want to know what concrete steps you have taken to put these guidelines into practice and give teeth to make sure they are followed.

Given all of the Justice Department's important roles and responsibilities, we must ensure that it has the resources it needs to protect the lives of 330 million Americans. But we also want to make sure the Justice Department is a good steward of taxpayer dollars and makes sure every \$1 we spend to keep our Nation safe is \$1 well spent.

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

Senator MIKULSKI. I'm going to turn now to Senator Hutchison, and then to you.

#### STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Senator HUTCHISON. Well, thank you, Madam Chairman, very much, not only for the deference on border security, where I live, but also on the way you run this subcommittee, which is for us to do what's right for America.

Mr. Attorney General, I do want to address some of the areas of border security. First of all, State Criminal Alien Assistance Program (SCAAP) funding is something that continues to be short-changed by your budgets, and SCAAP, of course, is the reimbursement for local counties that incarcerate illegal alien prisoners. And along the border, our counties are generally very poor and don't have those kinds of resources, and each year, you continue to not fund.

We did put the money back in last year, \$240 million, but I would hope that you would support increasing that, as we go through this process, because we must incarcerate these illegal alien criminals, who are mostly in the drug cartel and operations, so that this will not be borne by the counties on the border.

In response to Operation Fast and Furious, language was included in last year's bill that would prohibit Federal law enforcement agencies from selling operable weapons to cartels. This request that you're giving us removes that language, saying it's unnecessary. Mr. Attorney General, we just want to make positively sure that what happened does not happen again, and I would hope that you would support our insertion of that language again.

Last year, our Commerce, Justice, Science, and Related Agencies bill provided \$10 million to expand the capacity at the overcrowded El Paso Intelligence Center (EPIC). And this is critical for our Southwest Border information sharing, and is the border's focal point to help stop the flow of narcotics, combat illegal immigration, and end human trafficking and firearms smuggling.

It is imperative that EPIC and the DEA take full advantage of the resources available from DOJ agencies like the FBI, USMS, and ATF. And I hope that you can give us an update on the status of this funding and the project.

There have been reports that cartels across the border are attempting to recruit college students to smuggle drugs into the country, and it says that minors are more appealing, because criminal penalties are lighter for them. One of the good parts of your budget request is \$312 million for juvenile justice prevention programs. I will be interested in hearing if you are aware of these border threats to our youth, and if some of that money that you are requesting could be put on the border to try to make sure that we try to help our youth overcome the cartel overtures.

The VALOR program, the Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability, is one that I applaud your efforts to put in place. And unfortunately, the number of Federal, State, and local officers who died in the line of duty in America last year increased, from 153 to 173.

The feedback from the training and research being conducted through VALOR is very positive, including the alert center at Texas State University, which was credited by the two officers who came into Fort Hood when Major Nidal Hasan started shooting unarmed military people. Both of those officers survived, even though Sergeant Munley was shot several times. But they both credited their swift response that day to the alert active shooter training program that they had received. So, that's something that's very good that I applaud in your budget.

I want to state a concern that I have about the National Park Service pushing for construction, which is in progress, on an unmanned border crossing at the Big Bend National Park, in south Texas. This is not a DOJ decision, but it is going to affect some of the personnel, and I'm concerned that this is an area where illegal immigrants can walk across. The water is knee deep, and you can walk right across the river, and into Big Bend, and having an unmanned border crossing, I think, is insufficient. So, we're going to talk about that at some point to see if we can get FBI, DEA, ATF, Border Patrol, somebody to man a place like that, where it is so vulnerable.

And last, but not least, Attorney General Holder, I'm going to ask you some questions about your public integrity unit. I'm going to give you full credit for dismissing the case against the late Senator Ted Stevens when you learned of the corruption within that division of your Department. I'm going to ask you questions, because the report will be public within days, and if there's anything that you should take as your major responsibility, it is that the public corruption unit and DOJ is fair and evenhanded, and, clearly, that was not the case in the prosecution of a great friend to many of us, and a great patriot for our country, who, unfortunately, was very badly abused by the DOJ.

But, I will say, you did dismiss the case when you learned of the misbehavior, and I gave you credit on the Senate floor for doing that, and will again, but I do want to ask you about the report when we have time to ask questions.

Thank you.

Senator MIKULSKI. Mr. Attorney General.

SUMMARY STATEMENT OF ERIC H. HOLDER, JR.

Attorney General HOLDER. Thank you. Chairwoman Mikulski, Ranking Member Hutchison, other distinguished members of the subcommittee. I want to thank you very much for the opportunity to appear before you today and for your continued support of the Justice Department's critical work.

I look forward to discussing the President's fiscal year 2013 budget for the Department and how these investments would be used to build on what I think is our extraordinary record of success.

The President's budget proposal demonstrates a clear commitment to advancing the Department's core missions and augmenting our ability to fulfill our most important obligation, and that is protecting the American people. Despite the significant fiscal constraints the Federal Government has faced in recent years, the 116,000 dedicated employees who serve in the Department offices around the world have made significant, and in many cases, historic progress in safeguarding our citizens from terrorism, from violent crime, from financial fraud, and from a range of threats that often disproportionately threaten the most vulnerable members of our society.

We've also proven our commitment to acting as sound stewards of precious taxpayer dollars. As you can see in the most recent budget request, proposed spending increases have been exceeded by proposed cuts. In fact, as a result of numerous steps taken to streamline operations, almost \$700 million worth of savings have been developed and reinvested in critical mission areas. I believe that the Department is perhaps more efficient and more effective than ever before.

Our recent achievements underscore this point, especially when you consider our national security efforts. By continuing to work collaboratively alongside U.S. and international partners, we have identified and disrupted numerous alleged terrorist plots, including one by two Iranian nationals to assassinate the Saudi Ambassador to the United States. We have thwarted multiple plots devised by homegrown extremists, and we have secured convictions and robust sentences against a number of dangerous terrorists.

In October, the Department obtained a guilty plea from Umar Farouk Abdulmutallab for his role in the attempted bombing of an airplane on Christmas Day in 2009. Just last month, Abdulmutallab was sentenced to four life terms in prison. In November, we secured the conviction of Viktor Bout, a notorious arms dealer who sold millions of dollars in weapons for use in killing Americans. In December, Waad Ramadan Alwan pleaded guilty to 23 charges, including conspiracy to use a weapon of mass destruction against U.S. nationals abroad, attempting to provide material support to al Qaeda in Iraq, and conspiracy to transfer, possess, and export explosive devices against United States troops in Iraq.

The list goes on and on. With the sustained and increased investments included in the President's budget for the comprehensive national cybersecurity initiative, the high-value detainee interrogation group, the joint terrorism task forces, the Render Safe pro-

gram, and other key national security efforts, the Department will be able to strengthen our critical surveillance and intelligence gathering capabilities.

It will also allow us to bring our fight against financial fraud to a new level. On Monday, as many of you know, President Obama issued a proclamation to mark the beginning of this year's Consumer Fraud Protection Week, and I'm proud to note that the Justice Department's Consumer Protection Branch has established a record of success in defending the interests of American consumers that is worth celebrating and will be expanded upon.

In 2011 alone, our Consumer Protection Branch attained a 95-percent conviction rate, recovered more than \$900 million in criminal and civil fines, restitution, and penalties, and obtained sentences totaling more than 125 years of imprisonment against more than 30 individuals. This represents remarkable and unprecedented progress, but it really is only the beginning. In fact, since the start of the administration, the Justice Department has signaled an unwavering commitment to combating and preventing a wide range of financial and healthcare fraud crimes, and we've taken bold steps to address the causes and the consequences of the recent economic crisis.

Through the efforts of the President's financial fraud enforcement task force, which was launched in 2009, and which I'm proud to chair, charges have been brought against numerous CEOs, CFOs, corporate owners, board members, presidents, general counsels, and other executives of Wall Street firms, hedge funds, and banks who have engaged in fraudulent activity.

In recent months, we have obtained prison sentences of up to 60 years in a variety of fraud cases, including multi-million-dollar Ponzi schemes, and the largest hedge fund insider trading case in U.S. history.

Just this week, we secured a conviction against the former board of directors' chairman for an international bank for orchestrating a \$7 billion investment fraud scheme. The task force has established two new working groups: the Consumer Protection Working Group, which will enhance civil and criminal enforcement of consumer fraud, and the Residential Mortgage-Backed Securities (RMBS) Working Group, which bring Federal and State partners together to investigate and to prosecute abuses in our housing markets. Both will help to amplify existing efforts, and to foster cooperation and collaboration in the Department's response to these problems.

Just a few weeks ago, a similar collaborative approach led the Departments of Justice and Housing and Urban Development, as well as other agencies, and 49 State attorneys general to achieve a landmark \$25 billion settlement with the Nation's top five mortgage servicers, the largest joint Federal and State settlement in our Nation's history.

Although this will not, on its own, cure all that ails our housing market, this agreement builds on the record fair lending settlement obtained by the Civil Rights Division's fair lending unit last year, and will provide substantial relief to homeowners. It also provides a blueprint for future collaboration across levels of government, State borders, and party lines.

There is perhaps no better illustration of our recent progress than the Department's groundbreaking work to combat healthcare fraud. Over the last fiscal year alone, in cooperation with the Department of Health and Human Services, as well as other partners, by utilizing authorities provided under the False Claims Act and other essential statutes, we were able to recover nearly \$4.1 billion in funds that were stolen or taken improperly from Federal healthcare programs. That is the highest amount ever recorded in a single year.

Over the same period, we opened more than 1,100 new criminal healthcare fraud investigations, secured more than 700 convictions, and initiated nearly 1,000 new civil healthcare fraud investigations. For every \$1 that we have spent combating healthcare fraud, we have returned, on average, about \$7 to the United States Treasury, the Medicare Trust Fund, and others.

These numbers are stunning, but my colleagues and I recognize that we cannot be satisfied, and this is no time to become complacent. That's why in addition to helping us build on this record of success, the President's budget request also would bolster our fight against drug trafficking, international crime networks, gangs, and cyber criminals. It would increase our efforts to protect the law enforcement officers who keep us safe, and expand upon the work being done by our Civil Rights Division to guarantee that the rights of all Americans are protected in border areas, workplaces, housing markets, and voting booths.

#### PREPARED STATEMENT

I am committed to building on these and our other many achievements, and I know that you understand that in this time of uncommon threats and complex challenges, we simply cannot afford to cut back on the amount and the quality of justice that we are obligated to deliver. The Department must remain vigilant in protecting this Nation and in enforcing the law, and these efforts must be appropriately and adequately funded.

I look forward to continuing to work with the members of this subcommittee and your colleagues throughout the Congress to accomplish this, and I would be happy to answer any questions that you might have.

Senator MIKULSKI. Thank you, Mr. Attorney General. And your full statement will be entered into the record.

[The statement follows:]

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

Good morning Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee. Thank you for the opportunity to meet with you today to discuss the President's fiscal year 2013 budget for the Department of Justice (DOJ) and the Department's key priorities.

I also appreciate the opportunity to tell you more about the good work that is being done by DOJ employees across the United States and overseas to protect all of our citizens from harm and to ensure equal protection under the law, in order to promote "liberty and justice for all."

The President has emphasized his goal to stabilize the economy by creating new jobs and reducing our national debt through greater revenue generation and spending cuts. To assist in the economic recovery, we continue to ask even more from our talented DOJ personnel. This is as true in DOJ as it is in the rest of the Federal Government.

The President has asked DOJ to do more with less, recognizing that many across the country are still suffering; I am committed to presenting the Congress with a serious and thoughtful budget, which clearly reflects this awareness, and allows us the resources to faithfully carry out DOJ's mission and fulfill our obligation to the American people.

Upon careful examination of our mission and the range of the priorities I will present here we cannot simply "cut back" on the extent or quality of justice that we are obliged to deliver; we cannot cease to enforce the law. We cannot ignore an indictment, or choose at the end of the process not to imprison a criminal, if sentenced. We are responsible for enforcing the law, and these efforts must be funded.

What we can and must do, however, is examine the way we do our work, and find better ways to continue to do it well. In response to my call for savings across DOJ, my staff developed almost \$700 million worth of budget offsets, so that we can reinvest that money and protect DOJ's core mission and priorities. In presenting DOJ's fiscal year 2013 budget, we have aligned the entire amount to pay for high-priority, mission-related needs. Specifically, we have proposed \$228 million in program increases. Our overall discretionary budget authority is reduced from \$27.2 billion in fiscal year 2012 to \$27.1 billion in our fiscal year 2013 request.

In this fiscal year 2013 budget, we have proposed changes in operational accounts, as well as leadership offices. We have used balances from prior years that were left on the books to offset this year's costs, and we tried to find less expensive ways to accomplish the same outcome.

Each of our proposed reorganizations and realignments has been developed with one goal in mind, to save taxpayers money, while remaining dedicated to our mission to protect our citizens. I can assure you that none of our reorganizations or realignments will compromise this fundamental mission; personnel and resources will be shifted to achieve the same end, to remake DOJ in ways that make us more responsive to the American people whom we proudly serve.

To be clear, then, we at DOJ recognize that we are accountable to the American people, to identify and eliminate areas of waste, fraud and duplication, and also to marshal limited resources for the greatest return on investment. I have carefully reviewed with my staff DOJ's fiscal year 2013 budget request, and have directed them to focus resources on programs that have a measurable impact and demonstrate success in keeping our citizens safe.

In his fiscal year 2013 budget, President Obama proposes that the Congress fund the work of DOJ in the amount of \$27.1 billion. In this hearing, I would like to focus on DOJ's work in six critical areas, namely,

- To sustain our Nation's security interests;
- To uphold DOJ's traditional mission programs;
- To combat financial, mortgage, and healthcare fraud;
- To support our State, local, and tribal law enforcement partners;
- To invest in Federal prisons and enhance detention capacity; and
- To streamline programs and operations across DOJ.

#### NATIONAL SECURITY

The fiscal year 2013 budget includes a total of \$4 billion to sustain our first priority—DOJ's national security mission. As with our law enforcement mission, the Department continues to work to build strong ties with intelligence and security partners around the world, to protect the American people. At the same time, we are diligent in protecting U.S. technologies, goods, services, and national security interests from illegal tampering, malicious manipulation and acquisition by other countries, in order to maintain our Nation's competitive edge.

The funding previously enacted, which the fiscal year 2013 budget maintains, for our national security programs ensures the continuation of critical investments made to improve intelligence coordination; expands information sharing efforts with trusted counterparts; secures our cyber infrastructure; widens investigations of drug trafficking organizations with ties to terrorist groups; and continues to extend anti-terrorism training to our law enforcement partners.

In the past year, we were successful in several key national security investigations. In October, DOJ obtained the conviction against Umar Farouk Abdulmutallab for his role in the attempted bombing of an airplane full of holiday travelers on Christmas Day in 2009. He was sentenced to life in prison earlier this month. Working closely with our United States and international partners, we thwarted a plot by two Iranian nationals to assassinate the Saudi Ambassador to the United States, as well as numerous other suspected plots by homegrown violent extremists. We also secured the conviction of notorious arms dealer Viktor Bout for his efforts to sell millions of dollars of weapons for use in killing Americans. In May of last year,



a grand jury indicted Waad Ramadan Alwan on 23 charges, including conspiracy to use a weapon of mass destruction against United States nationals abroad; attempting to provide material support to al Qaeda in Iraq; and conspiracy to transfer, possess, and export explosive devices against United States troops in Iraq. In December, Alwan pleaded guilty to all 23 charges.

In the fiscal year 2013 budget, DOJ seeks to maintain critical counterterrorism and counterintelligence programs, and sustain significant, recent increases related to intelligence gathering and surveillance capabilities; detecting and deterring cyber intrusions and fully supporting cybersecurity through the Comprehensive National Cybersecurity Initiative. We also look to maintain our investments supporting the High Value Detainee Interrogation Group; the Joint Terrorism Task Forces; and the Render Safe Program.

#### TRADITIONAL MISSION PROGRAMS

In the fiscal year 2013 budget, DOJ seeks increases of \$31.8 million in support of programs in DOJ's traditional core mission of combating violent crime, cybercrime, crimes against children, and criminal trafficking in persons; and enforcing the Nation's civil rights and environmental laws.

##### *Criminal Law*

In combating organized crime, I announced in January 2011 the single largest operation against the mafia ever undertaken by the Federal Bureau of Investigation (FBI), the result of unprecedented cooperation among Federal, State, local, and foreign law enforcement personnel. The operation resulted in the arrest of more than 100 suspected mobsters—all without a hitch. In July, we announced the results of Project Delirium, a Drug Enforcement Administration (DEA) operation targeting La Familia Michoacana (Mee-shoa-CA-na), a violent drug cartel and supplier of most of the methamphetamines smuggled into the United States. Working with other Federal, State, local, and foreign law enforcement partners, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), DEA oversaw more than 1,900 arrests and the seizure of more than \$63 million in U.S. currency; more than 2,700 pounds of methamphetamine; more than 2,700 kilograms of cocaine; 900 pounds of heroin; nearly 15,000 pounds of marijuana; and \$3.8 million in other assets. An ATF investigation targeting a gang in Philadelphia known as the Young Hit Men or Harlem Gang resulted in an 89-count superseding indictment charging 23 members with an array of Federal violations, including multiple firearms violations. The trial of these gang members is scheduled for May. And finally, in 2011, the U.S. Marshals Service (USMS) captured nearly 125,000 fugitives, including 7 from their "Fifteen Most Wanted" list in 2011. This was the fourth consecutive year that the USMS captured more than 100,000 fugitives. These are only highlights, but, as you can see, it's been a busy year for DOJ.

Investigating cyber crime and protecting our Nation's critical network infrastructure is another of DOJ's top priorities. Successful cyber attacks can have devastating effects on our national security, infrastructure, and economy; and hackers have been relentless in their efforts to attack U.S. Government agency Web sites, including ours. In combating these efforts, we continue to build and strengthen our capabilities to counter and prevent these attacks. Here again, DOJ works on a global scale to achieve success, in cooperation with our law enforcement partners abroad. FBI estimates that Americans lose hundreds of millions of dollars to cyber criminals based in Eastern Europe alone. Working closely with the FBI Cyber Division and with our legal attaché personnel in Bucharest, our Romanian counterparts have arrested more than 300 cyber criminals in the last 3 years. Our efforts to build relationships with foreign counterparts continue to produce real dividends. FBI, the DOJ Office of International Affairs, and the Southern District of New York cooperated closely with the Israeli National Police and the Israeli Ministry of Justice. Together, we took down two boiler rooms in Israel that had targeted elderly persons in the United States in a lottery telemarketing scam, and had swindled them out of more than \$10 million of their hard-earned savings. Thanks to this cooperation, 24 members of the ring were arrested in Israel and the United States; and 19 of the 21 have been extradited to the United States. Most pleaded guilty, and have been sentenced.

In fiscal year 2013, DOJ is requesting an increase of \$15.2 million within the Justice Information Sharing Technology program to transform, strengthen, and protect DOJ internal networks. This will counter newly emerging cyber security threats, including insider threats, provide advanced intrusion detection and response capabilities, and implement cost-efficient scalable enterprise architecture.

The fiscal year 2013 budget also includes \$3 million in new investments to combat transnational criminal organizations, and a total of nearly \$2 billion to maintain the

security of our Nation's Southwest Border. The budget also increases funding for international investigation and deterrence of intellectual property crime by \$5 million, which brings our investment to nearly \$40 million annually to combat online piracy and otherwise protect our Nation's intellectual capital and maintain our competitive edge in developing American ideas and technologies to better compete in the global marketplace.

DOJ's budget request also supports our continuing work to prevent, investigate, and prosecute child exploitation crimes. Sadly, our caseload in this area continues to increase. Our budget request will fund ongoing efforts to investigate and prosecute offenders such as those who participated in the so-called Dreamboard, an international, members-only, online bulletin board that was dedicated to the sexual abuse of children. Just as Dreamboard's members operated across international boundaries in committing their crimes, so too did law enforcement personnel work across boundaries to take down this nefarious ring. To date, 72 Dreamboard members have been indicted; 53 have been arrested in the United States and abroad.

DOJ has successfully investigated and prosecuted public corruption, not only in the several high-profile cases that made the news, but across the United States. The American electorate trusts that their public servants will obey the law; they expect DOJ to bring to full justice those who abuse that trust.

#### *Civil Rights*

A fundamental highlight of DOJ's budget request for traditional mission programs is \$5 million in new resources for the Civil Rights Division to prevent and combat human trafficking; hate crimes; and misconduct by law enforcement and public officials. These issues warrant our greater investment and vigilance as we advocate for every American—without exception. Safeguarding the civil rights of every American is at the heart of what we do, and represents our core mission. In this good work, DOJ continues to achieve success and helps our Nation to create “a more perfect union”.

In seeking redress for the host of inequities uncovered by the mortgage morass, DOJ has fought especially hard to protect the civil rights of Americans. Recently, I announced that DOJ had reached a \$335 million settlement with a lender to resolve allegations of lending discrimination against African-American and Hispanic borrowers who qualified for mortgage loans, but were charged higher interest fees or were steered into sub-prime loans, solely because of their race and/or national origin. More than 200,000 Americans will be entitled to compensation. We have also acted to protect the civil rights of our servicemembers who have been targeted by these unconscionable, predatory lending practices. In May 2011, we announced settlements with two lenders to resolve allegations that they had wrongfully foreclosed upon active-duty servicemembers without first obtaining court orders, in clear violation of the Service Members Civil Relief Act. The settlements provided more than \$22 million in compensation to our men and women in uniform who were forced to worry about their families and losing their homes through unlawful foreclosures, while also having to endure the horrors of war. We fought hard for them because we believe that, as Americans, we are much better than that, and that our fellow citizens, who place their lives on the line for all of us, deserve far better than that.

Our other civil rights priorities in fiscal year 2013 include a greater focus upon combating human trafficking; in uncovering and prosecuting hate crimes that target Americans for who they are and what they believe; in upholding and enforcing the constitutional right of every eligible American to participate in our Nation's political process and vote freely; and fully implementing provisions of the Civil Rights for Institutionalized Persons Act.

#### *Environment and Natural Resources*

Since 2011, a team of our agents and prosecutors continues to lead the Deepwater Horizon Task Force, which has investigated the conduct of those involved in the tragic explosion and oil spill that claimed the lives of 11 people; despoiled the coastal waters of the Gulf of Mexico; killed scores of wildlife; and damaged the vibrant economy of a beautiful region, which our citizens have struggled mightily to restore.

#### *Financial, Mortgage, and Health Fraud*

In our fiscal year 2013 budget, DOJ seeks an increase of \$55 million, for a total investment of more than \$700 million, to investigate and prosecute financial and mortgage crimes that have sorely hurt the American people and damaged their trust in the financial markets they expect to engage in fair play. The abuses by many in the financial sector have had a devastating effect on the U.S. economy, and have contributed significantly to the economic suffering of so many Americans. It is essential that DOJ address these abuses forcefully, to hold fully accountable those who are responsible for these abuses and ensure that they are not repeated. In this

budget, we propose an increase in specialized staffing and technologies to combat and root out fraud in the area of securities and commodities; investment scams; mortgage foreclosure schemes; and increasingly, in healthcare fraud.

The program increase of \$55 million would provide funding for additional FBI special agents, criminal prosecutors, civil litigators, in-house investigators, forensic accountants, and paralegals to hone DOJ's capacity to investigate and prosecute the full spectrum of financial fraud. Bringing aboard specialized and dedicated personnel, especially investigators and forensic accountants, is key to our successful detection and prosecution of complex financial schemes, and helps us to stay well ahead of the criminals who devise them. Of the \$55 million program increase, \$37.4 million is to increase criminal enforcement efforts and \$17.6 million would increase civil enforcement efforts. Our total request also includes \$9.8 million for technology tools and automated litigation support.

We have already been actively engaged in these efforts. Since fiscal year 2010, the Financial Fraud Enforcement Task Force has spurred investigation and prosecution of financial fraud that has been uncovered by the 2008 financial crisis and economic recovery efforts. The task force has charged and sentenced a great number of defendants involved in securities fraud, investment fraud, Ponzi schemes, and other financial fraud. In October 2011, the managing member of Galleon Management LLC was sentenced to 11 years in prison, based on DOJ's investigation of the largest hedge fund insider trading scheme in history. We also continue to aggressively prosecute those who commit mortgage fraud. Mortgage fraud victims include distressed homeowners preyed upon by fraudsters posing as foreclosure rescue experts; the elderly who are victimized in Home Equity Conversion Mortgage or "reverse mortgage" schemes; U.S. servicemembers; and entire neighborhoods blighted by blocks of abandoned homes. In fiscal year 2011, the U.S. Attorneys' offices filed 513 cases against 947 defendants, an increase of 92 percent in just 2 years.

Earlier this month, I joined Housing and Urban Development Secretary Shaun Donovan and the Attorneys General of Colorado, Indiana, North Carolina, Illinois, and Iowa to announce the unprecedented agreement reached by the Federal Government and State attorneys general with the Nation's five largest mortgage servicers to address mortgage loan servicing and foreclosure abuses. This agreement—the largest joint Federal-State settlement ever obtained—provides substantial financial relief to homeowners and establishes significant, new homeowner protections. It holds mortgage servicers accountable for abusive practices and requires them to commit more than \$20 billion toward financial relief for consumers. As a result, struggling homeowners throughout the country will benefit from reduced principal amounts and the refinancing of their loans. The agreement also requires substantial changes in how servicers do business, which will help to ensure the abuses of the past are not repeated.

Moreover, on January 27, I announced the formation of the Residential Mortgage-Backed Securities Working Group, supported by current manpower and funds, to leverage State and local resources in a nationwide effort to investigate and prosecute crimes in the residential mortgage-backed securities market. DOJ will join the Securities and Exchange Commission and the New York State Attorney General under authority of the Financial Fraud Enforcement Task Force in leading the working group, which will be staffed by at least 55 DOJ agents, analysts, investigators, and attorneys from around the United States.

Finally, DOJ remains fully engaged with the Department of Health and Human Services (HHS) to prevent and combat healthcare fraud. Earlier this month, HHS Secretary Kathleen Sebelius and I reported the success of our joint efforts, having recovered nearly \$4.1 billion for U.S. taxpayers in fiscal year 2011. The 3-year average return on investment for healthcare fraud funding in fiscal year 2011 was more than \$7 for every \$1 invested—the highest ever for this program.

In fiscal year 2013, we plan to redouble our efforts and ask the Congress for \$294.5 million through the HHS budget for healthcare fraud funding to support DOJ initiatives to combat civil and criminal healthcare fraud. Increased funding will permit DOJ to expand Medicare Fraud Strike Force operations and to more effectively target locations where healthcare fraud activities are rampant. We also propose additional support to bolster civil enforcement efforts, including False Claims Act matters, to investigate and prosecute fraud by medical and pharmaceutical providers.

#### STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT

In our fiscal year 2013 budget, DOJ seeks a total of \$2 billion to assist State, local, and tribal law enforcement personnel, especially in combating violent crime

and violence against women and all other victims of crime, and in supporting victim programs.

DOJ's budget request is strong on law enforcement; it's strong on solid program research and development; it's strong on juvenile justice; and it's strong on innovation. In presenting this budget request, we've taken a long, hard look at what has worked best in these areas, in order to extend these best practices across the broad range of our work.

The key to DOJ's success in protecting the American people continues to be in developing effective partnerships with law enforcement counterparts throughout the United States and abroad to leverage a more focused and effective law enforcement response. To put this in perspective, there are 65,000 U.S. Federal agents dedicated to criminal investigations; by comparison, there are 700,000 State and local law enforcement officers in the United States, not to mention scores of others who work for agencies from other nations. Crime is increasingly transnational and global in scope, and criminals respect no boundaries. We owe it to the American people to work closely with our partners—at home and abroad—to prevent these criminals from harming our citizens, and to ensure that those who do so are brought to justice.

Here at home, one of our most important partnering programs is the Community Oriented Policing Service (COPS) grant program. These grants assist State and local police in hiring officers for targeted patrol and other proven strategies to reduce and prevent crime. From fiscal year 2009 through fiscal year 2011, the COPS office funded more than 7,100 positions. More than 5,000 of these positions have been filled so far; nearly 4,000 of them as new hires. The budget requests an additional \$91 million for the COPS hiring program in fiscal year 2013, for a total of \$257.1 million. Of this amount, \$15 million will be dedicated to community policing development initiatives and \$15 million will be directed to tribal jurisdictions.

It is worth noting that COPS will be giving preference in any fiscal year 2012 hiring grant award to communities that hire post-9/11 veterans of our armed forces. Put simply, this is the right thing to do, and I assure you that this policy will continue in grants funded by the fiscal year 2013 appropriation.

To give you an idea of the impact that COPS funding has had within local communities, let me tell you about Fresno, California. Given budgetary constraints, the Fresno Police Department had lost 100 sworn police officer positions and 265 civilian positions over a 3-year period. COPS funding added 41 front-line officers who helped Fresno reduce violent crime by targeted removal of dangerous criminals from the community's streets. The results are impressive. In 2011, Fresno experienced decreases in violent crimes across the board and had its lowest murder rate in a decade. Without COPS funding, the Fresno Police Department would have been forced to disband its violent crime impact team and redeploy officers into patrol, and merely react to crime. Instead, COPS funding helped the people of Fresno become more active in safeguarding their community.

In this area, too, DOJ seeks funding for grant programs proven to be effective in preventing crime. Increased funding is requested for the Byrne Criminal Justice Innovation Program; for residential substance abuse treatment; for Second Chance Act implementation; for Part B Juvenile Justice Formula Grants; and for a new, evidence-based juvenile justice competitive demonstration grant program.

The Adam Walsh Act significantly enhances DOJ's ability to respond to crimes against children and vulnerable adults, and to prevent sex offenders who have been released back into the community from victimizing others. The fiscal year 2013 budget also includes \$20 million for States and local jurisdictions, and an additional \$1 million to develop the National Sex Offender Public Web site.

Finally, a significant outlay under the fiscal year 2013 budget includes increased funding to squarely address domestic violence and child abuse in rural areas through support of projects specifically designed to prevent these crimes in rural jurisdictions. A significant portion of these funds will be dedicated to implementing public safety programs in Indian country, to assist tribal law enforcement partners in reducing the disproportionately high levels of violent crime there.

#### PRISONS AND DETENTION

In DOJ's fiscal year 2013 budget, we are seeking \$8.6 billion to ensure that prisoners and detainees are held in secure Federal facilities and to improve Federal prisoner re-entry.

Last year, DOJ made strategic investments to enhance the Nation's security and make communities safer. There are more than 2 million people incarcerated in the United States; estimates project the Federal inmate population in the United States to increase by 6,500, in addition to the estimated 5,000 inmates who will be proc-

essed in fiscal year 2012. The fiscal year 2012 enacted appropriation included partial funding for activation of new prisons in Alabama and New Hampshire. In the fiscal year 2013 budget, DOJ requests funding to fully activate these facilities and initiate two others, in Mississippi and West Virginia. In all, DOJ plans to add 2,500 prison beds and 1,000 new, low-security contract confinement beds in fiscal year 2013. DOJ will also direct increased funding to hire additional corrections workers and cover increased costs to transfer, accommodate, and secure the larger prisoner population.

While opening the secure facilities we need to confine criminals, DOJ's budget request also addresses the parallel need to free up prison space and reduce long-term detention and incarceration costs. This budget recognizes the need to work with you in the Congress to make simple changes to the calculation of good conduct time, and to explore ways to further reduce recidivism. These proposals provide proven incentives for good behavior among certain eligible, nonviolent inmates, and their participation in programs designed to keep them from returning to prison, and will have a direct impact in relieving overcrowding in Federal prisons. Beyond the steps proposed in this budget, the Federal Government has an opportunity to build on the work of States like Texas and Indiana to modernize criminal sentencing, ensuring that violent and career criminals remain behind bars and off the streets, while strengthening programs to help eligible, nonviolent offenders to safely and productively re-enter their communities.

The programs we propose to fund aim to reduce recidivism by expanding participation in these re-entry programs. DOJ's fiscal year 2013 budget request includes expansion of the Bureau of Prison's residential drug abuse program, which supports Second Chance objectives. This expansion will enable greater use of the sentencing credits available to eligible, nonviolent inmates who complete drug treatment programs. Thus, as this program contributes to reducing crime, it will also result in fewer taxpayer resources directed at incarcerating inmates.

#### SAVINGS AND EFFICIENCIES

DOJ's fiscal year 2013 budget presents a highly streamlined array of programs, which will help us to achieve our mission more efficiently while protecting the American people more effectively.

DOJ proposes almost \$700 million in efficiencies, offsets, and rescissions. We at DOJ recognize that we must do our part to help our Nation maintain its sound fiscal footing. In our fiscal year 2013 budget request, we seek to balance fiscal responsibility demanded by the American people with DOJ's national security and law enforcement mission to prevent, prosecute, and bring to justice all who would do us harm.

In leading this effort, I directed DOJ staff to identify areas where we would achieve significant savings for the American taxpayers by implementing changes in the way we execute our mission. These changes include improving the way we target funding, seeking support for programs that work; redirecting funding from the Department level to component agencies to reduce overhead and increase operational efficiency; and consolidating offices and redirecting or reducing personnel and resources.

In all, we identified \$646.6 million in administrative efficiencies, nongrant program reductions, and rescissions of prior-year balances, which will reduce our bottom line without impairing our mission or capabilities.

In submitting DOJ's fiscal year 2013 budget request, I emphasize that we continue to hold the line on expenses, seek to eliminate waste, and promote efficiencies. In this request, we propose to reorganize DOJ by consolidating offices. In doing so, we will become a leaner, more agile, and more responsive organization. Our goal is to enhance our service to the American people, without sacrificing the essential mission. Instead, we intend to realign our staff and resources to meet the greatest needs.

In proposing these realignments, we add our efforts to the President's Campaign to Cut Waste. In July 2010, I launched DOJ's Advisory Council for Savings and Efficiencies, or the SAVE Council, to focus these efforts within DOJ. In just the last 2 years, the SAVE Council has helped DOJ realize nearly \$60 million in savings and cost avoidance.

The fiscal year 2013 budget includes savings expected from merging detention functions currently performed by the Office of the Federal Detention Trustee into USMS, merging core functions of the National Drug Intelligence Center into DEA, and transfer management of the Law Enforcement Wireless Communication program to FBI, returning funding and the concomitant responsibility for radio operations and maintenance to DOJ's law enforcement components.

Additional savings and efficiencies were identified in the areas of information technology, space requirements, overhead, administration, and operations. For example, the IT offset represents savings that will be developed through greater inter-component collaboration in IT contracting; funds will be redirected to support DOJ's cyber security and IT transformation efforts and other high-priority initiatives.

CONCLUSION

In conclusion, I am keenly aware that the President and I have asked DOJ's dedicated employees to do much more with fewer resources during this period of economic recovery. That they have done so with continued dedication to our mission to protect the American people is truly exemplary and inspiring.

I appreciate this opportunity to tell you about our good work at the Department of Justice, to thank you for your support to date, and to ask you to fund the important work that lies ahead.

At this time, I would be pleased to take your questions.

Senator MIKULSKI. As a matter of senatorial courtesy, we're going to turn to Senator Shelby, who has a Banking Committee hearing that he must join, then I'll pick up, followed by Senator Hutchison. We will recognize the members in order of arrival, and we'll follow the 5-minute rule.

Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you. Thank you, Madam Chairman. Good morning, Mr. Attorney General.

Attorney General HOLDER. Good morning.

TERRORIST EXPLOSIVE DEVICE ANALYTICAL CENTER AND NATIONAL CENTER FOR EXPLOSIVES TRAINING RESEARCH

Senator SHELBY. Two key DOJ facilities will soon be operating on Redstone Arsenal: The FBI's Terrorist Explosive Device Analytical Center (TEDAC), and the ATF's National Center for Explosives Training Research (NCETR). These two national assets will help law enforcement officials deal with the growing threat posed by terrorists and criminal use of powerful explosives.

You and I have discussed these facilities previously, and I believe you agreed then with me that the missions of NCETR and TEDAC are distinct, but complementary, and that it made sense to collocate them at Redstone, where there's a lot of property, a lot of land.

For the benefit of the subcommittee, Mr. Attorney General, can you describe how DOJ will utilize NCETR and TEDAC?

Attorney General HOLDER. TEDAC, run chiefly by the FBI, deals with the examination of improvised explosive devices (IEDs), that we see coming out of Afghanistan and other places. NCETR, by contrast, run by the ATF, deals with other, more common explosive devices.

Senator SHELBY. More prevalent maybe?

Attorney General HOLDER. More prevalent explosive devices that we see. I think that you're right, they have fundamentally different responsibilities, but they complement one another, and the location of them in that place makes a great deal of sense.

Senator SHELBY. Could you describe the value of collocating these facilities on a large Federal arsenal, with lots of range of space?

Attorney General HOLDER. Yes. I think there's a great deal of cross-pollination, the ability to talk to one another. Although the purposes are distinct, there are going to certainly be scientific

things, breakthroughs, perhaps, that you can exchange information about by having people who are relatively close by. Having the two agencies that are primarily responsible for explosives determination and prevention close by each other, even though they have distinct roles that have been pretty well delineated—it is good to have them there and talking to one another.

Senator SHELBY. Also, you're aware that the community there, near Redstone, Huntsville, has the highest per capita Ph.D. communities in science and engineering.

Attorney General HOLDER. There are a lot of smart people there. That's true.

Senator SHELBY. You plan to utilize that then.

Attorney General HOLDER. Yes. We'll use smart people wherever we can find them. There are a lot there. That is fair.

#### ACTIVATION OF ALICEVILLE FEDERAL CORRECTIONS INSTITUTE

Senator SHELBY. Well, I want to go to another question. People make mistakes and pay for it, I guess.

Attorney General Holder, the Justice Department is seeking funds this year to activate a new women's prison in Aliceville, Alabama. This prison was designated as a female-only facility, based on input from your Department, and it cost nearly \$250 million when it was finished. Does the Department plan to activate this soon? I know you've got a lot in it. The Bureau of Prisons (BOP) said that was one of their top priorities.

Attorney General HOLDER. We want to activate it. It was specially designed to deal with the unique needs that female prisoners have. We need to expand our capacity to handle female prisoners in the Federal system. Given the fact that the facility was specially configured for female prisoners, it would be our hope to activate it as quickly as we can, and for the use for which it was designated.

Senator SHELBY. Well, you've got a lot in it, and it's finished. And I'd hope you would do that soon, because to activate it, it costs hardly anything, compared to what it cost to build.

Attorney General HOLDER. No. I don't disagree with that. The need is clearly there for the expanding female population, unfortunately, that we see in the Federal prison system.

Senator SHELBY. It would be a priority for you?

Attorney General HOLDER. Yes.

Senator SHELBY. In that area.

Attorney General HOLDER. We want to bring online as many of these facilities we can, and this is one that, as I understand it, is extremely close, where we're just about ready to open it.

Senator SHELBY. Good. Madam Chairman, thank you very much for taking me out of order, and I appreciate it very much.

Senator MIKULSKI. Mr. Attorney General, I have two questions. I had many, but we'll submit them for the record.

#### FEDERAL PRISON FUNDING

First of all, Federal prisons. As I look at the Department's budget, almost one-third of the Justice Department money is going into Federal prisons. That amount is now at \$6 billion, and it is rapidly approaching almost what the FBI budget is, which is \$8 billion.

Now, my question is: What's going on with Federal prisons? First of all, we want the bad guys and gals off the street. So we want you to prosecute and incarcerate, particularly where there are people who constitute a danger to our country or to our communities. I don't know if we can sustain this growth, and then I'm concerned about once we put them in, it's a revolving door, and we keep expanding their prisons with the same people. They keep coming back.

Could you elaborate on your Department's needs? Are there any recommendations you'd have to begin to contain the prison population? Are we federalizing too many crimes? Is recidivism the problem? Again, safe streets—but this is really an ever-increasing part of our appropriations.

Attorney General HOLDER. There are a whole variety of reasons why we see the prison population expanding. We now have about 215,000 people in the Federal system. That number goes up every year, and it is for that reason that we consistently come back to this subcommittee asking for additional funds for BOP.

There are a variety of reasons why you see people coming into the system. We are good partners with our State and local counterparts, and we try to help them, to the extent that we can. And so, some cases violate both Federal and State law, and if they are very serious criminals, we bring them to the Federal system if there are evidentiary rules or more harsh sentences that we can give to them.

I think the point that you hit on, that we really need to focus on, is how can we rehabilitate people so that we cut down on recidivism rates? One of the things that we have talked about is the Second Chance Act, coming up with ways in which we make available to people re-entry possibilities, so that they have the chance of not being recidivists, coming up with educational, vocational, drug treatment programs while we have them in prison.

We've actually seen pretty good success being made by some State systems that has been shared with me by the Pew Research Foundation. I think we can learn a lot from them in that regard.

Senator MIKULSKI. Well, Mr. Attorney General, we would really look forward to specific recommendations. We want our local and our Federal law enforcement to prosecute and get bad people off the street, whether they're terrorists or whether they're terrorizing a neighborhood, like some of the drug dealers in some of my own communities in Maryland.

At the same time, we don't want our Federal prisons to be an incubator for more crime, where the lessons that they learn when they go to prison is not to commit crimes again, but how to be better crooks. We want our prisons to teach them how to be better citizens, and then to come back to a community support system where they don't fall back into the behavior that got them.

So, I'm concerned that our Federal prisons are such that we need to really look and evaluate, and learn some of these lessons. So, we want to work with you. I know you feel that way. You're very experienced in street crime, which takes me to the other point.



## COMMUNITY ORIENTED POLICING SERVICE GRANTS

Ultimately, you've done this fantastic job of fighting terrorism, keeping America safe. It's been stunning what our national security services have accomplished, both military and civilian. Again, I'll come back to streets and neighborhoods. You know, we have communities that face crime every single day. And we talk to our local law enforcement, our local prosecutors' offices, and so on. They feel they're under the gun. They need Byrne grants, they need Cops on the Beat, and so on.

Do you feel that this is sufficient funding? In fiscal year 2010, we had \$3.7 billion that went into State and local grants. Due to acts of the Congress and so on, now, we're down to \$2 billion. Yet, everywhere I go in Maryland, from our local police commissioners to local district attorneys, or States' attorneys, as they're called in my State, people say we need those Justice Department grants. They give us better technology. They give us tools to deal with violence against women. They express gratitude for the lethal index. They need you. They love having you as a partner.

Do we have enough money in the right places to do the job to protect our communities?

Attorney General HOLDER. We have in the budget request \$2.04 billion for State and local assistance programs; \$1.4 billion for Office of Justice Programs (OJP); about \$290 million for COPS; and \$412 million for the Office on Violence Against Women (OVW).

This is the level that's about equal to the level we requested last year. It is lower than numbers that you had said. But, I think that given the budget realities that we face, the amount that we have requested is strong on law enforcement. It's strong for science. It's strong for victims.

Would I like to have more money? Yes, but the budget realities that we confront, and the need to stay within a budget in the executive branch have gotten us to this point. I think that through the provision of this money, through the technical assistance that we can also provide to our State and local partners, we can do the job.

I met with the National Association of Attorneys General just this week, and I think the partnership that we have is an unprecedented one. I think that the combination of that partnership, the sensitivity that we have to their needs, and the \$2 billion that we are seeking here will allow us to be good partners.

Senator MIKULSKI. Well, we have many questions. So, I'm going to turn to Senator Hutchison.

What I would find very helpful is two things. One, if you look at your Byrne grants, Cops on the Beat, and so on, what was the amount of money requested by State and local people to apply for those grants, and what could you fund?

Attorney General HOLDER. Yes. I mean the request—oh. Sorry.

Senator MIKULSKI. No. My time's up. So I'd like that for the record.

[The information follows:]

FUNDS REQUESTED BY STATE AND LOCAL ORGANIZATIONS FOR BYRNE GRANTS

COMMUNITY ORIENTED POLICING SERVICE OFFICE

In 2011, the Community Oriented Policing Service (COPS) office made 238 awards to fund 1,021 law enforcement officer positions, totaling \$243,398,709. The total amount requested was \$2,067,924,397 from 2,712 law enforcement agencies.

OFFICE OF JUSTICE PROGRAMS

Because individual Byrne Justice Assistance Grant (JAG) program awards are determined and limited by a specific, statutorily driven crime and population formula, States, local governments, and tribes cannot request more than the total amount available in any fiscal year. Because of this, it is not possible to determine what the unmet need was in fiscal year 2011 under the JAG program. In fiscal year 2011, there were a total of 56 States and territories and 1,348 local jurisdictions eligible for JAG funds, with a total of \$365.9 million available in prescribed amounts. Of the local governments eligible for a direct JAG award, all but 127 applied for their funding allocation. Of the 127 that did not apply for their eligible funding, 120 of these jurisdictions would have received an award of between \$10,000 and \$25,000. As a result of these failures to apply, \$1,949,103 in Byrne JAG funding was not awarded in fiscal year 2011.

However, in fiscal year 2011, Office of Justice Programs' (OJP) Bureau of Justice Assistance (BJA) released 63 funding solicitations and received 4,295 funding applications requesting a total of \$3,793,937,608 in Federal funding from BJA. BJA had sufficient appropriations to meet 19.32 percent of this requested total, funding 51.66 percent of all applications submitted. These figures do not include unmet demand from programs such as the State Criminal Alien Apprehension Program and the Bulletproof Vest Partnership, which had additional unmet funding requests.

DUPLICATION OF SERVICES

Improving the effectiveness and efficiency of Federal programs is a critical priority of the administration and the Department. The Department is committed to continuing efforts to prevent unnecessary duplication, streamline through approaches such as the consolidation of grant programs, and identify effective programs using evidence-based methods.

Department of Justice (DOJ) grantmaking agencies closely collaborate on the development and implementation of grant programs to avoid the types of potential problems cited by the Government Accountability Office (GAO). Managers from OJP and its bureaus, COPS office, and the Office of Violence Against Women (OVW) often meet to coordinate programs and objectives. The following selected examples are illustrative of the Department's commitment to work collaboratively among its own components as well as Federal Government-wide to improve government performance and effectively target the public safety needs of our communities.

—In January 2011, I convened the first meeting of the Federal Interagency Re-entry Council. The council is addressing short-term and long-term goals on prisoner re-entry through enhanced communication, coordination, and collaboration across Federal agencies. OJP is leading a parallel staff-level effort, which includes 35 people from 17 different Federal agencies—including the Departments of Health and Human Services (HHS), Housing and Urban Development (HUD), Labor, Education (ED), Veterans Affairs, Agriculture, and the Social Security Administration, and others.

—OJP is also spearheading the National Forum on Youth Violence Prevention, which is an effort launched—at the direction of the White House—by DOJ and ED, to directly and locally address the needs of communities that continue to experience high levels of youth violence. Using comprehensive technical assistance, the Forum enables Federal agencies to serve as catalysts for broad-based positive change at the local level in a very efficient, cost-effective manner.

—All of DOJ's components and leaders are working together to provide the most efficient and timely information to tribal communities. As cited in the GAO report, beginning in fiscal year 2010, the Department created the Coordinated Tribal Assistance Solicitation (CTAS), which consolidates most of the Department's tribal government-specific criminal justice assistance programs administered by OJP, OVW, and COPS under one solicitation. Through CTAS, tribes can apply for funding for many of their criminal justice needs with one application.

- The Tribal Law and Order Act enacted in July, 2010, contained amendments to multiple laws with an impact across DOJ activities in Indian country, including a number of OJP programs. The CTAS collaborative experience readied us for statutorily mandated coordination required for law enforcement, training, increased grants authority, and crime data analysis and reporting.
- We are also partnering with other Federal agencies to conduct inventories of Federal resources, develop interagency memorandums of agreement, and long-term comprehensive plans to improve our performance, eliminate duplication, and identify gaps to better serve tribal governments and their communities, in consultation with tribes.
- The Defending Childhood Initiative is being coordinated across OJP, COPS, OVW, the U.S. Attorneys offices, as well as other components within the Department and the Federal Government.

The Neighborhood Revitalization Initiative—which is a White House-led interagency collaboration—is executing place-based strategies to engage and support local communities in developing and obtaining the tools they need to revitalize their own neighborhoods of concentrated poverty.

The Federal Government already directs significant resources to these neighborhoods, but we can always look for additional ways to continue to support them. Better alignment of Federal programs will help local leaders to use Federal funds more effectively, making our taxpayer dollars go further.

Additionally, the Department is working as a whole to coordinate and improve our grants management efforts. There is a DOJ-wide Grants Management Challenges Workgroup, comprised of grants officials from COPS office, OJP, and OVW, that meets to share information and develop consistent practices and procedures in a wide variety of grant administration and management areas. In fiscal year 2011, the working group successfully implemented the DOJ-wide high-risk grantee designation program and a DOJ-wide, on-line financial training tool for DOJ grantees.

Through our Byrne Criminal Justice Innovation program, OJP and the Department will strengthen partnerships with HUD, ED, HHS, and the Department of the Treasury in distressed neighborhoods to implement effective strategies to address persistently high violent crime, gang activity, and illegal drugs.

As mentioned, the Department is equally committed to consolidating grant programs as appropriate. The fiscal year 2013 budget re-proposes a consolidation that was also included in the fiscal year 2012 budget but not adopted, the consolidation (Problem Solving Justice) and expansion of funding for Drug Courts and the Mentally Ill Offender Act Program. The fiscal year 2013 budget also proposes the creation of a 7-percent tribal grant set aside to address the needs of Indian country, rather than several separate programs.

As resources have become tighter, we are working smarter by promoting evidence-based approaches and developing and spreading knowledge about what works and what causes crime and delinquency. Evidence-based knowledge is critical to help policymakers at the Federal, States, and local levels know what to fund, but perhaps more importantly right now, what not to fund. For example, OJP has developed tools such as CrimeSolutions.gov and the Diagnostic Center, which help jurisdictions focus on evidence-based “smart on crime” approaches to maximize resources and improve public safety results.

Senator MIKULSKI. The second thing is: The GAO report raises issues related to duplication of services, and I'd like to have your reaction to the GAO report on how we can streamline, get more efficiencies. I think you're already on that road.

But let me turn to Senator HUTCHISON.

#### STEVENS CASE

Senator HUTCHISON. Thank you, Madam Chairman. Mr. Attorney General, we will have questions for the record, but I wanted to pursue this public integrity unit's misconduct against Senator Stevens.

After you moved to dismiss the case, the court appointed counsel to investigate the botched prosecution of Senator Stevens, and found that the prosecutors engaged in systematic concealment of evidence, but they were not guilty of criminal contempt. And according to the summary that was put out in the public, the full re-

port coming later, the court said, “Despite findings of widespread, and at times, intentional misconduct, the special counsel, Mr. Schuelke, recommended against contempt charges, because prosecutors did not disobey a clear and equivocal order by the judge, as required under law.”

Now, Judge Sullivan said, “Upon review of the docket and proceedings in the *Stevens* case, Mr. Schuelke concludes no such order existed in this case. Rather, the court accepted the repeated representations of the subject prosecutors that they were familiar with their discovery obligations, were complying with those obligations, and were proceeding in good faith.”

My question to you is: Does it concern you that the only reason these prosecutors escaped criminal charges is that the judge in the *Stevens* case didn’t file an order specifically telling the prosecutors that they should follow the law?

Attorney General HOLDER. We have to take into account a variety of things. When I was made aware of the issues that led to the inquiry that Judge Sullivan ordered, I made sure I ordered that the case be dismissed.

Senator HUTCHISON. Dismissed.

Attorney General HOLDER. I also ordered that an Office of Professional Responsibility (OPR) report be done as an internal DOJ report, which has now been completed. It is now in its final stages of being worked through.

Senator HUTCHISON. Will it be made public, Mr. Attorney General?

Attorney General HOLDER. I’m hoping that we can. There are privacy interests that we have to deal with, but my hope is to get that report, or as much of the report, made public as we possibly can. It is an exhaustive study. It is hundreds of pages long. I think the people at OPR have done a good job, and there are recommendations with regard to sanctions that ought to be made. I’m hoping that we will make that available.

Senator HUTCHISON. I’m going to request that you do.

Attorney General HOLDER. Okay. I’m not really at liberty to discuss the report that Mr. Schuelke did. We’ve gotten a limited number of those reports in the Justice Department, 10 or 15 of them, and we’re under orders by the judge not to discuss those. I’ve had a chance to review, certainly, the summary and portions of it, and some of the findings that are made there are disturbing. They were disturbing when I made the decision to dismiss the case.

We have done a lot since that time to come up with ways in which we try to prevent those kinds of mistakes from happening again. We have an extensive training program. We have hired somebody who is responsible as a coordinator to make sure that discovery is handled properly in criminal cases and civil cases that the Justice Department is involved in, so we don’t fall back into those same kinds of errors. I have spoken to members of the judiciary. All to make sure that what happened in the case involving Senator Stevens is not replicated. I would urge everybody to understand that this Justice Department, this Attorney General, when we made that determination that mistakes occurred, took the extraordinary step of dismissing that case.

Senator HUTCHISON. Which I give you full credit for.

PROSECUTORS IN *STEVENS* CASE

Now, let me ask you: Four of the six prosecutors, according to reports, who were investigated, opposed releasing the report, and their names have been redacted. I want to ask you if any of these prosecutors are still in the Justice Department system.

Attorney General HOLDER. I have to check that, just to make sure, but I believe all of the prosecutors who were involved in that case are still in the Department. I believe that's true. I'm not totally sure of that.

Senator HUTCHISON. Does that trouble you, that there would be findings of misconduct in such a sensitive area that you would not let them go outside of our justice system?

Attorney General HOLDER. It depends on the nature of the misconduct, what it is that they did, the mistakes that were made. I think one has to look at the Schuelke report that is about to be released, combined with the OPR report and the recommendations for sanctions that are contained in that OPR report, to look at what exactly should happen to these people. Was the incident an isolated one? How serious was it? What is the nature of their contribution?

Senator HUTCHISON. Are you going to do that, Mr. Attorney General? Are you going to make a decision regarding people who have clearly exhibited that they do not have the integrity to prosecute in this sensitive area? Will you tell the subcommittee what your actions are when you have made that determination?

Attorney General HOLDER. I don't think there was any Privacy Act interest that prevents us from sharing with this subcommittee what actions we have ultimately decided to take against those people who are found to have been culpable.

Senator HUTCHISON. Well, I ask that you report that to the subcommittee. Thank you, Madam Chairman.

Senator MIKULSKI. Senator Brown.

## STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Madam Chair, and thank you, Attorney General Holder, for your service.

## RESIDENTIAL MORTGAGE-BACKED SECURITIES WORKING GROUP

You established the new RMBS Working Group. Thank you for that. I want to talk a moment about that. But, last week, Phil Angelides, from Senator Feinstein's State, former chair of the Financial Crisis Inquiry Commission, observed that the number of lawyers, some 55 lawyers, investigators, and other staff of the working group I just mentioned, that is far fewer than the 100 law enforcement professionals dedicated to the Dallas bank fraud task force during the savings and loan era.

Mr. Angelides also suggested the Congress should extend the statute of limitations for financial institutions fraud from 5 years to 10 years, as the Congress did in 1989, when it passed the Federal Institutions Reform Recovery Enforcement Act after the savings and loan crisis. And you, of course, are aware of the public sentiment of anxiety, frustration, outrage—pick your noun—toward the fact that so few people have been prosecuted.

Talk to me about the working group, the dollars you're dedicating of the \$55 million increase you're asking for. Is it going to go into the RMBS Working Group? And comment, if you would, on Mr. Angelides' recommendation that the statute of limitations, similarly 20 years ago on a, if not a similar scandal, surely a scandal, when it was lengthened to 10 years by the Congress then, if that's something we should do.

Attorney General HOLDER. I would say, first off, that this whole mortgage fraud scandal that we are dealing with is something that we have taken extremely seriously. We brought charges against about 2,100 people last year, all over the course of the last few years, in connection with the mortgage problem. You mentioned there are 55 Federal personnel to go to the RMBS task force—that's the Federal component. One of the things that I think is unique about that is that we're working with our State and local partners, and, in particular, State attorneys general. So, the number of people who will be ultimately devoted to that task force will be substantially greater than that.

I suspect we will also be adding people from various U.S. Attorneys' offices around the country. I think we're looking at four or five that will be intimately involved in this, so that number will ultimately go up. We're going to have adequate resources, in terms of the numbers of people, to do the job that we need to do with regard to the RMBS Working Group.

With regard to the extension of the statute of limitations, that is something that I'd be more than glad to discuss with the members of this subcommittee after I've had a chance to speak with the prosecutors on the ground, to see if, in fact, that is something that we need. We want to use all the tools that we have, and also consider any possibilities that we might want to acquire, so that we can hold accountable the people and institutions who really had a devastating impact on our Nation's economy, and continue to have a lingering effect on our Nation's economy and, in particular, the housing market, which drags down the recovery.

Senator BROWN. Okay. Thank you for that. And we will be following up with your office on the wisdom, hearing from your prosecutors that might be in the middle of initiating these cases or in the middle of these cases, about the importance of that extra 5 years of the statute of limitations.

#### OIL AND GAS PRICE FRAUD WORKING GROUP

Let me talk for a moment about gas prices. You know, oil prices are more than \$100 per barrel. The Department of Energy and the Commodity Futures Trading Commission have told us inventories of oil are sufficient. Domestic production is up. We hear that. The number of rigs has grown. The consumption is down. All reasons that gas prices should not be going up, understanding that the turmoil in the Middle East and the discussion of Iran.

Some analysts have estimated speculation may be adding 50 cents to the price per gallon of gas. It's my understanding over the last year, DOJ organized the Oil and Gas Price Fraud Working Group to determine the role speculators and potential price manipulation are having on the price of gasoline.

What have you found? What are your next steps? What can we expect?

Attorney General HOLDER. That working group continues to be in effect. In fact, they're having a call today to discuss the situation in which we find ourselves with regard to these rising gas prices. That working group, itself, will be meeting before the end of this week. The work of that group has been ongoing and looking to see if there are inappropriate manipulations of the market.

The Federal Trade Commission (FTC) is also working in this area. I don't want to speak for them, but I understand they're working on a report of some sort that we should be seeing relatively soon. That is, again, the FTC working independently of us. But within the Department, that Oil and Gas Price Fraud Working Group has been active, and as I said, has a call today and a meeting that will happen, I think, by tomorrow.

Senator BROWN. Okay. I would like to request that after the phone call, and after the meeting today or tomorrow, that task force brief me and other members of the subcommittee who have expressed interest.

Attorney General HOLDER. All right. To the extent we can, we will certainly do that.

Senator BROWN. Thank you.

Senator MIKULSKI. All right. Mr. Attorney General, we really would like to see that. This is very, very, very important.

We would now like to turn to Senator Murkowski.

#### STATEMENT OF SENATOR LISA MURKOWSKI

Senator MURKOWSKI. Thank you, Madam Chairman, and Mr. Attorney General. Welcome this morning.

#### STEVENS CASE

I want to follow onto Senator Hutchison's questions regarding the prosecution of Senator Ted Stevens. I think so many of us were absolutely shocked. I was horrified, as a friend, and as an Alaskan, to read Judge Sullivan's comments that this ill-gotten verdict not only resulted in the loss of Senator Stevens losing his seat, but in his words, tipped the balance of power in the U.S. Senate. Pretty powerful, in terms of what DOJ did to a great man.

I appreciate, and I recognize, and I thank you for your actions in dismissing that case, and in your decision to not attempt to retry, and I join Senator Hutchison with that. But, there are questions that still remain. You know that. I have a long series of them, and what I would like to do is submit them to you today, and ask that you respond to them prior to the release of the report, which is due to come out next Wednesday, the 15th of March. So, I would appreciate your attention to that.

#### ATTORNEY'S FEES FOR PROSECUTORS IN STEVENS CASE

I have a question regarding what is happening now with the release of this report. The USA Today reported that DOJ has spent \$1.8 million in defending prosecutors from allegations that they broke the law in the *Stevens* prosecution. And Senator Grassley was one who mentioned that it seems like this is an unseemingly

high amount of money being spent by the taxpayers to defend what appears to be egregious misconduct. And, again, Senator Hutchison has noted the words that Judge Sullivan used in his order, saying that the report demonstrated significant widespread, and at times, intentional misconduct by the prosecutors.

Now, I understand that the \$1.8 million went for attorney's fees to defend the actions of the Justice Department prosecutors who were under investigation for contempt by the counsel appointed by Judge Sullivan. The report of that counsel, again, is due to be released on the 15th. In addition to spending taxpayer money to defend your attorneys, did the taxpayers also pay for the attorneys to argue that the contents of this report should not be publicly released? You have stated that this is a matter that has risen to a level of public attention. So, if you can answer that question for me, and also whether the Justice Department supports the merits of the appeal that has been raised by Mr. Edward Sullivan, who is one of the prosecutors who has asked the U.S. Court of Appeals for an emergency stay to prevent the release of this report next week.

So, the question is whether you support the merits of that appeal, and, again, whether or not the taxpayers are on the hook to pay for his attorneys to argue that this report should be kept from the public.

Attorney General HOLDER. I don't think we take any position with regard to what he has said about his desire to keep the report sealed. The Justice Department has indicated that we do not object to the release of the report. I think that given the issues that we found there, the magnitude of the case, and, frankly, the magnitude of the errors that led me to decide to dismiss the case, that there is a legitimate public interest in knowing as much as we can about what happened, why it happened, what steps the Justice Department has taken in connection with these findings of misconduct.

Senator MURKOWSKI. So is the Justice Department paying for his attorneys' fees in this matter, to keep this from being made public?

Attorney General HOLDER. I don't know about him, specifically, but I do know that as a result of the charges that were brought against them, the determination was made that there would be a conflict of interest for the Justice Department to defend them, which would be typically how we would do it, and they were, therefore, allowed to get outside counsel. Under the regulations, the Justice Department then pays for those legal representations, which has happened in a variety of cases, a variety of circumstances, former attorneys general and lawyers who have been reimbursed by the Government. I'm hoping I won't have to do that, but other attorneys general have done that.

Senator MURKOWSKI. So, even now that the independent counsel that Judge Sullivan had appointed, even though that counsel has found that members of the *Stevens* prosecution had engaged in significant, widespread and, at times, intentional, and again, intentional misconduct, does the Government have any recourse to recover the funds that have been paid for their attorneys' fees, when they have engaged in intentional misconduct?



Now, you mentioned in your comments to Senator Hutchison that after the OPR report, that there may be sanctions that we will see, but is there recourse? Are you pursuing any recourse? It seems to me that in an instance like this, where it has been made clear that the conduct was intentional, that it was substantial, and it was widespread, that we should not be defending and paying for the attorneys' fees to again allow these individuals to conduct such acts, and then to learn that they're still within DOJ doesn't give me much confidence.

Attorney General HOLDER. Certainly, one of the things that happens is that because the Justice Department can't represent these people, and they have their own views of what happened, they want to be able to explain, with counsel, defend themselves. That is why the expenditure of money actually occurred. That is why they are allowed to get outside counsel. As I said, that has happened, not frequently, but it certainly happened in the past, and we acted with regard to them as we have done in the past with regard to the retention of outside counsel.

Senator MURKOWSKI. I would think that \$1.8 million to go to defend these attorneys, who have engaged in intentional misconduct, is just stunning to me. I'd like to think that there could be some recourse.

Madam Chairman, I'm well over my time. I thank you for your indulgence.

Senator MIKULSKI. It was important that you had the opportunity to completely pursue your line of questioning. The situation that has been presented by you and Senator Hutchison, reminding the subcommittee, is deeply troubling. We must have public integrity. We also must have an independent judiciary. We have to have, regardless of which party is in the White House, a Justice Department that we believe in, and that the American people believe in. So, I know the Attorney General will be responsive, and then we'll take it from there.

Senator MURKOWSKI. Madam Chairman, I just want to thank you for those comments, and agree wholeheartedly. And I do think the Attorney General took a major first step, when he dismissed the case. That was huge. But, now we must followup, so that there is no question that the people who did this, and the report will show whatever it shows, that they're not able to prosecute ever again. Ever.

Senator MIKULSKI. Thank you.

Senator MURKOWSKI. Thank you.

Senator MIKULSKI. Senator Pryor.

#### STATEMENT OF SENATOR MARK PRYOR

Senator PRYOR. Thank you, Madam Chair, and Attorney General, welcome to the subcommittee. Thank you for being here.

#### PRISON OVERCROWDING

I want to add my voice to something that was said earlier about prison overcrowding. And I could go through the facts and figures on that, but you know those better than any of us do. It is just a real concern.

One of the prisons that's on the short list is actually in Arkansas, and back in fiscal year 2010, it was scheduled to be funded in fiscal year 2014. Well, now, it keeps getting pushed back. Now, it's fiscal year 2018. So, it's an example of us not being able to fund some of the real needs that we have. I know I'm not alone in that. So, I want to voice my concern there.

#### SEQUESTRATION

Let me ask about sequestration. I don't believe anyone's had a chance to ask about sequestration. And I'm curious about what the Justice Department perceives will happen to DOJ funding if sequestration does, in fact, take place, and what steps you're taking to address that.

Attorney General HOLDER. I certainly hope that's something that we don't have to face. As I look at it, we'd be looking at an across-the-board cut of about 7.8 percent, which would mean a cut of about \$2.1 billion. No Justice component would be exempt from those cuts. And from an operational perspective, we would have to cut personnel funding and nonpersonnel funding.

We are estimating that we'd have to furlough all position types, including agents, Federal agents, FBI agents, DEA agents, ATF agents, and attorneys, who try cases, investigate cases, for an average of about 25 days. We would have to lose permanently a pretty substantial number of jobs. This across-the-board cut would have a devastating impact on the Justice Department's ability to protect the American people, to do investigations. It would be something that would just simply be devastating. My hope would be that the Congress will find a way to avoid this sequestration, which, just from my own parochial interests, which I think actually are the Nation's as well, to really avoid the very negative consequences that could have a permanent impact on our well-being.

Senator PRYOR. And so, you've mentioned these furloughs, but I assume, also, you'd have to suspend the funding of many of your programs that help local and State law enforcement agencies.

Attorney General HOLDER. That's an excellent point. The consequences are not restricted to simply what happens to the Justice Department here in Washington and in our field offices. Our ability to be good State and local partners would certainly be impacted by the reduced amounts of money that we'd be able to share with our State and local partners, in terms of grants, Cops on the Beat. It would be a devastating thing for this to happen.

#### THE JOHN R. JUSTICE PROGRAM

Senator PRYOR. And let me ask about personnel in a little different context. The John R. Justice Program has about 1,600 prosecutors and about 1,200 public defenders in the last fiscal year that received assistance under that program, to help them pay off their student loans, et cetera. But, this budget, as I understand it, does not have funding for that program this year. So, my concern there would be that we want the best and the brightest out there trying cases on both sides. Again, this is public defenders and prosecutors. And in our criminal justice system, it's critical that we have good representation on both sides. And I'm afraid that we're going to lose a lot of talent if we don't have a program like this. Do you

share that concern, and what steps you think we can take to keep the best and the brightest coming on board?

Attorney General HOLDER. I do share that concern. We want the best and the brightest to come and take what are low-paying jobs on the prosecution side, on the defense side. These kids come out of law school with enormous amounts of debt. And I don't want them to make career choices based on how they're going to repay those loans, as opposed to following their passions, and taking their great skills to become members of the Justice Department, State and local prosecutors offices, or on the other side, to be good defense attorneys. And that is one of the things that I'm concerned about.

We have a tough budget, and you're right, the money is not there, to the extent that it was in the past. To the extent that we can work on ways in which we come up with creative things to do to make sure that those career decisions, especially those first job career decisions, by people coming out of law school, are not a function of their financial concerns, but really is a function of how they want to help build a better society.

Senator PRYOR. Thank you.

#### CYBERSECURITY

And Madam Chair, I don't really have time to ask another question, but I would like to just make an observation. The chair of the subcommittee here yesterday took a leadership role in a cybersecurity exercise in a classified setting, and we appreciate her leadership in getting all of us to go and participate. It was very informative, very interesting. And I know that DOJ has been very involved in what's going on with Federal Government cybersecurity issues, and all the task forces and everything you're working on. But, I also hope that you will not neglect the private sector, as well as the State and local governments, because they have a role to play in this as well.

Attorney General HOLDER. That's exactly right. This is not something that the Federal Government can handle by itself. This is a national security issue, certainly, but it's also an infrastructure issue which involves our State and local partners. Then one looks at just the amount of theft that occurs, intellectual property theft, in particular, so that the private sector has to be involved as well.

We have to come up with mechanisms, means by which all of those various components talk to one another, if we ultimately want to be successful in what I think is the most pressing thing that we're going to be facing in the coming years.

Senator PRYOR. Thank you. Thank you.

Senator MIKULSKI. Thank you, Mr. Attorney General. I want to go back to the excellent question Senator Pryor raised about the impact of sequester. Could we have that answer in more detail, in writing, so that everybody would have a chance to study it, and go over it in programs and so we can really grasp the full consequences?

Attorney General HOLDER. Yes.

[The information follows:]

IMPACT OF SEQUESTRATION

The Department of Justice's (DOJ) supports the fiscal year 2013 President's budget request, which would avoid a sequestration, if enacted as proposed. Therefore, I am not describing the impact of a potential sequester, which the administration is committed to avoiding. However, I can describe the impact of an across-the-board cut of 7.8 percent, or more than \$2.1 billion, to DOJ's budget authority. To implement this cut, DOJ would have to cut both personnel and operational funding. Personnel cuts would require DOJ to implement a hard hiring freeze, which would mean losing 4,800 positions, and furloughing all DOJ employees for 25 days. These personnel cuts, along with significant operational cuts, would mean reductions in the apprehension of violent fugitives, fewer Federal Bureau of Investigation (FBI) national security investigations, fewer affirmative litigation efforts, and more crowded prisons. For context, a 7.8-percent cut would mean that the Bureau of Prisons would be cut by \$510 million, FBI by \$730 million, the Drug Enforcement Administration by \$175 million, the U.S. Marshals Service by \$90 million, and the U.S. attorneys office by \$150 million.

Senator MIKULSKI. I'd now like to turn to Senator Graham.

STATEMENT OF SENATOR LINDSEY GRAHAM

Senator GRAHAM. Thank you, Madam Chairman. I'd like to add my voice to what you just echoed, and Senator Pryor, that sequestration, as it's set up, would devastate DOJ, our ability to defend ourselves, and destroy the military, and surely we can find a better way to do it than that. So, I think you're dead on. This is just an ill-conceived idea of cutting money blindly, in my view.

Now, you were in South Carolina couple days ago, is that right, Mr. Attorney General?

Attorney General HOLDER. It was yesterday.

Senator GRAHAM. Yesterday. Well, we're glad to have you. Hope you spent money while you were there.

Mr. HOLDER. I did.

NATIONAL ADVOCACY CENTER

Senator GRAHAM. But, the National Advocacy Center (NAC), in Columbia, that you visited, what would you tell the subcommittee about the NAC, in terms of being a value to the Nation?

Attorney General HOLDER. It is an invaluable resource for us.

Senator GRAHAM. Did you all hear that?

Okay. I'm sorry. Go ahead.

Attorney General HOLDER. No. I mean it is. It is an invaluable resource for the training that goes on in the Justice Department. It is one that I think could actually be expanded. I'm concerned that we're not interacting with our State and local partners to the extent that we once did in doing training with them. We're trying to bring into the NAC people from the defense side as well. It's where people learn to be good trial lawyers, learn a variety of skills, learn their ethical obligations. It's an invaluable resource.

Senator GRAHAM. Well, we appreciate your visit, and it will be a place where, you know, cybersecurity is probably the issue of the 21st century, and whether it's a crime, an act of war, it depends, I guess, who's involved, but a lot of local law enforcement folks probably have no idea how to handle this, and it would be a good way to kind of educate the country as a whole. And the collabora-

tion between the University of South Carolina and the NAC, I appreciate.

And I want the subcommittee to know that we took about 200 or 300 DOJ jobs out of Washington, because after 9/11, we were worried about having every part of our Government in one city. And we moved those folks down to South Carolina, in Columbia, and you leased a building from the university. It saved about \$35 million. So, I just want to applaud you for trying to be creative to decentralize DOJ, so that in case we're ever attacked here, we don't lose all of our national assets, and it was a way to save money.

Attorney General HOLDER. And we also have that relationship with the university about the rule-of-law component as well. And I think that's been a good synergy.

Senator GRAHAM. To my colleagues, and I've been to Afghanistan and Iraq, like many of you, and we're trying to develop a rule-of-law program in Iraq, Afghanistan, Africa—you name it. Without some basic rule of law, no country can develop. And all the lessons we've learned the hard way, from making mistakes, but finally getting it right in many ways, we're trying to create a center at the University of South Carolina, where those who have been overseas can share their thoughts about what worked, what didn't. You could train before you went. DOJ, Department of Agriculture, and the Department of Defense, this is a team.

This war requires a team concept. And we're trying to reach out to the Islamic world and create partnerships with lawyers, and attorneys general, and judges in the Islamic world, so we can understand them better, and they can understand us. And I'm excited about it, and I appreciate your support.

#### REVAMPING THE FEDERAL CRIMINAL CODE

Now, Justice Scalia came out yesterday, or the day before, talking about, he thought it would be wise if we looked at our Federal criminal code, particularly in the drug area, to see if we could reform it. And I think he's right. I think we've Federalized way too many crimes, creating work for our judiciary that could probably be handled better at the State level. What do you think about the idea of revamping the Federal criminal code, and looking at maybe undoing some of the over-Federalization?

Attorney General HOLDER. When I came into office, I set in place a number of working groups to look at that issue. Are we bringing the right people into the Federal system? Are the sentences that we have for the crimes that are Federal ones appropriate?

Senator GRAHAM. Like crack cocaine. We finally fixed that, but that was just sort of an indefensible sentencing disparity.

Attorney General HOLDER. Right. I think the bipartisan effort that resulted in the lowering of that ratio from 100 to about 16 to 1 was something that was long overdue, and was a great example. People don't focus on it, but it was an example of Republicans and Democrats getting together and doing the right thing, not only for the system, but it was something that I think was morally right as well.

## RECESS APPOINTMENTS

Senator GRAHAM. And an area where we may disagree, we'll talk about the law of war later, we don't have time here, but the recess appointments made by President Obama a while back to the National Labor Relations Board, is there a situation similar to that in the history of the Senate, or by a previous President, of appointing someone to a Federal agency under those circumstances, that you're aware of?

Attorney General HOLDER. If you look at the 23-page report by the Office of Legal Counsel (OLC), they go through a variety of precedents. They look at the laws that exist, tradition, and the conclusion that they reached was that given the length of the recess, 20 days, or so, that the appointments were, in fact, appropriate. This is obviously something that the courts are going to ultimately decide, but I think that the OLC opinion was accurately described.

Senator GRAHAM. I think Senator Alexander will have a discussion with you about that, but I take a different view. But, I'll let him discuss that with you.

## MILITARY COMMISSIONS

And finally, just to note, I think, maybe it was last week, we had a plea bargain with a military commission detainee who was one of the Khalid Sheikh Mohammed close confidantes. And I know Mark Martins is the chief prosecutor, and you've got a good defense team down there. I do support Article III courts for terrorism trials, when appropriate. But, I just want to acknowledge your support for military commissions in appropriate circumstances, and with your help, I think we've got these things up and running, and I look forward to more action coming out of Guantánamo Bay to get some of these people through the legal system. So, thank you for that support. And to all those at Guantánamo Bay doing your job, you're doing the country a great service, particularly the defense counsels.

Attorney General HOLDER. I think that's right. I think that people should understand that the revised commissions that exist, as I said in my speech at Northwestern, have many of the elements of due process that we consider vital to the American system. I think we have great defense lawyers down there.

The military system doesn't get the credit that it deserves for the fair way in which it deals with people, and under the direction of Mark Martins, who's a person I've known for some time, I think we'll be proud of the work they do.

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

We're now going to turn to Senator Feinstein. Before Senator Pryor leaves, I thank you and others for mentioning the cyber exercise yesterday, and all who participated. Next week, we're going to hear from the FBI, and we're going to do an open hearing, and then we're going to do a classified hearing. This will be an opportunity to ask many of your cyber questions and go into the level of detail I think the subcommittee would like. So, thank you.

Senator Feinstein.

## STATEMENT OF SENATOR DIANNE FEINSTEIN

Senator FEINSTEIN. Thanks very much, Madam Chairman, and welcome, General.

I want to associate myself with the comments of Senator Murkowski and Senator Hutchison. To me, the tragedy is that Senator Ted Stevens died before he knew this was a faulty prosecution. And that, to me, elevates this to a new height. And so, I think this investigation is really important. And I think that actions have to be taken. And I just wanted to express that.

## OIL SPECULATION

I wanted to followup on Senator Brown's comment. It's my understanding that there's more oil available in the United States than demand calls for. And as a matter of fact, surplus is being sold outside. This, I think, would bring to special attention the issue of speculation. And I hope the study that you're doing is going to take a good look at the financial marketplace, with regard to its ability to impact price in this way.

Attorney General HOLDER. The Oil and Gas Price Fraud Working Group that we formed last year as part of the President's Financial Fraud Enforcement Taskforce has been meeting. It just happens that they are having a call today, and a meeting, I think either tomorrow or on Monday. The full committee will be getting together to look at the issues that you've raised and the issues that Senator Pryor raised.

Senator FEINSTEIN. Good. Thank you.

## FOREIGN INTELLIGENCE SURVEILLANCE ACT

As you know, title 7 of the Foreign Intelligence Surveillance Act (FISA) expires at the end of the year. This allows for electronic surveillance of targets outside the United States. Senator Mikulski and I both serve on the Senate Intelligence Committee, and we've done extensive oversight of the Government's use of these surveillance authorities, and look forward to working with you to make sure Congress can reauthorize title 7 well before the end of 2012. We need to maintain the collection of critical foreign intelligence and provide certainty to intelligence professionals in that regard.

For members of this subcommittee that don't follow this issue closely, could you explain the need to reauthorize title 7 of FISA and the efforts taken to protect the civil liberties and privacy of Americans, as this title is carried out.

Attorney General HOLDER. The surveillance authorities that are in the FISA Amendments Act are absolutely critical to our national security. On a day-to-day basis, I authorize FISAs, the head of the National Security Division does, sometimes the Deputy Attorney General. It is a critical tool that we have in keeping the American people safe. The administration strongly supports the reauthorization, and as you indicated, hopes that it occurs well before the end of the year, so that the certainty that is needed by the men and women who are in our intelligence community will have some degree of assuredness that those tools will remain there, and that our fight against those who would do harm to the United States can continue.

## NATIONAL SECURITY

Senator FEINSTEIN. Thank you. I also want to thank you for your enormous help and the help of FBI with respect to national security. FBI now has thousands of agents and analysts located around the United States, essentially doing intelligence work. So, that transition has been effectively made.

Director Mueller, at a worldwide threat hearing, indicated to us that in the past year there have been 20 arrests in the United States of people in this country planning or participating in attempted terrorist attacks. And as you mentioned in your recent testimony, Umar Farouk Abdulmutallab was recently sentenced to life in prison.

Now, I also want to say that even though its specific activities are classified, in your written testimony, you mention the High-Value Detainee Interrogation Group, or the HIG, as we call it. I can say that we've seen the excellent intelligence the HIG is producing. And earlier this week, also, four principle members of hacking groups, Anonymous and LulzSec, were charged with computer hacking, and a fifth member pled guilty.

## NATIONAL SECURITY FUNDING

Now, to my question. It's two-fold. I think we have to begin to look for redundancy and duplication of effort. We now have a counterterrorism center. We now have Homeland Security with intelligence, and we also now have FBI. And so I hope you will take a look at that, because the dollars are precious, and we're already experiencing cuts in the intelligence budget.

So, here's my question. What are, in the national security area, your budget reductions? What will that mean for counterterrorism, and are there any gaps in our efforts?

Attorney General HOLDER. We have adequate amounts of money contained in the budget that we have requested. If you look at the amount of money that has gone to FBI in the national security sphere, since 2001 we've had about a 300-percent increase for the Justice Department. For FBI, it might have been about 400 percent. So, it's a very substantial increase over the course of the last 10 years or so. Even with the flat budget that we essentially have for the Justice Department and its components, including FBI, we have adequate amounts of money to keep the American people safe.

I will tell you that to the extent that I feel that it is not the case, my voice will be heard. We have no greater responsibility than keeping the American people safe.

Senator FEINSTEIN. Good. Thank you very much. Thank you, Madam Chairman.

Senator MIKULSKI. Senator Feinstein, we look forward to working with you on that part of it.

Senator Alexander.

## STATEMENT OF SENATOR LAMAR ALEXANDER

Senator ALEXANDER. Thanks, Madam Chairman, and General Holder, welcome. It's good to see you. I was thinking about a conversation we had during your confirmation about Griffin Bell, for whom you worked, and I know you admired him, and I certainly



admired him. I was a law clerk on a court when he was judge. And one of the things he used to say and which I've heard you say, I think, too, is that the attorney general is the lawyer for the United States, not just the lawyer for the President.

RECESS APPOINTMENTS

So, in following up with Senator Graham's comment on the so-called recess appointments, I wanted to ask you a question. As the lawyer for the United States, if the President calls you up and said, "General Holder, I notice that the Senate's gone into recess for lunch. I've got a Supreme Court nominee I want to appoint. Can we put him on the court without their advice and consent?" what would your answer be?

Attorney General HOLDER. Going to lunch? That would not be a sufficient recess.

Senator ALEXANDER. Well, what if he said they're going to recess for lunch and for dinner, and they won't be back until tomorrow? Would that be a sufficient recess?

Attorney General HOLDER. What we're getting at, if you look at that OLC opinion, they would—

Senator ALEXANDER. I'm asking your opinion, Mr. Attorney General.

Attorney General HOLDER. Well, I associate myself with that OLC opinion.

Senator ALEXANDER. Does that mean you agree with it?

Attorney General HOLDER. With the OLC opinion?

Senator ALEXANDER. Yes.

Attorney General HOLDER. Yes.

Senator ALEXANDER. You do agree with it.

Attorney General HOLDER. Yes.

Senator ALEXANDER. Then that means that the President, not the Senate, can decide when it's in session for purposes of advice and consent.

Attorney General HOLDER. Well, one has to look at the reality, the totality of the circumstances, in determining whether or not the Senate is actually in session, as that term has historically been used, and the determination made by OLC was that given the—

Senator ALEXANDER. Well, if we look at that, Mr. President, was your deputy solicitor wrong when he told the Supreme Court in a letter 2 years ago that the Senate may act to foreclose recess appointments by declining to recess for more than 2 or 3 days at a time? And was Senator Reid wrong in 2007 when he really devised the plan for pro forma 3-day sessions, because he said he heard that President Bush was about to make recess appointments. And Senator Reid said on November 16, 2007, "With the Thanksgiving break looming, the administration has informed me they want to make several recess appointments. As a result, I'm keeping the Senate in pro forma to prevent recess appointments until we get back on track." And the next year he said, "We don't need to vote on recess. We'll just be in pro forma session. We'll tell the House to do the same thing." President Bush didn't like it, but he respected it.

So, are you saying that the President, not the Senate, can decide when it's in session for purposes of a recess appointment?

Attorney General HOLDER. What we have to do and what we have done in this OLC opinion is look at history, look at precedent, look at the law, use some common sense when it comes to the approach of whether or not the Senate is actually in session.

Senator ALEXANDER. Well, was Senator Reid wrong?

Attorney General HOLDER. The determination that we made here was that with regard to that 20 days in which those pro forma sessions were occurring, that those were, in fact—

Senator ALEXANDER. But the Senate had decided it was in a 3-day session, according to the Reid formula. So, was Reid wrong about that?

Attorney General HOLDER. I'd have to look at exactly what occurred during that 3-day period, but given the facts that were presented to OLC in this instance, I think the determination that they made was correct.

Senator ALEXANDER. So, I don't see why the President couldn't look at the Senate and say, "I'm going to send up a Supreme Court justice, and I'm going to skip advice and consent." I'm astonished by this, really. And I would think Democratic as well as Republican Senators would honor the Reid formula that President Bush honored. The Senate did the very same thing in January, and the President, nevertheless, made four appointments during the time when constitutionally he shouldn't have, according to all the precedent that I've seen.

Attorney General HOLDER. The only thing I'd correct is that the determination was not made by the President. The determination was made by OLC, we then shared that opinion with the President, and the President made the decision as to what he wanted to do.

Senator ALEXANDER. He made the decision not to respect the Senate's decision about when it's in session or when it's not, which, to me, is a blatant lack of regard for the constitutional checks and balances, and something that we ought to avoid.

#### METHAMPHETAMINE LABS

May I ask quickly a question? Last year, the Department found money to support the work against methamphetamine, and I compliment the Department for that. I know it's getting increasingly harder. In our State, we had the highest number of meth lab seizures in the Nation. The money's running down. The State's increasing its funding. Will the Department again be able to try to help States that are working on this, as you were able to do last year?

Attorney General HOLDER. We are certainly going to try to, as best we can. I know one of the things that we have seen with regard to the cleanup of meth sites is that there have been a number of these container activities. I think this is right, that Tennessee is actually a leader in that effort.

Senator ALEXANDER. Yes.

Attorney General HOLDER. There have been a number of States that have come up with things, and instead of it costing, I don't know, \$3,000, \$4,000, \$5,000 to do that, it actually comes down to \$200 or \$300. The experience that we have seen there is something that we have to extrapolate and use in other parts of the country as well.

Senator ALEXANDER. Thank you, General Holder. Thank you, Madam Chairman.

Senator MIKULSKI. Senator Lautenberg.

Senator LAUTENBERG. No. I think——

Senator MIKULSKI. Oh. I'm sorry. Wait. Wait. It's a little rock-and-roll in here today. First of all, Senator Leahy, the chair of the Judiciary Committee, excuse me, and then Senator Lautenberg.

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Thank you, Madam Chair.

RECESS APPOINTMENT

Attorney General Holder, good to have you here. If I could just follow-up a little bit on what my good friend from Tennessee, Senator Alexander, said on the recess appointments. There is an easy way out of all of this. It requires a little cooperation on both sides. And I suggested this in the Judiciary Committee, that the President resubmit the nominations, and the Republicans agree to have an up or down vote, say, within 1 week or 2 weeks. The President did this, because even though everyone knew there were more than 50 votes, which is normally what it takes to confirm somebody, available, my friends on the other side of the aisle were blocking having a vote.

I understand the President's frustration, but I think the easy way out of this is simply if the Republican leadership would agree to an up or down vote, say, within 1 week or 2 weeks, whatever amount of time needed for it to be, and resubmit them and have the up or down vote. That takes care of all the problem. I just would suggest that as an easy way out. It's not as much fun on the talk shows, but it helps the Government.

GRANT PROGRAM DUPLICATION

Mr. Attorney General, your Department administers many crucial grant programs that help victims and law enforcement, including ones that I've been very heavily involved with, the Violence Against Women Act programs. And as you know, Senator Crapo and I have a reauthorization bill on the COPS grants and the bulletproof vest partnership program. GAO has said there's duplications and inefficiencies in some of the grant programs.

Will your Department work to make sure if there are any duplications that they be removed? Because these are good programs, but there's only so much money to go around.

Attorney General HOLDER. That's exactly the problem that we have. There's limited amounts of money to go around, and we have to make sure that there's not duplication. Managers from OJP, from COPS, OVW regularly meet to coordinate their programs, their activities. I think that one thing that people should not assume is that because, for example, you see the word "victim" in a number of the things that we do in the Department, that necessarily means that we're duplicating efforts there. They have very distinct responsibilities. We are working to make sure that the money that we have is being used in an efficient and appropriate way.

## BULLETPROOF VESTS

Senator LEAHY. One of the things I'm very proud of for my time here in the Senate is a bill that I wrote with then-Senator Ben Nighthorse Campbell on bulletproof vests, so much so, that I walked down the street in Denver, Colorado, 1 year or so ago, a police officer came up, asked if I am who I am. And I said, "Yes, I am Senator Leahy." He just tapped his chest and said, "Thank you."

But, we've been told by GAO that there's some funds that have not been obligated on the bulletproof vest partnership grant program. Law enforcement—especially in the smaller communities, where they do not have the budget to buy the bulletproof vests, which are \$500, \$600—need these funds. Can you check to make sure these funds are obligated as quickly as possible?

Attorney General HOLDER. Yes. To the extent that funds were not drawn down, we are taking steps to allow jurisdictions to use that unused funding, and have the time period with which they could drawdown extended, so that we can get these bulletproof vests out to these officers.

Senator LEAHY. And I would reiterate what I had told you when we chatted earlier this week, when I was in Vermont, about your speech earlier this week in guiding drones and targeting of U.S. citizens, I still want to see the OLC memorandum, and I would urge you to keep working on that. I realize it's a matter of some debate within the administration.

Attorney General HOLDER. That would be true.

Senator LEAHY. And please keep my staff and me updated on the progress of the review of the NYPD surveillance of Muslim Americans.

Attorney General HOLDER. We will.

## SAME-SEX IMMIGRATION PETITIONS

Senator LEAHY. And last, I wrote to you and the Secretary of Homeland Security, Janet Napolitano, to encourage you to hold marriage-based immigration petitions for same-sex spouses in abeyance, in light of the administration's decision to no longer defend the constitutionality of the Defense of Marriage Act. I heard it may be granting individual cases. I hope you will reconsider the administration's position.

We have a case I've written to you about, Frances Herbert and Takako Uedo, who are married in Vermont lawfully. We have a number of States where same sex marriages are legal, but then they run up against the immigration problem. So, please review that.

Attorney General HOLDER. Okay. I will look at that case, and we'll get back to you, Senator.

Senator LEAHY. Thank you. Thank you, Madam Chair.

Senator MIKULSKI. Those were excellent points, Senator Leahy, and thank you very much.

Senator Lautenberg.

## STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Thanks very much, Madam Chairman, and welcome, Attorney General Holder. The job doesn't seem to be getting easier, and I'm not blaming you. I'm just sympathizing in some ways.

Attorney General HOLDER. It's a good observation.

## VIOLENT CRIME

Senator LAUTENBERG. Not so much that I won't ask for more, because we're doing with less, and we see it in my State of New Jersey, 246 gun murders in 2010; 12 percent more than the previous year. We've had layoffs galore from cities that can't afford to maintain their police force structure. So, when I look at the things that we're doing, I worry about what it is that we can do from your Department and from others. What can we do to help these communities? State budget cuts have caused Newark, Camden, and other cities in New Jersey to cut their police forces at alarming rates; one-third of the police force in Camden, more than 100 terminations of police officers in Newark.

In December, I wrote asking if you could provide Federal resources to assist our ailing cities, and I am pleased, Mr. Attorney General, to see an increase in the budget for COPS grants. Is DOJ planning other steps that we can use to help protect New Jerseyans from violent crime?

Attorney General HOLDER. We're certainly making sure that in terms of COPS grants we do the best that we can there. We have a substantial amount of money in the budget. I spoke to the mayor of Camden. I was at a reception and I saw her. We have certainly, with regard to Camden, in 2011 made available monies to hire 14 officers, \$3.79 million; 2010, 19 officers, \$4.2 million. We'll be looking at that kind of unique situation again this year. We certainly are putting into New Jersey, and in other places, task forces, so that the DEA, the ATF, the FBI are helping to the extent that we can, as well.

There are a variety of ways in which the Federal Government can help, given the economic situation that many cities around the country are facing. We want to be good partners in that way. Camden is a place that deserves special attention, given the unique problem that we see there.

Senator LAUTENBERG. Can I ask your view on whether or not you think we're doing enough between your Department, the FBI, our State and local police people? Are we doing enough, based on what we see with the statistics? Do you think that we're doing enough to say honestly that we're protecting our people appropriately?

Attorney General HOLDER. We have crime rates that are at historic lows, 40- and 50-year lows, and yet, I'm still troubled by the number of police officers, for instance, who have been killed in the line of duty in the last 2 years, where we've seen a 16-, 20-percent increase there. That is something that we have to work on.

I'm concerned about the fact that although the numbers of murders are down, 67 percent of them occur by people who are using firearms. That's an issue that we have to deal with. Too many of the wrong people have access to guns, and they use them in inap-

propriate ways. The targets of many of those people are law enforcement officers, who are sworn to protect us, and we have to do everything that we can to try to protect them.

#### HIGH-CAPACITY AMMUNITION

Senator LAUTENBERG. Well, the wrong people or wrong laws? The man who shot Congresswoman Giffords last year used a gun with a high-capacity ammunition clip to kill 6 people, wound 13. It was only when he fired all 31 rounds in his clip that people were able to subdue him. And these high-capacity magazines were banned by the Congress until 2004. Last year, you said that you thought that reinstating this ban should be examined. What's the result of that examination?

Attorney General HOLDER. We're still in the process of working our way through that. I think there are measures that we need to take. We need to be reasonable, understanding that there is a second amendment right with regard to firearms, but even the dissent in the *Heller* case indicated that reasonable restrictions can be placed on the use of weapons. What this administration has tried to do is to come up with ways in which we are respecters of the second amendment, and yet come up with reasonable, appropriate firearms laws that will ultimately protect the American people.

Senator LAUTENBERG. Madam Chairman, your indulgence for one more question, please.

#### NEW YORK POLICE DEPARTMENT SURVEILLANCE

Over the past several years, the NYPD has been engaged in surveillance of New Jersey's communities and universities searching for those who might be accused of terror; Governor Christie and Newark Mayor Cory Booker both were apparently unaware of this large-scale investigation. How can the law enforcement agencies spy on another State's residents without notifying the authorities, the Governor, the mayor even knowing about it?

Attorney General HOLDER. I don't know. We are in the process of reviewing the letters that have come in expressing concerns about those matters. There are various components within the Justice Department that are actively looking at these matters. I talked to Governor Christie. Actually, I saw him at a reception a couple days or so ago, and he expressed to me the concerns that he had. He has now publicly expressed his concerns, as only he can. I think, at least what I've read publicly, again, just what I've read in the newspapers, is disturbing, and these are things that are under review at the Justice Department.

Senator LAUTENBERG. Thank you, General Holder. Thank you, Madam Chairman. I assume the record will be kept open.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. The record will be kept open for questions, and we then ask the Department to respond within 30 days. Senators may submit additional questions. We ask the Department to respond within 30 days.

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

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

*Question.* The Department's request for State and local grants is \$2 billion. This is down from roughly \$3.7 billion funded for grants in fiscal year 2010.

What is the total amount of money applied for in these competitive grant programs versus the amount actually awarded to States and localities?

*Answer.* In fiscal year 2011, Office of Justice Programs (OJP) received a total request of more than \$7.1 billion in discretionary applications; OJP awarded more than \$850 million in discretionary funding.

In fiscal year 2011, the Office on Violence Against Women (OVW) OVW had applications totaling \$1,150,510,742; OVW awarded \$457,900,491 in grants. OVW's yearly budget requests seek funding to support four core priorities of OVW:

- preventing violence against women;
- addressing sexual assault;
- extending our programming to underserved communities; and
- restoring and protecting economic security to victims of violence.

For fiscal year 2012, \$412,500,000 was appropriated to OVW to further the Department's efforts to improve the Nation's response to domestic violence, dating violence, sexual assault, and stalking. The fiscal year 2013 overall request for the OVW totals \$412,500,000, making the fiscal year 2013 total resource request for OVW equal to the fiscal year 2012 enacted appropriation.

In fiscal year 2011, the Office of Community Oriented Policing Services (COPS) received applications totaling \$2,067,924,397. COPS awarded more than \$313 million in grants funding. The COPS office received \$243,439,595 for the COPS Hiring Program in appropriated funds for fiscal year 2011 and awarded \$243,398,709. All agencies were asked to cap their request at no more than 5 percent of their current actual sworn force strength, up to a maximum of 50 officers. However, in order to provide funding assistance to the largest number of eligible agencies, the COPS office decided to further reduce the cap from a maximum of 50 officers to 25 officers. Had this methodology not been adopted as part of the hiring program solicitation, the total amount that would have been requested would have been \$5,354,837,329. For fiscal year 2012, \$166,000,000 was appropriated for the COPS Hiring Program. The COPS office will make 2012 hiring awards later this summer. The fiscal year 2013 budget request includes \$257,087,000 for the COPS Hiring Program.

DUPLICATION IN GOVERNMENT PROGRAMS

*Question.* The Government Accountability Office (GAO) recently released an updated version of its 2011 report on duplicative Government programs, "Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue", as well as a new 2012 version of the report. In 2011 and 2012, GAO counted Department of Justice (DOJ) programs among those that are potentially duplicative.

Has the Attorney General conducted an assessment to better understand which State and local grant programs overlap with one another to prevent unnecessary duplication, as the GAO report recommended?

*Answer.* Improving the effectiveness and efficiency of Federal programs is a critical priority of the administration and the Department. The Department is committed to continuing efforts to prevent unnecessary duplication, identifying overlaps in programs, and streamlining where it would ensure more effective grant assistance. The Department will initiate an assessment to better understand the extent to which Department grant programs may overlap and identify ways to mitigate the risks for unnecessary duplication. This assessment will be conducted by OJP's Office of Audit, Assessment, and Management.

*Question.* Has Department staff reviewed the report and conducted the analysis of grants recommended by GAO?

*Answer.* The Department appreciates the work of GAO and has carefully considered the findings and recommendations presented in GAO's report. The Department agrees that preventing unnecessary duplication in Government programs is a critical priority. The Department's grant agencies have significantly improved collaboration and information-sharing to mitigate the risk of duplicative Federal spending. The DOJ grantmaking agencies closely collaborate on the development and implementation of grant programs and share information with each other to improve coordination prior to making awards. The Department components will continue to co-

ordinate with one another to ensure sound stewardship and management of its grants.

*Question.* What independent steps have the Justice Department taken—prior to the release of the GAO report—to identify potentially duplicative grant programs?

*Answer.* DOJ grantmaking agencies closely collaborate on the development and implementation of grant programs to avoid the types of potential problems cited by GAO. Managers from OJP and its bureaus, COPS, and OVW meet regularly to coordinate their programs and objectives, and they pay particular attention to those areas where they have complementary joint programs. Additionally, the executive branch annual budget process provides a multi-level review of all component budgets and requires programs to be modified or deleted if overlap or duplication is identified. It is important to note, however, that overlapping activities do not necessarily signify duplication. For example, the following selected examples demonstrate the Department's commitment to work collaboratively among its own components as well as Federal Governmentwide to improve performance and effectively target the public safety needs of our communities.

- In January 2011, the first meeting of the Federal Interagency Reentry Council convened. The council addressed short-term and long-term goals on prisoner reentry through enhanced communication, coordination, and collaboration across Federal agencies.
- OJP is leading a parallel staff level effort, which includes 35 people from 17 different Federal agencies including the Departments of Health and Human Services (HHS), Housing and Urban Development (HUD), Labor (DOL), Education (ED), Veterans Affairs, Agriculture, and the Social Security Administration, and others.
- OJP is also spearheading the National Forum on Youth Violence Prevention, which is an effort launched, at the direction of the White House, by DOJ and ED, to directly and locally address the needs of communities that continue to experience high levels of youth violence. Using comprehensive technical assistance, the Forum enables Federal agencies to serve as a catalyst for broad-based positive change at the local level in a very efficient, cost-effective manner.
- For the first time, all of DOJ's components and leaders are working together to provide the most efficient and timely information to tribal communities. As cited in the GAO report, beginning in fiscal year 2010, the Department created the Coordinated Tribal Assistance Solicitation (CTAS), which coordinates the applications of most of the Department's tribal government-specific criminal justice assistance programs administered by OJP, OVW, and COPS under one solicitation. Through CTAS, tribes can apply for funding for many of their criminal justice needs with one application.
- The Tribal Law and Order Act enacted in July 2010, contained amendments to multiple laws with an impact across DOJ activities in Indian country, including a number of OJP programs. The CTAS collaborative experience readied us for statutorily mandated coordination required for law enforcement, training, increased grants authority, and crime data analysis and reporting.
- We are partnering with other Federal agencies to conduct inventories of Federal resources, develop interagency memorandums of agreement, and long-term comprehensive plans to improve our performance, eliminate duplication, and identify gaps to better serve tribal governments and their communities, in consultation with tribes.
- DOJ is an active participant in the Senior Policy Operating Group (SPOG), which coordinates Federal strategies and programs to combat human trafficking. National Institute of Justice and the State Department co-chair the SPOG Committee on Data and Research.
- The Attorney General's Defending Childhood Initiative is being coordinated across OJP, COPS, OVW, the U.S. Attorneys offices, as well as other components within the Department and the Federal Government.
- The Neighborhood Revitalization Initiative, which is a White House-led interagency collaboration, is executing place-based strategies to engage and support local communities in developing and obtaining the tools they need to revitalize their own neighborhoods of concentrated poverty.
- The Federal Government already directs significant resources to these neighborhoods, but we can always look for additional ways to continue to support them. Better alignment of Federal programs will help local leaders to use Federal funds more effectively, making our taxpayer dollars go further.
- Through our Byrne Criminal Justice Innovation program, OJP and the Department will strengthen partnerships with HUD, ED, HHS and the Treasury in distressed neighborhoods to implement effective strategies to address persistently high violent crime, gang activity, and illegal drugs.



- The COPS office is heavily invested in the White House initiative, Strong Cities Strong Communities, where it provides technical assistance to the Chester, Pennsylvania police department on issues such as crime analysis, faith-based partners, and community-based government problem-solving.
- To further advance national discussion regarding these important topics, the COPS office and OJP's Bureau of Justice Assistance have convened an Officer Safety and Wellness Group that brings together law enforcement leaders, criminal justice practitioners, Federal agencies, professional organizations, and academics to share perspectives on improving officer safety and wellness.

Additionally, the Department is working as a whole to coordinate and improve our grants management efforts. The Associate Attorney General's Office leads the DOJ-wide Grants Management Challenges Workgroup. The Workgroup is comprised of grants officials from COPS, OJP, and OVW, to share information and develop consistent practices and procedures in a wide variety of grant administration and management areas. In fiscal year 2011, the working group successfully implemented the DOJ-wide high-risk grantee designation program and a DOJ-wide, online financial training tool for DOJ grantees.

*Question.* Have you met with any roadblocks in the Department's attempts to eliminate or consolidate potentially duplicative programs?

*Answer.* The Department is committed to continuing efforts to consolidate grant programs as appropriate and use "evidence-based" approaches to identify programs that work, as well as those that do not. An example of this effort is the fiscal year 2013 President's budget proposal for the consolidation and expansion of funding for Drug Courts and the Mentally Ill Offender Act Program. A similar proposal also was included in the fiscal year 2012 President's budget, but not adopted.

In fiscal year 2012, the Congress supported the Department's budget proposal to merge several youth-oriented programs under OVW into one single program.

We are working smarter by promoting evidence-based approaches and developing and spreading knowledge about what works and what causes crime and delinquency because of limited resources. Evidence-based knowledge is critical to help policymakers at the Federal, State, and local levels know what to fund, what not to fund. For example, OJP has developed tools such as CrimeSolutions.gov and the Diagnostic Center, which help jurisdictions focus on evidence-based "smart on crime" approaches to maximize resources and improve public safety results.

*Question.* Does the Department think that the programs listed in the report are duplicative? Why or why not? What grant programs do the Department view as duplicative?

*Answer.* In its comments to the GAO on the report, the Department expressed significant concerns with GAO's methodology and identified flaws in its analysis. This flawed methodology resulted in a substantial overstatement of the number of programs that might potentially be operating in the same policy area. GAO categorized 253 solicitations into broad justice areas to identify "evidence of overlap" in justice areas. This approach is oversimplified and imprecise, resulting in a large number of solicitations in each broad category. Narrowing the justice areas would have provided for a more informative analysis of where DOJ funding is being applied. For example, the "technology and forensics" category is extraordinarily and unnecessarily expansive. Refining this justice area—such as information sharing standards development, criminal intelligence sharing, DNA backlog reduction, equipment and materials testing—would have been more informative, accurate, and less misleading.

Additionally, the GAO report identified 56 solicitations providing victim assistance, citing these as overlapping. While some might look at DOJ and see overlapping programs related to crime victims, what we actually have are programs directed at providing direct assistance and counseling to victims and their families; programs directed at training community law enforcement entities to better address the needs of victims; academic and forensic programs directed at research on victim issues; and statistical collections providing national data on the incidence of victimization and the consequences to crime victims.

GAO did not identify actual duplication; rather it cited examples of potential duplication. DOJ examined the award information of these grants and found no instance of grantees receiving funding to carry out the same activities. Although GAO acknowledges DOJ's review, the examples remain in the report to support its "findings." One example cited in the report as potential duplication involves the Office of Juvenile Justice and Delinquency Prevention and COPS grants to the Georgia Bureau of Investigation. DOJ determined that each of three grants is being used to target different issues:

- child prostitution and potential sexual slavery issues in Georgia;
- Internet crimes against children; and

—identification of sex offenders.

A second example reports that one applicant received funding under two awards from OVC and OVW to support child victim services through its child advocacy center. DOJ reviewed these grants, to the Tulipe Tribes of Washington, and determined that the tribe sought multiple funding sources because one source did not adequately cover the costs to establish the center and then carry out its activities in subsequent years.

Further, the Department was concerned with the lack of understanding that GAO showed related to the Department's "leveraging" and sustainability funding strategy. GAO concluded that DOJ's granting agencies have awarded multiple grants to the same communities for the same or similar purposes. Although GAO acknowledges, "there may be times when Justice's decision to fund grantees in this manner may be warranted", the content and tone of the report wrongly infers that recipients receiving related grant funding from more than one agency is wasteful or unnecessary. Due to limited funding, DOJ encourages grantees to use multiple funding streams in a complementary manner to support local needs and implement comprehensive programs. DOJ and other agencies encourage this as a "leveraging" and sustainability strategy.

*Question.* What steps are the Department and the administration taking—both independently and together—to eliminate duplication, abuse, and waste in the Department's grantmaking process in response to the GAO report?

*Answer.* The Department has been proactive in identifying and addressing unnecessary duplication. During the program design and the annual budget formulation process, the Department carries out the following actions to avoid duplication and overlap:

- Components regularly collaborate during the budget formulation process.
- DOJ's Justice Management Division Budget Division and senior officials review all component budgets prior to their submission to the Office of Management and Budget and require programs to be modified or deleted if overlap or duplication exists.

In addition, there are systems and tools in place that can be used to ascertain if duplication of awarded funds exists. Such as:

- All three DOJ major grantmaking components (OJP, COPS, and OVW) use the same accounting system and OJP and OVW both use the Grants Management System (GMS). All GMS users can access detailed program information.
- OJP's Office of the Chief Financial Officer conducts financial monitoring of grants of all three DOJ grantmaking components (OJP, COPS, and OVW) and identifies potential areas of overlap between programs and related funding.
- DOJ grantee audits (both single audits and Office of Inspector General grant audits) represent an independent examination of funding at the grantee level. Single audits, which are mandatory for grant recipients who expend more than \$500,000 in Federal funds during a fiscal year, provide the auditors with an opportunity to examine funding and related expenditures for all grant programs.

As it relates to existing program areas that cross components:

- OJP, COPS, and OVW regularly collaborate with other DOJ components in areas where programs overlap to ensure that efforts are efficient and effective. For example, the Attorney General has convened the Federal Interagency Reentry Council in which 18 Federal agencies participate.
- DOJ coordinates intra-agency working groups to develop and improve programs and reduce the possibility of duplication and overlap. For example, CTAS involves DOJ, OJP, COPS, and OVW in development of a single solicitation for all DOJ grants for tribal governments.
- OJP also leads interagency coordination groups to strategically utilize each component's strengths and minimize duplication. For example, OJP leads the National Forum on Youth Violence Prevention with strong participation from COPS, OVW, and other Federal agencies such as DOL, HUD, and ED.

For grants management activities, DOJ grant components participate in the Grants Management Challenges Working group as previously described in another section.

The Department has tackled the challenges of grants management aggressively, establishing policies, procedures, and internal controls to ensure sound stewardship, strong programmatic and financial management, and effective monitoring and oversight of its grants and grant programs. These policies and internal control framework position the Department to carry out statutory mandates and requirements and to detect and prevent potential waste, fraud, and abuse of the billions of taxpayer dollars the Department awards in grants each fiscal year.

The Department is dedicated to continuously improving its oversight and monitoring of grantees and grant programs. The Department reduces risks for fraud and

abuse by identifying high-risk and at-risk grantees and ensuring compensating controls are implemented. The DOJ high-risk grantee program requires appropriate controls to be in place to ensure that grantees with outstanding noncompliance issues implement timely corrective actions to address the issues; a grantee's risk status is addressed during the grant award process; enhanced oversight and monitoring is provided to the grantee. The Department ensures grantees have access to financial and grant fraud training. The OJP Office of the Chief Financial Officer provides training to grantee participants through its Regional Financial Management Training Seminars. These seminars cover critical topics such as subrecipient monitoring, cost principles for allowable and unallowable costs, reporting requirements, grant fraud, waste, and abuse, audit requirements, and prohibition of excess cash on hand. In December 2011, DOJ launched an on-line financial management training tool for all DOJ grantees and grant management staff.

The Department's Office of Inspector General works closely with the grant components to provide training on detecting and preventing grant fraud to its grantees and staff. For example, since fiscal year 2009, more than 600 OJP employees have participated in grant fraud training.

#### FEDERAL PROGRAMS FACING CUTS

*Question.* Under the terms of the Budget Control Act of 2011 (Public Law 112-25), funding for virtually all Federal programs will face an across-the-board cut in January 2013 if the Congress fails to reduce the national debt by \$1.2 trillion. According to CBO estimates, this would result in a cut of roughly 8 percent to programs across DOJ.

How would these cuts affect the Department?

*Answer.* Under the terms of the Budget Control Act of 2011 (Public Law 112-25), virtually all Federal programs will face an across-the-board cut in January 2013 if the Congress fails to enact legislation that would reduce the national debt by an additional \$1.2 trillion. According to CBO estimates, such an across-the-board cut would result in a reduction of at least 7.8 percent to programs across DOJ. A 7.8-percent reduction equates to a loss in funding of approximately \$2.1 billion.

*Question.* Please provide a list of expected workforce furloughs, cuts to grant programs, and other reductions at DOJ if sequestration is implemented.

*Answer.* The Department supports the fiscal year 2013 President's budget request, which would avoid a sequestration, if enacted as proposed. However, the impact of an across-the-board cut of 7.8 percent would mean a reduction of approximately \$2.1 billion to the Department's budget authority. To implement this cut, the Department would have to cut both personnel and operational funding. While the specific implementation of a 7.8-percent across-the-board cut cannot yet be determined, such a cut to DOJ's budget could result in the loss of more than 15,000 personnel, including furloughing all DOJ employees for 25 days. These personnel cuts, along with significant operational cuts, would mean reductions in the apprehension of violent fugitives, fewer Federal Bureau of Investigation (FBI) national security investigations, fewer affirmative litigation efforts, and more crowded prisons. For context, a 7.8-percent cut would mean 5,400 fewer Federal agents and nearly 1,250 fewer attorneys available to investigate and prosecute violent criminals, perpetrators of fraud, fugitives from justice, transnational criminal organizations, and cartels and terrorists. In addition, the Bureau of Prisons would have 2,500 fewer correctional officers to operate prison facilities in a manner consistent with officer and inmate safety and the Department's grant programs would be reduced by \$110 million compromising relationships with State and local law enforcement organizations and programs critical to advancing public safety.

*Question.* How would these cuts affect the Department's ability to carry out its mission?

*Answer.* An across-the-board cut of 7.8 percent would jeopardize the Department's ability to fulfill its missions to prevent terrorism, enforce Federal law, and ensure the fair administration of justice.

While the specific implementation of a 7.8-percent across-the-board cut cannot yet be determined, such a cut to DOJ's budget could mean:

- 49,654 fewer immigration matters completed by immigration judges;
- 5,430 fewer matters opened by the National Security Division;
- 7,713 fewer cases filed by U.S. Attorneys;
- 9,705 fewer investigations conducted by the FBI;
- \$335 million more revenue in the pockets of drug trafficking organizations;
- 79 fewer local police hires;
- 300 fewer Foreign Intelligence Surveillance Act applications filed by the National Security Division;

- \$1.6 million decrease in restitutions, recoveries, and fines related to FBI white collar crime investigations; and
- 6,495 fewer bulletproof vests for State and local law enforcement personnel.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

OFFICE OF LEGAL COUNSEL MEMORANDUM—COUNTERTERRORISM OPERATIONS

*Question.* Earlier this week, you gave a speech outlining some of the legal rationale for the use of lethal force against American citizens overseas in terrorism cases. In your speech, you stated that “the executive branch regularly informs the appropriate Members of Congress about our counterterrorism activities, including the legal framework, and would of course follow the same practice where lethal force is used against United States citizens.” While your speech was a welcome step toward more transparency about the legal rationale for these actions, it is no substitute for an independent review by the Congress of the actual legal opinion underpinning such actions. As Chairman of the Judiciary Committee, I have made repeated requests for the legal opinions upon which the administration has relied in taking such extraordinary actions against American citizens.

Can you tell me when you will be sending me a copy of the Office of Legal Counsel (OLC) memorandum authorizing the use of lethal force against American citizens in counterterrorism operations, including the operation that killed Anwar al-Awlaki?

*Answer.* OLC regularly publishes opinions that the office determines are appropriate for publication. The opinion in question is currently covered by executive privilege and therefore will not be released beyond the Department. Moreover, the Department does not comment on any specific case or individual. However, as noted before, the conduct and management of national security operations are core functions of the executive branch, as courts have recognized throughout our history. In order to ensure proper oversight, and in keeping with the law and our constitutional system of checks and balances, the executive branch regularly informs the appropriate Members of Congress about our counterterrorism activities, including the legal framework, and would of course follow the same practice where lethal force is used against United States citizens.

NEW YORK CITY POLICE DEPARTMENT SURVEILLANCE PROGRAM

*Question.* In recent months, we have heard troubling information about the surveillance operations of New York City Police Department (NYPD)—particularly targeting the Muslim-American community. According to press accounts, the NYPD has been compiling databases of information concerning Muslim Americans residing throughout the northeast, and has used informants called “rakers” and “mosque crawlers” to infiltrate mosques and Muslim student groups. There have also been reports of CIA involvement in NYPD’s surveillance program. Last week, you told a House Appropriations subcommittee that the Department of Justice (DOJ) was reviewing complaints it had received concerning the NYPD’s surveillance program, in order to determine what actions should be taken by DOJ.

I would request that you keep me and my staff updated as to the progress of this review. Can you tell me the current status of the Department’s review into these allegations of civil rights violations by the NYPD?

*Answer.* At this time, the Civil Rights Division is continuing its review into allegations of civil rights violations by the NYPD Surveillance Program. The Attorney General has authority to bring litigation to address patterns or practices by law enforcement agencies that deprive persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States (42 U.S.C. 14141). This authority has been delegated to the Civil Rights Division of DOJ and the Division often works with the local U.S. Attorney’s office. Each allegation of misconduct is reviewed and in a portion of cases, a formal investigation or another response is authorized. Investigations typically involve site visits, hundreds of interviews, and the review of tens of thousands of pages of documents. In addition to Division attorneys and investigators, the Division engages experts, typically well-respected law enforcement executives, to assist in the investigation. There is no way for us to provide a general timeframe for a preliminary inquiry or a formal investigation. Timelines for inquiries and investigations are controlled by the facts found.

*Question.* As the Department conducts its review of these complaints, I also ask that you evaluate the extent of coordination between the NYPD and the Federal Bureau of Investigation (FBI). I am particularly interested in whether data obtained through NYPD surveillance methods is shared with and used by FBI in accordance with DOJ guidelines. Will you do that?

Answer. FBI and NYPD work together on the Joint Terrorism Task Force, share investigative information, and exchange queries for operational and tactical de-confliction purposes in accordance with DOJ and FBI policies. However, FBI does not receive NYPD surveillance information.

#### SAME-SEX IMMIGRATION PETITIONS

*Question.* On April 6, 2011, I wrote to you and the Secretary of Homeland Security, Janet Napolitano, to encourage you to hold marriage-based immigration petitions for same-sex spouses in abeyance in light of the administration's decision to no longer defend the constitutionality of the Defense Against Marriage Act (DOMA). The response I received on May 17, 2011, suggested that discretion may be granted in individual cases, but that the agencies would not exercise discretion in a categorical manner. Subsequently, the Department of Homeland Security (DHS) denied the spousal-based petition of a Vermont couple, Frances Herbert and Takako Ueda who are lawfully married under Vermont statute. Particularly in States such as Vermont, where same-sex marriages are legally recognized, we believe that DHS has the legal authority to hold such cases in abeyance, and to exercise prosecutorial discretion for those in removal proceedings. I ask that you reconsider the administration position articulated in the May 17, 2011 letter. Will you do so?

Answer. While we cannot comment on the specific example cited, DOJ and DHS are continuing to follow the President's direction to enforce DOMA. Both DHS, through U.S. Citizenship and Immigration Services and Immigration and Customs Enforcement (ICE), and DOJ, through the Executive Office for Immigration Review, have discretion to make individual case determinations, and have used that discretion in a number of recent cases. The agencies have not, however, granted any form of blanket relief to the entire category of cases affected by DOMA. As ICE Director Morton described in a June 17, 2011 memorandum, "Providing Guidance on the Exercise of Prosecutorial Discretion Consistent With the Department's Civil Immigration Priorities", ICE's current enforcement priorities are aliens who pose a clear risk to national security or to public safety and those with an egregious record of immigration violations.

#### QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

##### PAN AM 103 BOMBING

*Question.* Only one person has ever been convicted in connection with the Pan Am 103 bombing, and that person has since been released from prison. On February 28, 2012, Secretary Clinton testified that the United States ongoing investigation into the bombing is primarily a Department of Justice (DOJ) responsibility. What progress has been made on the investigation of the Pan Am 103 bombing?

Answer. We remain committed to pursuing justice on behalf of the victims of this terrorist attack that took the lives of 189 Americans and many others.

We continue to seek more information, as well as access to those who might have been involved in the planning or execution of the bombing. We have made clear—and will continue to make clear—to the Government of Libya the great importance of this case to the United States and our determination to bring all of those responsible to justice.

The investigation into the Pan Am 103 bombing remains open, and we will continue to follow any leads that could result in evidence to support a criminal prosecution.

As this is an ongoing investigative matter, we cannot comment on specific investigative steps that are being taken.

##### ILLEGAL TRAFFICKING OF TOBACCO

*Question.* Reports from the Government Accountability Office have identified an estimated tax loss of \$5 billion a year due to the illegal trafficking of tobacco. The tremendous profits and low criminal penalties have attracted the involvement of organized criminal and terrorist groups. The Federal Bureau of Investigation (FBI) has primary jurisdiction on terrorism and organized crime, while the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) holds primary jurisdiction on cigarette trafficking. How does DOJ ensure that the FBI and ATF work together to prevent illegal tobacco proceeds from financing organized crime and terrorists?

Answer. DOJ's agencies have strong and effective working relationships with their DOJ partners as well as other Federal, State, and local agencies and a history of highly successful joint investigations. Supervisors in the field regularly review investigations on a case-by-case basis and involve other agencies as appropriate. For

example, recently the ATF and the FBI worked together on “Operation Secondhand Smoke”, an undercover investigation into a nationwide network of retailers, wholesalers, distributors, importers, and manufacturers who were avoiding cigarette taxes to make millions of dollars in profits.

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QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

DEPARTMENT OF JUSTICE’S PREVENTING VIOLENCE AGAINST LAW ENFORCEMENT AND ENSURING OFFICER RESILIENCE AND SURVIVABILITY INITIATIVE TRAINING

*Question.* Violence against law enforcement officers is at an all-time high. According to National Law Enforcement Officers Memorial Fund statistics, Texas leads the Nation with most police officers killed in the line of duty—1,594. Ensuring the safety of law enforcement is a top priority for all of us in this subcommittee’s bill.

During the Fort Hood shooting rampage in 2009, Department of the Army civilian Police Sergeants Kim Munley and Mark Todd were two of the first officers to arrive on the scene. Sergeant Munley was shot multiple times. Sergeant Todd was able to wound and incapacitate the shooter before he could shoot Sergeant Munley again. Both officers credited their swift and heroic actions to the active shooter training they received through the Advanced Law Enforcement Rapid Response Training (ALERRT) Center at Texas State University, which is a partner of the Department of Justice’s (DOJ) Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) Initiative. Their heroic actions show how a small investment in training can have an impact on the safety of our Nation’s law enforcement officers.

Can you tell us about the successes of the VALOR Initiative and DOJ’s plans to expand this training?

*Answer.* More than 3,100 law enforcement professionals have received the VALOR Initiative training, in 17 sessions across the country. We have heard from sheriffs and police chiefs that this curriculum has been successfully used in the field. Therefore, we plan to continue promoting, refining, and expanding its availability along with the VALOR Initiative officer toolkit. There have been 8,100 toolkits placed in the field and the Web site has received 2.5 million hits.

The feedback from the training has been positive from the field. Some of the feedback includes:

“It was truly some of the best training I’ve attended in 12 years as a peace officer here in Georgia. I truly hope and urge you to bring this training back to Georgia for more officers to attend, I would definitely push this training for as many as my colleagues as I could through the chain of command.”—Cartersville, Georgia

“This training was excellent, and every officer needs to take it. It’s an eye-opening experience! Excellent training!”—Arlington, Texas

“Most relevant training ever to help prepare and heighten awareness.”—Arlington, Texas

“I was involved in an incident where the training in pre-attack indicators really helped prevent a violent struggle with a suspect.”—San Diego, California

“The training has helped me with being more vigilant and looking for pre-incident indicators of violent attacks and armed persons. Cops become complacent as time goes on. This type of training helps rid the complacency and reopens the eyes of a patrol cop.”—San Diego, California

Texas State University and its ALERRT active shooter training has been, and is, an extremely important component of the VALOR Initiative training.

In fiscal year 2011, the Institute for Intergovernmental Research (IIR) received an award as the Bureau of Justice Assistance’s (BJA) VALOR Initiative grantee. IIR, through its internal awarding processes, provided a sub-award of \$200,000 to Texas State University for the delivery of 11 ALERRT Active Shooter hands-on training sessions. In fiscal year 2012, IIR will receive its second supplemental award for the VALOR Initiative. IIR has discussed with BJA how it intends to use the fiscal year 2012 funding, including awarding a second subcontract to Texas State University for an anticipated additional \$200,000 to continue delivery of ALERRT trainings across the country. BJA has discussed and is in agreement with the overall proposed work plan. IIR follows its internal subcontracting guidelines as well as Office of Justice Programs’ (OJP) guidelines with regard to the expenditure of Federal funds and subcontracting.

*Question.* Is the Department able to keep up with the requests for this training?

*Answer.* Given existing resource constraints, it is a challenge to satisfy the high demand of requests for this training. However, BJA is working closely with our

grantees to ensure that we are maximizing attendees at each event. To better meet the demand, we are requesting \$5 million in fiscal year 2013, an increase of \$3 million more than the fiscal year 2012 enacted level of \$2 million.

*Question.* Last year there were 31 cases of violence against U.S. Marshal Task Forces. Seven of these instances resulted in fatalities of Deputy U.S. Marshals or State and local officers working on the task forces.

Is there any type of training being conducted with our Federal law enforcement agencies? (Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF] and U.S. Marshals Services [USMS] conduct training)

Answer. DOJ, through BJA, reached out to Federal law enforcement agencies as the VALOR Initiative was being developed. Specifically, leadership levels of USMS have been briefed on the VALOR Initiative, and coordination and joint efforts, including exchanges of curricula to ensure consistent messaging, are in progress. A team from USMS was invited to and participated in the first VALOR Initiative class held in Tampa, Florida. BJA recently met with USMS staff to further develop coordination and information sharing between both the BJA and the USMS trainings. Leadership of ATF was also briefed on the VALOR Initiative, and collaborative discussions are planned. Staff from the Federal Bureau of Investigation (FBI) was significantly involved in the development of the VALOR Initiative, in particular, the research that supports the program. Coordination with Department of Homeland Security (DHS) law enforcement agencies is also expected. BJA has also coordinated VALOR Initiative trainings through U.S. Attorney's offices, pursuant to the Attorney General's direction that the U.S. Attorneys be engaged in assessing and responding to the officer safety issues in their districts.

*Question.* Is there any type of coordination with DOJ and our Federal law enforcement agencies to ensure that best safety practices are being shared?

Answer. BJA has made specific outreach to Federal law enforcement agencies to create best safety practices. BJA's VALOR Initiative representatives will attend the current USMS training. USMS representatives will attend a VALOR Initiative training to ensure that best safety practices are shared. Additionally, leadership of the ATF was also briefed on the VALOR Initiative and further discussions are planned.

DOJ law enforcement components participate in DOJ-wide working groups related to agent safety issues, such as body armor standards and requirements. DOJ law enforcement components also compare, collaborate, and share training techniques and methodologies, both formally and informally.

The ATF, Drug Enforcement Administration (DEA), and USMS purchase software licenses for three of the same online courses. Through cross-component discussion and collaboration, these courses have been established as important elements of safety training for agents of all three components.

Components utilize co-located training facilities at Quantico and Federal Law Enforcement Training Center (FLETC) and agents train using driving and firearms ranges as well as simulators. FBI has traveled to other law enforcement component training sites to establish liaison contacts and share best practices.

Furthermore, BJA and Community Oriented Policing Services (COPS) have established the National Officer Safety and Wellness Group. This group brings together law enforcement thought leaders, criminal justice practitioners, and colleagues to share their knowledge and perspectives on improving officer safety and wellness. The group's mission is to contribute to the improvement of officer safety and wellness in the United States by convening a forum for thoughtful, proactive discussion and debate around relevant programs and policies within the law enforcement field. Information and insight gained and shared will help enhance programs, policies, and initiatives related to officer safety and wellness.

#### NATIONAL ACADEMY OF SCIENCES FORENSICS STUDY

*Question.* Prior to becoming ranking member, this subcommittee commissioned the National Academy of Science (NAS) Forensics Study. The intent was to show where DOJ lacked in supporting crime labs and how it could provide more support to the forensics community. Unfortunately, it evolved from a narrowly focused non-binding study into a more far-reaching study than what the Congress intended.

While the NAS study did produce some positive results, there are questionable and unrealistic ones, such as creating an independent bureaucracy responsible for oversight of forensics, excluding DOJ from oversight.

Some special interest groups have even used a few of the individual bad cases in the NAS study to attack the credibility of all crime labs and law enforcement, resulting in impulsive and knee-jerk legislative proposals.

I would also note that some of these same organizations were also at the forefront of support for the Webb Crime Commission, which is an example of another “non-binding” study to go bad and result in overreaching and unnecessary legislative proposals.

Does the Department have a position on the NAS forensics study?

Answer. DOJ believes the report from the National Research Council, “Strengthening Forensic Science in the United States: A Path Forward”, is a helpful addition to the public discourse on the state of the forensic science community. The report recommends many useful steps to strengthen the community and enables it to continue to contribute to an effective criminal justice system. The report did conclude, “that forensic science, as a whole, produces valuable evidence contributing to the successful prosecution and conviction of criminals, as well as to the exoneration of the innocent.” However, the report does not, and was never intended to:

- comprehensively assess the forensic science disciplines;
- undermine the use of forensic science in the courtroom;
- offer any judgments on any cases currently in the judicial system; or
- recommend any rule or law changes in the area of evidentiary admissibility.

*Question.* Does DOJ support creating an independent agency responsible for having jurisdiction over forensics?

Answer. The Department concurs with the need for a concerted national investment to advance forensic science and its utility, which underlies all recommendations cited in the NAS report. However, the Department does not believe that a new forensics agency is necessarily needed to serve the interests of the criminal justice community at the Federal, State, and local levels.

#### DISCREPANCIES BETWEEN DEPARTMENT OF JUSTICE AND PRESIDENT’S REQUESTS

*Question.* Attorney General Holder, there are a number of discrepancies between your fiscal year 2013 budget request and the President’s fiscal year 2013 budget request in the Office of Management and Budget’s (OMB) appendix. This can only mean that OMB littered DOJ’s request with programs and funding proposals up until the last minute before releasing the budget.

This is evidence of part of the budget process that is not transparent and should be made public. OMB and the White House are able to adjust program funding levels and direct agencies through “passback” communications that they refuse to publicly disclose, hiding behind the veil of “executive privilege”.

The White House and OMB insert unrequested programs into an agency’s budget request, forcing the agency to cut their own priorities to make room for it. A perfect example of this is the White House inserting \$600 million for COPS Hiring into DOJ’s budget last year. We know you did not request that funding level and it forced you to cut other programs to make room for it.

OMB has authored numerous memos promoting transparency. Since agencies are already required to post congressional communications online, I hope that the chairwoman and my other colleagues will work with me in helping OMB close the circle of transparency by requiring all Federal agencies to post their OMB passback communications online.

During these tough fiscal times, taxpayers, the media and watchdog groups deserve to have full transparency and understand how the White House and OMB influence the budget process and sometimes override what agencies request.

Would you be supportive of being transparent and all OMB budget-related communications being available for the taxpayers to see?

Answer. While DOJ supports transparency, the process involved in the formulation of the President’s budget request requires unimpeded, back-and-forth dialog within the executive branch. These discussions are considered “pre-decisional” and allow the frank and open consultation and discussion that is necessary to reach the most cost-effective and efficient resourcing decisions for the American taxpayer. These internal confidential discussions are not intended to shield dialog, but rather allow the consideration of a wide range of possible options and alternatives. This is based on section 22 of the OMB Circular No. A-11 (2011) “Communications with the Congress and the Public and Clearance Requirements”. The executive branch’s internal deliberations regarding the various issues and options that were considered in the process leading to the President’s decisions, we believe, should remain a matter of internal record. This deliberative process is intended to promote free discussion between agencies and the President and is supported by the doctrine of the separation of powers. It also ensures policy consistency between the President’s budget and budget-related materials given to the Congress.

*Question.* What are the discrepancies between the DOJ request and the President’s budget in the appendix?



Answer. There are several small discrepancies between the Department's budget materials, including the fiscal year 2013 budget and performance summary and the individual congressional justifications, and the President's budget appendix; these discrepancies have been footnoted where appropriate in the DOJ's budget materials.

The cancellation language proposed for USMS, FBI, DEA, and ATF included in DOJ's budget materials differs from the language included in the budget appendix regarding the types of balances proposed for cancellation. DOJ's budget materials reflect the correct language.

The language included in DOJ's budget materials for OJP, State and Local Law Enforcement Assistance, differs slightly from the language included in the Budget Appendix regarding funding levels for certain programs (i.e., National Criminal History Improvement Program, National Instant Criminal Background Check System Improvement Act Grants, and Prison Rape Prevention and Response). The Department's budget materials reflect the correct language.

The number of full-time equivalent (FTE) reported in the DOJ budget summary varies slightly from the numbers reported in the President's budget appendix due to a difference in the methodology used to calculate the base FTE levels.

While the DOJ chapter of the President's budget states that a task force offset is proposed in fiscal year 2013, DOJ is just now finalizing its review of task force operations and an offset is instead anticipated for fiscal year 2014.

*Question.* What do you attribute these discrepancies to?

Answer. The majority of these discrepancies can be attributed to timing constraints during production of these separate documents, as it is the intent of both the language proposed in the Budget Appendix and the language proposed in the Department's budget materials to accurately report the same information.

The difference in FTE between the DOJ congressional budget submission and the President's Budget Appendix can be attributed to a difference in the methodology used to calculate the base FTE levels. The DOJ congressional budget submission used the authorized FTE level to calculate the base for the enacted FTE in fiscal year 2011 and fiscal year 2012 and the request in fiscal year 2013. The President's Budget Appendix used the actual fiscal year 2011 FTE level as a baseline for developing the fiscal year 2012 and fiscal year 2013 FTE levels, as opposed to using the authorized FTE levels. This leads to a slight discrepancy in the reported FTE level, as footnoted in the Department's budget and performance summary.

#### DANGER PAY FOR MEXICO

*Question.* DOJ has given the subcommittee its word that it would be advocating danger pay for USMS and ATF. What is the status of DOJ's negotiations on this? Why is OMB opposed to supporting law enforcement in Mexico receiving danger pay?

Answer. DOJ is continuing to monitor the issue of differential rates of pay for DOJ agents and employees working in danger posts. We are actively engaged in discussions with the Department of State, which has jurisdiction over danger post determinations. The Department of State is acutely aware of our concern and has assured us that it is closely monitoring the situation in Mexico and will add additional danger posts as necessary.

#### DEPARTMENT OF JUSTICE TASK FORCES

*Question.* Task forces play a major role in the DEA, USMS, FBI, and ATF missions. I support the consolidation of duplicative efforts, but I am concerned that there may be confusion on the part of the administration in past proposals to consolidate task forces.

Specifically, the USMS Fugitive Task Forces come to mind. USMS have made three times the arrests of all other Federal law enforcement agencies combined.

Can you tell us about the uniqueness of USMS's fugitive task forces and other task forces?

Answer. USMS plays a unique role in implementing DOJ's violent crime reduction strategy as USMS is the Federal Government's primary agency for conducting fugitive investigations, and it apprehends more Federal fugitives than all other law enforcement agencies combined. USMS has also been named the lead DOJ component to investigate and prosecute crimes involving the noncompliance of sex offenders. While USMS is responsible for investigating and apprehending individuals wanted for escaping from Federal prison and for Federal parole and probation violations, it has a long and distinguished history of providing assistance and expertise to other Federal, State, and local law enforcement agencies in support of fugitive investigations. This support is coordinated through the USMS's Domestic Investigations and Sex Offender Investigations Branches, 75 district-based task forces, and 7 regional

fugitive task forces, supplemented by three foreign field offices and a wide range of technical surveillance and criminal intelligence capabilities. USMS also participates on Organized Crime Drug Enforcement Task Forces (OCDETF); the OCDETF program has reported that its operations are substantially more effective when supported by USMS.

The 75 district fugitive task forces operate areas not covered by the regional fugitive task forces. The seven regional fugitive task forces operate in the National Capital region, gulf coast region, Great Lakes region, New York-New Jersey region, Pacific-Southwest region, Southeastern U.S. region, and Florida. The combined regional fugitive task force has proven to be a vital tool in ensuring the safety of communities by arresting violent fugitives who prey on society.

USMS's task forces combine the efforts of Federal, State, and local law enforcement agencies to locate and arrest the most dangerous fugitives. All USMS task forces are designed and managed to ensure the highest levels of cooperation, coordination, and deconfliction among participating agencies. While some of this coordination is informal in nature, in other cases, task forces use formal national and local information sharing and deconfliction systems to coordinate investigations and protect officer safety.

USMS locates and apprehends Federal, State, and local fugitives both within and outside the United States. The warrants include but are not limited to:

- homicide;
- rape;
- aggravated assault; and
- robbery; or
- if there was an arrest or conviction in the fugitive's record for any of these offenses; or
- for any sex offense as defined in the Adam Walsh Child Protection and Safety Act.

In fiscal year 2011, USMS task forces:

- arrested 36,268 Federal fugitives;
- arrested 86,449 State and local fugitives;
- cleared 39,398 Federal warrants;
- cleared 113,287 State and local warrants;
- arrested 3,867 homicide suspects;
- arrested 5,005 gang members;
- arrested 12,144 sex offenders;
- arrested 299 fugitives in Mexico; and
- the seven regional fugitive task forces made 41,654 arrests and cleared 52,078 warrants.

DOJ's other primary task forces include DEA's regional task forces, ATF's violent crime impact teams, and FBI's Safe Streets task forces. As these task forces act as the primary investigative and operational arm for their respective agencies, they each leverage unique expertise in fulfilling their missions. For example, DEA's regional task forces have unparalleled knowledge and experience related to identifying, investigating, and ultimately dismantling drug trafficking organizations, which DEA brings to bear in cases throughout the country.

*Question.* Are there any task forces that you feel may be considered for consolidation or elimination?

*Answer.* The fiscal year 2013 President's budget does not contain plans to consolidate or eliminate additional task forces. Currently, DOJ is finalizing its comprehensive assessment of task force performance in coordination with ATF, DEA, FBI, USMS, the National Institute of Justice and the Executive Office for U.S. Attorneys. The review will also take into account the extent to which there is overlap or duplication between DOJ-led task forces and those led by other departments and agencies or State, local, or tribal led task forces. This assessment will review all violent crime, drug, gang, and fugitive task forces to determine their effectiveness and will culminate in recommendations to maximize performance and reduce duplication and overlap. The Department anticipates that the assessment will result in the elimination or consolidation of some task force operations.

FAST AND FURIOUS LANGUAGE REMOVED FROM THE REQUEST

*Question.* As I mentioned in my opening statement regarding Fast and Furious, language was included on the floor in last year's bill that would prohibit Federal law enforcement agencies from selling operable weapons to cartels. The fiscal year 2013 request removes that language saying it's unnecessary. The amendment passed 99-0.

This budget proposes to eliminate a provision that prohibits facilitating the transfer of operable firearms to agents of drug cartels unless those firearms are continuously monitored. The budget request's justification for removing this language only says this "is not necessary." That's hard to explain to the families of the Federal agents killed by those weapons.

Can you elaborate on why the administration doesn't think it's necessary?

Answer. In the fiscal year 2013 President's budget, consistent with past practice of removing prohibitive language that limits executive branch discretion, we proposed not to continue the Fast and Furious provision, which was enacted in fiscal year 2012 with the intention of preventing future "gun walking" operations. The Fast and Furious provision does not need to be continued because, as stated on several occasions, the Department does not intend to engage in any such operations in the future.

*Question.* Doesn't the fact that it happened in the past suggest that legislation to block it in the future may well be necessary?

Answer. The Attorney General has stated on several occasions that the Department has no intention of engaging in such operations in the future. Indeed, appropriate steps have been implemented to ensure that this type of operation does not occur again. However, given the sensitive nature of this issue, and in recognition of congressional intent to ensure appropriate oversight, DOJ would not object to this language being reinstated in the fiscal year 2013 bill.

#### CARTELS RECRUITING COLLEGE STUDENTS AND MINORS

*Question.* There have been reports that cartels are attempting to recruit college students to smuggle drugs into the country, and college campuses could serve as an easy recruiting ground. It's understandable how young students could be enticed by large sums of cash. The reports say that minors are more appealing because criminal penalties are lighter for them. One of the bright spots in your budget request is \$312 million for Juvenile Justice Prevention programs. It's imperative that we educate our children and students on the potential dangers of being involved in cartels.

Are you aware of these threats to college students and Southwest Border youth?

Answer. DOJ has become aware of the threats posed by drug cartels to both college students and students in elementary and high schools along the Southwest border through those who attend and conduct AMBER Alert Southern Border Initiative trainings.

*Question.* Are any Juvenile Justice Prevention dollars being focused toward education and awareness programs for the Southwest Border youth to understand the dangers of cartels and the drug trade?

Answer. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has not focused Juvenile Justice Prevention dollars toward education and awareness programs for the Southwest Border youth. However, OJJDP's AMBER Alert Training and Technical Assistance program has developed a partnership with the Boys & Girls Clubs of America, a national nonprofit organization which provides expansion and development of sustainable Boys & Girls Clubs within tribal communities and other communities across the Nation. While OJP does not fund Boys & Girls Clubs activities directly through the AMBER Alert Training and TA program, we have awarded funding to a training and technical assistance provider that has a formal, established partnership with Boys & Girls Clubs of America. Through that partnership, Boys & Girls Clubs have been the conduit for information about gang and drug resistance education to youth who participate in Boys & Girls Clubs activities, and this may include education and awareness about the dangers of cartels and the drug trade for youth along the Southwest Border.

OJJDP also has supported Boys and Girls Clubs. Boys & Girls Clubs provide a variety of prevention programs and activities for youth that help them develop character, education, social, and leadership skills. In addition, the Boys & Girls Clubs provide the Delinquency and Gang Prevention/Intervention Initiative. This community-based initiative targets young people ages 6 to 18 that are at high risk for involvement or are already involved with delinquency and gangs. These youth and teens are directed to positive alternatives and learn about violence prevention.

OJJDP supports gang prevention education in schools. The Gang Resistance Education and Training (G.R.E.A.T.) Program, funded under title V, is a school-based, law enforcement officer-instructed, classroom curriculum administered by OJP's BJA and OJJDP. The delivery and support of the G.R.E.A.T. Program is coordinated through the four Regional Training Centers, the National Policy Board (NPB), a National Training Team and two Federal agency partners:

—FLETC;  
 —DHS; and  
 —ATF.

The goal of the G.R.E.A.T. Program is to help youth develop positive life skills that will help them avoid gang involvement and violent behavior. G.R.E.A.T. uses a communitywide approach to combat the risk factors associated with youth involvement in gang-related behaviors. The curricula was developed through the collaborative efforts of experienced law enforcement officers and specialists in criminology, sociology, psychology, education, health, and curriculum design and are designed to reinforce each other. The lessons included in each curriculum are interactive and designed to allow students to practice positive behaviors that will remain with them during the remainder of their developmental years. There are 495 law enforcement agencies in California, New Mexico, Arizona, and Texas that are teaching G.R.E.A.T and 151 of those agencies are within 150 miles of the border of Mexico.

#### BIG BEND

*Question.* Attorney General Holder, as I mentioned in the statement, I'm concerned about opening an unmanned border crossing in Big Bend National Park. The negative and unknown variables seem to outweigh the few and minimal benefits. Not to mention that during these tough fiscal times, these funds could be used more wisely elsewhere. It seems to me that if terrorists were to smuggle weapons across the border, they would do so in place that have easily accessible roads with the fewest amount of border officials.

Although it's not under DOJ's jurisdiction, an incident involving criminal activity after the fact very well would be. What is DOJ's position on an unmanned border crossing in this area or any other area?

*Answer.* DOJ does not administer day-to-day activities regarding U.S. border patrol and defers to DHS in making determinations regarding the installation of border crossings. However, DOJ law enforcement components collaborate daily with Federal, State, and local law enforcement via field offices located throughout the country, including the Southwest Border, to combat crime and deter, detect, and disrupt any national security threats to the United States. DOJ stands ready to work with DHS to address any security concerns regarding border crossings or any other issue involving national security.

#### SWB COMMUNICATIONS

*Question.* Big Bend Telephone Company (BBTC) is applying to the Federal Communication Commission (FCC) for a waiver from new rules that would lower the amount of Universal Service Fund (USF) subsidies that BBTC receives. BBTC is located in far West Texas, serves an area the size of Massachusetts, and covers 25 percent of the United States-Mexico border. Without a waiver, we believe that BBTC may go out of business, with no other companies likely to serve the region because the area is so rugged and sparsely populated. Because BBTC provides network transport for the cell phone providers in the area, if BBTC goes dark, so too do the cell phones. Furthermore, BBTC provides critical communications service to numerous DHS facilities along and near the border (including two ports of entry) and to many State and local law enforcement agencies in the area. Without a waiver, these facilities would be at risk of losing their critical phone and broadband capabilities.

If a waiver is not granted by the FCC to BBTC, and if BBTC goes out of business and thus its customers lose service, what would the impact be on national security and public safety if Federal, State, and local law enforcement agencies in the Trans-Pecos region lost its voice and broadband Internet capabilities? Without such critical communications, would these agencies be able to maintain their effectiveness in patrolling and securing nearly 500 mountainous miles of the border? More specifically, how would this impact the safety of Texas communities in the border region? What impact would this have on any DOJ entities or communications?

*Answer.* Should BTTC go out of business, DOJ would work closely with stakeholders, including DHS, to ensure that any negative impacts on public safety and national security are appropriately addressed.

#### SENATOR STEVENS CASE

*Question.* Attorney General Holder, first, I want to compliment you for dismissing the case, and cooperating with the investigation of misconduct and mishandling of evidence in the Government's case against former Senator Ted Stevens.

After your request that the case be dismissed in April 2009, U.S. District Judge Emmett G. Sullivan appointed a team to investigate and report on the misconduct.

Henry F. Schuelke III, who was appointed by Judge Sullivan to investigate the case, concluded in a 500-page report DOJ hid evidence that would have helped the Alaska Republican prove his innocence. Most notably, it was called a “systematic concealment” of evidence that could have helped Senator Stevens defend himself.

Despite findings of widespread and intentional misconduct, Schuelke recommended against contempt charges because prosecutors did not disobey a “clear and equivocal” order by the judge, as required under law—which I question.

Four of the six prosecutors who were investigated for their role in the case opposed releasing the report and their names were redacted.

Since Judge Sullivan has ordered that the investigative report in the disgraceful prosecution of Senator Stevens be made public, can you promise this subcommittee that the report by Justice’s Office of Professional Responsibility (OPR) will also be made public?

Answer. As DOJ’s disciplinary review process has not yet been completed, and due to limitations on public disclosure contained in the Privacy Act, DOJ is unable to release the relevant OPR report at this time. As I have stated previously, the Department will release as much as we can of the OPR report and DOJ findings, at the appropriate time and in a manner consistent with law and due process.

*Question.* Are any of the prosecutors who engaged in “systematic concealment” of evidence in the *Stevens* case still in prosecutorial roles?

Answer. Mr. Schuelke’s report examined the conduct of a number of current and former DOJ attorneys and found evidence of willful nondisclosure of *Brady* and *Giglio* materials involving two of those attorneys, Assistant United States Attorneys (AUSAs) Joseph Bottini and James Goeke. Mr. Bottini is an AUSA in District of Alaska and handles criminal prosecutions. Mr. Goeke is an AUSA in the Eastern District of Washington and likewise handles criminal prosecutions.

*Question.* Are any of their legal bills also being paid by the taxpayers? If so, please explain how much and the legal justification.

Answer. It is DOJ’s long-standing policy to provide representation to Federal employees for conduct performed within the scope of their employment. The purpose for providing representation is to protect the interests of the Government by assuring adequate representation with respect to legal issues in which the United States has a concern and by freeing its employees from the fear that proper and vigorous performance of their duties may result in substantial personal legal expenses. This may be so even where the employee has erred or where, regardless of the lawfulness of the conduct, there is concern that failure to provide representation may result in the establishment of a legal principle that compromises the Government’s ability to perform its functions in a proper and lawful manner in the future. Moreover, where there are disputed facts regarding the conduct giving rise to the claim—or where the facts are under investigation—the employee is afforded the benefit of the doubt to the extent it is reasonable to do so. In all cases, the decision of whether or not to provide representation is based upon the currently available information.

Consistent with this long-standing practice, 28 CFR 50.15 and 50.16, and Civil Division Directive 2120A, DOJ received representation requests from six individuals with respect to two matters. At the time representation was needed for the matters referenced below, the facts that it took the Special Counsel several years to gather were not available. In accordance with the usual processes available to Federal executive, legislative, and judicial branch employees, DOJ determined at that time that the prosecutors were acting within the scope of their employment and representation was in the interest of the United States. Private counsel was authorized because direct DOJ representation was not appropriate.

DOJ utilized standard retention agreements that the Department commonly uses in its representation of other Federal employees. Those retention agreements imposed caps on the number of hours of work for which, absent unusual circumstances, counsel would be reimbursed. Those agreements also set hourly rates that are based on the attorney’s experience and are well below—and in some cases less than 50 percent of—the rates that DOJ uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act. With respect to the six individuals for whom representation was authorized, to date DOJ has spent \$282,982.51 in connection with the contempt order entered by U.S. District Judge Emmet G. Sullivan on February 8, 2009, in *United States v. Stevens*, No. 08-cr-0231 (D.D.C.), and \$1,633,298.29 in connection with the subsequent investigation by Special Counsel Henry F. Schuelke III, who was appointed by Judge Sullivan on April 9, 2009, and who ultimately produced a 500-page report regarding the investigation.

*Question.* Does it concern you that the only reason these prosecutors escaped criminal charges is that the judge in the *Stevens* case did not file an order telling the prosecutors to follow the law?

Answer. Yes. DOJ expects its prosecutors to fully comply with their discovery obligations in every case regardless of the existence of a court order directing such compliance. As a result, when the nature of the undisclosed information was brought to my attention in 2009, I authorized DOJ to move to vacate Senator Stevens' conviction and to dismiss the indictment.

DOJ takes its discovery obligations seriously as evidenced by the policies and training requirements that have been implemented since the dismissal of the *Stevens* case. While DOJ continues to review the Schuelke report, and all of the facts and circumstances surrounding the discovery violations that occurred in the *Stevens* prosecution, DOJ prosecutors are expected to comply with their discovery obligations regardless of the existence of a court order.

*Question.* What are the names of these individuals? Please list what positions and where these individuals have worked since this came to light—to present.

Answer. The publicly filed version of the report identifies all of the subjects in the report. As noted, Mr. Schuelke found evidence that 2 of the 6 subjects willfully withheld discoverable evidence. DOJ understands this series of questions to pertain only to those two individuals. AUSA Joseph Bottini has continued to prosecute cases in the District of Alaska since the *Stevens* trial. After the *Stevens* trial, AUSA Goeke continued as an AUSA in the District of Alaska until May 2009, when he assumed the same position in the Eastern District of Washington.

*Question.* Please list the cases that these individuals have participated in and the results. For example, one participated in the *Alabama Bingo* case which resulted in acquittals. Another involved the National Security Agency. Please list each case, the outcome, the individuals' names, and what their roles in the cases are.

Answer. We do not think it would be appropriate or useful to list every case on which each attorney has worked. We can tell you that since the *Stevens* trial, AUSA Joseph Bottini has handled a varied criminal caseload, and there have been no findings of prosecutorial misconduct in any of the cases that he has prosecuted. Similarly, AUSA Goeke has continued to handle a routine criminal caseload, and there have been no findings of prosecutorial misconduct in any cases that Mr. Goeke has prosecuted since the *Stevens* trial. If you can identify a specific need for additional information, we will be happy to consider it.

*Question.* Will any investigation occur if the pending OPR recommends further action?

Answer. No further investigation will occur, but OPR findings are part and parcel of the Federal disciplinary process. Whenever OPR reaches findings of misconduct involving current DOJ employees, imposition of any disciplinary action as a result of those findings must comport with the requirements of Federal law. Federal law requires generally that employees receive at least 30 days' notice of any proposed disciplinary action and that they have an opportunity to respond both orally and in writing to the proposed action. After considering the response, the designated deciding official would determine whether the evidence supports the misconduct charge or charges in the proposal and, if so, whether the recommended discipline is appropriate. If a deciding official determines to suspend the employee for more than 14 days, the employee can appeal that suspension to the Merit Systems Protection Board. If the employee is suspended for 14 days or less, then the employee can file a grievance of the suspension with the agency. If the disciplinary process results in the affirmation of OPR's findings of misconduct, then OPR would ordinarily refer the matter to the appropriate State bar disciplinary authorities for any action they deem appropriate.

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#### QUESTIONS SUBMITTED BY SENATOR LAMAR ALEXANDER

##### METHAMPHETAMINE IN TENNESSEE

*Question.* Tennessee had the second-highest number of methamphetamine lab seizures in the country in 2011 (1,687 labs), second only to Missouri. In 2010, Tennessee had the highest number of methamphetamine lab seizures in the Nation with 2,082 seizures. The average cost to clean up a methamphetamine lab is \$2,300, and these costs are putting tremendous strain on State and local law enforcement.

Last November, the Department of Justice (DOJ) helped Tennessee and other States by providing \$12.5 million to address methamphetamine lab cleanup costs. However, this funding will run out in October 2012 according to the statewide Tennessee Methamphetamine Task Force. Without cleanup funds, there is a real incentive to avoid seizing these labs.

Given that this is one of the most urgent drug problems, especially in rural communities with limited resources, DOJ should find a way to help address this prob-

lem. In this year's budget will DOJ continue to support methamphetamine lab cleanup efforts in Tennessee?

Answer. DOJ's budget includes \$12.5 million in funding to continue to support methamphetamine lab cleanups in Tennessee and other States. Funding will be prioritized for States, like Tennessee, that have established container programs because these container programs allows DOJ and its State and local partners to complete cleanups in a more cost-effective manner.

In fiscal year 2013, the Office of Community Oriented Policing Services (COPS) requests \$12.5 million to provide assistance to help stem clandestine methamphetamine manufacturing and its consequences, including the cleanup of clandestine laboratories. As in previous years, DOJ assumes that these funds will provide for meth lab cleanup activities.

*Question.* What is DOJ doing to help State and local law enforcement deal with mobile methamphetamine labs, which account for a growing number of lab seizures?

Answer. Over the past several years, Drug Enforcement Administration (DEA) has developed a container-based cleanup program. Under this program, DEA trains and certifies law enforcement officers to remove gross contaminants from labs (including mobile labs) and dumpsites; secure and package the waste pursuant to State and Federal laws and regulations; and transport the waste to a centrally located, secure container for storage. In States participating in the container program, hazardous waste contractors travel periodically to a central location to remove meth lab contaminants from across the State. In noncontainer States, hazardous waste contractors must travel to each individual lab or dumpsite to secure, package, and remove meth lab contaminants.

DEA will be supporting cleanups in container and noncontainer States in fiscal year 2012 through its various hazardous waste contracts. Currently, eight States have operational container programs (Alabama, Arkansas, Illinois, Indiana, Kentucky, Nebraska, Oklahoma, and Tennessee), and DEA is working with five other States (Michigan, Mississippi, North Carolina, Ohio, and Virginia) to implement the container program during fiscal year 2012. DEA expects these additional five States to have operational container programs in fiscal year 2013. Thus far, the program has resulted in significant cost savings per lab in States that have the containers deployed; a contractor cleanup averages \$2,230 while a container cleanup averages \$320.

As container programs are more cost efficient and more States have operational container programs in fiscal year 2013, \$12.5 million in funding, requested in the fiscal year 2013 President's budget in the COPS appropriation, will continue to be sufficient in fiscal year 2013. DEA has also contacted an additional eight States for potential container program expansion. For those States without container programs, DEA assesses whether or not the program is a cost-effective option. If the state has only limited cleanups, the upfront equipment and training costs can exceed potential container program savings. In these cases, DEA will provide cleanup services through its hazardous waste contractors.

#### JUSTICE DEPARTMENT ENFORCEMENT AND WIND FARMS

*Question.* In 2009, Exxon admitted to killing approximately 85 protected birds, including waterfowl, hawks, and owls. The company paid a \$600,000 fine and was required to implement an environmental compliance plan.

The U.S. Fish and Wildlife Service (FWS) has referred similar cases to the Department involving wind farms. I am concerned that wind farms are not being treated the same as oil and gas companies with respect to enforcement of the Migratory Bird Treaty Act (MBTA).

What concerns me the most is that the Justice Department's lack of enforcement betrays a willingness to prosecute certain disfavored groups while giving others a pass. This kind of selective prosecution contradicts the Department's promise of "equal justice under law".

Since it is a criminal violation to kill birds protected by the MBTA and we know that wind mills kills hundreds of thousands of birds each year, including protected bald eagles, why hasn't DOJ taken action? Will DOJ step up enforcement for wind producers in the same way it has oil and gas companies?

Answer. FWS's Office of Law Enforcement (OLE) has primary responsibility for investigating potential criminal violations of MBTA, and refers appropriate matters to DOJ for prosecution. FWS's OLE has stated publicly that, in the context of industrial takings of migratory birds, it focuses its resources on investigating and prosecuting those who take migratory birds without identifying and implementing reasonable and effective measures to avoid the take.

In the context of the electric and oil and gas industries, reasonable and effective measures to avoid the taking of migratory birds have long been identified, and referrals have been made and legal action has been taken when companies knowingly fail to use such measures for avoiding bird mortality. Guidance on preventing bird deaths in the wind energy context has been more recent. However, some reasonable and effective measures for avoiding taking in this industry have been identified. The Department of the Interior released interim guidelines in 2003, and in March 2012, released final Land-Based Wind Energy Guidelines designed to help wind energy project developers avoid and minimize impacts of land-based wind projects on wildlife and their habitat.

DOJ reviews each referral from OLE carefully, and determines whether to initiate a prosecution based on the principles set forth in DOJ's Principles of Federal Prosecution. DOJ is committed to the fair and evenhanded administration of the MBTA and other criminal wildlife protection laws.

NATIONAL FORENSIC ACADEMY—UNIVERSITY OF TENNESSEE

*Question.* The National Forensic Academy (NFA), which is located at the University of Tennessee in Knoxville, has been providing hands on forensic training since 2001 at one of the Nation's only training centers where officers and investigators can practice forensic techniques in the classroom and in the field.

NFA works closely with the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ) to provide training courses to Federal, State, and local law enforcement and crime scene investigators, and this cooperation needs to continue.

In 2009, the National Academy of Sciences released a comprehensive report on the needs of the forensic sciences community and concluded that we are not doing enough to support forensics. The report recommended new training and certification initiatives, among others.

At a time when we are trying to control Federal spending, doesn't it make sense to support programs with a proven track record, like those at NFA, instead of creating new Federal training programs to support our forensic training needs?

*Answer.* NIJ is not creating any new Federal training programs to support the forensic science community. Providing high-quality educational opportunities for forensic science practitioners continues to be a critical goal to maintain high-quality forensic services. In order to increase the number of forensic science training opportunities available to the forensic science, law enforcement, medical, and legal communities, NIJ invested approximately \$12 million in fiscal year 2010 and \$5 million in fiscal year 2011.

In 2011, NIJ's Forensic Science Training and Delivery Program released a solicitation that sought proposals in two major areas: "Delivery of Training" and "Targeted Research on Forensic Science Training Programs."

One goal of the solicitation was to increase the number of no-cost educational opportunities for public crime laboratory personnel and practitioners in forensic science disciplines and provide forensic science training to other relevant criminal justice partners and professionals involved in treating victims of sexual assault. NIJ sought to fund grant awards for the delivery of courses leveraging existing forensic science training curricula or courses developed under a previous NIJ award. Forensic disciplines supported by the program include, DNA, pattern evidence (e.g., fingerprints and firearms), trace evidence, digital evidence, and medicolegal death investigation.

The solicitation conveyed the importance of cost-effectively leveraging existing curricula. For example, the 2011 training solicitation delineated that proposals should not include costs associated with further curricula development or modification.

The University of Tennessee's NFA received one award for \$450,000 for "Specialized Crime Scene Investigator Training in Forensic Digital Photography and Crime Scene Mapping" in fiscal year 2011 (2011-DN-BX-K567). NIJ has competitively funded numerous trainings geared toward crime scene investigators, forensic scientists, prosecutors, defense attorneys, law enforcement officers, and judges. Additionally, the University of Tennessee's NFA, with grant funding from BJA, has produced successful and popular training courses for many years. The University of Tennessee's Law Enforcement Innovation Center and its instructors do an excellent job training crime scene investigators during an intensive 10-week in house course.

NIJ will not be offering a targeted solicitation for training in fiscal year 2012 in order to evaluate the various training programs, and it will conduct a gap analysis of critical needs. We hope to initiate this evaluation during fiscal year 2012 to determine how best to proceed with training in the future. However, there are still various training opportunities available through the ongoing training grants from past



years. Moreover, there are various Federal grants that may be used for the purpose of training individuals at State and local agencies, such as the DNA Backlog Reduction and Coverdell Forensic Science Improvement programs. For example, Paul Coverdell funds may be used to bring in a trainer to provide specialized training in-house or funds may be used to attend trainings/meetings related to improving the timeliness and quality of forensic and/or medical examiner services.

In the fiscal year 2011 proposal from the State of Tennessee, one of the goals of the Office of the Acting State Chief Medical Examiner (OCME) is to educate county medical examiners, medical investigators, and/or regional forensic center nonphysician employees who serve as death investigators in basic death scene investigation techniques. Priority would go to individuals without any formal training in death investigation. While each grand division of Tennessee is included, this grant focuses on the smallest offices in the eastern division, because of a recognized need for very basic training in those regions. The OCME intends to send seven participants from across the State to either the winter or spring session of the Medicolegal Death Investigation Course in St. Louis, Missouri.

#### BUREAU OF PRISONS

*Question.* The Federal Bureau of Prisons (BOP) is estimated to be operating at 43 percent more than rated capacity by the end of fiscal year 2013, and overcrowding at high- and medium-security facilities is projected to be 52 percent and 63 percent, respectively. DOJ's fiscal year 2013 budget submission states:

"In light of overcrowding and stresses on prison staffing, BOP's ability to safely manage the increasing Federal inmate population is one of the Department's top 10 management and performance challenges identified by the Office of the Inspector General in the DOJ [Performance and Accountability Report]."

Additionally, the Inspector General Performance and Accountability Report states:

"In sum, the Department continues to face difficult challenges in providing adequate prison and detention space for the increasing prisoner and detainee populations and in maintaining the safety and security of prisons."

I recognize the fiscal year 2013 budget submission includes funding for an additional 3,496 beds (2,496 beds in Federal facilities and 1,000 new beds in contract facilities). However, BOP is projecting its population will grow by 6,500 inmates during that time, which means crowding will only get worse.

What additional resources are needed to provide the beds required to meet capacity?

*Answer.* Continuing increases in the inmate population pose ongoing challenges for BOP. The administration has taken several actions to control Federal prison crowding including expanding capacity and supporting legislation that will control prison population growth.

The fiscal year 2013 budget requests \$81.4 million in program enhancements to acquire 1,000 private contract beds and to begin activating two institutions, the United States Penitentiary at Yazoo City, Mississippi and the Federal Correctional Institution at Hazelton, West Virginia. These new contract beds and the two prisons will increase BOP's capacity by 3,496 beds once fully activated. (Exhibit O, Status of Construction, in the fiscal year 2013 President's budget request for buildings and facilities gives additional information on pending construction projects.)

In addition, the administration supports two prisoner re-entry provisions included in the Second Chance Reauthorization Act of 2011 (S. 1231), which was voted favorably out of the Judiciary Committee but has not yet been scheduled for Senate floor action. The bill contains provisions to increase inmate good conduct time by 7 days per year and to provide a 60-day per year incentive for participation in recidivism-reducing programs. If enacted, these legislative proposals will help control the long-term prison population growth and result in an estimated cost avoidance of \$41 million; the President's budget assumes enactment of these proposals and the corresponding savings.

*Question.* Is contract confinement a cost-effective solution for housing low to minimum security offenders? Given current costs at contractor and BOP facilities, is contract confinement a cost-effective way to deal with overcrowding issues?

*Answer.* Contract confinement can be cost-effective when used for housing low-security male criminal aliens. These inmates are particularly well-suited for contract confinement because their typically short sentence lengths and alien status generally preclude them from participating in sentence and recidivism reducing programs. Adding low-security private contract beds increases total system capacity and helps control overcrowding in low-security BOP facilities. At the end of fiscal

year 2011, low-security overcrowding was 39 percent, which equates to about 80 percent of low-security inmates being triple bunked, and in some cases regularly being housed in television rooms, open bays, program space, etc.

QUESTIONS SUBMITTED BY SENATOR LISA MURKOWSKI

INDEMNIFICATION OF LEGAL FEES INCURRED BY STEVENS PROSECUTORS

*Question.* How much money was in fact spent defending the prosecutors, what the money was spent defending the prosecutors from, and why did the Justice Department spend the money?

*Answer.* It is the Department of Justice's (DOJ) long-standing policy to provide representation to Federal employees for conduct performed within the scope of their employment. The purpose for providing representation is to protect the interests of the Government by assuring adequate representation with respect to legal issues in which the United States has a concern and by freeing its employees from the fear that proper and vigorous performance of their duties may result in substantial personal legal expenses. This may be so even where the employee has erred or where, regardless of the lawfulness of the conduct, there is concern that failure to provide representation may result in the establishment of a legal principle that compromises the Government's ability to perform its functions in a proper and lawful manner in the future. Moreover, where there are disputed facts regarding the conduct giving rise to the claim—or where the facts are under investigation—the employee is afforded the benefit of the doubt to the extent it is reasonable to do so. In all cases, the decision of whether or not to provide representation is based upon the currently available information. Those facts revealed that in the referenced matters the prosecutors were acting within the scope of their employment and representation was in the interest of the United States. Private counsel was authorized because direct Department representation was not appropriate.

DOJ authorized representation of six individuals with respect to two matters and used standard retention agreements that the Department commonly uses in its representation of other Federal employees. Those retention agreements imposed caps on the number of hours of work for which, absent unusual circumstances, counsel would be reimbursed. Those agreements also set hourly rates that are based on the attorney's experience and are well below—and in some cases less than 50 percent of—the rates that DOJ uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act. With respect to the six individuals for whom representation was authorized, to date DOJ has spent \$282,982.51 in connection with the contempt order entered by U.S. District Judge Emmet G. Sullivan on February 8, 2009, in *United States v. Stevens*, No. 08-cr-0231 (D.D.C.), and \$1,633,298.29 in connection with the subsequent investigation by Special Counsel Henry F. Schuelke III, who was appointed by Judge Sullivan on April 9, 2009.

*Question.* Did DOJ enter into any agreement with the prosecutors or their counsel prior to expending these funds? If so, please provide copies of all such agreements.

*Answer.* DOJ did not enter into any agreement with the prosecutors. In accordance with our usual practice, we sent our standard retention letter to the private counsel retained to represent the prosecutors and received back DOJ's standard retention agreement signed by private counsel. As noted above, the retention agreements imposed caps on the number of hours of work for which, absent unusual circumstances, counsel would be reimbursed. The agreements also set hourly rates that are based on the attorney's experience and are well below—and in some cases less than 50 percent of—the rates that the Department uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act. Copies of the retention letters and executed agreements are attached. (see Attachment 1)

ATTACHMENT #1

CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
Washington, DC 20530, April 21, 2009.

KENNETH L. WAINSTEIN,  
O'Melveny & Myers, 1625 Eye St., NW, Washington, DC 20006.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. WAINSTEIN: The Department of Justice has concluded that it reasonably appears at this time that representation of Joseph Bottini in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Bottini by attorneys employed by the Department of Justice is inappropriate. Mr. Bottini has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Bottini should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Bottini in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 7146  
Washington, DC, 20044

The Department of Justice is continuing to experience delays in its mail delivery, as mail addressed to the Department continues to be forwarded to out-of-State facilities for irradiation. Therefore, please e-mail the signature page of the retention agreement to the attention of Ms. Lago at [virginia.lago@usdoj.gov](mailto:virginia.lago@usdoj.gov). In addition, please e-mail your invoices to [doj.private-counsel-program@usdoj.gov](mailto:doj.private-counsel-program@usdoj.gov), or you may mail them to Ms. Lago's attention at P.O. Box 7146, Washington, DC 20044. Reimbursement of allowable fees and expenses will become available on the Civil Division's receipt of the signed addendum.

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to: Accounts Maintenance Unit  
Attn: Gina McLaughlin  
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.  
Very truly yours,

TIMOTHY P. GARREN,  
*Director, Torts Branch.*

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

**1. NATURE OF RETENTION**

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

## 2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

## 3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour

b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour

c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour

d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

## 4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

#### *5. FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. *BILLING ADDRESS*

The retained attorney should submit all bills to:  
Director, Office of Planning, Budget and Evaluation  
Civil Division  
United States Department of Justice  
Washington, D.C. 20530  
Attn: Room 9042, L Street Building

7. *PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. *GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. *TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Joseph Bottini, in connection with a Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: KENNETH L. WAINSTEIN

Date: April 23, 2009

Tax Identification Number: \_\_\_\_\_

CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
*Washington, DC 20530, June 16, 2009.*

MATTHEW I. MENCHEL,  
*Kobre & Kim, 800 Third Avenue, New York, NY 10022.*

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. MENCHEL: The Department of Justice has concluded that it reasonably appears at this time that representation of James Goeke in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Goeke by attorneys employed by the Department of Justice is inappropriate. Mr. Goeke has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Goeke should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr.

Goeke in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

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U.S. Department of Justice  
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*Director, Torts Branch.*

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- c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;
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After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

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#### *6. BILLING ADDRESS*

The retained attorney should submit all bills to:  
 Director, Office of Planning, Budget and Evaluation  
 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

#### *7. PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

#### *8. GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

#### *9. TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

## ACCEPTANCE

I agree that my retention by the Department of Justice to represent James Goeke, in connection with a Special Counsel investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: MATTHEW L. MENCHEL

Date: September 18, 2009

Tax Identification Number: \_\_\_\_\_

CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
Washington, DC 20530, May 19, 2009.

ROBERT D. LUSKIN, Esq.,  
Patton Boggs, 2550 M St., NW, Washington, DC 20037.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. LUSKIN: The Department of Justice has concluded that it reasonably appears at this time that representation of Nicholas Marsh in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Marsh by attorneys employed by the Department of Justice is inappropriate. Mr. Marsh has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Marsh should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Marsh in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 7146  
Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to: Accounts Maintenance Unit  
Attn: Gina McLaughlin  
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any

questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,  
*Director, Torts Branch.*

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR  
REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

**1. NATURE OF RETENTION**

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

**2. BILLABLE HOURS**

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

**3. LEGAL FEES**

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

#### 4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as “overhead”. The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

#### 5. FORMAT OF BILLS

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In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

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Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those

particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

#### 6. *BILLING ADDRESS*

The retained attorney should submit all bills to:  
 Director, Office of Planning, Budget and Evaluation  
 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

#### 7. *PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

#### 8. *GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

#### 9. *TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

#### ACCEPTANCE

I agree that my retention by the Department of Justice to represent Nicholas Marsh in connection with a Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: ROBERT D. LUSKIN

Date: May 26, 2009

Tax Identification Number: \_\_\_\_\_

CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
Washington, DC 20530, April 21, 2009.

CHUCK ROSENBERG, ESQ.,  
Hogan & Hanson LLP, 555 Thirteenth Street, NW, Washington, DC 20004.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. ROSENBERG: The Department of Justice has concluded that it reasonably appears at this time that representation of Brenda Morris in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Ms. Morris by attorneys employed by the Department of Justice is inappropriate. Ms. Morris has requested that the Department agree to reimburse you for her representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Ms. Morris should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Ms. Morris in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing her to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

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## 2. BILLABLE HOURS

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Civil Division  
United States Department of Justice  
Washington, D.C. 20530  
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7. PROMPT PAYMENT

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8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Brenda Morris in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: CHUCK ROSENBERG

Date: April 30, 2009

Tax Identification Number: \_\_\_\_\_

CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
Washington, DC 20530, April 22, 2009.

BRIAN M. HEBERLIG,  
Steptoe & Johnson, 1330 Connecticut Ave., NW, Washington, DC 20036.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. HEBERLIG: The Department of Justice has concluded that it reasonably appears at this time that representation of Edward Sullivan in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Sullivan by attorneys employed by the Department of Justice is inappropriate. Mr. Sullivan has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Sullivan should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr.

Sullivan in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

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The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-

hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

#### *5. FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

#### *6. BILLING ADDRESS*

The retained attorney should submit all bills to:  
 Director, Office of Planning, Budget and Evaluation  
 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

#### *7. PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

#### *8. GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

#### *9. TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

## ACCEPTANCE

I agree that my retention by the Department of Justice to represent Edward Sullivan in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: BRIAN M. HEBERLIG

Date: April 24, 2009

Tax Identification Number: \_\_\_\_\_

CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
Washington, DC 20530, April 21, 2009.

WILLIAM W. TAYLOR III,  
Zuckerman Spaeder, 1800 M Street, NW, Suite 1000, Washington, DC 20036-5807.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. TAYLOR: The Department of Justice has concluded that it reasonably appears at this time that representation of William Welch in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Welch by attorneys employed by the Department of Justice is inappropriate. Mr. Welch has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. §50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Welch should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Welch in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 7146  
Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to:

Accounts Maintenance Unit  
Attn: Gina McLaughlin  
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any

questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,  
*Director, Torts Branch.*

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR  
REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

*1. NATURE OF RETENTION*

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

*2. BILLABLE HOURS*

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

*3. LEGAL FEES*

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

#### 4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as “overhead”. The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

#### 5. FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those

particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

#### 6. BILLING ADDRESS

The retained attorney should submit all bills to:  
 Director, Office of Planning, Budget and Evaluation  
 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

#### 7. PROMPT PAYMENT

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#### 8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

#### 9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

#### ACCEPTANCE

I agree that my retention by the Department of Justice to represent William Welch in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: WILLIAM W. TAYLOR III

Date: May 8, 2009

Tax Identification Number: \_\_\_\_\_



CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
Washington, DC 20530, February 27, 2009.

CHUCK ROSENBERG, ESQ.,  
Hogan & Hartson LLP, 555 Thirteenth Street, NW, Washington, DC 20004.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. ROSENBERG: The Department of Justice has concluded that it reasonably appears at this time that representation of Brenda Morris in connection with a contempt proceeding in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Ms. Morris by attorneys employed by the Department of Justice is inappropriate. Ms. Morris has requested that the Department agree to reimburse you for her representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Ms. Morris should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Ms. Morris in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing her to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

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Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 7146  
Washington, DC, 20044

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Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,  
*Director, Torts Branch.*

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

**1. NATURE OF RETENTION**

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The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

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e. certain administrative expenses noted in paragraph number 4 below.

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To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

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## 3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

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a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour

b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour

c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour

d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

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In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

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The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

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The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

#### *5. FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

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The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

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After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. *BILLING ADDRESS*

The retained attorney should submit all bills to:  
 Director, Office of Planning, Budget and Evaluation  
 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

7. *PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. *GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. *TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

## ACCEPTANCE

I agree that my retention by the Department of Justice to represent Brenda Morris in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: CHUCK ROSENBERG

Date: March 3, 2009

Tax Identification Number: \_\_\_\_\_

CIVIL DIVISION,  
 U.S. DEPARTMENT OF JUSTICE,  
 Washington, DC 20530, February 18, 2009.

HOWARD M. SHAPIRO, ESQ.,  
 Wilmer Hale, 1875 Pennsylvania Ave., NW, Washington, DC 20006.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. SHAPIRO: The Department of Justice has concluded that it reasonably appears at this time that representation of Patty Merkamp Stemler in connection with a contempt proceeding in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Ms. Stemler by attorneys employed by the Department of Justice is inappropriate. Ms. Stemler has requested that the Department agree to reimburse you for her representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Ms. Stemler should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Ms.

Stemler in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing her to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 7146  
Washington, DC, 20044

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Thank you for your assistance in this matter.  
Very truly yours,

TIMOTHY P. GARREN,  
*Director, Torts Branch.*

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

*1. NATURE OF RETENTION*

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The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

- a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;
- b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;
- c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;
- d. any legal work that advances only the individual interests of the employee; and
- e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should

consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

## 2. *BILLABLE HOURS*

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

## 3. *LEGAL FEES*

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

## 4. *EXPENSES*

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-

hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

#### *5. FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

#### *6. BILLING ADDRESS*

The retained attorney should submit all bills to:  
 Director, Office of Planning, Budget and Evaluation  
 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

#### *7. PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

#### *8. GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

#### *9. TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

## ACCEPTANCE

I agree that my retention by the Department of Justice to represent Patty Merkamp Stemler in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: HOWARD M. SHAPIRO

Date: February 19, 2009

Tax Identification Number: \_\_\_\_\_

CIVIL DIVISION,  
U.S. DEPARTMENT OF JUSTICE,  
Washington, DC 20530, February 18, 2009.

MARK H. LYNCH, ESQ.,  
Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. LYNCH: The Department of Justice has concluded that it reasonably appears at this time that representation of William Welch in connection with a contempt proceeding in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Welch by attorneys employed by the Department of Justice is inappropriate. Mr. Welch has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Welch should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Welch in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 7146  
Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to:

Accounts Maintenance Unit  
Attn: Gina McLaughlin  
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any



questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,  
*Director, Torts Branch.*

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR  
REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

*1. NATURE OF RETENTION*

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

*2. BILLABLE HOURS*

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

*3. LEGAL FEES*

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
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The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

#### 4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as “overhead”. The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

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The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

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The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

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The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

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Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those

particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

#### 6. BILLING ADDRESS

The retained attorney should submit all bills to:  
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 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

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The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

#### 8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

#### 9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

#### ACCEPTANCE

I agree that my retention by the Department of Justice to represent William Welch in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: MARK H. LYNCH

Date: February 24, 2009

Tax Identification Number: \_\_\_\_\_

*Question.* Did the Justice Department have any role in the selection of private counsel retained to represent its prosecutors? If so, how was this role exercised?

Answer. The Department of Justice, upon determining that private counsel should be provided, informs the employees to contact private counsel of their choosing. If an employee is having difficulty in doing so, the Department will attempt to assist the employee in finding counsel. Once the employee selects counsel, the terms of retention as outlined in our standard retention letter and agreement are explained and, if private counsel agrees to the terms regarding reimbursement, he or she signs and returns the retention agreement to the Civil Division.

*Question.* What cost controls, if any, were imposed on the private counsel retained to represent the Department prosecutors?

Answer. Cost controls are specified in the retention agreement and Civil Division Directive 2120A (see Attachment 2). The retention agreement used by the Department requires the submission of detailed monthly bills, provides for GAO audit of the private attorney time sheets, places a maximum limit on the attorney's billable hours per month (however the agreement also provides that we will consider paying more if the press of litigation clearly necessitates the expenditure of more time), limits the maximum hourly fee that may be charged, and limits the services for which the private attorney will be compensated to those directly associated with the litigation. As noted above, the hourly rates are set based on the attorney's experience and are well below—and in some cases less than 50 percent of—the rates that the Department uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act.

#### ATTACHMENT #2

[U.S. Department of Justice, Civil Division, Administrative Directive CIV 2120A]

#### RETENTION AND PAYMENT OF PRIVATE COUNSEL

MAY 1, 2002

Subject: Retention and Payment of Private Counsel

##### 1. PURPOSE.

This directive sets forth the procedures for entering into agreements to retain private counsel to represent Federal employees at Federal expense and the procedures for paying private counsel fees and expenses.

##### 2. SCOPE.

The provisions of this directive apply to all branches, staffs, and offices within the Civil Division.

##### 3. DEFINITIONS.

a. A Private Counsel is a private attorney with whom the Department of Justice has entered into an agreement regarding compensation for the representation of a person, persons, or an entity being sued, prosecuted, or subpoenaed for acts performed in the service of the United States where the Department has determined that such representation is in the interest of the United States. The Department may enter into such compensation agreements with private counsel in any instance described in 28 C.F.R. § 50.15. Under the authority of 28 U.S.C. § 517, the Department may also enter into such agreements with private counsel for the representation of a person, persons, or entity in circumstances similar to those described in 28 C.F.R. § 50.15.

b. The Assigned Attorney, or the "Department attorney assigned," refers to the Civil Division attorney having assigned responsibility for the case and not to the Assistant United States Attorney who may be handling the case in the local district.

c. An "Employee," for the purposes of this directive, is a present or former employee of the United States or any other person or entity to whom or to which the Civil Division extends representation under the authority of 28 U.S.C. § 517.

##### 4. AUTHORITY.

28 C.F.R. § 50.16(b) gives the Assistant Attorney General of the Civil Division the responsibility for establishing procedures for the retention of private counsel, including the setting of fee schedules. 28 C.F.R. § 50.16(a) makes the retention of private counsel subject to the availability of funds.

##### 5. POLICY.

a. Department attorneys responsible for cases involving the retention of private counsel will determine from the Civil Division's Office of Planning, Budget, and Evaluation if funding is available for estimated private counsel costs PRIOR to sub-

mitting the formal request for authorization to enter into a private counsel retention agreement.

b. Once the Assistant Attorney General authorizes a private counsel representation agreement in accordance with 28 C.F.R. §§ 50.15 and 50.16, the Department of Justice will, SUBJECT TO THE AVAILABILITY OF APPROPRIATIONS, pay a private attorney, or other members of the attorney's firm, for those legal services reasonably necessary in the defense of a current or former Federal employee in civil, congressional, or criminal proceedings. The Department will not pay for services that it determines are not directly related to the defense of issues such matters present. Additionally, the Department will not pay for services, even if they are directly related to the defense of those issues, if the Department determines that the services are not in the best interests of the United States. The Department will not pay for services that advance only the interest of the employee.

#### 6. RESPONSIBILITIES.

a. The Assistant Attorney General, Civil Division, authorizes the representation of private counsel and determines what steps the Division will take when representation is warranted but funds are not available for it. The Assistant Attorney General may delegate these responsibilities to another appropriate Division official (a designee).

b. The Deputy Assistant Attorney General for the Torts Branch reviews and authorizes requests for additional private counsel hours and unusual private counsel expenses in cases that are the responsibility of other litigating divisions within the Department. He or she also decides whether the Department will reimburse an employee for previously incurred private counsel expenses.

c. Directors of the Civil Division's branches, offices, and staffs (hereinafter "Directors") send decision memoranda to the Assistant Attorney General (or designee) requesting authority to enter into retention agreements with private counsel and forward Memoranda for the File authorizing such agreements. They may sign letters presenting retention agreements to private counsel when the Assistant Attorney General has authorized retention of private counsel. They also review and decide routine private counsel billing disputes and requests for additional private counsel hours and costs after the assigned case reviewer has informed the private counsel of the Department's disallowance of a fee or expense. Directors refer such disputes to the appropriate Deputy Assistant Attorney General to review and decide the issues when the nature or expense of the case suggests the need to do so.

d. Reviewers for cases involving retained private counsel examine bills received from those counsel and certify them for payment, after review by the assigned attorney. Where the reviewer determines that the Department cannot pay for certain items as submitted, the reviewer informs the private counsel in writing of the Department's determination and of the private counsel's right to seek a redetermination from the appropriate Director.

e. Attorneys assigned to cases involving requests for private counsel estimate the costs of private counsel, inquire about the availability of funds for private counsel costs, prepare requests to enter into private counsel retention agreements, secure the actual agreement with private counsel, request the obligation of funds, suggest the deobligation of funds, submit all related documentation for processing, and review and certify private counsel bills for payment.

f. The Office of Planning, Budget, and Evaluation (OPBE), Civil Division, determines the availability of funds for private counsel, obligates and deobligates funds for the payment of private counsel, reviews bills for payment from private counsel, and arranges for the payment of private counsel from the U.S. Treasury.

#### 7. PROCEDURES.

##### a. *Obtaining Authorization For Private Counsel Retention Agreements.*

(1) *Determining the Availability of Funds.* Unless the retention of private counsel is clearly unwarranted under 28 C.F.R. § 50.16, attorneys responsible for cases in which the possibility of representation arises must DETERMINE THE AVAILABILITY OF FUNDS for any potential private counsel retention agreement BEFORE SEEKING APPROVAL to enter into any such agreement.

(a) The attorney must estimate the cost of a private counsel for the fiscal year based on the kind of services needed, the schedule of fees, and the approximate number of hours to be worked.

(b) The attorney should send a memorandum to the Director of OPBE inquiring about the availability of funds for the estimated private counsel costs.

(c) OPBE will determine whether sufficient funds are available to enter into a retention agreement and will notify the attorney accordingly in writing. If funds are available, OPBE will commit to the case the amount estimated for

the current fiscal year and will simultaneously reduce funding availability by the amount of the estimate. OPBE will obligate funds following the execution of a retention agreement (see section 7.c.). OPBE will establish monthly reports tracking availability, commitments, obligations, and payments by Branch.

(2) *Requesting Authorization for Private Counsel Retention Agreements.*

(a) After the attorney determines the availability of funds from OPBE, the attorney's Director will send a memorandum to the Assistant Attorney General (or designee) to obtain a decision on the retention of private counsel for the case. The memorandum will recommend whether to retain private counsel; will recommend, if appropriate, the private counsel to be retained; and will forward the supporting documentation necessary for the Assistant Attorney General (or designee) to make a decision. **THE MEMORANDUM MUST TRANSMIT:**

1. a written verification from OPBE that the Civil Division either has or does not have sufficient funds to pay for the estimated private counsel costs. In emergency situations, the memorandum may report an oral verification from OPBE, with the written verification for the record submitted later.

2. a Memorandum for the File, for the signature of the Assistant Attorney General (or designee), that will authorize the retention of private counsel and will approve the attorney to be retained (see Exhibit 1 for sample Memorandum for the File).

(b) The Assistant Attorney General (or designee) will consider the availability of funds in determining whether to authorize private counsel pursuant to 28 C.F.R. § 50.16. When private counsel representation is warranted and sufficient funds are not available, the Assistant Attorney General (or designee) may direct the Division to seek additional funding from the Justice Management Division. After signing the Memorandum for the File authorizing the proposed retention of private counsel, the Assistant Attorney General (or designee) will forward it to the originating Director, who will return it to the originating attorney.

b. *Establishing Private Counsel Retention Agreements.* Where the Assistant Attorney General (or designee) approves the retention of private counsel, the private counsel must sign a formal retention agreement that sets forth the terms and conditions of the representation. This written agreement will describe the legal fees and expenses that the government agrees to pay and the format and frequency of the bills that the private counsel will submit for payment.

Once the attorney receives the signed Memorandum for the File authorizing the retention of private counsel, the attorney will prepare the formal retention agreement, with a transmitting letter for the signature of the attorney's Director. After the Director signs the forwarding letter, the attorney will send these documents to the private counsel for signature. Exhibit 2 is a sample forwarding letter with the formal retention agreement.

**THE PRIVATE COUNSEL MUST SIGN AND RETURN THE AGREEMENT TO THE DEPARTMENT ATTORNEY ASSIGNED TO THE CASE BEFORE THE GOVERNMENT CAN PAY FOR ANY SERVICES.**

c. *Establishing an Obligation for Retained Private Counsel.* Once the assigned attorney receives the signed agreement from the private counsel, the attorney will prepare and send a memorandum to OPBE requesting the establishment of a financial obligation for the estimated costs of the private counsel (see the sample memorandum in Exhibit 3). In this memorandum, the attorney will estimate the total cost of the legal fees and expenses under the agreement. If the attorney anticipates that the case will require the private counsel's services longer than the current fiscal year, the memorandum should provide an estimate for each fiscal year. The attorney must attach to this memorandum:

(1) a copy of the Memorandum for the File authorizing the retention of private counsel;

(2) the signed retention agreement and forwarding letter; and

(3) OPBE's original written certification of the availability of funds for the agreement. After receiving the memorandum requesting an obligation with these supporting documents, OPBE will obligate funds for the payment of private counsel costs.

d. *Deobligating Funds.* The assigned attorney will closely monitor the progress of the case and will promptly notify OPBE when the case concludes or when the need for private counsel ends. Thereupon, OPBE and the attorney will assess the total and expected payments, and, if surplus funds remain obligated for the case, OPBE

will deobligate those funds so that they will be available for other requests for private counsel representation.

*e. Payment of Private Counsel Bills.*

(1) The retained private counsel must seek Department approval for any additional hours of service or any unusual expenditures not specifically allowed in the retention agreement BEFORE undertaking such services or incurring such expenses. The private counsel will make written request for authorization to the Department attorney assigned to the case. The assigned attorney, in consultation with the assigned case reviewer, will convey the Department's decision by letter to the retained private counsel.

In cases that are the responsibility of other litigating divisions of the Department, the Deputy Assistant Attorney General for the Torts Branch will review and authorize requests for additional hours or unusual costs.

(2) Private counsel will submit bills on a monthly basis to the Director of OPBE for processing and payment.

(3) OPBE will route the bill to appropriate individuals for review prior to payment. OPBE will attach a cover sheet to the bill with delineated spaces or blocks for each individual in the review process and a schedule for processing the bill at each stage of review. Each reviewer will enter the results of his or her review and will endorse the appropriate space on the cover sheet.

(4) OPBE will examine each bill to ensure its consistency with the financial conditions of the retention agreement (billable hours, legal fees, expenses, etc.) and the accuracy of the mathematical calculations. OPBE will not examine the necessity or reasonableness of any service. OPBE will certify the correctness of the bill for the items within the scope of its review or will note any discrepancies it discovers.

(5) OPBE will forward the bills, with the above certification or notation of discrepancies, to the assigned attorney for review and certification for payment. OPBE will not forward those billing items that the retained private counsel has indicated might compromise litigation tactics if disclosed to assigned Department attorneys, pursuant to paragraph 5 of the addendum to the retention agreement. In these instances, the Director responsible for the case will identify uninvolved Department attorneys who will independently review those sensitive portions of the bill directly for OPBE.

On receiving the bill, the attorney will review and then certify, if appropriate, the necessity and reasonableness of the services indicated and will forward the bill to the assigned case reviewer for his or her certification. The assigned case reviewer will then sign the bill, if appropriate, and return it to OPBE for payment.

(6) Once the appropriate parties have properly reviewed and certified the bill as payable, OPBE will submit it for payment to the U.S. Treasury, through the Justice Management Division.

(7) Should this review process uncover any discrepancies or nonreimbursable items, the assigned attorney will prepare a letter for the signature of the assigned case reviewer to inform the private counsel of the items not payable as presented and to explain the reasons. The letter should ask the private counsel to submit either a revised bill or an explanation of any item for which information is insufficient to determine if the item is payable. The assigned case reviewer will forward a copy of the signed letter with the disputed bill to OPBE.

Should the private counsel contest the disallowance of any items that the Department will not pay, the private counsel may submit a request for reconsideration to the appropriate Director, who will decide the matter for the Department and will inform the private counsel of the decision by letter.

(8) THE PROMPT PAYMENT ACT REQUIRES THE PAYMENT OF PRIVATE COUNSEL BILLS WITHIN 30 DAYS OF RECEIPT AND THE NOTIFICATION OF ANY DEFECTS IN BILLS WITHIN 7 DAYS OF RECEIPT IN THE CIVIL DIVISION. FAILURE TO ADHERE TO THESE TIME REQUIREMENTS MAY RESULT IN THE ASSESSMENT OF INTEREST PENALTIES. To avoid the possible assessment of interest penalties, OPBE will complete its initial review of private counsel bills and will forward them to the assigned attorney within 3 days of their receipt. Within 3 days of receiving the bill from OPBE, the assigned attorney will ensure the complete certification of the bill for payment and will return it to OPBE or will ensure the posting of a letter to the private counsel concerning defects in the bill.

*f. Payment for Previously Incurred Private Counsel Expenses.*

(1) *Preparation and Routing of Request.* In the event that an employee seeks reimbursement for private counsel expenses incurred in a matter that has already concluded or in which the direct representation by Department of Justice

attorneys has become available, the employee or the employee's private attorney may submit a request to the General Counsel of the employee's agency. The employing agency shall forward the request to the Director of the appropriate branch, office, or staff of the Civil Division. The Director will assign the matter to a trial attorney.

(2) *Content of the Request.* The request for reimbursement for past representation must include a complete statement of the fees and expenses for which the employee is seeking reimbursement. This statement should follow the format described in the sample reimbursement agreement (see Exhibit 2). The request should also include an explanation from both the employee and the employing agency of the reason or reasons why direct representation by the Department of Justice was not sought or was not available.

(3) *Assessment of the Statement of Fees and Expenses.* The assigned attorney will forward the statement of fees and expenses to OPBE for a review of computational accuracy and for consistency with the financial terms and conditions of the normal representation agreement. After that review, OPBE will return the bill to the assigned attorney with an explanation of any computational errors and non-conforming items. OPBE will also certify whether funds are available to pay the bill, after allowances for computational errors (no allowance being made for non-conforming items). On receipt of OPBE's assessment, the assigned attorney will review the statement of fees and expenses, including any non-conforming items, and will certify them for payment if they are reasonable in light of all the circumstances. In no case will the Department approve an hourly rate in excess of the rate then applicable for an attorney of the experience level of the billing private counsel.

(4) *Preparation of Recommendation for Approval.* The assigned attorney will then prepare a memorandum for the signature of his or her Director requesting that the Deputy Assistant Attorney General for the Torts Branch approve the payment of the private counsel. A request for approval must include:

- (a) the employee's request and the agency's views;
- (b) OPBE's confirmation that appropriated funds are available to pay the bill;
- (c) a recommendation as to the amount the Department should pay; and
- (d) a Memorandum for the File to record the Deputy Assistant Attorney General's decision (see Exhibit 4).

A retention agreement is not necessary.

(5) *Instituting the Decision.* The Deputy Assistant Attorney General will indicate his or her decision on the Memorandum for the File, sign it, and forward it with the requesting memorandum to the Director, who will send them to the assigned attorney. If the decision is favorable, the assigned attorney will send a copy of the Memorandum for the File and the statement of fees and expenses to OPBE, which will then obligate the funds and process the statement for payment. Finally, the assigned attorney will prepare a letter to the employee and the employing agency announcing the Department's decision and indicating, if appropriate, that the Department is now processing the bill for payment.

#### 8. DOCUMENTATION.

Documents associated with the retention and payment of private counsel often reflect the substance of communications between employees and their Justice Department counsel. Accordingly, they are entitled to the protection of the attorney-client privilege (see 28 C.F.R. § 50.15[a][3]). This includes documents related to the authorization of private counsel and the payment of their bills.

The Civil Division will afford special handling to these documents in accordance with the instructions contained in the Assistant Attorney General's memorandum of July 26, 1983, titled "Maintenance of Attorney-Client Information." The Civil Division will treat these documents as a part of the official litigation case file for the particular matter, but will hold them in special file sections separate and apart from the remainder of the official case file. These special file sections will contain a cover sheet over the documents that proclaims: "This file contains privileged attorney-client information. Access is limited to assigned trial attorneys and their supervisors." A similar message must appear on the outside of the file section folder near the identifying DJ number. Civil Division employees will take great care to prevent the unauthorized disclosure of the information in these documents, generally treating them as "Limited Official Use" information (see Civil Division Directive CIV-2620).

When the case closes, the assigned attorney will promptly retire the remainder of the case file, but the Civil Division branch, office, or staff will retain the privileged file sections until the Department of Justice and the National Archives determine their ultimate disposition. A note will go into the official file indicating that



the Division has retained a privileged portion of the file, and a copy of the signed closure form will go into the retained privileged file sections.

9. *RATES PAID TO PRIVATE COUNSEL.*

OPBE will review rates paid to private counsel at least every 3 years to ensure that rates are sufficiently competitive to attract qualified attorneys. Determinations to change rates will be based on market conditions and funding availability.

10. *ADDITIONAL INFORMATION.*

Additional information on this subject is available from the Director, OPBE (307-0034).

ROBERT D. MCCALLUM, JR.  
*Assistant Attorney General Civil Division.*

EXHIBIT 1

MEMORANDUM FOR FILE

Re: Request(s) For Representation By Private Counsel Of [insert name of employee(s)] in [insert case caption]

The request(s) for representation by private counsel at Department of Justice expense in the above referenced matter is hereby granted, subject to the terms, conditions and limitation of 28 C.F.R. §§ 50.15, 50.16 and Civil Division Directive 2120A.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Assistant Attorney General  
(or designee)  
CIVIL DIVISION

EXHIBIT 2

SAMPLE PRIVATE COUNSEL RETENTION LETTER

[Insert Name of attorney or firm]  
[Insert address]

Re: [Insert case name]

Dear [Name]:

The Department of Justice has concluded that it reasonably appears at this time that representation of [insert employee's name] is in the interest of the United States. It also appears at this time, however, that representation of [insert employee's name] by attorneys employed by the Department of Justice is inappropriate. [Employee] has requested that the Department agree to reimburse you for [his or her] defense in the above referenced matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and [employee] should be aware that by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary damages that may be imposed against [him or her] in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing [employee] to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact [Department attorney assigned to the case] at \_\_\_\_\_.

If you find the provisions of the agreement acceptable, please return the signed addendum to [name of assigned attorney] at the following address:

[Name of assigned attorney]  
[Name of branch, office, or staff]  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530

Reimbursement of allowable fees and expenses will become effective on the Civil Division's receipt of the signed addendum.  
Very truly yours,

\_\_\_\_\_  
Director  
[Branch, office, or staff]  
Civil Division

Enclosure

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

*1. NATURE OF RETENTION*

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

- a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;
- b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;
- c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;
- d. any legal work that advances only the individual interests of the employee; and
- e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

*2. BILLABLE HOURS*

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

*3. LEGAL FEES*

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services

should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3-5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0-3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

#### 4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

#### 5. FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

**6. BILLING ADDRESS**

The retained attorney should submit all bills to:  
 Director, Office of Planning, Budget and Evaluation  
 Civil Division  
 United States Department of Justice  
 Washington, D.C. 20530  
 Attn: Room 9042, L Street Building

**7. PROMPT PAYMENT**

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

**8. GAO REVIEW**

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

**9. TERMINATION**

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent \_\_\_\_\_ in connection with \_\_\_\_\_ will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

## EXHIBIT 3

## MEMORANDUM

TO: Supervisor, Accounts Maintenance Staff  
Office of Planning, Budget, and Evaluation  
Civil Division

FROM: [Name of Director]  
[Name of Branch, Office, Staff] Civil Division

SUBJECT: Request to Establish Private Counsel Obligation

A decision was made to reimburse private counsel for representation of a Federal employee in connection with [insert case caption].

It is estimated that [insert dollar amount] is needed for reimbursement in fiscal year [insert year]. Please establish the following obligation at this time.

<i>Law Firm</i>	<i>FY XX</i>
[Name of private counsel]	[insert dollar amount]
(on behalf of [insert employee(s) name])	
[Address of private counsel firm]	

The firm's tax identification number is: [insert tax identification number]

If you have any questions, please contact [insert name] of my office at [insert telephone number].

Attachments

## EXHIBIT 4

## MEMORANDUM FOR FILE

Re: Request For Authorization To Reimburse [insert name of attorney] For The Representation of [insert name of employee] in [insert case caption]

[Insert name of employee(s)] has requested that the Department of Justice bear the cost of representation in this case. It appears that representation of [insert name of employee(s)] would have been in the interest of the United States and that failure to make a timely request for representation is not attributable to any fault on the part of [insert name of employee(s)]. Reimbursement of [insert attorney's name] in the amount of \$ \_\_\_\_\_ is hereby authorized.

DATE: \_\_\_\_\_

Deputy Assistant Attorney General  
Civil Division

*Question.* Would you agree with Senator Grassley's characterization that "this is an unseemly high amount of money being spent by the taxpayers to defend what appears to be egregious misconduct?" If you disagree, please explain the reason for your disagreement.

*Answer.* We respectfully disagree for two reasons. First, only reasonable and necessary fees were reimbursed. The amount expended was for the legal services for six different prosecutors and for two separate but related matters:

- a contempt proceeding convened by the district judge; and
- a court-ordered several-years-long investigation, both stemming from a high-profile criminal prosecution which proceeded to trial.

The breadth of this undertaking is evidenced by the Special Prosecutor's investigative report, which exceeded 500 pages. Second, as noted in our previous response, employees are given a reasonable benefit of the doubt on disputed factual matters and representation is provided while the facts are being fully developed. This practice is designed to protect the Federal workforce and to ensure that the interests of the Government with respect to the legal issues in which the United States has a concern are adequately defended.

*Question.* On November 21, 2011, Judge Sullivan issued an order indicating that the report of his investigative counsel had been submitted and seeking the views of certain stakeholders, including the prosecutors, on whether the report should be made public. Did DOJ pay the legal expenses or associated costs of any of the prosecutors with respect to the issues raised in Judge Sullivan's November 21, 2011 order and if so, what public interest justified the expenditure of these funds and how much money was paid?

Answer. Judge Sullivan's November 21, 2011, order asked DOJ, Senator Stevens' attorneys, and the attorneys for the individual prosecutors to submit comments and state their positions on its release. The proceedings were conducted under seal and the Civil Division did not have access to any of the sealed submissions. While DOJ's position was unsealed on January 9, 2012, the positions of the individuals were not revealed until March 15, 2012, when the Special Prosecutor's report was released and Judge Sullivan's February 8, 2012, order was made public.

Pursuant to DOJ's previous determination that representation in connection with the investigation by Special Counsel Henry F. Schuelke III was in the Government's interest, and prior to the unsealing of the prosecutors' submissions on March 15, 2012, DOJ paid certain invoices for work that was conducted in connection with the prosecutors' court-invited comments on Special Counsel Schuelke's report.

Invoices were submitted by attorneys for Brenda Morris on December 15, 2011, January 24, 2012, and February 16, 2012, and payment was approved on January 6, 2012, February 10, 2012, and March 2, 2012, respectively.

Invoices were submitted by attorneys for James Goeke, on December 23, 2011, and January 31, 2012, and payment was approved on January 6, 2012, and February 8, 2012, respectively.

Invoices were submitted by attorneys for Joseph Bottini on December 13, 2011, and January 18, 2012, and payment was approved on December 20, 2011, and February 3, 2012, respectively.

Invoices were submitted by attorneys for Edward Sullivan, on December 15, 2011, January 12, 2012 and February 14, 2012, and payment was approved on December 20, 2011, January 20, 2012 and February 24, 2012, respectively.

The foregoing payments total approximately \$106,000. The time billed was used to review and analyze the Special Prosecutor's 500-plus-page investigative report, formulate the client's position, and file a response in accordance with the court's order.

In light of the Government's decision not to object to the release of the report, DOJ has not paid invoices that were received after the prosecutors' positions were unsealed on March 15, 2012, and that relate to efforts to prevent the release of the report. The Civil Division has received, but have not yet processed, an invoice submitted on February 29, 2012, from attorneys for James Goeke (who opposed release of the Special Counsel report). We also received, but have not yet processed, three invoices submitted on February 24, 2012, from attorneys for William Welch (who did not oppose release of the Special Counsel report).

*Question.* On February 8, 2012, Judge Sullivan issued an order requiring that the investigative report and certain related documents in the proceedings be released to the public on March 15, 2012. One of DOJ's prosecutors, an Edward Sullivan, filed a motion in the District Court to stay that order and when his request was denied filed an emergency appeal to the D.C. Circuit to stay the release of the report. Does DOJ intend to pay the attorneys fees incurred by Mr. Sullivan in requesting the stay or the attorneys fees and/or associated costs he incurs in connection with his appeal? If so, what public interest justifies the expenditure of these funds?

Answer. DOJ has received, but not yet processed an invoice related to Mr. Sullivan's request for a stay and his emergency appeal. This invoice will be reviewed and processed in accordance with the terms of our standard retention agreement. As noted in a previous response, that agreement, among other things, limits the services for which the private attorney will be compensated to those directly associated with the litigation. And our practice is to require counsel to seek authorization from the Civil Division to take an appeal from an adverse ruling stemming from the litigation in which we have authorized reimbursement. In this case, we have no record that counsel for Mr. Sullivan contacted the Civil Division for authorization to pursue an appeal. In addition, the retention agreement provides that DOJ will not reimburse services even if deemed reasonably necessary to the defense of the employee if it appears those services are not in the interest of the United States. In light of the Government's decision not to object to the release of the report, the Civil Division has not paid invoices that were received after the prosecutors' positions were unsealed on March 15, 2012, and that relate to efforts to prevent the release of the report.

*Question.* Does DOJ believe that the report of Judge Sullivan's investigative counsel and related documents should be released on March 15 as Judge Sullivan has ordered? Does DOJ intend to oppose Mr. Sullivan's appeal to the D.C. Circuit?

Answer. Per the January 6, 2012, submission by DOJ (unsealed on January 9, 2012), the Department did not object to the March 15, 2012, release of the Special Prosecutor's report. DOJ has not entered an appearance in connection with Mr. Sullivan's emergency appeal, but was listed by private counsel as an interested party on the docket.

*Question.* If DOJ supports Mr. Sullivan's efforts to prevent public disclosure of the report and associated documents please state the public interest served by the Department's position?

*Answer.* See previous response. DOJ did not support Mr. Sullivan's efforts to prevent public disclosure of the report and its associated documents. As I previously stated at the March 8, 2012 Senate appropriations hearing, DOJ does not object to the release of the Special Counsel's investigative report.

*Question.* In his November 21, 2011 order Judge Emmet Sullivan' indicates that his investigative counsel has found that members of the *Stevens* prosecution team engaged in "significant, widespread and at times intentional—misconduct." In light of this finding and other findings in the investigative report does the Government have any recourse to recover attorney's fees and costs expended in the defense of its prosecutors' conduct? If so does the Government intend to exercise its rights?

*Answer.* Pursuant to long-standing policy, a Federal employee who has been provided representation either by DOJ or by private counsel is afforded the benefit of the doubt and his or her plausible version of the facts usually will be credited until a contrary factual determination is made by the employee's agency, a DOJ prosecuting component, or the appropriate professional responsibility office. Representation continues to be provided until DOJ decides to seek an indictment against the employee related to the conduct concerning which representation was undertaken or the Department determines that continued representation of the employee through private counsel is no longer in the interest of the United States (28 C.F.R. 50.16 (c)(2)(i) and (iv)).

These rules apply whether the representation is provided by DOJ attorneys directly or through the Department's private counsel program. Just as there is no provision to recover services already rendered by DOJ attorneys directly pursuant to an earlier decision to provide such representation, there is no provision under the guidelines for recovering fees already expended.

#### PROSECUTORIAL MISCONDUCT

*Question.* "USA Today has reported that its 2010 investigation found that the department's internal investigations frequently take a long time and that prosecutors faced little risk of losing their jobs even when officials documented serious misconduct. Court records show that most of the attorneys named in the *Stevens* case continue to be assigned to their official duties." Is the USA Today writer's observation that prosecutors face little risk of losing their jobs even in the face of documented serious misconduct accurate? Please explain.

*Answer.* We are aware of the 2010 USA Today investigation. In January 2011 we created the Professional Misconduct Review Unit (PMRU) to handle disciplinary actions for career attorneys at DOJ that arise from Office of Professional Responsibility (OPR) investigations. The PMRU is now responsible for reviewing all OPR findings of professional misconduct against Assistant U.S. Attorneys (AUSAs) and Criminal Division Attorneys. The PMRU also is responsible for imposing discipline in those matters in which it upholds OPR's misconduct findings. We created the PMRU following a comprehensive review of existing disciplinary procedures and processes with the aim of creating a more efficient and uniform system to provide consistent, fair, and timely resolution of these cases. We believe that the PMRU is fulfilling its mandate.

DOJ is also forthcoming with information concerning OPR's performance. OPR provides the Attorney General with an annual report of its activities. These reports include statistical information on OPR's activities, significant policy changes and developments, and summaries of cases completed during the fiscal year. The reports are available to the public at <http://www.justice.gov/opr/reports.htm>. When making a finding of misconduct, OPR shares a draft report of its investigation with the subjects of the investigation prior to completing a final report. OPR's misconduct findings then are subject to review by the PMRU (for AUSAs and Criminal Division prosecutors) and the Office of the Deputy Attorney General prior to the implementation of discipline. Provided that OPR's findings of misconduct are upheld, discipline may range from a reprimand to removal from Federal service.

*Question.* Has the OPR been tasked to investigate allegations of misconduct by members of the *Stevens* prosecution team? How long has this investigation been going on and when might the public expect that it be concluded? Once OPR's investigation is completed, who is responsible for implementing its findings? Will the findings be made public?

*Answer.* OPR conducted a 2½ year investigation of the *Stevens* misconduct allegations. While OPR completed its 672-page investigative report on August 15, 2011, the entire disciplinary process involves various steps, and the process is not finished

until all the necessary steps have been completed. OPR's misconduct findings are subject to review by the PMRU and the Office of the Deputy Attorney General prior to the implementation of discipline. No formal action is taken against a Department employee until the disciplinary process is final. Because DOJ's disciplinary process is not yet complete, and because of limitations on public disclosure contained in the Privacy Act, the Department is unable to release the OPR Report at this time. Such a release also would be contrary to the integrity of the Department's ongoing disciplinary process. As the Attorney General has stated previously, the Department plans to release publicly as much of the OPR report and the Department's findings as possible, at the appropriate time and consistent with law. This cannot happen until the disciplinary process is complete.

*Question.* What potential consequences could members of the prosecution team found culpable of misconduct in the *Stevens* matter face?

*Answer.* While we cannot discuss at this time OPR's specific findings in the *Stevens* case, when OPR's findings of misconduct are upheld by the PMRU (for AUSAs and Criminal Division attorneys) and the Office of the Deputy Attorney General, discipline may range from a reprimand to removal from Federal service. However, any suspension in excess of 14 days is appealable to the Merit Systems Protection Board. All disciplinary determinations must fully consider the 14 factors enunciated in *Douglas v. Veterans Admin.*, 5 MSPR 313 (1981) that can mitigate or aggravate the level of discipline taken against an employee.

*Question.* In his November 21, 2011 order, Judge Sullivan observes that his investigative counsel found misconduct on the part of members of the *Stevens* prosecution team—misconduct that was characterized as “at times willful and intentional.” DOJ has had access to the report of Judge Sullivan's investigators since last November. Yet USA Today states that court records show that most of the attorneys named in the *Stevens* case continue to be assigned to criminal cases. As of March 8, 2012, does DOJ know who was responsible for the willful and intentional misconduct referred to in Judge Sullivan's November order and has it nevertheless permitted that individual or those individuals to continue to work on criminal cases? Has DOJ acted on the findings of Judge Sullivan's investigative counsel? If not, please explain why not.

*Answer.* In November 2011, Judge Sullivan released the report of his investigative counsel, Henry F. Schuelke, III, to certain DOJ individuals under a protective order for the purpose of assessing whether privacy and/or privilege issues affected the public release of the report. The designated individuals reviewed the document and responded accordingly that DOJ did not object to the release of the report. The report recently was publicly released. We are aware that the report is critical of Department attorneys, and we are addressing the matter through our disciplinary process. OPR, which cooperated fully with Mr. Schuelke's investigation, has conducted an independent review and has produced a detailed report concerning the misconduct allegations. This report is similar to Mr. Schuelke's in that it addresses the same misconduct issues; however, the OPR report makes specific findings and recommendations regarding each subject's conduct. Once our internal disciplinary review procedures are complete, and the subjects have been afforded an opportunity to comment on OPR's report and any disciplinary proposals, we will impose appropriate discipline in accordance with the 14 factors enunciated in *Douglas v. Veterans Admin.*, 5 MSPR 313 (1981) that can mitigate or aggravate the level of discipline taken against an employee.

#### FEDERAL CRIMINAL DISCOVERY REFORM

*Question.* Could you briefly explain what the *Brady* rule states and whether it is in your judgment it is necessary to the guarantee of a fair trial?

*Answer.* The *Brady* rule requires the disclosure of exculpatory and impeachment evidence when such evidence is material to guilt or punishment. *Brady*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972). The Supreme Court indeed held in *Brady* that Government disclosure of material exculpatory and impeachment evidence is part of the constitutional guarantee to a fair trial. 373 U.S. at 87; *Giglio*, 405 U.S. at 154. DOJ is committed to ensuring this constitutional guarantee is met in every Federal case.

*Question.* Some would suggest that it is awkward for prosecutors to provide the defense with information that might undermine their hard work to gain a conviction. I believe that you would agree with me that the responsibility of a prosecutor is not to secure a conviction but to secure justice. Would you explain what DOJ is doing, particularly in light of the lessons learned from the *Stevens* case to ensure that *Brady* obligations are met?



Answer. DOJ takes its discovery obligations very seriously. For that reason, after discovery violations were uncovered in the *Stevens* case, the Attorney General moved to set aside the guilty verdict against Senator Stevens and dismiss the indictment. Furthermore, the Attorney General took decisive and unprecedented action to improve the criminal discovery practices within the Department. The following steps, among others, have already been taken:

- The Office of the Deputy Attorney General issued memoranda to all Federal prosecutors providing overarching guidance on gathering and reviewing discoverable information and making timely disclosure to defendants; directing each U.S. Attorney's Office to develop additional, more specific discovery policies; and providing separate guidance on discovery of electronically stored information (ESI).
- DOJ developed a ground-breaking protocol concerning the discovery of electronically stored information in criminal cases in collaboration with representatives from the Federal public defenders and counsel appointed under the Criminal Justice Act.
- DOJ dramatically expanded its discovery training requirements for all Federal prosecutors and institutionalized those requirements through codification in the U.S. Attorneys' Manual. All Federal prosecutors are now required to undertake annual discovery training, so that roughly 6,000 Federal prosecutors across the country receive the required training annually on a wide variety of criminal discovery-related topics.
- DOJ holds "New Prosecutor Boot Camp" courses for newly hired Federal prosecutors, which includes training on *Brady*, *Giglio*, and ESI, among other topics.
- DOJ has trained thousands of Federal law enforcement agents and support staff in criminal disclosure policies and practices, and produced criminal discovery training materials for our victim witness coordinators.

DOJ distributed to all Federal prosecutors nationwide a Discovery Blue Book that comprehensively covers the law, policy and practice of prosecutors' disclosure obligations, and made it available on the desktop of every Federal prosecutor and paralegal.

*Question.* In spite of DOJ's efforts to educate its attorneys about Brady's requirements, many commentators have noted that *Brady* practices vary from office to office and even within offices. It has been suggested that the *Brady* obligation should be codified in the Federal Rules of Criminal Procedure. In fact, Judge Sullivan wrote to U.S. Court of Appeals Judge Richard Tallman, Chair of the Advisory Committee on the Federal Rules of Civil Procedure suggesting that this approach be taken. It has been reported that DOJ opposed these efforts in 2006 and again in 2009 and the Advisory Committee chose not to pursue the issue in light of this opposition. Is this accurate and can you explain why this is the case?

Answer. In 2006, DOJ opposed any effort to amend the Federal Rules of Criminal Procedure to codify or expand government disclosure obligations under *Brady*. In 2009, this administration was prepared to codify the *Brady* rule within the Federal Rules of Criminal Procedure. However, the administration opposed the expansion of criminal discovery under consideration, because we believed the expansion being considered by the Advisory Committee would have damaged the carefully constructed balance created by the courts for criminal discovery and would have ignored the need to protect the rights of victims, witnesses, law enforcement officers, and national security in criminal discovery practice.

*Question.* In light of DOJ's lack of support for improving *Brady* practices through the Federal Rules, the National Association of Criminal Defense Lawyers has proposed a model *Brady* reform bill. I am preparing this bill for introduction in the Senate. Is it reasonable to expect that DOJ would oppose this proposal?

Answer. We will oppose legislation that deviates from Supreme Court law, requires the disclosure of nonmaterial, legally irrelevant, and inadmissible information, or that does not properly account for and respect the interests of victims, witnesses, law enforcement officers, and national security.

*Question.* Would DOJ be supportive of the Judiciary Committees conducting a hearing on the *Brady* reform bill I intend to introduce and *Brady* practices overall in the near future?

Answer. We think any hearing on criminal discovery legislation should include witnesses who can speak to all the interests of justice, including the interests of defendants, victims, witnesses, law enforcement, and national security. A hearing on discovery legislation should also explore the practical realities of the legislation. We would have no objection to such a hearing.

## BILL ALLEN MATTER

*Question.* Is there anything you would like to say, in addition to what you told the subcommittee last year, which would explain why DOJ declined the recommendations of career prosecutors and professional law enforcement in this matter?

*Answer.* The protection of children is of the highest priority for DOJ and we aggressively prosecute those who harm our Nation's children. As a result of DOJ's decision to expand Project Safe Childhood (PSC) in May 2011, the Department now coordinates closely with law enforcement at the Federal, tribal, State, and local levels to investigate and prosecute all Federal crimes involving the sexual exploitation of a minor, including those committed in Indian country and those that involve commercial sexual activity, whether or not they involve the Internet.

Moreover, DOJ's track record of vigorously prosecuting those who sexually abuse minors speaks for itself:

—In fiscal year 2011, DOJ obtained approximately 2,713 indictments, against 2,929 defendants, for offenses involving the sexual exploitation of a minor. This represents a 15-percent increase in the number of indictments more than fiscal year 2007 (in which 2,364 indictments were filed against 2,470 defendants). Since the beginning of fiscal year 2007, more than 11,447 defendants have been convicted in Federal courts of an offense related to the sexual exploitation of a minor. These crimes have ranged from production of obscene visual depictions of minors engaged in sexually explicit conduct; to receipt, distribution, possession, and/or production of child pornography; to the direct physical, sexual abuse of a minor.

—Since fiscal year 2001, the caseload of the attorneys in the Child Exploitation and Obscenity Section of the Criminal Division has increased every year, and it has increased cumulatively by more than 1,100 percent.

As the Attorney General has previously testified regarding the investigation of Bill Allen, any decision that we make to prosecute or not prosecute a case is governed by the Principles of Federal Prosecution, and we look at a host of relevant factors including the strength of evidence; the state of the law; the age of the case; the reliability of witnesses and other evidence; whether we can adequately address anticipated pretrial motions and discovery demands; and whether we believe any conviction can be defended on appeal, among many other factors. Very simply, we make all decisions to prosecute or not prosecute—including that relating to Bill Allen—based solely on the law and the facts and nothing else.

*Question.* At my request, OPR has undertaken a preliminary inquiry into this issue. Can you tell me the status of that inquiry and explain what steps are being taken to ensure that OPR arrives at an independent and objective conclusion on this politically sensitive issue?

*Answer.* OPR's preliminary inquiry is ongoing. While OPR reports to the Attorney General, it operates independently, and the Attorney General's office exerts no influence over OPR's investigations or the content of its reports.

*Question.* The Alaska Attorney General's Office and the Anchorage Police Department investigative team have asked to meet with OPR to discuss their case. I have asked OPR to send a team to Alaska to understand how the case against Mr. Allen was prepared. Is OPR team authorized to travel to Alaska to meet with those who did the hard work to build the sexual abuse case against Mr. Allen?

*Answer.* OPR has the authority to take whatever steps it deems necessary in order to complete an inquiry or investigation.

Senator MIKULSKI. Before I recess the subcommittee, I want to conclude the hearing the way I began. As I listened to the questions, the answers, we've looked at the budget in the short time that we have to review, I want to end the hearing the way I began, which is to thank the men and women who work at the Justice Department.

I've been on this subcommittee a long time. It's been a great blessing and a great honor. And when I think about it, the scope and complexity of what our citizens and our country face, and what our Justice Department faces, it's an amazing job, from community safety, to national safety—just in the last decade, the expansion in the national security portfolio, and the transformation of agencies. FBI is not, you know, J. Edgar Hoover's FBI any more.

So for everybody who works, everybody's out on the street, everybody tracking sexual predators, everybody who's doing their job, the prison guards, and all the wonderful support staff, the paralegals, the secretarial staff, the administrative staff, et cetera, we just want to say thank you.

I think our country's safer, because of your work. And we have to look out for our civil service, because we need an independent judiciary. We need a Justice Department that functions with absolute integrity. But we, who fund the appropriations, need to know that if you're going to have a crackerjack civil service, we have to also support that crackerjack civil service. So, thank you, and God bless you, and God bless America.

SUBCOMMITTEE RECESS

The subcommittee stands in recess until March 15, next Thursday, at 10 a.m. We will take the testimony of the Director of the FBI, in both an open hearing and then ultimately a classified hearing.

The subcommittee is in recess.

Attorney General HOLDER. Thank you, Madam Chair.

[Whereupon, at 11:37 a.m., Thursday, March 8, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 15.]



**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2013**

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**THURSDAY, MARCH 15, 2012**

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

The subcommittee met at 10:05 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Feinstein, Lautenberg, Hutchison, Murkowski, and Graham.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

**STATEMENT OF ROBERT S. MUELLER, III, DIRECTOR**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, everybody. The Commerce, Justice, Science, and Related Agencies Subcommittee of the Senate Appropriations Committee will come to order.

Today, we are taking the testimony of and engaging in a conversation with our Director of the Federal Bureau of Investigation (FBI), Robert S. Mueller, III.

This will be a two-part hearing. One will be here in open and public session, and then, because of the sensitivity of issues and budget involved for the FBI's fight against the global war against terrorism, we will have a classified briefing. So upon the conclusion of this phase, we will recess and reconvene in a classified environment in the Capitol Visitors Center (CVC), and all members are welcome. This is where we can have an additional in-depth conversation.

Today, the subcommittee will hear from the Director of the FBI. We're grateful for Director Mueller's service and his agreement to serve 2 more years to work with our President in order to keep our streets, communities, and country safe.

We begin our examination of the FBI's fiscal year 2013 budget request with this open hearing.

As chairwoman of this subcommittee, when I look at the FBI budget, I have three priorities: national security, which is how the FBI is working to keep America safe; community security, how the FBI is working with local law enforcement to keep our families and

our neighborhoods safe; and then also oversight and accountability, to ensure that we're spending taxpayers' dollars wisely and ensuring that we get value for our dollar.

PREPARED STATEMENTS

I'm going to ask unanimous consent, in the interest of time, that my full statement be included in the record along with a statement that Senator Mark Pryor has asked to be included.

[The statements follow:]

PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

Good morning and welcome.

Today, the Commerce, Justice, Science, and related agencies Subcommittee (CJS) will hear from Federal Bureau of Investigation (FBI) Director Robert S. Mueller, III. We are grateful that Director Mueller agreed to serve for 2 more years.

As Chairwoman, I have three priorities when examining the FBI's budget:

*National Security.*—How is the FBI keeping America safe?

*Community Security.*—How is the FBI keeping our families safe?

*Oversight and Accountability.*—How is the FBI ensuring our tax dollars are spent wisely?

Today, we will learn more about how the FBI will use its funding to carry out its extraordinary responsibilities keeping 330 million Americans safe from terrorism and violent crime; dismantling organized crime and drug cartels; combating gang violence, and illegal drug and gun smuggling; and catching child sexual predators.

Before we begin our hearing, I want to thank all of the hardworking FBI agents, analysts, and professional staff for their dedication and determination. Federal employees feel under siege and unappreciated. I want them to know that the CJS Subcommittee is on their side. We know what the FBI does every day to keep American safe, and we appreciate it.

The President's budget request for the FBI is \$8.2 billion. The request reflects the stringent budget reality. There are no new initiatives in the FBI's budget request this year. There is only one modest, targeted increase to enhance FBI's abilities to fight mortgage and financial fraud.

In fact, FBI will be asked to do more with less in 2013. In order to afford to continue critical FBI efforts begun in previous years—such as computer intrusions—the budget proposes \$63 million in savings from lower-priority FBI programs. The FBI will also be required to give back \$162 million in prior-year funding. FBI is also tasked with becoming the banker for all Federal law enforcement agencies on interoperable communications equipment purchases. I want to ensure that the FBI's budget maintains the FBI as our pre-eminent law enforcement agency.

Additionally, if we don't avoid a sequester, FBI will be cut by 8 to 10 percent across the board. We will want to hear from Director Mueller about the consequences of a cut like that and how it will impact the FBI's ability to carry out its mission.

Our Nation faces a growing and pervasive threat overseas from hackers, cyber spies, and cyber terrorists. Cyber security may be the most critical component to our Nation's infrastructure. We need safe and resilient networks to protect our online banking and commerce, electrical and power grids, air traffic control systems and digitalized records. The budget request is \$136 million for the FBI's cyber efforts, which is the same as the current level. I want to know if the request is sufficient for the FBI to carry out its role as a key guardian of our Nation's cyber security.

After 9/11, the FBI was charged with a new national security mission to protect us from international terrorism. The FBI disrupts terrorist plots before they happen by identifying, tracking, and defeating terrorist cells in the United States. They dismantle weapons of mass destruction on U.S. soil. Today, counterterrorism and counterintelligence activities make up more than 40 percent of the FBI's budget. Just weeks ago, we saw the FBI's counterterrorism efforts up close when they arrested a man who was on a suicide mission plotting to blow up a bomb at the U.S. Capitol.

I want to know if this budget request is enough to tackle all counterterrorism responsibilities, including weapons of mass destruction, cyber computer intrusions, foreign counterintelligence, and critical incident response.

I also want to know how the FBI is protecting Americans from violent crime in their communities. The budget requests \$2.7 billion for traditional crime fighting efforts here in the United States.

The FBI targets sophisticated criminal organizations who prey on the vulnerable, including trafficking children for prostitution and scammers who scam families out of their homes. These organizations will do anything to make a profit. But I am concerned that this budget request is flat to fight violent crime and gangs.

FBI's State and local law enforcement partners work with the FBI on task forces by fighting gangs and violent crime. State and local budgets are under stress and Federal help has been reduced. Crime-fighting funding for State and local law enforcement has been cut by \$1.5 billion or 43 percent since 2010.

I am pleased that the budget request includes a modest increase to investigate the most complex financial crime cases, such as mortgage, corporate, and securities fraud. Mortgage fraud is the FBI's number one white collar crime problem. The FBI is investigating roughly 2,600 mortgage fraud cases. This is down by 17 percent since 2010 peak of more than 3,100 cases. But the FBI expects its mortgage fraud caseload to remain high. Suspicious Activity Reports (SARs) are at the highest levels ever—93,000 last year.

The budget requests \$210 million to combat mortgage fraud. This is \$15 million more than fiscal year 2012's enacted level. This funding will help hire 40 new special agents and four forensic accountants. It will establish two hybrid squads made up of agents, forensic accountants, and financial analysts to investigate complex financial schemes.

Director Mueller, I know you are with me. We want to send a clear message to the predators. No more scamming or preying on hardworking Americans. If you break the law you will suffer the consequences.

The President's budget request includes \$109 million for the FBI to protect children, catch deviants who use the Internet to prey on children, and break up international sex trafficking and prostitution rings.

The FBI plays an important role in enforcing the Adam Walsh Act. It's also responsible for monitoring and targeting Internet predators. It runs Innocent Images, a national initiative that in 2009 convicted more than 1,200 producers, distributors, and possessors of child pornography.

The FBI's Innocence Lost initiative has rescued more than 1,100 children from prostitution since 2003, including a victim who was just 9 years old. Through this initiative, more than 500 pimps, madams, and their associates who exploit children through prostitution have been convicted. I want to hear from you if the budget request is sufficient to enhance child predator investigations, target predators before they strike and save children's lives.

Finally, I want to say how proud I am of the men and women of the FBI who are on the job 24 hours a day, 7 days a week, fighting to keep America safe from terrorism and violent crimes.

We must ensure that the FBI has the resources it needs to protect the lives of 330 million Americans. But we also want to make sure the FBI is a good steward of taxpayer dollars, making sure every \$1 spent to keep our Nation safe is a \$1 well spent.

Thank you Director Mueller for your leadership. I look forward to continuing our productive relationship.

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PREPARED STATEMENT OF SENATOR MARK PRYOR

First, I want to thank Chairman Senator Mikulski and Ranking Member Hutchison for their leadership and for conducting this important hearing to examine the President's fiscal year 2013 budget request for the Department of Justice (DOJ).

I think that it is important that we work together with DOJ to provide our law enforcement organizations with the necessary funding to protect America and ensure the safety and security of its citizens. With that said, we all know that many tough decisions lie ahead as we strive to put our Nation's fiscal house in order, and I believe that no stone can remain unturned as we seek to do so. Effective oversight will be crucial in preventing and detecting cases of waste and abuse, and I am hopeful that the Attorney General and Inspector General will join us in seeking to increase efficiency within DOJ.

As this subcommittee reviews the fiscal year 2013 budget request for DOJ, I look forward to working with the chairman and ranking member to ensure that taxpayer dollars are spent responsibly.

Again, I thank Senators Mikulski and Hutchison for conducting this hearing. I look forward to Attorney General Holder's testimony and look forward to discussing the fiscal year 2013 budget request.

Senator MIKULSKI. Having said that, my oral statement, to the point, is that we know that we ask the FBI to carry out extraordinary responsibilities, keeping 330 million Americans safe from terrorism and also violent crime; to continue their work to dismantle organized crime, which now has many new faces, many new locations, and many new techniques; and then the despicable drug cartels that continue to exist in our country and threaten our borders.

We also ask the FBI to work to combat gang violence, illegal drug and gun smuggling, and at the same time to help us catch sexual predators.

The President's budget request for the FBI is \$8.2 billion. This request reflects the stringent budget reality in which we find ourselves. There are no new initiatives in the FBI's budget request this year, and only one modest, targeted increase, and that's the FBI's ability to fight mortgage fraud. In fact, the FBI will be asked to do more with less in 2013.

In order to afford to continue the FBI's critical efforts, the budget proposes \$63 million in savings from lower FBI programs, and the FBI will also have a give-back provision.

The FBI is also tasked to become the banker for all law enforcement, helping with interoperable communication equipment purchases, not just for the FBI, but for the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and U.S. Marshals. We've counseled the FBI to really watch this very carefully because, as we looked at our cousins in the Department of Homeland Security (DHS) appropriation, interoperable communications has been one of the biggest boondoggles I saw. Everybody bought a gadget, everybody got a gizmo, and at the end of the day none of those gadgets and gizmos could talk to anybody.

So we're counting on the FBI to work to get it straight, and at the same time we need to get an update on their work on the Sentinel Program, our virtual case management file. Also, we want to be sure we take a look at the sequester consequences and what would be the impact on the FBI if there was an 8-percent cut, and we need to know how this will impact the FBI's ability to carry out its mission.

In the area of national security, the FBI was charged with protecting us from international terrorism. We disrupt terrorist plots before they happen by identifying, tracking and defeating them, and then also working to dismantle weapons of mass destruction. This definitely is not J. Edgar Hoover's FBI anymore. Counterterrorism and counterintelligence make up a substantial part of the FBI budget. Just weeks ago, we saw the FBI's counterterrorism efforts up close when they arrested a man who wanted to blow up the U.S. Capitol.

Our Nation also faces a new kind of threat. That threat occurs in cyberspace. So we have cyber spies, cyber terrorists, and organized crime involved with cyber. Cyber is the new area, and we look forward to getting ideas and a concrete budget from the FBI Director on how we can keep us safe in that area and how they work with other intelligence agencies.



I also want to know how the FBI is protecting Americans from violent crime and also fraud in their communities. The FBI targets sophisticated criminal organizations who prey on the vulnerable: the child pornographer, the trafficking in children and prostitution, the schemes and scams and bilking people out of Medicare, or mortgage fraud, and I'm concerned that this budget is flat to fight violent crime and gangs.

I know my very able and wonderful colleague, Senator Hutchison, is going to talk about the Southwest Border. She's jazzed about it, and so am I, because of the ongoing threat at our border. State and local budgets are under stress, and we want to hear how you are leading that.

I'm going to conclude my remarks, though, by saying this budget is not about numbers and statistics; it's about people, making sure that Americans are not victimized by any bad person or anyone with a predatory intent toward them. But we couldn't do it without the people who work for FBI.

So, Director, before I turn to Senator Hutchison, I just want to thank you, and I'm thanking you for not only your service, but I'd like to thank you on behalf of all of those wonderful people who work every single day for the FBI, those that are out there in the field offices working on joint task forces, those that are around the world in, at times, very rugged and very dangerous positions. I know that the FBI works every day to protect us, that the people who work hard there every day are duty driven and dedicated, and they are in many ways our boots on the ground in local communities and also working with our intelligence and military agencies around the world. This is why I want them to know I respect them for the work they do, and I will fight for them in terms of their pay, benefits and pensions.

So if we're going to say thank you, we want to thank you not only with words but with deeds.

Thank you, and I'll turn to Senator Kay Bailey Hutchison.

#### STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Senator HUTCHISON. Well, thank you very much, Director Mueller, for coming before our subcommittee. I'm happy to say that last year we thought it would be the last time that you appeared before our subcommittee, and I was very pleased that the President offered and you accepted an extension of your term, because I think what has happened at the FBI during your term is exponential. I think the changes that have taken place and the responsibilities that you've had have been more transformational than probably at any time since the beginning of the FBI.

I do want to start my remarks just very briefly by recognizing also the chairwoman of this subcommittee, who will on Saturday become the longest-serving woman to serve in the Congress in the history of the United States Congress. We're going to make a big deal of that because we're really proud of this little pint-sized mighty-might who has outlasted them all.

So, Mr. FBI Director, let me just state a couple of points. I think that Senator Mikulski has really outlined the big picture. There are a couple of areas of interest that I have, and concerns.

Certainly, I think the Southwest Border has to be as much of a national security issue as any place that we have, and yet this request cuts the Southwest Border funding. I would question the priority of the administration in increasing the financial fraud enforcement and decreasing border security.

So I'm going to say that I'll be looking carefully at that and hoping to restore at least the \$5 million that was included to make it look like it was even funding. But really, that was just required to sustain the positions that had been added in the fiscal year 2010 border supplemental appropriations bill.

So I'm hoping that we can add more where you think you need it the most, because that would be 13 border corruption task force members located in field offices across the border, as I understand it, and these are kind of the backbone of the FBI Southwest Border mission that provide intelligence and coordinate with the Southwest Intelligence Group (SWIG), El Paso Intelligence Center (EPIC), and the National Border Task Force. So I'm going to be looking at that very carefully.

I'm also concerned and going to ask you about the \$162 million rescission and what exactly that is going to impact. If it is as it appears, that it would be the processing for fingerprinting and DNA on improvised explosive devices, that's an area where I think we could really link it to terrorists, and I wouldn't want to cut that unless you have other plans for using money to assure that is able to be done.

So, and then the other area is cutting the contractors of counter-intelligence programs, which would be informant validation, the Terrorist Screening Center, and the Foreign Terrorist Tracking Task Force. I will ask your opinion of those.

And then the other area that I will ask you about is the FBI agents that were involved in the prosecution of the late Senator Ted Stevens. We had a disturbing hearing with Attorney General Holder last week in which we talked about the Department of Justice (DOJ) employees who apparently are still prosecuting at DOJ even after the report was released and the Attorney General himself dismissed the case against Senator Stevens because of misconduct on the part of the prosecutors. So I will want to know if there are people still at the FBI—I think there were just two agents that were accused of being involved in it. So I'd like to know your opinion of that, as well.

So I thank you for all that you're doing in the other areas that Senator Mikulski mentioned, but especially knowing the role of the FBI now in international intelligence and law enforcement. So that expansion has been on your watch, and I appreciate that you have been able to handle it and work with the intelligence agencies so well. Thank you.

Senator MIKULSKI. Director Mueller, please proceed.

#### SUMMARY STATEMENT OF ROBERT S. MUELLER, III

Mr. MUELLER. Thank you, Madam Chairwoman. Let me also join the others on the subcommittee in congratulating you on your tenure, which is far longer than mine, I might add.

Also, let me thank you for your comments with regard to the FBI personnel. I'm reminded of that because recently I had an oppor-

tunity to talk to a number of agents, analysts and others who all worked 24 hours a day over the holidays in the case that we recently took down in Tampa, which was indicative of the degree of sacrifice that you see from the personnel in the organization. So, my thanks for commenting on that.

Let me start by saying that the FBI continues to face unprecedented and increasingly complex challenges. As you know and as you pointed out, we must identify and stop terrorists before they launch attacks against our citizens. We must protect our Government, our businesses, and our critical infrastructure from espionage and from the potentially devastating impact of cyber-based attacks.

We must root out mortgage fraud, fight white-collar and organized crime, stop child predators, and protect civil rights; and we must uphold civil liberties and the rule of law while carrying out this broad mission.

For fiscal year 2013, the FBI has requested a budget of \$8.2 billion to fund more than 13,000 Special Agents, more than 3,000 intelligence analysts, and more than 18,000 professional staff. This funding level will allow the FBI to maintain, just maintain our base operations, with a small increase, as you pointed out, for financial and mortgage fraud investigations.

Let me summarize, if I might, the key national security and criminal threats that this funding will address. First, the terrorist threat. While Osama bin Laden and other key leaders have been removed, al Qaeda and its affiliates remain a top terrorist threat in the United States. Core al Qaeda, operating out of Pakistan, remains committed to high-profile attacks against the West, and meanwhile al Qaeda affiliates and adherents have attempted several attacks on the United States. Such attacks include the failed Christmas Day airline bombing in 2009, the attempted truck bombing of Times Square in May 2010, and the attempted bombing of U.S.-bound cargo planes in October of the same year.

We are also concerned about the threat from homegrown violent extremists. As you pointed out, Madam Chairwoman, last month the FBI arrested Amine El Khalifi, a 29-year-old Moroccan immigrant. Khalifi allegedly attempted to detonate a bomb in a suicide attack on the U.S. Capitol building. Over the past year we have seen similar attempts by homegrown extremists in Florida, Massachusetts, Texas, and Washington State. These cases exemplify the need to continue to enhance our intelligence capabilities and to get the right information to the right people before any harm is done.

Turning to foreign intelligence: while foreign intelligence services continue their traditional efforts to obtain military and state secrets, they also seek technology and intellectual property from companies and universities. For example, last year a long-time Northrop Grumman engineer was sentenced to 32 years in prison for selling secrets related to the B-2 stealth bomber to several nations, including China; and last fall, a former Dow Chemical scientist plead guilty to transferring stolen trade secrets to individuals in Europe and in China. These are just a few examples of the growing insider threat from employees who may use their access to commit economic espionage.

Turning to the cyber threat: this will be an area of particular focus for the FBI in the coming years, as cyber crime cuts across all of our programs. Terrorists are increasingly cyber savvy, and like every other multinational organization, they are using the Internet to grow their business and to connect with like-minded individuals, and they are not hiding in the shadows of cyberspace.

Al Qaeda in the Arabian Peninsula has produced a full-color, English-language online magazine. Al Shabaab, an al Qaeda affiliate in Somalia, has its own Twitter account. Extremists are not just using the Internet for propaganda and recruitment. They are using cyberspace to conduct operations, and while, to date, terrorists have not used the Internet to launch a full-scale cyber attack, we cannot underestimate their intent. In one hacker recruiting video, a terrorist proclaims that cyber warfare will be the war of the future.

And then you have State-sponsored computer hacking and economic espionage, which poses significant challenges as well. Just as traditional crime has migrated online, so too has espionage. Hostile foreign nations seek our intellectual property and our trade secrets for military and competitive advantage. The result of these developments is that we are losing data, we are losing money, we are losing ideas, and we are losing innovation. And as citizens individually, we are increasingly vulnerable to losing our private information.

The FBI has, in the past several years, built a substantial expertise in order to try to stay ahead of these threats, both at home and abroad. We now have cyber squads in every one of our 56 field offices, with more than 1,000 specially trained agents, analysts, and forensic specialists. Borders and boundaries pose no obstacles for hackers, so the FBI uses our 63 Legal Attaché offices around the world to collaborate with our international partners. We also have Special Agents embedded in Romania, Estonia, Ukraine, and the Netherlands working to identify emerging trends and key players in the cyber arena.

And here at home, the FBI leads the National Cyber Investigative Joint Task Force, which brings together 18 law enforcement, military, and intelligence agencies in order to stop current and prevent future attacks. The task force operates through threat focus cells, specialized groups of agents, officers and analysts that focus on particular threats, such as botnets.

Together, we are making progress. Just last week, DOJ and FBI, along with our domestic and foreign partners, announced charges against six hackers who align themselves with a group known as Anonymous. According to the charges, they were responsible for a broad range of high-profile cyber intrusions targeting companies, the media, and law enforcement since 2008. This case was successful because we worked extensively with our overseas partners, and we used our traditional investigative and intelligence techniques in the cyber arena.

We must continue to push forward and to enhance our collective capabilities to fight cyber crime. We do need tougher penalties for cyber criminals to make the cost of doing business more than they are willing to bear.

Just as we did after September 11, we must continue to break down walls and share information to succeed in combating this cyber threat. And just as we do or did with terrorism, we must identify and stop cyber threats before they do harm. It is not enough to build our defenses and to investigate the harm after the fact.

Now, let me spend a moment, if I might, to discuss a few of the most significant threats in the criminal arena. From foreclosure frauds to subprime scams, mortgage fraud remains a serious problem. In fiscal year 2011, the FBI had more than 3,000 pending mortgage fraud investigations, more than four times the number of cases we had in 2005, and nearly 70 percent of these investigations include losses of more than \$1 million. In this budget for fiscal year 2013, the FBI is requesting a program increase of \$15 million and 44 new positions to further address the mortgage and financial fraud schemes at all levels.

The focus on healthcare fraud is no less important. The Federal Government spends hundreds of billions of dollars every year to fund Medicare and other healthcare programs. Together with our partners at the Department of Health and Human Services, the FBI has more than 2,600 active healthcare fraud investigations. In fiscal year 2011, these efforts led to the recovery of more than \$4 billion taxpayer dollars.

Violent crimes and gang activities continue to exact a high toll on our communities. According to the National Gang Intelligence Center, there are more than 30,000 gangs with more than 1 million members active in the United States today. Through Safe Streets and Safe Trails Task Forces, the FBI identifies and targets the most serious gangs operating, and targets them as criminal enterprises.

Turning to the Southwest Border, which I know is a concern to Senator Hutchison, the continued violence along the Southwest Border remains a significant threat, and we rely on our collaboration with SWIG, the Organized Crime and Drug Enforcement Task Force Fusion Center, and EPIC to track and disrupt this threat.

With regard to crimes against children, we remain vigilant in our efforts to remove predators from our communities and to keep our children safe. We have ready response teams stationed across the country to respond quickly to child abductions, and through our Child Abduction Rapid Deployment teams, our Innocence Lost National Initiative, and our Innocent Images National Initiative, the FBI and its partners are continuing to make the Nation safer for our children.

Last, turning to the budget, the FBI budget for fiscal year 2013 seeks to maintain our current base resources and capabilities in a restrained fiscal environment. But these resources are critical for us to continue responding to the broad range of national security and criminal threats we face today.

#### PREPARED STATEMENT

Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee, let me close by again thanking you for your leadership and support of the FBI, and most particularly the men and women of the FBI, in pursuit of its mission. Your invest-

ments in our workforce, our technology, and in our infrastructure have made a difference to the FBI every day, and the transformation of the FBI that has been undertaken over the last 10 years would not have been possible without the support of this subcommittee. My thanks, and I look forward to answering what questions you have.

[The statement follows:]

PREPARED STATEMENT OF ROBERT S. MUELLER, III

Good morning Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee. On behalf of the more than 34,000 men and women of the Federal Bureau of Investigation (FBI), I would like to thank you for the years of support you have provided to the Bureau.

The FBI remains focused on defending the United States against terrorism, foreign intelligence, and cyber threats; upholding and enforcing the criminal laws of the United States; protecting civil rights and civil liberties; and providing leadership and criminal justice services to Federal, State, municipal, and international agencies and partners. Our continued ability to carry out this complex and demanding mission reflects the support and oversight provided by this subcommittee.

More than 10 years after the terrorist attacks of 9/11, the FBI continues to be a threat-focused, intelligence-driven organization that is guided by clear operational strategies. And we remain firmly committed to carrying out these strategies under guidelines established by the Attorney General that protect the civil liberties of those entrusting us with the authorities to carry out our mission.

As our Nation's national security and criminal adversaries constantly adapt and evolve, so must the FBI be able to respond with new or revised strategies and operations to counter these threats. The FBI continues to shift to be more predictive, preventative, and actively engaged with the communities we serve. The FBI's evolution has been made possible by greater use of technology to gather, analyze, and share information on current and emerging threats; expansion of collaboration with new partners, both domestically and internationally; and investments in training, developing, and maximizing our workforce. The FBI continues to be successful in maintaining this momentum of transformation even during these challenging times.

The FBI's fiscal year 2013 budget request totals \$8.2 billion in direct budget authority, including 34,083 permanent positions (13,018 Special Agents, 3,025 intelligence analysts, and 18,040 professional staff). This funding level continues increases provided to the FBI in the past, most recently in fiscal year 2012, allowing the FBI to maintain its forward progress, including targeting additional resources on investigating financial and mortgage fraud.

Let me briefly summarize the key national security threats and crime problems that this funding supports.

NATIONAL SECURITY THREATS

*Terrorism.*—The terrorist threat facing the United States remains complex and ever-changing. We are seeing more groups and individuals engaged in terrorism, a wider array of terrorist targets, greater cooperation among terrorist groups, and continued evolution and adaptation in tactics and communication.

While Osama bin Laden and certain other key leaders have been removed, al Qaeda and its affiliates and adherents continue to represent the top terrorism threat to the United States abroad and at home. Core al Qaeda remains committed to high-profile attacks against the United States. Additionally, al Qaeda affiliates and surrogates, such as al Qaeda in the Arabian Peninsula (AQAP), represent significant threats to our Nation. These groups have attempted several attacks against the homeland and our citizens and interests abroad, including the failed Christmas Day airline bombing in 2009 and the attempted bombing of U.S.-bound cargo planes in October 2010.

In addition to al Qaeda and its affiliates, the United States faces a terrorist threat from self-radicalized individuals. Self-radicalized extremists—often acting on their own—are among the most difficult to detect and stop. For example, just last month, the FBI arrested Amine El Khalifi, a 29-year-old Moroccan immigrant, for the suspected attempt to detonate a bomb in a suicide attack on the U.S. Capitol building. According to court documents, Khalifi believed he was conducting the terrorist attack on behalf of al Qaeda and had become radicalized even though he was not directly affiliated with any group. The Khalifi case exemplifies the need for FBI to

continue to enhance our intelligence capabilities—to get critical information to the right people at the right time—before any harm is done.

The basis from which acts of terrorism are committed—from organizations to affiliates/surrogates to self-radicalized individuals—continue to evolve and expand. Of particular note is al Qaeda's use of on-line chat rooms and Web sites to recruit and radicalize followers to commit acts of terrorism. And they are not hiding in the shadows of cyber space: al Qaeda in the Arabian Peninsula has produced a full-color, English-language online magazine. Terrorists are not only sharing ideas; they are soliciting information and inviting communication. Al Shabaab, the al Qaeda affiliate in Somalia, uses Twitter to taunt its enemies—in English—and encourage terrorist activity.

To date, terrorists have not used the Internet to launch a full-scale cyber attack, but we cannot underestimate their intent. Terrorists have shown interest in pursuing hacking skills. And they may seek to train their own recruits or hire outsiders, with an eye toward pursuing cyber attacks.

These adaptations of the terrorist threat make FBI's counterterrorism mission that much more difficult and challenging.

*Foreign Intelligence.*—While foreign intelligence services continue traditional efforts to target political and military intelligence, counterintelligence threats now include efforts to obtain technologies and trade secrets from corporations and universities. The loss of critical research and development data, intellectual property, and insider information poses a significant threat to national security.

For example, last year, Noshir Gowadia was sentenced to 32 years in prison for selling secrets to foreign nations. For 18 years, Gowadia had worked as an engineer at Northrop Grumman, the defense contractor that built the B-2 stealth bomber. Gowadia, a naturalized United States citizen from India, decided to offer his knowledge of sensitive design aspects of the B-2 to anyone willing to pay for it. He sold highly classified information about the B-2's stealth technology to several nations, and made six trips to China to assist them in the development of stealth technology for their cruise missiles.

Last fall, Kexue Huang, a former scientist for two of America's largest agriculture companies, pled guilty to charges that he sent trade secrets to his native China. While working at Dow AgriSciences and later at Cargill, Huang became a research leader in biotechnology and the development of organic pesticides. Although he had signed nondisclosure agreements, he transferred stolen trade secrets from both companies to persons in Germany and China. His criminal conduct cost Dow and Cargill millions of dollars.

And just last month, five individuals and five companies were indicted in San Francisco with economic espionage and theft of trade secrets for their roles in a long-running effort to obtain United States trade secrets for the benefit of companies controlled by the government of the People's Republic of China (PRC). According to the indictment, the Chinese Government sought to obtain a proprietary chemical compound developed by DuPont to be produced in a Chinese factory.

These cases illustrate the growing scope of the "insider threat" from employees who use their legitimate access to steal secrets for the benefit of another company or country. Through our relationships with businesses, academia, U.S. Government agencies, and with other components of the Department of Justice (DOJ), FBI, and its counterintelligence partners must continue our efforts to identify and protect sensitive American technology and projects of great importance to the United States Government.

*Cyber.*—Cyber attacks and crimes are becoming more commonplace, more sophisticated, and more dangerous. The scope and targets of these attacks and crimes encompass the full range and scope of FBI's national security and criminal investigative missions. Our national security secrets are regularly targeted by foreign and domestic actors; our children are targeted by sexual predators and traffickers; our citizens are targeted for fraud and identity theft; our companies are targeted for insider information; and our universities and national laboratories are targeted for their research and development. Since 2002, the FBI has seen an 84 percent increase in the number of computer intrusions investigations opened. Hackers—whether state-sponsored, criminal enterprises, or individuals—constantly test and probe networks, computer software, and computers to identify and exploit vulnerabilities.

Just as FBI has transformed its counterterrorism program to deal with an evolving and adapting threat, FBI is enhancing its cyber program and capabilities. To counter the cyber threat, FBI has cyber squads in each of our 56 field offices. FBI now has more than 1,000 specially trained agents, analysts, and digital forensic examiners that run complex undercover operations and examine digital evidence. Along with 20 law enforcement and intelligence agency partners, FBI is the execu-

tive agent of the National Cyber Investigative Joint Task Force. The task force operates through Threat Focus Cells—smaller groups of agents, officers, and analysts from different agencies, focused on particular threats.

In April of this year, the FBI brought down an international “botnet” known as Coreflood. Botnets are networks of virus-infected computers controlled remotely by an attacker. To shut down Coreflood, FBI took control of five servers the hackers had used to infect some 2 million computers with malware. In an unprecedented step, after obtaining court approval, we responded to the signals sent from the infected computers in the United States, and sent a command that stopped the malware, preventing harm to hundreds of thousands of users.

Over the past year, the FBI and our partners have also pursued members of Anonymous, who are alleged to have coordinated and executed distributed denial of service attacks against various Internet companies. To date, 16 individuals have been arrested and charged in more than 10 States as part of this ongoing investigation. According to the indictment, the Anonymous group referred to the distributed denial of service attacks as “Operation Avenge Assange,” and allegedly conducted the attacks in support of Wikileaks founder Julian Assange. The defendants are charged with various counts of conspiracy and intentional damage to a protected computer.

U.S. law enforcement and intelligence communities, along with our international and private sector partners, are making progress. Technological advancements and the Internet’s expansion continue to provide malicious cyber actors the opportunity to harm U.S. national security and the economy. Given the consequences of such attacks, FBI must be able to keep pace with this rapidly developing and diverse threat.

#### CRIMINAL THREATS

Criminal organizations—domestic and international—and individual criminal activity also represent a significant threat to our security and safety in communities across the Nation. FBI focuses on many criminal threats, from white-collar crime and healthcare fraud to organized crime and gang violence to corruption and violence along the Southwest Border. Today, I would like to highlight a number of these criminal threats for the subcommittee.

*Financial and Mortgage Fraud.*—From foreclosure frauds to subprime scams, mortgage fraud is a serious problem. FBI continues to develop new approaches and techniques for detecting, investigating, and combating mortgage-related fraud. Through the use of joint agency task forces and working groups, FBI and its partners work to pinpoint the most egregious offenders and identify emerging trends before they flourish. In fiscal year 2011, these efforts translated into roughly 3,000 pending mortgage fraud investigations—compared to approximately 700 investigations in fiscal year 2005. Nearly 70 percent of FBI’s pending investigations involve losses of more than \$1 million. The number of FBI Special Agents investigating mortgage fraud cases has increased from 120 in fiscal year 2007 to 332 Special Agents in fiscal year 2011. The multi-agency task force and working group model serves as a force-multiplier, providing an array of interagency resources and expertise to identify the source of the fraud, as well as finding the most effective way to prosecute each case, particularly in active markets where fraud is widespread.

FBI and its law enforcement partners also continue to uncover major frauds, including trading activity, and Ponzi schemes. At the end of fiscal year 2011, FBI had more than 2,500 active corporate and securities fraud investigations, representing a 47 percent increase since fiscal year 2008. Over the past 3 years, FBI has obtained approximately \$23.5 billion in recoveries, fines, and restitutions in such programs, and during fiscal year 2011, FBI obtained 611 convictions, an historic high. FBI is pursuing those who commit fraud at every level and is working to ensure that those who played a role in the recent financial crisis are brought to justice.

For fiscal year 2013, FBI is requesting a program increase totaling \$15 million and 44 positions (40 Special Agents and 4 Forensic Accountants) to further address financial and mortgage fraud at all levels of organizations—both senior executives and lower level employees. These resources will increase FBI’s ability to combat corporate fraud, securities and commodities fraud, and mortgage fraud, and they will enable FBI to adapt as new fraud schemes emerge.

*Healthcare Fraud.*—The focus on healthcare fraud is no less important. The Federal Government spends hundreds of billions of dollars every year to fund Medicare, Medicaid, and other Government healthcare programs. In 2011, FBI had approximately 2,700 active healthcare fraud investigations, up approximately 7 percent since 2009. Together with attorneys at DOJ and our partners at the Department of Health and Human Services, FBI is aggressively pursuing fraud and abuse within our Nation’s healthcare system.



The annual Health Care Fraud and Abuse Control program report showed that the Government's healthcare fraud prevention and enforcement efforts recovered nearly \$4.1 billion in taxpayer dollars in fiscal year 2011. This is the highest annual amount ever recovered from individuals and companies who attempted to defraud taxpayers or who sought payments to which they were not entitled.

*Gangs and Violent Crime.*—Violent crimes and gang activities exact a high toll on victimized individuals and communities. There are approximately 33,000 violent street gangs, motorcycle gangs, and prison gangs with about 1.4 million members who are criminally active in the United States today. A number of these gangs are sophisticated and well organized; many use violence to control neighborhoods and boost their illegal money-making activities, which include robbery, drug and gun trafficking, fraud, extortion, and prostitution rings. Gangs do not limit their illegal activities to single jurisdictions or communities. FBI is able to work across such lines and, therefore, brings particular value to the fight against violent crime in big cities and small towns across the Nation. Every day, FBI Special Agents work in partnership with State and local officers and deputies on joint task forces and individual investigations. The FBI also has a surge capacity that can be tapped into during major cases.

FBI joint task forces—Violent Crime, Violent Gang Safe Streets, and Safe Trails Task Forces—focus on identifying and targeting major groups operating as criminal enterprises. Much of the FBI's criminal intelligence comes from our State, local, and tribal law enforcement partners, who know their communities inside and out. Joint task forces benefit from FBI surveillance assets and its sources track these gangs to identify emerging trends. Through these multi-subject and multi-jurisdictional investigations, FBI concentrates its efforts on high-level groups engaged in patterns of racketeering. This investigative model enables us to target senior gang leadership and to develop enterprise-based prosecutions.

In addition, while the fiscal year 2013 budget proposes to eliminate the National Gang Intelligence Center (NGIC), this will not hinder the FBI's ability to perform the analytical work done there. FBI will continue to produce intelligence products and threat assessments, which are critical to reducing criminal gang activity in our communities. FBI will also continue to examine the threat posed to the United States by criminal gangs and will focus on sharing intelligence at the field level, where intelligence sharing and coordination between DOJ agencies and State and local partners already exist. For example, our Field Intelligence Groups regularly produce intelligence products covering criminal threats, including gangs. It is through these existing resources that we will continue to produce gang-related intelligence in the absence of NGIC. In fact, the responsibility for the production of that material will happen now at the field level where gangs operate in neighborhoods, districts, and communities. The field offices are the closest to the gang problem, have a unique understanding of the gang problem and are in the best position to share that intelligence.

*Violence Along the Southwest Border.*—The escalating violence associated with drug trafficking in Mexico continues to be a significant issue. In addressing this crime problem, FBI relies on a multi-faceted approach for collecting and sharing intelligence—an approach made possible and enhanced through the Southwest Intelligence Group, the El Paso Intelligence Center, Organized Crime Drug Enforcement Task Force Fusion Center, and the Intelligence community. Guided by intelligence, FBI and its Federal law enforcement partners are working diligently, in coordination with the Government of Mexico, to counter violent crime and corruption that facilitates the flow of illicit drugs into the United States. FBI is also cooperating closely with the Government of Mexico in their efforts to break the power of the drug cartels inside the country.

Most recently, the collective efforts of the FBI, Drug Enforcement Administration, and other United States and Mexican law enforcement partners resulted in the identification and indictment of 35 leaders, members, and associates of one of the most brutal gangs operating along the United States-Mexico border on charges of racketeering, murder, drug offenses, money laundering, and obstruction of justice. Of these 35 subjects, 10 Mexican nationals were specifically charged with the March 2010 murders in Juarez, Mexico, of a United States consulate employee and her husband, along with the husband of another consulate employee.

*Organized Crime.*—Ten years ago, the image of organized crime was of hierarchical organizations, or families, that exerted influence over criminal activities in neighborhoods, cities, or States. That image of organized crime has changed dramatically. Today, international criminal enterprises run multi-national, multi-billion-dollar schemes from start to finish. These criminal enterprises are flat, fluid networks and have global reach. While still engaged in many of the—traditional—organized crime activities of loan-sharking, extortion, and murder, new criminal en-

terprises are targeting stock market fraud and manipulation, cyber-facilitated bank fraud and embezzlement, identify theft, trafficking of women and children, and other illegal activities. This transformation demands a concentrated effort by FBI and Federal, State, local, and international partners to prevent and combat transnational organized crime.

For example, late last year, an investigation by FBI and its partners led to the indictment and arrest of more than 70 members and associates of an Armenian organized crime ring for their role in nearly \$170 million in healthcare fraud. This case, which involved more than 160 medical clinics, was the culmination of a national level, multi-agency, intelligence-driven investigation. To date, it remains the largest Medicare fraud scheme ever committed by a single enterprise and criminally charged by DOJ.

The FBI is expanding its focus to include West African and Southeast Asian organized crime groups. The FBI continues to share intelligence about criminal groups with our partners, and to combine resources and expertise to gain a full understanding of each group. To further these efforts, the FBI participates in the International Organized Crime Intelligence Operations Center. This center serves as the primary coordinating mechanism for the efforts of nine Federal law enforcement agencies in combating nondrug transnational organized crime networks.

*Crimes Against Children.*—FBI remains vigilant in its efforts to remove predators from our communities and to keep our children safe. Ready response teams are stationed across the country to quickly respond to abductions. Investigators bring to this issue the full array of forensic tools such as DNA, trace evidence, impression evidence, and digital forensics. Through globalization, law enforcement also has the ability to quickly share information with partners throughout the world and our outreach programs play an integral role in prevention.

FBI also has several programs in place to educate both parents and children about the dangers posed by violent predators and to recover missing and endangered children should they be taken. Through our Child Abduction Rapid Deployment teams, Innocence Lost National Initiative, Innocent Images National Initiative, Office of Victim Assistance, and numerous community outreach programs, the FBI and its partners are working to make our world a safer place for our children.

#### OFFSETS

FBI's fiscal year 2013 budget request proposes offsets totaling approximately \$63 million, including program reductions. Proposed offsets, which are expected to result in little if any impact on the missions and responsibilities of FBI, include:

- elimination of the NGIC;
- reduction of one training day and equipment provided for Federal, State, and local bomb technicians and the Special Weapons and Tactics and Hostage Rescue Team training;
- reduction of contractor workforce funding supporting national security programs;
- reductions in funding for permanent change of station transfers, which relocates staff to meet organizational needs and carry out mission requirements; and
- reducing funding for information technology, facilities, and other administrative initiatives.

We will work to sustain our efforts in these program areas and minimize the impact of these proposed reductions.

#### CONCLUSION

Responding to this complex and ever-changing threat environment is not new to FBI; in fact, it is now the norm. The budget proposed for FBI for fiscal year 2013 seeks to maintain current capabilities and capacities achieved through increases provided in the past, as well as target additional resources to address financial and mortgage fraud. These resources are critical for FBI to be able to address existing and emerging national security and criminal threats. Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee, I would like to close by again thanking you for this opportunity to discuss FBI's priorities and detail FBI's fiscal year 2013 budget request. Madam Chairwoman, let me again acknowledge the leadership that you and this subcommittee have provided to FBI. The transformation FBI has achieved over the past 10 years would not have been possible without your support. Your investments in our workforce, our technology, and our infrastructure make a difference every day at FBI offices in the United States and around the world, and we thank you for that support.

I look forward to any questions you may have.

Senator MIKULSKI. Thank you very much, Director Mueller.

To my colleagues who have arrived, we're going to have one round of questions here, recognizing people in their order of arrival. When we've completed that, we will recess and then move to a classified hearing with the Director, particularly on those sensitive matters, and we will do that in our classified center and recess to CVC-217.

Director, I want to move right into my questions. First of all, in your testimony, you showed the breadth of the work of the FBI, from international terrorism to cyber threats, to really working with our cops on the beat, and dealing also with where there is need, there's greed, like mortgage and healthcare fraud.

So let me get right to, I think—we need to have for the record the major categories for FBI, which is how much of your \$8 billion—which is actually a modest request, held very tightly pretty much to last year's funding—how much goes into national security, and then how much goes into traditional crime fighting, and then also where do they cross, like in the area of cyber? Because I think many people don't realize that the FBI has such a substantial role in counterterrorism, counterintelligence.

FBI has transformed since 9/11. Could you elaborate, on your \$8 billion, what goes into those categories?

Mr. MUELLER. Under the budget, 60 percent, or approximately \$5 billion, is scored to what I would call the national security programs. That would be Counterterrorism, Counterintelligence, Directorate of Intelligence, Weapons of Mass Destruction, and additional pieces of other programs. That's about 60 percent of our budget, \$5 billion. But also scored are pieces of other programs. For instance, the cyber program is split between criminal and national security. Sixty percent of the cyber program is scored to national security and relates to intrusions, whereas the other 40 percent relates to programs such as Innocent Images, which addresses child pornography on the Internet, and intellectual property rights—the intellectual property crimes that we also address.

So, 40 percent of it is cyber crime. The other 60 percent of it is perceived and scored against the national security piece of the budget, and that relates to computer intrusions.

Senator MIKULSKI. Well, let's then go to the threat of sequester. I'm concerned that the Congress doesn't have a sense of urgency about cyber, but I'm also concerned that the Congress does not have a sense of urgency about the threat of sequester.

Given this \$8.2 billion, when one looks at what all we spend on other security issues, this is really modest. When you think of the scope, depth, technical expertise, personal integrity required of the agents and all who work there, what would happen to the FBI if sequester were triggered?

Mr. MUELLER. We tried to estimate what would happen in the event of sequestration, and the preliminary figures show that we would face a cut of \$650 to \$800 million of the \$8 billion appropriated in 2012. That would translate into a 25-workday furlough across the FBI, and a reduction of 3,500 work years for Special Agents, intelligence analysts, and professional staff.

Given what I've described in terms of the threats, we would have to do some very substantial prioritization, and it would have a

huge impact on our investigations, our intelligence collection, and most particularly and not to be underestimated, it would have a very large impact on the morale of the workforce.

We would have to rotate the furloughs to lessen the impact. We would have to reprioritize. But it would set us back to where we were many years ago, and the impact of that sequestration would be felt for many years in the future.

Senator MIKULSKI. I have a whole set of questions related to cyber which I will defer to our classified meeting.

In terms of accountability, as you know, I want to ask a question about Sentinel, on where you are in achieving the programmatic goals and keeping it within a budgetary framework. As you know, we've been at the Sentinel program, which was initiated a long time ago, to provide FBI with essentially virtual case files—to make them more effective and more productive. In the old lingo of post-9/11, connect the dots. Could you tell us, are we really getting Sentinel connected while we're busy trying to figure out how to connect the dots?

Mr. MUELLER. As you are aware, the contract was entered into a number of years ago. We had phase 1; that was produced. Phase 2, from our perspective, was not adequate. So we restructured the contract to bring in-house much of the software development. We had anticipated that we would be through the tests last fall and ready to start Sentinel. We had tests of the software, as well as the infrastructure to support the software. The software worked well, but the infrastructure needed updating.

So, since the fall, we have put in new servers and built up the infrastructure to be able to handle the software package that is in the last stages of being completed.

There are three factors that go into Sentinel. First, I want a product that people can use, that will be embraced in the field, and that actually works and is helpful. Second is the budget, and staying under budget. And third was doing it in a timely fashion. I have had to sacrifice the timely fashion in order to make certain that the product that we put in the field will be embraced by the workforce and, second, to keep it under budget.

We have built up the infrastructure as a result of the consequence of the test we put in in the fall. We are testing that, and the tests are positive. My expectation is that certainly by the end of this fiscal year, by the fall, that we will have completed this and Sentinel will be in the field, and it will be under or just at budget.

Senator MIKULSKI. Well, keep us posted on this.

I now want to turn to Senator Hutchison, then Senators Lautenberg, Graham, and Feinstein.

Senator HUTCHISON. Okay. Madam Chairman, I'm going to let Senator Graham have my time, and I'll come back at the end because I'm going to stay anyway. I do have questions, but I'm going to defer to Senator Graham.

Senator MIKULSKI. Senator Graham.

Senator GRAHAM. Thank you. This has been a very informative hearing.

Is it fair to say that we do not have the legal infrastructure in place to deal with the cyber threats that we face, that the Congress needs to give you better legislative support?

Mr. MUELLER. Yes.

Senator GRAHAM. Is it fair to say that, of all the things that we should be concerned about, cyber attacks from foreign governments and terrorists is a growing threat by the day?

Mr. MUELLER. Yes.

Senator GRAHAM. Okay. Would you consider a cyber attack generated from the People's Liberation Army of China against our national security infrastructure, should that be considered a hostile act?

Mr. MUELLER. Well, you're in an area that's somewhat beyond my purview, but in the way you would describe it, absolutely, it would be a hostile act. Now, I don't know about the connotations that hostile act has for—

Senator GRAHAM. See, I don't know either, but I think we need to come to grips with that because you've got a law enforcement model—

Mr. MUELLER. Yes.

Senator GRAHAM [continuing]. Against cyber attacks where people engage in economic espionage. They may try to shut down a powerplant or the grid. When is it a crime, and when is it a national security hostile act done under the law of war? I think that's what we need to consider among ourselves, and I would argue that, let's say, these Web sites generated by al Qaeda, if an al Qaeda-backed organization tried to commit a cyber attack, would you consider that an attack on the United States?

Mr. MUELLER. Yes.

Senator GRAHAM. So if we captured somebody involved in a cyber attack that was affiliated with al Qaeda, they would be treated differently than a common criminal. Is that correct?

Mr. MUELLER. It depends on the circumstances. I see where you're going, and—

Senator GRAHAM. You could use one or two models.

Mr. MUELLER. You could, and if I may, what you point to is one of the difficulties in the cyber arena.

Senator GRAHAM. I agree with that.

Mr. MUELLER. Because at the point in time of an intrusion, you don't know whether it's going to be a country, a terrorist, or the 18-year-old kid down the block.

Senator GRAHAM. Right, and the best way to find that out, I believe, is to hold someone that you suspect of being involved in terrorism and gather the information in an orderly fashion, and I do believe the law enforcement model has deficiencies in that regard.

The people at Guantánamo Bay, there are some people being held there for multiple years. Is that correct?

Mr. MUELLER. Yes.

Senator GRAHAM. Have FBI agents interviewed the population at Guantánamo Bay—

Mr. MUELLER. Yes.

Senator GRAHAM [continuing]. On a regular basis? Have we gathered good information over time from that population without using waterboarding?

Mr. MUELLER. Yes.

Senator GRAHAM. Don't you agree that the best way to interrogate someone is not to torture them but to use traditional military law enforcement techniques?

Mr. MUELLER. That's somewhat of a loaded question. I will say that—

Senator GRAHAM. You can say "No."

Mr. MUELLER. I will say that we follow our rules, and what we have had for years—

Senator GRAHAM. And yet you don't torture people in the FBI, do you?

Mr. MUELLER. Pardon?

Senator GRAHAM. You don't torture people, do you?

Mr. MUELLER. No. No, Sir.

Senator GRAHAM. And you get good information.

Mr. MUELLER. Yes.

Senator GRAHAM. I totally agree.

So what I would suggest to the subcommittee is that, Senator Mikulski's questions about sequestration, if this is not a wake-up call for the Congress, what would be? You just heard the FBI Director, who I think is doing a marvelous job, and all his agents, tell us that if we do what we're planning to do, we're going to devastate one of the frontline agencies in the war on terror.

Ten years ago, what was FBI's budget when it came to national security issues? What percentage of your budget?

Mr. MUELLER. I would say two-fifths of the budget back in fiscal year 2001 was national security, and I would say the principal percentage of that was addressed to espionage in the Counterintelligence Division.

Senator GRAHAM. So before 9/11, what percentage of your budget?

Mr. MUELLER. I would say approximately two-fifths.

Senator GRAHAM. Okay. So if your budget has gone up from two-fifths, it's now 60 percent dealing with national security issues, something's got to give. Has your budget gone up? How much has your budget gone up in the last 3 years?

Mr. MUELLER. Last 3 years I'd say maybe \$1 billion. I'd have to check.

Senator GRAHAM. Okay. What percentage of increase is that?

Mr. MUELLER. I can tell you since fiscal year 2001. Our budget in fiscal year 2001, which I'm much more familiar with, was \$3.1 billion. It is now \$8 billion. So it has almost tripled over that period of time.

Senator GRAHAM. Okay. And these resources have been needed?

Mr. MUELLER. Yes.

Senator GRAHAM. Do you have enough money to do all the jobs that you have told us that you do? And if you don't, tell us, because—

Mr. MUELLER. Well, it is a prioritization. We have to prioritize. As you saw, the threats that we face are substantial.

Senator GRAHAM. Mr. Director, it's one thing to prioritize. Everybody does it at home and in their businesses. It's another thing to just have to do it on the cheap.

Are we giving you enough money not only to prioritize but to fully and robustly deal with the threats the United States faces? And if you think you need more money, now is the time to tell us.

Mr. MUELLER. I would say that my concern in the immediate future is having sufficient funds to build up the capabilities to address cyber in the same way we had and were afforded the funds to address counterterrorism. And whether that's fiscal years 2013, 2014, or 2015, I think that is an issue that is going to require additional funds down the road.

Senator GRAHAM. Could you give us some estimate, privately or whatever is appropriate, about how to build up the cyber account? Because not only do we need new laws to deal with the cyber threat, we probably need to fund you more robustly.

So, thank you.

Senator MIKULSKI. Will you be able to come to our classified—

Senator GRAHAM. Yes, ma'am. If I can get back from my press conference about Medicare, I will be there. And if we can save money on Medicare, we'll give some of it to him.

Senator MIKULSKI. Senator Graham, thank you very much, and we'll look forward to seeing you in the classified hearing. Your considerable expertise in Armed Services and, again, you're a Judge Advocate General officer, this exchange was very informative.

I also want to comment, on this side, Senator Lamar Alexander is absent because of a family illness. He sends his regards and will have questions for the record. I wanted to note his absence was due to a very compelling family reason.

Senator Lautenberg.

#### STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Thanks, Madam Chairman.

And thanks, Director Mueller, for the wonderful work that FBI has done, the diligence and the competence that your people operate with, and hats off to you for your leadership there. It's quite incredible when we hear a review of what has happened budgetarily for these years.

And I'm reminded that on 9/11, the loss of lives and the restructuring of our society took place in a way that is not yet fully understood. On D-Day at Normandy, on Pearl Harbor day, we didn't lose as many Americans as we did on 9/11. And what we find, the proliferation of guns—and I'm not doing a second amendment review here. We're talking about guns in the wrong hands. We're not talking about people who apply and go through the rigors of testing, as they do now.

One of the questions that I'm really anxious to review is, we now understand that people from the New York Police Department (NYPD) were doing surveillance in the State of New Jersey, across the river into our sovereignty. Last week, the Special Agent in Charge (SAC) of the FBI Newark Office criticized the NYPD surveillance of New Jersey communities and universities saying, and I quote him, "It makes our job much, much harder."

Mr. Director, how do you feel about that?

Mr. MUELLER. Let me start off by saying that we have a very good relationship with the NYPD, and the work that the NYPD has done since September 11 to protect New York and the surrounding

communities is first rate, and there has not been a successful attack on New York, in large part attributable to the work that's done by the NYPD, along with the Joint Terrorism Task Force, which has been ongoing for many years in New York, as has the Joint Terrorism Task Forces in New Jersey and elsewhere.

Often there are issues in how you go about doing your work that arise over a period of time that are considered bumps in the road in terms of your cooperation. My expectation is that whatever bumps in the road there have been in the past in terms of alerting people to actions that are taken will not take place in the future.

But it should not interfere with the work that is being done, and done exceptionally well, with the Joint Terrorism Task Forces in New Jersey, as well as in New York.

Senator LAUTENBERG. Yes, and I agree with that, Director. But the fact of the matter is that there ought to at least be some privilege given to the law enforcement structure in our State, and for them to be alerted. Why should there not be that information available? What about cross-currents and bumping into one another? And I'm not going to press you further on this.

Mr. MUELLER. Well, I'll tell you, everybody knows you often have jurisdictional issues between the FBI and State and local law enforcement, between sheriffs and police chiefs and the like. It is not unusual to have that. My belief is you sit down, you talk about it in private, you get it resolved, and you move on. That's what has happened over a period of time, whether it be New York or Philadelphia or Washington, DC or San Francisco or Los Angeles or what have you.

So, as was pointed out by the SAC in his remarks, he has a good relationship with NYPD in New Jersey.

Senator LAUTENBERG. That's true.

I want to ask you a question about people on the terror watch list. They're able to legally purchase a gun or explosives. In addition, the gun show loophole allows anyone to walk into a gun show, purchase a gun, no questions asked. And when you look at the statistics of murders in our country compared to other advanced societies, our numbers dwarf anything that comes from other places—England, Germany, Australia, you name it—Canada.

Isn't it time to close that terror gap and the gun show loophole?

Mr. MUELLER. As we've discussed before in each hearing that we've had, I defer to the Department of Justice in terms of particular legislation. But needless to say, anything that can keep the guns out of the hands of terrorists or criminals is something that is beneficial in terms of reducing the extent, I believe, of violence in our society.

Senator LAUTENBERG. Madam Chairman, may I continue with one more question even though the gong may go off?

Cruise lines are required to inform FBI about serious crimes, and the number of crimes is supposed to be made public. However, according to FBI data that I obtained, the number of crimes posted online is lower than that reported by the industry. We're planning to change the law to address this discrepancy.

In the meantime, what steps can FBI take to publicly disclose the actual number of serious crimes on cruise ships? And I don't want to—I'm not interested in hurting the industry, but I'm also



not willing to permit crimes to be developed and not give the public the true facts about what's taking place.

Mr. MUELLER. Well, I think you raise two issues. One is the extent of reporting and compliance with the law, which requires reporting. Certainly, we can educate the cruise line companies in terms of the necessity of doing that and assuring, to the extent possible, that they comply with the statute.

Second, in terms of making those figures public, I will have to get back to you. I am not certain to what extent they are publicized, and if not, why they would not be publicized.

[The information follows:]

WHETHER THE FEDERAL BUREAU OF INVESTIGATION MAKES PUBLIC DATA ON CRIMES OCCURRING ON CRUISE SHIPS

The Federal Bureau of Investigation (FBI) complies with the reporting requirements of the Cruise Vessel Security and Safety Act of 2010 (CVSSA), which is codified in chapter 35 of title 46, United States Code. Pursuant to the CVSSA, when certain serious criminal offenses are alleged to have been committed on board a covered vessel, the owner of the vessel must report the offense both to an Internet-based portal and to FBI. FBI does not open investigations on all of the alleged incidents reported to it. Often these are sexual offenses in which late reporting has resulted in a loss of physical evidence or a contaminated crime scene. In other cases, the next port of call or other country exercising jurisdiction has delayed investigation or intervened in a way that affects FBI's ability to conduct a thorough investigation. Each quarter, FBI reports to the Secretary of the Department of Homeland Security the number of cases closed during the quarter that stemmed from the serious criminal offenses reported to us. This number does not include investigations that were never opened, investigations that remain open, or investigations of offenses other than those serious criminal offenses specified by the statute.

Senator LAUTENBERG. Thank you, Madam Chairman.

Senator MIKULSKI. Before I turn to Senator Feinstein, I just want to comment. You have a long history on defending people on cruise ships. Do you remember there were some terrible incidents many years ago?

PREPARED STATEMENT

Senator LAUTENBERG. Absolutely.

Senator MIKULSKI. And you are to be congratulated. We need to protect the people that sail on the seas from pirates or other despicable behavior, and we look forward to hearing more from you about that.

[The statement follows:]

PREPARED STATEMENT OF SENATOR FRANK R. LAUTENBERG

Madam Chairman, it goes without saying that the attacks of September 11, 2001, changed all of us. We lost more Americans that day than at Pearl Harbor or on 9/11, including 746 New Jerseyans who died that day. In the years since 9-11, the Federal Bureau of Investigation (FBI) has been asked to do more to keep us safe, and the Bureau has risen to the challenge.

But to truly ensure our safety, we need laws on the books that prevent dangerous criminals from accessing dangerous weapons. More Americans have died from gun murders here at home in the past decade than have died on the battlefields of Iraq and Afghanistan. In 2008, guns were used to murder around 10,000 Americans. By comparison, in the same year, guns killed 39 people in England and Wales, 35 in Australia, and 200 in Canada.

Recently our remarkable colleague Congresswoman Gabby Giffords stepped down from the Congress to focus on her recovery from a horrific shooting in January 2011. On that tragic day in Tucson, a man emerged from a supermarket, shot Representative Giffords in the head at point blank range, and fired 31 rounds before running out of ammunition. His rampage ended only when he stopped to reload and brave

bystanders tackled him to the ground. Nineteen people were shot, and six were killed. If the shooter had been forced to reload sooner, lives might have been saved. That's why I've introduced legislation to reinstate the Federal ban on high-capacity magazines like the one the shooter used.

We must also do more to keep guns out of the hands of criminals and terror suspects. Next month will mark 13 years since the shootings at Columbine—and as we know, the killers obtained their firearms at gun shows. More than a decade later, anyone—including known terrorists, convicted criminals, and the mentally ill—can walk into a gun show and purchase a gun, no questions asked. And, under current law, known and suspected terrorists are free to purchase any firearm—including an assault weapon—from a licensed gun dealer. Data from the Government Accountability Office show that from February 2004 through December 2010, firearms or explosives transactions involving individuals on the terrorist watch list were allowed to proceed 1,321 times. I have a bill that would close the gun show loophole by requiring all sellers at gun shows to do background checks, and another that would eliminate the terror gap by giving the Attorney General the authority to stop individuals on the terror watch list from buying firearms. Passing these common sense bills would reduce violent crime and protect those who are charged with protecting us.

The FBI stopped several recent terror plots, providing public reminders of the Bureau's constant work to keep us safe. My State of New Jersey is home to the stretch some in law enforcement have identified as "the most dangerous area in America" for a terrorist attack. We must make sure that the FBI has the resources it needs, and is doing everything it can to protect this area. I look forward to hearing from Director Mueller about how we can support the FBI in this critical mission and how we can improve our gun laws to keep Americans safe.

Senator LAUTENBERG. Thank you.

Senator MIKULSKI. Senator Hutchison, who was going to be next, yields to you. And so then we'll go to Murkowski and Hutchison that way, okay?

Senator FEINSTEIN. Thank you very much.

I wanted to take up where Senator Graham left off. There has been an effort emanating out of the Armed Services Committee to change the National Defense Authorization Act (NDAA) to essentially put this country's detention policy under the laws of war. Under the laws of war, an individual can be held without charge or trial until the end of hostilities—the point made that America is a battlefield—and I think that's the point that some have been trying to make.

I'd like to ask your view of this. I'm strongly opposed to it. I also know what you said during the worldwide threat hearing, that the FBI has interrupted or arrested some 20 terrorist plots in this country over the past year. You have the high-value interrogation group, which, you testified to the House Appropriations Committee, has done 14 interrogations, and I gather with some success.

I would like to ask you to comment on whether you believe that permanently detaining Americans without trial or charge is appropriate.

Mr. MUELLER. I would have to start with the NDAA legislation that has recently been passed which addresses that particular issue. As I think you and others are aware, I had some concerns at the outset in two areas: the continuation of our authorities during detention initially in military custody here in the United States; and second, whether or not there could be clarity in terms of either the statute or the Presidential directives that would clarify the process in which a person is deemed to be not an American citizen, but a person who is an al Qaeda affiliate engaged in a terrorist plot, and to what extent would there be an immediate military detention.

With both the statute as well as the President's directives, I'm comfortable that the capabilities of the Bureau, coupled with the capabilities of the Department of Defense (DOD), will be maintained in that rather unique situation where you have a foreigner, not a U.S. citizen, who undertakes a terrorist attack affiliated with al Qaeda in the United States.

Looking at that discrete issue, I am comfortable that we have preserved what we needed to preserve our role in that process.

Senator FEINSTEIN. But—

Mr. MUELLER. The broader question that you have—

Senator FEINSTEIN. The broader question is that the law is very cloudy, and this is a problem. And the court has had some holdings that you cannot detain a person indefinitely regardless of whether they're a citizen or not in this country without charge or trial.

Mr. MUELLER. The Supreme Court has occasion to opine on various aspects of that. What I have wrestled with is particular pieces of legislation that would impact that process whereby a person is detained in the United States, whether they are a U.S. citizen or a non-U.S. citizen. Both the Department of Justice and the President determine whether or not a person is ultimately tried or you proceed against that person in an Article III court, in which we operate, or in a military tribunal, which has also been upheld by the Supreme Court.

So with the NDAA legislation, I believe that the issues have been fleshed out to the extent that I'm comfortable with. But I really hesitate to comment on other issues which have either not been the subject of legislation or are unique to a particular circumstance where you really don't know the facts, and not knowing the facts, it's very hard to apply the law.

Senator FEINSTEIN. Right. I appreciate that, and I appreciate the need for executive flexibility, whether it's military or whether it's a Federal court.

Having said that, Senator Mikulski and I both serve on the Intelligence Committee, and the Foreign Intelligence Surveillance Act (FISA), is up for reauthorization and must be reauthorized by the end of the year. Do you view that reauthorization as important? Do you view it as valuable? And, if so, why?

Mr. MUELLER. I would go beyond that and use the word "critical", because the world in which we live today is what Tom Friedman talks about, a "flat" world. With technology, criminals, terrorists and cyber terrorists cut across borders, at will, in seconds. And it is absolutely essential that the intelligence community, whether it be domestic but most particularly foreign, has the flexibility and capability of obtaining communications by these individuals as quickly as possible in order to prevent attacks, whether those attacks in the future be a terrorist attack on the infrastructure, on the financial structure, or attacks by al Qaeda and the like in cyberspace. It's absolutely essential that we have those tools.

Senator FEINSTEIN. Would you say that FISA is a critical tool of counterterrorism in this country?

Mr. MUELLER. Yes. Yes, and also it will be a critical tool as well in the cyber arena.

Senator FEINSTEIN. Yes. Thank you very much.

Thank you, Madam Chairman.

Senator MIKULSKI. And, Senator Feinstein, I hope you can join us shortly in our classified session as well.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Madam Chairman.

Welcome, Director.

Mr. MUELLER. Ma'am.

Senator MURKOWSKI. Nice to have you here.

This morning, the investigative report that details the prosecutorial misconduct in the case against Senator Ted Stevens was released. It was, I guess, precipitated almost that the Brady violations came about, but it was not until 5 months after that trial was completed that we learned of these violations, and it came about because of the complaint that was filed by an FBI agent that alleged the prosecutorial and other law enforcement misconduct in that case. In my opinion, that was exceptionally good work by that FBI agent, and Judge Sullivan suggested that were it not for the complaint of that agent, that, in fact, we might not have learned of the misconduct.

I'm joined this morning, or this afternoon, with many of my colleagues, including Senator Hutchison, in filing legislation that would address some of the laws that are in place that allowed for this horrid situation to move forward. But because this whole thing came about because of the acts of an FBI agent, I would certainly hope that individual has been recognized for his persistence, standing up for the Constitution. I think he did right, and I hope that recognition has been given by FBI.

Mr. MUELLER. Well, I'd have to get back to you on any particular recognition. The case is still under review by the Office of Professional Responsibility (OPR), both the Justice Department as well as our own OPR. But I will say that the agent who came forward and did that was doing so in the tradition of FBI. It is a legacy to adhere to the Constitution. When you see something wrong, you bring that to the attention of others. That is exactly what we teach in our new agents training as they come through, that there is no case that is more important than abiding by the Constitution, the applicable statutes, and the Attorney General guidelines.

[The information follows:]

PROVIDE DETAILS ON ANY RECOGNITION THAT WAS GIVEN TO THE FEDERAL BUREAU OF INVESTIGATION AGENT THAT REPORTED THE ALLEGED MISCONDUCT OF SENATOR TED STEVEN'S CASE

The Special Agent who reported the alleged misconduct did not receive an incentive award in recognition of this activity.

Senator MURKOWSKI. Well, I appreciate that. You mentioned the report that is still underway. I've asked OPR to conduct this formal investigation, and I am hoping that the FBI will work with OPR as they look into some of the issues that were behind the Stevens matter.

In particular, the FBI has worked very, very closely with the Anchorage Police Department in this case that involved Bill Allen, who was the key witness in the case against Senator Stevens, and Mr. Allen was—it was alleged that he had transported a young Alaska Native woman across State lines in violation of the Mann Act. It's been widely reported in the media that the case was rec-

ommended for Federal prosecution, but DOJ higher-ups scuttled that.

The question that I would have to you is, to what extent was the FBI involved in that investigation, and did that investigation indicate any reason that the prosecution should not go forward? This has just really stunned people back in Alaska. They cannot understand why DOJ has dropped this, and I've attempted to get answers all the way up the chain and simply have not been able to get any.

Do you know any reason that, based on that investigation, the prosecution should not have gone forward?

Mr. MUELLER. I do not, but that is something we'd have to get back to you on. I would assume that this is a part of the OPR investigation inasmuch as the allegation that came out of that series of events, and that particular allegation, would be addressed in that arena.

I am not familiar with the court's report that was issued earlier today, and I do not know whether that became or was a subject of that particular investigation.

Senator MURKOWSKI. Well, and I would ask you, because this is a matter that has really gone far beyond what most could have even have imagined, that you not only look at the report that is issued today but also do some follow-up in terms of the FBI investigation and where we are with OPR.

The concern that so many of us have is that the allegations against Mr. Allen are, unfortunately, not isolated in Alaska. We have had a great deal of concern about sex trafficking within the State with young Native women, and I look at what has happened with the Bill Allen case, and the Government's failure to prosecute Bill Allen sends an awful message, just an awful message to other predators that might be out there, that if you are a young woman, and particularly a young Native woman, you don't stand a chance when you have been victimized by a person of political influence and financial means.

We worry about the situation of sex trafficking. And again, if an individual doesn't feel that there is any recourse out there, it makes the situation pretty tough. So this goes even beyond the Bill Allen investigation. I know that you've got good folks within FBI that are working these issues. I've met with them. I've talked with them. But again, I think this is something that needs further attention to detail, and if you can give me your assurance that you will look into that, I would certainly appreciate it.

Mr. MUELLER. Yes. Also, I will tell you that when the issues came out in terms of the Brady violations, we went back to our workforce to make certain that everybody understands the requirements under the Brady rules, and if exculpatory, to make certain that one learns from this, first.

Second, when it comes to human trafficking in Alaska, as you point out, we have persons that are working hard on that with State and local law enforcement who believe it is a priority. Any young woman or, for that matter, young man's life that can be saved in terms of working with State and local law enforcement to address this, we certainly want to be a participant and driver of that.

Senator MURKOWSKI. I appreciate that. Thank you, Director.  
Thank you, Madam Chairman.

Senator MIKULSKI. Senator Hutchison.

Senator HUTCHISON. Thank you, Madam Chairman.

Just to add one more question to Lisa's line, and I think she has taken the lead on this, and properly so, but I do commend the FBI agent who came forward who just couldn't sit back and let a person be accused, go through a trial, lose an election, all based on very bad misconduct on the part of the agencies that we look to for complete integrity, which would be DOJ, the prosecutors, and the FBI.

There were others that were implicated with the FBI in some of the alleged misconduct. And my question to you is, what are you doing to deal with the allegations, which I assume will come out in a report or the OPR report, if the agents are found to still be in the FBI and have been actually, to your satisfaction, part of the scheme that was put together to convict Senator Stevens?

Mr. MUELLER. Well, at the outset, the Justice Department OPR led the investigation. We participated and contributed to that investigation. To the extent that individuals within FBI were implicated, we, along with DOJ, investigated that. There is at least one individual who is still going through the OPR process. Let me just put it that way. I can tell you that process is monitored.

But, it goes through a process whereby the person has an opportunity to respond to the charges and the findings. That process is under way. At the end, when it's resolved, we'll take a look at it and determine what lessons need to be learned, what the appropriate punishment is for whatever wrongdoing was undertaken, and do as we do in every case where we find that a person has not adhered to what we expect in FBI.

Senator HUTCHISON. I would just ask if you would share the final result of that investigation and your actions with this subcommittee.

Mr. MUELLER. I'd have to look into that, but I would expect that we would report to you on what we have done.

Senator HUTCHISON. I would ask that you do so.

Mr. MUELLER. Yes.

[The information follows:]

REPORT ON FEDERAL BUREAU OF INVESTIGATION'S INVESTIGATION OF THE ALLEGED  
MISCONDUCT OF SENATOR TED STEVENS' CASE

Federal Bureau of Investigation's investigation of employee misconduct related to the investigation of Senator Ted Stevens is still pending.

Senator HUTCHISON. I want to just go back to a couple of other points. Number one, on cyber security, there are different bills that have been put forward to deal with cyber security. I think everyone in both bodies, the House and the Senate, and both parties in the House and Senate, agree it is a critical need that we address cyber security.

I think how we do it is the question and the differences in the bills. Many of us are concerned about an overlay by DHS, especially over the areas that have developed the expertise through the years, and the experience in cyber warfare, security of all kinds, and that would be DOD, the Central Intelligence Agency (CIA),

FBI, the Defense Intelligence Agency (DIA), as well as the National Security Agency (NSA).

So we're trying to work through what the best approach is for cyber security, and I think my position has been that we don't need a DHS overlay so much as we need the agencies that have the experience and the expertise to be able to make these decisions on how is the best way to assure our networks and our infrastructure are secure.

In a general way, how would you—I don't want to put you on the spot because I guess it's hard for you to say in this environment with all of the different ideas and the different agencies involved. But is there a particular area that you think is essential for us to agree on as we move forward in trying to determine how we get to the goal of securing our infrastructure?

Mr. MUELLER. Let me start by maybe indicating how I perceive the allocation of responsibilities in the cyber arena. On the one hand, you have the protection of the infrastructure, and protection of the .gov and .com networks. That falls to DHS.

On the other hand you have, as was brought out, not just the possibility but the actuality of foreign countries seeking to extract information, with the possibility down the road of undertaking cyber attacks. That falls generally with the intelligence community overseas, NSA, CIA, and the like.

In the middle comes domestic intrusions and a determination of whether that domestic intrusion is from a criminal, an organized crime group, a nation state, or a teenage hacker. We have 56 field offices around the country. We have 56 cyber squads. The first indication of a substantial intrusion will quite probably come to us, and it is our responsibility to do the investigation to determine who is behind that computer, and to stop them.

Too often, the discussion is how we protect against foreign countries, but part of that has to be disrupting these individuals and putting them behind bars.

The legislation that is currently pending includes three areas that are important to us. One is, to the extent possible, ultimately having a required notification to the Bureau of an intrusion. I think there are 47 States that have this, but it's all over the lot in terms of who has to report and when they have to report. So, first is notification.

Second is, to a certain extent, the fact that we are where we were in terms of sharing information prior to September 11 amongst the agencies. When it comes to counterterrorism, there's very little that's not shared. And I would say it's also readily true in the cyber arena amongst the agencies, whether it be DHS, NSA, ourselves, DIA and the like.

What's so important to this is what you point out, both the experience and the expertise in the private sector. This is where it's different from addressing terrorism, because the private sector has to play a substantial role. The private sector runs our critical infrastructures. How you execute that, whether through the statute or not, is really up to others. My concern is the sharing of information so that we can determine who is responsible for this and lock them up.

Perhaps the third area is the necessity of building up the expertise in the Federal Government amongst all of the agents, as well as the outreach to the private side, not only building up the expertise, but also the outreach to private businesses so that we become partners in ways that we have not in the other criminal arenas.

Senator HUTCHISON. Well, you have really highlighted an area that makes this whole intelligence, security, holding accused terrorists without charges being filed—we're not dealing with an enemy that is a nation state, like we have in the past. So if you picked up a person that was in the German army or in the intelligence arm of the German Government, you would know in World War II that you had to hold that person in the military sense.

But when it is organizations like al Qaeda and others that have attacked our country, but yet they're not under the rules of war as we accept it, the Geneva Conventions don't affect them, it makes it very difficult to deal with any kind of intelligence areas when you're dealing with an enemy of our country but not a nation state. So that's something that we're all going to have to deal with in, I think, I hope a realistic way, because I'm with Senator Graham on this.

I think we need Guantánamo Bay. I think we need the ability to hold people that are suspected terrorists that have associations with al Qaeda and other networks that deal with al Qaeda, and I don't want us to give up our capability to protect our country from another attack from one of these entities that may not even be an organization yet.

So I know you're wrestling with it. We are, too. But I'm going to come down on the side of protecting our people with an asymmetric war that we have. That's what we're given to deal with, and we've got to do it in a way that protects America.

Thank you.

Senator MIKULSKI. Thank you very much, Director Mueller.

Colleagues, as Director Mueller has said, 60 percent of FBI's request is in the area of national security. Many of these are really sensitive issues that FBI is engaged in, and we need to make sure we get our resources right while we're working on very complex policies.

Therefore, this is why we will move to a closed session.

#### ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, the Senate may submit additional questions for the record. We request FBI's response in the usual 30 days.

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

#### QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

##### FEDERAL PROGRAMS FACING CUTS

*Question.* Under the terms of the Budget Control Act of 2011 (Public Law 112-25), funding for virtually all Federal programs will face a possible across-the-board cut in January 2013 if the Congress fails to enact a plan before then to reduce the national debt by \$1.2 trillion. According to Congressional Budget Office estimates, this would result in a cut of roughly 8 percent to programs across the Federal Bureau of Investigation (FBI).



What impacts would these cuts have on the FBI? What is your strategic plan for the FBI to implement these cuts if Congress fails to enact an alternative plan? Please provide a list of expected workforce furloughs, consequences to public safety and national security programs, and other reductions at the FBI if sequestration is implemented.

Answer. The administration is committed to avoiding a sequester; we urge the Congress to enact balanced deficit reduction legislation that avoids this type of sequestration so the vital missions of the FBI can continue.

The effect of an across-the-board cut of 8.5 to 10 percent would mean budget cuts of approximately \$650 to \$800 million in fiscal year 2013 (the FBI's fiscal year 2012 Appropriation was \$8,036,991,000). These reductions would impact the FBI mission and result in cuts to investigative operations and infrastructure, a Bureau-wide furlough, and a lengthy hiring freeze. While the implementation of a \$650 to \$800 million cut cannot yet be determined, cuts in this range would likely result in a 25-workday furlough, resulting in a decrease of approximately 3,500 Special Agent, Intelligence Analyst, and Professional Staff work years. In addition to the negative impact on employee morale and productivity, a hiring freeze and furlough of this length would likely disrupt national security and criminal investigations, intelligence collection and dissemination, and surveillance capabilities.

The FBI would make every effort possible to minimize the negative impact to public safety; however, budget cuts of this magnitude would have a significant effect on FBI operations. These cuts would take agents off the streets, delay investigations, and disrupt intelligence collection. The FBI would continue to work with its Federal, State, and local law enforcement partners, but at a reduced capacity.

As a component of the Department of Justice (DOJ), the FBI would participate in the Department-wide furlough, which will affect every program and employee. If these cuts are enacted, the FBI will issue furlough notices and immediately begin furloughing employees in order to achieve the necessary savings by the end of the fiscal year. The furloughs would be implemented on a rotating basis with each of the FBI's 36,000 employees being required to take roughly 25 days off. In addition, the FBI may be forced to freeze equipment purchases, restrict investigative travel, and cancel service contracts.

#### FEDERAL BUREAU OF INVESTIGATION RESCISSION

*Question.* In fiscal year 2013, the FBI requests an appropriation of \$8.2 billion, an increase of \$114 million, or 1.4 percent. However, the request also proposes to rescind \$162 million from the FBI's existing funding in the Salaries and Expenses account, which leads to a net reduction for the FBI to fight terrorism at home and abroad.

What specific FBI activities would be impacted by the proposed rescission? Will the rescission impact missions in which Congress has made considerable investments in recent years? If so, which missions? How would this impact national security?

Answer. DOJ and FBI are evaluating the impacts of the rescission. We will work to minimize its impact and ensure that priority programs and projects are not affected.

#### CYBER SECURITY CUTS

*Question.* The Internet is the new battleground for terrorists, and the new playground for predators. To combat these threats, cyber security cuts across all of the FBI's programs.

Why the urgency in combating cyber threats?

Answer. Al Qaeda and other terrorist groups use the Internet as a recruiting tool, a moneymaker, a training ground, and a means for conducting operations. Terrorists have not used the Internet to launch a full-scale cyber attack, but we cannot underestimate their intent. Additionally, certain foreign nations use the Internet to steal our intellectual property and trade secrets for military and competitive advantage. We have also started to see that previously isolated hackers are now joining forces to create criminal cyber syndicates that steal information for sale to the highest bidder.

*Question.* What cyber imperatives does the FBI face on security? Policy? Funding?

Answer. The FBI will continue to expand its capacity to lead national efforts to investigate cyber intrusions, identify hackers, and put them in jail. The FBI will continue to build on current capabilities by:

- Ensuring all agents are able to operate in the cyber environment;
- Creating a virtual structure that enables cyber agents from around the country to work together on difficult cases;

- Cultivating sources that can infiltrate cyber criminal networks; and
- Expanding the network of cyber task forces around the country.

Encouraging the private sector to share information with the Government about cyber intrusions and data breaches in a timely manner would enhance the FBI's ability to conduct investigations, identify hackers, and put them in jail. Hackers will not stop until we hold them accountable.

The cyber threat continues to expand in scope and complexity, which will drive future funding requirements. Our adversaries are becoming increasingly sophisticated with using technology as a means to exploit our vulnerabilities; consequently, data, information, and infrastructure remain at risk of being compromised. We must continue to keep pace with technological advances.

*Question.* The fiscal year 2012 Appropriations Act gave the FBI more resources for cyber training, specifically for agents. Please provide an update on the FBI's cyber training and what plans are being implemented. Will the fiscal year 2013 budget affect this plan?

*Answer.* The FBI has recently restructured its cyber training curriculum to increase the emphasis on cyber national security investigations. Special Agents working on cyber issues will be trained toward working the most sophisticated organized crime and national security matters and will be required to complete more technically rigorous training requirements.

In addition, the FBI is implementing a new initiative dedicated to training a majority of the workforce on conducting investigations in an increasingly high-technology environment. This training is expected to educate more than 16,000 FBI employees. This new training initiative will provide the cyber skills needed to conduct complex counterterrorism, counterintelligence, criminal, and computer intrusions investigations. Using base resources, we plan to expand and deploy this training to all FBI investigators in fiscal year 2013.

#### TRADITIONAL CRIME FIGHTING

*Question.* The FBI's \$8.2 billion budget is split at roughly 60 percent for national security and counterintelligence, and 40 percent for traditional crime fighting efforts.

How much goes to national security, and what activities make up this category? How much goes to traditional crime fighting? What activities make up this category? What programs cut across the national security and counterintelligence budget, and into the traditional crime fighting budget? What complications does this create in terms of the budget?

*Answer.* The FBI's budget is broadly organized into four "decision units" as follows:

- Intelligence;
- Counterterrorism/counterintelligence;
- Criminal enterprises/Federal crimes; and
- Criminal justice services.

The first two decision units are scored to national security and total nearly \$5 billion, roughly 60 percent of the FBI's fiscal year 2013 budget. These decision units fund all of the FBI's National Security Branch (Counterterrorism, Counterintelligence, Weapons of Mass Destruction, and the Directorate of Intelligence) as well as portions of other programs, such as Cyber. Funding for these decision units also includes pro-rated portions of enterprise-wide services such as information technology, rent, etc. The FBI's Cyber programs are divided between two basic categories:

- Computer intrusions; and
- Cyber crime.

The Computer Intrusions section includes national security intrusions and programs such as the National Cyber Investigative Joint Task Force, representing approximately 60 percent of the overall Cyber Division budget.

The latter two decision units total more than \$3 billion of the FBI's budget and are scored to traditional criminal activities. This includes all of the Criminal Investigative Division, which operates the Violent Crime, White Collar Crime, and Public Corruption programs among others; our Criminal Justice Services Division; and the FBI laboratory. Also included is the Cyber Crime portion of the Cyber Division. Funding for these decision units also include pro-rated portions of enterprise-wide services, like information technology, rent, etc.

There are several programs that cut across both national security and criminal decision units. Cyber, as mentioned above, and Surveillance, are two examples.

## QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

NEW YORK CITY POLICE DEPARTMENT SURVEILLANCE OF MUSLIM AMERICAN  
COMMUNITY

*Question.* In recent months, we have heard troubling information about the surveillance operations of the New York City Police Department (NYPD)—particularly targeting the Muslim American community. According to press accounts, the NYPD has been compiling databases of information concerning Muslim Americans residing throughout the northeast, and has used informants called “rakers” and “mosque crawlers” to infiltrate mosques and Muslim student groups. Last week, the Special Agent in Charge of the Federal Bureau of Investigation’s (FBI) Newark Division criticized these tactics as damaging to relations between law enforcement and the Muslim community, and more importantly, damaging to the counterterrorism efforts of the FBI.

Was the FBI aware of the surveillance tactics being used by the NYPD to target the Muslim American communities in New York, New Jersey, and other places in the northeast prior to press reports on the matter? If so, when did it become aware of those tactics?

*Answer.* The FBI is generally aware that the NYPD engages in physical surveillance and a wide range of other investigative techniques in connection with its efforts to protect New York City from terrorist attacks. The FBI was not specifically aware of the conduct described in the press reports and does not know if those reports are accurate. The FBI has and will continue to work with the NYPD, as we do with many state and local police departments, consistent with our rules and regulations under the Attorney General Guidelines and the Domestic Investigations Operations Guide.

*Question.* I know that FBI agents must adhere to the Attorney General Guidelines and the FBI’s Domestic Investigations and Operations Guide (DIOG) when the FBI is conducting surveillance. But does the FBI obtain and use information collected by the NYPD through use of the NYPD’s surveillance tactics? If so, is this done in compliance with the relevant Federal guidelines?

*Answer.* The FBI shares and receives information collected by its partner agencies. In particular, the FBI and NYPD work together on the Joint Terrorism Task Force, share investigative information, and exchange queries for operational and tactical de-confliction purposes. Unless circumstances suggest otherwise, the FBI assumes that our partner agencies have collected this information in accordance with the United States Constitution and other applicable laws and regulations.

## REGIONAL COMPUTER FORENSICS LABORATORIES

*Question.* I have been working with a variety of stakeholders, including the law enforcement community, to strengthen and improve the forensic sciences used in criminal cases. Last year, I introduced legislation that would, among other things, help support forensics laboratories.

Director Mueller, I understand that the FBI is in the process of trying to set up regional computer forensic laboratories and that a site has not yet been determined for New England. Can you tell me the current status of those plans and what the timeframe is for choosing a site for a regional lab in New England?

*Answer.* The FBI has established 16 full-service Regional Computer Forensic Laboratories (RCFLs) devoted to the examination of digital evidence across the country. However, none are currently established in New England. Although there are no current plans to establish additional RCFLs the FBI continues to work with our law enforcement partners in the New England area to leverage all existing resources, facilities, and equipment to support its partners with the examination of digital evidence.

## QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

## HIGH-CAPACITY AMMUNITION CLIP

*Question.* When Congresswoman Gabrielle Giffords and 18 others were shot on January 8, 2011, outside of a supermarket in Tucson, Arizona, the shooter used a gun with a high-capacity ammunition clip to kill 6 people and wound 13 others. It was only when the shooter had fired all 31 rounds in his clip that people were able to tackle him. At last year’s hearing, Director Mueller stated that everybody in law enforcement supports efforts to lessen the threat of criminals getting weapons that do substantial damage. Would a high-capacity magazine ban lessen that threat?

Answer. The Federal Bureau of Investigation (FBI) supports law enforcement efforts aimed at preventing prohibited persons from obtaining firearms, including those capable of substantial damage.

#### MOST AT-RISK AREA

*Question.* According to the FBI, New Jersey is home to the most at-risk area for a terrorist attack in the United States. An attack on this area could have an impact on 12 million people who live nearby. Last year, you assured me that the FBI is doing everything it can to ensure that there is not an attack there. What specific items in this budget request will help the FBI protect this area?

Answer. The FBI continues to dedicate critical investigative resources to New Jersey's high-risk areas. As of April 2012, the FBI has more than 350 Special Agents in the Newark field office. Further, the FBI and DHS are working diligently through their task forces, including the Joint Terrorism Task Force (JTTF), to ensure the area remains safe by identifying and disrupting any threats. The fiscal year 2013 budget includes resources to continue supporting the JTTFs and the Special Agents currently assigned to the Newark field office.

#### ILLEGAL TRAFFICKING OF TOBACCO

*Question.* Reports from the Government Accountability Office have identified an estimated tax loss of \$5 billion a year due to the illegal trafficking of tobacco. The tremendous profits and low criminal penalties have attracted the involvement of organized criminal and terrorist groups. The FBI has primary jurisdiction on terrorism and organized crime, while the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) holds primary jurisdiction on cigarette trafficking. What are you doing to ensure that the FBI and ATF work together to prevent illegal tobacco proceeds from financing organized crime and terrorists?

Answer. The Department of Justice's (DOJ) agencies have strong and effective working relationships with their DOJ partners as well as other Federal, State, and local agencies and a history of highly successful joint investigations. Supervisors in the field regularly review investigations on a case-by-case basis and involve other agencies as appropriate. For example, recently the ATF and the FBI worked together on "Operation Secondhand Smoke", an undercover investigation into a nationwide network of retailers, wholesalers, distributors, importers, and manufacturers who were avoiding cigarette taxes to make millions of dollars in profits.

#### SUBCOMMITTEE RECESS

Senator MIKULSKI. This subcommittee will temporarily recess and reconvene in a closed session in room 217 in the CVC.

Before I close this public part, I would like the Director to know, as we said to the Attorney General, when the issue is related to public integrity, and on the issues related to the Stevens matter, this is a bipartisan set of requests, because we feel that both our Justice Department—those involved in enforcing the law, if we're going to pursue public integrity issues, which we must and should, then those who are pursuing it have to have the highest public integrity themselves.

We know FBI has that standard. You've insisted on that standard, and we thank you. But just note that it's not just from them because they're Republican and Stevens was on this subcommittee. It's larger than that.

So we look forward to working with you, and we look forward to meeting in the other room where we can go into the national security budget in more detail.

The subcommittee is temporarily recessed until we reconvene.

Next week we'll have a hearing for the testimony of Secretary Bryson of Commerce.

[Whereupon, at 11:18 a.m., Thursday, March 15, the subcommittee was recessed, to reconvene in closed session.]

**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2013**

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**THURSDAY, MARCH 22, 2012**

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

The subcommittee met at 10:03 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Inouye, Feinstein, Pryor, Brown, Hutchison, Murkowski, and Cochran.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

**STATEMENT OF HON. JOHN BRYSON, SECRETARY**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. The Subcommittee on Commerce, Justice, Science, and Related Agencies comes together, and today we will be taking the testimony of the Secretary of Commerce, John Bryson. We expect robust attendance at this hearing, and we note that the ranking member of the full Appropriations Committee, Senator Cochran, is here. And we also will be having votes at 12:30 p.m., so we hope to be able to move this in an expeditious way.

We're meeting today to examine the Commerce Department's fiscal year 2013 budget, and we welcome Secretary Bryson. This is his first testimony before the subcommittee since becoming Secretary in October 2011. He brings valuable skills to his position, strong experience in the private sector, and he's been a strong voice for American manufacturers. We love the slogan, "Build it here. Sell it everywhere." He knows firsthand what American business is facing in today's challenging economy. We look forward to hearing from him about the agency's budget and priorities.

The Commerce Department is the major economic engine for America. The President's request totals \$11 billion for the Department. This includes \$3 billion in patent and trademark fees. Today, I want to examine just a few areas of this robust agency. Number one, the protection of not only American ideals, but America's ideas. It is in the area of intellectual property and the United States Patent and Trademark Office that we have a keen interest. We believe that if you invent it, we should be able to help you pro-

tect it. We are concerned about the backlog, the expeditious processing of patent claims, and then as a member of both this subcommittee and the Intelligence Committee, I am obsessed with cyber espionage. And that will be another theme that I will ask in my questions, which is the role of the Commerce Department in not only the cyber economy, but how to make sure we're protecting ourselves against the threats in this area, and the important function of the National Institute of Standards and Technology (NIST).

We also are looking at how to protect our citizens, and this goes to whether it's protecting our coast from hurricanes, tornadoes, and others, and we're tremendously interested in what is happening to the National Oceanic and Atmospheric Administration (NOAA), and also particularly to NOAA's weather service.

Then, we have to also look out for the taxpayer. The inspector general, over the history of this subcommittee, has identified persistent problems that need strong oversight. This isn't a blip, but there is a persistent problem in NOAA satellite procurement, and Census; we're not going to have another techno boondoggle like we had last time. And then, of course, the issue of the patent backlog.

I believe the Department of Commerce needs to be cyber-obsessed, creating ways to protect its own .gov systems and protecting those that use our .gov, particularly, again, in the area of cyber espionage.

NIST is doing a fantastic job, and I know it's been capped by the President in this area, as well as playing the leading role now in saying manufacturing is alive in America, and we're going to make sure it's not only alive, but it thrives. So, we're going to ask for more details in that area and on intellectual property.

We are concerned about NOAA's satellites, and ships, and planes, and that we need to be fit for duty. We owe it to the men and women who operate this equipment, and to the scientists and forecasters to make sure we are working with them. We're concerned that when it comes to NOAA's ships and NOAA's planes, they're kind of a little late at the switch to notice what the problems are, ending up in tremendous cost.

We owe it to our people who work at NOAA that they have the best equipment and the best support from their government, so that they can be out there providing, whether it's for mariners, people who live in coastal communities, and so on. We're so proud of what they do. I know, as a Maryland Senator, we can't live without NOAA and its weather warnings, but when you talk with the Senators from Missouri, and now the way the tornado warnings have gone, to a Senator from Hawaii, to another Senator from Alaska, the tsunami warnings, and others—so we do need to hear from you.

The inspector general has identified several major issues, particularly controlling the cost of the 2020 census. Once more, we're seeing that the census cost has doubled. We can't go there again. And I'm just saying that. We really can't go there again. And we'll come back to what I'm going to be asking from you.

I've identified some of the problems at NOAA. We're back to the Joint Polar Satellite System (JPSS), and to make sure that the satellite program is not out of control.

## PREPARED STATEMENT

I'm going to ask unanimous consent that my full statement be included in the record.

[The statement follows:]

## PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

Today, we're meeting to examine the Department of Commerce's fiscal year 2013 budget request. We welcome Commerce Secretary John Bryson for joining us today for his first testimony before the subcommittee since becoming Commerce Secretary in October 2011. Secretary Bryson brings valuable skills to his position. He has been a strong voice for American manufacturer, saying we need to "Build it here, sell it everywhere." He knows firsthand what American businesses are facing in today's challenging economy. We look forward to hearing from him about his budget and his priorities.

The Commerce Department is the major economic engine for America. The President's request totals \$11 billion for the Department, including \$3 billion in patent and trademark fees.

Today, I want to examine how these funds will do three things:

- Protect American ideas by safeguarding our intellectual property with patents and trademarks and enforcement of our trade laws;
- Protect our citizens by forecasting and warning about severe weather; and
- Protect taxpayer dollars.

By that, I mean the Secretary of Commerce is the chief spokesperson for American business, but the Secretary is also the chief manager of major management challenges at the Department. Persistent problems need strong oversight. Issues that the Inspector General has identified include:

- National Oceanic and Atmospheric Administration's (NOAA) satellite procurement;
- the next Census; and
- the patent backlog and the stealing of our ideas.

When it comes to protecting our ideas, the Department of Commerce needs to be cyber-obsessed—creating ways to protect its own ".gov" systems while working with the private sector to better protect ".com". The National Institute of Standards and Technology (NIST), Commerce's outstanding science and research agency, is helping the private sector find new ways to solve today's cyber security problems. NIST's budget request of \$860 million includes \$60 million for cyber activities. I want to know how these funds will be used to protect online consumers and the private sector from cyber-attacks.

But NIST is not the only agency standing sentry over America's intellectual property. The United States Patent and Trademark Office (USPTO) protects American ideas and inventions, which are the heart of economic prosperity and jobs. The USPTO has made progress in reducing the patent backlog, but more than 657,000 patents are waiting for approval and it takes 2½ years to grant a patent. I also want to make sure that USPTO's networks are secure American inventors are filing applications electronically. We must make sure the filing process is secure.

When it comes to protecting people, every member of this subcommittee is pro-weather and pro-science. NOAA's satellites, ships, and planes need to be fit for duty. We owe it to the men and women who operate this equipment and to the scientists and forecasters who depend on the data to do their jobs. And most importantly, we owe it to our communities: to the coastal States that depend on accurate hurricane forecasts and to the interior States that depend on timely tornado warnings. I know the President's Government reform plan calls for moving NOAA to the Department of the Interior, but in the meantime, I want to know what you are doing now to keep people and communities safe.

The Inspector General has identified several major issues persistent management problems for the Department. Serious issues continue to challenge the Department, particularly planning and management of the next Census and NOAA weather satellite procurement.

Controlling costs for the 2020 Census is a top oversight concern for both the Inspector General and the Government Accountability Office. Cost overruns become a major problem during the 2010 Census, and already today we see estimates for the 2020 Census ranging from \$22 to \$30 billion. That's more than double 2010 Census costs. I want to know what is being done to reduce costs now.

When Secretary Bryson agreed to be the chief spokesman for America's businesses, he also knew that 60 percent of the Department's budget is for NOAA,

which includes fisheries management, coastal resource protection, and operations of the National Weather Service. An area that I remain very troubled by is NOAA's acquisition of new weather satellites. The budget request for NOAA's new polar satellites—called Joint Polar Satellite Systems (JPSS)—is nearly \$1 billion. JPSS's life-cycle cost—the costs of development and operations—have increased yet again from \$11.9 to \$12.9 billion. This new total cost estimate shows that despite strong warnings from the subcommittee, JPSS is going in the wrong direction. Cost growth is hurting NOAA's core ocean and weather operations. This leads me to question if NOAA should remain responsible for procuring these satellites.

In conclusion, I want to thank all the men and women of the Commerce Department. They are the trade experts, statisticians, patent and trademark examiners, scientists, engineers, and weather forecasters who work hard every day to promote American businesses, protect American ideas and resources and keep our economy moving forward.

Senator MIKULSKI. And Senator Hutchison, I know Senator Inouye and Senator Cochran have joined us. May we defer to them, and then come back to you, and in turn, to our Secretary?

Senator HUTCHISON. I'd be happy to. I'll be here for the duration.

Senator MIKULSKI. I know that there are several hearings going on.

Senator HUTCHISON. Yes.

Senator MIKULSKI. Senator Inouye, did you want to make a statement?

#### STATEMENT OF SENATOR DANIEL K. INOUE

Senator INOUE. Madam Chair, thank you very much for this opportunity to say a few words about the President's fiscal year 2013 budget relating to the Commerce Department. But, before I begin, Madam Chair, I'd like to join the multitude of admirers and colleagues in congratulating you on becoming the longest-serving woman in our congressional history. I can't quite believe it, but—

Senator MIKULSKI. I can't believe it either.

Senator INOUE. You look too young and cute.

Senator MIKULSKI. That, I can believe.

Senator INOUE. But I've been around a little while, and I want to thank you for the great work you've done here.

Madam Chair, I want to say a few words, but before I proceed I'd like to commend and thank the Secretary for the work he has been doing, and on behalf of my constituents, I thank you for your hands-on service to our people.

I have just one concern, and that concern has been expressed by my chair: NOAA. So if I may, Madam Chair, I'd like to submit my statement and make sure that it's part of the record.

Senator MIKULSKI. Absolutely, Senator. With unanimous consent, your statement is included in the record.

#### PREPARED STATEMENT

Senator MIKULSKI. And then I know you and your staff have important questions, that they, too, will be submitted to the record, and we'll ask the Secretary to respond within 30 days.

[The statement follows:]

#### PREPARED STATEMENT OF SENATOR DANIEL K. INOUE

Madam Chairwoman, thank you for the opportunity to say a few words with regard to the President's request for the Department of Commerce's budget for fiscal year 2013. Before I begin, however, let me also join my colleagues and others in congratulating you on making history as the longest-serving woman in congressional



history. I have been around for a few years myself and deeply appreciate the honor and dignity that you have brought to both the House and the Senate through your dedicated service.

Mr. Secretary, welcome and thank you for joining us. I have been reviewing the President's proposed budget and want to applaud you and the President for working to find ways to support our small businesses and decrease our trade deficit even in these perilous budget times. I know this is no easy task. However, this is not why I wanted to come to this hearing today. Rather, I wanted to come in order to make a special point about the agency which comprises more than 60 percent of your Department's discretionary budget and yet seems to merit less attention from year to year. I refer of course to the National Oceanic and Atmospheric Administration (NOAA) which, under the President's budget would receive a little more than \$5.1 billion in fiscal year 2013. To be sure, this is an increase, but as we all know this increase is dedicated almost entirely to needed satellite programs while core agency functions and programs are elsewhere consolidated and cut. In my view, these cuts appear to have been made in a somewhat haphazard fashion with what seems to be a highly unfortunate emphasis on programs that have previously been quite clearly highlighted as congressional priorities. I might suggest that explicitly targeting such programs is not a constructive way to begin a dialog over what I consider to be an agency crucial to our Government's function, our Nation's economic well being, and our safety and security. To begin the annual budget conversation in such a way inevitably sets up a cycle where the Congress and the administration focus on more parochial interests to the detriment of any serious thinking that might be required about refocusing agency missions and priorities in a shrinking budget environment.

You note in your written testimony that the cuts to NOAA were made so that the agency could focus on its "most essential initiatives" and that reductions were made to programs that were found to be redundant and "of lower value". This then is the rubric by which we must judge such actions as the proposed 20 percent cut to the National Tsunami Warning Network and Hazard Mitigation Program. Less than a year after one of the most devastating tsunamis the world has ever seen, the Department of Commerce decided that NOAA's tsunami warning program was, according to standards outlined in your testimony, nonessential, redundant, and of low priority. Given that my State suffered significant damage, though thankfully no loss of life, from the Japanese tsunami, this seems like an incorrect assessment to me. It also gives me pause as to the other proposed cuts to NOAA and I hope that we may continue to have a dialog as to your reasoning.

I would like to add one last point with regards to the administration's proposal for reorganizing the business and trade functions of the executive branch. I sincerely congratulate you and the President on your willingness and desire to think creatively about how we may make Federal activities more efficient while at the same time enhancing the vital services that foster American enterprise. The proposal to reorganize and consolidate the business and trade functions of the Federal Government into a single Department has some value in terms of efficiency, economy, and effectiveness. However, there are still many issues yet to be worked out and some questions yet to be answered.

I am especially concerned with the lack of details regarding the proposed fate of NOAA.

I understand that there is a notional idea to move it the Department of the Interior with a promise that details will be worked out later. I also understand that the likelihood of any of this occurring in the near term is small. Nevertheless, I strongly suggest to you that, as with the budget, it is always better to start these conversations sooner. In this case there is no need to wait for the Congress to act on the President's request for reorganization authority. I and my staff would enthusiastically welcome a conversation with the administration about ways that we may strengthen NOAA while increasing Government efficiency.

Senator INOUE. Thank you very much.

Senator MIKULSKI. Senator Cochran, our ranking member, also a coastal Senator.

#### STATEMENT OF SENATOR THAD COCHRAN

Senator COCHRAN. Madam Chair, thank you very much. Thank you for your leadership of this subcommittee, and in the Senate, as a whole, we appreciate your friendship over the years.

Mr. Secretary, welcome. We're pleased to have you here before us today to discuss the budget request for the administration and these areas under your jurisdiction.

One of the disturbing things, and I noticed right away, is the lack of emphasis on the Gulf of Mexico. And I don't know of anything that's happened in our country in terms of water resources, ecological interests, and importance than the problems in the Gulf of Mexico, and to see NOAA sitting back and waiting for others, I guess, to identify the priorities—we need leadership at this time more than ever. And I will be curious to know what your recommendations and observations are about that issue.

But beyond that, we're glad to have the opportunity to review the budget request of the administration, and we're hoping to work in a positive and constructive way to harness the resources that are needed to deal with the challenges we face under your jurisdiction, in spite of the disappointment that the budget presents to us at the outset.

Senator MIKULSKI. Thank you, Senator Cochran. And your questions, too, will be in the record.

Senator MIKULSKI. Senator Hutchison.

STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Senator HUTCHISON. Well, thank you, Madam Chairman, and I will echo what Senator Inouye said, and say that you've had a fabulous week. And I'm so happy that Women's History Month, which you couldn't have predicted 30-some years ago, would happen on your anniversary. But it's a wonderful thing that we are celebrating your service as the longest-serving woman in the history of our the Congress and our country. So, I loved being a part of all your festivities, and it probably won't be matched for a long time. In fact, you may break your own record.

Senator MIKULSKI. Thank you.

Senator HUTCHISON. Let me say that I think you're hearing what the concerns are already. NOAA is a big one. Gulf of Mexico. I mean just last week, we had tornadoes, and horrendous weather that kept our Republican Minority leader, Senator McConnell, from being able to be here on Tuesday, because he was not able to get out of DFW airport for about 8 hours. And it's just always there.

The Gulf of Mexico is the site of so many of our hurricanes, and tornadoes, and horrible weather, and yet, we see failures in NOAA. We see the satellite system, which doesn't function right. It's a big part of your budget. But, the people who are concerned with the wet side of Commerce, with fisheries and ocean monitoring, are also very concerned. So, I will want to know what you're doing to address these issues, and what you would do with the increase in spending in that area.

The reorganizing that has been announced to possibly put NOAA in the Department of the Interior, I would like to know your opinion about that, if it goes better there, and what can we see that would be an improvement if it did move, or if not, why not. And the computer hacking is another issue that really has come to the forefront, and protecting the Department's information technology infrastructure certainly has to be a priority. And I guess in the hacking that happened this year, you're still, I'm told, trying to sort

out if any information about the companies that are in your system had compromised information.

The National Network for Manufacturing Innovation is part of the budget. Certainly, we are focused on manufacturing, and innovation and manufacturing should be a priority, and I want to hear more about that. And just the last thing I would mention is the International Trade Administration (ITA). The President made an Executive order that I think was premature, because we haven't had a chance to see what a new ITA would do that the U.S. Trade Representative (USTR) isn't already doing, or should be doing, and do we need another reformed agency to do the work on unfair trade practices, when we do have a setup, I think, at the USTR office.

So, I'd like to, you know, pursue these things, and get your answers, and I guess after we have our opening statements, we'll get a chance to hear what your priorities are.

Thank you.

Senator MIKULSKI. Mr. Secretary.

Secretary BRYSON. Well, thank you.

Senator MIKULSKI. Thank you, I think. We've got a lot of challenges.

#### SUMMARY STATEMENT OF JOHN BRYSON

Secretary BRYSON. Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee, I am pleased to offer a written statement for the record, and to discuss President Obama's 2013 budget request for the Commerce Department.

I feel the need and really want to join the others in saying that it is a special honor today to testify before the longest-serving female Member in the history of the Congress, and maybe as a father of four daughters, I would say I deeply admire your service to the people of Maryland and our Nation since being elected to the Congress in 1976. So, I join all the others in saying thank you, and congratulations Chairman Mikulski on making history once again.

So, in my first 5 months as Secretary, I've seen many examples of how the Commerce Department supports American business. Just last Friday, I visited Pavilion Furniture. That is a very small manufacturer in Miami who we are helping to start exporting both to the Caribbean and to Asia. The owner, Mike Buzzella, said, "The introductions that the Commerce Department just made for us in Panama and the Pacific Rim are helping to find new ways to grow in a global economy."

This budget, the budget we have before you now, reflects the commitment to helping businesses like Mike's continue to drive competitiveness, innovation, and job creation. It includes \$8 billion in discretionary funding and \$2.3 billion in mandatory funding. Throughout the budget, we have made smart and tough choices that cut costs, while building only on programs that truly do work. Key priorities are in areas where we see growth and promise, such as advanced manufacturing, exporting, and attracting foreign direct investment.

For example, the budget includes \$135 million for R&D in areas like advanced materials and advanced manufacturing processes. These are critical areas where the United States must stay competitive.

We will also continue to support the foundational building blocks of our economy, such as research and science, environmental sustainability, and the public safety. For example, NOAA's budget includes \$1.85 billion for satellites, which provide 93 percent of the input to our Nation's weather prediction models. This directly impacts the daily flow of commerce and the ability of businesses and communities to prepare for disaster.

Also, we have invested in stock assessments, because our fishermen and our fisheries are culturally and economically important to our country and to our competitiveness.

At the same time, we are committed to serving as responsible stewards of taxpayer dollars. We propose eliminating 18 programs, reducing funding for many others, and achieving administrative savings. Altogether, this will save taxpayers more than \$400 million.

#### PREPARED STATEMENT

Let me just close by saying that as a CEO for nearly 2 decades, I strongly believe that any organization is most effective when it operates with a common vision. Our 12 bureaus are committed to functioning as what we call "One Commerce". Collectively and collaboratively, we will continue to empower American businesses to drive our economy and to build on the nearly 4 million jobs that have been created over just the past 2 years.

Thank you all for your continued support of the Commerce Department. I look forward to your comments, and I'm pleased to answer any questions.

[The statement follows:]

#### PREPARED STATEMENT OF JOHN BRYSON

##### INTRODUCTION

Chairman Mikulski, Ranking Member Hutchison, and distinguished members of the subcommittee, I am pleased to join you today to talk about President Obama's budget request for the Department of Commerce for fiscal year 2013. While this is my first testimony before you, I want to start by thanking you for the subcommittee's members' deep appreciation of the talented women and men who work at the Department of Commerce, and for your support of our relentless focus on helping American companies be more innovative at home and competitive around the world.

I must say, it is humbling that my first time testifying in the Senate as the Secretary of Commerce is before the longest-serving female Member in the history of the United States Congress. As the father of four daughters, I thank you. As the newest member of the Cabinet, I humbly recognize what an impressive feat this is and deeply admire your many years of service. Since being elected to Congress in 1976, you have always been an admirable representative of the great State of Maryland and our country. Thank you and congratulations on making history once again, Chairwoman Mikulski.

In today's challenging budget climate, the Commerce Department is committed to responsible stewardship of taxpayer dollars. We've done this by making smart and tough choices to cut costs, while ensuring that we build only on programs that truly work. Thus, the fiscal year 2013 budget request for Commerce is fiscally responsible while promoting entrepreneurship, innovation fueled by investments in science, global competitiveness, and research and development. President Obama's fiscal year 2013 budget for Commerce includes \$8 billion in discretionary funding, which is a 5-percent increase from the fiscal year 2012 enacted level. The budget also requests \$2.3 billion in mandatory funding for new programs.

This budget invests in efforts to help businesses build their products here and sell their products and services everywhere, putting Americans back to work. To do so, we are requesting funding specifically to promote high-priority activities to support advanced manufacturing, exports and foreign direct investment. With these invest-

ments, we will build a 21st century infrastructure; encourage the sustainability of our environment; strengthen science and information; and support national security and public safety. To make that possible, this budget request balances the investments and priorities outlined here with difficult choices—including eliminating 18 programs, resulting in more than \$50 million in savings; reducing other programs by an additional \$336 million; and achieving \$176 million in administrative savings.

As a CEO for nearly two decades, I learned that a company is most effective at delivering services when it operates with one vision and the entire workforce, from the boardroom to the shop floor, are focused on a clearly defined collective goal. I believe the same thing at the Commerce Department. We are the strongest advocates for American businesses when we are more than the sum of our parts—when we are “One Commerce”.

The common thread through all of our work across the bureaus is helping American businesses create jobs. This is as true for National Oceanic and Atmospheric Administration (NOAA) as it is for the International Trade Administration (ITA). As One Commerce, we are working relentlessly to support businesses and communities and to advance the frontiers of innovation, as I detail below.

#### BUILD IT HERE—SELL IT EVERYWHERE

As you all know, the challenges and opportunities that American businesses face today are global in nature. Since my confirmation in October, I have focused the Commerce Department on becoming more nimble, responsive, and effective for American businesses. As my friend Fred Hochberg and I like to say, “We want government at the speed of business.” To reach this goal, the Department will focus on a simple imperative: In order to create good-paying jobs here at home, we need to help more businesses build their products here and sell them everywhere. To achieve this, we are focusing on:

- Supporting advanced manufacturing;
- Increasing U.S. exports; and
- Attracting more investment in America from all over the world.

#### *Advanced Manufacturing*

The President’s fiscal year 2013 budget request for the Department of Commerce recognizes that we must build momentum in our manufacturing sector, particularly advanced manufacturing. By itself, the U.S. manufacturing sector would be the ninth-largest economy in the world. Manufacturing employs 12 million Americans and is a major source of innovation in our economy, with manufacturing companies accounting for 72 percent of all private-sector research and development (R&D) spending. This is why the President’s proposed budget would invest heavily in the manufacturing expertise at our National Institute for Standards and Technology (NIST).

In support of the President’s priority to strengthen advanced manufacturing, the President’s fiscal year 2013 budget for NIST contains:

- \$135 million for advanced manufacturing R&D to target high-potential technologies such as the manufacture of advanced materials and smart manufacturing processes, which will make U.S. manufacturers more competitive; and
- \$21 million for the Advanced Manufacturing Technology Consortia Initiative that will bring together industry, universities, and the Federal Government to invest in highly promising R&D and accelerate the transfer of innovative technologies and products into the hands of American manufacturers.

In addition, the Hollings Manufacturing Extension Partnership within NIST is funded at \$128 million to help businesses save time and money and thereby improve the competitiveness of small- and medium-sized firms in manufacturing.

Partnerships can also strengthen our competitiveness in manufacturing. Gene Sperling, Director of the National Economic Council and Assistant to the President for Economic Policy, and I are co-leading the new White House Office of Manufacturing Policy. We are focused on high-impact ideas, such as the creation of a new National Network for Manufacturing Innovation. The administration proposes to make a one-time \$1 billion mandatory spending investment to catalyze the creation of a network of up to 15 regional institutes to foster innovation and accelerate technological advancements in manufacturing. These regional institutes will allow researchers, companies, and entrepreneurs to solve problems in pre-commercial technologies that will lead to U.S. leadership in tomorrow’s manufactured goods.

Our “One Commerce” approach brings significant resources to bear for the benefit of American manufacturing companies. The Commerce Department’s bureaus—including NIST, ITA, Economic Development Administration (EDA), and U.S. Patent and Trademark Office (USPTO)—are collectively focused on supporting the commercialization of manufacturing technology, bridging the gap between the laboratory

and the market, and maximizing the unique strengths that already exist in particular regions and manufacturing hubs around the United States. This will help us ensure that the next generation of groundbreaking products is not just invented here in America, but is also built here.

#### *Increasing U.S. Exports*

We also want to help American companies sell their products and services to the 95 percent of the world's consumers who live beyond our borders. U.S. businesses are not exporting nearly as much as they could. Only about 1 percent of U.S. businesses export, and most only to one country. Many American companies would like to export but are unsure how to start. Small businesses in particular often face big challenges when it comes to getting export financing, building relationships with foreign suppliers, and dealing with unfamiliar foreign rules and regulations. President Obama's National Export Initiative (NEI), led by our Department, is designed to help businesses overcome these hurdles. And, in fact, U.S. companies increased their exports by 17 percent in 2010 and by an additional 14 percent in 2011, putting us substantially on track to meet the challenging goal to double American exports by the end of 2014.

We have leveraged existing resources and enhanced the way we work to help American companies expand their global market share. In 2010 and 2011, the Commerce Department coordinated 77 trade missions to 38 countries with more than 1,000 U.S. companies. We have identified and prioritized work in markets and sectors where American businesses are the most competitive. In addition, we have expanded opportunities in new markets thanks to congressional implementation of the trade agreements with Colombia, Panama, and Korea.

The fiscal year 2013 budget requests a total of \$517 million for our ITA. As with other Commerce Department bureaus, ITA is closely examining its organization to speed up operations in order to focus on higher productivity results for American businesses. This budget request proposes a consolidation of ITA's four business units to three, organizing them by core function to provide more effective and efficient services to U.S. companies and to better focus on priority export markets, trade enforcement, and strategic partnerships while saving \$8 million annually.

ITA's budget also requests an additional \$30 million to strengthen trade promotion by placing Foreign Commercial Service Officers and the equivalent of 90 locally engaged staff in high-growth markets such as China, India, and Brazil. An expansion of these priority markets will enable identification of more export opportunities for U.S. companies, more rapid and timely business counseling, and enhanced commercial diplomacy and advocacy support.

#### *Attracting More Investment*

We also must promote investment into the United States. That includes U.S. companies expanding their operations domestically or bringing jobs back to the United States. It also means foreign companies investing here. This administration maintains a deep commitment to ensuring that the United States remains the most open economy in the world. America is already the number-one destination around the world for foreign direct investment, and foreign companies support more than 5 million jobs across the United States. Until the recent launch of SelectUSA, however, there has not been coordinated Federal effort to help either U.S. or non-U.S. businesses navigate the Federal and various State economic environments in order for the private sector to more rapidly and easily make these types of investments in America. The fiscal year 2013 President's budget proposes \$13 million for SelectUSA to aggressively pursue and win new business investment in the United States.

In order to spur job creation, the United States must encourage business investment from all sources, including encouraging companies that have moved jobs offshore to come back to the United States. To support this effort, we have launched a task force dedicated to investment and the in-sourcing of jobs. This task force is leveraging our existing resources to make promoting and facilitating business investment in the United States a natural part of what the Department does, akin to export promotion and facilitation. Further, we are working to create an online calculator that will help companies determine the hidden costs of moving business out of the United States.

Additionally, EDA will play a critical role through strategic grants that build assets in communities to support investment. Moreover, EDA is updating its investment priorities to include the in-sourcing of jobs back to the United States; projects to facilitate in-sourcing will be prioritized for funding within all EDA grant programs. In fiscal year 2012, EDA will offer support to grant applicants who are interested in bringing jobs back to the United States through its next round of Jobs and Innovation Accelerator Challenges—economic development grants that will focus on

America's rural communities and strengthening advanced manufacturing. Those interested in accelerating job creation through in-sourcing will be encouraged to apply.

#### SUPPORTING U.S. BUSINESSES AND COMMUNITIES

The fiscal year 2013 budget for the Department of Commerce supports American businesses and communities—whether it's working directly with manufacturers to enhance their economic competitiveness or supporting communities through economic development and the delivery of daily weather forecasts and severe storm warnings.

The Department works to strengthen communities, especially in disadvantaged or distressed areas, through private sector job creation. The President's budget provides \$182 million for the EDA's Economic Development Assistance programs to drive 21st century innovation and economic development that leverage regional assets to foster economic growth.

The budget provides \$29 million for the Minority Business Development Agency (MBDA), which, through a network of 39 affiliated Minority Business Centers, supports the ability of minority businesses to grow and thrive in the global economy. We are investing in these centers because they are on the front lines of providing direct services to minority-owned businesses. This approach has worked. Over the last 3 years, our network of MBDA Business Centers has helped minority businesses obtain \$10 billion in contracts and capital while helping to create and save nearly 20,000 jobs. And last year, MBDA registered the best annual performance in its 41-year history.

The Bureau of Industry and Security (BIS) advances U.S. national security, foreign policy, and economic objectives through ensuring an effective export control and treaty compliance system and by promoting continued U.S. strategic technology leadership. The President's fiscal year 2013 budget recognizes, with a request of \$102 million, the important role of BIS to ensure sensitive technologies are not exported to regimes unable to safeguard the technologies from bad actors, weapons proliferators, and terrorists. Within this request, \$6 million is provided to hire 24 additional personnel at Commerce to handle the new workload under the administration's export control reform initiative to advance national security and overall economic competitiveness.

Robust monitoring and enforcement of U.S. rights under international trade agreements, as well as enforcement of domestic trade laws, are crucial components of the administration's strategy to expand exports, ensure fair competition with our foreign trading partners, and grow the economy. ITA is a key partner supporting the new Interagency Trade Enforcement Center (ITEC), which will represent a more aggressive "whole-of-government" approach to addressing unfair trade practices, and will serve as the primary forum within the Federal Government for executive departments and agencies to coordinate enforcement of international and domestic trade rules. This budget requests an increase of \$24 million to the Commerce Department that will support the ITEC and will significantly enhance the administration's capabilities to aggressively challenge unfair trade practices around the world.

The Commerce Department also focuses on generating and providing timely data and analysis for public and private sector decisionmaking. The fiscal year 2013 President's budget requests \$100 million for the Economics and Statistics Administration (including the Bureau of Economic Analysis [BEA]) and \$970 million for the Census Bureau. BEA, which sits within the Economics and Statistics Administration (ESA), provides the tools to identify the drivers of economic growth and fluctuation, as well as measure the long-term health and sustainability of U.S. economic activity. This budget will strengthen BEA's ability to identify industry-specific trends within its GDP statistics.

The fiscal year 2013 budget for Census sustains critical business and household data collection activities, such as the 2012 Economic Census that provides an every-5-year comprehensive view of American businesses and that forms the foundation for all our industry and business statistics. Similarly, the American Community Survey (ACS) is the only source for geographically detailed socio-economic information on a yearly basis. Businesses use ACS information in many ways, such as site selection and market intelligence, which promotes job creation and economic recovery. State and local governments use ACS information to support decisionmaking for key programs and services, such as schools, transportation, and emergency services. The Census Bureau request also invests \$131 million in research and testing for the 2020 Decennial Census. This is a critical investment that is essential to saving money in future years. By devoting sufficient resources to this early state of the lifecycle, the Census Bureau will be able to develop the new approaches required to break the trend of doubling the cost of the decennial census each decade.

This budget also supports U.S. businesses and communities by investing \$5.1 billion, an increase of \$153.9 million or 3.1 percent more than the fiscal year 2012 enacted level, for NOAA's vital work on weather forecasting, fisheries management, and coastal stewardship.

NOAA's critical satellite operations will provide businesses and individuals with the data and information needed to plan for changing weather conditions. These satellites also provide advanced warning of severe storms so that actions can be taken to protect lives and property. The fiscal year 2013 budget invests \$1.8 billion in NOAA satellites, including \$916 million for the NOAA Joint Polar Satellite System (JPSS), and \$802 million for the next generation geostationary satellite, GOES-R. Weather satellites, including JPSS and GOES-R, are critical to our Nation's infrastructure and economy and provide 93 percent of the input to the Nation's weather prediction models. Severe storms in the past year, both tornados and hurricanes, have demonstrated the importance of our weather satellite system to provide advance warning of these disasters. fiscal year 2013 funding will ensure that GOES-R remains on its current schedule to replace the GOES-N series of satellites currently in operation. Full funding is required to avoid any additional schedule slip to JPSS and to minimize the gap in polar satellite coverage between JPSS and the Suomi National Polar-Orbiting Partnership (Suomi-NPP). NOAA and National Aeronautics and Space Administration successfully launched the Suomi-NPP in October 2011. JPSS is scheduled to launch in the second quarter of 2017.

NOAA's environmental data and services support commerce throughout the country. NOAA provides weather information that allows for safe and efficient transportation; drought and water data that inform agricultural decisions; space weather warnings needed to protect the national energy grid and worldwide communications from solar storms; and climate information that supports adaptation decisions for business and communities. Nearly 80 percent of U.S. import and export freight is transported through seaports, and by 2020, the value of all freight coming through U.S. ports is projected to increase by more than 40 percent. The fiscal year 2013 President's budget requests \$150 million to support navigational services nationwide, including mapping and charting and real-time observations and forecasts of water levels, tides, and currents. The budget also provides \$972 million for weather, drought, and flood forecasting.

The fiscal year 2013 President's budget for NOAA also provides an increase of \$29.7 million to improve our understanding of climate, with a specific focus on research that underpins our understanding of climate processes. This includes an \$8 million investment in the continued development and use of state-of-the-art Earth system models, which help businesses and communities address climate related issues, including sea level rise and Arctic climate change and \$4.6 million to make progress in critical ocean observations and analysis.

Healthy coastal economies rely on a healthy ocean ecosystem. NOAA's fiscal year 2013 budget will continue to ensure that critical information and tools are available to users and decisionmakers to support the management of our ocean and coastal resources to make certain future generations also have the ability to enjoy and benefit from these resources. Rebuilding our Nation's fisheries is essential to preserving the livelihood of fishermen, the economies of our coastal communities, and a sustainable supply of healthy seafood. The fiscal year 2013 President's budget requests \$880 million for the National Marine Fisheries Service, funding science, management, and conservation of fisheries and protected resources. This includes a requested increase of \$4.3 million to expand stock assessments and \$2.3 million for survey and monitoring projects, which will be targeted at high-priority commercially and recreationally viable fish stocks.

#### ADVANCING THE FRONTIERS OF INNOVATION

The fiscal year 2013 budget supports key initiatives to help advance our scientific and technological frontiers and build the foundations for a secure future. Innovation is critical to our economy; it generates American jobs today and will drive the jobs of the future. Along with major research universities, businesses are the primary source of new ideas, from concept to commercialization, and the Department of Commerce is leveraging our resources to provide the tools, policies, and technologies that enable U.S. businesses to gain and maintain an advantage in world markets.

Together, NIST and NOAA will invest an additional \$1.3 billion in research and development efforts.

As I mentioned earlier in my testimony, a focal point for the NIST budget request is on investments to support advanced manufacturing. Overall, the fiscal year 2013 President's budget requests \$857 million in discretionary spending for NIST that ad-



dresses challenges to U.S. industry in a number of areas including advanced communications and cybersecurity.

Specifically, we request \$10 million to support research in advanced communications networks to build collaboration with the telecommunications industry to help lay the groundwork for an interoperable public safety communications network that seamlessly delivers voice, data, and video to first responders and other emergency personnel. In addition, cybersecurity remains a priority at NIST with the request of an additional \$8 million for the administration's National Strategy for Trusted Identities in Cyberspace (NSTIC) program. This program supports the development of an online environment—the "Identity Ecosystem"—that improves on the use of passwords and usernames, and allows individuals and organizations to better trust one another, with minimized disclosure of personal information. This work is intended to have broad benefits for applications ranging from consumer financial transactions, to industrial supply chains, to health records, for which it is essential to have information security.

The President's fiscal year 2013 budget requests \$651 million for NOAA research and development. This includes NOAA's atmospheric and ocean, coastal, and Great Lakes research and applied science which are at the forefront of discovery and a key component of advancing the mandates of the America COMPETES Reauthorization Act of 2010. NOAA research is improving the forecasts of severe weather such as winter storms and flash floods, developing next-generation radars with the potential to extend lead times for detecting tornadoes, and operationalizing new marine sensor technologies with economic benefits.

USPTO facilitates the generation of innovative and commercially viable processes and products, while protecting the intellectual property rights of inventors. The Congress helped tremendously in this effort last year with the passage of the America Invents Act, and the fiscal year 2013 budget supports USPTO's authority to spend all of the fees collected to accelerate patent processing and improve patent quality, as established in that law. The request supports continued reductions to pendency and backlogs, with goals of cutting the backlog in half to 329,500 by fiscal year 2015 and total pendency to 18.3 months by fiscal year 2016. This would be a dramatic turn-around from where we were just 3 years ago. In fiscal year 2009, the backlog was nearly 800,000 and pendency was 34.6 months. In fiscal year 2013, USPTO expects to hire an additional 1,500 examiners to support this effort.

EDA will dedicate \$182 million in grants to foster innovation through innovation hubs across the United States, particularly in distressed communities. We know this new model of economic development works. The Jobs Innovation and Accelerator Program launched by EDA last year is estimated to create approximately 4,800 jobs and 300 new businesses, retain 2,400 jobs and train 4,000 people for careers in high-growth industries.

The need to ensure our Nation has state-of-the-art digital infrastructure—to drive economic growth, create jobs, promote innovation, support Federal agencies' missions, and improve public safety—cannot be overstated. This is a core value of President Obama, and one that is reflected in several major initiatives undertaken by the administration and enacted by the Congress. The Department's National Telecommunications and Information Administration (NTIA) has been called upon to make some of the most complex and consequential technology and innovation programs a reality. Most recently, under the Middle Class Tax Relief and Job Creation Act, NTIA will establish "FirstNet", an independent entity that will oversee the creation of a long-needed nationwide, interoperable public safety broadband network. Funded through proceeds of future spectrum auctions, this broadband network represents delivery on a promise made by this administration to America's first responders and the key challenge of network operability noted by the 9/11 Commission.

In all, the President's fiscal year 2013 budget provides \$47 million to NTIA. These funds are needed for NTIA to continue its work in several areas critical to creating jobs, promoting innovation and growing our economy. This includes implementing the President's directive to double the amount of spectrum available for commercial wireless broadband service. It also includes managing and overseeing nearly \$4 billion in Broadband Technology Opportunities Program projects, which are helping to expand broadband access and adoption across the country. These projects are allowing hospitals, libraries and universities, as well as individual citizens, entrepreneurs and small businesses, to succeed and thrive in the digital economy. The fiscal year 2013 President's budget request includes \$27 million for NTIA to continue to oversee these projects to protect against waste, fraud and abuse, and ensure they deliver on their promised benefits—including more than 70,000 miles of broadband networks by the end of fiscal year 2013—on time and on budget. Almost all projects are slated to be completed by the end of fiscal year 2013.

The Department of Commerce is also active on the domestic and international fronts to preserve an open, interconnected global Internet that supports continued innovation and U.S. economic growth. Privacy is a key component of consumer trust in the Internet and of the online retail marketplace that accounts for around \$200 billion in annual economic activity. The President's budget requests approximately \$1 million for NTIA's work on promoting Internet innovation, in particular, by leading the administration's efforts to provide consumers with stronger privacy protections while maintaining the flexibility that companies need to innovate, here and around the globe.

#### STEWARDSHIP OF TAXPAYER DOLLARS

Just as businesses across the United States must find efficiencies and focus on results, the Federal Government has a responsibility to maximize results and be responsible stewards of taxpayer dollars, especially in difficult economic times. As I stated before, there were many difficult choices made in this budget, cutting programs across the Department. In fact, EDA, MBDA, and departmental management are decreased below their fiscal year 2012 enacted levels. In other bureaus, such as NOAA, sharp cuts were taken to specific programs to focus on the most essential initiatives. Programs were reviewed across the Department, and reductions were focused on specific programs or projects that, while performing important work and generating value, are lower priority because they are either similar to programs in other agencies or not central to the Department's mission.

The Commerce Department is committed to reducing our administrative costs through savings and efficiencies. In doing so, we are not only being financially sound, but we are ensuring we can invest in the important initiatives that help American businesses compete and win.

The fiscal year 2013 President's budget invests in key areas to improve administrative functions throughout the Department. These investments include an increase of \$0.4 million for cybersecurity; \$3.9 million to upgrade the financial management, acquisition, and other administrative systems within the Department; and \$2.2 million to continue to automate our manual human resource processes. Making these investments is key to future savings.

To fund these investments, the Commerce Department has moved aggressively in the past year to reduce our administrative costs. We will meet our goal of saving \$143 million by the end of fiscal year 2012, in areas such as acquisition, fleet operations, human resources, and information technology. This builds upon our fiscal year 2011 savings of approximately \$50 million in administrative costs. Part of those savings resulted from Commerce shutting down approximately 3,000 unused cell phone lines and optimizing rate plans, for an annual savings of \$1.8 million, and issuing a printing policy that calls for less and smarter printing, which will save approximately \$4.2 million annually.

Next year we will achieve substantial additional savings. The fiscal year 2013 President's budget calls on the Department to achieve a total of \$176 million in administrative cost savings, which is already underway by placing additional focus on reducing travel costs, employee IT devices, printing, fleet operations, management contracts, and extraneous promotional items. In addition, the Department has proposed administrative savings in NOAA by merging a small number of programs and reducing its footprint of facilities so that funding can be targeted at the agency's highest priorities.

The Department of Commerce also continues to support the President's BusinessUSA Initiative—a comprehensive customer service plan to better meet the needs of businesses. Furthering the Commerce Connect initiative launched in late 2010, BusinessUSA ensures that businesses looking for assistance from the Federal Government can quickly connect to the services and information relevant to them, regardless of which agency's Web site, call center, or office they go to for help. BusinessUSA would link American businesses and entrepreneurs with Commerce Department and other Federal, State, and local partner resources. These services are provided faster and more comprehensively through a one-stop shop, beginning with a web portal and enhanced call center coordination. This is a key step in a new way for the Federal Government to be an asset to America's businesses—applying information and customer service standards, technology, call centers, and field offices in a manner that provides the most useful, accurate, and timely services and information to businesses.

#### CONCLUSION

The President's fiscal year 2013 budget request reflects the crucial role that the entire Department of Commerce plays in accelerating job growth, strengthening the

economic recovery, and supporting American businesses all across our country. At the same time, the President's request recognizes the challenging budget climate in which we find ourselves and includes many difficult choices that meet the need for responsible reductions.

By combining crucial investments with fiscal responsibility, the budget sets forth a meaningful plan to stimulate private sector job creation and promote American competitiveness for years to come. With each of our 12 bureaus working together with a focus on helping companies sell their goods and services around the globe, supporting businesses and communities, and advancing the frontiers of innovation, I am confident in our ability to deliver on that commitment.

#### INTELLECTUAL PROPERTY

Senator MIKULSKI. Mr. Secretary, we're going to go by the 5-minute rule, and I will then, I know, at the end, probably have a couple of wrap-up questions related to management and cost overruns.

The Commerce Department's job is to work with the President, the Congress, and the private sector to really create jobs. And it has been the tradition of the Secretary of Commerce to really be like the President's ambassador to our domestic business community. We have the ambassadors to countries, but here we're one of the most vital private sectors in the world. So, we know that's a big job. And one thing we are concerned about on this subcommittee is certainly creating jobs.

This is now going to take me to the whole issue of the role of the Commerce Department in cyber, and also with our intellectual property. Everybody likes to talk today about American exceptionalism. It really is our intellectual ideas. So, one, the whole idea that we don't want a valley of death, where people do research—how do they get their ideas patented?—because that is the major tool for protecting their intellectual property. It puts the fence up and protects them.

The second issue we hear in both this subcommittee and in the Intelligence Committee that Senator Feinstein chairs is about cyber espionage, where there are those nation states that are out there cruising, and even in the private sector, that are stealing our ideas. Why invent the cure for cancer? Why invent something new that will be Internet-driven, when you can just steal it?

So, my question to you is: What is the role of the Commerce Department in protecting America's intellectual property and making sure we end the backlog and deal with the cyber espionage problem?

Secretary BRYSON. Thank you, Chairman Mikulski. The Commerce Department has a significant role, a very significant role in dealing with the very considerable threats and costs of not having complete and fully protected cybersecurity.

Chairman Mikulski, I want to say how much our people at NIST have valued your support. You've followed this. You've addressed it for a long period of time. And you're coming recently to the recognition—

#### PATENT APPLICATION BACKLOG

Senator MIKULSKI. I appreciate the nice words. Tell me what you're doing on the backlog problem.

Secretary BRYSON. The backlog problem—

Senator MIKULSKI. The backlog problem at the USPTO.

Secretary BRYSON. Yes. What we're doing is, we've set a standard now. A lot of work is under way. We will reduce the backlogs by 2015 by one-half.

Senator MIKULSKI. And how are you going to do that, and what resources do you need?

Secretary BRYSON. A series of steps, but the most important is in the budget before you now, and that is the funding that would allow us to bring immediately, in the 2013 timeframe, 1,500 new patent examiners to carry that backlog down, and reduce that considerable backlog.

Senator MIKULSKI. But, we've heard that before. How is this going to be different than in the past? Oh, let's bring in more, but then so what. I've now been with several secretaries of Commerce. With all due respect, Sir, they tell me the same thing. We're going to hire more people and hooah, hooah, and it just doesn't make a difference. Either you're not hiring, either you're not keeping, you don't—

Secretary BRYSON. Dave Kappos, in my judgment, as the Director of the USPTO, is doing an outstanding job, extraordinary leadership. The America Invents Act gives us an additional set of tools. But, the hiring of 1,500 additional patent examiners has never taken place before. That is a big addition. They will be highly, highly capable people. Already, people are lining up to have those jobs, and it's an attractive place to work.

Senator MIKULSKI. Well, I think what the subcommittee would like is a detailed management plan including not only the hiring, but how are you going to train them, how are you going to recruit them, what happened to the fast-track idea?

[The information follows:]

PATENT EXAMINER RECRUITMENT, HIRING, TRAINING, AND PRIORITIZED EXAMINATION PROCESS

The Department of Commerce wishes to supplement the response to the question by Chairperson Mikulski regarding actions taken to address United States Patent and Trademark Office (USPTO) patent examiner recruitment, hiring, and training as well as the prioritized examination process

PATENT EXAMINER RECRUITMENT, HIRING, AND TRAINING

USPTO has conducted a significant amount of planning associated with bringing a large new cadre of patent examiners on board and the execution of this effort is in full swing. USPTO has undertaken a diverse approach to inform the public about patent examiner job opportunities, successfully attracting thousands of qualified candidates through extensive recruitment efforts. Recruitment strategies are being expanded in areas such as career fairs; aggressive outreach to veterans and transitioning servicemembers through networking with other Federal agencies and veterans groups; targeted advertising and email blasts to universities, professional organizations and associations; nationwide advertisements and outreach efforts via social media; and, internal agency-wide communications.

USPTO expects the majority of hiring for fiscal year 2012 to occur in the latter half of this fiscal year. In addition, the hiring processes for patent examiners have been streamlined to minimize the time between application, candidate selection, and orientation. Accordingly, USPTO is on track to meet its hiring goal of 1,500 examiners for fiscal year 2012, and will be working aggressively to hire up to an additional 1,500 examiners for fiscal year 2013.

While hiring efforts have been offset in some earlier years by high attrition, Director Kappos and his team have strengthened recruitment, hiring, training, and retention efforts. Patent examiners are now staying at the agency longer and are more productive in working down the patents backlog. Over the last 12 months, the

USPTO patent examiner attrition level was just 3.3 percent compared to more than 8 percent during 2005 through 2007.

Once on board, the USPTO training program emphasizes heavy up front knowledge and skills training as well as ongoing development to produce a highly effective workforce. Through the Patent Training Academy, comprehensive programs are in place for new examiners utilizing a well-established, certified curriculum that includes legal training, systems and software training, and in-depth training on examination practice and procedure. Each new examiner also creates an Individual Development Plan to address training and development needs through the first 2 years of employment.

The Academy was designed to provide the agency the capacity and flexibility necessary to effectively train large numbers of new hires. For instance, entry-level examiners are typically hired into classes of approximately 128 employees. To ensure an individualized training approach, classes are further divided into labs comprised of up to 16 examiners where they are paired with a trainer and a lab assistant.

Careful consideration and review of qualifications is given for each new examiner brought on board. For new examiners without Intellectual Property experience, the USPTO employs a phased training program covering the first 12 months of employment that includes an initial 4 months at the Academy. Examiners hired with experience in intellectual property, spend an initial 20 days at the Academy, but also continue training over their first 12 months of employment that includes an overview of U.S. statutes, rules, procedures, and practices as well as refresher training to strengthen employee-identified areas for further development.

#### PRIORITIZED EXAMINATION PROCESS

With respect to implementation of process for faster processing of patent applications, the USPTO implemented a Prioritized Examination process (i.e., "Track One") in September, 2011 consistent with new authority provided under the America Invents Act. For utility and plant applications which are accorded prioritized examination after an additional fee is paid, the operational goal of the USPTO is to provide final disposition within 12 months, on average. Track One provides applicants with greater control over when their applications are examined and promotes examination process efficiency. Since inception, USPTO has received more than 3,500 Track One applications; the average time from acceptance to first office action has been 43 days.

Senator MIKULSKI. Could we also now talk about cyber espionage?

Secretary BRYSON. Yes.

#### CYBER ESPIONAGE

Senator MIKULSKI. Is that a threat, and how are you dealing with it?

Secretary BRYSON. Cyber espionage is a very considerable threat. We're not fully prepared, as a country, to address that.

With regard to the Commerce Department's role, that is NIST, the extraordinary and extraordinarily important work of Pat Gallagher and that team. So, the role there is setting the standards that will apply across not just the Federal Government, not just across the United States, but likely around the world, and that work is under way with an excellent team, and you know that team, you've supported that team. We thank you for that. We believe in it deeply.

Senator MIKULSKI. So, NIST is creating the standards to do what?

Secretary BRYSON. The standards to set what would then be—the standards are the standards that are a level of attainment we have to have for protections. And one of the important things with NIST, as you know, is that then reaches out to the private sector, and we work with the private sector to reach agreement—

Senator MIKULSKI. The standards for technology? Standards for management? What—

Secretary BRYSON. Standards for technology is the driver here.

Senator MIKULSKI. So, in other words, we would build in standards to the technology, where it would only be self-enforcing and self-policing. Is that right?

Secretary BRYSON. Yes. And it would grow into performance standards, with the agreement of the private sector. So, that's the dynamic, as you know, at NIST that is taking place—for years.

Senator MIKULSKI. Right.

Secretary BRYSON. And we would then have performance standards against which we and others around the world would have to operate.

Senator MIKULSKI. Thank you. Senator Hutchison.

#### GAPS IN WEATHER COVERAGE

Senator HUTCHISON. Well, thank you, Madam Chairman.

There is a growing concern about the management of the NOAA satellites. I think everyone is concerned about this. And the fact that we're having to pour so much money into them and they're not working as well as they should also has hurt the funding of other programs in NOAA, such as the fisheries, ocean monitoring, research, and education. And I'm very concerned about the P-3 hurricane hunters that are also proposed to be eliminated. So, I want to ask a couple of questions.

First of all, the gap in weather coverage that is proposed to occur around 2017 for 24 months, is that something that's being addressed? And what would that kind of gap mean in our weather coverage and capabilities?

Secretary BRYSON. Thank you, Senator. We are putting our highest priority in this budget in the satellites. So, the way to think about this budget is, we are putting all the resources we have to put in to be assured that we put up these satellites, the JPSS satellites, those on the Geostationary Operational Environmental Satellites (GOES). We have put an entirely new management team in place. We have reports at all levels of the Commerce Department, including to me, on performance against goals. On the 2017 target, there is a gap. Our focus is on minimizing that gap. We believe we can succeed in doing that.

#### SATELLITE PROGRAM

Senator HUTCHISON. Mr. Secretary, with the White House's interest in consolidations, has there been any talk of the satellite program either being moved to the National Aeronautics and Space Administration (NASA) or some kind of collaboration required between Commerce and NASA, so that you have their capabilities to work on this issue?

Secretary BRYSON. There has not been. Senator, we are confident the team, the experience, the preparation done by NOAA and in the Commerce Department puts us in a position to succeed very well in putting these satellites in operation and minimizing the 2017 gap, and taking further the truly excellent GOES program that is in place today.

Senator HUTCHISON. Would you be open to working with NASA and seeing if the expertise that they have would expedite that?

Secretary BRYSON. NASA is a good program. We are sufficiently confident that we are going ahead with what we have with an excellent team of people, broad experience. We know how to do this, and what we are not eager to do is interrupt the program and work we're on now by turning to NASA now.

[The information follows:]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION RELATIONSHIP

The existing National Oceanic and Atmospheric Administration (NOAA)/National Aeronautics and Space Administration (NASA) partnership is successful, and has been successful for more than 40 years. Both NOAA and NASA have worked closely together and have collaborated by leveraging the strengths of each agency to develop NOAA's polar and geostationary satellite series. NASA's contribution resides in space systems acquisition and, in turn, NOAA's contributions are in ground system development, satellite operations, and the development of weather, climate, oceans, and coastal products and services to meet the needs of the operational communities it serves. This positive collaboration and nonduplication of effort was confirmed in October 2009 by an in-depth Government Accountability Office (GAO) review of NASA's Earth science projects, which found no duplication of effort between these climate and weather research missions and other Federal agencies (GAO-10-87R).

Today, under the U.S. civil space program construct, recently reinforced by the National Space Policy, NOAA and NASA have developed and implemented a successful partnership that has delivered technology advances in Earth observation capabilities, whereby NASA conducts leading-edge research in Earth system science, including new technologies to monitor the environment while NOAA responds to demands for easily accessible and timely data and information about Earth and space observations. These technology advances have been transitioned for use operationally to improve weather forecasting, severe storm/hurricane prediction and climate observations.

Senator HUTCHISON. I'll take that as a "No."

HURRICANE HUNTERS

Let me ask you about the hurricane hunters. That has really been a very valuable tool in the gulf coast, well, actually, the Atlantic as well, where they've been able to fly in and get good intelligence on how ferocious the center is, and how wide it is, and all that.

Why are you supporting the elimination of that program, the three hunters?

Secretary BRYSON. Senator, we do not support the elimination of that program. Well, let me take it a little further. In this budget, we are confident that the so-called hurricane hunters, the three of them, with the very important support that we provide them in maintenance will serve this year very, very well, the fiscal 2013 year.

What we're doing also at the same time is looking, for the fiscal year 2014 budget, at a series of possible steps we might take, and that's in the works now, looking at conceivable alternatives to the P-3 planes we have. We believe we're in a good position to be well protected for this year, but technology improves and advances, and there are conceivable alternatives, and we'll bring to this subcommittee the judgments we reach with respect to that, and the possibility that we will bring forth in fiscal year 2014 an alternative program.

Senator HUTCHISON. Meaning other airplanes?

Secretary BRYSON. Conceivably, yes.

Senator HUTCHISON. Okay. Because my information says that you've really only got one that's operational right now. Is that not correct?

Secretary BRYSON. That's not correct. We have three. They have their periods of maintenance each year. They've worked very well in the past, as you suggested. We are confident they will work well through 2013.

Senator HUTCHISON. Okay. I really hope that we can see when hurricane season comes that those three are operational, because there's a conflict of our information, and that's very important when we get into the really bad hurricanes.

Thank you.

Senator MIKULSKI. I want to join with the Senator here, because there is confusion, and we are deeply concerned, and we know, particularly our gulf Senators, but all of us rely on those hurricane hunters. You have three planes. Three Orion planes. All planes need to be refurbished by 2016 to make them fly. Is that correct?

Secretary BRYSON. That may be. I can't confirm that, but it sounds like a reasonable estimate.

[The information follows:]

#### STATUS OF THE HURRICANE SURVEILLANCE AIRCRAFT (HURRICANE HUNTERS)

National Oceanic and Atmospheric Administration (NOAA) typically schedules maintenance to ensure aircraft are available for hurricane season, but the Service Life Assessment Program by Lockheed Martin, completed in June 2011, recommended new short-term maintenance and inspections for NOAA's P-3s that required NOAA to induct one aircraft into Special Structural Inspection during the 2012 hurricane season in order to remain airworthy.

This means that during fiscal year 2012, only 1 of the 2 P-3s (N42 and N43) currently used for hurricane surveillance will be operational at any specific time during the year due to scheduled maintenance. If unscheduled maintenance is required, that may leave no available P-3s, which would impact hurricane research, but would not significantly impact the current operational hurricane forecasting capabilities of the National Hurricane Center.

Doppler data from the P-3s support the National Weather Service/National Centers for Environmental Prediction Environmental Modeling Center's (EMC) development of the Hurricane Weather Research and Forecast System (HWRF), the first operational model designed to make use of high-density inner core observations. Use of inner-core observations has the potential to improve the prediction of hurricane track and intensity forecasting. In order to utilize the airborne Doppler data for the HWRF model initialization, EMC requires sustained sampling of the hurricane core at 12-hour intervals over a period of at least 36 hours (three back-to-back-to-back missions, 12-hours apart) when tropical cyclones threaten the United States (e.g., Hurricane Irene's extended threat to the eastern seaboard).

Due to the availability of only one P-3 to support collection of airborne Doppler radar data during the fiscal year 2012 hurricane season, a mitigation strategy has been developed that will use two flight crews for the single P-3. This will minimize the impact on the research plan for at least three back-to-back-to-back 12-hour missions. While this mitigation strategy will meet the EMC's requirement, the primary risk is if the single P-3 cannot fly, due to equipment failure or unscheduled maintenance or if one or more of the three back-to-back-to-back 12-hour missions is cancelled there will be a loss of the data collected.

#### BACKGROUND ON NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION P-3S

NOAA hurricane hunter planes are used for both hurricane research and operational hurricane forecasting. Two of NOAA's P-3 planes are used primarily for hurricane research. The Gulfstream jet (G-IV) is used for operational hurricane forecasting. In addition, per the National Hurricane Operations Plan, the Air Force



maintains 10 WC-130 planes to support NOAA hurricane reconnaissance requirements, providing approximately 800 flight hours per year in this capacity.

N42 completed Special Structural Inspection in May 2012 and is currently available for day-to-day operations.

N43 will undergo Special Structural Inspection and Phased Depot Maintenance from May 2012 through February 2013, after which it will be available for day-to-day operations.

N44, which has not previously been used for hurricane research or operational forecasting, has reached End of Service Life and is currently not operational.

The G-IV (N49) is currently operational and will be inducted into a Service Life Extension, engine overhaul, in October 2012 for approximately 5 months.

The NOAA fiscal year 2012 Aircraft Allocation Plan is available here: [http://www.oma.noaa.gov/12\\_airservices\\_allocation.html](http://www.oma.noaa.gov/12_airservices_allocation.html)

In fiscal year 2013, two P-3s (N42, N43) and the G-IV (N49) will be operational during hurricane season. Office of Marine and Aviation Operations will be able to meet current hurricane research and reconnaissance requirements at the requested funding level.

Senator MIKULSKI. But, you need to know this.

Secretary BRYSON. Well, the reason we're focused on 2014 is to be in a position where we're entirely ready to make replacements in advance of that 2016—

Senator MIKULSKI. Well, let me keep going here. The cost to refurbish each plane is \$20 million, because, essentially, it's not like new carburetors, or, you know, let's clean up the leather seats here. These are planes that have to fly into a hurricane. So, what they need is new wings. This is big, and it is serious.

Now, as I understand it, NOAA did not tell the Congress that all of the planes need extensive work, and that a second P-13 plane is due for scheduled maintenance this spring, and that there's concern that you're just going to have one plane fit for duty to fly into a hurricane. And, you know, this subcommittee is obsessed with the safety of people we ask to go into harms way, and whether it's our astronauts in space or our pilots into a hurricane. So, do you understand Senator Hutchison's question?

Secretary BRYSON. I do. Yes.

Senator MIKULSKI. So, Sir, we really ask you to go back to the drawing board and come back to the subcommittee. We need to know what planes, what sequencing, and what money. Am I correct? Is that the thrust of it? Is that the trepidation that you feel, Senator Hutchison?

Senator HUTCHISON. The information that I have is what you have, that one is completely out of commission while it is getting new wings, and one hasn't had the annual maintenance, and it's not reliable, leaving just one that is. And if we've got two hurricanes going or in different places, this could be a very necessary function, and maybe I think what the chairman and I are saying is that it doesn't appear to be the priority in the Department of Commerce that we think it should be.

Secretary BRYSON. Thank you, Senator. Let me say that we do not and would not take lightly the safety of people with respect to these planes. We are highly confident that we will come back to you, absolutely. We're highly confident, for example, that these planes will work satisfactorily entirely through this upcoming hurricane season.

Senator MIKULSKI. But that's not what we're worried about. What we're concerned about is what planes need to be fixed when. We need a sequencing plan. We need a money plan to match what

needs to be done. We need to have the sequences, the timing, and we need to know what's available when.

Secretary BRYSON. And we will do just that. And we will bring to you our planning with respect to 2014.

Senator MIKULSKI. Before the hurricane season.

Secretary BRYSON. For example, the C30 looks like a conceivable candidate, but we're doing this in a very, very disciplined way. But, if you would like us to have the people at NOAA that are working on this now come to see you, the sooner we can work this through, we can do that as well.

Senator MIKULSKI. I'm going to turn now to Senator Pryor.

Senator PRYOR. Thank you, Madam Chair. And thank you, Mr. Secretary, for being here. I see that you have Jim Stowers there, looking over your right shoulder. He's helped me in many capacities over the years. Jim, it's good to see you.

#### ECONOMIC DEVELOPMENT ADMINISTRATION

Let me start with science parks and regional innovation centers. I know that the fiscal year 2013 budget requests money for that. Has the Economic Development Administration (EDA) made any science park planning grants, or provided any science park construction loan guarantees?

Secretary BRYSON. Yes. EDA has done that. We know that you've been a strong, strong supporter of science parks. We really believe in these science parks. EDA has made grants: for example, a \$95,000 planning grant to the Missouri Innovation Park; funding for infrastructure improvements at the Sandia Science Park Laboratory, in Albuquerque, New Mexico. So, we're believers in these science parks, and EDA, I think, is a leader in going out around the country to do just what you underscore here, and more should be done.

Senator PRYOR. Yes. I appreciate that. And I do think that they're key to our economic future. But, I also noticed that the subsidy rate this year is higher than last year. In effect, it works like an interest rate. Do you have an explanation for that? I believe this year it's 18.06 percent. Last year, it was 15.5 percent.

Secretary BRYSON. Here's what I understand, and that is that at the recommendation of the Office of Management and Budget, there is no pre-established subsidy rate for science park loan guarantees. So our preliminary analysis indicates a low volume of potential applications in this area, and this is because science parks are affiliated with research institutions that can access credit at income tax rates, and loan guarantees by the Federal Government are taxable. So, what the Federal Government can do, it's somewhat affected by alternatives for the science parks. We're eager to be supportive in any way we reasonably can. It's going to be a fixed subsidy rate.

Senator PRYOR. All right. I think the way the law works requires the science parks to put up 20 percent of the money, and it seems like that would be a pretty good safe investment. So, I would think the interest rate would be lower than that. But, we can talk about that in a different context.

Senator Blunt and I have filed the Export Promotion Act of 2012. I don't know if you're familiar with it, but I would encourage you

to take a look at it, and hopefully help generate some support for it. What we're trying to do, quite frankly, is what the President wants us to do which is continue to focus on exports and help the U.S. economy. We think that our approach is fairly common sense, and it doesn't cost much money.

Let me ask about something else that the President mentioned. In his State of the Union Address, he talked about community colleges, and connecting the training for jobs with available jobs and sales. We've had a lot of success with that in Arkansas, using our 2-year colleges mostly, and some 4-year institutions, but mostly our 2-year colleges, to connect very closely with economic development, and manufacturers, and other employers in various areas around the State. It's worked very, very well. It's a classic public-private partnership. And if you haven't already, I'd hope that you would look at that model.

Senator Wicker and I, as a result, introduced the Win Jobs Act that follows that Arkansas model. I think it's consistent with what the White House is talking about in this area. Maybe a little different approach, but I think the goals are certainly the same. So, I'd hope you'll take a look at that.

#### SEQUESTRATION

I'm almost out of time here, but I do have a question that you probably don't really want to focus on too much, but I think it's important that the subcommittee have an answer on this. Have you made any contingency plans for a possible sequestration? If sequestration does, in fact, happen, how will that impact your day-to-day operations, how would that impact your budget, and what plans are you making in the event this happens?

Secretary BRYSON. Senator, do I have time to respond to you?

Senator PRYOR. Yes.

Secretary BRYSON. So, I'll take the sequestration first, then, if we have time, something quickly on—let me simply say I'd like to learn more of your proposal, so maybe we'll put that aside. But, I'd like to follow-up on that.

With regard to sequestration, the President has taken a view that I share strongly, and that is sequestration would simply be a very bad thing for our country. And the cost of having sequestration go forward, rather than having you, as Members of Congress, move to a sounder way of going forward, is what we stand on. We believe in that, and we have invested no time at the Commerce Department trying to think through what would we do in the event sequestration went forward.

We think it's such a bad thing for the country to just have sequestration roll out that we believe that it's probable, and we would, of course, do anything we can, but this is so much in your hands, to have a better approach to dealing with our Nation's budget.

Senator PRYOR. Thank you.

Senator MIKULSKI. Thinking that it's a bad idea doesn't give a plan for a contingency. We all think it's a bad idea. So, we've agreed on that. But, I think the point that Senator Pryor raises at all of the CJS hearings, and it's a very valuable question, is: Have

you thought about a contingency plan, and what the impact that would be on the agency?

Wasn't that your question? Do you have a contingency plan?

Secretary BRYSON. We do not have a contingency plan. We've looked very roughly at what the numbers look like, and they would be severe cuts.

Senator MIKULSKI. And do you have an idea of what the impact would be because of sequester?

Secretary BRYSON. We would go to doing what we've done in this budget and try ruthlessly to keep the most important programs and to cut everything else we had to cut. It would be a very bad result. We do not have a full plan.

Senator MIKULSKI. On behalf of Senator Pryor, and myself, and really Senator Hutchison, and all of us, we need to know the consequences. So, if we could have kind of a snapshot of what you think they would be, and what areas cuts would be most likely to occur, and the impact.

Senator Cochran, as our ranking guru on the Appropriations Committee.

Senator COCHRAN. Thank you, Madam Chairman.

#### GULF OF MEXICO FISHERIES

Mr. Secretary, I'm interested in knowing your recommendations for funding research to try to determine what steps needs to be taken by the private sector or government agencies to help restore good health in the Gulf of Mexico, following the disastrous weather challenges that we faced in the last year or two.

Secretary BRYSON. Well, the important thing in protecting public safety is the work that NOAA does in identification of warning systems. So, we have warning systems. Across the board you will see that we have cut programs, other than satellite program, so what we've done is eliminated from the programs things that weren't essential to preserve, for example, in this case, the key warning systems that make everyone aware of, for example, tornadoes, and other tsunamis, the things that would really affect people intensely. So, we go forth with that, even under circumstances of tough times, tough choices. We are committed to doing our part to reduce taxpayer dollars to the extent we possibly can in all the programs of the Commerce Department.

Senator COCHRAN. There's been a lot of public concern expressed about the effects on the Gulf of Mexico from the BP Oil spill that occurred in the Gulf of Mexico. To what extent has the Department reached any conclusions about what the threats are to the continued vitality to fisheries and to the general environment in the Gulf of Mexico as a result of that oil spill?

Secretary BRYSON. Yes. NOAA has been deeply engaged in that. I've been fairly meaningfully engaged in it myself, in part, because, I think to the credit of British Petroleum, they would like to achieve a resolution of the outstanding claims and litigations here, and that's where I've worked with them on it. And what we hope to do is have a resolution that will be in agreement, that will encompass the impacted States there, and put these resources to work in moving rapidly to the protection of the ecosystem of the gulf there.

Senator COCHRAN. You hear a lot of things that are said in a negative way about earmarks. Are there any earmarks in this proposal from the administration that we need to know about?

Secretary BRYSON. No. No. This is a matter of—

Senator COCHRAN. What about your salary? Isn't that an earmark?

Secretary BRYSON. I don't know if I've thought of my salary as an earmark.

Senator COCHRAN. Why not?

Secretary BRYSON. But I will tell you the—

Senator COCHRAN. What's the difference in your salary and grants to grantees who are conducting research on the effects of the oil spill and other concerns that our Nation has in the Gulf of Mexico? Should it not be subjected to the same kind of scrutiny and questioning as something that is submitted for consideration in the budget by a Member of Congress?

Secretary BRYSON. So, we still do make grants in the gulf now. We have to have tough choices when we do that, but we'll go forward with that. There's no question about that. But, I'm not sure I'm answering your question very well, Senator. Maybe if you put it to me again, because I may be missing something here.

Senator COCHRAN. Well, thank you very much. We'll revisit that later. I'll let others ask questions and we will come back to that later in the hearing.

Senator HUTCHISON. I think you're defending the appropriations process.

Senator MIKULSKI. We kind of liked that line of questioning, actually.

Senator Brown.

#### STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Madam Chair. Secretary, welcome. Thank you for your candor. Folks, on that last question, I don't know what the right answer was either, but I appreciate Senator Cochran phrasing it the way that he did.

Senator MIKULSKI. It wasn't personal, Mr. Secretary.

Senator PRYOR. It certainly wasn't.

Secretary BRYSON. Thank you.

Senator BROWN. We only have one time for one question. I have one comment and question. I have to preside at 11 o'clock.

#### TRADE ENFORCEMENT

I want to talk to you about manufacturing. For 12 years, from 1997 to 2009, we had a decline every year in my State and nationally in manufacturing jobs, and the number of manufacturing plants around the country. You know that we have, almost every month since more or less the middle of 2010, seen—earlier than that, actually—an increase in manufacturing jobs, not to the level we want to be at, not even close. Workers, especially in my State, have faced firsthand the problem with our trade laws that require enormous injury from unfairly traded foreign products before any response by our Government. And the slowness of that and the arduousness of the process has made fighting back on behalf of our manufacturers and their workers especially difficult.

For example, a coated paper case was filed. Relief was originally rejected, because the injury was existent, but not deep enough. Three years later, the industry and union re-filed. Because thousands of jobs were lost, because of unfair trade practices, relief was granted, but it really was too late to help this industry. And that's been sort of emblematic of what we've seen.

The Department has brought authority to initiate trade enforcement cases. Last week, I helped lead an effort supported by more than 180 House and Senate Members, calling for a full examination of China's policies and practices in the auto parts sector that have flooded our Nation. At the time of permanent normal trade relations (PNTR), well, after PNTR, a decade ago, we had about a \$1 billion bilateral trade deficit with China in auto parts. Today, it's grown 800 percent. It's around \$10 billion. I'm glad you are working on the Interagency Trade Enforcement Center (ITEC). That's especially important.

My question is this. In face of the reluctance, sometimes, of industries to bring trade cases, the union less reluctant, the industry more reluctant, because of potential and very real Chinese retaliation, from retaliation from their government, when can we expect an answer on whether you will and how you will take up the auto parts question? What other key sectors, in addition to auto parts, do you think we should be moving on when it comes to trade enforcement? What do we do to make our trade laws more responsive to the numerous issues with China's export subsidies?

Thank you, Madam Chairman.

Secretary BRYSON. So, first, with respect to the auto parts, the question we have with regard to the auto parts is—the laws are such that we, the Commerce Department, can ourselves initiate a case. The problem with that is the success of those cases has been relatively minor, because we have to have the data from the industry that allows the case to be made. So, on the auto parts, to my knowledge, none of the companies have come forth, and you're suggesting—

Senator BROWN. If I can interrupt, and I apologize, Madam Chair. Correct. But that's why a strong encouraging statement from you, public or private, to them, that you're serious, would go a long way. And these companies, it's a little bit of a cat and mouse game. The companies don't step forward, they're afraid of retaliation. Their history with Commerce, especially in the Bush years, but even in the Obama years and the Clinton years, frankly, maybe equally—they've not been encouraged, and we need you to step up and let them know that yes, you want to work with them. And I don't know if that message is clear yet. Perhaps it is, and I don't know it.

Secretary BRYSON. I think it is pretty clear that what has been done at the Commerce Department is extraordinarily different than what has been done in the preceding periods of time. So, take last year alone, 2011, with respect to China we increased by 50 percent the number of initiations of investigations over the prior year. So, over the 3 years, we've moved substantially ahead of what had previously been done.

What we've done in the last few days, as perhaps you've seen, is a series of additional steps. This is a very, very intense, very de-

manding undertaking, and we are focused, absolutely, on serving our Nation with enforcement of the trade laws.

Now we have the complementary White House office called ITEC, with which we cooperated. In fact, our budget includes significant resources. The budget before you now, it will enable us, among other things, to detail a number of people to ITEC, and the advantage of ITEC is more effectively bringing the entire Federal Government behind these exercises. So, this is incredibly, acutely important, and we will do everything we can in that respect to move these enforcement cases forward and to conclusions.

And finally, I'll just say I want to especially thank you and the Congress on the *GPX* (*GPX International Tire Corporation v. United States*) decision, because on that we had 24 key cases that we had acted to final conclusions on, with countervailing duties, and an enormous amount at stake, 33 of the States in the country affected, tens of thousands of workers affected, and the court took that away from us. You put it back in place forever. It makes a great deal of difference for us.

Senator BROWN. Thank you. And Madam Chair, I would add, hopefully, 20 seconds. The *GPX* case, I think, shows the Commerce Department, and the President, and the country that the Congress will move quickly and bipartisanly on enforcement of trade laws. We know that was the right way to go. There was little or no opposition here. We moved it quickly. The President signed it. We're grateful for that.

Thank you.

Senator MIKULSKI. Thank you.

Senator Murkowski.

#### STATEMENT OF SENATOR LISA MURKOWSKI

Senator MURKOWSKI. Thank you, Madam Chair. Mr. Secretary, welcome. It's going to be no surprise to you this morning, I'm going to talk about fish. When we talked prior to your nomination, I told you that this was my priority within the Commerce Department, and I wanted to make it your priority.

Secretary BRYSON. Yes.

#### FISHERY MANAGEMENT

Senator MURKOWSKI. And I will tell you, I'm a little bit disappointed, as I've looked through your statement that you have provided the subcommittee here today, out of 12 pages, pretty much single-spaced, we've got one paragraph here on fish. So, I want to give you an opportunity to elaborate, if I may.

The effort to develop new catch-share programs within NOAA is moving forward. There's been some, I think, substantial amount of funding that is dedicated to that, and I understand that part of what NOAA's attempting to do is to really do the outreach, engage in an educational effort. I think that that's important. Our experience in Alaska, where we've been living with it, and been successful with it, is that the outreach is important. We also recognize that it's important that all the fishery management decisions are well thought out, affected by the public process, and that the Regional Fisheries Management Councils are very critical to this education effort, to this outreach effort.

So, I'm a little bit concerned about how you will be able, successfully, to do what you're hoping to do with the outreach efforts to develop a new catch-share program, when you are decreasing pretty dramatically, a 14-percent cut to the Regional Fishery Management Councils. So, I'd like you to address that aspect of the NOAA budget and the fisheries, and also to provide for me some understanding here. It is critical that we make sure that we've got adequate funding for our stock assessments. I know that the chairman is concerned about this as well. We need to have that science. We need to know that it's science that is guiding these management decisions for us. And we, again, have been doing, I think, a pretty good job up north in making sure that we're operating off science based in good solid data.

The request within the budget does include an increase for overall stock assessment, where much of those funds, I understand, are going to be used to develop new fisheries assessments. And I know in your written statement you say that the expanded stock assessments will be targeted at high-priority commercially and recreational viable fish stocks. I'm not entirely certain what that means.

What I need to convey to you is the concern that I'm hearing from folks up north that the surveys and the stock assessments that have been under way in the Bering Sea or the Gulf of Alaska are going to be reduced or impacted negatively as you focus your efforts in other areas, where perhaps you have less adequate or less rigorous data. If we don't have stock assessments conducted frequently and with reliability, then what happens is the total allowable catch levels will necessarily need to be reduced, because you've got to adjust for increased uncertainty. That then costs millions in revenues to harvesters, processors, and communities that really rely on this.

So, it's kind of a two-pronged question here. Focus a little bit on the Regional Fishery Management Council and the role in the education and outreach that you're trying to do with the catch-share programs. And can you give me some level of assurance that the current level of stock assessment surveys that is under way is not going to be downgraded or reduced under this proposed budget.

Secretary BRYSON. Yes. I can give you that assurance. We are very focused on the role the Regional Fishery Management Councils play. We have cut some costs there, but in ways that we do not believe undermine their work at all, and with respect to the concern that there might be a reallocation of dollars away, for example, from Alaska to other regions in the country, no, under the law we can't, and, of course, wouldn't do that. So, the proportional effect of having less money in the aggregate going into fishery management councils, it's just pro rata across the United States.

The key emphasis beyond that is that we have, for example, in Alaska, a really excellent Fishery Management Council. We are continuing to provide the funding for the science on how to take this further. So, funding, and you've touched on this, for the national catch-share program, will support use of this key fishery management tool, definitely including in Alaska, and you've touched on the impacts on the reduced stock assessment surveys. I understand the importance of science in managing these things



in Alaska and elsewhere, and across the United States we're investing increases of \$4.3 million to increase stock assessments; \$2.3 million for surveys and monitoring; and \$2.9 million for observers.

So, again, the fundamental situation that we have here is, these are tough times, we're making tough choices, we're seeking to protect the taxpayer dollar and use it to the greatest benefit, and so we're building on the science. We're cutting back, but we're going forward with what we think carries forth the work of a long period of time of getting to a stronger position dealing with the fisheries.

Senator MURKOWSKI. Well, I appreciate your statement and the reassurance that we're not going to see a downgrade in these very important stock assessments, and the survey, and the data collection. I think you can understand my concern.

As I look at a budget where very difficult decisions had to be made, I appreciate that, but where you see new programs then coming forward with a national ocean policy—we were successful last budget cycle in making sure that funding did not move forward for the Coastal Marine Spatial Planning Initiative. Now is not the time to be putting new programs onto the books, when we're effectively shortchanging the very, very important efforts that must be made when it comes to understanding and managing our very important fisheries and the fish stocks. And I know that the chairman works with me on this to help make sure we're doing the right thing.

Thank you.

Secretary BRYSON. Thank you, Senator.

Senator MIKULSKI. We face the same issues, whether it's our rockfish population or crabs. We do need accurate assessments. And unless the regulatory environment kicks in, it always has an impact on your fishermen, my watermen. Nobody's very happy at the answers, but we have to know that we're on solid water.

Thank you.

This concludes the first round of questions. I'm going to ask Senator Cochran if he has any additional questions or would like to submit them for the record.

#### GULF OF MEXICO FISHERIES

Senator COCHRAN. Madam Chairman, thank you. I would like to ask another question relating to the Gulf of Mexico.

I think we need to identify, if we can, in cooperation with the Department, the research priorities that affect the Gulf of Mexico. The impression that I've gotten in reviewing this budget request is that it's a very low priority, in view of the Department, and that concerns me. It is a vital and important fisheries resource for not just the Gulf States, but for the United States, generally speaking. It is a very important area ecologically, just as important as any other body of water that is adjacent to or a part of the United States' primary interest for fisheries and related activities.

In that connection, the research programs that we have funded in the past are designed to help keep up with challenges to the ecological integrity of the Gulf of Mexico. And it just seems to me that it's taken a backseat to a lot of other programs by the administration. That's a concern that I'm raising, and I hope that you will be able to take another look at some of the priorities of the Depart-

ment, and see if there can be a more equitable balance between our interests in the gulf and elsewhere along our ocean borders.

Secretary BRYSON. Senator, we really are committed to distribution of our funding, our science, our capabilities across the entire coastal regions of the United States, and we do care deeply about the gulf.

Senator COCHRAN. Well, we want to see you put your money where your mouth is. That's kind of the old way they'd say that at home.

Secretary BRYSON. And I understand that, and we will do that. And I would just—we are in this situation that we believe we're doing what is necessary, by reducing anything we can reduce that isn't absolutely essential in our core programs, and going forth with our key fisheries programs. So we support fisheries and we support fishermen, and that's a big priority for us. And that is very much in this program.

It's the things that don't have those direct impacts that we've cut back some on, and that's not in the Gulf or anywhere else in a particular way. That's across the United States as a way to try to be the way businesses must be, and that is really, really effective, in the dollars that they have and prioritizing them.

Senator COCHRAN. Thank you.

Senator MIKULSKI. Senator Hutchison.

Senator HUTCHISON. Yes. I want to make a statement and then ask one question.

Just to reinforce what my colleagues Senator Mikulski and Senator Cochran have just said: In NOAA's own National Marine Fisheries Service report, on its Web site, it says that there are 121 up-to-date stock assessments for the 528 stocks of fish or stock complexes under NOAA management. So 121 out of 528 is showing, I think, the concerns that we're raising.

One of those that my constituents have been hoping for is the Red Drum. The Gulf of Mexico Fishery Management Council is struggling with so little data, because the Red Drum, for instance, hasn't had an assessment in 20 years, and remains closed as a result of outdated science, despite the fact that they believe the fishery may be rebounding.

So, these are some of the additional facts that I would put on the table to show you why I think many of our fishermen and our industries throughout just don't have confidence in the science that's being done in NOAA on fishery data and information.

So, I do think it's a priority that we need to address, because the commerce of our country can be enhanced if we can increase the export of marine life. So, that's my statement to add to theirs.

DEPARTMENT OF COMMERCE RESTRUCTURING: NATIONAL OCEANIC  
AND ATMOSPHERIC ADMINISTRATION

My last question, though, is the one I mentioned in my opening statement about the President's plan, or looking at putting National Oceanic and Atmospheric Administration (NOAA) into the Department of the Interior, and I wanted your comments for the record before we finish this hearing.

Secretary BRYSON. Yes. I'd be happy to address that. So, the President's proposal for making a more efficient economic Depart-

ment, creating a Department in a restructuring that would bring together all the entities in the Federal Government that are focused on economics, business, and data collection on how the economy works, all the things that are at the Commerce Department, and other places in the Federal Government, to me, that makes sense, but there has been no further work done on that, because in the President's eye and all of our eyes, the first question will be, is that a proposal that the Congress acts on. If the Congress were to act on that, then we'd go to work putting before you what we think the best way to manage these resources will be under that priority, and the President has thrown out the idea of NOAA transferring to the Department of the Interior. There's no further details on that, and there's no further work that's been done on it, but that is a possibility.

But, the first question really will be, is the Congress ready to and will the Congress want to offer the President the opportunity to bring forth a plan that would, under this proposal, be an up or down vote in the Congress, as is true through the Depression, as you know, and all the way to President Reagan, but not since.

Senator HUTCHISON. So, you're not saying you're against looking at it, if that makes sense for efficiencies.

Secretary BRYSON. Yes. I think that it—and again, I analogize almost everything. We're now speaking in the Commerce Department as an arm of the Federal Government that is seeking to operate at the speed of business, and we are trying to make decisions, and we're trying to preserve taxpayer dollars, and use them to the greatest result possible. And I regard that restructuring of the Department in this respect could enhance productivity. Yes.

Senator HUTCHISON. Thank you.

Senator MIKULSKI. We'll see what the authorizers do. It's a complicated topic.

Secretary BRYSON. It is.

Senator MIKULSKI. You know, NOAA headquarters is in the State of Maryland, and some of its most significant assets are there—the NOAA satellite office, which does so much for the weather. And I invite colleagues to come with me to see this incredible operation. And then the NOAA weather office.

We wonder where the NOAA agency will go, and will it stay in Commerce. Now, there's a whole rumor that it could become an independent agency, and people think, oh, gee, this will be swell. It's not going to be an independent agency. It's either going to stay here or it's going to go, through due diligence of the Congress working with the President's suggestion, or recommendation, to Interior, but it will not be an independent agency.

Secretary BRYSON. Yes. And if I could just make one comment.

Senator MIKULSKI. Well, we don't want NOAA cut loose.

Secretary BRYSON. Yes.

Senator MIKULSKI. We think NOAA really needs a lot of management, which is now going to go to my question.

Secretary BRYSON. Makes complete sense. Yes.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
MANAGEMENT

Senator MIKULSKI. Because, first of all, we know that the Commerce Department has—for the members of this subcommittee and the Congress, it is a major jobs agency.

First of all, what you see here, we're coastal Senators, so we are NOAA focused, and within NOAA, it's everything from weather warnings, that you've heard, from Hawaii, to Alaska, to the Gulf, to the Bay, and the fisheries issues. So, many people come under the Commerce, Justice, Science, and Related Agencies Subcommittee, because of NOAA and the coastal significance.

The coast is part of our heritage, part of our identity, but it's also a big part of our economy. What happens on a coast drives our economy. And for the great States that are surrounded by or so hard hit by water, like Alaska, it's important. So, we are looking at NOAA.

What we're concerned about is the persistent problems at NOAA, and there are persistent management problems. Senator Hutchison raised the satellite issue and the other issues related to the weather department. She articulated, essentially, my questions, so I'm not going to duplicate them. But, we are concerned that satellites make up 37 percent of the overall NOAA budget. We are concerned that the satellite costs are starting to erode other activities at NOAA.

Now, in the fiscal year 2012 bill, I directed NOAA to update the life-cycle cost for satellite programs. But, Mr. Secretary, you're a business man. You said you're operating at the speed of business. Well, we don't think that reform is operating at the speed of business. We need you, at the Secretary's level, to really use whoever you will designate to be a hands-on manager of these costs that are exploding at NOAA, because of the satellites. We need our satellites.

This subcommittee went big time on-line to fund the JPSS. And we knew it was important. We were concerned about our colleagues in the most driven part of our Nation, that they need the JPSS for weather. It's part of our treaty obligation for weather. But, my God, when we're now at 37 percent, and every day we turn around, it's a new satellite cost, and gee, we hadn't thought of it.

So, can I ask you, really, to make this one of your top management priorities? You are absolutely promoting our exports, working in international markets. We're glad you're going to India. It's a great democracy and a great sense of working together. But, we also need you to be looking at NOAA. So, what can I get from you to make sure that this doesn't continue, that NOAA doesn't seem to take this in the spirit that we do, and that then also goes to these airplanes that Senator Hutchison raised. I'm sure you are concerned about safety. We're concerned about safety and functionality as well. So, we need a hands-on sense of reform at the top management level at NOAA here in its satellites, in its planes, and its ships.

Secretary BRYSON. I commit to you that I will give it that priority. Yes.

## CENSUS MANAGEMENT

Senator MIKULSKI. Do I kind of represent the sentiments of the subcommittee here on this? So, know that we really respect the people who are working there at NOAA to be able to do this.

This then also does go to the issues related at the Census Bureau. You know, the census happened, but barely. Now, I'm not faulting the people who work for the Census Bureau, but, again, I worked with Secretary Guttierrez, then Secretary Locke, and now you, Sir, and once again, now, we're hearing, "Oh. The census [cost] might double." Well, in the day of new technology, new ways of communicating with people, at the speed of business, we should be reducing costs on the census. And we need you, again, to assign a management person, because our problems with the census is everything comes in at the last minute, and if you don't fund it, we won't be able to do the census. It's 2012. We're working on the fiscal year 2013 appropriations. We've got to really bring the Census Bureau into a discipline here.

Secretary BRYSON. Yes. Thank you, Senator. And I strongly commit to you that I will give that very high priority, and I do give it very high priority. And the key thing in this budget is they have the resources to do this work right now for 2013 that will make it possible so that we can assuredly tell you that it will be lower cost per household and a complete census in 2020 than there has been in the 2010 census.

Senator MIKULSKI. That's very good to hear, and we're really going to count on you.

One of the areas where we know that there would be bipartisan consensus is we don't want a sequester either. Now, we might disagree on a line item or an agency here or there, but we know a sequester is not in the interest of the country over the long haul.

The way that we're going to be able to deal with that, and again, there's bipartisan consensus, is how can we be more frugal now? And that means getting value for our dollar. So, where there are these persistent problems year after year, Secretary after Secretary, President after President, we need to really begin, we need to really now take a real steadfast attempt to bring these things that are always out of control, always coming over budget, under really a far greater fiscal discipline, so that we can approach this in a more frugal way, get value for our dollar. We need those satellites. We need our weather. We need our NOAA. We need our Census Bureau. But, we need them to take these issues very seriously, or we could end up into a situation where the Nation suffers and we suffer as well.

So, let me conclude this hearing. Sorry, Senator. Did you have another question?

Senator MURKOWSKI. One very brief one, if I may.

Senator MIKULSKI. Yes.

Senator MURKOWSKI. I will be very quick, but it is a very important issue.

## ARCTIC OUTER CONTINENTAL SHELF

Mr. Secretary, I don't know whether you were briefed by Dr. Lubchenco last week. I had an opportunity to meet with her about

a Draft Environmental Impact Statement (DEIS) that has come out of her agency, and this relates to the Arctic Outer Continental Shelf (OCS). And as you probably know, there is a great deal of interagency coordination—you've got the National Ocean Policy, you've got Regional Ocean Partnerships, you've got David Hayes' interagency taskforce—and yet, National Marine Fisheries Service (NMFS) produced a DEIS this year that is in direct conflict with Department of the Interior's National Environmental Protection Act work. And this DEIS could significantly alter the framework of what is, hopefully, anticipated there in the Arctic, in terms of the numbers of operators that may be able to be in place, some of the geographic and time restraints. It is significant. And this was not the product of any interagency coordination.

The team that produced it essentially said that it was done because the Department of the Interior didn't look the way that NMFS thought that it should look, even though it's Interior that has the authority over the OCS and the leases that have been sold with the expectation that their owners are going to be able to get some use out of them. So, I asked why this disconnect, and unfortunately, I did not receive an answer on that, certainly not a clear answer.

But, this DEIS is simply too big a deal for your Department to not be able to answer some basic and pretty fundamental questions about its very existence. And until there's an understanding as to who is the lead here, and what the interagency process is supposed to be, I would ask you, Mr. Secretary, to pull that DEIS and go back to the drawing board. And if this is something that you can tell me that you have not been involved in, I would ask that you look into it and be engaged on that.

Again, this could significantly impact the operation of this expansion that we are hoping to embark on this summer.

Secretary BRYSON. Senator, I have not been engaged in that. I will get back to you with respect to it. I will look into it promptly. [The information follows:]

DRAFT ENVIRONMENTAL IMPACT STATEMENT ON THE ARCTIC—OUTER CONTINENTAL SHELF

The National Oceanic and Atmospheric Administration (NOAA) is responsible for implementing the provisions of the Marine Mammal Protection Act (MMPA). Under the MMPA, it is illegal to “take”<sup>1</sup> a marine mammal without a permit or exception. One such exemption can be obtained by U.S. citizens conducting activities (other than commercial fishing) within a specified geographic region that may incidentally take marine mammals pursuant to section 101(a)(5) of the MMPA. Those exemptions are known as Incidental Take Authorizations.

The Department of the Interior (DOI) has jurisdiction over authorizing offshore oil and gas activities on the Outer Continental Shelf (OCS). If an oil and gas industry operator determines that their activity may “take” marine mammals, they need an MMPA Incidental Take Authorization from NOAA. Section 101(a)(5) of the MMPA directs the Secretary of Commerce (with authority delegated to NOAA National Marine Fisheries Service) to issue such authorizations if certain findings are made.

Prior to issuance of an Incidental Take Authorization, NOAA must evaluate the potential impacts to the environment pursuant to the National Environmental Policy Act (NEPA). Although DOI has recently completed large-scale NEPA analyses regarding oil and gas activities on the Alaskan OCS, those documents did not fully

<sup>1</sup> Under the MMPA, take means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill any marine mammal.

address NOAA's action of issuing MMPA Incidental Take Authorizations for the take of marine mammals incidental to conducting oil and gas exploration activities in the Alaskan OCS. Therefore, in order to meet our statutory and regulatory requirements, NOAA determined it was appropriate to prepare an Environmental Impact Statement (EIS) evaluating issuance of MMPA Incidental Take Authorizations.

NOAA has coordinated throughout this process with DOI's Bureau of Ocean Energy Management (BOEM). NOAA and BOEM signed a Memorandum of Understanding in February 2010 regarding the level of involvement and coordination that would occur throughout the development of the Environmental Impact Statement. The Federal Register Notice of Intent initiating this EIS process noted that BOEM would be a cooperating agency, as defined by NEPA. The two agencies have worked collaboratively throughout the development of the document, and BOEM staff prepared sections of the document where they had subject-matter expertise. The two agencies worked together to develop the numbers of anticipated activities that may reasonably occur over a 5-year period. The activity levels analyzed in the Draft EIS do not serve as a "cap" on industry activity. Rather, they were based on what the agencies predicted is reasonably likely to occur versus an outer bound of what one anticipates might occur.

Since the March 22 hearing, Dr. Lubchenco has met with Deputy Secretary Hayes to discuss this EIS and the role of the Alaska Interagency Working Group in its development. Leadership from NOAA and BOEM met in early May to discuss the path forward, and BOEM agreed to re-evaluate the level of activity assessed in the EIS. The two agencies will continue to work collaboratively on this effort to ensure an accurate assessment of reasonably likely oil and gas exploration activity in the Alaskan OCS. Once finalized, this document will assist NOAA in making timely decisions regarding the issuance of MMPA Incidental Take Authorizations to the oil and gas industry in the U.S. Arctic Ocean.

NOAA has also worked collaboratively with the Environmental Protection Agency regarding issues related to air and water quality and the potential impacts to those resources from the proposed actions of oil and gas exploration and the issuance of MMPA Incidental Take Authorizations when developing this EIS.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator MURKOWSKI. Okay. I would appreciate a very prompt response and would look forward to that.

Thank you, Madam Chairman, for the additional couple minutes.

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

#### QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

##### SEQUESTRATION

*Question.* Under the Budget Control Act of 2011, funding for virtually all Federal programs will face a possible across-the-board cut in January 2013 if the Congress doesn't enact a plan before then to reduce the national debt by \$1.2 trillion. According to Congressional Budget Office (CBO) estimates, this would result in a cut of 7.8 percent to all nonsecurity programs.

What impacts would an across-the-board cut of 7.8 percent have on the Commerce Department? What are the consequences, both in terms of dollars and people served? Can you give us specific examples? Is there anything else that the Commerce Department can cut beyond what is proposed in the fiscal year 2013 request? How would public safety be impacted by a cut to National Oceanic and Atmospheric Administration (NOAA), particularly the agency's ability to accurately forecast weather? Do you have a plan for the Commerce Department to implement these cuts if the Congress doesn't enact an alternative plan?

*Answer.* The administration believes that a sequestration can and should be avoided. According to the CBO, the sequester could cut overall domestic spending by about 8 percent. The Department anticipates a negative impact on our mission to create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship informed by world-class scientific research and information. The Department would have to reduce its efforts to support regional innovation strategies that foster job creation. Fewer small- and medium-sized businesses, and minority enterprises would be assisted in their efforts to export products and services. Some investments in research and advanced manu-

facturing technologies would be eliminated. Research efforts to bring the 2020 Census in at a lower cost per household would be hindered. Also, the cut would curtail the Department's ability to address foreign trade barriers and ensure market access cases are resolved successfully.

A cut of this magnitude would likely require furloughs or the elimination of positions and reduce NOAA's ability to fully meet its mission. This type of reduction would also diminish the Department's ability to make necessary information technology (IT) modernizations and improvements in our IT security posture to appropriately address the current cyber environment. The Department would have to eliminate some key statistical series and surveys that provide important information in the decisionmaking processes of businesses and Federal, State, and local governments. In addition, it would reduce funding to develop next-generation weather satellites which are critical to maintaining the Nation's weather forecasting capabilities.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

##### *National Oceanic and Atmospheric Administration Satellites*

*Question.* Satellites acquisitions make up 37 percent of NOAA's budget in fiscal year 2013 and have started to erode funding for other operations at NOAA. That is why I directed NOAA in 2012 to provide updated life-cycle costs for all satellite programs.

The fiscal year 2013 budget request for Joint Polar Satellite Systems (JPSS) is \$916 million and includes an updated life-cycle cost for the program. The total cost increased by \$1 billion from \$11.9 billion to \$12.9 billion. NOAA is also cutting more weather sensors to keep costs down, going from 13 total sensors for both satellites to just 7. This new total cost estimate shows JPSS going in the wrong direction.

Please explain the current gap in the weather coverage and how NOAA will keep it from growing?

*Answer.* The methodology that NOAA has used to calculate the gap is based on a probabilistic methodology that is used for operational satellites. As such, the basis of the gap is focused on the ability to continue to provide data, without interruption, to support weather forecast models. It is difficult to say with absolute certainty when the projected gap may occur, and any estimates on the duration of the gap are based on probability analysis using assumptions about the lifespan of current satellites. Assuming that Suomi National Polar-Orbiting Partnership (NPP) ceases to operate at the end of its projected life in 2016 and JPSS-1 becomes fully operational in 2018 (after undergoing calibration and validation activities) following launch in the second quarter of fiscal year 2017, NOAA estimates that the potential data gap in the afternoon orbit could be up to 18 to 24 months.

In reality, Suomi NPP could last longer or shorter than what the current probability analysis suggests, which would impact the duration of the gap.

Ultimately, NOAA's best chance to minimize any gap is to maintain the second quarter of fiscal year 2017 launch date of the JPSS-1 satellite. Loss of data in the afternoon orbit will degrade NOAA's weather forecast skill at day 3 and beyond, providing the Nation less-accurate information about significant weather events than would otherwise be available.

*Question.* Funding for NOAA's core ocean and weather operations is suffering while procurement budgets balloon and satellite capabilities decrease. Why should NOAA remain the lead acquisition agency for these satellites?

*Answer.* The administration is still developing a response to the Senate's proposal to move weather satellite acquisition from NOAA to National Aeronautics and Space Administration. As you know, this is a complicated issue which the Congress has been addressing for years. We are analyzing the possible impacts the organizational change could have on the satellite missions, as well as on satellite budgets and schedules.

#### CUTS TO NATIONAL WEATHER SERVICE WORKFORCE

NOAA's budget request reduces the National Weather Service's (NWS) IT staff by 80 percent, affecting 122 employees:

- cuts 98 computer technician positions in local field offices; and
- consolidates remaining 24 positions into six regional offices

IT staff have proven to be valuable parts of the local weather forecast teams. Every local weather field office across America will be affected by these cuts.

We experienced the most devastating weather on record in 2011. 2012 is already shaping up to be just as bad. According to NWS, the recent February 28 to March 2 severe storm outbreak spawned 230 tornadoes across 14 States killing 54 people. Without NOAA's warnings, more lives would have been lost.



*Question.* Dr. Lubchenco has stated that reducing computer tech staffing will not affect the quality of services, warnings, and forecasts. What does she mean by this?

*Answer.* As a result of technological advances and efficiencies to remote communications, centralized Regional Information Technology Collaboration Units (RITCUs) would work in partnership with Weather Forecast Offices (WFOs) and the established Network Control Facility in Silver Spring to provide the same or an improved level of support as provided today to each WFO. WFOs would continue the same service delivery in the future as they do now, with no impact to mission or performance. RITCUs will be fully capable of addressing any software issue within their area of responsibility. The Advanced Weather Interactive Processing System (AWIPS) Network Control Facility (NCF) will continue as a secondary source of support capable of diagnosing and resolving most problems. Between the RITCU and AWIPS NCF, most problems will be resolved within an average of 5–10 minutes. In addition, robust, long-standing service backup capabilities allow an adjacent office to assume warning and forecast responsibility almost immediately. If the system goes down during severe weather and cannot be remedied remotely in short order, service backup would be implemented. To provide for continuity of operations in the field, long-standing and extensively tested service backup capabilities allow an adjacent WFO to assume the warning and forecast responsibility of a pre-determined, neighboring WFO almost immediately to ensure no service degradation to the public. Testing of backup plans is conducted at least annually in accordance with the NWS operations policy.

*Question.* NOAA ramped up its weather computer workforce in 2000 to help with a new computer network. NOAA is currently updating that system and has requested \$12 million in 2013 to prepare for more weather data from newer satellites. Why are these IT techs no longer valuable now?

*Answer.* AWIPS is the backbone of forecast capabilities at WFOs. When AWIPS was first deployed, this technology was not well defined, nor was there technical expertise within local forecast offices to manage the additional IT requirements. To meet these challenges, the—Information Technology Officer (ITO) position was created in 2001 to provide onsite configuration and upgrade support for AWIPS. Over the past decade, advances in NWS IT have allowed NWS to make significant technological advances and efficiencies into its remote support capabilities making these positions unnecessary. Currently, each WFO has one ITO, typically working day shifts on weekdays.

#### CENSUS

##### 2020 Census

*Question.* Controlling costs for the 2020 Decennial Census remains a top oversight concern. Both the Commerce Inspector General and Government Accountability Office track the 2020 Census as a high-risk challenge for the Department.

Cost overruns were a problem for the 2010 Decennial Census, totaling more than \$12 billion. That is 20 percent more expensive than original estimate of \$11 billion, and double the cost of 2000 Census of \$6.5 billion. This subcommittee had to make tough choices each year to continue funding the 2010 Census.

Last year, the projected cost of the 2020 Census ranged between \$22 billion and \$30 billion—more than double the cost of the 2010 Decennial Census. The fiscal year 2012 Commerce, Justice, Science, and Related Agencies bill included language calling for curbed costs.

How is the Census Bureau changing the way the agency is planning for the 2020 Decennial Census—particularly with driving down “nonresponse followup” costs which is the most expensive part of the Census process? How is the Census Bureau avoiding techno-boondoggles such as the 2010 Census hand-held computer debacle? Why do you anticipate the 2020 Census costing twice as much as the 2010 Census?

*Answer.* The Census Bureau recognizes that the rising cost of the decennial census in recent decades cannot be sustained, and we must make changes to the design of the decennial census to increase efficiency and control costs while maintaining the quality of the data. Accordingly, we have embarked on a research and testing program focused on major innovations to the design of the census oriented around three major cost drivers of the 2010 Census:

- substantial investments in major, national updating of the address frame just prior to enumeration;
- the lack of full public participation in the self-response phase of the census, requiring the hiring of a large field staff for nonresponse followup; and
- the failure or challenges with linking major acquisitions, the schedule, and the budget. Major innovations in three key areas of the design of the 2020 Census can control costs relative to the 2010 Census design.

The first key area is conducting a Targeted Address Canvassing operation as a result of improving address coverage and map feature updates as part of the fiscal year 2011 Geographic Support System (GSS) Initiative. The possibilities for maintaining our address list and maps range from a full address canvassing operation (similar to what we did for the 2010 Census, where we walked almost every street in America to verify and capture information about every housing unit with the correct geography), to targeted address canvassing, to not having to do address canvassing at all. The 2020 Census research and test work in conjunction with the GSS Initiative will be critical to understanding the extent to which we can reduce the amount of address canvassing.

The second key area is Multiple Mode Response Options, which allows for the public to respond to the census via multiple modes, such as mail, telephone, Internet, face-to-face interview, and other electronic response options that may emerge to ensure that diverse subgroups of the population, including those that speak languages other than English, have every opportunity to submit their information. This also includes redesigning the most expensive component of the census, the non-response followup operation, where we enumerate households that do not initially provide their information to us. The Census Bureau will explore using existing data sources like the American Community Survey and administrative records to obtain data about those households that do not otherwise respond to the census. Using administrative records for a substantial number of nonrespondents could result in substantially smaller field and labor infrastructure, thereby saving billions of dollars. We can also save money by modernizing the IT and field support infrastructure.

The third key area is investment program management and systems engineering efforts early in the decade. Based on lessons learned, there were areas of program management that have potential for improvement. To achieve the goals of the 2020 Census, sufficient investments in planning and research are being made early. In addition, the program's budget, schedule, and scope are being integrated, and an iterative process is being put in place that will allow flexibility in planning and design. To the extent possible, we will make decisions based on the evidence from our research. The goal of this extensive up-front effort is to hold down costs later in the decade without compromising quality.

The bottom line is that the more we can innovate, the more we can contain costs without sacrificing the high-quality census that the country requires. The Census Bureau is tasked with producing the most accurate data possible in every census, including the 2020 Census. However, obtaining a complete and accurate census every 10 years becomes more complex and difficult with each successive cycle. For the 2020 Census, a larger, more diverse population will be more difficult and expensive to count. While we can reduce costs per household considerably by utilizing advances in technology and innovations in the design of the decennial census as described in these documents, there is a point at which reducing costs could lead to a significant reduction in the quality of census data. The 2020 research and testing program will help us gain a better understanding of the extent to which we can contain costs without sacrificing coverage and data quality.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S HURRICANE HUNTER PLANES

This year, NOAA's ability to fly into hurricanes for storm forecasts has been severely cut as one of the agency's three P-3 Orion planes used for hurricane reconnaissance will be grounded indefinitely:

- NOAA has three P-3 Orion planes.
- All planes need to be refurbished before 2016 to make them safe to fly.
- The cost to refurbish each plane is \$20 million.
- NOAA did not request funding to refurbish the grounded plane.
- NOAA did not tell the Congress that all of the planes need extensive work.
- A second P-3 plane is due for scheduled maintenance this spring.
- NOAA will just have one plane and no back-up.

It is common for one plane to be grounded for maintenance, but to permanently lose a capability without any budget path forward is unacceptable.

*Question.* Why is NOAA not requesting proper maintenance funds for NOAA's Hurricane Hunters and what is their plan forward?

*Answer.* NOAA would like to clarify that the two P-3s (N42, N43) are hurricane reconnaissance and research platforms. One P-3 (N44) has reached its End of Service Life (EOSL) and will be grounded. However, this aircraft was not used for hurricane reconnaissance or research. In that regard, NOAA is not losing capability.

NOAA's P-3 planes have adequate funding for routine maintenance. All standard maintenance for NOAA aircraft is included within the Aviation Operation's budget. One of the three planes, the N44, which has not previously been used for hurricane

research or operational forecasting, has reached its EOSL due to existing conditions of the wings and NOAA will make no further investments in the aircraft. The Service Life Assessment Program (SLAPs) showed that the remaining P-3s, the N42 and N43, will reach EOSL in fiscal year 2020 and fiscal year 2019 with Special Structural Inspections. Investment in new wing sets for the N42 and N43 is not covered under the standard maintenance program, and has not yet been decided, as this is related to NOAA's current effort to systematically look at all observing systems and NOAA's requirements.

NOAA typically schedules maintenance to ensure aircraft are available for hurricane season, but the SLAP by Lockheed Martin, completed in June 2011, recommended new short-term maintenance and inspections for NOAA's P-3s that required NOAA to induct one aircraft into Special Structural Inspection during the 2012 hurricane season in order to remain airworthy.

This means that during fiscal year 2012, only one of the two P-3s (N42, N43) currently used for hurricane reconnaissance and research will be operational at any specific time during the year due to scheduled maintenance. If unscheduled maintenance is required, that may leave no available P-3s, which would impact hurricane research, but would not significantly impact the current operational hurricane reconnaissance and forecasting capabilities of the National Hurricane Center.

*Question.* NOAA partners with a U.S. Air Force reserve unit who also fly into hurricanes using more modern C-130 planes. NOAA's and USAF's important flight missions are different, but complementary. Has NOAA looked at procuring more modern planes like C-130 rather than re-winging its older planes?

*Answer.* NOAA's Observing System Council (NOSC) is systematically looking at all observing systems and NOAA's requirements. The NOSC is chaired by the Assistant Secretary for Environmental Observations and Predictions, with the Assistant Administrator of NWS and National Environmental Satellite, Data, and Information Service (NESDIS) as the vice-chairs. Each Line Office is represented by a Senior Executive. Under the NOSC, an observing system committee will propose the optimum observing systems configuration necessary to meet NOAA's missions. NOAA has also begun to evaluate individual systems against these observing requirements and determine the effective observing suite across NOAA's diverse missions. NOAA is now comparing the results of this initial effort with other information we have gathered on observing system priorities to come up with a robust, interactive, responsive decision support tool for observing system integrated portfolio management.

#### UNITED STATES PATENT AND TRADEMARK OFFICE

##### *Protecting Intellectual Property*

*Question.* The backlog of unreviewed patents has decreased 7 percent since last year, but more than 657,000 patents are still waiting approval. The average waiting time to for a patent has decreased too, but it still takes more than 30 months for United States Patent and Trademark Office (USPTO) to make a decision. USPTO's goal is 18 months by 2016.

USPTO's budget is based on the amount of fees collected each year.

USPTO's fiscal year 2013 estimated fees will be \$3 billion, \$273 million more revenue than fiscal year 2012.

I understand that USPTO plans to use this increased revenue to tackle the backlog by hiring 1,500 new examiners and opening three new satellite offices.

But USPTO will also spend \$521 million on its IT portfolio, including:

- Creating an end-to-end electronic patent process where applications are submitted, handled, and processed all electronically; and
- Adding "cloud" computing to create a virtual patent system.

*Question.* How will USPTO's new IT infrastructure decrease the backlog so that more American ideas are patent-protected quicker?

*Answer.* The new IT infrastructure will improve the network, data center, and communication tools both for the patent applicant and patent examiners. This improved infrastructure will increase reliability, speed, and accuracy in communication and automation solutions, which will in turn increase efficiency and quality. The end-to-end electronic patent processing will be text-based, which will allow for computer automation and increased quality. The system will analyze data from documents received or prepared, and validate that information against rules or existing data. Cloud implementation of the data center will allow the USPTO to scale and meet seasonal demands on the systems in a cost-effective manner. This will increase our capacity to meet patent applicant and patent examiner expectations of a highly available system.

*Question.* USPTO is a repository of American ingenuity. What is USPTO doing to protect America's intellectual property? How confident are you in USPTO's cybersecurity plan, especially will cloud computing coming online?

*Answer.* USPTO is in compliance with the e-Government Act of 2002, which included the Federal Information Security Management Act. Currently, all USPTO IT systems that are in production have been authorized to operate in accordance with all Federal and NIST guidelines (i.e., FIPS 199, FIPS 200, NIST 800-37, Rev 1, NIST 800-53, Rev 3, and NIST 800-53a, Rev 1). As part of the continuous monitoring process, all USPTO information systems are assessed and reviewed each year to ensure that security controls implemented in each are:

- working as intended;
- have been implemented correctly; and
- are producing the desired outcome with respect to meeting the confidentiality, integrity, and availability requirements for the information system in its operational environment.

Changes to information systems are monitored closely and assessed for their security impact to ensure that proposed changes do not adversely affect the security posture of the information system.

The CIO Command Center (C3)-combined with both the Network Operations Center and the Security Operations Center-continuously monitors all USPTO systems. Compliance and vulnerability scans, including penetration tests, are performed to ensure that IT devices have been configured in accordance with secure baselines, and that systems patching is current. After the scans are analyzed, plans of action and milestones are created to manage any findings. USPTO conducts quarterly scans and maintenance scans on server and network infrastructure devices. Security scanning tools are utilized to scan databases and web URLs. Real time monitoring tools are put in place to monitor and collect security events and application logs of systems.

USPTO has improved the security of its webmail by enhancing access requirements to a two-factor authentication to minimize the risk of identity theft. These factors are:

- Something the user knows (e.g., password);
- Something the user has (e.g., a security token); and
- By providing this enhanced level of security, user authentication will positively identify customers before they interact with mission-critical data and applications.

USPTO generally supports the use of commercially available cloud technology when appropriate. For instance, the USPTO leveraged a commercial cloud to host a copy of the publicly available trademark data and documents (<http://tsdr.uspto.gov/>). However, since commercial cloud providers cannot ensure security standards comparable to those maintained at USPTO, certain USPTO data, such as pre-publication patent applications, would present an unacceptable risk of compromise if hosted in a public cloud. In addition, USPTO must remain the authoritative source of agency data to ensure the accuracy and integrity of that data. Only the USPTO can provide those assurances at this time.

USPTO supports the leveraging of cloud technologies and is implementing in-house cloud-based solutions to take advantage of the capabilities while ensuring the security of our data. USPTO has started implementing its Next Generation applications (Fee Processing Next Generation, Trademark Next Generation) using web services instead of traditional three-tier web technologies in an effort to make its core applications cloud ready. Additionally, USPTO physical infrastructure is currently being refreshed and replaced with devices with virtual technologies to ensure that these applications can be moved into a cloud environment when they are ready to be deployed. Before applications can move to cloud, they must undergo resiliency testing to ensure that they can fully utilize the benefits of cloud computing (i.e., throughput, reliability, and elasticity).

To help make the USPTO more efficient and meet daily challenges in this area, the USPTO has aligned its organization into a streamlined cybersecurity division by combining security operations, C3, and security audit and compliance groups under one umbrella office.

*Question.* As the patent review backlog decreases, the amount of patent appeal cases will likely grow. How does USPTO anticipate dealing with this potentially new backlog?

*Answer.* The Board of Patent Appeals and Interferences (BPAI) backlog of ex parte appeals currently stands at greater than 26,000 appeals and continues to grow. In order to address the backlog, while at the same time addressing new proceedings that come to the Board under the America Invents Act, the Board is working to hire 100 new Administrative Patent Judges (APJ) in fiscal year 2012, and

is planning to hire another 61 APJs using fiscal year 2013 resources. The USPTO will continue to monitor BPAI's workload to determine if additional hiring is necessary in the out-years.

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QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

*Government Reorganization*

*Question.* Why do you wish to move National Oceanic and Atmospheric Administration (NOAA) to the Department of the Interior? What specific programmatic gain would be accomplished? What does the administration view as the risks associated with such a move?

*Answer.* The Department of the Interior and NOAA manage most of the Federal Government's natural resources; a consolidation would strengthen the Federal Government's stewardship and conservation efforts. Merging the two would improve coordination of complementary programs for the conservation of natural resources, strengthen ecosystem-based management and science, enhance services to coastal communities, improve utilization of assets and facilities, and eliminate unnecessary administrative costs. NOAA would continue to provide critical weather, climate, marine, and coastal services to the Federal Government, States, businesses, and coastal communities within the Department of the Interior. There could be risks associated with the consolidation, for example, if programs are not well-integrated (leading to fewer efficiencies than expected) or there is uncertainty on the part of staff and other stakeholders who are not accustomed to the new organizational arrangement. However, because we view an effective transition as essential to the success of the reorganization, we would work hard to minimize these risks with careful transition planning, communications, and management. Exactly how they would be integrated will be the subject of considerable consultations with the Congress, agency staff and other stakeholders to ensure that the result is a stronger, more effective department that protects and enhances NOAA's core functions.

*Question.* Why has the possibility of NOAA as an independent agency not been considered?

*Answer.* The possibility of NOAA as an independent agency was one of the options that received serious consideration in the reorganization effort. However, the review concluded that merging NOAA with the Department of the Interior would be a better option as it would create the possibility for more synergies and efficiencies, thereby enhancing conservation and stewardship programs.

*Question.* Does the administration believe that a NOAA organic act would be beneficial? If so why has there been no administration proposal in this regard?

*Answer.* A NOAA organic act would provide a foundation of authorities to conduct the activities needed to meet the agency's missions. There are dozens of single laws authorizing NOAA's activities, but no central authority defines the mission and general functions of the agency. Having this authority in a single primary statute would codify NOAA's programs and activities in a consolidated manner which could be useful.

TSUNAMI HAZARD MITIGATION PROGRAM

*Question.* Can you provide a specific description of the capacity that will be lost due to the cuts proposed to NOAA's Tsunami Hazard Mitigation Program (NTHMP)?

*Answer.* NOAA places its ability to warn and advise the American public on the threat of tsunamis as its highest priority within the NTHMP. Tsunami Warning Centers' operations in Hawaii and Alaska are not compromised or degraded with the proposed reductions.

The proposed reductions will eliminate grants to the NTHMP. The NTHMP is a consortium of State partners that use NOAA tsunami program funding to support local community education and mitigation activities. These activities include inundation mapping to develop evacuation plans, routes, and signage; education and awareness campaigns; provision of education materials; and training for the public and local officials.

Despite the reduction in grants funding, NOAA would continue to support the NTHMP by:

- setting standards of accuracy for NTHMP-developed inundation models;
- promoting community outreach and education networks to ensure community tsunami readiness through funding from the TsunamiReady™ program;

- promoting the adoption of tsunami warning and mitigation measures by Federal, State, tribal and local governments, and nongovernment entities;
- conducting tsunami research; and
- operating the U.S. Tsunami Forecasting and Warning Program.

*Question.* I understand that the proposed cuts are to be taken mostly from activities designed to support education and community capacity building. How does NOAA propose to replace these efforts, and if not, why is this considered to be a low-priority activity?

*Answer.* NOAA places its ability to warn and advise the American public on the threat of tsunamis as its highest priority within the NTHMP. Tsunami Warning Center operations in Hawaii and Alaska are not compromised or degraded with the proposed reductions.

Education and outreach activities continue to be a priority for NOAA. NOAA is committed to continuing support and funding for the TsunamiReady™ program. The TsunamiReady™ program promotes tsunami hazard preparedness as an active collaboration among Federal, State, and local emergency management agencies, the public, and the NOAA tsunami warning system. Warning Coordination Meteorologists in each NOAA National Weather Service (NWS) coastal office are dedicated to working closely with local emergency management to develop capabilities and assist in planning infrastructure that will allow communities to become TsunamiReady™. NWS will prioritize efforts to concentrate on those coastal communities at highest-risk for destructive or life-threatening tsunamis.

#### MARINE DEBRIS PROGRAM

*Question.* I understand that the Congress has previously provided a directive to NOAA regarding the consolidation of its various habitat programs but I do not believe that we ever considered NOAA's Marine Debris Program (MDP) to fall under this category. Can you explain why you have chosen to move it and include it with restoration programs when its primary mission is hazard response?

*Answer.* NOAA is proposing to move the MDP to the NOAA Restoration Center to streamline grants programs. Since 2007, approximately \$1 million of the MDP's annual budget has been administered by the NOAA Restoration Center through the Community-based Restoration Marine Debris Removal Grants. The NOAA Restoration Center implements on-the-ground habitat restoration projects for many different programs within NOAA.

The Marine Debris Research, Prevention and Reduction Act of 2006 established the NOAA MDP to focus on mapping, identification, impact assessment, prevention, and removal efforts, with a focus on marine debris posing a threat to living marine resources and navigation safety. Since the establishment of the program, NOAA has funded research as well as removal activities that threaten living marine resources or are in response to hazards.

It is not expected that the consolidation of the MDP into NOAA fisheries would change the core functions, mission, or results of the program, as stated in the mandate referenced above. The program would still advance the act's goals, and NOAA would capitalize on this shared priority to create efficiencies through the streamlining of grants operations resulting in improved services for our stakeholders and greater impact on the ground.

*Question.* Can you provide me with a comparison of the efficiencies provided by the MDP's current location in the Office of Response and Restoration as to those that might be gained with its proposed move to the Office of Habitat Management and Restoration?

*Answer.* Since 2007, approximately \$1 million of the MDP's annual budget has been administered by the NOAA Restoration Center through the Community-based Restoration Marine Debris Removal Grants. NOAA anticipates savings by streamlining grants administration and technical services provided with the goal of maximizing extramural funding provided. With this proposed move, the MDP will still be able to leverage the scientific expertise and capacity of the Office of Response and Restoration from within the Office of Habitat Management and Restoration, while achieving administrative cost savings as described above.

*Question.* How does NOAA plan to spend the additional \$1 million which the Congress appropriated to the MDP in fiscal year 2012? Will the funds be available for grants to State and local entities?

*Answer.* In the fiscal year 2012 congressionally approved spend plan, the NOAA MDP was funded at \$4,618,000, an increase of \$718,000 more than fiscal year 2011. NOAA is undertaking the following actions using these additional funds, as well as a portion of its base funds:

*Debris Survey and Removal at Midway Island.*—The NOAA MDP provided funding for survey and removal teams of NOAA's National Marine Fisheries Service (NMFS) Coral Reef Ecosystem Division to conduct marine debris surveys and debris removal at Midway Island. There have been no confirmed reports of debris from the 2011 tsunami arriving at Midway to date, but initial ocean modeling indicated that the Northwestern Hawaiian Islands, particularly at Midway Island and Kure Atoll, were one of the first United States locations where a significant amount of marine debris from the Japan tsunami may have made landfall. Even though debris linked directly to the tsunami was not detected at Midway, the effort removed 26 tons of accumulated debris in this ecologically important and fragile area. Debris removal, whether from the tsunami or other sources, reduces risk of entanglement, ingestion, and other impacts to endangered and other species of concern.

*Drifter Buoys.*—NOAA is working with partners transiting the North Pacific to deploy drifter buoys either in concentrations of marine debris or other strategic areas of interest to help NOAA better understand how the debris is moving.

*At-Sea Detection.*—NOAA is conducting field trials and surveys using unmanned aircraft systems (UAS) to help detect Japan tsunami marine debris at-sea in open North Pacific waters in areas of potential marine debris concentrations that have been identified through modeling. Data from the UAS surveys will improve marine debris modeling efforts and will be part of a larger NOAA UAS program.

*Shoreline Monitoring in Alaska, California, Hawaii, Oregon, and Washington.*—NOAA, working with State and local partners from government agencies, nongovernmental organizations, and academia are acquiring baseline shoreline debris information at more than 101 sites in the five affected States. Most of the marine debris generated by the Japan tsunami is indistinguishable from the normal marine debris that washes ashore every day in Hawaii, Alaska, and on the west coast. Results of the monitoring will help indicate when and where Japan tsunami marine debris is making landfall. NOAA will also use part of the additional funds to enter information on tsunami debris into an online database that will both store the data and disseminate them to response agencies at all levels of government and to the public.

*Alaska Monitoring.*—Prior to the March 2011 Japan tsunami, NOAA's NMFS established shoreline monitoring sites within the Gulf of Alaska to collect data on marine debris that poses entanglement risks. These data have been providing a baseline to help detect the landfall of Japan tsunami marine debris in Alaska. The additional funds extend the existing time-series of monitoring data and help gather vital information from more than 60 sites in the Gulf of Alaska using the existing methodology and spot application of NOAA MDP shoreline monitoring protocols.

*Contingency Planning.*—Contingency planning to ensure there are rapid response protocols in place requires significant coordination at local, State, and Federal levels. NOAA has been conducting workshops on the Japan tsunami marine debris issue with partner agencies and organizations to provide a common foundation of understanding about the debris and to facilitate development of response contingency plans. Plans developed will be particularly valuable for response to any large or hazardous items that might make landfall on U.S. coastlines. The workshops facilitated further engagement of State and local resource management and response agencies, as well as nongovernmental organizations concerned about marine debris issues.

*Japan Tsunami Marine Debris Data Visualization.*—NOAA's MDP expects a significant increase of tsunami marine debris sighting data to be reported and collected over the next several months as a result of increased monitoring efforts. This project makes these data available to our response agency partners and the public through maps, graphics, and other visualizations of debris in the water and on shorelines. NOAA is cataloguing all debris sightings on NOAA's Environmental Response Management Application (ERMA) and is sharing ERMA-derived products with the public and response agency partners. ERMA was a successful vehicle for making data available to the public during the Deepwater Horizon oil spill response.

In July 2012, NOAA initiated action, using its authorities under the Marine Debris Research, Prevention, and Reduction Act, to provide \$50,000 to each of the five Pacific States to aid in their marine debris removal activities. NOAA expects to award the funds in mid-August.

## HABITAT PROGRAMS

*Question.* Can you explain what the funding in the new “Habitat Management and Restoration” line will go toward?

*Answer.* Funding in the new Habitat Management and Restoration line will support:

- Sustainable Habitat Management.*—Habitat management and protection activities for sustaining and enhancing commercial and recreational fisheries to:
  - Conduct consultations with Federal agencies and constituents nationwide to protect essential fish habitat in order to support commercial and recreational fisheries and vibrant coastal communities.
  - Ensure fish passage at federally licensed hydroelectric dams that block access to valuable spawning habitat.
  - Advance research on the role of different habitats in supporting sustainable fisheries and recovering listed species, with benefits to the communities and economies that depend on them.
  - Implement the Deep Sea Coral Research and Technology Program to identify and map locations of deep sea coral, analyze new scientific information, and apply that knowledge in fishery management plans.

*Fisheries Habitat Restoration.*—Habitat restoration activities to:

- Plan and construct habitat restoration projects for restoring coastal and marine resources injured by oil spills, releases of hazardous substances, or vessel groundings.
- Implement and support targeted restoration projects for sustaining managed fisheries and recovering listed species through technical expertise (planning, engineering, design, monitoring, etc.) with limited financial resources for project construction.
- Implement the Marine Debris and Estuary Restoration Programs, including activities to research, prevent, and reduce the impacts of marine debris.

*Question.* Given that habitat restoration creates jobs and supports fisheries, why have you proposed to severely cut the Community-based Restoration Program in fiscal year 2013?

*Answer.* Within the fiscal year 2013 President’s budget, NOAA has prioritized the support of restoration activities for the Natural Resource Damage Assessment process, as mandated by the Oil Pollution Act and the Comprehensive Environmental Response, Compensation and Liability Act, over grants. Restoration activities compensate the public for lost trust resources that result from oil and other hazardous waste spills. Under these statutes, NOAA is responsible for addressing injury to natural resources, and acts on behalf of the public to protect and restore coastal and marine resources and their services. Jobs are also supported with this type of restoration work. This effort will take place in addition to consultative work and efforts to work with communities.

*Question.* Why was the Coastal and Estuarine Land Conservation Program (CELCP) eliminated?

*Answer.* Funding for the CELCP was eliminated due to the fact that the base level of funding severely limits the size and number of conservation projects that could be approved and the existence of other Federal agencies with existing land conservation programs.

## NAVIGATION RESPONSE TEAMS

*Question.* How will the proposed elimination of NOAA’s Navigation Response Teams (NRT) affect NOAA’s ability to fulfill its legal nautical charting mandate and respond to man-made and natural disasters?

*Answer.* NOAA will pursue an agreement with Federal Emergency Management Agency to ensure that technical assistance to assess navigational hazards is available during Presidentially declared disasters. In 2011, the six NRTs spent a total of 25 days responding to emergencies. However, NRTs also currently work to identify local survey requirements, and as these efforts benefit the ports and surrounding communities, they can be conducted using non-Federal funding. Finally, NOAA would need to perform inshore validation of its nautical charting products and other navigation tools through contracted surveys and user feedback.

*Question.* How will the absence of these NRTs extend response times and increase economic losses of the closed ports?

*Answer.* Because the response to this question requires a comparison of unknowns to an existing program, NOAA cannot speak to whether this proposal would lead to extended response times and increased economic losses of closed ports.



NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SHIP *KA'IMIMOANA*

The fiscal year 2012 President's budget included a request for \$11.6 million for major repair periods (MRPs) for the NOAA ships *Ka'imimoana* and *Miller Freeman*. Recognizing the valuable nature of the missions served by these two vessels, the Congress acceded to this request and provided \$11.1 million in the fiscal year 2012 appropriation for these purposes under the Fleet Capital Improvements budget line. Subsequently, however, the Department of Commerce cut all but \$1 million of these funds in the fiscal year 2012 NOAA spend plan to provide savings for undistributed cuts made elsewhere in the budget. NOAA has since indicated that the lack of available MRP funds in fiscal year 2012 will require that both the *Ka'imimoana* and the *Miller Freeman* be decommissioned for safety's sake.

*Question.* Why did the Department decide that the *Ka'imimoana* refit, and thus the *Ka'imimoana* itself, was not needed?

*Answer.* In the fiscal year 2012 President's budget, NOAA requested a one-time \$11.6 million increase to support the highest-priority repairs aboard the NOAA ships *Ka'imimoana* and *Miller Freeman*. The final negotiated fiscal year 2012 Spend Plan resulted in \$1 million for fleet repairs, due to competing mission needs within the total appropriation. As a result, the *Miller Freeman* will be decommissioned. On June 18, the NOAA Fleet Council met and voted to place the NOAA ship *Ka'imimoana* in warm layup status at the conclusion of the current field season (which just ended), as the vessel can no longer operate without required extensive repairs to ensure safe operations and extend the service life of the vessel. The MRP funding for fiscal year 2012 was not included in the final, approved spend plan, and instead of decommissioning the vessel at this time, the Council's directive to place it in warm layup status will allow us to maintain the vessel until the MRP funds may be allocated, or other actions taken.

*Question.* Was there a change in the physical status of the *Ka'imimoana* between the time of the President's fiscal year 2012 budget submission to the Congress and the submission of the fiscal year 2012 spend plan that led to the elimination of the MRP?

*Answer.* No, there was not a change in the physical status of *Ka'imimoana* during that time. The *Ka'imimoana* will continue to operate during fiscal year 2012 as outlined in the Fleet Allocation Plan. The ship would not have entered the MRP until early fiscal year 2013 as outlined in the President's fiscal year 2012 budget submission.

*Question.* The *Ka'imimoana's* primary mission is to service the Tropical Atmosphere Ocean (TAO) buoy array which provides the Nation invaluable information regarding the status of the El Niño Southern Oscillation and its potential for impacts on our weather. How does NOAA plan to conduct fulfill the service needs of the TAO Array without the *Ka'imimoana*?

*Answer.* The NOAA Fleet Council is examining the best means to ensure continuity of the TAO Array and will develop a fiscal year 2013 Fleet Allocation Plan by September 2012 that meets TAO mission requirements. Currently, 12 of the 67 TAO/TRITON buoys are maintained by Japan and NOAA is evaluating the feasibility of conducting the *Ka'imimoana* mission supporting the TAO project with either in house support (potentially the NOAA ship *Ronald H. Brown*), the use of outside charter in collaborations with our partners in South Korea, or a combination of both.

*Question.* If contract services are proposed, were necessary funds requested in the fiscal year 2013 budget? Please provide a detailed explanation of the short- and long-term budget effects, and any change in operational capacity, which may accrue from using contract services as opposed to a NOAA vessel as part of your answer.

*Answer.* Yes, the fiscal year 2013 Operations, Research, and Facilities budget includes funding to support TAO continuity operations, through either NOAA vessel or charter. The Fleet Council is examining the best means to ensure continuity of the TAO Array and will develop a fiscal year 2013 Fleet Allocation Plan that meets TAO mission requirements. Long-term budget effects will be determined by the Fleet Plan and NOAA Observing System Council (NOSC) observing systems review. NOAA is currently identifying and prioritizing existing requirements and observing systems capabilities for the Fleet for a Fleet Plan that will determine the optimum configurations for meeting priority mission requirements and utilization of all observing platforms.

*Question.* If savings were needed in fiscal year 2012 but no net long-term benefit would accrue from decommissioning the *Ka'imimoana*, why not defer its MRP to fiscal year 2013 and move the proposed MRP for the *Thomas Jefferson* to fiscal year 2014?

Answer. NOAA will place the *Ka'imimoana* in an inactive status beginning in July 2012 due to concerns over the material condition of critical mission and ship board systems including deck machinery, tanks, and piping. Deferring the MRP to fiscal year 2013 would have required NOAA to idle the ship for more than 12 months until early fiscal year 2014 during which time further deterioration would occur increasing medium-term risks.

*Question.* What other missions were served by the *Ka'imimoana* and how will their needs be met?

Answer. The *Ka'imimoana's* primary mission is support of TAO. Other ocean observation and research missions are completed concurrently. Like TAO mission support, these requirements would need to be chartered.

#### INTERNATIONAL TRADE ADMINISTRATION

##### *Task Force on Travel and Competitiveness*

*Question.* On January 19, 2012, President Obama issued Executive Order 13597, which is meant to, “. . . to improve visa and foreign visitor processing and travel promotion in order to create jobs and spur economic growth in the United States.” Among other things, the Executive order calls for the establishment of the Task Force on Travel and Competitiveness, co-chaired by the Secretaries of Commerce and the Interior, and including heads of the Departments of State, the Treasury, Agriculture, Labor, Transportation, and Homeland Security; Army Corps of Engineers; Office of the United States Trade Representative; Export-Import Bank; and other agencies invited to participate by the Task Force Co-Chairs. The Task Force is supposed to work on developing a National Travel and Tourism Strategy with recommendations for new policies and initiatives to promote domestic and international travel opportunities throughout the United States with the goal of increasing the United States market share of worldwide travel.

*Question.* Can you please give an update on what the Task Force has done, and is working on?

Answer. The Task Force on Travel and Competitiveness has been actively working to implement the Executive order. To date, the Task Force has met with the Tourism Policy Council to discuss the development of the National Travel and Tourism Strategy called for in the Executive order. Subsequent to that discussion, the Task Force has met three times to hone the Strategy in light of inputs from numerous Federal agencies and substantial public comments received from the travel and tourism industry and other stakeholders in response to a Federal Register notice. In addition, the Secretary of Commerce requested, and received, input from the U.S. Travel and Tourism Advisory Board that has also been considered in the development of the Strategy. The Task Force is on schedule to deliver its recommendations to the President within the 90-day timeframe called for in the Executive order.

In March 2010, the Congress passed, and President Obama signed into law, the Travel Promotion Act (Public Law 111–145), creating a nonprofit corporation, Brand USA, to market the United States as an international travel destination.

*Question.* In March 2010, the Congress passed, and President Obama signed into law, the Travel Promotion Act (Public Law 111–145), creating a nonprofit corporation, BrandUSA, to market the United States as an international travel destination. Does the Task Force work with BrandUSA, if so, how? Also, how do you ensure that the efforts of the Task Force and BrandUSA are not duplicative?

Answer. Under the Executive order, the Task Force shall coordinate with the Corporation for Travel Promotion (dba Brand USA) through the Secretary of Commerce. The Department of Commerce works closely with Brand USA and has taken Brand USA's plans into account in the development of the National Travel and Tourism Strategy. In addition, representatives of Brand USA met with Secretary Bryson and Secretary Salazar, the Chairs of the Task Force on Travel and Competitiveness.

The Task Force on Travel and Competitiveness and Brand USA perform separate functions that are not duplicative. The Task Force was formed for the sole purpose of developing a National Travel and Tourism Strategy. The strategy is focused on what the government can and should do to increase travel and tourism to and within the United States. Brand USA is a private sector organization charged with marketing the United States as a travel destination to international audiences. These efforts are complementary and avoid duplication. It is the intention of the Task Force that the National Travel and Tourism Strategy provide for the effective coordination of Federal agencies with Brand USA to support Brand USA's mission to increase international travel to the United States and communicate relevant U.S. policy.

## REGIONAL FISHERY MANAGEMENT COUNCILS

*Question.* How will the proposed cuts to funding for Regional Fishery Management Councils (RFMCs) and Commissions affect these organizations?

Answer. NOAA greatly values the work of the RFMCs and Commissions. These bodies—which include commercial and recreational industry, Federal agencies, the conservation community, and State fishery managers—are critical for making sound fishery management decisions. Between fiscal year 2008 and fiscal year 2010, the Councils received a significant increase to ensure Annual Catch Limits were implemented in accordance with the 2006 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. Now that Annual Catch Limits have been implemented, NMFS does not expect that the Councils will require the same amount of resources.

NOAA's focus for fiscal year 2013 is maintaining and improving our science programs as the basis for sound, science-based management actions taken by these bodies. The Councils and Commissions will distribute funds to ensure the implementation of adaptive management measures in the highest-priority fisheries, building on the 2011 milestone of implementing Annual Catch Limits in federally managed fisheries.

A reduction in funding for the Councils in fiscal year 2013 will not reduce the transparency of the fishery management process nor limit public involvement. Further, Council activity will still be open to the public. While there may be changes in the frequency of the meetings held, there will be no change to the transparency of Council decisions.

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 QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

## UNITED STATES PATENT AND TRADEMARK OFFICE

*Question.* The United States Patent and Trademark Office (USPTO) has made great progress in the last few years to reduce the backlog of patent applications and issue higher-quality patents. While USPTO is working through this backlog, it is also in the process of implementing the Leahy-Smith America Invents Act, Public Law 112-29, which was signed by President Obama on September 16, 2011. USPTO needs full access to the fees it collects to continue its progress and reward inventors of true inventions with high-quality patents.

Do you agree that ensuring the USPTO has full access to its fees is essential to the effective functioning of the USPTO?

Answer. Yes, full access to fees is critical to help the USPTO achieve strategic goals and performance objectives, and to manage resources effectively. USPTO is committed to effective resource and performance planning linked carefully to operations. Planning and operations can be undermined significantly without full access to the revenue the USPTO collects.

*Question.* How does an effective functioning USPTO, and patent and trademark system in general, benefit the United States economy?

Answer. Innovation continues to be a principal driver of economic growth and job creation in the United States, and a strong patent and trademark system helps deliver that innovation to the marketplace. USPTO plays a critical role in serving America's innovators, and granting the patents and registering the trademarks they need to secure investment capital, build companies, and bring new products and services to the marketplace. Adequate funding allows the USPTO to ensure that innovators are getting high-quality examination in a timely manner. Economic evidence shows that patent applications that take too long to be examined and patents that are issued with overly broad claims, introduce unnecessary uncertainty into the marketplace. USPTO's patent grants and registration of trademarks directly contribute to strengthening our economy, create jobs, and help move us toward the President's goal of winning the future by out-innovating our competitors.

*Question.* Will the proposed appropriations language for the USPTO ensure that USPTO can access its fees through the Patent and Trademark Fee Reserve Fund if the USPTO collects more than what the budget currently anticipates?

Answer. Existing and proposed appropriations language is beneficial in enabling USPTO to access all fees through the Patent and Trademark Reserve Fund. USPTO would be required to submit a spend plan the Senate and House appropriation committees prior to accessing resources from the Fund.

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN  
 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

*Salmon Biological Opinion*

*Question.* The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) issued a biological opinion on the salmon in 2009 which required the State of California to restrict water flows in California's Sacramento River Delta in order to protect the salmon. Since then, the biological opinion has been criticized by the National Academy of Sciences, and U.S. District Court Judge Wanger issued a ruling that the National Marine Fisheries Service (NMFS) had not provided adequate justifications to support the biological opinion.

Protecting endangered and threatened species is important, but so too are the farms and the communities in California's Central Valley that depend upon reliable water deliveries to produce the billions of dollars of crops that feed the Nation. It is my understanding that the revised biological opinion will not be completed until February 2016. The uncertainty this creates for agricultural and urban communities south of the Delta is a real concern.

It has been 6 months since Judge Wanger issued his decision on the biological opinion. What has NOAA done since then to meet the Court's mandates?

*Answer.* After Judge Wanger issued his decision on NOAA's 2009 biological opinion, NMFS worked with the U.S. Bureau of Reclamation (BOR), the California Department of Water Resources, public water agencies, and nongovernmental organizations to develop a timeline toward the completion of a new biological opinion. All involved parties agreed that NMFS will deliver the final biological opinion by February 2016, and the schedule was submitted and accepted by the Court. The Court rendered its final decision on the schedule in December 2011, agreeing with the submitted timeline, giving NOAA until October 2014 to complete a draft opinion and until February 2016 to complete a final opinion.

NMFS has made the completion of the biological opinion project a high priority and has already begun analyzing the remand issues and integrating new science into the new biological opinion. We are gathering and analyzing new data and information that has become available since the issuance of the 2009 biological opinion. We have coordinated with BOR, U.S. Fish and Wildlife Service, California Department of Water Resources, California Department of Fish and Game, and University of California at Davis on data collection.

*Question.* Can you explain why it will take NOAA 4 years to complete a new biological opinion and what is entailed in the process?

*Answer.* This is one of the most complex and challenging Endangered Species Act consultations that NMFS has ever conducted. The geographic scope is very broad, the number of species affected is large, and the planning horizon is long (21 years). The judge recognized this complexity and ordered the new biological opinion to be completed by early 2016, with a draft issued by October 2014. NMFS has begun work on the new opinion and continues to await completion of the salmon life-cycle analyses and will analyze 4 years of new data on salmon and the operating system to incorporate into the new biological opinion.

The various tasks that must be completed by 2016 include effects analysis, integration and synthesis of effects, development of new or revised reasonable and prudent alternative actions, four-factor analysis, the NOAA Fisheries Southwest Fisheries Science Center's (SWFSC) life-cycle model, development of an incidental take statement, issuance of a draft biological opinion and reasonable and prudent alternative, external and peer review, incorporation of review comments, and issuance of final biological opinion by February 2016.

*Question.* What, if anything, can be done to reduce the amount of time it will take to complete the new biological opinions?

*Answer.* NMFS is working diligently to complete the new biological opinion. We continue to adapt the existing opinion in the interim, where possible by looking for ways to maximize both water reliability and species protections. For example, in January 2012, the Department of Justice filed with the court a stipulated agreement among NOAA, the Department of the Interior (DOI), the State of California, and several water contractors for spring 2012 water operations to enable increased water supply reliability, while upholding species protections. Furthermore, there are numerous tasks that must be completed by other agencies for NMFS to complete the biological opinion.

*Question.* What new scientific research does NOAA intend to conduct or rely upon to develop the new biological opinion and does the President's budget fully fund these efforts?

Answer. A salmon life-cycle model will be a central scientific component underlying the new biological opinion. This relies on completing new acoustic tag studies in the Sacramento and San Joaquin Rivers. NMFS intends to apply the model to evaluate how water operations or proposed reasonable and prudent alternatives might affect listed species and/or water supply under various scenarios. NMFS continues to use and incorporate the best available science in the development of the biological opinion.

Central Valley salmon continue to be a high priority in the fiscal year 2013 budget request. To complete all the necessary work on this complex endeavor, we need to leverage both internal and external expertise and resources. We are currently in discussions with BOR about potential avenues for funding aspects of the life-cycle model. NMFS has already begun work on this key component of the new opinion.

I understand that NOAA has recently begun implementing an adaptive management strategy that sets pumping permissions and restrictions based off of real-time data on salmon movements at the confluence of the San Joaquin and Old Rivers correlated with Old & Middle River flows.

*Question.* In terms of water deliveries to south of Delta farmers, what benefits do you anticipate this strategy may provide?

Answer. In January 2012, NMFS worked with the State of California, several water contractors, and DOI to develop a joint stipulation for spring 2012 water operations in the Central Valley, available at [http://swr.nmfs.noaa.gov/ocap/2012\\_stipulation.htm](http://swr.nmfs.noaa.gov/ocap/2012_stipulation.htm). The agreement allowed us to refine some of the more controversial aspects of the biological opinion for spring 2012 that we believe will benefit both recovering salmon and water users, and enable us to keep working on the new opinion. The agreement will provide greater flexibility and predictability to management of Central Valley water operations by enabling us to exercise real-time management where possible, thereby potentially having less of an impact to water supply.

*Question.* Does the fiscal year 2013 budget request allow you to continue funding this project and other adaptive management strategies elsewhere on the system?

Answer. Central Valley salmon continue to be a high priority in the fiscal year 2013 budget request. To complete all the necessary work on this complex endeavor, we need to leverage both internal and external expertise and resources. We are currently in discussions with BOR about potential avenues for funding aspects of the life-cycle model. NMFS has already begun work on this key component of the new opinion.

While we will continue to operate within limited resources, we will prioritize implementation of this agreement. We will continue to explore new science that would enable greater reliability with respect to water supply, while ensuring the risk of extinction does not increase, and the potential for recovery is not impeded.

*Question.* While the new biological opinion is being developed, are there any other additional projects or administrative steps NOAA believes could be taken that could provide salmon and water supply benefits?

Answer. NOAA's opinion includes an annual adaptive management mechanism devoted to exploring new science and analyzing lessons learned from the previous year's implementation of the opinion. We are always exploring new data and alternative strategies to increase water supply reliability while ensuring the risk of extinction does not increase and the potential for recovery is not impeded.

#### PACIFIC SALMON PROTECTED SPECIES RESEARCH AND MANAGEMENT FUNDING

*Question.* It is my understanding that one project that is critical to developing a new salmon biological opinion is a new life-cycle modeling research program. This research is expected to take 3 years to complete at an annual cost of \$2 million which would need to be funded by NOAA's Pacific Salmon Endangered Species Act account. However, the President's budget for this account is essentially the same as last year (approximately \$58 million, with a \$300,000 decrease).

Does the President's budget proposal provide sufficient funding for NOAA's proposed salmon life-cycle modeling project and any other research necessary to complete the new biological opinion?

Answer. Central Valley salmon continue to be a high priority in the fiscal year 2013 budget request. To complete all the necessary work on this complex endeavor, we need to leverage both internal and external expertise and resources. NOAA has already begun work on this key component of the new opinion.

NMFS is working on a pilot life-cycle model leveraging our Pacific Salmon funding with a grant from BOR. We continue to work with them to identify the required funds in the BOR budget for full implementation.

The pilot life-cycle model work has made clear that additional field studies would be useful. NMFS, in collaboration with the University of California at Davis, has done some pilot work on this issue, and has obtained extramural support for additional studies over the next 3 years. Additional areas of research for the longer term include telemetry studies that can quantify patterns of salmon movement and survival in relation to operation of the water project facilities, studies of predators (their distribution, abundance, and activity) and the movement and survival of very young salmon that are too small to tag with existing technology.

NOAA has prepared a research plan that would fully address the questions surrounding management of water and salmon in the Central Valley.

#### PACIFIC COASTAL SALMON RECOVERY FUND

*Question.* Funding for the Pacific Coastal Salmon Recovery Fund continues to decline. In fiscal year 2011 it was funded at \$80 million. In fiscal year 2012 it received \$65 million. The President's budget request for fiscal year 2013 is \$50 million.

Given that salmon populations along the Pacific coast are still recovering from the 2006–2008 fisheries collapse, do you think that continued decreases in funding for the Salmon Recovery Fund is justified?

*Answer.* The long-term stability of the Pacific Coastal Salmon Recovery Fund since fiscal year 2000 has been a huge asset to NOAA's State and tribal salmon recovery efforts. The average annual appropriation level since the program's inception has been approximately \$78 million. While the fiscal year 2012 funding level and the fiscal year 2013 President's budget do represent a relative decline, the Pacific Coastal Salmon Recovery Fund will continue to be an indispensable resource in support of salmon recovery and sustainable fisheries. The declining funding levels reflect the current fiscal climate rather than program performance. In response to declining funding levels, NOAA is increasing the program's focus on those projects identified in Endangered Species Act (ESA) recovery plans that are most likely to provide the greatest biological benefit to the species and their habitat.

*Question.* Is there any concrete data you can offer in terms of recovery of the salmon fishing industry along the Pacific coast that can give us assurance that the Salmon Recovery Fund is working as intended to help restore the health of that industry?

*Answer.* The abundance of Sacramento and Klamath Rivers Chinook salmon stocks has increased dramatically in 2012, providing much improved harvest opportunities over recent years. These stock improvements and the resulting benefits to the Pacific coast fishing industry are most likely attributable to favorable ocean conditions. Pacific Coastal Salmon Recovery Fund investments are focused on the protection and restoration of the freshwater habitats that are necessary to sustain salmon populations through future downturns in marine survival conditions. A significant portion of the Fund is directed at recovery of ESA-listed salmon and steelhead which are not the direct target of commercial fisheries. Since the inception of the Fund in fiscal year 2000, more than 10,200 projects have been completed, protecting and restoring nearly 880,000 acres of habitat and restoring access to more than 5,300 miles of habitat program-wide.

The management of coastal Chinook salmon fisheries off southern Oregon and California is currently constrained by the availability of stock-specific monitoring information. For example, data on the nonlisted Klamath River Chinook salmon population is used as a surrogate for the California Coastal Chinook salmon stock (which is listed as threatened under ESA) to inform limitations on ocean fisheries. Focused resources, such as the Pacific Coastal Salmon Recovery Fund, are critical to improving the monitoring information available to guide fisheries management and to allow for increased utilization of nonlisted salmon runs when sufficiently abundant.

#### CONSOLIDATION OF OFFICES

*Question.* On January 13 of this year, the White House proposed a plan to shrink the size of the Federal Government by, in part, merging existing agencies. For the Department of Commerce, the administration proposed, among other things, to consolidate NOAA into DOI.

How do you think this proposed merger would affect the retention of qualified personnel and their expertise?

*Answer.* The President's first priority is first to obtain reorganization authority. If the Congress grants him that authority, the administration would consult with Members of Congress, the relevant congressional committees, agencies, and stakeholders as it prepares a detailed reorganization proposal to submit to the Congress. Retaining qualified personnel with expertise will be a priority in the development

and implementation of that proposal. Given that the core missions of NOAA would continue in any event, we believe we would retain our highly qualified staff.

*Question.* Do you think that this proposed merger would result in the loss of senior management and create confusion and delays in making decisions?

*Answer.* The goal of the proposed reorganization is to streamline and enhance decisionmaking and operations. We would plan carefully for the transitions associated with organizational changes in order to ensure that there be no delays in making decisions. Among other things, we would establish a senior team with strong leadership and agency representation that would establish a detailed action plan for integrating the agencies and programs to ensure a thoughtful process and no loss of functionality. No decisions have been made about organizational details, as we intend to seek the views of the Congress, agency staff, and other stakeholders on how a merger of NOAA and DOI could best improve communication and coordination of natural resource management programs.

*Question.* How do you think NOAA's operational and research focus—climate, oceans, fisheries, and weather—will be affected if they are folded into DOI, which has been traditionally focused on land management, nonmarine species, and oil and gas?

*Answer.* DOI and NOAA manage most of the Federal Government's natural resources; a consolidation would strengthen the Federal Government's stewardship and conservation efforts. Merging the two would improve coordination of complementary programs for the conservation of natural resources, strengthen ecosystem-based management and science, enhance services to coastal communities, improve utilization of assets and facilities, and eliminate unnecessary administrative costs. NOAA would continue to provide critical weather, climate, marine, and coastal services to the Federal Government, States, businesses, and coastal communities within DOI. Exactly how they would be integrated will be the subject of considerable discussion with the Congress, agency staff, and other stakeholders to ensure that the result is a stronger, more effective department that protects and enhances NOAA's core functions.

It is my understanding that in addition to the proposed consolidation of NOAA into DOI, the administration is also proposing to consolidate NMFS' southwest and northwest offices into a single west coast regional office. While I understand the need to reduce spending, I am concerned that these changes may impact NOAA's ability to address fishery issues critical to the delivery of water supplies in California and our fishing industry.

*Question.* What assurances can you provide me that the proposed regional office consolidation will not result in a reduction in senior program staff that would diminish services or the timely execution of regulatory reviews or scientific support?

*Answer.* The fiscal year 2013 budget request includes a reduction of \$3.109 million and 20 full-time equivalents (FTE) for the reconfiguration of NMFS' southwest and northwest regional offices into a single west coast regional office. The regional offices are being proposed for reconfiguration because of the narrow range of functions between the two, the higher degree of overlap in the work conducted, and the fact that the both support one Fishery Management Council. This reconfiguration would prioritize mission-critical work to protect the west coast's living marine resources, and core work on protected species consultations would be maintained; however, NMFS's ability to work in a proactive fashion with constituents could be constrained.

Additional action being taken within the west coast consolidation include, closing the Pacific Grove Laboratory; that staff would be co-located with the main science divisions in Santa Cruz and La Jolla, California, resulting in a \$0.641 million reduction and three FTE. This closure reduces facility operating costs of the SWFSC reducing the facilities footprint. This relocation would allow for greater integration of SWFSC's oceanographic expertise with its biological missions in fisheries, marine mammal, and turtle science. As an organizational unit, the Environmental Research Division that is leaving the Pacific Grove Lab would remain intact after the closure.

#### COASTAL PROTECTIONS

*Question.* Coastal protection and restoration programs are vital for coastal communities and States. These programs help protect natural coastal resources, sustain commercial and recreational fishing activities, support habitat protection and restoration, augment tourism, and sustain and create jobs. Local communities depend on these activities for their personal, educational, and economic well-being. They are also cost-effective because they leverage cooperative agreements with non-Federal partners to complete projects. However, a number of coastal protection programs are facing cuts in the proposed fiscal year 2013 budget. For example, community-based

restoration will decrease by \$10 million; marine debris and estuary restoration programs will decrease by \$1.2 million.

With decreased funding, how do you propose to sustain protections for our coastal communities and economies?

Answer. Although NOAA has made difficult choices in fiscal year 2013 in the face of top line budgetary pressures, NOAA continues to make targeted investments in key coastal programs. NOAA is requesting a program increase of \$1.2 million for the Tides and Current Data program, which will allow the program to fully maintain and inspect its network of National Water Level Observation Network (NWLON) stations. Data from these stations are critical to safe navigation and maritime commerce activities which are essential to coastal communities and economies. NOAA is also requesting an additional \$500,000 for Regional Ocean Partnership Grants, which supports a targeted competitive grant program to advance regional approaches to addressing changes to ocean and coastal natural resources. In addition NOAA is requesting a program increase of \$2 million to enhance its forecasts of harmful algal blooms, which can have profound effects on public health, fisheries, tourism, and other coastal economic activity.

In areas where NOAA is requesting program decreases, NOAA is seeking new ways to prioritize essential programs, increase efficiency, and leverage partnerships with other Federal agencies, State and local governments, the private sector, and the nonprofit community. The fiscal year 2013 request includes a \$10.1 million decrease for the Community-based Restoration Program. At the reduced level of funding, the Restoration Center will maintain its core operations and restoration capabilities to support mandated restoration activities related to Natural Resource Damage Assessment, Oil Pollution Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Under these statutes, NOAA is responsible for addressing injury to natural resources, and acts on behalf of the public to protect and restore coastal and marine resources and their services.

Funding for Community-based restoration partnership grants will be used for targeted projects, and NOAA will continue to provide technical expertise and leadership to States, tribes, and local communities implementing fishery and coastal habitat restoration projects, within the guiding principles of NOAA's Habitat Blueprint. For example, NOAA experts will provide support for cooperative programs including NOAA's Gulf Coast Recovery, Coral Reef Conservation, and Protected Species Programs; EPA's Great Lakes Restoration Initiative and other large ecosystem partnerships; and the U.S. Army Corps of Engineers' interagency coordination of coastal wetland protection, restoration, and research in Louisiana.

*Question.* NOAA's modeling shows that marine debris from Japan's devastating 2011 tsunami may reach the Pacific coast in 2013. With decreased funding, will NOAA be able to properly mitigate the effects of that debris on coastal communities?

Answer. In fiscal year 2012, NOAA is leading efforts to respond to debris from the Japan tsunami. Working with international, Federal, State, and local partners, the NOAA Marine Debris Program is collecting data on debris quantity, modeling debris movement, assessing potential impacts, and planning for efforts to mitigate potential harm to coastal communities and natural resources. NOAA has been able to leverage its emergency response expertise to coordinate interagency monitoring efforts, enhance modeling, develop decision-support tools, and conduct response planning.

In fiscal year 2012 NOAA is directly supporting specially trained and highly skilled debris survey teams in their efforts to conduct marine debris monitoring surveys. These operations serve as an early assessment of the nature and quantity of debris making landfall from the Japan tsunami. These activities are also critical to establishing baselines for debris observations in Alaska, California, Hawaii, Oregon, and Washington so that specific effects attributable the tsunami can be documented. NOAA is also developing a marine debris response contingency plan and providing support for developing graphical representations of scientific forecasts of debris movement to better inform responders and improve public understanding of the problem. NOAA is not requesting dedicated funding for these activities related to the Japan tsunami in 2013. NOAA will continue to evaluate whether additional funds are required in the outyears.

*Question.* What is NOAA doing to prepare the Pacific coast for the possibility of a damaging tsunami? What is still needed to be done in order to protect our coastal communities, industries, and infrastructures?

Answer. Since 2005, in the wake of the Indian Ocean tsunami that took 240,000 lives, NOAA has continuously implemented a multi-year effort to strengthen the Nation's capacity to provide early warnings of tsunamis and to enhance coastal commu-



nities' preparedness. Both types of activities are necessary to mitigate the risks to coastal communities and economies from tsunami events.

The first step toward tsunami preparedness is the ability to provide early warning upon a tsunamigenic event. In fiscal year 2006, NOAA expanded staffing at the Pacific Tsunami Warning and West Coast/Alaska Tsunami Warning Centers to ensure 24-hour operations. Warnings are delivered to communities at potential risk within 5 minutes of detection of a seismic event with potential to generate a tsunami. To monitor tsunamic events and further refine its advisories and warnings, NOAA has deployed and operates a network of 39 Deep-ocean Assessment and Reporting of Tsunamis (DART®) stations, 32 of which are stations in the Pacific, 4 of which are stations in the Caribbean, and 3 of which are in other areas of the Atlantic Ocean.

To further enhance warning guidance, NOAA Tsunami Warning Centers receive real-time, high-frequency water data from NOAA's network of 210 long-term coastal tide gauges on all U.S. coasts. With this information, Warning Centers are able to confirm the nearshore contact of a tsunami, quantify its impact, and validate models used for improving future warnings. The real-time data are also used by other emergency responders to validate the accuracy of the tsunami warnings arrival time and to make subsequent safety of life and property decisions. Real-time water level data from all NOAA National Ocean Service tide stations, known as NWLON, are made accessible for users by request.

NOAA supports many training, education, and public awareness activities for tsunami preparedness. Through an ongoing partnership with the Federal Emergency Management Agency (FEMA) National Disaster Preparedness Training Center, NOAA is engaged in delivering FEMA-certified training on Tsunami Awareness. In addition, NOAA has developed an education and outreach program in conjunction with the National Tsunami Hazard Mitigation Program (NTHMP). This education and outreach program includes NOAA's TsunamiReady™ program, which thus far has recognized 71 of 272 at-risk communities on the Pacific (west) coast. NOAA continues tsunami inundation mapping, modeling, and forecast efforts for communities at risk, advancing next-generation models for currents, and transition these research efforts into operations.

In addition, NOAA supports development of decision support tools related to tsunami preparedness. For example, through the Coastal Geospatial Services Contract, NOAA works with the private sector to acquire and process high-resolution elevation data for coastlines. These data provide the foundation for accurate estimates of tsunami inundation and are the basis for local evacuation zones and tsunami response and mitigation activities. NOAA distributes this data, along with other technical resources, through the NOAA Coastal Service Center's Digital Coast Web site ([www.csc.noaa.gov/DigitalCoast](http://www.csc.noaa.gov/DigitalCoast)). NOAA also partners with state and local jurisdictions to assist in the distribution of tsunami evacuation maps through the Internet and mobile devices. For example, the online Hawaii Tsunami Information Service and its companion application for mobile phones reached more than 100,000 residents and visitors in Hawaii during the hours following the March 11, 2011 Japan earthquake and tsunami.

#### TSUNAMI PREPAREDNESS

*Question.* Secretary Bryson, on March 14, 2012 NOAA posted a page to its Web site entitled, "Japan's 'harbor wave': The tsunami 1 year later". The page makes an unequivocal statement: "NOAA predictions saved U.S. lives and property". I share this belief because on March 11, 2011, NOAA's DART® program transmitted timely information to California and the rest of the Pacific coast. And local emergency responders used this information and their NOAA-funded training to quickly and efficiently evacuate low-lying coastal areas.

The system worked well, but next time we may only have minutes, not hours, to respond to a tsunami threat. That's why I question the proposed cut of more than \$4.5 million to the NOAA tsunami preparedness and early warning system. The reduction to the buoy network is particularly concerning—it will mean decreased data availability a system that only operates at 72-percent efficiency.

Secretary Bryson, if the proposed cut for the DART® program is approved, how will it impact NOAA's ability to pinpoint the location of approaching tidal surges? What impact would the cut have on determining the precise time a surge would come ashore?

*Answer.* Initial tsunami warnings are based on seismic data alone, which determines the magnitude and location of an earthquake. Therefore, data availability from a DART® station will not impact the issuance of tsunami warnings.

After seismic data is used to issue a warning, data is then received from DART® stations as a tsunami affects the buoys. Data from affected stations are used to con-

firm the existence or absence of a tsunami in a specific area, determine the potential size of the tsunami, and further refine the area and temporal extent of any warnings. The redundancy built into the DART® network and alternative sources of data (such as foreign buoys and sea-level gauge data) mitigate the impacts of reduced availability of DART® data. In addition, National Weather Service (NWS) has recently signed an agreement in principle with Australia in which they will share operations and maintenance responsibility for some NOAA-operated DART®. While the details of the agreement are still being worked out, we anticipate this sharing will mitigate the impact of lower funding levels for DART® operations and maintenance.

*Question.* The budget also proposes reducing funding for NTHMP. Will this result in fewer cities receiving mitigation grants? Or will the program simply provide less funding to each eligible entity?

*Answer.* NOAA places its ability to warn and advise the American public on the threat of tsunamis as its highest priority within the NTHMP. The Tsunami Warning Centers' operations in Hawaii and Alaska are not compromised or degraded with the proposed reductions.

The proposed reductions will eliminate grants to the NTHMP. The NTHMP is a consortium of State partners that use NOAA tsunami program funding to support local community education and mitigation activities. These activities include inundation mapping to develop evacuation plans, routes, and signage; education and awareness campaigns; provision of education materials; and training for the public and local officials.

Despite the reduction in grants funding, NOAA would continue to support the NTHMP by: setting standards of accuracy for NTHMP-developed inundation models; promoting community outreach and education networks to ensure community tsunami readiness through funding from the TsunamiReady™ program; promoting the adoption of tsunami warning and mitigation measures by Federal, State, tribal, and local governments and non-Government entities; conducting tsunami research; and operating the U.S. Tsunami Forecasting and Warning Program.

*Question.* The United States Geological Survey estimates that there is a 99.7-percent chance that a magnitude 6.7 or greater earthquake will strike in California in the next 30 years. What is the likelihood that this event would trigger a tsunami on the west coast?

*Answer.* Most California earthquakes are onshore, and therefore unlikely to generate a tsunami. However, without knowing the earthquake type, location and magnitude, NOAA is not able to estimate the probability of a tsunami.

*Question.* If a seismic event occurs near-shore and it triggers a tidal surge, will your data be more or less reliable than tidal events that are triggered across the Pacific ocean (such as the March 11, 2011 tidal wave)?

*Answer.* Regardless of location of the tsunamigenic earthquake, the NOAA Tsunami Warning Centers assess the threat and issue a tsunami warning within 5 minutes. The reliability of data from any seismic event is dependent upon the density of the seismic sensors in the area of the earthquake. For example, if an earthquake occurred in the middle of the Pacific Ocean, it would take longer to assess the characteristics of that event due to the low density of seismic sensors. The west coast, on the other hand, has a very dense system of seismic networks that would allow for a more rapid assessment of any earthquake.

#### INTERNATIONAL TRADE ADMINISTRATION

##### *Solar Panel Trade Dispute With China*

*Question.* The Department of Commerce just released a preliminary determination that the Chinese Government is illegally subsidizing Chinese solar manufacturers, and recommended tariffs ranging from 2.9 to 4.7 percent. Soon, the Department will release another preliminary determination about alleged dumping of those solar panels on U.S. shores, which may raise tariffs further. Unfair and illegal trade practices are clearly harmful to the U.S. solar industry, but I have also heard concerns from some solar companies that retaliatory tariffs could start a trade war, drive up prices, discourage customer demand, and stifle a growing industry here at home.

What are you going to do to ensure that in the process of enforcing fair trade practices, the domestic U.S. solar industry would not be adversely affected by the Commerce Department's decisions?

*Answer.* The U.S. antidumping and countervailing duty laws, as enacted by the Congress, provide very detailed rules and procedures for the investigation of these unfair trade complaints. In administering the laws, the Department follows these rules and procedures to the letter. The laws do not permit the Department to take

into account the impact on other industries in determining whether and the extent to which the imports under investigation may be dumped or subsidized.

The Obama administration is fully committed to enforcing our trade laws and to addressing unfair trade practices in accordance with our statutes, regulations, and obligations in order to help ensure that U.S. firms and workers have the opportunity to compete on a level playing field.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

*Internet Corporation for Assigned Names and Numbers*

*Question.* Secretary Bryson, as we have discussed before, there is great concern about Internet Corporation for Assigned Names and Number's (ICANN) proposal to open wide top-level domain names, expanding them from the present well-known .com, .org, and the others, to virtually anything. I was pleased that Commerce wrote to ICANN raising a number of specific concerns and suggestions about this proposal. I was also pleased with ICANN's response to this letter, where they showed a commitment to addressing these concerns. However, the rubber has not yet hit the road on this. ICANN is in the middle of accepting applications for new top-level domain names, so it has yet to put many of its commitments into practice.

It is important, therefore, that the Commerce Department maintain strong oversight over ICANN. The principal leverage that Commerce has with ICANN is the "IANA", or Internet Assigned Numbers Authority, agreement which Commerce has with ICANN to run the system for associating domain names with Internet Protocol numbers, and which expires at the end of this month. Therefore, I was very pleased to see that Commerce last week did not renew this contract, but instead granted a temporary 6-month extension of the existing contract, while ICANN addresses certain issues.

Can you elaborate on the reasons why Commerce only granted a short-term, temporary extension?

*Answer.* In anticipation of the impending expiration of the IANA functions contract, National Telecommunications and Information Administration (NTIA), via two public notices in February and June 2011, consulted on how best to enhance the performance of the IANA functions. Based on the input received from stakeholders around the world, NTIA added new requirements to the IANA functions' statement of work, including the need for structural separation of policymaking from implementation, a robust companywide conflict of interest policy, provisions reflecting heightened respect for local country laws, and a series of consultation and reporting requirements to increase transparency and accountability to the international community.

On November 10, 2011, the Department of Commerce issued a Request for Proposal (RFP) for a new IANA functions contract. The Department received no proposals that met the requirements requested by the global community, and, therefore, it cancelled the RFP. The Department intends to reissue the RFP in the coming weeks so that the requirements of the global Internet community can be served. To ensure the continued stability and security of the domain name system (DNS) during this period, NTIA issued a short-term extension of the contract.

*Question.* I would suggest to you that continuing to limit the duration of this contract is an excellent way to ensure that ICANN follows through on its commitments to address the concerns of law enforcement, trademark holders, and others with the new "generic Top Level Domain" program and other ICANN operations.

*Answer.* Thank you very much for your input. I share your interest in ensuring that ICANN follows through on its commitments.

FEDERAL BUREAU OF INVESTIGATION INPUT

*Question.* Along these lines, I understand that the Federal Bureau of Investigation (FBI) made a number of recommendations to Commerce for provisions to include in the IANA agreement to help them in their efforts to combat child pornography, fraud, and other types of cybercrime—but Commerce did not include most or all of these recommendations.

Why didn't you include the FBI's recommendations?

*Answer.* The statement of work for the IANA functions contract was developed through a deliberative and iterative interagency process informed by two public notices in February and June 2011 about how best to enhance the performance of the IANA functions.

*Question.* Can I have your commitment that you will work with the FBI to include as many of their recommendations as possible?

*Answer.* NTIA has a long history of collaborating with all U.S. law enforcement agencies and continues to actively work with all Federal Government agencies

through an interagency DNS Issues working group, which includes the FBI, to ensure that law enforcement concerns are being addressed. NTIA continues to take steps to address law enforcement concerns by working to strengthen the Registry and Registrar Accreditation Agreements, supporting enhancing ICANN's contract compliance, and encouraging implementation of the recommendations of the WHOIS Review team.

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QUESTION SUBMITTED BY SENATOR JACK REED

*HENRY B. BIGELOW HOMEPORT*

*Question.* At a time of tight funding and rising fuel costs, the National Oceanic and Atmospheric Administration (NOAA) fleet faces major funding challenges. Amid these challenges, NOAA is attempting to determine the permanent homeport for Fisheries Survey Vessel *Henry B. Bigelow*, which has been located at Naval Station Newport in Rhode Island on a "temporary" basis since it was commissioned in 2006.

For more than 6 years, NOAA has been wrestling with the decision on the *Henry B. Bigelow's* permanent homeport because of the costs of relocating to Woods Hole, which would require major dredging and infrastructure work to accommodate the *Henry B. Bigelow*. Those costs would be in excess of \$20 million, according to NOAA's 2008 Facility Modernization Plan.

More than a year ago, I wrote to Under Secretary Jane Lubchenco to suggest potential cost-saving options for permanently homeporting the *Henry B. Bigelow* in Rhode Island. Indeed, an independent evaluation conducted for NOAA by SRI International in 2006 evaluated Naval Station Newport and the Port of Davisville (Quonset). That analysis rated Newport higher than Woods Hole, and it was completed before improvements were made at the Port of Davisville to accommodate the *Oceanos Explorer*. Those improvements would have improved the Port of Davisville's already competitive score.

Although I have discussed this issue with Dr. Lubchenco on several occasions, my letter has not been answered, and I fear less-costly alternatives to Woods Hole are being overlooked. While I understand that NOAA and the Department are still evaluating options, I would like to know when I can expect a reply to my letter. Given the impacts on the NOAA fleet, I would also appreciate an explanation of the potential costs.

*Answer.* We appreciate the Senator's interest in this issue and the letter to Dr. Lubchenco expressing his views about the *Henry B. Bigelow* homeport. NOAA's response to the Senator's letter is in the final stages of clearance within the agency and we expect to transmit it to the Senator's office as soon as possible. Furthermore, we have completed an analysis of the options for the *Henry B. Bigelow's* homeport. Our analysis has been transmitted to the Department for further review. We will share the content of the analysis as soon as we are able.

NOAA's fleet plays an essential role in supporting NOAA mission accomplishment. The stationing of NOAA's vessels is based on mission and operational requirements to support the science mission. In the past, when a vessel is replaced, NOAA has stationed the new vessel at the same station as the one being replaced. In the case of *Henry B. Bigelow*, the previous vessel was stationed at the Woods Hole Northeast Fisheries Science Center in Woods Hole, Massachusetts. In this instance, the *Henry B. Bigelow* is larger than the vessel it replaced, which would require additional investment in improvements to the Woods Hole pier and harbor. Since the *Henry B. Bigelow* was commissioned, it has been stationed at the Naval Station Newport, with the option of tying up at the commercial Port of Davisville when necessary for loading.

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QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

*Question.* As part of this year's budget, National Oceanic and Atmospheric Administration (NOAA) has proposed closing its laboratory at Sandy Hook, New Jersey. This lab is unique—it is located near major urban areas, helping scientists develop approaches to managing fisheries in impaired water bodies. It has lasting partnerships with local universities and fishermen. And it has a 50-year record of scientific achievement.

Can any other single NOAA location provide this combination of qualities?

*Answer.* The NOAA laboratory at Sandy Hook is an excellent research facility with unique capabilities. The laboratory's flow-through seawater system, large-capacity experimental tanks, and ocean acidification research facility provide an ex-

ceptional environment for behavioral ecology, habitat, and early life history research.

However, it has one of the highest costs per square foot for high-density occupied spaces within the continental United States—at \$36.30/sq ft. Additionally, the 20-year lease for the Sandy Hook Facility expires in December 2013. While NOAA recognizes and understands that the Sandy Hook lab conducts important research on recreational fish species and serves as an outreach lab to recreational fishermen it must balance this with the need to reduce costs.

*Question.* Regulators help keep our food safe, and ensure we have clean air to breathe. They also make sure that businesses that break the rules don't get an unfair advantage. The Office of Management and Budget (OMB) reports that regulations over the last decade produced as much as \$700 billion in benefits at a cost of less than \$70 billion.

Do you agree with OMB finding that regulations yield benefits well in excess of their costs?

*Answer.* Although NOAA has not done comprehensive analysis such as that done by the OMB, our experience is that the benefits to coastal communities and the environment resulting from collaborative work through the regional fishery management councils and the dedication of resources to managing and sustaining fisheries, for instance, exceed the costs to the Government.

*Question.* The United States Patent and Trademark Office (USPTO) is evaluating locations for at least two new satellite offices. U.S. patent activity is an important factor in the USPTO's selection process. In 2010, the New Jersey/New York region was second in patent applications. New Jersey by itself was sixth, and New Jersey excels in many other categories the USPTO is considering.

How does New Jersey compare to other locations as a candidate for a satellite office?

*Answer.* In assessing potential satellite office locations, USPTO assessed more than 50 metropolitan areas against a variety of criteria. As mandated by the Leahy-Smith America Invents Act (AIA), cities were evaluated according to the ability of the USPTO to perform applicant outreach in the area; the ability to both recruit and retain qualified employees within the regional labor market; and, the potential economic impact of establishing a USPTO satellite office in the region. The AIA also required that the USPTO consider geographic diversity among its satellite office locations when selecting future sites. In addition, each location was evaluated on the basis of operating cost and other factors.

Given the considered factors, data for the New Jersey/New York region did not at this time present the best comparative case as a whole despite high performance within some factor categories.

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QUESTIONS SUBMITTED BY SENATOR SUSAN M. COLLINS

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

*New England Groundfish Monitoring*

*Question.* Maine's groundfish industry is facing a great deal of uncertainty as it continues to move to a new management system and in the face of new reports showing that the Gulf of Maine and Georges Bank cod stocks may not be as healthy as previously thought, a position at odds with the assessments of many working fishermen.

National Oceanic and Atmospheric Administration (NOAA) announcement late last year that it would fund the full cost of observers in fishing year 2012 for the New England groundfish fishery was welcome news. Looking ahead to next year, I am concerned that the industry will still not be in the financial position to pay for the high cost of monitoring on the east coast. I understand that these monitoring programs not only provide assurance that catch limits are not exceeded, but also provide accurate catch data that is essential to good stock assessments. The budget requests \$28 million for the National Catch Share Program. How much does NOAA estimate the total cost of monitoring coverage will be for the New England groundfish fishery in fiscal year 2013? How much has NOAA budgeted for in fiscal year 2013 to cover those costs? Given all of the uncertainty facing the New England groundfish industry, has NOAA looked at whether the fleet will be in an economic position to begin shouldering the costs of monitoring in 2013 and 2014? And given that NOAA uses this monitoring data to feed into its stock assessments, which is appropriately a Federal function, is it fair to ask the fleet to cover the entire cost of at-sea monitoring in future years?

Answer. NOAA agrees that at-sea monitoring data is critical to accurate stock assessments and the effective functioning of the Sector program. NOAA will continue to work with the New England groundfish fishery on the appropriate mix of industry and Federal funds to support this function. NOAA works similarly with other federally managed fisheries where industry is or will be paying all of the at-sea monitoring costs, including several Alaska fisheries, Pacific Groundfish, and Atlantic scallops.

National Marine Fisheries Service (NMFS) collects two types of data on the New England groundfish fishery through at-sea monitors and observers. At-sea monitors count fish and collect less detailed data on catch and bycatch (discards) and are utilized to monitor the fishery to track quota. Observers collect more detailed data related to catch such as age and length of targeted and discarded species, bycatch, and additional data such as, biological samples. All information collected is used in stock assessments and to understand the fisheries interaction with protected resources.

At-sea monitors are funded primarily through the National Catch Share Program budget line, with additional funds from the Observer/Training budget line. Observers are solely supported through the Observer/Training budget line.

NOAA estimates that the total 2013 cost of observer/at-sea monitor coverage in the Northeast to be \$17.9 million. The fiscal year 2013 President's request for NOAA includes approximately 50 percent of the costs for at-sea monitors, or \$2.2 million, and the total cost for observers, \$13.9 million, which provides a total of \$16.1 million of the estimated \$17.9 million for observer and at-sea monitor coverage required (Table 1). This request takes into consideration recent developments, in particular the Gulf of Maine cod stock assessment. The remaining costs of at-sea monitors, approximately \$2.2 million, are expected to be paid by the industry beginning in May 2013.

NOAA recognizes the potential economic implications, in particular for small operators, of transitioning the costs of at-sea monitors to industry. Therefore, we continue to analyze the fishery, including economic information, and if circumstances warrant we will adjust as needed. NOAA continues to work with the New England Fishery Management Council and industry to consider alternative effective monitoring techniques, such as electronic monitoring (including an ongoing electronic monitoring pilot project) that could also be more cost-effective.

TABLE 1. FISCAL YEAR 2013 FUNDING REQUEST FOR OBSERVER/AT-SEA MONITOR COVERAGE IN NORTHEAST FISHERIES

[In millions of dollars]

Region/fishery	Fiscal year 2013 PPA	Fiscal year 2013 request
NE Multi-species fishery (at-sea monitors and observers) .....	National Catch Share Program (at-sea monitors) .....	2.2
	Observers/training .....	13.9
TOTAL .....	.....	16.1

POTENTIAL LISTING OF RIVER HERRING AS THREATENED UNDER THE ENDANGERED SPECIES ACT

*Question.* Late last year, NOAA fisheries announced that it had determined that a petition to list alewife and blueback herring, collectively known as river herring, under the Endangered Species Act (ESA) merited further review and the agency would consider whether listing these species would be appropriate. Given the potential impacts that even a threatened listing could have on our nation's fishing communities, I hope you will urge NOAA fisheries to carefully consider effective management plans already in place, such as the programs in my home State of Maine.

River herring are an important source of bait for Maine fishermen who already adhere to restrictions mandated by the Maine Department of Marine Resources (DMR). The Maine DMR's river herring management plan has proven effective in increasing river herring populations through habitat restoration and improvements, fish passage construction, stocking and transfer programs, and catch limits.

My question is twofold: in your status review of the species, how are you working with State agencies that have a greater familiarity with the species than the Federal Government? And, what can be done by working proactively with States, par-

ticularly States that already have successful management programs in place, to avoid a listing under the ESA?

Answer. The Atlantic States Marine Fisheries Commission has been working with representatives from each of the east coast States on a stock assessment for river herring for approximately the last 3 years. This stock assessment is a thorough compilation of the best available data on river herring and therefore, will be extremely useful in making a listing decision. In order to identify any gaps between the information contained within the stock assessment report and information that is needed to make a listing determination under the ESA, NMFS staff attended the stock assessment committee meeting in January 2012, at which the group finalized the data inputs for the report. The following are topics that must be addressed in an ESA listing decision that were not fully addressed in the stock assessment:

- stock structure/identification of distinct population segments;
- impacts of climate change on the continued existence of both species;
- status of Canadian stocks; and
- extinction risk.

Based on these existing gaps, NMFS has been working with Atlantic States Marine Fisheries Commission to plan individual workshops to address three of these data gaps (we are working with the Canadian Department of Fisheries and Oceans to obtain data on the status of these species in Canada). With the Atlantic States Marine Fisheries Commission's input and assistance, NMFS has identified experts for each of these topic areas, and we will be convening these workshops during this summer to help inform the status review and subsequent listing determination. Announcements of these workshops will be posted on our Web site. Reports from the stock structure and extinction risk analysis workshops will be peer reviewed by experts from the Center for Independent Experts and we will be seeking nominations for qualified peer reviewers for the climate change workshop later this spring.

NMFS has solicited information from the State agencies and the public that is relevant to the listing decision and the status review team is considering this information in the ongoing status review. We are also seeking input from State-recognized experts on the species and the management issues surrounding their status and recovery and will be inviting the States to send representatives to each of the workshops. The information from the workshops will be posted on our Web site providing the States and the general public with an additional opportunity to see the materials that are in the record, which will form the basis of a listing or no listing decision. The States and the public will also be provided with the opportunity to supplement the record with data and materials from people whom they recognize as experts during the peer review process of the workshop reports.

NMFS has also been working with representatives from the State of Maine on restoring access to important spawning areas for both species in the State as part of our efforts to restore and recover Atlantic salmon and other members of the anadromous species complex. This includes focusing on restoration of access to important alewife spawning habitats in the St. Croix River. NMFS has also been working on restoring access in many other rivers in other States along the east coast, and has provided input and guidance for fish passage in many river systems under the Fish and Wildlife Coordination Act. All of these proactive measures to restore and recover these species will be considered in the Policy for the Evaluation of Conservation Efforts analysis in the listing determination.

#### STATE-FEDERAL PARTNERSHIPS

*Question.* NOAA's fiscal year 2013 budget proposes to cut or eliminate some key programs that support important State and Federal partnerships. In particular, the proposals to eliminate funding for Interjurisdictional Fisheries Grants and reduce by 14 percent funding for the Atlantic Coastal Act are particularly worrisome to States. This funding helps support State efforts to restore and sustainably manage their marine fisheries, and reducing this funding could have severe ramifications for monitoring of the Nation's fisheries by the States. In Maine, we are particularly concerned about the potential impacts to monitoring of our lobster, Atlantic herring, and Northern shrimp stocks. How does NOAA propose to maintain and improve the basic scientific data collection programs needed for stock assessments of these stocks while at the same time cutting funding for these programs?

Answer. NMFS agrees that the role of the Interstate Commissions in fostering partnerships and incorporating the needs of fishing communities and industry, recreational, Federal, and State interests into fishery management decisions is critical.

Appropriated funding for the Interjurisdictional Fisheries Act grants has declined over the past 2 years. As a result, the benefits of the program relative to the admin-

istrative costs on both NOAA and the States to apply for, manage and report on the awards are no longer effective. The Interjurisdictional Fisheries Act grant funding is specified by statutory formula and would require a legislative fix. In applying the statutory formula to the amount of appropriations supporting Interjurisdictional Fisheries Act grants under the fiscal year 2012 conference mark, 18 of the 38 grants would have been for less than \$6,000. NMFS determined that this funding was insufficient to justify the grant program, and therefore decided to zero out the grant program as part of the undistributed reduction included in the conference agreement. This reduction was included in the fiscal year 2012 spend plan approved by the Congress in January 2012. The fiscal year 2013 President's budget maintained this decision. NMFS does not expect its fiscal year 2013 appropriation to increase to a level at which this program could be effectively managed.

NOAA continues to work with its partners to find efficiencies to maintain the quality and effectiveness of our data quality and monitoring. NMFS will continue its current level of effort to collect data from its surveys, sampling, and dealer data collection that support the Atlantic States Marine Fisheries Commission's technical committees. NMFS' scientists serve on the Atlantic States Marine Fisheries Commission's committees that develop and apply population modeling for the assessment. As an example, for the NMFS Northeast bottom trawl, survey data, at-sea and in-port biological sampling data, and landings from federally permitted dealers are routinely used by the Atlantic States Marine Fisheries Commission.

Also, in 2012–2013, NMFS is piloting a project to collect more samples from observed commercial lobster trips in Statistical Areas 515 and 513, in the Gulf of Maine. The focus is on characterizing groundfish discards and reasons for lobster discard. There are about 10 vessels that operate in this component of the fishery. This is intended to augment data on offshore lobsters for both lobster and groundfish management and assessment purposes. NOAA will continue to work with our partners to find other efficiencies to maintain the high level of quality data and analysis despite reductions in Federal and State budgets.

#### INTERNATIONAL TRADE ADMINISTRATION

##### *Softwood Lumber Agreement—Monitoring*

*Question.* Recently, the United States and Canada agreed to extend the softwood lumber agreement to October 2015. The agreement has generally benefited Maine's forestry industry, but it has not been an easy path due to Canada's numerous violations under the trade agreement. The delicate balance of realizing adequate value of the agreement for U.S. industry has only been achieved due to the monitoring and enforcement work of the last two administrations. The Commerce Department plays an important role in the U.S. Government's efforts to monitor Canada's compliance with the agreement. This work must continue. Failure to adequately monitor and enforce this trade agreement places at risk jobs in communities that can least afford to lose them. Do you believe that you have the adequate resources to continue the Department's critical role in monitoring the Softwood Lumber Agreement? Will you commit to continue to make this monitoring a priority for the Department?

*Answer.* The U.S. trade relationship with our neighbors is an absolute priority and Canada is our number one trading partner.

The Softwood Lumber Agreement (SLA) is evidence of the United States and Canada's commitment to working together to resolve long-standing trade disputes. As you know, the SLA was recently extended for 2 more years and is now effective until October 12, 2015.

The administration is committed to strong enforcement of its rights under these agreements. To date, in concert with the Office of the United States Trade Representative (USTR) and the Department of Justice (DOJ), we have been involved in three arbitrations under the SLA. The arbitration panel found in favor of the United States on many of the issues raised in the first two disputes, and just recently completed the third arbitration hearing.

Commerce's International Trade Administration has targeted \$99.6 million to enforcement in the fiscal year 2012 budget, and the Administration has requested a significant increase in the fiscal year 2013 budget for trade enforcement activities, including the Interagency Trade Enforcement Center (ITEC).<sup>1</sup> Commerce will continue to work closely with USTR to ensure that U.S. rights under the SLA are vigorously enforced and defended.

<sup>1</sup> FY 2012 figure from ITA FY2013 Budget in Brief, Objective 12.



## QUESTION SUBMITTED BY SENATOR LINDSEY GRAHAM

## INTERNATIONAL TRADE ADMINISTRATION

*Question.* I wrote to your Department earlier this year regarding the International Trade Administration's (ITA) U.S. Commercial Service (CS). While I look forward to your response, I understand the Department of Commerce intends to eliminate CS staff in developing economies. While I fully understand the budgetary constraints all U.S. Government agencies currently face, I worry such action is premature and would weaken opportunities for U.S. companies.

Under the President's fiscal year 2013 budget, which commercial service professionals would be eliminated? How much would it cost to ensure no current CS professionals are eliminated? How much would it cost for the CS to operate at full capacity?

*Answer.* Over the last decade ITA U.S. and Foreign Commercial Service (US&FCS) has been reshaped by tight budgets, which have resulted in hiring freezes and other ad hoc measures to reduce costs. US&FCS responded by undertaking a strategic review of its resources using expected budget levels and looking at where and how those resources were deployed. These calculations were based on deploying approximately 169 officers and 742 locally engaged staff (LES) in 70 countries worldwide, representing 94 percent of the worldwide market for U.S. exports. Based on this information and coupled with administration priorities such as the National Export Initiative, US&FCS placed each country in Tier I, II, or III categories. Tier I represents countries such as China, India, and Brazil with the greatest current opportunity to maximize United States exports and the greatest demand for our services.

In order to reposition resources to top tier countries US&FCS sought and received approval from the Office of Management and Budget and our Congressional Appropriations Committees to close 17 offices internationally in fiscal year 2012. The list included closing the sole US&FCS offices in seven countries (Algeria, Ecuador, Kazakhstan, Libya, Senegal, Switzerland, and Venezuela); nine constituent posts (Melbourne, Australia; Vancouver, Canada; Wuhan, China; Alexandria, Egypt; Florence, Italy; Sapporo, Japan; Nagoya, Japan; Tijuana, Mexico; and Vladivostok, Russia), and the African Development Bank (ADB) office. We are also reducing staff in some markets where we are not closing offices, mostly in mature, developed markets. Essentially, we are under-resourced in priority markets and must therefore address those needs before we can consider resourcing third tier markets.

It is important to recall two elements of our history. First, US&FCS was created in 1980 to service U.S. business needs in our most commercially important export markets. This represented slightly more than 60 markets at that time. The intent was for US&FCS to focus on those markets judged to be the most important for expanding exports and advancing U.S. commercial interests. However, over time the US&FCS grew to have offices in 80 countries. A continuous review of our footprint and a common understanding and agreement on the identification of these priority markets for U.S. business remains fundamental to offering a successful US&FCS program. Given that we cannot be in every market, our partnership with the trade promotion program that the State Department offers in foreign markets in which US&FCS does not have a physical presence is of vital importance if we are to remain at the center of a whole-of-government effort to deliver a seamless global program. At present, we have partnership post arrangements with 57 State Department posts.

The President's fiscal year 2013 budget proposes an increase of \$30.3 million to place additional Foreign Commercial Service Officers and LES in high-growth, priority markets, including those developing economies that offer the greatest opportunity. US&FCS is working to determine the best placement of additional staff should increased funding materialize, and will evaluate its overseas presence and make appropriate adjustments to its footprint as markets and the demand for services require. On the contrary, should funding remain flat, US&FCS will look to further reposition resources from third and possibly second tier countries into the top tier. Absent the closing of additional posts due to market conditions or budget constraints, any decrease in staff would be accomplished through attrition.

## QUESTION SUBMITTED BY SENATOR THAD COCHRAN

## MARINE MAMMAL STRANDING—GULF OF MEXICO

*Question.* When marine mammals strand themselves in the northern Gulf of Mexico and cannot be returned to the ocean, the National Marine Fisheries Service

(NMFS) decides where to place these animals for their long-term care. Despite the fact that several dolphins have stranded themselves in the northern gulf, NMFS has chosen to send these animals to facilities that are not involved or participate in the stranding response in the area. Organizations such as Institute for Marine Mammal Studies (IMMS) assisting National Oceanic and Atmospheric Administration (NOAA) in the stranding response should be preferred in the allocation of these non-releasable stranded animals as these facilities spend a lot of time, effort, and resources in assisting NOAA. Why is that the case?

Answer. One of the primary goals of NMFS is the successful rehabilitation of stranded marine mammals and their release back to the wild. On occasion, we (along with the attending veterinarian) determine that rehabilitated animals should not be released for medical or behavioral reasons and they must be placed in permanent captivity. We place nonreleasable dolphins in public display facilities through an equitable and transparent consideration of the capabilities of interested facilities in meeting the specific animal's needs.

Participation in the Marine Mammal Health and Stranding Response Program is not a criterion considered in the placement of animals. Nonreleasable animals are often placed with entities that do not participate in the rescue and rehabilitation of that species. For example, IMMS is on the national placement list to receive non-releasable California sea lions, which is not a species found in the Gulf of Mexico.

We have routinely alerted IMMS about each nonreleasable dolphin since it received its public display license in December 2009. In 2011, four young bottlenose dolphins were determined to be nonreleasable to the wild. One of these animals was placed at the facility where it was being rehabilitated because they could provide for the social and developmental needs of this animal. The IMMS expressed an interest in possessing each of the three remaining animals. We determined that they did not have the appropriate number and social composition of dolphins in its custody to integrate these young individuals, compared to other facilities where they were ultimately placed.

We strive to ensure that nonreleasable dolphins are placed in appropriate social groups based on the animal's age and sex, and its social, health, and behavioral condition. This is especially critical for young animals in need of foster care from adult females with maternal experience. A copy of our detailed policy for placing non-releasable marine mammals into permanent captivity is available through the following web link: <https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/02-308-02.pdf>.

#### SUBCOMMITTEE RECESS

Senator MIKULSKI. Mr. Secretary, this concludes our hearing. We thank you for your testimony. We look forward to your ongoing cooperation. We, too, want to do business in the subcommittee at the speed of business.

We also, while we've been insistent about certain performance standards and expectations, we really do want to let the people who work at Commerce know, whether they're doing trade agreements, enforcing trade, working on those incredible standards that take ideas into products that we need to thank the 40,000-plus people who work hard every day to create jobs, and sustain jobs, and keep our country safe. So, let's all work together, so that we can be a more frugal Government, and have some smart funding initiatives.

This subcommittee stands in recess until next Wednesday, at 2 p.m., when we're going to take the hearing of the NASA administrator.

[Whereupon, at 11:25 a.m., Thursday, March 22, the hearing was concluded, and the subcommittee recessed, to reconvene at 2 p.m. on Wednesday, March 28.]

**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2013**

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**WEDNESDAY, MARCH 28, 2012**

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

The subcommittee met at 2:03 p.m., in room SD-124, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Brown, Hutchison, Shelby, and Cochran.

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
STATEMENT OF CHARLES F. BOLDEN, JR., ADMINISTRATOR**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. The subcommittee on Commerce, Justice, Science, and Related Agencies (CJS) will come together, and we will be taking the testimony of the Administrator of the National Aeronautics and Space Administration (NASA), Charles F. Bolden.

But before we do, I want to say that this is the last public hearing of Senator Kay Bailey Hutchison. This is not her last appearance before the subcommittee, but it's our last public hearing on CJS appropriations.

And as her good friend and colleague, I have a present for you. This is not a goodbye gift. This is a commemorative gift. But we couldn't let this gathering of people, particularly from America's space program, its leadership, those who are interested in the space community, without taking this opportunity to just thank you for being a really great senator from Texas, a really great Senator for America and America's future, science, technology, a real advocate for the space program, keeping an eye on the bottom line. We just wanted to let you know this subcommittee, its members and all of us just think the world of you.

Senator HUTCHISON. I thank you very much.

Senator MIKULSKI. So let me present that to you. Take a peek.

Senator HUTCHISON. Okay. Thank you very much.

Senator MIKULSKI. No, it didn't come from him.

Senator HUTCHISON. No, I know. I never get gifts from him.

Senator MIKULSKI. He's going to give you one in a minute.

Senator HUTCHISON. Oh, gosh, this is great.

Senator MIKULSKI. Wait until you see this. This is—

Senator HUTCHISON. I would rather have one from him.

Senator MIKULSKI. This is so cool.

Senator HUTCHISON. This is cool. That is really cool.

Senator MIKULSKI. It is a crystal rocket.

Senator HUTCHISON. It is.

Senator MIKULSKI. It's the space shuttle, made here in the United States of America, on time.

Senator HUTCHISON. And the time is right.

Senator MIKULSKI. It's on time, it's on time.

Senator HUTCHISON. I love it. Isn't that neat? Yes, I love it. Thank you.

Senator COCHRAN. If you put it up here, it might launch.

Senator HUTCHISON. Well, I love it, and thank you for the commemoration. I did not realize this would be our last official hearing, but we do have a lot of work to do, and I can't tell you how much I appreciate the relationship and the support that we have from our chairman and the members of this subcommittee. I think we've done great things for NASA, and we've been creative, and I can't tell you how much I appreciate the ability for us to be on the same wavelength and really accomplish something for our pre-eminence in space. So, thank you very much.

Senator MIKULSKI. Senator Hutchison, it is our last scheduled hearing on the fiscal year 2013 CJS appropriations. The chair reserves the right to conduct other hearings as might be necessary as our process continues onward, or if there is a special event that would require special attention. So that's our last scheduled hearing, but we know you're going to be in the thick of it on this bill, all the way up to the President signing it.

Senator HUTCHISON. For sure.

Senator MIKULSKI. We're going to get underway pretty quickly, and we want to thank Administrator Bolden for being so flexible. This hearing was originally scheduled for Thursday, and because of other hearings at this time, we asked to rearrange this. So we thank you for your courtesy.

What we're going to do today is have open statements from Senator Hutchison and myself, then go to questions. We'll follow the 5-minute rule, and look forward to hearing from the Administrator.

So today we want to welcome Administrator Bolden, testifying on behalf of the fiscal year 2013 NASA appropriations.

As chairwoman, I have three priorities for NASA: make sure we have a balanced space program that will make NASA move forward with the programs that the Congress has authorized and funded; we want NASA to be an economic engine, out-innovating, out-educating, and out-building what we need to do to keep America pre-eminent in space; also, as a duty to the taxpayer, we continue our rigorous oversight and accountability to make sure taxpayers' dollars are spent wisely and to acknowledge the fact that we need to focus on a more frugal Government. I want to make sure that NASA has what it takes to carry out its mission, explore the universe, understand and protect our planet, and create new knowledge and new technologies that lead to breakthroughs.

The President's budget for NASA is \$17.7 billion. I want the subcommittee to note this is \$89 million less than the fiscal year 2012

level, and in the last 3 years NASA has already been cut by \$1 billion. Within the request, NASA outlines three top priorities:

- the Space Launch System (SLS) rocket and the Orion capsule, I know of great interest to the members;
- supporting the International Space Station (ISS) with commercial flights for cargo and hopefully one day, astronauts; and
- building the James Webb Space Telescope (JWST), but also continuing our focus on science.

NASA will be asked to accomplish these priorities with far less than in the last NASA Authorization Act. In supporting these three priorities, NASA has made some tough choices. Science is cut by \$179 million less than the fiscal year 2012 level. The funding for the SLS and Orion is \$291 million below fiscal year 2012. And NASA education funding, something I know is very important to the Administrator, is cut by \$28 million.

Additionally, if we don't avoid a sequester, NASA will be cut by another 8 percent across the board. We will want to hear from Administrator Bolden on how a cut like that will impact the NASA ability to carry out its mission.

Oh, man, that pollen is—I hope the space capsules are cleaner than the Dirksen Building here.

This subcommittee has always worked to make sure we have a balanced space program in science aeronautics, a reliable transportation system, and human space flight. For science, this budget will keep NASA's near-term launches on track. This is good news—important side missions to look at our solar system, understand the Sun, and protect our planet.

I'm troubled that the budget does not invest adequately in future missions, the highest science priorities that are identified by the National Academies in their decadal surveys. We're concerned about the cuts in Planetary Science, Mission to Planet Earth, dark energy, and Heliophysics. We'll explore that more in the questions.

We know that NASA is an economic engine, and we hope to hear more about what SpaceX and Orbital are doing and whether we're going to be on time and online.

I just want to close by commenting on accountability and oversight. First of all, we need to compliment NASA for achieving for the first time since 2002 a clean financial audit, and I know that was due to your stewardship and insistence, Mr. Administrator, and we're counting on you and your team to continue vigilant oversight and accountability.

I appreciate NASA's effort to also re-evaluate the JWST. We've got to make sure we stay online and to keep the project underway.

#### PREPARED STATEMENT

The Government Accountability Office's most recent assessment of NASA's large projects found that NASA's large programs are often over-budget and behind schedule. They can do better, and we'll be able to talk about it.

I ask unanimous consent that my full statement be in the record.  
[The statement follows:]

## PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

Today the Commerce, Justice, Science, and Related Agencies Subcommittee welcomes National Aeronautics and Space Administration (NASA) Administrator Charles F. Bolden, Jr. who will be testifying about NASA's fiscal year 2013 budget request.

As chairwoman, I have three priorities for NASA. First, is to implement a balanced space program. How will NASA move forward with the program the Congress authorized and funded?

Second, is to be an economic engine. How is NASA putting America to work out-innovating, out-educating, and out-building? Third, is oversight and accountability. How is NASA ensuring our tax dollars are spent wisely?

I want to make sure that NASA has what it needs to carry out its mission, explore the universe, understand and protect our planet, and create new technologies that lead to new breakthroughs creating jobs of the future.

The President's budget request for NASA is \$17.7 billion, which is \$89 million less than the fiscal year 2012 level. In the last 3 years, NASA's appropriation has been cut by \$1 billion. Within the request, NASA outlines three top priorities:

- Space Launch System (SLS) rocket and Orion capsule;
- supporting the International Space Station (ISS), including commercial flights for cargo and astronauts; and
- building the James Webb Space Telescope (JWST).

NASA will be asked to accomplish those priorities with less, far less, than envisioned in the last NASA authorization act. In supporting those three priorities, NASA has made some tough choices. Science is cut \$179 million below the fiscal year 2012 level; funding for SLS and Orion is reduced below the fiscal year 2012 level; and NASA education funding is cut \$38 million or 28 percent.

Additionally, if we do not avoid a sequester NASA will be cut by another 8 percent across the board. We want to hear from Administrator Bolden on how a cut like that will impact NASA's ability to carry out its mission.

This subcommittee has always worked to preserve a balanced space program with science, aeronautics, and sustainable human flight. For science, this budget will keep NASA's near-term launches on track. This is good news. This supports important science missions to explore our solar system and the universe, understand the Sun, and observe and protect our planet.

But I am troubled that the budget does not invest adequately in future missions—the next highest science priorities identified by the National Academies' decadal surveys. We must keep making progress on the Academies' recommendations, now and in the future.

This year, we hope to see both SpaceX and Orbital launch cargo to ISS, results of a partnership between NASA and the private sector. Once Orbital starts launching out of Wallops there will be 400 new high-tech jobs on the Eastern Shore. SpaceX has created 1,500 jobs since it became part of the commercial cargo program in 2006.

Nationwide, aerospace industries create a \$50 billion trade surplus for the United States, and NASA should be a partner with them. Our new commercial space rockets can launch a new industry in places like Wallops Island. NASA-developed capabilities, like the satellite servicing group at Goddard, have the potential to create jobs for today and jobs for tomorrow—innovation jobs that can't be outsourced. That's why we have a strong coalition of space Senators, because we believe in NASA's ability to bring out the best of America.

But to keep that support, NASA has got to be more frugal. Last year, NASA achieved a clean financial audit for the first time since 2002. We are counting on NASA to remain vigilant on oversight and accountability.

I appreciate NASA's efforts to re-evaluate JWST. Now NASA must keep to the plan. The General Accounting Office's most recent assessment of NASA's large projects found NASA's large programs—other than JWST—average \$79 million or 15 percent more than the budget and 8 months behind schedule.

NASA has to do better. More than 80 percent of NASA's funding is awarded by contract. That's more than \$14 billion of NASA's fiscal year 2013 request. NASA's Inspector General has identified project and contract management as top challenges for the agency. This subcommittee will be a watchdog and we expect NASA to implement the Inspector General's recommendations.

Frugal times demand a frugal space agency. Our space programs must be affordable, balanced, and wisely managed to gain support in frugal times. But make no mistake, NASA's mission is worth our passion.

Senator MIKULSKI. We have many members here, and I know we will want to proceed.

Senator Hutchison, do you have a statement?

STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Senator HUTCHISON. Thank you, Madam Chairman.

Madam Chairman, I am concerned about the budget that the Administrator is putting forward today, and I want to go over just some of the agreements that we have made in the past and what the result of those agreements is in your budget, Mr. Administrator.

Your testimony for the subcommittee lays out what NASA claims are its priorities, but what is said and what is being proposed don't really match. NASA's priorities, as we all agreed to in a meeting in my office just a few months ago, were, number one, the JWST, and it has been thoroughly reviewed and appropriately funded. It is a priority which is funded as anticipated.

The second priority is the SLS and the Orion Capsule, which were studied inside and outside of NASA, and again independently before finally being allowed to move forward. The resulting independent analysis said the budget assumed in that analysis for the first 3 to 5 years, which was what we had agreed would be the amount, was accurate and provided what was needed to maintain schedule.

So, of course, I was surprised when I got the call that NASA was going to cut this part of the budget by \$170 million. This is a case where NASA has chosen to say it's a priority but has deliberately cut the funding that was assumed to assure that it could maintain its schedule.

So this is, of course, a great concern to me and to the Members of Congress who agreed with these priorities and thought we had the agreement from NASA.

Number three, the final priority is Commercial Crew, which receives a proposed increase of 104 percent more than last year. This is being asked for without any type of independent cost verification for the program and, at \$830 million, exceeds the authorized amount for Commercial Crew by \$330 million.

Now, many in the space community say that a lot is riding on the upcoming cargo demonstration flight next month, and the fate of Commercial Crew is tied to its success. I think they're wrong. I think they should be saying it's about time, that we have been waiting for years longer than we have been promised by NASA and its commercial partners for this launch, and we hope the delay will produce success.

But even though Commercial Crew continues to struggle to attain its goals, I recognize its importance. I do support Commercial Crew. However, I think NASA is continuing to throw money at too many companies with a hope of flying astronauts and not doing what it has done with the SLS and the launch vehicle, which is to undertake a study for the Commercial Crew, similar to what you have done in Orion and SLS, including an independent analysis of options, and then funding the programs that NASA believes have the most hope of gaining what we all want, which is the quickest American-provided commercial crew vehicle to ISS as possible.

Members of Congress are already coalescing around NASA choosing no more than two companies, providing competition as well as funding realities that we see in our budget, and not stealing from the long-term future, which is Orion and the launch vehicle.

If we provided the authorized level for this year for Commercial Crew and add the funds from last year that have yet to be spent, NASA would have more than \$900 million available for Commercial Crew selections. That amount of funding fits within NASA's stated estimated cost of \$300 to \$500 million per Commercial Crew entrant, if two are selected. If you adhere to the three or four, you're going to go over the budget, you're going to continue to cut back on Orion and the launch vehicle, and it's going to mean that our long-term future is jeopardized.

So I hope, Mr. Administrator, that you and the NASA personnel who have done such a great job for our country through all of these years of space exploration will go back to the drawing board and support Commercial Crew in a fiscally responsible way so that we can all, once again, be on the same page for our goals, which is a Commercial Crew vehicle that will go to ISS within a couple of years, at the same time that we are using the expertise from that and moving forward expeditiously for the longer-term lower-Earth orbit (LEO) ventures that will spell the real long-term future for the science and technology that we hope to gain.

Thank you, Madam Chairman.

Senator MIKULSKI. I liked it.

We're going to turn to Administrator Bolden for his testimony, and then after the conclusion of his testimony, Senator Cochran, noting you are the vice chairman of the full Appropriations Committee and the many demands on your time, we'll turn to you for the first set of questions. Will that help you out?

SUMMARY STATEMENT OF CHARLES F. BOLDEN, JR.

Mr. BOLDEN. Madam Chair, Senator Hutchison and members of the subcommittee, today it's my pleasure and my privilege to discuss the President's fiscal year 2013 budget request for NASA. All of us at NASA are very grateful to the Congress and to this subcommittee for the strong level of support we continue to receive.

And before I press on any more, I have to join the chair in recognizing Senator Hutchison for your long-term commitment to NASA, as well as to this Congress. Although this may be the last official public meeting of this subcommittee, I'm certain that this will not be the last time that you and I spend time together. I really look forward to it.

But we have benefited from your guidance and your commitment since your election in 1993, and you have always been a strong advocate for human space flight and for the Johnson Space Center, a place that I called home at one time. You have been one of the Congress' strongest proponents for a space station, and you have insisted that we enhance its utilization, and you were the one that forced us or supported us in making it a national laboratory. You were a key champion for the Alpha Magnetic Spectrometer and for SLS and the Multi-Purpose Crew Vehicle (MPCV) and for full utilization of ISS, and I really want to thank you personally.



Your leadership in the appropriations action brought all of us together in your office, as you said, on a bipartisan basis with then Director of the Office of Management and Budget, Jack Lew, to get the three priorities for NASA that we have, at your insistence, that we prioritize. Otherwise, we were going nowhere.

So I sincerely thank you on behalf of all of the NASA family, and I look forward to continuing to work with you until the last day you're in office, and then even after that, because I know you will continue to make your mark on the space program. But, thank you very much personally.

Our requested budget, as has already been mentioned, was \$17.7 billion, and this will enable NASA to continue to execute bipartisan space exploration as planned and agreed to by the President and the Congress in 2010. Despite the constrained fiscal environment facing the nation, this request supports an ambitious civil space program that puts us on a path to achieving a truly exciting set of goals, to send humans to an asteroid, and ultimately to Mars, and to broaden human activity in LEO.

The fiscal year 2013 request supports all of the key priorities agreed upon by the President and congressional leadership. First, American astronauts continue to live and work in space onboard the now-completed ISS, conducting research to benefit life here on Earth and prepare us for deep space human exploration. NASA is committed to making this national resource available to broader research communities.

We are also committed to ensuring that American companies launching from U.S. soil transport our astronauts and their cargo to the ISS. This year we will see the first commercial cargo flights to ISS, and with the approval of the funding request, we're on track to have an American company or companies transporting our astronauts to the ISS by 2017.

Second, NASA is on track to develop a flexible deep space launch system that will be the most capable in history. We are making remarkable progress on contracts and design for the SLS heavy-lift rocket and the MPCV, Orion, which will carry American astronauts beyond LEO and into deep space within the next decade. Our fiscal year 2013 budget request supports our plan for an un-crewed test flight in 2017, and a crew test mission by 2021.

Third, we continue progress toward a launch of the world's most advanced telescope, the JWST, in 2018. NASA's budget request supports a portfolio of innovative science missions resulting in a stream of data from orbits around the Sun, Mercury, the Moon, the asteroid Vesta, Mars, and Saturn. We now have missions on the way to Jupiter, Pluto, and Mars. Sixteen Earth science missions currently study the Earth.

As this subcommittee knows, tough choices had to be made, so we will not be moving forward with the 2016 and 2018 exo-Mars missions we had been planning with the European Space Agency (ESA). Instead, NASA is developing a new integrated strategy for sequence of strategically selected missions that increase scientific knowledge, advance key technologies, and inform and enable human exploration goals. Our plan, including the framework for our mission to take advantage of the 2018 to 2020 launch oppor-

tunity, is targeted for completion hopefully in time to support the fiscal year 2013 appropriations process.

As we finalize that, we will coordinate extensively with the science community, our international partners and, of course, the Congress. The fiscal year 2013 budget request continues to support ambitious Mars exploration, including two spacecraft currently orbiting Mars, the Opportunity rover on the surface, the Mars Science Laboratory, Curiosity, and the planned 2013 Mars Atmosphere and Volatile Evolution (MAVEN) mission to explore Mars's upper atmosphere.

#### PREPARED STATEMENT

The fiscal year 2013 budget request also supports continued advances in new aviation, science, and space technologies, absolutely essential to enable NASA to achieve its ambitious goals. With the 2013 request, NASA will conduct aeronautics research to enable the realization of NASA's Next Generation Air Transportation System, or NextGen, and use NASA's education programs to inspire the next generation of scientists and explorers.

NASA is grateful to the American people and to you on this subcommittee for your continued support in these challenging times. I thank you and I look forward to your questions.

[The statement follows:]

#### PREPARED STATEMENT OF CHARLES F. BOLDEN, JR.

Madam Chair and members of the subcommittee, today it is my privilege to discuss the President's fiscal year 2013 budget request for National Aeronautics and Space Administration (NASA). Our requested budget of \$17.7 billion will enable NASA to execute the balanced program of science, space exploration, technology, and aeronautics agreed to by the President and a bipartisan majority of the Congress.

Despite the constrained fiscal environment facing the Nation, this request supports a robust civil space program that puts us on a path to achieving a truly exciting set of goals. We are working to send humans to an asteroid and ultimately to Mars, to peer deep into space to observe the first galaxies form, and to broaden human activity in low-Earth orbit (LEO). We have completed assembling and outfitting of the U.S. segment of the International Space Station (ISS), allowing us to focus on full utilization of the station's research capabilities. NASA is making air travel safer and more efficient, learning to live and work in space, and operating a fleet of spacecraft to investigate the Earth, the solar system, and the universe.

The fiscal year 2013 request supports the implementation of key priorities for NASA.

First, since the historic construction of the ISS was completed in 2011, and now that all the international partners have agreed to its extension to at least 2020, we must enhance its utilization to ensure the success of this national laboratory. For more than 11 years, international crews of space explorers have been living in orbit, both building the ISS and conducting a diverse research program continuously. NASA is committed to making this national resource available to the broader scientific and commercial research community. Key to its sustainment is the availability of a U.S. commercial crew and cargo delivery capability as soon as possible. NASA is working with American companies to establish the next generation of safe and efficient vehicles for access to LEO and the ISS. In calendar year 2012, we will see the first commercial cargo flights to the ISS, demonstrating the innovation and capabilities of our industry partners and providing a path forward to ease our sole reliance on Russian transport of astronauts. We will continue to work with our industry partners to develop end-to-end systems for transporting crew and cargo to orbit. I am committed to ensuring that American companies, launching from U.S. soil, are providing the cargo and crew transportation services that we need to keep the ISS functioning. We are making steady progress on these launch services. Later this spring and summer, we expect that both of our private company partners, SpaceX and Orbital Sciences, will complete demonstration flights of their cargo vehi-

cles to station and actually berth with the ISS, marking a major milestone in our goal to establish commercial space capabilities for LEO travel. Some modification of the Iran, North Korea, Syria Non-proliferation Act (INKSNA) provisions will likely be required for the continued operation of ISS and other space programs after 2016. The administration plans to propose appropriate provisions and looks forward to working with the Congress on their enactment.

Second, with the fiscal year 2013 budget request, NASA is moving out on plans to develop a flexible launch system that will ultimately be the most capable in history. The Space Launch System (SLS) rocket and the Orion Multi-Purpose Crew Vehicle (Orion MPCV) will carry American astronauts beyond LEO and into deep space within the next decade. Following a thorough analysis of alternatives, NASA has established architecture for SLS and the Orion MPCV. In recent months we have continued to push forward with contracting and design efforts to make this system a reality. At the same time, we are moving forward on a critical effort to develop the technologies and capabilities required to support our ambitious exploration goals. Our fiscal year 2013 budget request supports our plans for an uncrewed SLS test flight in 2017 and a crewed test mission by 2021.

Third, we plan to continue progress toward the launch of the world's most advanced telescope in 2018. The James Webb Space Telescope (JWST) will operate deep in space to orbit the Sun nearly 1 million miles from Earth. From that vantage point, JWST will look out into space and back in time almost as far as it is possible to look. Over the past year, NASA has engaged in a thorough review of JWST, made important adjustments to management, and put the project on a sound financial footing. Since we completed this new plan, the project has met 19 of 20 fiscal year 2011 milestones (with one deferred without impact), and has met all fiscal year 2012 milestones to date on or ahead of schedule. NASA is confident that the fiscal year 2013 request supports a 2018 launch of JWST.

Fourth, the fiscal year 2013 budget request supports continued advances in new technologies. The National Research Council (NRC) has determined that future U.S. leadership in space requires a foundation of sustained technology advances, but that the U.S. space program is now living on the innovation funded in the past. Our focus on new space technologies is absolutely essential to enable NASA to achieve its ambitious goals. At the same time, NASA technology research seeds innovation, supports economic vitality and helps to create new jobs and expanded opportunities for a skilled workforce. Space technology investments address long-term agency technology priorities and technology gaps identified by NASA Mission Directorates and within the agency's draft space technology roadmaps. On February 1, 2012, NRC released its final review of NASA's Draft Space Technology Roadmaps. The report, which notes that NASA's technology base is largely depleted and identifies 16 top-priority technologies necessary for NASA's future missions, which also could benefit American aerospace industries and the Nation. This NRC assessment will help guide NASA's technology priorities in the years to come.

NASA's fiscal year 2013 budget request supports a portfolio of innovative science missions that will explore the diverse planetary bodies of our solar system, unravel the mysteries of our universe and provide critical data about our home planet. Currently operating missions continue to return a stream of data from orbits around the Sun, Mercury, the Moon, the asteroid Vesta, Mars, and Saturn. We now have missions on the way to Jupiter, Pluto, and Mars. Sixteen Earth Science missions in orbit study the Earth as an integrated system. The Hubble, Spitzer, Chandra, and Fermi space telescopes continue to make groundbreaking discoveries on an almost daily basis. In calendar year 2011, the MESSENGER spacecraft entered orbit around Mercury, Ebb and Flow began mapping the gravity field of the Moon, and Juno launched on its way to Jupiter. Also in 2011, Aquarius produced the first global view of ocean surface salinity and the Suomi National Polar-Orbiting Partnership (SNPP) satellite began making observations of Earth's weather and climate. In 2012, we will launch the Nuclear Spectroscopic Telescope Array to study massive black holes, supernovae and other high-energy sources in the universe, and will launch the Radiation Belt Storm Probes into Earth's Van Allen belts. In 2013, we will launch the next land observing mission (the Landsat Data Continuity Mission) and complete environmental testing of the Global Precipitation Measurement mission, the Lunar Atmosphere and Dust Environment Explorer (LADEE) and the Mars Atmosphere and Volatile Evolution (MAVEN) mission.

In view of these key priorities for NASA and of our constrained fiscal environment, we will not be moving forward with the 2016 and 2018 ExoMars missions that we had been studying with the European Space Agency (ESA). Instead, NASA is developing a new, integrated strategy for Mars missions to ensure that the next steps for Mars exploration will support science, as well as longer-term human exploration goals, and take advantage of advanced space technology developments. NASA

will complete this integrated plan, including the framework for a mission to take advantage of the 2018 or 2020 launch opportunities, no later than this summer and, hopefully, in time to support the fiscal year 2013 appropriations process. The fiscal year 2013 request supports this approach, and this process will be informed by coordination with the science community and our international partners. The fiscal year 2013 budget request continues to support robust Mars exploration, including two spacecraft orbiting Mars, the Opportunity rover on the surface, a multi-year exploration of Mars by the Curiosity Mars Science Laboratory, and the MAVEN mission to explore the Mars upper atmosphere. The August landing of Curiosity will be among the most difficult technical challenges that NASA has ever attempted and Curiosity's mission of exploration will far eclipse anything humanity has attempted on the surface of Mars in the past. We look forward to receiving a treasure trove of data from the surface of Mars to help answer questions about its past and present habitability.

With the fiscal year 2013 request, NASA will conduct aeronautics research to enable the realization of the Nation's Next Generation Air Transportation System (NextGen), and the safer, more fuel efficient, quieter, and environmentally responsible aircraft that will operate within NextGen. Through the aeronautics research we conduct and sponsor with universities and industry, NASA helps to develop the technology that enables continuous innovation in aviation. As a result, U.S. companies are well-positioned to build on discoveries and knowledge resulting from NASA research, turning them into commercial products that benefit the quality of life for our citizens, provide new high-quality engineering and manufacturing job opportunities, and enables the United States to remain competitive in the global economy.

The request also continues NASA's dedicated efforts to inspire the next generation of explorers. NASA can provide hands-on experience and inspiration as few other agencies can. To foster the development of the U.S. workforce, NASA's education programs will focus on demonstrable results and capitalize on the agency's ability to inspire students and educators through unique missions and the big challenges that help today's young people envision their future in science, technology, engineering, and mathematics (STEM). NASA education is one of many Federal Government programs that support STEM education. NASA education is working with other agencies through the National Science and Technology Council's Committee on STEM Education to fund coordinated and effective student and teacher opportunities. NASA will focus its resources on demonstrated areas of strength in its unique role in STEM education, freeing resources for other agency priorities. NASA brings many assets, beyond funding, to support the administration's emphasis on STEM education. Our people, platforms like the ISS, and our facilities across the Nation all contribute to strengthening STEM education.

NASA is grateful to the American people, and their representatives here on the subcommittee for the continued support for NASA despite the difficult resource challenges facing our Nation. A more detailed description of NASA's balanced program of science, space exploration, technology development, and aeronautics is provided below.

#### SCIENCE

NASA's Science Mission Directorate develops and operates innovative spacecraft missions and instruments that help researchers deliver new discoveries of the Earth, the Sun, the planetary bodies in our solar system, and the universe beyond. The fiscal year 2013 budget request for science is \$4,911.2 million.

NASA's Earth Science Program advances knowledge of the integrated Earth system—the global atmosphere, oceans, land surfaces, ice sheets, ecosystems, and interactions among them. The fiscal year 2013 budget request for science includes \$1,784.8 million for Earth science. In 2011, NASA successfully launched Aquarius/SAC-D, a cooperative ocean surface salinity mission conducted with the Argentine Space Agency, and with our partner the National Oceanic and Atmospheric Administration (NOAA) and the SNPP. SNPP is the first step in developing the Nation's next-generation climate and weather monitoring missions. During calendar year 2012, NASA will select the first small satellite mission under the Earth Venture (EV) program as recommended in NRC's decadal survey for Earth science. The fiscal year 2013 budget will fund all three components of the EV program:

- this new small mission;
- the on-going EV-1 airborne science campaigns; and
- the first EV-I instrument of opportunity.

Fiscal year 2013 will see the launch of the Landsat Data Continuity Mission and the completion of environmental testing for the Global Precipitation Measurement mission. The fiscal year 2013 budget will also fund continued development of the

first two Tier 1 decadal survey missions, Soil Moisture Active Passive mission and ICESat-2. Finally, the fiscal year 2013 budget will fund continued development of three key missions to assure delivery of sustained Earth observations (Gravity Recovery and Climate Experiment-Follow on, OCO-2, and the SAGE-III instrument that will fly on the ISS) and fund the continued operation of 16 missions currently in orbit as well as research using the resultant data. The fiscal year 2013 budget request for Earth science sustains support for focused research, applications, and technology development activities that redeem the investment in our ongoing missions, while positioning us to accomplish essential new missions in the future. NASA's Earth science program leads to improved prediction services by other agencies, providing direct tangible benefits to communities, businesses, and citizens.

NASA's Planetary Science Program explores the content origin and evolution of the solar system and the potential for life beyond Earth. The fiscal year 2013 budget request for science includes \$1,192.3 million for planetary science. In the second half of 2011, NASA launched Juno on its way to Jupiter, Gravity Recovery And Interior Laboratory (GRAIL) to the Moon, and the Mars Science Laboratory to the Red Planet. GRAIL's "Ebb" and "Flow" spacecraft will conduct their mission to map the Moon's gravity field and interior structure during the first half of 2012. The Mars Science Laboratory rover Curiosity will land in Gale Crater on Mars on August 6, 2012. The fiscal year 2013 budget request funds the operation of Curiosity on Mars. The fiscal year 2013 budget will also fund the beginning of development of the next *Discovery* mission that will be selected from among three candidates completing their studies in 2012. In fiscal year 2013, NASA will be completing development of the LADEE mission to the Moon and the MAVEN mission to Mars for launch in late calendar year 2013/early fiscal year 2014. Also in fiscal year 2013, NASA will continue the development of the OSIRIS-REx mission to return samples from an asteroid, and will continue operation of the Dawn (the asteroid Vesta), Juno (Jupiter), Cassini (Saturn), New Horizon (Pluto), and MESSENGER (Mercury) missions. However, the resources available over the budget horizon are insufficient to enable either a future Mars or Outer Planets flagship mission as identified by last year's planetary science decadal survey.

NASA remains committed to a vigorous program of Mars exploration and continuing America's leadership role in Mars exploration within the available budget. As stated above, NASA is discontinuing its effort on instruments for the joint (NASA/ESA) 2016 ExoMars Trace Gas Orbiter mission and the 2018 mission that NASA had been exploring with ESA. Instead, NASA will develop an integrated strategy to ensure that the next steps for Mars exploration will support science as well as long-term human exploration goals. This process will be informed by coordination with the science community and international community. NASA is developing a plan for a reformulated medium-class robotic science Mars mission, within available resources, to take advantage of the favorable location of Mars and Earth in 2018 or 2020. NASA's plan is to work with potential international partners including ESA and the science community to lay out an initial framework for this mission over the next several months and produce a mission architecture by this summer. The budget request includes \$62 million in fiscal year 2013 for this mission.

NASA's Astrophysics Program seeks to discover how the universe works, explore how the universe began and evolved and search for Earth-like planets. The fiscal year 2013 budget request for science includes \$659.4 million for Astrophysics. NASA will continue to conduct science operations flights of the SOFIA aircraft in 2012 and 2013 as we upgrade its science instruments, and will continue parallel development of efforts leading to achievement of a full operational capability in 2014. The fiscal year 2013 budget will fund the early stages of development of the next Astrophysics small Explorer mission to be selected early in calendar year 2013. Also in 2013, NASA will complete development of its instrument contributions to Japan's Astro-H mission for launch in fiscal year 2014. The fiscal year 2013 budget enables NASA to continue development of the GEMS Explorer mission toward a launch in 2015. Finally, the fiscal year 2013 budget will fund the operation of eleven Astrophysics missions currently in operation, including the Hubble, Spitzer, Chandra, and Fermi space telescopes.

The JWST is an infrared telescope designed to study and answer fundamental astrophysical questions ranging from the formation and structure of the universe to the origin of planetary systems and the origins of life. The fiscal year 2013 budget request for science includes \$627.6 million for JWST. A scientific successor to the Hubble Space Telescope and the Spitzer Space Telescope, JWST will be used by international teams of astronomers to conduct imaging and spectroscopic observations. The Observatory will be located in an orbit near the second Sun-Earth Lagrange point, approximately 1.5 million km from Earth. The telescope and instruments will be operated at a temperature of 40 degrees above absolute zero (40 Kel-

vin) shielded from the heat of the Sun by a large sunshield, to enable the Observatory to achieve unprecedented sensitivity over its entire wavelength range. NASA completed a new baseline cost and schedule for JWST at the end of calendar year 2011, and is now implementing that new baseline. All 18 JWST primary mirror segments have been completed. NASA expects to take delivery of all four JWST instruments in fiscal year 2012–2013. In fiscal year 2013, NASA will begin sunshield fabrication and continue development of the Integrated Science Instrument Module and the ground segment.

NASA's Heliophysics Program seeks an understanding of the Sun, and the complex interaction of the coupled system comprising the Sun, Earth, other planetary systems, the vast space within the solar system, and the interface with interstellar space. The fiscal year 2013 budget request for Science includes \$647 million for Heliophysics. Later this year, NASA will launch the Radiation Belt Storm Probes mission, and the fiscal year 2013 budget will fund completion of its checkout and its early operations. The fiscal year 2013 budget will fund completion and launch of the Interface Region Imaging Spectrograph (IRIS) small Explorer mission as well as beginning of the development of the next small Explorer to be selected in early in calendar year 2013. Fiscal year 2013 will be a peak year in the development of the Magnetospheric Multiscale mission to be launched in 2015. The fiscal year 2013 budget will also fund the continued formulation of the Solar Probe Plus mission and development of the Solar Orbiter Collaboration with ESA. NASA expects to receive the new NRC Heliophysics decadal survey this spring, and will use it to shape the fiscal year 2014 budget request in this area.

Also during fiscal year 2013, NASA will continue development of environmental operational satellites for NOAA on a reimbursable basis. These include the Joint Polar Satellite System, Geostationary Operational Environmental Satellites (GOES-R series), Jason 3, and the Deep Space Climate Observatory. Funding for these programs is in the Department of Commerce budget request for NOAA.

In addition to the space missions emphasized above, the fiscal year 2013 budget funds NASA's Science Mission Directorate to continue to sponsor competitively selected research by universities, industry, and government laboratories across the Nation. Using data from these missions, the Nation's scientific community pursues answers to profound scientific questions of interest to all humanity as well as questions that enhance our national capability to predict environmental change including severe storms, droughts, and space weather events, and thereby enhance our economic and environmental security.

#### AERONAUTICS RESEARCH

NASA aeronautics research will enable the realization of the Nation's Next Generation Air Transportation System (NextGen), and the safer, more fuel efficient, quieter, and environmentally responsible aircraft that will operate within NextGen. Through the research we conduct and research we sponsor with universities and industry, we help to develop the technology that enables continuous innovation in aviation. American companies are well-positioned to build on discoveries and knowledge resulting from NASA research, turning them into commercial products, benefiting the quality of life for our citizens, providing new high-quality engineering and manufacturing job opportunities, and enabling the United States to remain competitive in the global economy. NASA's fiscal year 2013 budget request for aeronautics is \$551.5 million to continue our tradition of developing new concepts for aeronautics applications.

The fiscal year 2013 request for aeronautics research includes \$168.7 million for the Fundamental Aeronautics Program, which seeks to continually improve technology that can be infused into today's state-of-the-art aircraft, while enabling game-changing new concepts such as Hybrid Wing Body airframes, tilt-rotor aircraft, low-boom supersonic aircraft, and sustained hypersonic flight. In fiscal year 2010 and 2011, we conducted emissions measurements for alternative nonpetroleum fuels derived from coal and biomass that showed dramatic reductions in particulate emissions in the vicinity of airports. In fiscal year 2013, the program will perform emissions measurements behind aircraft operating at relevant altitudes and cruise speeds to provide the first-ever data on the impact of alternative fuels on contrail formation, an important factor in aviation climate impact. In fiscal year 2013, the program will also increase its research on composite materials to enable airframe weight reductions beyond those achieved with current materials and structural design concepts.

NASA is combining hypersonic and supersonic research into a single project to focus on fundamental research for high-speed flight. Research into hypersonic flight is also relevant to the Department of Defense (DOD) and NASA will retain critical

core competencies and national asset testing capabilities to continue productive collaborations with DOD. Responsibility for fundamental research on entry, decent, and landing technologies will be transferred to space technology to increase synergy with the agency's exploration and science missions. NASA will continue to work with DOD to maximize the efficiencies of current assets and investments and increase partnership to accomplish common goals. These realignments will enable NASA to focus on higher-priority research to improve the safety and minimize the environmental impacts of current and future aircraft and air traffic management systems. The fiscal year 2013 request for aeronautics research includes \$104 million for the Integrated Systems Research Program. This program evaluates and selects the most promising environmentally friendly engine and airframe concepts emerging from the fundamental research programs for further development, integration, and evaluation in relevant environments. Last year, the program completed a major study by three aircraft manufacturers to identify the critical technologies needed to simultaneously reduce emissions, fuel burn, and noise in aircraft entering service in 2025. In fiscal year 2013, the program will start a 3-year focused research effort on these technologies to advance their technology readiness. The program is also addressing the emerging desire to integrate Unmanned Aircraft Systems (UAS) into the National Airspace System. Current Federal Aviation Administration (FAA) regulations are built upon the condition of a pilot being on-board the aircraft. The Program will therefore generate data for FAA use in rule-making through development, testing, and evaluation of UAS technologies in operationally relevant scenarios.

Reductions in environmental impact will be achieved not only through new aircraft, engines, and fuels, but also through improved air traffic management procedures, which is the focus of the Airspace Systems Program with \$93.3 million requested for fiscal year 2013. Last year the program advised the FAA on new air traffic management concepts for more efficient routing of flights during their cruise phase. We also completed evaluations of concepts for new fuel-efficient arrival procedures and will deliver requirements for those concepts to the FAA this year. In fiscal year 2013, the program will begin demonstrations to verify that several new procedures for air traffic management during arrival and taxiing to the gate that are enabled by NextGen Automatic Dependent Surveillance-Broadcast (ADS-B) technology can work together seamlessly. This effort will demonstrate near-term and mid-term ADS-B application benefits and provide airlines with data to support their strategic decisions related to the significant investments they need to make to equip their aircraft with ADS-B capability.

The Aviation Safety Program, with \$81.1 million requested for fiscal year 2013, conducts research to ensure that current and new aircraft and operational procedures maintain the high level of safety which the American public has come to expect. In fiscal year 2011, the program advanced data mining methods that permit the discovery of flight operations and aircraft maintenance issues through automated analysis of the vast amounts of data generated during flight operations and by sensors onboard aircraft. These methods have enabled the development of new software for aircraft central maintenance computers on both business jet and large commercial aircraft that can identify the early stages of hardware faults 30 to 50 flights earlier than previously possible. This allows airline maintenance personnel to address equipment issues before they cause a disruptive maintenance delay at the airport gate. The program also focuses on mitigating environmental hazards to aviation and in fiscal year 2013 will conduct a flight campaign to characterize ice water content at high altitudes in tropical regions as a first step to understanding the causes of severe loss of power due to engine icing that has occurred on a number of occasions.

U.S. leadership in aerospace depends on ready access to technologically advanced, efficient, and affordable aeronautics test capabilities. NASA's Aeronautics Test Program, with \$78.1 million requested for fiscal year 2013, makes strategic investments to ensure the availability of these ground test facilities and flight test assets to researchers in Government, industry, and academia. In addition to this strategic management activity, the program will continue developing new test instrumentation and test technologies. Last year the program completed nearly \$50 million worth of upgrades to major facilities funded through the American Recovery and Reinvestment Act. These upgrades provide improved research capabilities at Glenn and Ames Research Centers for aircraft and engine icing research, and tilt-rotor designs for a new generation of rotorcraft. New capabilities were also added to the Langley 14x22 Subsonic Wind Tunnel that will enable researchers to measure noise signatures from novel aircraft designs at a fraction of the cost of noise measurement acquired by flying real aircraft over airport microphone arrays. NASA's Aeronautics Test program enables and sustains U.S. leadership in aerospace yielding high-quality jobs and ultimately a productive aerospace sector.

The Aeronautics Strategy and Management Program provides for research and programmatic support that benefits each of the other five programs, and has a requested budget of \$26.4 million for fiscal year 2013. The program manages Directorate functions including innovative concepts for aviation, education and outreach, and cross program operations.

NASA is making meaningful contributions to the aerospace community, but we cannot do all these good things alone. Therefore, our partnerships with industry, academia, and other Federal agencies are critical to our ability to expand the boundaries of aeronautical knowledge for the benefit of the Nation. These partnerships foster a collaborative research environment in which ideas and knowledge are exchanged across all communities and help ensure the future competitiveness of the Nation's aviation industry. They also directly connect students with NASA researchers and our industrial partners and help to inspire students to choose a career in the aerospace industry.

#### HUMAN EXPLORATION AND OPERATIONS

In 2011, NASA combined the Exploration Systems and Space Operations Mission Directorates to create the Human Exploration and Operations (HEO) Mission Directorate. HEO encompasses everything from the ISS and the commercial cargo and crew vehicles that will support it, to NASA's new exploration vehicles, which will take astronauts beyond LEO. HEO also includes research and technology development efforts that will enable deep space exploration, as well as critical infrastructure and operational capabilities that ensure NASA's ability to conduct testing, launch science missions, and communicate with its spacecraft across the solar system. As NASA reformulates its Mars exploration plans, we will ensure that the next steps for Mars exploration will take into account long-term human exploration as well as science goals.

The fiscal year 2013 budget request includes \$2,769.4 million for human exploration capabilities, which the agency proposes to rename Exploration Systems Development. This program includes development of the Orion MPCV, SLS heavy-lift launch vehicle, and the supporting ground infrastructure required for NASA's future crewed missions of exploration beyond LEO and into deep space. The amounts requested align with the plan developed and supported by an independent cost analysis performed last summer.

NASA's Orion MPCV will carry astronauts to, and support operations at, a variety of destinations in our solar system for periods of up to 21 days. NASA has recently completed a number of tests on Orion MPCV, including a test of the main parachute, and a series of water drop tests on the 18,000-pound Orion MPCV Boiler Plate Test Article. The Orion ground test article will undergo and complete acoustic, modal, and vibration environment compatibility testing at Lockheed Martin Denver during fiscal year 2012. The results of these tests will help improve the design for the actual flight vehicle. In May, the Orion Crew Module primary structure will be moved to Kennedy Space Center in Florida for the start of Assembly, Integration, and Production. NASA plans to conduct an uncrewed high-energy-atmospheric entry test mission of the Orion MPCV in fiscal year 2014. Designated Exploration Flight Test-1 (EFT-1), this flight test will provide critical data to influence key design decisions. EFT-1 will also validate innovative new approaches to space systems development and operations to reduce the cost of exploration missions. For EFT-1, an early production variant of the Orion MPCV spacecraft will be integrated on a Lockheed Martin-procured, heavy-class launch vehicle. The flight test will provide an opportunity to significantly inform critical design elements by operating the integrated spacecraft hardware and software in flight environments that cannot be duplicated by ground testing.

On September 14, 2011, NASA announced the design of the SLS, which will initially be capable of lifting 70–100 metric tons before evolving to a lift capacity of 130 metric tons for more demanding missions. NASA has worked diligently to accomplish the contracting and design work necessary to support a 2017 initial flight mission for the SLS. In fiscal year 2013, SLS will continue detailed preliminary design and development and undergo a preliminary design review to evaluate the completeness/consistency of the program's preliminary design in meeting all requirements with appropriate margins, with acceptable risk, and within cost and schedule constraints. This comprehensive review will determine the program's readiness to proceed with the detailed critical design phase of the project.

The SLS will use a liquid hydrogen and liquid oxygen propulsion system, building upon the investment made by the Nation over the last 40 years. The vehicle's core stage will utilize existing Space Shuttle Main Engines (SSME RS-25D) for the initial capability. NASA's use of the SSME inventory will reduce initial design costs



and take advantage of an existing human-rated system. NASA plans to modify and use the existing SSME contract with Pratt & Whitney Rocketdyne to acquire RS-25D engine servicing and testing for the initial launch system.

The upper stage of the SLS needed for the full-up SLS capability will also use a liquid hydrogen and liquid oxygen propulsion system that includes the J-2X, a new upper stage engine previously planned for use in the Ares-I vehicle. NASA is negotiating a modification to the Ares I Upper Stage contract with Boeing to develop the SLS core stage and upper stage, including avionics. SLS will also utilize the existing J-2X contract with Pratt & Whitney Rocketdyne to continue developing the upper stage engine.

NASA has been running J-2X components through a series of tests. In November and December 2011, the agency conducted three J-2X engine tests, firing the motor for a total of 680 seconds. These were the last of 10 engine test firings completed in 2011. In January and February 2012, NASA also conducted a series of J-2X Power Pack Assembly tests. These tests are part of a series of more than 100 power-pack and integrated engine tests that NASA has planned to complete the engine design and certify the J-2X for use in the SLS Upper Stage.

NASA plans to use five-segment solid rocket boosters for the initial capability test flights of the SLS. We will conduct a competition to develop the follow-on boosters based on performance requirements. In support of this effort, on February 9, 2012, the agency released a NASA Research Announcement (NRA) for Advanced Booster Engineering Demonstration and Risk Reduction. Proposals are due in April and contract awards are expected in October 2012.

On February 1, 2012, NASA also released a draft for an NRA for advanced development of key technologies in propulsion, avionics, structures and materials, and other areas. The final release is planned for March, with proposals due in May and contract award in October 2012.

Exploration Ground Systems (EGS) will develop the necessary ground systems infrastructure at the Kennedy Space Center and operational plans and procedures to prepare, assemble, test, launch, and recover the Exploration architecture elements for long-term beyond-Earth orbit exploration. EGS will focus on the lifecycle of a launch complex as an integrated system (from development, activation, operations, maintenance of capabilities to manufacture, assemble, test, checkout, launch, and recover flight hardware) to enable more efficient and cost-effective ground processing, launch and recovery operations.

The fiscal year 2013 budget request includes \$829.7 million for the Commercial Spaceflight theme. This effort will support commercial providers to develop and operate safe, reliable, and affordable commercial systems to transport crew and cargo to and from the ISS and LEO.

As part of the Commercial Orbital Transportation Services (COTS) program—NASA's commercial cargo effort—NASA has partnerships with Space Exploration Technologies, Inc. (SpaceX) and Orbital Sciences Corporation (Orbital) using funded Space Act Agreements. These agreements include a schedule of fixed-payment performance milestones culminating in a demonstration mission to the ISS that includes vehicle launch, spacecraft rendezvous, ISS berthing, and re-entry for disposal or return to Earth. Both COTS partners continue to make progress in developing and demonstrating their systems. Based on the success of their first COTS demo flight in December 2010, SpaceX plans to fully develop and assemble their next vehicle with the capabilities and equipment necessary to complete rendezvous and berthing demonstration to the ISS, thus potentially combining milestones that had been planned for separate flights. If successful, this will accelerate the completion of the COTS Space Act Agreement and enable delivery of cargo under the Commercial Resupply Services contract. This mission is tentatively planned for April 2012. Orbital Sciences is currently mating the main engines for its Antares vehicle to the core stage in preparation for an integrated static fire later this year. The maiden flight of the Antares is planned for launch no earlier than the second quarter of 2012, and it will include a Cygnus spacecraft mass simulator. Orbital Sciences' COTS demonstration flight to the ISS is slated for no earlier than the third quarter of 2012. The pad complex at Wallops Flight Facility in Virginia is being readied and space flight hardware, including the first Pressurized Cargo Module, two Antares core sections, and a Castor-30 upper stage, has already been delivered to Wallops Flight Facility.

The Commercial Crew Program (CCP) aims to facilitate the development of a U.S. commercial crew space transportation capability with the goal of achieving safe, reliable, and cost effective access to and from LEO and ISS. Since 2009, NASA has conducted two CCDev competitions, soliciting proposals from U.S. industry to further advance commercial crew space transportation system concepts and mature the design and development of elements of the system. During the second CCDev competi-

tion, known as CCDev2, NASA awarded four funded Space Act Agreements that are currently being executed with Blue Origin, The Boeing Company, Sierra Nevada Corporation, and SpaceX, all of which are making good progress in achieving their milestones. NASA has also signed Space Act Agreements without funding with three additional companies:

- Alliant Techsystems, Inc.;
- United Launch Alliance; and
- Excalibur Almaz, Inc.

Under the CCP, NASA plans to partner with U.S. industry, providing technical and financial assistance to facilitate industry's development of an integrated crew transportation system. In the longer term, once those entities are certified, NASA plans to buy transportation services from commercial entities for U.S. and U.S.-designated astronauts to the ISS.

The Congress appropriated \$406 million for CCP in fiscal year 2012 which reflected a substantial reduction from NASA's request for this program. The fiscal year 2012 appropriation enables the agency to move forward with its plans to support the development of commercial services that may eventually support crew transportation and rescue capabilities in support of ISS. However, the constrained budget environment necessitated a reassessment of NASA's overall strategy for this Program. On December 15, 2011, NASA announced a modified competitive acquisition strategy designed to make the best use of available resources and to pursue the most effective path to the achievement of a commercial crew capability. Instead of using firm-fixed price contracts for the next phase of the program, the agency plans to continue using multiple, competitively awarded and funded Space Act Agreements for another round of CCP. NASA will use procurement contracts to certify these capabilities before they are used to support ISS. Using competitive Space Act Agreements instead of contracts at this juncture will allow NASA to maintain multiple partners during this phase of the program, and provide NASA with the flexibility to more easily adjust to various funding levels. This new acquisition strategy will allow NASA to preserve greater competition and maintain momentum to provide a U.S.-based commercial crew launch capability at the earliest possible time.

NASA is pleased with the steady progress of U.S. commercial providers in developing domestic cargo and crew transportation services. NASA currently has contracts for cargo services and intends to purchase crew services from U.S. providers once they are certified to our crew requirements. Obtaining needed cargo and crew transportation services from U.S. providers is NASA's preferred method for sustaining and fully utilizing the ISS. Nevertheless, given current funding levels for the development of U.S. crew transportation systems, we anticipate the need to purchase Soyuz crew transportation and rescue capabilities into 2017. As NASA has previously testified, modification of INKSNA provisions will likely be required for the continued operation of ISS and other space programs after 2016. The administration plans to propose appropriate provisions and looks forward to working with the Congress on their enactment. NASA is evaluating how this issue impacts the development of U.S. crew transportation systems and NASA's acquisition of services for the ISS and goods and services for other NASA human spaceflight activities, given the possibility that some U.S. domestic providers will need to use Russian goods and services. In addition to the need driven by the ISS transportation requirements, NASA will require Russia-unique critical capabilities for the life of the ISS, such as sustaining engineering for the Russian-built, United States-owned Functional Cargo Block, that are not available elsewhere.

The fiscal year 2013 budget request includes \$333.7 million for Exploration Research and Development (ERD). The ERD theme will expand fundamental knowledge that is key to human space exploration, and will develop advanced exploration systems and capabilities that will enable humans to explore space in a more sustainable and affordable way. ERD is comprised of the Human Research Program (HRP) and the Advanced Exploration Systems (AES) Program, which will provide knowledge and advanced human spaceflight capabilities. NASA's Office of the Chief Technologist (see below) coordinates closely with ERD to ensure that NASA's long range, crosscutting Space Technology research is complementary to ERD's human exploration focused work.

HRP and its associated projects will continue to develop technologies, countermeasures, diagnostics, and design tools to keep crews safe and productive on long-duration space missions. ISS crews are conducting relevant human medical research to develop knowledge in the areas of clinical medicine, human physiology, cardiovascular research, bone and muscle health, neurovestibular medicine, diagnostic instruments and sensors, advanced ultrasound, exercise and pharmacological countermeasures, food and nutrition, immunology and infection, exercise systems, and human behavior and performance. While this research is aimed at enabling astro-

nauts to push the boundaries of exploration beyond LEO, NASA anticipates that investigations conducted aboard ISS may have broad application to terrestrial medicine, as well. For example, the growing senior population may benefit from experiments in the areas of bone and muscle health, immunology, and from the development of advanced diagnostic systems.

The AES program is pioneering new approaches for rapidly developing prototype systems, demonstrating key capabilities, and validating operational concepts for future human missions beyond-Earth orbit. AES activities are uniquely related to crew safety and mission operations in deep space, and are strongly coupled to future vehicle and exploration capability development. Early integration and testing of prototype systems will reduce risk and improve affordability of exploration mission elements. The prototype systems developed in the AES Program will be demonstrated in ground-based test beds, field tests, underwater tests, and flight experiments on the ground and then on the ISS. Many AES projects will evolve into larger integrated systems and mission elements that will be tested on ISS before we venture beyond-Earth orbit, thus leveraging the value of ISS as a vital exploration test-bed.

The fiscal year 2013 budget request includes \$70.6 million for the Space Shuttle Transition and Retirement. In 2011, the shuttle flew out its remaining missions safely. On February 24, *Discovery* launched on mission STS-133, carrying supplies to ISS, as well as the permanent a Multi-purpose Module—a Multi-Purpose Logistics Module transformed to remain on orbit, expanding the Station's storage volume. On May 16, *Endeavour*, STS-134, carried the Alpha Magnetic Spectrometer and attached it to the Station's truss structure. The final shuttle mission, STS-135, launched on July 8, delivered critical supplies to the ISS. With the landing of *Atlantis* on July 21, 2011, the 30-year shuttle program was brought to a close. The space shuttle program is now focused on the transition of key assets and infrastructure to future programs, and the retirement, and disposition of program assets.

In fiscal year 2012, NASA is funding United Space Alliance's (USA) Space Program Operations Contract Pension Liability. During the shuttle program, USA consistently incorporated and billed the maximum allowable costs into their indirect rates, but the deterioration of the equities and credit markets caused their plan to be underfunded by a currently estimated \$522 million. The estimate will fluctuate until payout in the summer of 2012. The variance is protected in the transition and retirement budget line item. The Space Program Operations Contract, which accounts for almost all of USA's business base, is a cost-type contract covered by the Cost Accounting Standards. These standards stipulate that any costs of terminating plans are a contractual obligation of the Government (if deemed allowable, allocable, and reasonable). NASA and USA entered into an agreement under which USA froze their pension plans as of December 31, 2010, and deferred any decision about terminating their plan until after NASA received its fiscal year 2012 appropriation, allowing NASA to address this issue with fiscal year 2012 funds. If funding remains after the pension plan termination, it will be used to defray space shuttle closeout costs that would otherwise require fiscal year 2013 funding. If there is a shortfall, it will reduce available space shuttle funds for closeout and some activity could move later than planned. NASA will keep the Congress informed as this issue evolves.

The fiscal year 2013 budget request includes \$3,007.6 million for the ISS program. This funding will support ISS Operations and Maintenance, ISS Research, and ISS Crew and Cargo Transportation. The ISS has transitioned from the construction era to that of operations and research, with a six-person permanent crew, three major science labs, an operational lifetime through at least 2020, and a growing complement of cargo vehicles, including the European Automated Transfer Vehicle and the Japanese H-II Transfer Vehicle (HTV). The fiscal year 2013 budget request reflects the importance of this unparalleled research asset to America's human spaceflight program.

In the NASA Authorization Act of 2005 (Public Law 109-155), the Congress designated the U.S. segment of the ISS as a National Laboratory, and directed the agency to seek to increase the utilization of the ISS by other Federal entities and the private sector. NASA has made great strides in its effort to engage other organizations in the ISS program, and the agency now has Memoranda of Understanding with five Federal agencies and Space Act Agreements with nine companies and universities. In the NASA Authorization Act of 2010 (Public Law 111-267), the Congress directed that the agency enter into a cooperative agreement with a not-for-profit organization to manage the activities of the ISS National Laboratory. To this end, on August 31, 2011, NASA finalized a cooperative agreement with the Center for the Advancement of Science in Space (CASIS) to manage the portion of the ISS that operates as a U.S. National Laboratory. CASIS will be located in the Space Life Sciences Laboratory at Kennedy Space Center in Florida. The independent, non-profit research management organization will help ensure the Station's unique capa-

bilities are available to the broadest possible cross-section of U.S. scientific, technological and industrial communities. CASIS will develop and manage a varied Research and Development portfolio based on U.S. national needs for basic and applied research; seek to establish a marketplace to facilitate matching research pathways with qualified funding sources; and stimulate interest in using the national lab for research and technology demonstrations and as a platform for STEM education. The goal is to support, promote and accelerate innovations and new discoveries in science, engineering and technology that will improve life on Earth.

The fiscal year 2013 budget request includes \$935 million for Space and Flight Support (SFS). The budget request provides for critical infrastructure indispensable to the Nation's access to and use of space, including Space Communications and Navigation (SCaN), Launch Services Program (LSP), Rocket Propulsion Test (RPT), and Human Space Flight Operations. The SFS budget also includes investment in the 21st Century Space Launch Complex, whose primary objective is to modernize and transform the Florida launch and range complex at the Kennedy Space Center to benefit current and future NASA programs, along with other emerging users. Fiscal year 2013 is an important period for NASA's SCaN program. The program is responsible for NASA's Tracking and Data Relay Satellites (TDRS) that provide a critical backbone for space communications. Fiscal year 2013 will include the scheduled launch TDRS-K, an additional satellite in the system; completion of TDRS-L integration; and the development of TDRS-M, which will be ready for launch in 2015. These spacecraft will refurbish this important network as aging TDRS are retired after 20 years of service to the Nation. Also under construction is a 34-meter antenna at the Deep Space Network's Canberra Deep Space Communication Complex, with plans to build a second, to replace the aging 70-meter antenna. These antennae in the Southern Hemisphere will be particularly important as the Earth's rotation brings this site into the best range for tracking NASA's deep space missions in the coming decade. In preparation for supporting NASA's space science program, SCaN is developing space communications technology, including the Lunar Laser Communications Demonstration and the Laser Communication Relay Demonstration, which will lead to the capability of handling the huge increase in scientific data expected from NASA's planned spacecraft. Additionally, this capability could enable greater bandwidth and capabilities to support expanded education, participatory engagement, and interactive exploration opportunities. SCaN also anticipates the launch of its SCaN Test-bed in June on the Japanese Space Agency's HTV cargo vehicle. The test-bed, composed of three Software-Defined Radios, will provide the bridge to advance technological innovation by actual testing in the real space environment. As a pathfinder it will be made available to industry, academia, and other Government agencies.

LSP has several planned NASA launches in fiscal year 2013, including the, Landsat Data Continuity Mission, TDRS-K, and IRIS, and will continue to provide support for the development and certification of emerging launch services. In fiscal year 2013, the RPT program will continue to conduct test facility management, maintenance, sustaining engineering, operations, and facility modernization projects required to keep the test-related facilities in the appropriate state of operational readiness. The RPT program will continue to assist in rocket propulsion testing requirements definition for LEO and in-space propulsion systems and related technologies

#### SPACE TECHNOLOGY

The Office of the Chief Technologist (OCT) coordinates the agency's overall technology portfolio. OCT ensures that NASA's investments are cost-effective and that they are aligned with the agency's near- and far-term goals. Over the last year, OCT has engaged thousands of technologists and innovators to develop and test cutting-edge technologies distributed across the country. While NRC conducted its review of NASA's technology roadmaps, OCT worked with mission architecture teams to identify key technology areas requiring immediate investment. Using these internal, cross-agency working groups, NASA selected nine technologies to receive priority funding based on their criticality in extending human presence beyond LEO and their ability to dramatically further scientific exploration of the solar system. These "Big 9" projects are:

- Laser communications relay demonstration;
- Cryogenic propellant storage and transfer;
- Low-density supersonic decelerators;
- Composite cryogenic propellant tanks;
- Robotic satellite servicing;
- Hypersonic inflatable aerodynamic decelerators;

- Deep space atomic clock;
- Large-scale solar sail; and
- Human-robotic systems.

On February 1, 2012, NRC released its final review of NASA's Draft Space Technology Roadmaps. NRC identified 16 top-priority technologies necessary for future missions, and which could also benefit American aerospace industries and the Nation. The 16 were chosen by the NRC from its own ranking of 83 high-priority technologies out of approximately 300 identified in the draft roadmaps. In the coming months, OCT will lead an agency-wide analysis and coordination effort to inform future technology investments on the basis of the NRC report.

The fiscal year 2013 request for space technology is \$699 million and funds ongoing high-priority space technology projects that will increase the Nation's capability to operate in space and enable long-term human exploration and develop efficiencies for deep space science missions. In fiscal year 2013, NASA will begin to see major milestones achieved within Space Technology's "Big 9" efforts. Designed to deliver data rates that will enable new class of deep-space exploration missions, the Laser Communications Relay Demonstration project will begin ground validation activities of advanced laser communication systems. Enabling precise landing of higher-mass payloads to the surface of planets, the Low Density Supersonic Decelerators effort will complete three critical full-scale tests to demonstrate parachute and inflatable decelerator performance required prior to supersonic-speed flight demonstration. The Composite Cryogenic (low-temperature) Propellant Tank project will design and build a 5-meter-diameter composite cryogenic propellant tank that will yield lower-mass and lower-cost rocket propellant tanks. The Cryogenic Propellant Storage and Transfer demonstration mission will conduct ground tests of the critical technologies required to enable long-term storage and handling of cryogenic fluids in space in preparation for a flight demonstration. While these projects will make visible individual steps in fiscal year 2013, they are part of a broader portfolio of activities that space technology will pursue in order to generate new technologies for use by NASA, other government agencies, and U.S. industry.

Within space technology, NASA funds Crosscutting Space Technology Development at \$293.8 million to enable NASA to develop transformational, broadly applicable technologies and capabilities that are necessary for NASA's future science and exploration missions, and also collaborates on the aerospace needs of other government agencies and the U.S. space enterprise. NASA's CSTD activities are funded through a mix of competitive and strategically guided projects to attract a broad array of participants. Investments support research fellowships, NASA Innovative Advanced Concepts (NIAC), Centennial Challenges, suborbital flight opportunities, and advancements in small satellite technologies and systems.

NASA also funds Exploration Technology Development at \$202 million to invest in the long-range technologies required for humans to explore beyond LEO. ETD technologies are higher-risk investments that complement architecture and systems development efforts within exploration by maturing breakthrough technology prior to integration with operational capabilities. As projects are matured, new projects are selected competitively to provide the opportunity to develop the best ideas, innovations, approaches, and processes for the future human space exploration efforts.

Funded based on a percentage of the agency's total extramural R&D, the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs continue to support research and development performed by small businesses through competitively awarded contracts. Estimated at approximately \$173.7 million in fiscal year 2013, these programs produce innovations for both Government and commercial applications. SBIR and STTR provide the high-technology small business sector with the opportunity to develop technology for NASA, and commercialize that technology to provide goods and services that address other national needs based on the products of NASA innovation.

Partnership Development and Strategic Integration, funded at \$29.5 million, comprises key agency responsibilities managed by OCT:

- technology partnerships;
- technology transfer and commercialization; and
- the coordination of NASA's technology investments across the agency through technology portfolio tracking and technology road-mapping.

By providing coordination between Mission Directorates and Centers, and identifying collaboration opportunities with other government agencies and performing technology transfer, NASA can deliver forward-reaching technology solutions for future science and exploration missions, and help address significant national needs.

Within this portfolio, OCT engages in national technology development initiatives such as the National Robotics Initiative, the National Nanotechnology Initiative and the Advanced Manufacturing Partnership, and seeks partnerships with external en-

tities for collaborative technology development. OCT engages the larger aerospace community including other Government agencies, and where there are mutual interests, develops partnerships to efficiently develop breakthrough capabilities.

#### EDUCATION

The fiscal year 2013 request includes \$100 million for NASA's Office of Education to develop STEM education activities that only NASA can provide. The funding request would allow undergraduate and graduate students to work alongside NASA scientists and engineers through internships and fellowships at NASA centers. It includes educator professional development, helping our country's educators become proficient in STEM topics, and providing them opportunities to practice hands-on investigations. NASA will also continue to support the institutions where learning takes place. Through the Space Grant and Minority University Research and Education projects, NASA will work with hundreds of universities and community colleges, strengthening their capacity to train the next generation of scientists and engineers, encouraging student design challenges, and connecting faculty with NASA research. And, because we know inspiration doesn't just happen in a classroom, we will engage learners in NASA content at our visitor centers and in partnership with museums, science centers, planetariums and other informal education venues.

NASA is one of many Federal Government programs that support STEM education. NASA is working with other agencies through the National Science and Technology Council's Committee on STEM education to effect optimal revisions to fund coordinated and effective student and teacher opportunities. NASA will focus its resources on demonstrated areas of strength in its unique role in STEM education. NASA brings many assets to support the administration's emphasis on STEM education beyond funding. Our people, platforms like the ISS and our facilities across the Nation all contribute to strengthening STEM education.

Recognizing that the nature of our work is inspirational to learners and educators, NASA will leverage the talents of our workforce to support the critical STEM education needs of our Nation. In collaboration with other Federal agencies, NASA will leverage unique assets ISS, to provide meaningful experiences. In March, educator Astronaut Joe Acaba, a former middle and high school teacher, will begin a 6-month mission onboard the ISS. During his time in space, he will work closely with our education team on the ground to share his experience with classrooms across America.

#### CROSS-AGENCY SUPPORT

The fiscal year 2013 budget request includes \$2,847.5 million for cross-agency support, which provides critical mission support activities that are necessary to ensure the efficient and effective operation and administration of the agency. These important functions align and sustain institutional and program capabilities to support NASA missions by leveraging resources to meet mission needs, establishing agency-wide capabilities, and providing institutional checks and balances. Within this budget request, NASA has taken steps to reduce its administrative expenses, including a hiring slowdown and reduced travel.

NASA's fiscal year 2013 budget request includes \$2,093.3 million for Center Management and Operations, which funds the critical ongoing management, operations, and maintenance of nine NASA Centers, as well as associated major component facilities. NASA Centers continue to provide high-quality support and the technical engineering and scientific talent for the execution of programs and projects. This technical expertise represents a true national resource. Center Management and Operations provides the basic support required to meet internal and external legal and administrative requirements; effectively manage human capital, information technology, and facility assets; responsibly execute financial management and all NASA acquisitions; ensure independent engineering and scientific technical oversight of NASA's programs and projects in support of mission success and safety considerations; and, provide a safe, secure, and sustainable workplace that meets local, State, and Federal requirements.

NASA's fiscal year 2013 budget request includes \$754.2 million for agency management and operations, which funds the critical management and oversight of agency missions, programs and functions, and performance of a broad spectrum of NASA-wide activities. These programs include Safety and Mission Success activities, essential to reducing the likelihood of loss of life and likelihood of mission success in our human and robotic programs. Safety and Mission Success funding supports the maintenance of independent safety, health, medical and engineering assessments of systems and processes, as well as the performance of the broad risk assessments, mitigations, and acceptance related to critical agency decisions. Agency In-

formation Technology Services encompasses agency-level cross-cutting services and initiatives in Information Technology (IT) innovation, business and management applications, and infrastructure necessary to enable the NASA mission. The Strategic Capabilities Assets Program (SCAP) ensures that vital agency test capabilities and assets, such as flight simulators and thermal vacuum chambers are sustained in order to serve agency and national needs. The agency management and operations account funds salary and benefits for civil service employees at NASA headquarters, as well as other headquarters personnel costs, such as mandated training. It also contains labor funding for agency-wide personnel costs, such as agency training, and workforce located at multiple NASA Centers that provide the critical skills and capabilities required to execute mission-support programs agency-wide.

#### CONSTRUCTION AND ENVIRONMENTAL COMPLIANCE AND RESTORATION

The fiscal year 2013 budget request includes \$619.2 million for construction and environmental compliance and restoration. NASA construction and environmental compliance and restoration provides for the design and execution of all facilities construction projects, including discrete and minor revitalization projects, demolition of closed facilities, and environmental compliance and restoration.

The fiscal year 2013 budget request includes \$552.8 million for the Construction of Facilities (CoF) program, which funds capital repairs and improvements to ensure that facilities critical to achieving NASA's space and aeronautics programs are safe, secure, sustainable, and operate efficiently. The agency continues to place emphasis on achieving a sustainable and energy-efficient infrastructure by replacing old, inefficient, deteriorated buildings and infrastructure with new, efficient, and high-performance buildings and infrastructure that will meet NASA's mission needs while reducing the agency's overall footprint and future operating costs. In August 2011, NASA opened the agency's first building designed for "Net-Zero" energy operations, the Propellants North Administration and Maintenance Facility at the Kennedy Space Center in Florida. Two active programs that result in NASA achieving greater efficiencies and reduced operating costs are NASA's demolition program and recapitalization program, in which old inefficient facilities are replaced with new, efficient, consolidated facilities. Twelve horizontal infrastructure projects that sustain our major utility systems are included in this request; completion of these projects will reduce our usage of potable and process water, electricity, and steam.

The fiscal year 2013 budget request includes \$66.4 million for the Environmental Compliance and Restoration (ECR) program, which supports the ongoing clean-up of sites where NASA operations have contributed to environmental problems. The ECR program prioritizes these efforts to ensure that human health and the environment are protected. This program also supports strategic investments in sustainable environmental methods and practices aimed at reducing NASA's environmental footprint and lowering the risk of future cleanups.

#### CONCLUSION

NASA's fiscal year 2013 budget request of \$17.7 billion represents a substantial investment in a balanced program of science, exploration, technology, and aeronautics research. Despite the constrained budget environment facing the Nation, this request supports a robust space program that keeps us on a path to achieving a truly audacious set of goals. NASA is working to send humans to an asteroid and ultimately to Mars, to observe the first galaxies form, and to expand the productivity of humanity's only permanently crewed space station. We are making air travel safer and more efficient, learning to live and work in space, and developing the critical technologies to achieve these goals. The coming year will include the first commercial cargo flights to the ISS, a nuclear-powered robot the size of a small car landing on the surface of Mars, and the launch of the Nation's next land-observing satellite. We have spacecraft studying the Sun, circling Mercury, cruising to Pluto and investigating almost everything in-between. In the face of very difficult times, the American people continue to support the most active, diverse, and productive space program in the world. We at NASA are honored by our fellow citizens' continued support and we are committed to accomplishing the goals that the Congress and the President have laid out for us. The program described and supported by our fiscal year 2013 budget request represents our plan to accomplish those goals.

Senator MIKULSKI. Senator Cochran.

#### STATEMENT OF SENATOR THAD COCHRAN

Senator COCHRAN. Madam Chair, thank you very much.

Mr. Administrator, welcome to our subcommittee. We congratulate you on your continued leadership for NASA, and we are really proud that Mississippi has had a very conspicuous role to play in our space flight efforts, specifically being the home of the SLS and the testing that has been consistent with the mission of NASA up to this point.

#### ENGINE TESTING AND DEVELOPMENT

We hope that NASA is considering what it's going to do and how it's going to proceed with testing, what funds will be needed so that we can respond in the Congress with the support from those others who support NASA, and we'd like to see the programs that we think are in the national interest continue. At the Stennis Space Center, we play a big role in that, in my view.

Is that something that you could agree with? Or if there are other plans that NASA has that we're not aware of, could you let us know what they are?

Mr. BOLDEN. Senator, as you and I have discussed before, Stennis plays a key role in the future of NASA, whether it's with NASA engine testing and development or whether it's commercial engine testing and development. And the other thing that you know very well—I refer to Stennis as the Federal city. We host a number of other Federal agencies at Stennis, and we're very proud to do that, everything from the Coast Guard and Special Operations Forces, the Navy. All the buoys are re-done onboard the Stennis facility, so we're very proud of that, and we see Stennis continuing its role as a Federal city.

#### MAIN PROPULSION TEST CENTER

Senator COCHRAN. Well, I'm hopeful that we will have enough advanced notice and advice so that we can be supportive and helpful, if that's the will of this subcommittee and of the Senate.

I wonder if you could say at this point what the costs would be if we reactivated the testing for space flight or for launches that would occur under NASA's jurisdiction. What specific plans do you anticipate having to implement?

Mr. BOLDEN. Senator, I think what you're addressing is the total test of the main propulsion test center the way that we used to do it, which is the cluster of all five engines for the SLS. We're evaluating right now whether we really need to do that. We think we will, and we will come back to this subcommittee and to the Congress to say what we think we need to do in terms of shifting funds from something else that we were going to do to be able to conduct that test. I'm not prepared to give you an estimate right now, but I will take it for the record and get back to the subcommittee on it.

[The information follows:]

#### MAIN PROPULSION TEST CENTER

The National Aeronautics and Space Administration (NASA) plans to conduct an integrated test of the Space Launch System (SLS) Core Stage prior to the launch of the first flight, Exploration Mission-1 (EM-1), which is scheduled for launch at the end of 2017. The current plan is to conduct this integrated test (including a tanking test and two full-duration 550-second firings) on the SLS core stage that will be used for EM-1. After a review by the Rocket Propulsion Test Program, the



agency has decided to conduct this test on the B-2 test stand at the Stennis Space Center. The agency estimates that the total construction costs associated with preparing B-2 to support this integrated test are approximately \$168 million. The agency will provide the Congress with the construction of facilities plan as part of the fiscal year 2012 operating plan update.

Senator COCHRAN. That would be helpful for us to know just for our information, and also planning, to be sure we have room within our budget resolutions to provide the funding that would be needed.

I understand that rocket test facilities would get the same kind of systems-level testing of the SLS and that an evaluation could be done by NASA at this time of the potential commercial uses of such facilities and the resources that may be needed in the next fiscal year. Do you have any specific requests in this budget year that's coming up of the specific amounts that would be needed for any of those activities?

Mr. BOLDEN. Senator, as was requested by the Congress, we are just about finished with the report on the utilization and rehabilitation of the rocket test facilities, and that will give us definitive answers to the question you just posed. So we're pretty close. I have a draft of that report. It should be ready soon, and if we need additional funds, we will be coming to the Congress for that.

Senator COCHRAN. Well, we thank you for that.

Madam Chair, I'll yield the floor after making an observation that we continue to be complimented that the Stennis Space Center is known as the Federal city, and we are hopeful that we will continue to be good hosts and supportive of the efforts that are made there to help make sure that we carry out the programs that were designed there at Stennis and continue to be cherished in the memory of those of us who live in Mississippi.

#### JAMES WEBB SPACE TELESCOPE

Senator MIKULSKI. Administrator Bolden, we'll probably go to a second round, but in my first round I want to focus on the JWST. I think as you've heard from the members here, we're each interested in where NASA, through our appropriations process and authorizing, is making a significant investment in some really big projects with really big bucks behind it, for which there is no margin for error or cost overruns and so on.

Last year, this subcommittee took a major step with the bipartisan concurrence of everyone to make sure we put the JWST on track. This is after we had asked for a significant management review because we were concerned 2 years ago that the JWST was off track, off budget, and we were concerned that it was going to be cancelled not because of technology dysfunction but because of management dysfunction.

So last year we put in a significant amount of money, and this year the budget request is for \$628 million to keep it on track for launch by 2018. My question to you is, is the JWST on track, and how do we know it to be so?

Mr. BOLDEN. Senator, no one was as concerned as I was when I found out the condition of JWST, and I can tell you now that after the management changes we made at the Goddard Space

Flight Center, at headquarters, and also in the prime contractor of Northrup Grumman, I'm very confident that JWST is on track.

I get a status report on milestones and costs every month, and for almost a year-and-a-half now we have met or exceeded the time on every—when I say exceeded, it has been quicker than forecast. So we have met or bettered every milestone, and we are on cost. There were 27 milestones that we laid out. To this date, 26 of them have been met. The only one we didn't, we delayed because of the results that we wanted to get from one of the other milestones there.

So, two things. The management in place, the diligence and discipline with which we are approaching the project, the constant oversight that's given from my office by me and my associate administrator makes me confident that the JWST is going to make a 2018 launch with the funding that we have requested in this budget.

Senator MIKULSKI. Do you believe that it will make 2018?

Mr. BOLDEN. Yes, ma'am, I do.

#### SEQUESTER CONSEQUENCES

Senator MIKULSKI. Well, what will happen if there's a sequester?

Mr. BOLDEN. Senator, I think I've talked to everybody about this. While I am a realist, I'm probably the world's greatest optimist, and I am confident that this Congress will avoid that and that we will have a budget, and that we will be able to meet our 2018 deadline.

Senator MIKULSKI. Well, you couldn't be an astronaut without being an optimist.

Mr. BOLDEN. Yes, ma'am. I heard that this morning, as a matter of fact, that you don't want people who fly things making budgets—

Senator MIKULSKI. You have to have one of the most optimistic views.

But I am asking you, what would be the consequences of a sequester, and have you looked at it, both for the JWST and also the consequences of a sequester on the NASA budget?

Mr. BOLDEN. Senator, I think anyone would say—and we have not taken a hard look at the results, what would be the result of a sequester, but we all know that it would be a significant cut to the NASA budget, which is already strained. We would have to come back to the Congress and talk about how we meet our priorities and whether we decided that we were going to put all of our funds on the priorities and forsake everything else. That would be the only way that we would be able to see those three priorities stick to the dates that we have right now.

Senator MIKULSKI. So has the administration directed you as the NASA Administrator to have contingency plans in the event of that?

Mr. BOLDEN. No, ma'am, we have not. The administration's position is as I—while they're not as optimistic as I am all the time, I think we all are optimistic that between the administration and the Congress, we'll find a way to work this out and we won't get to sequester. So we are not making contingency plans or anything.

Senator MIKULSKI. Well, I think I'm optimistic, too. I would have never done the things I have in my life if I wasn't optimistic. But I think I'm also the kind of person that—I believe in a double cord if I needed a parachute, and I like having brakes on a car, and I like having airbags.

So I really would recommend to both the administration and to you, again, complying with their directions, to really be ready for some real challenges. We hope not.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. We hope not, but I think there is a big flashing yellow light on our screen.

But, having said that, I've got a flashing yellow light on my time. Let me turn to Senator Hutchison.

Senator HUTCHISON. I'm happy to let Senator Shelby and Senator Brown go next.

Senator MIKULSKI. Senator Shelby.

#### STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you. Thank you, Senator Hutchison.

Mr. Administrator, I believe that the core mission of NASA is to build cutting-edge systems that will allow us to expand our knowledge of the universe. This administration, I believe, seems to think that NASA's job is to use taxpayer money as venture capital to support speculative commercial companies, the future Solyndras of the space industry.

#### THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION'S CORE MISSION

Despite identifying SLS as a priority program, you requested \$150 million less in the fiscal 2013 budget year than the Congress provided in 2012 for the SLS vehicle development. At the same time, you doubled funding for commercial programs. When is this administration going to get the message that the Congress, I believe, is not willing to subsidize so-called commercial vendors at the expense of NASA's core mission of engineering and exploration?

Mr. BOLDEN. Senator, I could not agree more with your position that our job is technology development and exploration and cutting-edge science and technology, and that's what we asked for in the budget. We put forth a budget that requests \$675 million for space technology, which covers the gamut of what we do. It contributes to the heavy-lift launch vehicle. It contributes to a next-generation MPCV. It contributes to our science program. It will enable us to better go to Mars, both robotically and in human space flight.

So we did not have a space technology line until the fiscal year 2012 budget. The President asked for \$1.5 billion for space technology in the first budget that I brought to this Congress my first year as the NASA Administrator. So we agree with you that we do need to be about cutting-edge technology, and we're trying to do that.

#### COMMERCIAL PROVIDERS PROGRESS

Senator SHELBY. In your statement, you said that you're pleased, and I'll quote you, "pleased with the steady progress of U.S. com-

mercial providers in developing domestic cargo and crew transportation services.” I would note that one of your commercial cargo providers was originally scheduled to complete three demonstration flights by September 2009. They have only completed one, and many expect the date of that second launch to slip again soon, as it just did in February.

Your other cargo vendor was expected to complete a single demonstration flight by December 2010. That flight has not even been scheduled yet.

I guess the question posed here is how much longer will their flights have to be delayed before you, as the Administrators are no longer “pleased” with these providers?

Mr. BOLDEN. Senator, I’m confident that one of the——

Senator SHELBY. Are you still pleased with them?

Mr. BOLDEN. Senator, I’m pleased with their progress. One of our providers, SpaceX, is scheduled to launch on the 30th of April, and I think——

Senator SHELBY. Do you think they will keep that date?

Mr. BOLDEN. I think they will make that. The other one, Orbital Sciences, has a lot of things that are out of their control in terms of a launch facility, but I think they will be ready to launch sometime this summer. The big thing for us and them is to get the launch pad ready at Wallops so that they can run a main propulsion test, and then they’ll be ready to fly their first demonstration.

I would caution everyone to be somewhat resistant to talk about delays. I came to NASA in 1980 to join the astronaut program, and that was 2 years after the shuttle was supposed to have flown. I am personally thankful that we did not fly in 1978 because we weren’t ready. I worked as a member of the tile repair tiger team, because when we flew *Columbia* from its manufacturing facility in Palmdale, California to the Kennedy Space Center, it got there and a large majority of the tiles were missing.

We weren’t ready, and we learned a lot of things that caused us to delay. But when we flew STS-1, it was an incredible achievement.

So I think the commercial providers are doing very well. They’re meeting challenges that have come their way. We advise. We can’t tell them what to do, but we have relatively good insight into what they’re doing, and we’re confident that the decisions they’re making are prudent. We would much rather see them delay than to fly and fail, because we cannot use a failed system.

#### GOVERNMENT BUYING PRACTICES

Senator SHELBY. I’m very concerned that NASA seems to be abandoning its plan to abide by the Federal acquisition regulations (FAR) in the commercial crew program and instead continue to use Space Act agreements. Space Act agreements will provide you more flexibility, but they do so at the expense, some of us believe, of transparency and accountability on the part of the contractor. I think such agreements in this case are dangerous to both astronauts who might fly in commercial rockets and the American taxpayers who, to date, have had to fund them.

You claim, Mr. Administrator, that the budget cuts made by this subcommittee have, quote, “necessitated” is your word, you to

abandon traditional Government buying practices. I would note that you are currently funding four separate vendors in the commercial crew program, some of whom have never built a single piece of space hardware, and only one of whom has ever built hardware that carried humans.

My question is this. Is it not possible that the answer to your budget issues is to fund fewer vendors? Wouldn't you rather have more effective Government oversight over one or two providers rather than less oversight over four or more?

Mr. BOLDEN. Senator, there are a couple of answers to your question. One is, when we purchase services from the private companies, they will be operating under contracts that comply with FAR. So we won't purchase services under a Space Act agreement. We'll purchase services under FAR. We have chosen to extend our utilization of Space Act Agreements because it does allow us to carry hopefully more than one potential provider for as long as we can so that we get competition and we get the best product.

In the commercial crew development program, we funded as many providers as we could, and it's important to understand the difference between the commercial crew development program (CCDEV), which is what we are about to end, and the acquisition program that we're about to enter where we buy a launch provider for commercial crew. CCDEV—some were looking at capsules, some were looking at launch vehicles. United Launch Alliance (ULA) was not looking at either. They were looking at a self-monitoring maintenance system on a vehicle. So we had different providers. We utilized their expertise to give us information and technology that we needed to put into the ultimate system.

So hopefully the result from the effort and the money that we put into CCDEV will be, as all of you say, a final product from or to providers that takes advantage of all of the benefits that we got from the individual providers with individual components of the total system.

Senator SHELBY. But isn't some of the program, it seems to a lot of people, to be a march away from NASA—in other words, into the private sector and vendors—rather than what NASA has proven over many years to have?

Mr. BOLDEN. Senator, quite the contrary. It is a march to—  
Senator SHELBY. Explain.

Mr. BOLDEN. It is a march toward the exact way that we did Mercury, Gemini, Apollo, the shuttle, except the acquisition method. With those, we bought a vehicle, and then we owned it and we managed it, and that's what cost us money. The infrastructure, the underlying cost for the space shuttle was \$2 billion a year whether I used it or not. That's because I had to maintain the facilities, I had to keep the people to run it, I had to do everything.

Under the commercial program, we will purchase a service. And I will remind everyone, Senator Hutchison mentioned, why couldn't we do like we did with SLS and MPCV? Because we previously had a robust competition in the old Constellation program, we got a product like Orion, and when we started looking at what we wanted to use for a MPCV, it made it not easy because we still had to go through a process of evaluation, independent assessment, but

we were able to accept the Orion vehicle lock, stock, and barrel from what was in the Constellation program.

But that does not say it was not chosen under competition. It had rigorous competition. Same thing for the SLS. It underwent rigorous competition, and we used that, and we were able to go back to the procurement people and say, look, we're not trying to just take something unproven. This is the result of rigorous competition. The way I described it, we tried to take the nuggets from Constellation and transition them into SLS/MPCV, and I think that's what we got.

We won't know until we fly, but I think we are well on our way to demonstrating that the process we used there, which I will remind everybody was severely questioned by many—why are you doing it this way? Why don't you just go get another vehicle? We didn't think that would be prudent because we wanted to take advantage of the competition that had brought us those vehicles.

Senator MIKULSKI. Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Madam Chair.

A HEALTHY NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
RELYING ON TEN CENTERS

The previous administration declared 10 healthy centers and laid out responsibilities for each. When we sat down before your confirmation more than a year ago, you assured me this policy was no longer needed because NASA had 10 healthy centers. But without a 10 healthy centers policy, you're asking us now to give you the ability to shift funds around with no guarantee that the research centers or flight centers or specific programs will be funded at adequate levels.

How do all of us know you have a serious commitment to making sure there are 10 healthy centers? Are you laying out a detailed plan for us so that we know that?

Mr. BOLDEN. Sir, I think when you and I talked numerous times, I said I don't like the term "10 healthy centers", because that term implies that you've got to force a workplace where it may not belong. What I like is a very healthy NASA that relies on 10 centers with diverse skills and capabilities that support a healthy agency, and not individual centers.

I think what hopefully all of you are seeing is that we are trying our best to make sure that every center that is presently a member of the NASA family gets an adequate share of the work that we are doing in the three principal mission areas of aeronautics, human space flight, and science.

If you look at Glenn, for example, Ray Lugo probably would admit he has a significant share, if not the lion's share, of the technology development funds. Even though the program may not be run out of Glenn, the money is being spent through Glenn, and there's a big difference between where a program is housed and where the money is being spent.

Glenn is a vital center for us not only for human space flight, but they are the heart and soul, along with Dryden and Langley, for aeronautics research. What we're doing right now to support DOD

and even commercial aviation, a lot of that is being done out of Glenn, whether it's icing tests, or they're the major center for rotary research. So it's very helpful.

Senator BROWN. I don't think any of us think that the issue is forcing work at any one of these centers.

I have a couple of comments about aeronautics. Aeronautics, the first "A" in NASA is aeronautics, before the "S" for space. NASA is requesting \$551 million for aeronautics, less than last year, one-half of what's authorized. Put that aside for a minute.

But sort of along the lines of Senator Cochran's comments about the Stennis Center, from your comments I'm concerned that NASA is out-sourcing hundreds of millions of dollars for research and development at the Space Flight Center when the research centers can do this work. Why does this business model no longer seem so workable to do this at the centers, especially a research center like NASA Glenn?

Mr. BOLDEN. Senator, I'm not sure that we're not following the model that utilizes the skills at the individual centers. I may misunderstand your question. I think we are utilizing the skills at the centers, and we redistribute work such that it goes to the strongest center. We sometimes use people from one center to do work at another, and we either detail them there or we let them do the work that belongs to another center in their home center. So maybe I don't understand your question.

#### PLUM BROOK TEST CENTER

Senator BROWN. I'm not sure I agree with that, but let me shift, though, because I just have a couple more minutes.

About Plum Brook, I appreciate, first of all, your correcting some of our House counterparts when they refer to Plum Brook as a test stand. As you know, it's not a test stand. It's a one-of-a-kind test center. I'm looking for what you can tell us NASA can do to better utilize those facilities. For instance, one example, the Europeans want to use Plum Brook. I understand NASA headquarters seems to be holding this up. Why wouldn't we jump at this opportunity for the ESA to want to use Plum Brook and its terrific facilities?

Mr. BOLDEN. Senator Brown, I'll have to get back to you. I am not aware of us holding this up—if, in fact, ESA is asking to test a vehicle at Plum Brook, I'm not aware of what we're doing to disallow that. So I will take that question for the record and get back to you.

[The information follows:]

#### PLUM BROOK TEST FACILITY

The National Aeronautics and Space Administration (NASA) headquarters issues with the European Space Agency (ESA) test agreement have been worked fairly quickly and involved the use of the facility by a foreign entity and a question regarding whether the funding for the modifications to the test facility represented an augmentation of the NASA budget. Both of those issues were worked early in the year, and at this point we are awaiting a decision from ESA.

Senator BROWN. Okay. Our understanding is there has been a delay. We don't know why. It's a significant proposal, and we will follow up with you, then.

Mr. BOLDEN. Okay. Senator, that would be in opposition to my stated direction to everybody that we should find people to put in our facilities.

Senator BROWN. Okay. Good, good.

Mr. BOLDEN. I don't care where they come from.

Senator BROWN. Good to hear. Thank you.

Thank you, Madam Chair.

Senator MIKULSKI. Senator Hutchison.

#### PRIORITY GOALS

Senator HUTCHISON. Mr. Administrator, as I mentioned, I'm just waiting for the—I'm going to ask you a question, you're not going to answer it, and we're going to be where we are and we're going to settle this one-on-one, I know. But I'll just ask—

Mr. BOLDEN. Senator.

Senator HUTCHISON. I'll try my best. I talked about and you acknowledged that we set three priority goals, and you fully funded one. You have now gone 100 percent over on one and cut the other, the third priority, by virtually the same amount that you went over on the second priority. So you can imagine why we would think that you are cutting the Orion and the SLS in favor of commercial crew.

What I would hope is that we could come to the joint goals and all work together for commercial crew, but not at the expense of Orion and SLS.

One thing that you mentioned you're funding at a 21-percent increase this year is technology. Why is it that you feel so compelled to cut the future, which is SLS and Orion, in favor of the immediate, which is commercial crew, as we acknowledge? Why not keep the three priorities, keep the faith with the Congress, and help us feel like we're all going in the same direction?

Mr. BOLDEN. Senator, I do believe that we are doing our best to keep faith with the Congress. When we agreed upon the three priorities, we said we were going to fund SLS and MPCV and we were going to comply with the schedule that we had laid out for everyone. I provided a list to the subcommittee of achievements with both SLS and MPCV to date. Some of them are well ahead of where we expected to be.

[The information follows:]

#### SPACE LAUNCH SYSTEM/ORION MULTI-PURPOSE CREW VEHICLE

The Orion Multi-Purpose Crew Vehicle (MPCV) and Space Launch System (SLS) Programs continue to meet milestones on schedule.

Recent accomplishments of note for Orion MPCV include:

- Key Decision Point-A Authorization Memo was signed by the Agency Project Management Council on February 28, 2012. This provided official approval for the Orion Program to proceed from the pre-formulation phase into the design, development, test, and evaluation (DDT&E) phase.
- The Orion Formulation Authorization Document was approved by Human Exploration and Operations Mission Directorate on April 2, 2012.
- Arrival of first Exploration Flight Test-1 (EFT-1) flight hardware at the Kennedy Space Center's Operations and Checkout (O&C) facility (2 SM longeron). This milestone signifies confidence that the EFT-1 vehicle will soon begin its ground test campaign.
- Transfer of Crew Module (CM) Assembly Structure from Denver (post-Ground Test Article [GTA] use) to O&C.



- Transfer of the CM used for the Pad Abort-1 (PA-1) test from O&C to Vehicle Assembly Building (VAB) for public display (opens space in O&C for EFT-1 production and GTA arrival).
  - CM barrel delivered to NASA Manufacturing Assembly Facility (MAF). CM2 (Barrel-to-Aft Bulkhead) and CM1 (Aft Bulkhead-to-Cap) welding completed.
  - Orion has also successfully completed 22 major hardware tests from June 2011 through May 2012, including 4 parachute drops, 9 hydro impact splash downs, 6 vibro-acoustic tests, and 3 avionics simulations.
  - SLS has made substantial progress since the program entered formulation in November 2011, with the following notable accomplishments:
    - Systems Requirements Review/Systems Definition Review now underway to establish baseline vehicle requirements before entering detailed preliminary design.
    - Integrated acquisition teams in place and negotiations underway to definitize contracts with stages, engines, and boosters contractors.
    - Design loads analysis and wind tunnel tests incorporating Orion MPCV in work.
    - Ten tests as of May 2012 (for a total of more than 1,000 seconds of total run time) of the J-2X engine on the A-2 test stand at the Stennis Space Center. Engine 10001 has since been fitted with a clamshell for further engine characterization starting in May.
    - As of May 2012, 13 powerpack tests had been completed, and J-2X powerpack series #2 were underway on the A-1 test stand at the Stennis Space Center.
    - All RS-25 Space Shuttle main engines and associated ground support equipment transferred from the Kennedy Space Center to the Stennis Space Center for future testing and integration into Core Stage.
    - As of May 2012, there had been three demonstration firings of the five segment solid rocket motor design to be used for the EM-1 and EM-2 flights in 2017 and 2021.
    - Completed 24-inch motor firing test on March 14, 2012.
- Accomplishments for Orion MPCV and SLS are updated monthly at: [http://www.nasa.gov/exploration/systems/mpcv/orion\\_reports\\_archive.html](http://www.nasa.gov/exploration/systems/mpcv/orion_reports_archive.html) and [http://www.nasa.gov/exploration/systems/sls/sls\\_highlights.html](http://www.nasa.gov/exploration/systems/sls/sls_highlights.html)

Mr. BOLDEN. So while I know you're talking about dollars, I'm actually talking about accomplishments, getting us to a 2014 launch date for Orion that Lockheed Martin wants to do, an exploration test flight. They're going to make that. So 2 years from now, we're going to fly Orion. That was not even in our program before. I think at the rate we're going right now, the funding profile that we have, while not optimal, will get us to a 2017 first un-crewed flight of SLS and MPCV combination. That will be a first-generation SLS/MPCV, and then no later than 2021 we will see a crewed mission on SLS/MPCV.

Additional funds would help the 2021 date because we could pull some things forward, we could reduce some risk, but it won't affect the 2017 launch date, the first un-crewed mission. So I think we have put funds against SLS and MPCV to get to the objective, to meet the objectives that we agreed to with the Congress.

While commercial crew and cargo is not a priority, so to speak—it is not one of the priorities agreed upon by the Congress and the administration because there are only three—but commercial crew and cargo are vital for me to be able to live up to my promise to you on ISS. Without an American capability to supply both cargo and crew to ISS, the gap is going to continue to increase. I am going to continue to rely on the Russians to provide transportation for both cargo and crew, and I'm not sure that I can adequately enhance ISS the way I want to do it.

## ORION AND SPACE LAUNCH SYSTEM AUDIT STUDY

Senator HUTCHISON. Mr. Bolden, when you thoroughly studied Orion and SLS, you studied it in NASA, and then you studied it outside of NASA. You had an outside group that you were adamant had to make the final decision, and you paid a lot of money for that further independent study. And, probably what I would consider to be 1 year late, you finally got the report back that said if the assumptions are correct for the next 3 to 5 years, the budget will be sufficient to make the goals for Orion and SLS a reality.

And yet the very next year, we have you coming forward cutting that budget that was the basis of your very sought after and required outside audit study before you would move forward. So here we are in what looks like the stepping back from what your outside study showed was necessary so that you're going to be able to come in next year and say, "Gee, you know, we didn't get that funding that was the basis of that study, and so we probably can't do Orion and SLS", which is the kind of rhetoric we have heard in the past.

So I just wonder why you would be so obvious in cutting the Orion and SLS budget when you staked the whole credibility of going forward on the study that said we had to keep these assumed levels of spending.

Mr. BOLDEN. Senator, it is my hope that before you leave the Congress, NASA will be able to show you where it's not going to cost us as much as is presently budgeted right now to complete SLS and MPCV because the technologies that we're developing will reduce the cost, that we will move to lighter-weight tanks, we will move to composite tanks. The original estimates we gave everybody were based on current state-of-the-art technology of the day. If we stay with that, then I'm not being responsible.

So my hope is—and we have to live within the budget that you gave us, and that budget also has to provide funds for a wedge for additional things that will go with SLS and MPCV to make it a true exploration system. So that money has to come from within. So we are trying our best, as Senator Shelby and Senator Cochran mentioned, and as all of you have, we're trying to call upon our best technologists both in the agency and academia and in industry to help us get to the point where we are much more efficient in the development of our vehicles, that they are much better than the currently envisioned, and that we can get the job done that you set. We will not change the date—

Senator HUTCHISON. Mr. Bolden, you are so insistent that you're living within the budget that we gave you for Orion and SLS. But oddly, you're going \$300 million more than the authorized level for commercial, and you're saying on Orion and the SLS you're going to have new technology that's going to bring the cost down, so everything is going to be fine.

But on the other hand, you now are looking at three or four companies that you're subsidizing on the commercial crew side, so there doesn't appear to be any kind of future advantage for technology like you're proposing that you're going to have for the Orion and SLS. It doesn't seem to make any sense that there's a way forward that you can meet all of our goals with integrity by subsidizing competitive commercial crew enterprises.

Mr. BOLDEN. Senator, I have to re-emphasize the fact that we are making progress, tangible progress on SLS and MPCV. We've completed, I don't want to read through the list, but we've completed water drop tests on Orion. We have actually completed risk reduction. We've had an industry day on the SLS. We have taken steps that will reduce the risks on the vehicle itself as we do it. We have transferred main engines over to the Stennis Space Center for testing after modifications.

So we are doing everything that we can. And I will take—

Senator HUTCHISON. Is this going to be \$170 million in savings? Is that what you're saying?

Mr. BOLDEN. No, ma'am. But I will—

Senator HUTCHISON. Well, that's what you're cutting out of this year's budget.

Mr. BOLDEN. I will take one thing for the record. I think that you and I are disagreeing on what the fiscal year 2012 appropriation amount really was, and I will take it for the record. But I think a check of the budget will show that the fiscal year 2012 appropriation is actually in excess of what we submitted as needed based on the independent cost assessment, but I will take that for the record.

[The information follows:]

SPACE LAUNCH SYSTEM/ORION MULTI-PURPOSE CREW VEHICLE

For fiscal year 2012, the Congress appropriated \$1.943 billion for Space Launch System and associated ground systems, \$15 million more than the Independent Cost Assessment (ICA) profile when adjusted to include civil service labor. Also for fiscal year 2012, the Congress appropriated \$1.2 billion for the Orion Multi-Purpose Crew Vehicle, \$181 million more than the ICA profile when adjusted to include civil service labor.

Mr. BOLDEN. I think the fiscal year 2012 funding for SLS/MPCV exceeded what we said we would need in the independent—substantiated by the independent cost assessment. I know that the fiscal year 2012 budget was greatly reduced from what we said we would need in order to be able to close the gap with commercial crew. And so we're trying to get to the balance that you insist upon so that we have a commercial capability to supply ISS and keep the gap from growing there.

Senator HUTCHISON. Thank you.

Mr. BOLDEN. We have not changed the delivery dates on SLS and MPCV. In fact, we have improved them somewhat by buying down risk with the test, the demonstrated activities that we've done to date.

Senator HUTCHISON. Thank you, Madam Chair.

Senator MIKULSKI. Mr. Administrator, as you can see, there are a lot of yellow flashing lights, and even skepticism about the amounts that are in the priorities.

I'm going to go to another round, just very quickly, but let me say this.

First of all, this \$17 billion-plus budget request is pretty much the same as what it was when President Clinton and Vice President Gore were in the White House. So though we ask for greater responsibility, though we've had some severe challenges, even an accident, we are still pretty much in the same money that we were 15 years ago. I know of no other Federal agency that has a major

international presence that has been kept at that level. So I think we all have to be realistic here about expectations of what we want NASA to do.

If we had followed the Norm Augustine recommendations for a balanced space program and a steady percentage of increase, and Mr. Augustine did that during the administration of President Bush, the elder, who we worked with very closely on many of these matters, you would be somewhere between \$22 and \$24 billion. But we're doing things in a different way, and lessons learned.

#### JAMES WEBB SPACE TELESCOPE

So let me just say a concluding remark about JWST. I appreciate the fact that the NASA administration, and also Northrop Grumman, is taking very seriously our insistence on keeping the project on time, on line, and meeting its objectives, and we're going to count on you to continue to do that. I know you've dispatched some of your most trusted NASA leaders to be able to oversee it from the NASA area.

I just want to say this, and I've said this to the others involved in JWST that don't think this is like the Hubble.

Mr. BOLDEN. Yes, ma'am.

#### COMMERCIAL CARGO AND CREW

Senator MIKULSKI. If anything gets screwed up, I can't pull a rabbit out of the hat. I don't have a rabbit, and I don't have a hat. So we need to do that.

Now, let's go to commercial crew. The questions have been extensively asked, but here is my question. I happen to support the commercial endeavor for both cargo and crew. I think it's bold, I think it's promising, but I'm concerned that it's behind schedule.

My concern is that now the best-case scenarios about the launch for these is 2017. We've extended the life of ISS to 2020. Isn't this a hell of a lot of money for a 3-year effort? Could you comment on that?

Mr. BOLDEN. Senator, I will comment, and I am not making a promise to anyone because I'm not in a position to make this commitment, but in anticipating what we can do with ISS, the international partners—and that's the 19 member nations of the ESA, Japan, Canada, the United States, and Roscosmos and Russia—have all been engaged in engineering estimates of how long can we fly ISS, and we have all agreed that ISS can be flown to at least 2028.

So when I talk about the life of ISS, I don't limit it to 2020. To fly it beyond that, as we all learned after President Obama said he wanted to fly it until at least 2020, beyond the 2016 original date for termination, requires approval of all the international partners. But all of them are on the record saying that we know we can fly ISS until 2028, and most of them are on the record saying they would like to utilize it beyond that.

So what NASA wants to do is get a commercial capability, get a U.S. capability in place as soon as possible so that we can enhance its utilization, can make it a true national laboratory, as Senator Hutchison has insisted, and fly it as long as we can, support it as long as we can. I don't foresee us, just because 2020 ar-

rives, saying that's the end of ISS. To me, that would make no sense. We should fly it as long as the nations feel there is a need. I think all of us believe that if we're really going to do a robust exploration program, there will be a long-term need for a micro—

Senator MIKULSKI. As you can understand. First of all, it cost us \$50 billion.

Mr. BOLDEN. So beyond 3 years—

Senator MIKULSKI. It cost us \$50 billion to build ISS.

Mr. BOLDEN. \$100 billion.

Senator MIKULSKI. And a lot of blood, sweat, and tears. As you know, we had some melancholy events along the way. Now we have ISS, and we have great international partners who signed up to go with the United States. They were kind of a coalition of the willing in space. We need to use that ISS.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. We need to justify it to the taxpayer, and we need to show it in the scientific community. So we've got to get up there.

So let's start with cargo. I understand that SpaceX expects to—we need rockets in the air.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. Again, it's cargo, it's not people. When do you think SpaceX will launch?

Mr. BOLDEN. Weather and everything else considered, I think they will be able to hold to their April 30 launch date.

Senator MIKULSKI. So it will be April or the first week in May, depending on weather.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. And when is Orbital going to launch at Wallops?

Mr. BOLDEN. Orbital's best estimate right now—and I promised you, I need to give you concrete numbers. Orbital's best estimate right now is, if the Mid-Atlantic Regional Spaceport (MARS) can finish the launch pad—

Senator MIKULSKI. MARS, for my colleagues and the record—

Mr. BOLDEN. I'm sorry. MARS is the controlling entity. They own the launch pad at Wallops. They are building it for the State of Virginia. It's sort of like Space Florida and Florida. They contracted with a company to actually do the building. When you and I were out for the inauguration of the horizontal processing facility, we took a walk up on the launch pad and we both felt good because the physical structure is—

Senator MIKULSKI. But I want to feel good now.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. So where are we?

Mr. BOLDEN. It is not ready. But we have brought people up from the Kennedy Space Center, from Langley, from Marshall, from Stennis to help them with technical expertise to try to make sure that they can complete it on a date certain, and that date certain I have to provide to you, and that I'll have to take for the record.

[The information follows:]

## MID-ATLANTIC REGIONAL SPACEPORT

The Mid-Atlantic Regional Spaceport Launch Pad 0A at Wallops Flight Facility is scheduled for completion and turnover to Orbital Sciences Corporation (OSC) in June-July 2012. OSC's Antares launch vehicle maiden test flight is scheduled for late summer, with the demonstration mission to the International Space Station scheduled by end of 2012.

Senator MIKULSKI. Well, I'm very frustrated by this.

Mr. BOLDEN. As am I.

Senator MIKULSKI. Because there was much promised, and the launch pad, it was going to be a new day for Spaceport Wallops. This offer was promised for not only a return to ISS, but other launch capabilities that would serve our national interest, which we don't have to elaborate on here. And I am puzzled and perplexed that for the last 8 weeks I keep hearing that there's a problem with the launch pad, but I don't hear solutions. What I hear is that you've dispatched people, but I don't hear a solution, and we need to hear a solution.

Mr. BOLDEN. Yes, ma'am. And I will bring that to you. I have had discussions with Mr. Bill Gerstenmaier, who heads our human exploration operations at Mission—

Senator MIKULSKI. But I'm directing these comments also to MARS and to the people in charge of that, that they've got to get it going.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. Because I think there is growing frustration and skepticism about this, and yet we hear that the rockets are ready, everything is ready. And so we've got to start saying, is this endeavor a go? The clock is ticking.

Mr. BOLDEN. Yes, ma'am.

## SCIENCE MISSIONS IN THE FUTURE

Senator MIKULSKI. This, then, goes to my last question with science. We feel that with the JWST, we are continuing to secure America's pre-eminence in astronomy and astrophysics, that it is the next generation of Hubble, and we, who have the Space Telescope Institute in Maryland, are so proud of not only the Hubble but the fact that Dr. Reese of the Space Telescope Institute and the Hopkins faculty has won a Nobel Prize.

Much is being said about American exceptionalism, and we believe that it is in these endeavors that we have really demonstrated that. So we need that, but we need to look ahead also to what is the science today and what is the science of the future, and what can we afford. So the people have to make decisions. We make decisions about budgets, but people make decisions about careers.

So right now, the scientific community is concerned about where are we heading with small-, medium-, and large-size science missions in the future. Based on the National Academy of Sciences—not only Senator Barr or Senator Kay Bailey Hutchison or any of us here, but the National Academy—what is in this appropriations request that lays the groundwork for future recommendations in things like dark energy, astrophysics, heliophysics, and Earth science? Or are we in such an age of frugality that we aren't going to make those investments?

Mr. BOLDEN. Senator, we are going to continue to make those investments. People talk about flagship missions. Flagships are something that are of such importance to science, they answer the most challenging questions, and NASA has not given up on flagship missions. We don't have a new flagship in place, but I have to remind everyone that JWST is a flagship mission that we are going to launch in 2018. The Mars Science Laboratory, Curiosity, which is on its way to Mars right now, is a flagship mission which we launched in November and will land on Mars in August of this year. SLS/MPCV in the area of human exploration is a flagship mission.

Senator MIKULSKI. You see, that's my whole point. There we are with flagship. We spend a lot of our time keeping it focused and on line because it continually comes to us with underestimates. So then we have the flagship. So there we are, and I'm not minimizing their significance, but they're the Santa Marias. But there's a whole group out there that wonders about the Niñas and the Pintas, and are we so busy bailing out the Santa Marias, we don't get to the Niñas and Pintas.

Mr. BOLDEN. Senator, we have Niñas and Pintas on the way, as a matter of fact, and what we have been able to do with the Niñas and Pintas, something like Juno, Gravity Recovery and Interior Laboratory (GRAIL), now Ebb and Flow, and some of the other medium-class or small-class science missions that are underway or in work, MAVEN for example, going to Mars to measure its upper atmosphere, these missions which have come about post-2009-ish or so, where we started utilizing a policy of joint confidence-level assessments where we looked at cost and schedule, and we are now holding programs to cost and schedule in a way that we were not able to do before.

Juno is on its way to Jupiter, on cost, on schedule. GRAIL, Ebb and Flow, are at the Moon doing science, on cost, on schedule. Suomi National Polar-Orbiting Partnership, which we produced—

Senator MIKULSKI. Those are underway. So that—

Mr. BOLDEN. MAVEN is in work. MAVEN is scheduled to launch in 2013. It is currently on cost, on schedule.

I would even go so far as to say, while JWST is a flagship and it started out in bad shape, I am very proud to say that since we restructured JWST and re-planned it and we are now under new management, we hung a new shingle, JWST is on cost and on schedule.

Now, that is absurd to say that for a mission that is billions of dollars over what the original assessment was. But since we worked with your staff and you and we made a promise to you that we were going to deliver, we have done so. We are on cost and on schedule, in some cases ahead of schedule with JWST. We are doing things differently than the way we used to do it.

We have to deliver. We know that. Or otherwise we perish.

Senator MIKULSKI. Well, and so do the contractors.

Mr. BOLDEN. Yes, ma'am. Anyone who thinks that NASA can make all this happen without our incredibly valuable contractors just doesn't know how we do business. We spend 85 percent of the taxpayers' money going out to the contractors, and so we have to

hold their feet to the fire. I can point to missions now where I think we are holding their feet to the fire. They understand, because of people like you who have brought them in and said, okay, I don't have another hat, and I don't have a rabbit, I think they understand what you've told them, and they are performing.

We're on the way to launching a replacement for the Orbiting Carbon Observatory, OCO-2. Right now, that's on cost. And OSIRIS (Origins-Spectral Interpretation-Resource Identification-Security-Regolith Explorer—OSIRIS-REx)——

Senator MIKULSKI. I think we understand that.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. Well, thank you for that answer.

Mr. BOLDEN. Yes, ma'am.

Senator MIKULSKI. Senator Hutchison.

Senator HUTCHISON. No further questions.

Senator MIKULSKI. So, Mr. Administrator, we thank you for your testimony. I think Senator Hutchison and I, in thanking you, we want to thank really all the men and women who work at the NASA centers, the contractors who support them, and also very important allies that participate with us in these very important projects. We view Canada, Japan, who itself is facing some challenges with their own budget because of the natural disaster—we treasure the relationship with Japan both in space, science, and in national security.

So we all need to work together and keep those Santa Marias afloat and make sure we have the Niñas and the Pintas, all of which we can afford. And we wouldn't mind the Navy's budget either.

So, having said that——

#### ADDITIONAL COMMITTEE QUESTIONS

Mr. BOLDEN. Senator, I appreciate that. I do want to take an opportunity to congratulate you on the milestone that you yourself achieved this past weekend. That is something worthy of all of our applause for you.

And, Senator Hutchison, I do want to thank you again.

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

#### QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

##### SEQUESTRATION

*Question.* At each of our hearings this year each department has been asked about the impact of the budget sequestration might be. As National Aeronautics and Space Administration (NASA) budget already has a cut as part of the fiscal year 2013 budget request, and several programs are being reduced to the bare minimum needed to maintain schedule, the impact of sequestration could cause mission schedules to slip and when that happens, increased costs inevitably follow.

What will the overall impact be to the agency?

*Answer.* NASA has not initiated planning for sequestration and fully expects that the Congress and the administration will enact balanced deficit reduction legislation and thereby avoid the need for a sequestration. If necessary, the administration will be addressing important technical questions concerning a sequestration and NASA cannot speculate at this time the size or effect of sequestration.

*Question.* If sequestration requires reductions to programs at NASA, what will NASA's rationale be for applying funding reductions to its programs? Will NASA re-



duce every program, project and activity by the percentage, and if not, justify the agency's decision to spare some programs over others from the effects of a funding reduction?

Answer. NASA has not initiated planning for sequestration and cannot speculate at this time the size or effect of sequestration.

#### ORION AS BACKUP

*Question.* The NASA authorization specifically identifies space launch system (SLS) and Orion to be used as a backup to commercial crew. This was done in case the primary providers are unable to fulfill the need for International Space Station (ISS) support. You have previously stated that commercial crew is plan A for reaching the ISS, and it is also plan B because NASA would like to subsidize more than one company for their development and then pay them again to ride to the space station. At the same time, if they cannot deliver, NASA will have to scramble to determine a rocket configuration for Orion to do the job, or continue paying the Russians for seats.

Does NASA have a plan, if the need arises, to exercise the Orion backup capability?

Answer. The Orion Multi-Purpose Crew Vehicle (MPCV) will have the capability to provide an alternate means of delivery of crew and cargo to the ISS. Although funds are not currently being spent to enable this capability, this capability will not be precluded. This would be a highly inefficient use of the SLS and MPCV designs, so NASA would only develop the capability "in the event other vehicles are unable to perform that function" per the NASA Authorization Act of 2010 (Public Law 111-267).

*Question.* If a plan exists, or even if one does not, please provide an estimate for the cost and timeline that would be needed for Orion to take crews to the ISS in case of commercial crew being unable to deliver crews to the ISS as defined in section 302(c)(1)(D) of Public Law 111-267.

Answer. SLS and Orion MPCV are expected to execute the system's first launch in 2017 and be crew capable in 2021. SLS is a heavy lift launch vehicle and has payload capability far and above that which is necessary to support ISS crew rotation and resupply activities; therefore, launching an SLS for ISS-related activities would be a highly inefficient use of the system that is simply not cost-effective. However, in an emergency, the SLS could be used for low-earth orbit (LEO) operations. In addition, the Orion MPCV is a crew vehicle that is primarily designed for deep space exploration and, if needed for an emergency, could function as a backup vehicle for the ISS crew. The current Orion design is specifically designed and tailored for deep space exploration and a high-speed re-entry to Earth, which includes systems that are not necessary for LEO missions. Launching the Orion MPCV capsule for use in LEO would also be an inefficient use of a robust system intended for other purposes.

NASA has assessed the content changes needed to perform ISS missions as a backup, including required technical changes and the associated cost and schedule. The additional Orion MPCV costs for the ISS mission would be at minimum \$300 million. Additional cost would be incurred if schedule is critical.

#### SHUTTLE RETIREMENT PAYMENT

*Question.* As part of the close out of the shuttle program, NASA has a one-time payment to the contractor for their employee retirement plan. This payment was agreed to by NASA when the United Space Alliance (USA) was created to service the orbiters for NASA. Last year, the subcommittee was assured that the amount funded in last year's appropriations bill was the amount necessary to make this payment. However, since that time the amount has changed and the payment will likely be higher than NASA anticipated when funds were appropriated for this payment.

Can you tell us what the current payment is anticipated to be and which programs NASA intends to look to in order to make up the difference if necessary?

Answer. Our latest estimate is that termination of USA employee retirement plans will cost between \$535 to \$555 million. This estimate could change once the formal termination is approved; however, we do not anticipate that it will greatly change. The difference between what was appropriated, \$470 million, and the final cost will be covered within the Space Shuttle Retirement and Transition line of the Space Operation account.

## SANTA SUSANA FIELD LABORATORY

*Question.* I understand that NASA is involved in the cleanup of a former rocket engine test facility in Ventura County, California—called the Santa Susana Field Laboratory (SSFL). In December 2010, NASA and Department of Energy signed administrative orders on consent (AOC(s)) with the State of California that obligated the Federal parties to cleanup portions of the site.

What level of cleanup did NASA commit to in the AOC, and is that cleanup level required by Federal or state law?

*Answer.* The AOC calls for a cleanup to “background”. Per AOC section 2.1, “[t]hat is, at the completion of the cleanup, no contaminants shall remain in the soil above local background levels, with [certain specific exemptions].”

Federal law required cleanup of sites contaminated any hazardous materials. NASA entered into the AOC as part of an out of court settlement with the Department of Toxic Substance Control (DTSC). Under the terms of the AOC, compliance with the AOC “shall constitute NASA’s full and complete compliance with all applicable provisions of Chapters 6.5 and 6.8 of Division 20 of the California Health and Safety Code (the California Hazardous Waste Control Law, sections 25100 et seq. of that Code, and the California Hazardous Substances Account Act, sections 25300 et seq. of that Code), including specifically, but not limited to, California Senate Bill 990 (Stats. 2007, c. 729), which has been codified as section 25359.20 of the California Health and Safety Code, but only with respect to the application of these provisions to radiologic or chemical contamination of soil at the Site or any contiguous radiologic or chemical contamination of soil emanating from within Area II and the portion of Area I owned by NASA, within or without the SSFL boundaries, identified by DTSC as part of the investigation of chemical contaminants.”

The AOC also requires NASA in section 4.2.3 that “NASA shall conduct all activities under this Order in a way that will promptly comply with the requirements of NEPA.”

*Question.* How does this level of cleanup compare to cleanup levels at other sites that NASA is involved in?

*Answer.* The final cleanup levels (what is meant by background for the proposed action) have not been specifically established by the State. In order to conduct the required National Environmental Policy Act (NEPA) evaluation of the proposed AOC cleanup and reasonable alternatives, NASA has developed estimates based on the background levels determined in 2005 along with the latest laboratory reporting limits used by the State. The chart below summarizes the proposed AOC cleanup and three other standard land-use scenarios under other cleanup programs.

## PROPOSED ACTION

	AOC cleanup	Alternative 1 (Residential)	Alternative 2 (Industrial)	Alternative 3 (Recreational)
Removal volume (cy) .....	502,000	182,000	92,000	58,000
Estimated cost .....	\$210 million	\$80 million	\$40 million	\$25 million
Truckloads required .....	26,421	9,579	4,842	3,052
Duration (months) assuming 12 trucks per day .....	100	36	18	12

*Question.* If the cleanup is not required by law, and it differs from cleanups at other sites, why is NASA making this commitment?

*Answer.* NASA entered into the AOC as part of an out-of-court settlement with DTSC. Cleanup of contaminated sites with hazardous materials is required under Federal law, specifically the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation Liability Act (CERCLA). NASA’s cleanup actions are completed under these authorities or under State authorized RCRA or CERCLA programs.

*Question.* Under the AOC how many cubic yards of soil will need to be removed?

*Answer.* The final cleanup levels have not been specifically established by the State. However, based on engineering estimates to meet levels required by section 2.1 of the AOC limits and assuming excavation and offsite disposal, the current estimate would be approximately 502,000 cubic yards. This estimate is based on background levels determined in 2005 and current laboratory reporting limits.

*Question.* What is NASA’s cost estimate for complying with the AOC? How much more will the SSFL AOC cleanup cost compared to what it costs NASA to do the cleanup it does at other sites?

*Answer.* The final cleanup levels (what is meant by background for the proposed action) have not been specifically established by the State. In order to conduct the

required NEPA evaluation of the proposed AOC cleanup and reasonable alternatives, NASA has developed estimates based on the background levels determined in 2005 along with the latest laboratory reporting limits used by the State. The chart below summarizes the proposed AOC cleanup and three other standard land use scenarios under other cleanup programs.

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*Question.* Does cleanup under the AOC need to comply with NEPA?

*Answer.* NEPA is a statutory requirement (42 U.S.C. 4321 et seq.) and, as such, is reflected as a requirement of the AOC. Under the terms of the AOC: “4.2.3. NASA shall conduct all activities under this Order in a way that will promptly comply with the requirements of NEPA”.

*Question.* Will compliance with NEPA require consideration of all land-use and cleanup alternatives?

*Answer.* Section 4.2.3 of the AOC requires that “NASA shall conduct all activities under this Order in a way that will promptly comply with the requirements of NEPA.” NASA is obligated to evaluate all reasonable alternatives or a range of reasonable alternatives in enough detail so that the public can compare and contrast the environmental effects of the various alternatives. NASA is currently conducting an environmental review of the impacts of the AOC and will consider land use and cleanup alternatives consistent with NEPA’s statutory and regulatory obligations.

CONCLUSION OF HEARINGS

Senator MIKULSKI. Thank you.

If there are no further questions, Senators may submit additional questions for the official record. We’ll request NASA’s response within 30 days.

This is the subcommittee’s final regularly scheduled budget hearing. However, the subcommittee reserves the right to hold others should the need arise.

And the subcommittee stands in recess, subject to the call of the chair, with an anticipated mark-up of our bill sometime in mid-to-late April.

[Whereupon, at 3:20 p.m., Wednesday, March 28, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]



# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2013

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

## NONDEPARTMENTAL WITNESSES

[CLERK'S NOTE.—The subcommittee was unable to hold hearings on nondepartmental witnesses. The statements and letters of those submitting written testimony are as follows:]

### PREPARED STATEMENT OF THE AMERICAN GEOSCIENCES INSTITUTE

The American Geosciences Institute (AGI) supports Earth science research sustained by the National Science Foundation (NSF), the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST) and the National Aeronautics and Space Administration (NASA). Frontier research on the Earth, energy, and the environment has fueled economic growth, mitigated losses and sustained our quality of life. The subcommittee's leadership in supporting geoscience-based research is even more critical as our Nation competes with rapidly developing countries, such as China and India, for energy, mineral, air, and water resources. Our Nation needs skilled geoscientists to help explore, assess and develop Earth's resources in a strategic, sustainable and environmentally sound manner and to help understand, evaluate, and reduce our risks to hazards. AGI supports the President's budget request of \$7.373 billion for NSF, \$859.75 million for NIST, and \$1.785 billion for Earth science at NASA plus \$5.3 billion for NOAA.

AGI is a nonprofit federation of 50 geoscientific and professional societies representing more than 250,000 geologists, geophysicists, and other Earth scientists. Founded in 1948, AGI provides information services to geoscientists, serves as a voice for shared interests in our profession, plays a major role in strengthening geoscience education, and strives to increase public awareness of the vital role the geosciences play in society's use of resources, resilience to hazards, and the health of the environment.

*National Science Foundation.*—AGI supports an overall budget of \$7.373 billion for NSF. AGI greatly appreciates the Congress' support for science and technology in recent appropriations and through the America COMPETES Reauthorization Act of 2010. The forward-looking investments in NSF are fiscally responsible and will pay important dividends in future development that drives economic growth, especially in critical areas of sustainable and economic natural resources and reduced risks from natural hazards. Support for science will save jobs, create new jobs, support students, and provide training for a 21st century workforce.

*National Science Foundation Geosciences Directorate.*—The Geosciences Directorate (GEO) is the principal source of Federal support for academic Earth scientists and their students who are seeking to understand the processes that sustain and transform life on this planet. About 63 percent of support for university-based geosciences research comes from this directorate and more than 14,600 people will be directly supported through GEO in fiscal year 2013 with thousands of others deriving support indirectly.

The President's request for fiscal year 2013 asks for \$264 million for Atmospheric and Geospace Sciences; \$189 million for Earth sciences; \$362 million for Ocean sciences; and \$91 million for Integrative and Collaborative Education and Research within GEO. Much of the geosciences research budget is for understanding that is

critical for current national needs, such as water and mineral resources, energy resources, environmental issues, climate change, and mitigation of natural hazards. AGI asks the subcommittee to strongly support these funding levels.

GEO supports infrastructure and operation and maintenance costs for cutting-edge facilities that are essential for basic and applied research. Ultimately the observations and data provide knowledge that is used by researchers and professionals in the public, Government and private sector. GEO research and infrastructure helps drive economic growth in a sustainable manner. Geoscience-based research tools and academic expertise helped to end the BP Deepwater Horizon oil spill, saving billions of dollars for industry and untold costs to the environment. Research funding continues to help the gulf coast recover environmentally and economically.

Among the major facilities that NSF supports, the Academic Research Fleet would receive \$73 million; EarthScope Operations would receive \$26 million; Incorporated Research Institutions for Seismology would receive \$11 million; Ocean Drilling Activities would receive \$39 million; the Ocean Observatories Initiative would receive \$40 million; and the National Center for Atmospheric Research would receive \$92 million. AGI strongly supports robust and steady funding for infrastructure and operation and maintenance of these major facilities.

NSF's Office of Polar Programs (OPP) funds basic research in the Arctic and Antarctica that helps the United States maintain strategic plans, international efforts, security goals, natural resource assessments, cutting-edge polar technology developments, and environmental stewardship of extreme environs. OPP's funding helps support researchers and students, the U.S. military, and the private sector. OPP is estimated to directly support almost 3,325 people in fiscal year 2013 and thousands of others indirectly. AGI supports the President's request of \$449.7 million for this important program.

*National Science Foundation Support for Earth Science Education.*—The Congress can grow the depleted geosciences workforce; stimulate economic growth in the energy, natural resources, and environmental sectors; and improve natural resource literacy by supporting the full integration of Earth science information into mainstream science education at the K–12 and higher education levels. AGI strongly supports the Math and Science Partnerships (MSP), the Graduate Research Fellowships (GRF) and the Research Experiences for Undergraduates (REU) within NSF's Education and Human Resources Division. These programs are effective in building a science and engineering workforce for the 21st century.

Improving geoscience education, one of the goals of NSF-EHR, to levels of recognition similar to other scientific disciplines is important in the following ways:

- Geoscience offers students subject matter that has direct application to their lives and the world around them, including energy, minerals, water, and environmental stewardship. All students should be required to take a geoscience course in primary and secondary school.
- Geoscience exposes students to a range of interrelated scientific disciplines. It is an excellent vehicle for integrating the theories and methods of chemistry, physics, biology, and mathematics. A robust geoscience course would make an excellent capstone for applying lessons learned from earlier class work.
- Geoscience awareness is a key element in reducing the impact of natural hazards on citizens—hazards that include earthquakes, volcanic eruptions, hurricanes, tornadoes, and floods. Informal geoscience education that leads to reducing risks and preparing for natural events should be a life-long goal.
- Geoscience provides the foundation for tomorrow's leaders in research, education, utilization and policymaking for Earth's resources and our Nation's strategic, economic, sustainable, and environmentally sound natural resources development. There are not enough U.S.-trained geoscientists to meet current demand and the gap is growing. Support for geoscience research and education is necessary to stay competitive and to wisely manage our natural resources.

*National Oceanic and Atmospheric Administration.*—AGI supports a budget of \$5.3 billion for NOAA, which is consistent with the request of other stakeholders and more than the President's request of \$5.061 billion. We hope the subcommittee will continue to support the National Weather Service (NWS); Oceanic and Atmospheric Research (OAR); National Ocean Service (NOS); and the National Environment Satellite, Data and Information Service (NESDIS). These programs are critical for understanding and mitigating natural and human-induced hazards in the Earth system while sustaining our natural resources. These programs prevent billions of dollars of losses, keep the private and public sectors growing, and save lives. For example, drought forecasts are worth up to \$8 billion to the agriculture, transportation, tourism, and energy sectors while NexRad radar has prevented more than 330 fatalities and 7,800 injuries from tornadoes since the early 1990s. The addi-

tional request of AGI and stakeholders would bring NWS, OAR, and NOS back to fiscal year 2010 levels, while supporting nonprocurement needs in NESDIS.

*National Institute of Standards and Technology.*—We support the President’s request of \$860 million for NIST in fiscal year 2013. Basic research at NIST, conducted by Earth scientists and geotechnical engineers, is used by the public and private sector on a daily basis. The research conducted and the information gained is essential for understanding climate change and natural hazards in order to build resilient communities and stimulate economic growth with reduced impact from risk. In particular, we support Measurements and Standards to Support Increased Energy Efficiency and Reduced Environmental Impact and Measurements and Standards to Support Advanced Infrastructure Delivery and Resilience. Energy efficiency and reduced environmental impact research will improve the health of our planet and reduce energy costs. The advanced infrastructure research will help to reduce the estimated average of \$52 billion in annual losses caused by floods, fires, and earthquakes.

NIST is the lead agency for the National Earthquake Hazard Reduction Program (NEHRP), but has received only a small portion of authorized and essential funding in the past. AGI strongly supports the reauthorization of the National Earthquake Hazards Reduction Program (NEHRP) in 2012. We hope the appropriations subcommittee will continue to support this effective and cohesive program, even if the authorizing legislation takes more time to complete. NEHRP is an excellent example of how to coordinate different entities for the safety and security of all. NEHRP develops effective practices and policies for earthquake loss reduction and accelerates their implementation; improves techniques for reducing earthquake vulnerabilities of facilities and systems; improves earthquake hazards identification and risk assessment methods and their use; and improves the understanding of earthquakes and their effects.

*National Aeronautics and Space Administration.*—AGI supports the vital Earth observing programs within NASA. AGI supports the President’s request of \$1.785 billion for Earth science programs within the Science Mission Directorate at NASA. The investments are needed to implement the priorities of the National Academies Earth Science and Applications from Space Decadal Survey. NASA needs to maintain its current fleet of Earth-observing satellites, launch the next tier and accelerate development of the subsequent tier of missions. The observations and understanding about our dynamic Earth gained from these missions is critical and needed as soon as possible. Earth observations are used every day, not just for research, but for critical information to aid society in mundane tasks, like weather forecasting and emergency services, such as tracking volcanic ash plumes or oil spills that disrupt the economy and the environment. The requested increase for fiscal year 2013 and proposed increases for future years are wise and well-planned investments that benefit everyone.

We appreciate this opportunity to provide testimony to the subcommittee and would be pleased to answer any questions or to provide additional information for the record.

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PREPARED STATEMENT OF THE AMERICAN INDIAN HIGHER EDUCATION CONSORTIUM

This statement focuses on the National Science Foundation (NSF).

On behalf of this Nation’s 37 tribal colleges and universities (TCUs), which compose the American Indian Higher Education Consortium (AIHEC), thank you for the opportunity to express our views and recommendations regarding the National Science Foundation’s Tribal Colleges and Universities Program (NSF–TCUP) for fiscal year 2013.

SUMMARY OF REQUEST

*National Science Foundation—Education and Human Resources Directorate*

Since fiscal year 2001, a TCU initiative has been funded and administered under the NSF–Education and Human Resources (EHR). This competitive grants program enables TCUs to enhance the quality of their science, technology, engineering, and mathematics (STEM) instructional and outreach programs. TCUs that have been awarded an NSF–TCUP grant have completed comprehensive institutional needs analysis and developed a plan for how to address both their institutional and NSF goals, with a primary institutional goal being significant and sustainable expansion and improvements to STEM programs. Through NSF–TCUP, tribal colleges have been able to establish and maintain programs that represent a key component of the pipeline for the American Indian STEM workforce. We urge the subcommittee to fund the NSF–TCU competitive grants program at a minimum of \$13,350,000.

TRIBAL COLLEGES AND UNIVERSITIES SHOESTRING BUDGETS: "DOING SO MUCH WITH SO LITTLE"

Tribal colleges and universities are accredited by independent, regional accreditation agencies and like all U.S. institutions of higher education, must periodically undergo stringent performance reviews to retain their accreditation status. TCUs fulfill additional roles within their respective reservation communities functioning as community centers, libraries, tribal archives, career and business centers, economic development centers, public meeting places, and child and elder care centers. Each TCU is committed to improving the lives of its students through higher education and to moving American Indians toward self-sufficiency.

TCUs have advanced American Indian higher education significantly since we first began four decades ago, but many challenges remain. Tribal colleges and universities are perennially underfunded. In fact, TCUs are the most poorly funded institutions of higher education in the country.

The tribal governments that have chartered TCUs are not among the handful of wealthy gaming tribes located near major urban areas. Rather, they are some of the poorest governments in the Nation. Tribal colleges are home to some of the poorest counties in America.

The Federal Government, despite its trust responsibility and treaty obligations, has never fully funded the principal institutional operating budgets, authorized under the Tribally Controlled Colleges and Universities Assistance Act of 1978. The Tribal College Act authorizes basic institutional operations funding on a per Indian student basis; yet the funds are not appropriated in the same manner. In fiscal year 2011, the Congress proposed level funding for TCU institutional operating grants and appropriated the communal pot of funds at the same level as fiscal year 2010. However, due to a spike in enrollments at the TCUs of more than 1,660 Indian students in a single year, the TCUs are receiving funds at \$549 less per Indian student toward their institutional operating budgets. Fully funding TCUs' operating budgets would require \$8,000 per Indian student. The tribal colleges are currently operating at \$5,235 per Indian student. By contrast, Howard University located in the District of Columbia, the only other minority-serving institution to receive institutional operations funding from the Federal Government, is funded at approximately \$19,000 per student. We are by no means suggesting that Howard University does not need this funding, only that the TCUs' operating budgets are clearly grossly underfunded.

While TCUs do seek funding from their respective State legislatures for the non-Indian State-resident students (sometimes referred to as "nonbeneficiary" students) that account for 20 percent of their enrollments, successes have been at best inconsistent. TCUs are accredited by the same regional agencies that accredit mainstream institutions, yet they have to continually advocate for basic operating support for their non-Indian State students within their respective State legislatures. If these nonbeneficiary students attended any other public institution in the State, the State would provide that institution with ongoing funding toward its operations.

TCUs effectively blend traditional teachings with conventional postsecondary curricula. They have developed innovative ways to address the needs of tribal populations and are overcoming longstanding barriers to success in higher education for American Indians. Since the first TCU was established on the Navajo Nation in 1968, these vital institutions have come to represent the most significant development in the history of American Indian higher education, providing access to, and promoting achievement among, students who might otherwise never have known postsecondary education success.

JUSTIFICATIONS

*National Science Foundation—Education and Human Resources*

American Indian students have the highest high school drop-out rates in the country. On average, more than 75 percent of all TCU students must take at least one developmental course, most often precollege mathematics. Of these students, our data indicate that many do not successfully complete the course in 1 year. Without question, a large proportion of the TCUs already limited resources is dedicated to addressing the failings of K–12 education systems.

To help rectify this, TCUs have developed strong partnerships with their K–12 feeder schools and are actively working, often with support from NSF–TCU grant programs, to engage young students in community and culturally relevant science and math programs. These efforts include weekend academies and summer STEM camps that reinforce and supplement the instructional programs area K–12s are able to provide.

Beginning in fiscal year 2001, NSF–TCUP has provided essential capacity building assistance and resources to TCUs. In the approximately 10 years since the pro-



gram began, NSF-TCUP has become the primary Federal program for building STEM capacity at the TCUs. NSF-TCUP has served as a catalyst for capacity building and positive change at TCUs and the program can be credited with many success stories. Today, American Indians are more aware of the importance of STEM to their long-term survival, particularly in areas such as renewable energy and technology-driven economic development.

The NSF-TCU program, administered by the Education and Human Resources Directorate, is a competitive grants program that enables TCUs to develop and expand critically needed science and math education and research programs relevant to their respective communities. Through this program, TCUs that have been awarded an NSF-TCUP grant have been able to enhance their STEM instructional offerings, workforce development, and outreach programs.

For example, College of Menominee Nation (CMN) in Keshena, Wisconsin has established strong programs in pre-engineering, computer science, natural resources, the biological and physical sciences, and sustainable development, mainly through support from NSF-TCUP. CMN's Sustainable Development Institute now hosts regional and sometimes international conferences on sustainable practices and in 2011 hosted an important conference for tribes located in the Great Lakes region to review current research on, and discuss strategies for responding to emerging challenges attributed to, climate change. CMN is an example of how TCUs are using their STEM programs as a springboard for taking critical leadership roles within their communities. Additionally, faculty and students at Haskell Indian Nations University in Lawrence, Kansas are using the university's Sequoyah Computer and GIS Lab to support their work with the Omaha and Winnebago Tribal Nations in collecting and analyzing hydrologic and botanical data necessary to support resource management decisionmaking by the tribal leadership.

Unfortunately, not all of the TCUs have had an opportunity to benefit from this program; yet, funding for this vital program has been static, and the percentage of proposals funded has declined each year beginning in 2004. We strongly urge the subcommittee to fund the NSF-TCU grants program at a minimum of \$13,350,000.

#### CONCLUSION

Tribal colleges and universities provide access to quality higher education opportunities, including STEM-focused programs, for thousands of American Indians. The modest Federal investment that has been made in TCUs has paid great dividends in terms of employment, education, and economic development. Continuation of this investment makes sound moral and fiscal sense.

We greatly appreciate your past and continued support of the Nation's tribal colleges and universities and your serious consideration of our fiscal year 2013 appropriation request.

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#### PREPARED STATEMENT OF THE AMERICAN INSTITUTE OF BIOLOGICAL SCIENCES

The American Institute of Biological Sciences (AIBS) appreciates the opportunity to provide testimony in support of fiscal year 2013 appropriations for the National Science Foundation (NSF). We encourage the Congress to provide NSF with at least \$7.373 billion in fiscal year 2013.

The AIBS is a nonprofit scientific association dedicated to advancing biological research and education for the welfare of society. AIBS works to ensure that the public, legislators, funders, and the community of biologists have access to and use information that will guide them in making informed decisions about matters that require biological knowledge. Founded in 1947 as a part of the National Academy of Sciences, AIBS became an independent, member-governed organization in the 1950s. Today, AIBS has nearly 160 member organizations and is headquartered in Reston, Virginia, with a Public Policy Office in Washington, DC.

The NSF is an important engine that helps power our Nation's economic growth. Through its competitive, peer-reviewed research grants, NSF is leading the development of new knowledge that will help to solve the most challenging problems facing society, and will lead to new scientific discoveries, patents, and jobs. The agency's education and training programs are helping to ensure that the next generation has the scientific, technical, and mathematical skills employers are seeking. Investments in research equipment and facilities enable the country to continue to innovate and compete globally. These efforts, however, require a sustained and predictable Federal investment. Unpredictable swings in Federal funding can disrupt research programs, create uncertainty in the research community, and stall the development of the next great idea.

NSF is the primary Federal funding source for fundamental research in the non-medical life sciences at our Nation's universities and colleges. The NSF provides approximately 62 percent of extramural Federal support for nonmedical, fundamental biological, and environmental research at academic institutions.

NSF is a sound investment that pays dividends. The use of peer-review to evaluate and select the best proposals means that NSF is funding the highest-quality research. Importantly, the fiscal year 2013 budget request would allow the agency to fund 300 additional research grants, thereby supporting roughly 5,000 additional researchers, teachers, and students.

The research supported by NSF is unique from the science funded by other Federal agencies. Unlike most Federal agencies, which focus on applied research, NSF supports basic research that advances the frontiers of our knowledge about biodiversity, genetics, physiology, and ecosystems. Recent discoveries that stem from NSF-funded research include:

- Creation of designer enzymes that can convert biomass into biofuels faster, more efficiently, and less expensively.
- Refined understanding of the mechanism by which the flu virus infects humans. This insight could help to develop more effective treatments for the flu and save lives.
- Identification of long-term environmental changes in U.S. ecosystems, such as changes in hydrology and nutrient inputs in lakes in the Midwest.
- Knowledge of the physiological effects of human-caused marine stressors, such as pollution and low oxygen, on crustaceans' ability to fend off bacterial infections. This research has ramifications for several economically important fisheries.
- Insight into the benefits of antimicrobial plant resins used in beehives on honeybee health. This discovery could have implications for colony collapse disorder, which has devastated bee populations in North America.

#### BIOLOGICAL SCIENCES DIRECTORATE

The Biological Sciences Directorate (BIO) funds research in the foundational disciplines within biology. These fields of study further our understanding of how organisms and ecosystems function. Additionally, BIO supports innovative interdisciplinary research that improves our understanding of how human social systems influence—or are influenced by—the environment, such as the NSF-wide Science, Engineering, and Education for Sustainability program. In collaboration with NSF's engineering, math, and physical science directorates, BIO is working to develop new, cutting-edge research fields. For example, the BioMaPS program is accelerating understanding of biological systems, and applying that knowledge to new technologies in clean energy.

The fiscal year 2013 budget request for NSF would enable the agency to continue to fund highly competitive grant proposals in BIO's five core programmatic areas:

- Environmental biology;
- Integrative organismal systems;
- Molecular and cellular biosciences;
- Biological infrastructure; and
- Emerging frontiers.

Each of BIO's program areas also contribute to the education and training of undergraduate, graduate, and postdoctoral students.

Equally important, BIO provides essential support for our Nation's place-based biological research, such as field stations and natural science collections. The Long-Term Ecological Research program supports fundamental ecological research over long-time periods and large spatial scales, the results of which provide information necessary for the identification and solution of environmental problems.

The budget request also would sustain an effort to digitize high-priority specimens in U.S. scientific collections. This investment will help the scientific community ensure access to and appropriate curation of irreplaceable biological specimens and associated data, and stimulate the development of new computer hardware and software, digitization technologies, and database management tools.

The fiscal year 2013 budget would continue efforts to better understand biodiversity. Funding is included for the Dimensions of Biodiversity program, which supports cross-disciplinary research to describe and understand the scope and role of life on Earth. Despite centuries of discovery, most of our planet's biodiversity remains unknown. This lack of knowledge is particularly troubling given the rapid and permanent loss of global biodiversity. Better understanding of life on Earth will help us to protect valuable ecosystem services and make new bio-based discoveries in the realms of food, fiber, fuel, pharmaceuticals, and bio-inspired innovation.

The budget request includes funding in the Major Research Equipment and Facilities Construction account for the continued construction of the National Ecological Observatory Network (NEON). Once completed, NEON will provide the infrastructure necessary to collect data across the United States on the effects of climate change, land use change, water use, and invasive species on natural resources and biodiversity. This information will be valuable to scientists, resource managers, and Government decisionmakers as they seek to better understand and manage natural systems.

#### SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATION

The requested budget would allow NSF to build upon its central role in science, technology, engineering, and mathematics (STEM) education. Support for the scientific training of undergraduate and graduate students is critically important to our research enterprise. Students recruited into science through NSF programs and research experiences are our next generation of innovators and educators. In short, NSF grants are essential to the Nation's goal of sustaining our global leadership in science, technology, engineering and mathematics and reigniting our economic engines.

We encourage the subcommittee to provide the requested funding for the successful Graduate Research Fellowship program. The budget request would provide funding for 2,000 new fellowships, which are important to our national effort to recruit and retain the best and brightest STEM students. The budget would also provide a needed \$2,000 increase to the fellowship's stipend, which has not changed since 2005.

The agency budget request also would provide important research support to early career scientists, helping them to initiate their research programs. The Faculty Early Career Development program (CAREER) supports young faculty who are dedicated to integrating research with teaching and learning. The fiscal year 2013 budget would enable NSF to support approximately 40 more CAREER awards than in fiscal year 2012.

#### CONCLUSION

Continued investments in the biological sciences are critical. The budget request for NSF will help spur economic growth and innovation and continue to build scientific capacity at a time when our Nation is at risk of being outpaced by our global competitors. Please support an investment of at least \$7.373 billion for NSF for fiscal year 2013.

Thank you for your thoughtful consideration of this request and for your prior efforts on behalf of science and NSF.

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#### PREPARED STATEMENT OF THE AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association (APPA) supports adequate funding for staffing antitrust enforcement and oversight at the Department of Justice (DOJ). For the DOJ Antitrust Division we support the President's fiscal year 2013 request of \$165 million.

APPA is the national service organization representing the interests of more than 2,000 municipal and other State and locally owned utilities in 49 States (all but Hawaii). Collectively, public power utilities deliver electricity to 1 of every 7 electric consumers (approximately 46 million people), serving some of the Nation's largest cities. However, the vast majority of APPA's members serve communities with populations of 10,000 people or less.

The DOJ Antitrust Division plays a critical role in monitoring and enforcing antitrust laws affecting the electric utility industry. With the repeal of the Public Utility Holding Company Act (PUHCA) included in the Energy Policy Act of 2005, the electric utility industry has experienced an increase in mergers that could result in increased market power in certain regions. This development, coupled with the volatility and uncertainty continuing to occur in wholesale electricity markets run by regional transmission organizations, makes the oversight provided by DOJ more critical than ever.

We appreciate the opportunity to submit this statement outlining our fiscal year 2013 funding priority within the Commerce, Justice, Science and Related Agencies subcommittee's jurisdiction.

## PREPARED STATEMENT OF THE AMERICAN SOCIETY FOR MICROBIOLOGY

The American Society for Microbiology (ASM) is pleased to submit the following testimony on the fiscal year 2013 appropriation for the National Science Foundation (NSF). ASM is the largest single-life science organization in the world with about 38,000 members. ASM endorses the administration's fiscal year 2013 request of \$7.373 billion for NSF, a 4.8-percent increase more than the fiscal year 2012 level. For more than 60 years, NSF grants have been responsible for breakthroughs in science, technology, engineering, and mathematics (STEM), sponsoring research with economic benefits and providing opportunities to train new generations of STEM professionals.

U.S. global competitiveness in science and technology can only be sustained by increased resources devoted to research and development (R&D). In NSF's most recent biennial Science & Engineering Indicators report, U.S. investment in R&D declined during the 1999–2009 period relative to other nations' investments. It is critical that funding be increased for the NSF because it is the primary source of Federal research funding in multiple STEM disciplines.

Each year, NSF distributes funds to about 1,900 colleges, universities, and other U.S. institutions. This year NSF will support about 285,000 researchers, postdoctoral fellows, and other trainees, teachers, and students. In fiscal year 2013, it expects to make more than 12,000 new awards selected from more than 55,000 submitted research proposals. NSF is responsible for 61 percent of the total Federal budget for basic academic research.

NSF's fiscal year 2013 budget will support the American Competitiveness Initiative and the National Bioeconomy Blueprint designed to resolve issues in health, food, energy, and the environment. NSF has launched several new initiatives to accelerate innovation, including the NSF Innovation Corps (I-Corps) program to build partnerships between NSF-funded researchers and the private sector. The Science, Engineering and Education for Sustainability (SEES) program will use sustainability science to generate important innovations in clean energy like microbial produced biofuels.

NSF-funded scientists contribute new information about living organisms that benefits public health, our economy, and the environment. In the past year, NSF-supported researchers at academic institutions have reported the following results, among many others:

- Electron microscopy and 3-D image reconstruction revealed the seahorse-shaped structure of a protein complex in *Escherichia coli* that can adapt to defend the bacteria against viruses and other microbial threats, indicating a bacterial immune system analogous in part to the human immune system.
- In stressful environments, *Bacillus subtilis* bacteria increase their survival by pulsing genes, like those initiating cell repair, on and off, counter to previous belief that once turned on, the genes remain active.
- Some patients develop blood infections from implanted cardiac devices because the biofilm bacteria involved have gene mutations that make the bacteria more likely to adhere to device surfaces, according to research partly funded by NSF's Directorate for Geosciences.
- Viruses known to infect *E. coli* bacteria (M13 phages) have been tricked into self-assembling as thin films with 3-D features like filaments or ridges, offering a potential nanoscale tool that might eventually lead to tissue regeneration and repair.
- Genetic sequencing of the bacteria that cause speck disease in tomatoes (*Pseudomonas syringae* pv. *tomato*), comparing isolates from 1975 and 2000, revealed that the economically important plant pathogen evolves more rapidly than expected, increasing its resistance to the tomato immune system and becoming more virulent.
- Novel therapeutics effective against drug-resistant influenza viruses might be developed using new research on the pocket-shaped surface cavities of avian influenza viruses that are targeted by flu drugs, based on computer simulations of how these cavities move and change.
- Scientists have sequenced the genomes of two fungal pathogens responsible for plant diseases that severely impact global food supplies, wheat stem rust and poplar leaf rust, in a 6-year collaborative program involving several universities, NSF, the U.S. Department of Energy, and the U.S. Department of Agriculture (USDA).

NATIONAL SCIENCE FOUNDATION FUNDING SUPPORTS DIVERSE RESEARCH IN  
BIOLOGICAL SCIENCES

The fiscal year 2013 budget requests \$733.86 million for NSF's Directorate for Biological Sciences (BIO), a 3-percent increase more than the enacted fiscal year 2012 level. We are concerned that funding for the BIO divisions has remained essentially flat since fiscal year 2010. BIO-supported research contributes important insights and new knowledge across the wide spectrum of living organisms and systems, with obvious applications to public health. Fiscal year 2013 funding will further current BIO strategies that emphasize cross-cutting research combining several scientific disciplines or leveraging the interfaces between the physical and biological worlds.

Within its research portfolio, the Directorate invests in the five so-called Grand Challenges in Biology:

- synthesizing life-like systems;
- understanding the brain;
- predicting organisms' characteristics from their DNA sequences;
- elucidating interactions between the Earth, its climate and its biosphere; and
- understanding biological diversity.

BIO grant recipients and training programs seek answers to major problems like climate change, energy shortages, animal and plant diseases, and threats to our environment. In fiscal year 2013, BIO funding will be distributed among more than 18,000 scientists, students, and K–12 teachers to promote relevant research and education.

This year, the first test sites in the NSF-funded National Ecological Observatory Network (NEON) will be operational. NEON is a unique research infrastructure that will study all biological entities identified in large geographic areas over extended periods. Included in NEON research will be numerous studies of microbial communities, their responses to environmental change, and how they can be utilized in useful ways. Another large-scale NSF project with microbe-based components is the agency wide SEES program, distributing grants in bioremediation and microbial genetics.

BIO provides about 62 percent of Federal funding for nonmedical basic research in the life sciences at academic institutions and supports important microbial research. Over the past 2 years, BIO has awarded more than 580 grants worth about \$111 million to microbiology-related projects, which have advanced basic and applied microbiology, such as new ways to produce drugs against infectious diseases and potential remediation methods to clean polluted environments.

The Ecology and Evolution of Infectious Disease (EEID) program is a joint BIO effort in partnership with USDA's National Institute of Food and Agriculture and National Institutes of Health's (NIH) National Institute of General Medical Sciences. The principal focus is the dynamics of disease transmission, and the program supports academic research on the ecological, evolutionary, and socio-ecological processes that determine the spread of diseases. Through this program, NSF multidisciplinary research is creating inventive approaches to controlling infectious diseases. Potential grantees are encouraged to utilize investigative teams of physicians, veterinarians, food scientists, virologists, and multiple other specialists in their proposals.

Last year, EEID-funded researchers identified the mosquito and bird species most responsible for West Nile virus transmission and linked bacteria in human sewage to white pox disease that is killing elkhorn coral in the Caribbean. Recently funded EEID projects include studies of the transmission of brucellosis among bison in Yellowstone Park, the spread of the fungal disease white-nose syndrome among hibernating bats, and how wildfires and extreme droughts affect the spread of the infectious plant disease called sudden oak death that has attacked millions of trees in California and Oregon. EEID's mission encompasses the varied factors that determine transmission of diseases to humans, nonhuman animals, and plants, enabling research in infectious disease not replicated elsewhere.

NATIONAL SCIENCE FOUNDATION FUNDING SUPPORTS BASIC RESEARCH IN  
ENGINEERING, MATHEMATICS, AND PHYSICAL SCIENCES

NSF supports interdisciplinary studies in all STEM fields as the boundaries have become increasingly blurred among biological, physical, and computing sciences. The Directorate for Engineering would receive \$873.33 million, an increase of 6.1 percent; the Directorate for Geosciences (GEO), \$906.44 million (2.4 percent); and the Directorate for Mathematical and Physical Sciences (MPS), \$1,345.18 million (2.8 percent).

GEO—which provides about 55 percent of Federal funding for basic geosciences research—supports diverse academic studies of the global environment. GEO-funded

research, scientist training, and education contribute new knowledge about the oceans, our atmosphere, water quality, and other environmental systems. GEO funds help underwrite observatories, ocean drilling projects, and other large-scale programs that would be unlikely without NSF support. The resulting research also has added to our understanding of natural disasters like earthquakes and tornadoes. Geochemists' identified microbes in the Gulf of Mexico following the Deep-water Horizon oil spill that ingest natural gases like methane and ethane at cold temperatures, which should inform future contaminant remediation.

The Directorate of MPS provides one-half of the Federal funding for basic research at academic institutions. Its contributions to the SEES program include grant awards for sustainable chemistry research. MPS recently appointed a committee of external experts, called NSF Materials 2022, to develop future research strategies in materials science that will undoubtedly utilize biological systems among others. In fiscal year 2013, MPS also will continue its partnership with the BIO and ENG directorates in the Research at the Interface of the Biological, Mathematical and Physical Sciences (BioMaPS) program, which integrates biological, engineering, mathematical, and physical sciences to study naturally occurring networks. BioMaPS-funded projects generate bio-based materials, through new approaches to manufacturing devices and platforms. MPS funding for this creative program would increase 50 percent in fiscal year 2013, recognition of the potential contributions from mathematical and physical sciences to technologies like bioimaging, renewable fuels, and biosensors.

The Directorate for Engineering contributes about 35 percent of Federal funding for basic engineering research at academic institutions. Bioengineering research offers exciting new solutions to challenges faced in healthcare, environmental stewardship, and the U.S. economy. The Division of Chemical, Bioengineering, Environmental, and Transport Systems (CBET) underwrites SEES-related research and education aimed toward sustainability in water, climate, and energy. The CBET research portfolio includes emerging specialties like biosensing and investigations that involve engineers, life scientists, and bioinformatics experts.

#### CONCLUSION

ASM recommends that the Congress approve the administration's fiscal year 2013 budget request for the NSF, the Nation's principal sponsor of basic research in crucial technical areas. It is important that the Congress sustain NSF's proven successes in STEM-related research and education. By funding academic research, NSF serves the public as a partner in achieving our national imperative to enhance discovery and innovation across STEM disciplines.

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#### PREPARED STATEMENT OF THE AMERICAN SOCIETY OF AGRONOMY

The American Society of Agronomy (ASA), Crop Science Society of America (CSSA), and Soil Science Society of America (SSSA) represent more than 18,000 members in academia, industry, and Government, and 13,000 Certified Crop Advisers. The largest coalition of professionals dedicated to the agronomic, crop, and soil science disciplines in the United States, ASA, CSSA, and SSSA are dedicated to utilizing science in order to meet our growing food, feed, fiber, and fuel needs. With an ever-expanding global population and increasing food demands, investment in food and agriculture research is essential to maintaining our Nation's food, economic and national security. We are pleased to submit the following funding recommendations for fiscal year 2013.

ASA, CSSA, and SSSA understand the budgetary challenges facing the Senate Commerce, Justice, Science, and Related Agencies Appropriations subcommittee. We also recognize that the Commerce, Justice, and Science, and related agencies appropriations spending bill has many valuable and necessary components, and we applaud the past efforts of the subcommittee to fund critical research through the National Science Foundation (NSF). ASA, CSSA, and SSSA urge the subcommittee to support an increase in fiscal year 2013 funding for NSF of 5 percent more than the fiscal year 2012 enacted level, bringing total funding to \$7.4 billion, the same funding level recommended in the President's fiscal year 2013 budget request. This strong level of funding will enable NSF to continue valuable projects that promote transformational and multidisciplinary research, provide needed scientific infrastructure, and contribute to preparing the next generation science, technology, engineering, and mathematics workforce.

Within NSF we support the following programs that help advance our understanding of the basic crop and soil sciences. These sciences underpin future solutions to many of the most pressing challenges including food security, sustainable

renewable energy production, and environmental protection that confront both our country and the world.

#### BIOLOGICAL SCIENCES DIRECTORATE

##### *Molecular and Cellular Biosciences*

ASA, CSSA, and SSSA support funding Molecular and Cellular Biosciences (MCB) at \$132.68 million for fiscal year 2013 (an \$6.89 million or 5.5-percent increase more than fiscal year 2012). MCB supports fundamental research and related activities designed to promote understanding of complex living systems at the molecular, sub-cellular, and cellular levels. The division supports research across a broad spectrum of experimental systems, ranging from organisms, such as plants and microbes, to the use of in silico approaches.

##### *Integrative Organismal Systems*

ASA, CSSA, and SSSA support increasing Integrative Organismal Systems (IOS) funding to \$220.52 million (an increase of \$8.19 million or 3.9 percent more than fiscal year 2012), which would allow 41 percent of the IOS portfolio to be available for new research grants. In order to meet increasing demands and develop more robust crops, additional fundamental understanding regarding the basic biology of these crops is needed. IOS maintains its commitment to support fundamental plant genome research through the Plant Genome Research Program (PGRP). In addition, the Developing Country Collaborations in Plant Genome Research program links U.S. researchers with partners from developing countries to solve problems of mutual interest in agriculture and energy and the environment. Additionally, in collaboration with the Department of Energy and the Department of Agriculture, the PGRP has financed the Maize Genome Sequencing Project—a sequencing project for one of the most important crops grown globally.

The PGRP's Basic Research to Enable Agricultural Development (BREAD) program supports basic research on early concept approaches and technologies for science-based solutions to problems of agriculture in developing countries. ASA, CSSA, and SSSA recommend a funding level of \$6 million for the BREAD program.

Finally, in 2005 the International Rice Genome Sequencing Project published the finished DNA blueprint for rice—a crop fundamental to populations worldwide. To continue the discovery of new innovative ways to enhance crop production for a growing population, sustained funding is needed for similar projects.

#### GEOLOGICAL SCIENCES DIRECTORATE

##### *Division of Atmospheric and Geospace Sciences*

ASA, CSSA, and SSSA support increasing Division of Atmospheric and Geospace Sciences (AGS) funding to \$264.06 million (an increase of \$5.4 million or 2.1 percent more than fiscal year 2012). Changes in terrestrial systems will have great impacts on biogeochemical cycling rates, which in turn, greatly affect our agriculture, crops, and soil. By providing support for basic science and the acquisition, maintenance, and operation of observational facilities and services, AGS ensures the presence of modern-day atmospheric and geospace science research activities.

##### *Earth Sciences*

ASA, CSSA, and SSSA support increasing Earth Sciences (EAR) funding to \$189.2 million (an increase of \$5.7 million or 3.1 percent more than fiscal year 2012). The Earth Sciences division supports the Surface Earth Processes section which researches geomorphology and land use, hydrologic science, geobiology, geochemistry (particularly the Geobiology and Low-Temperature Geochemistry Program), and sedimentary geology and paleobiology—all crucial to the areas of agronomy, soil, and crops. In addition, EAR supports EarthScope which focuses on studying the structure and tectonics of the North American continent and an Instrumentation and Facilities program that supports community-based, shared-use facilities, as well as an education program to attract and support students and young investigators to the field of Earth science. ASA, CSSA, and SSSA also support strong funding for the Critical Zone Observatories that operate at the watershed scale and significantly advance our understanding of the integration and coupling of Earth surface processes as mediated by the presence and flux of fresh water.

#### DIRECTORATE FOR EDUCATION AND HUMAN RESOURCES

##### *Division of Graduate Education*

ASA, CSSA, and SSSA support increasing Division of Graduate Education funding to \$184.82 million (an increase of \$5 million or 3.9 percent more than fiscal year

2012). ASA, CSSA, and SSSA are dedicated to the enhancement of education, and concerned about recent declines in enrollment for many sciences. ASA, CSSA, and SSSA support science, technology, engineering, and mathematics (STEM) education efforts in order to prepare the next generation of agronomy, crop, and soil scientists.

In light of this effort, ASA, CSSA, and SSSA recommend strong support for the Integrative Graduate Education and Research Traineeships program. Graduate students are the next generation of scientists, and opportunities for study must be increased with the ever-increasing demands of science. Global problems rely on scientific discovery for their amelioration and it is critical that the United States continue to be a leader in graduate education.

#### *Division of Undergraduate Education*

ASA, CSSA, and SSSA support increasing Division of Undergraduate Education (DUE) funding to \$246.64 million (an increase of \$11 million or 4.7 percent more than fiscal year 2012). The entire DUE portfolio (Advanced Technological Education, Science, Technology, Engineering, and Mathematics Talent Expansion Program, and Transforming Undergraduate Education in Science) seeks to anchor a coherent body of knowledge on innovative and effective STEM learning environments. This core area addresses all levels of transition, including high school to undergraduate or community college to 4-year institution shifts. Investments in DUE will support the further implementation of STEM practices in order to bring learners to the frontiers of science.

#### NATIONAL SCIENCE FOUNDATION-WIDE/CROSSCUTTING PROGRAMS

#### *Integrated National Science Foundation Support Promoting Interdisciplinary Research and Education*

ASA, CSSA, and SSSA support the budget request of \$63 million for Integrated NSF Support Promoting Interdisciplinary Research and Education (INSPIRE). INSPIRE seeks to increase NSF's support of bold high-risk interdisciplinary projects that may fall outside the scope of existing NSF programs. This is especially important as NSF seeks to encompass improvements in business practices, funding culture, training and evaluation.

#### *Expeditions in Education*

ASA, CSSA, and SSSA support the establishment of the Expeditions in Education Initiative in order to "move the dial" toward achieving important national goals in STEM education and human capital development. We support NSF's request of \$49 million in order to achieve the goal of infusing cutting-edge science, engineering, and innovation into the preparation of a world-class scientific workforce.

#### *Science, Engineering, and Education for Sustainability*

ASA, CSSA, and SSSA support the budget request of \$202.5 million for Science, Engineering, and Education for Sustainability. This long-term investment reflects an effort by NSF to coordinate and grow research and education associated with the environment, energy, and sustainability. More specifically, we support NSF's efforts to increase our understanding of the integrated system of resource and supply chains, society, the natural world, and the alterations humans bring to Earth.

#### *Partnerships for Enhanced Engagement in Research*

ASA, CSSA, and SSSA support the continued cooperation between NSF and USAID. Partnerships for Enhanced Engagement in Research grants provide an important opportunity to support scientists in developing countries who work with NSF-funded scientists at U.S. institutions.

#### *Graduate Fellowships and Traineeships*

ASA, CSSA, and SSSA support the budget request of \$321.67 million for NSF's graduate fellowship and traineeship programs. This funding will enable NSF to support an estimated 6,950 graduate students, including 2,000 new Graduate Research Fellows in 2013.

As you consider funding levels for NSF, please consider ASA, CSSA, and SSSA as supportive resources. We hope you will call on our membership and scientific expertise whenever the need arises.

Thank you for your thoughtful consideration.

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#### PREPARED STATEMENT OF THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS

The recent heightened awareness around budget deficits and our Nation's fiscal health has catalyzed an important and timely discussion regarding how we begin



to make the difficult decisions that will improve our long-term fiscal outlook. However, even in the frame of this discussion, it is critical that research and development remain one of the highest priorities for domestic discretionary spending. Scientific and engineering research has long been the foundation of our Nation's economic growth and prosperity. Our country's economic strength comes from our ability to produce the world's best scientists and engineers, nurture new ideas and innovation, and develop new technologies and industries. If America is to remain a global economic leader, we must continue to invest in the scientific and engineering enterprise that generates new technologies, industries and jobs.

The American Society of Mechanical Engineers (ASME) Knowledge & Community Sector National Institute of Standards and Technology (NIST) Task Force is pleased to have this opportunity to provide comments on the fiscal year 2013 budget request for NIST. The NIST Task Force and ASME Standards & Certification have a long-standing relationship with NIST and thus recognize NIST as a key Government agency that contributes significantly to the development and application of technology.

In the President's fiscal year 2013 budget request, the Task Force supports the proposed increases for NIST programs, which are consistent with the doubling path by fiscal year 2017 identified by the administration as a goal for NIST.

*Introduction to American Society of Mechanical Engineers and the National Institute of Standards and Technology Task Force*

Founded in 1880 as the American Society of Mechanical Engineers, ASME is a worldwide engineering society of more than 120,000 members focused on technical, educational and research issues. ASME conducts one of the world's largest technical publishing operations, holds approximately 30 technical conferences and 200 professional development courses each year, and sets many industry and manufacturing standards.

Mechanical engineers play a key role in the research, technology development, and innovation that influence the economic well-being of the Nation. ASME has supported the mission of NIST since it was founded in 1901, as the National Bureau of Standards. In fact, ASME was instrumental in establishing the Department of Commerce, NIST's parent agency. The technical programs of NIST are unique in that they foster Government and industry cooperation through cost-sharing partnerships that create long-term investments based on engineering and technology. These programs are aimed at providing the technical support so vital to our Nation's future economic health.

*Overview of National Institute of Standards and Technology's Fiscal Year 2012 Budget Request*

The administration's budget request for NIST in fiscal year 2013 is \$857 million. This represents a \$106.2 million increase more than the fiscal year 2012 appropriated amount. This year, the administration has also identified \$1.3 billion in mandatory spending; \$300 million to support a Wireless Innovation Fund, and \$1 billion for a National Network for Manufacturing Innovation.

Although the NIST Task Force is pleased to see the administration seeking higher funding for NIST, we remain concerned that the cancellation of NIST programs such as the Technology Innovation Partnership (TIP) as well as the Baldrige Performance Excellence Program may obstruct the path toward a high-technology manufacturing economy as envisioned by President Barack Obama. The Task Force would also note that the budget increases proposed for fiscal year 2013 would come on the heels of a previous discretionary budget cycle that was flat overall for NIST.

This budget includes \$648 million for the Scientific and Technical Research and Services (STRS), NIST laboratory research, which is \$81 million more than the fiscal year 2012 appropriated amount. The fiscal year 2013 budget would provide \$572.7 million to support laboratory programs, a \$54.7 million increase more than the fiscal year 2012 appropriated amount. This is reflective of the desire expressed by Under Secretary of Commerce and Director of NIST Patrick Gallagher last year to discontinue the Baldrige program and identify private sector funding sources for its continuation. There is no set timetable for this to take place.

A large portion of the NIST budget is devoted to the Industrial Technology Services (ITS) programs, which previously consisted of the Technology Innovation Program (TIP). Now, ITS is mostly devoted to the Hollings Manufacturing Extension Partnership (MEP), which would receive \$149 million in fiscal year 2013, a \$20.6 million increase more than the fiscal year 2012 appropriated amount. In more recent years, the erosion of U.S. manufacturing jobs has become a key issue for the MEP to develop sustainable practices for industries in the United States. The MEP incorporates competitive business practices and technologies into small- to medium-

sized enterprises—companies that create a significant number of jobs. The administration's request of \$149 million reflects the importance of NIST as a part of the administration's goals for innovation, as well as harkens to the bipartisan America COMPETES Act. The NIST Task Force has long supported MEP as a catalyst for technological innovation and is pleased with the administration's support for this program as NIST seeks to facilitate the development of new industries that will catalyze manufacturing and industrial practices in the United States. The Task Force supports the total request to fund the ITS in fiscal year 2013.

NIST has again proposed the creation of a new program called the Advanced Manufacturing Technology Consortia (AMTech) but has asked for \$21 million instead of the \$12.3 million it requested in fiscal year 2012, when it did not receive funding from the Congress. According to NIST, the program will also be "based on NIST's experience with the Nanoelectronics Research Initiative (NRI) partnership." The program has been described as a vehicle for aiding private industry seeking to develop nanotechnology products for the manufacturing sector. AmTech will seek to assemble a consortium of public and private stakeholders to identify, and collectively fund, long-term technical challenges to this high-technology manufacturing sector. Unlike TIP, there is no cost share requirement for AmTech. This program effectively demonstrates the value of NIST as a convener of U.S. stakeholders to collectively work toward the establishment of groundbreaking new industries like the nanotechnology field. Although, difficult fiscal challenges lay ahead, the Task Force strongly urges the Congress to honor the request to fund AmTech in fiscal year 2013, and the Task Force was disappointed that the Congress did not fund AmTech in fiscal year 2012. We believe that investment should be made into initiatives such as the AMTech program because of their potential for high return on investment and to maintain global U.S. competitiveness.

Finally, the Construction of Research Facilities (CRF), which would receive \$60 million, a 19-percent increase from the fiscal year 2012 enacted amount of \$48.2 million. This category includes \$11.8 million for the renovation of the 60-year-old Building 1 of the NIST Boulder laboratories. NIST laboratories remain a critical resource that is vital to the economic health and national security of the United States as outlined in the President's Innovation Agenda, inspired, in part, by the original America COMPETES Act of 2007 (Public Law 110-69). The NIST engineering laboratory "promotes the development and dissemination of advanced technologies, guidelines, and services to the U.S. manufacturing and construction industries through activities including measurement science research, performance metrics, tools and methodologies for engineering applications, and critical technical contributions to standards and codes development."

#### *National Institute of Standards and Technology's Standards Mission*

Part of the mission of NIST is to promote the use of American standards, conformity assessment programs and technology in countries and industries around the world as a means of enhancing U.S. competitiveness and opening new markets for U.S. products and services. Standards provide technical definitions and guidelines for design and manufacturing. They serve as a common global language, define quality and establish safety criteria. In the United States, standards are developed by private-sector organizations such as ASME in close collaboration with representatives from industry, government, and academia. These standards are used by industry and also frequently adopted by Government agencies as a means of establishing regulatory requirements. They are vital to the economic health of many industries, and—more importantly—they help to ensure the health and safety of the American people and of citizens in countless nations around the world.

Over the years, the Department of Commerce and NIST have played an indispensable role in ensuring acceptance by other nations of U.S.-developed standards that continue to identify and incorporate technological advances and that also reflect changing needs for industry, regulation, and public safety. The Congress must be aware that, unlike in the United States where standards development is largely the province of private sector organizations, standards development in many other countries is undertaken with strong government support. The U.S. voluntary consensus standards process enables innovation, reduces redundancy in public and private sector research, and reduces Government costs. The governments of many of our key trading partners invest significant resources to promote acceptance of competing standards (developed by organizations in those countries) in the global marketplace. It is therefore essential that the U.S. Government, in partnership with private sector standards development organizations, strengthen its commitment to ensuring adequate representation of U.S. interests in international standards negotiations.

Enabling U.S. manufacturers to design and build to one standard or set of standards increases their competitiveness in the world market. The ability of NIST to as-

sist U.S. domiciled standards developers in their negotiations with international and national standards organizations is important to the U.S. business community. The United States must be a full participant in global standards development if our industries are to compete effectively in a world market. Decisions made in standards bodies outside the United States have a profound impact on the ability of U.S. companies to compete in foreign markets. We believe that NIST plays a unique and crucial role in maintaining, and growing, the competitive edge of U.S. industry in the emerging landscape of the high technology manufacturing sector.

#### CONCLUSION

The administration's commitment to NIST appears to be strong, as demonstrated by their willingness to support increases for key NIST initiatives for fiscal year 2013. While the Task Force would prefer to see the resurrection of the TIP program, the Task Force remains strongly supportive of these initiatives as well as the underlying goals of NIST as it relates to advanced manufacturing and technological innovation.

ASME is a nonprofit technical and educational organization with more than 120,000 members globally. ASME's members work in all sectors of the economy, including industry, academia, and government. This position statement represents the views of the NIST Task Force of the ASME Technical Communities of the Knowledge & Community Sector and is not necessarily a position of ASME as a whole.

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#### PREPARED STATEMENT OF THE AMERICAN SOCIETY OF PLANT BIOLOGISTS

On behalf of the American Society of Plant Biologists (ASPB), we submit this testimony for the official record to support the requested level of \$7.373 billion for the National Science Foundation (NSF) for fiscal year 2013. ASPB and its members recognize the difficult fiscal environment our Nation faces, but believe that investments in scientific research will be a critical step toward economic recovery and continued global competitiveness.

ASPB would like to thank the subcommittee for its consideration of this testimony and for its strong support for the research mission of NSF.

Our testimony will discuss:

- Plant biology research as a foundation for addressing food, fuel, environment, and health concerns;
- The rationale for robust funding for NSF to maintain a well-proportioned science portfolio with support for all core science disciplines, including biology; and
- The rationale for continued funding of NSF education and workforce development programs that provide support for the future scientific and technical expertise critical to America's competitiveness.

ASPB is an organization of approximately 5,000 professional plant biology researchers, educators, graduate students, and postdoctoral scientists with members in all 50 States and throughout the world. A strong voice for the global plant science community, our mission—achieved through work in the realms of research, education, and public policy—is to promote the growth and development of plant biology, to encourage and communicate research in plant biology, and to promote the interests and growth of plant scientists in general.

#### FOOD, FUEL, ENVIRONMENT, AND HEALTH: PLANT BIOLOGY RESEARCH AND AMERICA'S FUTURE

Plants are vital to our very existence. They harvest sunlight, converting it to chemical energy for food and feed; they take up carbon dioxide and produce oxygen; and they are the primary producers on which all life depends. Indeed, plant biology research is making many fundamental contributions in the areas of energy security and environmental stewardship; the continued and sustainable development of better foods, fabrics, and building materials; and in the understanding of biological principles that underpin improvements in the health and nutrition of all Americans.

In particular, plant biology is at the interface of numerous scientific breakthroughs. For example, with high throughput experimental approaches facilitating extraordinary syntheses of information that are supported by the NSF, plant biologists are using computer science applications to make tremendous strides in our understanding of complex biological systems, ranging from single cells to entire ecosystems. Understanding how plants work will ultimately result in better and more productive crops, new sources of fuel, and the development of better medicines to treat diseases like cancer.

Despite the fact that foundational plant biology research—the kind of research funded by NSF—underpins vital advances in practical applications in agriculture, health, energy, and the environment, the amount of money invested in understanding the basic function and mechanisms of plants is surprisingly small. This is especially true considering the significant positive impact plants have on the Nation's economy and in addressing some of our most urgent challenges, including food and energy security.

Understanding the importance of these areas and in order to address future challenges, ASPB organized the Plant Science Research Summit held in September 2011. With funding from the NSF, Departments of Agriculture and Energy, and the Howard Hughes Medical Institute, the Summit brought together representatives from across the full spectrum of plant science research to identify critical gaps in our understanding of plant biology that must be filled over the next 10 years or more in order to address the grand challenges facing our Nation and our planet. The grand challenges identified at the Summit include:

- In order to feed everyone well, now and in the future, advances in plant science research will be needed for higher yielding, more nutritious varieties able to withstand a variable climate;
- Innovations leading to improvements in water use, nutrient use, and disease and pest resistance that will reduce the burden on the environment are needed and will allow for increases in ecosystem services, such as cleaner air, cleaner water, fertile soil, and biodiversity benefits like pest suppression and improved pollination;
- To fuel the future with clean energy, improvements in current biofuels technologies, including breeding, crop production methods, and processing that will help meet our Nation's fuel requirements for the future are needed; and
- For all the benefits that advances in plant science bestow—in food and fiber production, ecosystem and landscape health, and energy subsistence—to have lasting, permanent benefit they must be economically, socially, and environmentally sustainable.

In spring 2012, a report from the Plant Science Research Summit will be published. This report will further detail priorities and needs to address the grand challenges.

#### ROBUST FUNDING FOR THE NATIONAL SCIENCE FOUNDATION

The fiscal year 2013 NSF budget request would fund the NSF at \$7.373 billion. ASPB supports this request and encourages proportional funding increases across all scientific disciplines supported by the NSF. As scientific research becomes increasingly interdisciplinary with permeable boundaries, a diverse portfolio at the NSF is needed to maintain transformational research and innovation.

NSF funding for plant biology specifically enables the scientific community to address cross-cutting research questions that could ultimately solve grand challenges related to a sustainable food supply, energy security, and improved health. This idea is reflected in the National Research Council's report "A New Biology for the 21st Century" and will be addressed comprehensively in the Plant Science Research Summit's report.

The NSF Directorate for Biological Sciences (BIO) is a critical source of funding for scientific research, providing 62 percent of the Federal support for nonmedical basic life sciences research at U.S. academic institutions and beyond. BIO supports research ranging from the molecular and cellular levels to the organismal, ecosystem, and even biosphere levels. These investments continue to have significant payoffs, both in terms of the knowledge directly generated and in deepening collaborations and fostering innovation among communities of scientists.

The Biological Sciences Directorate's Plant Genome Research Program (PGRP) is an excellent example of a high-impact program that has laid a strong scientific research foundation for understanding plant genomics as they relate to energy (biofuels), health (nutrition and functional foods), agriculture (impact of changing climates on agronomic ecosystems), and the environment (plants' roles as primary producers in ecosystems). ASPB asks that the PGRP be funded at the highest-possible level and have sustained funding growth over multiple years to address 21st century challenges.

Without significant and increased support for BIO and NSF as a whole, promising fundamental research discoveries will be delayed and vital collaborations around the edges of scientific disciplines will be postponed, thus limiting the ability to respond to the pressing scientific problems that exist today and the new challenges on the horizon. Addressing these scientific priorities also helps improve the competitive position of the United States in a global marketplace.

CONTINUED SUPPORT FOR NATIONAL SCIENCE FOUNDATION EDUCATION AND  
WORKFORCE DEVELOPMENT PROGRAMS

NSF is a major source of funding for the education and training of the American scientific workforce and for understanding how educational innovations can be most effectively implemented. NSF's education portfolio impacts students at all levels, including K-12, undergraduate, graduate, and postgraduate, as well as the general public.

The Integrative Graduate Education and Research Traineeship (IGERT) program is just one example of NSF's commitment to education that has been successful in fostering the development of novel programs that provide multidisciplinary graduate training. ASPB encourages expansion of the IGERT program in order to foster the development of a greater number of innovative science leaders for the future.

Furthermore, ASPB urges the subcommittee to support the fiscal year 2013 request to expand NSF's fellowship and career development programs—such as the Postdoctoral Research Fellowships in Biology, the Graduate Research Fellowship and the Faculty Early Career Development programs—thereby providing continuity in funding opportunities for the country's most promising early career scientists. ASPB further encourages the NSF to develop "transition" awards that will support the most promising scientists in their transition from postdoctoral research to independent, tenure-track positions in America's universities. The NSF might model such awards after those offered by the National Institutes of Health.

ASPB urges support for NSF to further develop programs aimed at increasing the diversity of the scientific workforce by leveraging professional scientific societies' commitment to provide a professional home for scientists throughout their education and careers and to help promote and sustain broad participation in the sciences. Discreet focused training and infrastructure support programs for Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities remain vitally important, as they foster a scientific workforce that reflects the U.S. population.

ASPB urges support for education research that enhances our understanding of how educational innovations can be sustainably implemented most effectively in a variety of settings. NSF programs such as Transforming Undergraduate Education in STEM, Discovery Research K-12, and Widening Implementation and Demonstration of Evidence-based Reforms provide opportunities to expand NSF's research and evaluation efforts to address scale-up and sustainability. Additionally, investigating and supporting effective approaches toward rolling out across the K-16 continuum the new vision for undergraduate biology education articulated in the 2010 Vision and Change report are particularly valuable. ASPB encourages continued support for education research programs within NSF's Education and Human Resources portfolio with a focus on understanding how previous investments in educational strategies can be made most effective.

Grand research challenges will not be resolved in a year, an administration, or a generation, but will take continued attention and investment at Federal research agencies, such as the NSF, over decades.

Thank you for your consideration of our testimony on behalf of the American Society of Plant Biologists.

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PREPARED STATEMENT OF THE ANIMAL WELFARE INSTITUTE

We wish to thank the subcommittee for accepting our testimony as you consider fiscal year 2013 funding priorities under the Commerce, Justice, Science, and Related Agencies appropriations bill. Our testimony addresses activities under the Office of Justice Programs (OJP) of the Department of Justice (DOJ).

We are grateful for the DOJ's OJP Bureau of Justice Assistance's continuing support for the Association of Prosecuting Attorneys' (APA) program of training, technical support, and other assistance for prosecutors, law enforcement, and other involved parties to enhance the prosecution of animal abuse and animal fighting crimes. This is a very exciting development; we are proud to partner with APA in this ongoing effort (I would note that Animal Welfare Institute (AWI) does not receive any Federal funding for its work with APA), and I am pleased to be able to share with you the work that has been done as a result of BJA's support.

APA is currently planning its third national training conference for October in Los Angeles, having already held conferences in Washington, DC and Colorado. These national meetings bring together participants and speakers from many disciplines—law enforcement, psychology, animal control, veterinary medicine, the domestic violence and juvenile justice communities, etc.—to share their experiences dealing with animal cruelty and animal fighting, and to encourage cross-pollination among par-

ticipants. Topics have included the basics of conducting an animal cruelty investigation; charging, prosecuting, and sentencing in animal cruelty cases; the use of forensics experts in court; the relationship between animal cruelty and other forms of interpersonal violence; and cutting edge considerations with the use of digital evidence. Participants then put theory into practice through a mock trial.

As an example of the impact that such training can have, an assistant prosecutor from a large urban county attended the very first conference. He and a colleague were taking on animal cruelty cases on their own, in addition to their regular caseload, and were feeling very much out in the wilderness. Today, their animal protection unit boasts four prosecutors who review and handle all animal-related cases (as well as other cases) and over the past 3 years has achieved a 98-percent conviction rate. (Both of the original assistant prosecutors are now members of the APA's Animal Cruelty Advisory Council, discussed below.) One of the unit's cases resulted in significant jail time for two men who set fire to a dog in front of several witnesses, including children.

Training and outreach do not stop with these large meetings, however. APA maintains a listserv and also runs a series of successful webinars addressing issues of practical concern to prosecutors and the many others whose work is connected with animal cruelty crimes. Thus far, the sessions have covered obtaining search warrants in animal cruelty cases; puppy mills; dog fighting; cockfighting; and veterinary forensics in cruelty cases. Three more webinars are scheduled for 2012.

APA has responded to more than 250 requests for technical assistance, either directly or through referral to appropriate experts. The Animal Cruelty and Fighting Program section of its Web site makes available such valuable resources as training and informational manuals; State animal cruelty statutes; animal cruelty case law summaries (developed as part of a project with the George Washington University School of Law); a library of briefs, motions, search warrants, and legal memos; and downloadable versions of the webinars.

APA also publishes, distributes, and posts on its Web site the newsletter *Lex Canis*, each issue of which (there have been nine so far) provides readers with program updates, an in-depth feature, and summaries of investigations, cases, changes in the law, and other developments. For example, recent features have focused on strategies for achieving success in prosecuting cases under State animal cruelty laws; dealing with hoarders; the innovative work of the Mayor's Anti-Animal Abuse Advisory Commission in Baltimore; and, in its very first issue in 2009, the effect of the foreclosure crisis on rising abuse and abandonment of companion animals.

APA and AWI have taken advantage of opportunities to address new audiences about the relationship between animal cruelty and interpersonal violence, and how those audiences can respond both to improve prosecutions of such cases and to reduce their incidence. Several presentations were made to the National Conference of Juvenile and Family Court Judges and to the Pennsylvania Bar Institute.

Last but not certainly not least, APA has assembled an Animal Cruelty Advisory Council composed of prosecutors, investigators, law enforcement, veterinarians, psychologists, members of the animal protection and domestic violence communities, and others, to identify issues, resource needs, and strategies. It brings these same professionals together to provide its multidisciplinary training, and also calls on them individually for topic-specific web-based training and materials.

We respectfully urge the subcommittee to continue funding the BJA's National Animal Cruelty and Fighting Initiative and to encourage DOJ's ongoing interest in addressing animal-related crimes because more vigorous attention to such crimes is a valuable tool for making communities safer overall.

The connection between animal abuse and other forms of violence has been firmly established through experience and through scientific studies. Among the most well-documented relationships is that between animal cruelty and domestic violence, child abuse, and elder abuse. For example, up to 71 percent of victims entering domestic violence shelters have reported that their abusers threatened, injured, or killed the family pet; batterers do this to control, intimidate, and retaliate against their victims. Batterers threaten, harm, or kill their children's pets in order to coerce them into allowing sexual abuse or to force them into silence about abuse.<sup>1</sup> Criminals and troubled youth have high rates of animal cruelty during their childhoods, perpetrators were often victims of child abuse themselves,<sup>2</sup> and animal abusers often move on to other crimes. In 1997, the Massachusetts Society for the Pre-

<sup>1</sup>The study "I'll only help you if you have two legs", or "Why human services professional should pay attention to cases involving cruelty to animals", by Loar (1999), as cited on the Web site of the National Coalition Against Domestic Violence ([www.ncadv.org](http://www.ncadv.org)).

<sup>2</sup>"Woman's Best Friend: Pet Abuse and the Role of Companion Animals in the Lives of Battered Women", by Flynn (2000), as cited at [www.ncadv.org](http://www.ncadv.org).

vention of Cruelty to Animals (MSPCA) released the results of a review of animal cruelty cases it had prosecuted between 1975 and 1996. Seventy percent of the individuals involved in those cases had been involved in other crimes, and animal abusers were five times more likely to commit a violent offense against other people.

More recently, an FBI special agent (who is also a member of the APA's Animal Cruelty Advisory Council) is currently overseeing a research project that involves "analyzing the criminal histories of offenders who were arrested for active animal cruelty, in order to further examine the potential link between animal cruelty and violence against persons. According to an initial analysis published in a dissertation (Leavitt, 2011), the majority of the 66 offenders examined so far "had prior arrests for other crimes", including interpersonal violence (59 percent); assault (39 percent); and assault of a spouse or intimate partner (38 percent); and 17 percent had a history of sexual offenses.

Another connection that is all too common exists among animal fighting (which includes both dogfighting and cockfighting), gangs, and drugs, illegal guns, and other offenses. The Animal Legal and Historical Center at the Michigan State University College of Law describes dogfighting in these stark terms:

"The notion that dogfighting is simply an animal welfare issue is clearly erroneous. Until the past decade, few law enforcement officials or government agencies understood the scope or gravity of dogfighting. As these departments have become more educated about the epidemic of dogfighting and its nexus with gang activity, drug distribution rings, and gambling networks, many have implemented well-designed, sophisticated task forces. The magnitude of criminal activity concurrently taking place at the average dogfight is of such a scope as to warrant the involvement of a wide range of agencies, including local, regional, and Federal law enforcement agencies and their specialized divisions such as organized crime units, SWAT teams, and vice squads, as well as animal control agencies and child protective services."

Further evidence of the accuracy of the above assessment comes from a Drug Enforcement Administration report on the sentencing of a Louisiana drug trafficking kingpin, which described him as "an avid pit bull and cock fighter [who] utilized these illegal events as a networking tool in order to recruit members to transport and sell marijuana and cocaine for his organization."

Animal fighting is barbaric and is a violent crime in the truest sense of the term. It causes immense suffering to countless numbers of innocent animals and its presence threatens the safety of the entire community. It is illegal under both State and Federal law, so it well serves the entire community for law enforcement to have the most powerful tools possible to eradicate it. In fact, legislation has been introduced in the House and Senate that would add to these tools by closing a significant loophole in the law. Animal fighting is fueled not just by those who train and fight the animals and finance the fights, but also by spectators. Spectators are not innocent bystanders; they are active participants in and enablers of these criminal enterprises—and they also provide "cover" during raids by allowing the organizers, trainers, etc., to "blend into the crowd" to escape arrest. The Animal Fighting Spectator Prohibition Act (H.R. 2492 and S. 1947) makes knowingly attending an animal fight punishable by fines and jail time and also makes it a separate offense, with higher penalties, to knowingly bring a minor to such an event. Forty-nine States have already outlawed attendance at an animal fight.

At the same time, it must be remembered that animal abuse is more than a "gateway" behavior. It is also a crime in its own right. It is a crime everywhere in the United States, and certain egregious acts are felonies in 47 States (it was 46 this time last year) and the District of Columbia. Some States have even enacted or are considering provisions that enhance the penalty for animal cruelty when it is committed in front of a child. Twenty-two States also now allow the inclusion of companion animals in domestic violence restraining orders.

All laws are not created equal, however; activity that constitutes a felony in one State may still only be a misdemeanor in another. In some States, cruelty rises to a felony only upon a second or third offense, or only if the animal dies; if he survives, no matter how severe his injuries, it is still a misdemeanor.

The key to offering animals the most protection possible, however weak or strong the statute, lies in ensuring both awareness of the law and vigorous enforcement of that law and prosecution of violators. While there are many in law enforcement and the courts who recognize animal abuse for the violent crime that it is and act accordingly, there are those who do not take it seriously, treating it as no more urgent than a parking infraction. Others genuinely want to act decisively but may lack the necessary resources, support, or expertise. Moreover, enforcement can be complicated by the laws themselves—weak laws are bad enough, but additional prob-

lems may arise from confusion over jurisdiction or limitations in coverage—or by pressure to dispose of cases quickly.

BJA's National Animal Cruelty and Animal Fighting Initiative is so valuable and forward-thinking in recognizing that animal cruelty and animal fighting crimes not only victimize some of the most innocent and vulnerable members of society, but also create a culture of violence—and a cadre of violent offenders—affecting children, families in general, and society at large. Therefore, preventing and prosecuting these crimes will benefit not only the animals, but also the entire community by reducing the overall level of violence.

OJP/BJA showed great vision in recognizing that by identifying precursor crimes, such as animal cruelty and animal fighting, and ensuring proper adjudication of such cases, our criminal justice system can reduce the incidence of family and community violence and change the path of potential future violent offenders. It is especially with respect to that latter goal that APA and AWI are also calling attention to the impact that experiencing animal cruelty has on children and their possible future involvement in the juvenile justice system; many youths in juvenile detention facilities have been exposed to community and family violence—which arguably includes animal fighting and abuse.

There are two audiences for the message and resources the BJA initiative makes available:

- those who still need to be convinced of the importance of preventing and punishing animal-related crimes, for the sake both of the animals and of the larger community; and
- those who are dedicated to bringing strong and effective cases against animal abusers but may need assistance to do so.

The National Animal Cruelty and Animal Fighting Initiative sends a very strong message to prosecutors and law enforcement that crimes involving animals are to be taken seriously and pursued vigorously, and offenders must be held accountable.

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#### PREPARED STATEMENT OF ASME TECHNICAL COMMUNITIES' NASA TASK FORCE

##### INTRODUCTION TO AMERICAN SOCIETY OF MECHANICAL ENGINEERS AND THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TASK FORCE

The National Aeronautics and Space Administration (NASA) Task Force of the American Society of Mechanical Engineers (ASME) Knowledge and Community Aerospace Division is pleased to have the opportunity to provide its views on the fiscal year 2013 budget request for NASA. ASME is a nonprofit, worldwide engineering society serving a membership of more than 120,000 people. It conducts one of the world's largest technical publishing operations, holds more than 30 technical conferences and 200 professional development courses each year, and sets many industrial and manufacturing standards. The Aerospace Division represents approximately 15,000 members from industry, academia, and government. Aerospace Division members are involved in all aspects of aeronautical and aerospace engineering at all levels of responsibility. They have a longstanding interest and expertise in the Nation's federally funded aeronautics, exploration, space operations, and aerospace research and development (R&D) activities at NASA, and the agency's efforts to create a pipeline of young engineers interested in aerospace and aeronautics. In this statement, the Task Force will address programs that are critical to the long-term health of the Nation's aerospace workforce and the global economic competitiveness of the U.S. aerospace industry.

##### Key recommendations for fiscal year 2013:

- The Aerospace Division is concerned about proposed flat and reduced funding for key research and education accounts within NASA. Flat funding amounts to effective reductions in funding when adjusted for inflation and would have a particularly negative effect on NASA's aeronautics research programs. NASA's R&D and educational activities will require sustained increases in funding in order to maintain and enhance space exploration outcomes and competitiveness in the U.S. aeronautics industry and workforce against emerging countries entering space exploration.
- The Task Force highly recommends that the Congress and the administration work to increase the aeronautics portion of NASA's research budget to maintain funding and activities for aeronautics research at the fiscal year 2012 level of \$569.4 million. Achieving this goal will help maintain the research programs needed to support and maintain a world-class aeronautics and aerospace industry and globally competitive research workforce.



## NATIONAL AERONAUTICS RESEARCH AND DEVELOPMENT POLICY AND PLAN

The National Science and Technology Council (NSTC) released their “National Aeronautics Research and Development Policy” in December 2006, to establish long-term goals for U.S. aeronautics R&D endeavors. The NSTC followed this policy with a “National Aeronautics Research and Development Plan,” updated by the Obama administration in 2010. This plan noted the continued importance of aeronautics R&D to U.S. national security and global economic competitiveness. These policy documents recognize the necessity for Federal leadership in advanced R&D and emphasize the Federal role in advanced aircraft technologies and systems research but also call for private sector contributions in identifying and applying technological innovations. However, these policies alone cannot provide the necessary gains in aeronautics technology without the proper amount of funding and the sustained commitment on the part of the administration and the Congress.

## OVERVIEW OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION’S FISCAL YEAR 2013 BUDGET REQUEST

The Task Force recognizes the unprecedented fiscal challenges our country faces and supports the administration’s strategy of promoting fiscal discipline in a smart way—strategically cutting programs where possible and investing in programs which improve our long-term economic competitiveness. In accordance with the terms of the NASA Authorization Act of 2010 (Public Law 111–267), the administration is continuing the implementation of significant changes to NASA’s programming in fiscal year 2013, including the continuation of a series of new exploration, R&D, and technology demonstration programs and several programs geared toward partnerships between NASA Centers and commercial sector aeronautics and aerospace companies.

The administration’s overall budget request of \$17.7 billion for NASA in fiscal year 2013, compared to \$17.77 billion in fiscal year 2012, is significant considering the current fiscal environment, but the Task Force has severe reservations about the administration’s proposed budget freeze at this reduced level over the next 5 fiscal years, through fiscal year 2017.

NASA is already struggling to support several new research and technology initiatives needed to serve the Nation’s long-term space exploration needs. Constrained research funding will force NASA to abandon worthy research endeavors, including proven and promising research programs and technology development efforts such as NASA’s Mars science programs. Due to recurrent under-funding of NASA’s research and development focused directorates over the last several years, NASA became an agency focused on operations and execution to the detriment of its concurrent mission to develop and research the aeronautics and aerospace platforms of tomorrow. Given the challenges faced by NASA as it transitions to new mandates from the Congress—mandates which assume significant out-year budget growth—and the current challenges faced by the broader U.S. aeronautics industry and aeronautics workforce, the Task Force urges the administration to reassert its commitment to revitalizing research and development at NASA, particularly through proposals to engage U.S. industry in a variety of new space technology development and demonstration programs in NASA’s new “Space Technology” budget portfolio.

NASA’s “Space Technology” development proposal reflects one of the most important recommendations from the Review of U.S. Human Space Flight Plans Committee, also known as the “Augustine Committee”, that is, the revitalization of NASA’s innovative space technology development efforts. The U.S. record on space exploration stands among the greatest achievements of humankind and one of our greatest achievements as a Nation, and maintaining this mission is critical to U.S. leadership in space.

At a time when America faces unprecedented challenges to its economic leadership, NASA must continue to play a leading role in funding engineering-related research, particularly for aeronautics and aerospace programs, if we are to continue our leadership in activities ranging from commercial aeronautics and aerospace activities to national space exploration priorities. Therefore, the Task Force views the administration’s notional freeze on NASA’s budget as detrimental to encouraging new research and technology demonstration programs critical to placing NASA and the U.S. aeronautics and aerospace industries back on course to developing space exploration programs which are truly “worthy of a great Nation”.

## NEED TO EXPAND AERONAUTICS RESEARCH

The Task Force has consistently noted the value of NASA’s aeronautics research and technology (R&T) programs contained within the Aeronautics Research Mission

Directorate (ARMD). This portion of the NASA budget offers immediate and practical benefits for the Nation, and the Task Force is concerned about the administration's proposed \$551.5 million budget for ARMD in fiscal year 2013, a –3.1-percent decrease from fiscal year 2012. In light of this reduced funding path, the administration's out-year budget plan for ARMD will be insufficient to support the development of important aeronautics research missions if ARMD is to ramp up work on its Integrated Systems Research Program (ISRP), and also force NASA to abandon much of its hypersonic aviation research efforts.

Aeronautic products represent our greatest single national export. These exports are now being threatened by foreign competition whose governments are largely supportive of their aeronautics enterprises. This represents not only a commercial threat, but a potential threat to our national security as well. Strong investment in fundamental engineering research in aeronautics will ensure that the United States will retain its long-term leadership in this field.

NASA's proposed investment in aeronautics research for fiscal year 2013 represents less than 1 percent of the more than \$53.7 billion in net U.S. exports of aeronautics products in 2011. The Task Force recommends that the aeronautics portion of the NASA budget be increased to \$1 billion over the next 5 years, with a long-term target of attaining a level of 10 percent of the total NASA budget. Achieving this target would re-establish aeronautics funding, as a percentage of the NASA budget at its pre-1990 level, and put U.S. aeronautics R&D funding at levels commensurate with the needs of a world-class aeronautics and aerospace industry.

An increase in R&D funding for Aeronautics could provide immediate and strategic benefits to the U.S. economy. More funding will allow rapid improvements in fuel economy and noise abatement technology development through full-scale or subscale flight demonstrations that speed transition of these technologies into production aircraft, and leverage current Aeronautics investments in environmentally responsible aviation technologies. Strategically, more R&D funding could allow the ARMD to take a greater role in Next Gen technology development for air traffic control, and to possibly take a lead role in the National Airspace System, leading the way to safely flying unmanned vehicles in our national airspace and maintaining U.S. leadership in this critical technology.

#### U.S. AERONAUTICS AND AEROSPACE WORKFORCE

Several interrelated critical challenges confront the U.S. aeronautics enterprise—a sharp decrease in the number of new commercial and military aircraft programs, a decline in the quality of the research infrastructure, and erosion in the technologically literate workforce needed to ensure pre-eminence in an increasingly competitive marketplace. Robust investment by NASA in aeronautics research and space technology development addresses all these problems and will help balance NASA's portfolio to reflect the importance of aeronautics and aerospace to the global economy.

Aeronautics faces the same pressures being felt by the space industries, where fewer research dollars over time has resulted in fewer companies with skilled workers capable of designing and building complex aeronautical systems. As result, the United States is increasingly dependent on immigration and outsourcing to meet its technical workforce needs. In fact, the NSF's 2012 S&T Indicators report found that more than 50 percent of doctorate-level engineers working in the U.S. engineering fields, including aeronautical and aerospace engineering, came from foreign backgrounds, an increase from 41 percent in 2000. Investment in aeronautics is a matter of strategic importance, as it creates highly skilled manufacturing jobs and helps create a foundation for a strong national defense. Additionally, the same report found that both the number and percentage of science and engineering doctoral degree recipients with temporary visas reporting plans to stay in the United States peaked in 2007 and declined in 2009 after rising since 2002, indicating that the United States cannot take its scientific workforce for granted during tough economic times.

While regional economies differ, the aerospace industry overall suffers from a lack of available young workers with advanced technology degrees who can step in to replace retiring, experienced workers. The aerospace industry looks to NASA to create a demand for long-term R&D to encourage students to go to graduate school and on to companies who are doing aeronautical R&D. There is a clear correlation between research dollars and the number of graduate students in a particular field. Therefore, as the funding for aeronautics has decreased by more than one-half over the last decade, the number of younger faculty and graduate students decreased. There is a lag between funding increases and student enrollment increases, and this decade-long erosion must begin to be reversed now. Accordingly, the Task Force reit-

erates its support for a revitalization of aeronautics and aerospace research and development efforts at NASA.

RECOMMENDATIONS CONCERNING INTERNATIONAL TRAFFIC IN ARMS REGULATION-  
RESTRICTED RESEARCH

The Task Force again recommends that NASA receive increased funding for research programs conducted through academic partnerships, and recommends maintaining NASA's education budget at a minimum fiscal year 2012 level of \$136 million. In this context, the Congress should consider having a broad range of technologies reviewed and declared non-International Traffic in Arms Regulation (ITAR) restricted in order to reduce costs and barriers to performing research in academic laboratories.

While basic research does not face ITAR restrictions, many applied and advanced categories of research on space-related technologies face significant barriers for foreign nationals at academic institutions. At present almost all space launch technologies are ITAR restricted, eliminating the possibility for many foreign students to participate in the research at many universities. Recognizing that many aerospace companies perform restricted work and need to hire legal residents or U.S. citizens, the Task Force recommends that a process be established to screen new foreign engineering students and start the green card process and path to citizenship as a part of their student employment through U.S. taxpayer-funded grants working on technology in the aerospace and astronautics fields. This would restrict funding to individuals that would later be eligible for employment in the United States after conclusion of their Ph.D., allowing for easier entry into the U.S. astronautics workforce. This would also reduce the cost to small business hiring new non-U.S. graduates and streamline the U.S. astronautics workforce development pipeline.

CONCLUSION

Our Nation is facing an ongoing struggle in two areas that are interrelated, which are:

- declining technical workforce; and
- foreign competition for aeronautics and space exploration leadership.

We believe one element of the solution to both problems is investment in aeronautics research and development. There is a strong correlation between technical degrees being awarded and consistent funding for research and development. NASA can help its own workforce problems as well as some of the same problems facing the rest of the country by increasing, in a persistent fashion, research in aeronautics. This in turn would have a positive effect on the U.S. economy in the long run by enabling our country to better compete in the future global marketplace.

The administration's proposed NASA budget for fiscal year 2013 indicates an overall philosophical commitment to revitalizing space technology R&D efforts, which the Task Force fully supports. However, a strong aeronautics R&D program is also essential for the national necessity of retaining a U.S. world-class aeronautics workforce and the administration's 5-year (fiscal year 2013–fiscal year 2017) funding freeze for NASA is incongruent with the administration's overall goal of spurring a revitalization of R&D at NASA and in the U.S. astronautics industry. Aeronautics is a vital industry that produces tangible economic and security benefits for the nation. NASA's charter for aeronautics and space means that it must address both. Therefore, the Task Force reiterates its support for an expansion in NASA's overall ARMD's budget portfolio to ensure support for existing long-term aviation research and infrastructure goals as well as the development of new space technology R&D capabilities.

As other nations seek to expand their efforts in aeronautics and space exploration, there is a strong rationale for the Congress to consider real increases to the NASA aeronautics and space technology budgets. The Congress must help the United States remain competitive and innovative in this vital area by providing adequate funds and consistent support for NASA's missions. Furthermore, NASA's aeronautics budget should reflect the priorities laid out in the NSTC National Aeronautics Research and Development Policy, which supports stable and long-term foundational research. Only a robust aeronautics budget will meet this goal. The –3.1-percent decrease in NASA's aeronautics budget is a step in the wrong direction. The United States must maintain and expand its investments in scientific research to ensure continued U.S. leadership in space exploration and aeronautics and aerospace technological development.

This testimony represents the considered judgment of the NASA Task Force of the Aerospace Division of ASME's Technical Communities of the Knowledge and Communities Sector and is not necessarily a position of ASME as a whole.

## PREPARED STATEMENT OF THE CALIFORNIA COASTAL COMMISSION

Many of our Nation's most urgent issues—the economy, energy policy, environmental protection, and climate change—converge along our Nation's coasts. Coastal areas are home to more than one-half of the Nation's population and a diversity of natural resources, species, and habitats. Our coasts are also critical economic drivers; collectively coastal economies contribute almost one-half of the Nation's GDP, providing jobs, recreation and tourism, coastal and ocean dependent commerce, and energy production.

In California, for example, the State's ocean-dependent economy is estimated at almost \$36 billion per year.<sup>1</sup> Almost 70 percent of Californians live and nearly 80 percent of California's jobs exist along bay or coastal areas and face hazardous conditions now and in the future.<sup>2</sup> California's coastal tourism and recreation economy, valued at \$12 billion in 2009 and employs more than 300,000 people, more than any other ocean economy industry in California.<sup>1</sup>

The U.S. Congress recognized the importance of the Nation's coasts by passing the Coastal Zone Management Act (CZMA) in 1972. The act, administered by the National Oceanic and Atmospheric Administration (NOAA), provides for management of the Nation's coastal resources, including the Great Lakes, and balancing economic development with environmental conservation. CZMA also establishes a Federal-State partnership by giving State's the opportunity to manage coastal resources in concert with the Federal Government through federally approved State Coastal Management Programs (CMP). California's CMP is designed to comprehensively manage coastal resources using a variety of planning, permitting, public education, and nonregulatory mechanisms. Successful implementation of the CMP depends on cooperation between Federal, State, and local agencies and requires that California balance the demands for development with the need to conserve natural resources, providing for sound, responsible stewardship of one of the Nation's most spectacular coastlines.

Federal approval of a State program also provides the State CMP agencies with Federal funding through Coastal Zone Management State Grants. For the fiscal year 2013, the California Coastal Commission requests that these grants be funded at least \$67 million, consistent with last year's funding and the fiscal year 2013 President's budget. This funding is critically important to the maintaining current staffing and operational levels of California's Coastal Management Program agencies:

- the California Coastal Commission;
- the San Francisco Bay Conservation and Development Commission; and
- the State Coastal Conservancy.

Federal funds are matched by the State dollars and are often further leveraged by private and local investment in our Nation's coasts.

Maintaining funding for these programs that provide on-the-ground services to our local communities and citizens is well worth the investment. The Federal funds that California receives will directly support processing of hundreds of coastal development permits, reviewing approximately 125 Federal consistency determinations, and addressing the more than 1,650 pending enforcement cases. These actions provide for environmentally sustainable development and related economic growth, while recognizing the protections that are needed for California's coast to maintain its natural and scenic beauty, ensure healthy air and clean water for coastal communities, and support coastal tourism that is so critical to the State's economy. In addition, this funding will support the work that the California Coastal Commission is doing to help communities prepare for and address threats from coastal hazards resulting from increased flooding and sea level rise.

CZMA State grants have essentially remained level-funded for a decade, resulting in a decreased capacity in the State coastal zone management programs and less funding available to communities. An increase in funding to \$91 million would mean level funding that accounts for inflation over the last decade and would provide an additional \$300,000 to \$800,000 for each State and territory. The California Coastal Commission recognizes, however, that the fiscal climate makes this type of an increase difficult if not impossible. At current funding levels, California will receive approximately \$2 million to carry out its coastal management program based on a formula accounting for shoreline miles and coastal population. Any additional funding to the CZMA State grant line item would be welcome, especially to account for

<sup>1</sup> <http://www.oceaneconomics.org/Market/coastal/coastalEcon.asp>.

<sup>2</sup> Griggs, G. (1999). *The Protection of California's Coast: Past, Present and Future*. Shore and Beach 67(1): 18–28.

the recent addition of Illinois as a State with an approved coastal program in January 2012.

The California Coastal Commission also supports funding for the National Estuarine Research Reserve System (NERRS)—another Federal program authorized under the CZMA that establishes a partnership with States and territories to ensure long-term education, stewardship, and research on estuarine habitats and provides a scientific foundation for coastal management decisions. This unique site-based program around the Nation contributes to a systemic research, education, and training on the Nation's estuaries. To that end, we request level funding in fiscal year 2013 for the National Estuarine Research Reserve System at \$22.3 million. The NERRS in the State of California at San Francisco Bay, Elkhorn Slough (Monterey) and Tijuana River are a tremendous educational resource for the public and for State and local coastal management professionals who directly benefit from the trainings that are provided at little or no cost. Given the lack for funding at the State and local level, planning professionals at State agencies and local governments will likely receive little to no professional training on the addressing some of the Nations most pressing coastal management issues without level funding for the NERRS.

The California Coastal Commission greatly appreciates the support the subcommittee has provided to these programs in the past, thus facilitating the Federal and State governments working together to protect our coasts and sustain our local communities. We appreciate your taking our requests into consideration as you move forward in the fiscal year 2013 appropriations process.

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#### PREPARED STATEMENT OF THE COASTAL STATES ORGANIZATION

The Coastal States Organization (CSO) is a nonpartisan, nonprofit organization in Washington, DC, that represents the interests of the Governors of the 35 coastal States, territories, and commonwealths. Established in 1970, CSO focuses on legislative and policy issues relating to the sound management of coastal, Great Lakes, and ocean resources and is recognized as the trusted representative of the collective interests of the coastal States on coastal and ocean management. For fiscal year 2013, CSO supports the following coastal programs and funding levels within the National Oceanic and Atmospheric Administration (NOAA):

- Coastal Zone Management Program (§§ 306/306A/309)—\$67 million;
- Coastal and Estuarine Land Conservation Program—\$20 million;
- Regional Ocean Partnerships—\$10 million; and
- National Estuarine Research Reserve System—\$22.3 million.

Every American, regardless of where they live, is fundamentally connected to U.S. coasts, oceans, and Great Lakes. These valuable resources are a critical framework for commerce, recreation, energy, environment, and quality of life. The U.S. economy is an ocean and coastal economy: though Federal investment does not reflect it, the oceans and coasts provide an irreplaceable contribution to our Nation's economy and communities. With sectors including marine transportation, tourism, marine construction, aquaculture, ship and boat building, mineral extraction, and living marine resources, the U.S. ocean-based sector alone provides \$138 billion to U.S. gross domestic product and more than 2.3 million jobs to our citizens. In addition, the annual contribution of coastal counties is in the trillions, from ports and fishing to recreation and tourism. In 2007, our Nation's coastal counties provided \$5.7 trillion to the economy and were home to 108.3 million people on a land area that is only 18 percent of the total U.S. land area. If these counties were their own country, they would represent the world's second-largest economy. Coasts and oceans also add to the quality of life to the nearly one-half of all Americans who visit the seashore each year; the nonmarket value of recreation alone is estimated at more than \$100 billion.

Today, our Nation's coasts are as vital for our future as they are vulnerable. As a result of their increasing recreational and residential appeal and economic opportunity, we are exerting more pressure on our coastal and ocean resources. This demand, combined with an increase in natural hazards such as sea level rise, hurricanes and other flooding events, endangers the country by the potential loss of these invaluable assets. Despite the difficult budgetary times, adequate and sustained funding is needed to support the key programs that implement national priorities on the ground by utilizing the advances in coastal and ocean science, research, and technology to manage our coastal and ocean resources for future generations.

These programs reside within NOAA and provide direct funding or services to the States, territories, and regions to implement national coastal and ocean priorities at the State, local, and regional level. Programs that are engaged in these important

efforts and working to balance the protection of coastal and ocean resources with the need for sustainable development include the Coastal Zone Management Program, Coastal and Estuarine Land Conservation Program, Regional Ocean Partnerships and National Estuarine Research Reserves.

*Coastal Zone Management Program (§§ 306/306A/309)*

CSO requests that CZM grants be funded at \$67 million, a consistent level with last year's funding with a small increase to account for Illinois' entrance into the program. This funding will be shared among the 34 States and territories that have approved coastal zone management programs. Pursuant to the Coastal Zone Management Act (CZMA), States partner with NOAA to implement coastal zone management programs designed to balance protection of coastal and ocean resources with the need for sustainable development of coastal communities. States have the flexibility to develop programs, policies and strategies that are targeted to their State priorities while advancing national goals. Under the CZMA program, the States receive grants from NOAA that are matched by the States and are used to leverage significantly more private and local investment in our Nation's coastal areas. These grants have been used to maintain and grow coastal economies by reducing environmental impacts of coastal development, resolving conflicts between competing coastal uses, and providing critical assistance to local communities in coastal planning and resource protection.

The CZMA State grants have essentially remained level-funded for a decade, resulting in a decreased capacity in the State coastal zone management programs and less funding available to communities. An increase in funding to \$91 million would mean level funding that accounts for inflation over the last decade and would provide an additional \$300,000 to \$800,000 for each State and territory; however, CSO recognizes that the fiscal climate makes this type of an increase difficult, if not impossible. At maintained current funding levels, States and territories would receive between \$850,000 and just more than \$2 million to carry out their coastal management programs based on a formula accounting for shoreline miles and coastal population. Any additional funding over current funding levels would account for the addition of Illinois as a State with an approved coastal program (which just occurred January 2012). Illinois will be eligible to receive the maximum allotted funds of \$2 million. With an increase, States' funding would not be diluted with the addition of Illinois into the program and could focus on activities that support coastal communities and economies such as addressing coastal water pollution, working to conserve and restore habitat, helping plan with and educate communities, providing for public access to the shore and preparing to adapt to changing sea and lake levels and the threat of increasing storms.

Several years ago and appropriate at the time, a cap of approximately \$2 million was instituted to allow for funding to be even across the States and territories. Now, more than one-half of the States have met the cap and no longer receive an increase in funding, despite increased overall funding for CZMA State grants since that cap was introduced. Therefore, CSO requests that language be included in the appropriations bill declaring that each State will receive no less than 1 percent and no more than 5 percent of the additional funds more than previous appropriations. As was provided for in fiscal year 2010, CSO requests that language be included in the appropriations bill that directs NOAA to refrain from charging administrative costs to these grants. This is to prevent any undue administrative fees from NOAA from being levied on grants intended for States.

The following are a few examples of activities in Maryland and Texas recently funded through State grants. These types of contributions and more can be found around the Nation.

*Maryland*

CZMA funding assisted four communities (Anne Arundel, Queen Anne's, and Talbot counties, and the city of Annapolis) in reducing vulnerability to future storm events, shoreline change and sea level rise and incorporating those considerations into local plans, codes, and ordinances. CZMA funding assisted 11 communities in designing nonpoint source reduction projects which help the State and local communities meet water-quality goals by reducing runoff in the State's coastal waterways.

Maryland's CZM Program worked with land conservation partners to preserve 1,150 acres of critical coastal habitat for storm protection, water-filtering benefits, fish nurseries, or recreation through acquisition and easements. Maryland completed projects that protected 4,425 linear feet of nearshore habitat from erosion while providing critical habitat through the implementation of shoreline management techniques such as living shorelines.

*Texas*

The Texas Coastal Resources Program created an oyster shell recycling program, called the "Shell Bank", for the Texas Coastal Bend. This innovative oyster shell reclamation, storage, and recycling program creates a repository to collect and decontaminate shucked shells, identifies reef restoration sites, performs an economic analysis of the shell bank and educates the public. By putting shells back into the Bay, new substrate and habitat is created for larval recruitment and growth. Oyster reefs are vital to the health of ecosystems and economies as they provide habitat for other organisms and fish and help improve water quality. Oyster fisheries play a large part in the coastal economy of Texas with 6.1 million pounds harvested annually generating \$11 million in revenue. The project is a success, collecting approximately 70 tons of oysters to date.

The Texas General Land Office (GLO) established guidelines for the development of local Erosion Response Plans (ERPs) that can incorporate a building set-back line. The guidelines for ERPs include provisions for prohibition of building habitable structures seaward of the building set-back line, exemptions for certain construction seaward of the set-back line, stricter construction requirements for exempted construction, improvements to and protection of public beach access points and dunes from storm damage, and procedures for adoption of the plans. Development of ERPs by several local governments using CZMA funding is underway. This will contribute to:

- reductions in public expenditures due to erosion and storm damages, disaster response and recovery costs, loss of dune area habitats, and biodiversity;
- protection of critical dunes and dune vegetation that provide protection during storm events;
- preservation and enhancement of public access and use of beach; and
- prevention of the loss of human life.

*Coastal and Estuarine Land Conservation Program*

CSO requests Coastal and Estuarine Land Conservation Program (CELCP) not be terminated, as proposed in the President's budget request. Authorized by the Congress in 2002, CELCP protects "those coastal and estuarine areas with significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational States to other uses." To date, the Congress has appropriated nearly \$255 million for CELCP. This funding has allowed for the completion of more than 150 conservation projects, with more in progress. CELCP projects in 27 of the Nation's 35 coastal States have already helped preserve approximately 50,000 acres of the Nation's coastal assets. All Federal funding has been leveraged by at least an equal amount of State, local, and private investments, demonstrating the broad support for the program, the importance of coastal protection throughout the Nation, and the critical role of Federal funding plays in reaching the conservation goals of our coastal communities.

The preservation of coastal and estuarine areas is critical to both humans and the environment. These areas shield us from storms, protect us from the effects of sea-level rise, filter pollutants to maintain water quality, provide shelter, nesting and nursery grounds for fish and wildlife, protect rare and endangered species and provide access to beaches and waterfront areas. CELCP is the only program entirely dedicated to the conservation of these vital coastal areas.

The demand for CELCP funding far outstrips what has been available in recent years. In the last 3 years, NOAA, in partnership with the States, has identified over \$270 million of vetted and ranked projects. As demand for CELCP funding has grown, the funding has not kept pace. Adequate funding is needed to meet the demand of the increasingly high-quality projects developed by the States and submitted to NOAA. Unfortunately, budget constraints at NOAA have forced the agency to make a difficult choice not to fund its only land acquisition program. Efforts are underway to streamline NOAA's coastal stewardship programs to create program efficiencies and lower costs. Eliminating an important and successful coastal conservation tool before a consolidation plan is in place does not make sense. Therefore, we request that the subcommittee restore funding for CELCP until a consolidation plan can be developed and implemented.

*Regional Ocean Partnerships*

There is an ever-growing recognition that multistate, regional approaches are one of the most effective and efficient ways to address many of our ocean management challenges. These approaches are producing on-the-ground results that are benefiting both the economy and the environment.

Federal investment in Regional Ocean Partnerships (ROP) representing every coastal State in the continental United States and potentially emerging in the Pa-

cific and Caribbean islands—will enhance economic development, grow employment in green technologies, foster sustainable use of our oceans, coasts and Great Lakes, and leverage State and nongovernmental investments. To meet our ocean and coastal challenges, Governors have voluntarily established ROPs and are working in collaboration with Federal agencies, tribes, local governments, and stakeholders. In the belief that multi-sector, multistate management decisions will result in an improved ocean environment and ocean-related economy, ROPs are working in a variety of manners and approaches to address similar challenges, enhance the ecological and economic health of the regions, and ultimately the Nation.

The States and territories with existing partnerships, and those under development, request \$10 million in grants for ROPs as a step toward the funding level needed. These grants will provide essential support for the development and implementation of action plans within each region. ROPs also request appropriation language stating that 10 percent of the total funding be divided equally to existing ROPs for operations support and the remaining funding broadly support the development and implementation of regional priorities as determined by the ROPs through competitive solicitations.

Funding for operations support will ensure that the ROPs become enduring institutions that can guide regional efforts over the long term. Remaining funds allocated through a competitive grants process will support projects that address the priorities identified in the regions. Grants to the Partnerships should be awarded and administered by NOAA. CSO and the Partnerships are in agreement that this funding; however, cannot be at the expense of the CZM program funding. The CZM grants to the States provide the infrastructure and support that is foundational to the work of the ROPs. Any decreases to CZM funding for the purposes of increasing that of the ROPs will only hamper the States' ability to implement the National Ocean Policy as well as address regional priorities. As partnerships mature and new ones form where needed, funding should increase to \$60 million as soon as possible in order to fully meet their needs.

#### *National Estuarine Research Reserve System*

The National Estuarine Research Reserve System partners with States and territories to ensure long-term education, stewardship, and research on estuarine habitats. Atlantic, Gulf, Pacific, Caribbean, and Great Lakes reserves advance knowledge and stewardship of estuaries and serve as a scientific foundation for coastal management decisions. This unique site-based national program contributes to systemic research, education, and training on the Nation's estuaries.

These types of partnership programs account for only a small portion of the total NOAA Federal budget, but provide dramatic results in coastal communities. The funding for these programs is very cost effective, as these grants are matched by the States and are used to leverage significantly more private and local investment in our Nation's coastal zone. Maintaining funding for these programs that provide on-the-ground services to our local communities and citizens is well worth the investment.

CSO greatly appreciates the support the subcommittee has provided in the past. Its support has assisted these programs in working together to protect our coasts and sustain our local communities. We appreciate your taking our requests into consideration as you move forward in the fiscal year 2013 appropriations process.

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#### PREPARED STATEMENT OF DAVID ENGELS AND LENI ENGELS, RN

We are writing to you because we are very upset by the Department of Justice (DOJ) trampling on the civil rights of some severely disabled individuals. For the last several years the DOJ has adopted an ideological agenda that assumes "one size fits all" and that all disabled people, regardless of their physical or mental disabilities, should be living "in the community." DOJ has been intimidating and suing State governments, causing them to accept agreements which they would otherwise not accept. We are referring to both the "settlements" recently accepted by Georgia and Virginia. This is a very disturbing trend. The *Olmstead* law does not direct States to close State centers, but rather it directs States to provide for the least restrictive setting—which may be, in fact, an Intermediate Care Facility for the Mentally Retarded (ICF/MR) or similar care setting. Although the actions of the DOJ are insulting to parents and guardians who have made careful, albeit difficult decisions, looking out for the welfare of their children, this is not their only violation. Their actions blatantly disregard both the spirit and the letter of the *Olmstead* decision. The law clearly states:



“Federal Medicaid policy supports an individual’s right to choose where they receive Medicaid services for which they are eligible. For example, States are required by Federal law to offer individuals who are eligible for Medicaid home and community based waiver services the choice between community-based care under the waiver program or institutional services.

“Individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and support such individuals and their families receive. Including regarding choosing where the individuals live from available options, and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families.”—Developmental Disabilities Assistance and Bill of Rights Act, 423 U.S.C. 2001(c)(3) NOTE: the DD Act is the Federal authorizing statute for the Advocacy Center.

How can the DOJ ignore this integral part of the law?

On February 10, 2012, at a White House meeting with ARC, Attorney General Tom Perez stated, “*Olmstead* . . . is about people who want to live in the community and who can live in the community with the appropriate supports.” But my concern is for those who don’t want to live in the community, and those who are forced by DOJ actions to leave their safe homes—those who can’t live safely in the community. At the same meeting, Mr. Perez also said the recent settlement agreements between the DOJ and the States of Virginia and Georgia will “enable individuals to live, work and participate fully in community life.” Really? Can he explain how a 33-year-old individual, with the physical and cognitive function of an infant, will be able to “participate” in community life? By dismantling ICFs, and placing some higher-functioning individuals with developmental disabilities (DD) into the community, at the expense of those who can’t live there, Mr. Perez is effectively throwing the baby out with the bath water. In real life, he’s placing them in jeopardy. Isn’t DOJ’s Civil Rights Division charged with protecting everyone’s civil rights—not just those who are willing and able to “participate fully in community life”?

Therefore, we are writing to you with an urgent request; that you ensure that no Federal funds be used, to engage in any agenda, which dismantles and/or eliminates the option of intermediate care facilities (ICFs/MR/DD) for those individuals with the most severe/profound levels of disability. They are entitled to this option as outlined in the statutes listed above. I note that there is a request for an additional \$5.1 million for 25 attorneys for the Civil Rights Division which includes Civil Rights of Institutionalized Persons Act enforcement. Unless DOJ is going reverse course and actually uphold the *Olmstead* decision, and abide by all the statutes therein—we strongly urge you to deny the request for additional funding.

#### ADDITIONAL SPECIFIC REQUESTS

##### *Subcommittee on Commerce, Justice, Science and Related Agencies—Re: Department of Justice/Civil Rights Division Policies*

We object to the Civil Rights Division’s ADA/*Olmstead* Enforcement policies, the effect of which is to eliminate intermediate care programs/licensed congregate care facilities for persons with severe/profound cognitive-developmental disabilities.

We recommend to the subcommittee that it place restrictions on the Civil Rights Division’s fiscal year 2013 budget, so that funds may not be used to undermine and/or eliminate licensed facilities for persons with cognitive-developmental disabilities.

##### *Subcommittee on Labor, Health and Human Services, Education, and Related Agencies—Re: DHHS/Administration on Children and Families/Administration on Developmental Disabilities policies*

We object to the activities of the Administration on Developmental Disabilities (“DD Act” programs) policies, the effect of which is to eliminate intermediate care programs/licensed congregate care facilities for persons with severe/profound cognitive-developmental disabilities.

We recommend to the subcommittee that it place restrictions on the Administration on Developmental Disabilities’ fiscal year 2013 budget, so that program funds may not be used to undermine and/or eliminate licensed facilities for persons with cognitive-developmental disabilities.

Thank you.

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PREPARED STATEMENT OF THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

Madam Chair and members of the subcommittee, thank you for this opportunity to voice my appreciation for the support this subcommittee has steadfastly provided for basic science—particularly in the Earth and environmental sciences—at the Na-

tional Science Foundation (NSF), the National Oceanic and Atmospheric Administration (NOAA), and the National Aeronautics and Space Administration (NASA). This subcommittee is responsible for at least 75 percent of the total Federal support for Earth and environmental sciences and the importance of that investment is both lifesaving and essential from an economic point-of-view, as I will describe in my testimony. Assuming I can make that case to you and your colleagues, I hope that even as you are confronted with extremely severe budget challenges, you will continue to place a high priority on these basic research activities in the fiscal year 2013 appropriations process.

My focus on basic sciences is not because I am a physical or natural scientist. I am a political scientist, a scholar of public management, and the director of two masters programs at Columbia University—a Masters of Public Administration in environmental science and policy, and a Master of Science in sustainability management. In both programs, students are required to take core courses in environmental science. Why do I require management and policy students to learn science? I do so because there is a fundamental need to understand basic environmental processes in order to effectively manage anything in an increasingly challenging world. Decisionmakers must have insight into the natural resources and inputs that sustain their organization or business—the energy, water, and raw materials needed for production. They must also understand the impact of their production on the natural environment. Ask BP if they think that is important knowledge for management to have. An education that includes basic science allows graduates of these programs to serve as managers and policymakers with the environmental and Earth science information that is increasingly necessary to evaluate complex information and make informed decisions.

When I was growing up in the 1960s, there were 3 billion people on the planet; today there are more than 7 billion. With a global population that is projected to reach 10 billion by 2050, the crucial question emerges—how do we extract our needs from the planet without destroying it? In an increasingly crowded planet, the scale of production of everything has grown, and with it we see an increased draw on the Earth's resources. If we do not develop an economic system less dependent on the one-time use of natural resources, then it is inevitable that energy, water, food, and all sorts of critical raw materials will become more and more expensive. The development of a sustainable, renewable resource-based economy has become a necessity. The species that really needs healthy ecosystems is not some endangered sea turtle or polar bear, but the one you and I belong to—the human species. Energy and climate are just some of the first places we see the strain on the global biosphere, but they won't be the last.

In order to maintain and improve our standard of living and those of the aspiring middle class in the developing world, we must create a high-throughput economy that manages our planet's resources and maintains the quality of our air, water, and land. In the United States and other wealthy nations, we expect our standards of living to continue to rise, enjoying advanced technologies, and reaping the benefits of an advanced economy. In order to do this, to grow the global economy in the long term, we need to manage the planet more effectively. Without a healthy and productive ecosystem, wealth is impossible; environmental protection is a prerequisite to wealth. The stress on our environment has become apparent to those even in the wealthiest nations. The resources of the Earth are fixed and finite, and environmental and Earth system processes are complex and not yet completely or widely understood. Scientific research is required to continue to advance our knowledge of these systems so that we can ensure our ability to sustainably utilize them in the long run. We need to advance and invest in the science of Earth observation if we are to sustainably manage an economy capable of supporting the planet's population.

The fact is that we know far more about the functioning of our economy than about the environment. The Gross Domestic Product indicator has been around since the 1930s. There is still no such all-encompassing measure for environmental quality and planetary health—yet these may end up being key indicators of global well-being and the ability for individuals, organizations, and nations to prosper. Basic environmental science and Earth observations are the prerequisites for such an overall sustainability measure or metric. For these reasons, it is imperative that we expand the collective understanding of natural resources, Earth and environmental processes, and biological systems. We must continue to learn about the resources we have at our disposal, the processes that create and sustain them, and, perhaps most importantly, the short-term and long-term impacts we are inflicting on these resources and systems.

The support provided by NOAA's extramural competitive climate change research program, NSF's research programs—especially in the geosciences and biological

sciences, and NASA's Earth science programs are critical keys to understanding the impacts we are inflicting on our natural resources and our complex environmental systems.

Physical constraints, resource costs, and environmental impacts have become routine inputs to decisionmaking across sectors and industries. Increasingly, environmental research is needed to drive the understanding behind critical public policy decisions. Basic and applied scientific research can uncover new policy options, lead to cost savings in unexpected ways, and can help make sense of sometimes conflicting data or information. Two examples from New York City illustrate the important role that basic science plays in fundamental policy decisions.

New York City's drinking water is among the best in the world, exceeding stringent Federal and State water quality standards. New Yorkers get their water from three upstate reservoir systems that the city owns and operates—the Catskill, Delaware, and the Croton watersheds. This extensive water system provides more than 1 billion gallons of water daily to more than 9 million New York City residents and residents in the surrounding counties.<sup>1</sup> The Catskill and Delaware watersheds, which together provide 90 percent of the water to the city, are so pristine that their water does not need to be filtered. This is a significant accomplishment; in fact, there are only four other major American cities that are not required to filter their drinking water:

- Boston;
- San Francisco;
- Seattle; and
- Portland.

To keep the sources of water clean, the city works hard to protect the watershed from activities that can threaten their water quality. New York City actively engages in land acquisition when available and feasible, acquiring more than 78,000 acres since 2002.<sup>2</sup> City ownership guarantees that crucial natural areas remain undeveloped, while eliminating the threat from more damaging uses. The city enforces an array of environmental regulations designed to protect water quality while also encouraging reasonable and responsible development in the watershed communities. New York City also invests in infrastructure—such as wastewater treatment facilities and septic systems—that shield the water supply, while working with its upstate partners to ensure comprehensive land-use best practices that curb pollution at the water's source. While these efforts take significant investments of time and money, the alternative to maintaining these watersheds is far more costly. If the water quality deteriorated, the city would be forced to build a filtration plant that could cost as much as \$10 billion to construct, which would mean costs of roughly \$1 billion a year to pay the debt service and operate the plant. This would also cause a water rate increase of at least 30 percent to New Yorkers.<sup>1</sup>

Most of New York City's water supply is protected and filtered by the natural processes of upstate ecosystems. To environmental economists, nature's work that protects our water is an "environmental service." Because the price of a filtration plant is known, we can estimate the monetary value of the services provided to filter our water. This comes to \$1 billion per year minus the \$100 million or so we spend each year to protect the upstate ecosystems. This is \$900 million a year of found money that we will lose if we don't protect these fragile ecosystems. It's a graphic illustration of the point that what is good for the environment will often be good for our bank account. However, this is only possible with a strong knowledge of these ecosystem services—we cannot assume nature is doing something and put a value on that service, if our fundamental understanding of the environmental processes involved is flawed or incomplete. This is where basic and applied science research is key—providing the foundation for critical public policy decisions, often involving substantial sums of public dollars. We can see that science is one of many critical inputs that managers and leaders need at their disposal to process complex problems and arrive at the best solution.

I will use my hometown, New York City, to demonstrate once more the influence that informed science can have on public policy problems and the bottom line. The problem of combined sewer overflow remains one of the most difficult water-quality issues facing New York City. Combined sewer systems are typical of cities with old infrastructure, where the sewage from your home is combined with sewage from street sewers before it is piped to the local sewage treatment plant. The problem is that if a large amount of rain suddenly sends a high volume of water into street sewers, it can overwhelm treatment plants and push raw sewage into local waterways before it is treated.

<sup>1</sup>"PlaNYC: 2030". The City of New York. Apr 2007. Web. 3 Mar 2012. Pg 78.

<sup>2</sup>"PlaNYC: 2030". The City of New York. Apr 2007. Web. 3 Mar 2012. Pg 81.

The traditional approach to dealing with the combined sewer overflow problem is to build tanks and other facilities to hold storm water during storms and then release it into the sewers once the storm has ended. In September 2010, New York City released its landmark Green Infrastructure Plan, which would make use of vegetation, porous pavements and porous streets, green and blue roofs, and even rain barrels to augment traditional investment in “gray infrastructure”. These “green” low-cost techniques reduce the impact of storms on the city’s water treatment plants by absorbing or catching water before it can enter the sewer system. Green infrastructure can quickly reduce the flow of wastewater to treatment plants since it takes much less time to plant greenery or put out rain barrels than to site, design, build, and operate a traditional holding tank.

The goal of New York’s innovative green infrastructure plan is to reduce sewage overflows into NYC waterways by 40 percent by 2030. The city’s plan estimates costs that are \$1.5 billion less than the traditional “gray” strategy. Not only is green infrastructure cheaper than traditional infrastructure (and just as effective), but these types of projects provide multiple co-benefits for the city including cleaner air, reduced urban heat island effect, improved energy efficiency, and enhanced quality of life through increased access to green space.

Recently the State and city signed a draft agreement allowing the city to begin implementing its green infrastructure approach. The agreement also included a provision to defer making a decision to construct two combined sewer overflow tunnels until 2017. The rationale behind the postponement is that in 5 years we will know much more about the effectiveness of the green techniques. These tunnels are estimated to cost approximately \$1 billion each, and if we could demonstrate that an ecosystems services approach could save most of these funds, it would be an exciting and important demonstration of the principles of green infrastructure—and the importance of environmental science on policymaking.

Again, we see the importance of utilizing environmental science and research in critical decisionmaking that impacts significant populations of people. A clear, comprehensive understanding of hydrological, biological, and geochemical processes fuels the decisions to opt for “green” projects versus “gray” projects. Scientific research is not made for the sake of knowledge itself. Important environmental discovery and knowledge form the necessary building blocks to important policies. Neither of these innovative cost-saving public programs would be possible without a solid understanding of science. If we do not make the investment in the basic scientific research needed to make these complex decisions regarding the planet’s finite resources and sensitive services, a reduction in the planet’s ability to produce goods and services is only a matter of time. We need to dramatically increase funding for basic and applied science and focus attention on research and development in Earth observation, energy, food, water, and other key areas.

One of the great strengths of this country is our amazing research universities. In the post-World War II era, the United States established an effective partnership between Government-funded basic research and private sector application of fundamental research in applied technologies, including computers, cell phones, the Internet, and of course a host of breakthroughs in medicine and medical technology. Much of the economic growth of the past century and a half has been the direct result of this type of technological development. Government is especially crucial in funding basic science that is too far from products and profits to generate private research and development investment. Government is also needed to help bridge the sometimes wide gap between basic and applied research.

Support for basic environmental science research should not be seen as a partisan or political issue. It is about the discovery of fundamental knowledge that has allowed us to improve our standard of living and holds the promise of a sustainable planet, free from extreme poverty. Support for basic scientific and engineering research and education—particularly the university-based research that the agencies under the jurisdiction of this subcommittee support—is a fundamental role of Government similar to national security, emergency response, infrastructure, and criminal justice. Reducing this funding is a threat to our long-term economic growth.

Thank you for this opportunity to appear before the subcommittee. I would be happy to answer any questions the members of the subcommittee may have.

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PREPARED STATEMENT OF THE FAMILIES AND FRIENDS OF CARE FACILITY RESIDENTS

Chairman Mikulski and members of the subcommittee: Thank you for the opportunity to testify regarding appropriations for the Department of Justice (DOJ)/Civil Rights Division (CRD). DOJ is requesting additional personnel of 50 positions and resources of \$5.1 million to strengthen civil rights enforcement efforts that the At-

torney General has identified as part of his Vulnerable People Priority Goal. My testimony is limited to DOJ's activities under Civil Rights of Institutionalized Persons Act (CRIPA) and the Americans with Disabilities Act (ADA), which are included in this program area.

I represent the Arkansas statewide parent-guardian association, Families and Friends of Care Facility Residents (FF/CFR), a 501(c)(3) organization. I am a volunteer advocate. My interest in the appropriations for the DOJ/CRD is that of mother and co-guardian of an adult son, aged 43, whose severe brain injuries occurred at birth. CRD's programs called "Enforcement of the Integration Mandate of the Americans with Disabilities Act (ADA) and *Olmstead v. L.C.*" are aggressive legal actions against States which operate licensed, Medicaid-certified congregate care programs for individuals who have been adjudicated incompetent and whose continuous care is beyond their families' capacities. CRD's mission is to eliminate the option of State-operated congregate care for individuals with disabilities in the misguided notion that CRD knows what is best for my son and other individuals with severe and profound disabilities rather than their legal guardians who have made the residential decisions for their family members.

Our son, a middle-aged man, has a medical diagnosis of profound mental retardation and autism. John functions on the level of a toddler. He is basically nonverbal, with occasional echolalia (he may repeat in short words or phrases what another says directly to him) and exhibits pica (an intense desire to consume inedibles). He has a toddler's sense of danger (without close supervision, he might walk into a busy street; and he would not recognize a toxic cleaning product as something harmful to ingest, for example).

John can be frightening to an untrained person. A large mobile man when he is frustrated or experiences disappointment or discomfort, he might come too close to others, and in a full-blown meltdown, he might howl, slap his face, and chew on his right wrist. At such times, he is vulnerable to over-reaction by untrained, unsupported staff. Our son's care is beyond our family's capacities. All of his life, John and others similarly situated will rely on the humanity of others for health and safety. In particular, they will require residential programs with high standards when there are no living or active family members involved in their lives. For many years our son's safe home has been a State-operated congregate-care, Medicaid-certified intermediate care facility. Through costly litigation and arbitration, DOJ/CRD is systematically dismantling the residential living facilities for these fragile persons, removing the most defenseless among us from their protected environment without respect for the wishes of guardians and with no clear underlying, peer-reviewed rationale. CRD's actions have caused and continue to cause enormous stress and anxiety for families and guardians.

Federal tax dollars should not be spent in undermining and dismantling a system of care that is absolutely essential to many persons with disabilities. What is often overlooked, particularly by those in authority who are far away from the daily responsibilities of care and who are not responsible for providing the close care required, is that the population with disabilities involved in CRD's legal actions is extremely difficult to care for and to support, wherever they may live. It is our position (including those like my family who are parents and families of the critically disabled individuals at risk) that congregate care facilities, adequately funded, offer the most suitable settings and programs for a particular group of those suffering from some of the most severe forms of cognitive—developmental disabilities.

DEPARTMENT OF JUSTICE/CIVIL RIGHTS CASES IN ARKANSAS AND SIMILAR CASES IN THE UNITED STATES

DOJ policies, under the mask of "civil rights", were played out in a Federal lawsuit in Arkansas (*United States of America v. State of Arkansas/Conway Human Development Center*, Eastern District of Arkansas, Case No. 4:09-cf-00033-JLH (2011)). DOJ began investigating the center in 2003 and spent millions of dollars with about 15 attorneys committed to the case (at trial) after an 8-year investigation, and a 6-week Federal trial challenging our State over one of its intermediate care facilities, which during the long years of investigation was at all times in compliance with its Federal Medicaid certification regulations.

Arkansas defended its developmental center, and to our great relief, the substantive DOJ claims were denied and the case was dismissed (June 2011).

As the parties prepared for trial, DOJ filed a second law suit against Arkansas, naming all of the State's licensed facilities, including my son's home, alleging ADA violations. DOJ's ADA case against all of the centers was dismissed, and the Federal trial by DOJ against the Conway Human Development Center proceeded in early September 2010. I was a spectator and observer through most of the 6-week trial

in Little Rock, Arkansas. Not one family from the more than 400 Conway center residents supported DOJ's claims that their family members' civil rights were violated; not one medical provider or hospital representative familiar with the center's residents and their complex medical needs testified to support DOJ's claims of poor care.

The Federal Court dismissed the Justice Department's lawsuit against the Arkansas center (June 8, 2011). In an 85-page decision, the Court began its findings as follows:

"Most lawsuits are brought by persons who believe their rights have been violated. Not this one . . . All or nearly all of those residents have parents or guardians who have the power to assert the legal rights of their children or wards. Those parents and guardians, so far as the record shows, oppose the claims of the United States. Thus the United States [Department of Justice] is in the odd position of asserting that certain persons' rights have been and are being violated while those persons—through their parents and guardians disagree." See Case decision, 1st para., p. 1.

In the Arkansas case, DOJ was assessed \$150,585.01 in court costs to be paid to the State, but DOJ was not required to pay the more than \$4.3 million in attorney's fees and litigation costs Arkansas spent for defending the center. These fees were not reimbursed and they came from several places including the sale of timber and mineral rights on board-owned properties and donations and bequests accumulated in more than 50 years to the State-operated centers for the purpose of enhancing services for their vulnerable residents.

States across the Nation have been confronted with DOJ's misguided ADA/*Olmstead* Enforcement Policies. The latest example is in the State of Virginia. Simultaneously, with no opportunity for public review, DOJ filed both a complaint and a settlement agreement in January of this year. We know from hard experiences in other States, that DOJ objectives to close State-operated centers are usually not identified clearly in the documentation of an investigation of a case, but the intentions become clearer as implementation of the settlement agreements is carried out. A settlement in Texas, for example, requires the State's centers to undergo additional reviews by DOJ approved court monitors. None of the Texas centers is likely to achieve the goals set by the monitors. In a recent editorial, a Texas newspaper commented that based on its first-hand knowledge of a center, the complex population it serves and the staff, "the demands are not reachable." (Lufkin Daily News, 2/26/2012).

In a settlement agreement with the State of Georgia, which was entered contemporaneously with filing of the lawsuit and without public review, all persons with developmental disabilities in the developmental centers are required to move from their licensed facilities. The Assistant Attorney General for CRD described the Georgia Settlement Agreement as a "template for our enforcement efforts across the country." In a teleconference, he described his role in the settlement which included going directly to the Governor of Georgia to press for an agreement rather than costly litigation.

#### CONCLUSION

It is not in the public interest for a federally funded entity through power of its office and out of the public view to coerce a State to cease operating programs which have historically proven successful in assuring the health and safety of persons with lifelong, severe cognitive disabilities. It is deeply offensive to me, my family and many others that our Federal Government through the DOJ is empowered to intimidate State authorities into unfair settlement agreements resulting in closures of our children's safe homes. It is especially egregious that this activity continues when DOJ's legal claims have been found so weak in Federal court and the outcomes are so dangerous to the health and safety of the most vulnerable among us.

DOJ does not reference the Arkansas case on its Web site; however, it does have a document entitled "Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*" This document omits the Federal laws which recognize that individuals with developmental disabilities and their families are the primary decisionmakers in placement choices; it omits the Medicaid rule which provides that eligible persons may choose between home and community based care and institutional care. The DOJ statement presents an incomplete interpretation of the *Olmstead* decision and ignores critical parts, for example: In the *Olmstead* majority opinion, Justice Ginsberg wrote that "[w]e recognize, as well, the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabili-

ities, . . . .” 527 U.S. 597. The Court further held that “[w]e emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings.” 527 U.S. 601.

Justice Kennedy, joined by Justice Breyer, wrote in his concurring opinion, joining the majority of four: “it would be unreasonable, it would be a tragic event, then, were the Americans with Disabilities Act of 1990 (ADA) to be interpreted so that States had some incentive, for fear of litigation, to drive those in need of medical care and treatment out of appropriate care into settings with too little assistance and supervision.” 527 U.S. 610. Justice Kennedy’s prognostic fear is a present day reality.

DOJ should re-examine its programs under *Olmstead*, which the Department calls an “integration mandate,” and answer for the very serious consequences of its actions. Most important, how many former residents of congregate care facilities have died from preventable causes since being displaced from their ICF/MR (Intermediate Care Facilities for persons with Mental Retardation) homes? What are the actual facts on quality of care and comparative costs?

#### REQUEST

The comprehensive and devastating reach of the Civil Rights Division agenda on the most vulnerable among us requires active, vigilant congressional oversight. We respectfully request this subcommittee’s review and action by:

- halting the misguided mission of the Civil Rights Division of the Department of Justice, as described above;
- discontinuing to fund the de-institutionalization programs of the of the Civil Rights Division of the Department of Justice; and
- placing restrictions on the Civil Rights Division’s programs, limiting its funds to bring actions that drive States out of their roles in providing care for our most severely impaired developmentally disabled citizens, all under the mask of “civil rights.”

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#### PREPARED STATEMENT OF FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL BIOLOGY

The Federation of American Societies for Experimental Biology (FASEB) respectfully requests an appropriation of at least \$7.3 billion for the National Science Foundation (NSF) in fiscal year 2013. This funding level matches the recommendation made in the President’s fiscal year 2013 budget request. As you know, NSF funding in recent years has failed to reach the levels authorized in the America COMPETES Acts of 2007 and 2010. FASEB’s broader goal is to support sustainable growth and a return to a funding trajectory reflective of the COMPETES reauthorization.

As a federation of 26 scientific societies, FASEB represents more than 100,000 life scientists and engineers, making it the largest coalition of biomedical research associations in the United States. FASEB’s mission is to advance health and welfare by promoting progress and education in biological and biomedical sciences through service to its member societies and collaborative advocacy. FASEB enhances the ability of scientists and engineers to improve—through their research—the health, well-being, and productivity of all people.

With just 4 percent of the Federal research and development (R&D) budget, NSF sponsors 40 percent of federally funded basic academic research in the physical sciences and serves as the primary Federal funding source for research in disciplines such as computer science, nonhealth-related biology, and the social sciences. NSF also plays a significant role in advancing biomedical research; 42 Nobel Prizes have been awarded to NSF-funded scientists for contributions in physiology or medicine.

At a time when the U.S. faces many challenges, scientific and technological advances are the key to keeping our Nation globally competitive and protecting our standard of living. The broad portfolio of fundamental research supported by NSF expands the frontiers of knowledge, fuels future innovation, and creates a well-developed research infrastructure capable of supporting paradigm-shifting research projects. NSF grants, awarded to projects of the highest quality and greatest significance in all 50 States, are selected using a rigorous merit-review process that evaluates proposals on both scientific and societal value. For example, one recent NSF research project utilized mathematics and computer modeling to understand structural characteristics of stents used to treat coronary artery disease. The results of this research will allow manufacturers to optimize stent design and help doctors determine the best kind of stent for each patient and medical procedure. Another team

of NSF-funded scientists is studying the unique properties of sundew plants to develop new materials with potential medical applications. Adhesive fibers, like those secreted by the plant, could one day be incorporated into bandages that accelerate tissue repair or applied to artificial hip and knee replacements to stimulate compatibility with human tissue. NSF researchers are also exploring scientific questions that reveal the nature of our universe. Using new data collection capabilities not available a few years ago, astronomers recently discovered the most massive black holes ever observed in outer space.

NSF is also committed to achieving excellence in science, technology, engineering, and math education at all levels. The agency supports a wide variety of initiatives aimed at preparing science teachers, developing innovative curricula, and engaging students in the process of scientific inquiry. One of many NSF efforts to prepare future scientists and engineers, the Graduate Research Fellowship Program (GRFP) annually awards approximately 2,000 3-year fellowships to outstanding graduate students pursuing advanced degrees in science, technology, engineering, or mathematics. NSF graduate research fellows are making important scientific contributions, and past GRFP award recipients have gone on to become leading scientists and Nobel Prize winners. Through its education and training initiatives, NSF ensures the development of a workforce well-prepared to advance knowledge and achieve new breakthroughs in science and engineering.

NSF-funded research has produced revolutionary discoveries and innovations through its broad-based, long-term investment in R&D. These are the types of investments that no individual or private business could afford to undertake. If the public did not support it, it would not be done. The recently released National Science Board Science and Engineering Indicators 2012 report indicates that while growth of United States R&D expenditures has slowed in recent years, China's R&D expenditures have risen sharply, increasing by 28 percent in 2009. Failure to build on prior investments in NSF would slow the pace of discovery, sacrifice our position as the global leader in innovation, and discourage young scientists and engineers. Strong and sustained NSF appropriations enable the groundbreaking research and training critical to the future success and prosperity of the United States.

Thank you for the opportunity to offer FASEB's support for NSF.

FASEB is composed of 26 societies with more than 100,000 members, making it the largest coalition of biomedical research associations in the United States. Celebrating 100 Years of Advancing the Life Sciences in 2012, FASEB is rededicating its efforts to advance health and well-being by promoting progress and education in biological and biomedical sciences through service to our member societies and collaborative advocacy.

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PREPARED STATEMENT OF THE IACP/DUPONT KEVLAR SURVIVORS' CLUB®

Chairwoman Mikulski and Ranking Member Hutchison, members of the subcommittee, I genuinely appreciate this opportunity to submit testimony in support of a program key to law enforcement officer safety: the Bulletproof Vest Partnership Act (BVPA). I thank the subcommittee for supporting BVPA funding in the past and ask that the program be funded at or more than the level recommended in the President's fiscal year 2013 budget, or \$24 million. Program demand continues to be very high: the 5-year average for combined small and large agency requests for BVPA funds is \$114 million, compared to average annual funds of \$28 million allocated the BVPA (according to the Bureau of Justice Assistance [BJA]).

By way of brief background, I served as a police officer for 35 years, 20 of which were as chief of police. Following that, I have documented the benefits of wearing body armor for thousands of officers across the country over the last decade through the IACP/DuPont Kevlar Survivors' Club® as created by the International Association of Chiefs of Police (IACP) and DuPont in 1987. Key functions of the IACP/DuPont partnership are encouraging law enforcement officers to wear personal body armor and celebrating the lives of officers who, as the result of wearing ballistic protection, were protected from being disabled or killed. The data collected from police survivors is shared with the noncommercial research community for the exclusive purpose of improving the next generation of body armor.

I am able to provide reported preliminary and verified saves for every State upon request. For the purposes of this testimony, the saves for Maryland are 10 and for Texas, 60. I call to your attention that we are unable to capture all saves. Agencies and officers for a variety of reasons often prefer not to submit information about an incident.

*Background and Need.*—Law enforcement is a field that carries inherent risks, with the past 2 years being especially lethal years for law enforcement officers.



Numbers from the Officer Down Memorial Page ([www.odmp.org](http://www.odmp.org)) note that 164 line-of-duty deaths were reported in 2011 and 162 line-of-duty deaths in 2010. Although we are at the beginning of 2012, line-of-duty deaths are already at 22—with the first being that of a female officer—United States Park Ranger Margaret Anderson.

Considering only police line-of-duty deaths resulting from felonious attacks, the numbers are stunning. The table below reflects final Federal Bureau of Investigation Law Enforcement Officers Killed and Assaulted (FBI LEOKA) data for the years 2009 and 2010. Although the data for 2011 is incomplete as reported by FBI LEOKA on December 27, 2011,<sup>1</sup> the number of officers feloniously killed increased 35.4 percent from 2009 to 2011. This begs the question, if the reports of homicide in the country are generally decreasing, why are police homicides up?

FEDERAL BUREAU OF INVESTIGATION LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED  
REPORTS OF OFFICERS FELONIOUSLY KILLED

Type of weapon	2009	2010	2011
Number of victim officers .....	48	56	65
Type of firearms used to kill law enforcement officers:			
Handgun .....	28	38	.....
Rifle .....	15	15	.....
Shotgun .....	2	2	.....
Type of firearm not reported .....	.....	.....	.....
Total officers feloniously killed by firearm .....	45	55	56
Weapons other than firearm used to kill law enforcement officers:			
Knife or other cutting instrument .....	.....	.....	1
Bomb .....	.....	.....	.....
Blunt instrument .....	.....	.....	.....
Personal weapons (hands and feet) .....	.....	.....	2
Vehicle .....	3	1	6
Other .....	.....	.....	.....

The American police community is facing incredible challenges, not the least being officer safety. Police officers are encountering criminals armed with high-powered weapons including fully automatic rifles. Criminals are routinely wearing body armor while engaged in violent acts. Even so, men and women of American law enforcement are the first responders charged to prevent, interrupt, mitigate, and recover from a criminal act, be it a minor crime in progress or the action of a terrorist. It is vital to ensure that they are provided the tools and equipment to carry out their duties safely. This includes adequate comfort and coverage with respect to body armor.

Body armor continues to serve as an effective piece of equipment to save officers from disabilities and death—with FBI data showing relative risk of fatality for officers who did not wear body armor at 14 times greater than those who did.<sup>2</sup> Documented saves include more than 3,100 officers over the past 30 years<sup>3</sup>—a number that is likely far higher considering that many incidents go unreported in the regular course of law enforcement work. However, BJS estimates that only 67 percent of departments require the officers to wear protective armor at all times.<sup>4</sup>

Body armor protects scores of officers from injuries—both ballistic and nonballistic—every year. However, although the National Institute of Justice (NIJ) has worked to ensure certain levels of protection for ballistic vests, the policy insufficiently addresses issues of fit, measurement, and maintenance—which has produced wide variation in the treatment of these issues by manufacturers that has led to a decreased level of safety for officers using body armor. For example, BJA policy fails to set standards for those taking measurements for fit and coverage, leaving room for great levels of discretion and error. Ideally, fit would be verified at time of delivery, at a specific period of time after delivery to provide for adjustments re-

<sup>1</sup> FBI LEOKA preliminary report felonious deaths as of December 27, 2011; final 2011 Law Enforcement Officers Killed and Assaulted report will be published by the FBI in 2012; visit FBI LEOKA data at <http://www.fbi.gov/about-us/cjis/ucr/leoka/leoka-2010>.

<sup>2</sup> FBI LEOKA data.

<sup>3</sup> International Association of Chiefs of Police (IACP)/DuPont Survivors' Club®.

<sup>4</sup> Bureau of Justice Statistics Web site, based on Law Enforcement Management and Administrative Statistics survey, and the Census of State and Local Law Enforcement Agencies: <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=71>.

quired after a break-in period, and annually thereafter until the armor is removed from service.

The FBI reports that from 1996 to 2005, 132 officers were killed while wearing body armor from ballistic penetration of areas not covered by body armor. Of those killed, 26 percent were wounded between side vest panels, 35 percent around the armholes or shoulder, 25 percent more than the vest, and 14 percent less than the vest. The actual numbers are much greater as this information is limited to felonious deaths and does not include assaults where the officer survived. These numbers highlight the importance of ensuring good fit and measurement to provide officers with equipment that provides maximum safety.

*Special Issue Concerning Female Body Armor.*—Law enforcement is no longer a men-only occupation. Numbers show that for the past few decades, the number of women in law enforcement has consistently increased—for all levels of law enforcement:<sup>5</sup>

—By 2008, about 100,000 women served as Federal, State, or local law enforcement officers.

—The number of women in local enforcement grew from 7.6 percent in 1987 to 12 percent by 2007.

—Among local law enforcement agencies, women represented more than double the percentage of sworn personnel in large agencies than compared to small agencies.

—In 2007, women made up 18 percent of sworn officers in 12 of the 13 largest local police departments.

Regrettably, when it comes to body armor for women, usage of body armor specifically designed to fit the female torso is limited. Much of the armor currently offered is designed for male officers and does not take into account the anatomical differences between male and female officers. In one survey, female officers complained that the poor fit, especially in the bust, made it “hard to breathe,” and another noted that the tight fit made her feel “squashed”—hardly top conditions under which female officers should operate. A survey conducted by the Institute for Women in Trades, Technology, and Science found that 33 percent of female officers reported fit problems, compared to 6 percent of their male counterparts. Even so, many female officers shun the stigma surrounding perceived “special treatment” by superiors and, therefore, fail to request equipment made to suit them even though it may only run \$100–\$150 more than male armor. Many end up requesting body armor designed for a male body, to keep up with their male peers, but find it impractical to use. Clearly, the level of education and awareness concerning this type of protective equipment must be elevated.

*Bulletproof Vest Partnership Act.*—Some of these issues related to fit and coverage were studied by the Government Accountability Office (GAO), which released a report (GAO12–353) on February 15, 2012, entitled, “Law Enforcement Body Armor: DOJ Could Enhance Grant Management Controls and Better Ensure Consistency in Grant Program Requirements”. According to the report’s highlights, here are key findings and recommendations:

“The Department of Justice (DOJ) has a number of initiatives to support body armor use by State and local law enforcement, including funding, research, standards development, and testing programs. Two Bureau of Justice Assistance (BJA) grant programs provide funding to State and local law enforcement to facilitate their body armor purchases. The Bulletproof Vest Partnership (BVP) program offers 2-year grants on a reimbursable basis . . .”

“DOJ designed several internal controls to manage and coordinate BJA’s and NIJ’s body armor activities, but could take steps to strengthen them, consistent with standards for internal control. For example, the BVP program has not deobligated about \$27 million in undisbursed funds from grant awards whose terms have ended. To strengthen fund management, DOJ could deobligate these funds for grants that have closed and, for example, apply the amounts to new awards or reduce requests for future budgets. Also, unlike the BVP program, the JAG program does not require that the body armor purchased be NIJ compliant or that officers be mandated to wear the armor purchased. To promote officer safety and harmonize the BVP and JAG programs, DOJ could establish consistent body armor requirements . . .”

“GAO recommends that among other actions, DOJ deobligate undisbursed funds from grants in the BVP program that have closed, establish consistent requirements within its body armor grant programs, and track grantees’ intended stab-resistant vest purchases. DOJ generally agreed with the recommendations.”

<sup>5</sup> Bureau of Justice Statistics Crime Data Brief: Women in Law Enforcement, 1987–2007: <http://www.bjs.gov/content/pub/pdf/wle8708.pdf>.

The recommendation by GAO to deobligate unused funds warrants judicious consideration. It is my understanding that the unused funds, referenced in the GAO report, were not drawn down by the requesting jurisdictions during the period of 2004 through 2009. As I understand it, beginning with 2008 BPVA awards, BJA reduced the amount of new awards equal to unused/expired funds in a jurisdiction's account and decreased the eligibility period for use of funds from 4 years to 2. Deobligating funds as recommended by GAO could have a detrimental effect on jurisdictions requiring more time to spend down the remainder of their grants.

Thus, in addition to funding the BVPA at a level equal to or higher than the President's fiscal year 2013 request of \$24 million, I urge the subcommittee to not approve deobligation of BVPA funds as recommended by GAO and allow more time for grantees to use those monies to purchase body armor for officers. Hopefully this will also be body armor that fits well, covers areas adequately, and is comfortable enough to allow the officer to properly do his or her job.

PREPARED STATEMENT OF THE INDEPENDENT TRIBAL COURT REVIEW TEAM

Thank you for the opportunity to testify today and address the serious funding needs that have limited and continue to hinder the operations of tribal judicial systems in Indian country. I am the lead judge of the Independent Tribal Court Review Team. I am here today to request funding for tribal courts in the Department of Justice, Office of Justice Programs for the Tribal Courts Assistance Program.

Budget priorities, request and recommendations:

- Increase funding for tribal courts by \$10 million;
- Maintain the set-aside for tribal courts;
- Fully fund all provisions of the Tribal Law and Order Act of 2010 (TLOA); and
- \$58.4 million authorized under the Indian Tribal Justice Act of 1993, Public Law 103-176, 25 U.S.C. 3601 and re-authorized in year 2000 Public Law 106-559 (no funds to date).

We support the 7-percent tribal set-aside (\$81,375,000) from all discretionary Office of Justice Programs to address Indian country public safety and tribal criminal justice needs. However, this is not sufficient to address the need in terms of equity for Indian country relative to funding appropriated for State, local, and other Federal justice assistance programs. On behalf of the Review Team, I ask that you give every consideration to increasing this program to the fiscal year 2010 enacted level for the Tribal Assistance Account and allow for greater flexibility for tribes to use these funds at the local level.

We support an increase in funding for:

*Hiring and Training of Court Personnel.*—Tribal courts make do with underpaid staff, underexperienced staff, and minimal training. (We have determined that hiring tribal members limits the inclination of staff to move away; a poor excuse to underpay staff.)

*Compliance With Tribal Law and Order Act.*—To provide judges, prosecutors, public defenders, who are attorneys and who are bared to do "enhanced sentencing" in tribal courts.

*Salary Increases for Existing Judges and Court Personnel.*—Salaries should be comparable to local and State court personnel to keep pace with the non-tribal judicial systems and be competitive to maintain existing personnel.

*Tribal Courts Need State-of-the-Art Technology—(Software, Computers, Phone Systems, Tape Recording Machines).*—Many tribes cannot afford to purchase or upgrade existing court equipment unless they get a grant. This is accompanied by training expenses and licensing fees which do not last after the grant ends.

*Security and Security Systems To Protect Court Records and Privacy of Case Information.*—Most tribal courts do not even have a full-time bailiff, much less a state-of-the-art security system that uses locked doors and camera surveillance. This is a tragedy waiting to happen.

*Tribal Court Code Development.*—Tribes cannot afford legal consultation. A small number of tribes hire on-site staff attorneys. These staff attorneys generally become enmeshed in economic development and code development does not take priority. Tribes make do with underdeveloped codes. The Adam Walsh Act created a hardship for tribes who were forced to develop codes, without funding, or have the State assume jurisdiction. (States have never properly overseen law enforcement in a tribal jurisdiction.)

*Financial Code Development.*—We have rarely seen tribes with developed financial policies. The process of paying a bond, for example, varies greatly from tribe to tribe. The usual process of who collects it, where it is collected, and how much it is, is never consistent among tribes.

Nationwide, there are 184 tribes with courts that receive Federal funding. For the past 6 years, the Independent Court Review Team has been traveling throughout Indian country assessing how tribal courts are operating. During this time, we have completed some 84 court reviews. There is no one with more hands-on experience and knowledge regarding the current status of tribal courts than our Review Team.

We have come into contact with every imaginable type of tribe; large and small; urban and rural; wealthy and poor. What we have not come into contact with is any tribe whose court system is operating with financial resources comparable to other local and State jurisdictions. Our research indicates tribal courts are at a critical stage in terms of need.

There are many positive aspects about tribal courts. It is clear that tribal courts and justice systems are vital and important to the communities where they are located. Tribes value and want to be proud of their court systems. Tribes with even modest resources tend to send additional funding to courts before other costs. After decades of existence, many tribal courts, despite minimal funding, have achieved a level of experience and sophistication approaching, and in some cases surpassing, local non-Indian courts.

Tribal courts, through the Indian Child Welfare Act, have mostly stopped the wholesale removal of Indian children from their families. Indian and non-Indian courts have developed formal and informal agreements regarding jurisdiction. Tribal governments have recognized the benefit of having law-trained judges, without doing away with judges who have cultural/traditional experience. Tribal court systems have appellate courts, jury trials, well-cared-for courthouses (even the poorer tribes), and tribal bar listings and fees. Perhaps most importantly, tribes recognize the benefit of an independent judiciary and have taken steps to insulate courts and judges from political pressure. No longer in Indian country are judges automatically fired for decisions against the legislature.

Assessments have indicated that the Bureau of Indian Affairs (BIA) only funds tribal courts at 26 percent of the funding needed to operate. The remainder is funded by the tribes. Tribes who have economic development generally subsidize their tribal courts. On the flip side, tribes who cannot afford to assist in the financial operations of the court are tasked with doing the best they can with what they have even at the expense of decreasing or eliminating services elsewhere. This while operating at a disadvantage with already overstrained resources and underserved needs of the tribal members. The assessment suggests that the smaller courts are both the busiest and most underfunded.

We thank this subcommittee for the additional \$10 million funding in fiscal year 2010. These funds were a godsend to tribes. Even minimal increases were put to good use. The additional funding in fiscal year 2013 will be a big asset and coupled with tribes having flexibility on how to use these funds will greatly improve access to funding for tribal courts.

The grant funding in the Department of Justice (DOJ) is intended to be temporary, but instead it is used for permanent needs; such as funding a drug court clerk who then is used as a court clerk with drug court duties. When the funding runs out, so does the permanent position. We have witnessed many failed drug courts, failed court management software projects (due to training costs), and incomplete code development projects. When DOJ funding runs out, so does the project.

As a directive from the Office of Management and Budget, our Reviews specifically examined how tribes were using Federal funding. In the past several years, there were only two isolated incidents of a questionable expenditure of Federal funds. It is speculated that because of our limited resources, we compromise one's due process and invoke "speedy trials" violations to save tribal courts money. Everyone who is processed through the tribal judicial system is afforded their constitutional civil liberties and civil rights.

We do not wish to leave an entirely negative impression about tribal courts. Tribal courts need an immediate, sustained, and increased level of funding. True. However, there are strong indications that the courts will put such funding to good use.

There are tribes like the Fort Belknap Tribe of Montana whose chief judge manages both offices and holds court in an old dormitory that can't be used when it rains because water leaks into the building and the mold has consumed one wall. Their need exceeds 100 percent.

There are several courts where the roofs leak when it rains and those court houses cannot be fixed due to lack of sufficient funds. The Team took pictures of those damaged ceilings for the BIA hoping to have additional funds for the tribes to fix the damaged ceilings.

Tribal courts have other serious needs. Tribal appellate court judges are mostly attorneys who dedicate their services for modest fees that barely cover costs for copying and transcription fees. Tribal courts offer jury trials. In many courts, one

sustained jury trial will deplete the available budget. The only place to minimize expenses is to fire staff. Many tribal courts have defense advocates. These advocates are generally law trained and do a good job protecting an individual's rights (including assuring that speedy trial limitations are not violated.) This is a large item in court budgets and if the defense advocate, or prosecutor should leave, the replacement process is slow.

Now the need is greater if the tribal courts follow the TLOA, that requires barred attorneys to sit as judges, prosecutors, and defense attorneys, when using the "enhanced sentencing" and enhanced jail detention, options of this act. Partial funding for TLOA is not an option if Indian country is expected to benefit from the intent of the Congress. We ask that you fully fund the investment you made in tribal justice systems by authorizing both the TLOA and the Indian Tribal Justice Act of 1993. Otherwise the continued lack of resources for tribal justice systems will continue to pose a threat to Native citizens and the future of Indian country.

I am here today to tell the Congress these things. We feel it is our duty to come here on behalf of tribes to advocate for better funding. Tribes ask us to tell their stories. They open their files and records to us and say, "We have nothing to hide". Tell the Congress we need better facilities, more law enforcement, more detention facilities, more legal advice, better codes—the list goes on and on. But, as we have indicated, it all involves more funding. This Congress and this administration can do something great. Put your money where your promises have been.

Finally, we support the requests and recommendations of the National Congress of American Indians.

On behalf of the Independent Review Team, thank you.

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#### PREPARED STATEMENT OF THE INNOCENCE PROJECT

On behalf of the Innocence Project, thank you for allowing me to submit testimony to the Senate Committee on Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies as it considers budget requests for fiscal year 2013. I write to request the continued funding of the following programs at the described levels:

- The Paul Coverdell Forensic Sciences Improvement Grant Program (the "Coverdell Program") at \$20 million through the Department of Justice, National Institute for Justice (NIJ);
- The Kirk Bloodsworth Post-Conviction DNA Testing Program (the "Bloodsworth Program") at the fiscal year 2012 level of \$4 million through the NIJ; and
- The Wrongful Conviction Review Program, which is a part of the Capital Litigation Improvement Program, at \$2.5 million, for a total Capital Litigation Improvement Program allocation of \$5 million through the Department of Justice, Bureau of Justice Assistance (BJA).

Freeing innocent individuals and preventing wrongful convictions through reform greatly benefits public safety. Every time DNA identifies a wrongful conviction, it enables the identification of the real perpetrator of those crimes. True perpetrators have been identified in 45 percent of the DNA exoneration cases. To date, 289 individuals in the United States have been exonerated by DNA testing, with these innocents serving on average 13 years in prison. However, I want to underscore the value of Federal innocence programs, not to just these exonerated individuals, but also to public safety and justice. It is important to fund these critical innocence programs because reforms and procedures that help to prevent wrongful convictions enhance the accuracy of criminal investigations, strengthen criminal prosecutions, and result in a stronger, fairer system of justice.

#### *The Coverdell Program*

Recognizing the need for independent government investigations in the wake of forensic scandals, the Congress created the forensic oversight provisions of the Coverdell Program, a crucial step toward ensuring the integrity of forensic evidence. Specifically, in the Justice for All Act, the Congress required that "[t]o request a grant under this subchapter, a State or unit of local government shall submit to the Attorney General . . . a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory

system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount."<sup>1</sup>

The Coverdell Program provides State and local crime laboratories and other forensic facilities with much needed Federal funding to carry out their work both efficiently and effectively. Now, more than ever, as forensic science budgets find themselves on the chopping block in States and localities nationwide, the very survival of many crime labs may depend on Coverdell funds. As the program supports both the capacity of crime labs to process forensic evidence and the essential function of ensuring the integrity of forensic investigations in the wake of serious allegations of negligence or misconduct, we ask that you fund the Coverdell Program at \$20 million in fiscal year 2013.

#### *The Bloodsworth Program*

The Bloodsworth Program provides hope to innocent inmates who might otherwise have none by helping States more actively pursue postconviction DNA testing in appropriate situations. These funds have had a positive impact that has led to much success. Many organizational members of the national Innocence Network have partnered with State agencies that have received Bloodsworth funding.<sup>2</sup>

It is worth noting that the Bloodsworth Program does not fund the work of Innocence Projects directly, but State applicants which seek support for a range of entities involved in settling innocence claims, including law enforcement agencies, crime laboratories, and a host of others—often in collaboration. Additionally, the Bloodsworth Program has fostered the cooperation of innocence projects and State agencies. For example, with the \$1,386,699 that Arizona was awarded for fiscal year 2008, the Arizona Justice Project, in conjunction with the Arizona Attorney General's Office, began the Post-Conviction DNA Testing Project. Together, they have canvassed the Arizona inmate population, reviewed cases, worked to locate evidence and filed joint requests with the court to have evidence released for DNA testing. In addition to identifying the innocent, Arizona Attorney General Terry Goddard has noted that the "grant enables [his] office to support local prosecutors and ensure that those who have committed violent crimes are identified and behind bars."<sup>3</sup> Such joint efforts have also been pursued in Connecticut, Louisiana, Minnesota, North Carolina, and Wisconsin.

The Bloodsworth Program is a relatively small yet powerful investment for States seeking to do critically important work: to free innocent people who were erroneously convicted and to identify the true perpetrators of crime. The Bloodsworth Program has resulted in the exonerations of nine wrongfully convicted persons in six States, and the true perpetrator was identified in three of those cases. For instance, Virginian Thomas Haynesworth was freed thanks to Bloodsworth-funded testing that also revealed the real perpetrator. As such, we ask that you continue to fund the Bloodsworth Program at its current fiscal year 2012 funding level of \$4 million.

#### *Wrongful Conviction Review Program*

Particularly when DNA isn't available, or when it alone isn't enough to prove innocence, being able to prove one's innocence to a level sufficient for exoneration is even harder than "simply" proving the same with DNA evidence. These innocents languishing behind bars require expert representation to help navigate the complex issues that invariably arise in their bids for postconviction relief. And the need for such representation is enormous when only a small fraction of cases involve evidence that could be subjected to DNA testing. (For example, it is estimated that among murders, only 10 percent of cases have the kind of evidence that could be DNA tested.)

Realizing the imperative presented by such cases, the BJA dedicated part of its Capital Litigation Improvement Program funding to create the Wrongful Conviction Review program.<sup>4</sup> The program provides applicants—nonprofit organizations and public defender offices dedicated to exonerating the innocent—with funds directed toward providing high-quality and efficient representation for potentially wrongfully convicted defendants in postconviction claims of innocence.

<sup>1</sup> 42 U.S.C. 3797k(4).

<sup>2</sup> The Innocence Network is an affiliation of organizations dedicated to providing pro bono legal and investigative services to individuals seeking to prove innocence of crimes for which they have been convicted and working to redress the causes of wrongful convictions.

<sup>3</sup> Arizona receives Federal DNA grant, <http://community.law.asu.edu/news/19167/Arizona-receives-federal-DNA-grant.htm> (last visited March 13, 2012).

<sup>4</sup> Reauthorization of the Innocence Protection Act. 111th Cong., 1st Sess., 8 (2009) (testimony of Lynn Overmann, Senior Advisor, Office of Justice Programs).

The program's goals, in addition to exonerating the innocent, are significant: to alleviate burdens placed on the criminal justice system through costly and prolonged postconviction litigation and to identify, whenever possible, the actual perpetrator of the crime. Above all, though, this program forms a considerable piece of the comprehensive Federal package of innocence protection measures created in recent years; without it, a great deal of innocence claims might otherwise fall through the cracks.

Numerous local innocence projects have been able to enhance their caseloads and representation of innocents as a result of the Wrongful Conviction Review Grant Program, including those in Alaska, Minnesota, Pennsylvania, and at the University of Baltimore. During the past year, the Florida Innocence Project was able to achieve the exoneration of Derrick Williams through the support of this program, and the Mid-Atlantic Innocence Project helped secure the exoneration of Thomas Haynesworth in Virginia. Grant funds enabled the Northern California Innocence Project to hire staff to screen cases, thereby permitting their existing attorneys to commit to litigation, which resulted in the exonerations of three innocent Californians, Obie Anthony, Maurice Caldwell, and Franky Carillo. With Wrongful Conviction Review funding, the Innocence Project of Minnesota was able to prove that Michael Hansen did not kill his 3-month-old. To help continue this important work, we urge you to fund the Wrongful Conviction Review Program at \$2.5 million, for a total allocation of \$5 million for the Capital Litigation Improvement Program line.

*Additional Notes on the Department of Justice's Requested Budget for Fiscal Year 2013*

The Department of Justice's fiscal year 2013 budget request defunds two of the above programs—the Coverdell and Bloodsworth programs. These programs potentially would be rolled into a much broader “DNA Initiative” for a requested fiscal year 2013 funding level of \$100 million, or perhaps not supported at all.

We are concerned about the impact that zeroing out the Bloodsworth and Coverdell programs would have on the requirements and incentives that they currently provide for States to prevent wrongful convictions and otherwise ensure the integrity of evidence. These incentives have proven significant for the advancement of State policies to prevent wrongful convictions. Indeed, the Coverdell Program forensic oversight requirements have created in States entities and processes for ensuring the integrity of forensic evidence in the wake of the forensic scandals that have undermined public faith in forensic evidence. The Coverdell Program oversight requirements are essential to ensuring the integrity of forensic evidence in the wake of identified acts of forensic negligence or misconduct.

The Innocence Project recommends that the Congress maintain and fund these two programs by name, in order to preserve their important incentive and performance requirements. Doing away with these requirements would thwart the intent of the Congress, which was to provide funding only to States that demonstrate a commitment to preventing wrongful convictions in those areas. Additionally, funding these programs would help to achieve their unique goals of providing access to postconviction DNA testing for those who have been wrongfully convicted, and helping State and local crime labs process the significant amount of forensic evidence critical to solving active and cold cases, which helps to ensure public safety.

CONCLUSION

Thank you so much for your time and consideration of these important programs, and the opportunity to submit testimony. We look forward to working with the subcommittee this year.

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PREPARED STATEMENT OF THE INSTITUTE OF MAKERS OF EXPLOSIVES

INTEREST OF THE INSTITUTE OF MAKERS OF EXPLOSIVES

Interest of the Institute of Makers of Explosives (IME) is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. IME represents U.S. manufacturers, distributors, and motor carriers of commercial explosive materials and oxidizers as well as other companies that provide related services. The majority of IME members are “small businesses” as determined by the Small Business Administration.

Millions of metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the United States. These materials are essential to the U.S. economy. Energy production, construction, and other specialized applications begin

with the use of commercial explosives. IME member companies produce 99 percent of these commodities. These products are used in every State and are distributed worldwide. The ability to manufacture, distribute, and use these products safely and securely is critical to this industry.

Commercial explosives are highly regulated by a myriad of Federal and State agencies. Alcohol, Tobacco, Firearms and Explosives (ATF) plays a predominant role in assuring that explosives are identified, tracked, purchased, and stored only by authorized persons. We have carefully reviewed the administration's fiscal year 2013 budget request for ATF and have the following comments about its potential impact on the commercial explosives industry.

ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES REGULATORY PROGRAM  
BUDGET REQUEST

The administration's fiscal year 2012 budget request proposes to decrease resources devoted to ATF's regulation and oversight of explosives industries by 24 full-time equivalent (FTE), a 7-percent reduction, from 335 FTE to 311 FTE, for a savings of \$940,000.<sup>1</sup> This FTE reduction represents nearly one-half of the staffing reduction the Bureau's Arson and Explosives Program is being asked to absorb.

We understand the current urgency to address the Federal budget deficit. We understand the shared sacrifice that all segments of the Government are asked to make to help the economy recover by spurring job growth and investment. Yet, budgetary cuts to the bureaucracy should not cut essential services. By law, ATF must inspect explosives licensees and permittees at least once every 3 years and conduct background checks of so-called "employee possessors" of explosives and "responsible persons." During the last full fiscal year, ATF conducted more than 4,000 such compliance inspections and identified 1,392 public safety violations.<sup>2</sup> In addition to this workload, ATF must process applications for new explosives licenses and permits as well as those submitted for renewal of existing licenses and permits. More than 2,700 such applications were processed during the last full fiscal year.<sup>2</sup> ATF must also conduct inspections of all new applicants. More than 56,000 background checks were completed for employee possessors and more than 9,000 for responsible persons.<sup>2</sup> These are significant workload indicators.

ATF recognizes that its ability to perform its statutory responsibilities will be negatively impacted by these resource cuts. ATF estimates that, in fiscal year 2010, it met its statutory responsibilities 95.8 percent of the time. In fiscal year 2012, it estimates that this performance rate will fall to 88 percent. And, with the resource cuts anticipated in fiscal year 2013, this competency rate will fall to 85 percent. The Bureau's falling productivity cannot help but have adverse impacts on our industry. Without approved licenses and permits from ATF, our industry cannot conduct business. Delays in servicing the needs of our industry may lead to disruptions in other segments of the economy that are dependent on the products and materials we provide.

At the same time, duplication between Government programs wastes resources. Last year, the Government Accountability Office (GAO) highlighted areas of duplication between the ATF and the Federal Bureau of Investigation (FBI) that relate to explosives incidents.<sup>3</sup> As early as 2004, duplication and overlap were identified in the areas of investigations, training, information sharing, and use of databases and laboratory forensic analysis. While ATF's budget request provides updates of plans for consolidating and eliminating these redundancies, we continue to watch for other potential areas of overlap. In describing its role as the sole repository of data on explosives incidents, ATF states that "8 billion pounds of ammonium nitrate are produced, of which half is used for explosives."<sup>4</sup> In fact, the percentage used by the explosives industry has been rising and currently stands at 70 percent. As a regulatory matter, the security of ammonium nitrate (AN), along with other explosives precursors, has been delegated to the Department of Homeland Security (DHS). We believe that DHS could learn from ATF's regulation of commercial explosives as it finalizes rules to secure the commerce of AN. In particular, DHS should recognize that employees who have been vetted and cleared by ATF to possess explosives should not have to be vetted again in order to engage in the commerce of AN.

As the subcommittee considers ATF's budget request, we ask that the Bureau's ability to perform its regulatory oversight of the explosives industry in a timely

<sup>1</sup> Fiscal Year 2013 ATF Budget Submission, page 49.

<sup>2</sup> Fiscal Year 2013 ATF Budget Submission, page 42.

<sup>3</sup> "Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue", GAO, March 2011, pages 101-104, <http://www.gao.gov/new.items/d11318sp.pdf>.

<sup>4</sup> Fiscal Year 2013 ATF Budget Submission, page 38.



fashion not be compromised in the push for fiscal discipline when other areas of duplication and overlap are ripe for reform.

#### ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES REGULATORY WORKLOAD

In the last 10 years, ATF has issued eight rulemakings of importance to IME (including two interim final rules). It has finalized three and withdrawn two. Of the three rulemakings still pending, two are interim final rules and the oldest dates to 2003. In the absence of a process to ensure timely rulemaking that is capable of keeping up with new developments and safety practices, industry must rely on interpretive guidance and variances from outdated requirements in order to conduct business. While we greatly appreciate the Bureau's accommodations, these stop-gap measures do not afford the continuity and protections that rulemaking would provide the regulated community, nor allow the oversight necessary to ensure that all parties are being held to the same standard of compliance. These regulatory tasks are critical to the lawful conduct of the commercial enterprises that the Bureau controls. ATF should be providing the resources to make timely progress in this area.

#### INDUSTRY STANDARDS

We take seriously the statutory obligation that ATF take into account industry's standards of safety when issuing rules and requirements.<sup>5</sup> We continue to fulfill this obligation through our development of industry best practices for safety and security, membership in relevant standard-setting organizations, and active participation in forums for training. We have offered ATF recommendations that we believe will enhance safety and security through participation in the rulemaking process, in the Bureau's important research efforts, and in other standard-setting activities.

In this regard, IME has spent years developing a credible alternative to strict interpretation of quantity distance tables used to determine safe setback distances from explosives. IME collaborated in this development with the Department of Defense Explosives Safety Board (DDESB) as well as Canadian and United States regulatory agencies, including ATF. The result is a windows-based computer model for assessing the risk from a variety of commercial explosives activities called Institute of Makers of Explosives Safety Assessment for Risk (IMESAFR).<sup>6</sup> ATF and other regulatory agencies are recognizing the value of IMESAFR and are participating in development meetings for version 2.0. ATF is also evaluating existing licensed locations with this risk-based approach. These efforts are vital for ATF to remain on the forefront of public safety and we strongly encourage ATF's continued support. The benefits of risk-based modeling should be officially recognized by ATF and resources should be provided to develop policies that allow the use such models to meet regulatory mandates.

#### LEADERSHIP

The resolution of these issues may have to wait the appointment of a new ATF Director. The Bureau has been without a Director since August 2006. We support President Obama's nomination of Andrew L. Traver for this position.<sup>7</sup> We hope that the Senate will timely act on this nomination. ATF has been too long without permanent leadership.

#### CONCLUSION

The manufacture and distribution of explosives is accomplished with a remarkable degree of safety and security. We recognize the critical role ATF plays in helping our industry achieve and maintain safe and secure workplaces. Industry and the public are dependent on ATF having adequate resources to fulfill its regulatory responsibilities. It is up to the Congress and, in particular, this subcommittee to ensure that ATF has the resources it needs. We strongly recommend full funding for ATF's explosives program.

<sup>5</sup> 18 U.S.C. 842(j).

<sup>6</sup> IMESAFR was built on the DDESB's software model, SAFER. The DDESB currently uses SAFER and table-of-distance methods to approve or disapprove Department of Defense explosives activities. Not only can IMESAFR determine the amount of risk presented, but it can also determine what factors drive the overall risk and what actions would lower risk, if necessary. The probability of events for the activities were based on the last 20 years experience in the United States and Canada and can be adjusted to account for different explosive sensitivities, additional security threats, and other factors that increase or decrease the base value.

<sup>7</sup> Received in the Committee on the Judiciary, United States Senate, January 5, 2011, PN44.

## PREPARED STATEMENT OF THE LUMMI INDIAN BUSINESS COUNCIL

Good morning to the distinguished committee members. Thank you for this opportunity. I am honored to present the appropriations request of the Lummi Nation for fiscal year 2013 to the Department of Commerce. Today, I am presenting a long-term, strategic plan described in a sustainable set of coordinated proposals to address the prolonged economic and cultural disaster and the suffering of our people. This strategy is a comprehensive approach combining habitat restoration, environmental monitoring and assessment, with Lummi Hatchery infrastructure improvements. Our treaty rights are at risk and immediate and sustained action is needed to ensure our continued ability to exercise our Schelangen ("way of life").

*Lummi Nation Specific Total Request is \$11,650,000*

This funding is being requested under the 1855 Treaty of Point Elliot, Secretarial Order No. 3206, entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act", and section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act.

## Lummi Nation 2013 budget requests:

- + \$750,000 Monitoring and Assessment Program to include:
  - Habitat restoration program support;
  - Environmental and fisheries monitoring program; and
  - Lummi Natural Resources Department policy staff support.
- + \$10.9 million—Salmon/Shellfish Hatcheries
  - \$6,716,000 Lummi Bay and Skookum Hatchery Improvements; and
  - \$4,184,000 Lummi Shellfish Hatchery Improvements.

*Department of Justice Lummi Nation Specific Requests*

*Eliminate Expensive Granting Systems in Favor of Transfers of Funds.*—Title IV and V of Public Law 93–638 provide a process for federally recognized tribes to negotiate and annual funding agreement with the Federal Government to receive transfers of funds on a continuing basis. The tribes and the Federal Government benefit through the reduction of the costs of the formal granting systems. In most cases these additional costs are sufficient to significantly increase services at the reservation level, without an increase in Federal expenditures. Continued reliance on the grant process increases administrative costs without increasing services to tribal members.

*Justification of Requests—Lummi Nation Specific Total Request is \$11,650,000*

- + \$750,000 Monitoring and Assessment Program
- + \$10.9 Million for Lummi Hatchery Infrastructure—Stock Re-Building Program

The Lummi Nation requests funding to support a strategic plan to increase production of salmon from our hatcheries to offset lost fishing opportunities imposed by the listing of Chinook salmon and Southern Resident Orca whales under the Endangered Species Act (ESA). The Lummi Nation appropriation requests represent an investment in a sustainable strategy to maintain a future moderate living for fishermen as guaranteed by the treaty 1855 Point Elliot Treaty, affirmed by the U.S. Supreme Court (1979). Nontribal fishers will also benefit from the implementation of this strategy.

The Lummi Nation currently operates two salmon hatcheries and one shellfish hatchery that support tribal and nontribal fisheries in the region. Lummi Nation hatcheries were originally constructed utilizing Department of Commerce funding appropriated from 1969–1971. Since that time hatchery operations and maintenance funding from the Bureau of Indian Affairs has been used. At the time of construction, those hatcheries were cutting edge. However, with the passage of time and limited financial resources, the original hatchery infrastructure needs to be repaired, replaced or completely modernized. Lummi Nation fish biologists estimate that these facilities are now operating at 40 percent of their productive capacity. Through the operation of these hatcheries, the Lummi Nation annually produces 1 million fall Chinook salmon, 2 million Coho salmon, and 6.5 million shellfish seed and 300,000 pounds of clams. These production levels simply do not provide the fishing opportunity and associated economic benefits necessary to offset the financial loss caused by the Sockeye Salmon fisheries disaster. To provide sufficient salmon stock resources and shellfish harvest opportunities on an annual basis to the Lummi fishing fleet (and nontribal fishers), the hatchery operations and associated infrastructure require rehabilitation.

The hatchery infrastructure improvement plan represents an investment that increases the immediate annual return and is a long-term sustainable activity.

Detailed hatchery line item descriptions are listed below:

- Lummi Nation Skookum Creek Hatchery—\$725,000
  - \$725,000 *New Raceways*.—Replace originally constructed infrastructure that is deteriorating and falling apart.
- Lummi Bay Hatchery—\$5,991,000
  - \$5,536,000 *Nooksack River Pump Station and Transmission Water Line*.—The project will increase annual production by 300 percent by providing additional water to the hatchery. The major limiting factor to production at this facility is lack of freshwater. This project will ensure adequate water supply to achieve needed production levels.
  - \$455,000 *Rearing Pond Improvements*.—Repair and pave juvenile rearing pond and restructure adult ladder and attraction complex.
- Lummi Shellfish Hatchery—\$4,184,000
  - \$484,000 *Improvements at Shellfish Hatchery*.—Repair and expand current facility to increase seed production by improving heating and cooling systems, live feed production, and grow out tank space.
  - \$2.4 Million to *Build a Geoduck-Specific Hatchery*.—A new geoduck-specific hatchery would allow for the current facility to be dedicated to oyster and manila clam production. Increased seed production will increase enhancement activities on Lummi tidelands to create jobs for tribal harvesters and support the west coast shellfish industry and associated businesses.
  - \$1.3 Million *Repair the Seapond Tidegates*.—A feasibility level engineering study indicated that \$1.3 million is needed to repair the Seapond tidegates, which will both improve circulation within the Lummi Bay seapond to increase production at both the shellfish and Lummi Bay salmon hatcheries and production of manila clams in the seapond and also help protect the facility in the event of an oil spill from the two petroleum oil refineries located immediately north of the reservation.

#### *Background Information*

The Lummi Nation is located on the northern coast of Washington State, and is the third-largest Tribe in the State, serving a population of more than 5,200 people. The Lummi Nation is a fishing tribe and is the largest fishing tribe in the United States. We have drawn our physical and spiritual subsistence from the rivers, marine tidelands, and marine waters since time immemorial. Lummi has rights guaranteed by the 1855 Treaty of Point Elliot to harvest fish, shellfish, and game in our Usual and Accustomed area. The *Boldt* decision of 1974 re-affirmed that right, and designated Lummi as a co-manager of a once abundant salmon fishery. Now, the abundance of wild salmon is gone. In 1985, the Lummi fishing fleet landed more than 15 million pounds of finfish and shellfish. In 2001, the combined harvest was approximately 3.9 million pounds. The remaining salmon stocks do not support tribal fisheries, and the Nation is suffering both spiritually and economically. Our treaty rights are at risk—we must act to preserve, promote, and protect our Schelangen (“way of life”) or our culture will disappear.

In 1973, the ESA was passed. ESA should have resulted in improved salmon habitat and more resources for salmon habitat restoration, but ESA has become a “double-edged sword”. Today, ESA has impacted tribal hatchery production and tribal harvests for commercial, subsistence, and ceremonial purposes. Tribal dependence on salmon and the timing of economic development results in tribal members and tribal governments bearing a disproportionate burden for the conservation of listed species. Lummi treaty fishers are directly impacted by the listing of Puget Sound Chinook, Bull trout, Puget Sound steelhead, and Southern Resident Orca whales. Secretarial Order 3206, entitled “American Indian Tribal rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act”, specifically states that “. . . the Departments will carry out their responsibilities in a manner that . . . strives to ensure that Indian Tribes do not bear a disproportionate burden for the conservation of listed species . . .”. The Lummi Nation is actively engaged in recovering listed salmon species in our watershed, restoring critical habitat, and monitoring listed population to determine which factors adversely affect those populations and other critical but nonlisted species. The Lummi Nation cannot; however, continue to recover salmon and maintain our way of life without funding support/appropriations from the Federal Government.

#### *Continuous Sockeye Fisheries Disaster Declaration*

In 2008, the Department of Commerce reissued the sockeye fishery disaster declaration in a statement contained in a letter to Lummi Nation, (see letter from Secretary, Department of Commerce, November 3, 2010). The declaration conforms with the findings of the Congressional Research Services (CRS)—CRS Report to Con-

gress, Commercial Fishery Disaster Assistance, (RL-34209). For more information, see CRS Report RS21312, by Eugene H. Buck.

In 2010, the Fraser River sockeye salmon run was the largest is recorded history. After years of sitting on the beach, the Lummi sockeye fleet was able to harvest sockeye salmon again. One good year, however, does not make up for the previous years of continuous fisheries disasters and associated loss of financial and cultural benefits. To account for the lack of a consistent sockeye salmon fishery and to make up for the lost fishing opportunity attributed to habitat degradation and subsequent salmon population crashes, the Lummi Nation plans to bolster both finfish and shellfish production from its facilities.

Hatcheries ensure future salmon populations large enough to support our families and our way of life, until such time as the habitat is able to sustain harvestable levels of salmon. The Lummi Nation recognizes that hatcheries alone will not restore salmon stocks to historical levels. The Lummi Natural Resources Department allocates a substantial amount of time, effort, and funding to improve and monitor freshwater habitat, manage and monitor tribal harvest activities, and restoring ecosystem functions in the Nooksack River Basin.

By increasing hatchery production of shellfish, chum salmon, coho salmon, and Chinook salmon, the Lummi Nation will create a reliable backup resource to salmon fishers and decrease Tribal dependence on the sockeye fishery. Additionally, we seek to raise the value of these harvests through advanced marketing, the introduction of a fisher's market, and the shellfish grow out operations for shellfish products.

*Lummi Specific Requests—Bureau of Indian Affairs*

+ \$2 million—*Phase 1. New Water Supply System.*—Increase in funding for hatchery construction, operation, and maintenance. Funding will be directed to increase hatchery production to make up for the shortfall of wild salmon.

The Lummi Nation currently operates two salmon hatcheries that support tribal and nontribal fishers in the region. The tribal hatchery facilities were originally constructed utilizing Federal funding from 1969–1971. Predictably some of the original infrastructure needs to be repaired, replaced, and/or modernized. Lummi Nation fish biologists estimate that these facilities are currently operating at 40 percent of their productive capacity. Through the operation of these hatcheries the tribe annually produces 1 million fall Chinook and 2 million Coho salmon. To increase production, we would like to implement a “phased approach” that addresses our water supply system. The existing system only provides 850 gallons per minute to our hatchery. To increase production to a level that will sustain tribal and nontribal fisheries alike, we need to increase our water supply fourfold. A new pump station and water line will cost the tribe approximately \$6 million. We are requesting funding for the first phase of this project. Our goal is to increase fish returns by improving aquaculture and hatchery production and create a reliable, sustainable resource to salm- on fishers by increasing enhancement.

*Regional Requests*

The Lummi Nation supports the fiscal year 2013 requests of the Northwest Indian Fisheries Commission and the Treaty Rights and Risk Initiative.

*National Requests*

The Lummi Nation supports the fiscal year 2013 requests of the National Congress of American Indians.

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PREPARED STATEMENT OF THE MARINE CONSERVATION INSTITUTE

Madam Chairwoman and members of the subcommittee: Marine Conservation Institute, based in Bellevue, Washington, is a nonprofit conservation organization that uses the latest science to identify important marine ecosystems around the world, and then advocates for their protection. I wish to thank the members of the subcommittee for the opportunity to submit written testimony on the fiscal year 2013 appropriations and request \$5.3 billion for National Oceanic and Atmospheric Administration (NOAA). This level of funding would support satellite acquisition, while restoring funding for the ocean, coastal, and fisheries programs to the fiscal year 2010 enacted level.

America's oceans play a vital role in our Nation's economy. According to the National Ocean Economics Program, the U.S. ocean economy contributes more than \$130 billion to our Nation's Gross Domestic Product from living marine resources, tourism, recreation, transportation, and construction. Additionally, more than 2.4 million jobs in the United States depend on the marine environment. NOAA's programs are critical to fostering this activity and protecting ocean health for sustained

use. I would like to highlight a few programs which focus on NOAA's conservation mandate.

#### *Hawaiian Monk Seal Recovery*

NOAA has responsibility for recovering the Hawaiian monk seal, one of the most critically endangered marine mammals in the world. It is also the only marine mammal whose entire distribution range lies within our national jurisdiction; thus the United States has sole responsibility for its continued survival. Over the last 50 years, the Hawaiian monk seal population has declined to less than 1,200 individuals. The majority of the population resides in the remote Papahānaumokuākea Marine National Monument; however, a smaller (but growing) population resides in the Main Hawaiian Islands.

NOAA is making progress implementing the monk seal recovery plan, and needs additional resources to stay on track. It has been conservatively estimated that 30 percent of the monk seals alive today are due to direct actions by NOAA and its partners.<sup>1</sup> The Congress' decision to more than double the program funds to approximately \$5.6 million in fiscal year 2009 and fiscal year 2010 created crucial momentum to protect the Hawaiian monk seal from extinction. NOAA conducts annual research field camps in the Northwestern Hawaiian Islands (NHI), conducts outreach to fishermen and the general public concerning the seal's ecological and cultural importance, intervenes to rescue entangled or wounded seals, investigates seal deaths, and conducts vital research studies on disease and mortality mitigation.

However, funding levels were cut in half to about \$2.7 million for fiscal year 2011 and fiscal year 2012. Maintaining this level of reduced funding will continue to restrain the rollout of recovery actions, including the translocation of seals to areas where they can mature with greater likelihood of survival. Marine Conservation Institute (MCI) strongly recommends the subcommittee reinstate funding to \$5.5 million in fiscal year 2013.

#### *Deep Sea Coral Research and Technology Program*

The discovery of widespread deep sea coral ecosystems within U.S. waters has challenged scientists to learn the extent of these important ecosystems and develop strategies on how to protect them. The Deep Sea Coral Research and Technology Program was established by NOAA under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. NOAA is charged with mapping and monitoring locations where deep sea corals are likely to occur, developing technologies designed to reduce interactions between fishing gear and deep sea corals, and working with fishery management councils to protect coral habitats.

MCI was pleased to see increased funding for the National Marine Fisheries Service's (NMFS) Deep Sea Coral Program to a level of \$2.5 million in fiscal year 2010; we recommend that level be sustained in fiscal year 2013. Previous funding has allowed for coral habitat mapping and analysis along the west coast and in Southeastern U.S. waters. Sustained funding will permit the continued mapping of coral areas off the west coast and in Alaska, as well as the initiation of coral mapping in Mid-Atlantic waters. There is a great need for habitat assessments to inform fisheries management and development decisions. Reduced funding levels would hamper the compilation of this information.

#### *Marine Debris Program*

Marine trash has become one of the most widespread pollution problems affecting the world's oceans and waterways. An estimated 8.6 million pounds of debris was recovered worldwide in 2010. Recently, much attention has been given by the press to the debris generated by the Japanese tsunami tragedy, and its impacts on ocean life and tourism in Hawaii and along the west coast. Research has shown that debris has serious effects on the marine environment, wildlife, the economy, and human health and safety. It is estimated that as much as 1,250,000 tons of tsunami debris could reach the United States over the next several years.<sup>2</sup>

The Marine Debris Research, Prevention and Reduction Act was enacted in 2006 to identify, assess, reduce, and prevent marine debris and its effects on the marine environment. The Marine Debris Program received a much needed increase in fiscal year 2012 to a level of \$5 million to address the incoming tsunami debris. The President's fiscal year 2013 budget recommends relocating the Marine Debris Program to NMFS, Office of Habitat Conservation. While understanding the need to improve efficiency, MCI believes the program would be more effective if it remained under

<sup>1</sup>McAvoy, Audrey. "Feds—Efforts to rescue monk seals helping species". Associated Press in West Hawaii Today, January 26, 2012.

<sup>2</sup>McAvoy, Audrey. "Tsunami debris spreads halfway across Pacific". Associated Press in Seattle Times, February 28, 2012.

the National Ocean Service at the current funding level of \$5 million. Current placement allows the program to leverage resources available to the Office of Response and Restoration and work in better collaboration with fisherman since the program is currently housed under the National Ocean Service and not together with the regulators of NMFS.

#### *National Marine Sanctuaries*

Presently, the Office of National Marine Sanctuaries (ONMS) is responsible for managing the Nation's 13 marine sanctuaries and Papahānaumokuākea Marine National Monument in the NHI. Collectively, these 14 units cover more area than the National Park System.

MCI recommends \$54.5 million in fiscal year 2013. This amount includes \$49 million for the operations and research account, and \$5.5 million for the construction account. This would allow ONMS to better fulfill its responsibilities as a leader in ocean management and conservation. The funding would allow ONMS to maintain current management capabilities and complete current construction projects. Less funding would likely require the termination of contractors performing full-time equivalents duties, eliminate most vessel days at sea, and reduce operations at many visitor centers, thereby reducing local community benefits.

The President's fiscal year 2013 budget recommends merging the Marine Protected Areas Center with the National Marine Sanctuaries Program. If this merger were to occur, I recommend funding for the ONMS be increased by \$4 million to ensure the MPA Center mission and projects continue.

#### *Regional Ocean Partnerships*

Regional Ocean Partnerships (ROP) facilitate the cooperation and integration of ocean and coastal resources management between local, State, and Federal agencies. Coastal States Governors have already established several regional ocean partnerships to collaboratively address priority marine and coastal issues.

The President's fiscal year 2013 budget requests \$4 million in fiscal year 2013 to provide competitive grants to address issues within each U.S. region. While this amount is \$0.5 million more than enacted fiscal year 2012 levels, it is \$3.5 million less than the fiscal year 2011 enacted level. MCI recommends a minimum funding level of \$7.5 million to assist these important collaborative efforts.

#### *Ocean Acidification*

Ocean acidification is the process by which seawater becomes corrosive to calcium carbonate structures found in many of the shells and skeletons of marine organisms, such as shellfish, corals, and fish. It is a major marine impact associated with elevated carbon dioxide levels in the atmosphere. Ocean acidification has already begun to negatively impact commercial and recreational fishing, as well as coastal communities and economies.

The Federal Ocean Acidification Research and Monitoring Act that passed in 2009 calls upon NOAA to coordinate research, establish a monitoring program, identify and develop adaptation strategies and techniques, encourage interdisciplinary and international understanding of the impacts associated with ocean acidification, improve public outreach, and provide critical research grants to increase understanding of the ecosystem impacts and socioeconomic effects of ocean acidification. Ocean acidification research received \$6.4 million in fiscal year 2012. MCI recommends a level of \$11.6 million in fiscal year 2013 to more fully understand the impacts of ocean acidification on our coastal communities and economy.

#### *Law Enforcement*

NOAA's Office of Law Enforcement (OLE) is responsible for enforcing the laws that conserve and protect our Nation's fisheries, protected species, and national marine sanctuaries and monuments. The office is also responsible for enforcing the United States' international commitments to fight illegal, unregulated, and unreported fishing, a practice that threatens to undermine global fish stocks, such as the Pacific tuna fishery in which the United States participates. In addition, the Office of General Counsel Enforcement Section provides legal services and guidance to NOAA's OLE.

NOAA's jurisdiction spans 3.4 square million miles of coastal and marine environments, including the Nation's 13 marine sanctuaries and four marine national monuments. The Pacific region alone poses a challenge for NOAA law enforcement as it spans 1.5 million square miles, nearly one-half of the U.S. Exclusive Economic Zone.

MCI strongly supports the President's fiscal year 2013 budget request of \$67.1 million for NOAA's OLE. This will allow OLE to maintain current capabilities, while potentially adding additional resources in the Pacific region. MCI also recommends

an additional \$150,000 for another attorney in the Pacific Islands Office of General Council Enforcement Section, as there is currently only one attorney with no support staff.

*Marine Operations and Maintenance*

The Office of Marine and Aviation Operations (OMAO) operates NOAA's fleet of specialized ships to fulfill the agency's environmental and scientific missions. OMAO provides vessels for fisheries research, oceanographic and atmospheric research, and hydrographic surveys. Ships are also used for monitoring marine sanctuaries and monuments, and servicing the early warning tsunami and weather system equipment.

Not since 2007 has OMAO operated its ships at full capacity, largely due to budget constraints. In 2011, OMAO allocated base ship time for each of its 17 vessels at about 135 days at sea, which is about 55 percent of the fleet's operational capability (max = 220 days per vessel). NOAA's program offices have had to "buy" additional days to fulfill some of their basic mandates. For instance, NMFS purchased an additional 542 days in fiscal year 2011. Unfortunately, the line offices are experiencing budget constraints as well.

It makes no sense for NOAA's ships to be partially idle when one of NOAA's primary missions is to manage and restore our oceans. MCI supports the President's request of \$166 million for OMAO in fiscal year 2013. It is a step toward more fully funding NOAA's fleet to fulfill its mandates.

In summary, MCI respectfully requests that the subcommittee maintain or slightly augment funding for the conservation side of the NOAA budgets.

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PREPARED STATEMENT OF MARY P. PAULSEN

Today, I am writing to share my story with you; but most of all I am writing to you as elected officials to ask you to please stop the egregious use of taxpayer dollars allocated to Governmental agencies and used to promote an agenda to close Medicaid certified care programs across our country. Care is provided for people with significant disabilities in what are now called Intermediate Care Facilities/Intellectual Disabilities (ICF/DD) that are operated both by States and by private business. I am concerned with the budget request for the Civil Rights Division (CRD) in the Department of Justice (DOJ) for an additional \$5.1 million. The request states that they need this money to strengthen civil rights enforcement efforts on behalf of vulnerable people (CRIPA). The most unfortunate thing about CRIPA is that it cannot be used to enforce proper care in private facilities where significant abuse/neglect issues occur but only in institutions operated by States (public).

My son is a vulnerable adult. He is 47 years old and has severe autism, epilepsy and Obsessive-Compulsive Disorder. He is also nonverbal. I am his legal guardian. Our life journey has been long and difficult. As a parent, I was always hoping that someone, something, somewhere would make a difference for him and he would become more functional and normal. Parents live on hope and are easily convinced by philosophical and ideological ideas. I now realize that this can be an extremely false hope. When we could not provide him with the care he required due to a death in the family, he was placed in our State institution. Autism has a level of hyperactivity that people cannot understand who have not lived it. You must know where the child is and what he is doing every minute of the day. I have been a volunteer advocate for more than 40 years so I am aware of what is and has been going on with regards to services for people with disabilities. I succumbed to the "normalization" concept and moved my son from our State facility to a privately managed group home when he was in late adolescence, age 20, and had become assaultive. The transition was difficult and many changes and moves were involved. Nothing has ever been easy for us.

The popular idea of promoting independence and self-determination for people with disabilities nearly resulted in my son's death in 2006. The group home system lacks oversight and abuse and neglect happens. In our case the provider violated the agreement (contract) with regard to my son having one-on-one staffing. He was left alone in the kitchen of the home. His shirt caught on fire (gas stove) and he had second- and third-degree burns on his back from his waist to his shoulder blades. His care and recovery was a long and difficult road. I realized that he was not safe and could not be kept safe in a group home environment. After a battle with our State bureaucracy, I have succeeded in placing him back in our State operated developmental center (ICF/ID) with all the Medicaid regulations and oversight. Federal law supports my right as his legal guardian to choose where he will receive services (care), but I had to fight the system here in Utah to have my choice hon-

ored. My son needs a restricted campus with many well-trained people around him in order to keep him safe—a place where everyone knows him. It is unfortunate that we had to learn this the hard way.

Advocates who have pursued closure of congregate care facilities have chosen to ignore the cases of abuse, neglect, and even death that occur in the group homes and apartments. For many people with disabilities, the level of care to minimize the risk of injury can best be provided in adequately funded and properly monitored congregate care facilities (ICF/ID) where the staff is well-trained.

I believe it is a violation of my son's civil rights and mine as his guardian for us to be subjected to misinterpretations of the *Olmstead* decision as well as Americans with Disabilities Act to force the agenda of closure of public congregate care facilities in this country. There are many people with significant disabilities who need more care than can be provided in the Home and Community Based Waiver system. With the population increase, the most severely impaired are in the minority and often our voices are simply not heard. The number of adherents for an idea should not be the determining criterion for its truth or falsehood. If the closure of large facilities is based on majority rule, then those of us composing the minority will be the losers—often the losers of life itself.

I am asking you to stop funding to the CRD of DOJ that allows them to pursue de-institutionalization efforts.

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PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS

Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee: I am Arturo Vargas, the Executive Director of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund. I also serve as Co-Chair of The Leadership Conference on Civil and Human Rights Census Task Force, which brings together leading civic and civil rights organizations to address pressing census issues. Thank you for the invitation to appear before you today on behalf of the NALEO Educational Fund and The Leadership Conference Census Taskforce to support the President's fiscal year 2013 request to the Congress of \$970.4 million in discretionary funding for the U.S. Census Bureau.

The NALEO Educational Fund is a nonprofit, nonpartisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency includes the more than 6,000 Latino elected and appointed officials nationwide. Our Board members and constituency include Republicans, Democrats, and independents. The NALEO Educational Fund is one of the Nation's leading organizations in the area of Census policy development and public education, and we are deeply committed to ensuring that the Census Bureau provides our Nation with the most accurate count of its population. Since 2000, the NALEO Educational Fund has served on the Secretary of Commerce's 2010 Census Advisory Committee, or its predecessor, the Decennial Census Advisory Committee, and we actively participated in the committee's discussions surrounding the planning for the 2010 enumeration. In October 2009, we launched the "ya es hora, ¡HAGASE CONTAR! (Make Yourself Count!)" campaign, which focused on promoting the importance of the census, educating individuals about filling out their census forms, and encouraging households to mail back their responses.

The Leadership Conference is ideally positioned to address many of the most pressing issues affecting the successful implementation of Census Bureau programs, surveys, and initiatives. The Leadership Conference's coordinating role among so many diverse organizations allows for the sharing of different perspectives, as well as the development of broader strategies that occur within the purview of any individual organization. All of its work draws on the expertise of the cross-section of national organizations, and examines the impact of civil rights policy on a broad range of constituencies.

Mrs. Chairwoman, as your committee prepares to consider the fiscal year 2013 Commerce, Justice, and Science, and Related Agencies (CJS) appropriations bill, we urge your support for the administration's fiscal year 2013 request to the Congress for the Census Bureau. We believe this amount is the minimum necessary to preserve core statistical programs and ensure the continued reliability of data vital for public, private, and nonprofit sector decisionmaking now and in the future. In particular, reliable and accurate data about the Latino community are critical for the prosperity and well-being of the entire country. The results of the 2010 census demonstrated the importance of the decennial enumeration for charting the dramatic growth of our Nation's Latino community and the implications of that growth for the future of our economy and democracy. The Latino population in the United



States was 50.5 million in 2010, and Latinos are the Nation's second-largest and fastest-growing population group. Between 2000 and 2010, the Latino share of the population increased from 12.5 percent (1 in 8 Americans) to 16.3 percent (1 in 6 Americans).

For fiscal year 2013, the President proposed a total budget of \$970.4 million in discretionary funding for the Census Bureau, a 3-percent increase more than the fiscal year 2012 funding level of \$942 million. In this testimony, I will address how the administration's request is necessary to maintain the reliability of American Community Survey (ACS) data, begin planning for a cost-effective 2020 decennial census, and effectively meet the constitutional responsibilities of the Bureau. I would like to start by providing detailed information about the President's request regarding two critical programs:

- the ACS; and
- the planning for the 2020 census.

*American Community Survey.*—For fiscal year 2013, the President requested \$252.7 million, which represents a decrease of \$10.9 million for the ACS program. ACS is implementing several changes in fiscal year 2013, including an Internet response option and a reduction in the scale of the Failed Edit Follow-up Operation.

We believe the fiscal year 2013 budget request sufficiently invests in the ACS program to ensure that the sample size is large enough to produce reliable and useful data for less populated geographic areas, such as towns and rural counties, and especially less populous subgroups. This funding also would allow for improved telephone and field data collection; sufficient follow-up of unresponsive households in remote areas; and a comprehensive review of 3-year and 5-year ACS estimates. These activities are imperative for ensuring the ACS can continue to provide valid data about the socio-economic and demographic characteristics of the American people on an ongoing, annual basis.

Policymakers at all levels of government rely on ACS data to make important decisions that affect the lives of all Americans. These data help make such determinations as the number of teachers that are needed in classrooms, the best places to build roads and highways, and the best way to provide health and public safety services to our neighborhoods and communities. According to a July 2010 report by Andrew Reamer of the Brookings Institute which analyzed fiscal year 2008 Federal Government spending, 184 Federal domestic assistance programs used ACS-related datasets to help guide the distribution of \$416 billion, 29 percent of all Federal assistance. ACS-guided grants accounted for \$389.2 billion, 69 percent of all Federal grant funding. Most of ACS-guided Federal assistance goes to State governments through a few large grant programs which support highway infrastructure and aid low-income households. The 10 largest ACS-guided assistance programs include several that help ensure that Latino families and their children receive quality healthcare, and housing, including Medicaid, section 8 housing programs, and school education grants.

Other Federal programs also rely on the ACS for implementation of the programs and priorities of the Federal Government. For example, the Department of Defense uses ACS data for the implementation of the procurement technical assistance it provides to businesses. The Department of Agriculture uses the data for water and waste disposal system planning in rural communities, where a significant number of Latino families live. In addition, sound implementation of the protections of the Voting Rights Act of 1965 relies on ACS data, because those data are used to make determinations under section 203, which requires jurisdictions with a high percentage of people who are not yet English language proficient to offer language assistance to citizens during the electoral process.

High-quality, objective, and universal ACS data are also critical for our Nation's private sector. Without these data, businesses and nonprofit organizations will lose the ability to understand their customers and the communities they serve, and allocate their fiscal and human resources prudently. American companies rely on ACS data every day to make vital decisions about where to locate and expand; what goods and services to offer; the scope of employee training needed; and long-term investment opportunities. Thus, fiscal year 2013 funding to support reliable ACS data is critical for sound government and business profitability, and the pursuit of national economic prosperity.

*2020 Census.*—As 2010 census activities wind down with final evaluations and data products, planning for the next decennial enumeration is on its cyclical upswing. The President's fiscal year 2013 request for 2020 census activities is nearly double the fiscal year 2012 funding level, from \$66.7 million in fiscal year 2012 to \$131.4 million in fiscal year 2013. We strongly support this important funding increase. As the Government Accountability Office (GAO) has consistently documented, reasonable investments in census planning in the early part of the decade

will help save millions, and perhaps billions, of dollars in census costs down the road.

We know from experience that insufficient funding for early decennial census planning leads to ballooning costs later in the decade. The Census Bureau must invest resources early in the decade to ensure cost-effective, successful implementation of census operations in the future. The pace of technological change and rapid evolution of communication modes make ongoing research and testing essential. Similarly, keeping up with changes in the Nation's housing stock and roads could save hundreds of millions of dollars during census preparations in 2018–2019, allowing the Bureau to confine final address checking to areas in frequent transition. As Director Groves has stated, the vision is, "An efficient and quality census that counts people once, only once, and in the right place." The fiscal year 2013 budget also supports another critical Bureau central focus of the 2020 census planning: To design programs and operations for the 2020 census that have residual benefits for other Census Bureau data collections.

In this spirit, we are working with the Census Bureau to continue a robust Partnership Program in preparation for the 2020 census. During the decennial enumeration, the Census Bureau used the Partnership Program to engage community-based organizations, religious leaders, educators, local businesses, and media outlets who had strong relationships with hard-to-count populations and were familiar with the barriers they face in census participation. The Bureau utilized the assistance of Partnership Program stakeholders in educating residents about the importance of returning their census questionnaires, and helping them surmount the barriers in completing and returning their forms. In short, the Partnership Program ensured that timely and locally relevant information from the Bureau reached community leaders, and that local enumeration efforts were able to use limited resources efficiently. We believe that the program, which proved to be an integral component of the census 2010 outreach efforts, remains critical for reaching hard-to-count populations and ensuring their participation in future surveys and censuses. However, the severe limitations being placed on the Bureau's budget have proven to be an impediment to guaranteeing that this important initiative will continue. The President's fiscal year 2013 budget request may allow for the resumption of this critical program.

Support for the full amount of census funding in the President's 2013 budget is particularly crucial in light of past experiences with census expenditure reductions in postenumeration years. Unfortunately, the Congress has often turned to the Census Bureau's budget as a source of expendable funds after each decennial census, overlooking the important work the agency does year in and year out and starving the critical research and testing phases of the next enumeration. The fiscal year 2012 budget was no exception.

In fiscal year 2012, this subcommittee \$88 million more than the House version of this bill. Fortunately, the final appropriation legislation offered just enough funding for the Bureau to proceed with its core activities. The so-called "minibus" appropriations bill—encompassing 3 of 12 Federal appropriations accounts, including the CJS appropriations bill—allocated \$942 million for the Census Bureau. However, we strongly caution against relying on money from the Working Capital Fund to pay for ongoing core activities.

As a result of fiscal year 2012 and fiscal year 2011 budget cuts—and on its own accord—the Census Bureau has committed to reducing costs by taking bold steps to streamline operations. In fiscal year 2012, it realigned its national field office structure by permanently closing six regional offices. Last year, the Bureau eliminated a number of lower-priority programs. In addition, the Bureau has demonstrated its determination to make modest investments in required activities to help save billions of dollars.

We understand the fiscal environment requires the Congress to make difficult decisions and curtail current spending. We recognize that there are many worthy programs funded through the CJS appropriations bill. Yet, we believe that making cuts in the President's fiscal year 2013 budget request for the Census Bureau will be counterproductive to an agency whose data are essential to running our government, informing our policies, and influencing economic productivity.

I thank the Chairwoman, the Ranking Member, and the subcommittee once again for providing us with the opportunity to share our views today in support of the President's fiscal year 2013 budget request for the Census Bureau.

## PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF MARINE LABORATORIES

Madam Chair and members of the subcommittee, my name is Shirley Pomponi and I direct the National Oceanic and Atmospheric Administration (NOAA) Cooperative Institute for Ocean Exploration, Research and Technology at Florida Atlantic University. I submit this statement on behalf of more than 100 marine labs that make up the National Association of Marine Laboratories (NAML). On behalf of all of my fellow marine lab directors, I thank this subcommittee for the support it has provided for ocean, coastal, and Great Lakes research and education through NOAA, the National Science Foundation (NSF), and the National Aeronautics and Space Administration (NASA).

NAML is a nonprofit organization of member institutions representing coastal, marine, and Great Lakes laboratories in every coastal State, from Guam to Bermuda and Alaska to Puerto Rico. Member laboratories serve as unique “windows on the sea,” connecting scientists and citizens with the rich environmental mosaic of coastal habitats and offshore oceanic and Great Lakes regions. NAML laboratories conduct research and provide academic, education, and public service programs to enable local and regional communities to better understand and manage their ocean, coastal and Great Lakes cultural and natural resources.

NAML has two key priorities relevant to this subcommittee as part of its fiscal year 2013 public policy agenda:

- to maintain strong support for extramural marine research and education programs at NOAA and the NSF; and
- a recommendation for a cost-saving national partnership program aimed at collocated NOAA and other Federal agency marine science personnel and facilities at the more than 100 NAML laboratories located all over the country.

I am here today to present the case for the restoration of funding within the NOAA appropriation that this subcommittee will draft in the near future. These funds provide vital and irreplaceable support for extramural research, education, and conservation programs, and are among the most well-spent and highly leveraged Federal dollars.

The coastal population of the United States increased by nearly 51 million people from 1970 to 2010, with 52 percent of the Nation’s total population living in coastal watersheds. By 2020, the coastal population is expected to grow by another 10 percent or 15.6 million. In 2009, the coastal economy contributed \$8.3 trillion to the Nation’s Gross Domestic Product resulting in 66 million jobs and wages worth an estimated \$3.4 trillion. Recreational coastal fishing contributed about \$73 billion in total economic impact supporting more than 320,000 jobs. For commercial fishing, the average annual value of all U.S. marine fisheries from 2008 to 2010 is estimated at \$4 billion, providing about 1 million jobs and generating more than \$32 billion in income. Our Nation’s ports, often located in the heart of sensitive coastal ecosystems, are an essential driver of the U.S. economy. About \$1.9 trillion worth of imports came through U.S. ports in 2010, supporting an estimated 13 million jobs. More than 50 percent of the total energy produced domestically occurred in coastal States, including natural gas production, electricity generation, and oil and gas production. Coastal areas are providing opportunities for renewable energy development with projects that seek to extract energy from the movement of ocean water due to tides, currents, or waves; from the temperature differential between hot and cold ocean water; and from strong winds in offshore ocean environments.

Meeting stewardship responsibilities for the oceans, coasts, and Great Lakes requires a robust science and education enterprise. Coastal areas face challenges that threaten fisheries resources, impact recreational and commercial resources and affect the health of ecosystems. The Deepwater Horizon oil spill in the Gulf of Mexico and its continuing impact on the natural resources of the region illustrate the need for a robust and responsive ocean and coastal sciences enterprise. We must continue to invest in the Nation’s research enterprise that has been responsible for our long-term prosperity and technological pre-eminence through interdisciplinary research spanning a landscape of disciplines, from physics to geology, chemistry to biology, engineering to economics, and modeling to observation.

## NATIONAL SCIENCE FOUNDATION

NAML is highly supportive of the NSF and its fiscal year 2013 budget request. NSF funds vital basic and translational research that enhances the understanding and governance of the Nation’s oceans, coasts, and Great Lakes. More than 90 percent of NSF’s budget directly supports research at universities and laboratories in all 50 States. A robust NSF fuels the economy, boosts national competitiveness, supports a scientific and technologically literate workforce and provides new knowledge—all of which are essential for national and economic security. Science and en-

gineering research, education, and related infrastructure support, such as the core research programs in the geosciences, the Ocean Observatories Initiative, and the Field Stations and Marine Lab infrastructure program, are especially important in enabling our national network of nongovernment marine laboratories to serve their vital, cost-effective role as community-based research enterprises.

NAML strongly supports the Science, Engineering, and Education for Sustainability (SEES) initiative. SEES focuses on targeted programs that promote innovative interdisciplinary research to address pressing societal issues of clean energy and sustainability. In fiscal year 2013, SEES includes five programs that contain translational themes:

- Coastal SEES;
- Arctic SEES;
- Sustainable Chemistry, Engineering, and Materials;
- Creating a More Disaster-Resilient America; and
- a program on the Role of Information Sciences and Engineering in SEES.

NSF's support for ocean science education should continue to build on past successes, such as the Centers for Ocean Science Excellence in Education, and should also continue to integrate new approaches and themes, for example, through the new Expeditions in Education initiative.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NOAA's fiscal year 2013 budget plan will eliminate funding for the National Undersea Research Program (NURP), the National Estuarine Research Reserve Construction program, the Marine Sanctuaries Construction, the John H. Prescott Marine Mammal Rescue Assistance Grant Program, Ocean Education Partnerships, and Competitive Education Grants.

Additionally, NOAA's 2013 budget plan will drastically reduce funding for other extramural programs, including the Integrated Ocean Observing System, the Coastal Services Center, the Center for Sponsored Coastal Ocean Research, and the National Estuarine Research Reserve program. All of these programs directly connect the NOAA mission to coastal communities, to jobs, schools, recreation and other important values. They also connect communities back to NOAA, helping to ensure that NOAA is responding to real needs.

In the past, NOAA has benefited enormously from its extramural partnerships, engaging hundreds of scientists and other agencies (e.g., NSF) in issues of direct and critical relevance to the Nation, at remarkably low cost. The extramural programs have been dollars well spent. In 2004 the NOAA Science Advisory Board's Research Review Team report concluded:

“. . . Extramural research is critical to accomplishing NOAA's mission. NOAA benefits from extramural research in many ways, including: access to world class expertise not found in NOAA laboratories; connectivity with planning and conduct of global science; means to leverage external funding sources; facilitate multi-institution cooperation; access to vast and unique research facilities; and access to graduate and undergraduate students. Academic scientists also benefit from working with NOAA, in part by learning to make their research more directly relevant to management and policy. It is an important two-way street . . . NOAA cannot accomplish its goals without the extramural community, specifically the universities and institutions that represent the broad range of expertise and resources across the physical, biological, and social sciences. Moreover, there is the important issue of maintaining a scientific and technologically competent workforce in NOAA and the workforce is another 'product' of the extramural research community . . . Also it is important that during difficult budget periods that NOAA not disproportionately target the extramural research for budget cuts.”

NAML fully recognizes the constraints facing the Federal Government and the Congress and the necessary limitations on Federal discretionary spending. For that very reason, NAML believes that extramural programs should be supported to the maximum extent. External programs are flexible, responsive to local and regional needs, and can leverage local and regional investments, as well as funds from other agency investments. They are often at the cutting edge, supporting innovation and nurturing the scientists of the future. These advantages are enhanced in programs for which peer-reviewed competition and overall merit determine the funding decisions.

Through engagement with the extramural research community and the agencies that support it, NOAA can enhance its research priorities and address the Nation's critical scientific problems. The place-based extramural programs also contribute to local and regional economic development and engage citizens in wise use of their

coastal and ocean resources. Finally, extramural research helps educate and train the next generation of marine scientists and engineers, expanding the impact of the Federal dollars toward building a globally competitive science, technology, engineering, and math workforce.

As the Federal agency responsible for managing living marine and coastal resources, NOAA must have a presence beneath the sea to better understand the systems under its management. With Public Law 111–11, the Congress authorized NURP to provide NOAA with enhanced scientific access to the undersea environment. NURP has cost-effectively provided human access with submersibles and technical diving, and virtual access using robots, seafloor observatories, and innovative new technologies. NURP has provided scientists with the tools and expertise they need to investigate the seafloor and water column, allowing for unique new insights and data to address NOAA’s diverse mission. NURP is comprised of a network of regional centers and institutes of undersea science and technology excellence located at major universities. This extramural network facilitates collaborations with programs outside NOAA, leverages external funds and infrastructure, and provides access to world-class expertise and students. NURP projects are selected by a rigorous peer-review process based on scientific merit and relevance to NOAA and national research priorities.

The John H. Prescott Marine Mammal Rescue Assistance Grant Program has also been eliminated from NOAA’s fiscal year 2013 Federal budget request. Marine mammals are sentinel species that inform our knowledge of the health of marine food webs. Marine mammal stranding response networks nationwide are run primarily through nonprofits and other nongovernment entities including, in many cases, marine labs affiliated with educational institutions. They coordinate their work with NOAA’s National Marine Fisheries Service (NMFS) and often engage large numbers of volunteers and students, making the program very cost effective. Consistent funding is necessary to maintain basic operational needs, volunteer engagement, and the continued success of these essential stranding networks. In addition to support for the stranding networks, NMFS reserves a portion of Prescott funds for emergency responses to catastrophic events, including oil spills, mass strandings, and hurricanes.

Stranding networks are the Nation’s first responders to both live and dead marine mammals that come ashore, often in developed coastal communities. They perform important outreach functions for NOAA and collect data and samples that enable important population and ocean health assessment. This includes basic information on marine mammal diseases that are anthropogenic in nature, as well as those that can be spread to humans via contact with stranded animals. If NOAA is permitted to eliminate this program, it is unlikely that NMFS will be able to meet congressional mandates stipulated in the Marine Mammal Protection Act.

To demonstrate the economic and environmental value of extramural programs to the Nation, consider the National Sea Grant College Program, a stellar example of NOAA’s ability to support extramural research that is locally and nationally prominent. In the last 2 years, Sea Grant has delivered the following benefits to the Nation:

- Nearly \$243 million in direct economic benefits, which represents nearly a 4 to 1 return on the Federal investment;
- An estimated additional \$146 million in other Federal, State, and nongovernmental resources leveraged for research, extension, and other services that support the ocean and coastal enterprise;
- 144 new businesses created, 1,271 businesses retained, and more than 8,100 jobs created or retained;
- 768 communities across the Nation adopted more sustainable economic or environmental development practices and policies;
- 340 communities adopted hazard resiliency practices to make them better prepared to cope with or respond to hazardous coastal events;
- 5,000 individuals or businesses received new certifications in hazard analysis and critical control point handling of seafood products, improving the safety of seafood consumption by Americans across the country;
- 40,000 acres of degraded ecosystems were restored; and
- 1,700 undergraduate students, 1,400 graduate students, and 800,000 K–12 students were reached with information about marine and Great Lakes science and resources.

Besides the programs singled out in this presentation, a great deal of extramural research that supports NOAA’s overall mission is in specific programs such as the Integrated Ocean Observing System (IOOS), the Coastal Services Center, the Center for Sponsored Coastal Ocean Research (CSCOR), and the National Estuarine Research Reserve System (NERRS) program. For instance, CSCOR is a multi-topic

competitive research program that supports longer-term research on important coastal issues of harmful algal blooms, hypoxia in the northern Gulf of Mexico and other U.S. waters, and multiple stressors. The NERRS programs are effectively aligned with academic institutions and especially marine labs, and they support significant research activities funded by other agencies. The IOOS has observing instrumentation in the water around the United States (and including the Gulf of Mexico) that currently provides real-time oceanographic data to users, including the U.S. Coast Guard, maritime transportation, oil spill response agencies (State and Federal), and fisheries managers, as well as local fishing and other businesses. Much of the data comes from academic scientists at no cost to the Federal budget. In all, these extramural programs provide NOAA with capabilities that far exceed what is possible in-house, enabling the agency to carry out its mission more effectively and more efficiently.

The examples above demonstrate the unique value, cost effectiveness, and contribution that extramural programs make to the agency's missions of science, service and stewardship. And last, but by no means least, NOAA extramural funding for colleges and universities fosters the integration of education and training into research, helping to create the next generation of scientific and technical talent that the Nation must have to remain competitive into the future.

We urge the subcommittee to restore funding to these extramural programs when the subcommittee marks up the fiscal year 2013 Commerce, Justice, Science, and related agencies appropriations bill.

On behalf of my colleagues at NAML, thank you very much for the opportunity to express our concerns. We would be happy to provide additional information if it would be helpful to the subcommittee.

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PREPARED STATEMENT OF THE NATIONAL ECOLOGICAL OBSERVATORY NETWORK, INC.

Chairman Mikulski, Ranking Member Hutchison, and members of the subcommittee, thank you for the opportunity to testify on the fiscal year 2013 budget for the National Science Foundation (NSF). My name is Tom Jorling, and I serve as the interim CEO of the National Ecological Observatory Network (NEON), Inc. a 501(c)(3) corporation established to implement the NEON Project supported by the Major Research Equipment and Facilities Construction (MREFC) program of the NSF. We are deeply appreciative of the support this subcommittee has provided the MREFC account, and NEON in particular, in previous years and hope it will continue as you consider the fiscal year 2013 budget request for the NSF MREFC account in the amount of \$196.17 million. This funding recommendation is essentially level with the fiscal year 2012 appropriation for this account and will allow the continued construction of NEON consistent with the 5-year construction schedule developed by the NSF and NEON, Inc. and approved by the National Science Board.

THE CHALLENGE

Maintaining this Nation's Science and Engineering (S&E) leadership is increasingly seen as a precondition for maintaining U.S. competitiveness on the world stage. In February 2003, the National Science Board said:

There can be no doubt that a modern and effective research infrastructure is critical to maintaining U.S. leadership in Science and Engineering (S&E). New tools have opened vast research frontiers and fueled technological innovation in fields such as biotechnology, nanotechnology, and communications . . . . Recent concepts of infrastructure are expanding to include distributed systems of hardware, software, information bases, and automated aids for data analysis and interpretation. Enabled by information technology, a qualitatively different and new S&E infrastructure has evolved, delivering greater computational power, increased access, distribution and shared use, and new research tools, such as data analysis and interpretation aids, Web-accessible databases, archives, and collaboratories. Many viable research questions can be answered only through the use of new generations of these powerful tools.

. . . . In an era of fast-paced discovery, it is imperative that NSF's infrastructure investments provide the maximum benefit to the entire S&E community. NSF must be prepared to assume a greater S&E infrastructure role for the benefit of the Nation.

Pushing the frontiers of science requires a sustained effort to ascertain the scientific grand challenges that beckon our brightest minds, to determine how science and technology can best address emerging challenges, and to develop the leadership in turning knowledge into technologies and benefits for society. In order to conduct

basic research in every field of S&E, students, teachers, and researchers must have access to powerful, state-of-the-art scientific infrastructure—the type of infrastructure that has a major impact on broad segments of S&E disciplines. Large and up-to-date research equipment and facilities are essential to the fundamental process of basic research.

We are entering an era of large-scale, interdisciplinary science fueled by large data sets that will be analyzed by current and future generations of scientists. The rapid pace of changes around the globe has underscored the value of long-term data sets for understanding the context of scientific observations, and for forecasting future conditions. Natural and human-managed landscapes are subject to events and processes that play out over different scales of time and space. Some are rapid and visible, like extreme precipitation, wind, and wildfire events, while others are subtle and play out over decades, like changing ocean temperatures and pH that affect the world's fisheries. Dealing with these challenges calls for a new generation of tools and observational capabilities.

#### RISING TO THE CHALLENGE

There is no better generation to handle these long-term challenges than the cadre of early career scientists, engineers, and educators that we have in this country. These individuals have trained for professional and academic careers in a highly connected, fast-changing, digital world. Many are eager and ready to tackle data-intensive, data-driven scientific challenges if provided the opportunity and the requisite data. We need modern scientific tools that will allow this generation of scientists to listen to the heartbeat of an entire continental ecosystem, to observe the changing patterns of large-scale oceanic patterns that affect our weather, and to use powerful scientific analysis and visualization techniques to understand the connectivity between the atmosphere, land, and oceans.

The successful nurturing of these capabilities depends on the availability and accessibility of data characterizing the structure and function of natural systems. Publicly accessible data represents a potent democratization of science—it opens up the marketplace of ideas and enables participation by constituencies that were previously excluded because of barriers related to the capital costs of scientific infrastructure. The MREFC account funds transformational scientific infrastructure entirely consistent with NSF's vision of science entering into an "Era of Observations" and an "Era of Data and Information".

#### THE MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION ACCOUNT

NSF describes the NSF MREFC account as providing "unique, transformational research capabilities at the frontiers of science and engineering". Such multi-user facilities are identified through extended engagements with the scientific community, designed using processes that National Aeronautics and Space Administration, Department of Energy, and others have developed over decades, and constructed using state-of-the-art technology. As members of this subcommittee are aware, the Congress, the NSF Inspector General, the National Science Board, and NSF provide stringent oversight of the planning, construction, and operations of all MREFC projects to ensure that taxpayer dollars are spent wisely.

We would like to applaud NSF's stewardship of these facilities. The agency has defined processes that it requires all MREFC projects, including NEON, to follow. These defined processes and an expectation of the timeframes allow us to engage with our user-communities to prepare them for the use of the facility as it gets built, and for when it comes on-line. This allows universities to strategize their hiring strategies, and for our early career scientists to acquire the necessary skills that will allow them to participate in these new scientific enterprises. One such enterprise that we wish to highlight in this testimony is NEON.

#### WHY THE NATIONAL ECOLOGICAL OBSERVATORY NETWORK, INC.

Living systems interact with each other and with the rest of the Earth System at many scales. At a small scale, individual plants exchange energy and matter with the atmosphere to support growth. At a large scale, like that of an entire continent, exchange between biotic components, the atmosphere, and surface water affects climate and hydrology. NEON is the Nation's and the world's first science facility designed to enable understanding and predicting the way ecosystems work and respond to changes, especially at large scales; understanding how ecosystem processes feedback to alter Earth system processes, including climate and hydrology; and understanding the implications of these processes and feedbacks for the human endeavor.

The project is designed to fill a void in observing systems that collect the range of variables needed for a complete view of ecosystem responses to multiple interacting environmental stressors, essential if we are to maintain the ecosystems that support humans and all life.

The concept for the ecological observatory was initiated in 1998 by the National Science Board's Task Force on the Environment. This was followed by workshops conducted by a large segment of the ecological community and a succession of competitive planning grants from NSF. This process culminated in a proposal to construct what was to become the NEON project. There followed a multi-year process involving more than a dozen outside expert review panels convened by NSF, including a Conceptual Design Review, Preliminary Design Reviews and a Final Design Review in 2010. These successful reviews led to approval by the National Science Board and finally authorization for construction from the Congress in 2010 as part of the MREFC program of NSF.

THE NATIONAL ECOLOGICAL OBSERVATORY NETWORK, INC. IN THE FISCAL YEAR 2013  
BUDGET REQUEST TO THE CONGRESS

The total NSF MREFC request for NEON for fiscal year 2013 is \$91 million. This level of funding would support continuation of civil and facility construction and instrumentation deployment across six geographical regions, and commissioning of the infrastructure in three others. Biological sampling and analysis activities will commence in all constructed and accepted Observatory sites. The funds will also support continuation of the NEON cyberinfrastructure in preparation for serving the freely accessible data to the scientific community. The first NEON airborne remote sensing platform is expected to be completed, fully instrumented, and flight-tested in preparation for delivery to Observatory operations in fiscal year 2014.

The NEON project received its first funding from the MREFC program, \$12.58 million in fiscal year 2011 and \$60.3 million in fiscal year 2012. The National Science Board approved plan for the full construction of the Observatory calls for \$98.2 million in fiscal year 2014, \$91 million in fiscal year 2015, and \$80.66 million more than fiscal year 2016. The National Science Board approved total cost for the construction of the Observatory is \$433 million.

SUMMARY

We strongly support the fiscal year 2013 appropriations request for the MREFC account, including the request for NEON, because the cutting edge infrastructure is an essential component of the national effort to keep U.S. scientific enterprise at the leading edge. This is vital for advancing science and maintaining the United States as the leader in understanding the natural world and all the benefits that can flow from that understanding. Long-term observational data generated by MREFC facilities will open up new opportunities for innovation and discovery that will benefit scores of scientists, engineers, and educators by lowering barriers to participation at the very edges of science. We appreciate the constraints within the budget process, but urge the subcommittee to consider the NSF investment in major research equipment and related facilities construction as a critical investment in the future health and well being of the research enterprise—an enterprise that will fuel this Nation's long-term economic competitiveness.

Thank you for this opportunity to present these views.

PREPARED STATEMENT OF THE NATIONAL ESTUARINE RESEARCH RESERVE  
ASSOCIATION

The National Estuarine Research Reserve Association (NERRA) is a not-for-profit scientific and educational organization dedicated to the protection, understanding, and science-based management of our Nation's estuaries and coasts. Our members are the 28 reserves that make up the National Estuarine Research Reserve System (NERRS). Established in 1987, NERRA facilitates its members' mission to protect our Nation's estuaries and to promote conservation-based research, education, and stewardship through the reserves. For fiscal year 2013, NERRA strongly recommends the following reserve system programs and funding levels within the National Oceanic and Atmospheric Administration (NOAA):

—NERRS Operations—\$22.3 million; and

—NERRS Procurement, Acquisition, and Construction (PAC)—\$1.69 million.

Additionally, NERRA also requests appropriation language directing NOAA to ensure that every reserve will get no less than the fiscal year 2012 allocation. This



will enable all reserves to meet obligations for core operations associated with research, education, stewardship, and coastal training responsibilities.

In 28 beautiful coastal locations around our country, 22 States and Puerto Rico have protected—in perpetuity—more than 1.3 million acres of land for education, long-term research, science-based stewardship, recreation, and sustainability of the coastal economy. The States have been entrusted to operate and manage NOAA's program as created by the Congress in the Coastal Zone Management Act (CZMA) nearly 40 years ago. What sets this program apart from other place-based Federal programs, like the National Marine Sanctuaries or National Wildlife Refuges for example, is that the reserves manage a Federal partnership program, implemented locally by States or universities.

The reserves have a tremendous positive impact on our economy including work to maintain clean water, keep the seafood and fishing industry viable, and provide communities with practical help and science-based information to address coastal hazards and maintain the area's tourism. Estuaries, where rivers meet the sea, provide nursery ground for two-thirds of commercial fish and shellfish: in NERRS States, the shellfish (wholesale market value) and seafood industry (total sales generated by the seafood industry) contributed more than \$2.7 billion to the economy in 2010 (SOURCE.—National Ocean Economic Program and NOAA Fisheries, Office of Science and Technology). Protection of these important estuaries within the NERRS can have a significant impact on specific species. For example, in Florida, Apalachicola Reserve is 1 of 3 reserves in the State: approximately 90 percent of Florida's oyster harvest and 10 percent of United States total harvest comes from Apalachicola Bay (Source.—Wilber, 92).

The work at each reserve goes beyond its property boundaries and creates a number of environmental and economic benefits for the communities and regions where they exist. For example, in 2010, NERRS coastal counties provided 4.4 percent of total wages earned in the United States and 4.2 percent of the Nation's jobs contributing more than \$26 billion in economic output (measured in gross State product) and supporting more than 468,000 jobs in ocean-dependent industries (SOURCE.—Bureau of Labor Statistics; NOAA).

#### *About the National Estuarine Research Reserve System*

Since 1974, beginning with the designation of the South Slough National Estuarine Research Reserve in Oregon, the coastal States and the Federal Government have collaborated to create a unique network of estuarine areas protected for long-term research and education. The NERRS added its 28th reserve on Lake Superior, Wisconsin in October 2010.

Pursuant to the CZMA, each reserve is chosen because it is a representative estuarine ecosystem able to contribute to the biogeographical and typological balance of the NERRS and because the area within the reserve is protected in perpetuity and is available for suitable public purposes such as education and interpretive use. The reserves are a network of protected areas established for long-term research, education, training, and stewardship.

NERRS's priorities are developed through a collaborative approach between the States and NOAA to address both national and local concerns. The reserves have a mandate pursuant to section 315 of the CZMA to support the coastal States through research and education as the States address today's most pressing coastal issues such as impacts from changes in sea and lake levels and increased nutrient loading. The reserves conduct research, monitoring, restoration, education, and training designed to improve our understanding and management of coasts and estuaries. The reserves are public places that have significant local, regional, and national benefits because the lands are publicly owned and function as living laboratories and classrooms that are used by scientists, decisionmakers, educators, and people of all ages. They are located in pristine coastal areas that serve as "sentinel sites", places where early indicators of environmental change are scientifically measured to provide up-to-date information to local officials and the public to support environmental decisionmaking, and inform assessment of trends at the regional and national levels.

#### *National Estuarine Research Reserve System Operations*

NERRA requests that program operations be funded at a level of \$22.3 million, an amount level with Congressional Appropriations Act fiscal year 2012 level. This funding will be shared by the 28 programs to enable the NERRS to manage and maintain healthy estuaries. Healthy estuaries support fishing, seafood, ecotourism, recreation, clean water, and communities. Beyond the economic impact to our National, State, and local economies, reserves have national infrastructure that support bringing science to the management of our coasts. This was most recently evi-

denced in the Deep Water Horizon oil spill of 2010, a coastal area that is home to five reserves. We know that the \$1 billion tourism and seafood industries depend upon on clean water, and during the Deep Water Horizon Oil Spill crisis the communities and industries along the gulf coast relied on disaster support efforts including data supplied by some of the five gulf coast National Estuarine Research Reserves, some of which continues today.

Each reserve receives operation funds from NOAA that are matched by the States and that are used to leverage significantly more private and local investments that results in each reserve having on average more than five program partners assisting to implement this national program. In addition, the program significantly benefits from volunteers that are engaged in habitat restoration, education and science which offset operation costs at reserves by donating thousands of hours. Between fiscal year 2006 and fiscal year 2010, volunteers have contributed more than 460,400 hours to the NERRS. In fiscal year 2010 volunteers contributed more than 100,000 hours to the NERRS (SOURCE.—NOAA).

NERRS have made countless economic contributions to their local communities, States, and Nation. In the category of eco-tourism, more than 2 million people annually visit the NERRS: an estimated more than \$20 million annually in direct benefit from these visitor use opportunities (estimated using Federal, State, and local park entry fees). Visitors to our reserves walk the trails, paddle the waterways, bird watch, snowshoe, and participate in activities and events at each of our 28 reserves.

In 2011, NERRS contributed more than \$10 million to science and research. One example of this is NERRS water and weather monitoring programs are used at the local, State, and national levels to support assessment of water quality and guide and track remediation strategies, aid in weather and marine forecasts, support emergency response, and aid the water dependent and insurance industries. NERRS land conservation ensures that 1.3 million acres of coastal property worth more than \$6.5 billion are protected. (Estimated based on the average cost of Federal investment per acre of land added to reserves over the last 10 years.)

In addition, NERRS contributes more than \$4.9 million in education relief offsets, educating more than 83,000 children annually through school-based programs grades K–12. This is a major benefit in some communities where local school districts have been forced to cut programs in these economic times. Likewise, NERRS offsets more than \$13.4 million in training for more than 66,000 people. This is a direct benefit of the Coastal Training Program that provides knowledge, tools, and resources to assist communities in protecting our coasts and aiding in sustainable development.

#### *National Estuarine Research Reserve System Procurement, Acquisition, and Construction*

NERRA requests \$1.69 million for land conservation and facilities to maintain, upgrade, and construct reserve facilities and acquire priority lands. This competitive funding program is matched by State funds and has resulted in not only the preservation of critical coastal lands as described above, but also in the increase of construction jobs. For example, NERRS creates more than 60 jobs for each \$1 million of Federal PAC money spent. In addition, NERRS leveraged investments of more than \$114 million to purchase 30,000+ acres of coastal property over the last 10 years. A recent assessment of construction and acquisition priorities at the reserves shows that the NERRS have needs for more than \$60 million for fiscal years 2011 through 2015.

#### *President's Fiscal Year 2013 Budget*

The President's fiscal year 2013 budget, if enacted, would reduce the NERRS program funding by 15 percent from fiscal year 2012 omnibus bill levels of \$22.259 million to \$18.979 million and would reduce Procurement, Acquisition, and Construction (PAC) funding by 100 percent from fiscal year 2012 omnibus bill levels of \$1.7 million to zero. According to the NOAA "blue book" language, "At this funding level, NOAA will eliminate the NERRS graduate fellowship program and decrease funding to each of the 28 reserves across the United States." As stated previously, NERRA requests appropriation language directing NOAA to ensure that every reserve will get no less than the fiscal year 2012 allocation. This will enable all reserves to meet obligations for core operations associated with research, education, stewardship, and coastal training responsibilities.

NERRA's assessment of the potential funding cut impacts assumes that program operations in the States, at the 28 sites, would absorb the majority of the program cuts and thereby result in the greatest impacts being felt locally, even though it is believed that all aspects of the program—locally and systemwide—would receive reductions. The States suffer the greatest from the funding cuts. Program cuts pro-

posed by the President would put at risk the more than \$26 billion of economic output contributed by NERRS coastal counties in 2010, as well as the more than more than 468,000 jobs in ocean-dependent industries supported in these communities. Insufficient funding would impact State and local seafood and fishing industries that are a \$2.7 billion economic contributor for States that have a reserve because reserve sites would suffer adverse economic impacts from reduced water quality and water quality data. In addition, NERRA believes that the NERRS program for Graduate Research Fellowships, providing advance degree educational opportunities for up to 56 university marine science-related students per year, will be eliminated.

#### SUPPORT REQUESTED FOR COAST AND OCEAN AND MANAGEMENT

NERRS are connected to the coast and ocean management work done by its State and Federal partners. Specifically, in the States, reserves primary partners are the State coastal management programs in the majority of the States. NERRA requests subcommittee support for Coastal Zone Management (CZM) grants at \$67 million. In addition, many reserves rely on congressionally appropriated Bay Watershed Estuary Training (B-WET) funds to augment educational funds. Therefore, NERRA request your support for this program in the appropriation of \$9.7 million for B-WET grants. Finally, the reserves depend on NOAA's technical assistance and partnership capacity. NERRA requests support of \$37.1 million for the Coastal Services Center and \$8.7 million for CZM Stewardship.

#### CONCLUSION

NERRA greatly appreciates the support the subcommittee has provided in the past. This support has been critical to sustain and increase the economic viability of the coast and estuary-based industries. We urge you to give every consideration to these requests as you move forward in the fiscal year 2013 appropriations process.

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#### PREPARED STATEMENT OF THE NATIONAL MARINE SANCTUARY FOUNDATION

##### APPROPRIATIONS REQUEST

For 12 years, the National Marine Sanctuary Foundation (NMSF) has worked with the Congress and the National Oceanic and Atmospheric Administration (NOAA) to connect our fellow citizens to the underwater places that define the American ocean—the National Marine Sanctuary System. The President's budget request for 2013 could jeopardize economic growth in coastal communities by terminating funding for national marine sanctuary vessel acquisition and visitor center construction, including the completion of ongoing projects. NMSF respectfully requests that the subcommittee remedy this situation by appropriating:

- \$5.495 million to the Marine Sanctuaries Construction Base, within NOAA's Procurement, Acquisition, and Construction account (fiscal year 2012 enacted level); and
- \$49 million to the Marine Sanctuary Program Base, within NOAA's Operations, Research, and Facilities account (fiscal year 2010 enacted level).

Joining NMSF in this request is the national network of community-based, non-profit organizations that support specific sites within the sanctuary system. On behalf of their members from coast to coast, the Channel Islands Sanctuary Foundation (California); Cordell Marine Sanctuary Foundation (California); Farallones Marine Sanctuary Association (California); Friends of Thunder Bay National Marine Sanctuary (Michigan); Monterey Bay Sanctuary Foundation (California); Olympic Coast Alliance (Washington); Sanctuary Friends Foundation of the Florida Keys (Florida); and Stellwagen Alive! (Massachusetts) support funding National Marine Sanctuary System at these levels.

While we recognize the challenges associated with providing increased funding in the current budget climate, and the need to fund other important programs under the jurisdiction of the subcommittee, we believe that the President's fiscal year 2013 budget request fails to address critical sanctuary contributions to coastal job creation and economic growth, from supporting tourism to providing construction jobs. It also continues a deeply disturbing trend of underfunding the sanctuary program—despite nearly a decade's worth of unmistakable signals from Democrats and Republicans in both Houses of Congress that the program warrants additional funds.

## NATIONAL MARINE SANCTUARIES ARE ECONOMIC ENGINES FOR COASTAL COMMUNITIES

National marine sanctuaries support economic growth and hundreds of coastal businesses in sanctuary communities; preserve vibrant underwater and maritime treasures for our children and grandchildren to enjoy; and provide critical public access for ocean recreation, research, and education. Investing in these sites does much more than simply protect small areas of the ocean—national marine sanctuaries are economic engines for coastal communities, and investing in sanctuaries is a downpayment on the future of fishing families, dive operators, and whale-watching vendors, not to mention the many other Americans whose livelihoods are dependent on a healthy ocean and coasts. We offer the following examples to suggest that the benefits of funding our national marine sanctuaries far outweigh the Federal outlays that support them:

- Management of the Stellwagen Bank National Marine Sanctuary off Massachusetts costs taxpayers less than \$2 million annually, and healthy sanctuary waters draw the tourists who spent \$126 million on commercial whale-watching trips there during 2008 alone, supporting 31 businesses and almost 600 jobs.<sup>1</sup>
- Taxpayers spend less than \$3 million per year to manage the Monterey Bay National Marine Sanctuary off California, whose waters are the focus of a marine science and education industry that employed more than 2,100 people and had a \$291 million budget in 2012.<sup>2</sup>
- The Florida Keys National Marine Sanctuary, where management costs less than \$6 million per year, protects coral reefs and legal fishing opportunities that are the backbone of a marine tourism and recreation industry in the two adjacent counties—employing more than 70,000 people and contributing \$4.5 billion per year to state GDP.<sup>3</sup>
- On the shores of Lake Huron, Michigan’s Thunder Bay National Marine Sanctuary costs less than \$1 million annually and serves as a destination for tourists who spent \$110 million visiting the three adjacent counties in 2000, providing almost \$36 million in personal income and supporting 1,700 jobs.<sup>4</sup>
- Taken as a whole, the National Marine Sanctuary System manages our waters at a cost to taxpayers of approximately \$340 per square mile, while management of National Park Service properties costs more than \$16,000 per square mile.<sup>5</sup>

Investments in our National Marine Sanctuary System provide incredible returns to society, both today and for future generations, and we encourage the subcommittee to provide additional resources to sanctuaries wherever possible, enabling them to stimulate coastal economies, promote ocean recreation, and create a healthy, long-term balance on the water.

## NATIONAL MARINE SANCTUARIES START AND STAY IN LOCAL COMMUNITIES

The designation and management of new sanctuaries is wholly dependent on a “bottom-up” process where local communities are involved from very beginning—sanctuaries actually devolve power from Washington, DC and give constituents control over the destiny of their coasts. All sanctuary rules and regulations are developed on a site-by-site basis, and sanctuaries are designed from the outset to accommodate multiple uses of the ocean. Coastal communities have a controlling influence on sanctuary priorities, ensuring that they address unique, local circumstances. This community-driven approach to decide where sanctuaries are located and what is allowed within them is one of the most public in our democracy. National marine sanctuaries are created by and for the people: citizens and communities propose sites and then have at least three additional chances to weigh in during the process.

<sup>1</sup>O’Connor, Simon et al (2009). Whale Watching Worldwide: tourism numbers, expenditures and expanding economic benefits, a special report from the International Fund for Animal Welfare. Prepared by Economists at Large. Available at [http://www.ifaw.org/Publications/Program\\_Publications/Whales/asset\\_upload\\_file841\\_55365.pdf](http://www.ifaw.org/Publications/Program_Publications/Whales/asset_upload_file841_55365.pdf).

<sup>2</sup>Monterey Bay Crescent Ocean Research Consortium. (2012) “Major Marine Sciences Facilities in the Monterey Bay Crescent—2012.” Available at [http://web.me.com/paduan/mbcorc/Membership\\_Info\\_files/MontereyBayLabs2012-2.pdf](http://web.me.com/paduan/mbcorc/Membership_Info_files/MontereyBayLabs2012-2.pdf).

<sup>3</sup>National Ocean Economics Program. (2004) “Ocean Economy Data.” Available at <http://www.oceaneconomics.org/Market/ocean/oceanEconResults.asp?IC=N&selState=12&selCounty=12086&selCounty=12087&selYears=All&selSector=6&selIndust=All&selValue=All&cbMultiplier=Multiply&selOut=display&noepID=3204>.

<sup>4</sup>Michigan Sea Grant. (2009). “Northeast Michigan Integrated Assessment Final Report.” Available at <http://www.miseagrant.umich.edu/downloads/nemia/report/NEMIA-Final-Report.pdf>.

<sup>5</sup>Office of National Marine Sanctuaries. (2011) “Sanctuary Watch, Summer 2011.” U.S. Department of Commerce: NOAA National Ocean Service, National Marine Sanctuary Program. Available at <http://sanctuaries.noaa.gov/news/pdfs/sanctuarywatch/sw0611.pdf>.

In addition, more than 700 Sanctuary Advisory Council representatives from the fishing, tourism, and maritime commerce industries; Tribes, State, and local government; and researchers, educators, and conservationists spend more than 13,000 hours each year to help manage sanctuary operations day-to-day. Sanctuaries are also hubs for volunteer activity: more than 100,000 hours are contributed by local sanctuary volunteers each year.

NATIONAL MARINE SANCTUARIES' PROGRAMMATIC OUTLOOK UNDER PROPOSED FISCAL YEAR 2013 FUNDING LEVELS

We remain concerned that NOAA's Office of National Marine Sanctuaries (ONMS) has not received sufficient appropriations for several consecutive budget cycles. As a result of these shortfalls, a consolidation with NOAA's Marine Protected Areas Center, and the continued underfunding proposed for fiscal year 2013, we project the termination of contractors who perform full-time equivalent duties; reduced operations at visitor centers; a lack of contingency funding needed in case of emergencies like oil spills; and inoperable vessels tied up at the docks. In addition, lack of funds will likely result in cuts to public access and recreation opportunities, cancellation of partnerships that leverage private funds for taxpayer benefits, and the dismantling of successful education initiatives.

The potential impact of reducing sanctuary appropriations goes far beyond the individual sanctuaries themselves:

- limiting visitor center hours;
- eliminating research programs; and
- diminishing enforcement capacities will prevent ONMS from fulfilling its statutory mandates while also reducing the economic activity and job creation that surrounds healthy sanctuary communities from coast to coast.

For example, funding national marine sanctuaries below the recommended levels could force the program to:

*Cut Treasured Public Access and Recreation Opportunities For All Americans.*—Funding cuts risk the Florida Keys National Marine Sanctuary's 767 mooring buoys, which provide public access and recreational opportunities within the sanctuary while protecting coral reefs and shipwrecks from anchor damage, preserving them for future generations.

*Restrict Enforcement Operations That Protect Legal Fishermen by Guarding Against Illegal Fishing.*—Lack of funding jeopardizes on-water patrols for illegal lobster fishermen in the Florida Keys NMS. In a single 2010 case, illegal fishermen pilfered 8,500 pounds of spiny lobster within a 6-month period. The lobster had a street value of \$155,000—money that was effectively taken out of the pockets of hardworking, legal fishermen.

*Dramatically Shrink Visitor Center Hours.*—Visitor centers are a vital link between sanctuaries and the millions of Americans who visit the coast each year and serve as the public face of NOAA. Sanctuary visitor centers see more than 200,000 visitors per year, including the Mokuapāpapa Discovery Center (Hilo, Hawaii), Great Lakes Maritime Heritage Center (Alpena, Michigan), and Florida Keys EcoDiscovery Center (Key West, Florida).

*Eliminate Cooperative Education Efforts With Local Museums That Leverage Private Funds for Taxpayer Benefits.*—Placing exhibits in partner institutions, like the California Academy of Sciences' three-story "California Coast" aquarium, is a successful and cost-effective method for reaching the American public. More than 1 million Academy visitors each year learn how the Gulf of the Farallones National Marine Sanctuary protects America's valuable ocean and maritime resources.

*Cancel Collaborative Research Efforts With Local Universities That Leverage Private Funds for Taxpayer Benefits.*—Funding cuts could risk partnerships with Oregon State University, Stanford University, and the University of California for collection of wind, tide, current, and marine life data critical to maritime commerce and search-and-rescue operations within the Channel Islands, Monterey Bay, Gulf of the Farallones, Cordell Bank, and Olympic Coast National Marine Sanctuaries.

*Dismantle Successful Education Initiatives That Save Taxpayers Money by Focusing on Low-Cost Prevention Instead of Expensive Restoration or Remediation.*—The Multicultural Education for Resource Issues Threatening Oceans (MERITO) program's media outreach has touched more than 13 million California residents. The California Bay-Watershed Education and Training (B-WET) program increases the stewardship ethic of participating youth, and local communities in the Chesapeake Bay, Gulf of Mexico, Hawaii, New England, and Pacific Northwest have imported the program.

THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NEEDS SUFFICIENT FUNDS  
TO FULFILL ITS RESPONSIBILITIES TO THE AMERICAN PEOPLE

As a member of the Friends of NOAA coalition, the National Marine Sanctuary Foundation works with other supporters, stakeholders, and partners of NOAA to educate and inform interested audiences about the full range of NOAA activities, enabling the agency to more effectively carry out its responsibilities relating to our ocean and coasts, fisheries, research, and weather and climate, including satellites. NOAA is one of the premier science agencies in the Federal Government and provides decisionmakers with critically important data, products, and services that promote and enhance the Nation's economy, security, environment, and quality of life. More than 1.5 million NOAA weather forecasts and warnings per year generate benefits of at least \$31.5 billion, and the agency's ocean and atmospheric research, fisheries management, and satellite enterprises are essential for the continued prosperity of our Nation.<sup>6</sup> For example, recovery of overfished stocks has produced an additional \$2.1 billion in income and \$5 billion in sales over the past decade.<sup>7</sup> Providing insufficient funding for NOAA will only serve to diminish the economic activity and job creation that is at present successfully revitalizing communities across America.

We hope the subcommittee will see the benefits of investing in NOAA and the National Marine Sanctuary System, and that a failure to provide sufficient funding will endanger, quite literally, American lives and livelihoods across the Nation.

PREPARED STATEMENT OF THE NATIONAL NETWORK TO END DOMESTIC VIOLENCE

INTRODUCTION

I am testifying to request a targeted investment of \$449.5 million in Violence Against Women Act (VAWA) programs administered by the Department of Justice, (DOJ) Office of Violence Against Women in the fiscal year 2013 budget (specific requests detailed below). In addition, I am testifying to request a \$1 billion "cap" from the Victims of Crime Act (VOCA), administered by the Office of Justice Programs, Office for Victims of Crime in the fiscal year 2013 budget.

Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee Chairwoman Mikulski, Vice Chairman Hutchison, Chairman Inouye, Ranking Member Cochran and distinguished members of the Senate Appropriations Committee, thank you for this opportunity to submit testimony to the subcommittee on the importance of investing in VAWA and VOCA. I sincerely thank the subcommittee for its ongoing support and investment in these lifesaving programs. These investments help to bridge the gap created by an increased demand and a lack of available resources.

I am the president of the National Network to End Domestic Violence (NNEDV), the Nation's leading voice on domestic violence. We represent the 56 State and territorial domestic violence coalitions, including those in Maryland, Texas, Hawaii, and Mississippi, their 2,000-member domestic violence programs, and the millions of victims they serve. Our direct connection with victims and service providers gives us a unique understanding of their needs and the vital importance of continued Federal investments.

*Incidence, Prevalence, Severity, and Consequences of Domestic and Sexual Violence*

The crimes of domestic and sexual violence are pervasive, insidious, and life-threatening. Every day in the United States, an average of three women are killed by a current or former intimate partner.<sup>1</sup> In 2005 alone, the most recent year with this data available, 1,181 women were murdered by an intimate partner in the United States.<sup>2</sup> In Texas, 142 women were killed by their current or former intimate partner in calendar year 2010.<sup>3</sup> Recently, the Centers for Disease Control and Prevention (CDC) released the first-ever National Intimate Partner and Sexual Violence Survey (NISVS) which found that domestic violence, sexual violence, and stalking are widespread. In fact, domestic violence alone affects more than 12 mil-

<sup>6</sup>Lazo, J.K., D.M. Waldman, B.H. Morrow, and J.A. Thacher. 2010. "Assessment of Household Evacuation Decision Making and the Benefits of Improved Hurricane Forecasting." *Weather and Forecasting*, 25(1):207-219.

<sup>7</sup>National Marine Fisheries Service.

<sup>1</sup>Bureau of Justice Statistics (2008). *Homicide Trends in the U.S. from 1976-2005*. Department of Justice.

<sup>2</sup>Ibid.

<sup>3</sup>Honoring Texas Victims. Family Violence Fatalities in 2010. Texas Council on Family Violence. Available at <http://www.tcfv.org/pdf/Honoring-Texas-Victims.pdf>.

lion people each year; nearly 1 in 5 women have been raped in their lifetime, and 1 in 4 women have been a victim of severe physical violence by an intimate partner. More than 80 percent of women who were victimized experienced significant short- and long-term impacts related to the violence such as Post-Traumatic Stress Disorder (PTSD), injury (42 percent), and missed time at work or school (28 percent). Finally, NISVS shows that most rape and partner violence is experienced before the age of 24, highlighting the importance of preventing this violence before it occurs.<sup>4</sup>

In addition to the terrible cost domestic violence has on the lives of individual victims and their families, these crimes cost taxpayers and communities. In fact, the cost of intimate partner violence exceeds \$5.8 billion each year, \$4.1 billion of which is for direct medical and mental healthcare services.<sup>5</sup> Domestic violence costs U.S. employers an estimated \$3 to \$13 billion annually.<sup>6</sup> Between one-quarter and one-half of domestic violence victims report losing a job, at least in part, due to domestic violence.

Despite this grim reality, we know that when a coordinated response is developed, and immediate, essential services are available, victims can escape from life-threatening violence and begin to rebuild their shattered lives. Funding these programs is fiscally sound, as they save lives, prevent future violence, keep families and communities safe, and save our Nation money.

#### *Investing in Violence Against Women Act*

The Congress first authorized VAWA in 1994 in response to the terrible crimes of domestic violence, sexual assault, dating violence, and stalking. The programs created by VAWA and administered by the DOJ and the Department of Health and Human Services, have changed Federal, tribal, State and local responses to domestic violence dating violence, sexual assault, and stalking. VAWA creates and supports comprehensive, cost-effective responses to these pervasive and insidious crimes and has unquestionably improved the national response to domestic violence, dating violence, sexual assault, and stalking. Due to the overwhelming success of VAWA-funded programs, more and more victims are coming forward for help each year. More victims report domestic violence to the police: reporting rates by women have increased by up to 51 percent and by 37 percent for men.<sup>7</sup> The rate of nonfatal intimate partner violence against women has decreased by 63 percent.<sup>8</sup> Remarkably, the number of individuals killed by an intimate partner has decreased by 24 percent for women and 48 percent for men.<sup>9</sup> In addition to saving and rebuilding lives, VAWA saved taxpayers \$12.6 billion in net averted social costs in its first 6 years alone.<sup>10</sup>

A recent study demonstrates both the lifesaving and cost-effective nature of VAWA-funded programs. The study found that during the 6 months after a survivor obtained a protective order, the number of threats of physical harm or murder decreased nearly 50 percent, moderate physical abuse decreased 61 percent, and severe physical abuse decreased nearly 50 percent. Moreover, protective orders saved Kentucky at least \$85 million in just 1 year.<sup>11</sup> Because many VAWA-funded programs can help victims obtain protection orders, this study supports the efficacy of continued investment in these funding streams.

While VAWA programs have made systemic changes to meet the needs of victims and saved countless lives, the demand for services continues to rise. Additionally,

<sup>4</sup>Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

<sup>5</sup>National Center for Injury Prevention and Control. *Costs of Intimate Partner Violence Against Women in the United States*. Atlanta (GA): Centers for Disease Control and Prevention; 2003.

<sup>6</sup>Bureau of National Affairs Special Rep. No. 32, *Violence and Stress: The Work/Family Connection 2* (1990); Joan Zorza, *Women Battering: High Costs and the State of the Law*, *Clearinghouse Rev.*, Vol. 28, No. 4, 383, 385; *Supra*, see footnote 10.

<sup>7</sup>"Intimate Partner Violence in the U.S." U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Jan 2008.; Cassandra Archer et al., *Institute for Law and Justice, National Evaluation of the Grants to Encourage Arrest Policies Program 14* (November 2002).

<sup>8</sup>"Intimate Partner Violence in the U.S." U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, January 2008.

<sup>9</sup>*Ibid.*

<sup>10</sup>Andersen Clark, K., et al. (2002). "A Cost-Benefit Analysis of the Violence Against Women Act of 1994." *Violence Against Women*, 8, 417.

<sup>11</sup>*The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violence Consequences, Responses and Cost*. (2009). U.S. Department of Justice.

many parts of the country still lack basic services and traditionally underserved populations face additional barriers to accessing services. The National Domestic Violence Census found that in just 1 day in 2011, more than 67,000 adults and children found safety in our Nation's domestic violence shelters and programs. On the same day, however, more than 10,500 requests for services went unmet because programs did not have the resources to meet the needs of victims.

In these tough economic times, State and private funding sources are dwindling, while at the same time there are more incidents of violence and more victims seeking help. As programs strive to meet the needs of all victims requesting services, the Federal funding is essential for ensuring that programs can keep their doors open and answer crisis calls. In fact, the National Domestic Violence Census found that in 2010, 1,441 (82 percent) domestic violence programs reported a rise in demand for services, while at the same time, 1,351 (77 percent) programs reported a decrease in funding.<sup>12</sup> While we recognize the difficult decisions you face during this extremely challenging budget year, VAWA, VOCA, and Family Violence Prevention and Services Act (FVPSA) funding, is critically needed to prevent and end domestic and sexual violence in our country. To address unmet needs and build upon its successes, VAWA should maintain at least fiscal year 2012 funding levels, with key targeted investments for fiscal year 2013.

#### *Specific Investments in Violence Against Women Act Programs*

*Services, Training, Officers Prosecution—\$205 Million Request.*—Services, Training, Officers Prosecution (STOP) grants are formula grants given to each State to improve the criminal justice response to domestic violence, dating violence, sexual assault, and stalking, are used to develop coordinated community responses. Many States and jurisdictions have implemented STOP-funded strategies that have led to a direct reduction in domestic violence homicides.<sup>13</sup> As part of the coordinated community response, STOP also supports the work of victim services agencies. According to Parents and Children Together Peace Center, Hawaii, “as a result of these funds, we have been able to provide much-needed individual counseling to victims with complex needs such as mental illness, language barriers, living in a rural area and/or immigrants.”<sup>14</sup> Investment in the STOP program is needed to ensure that communities across the country continue to strengthen their efforts to hold perpetrators accountable and support victims.

*Sexual Assault Victim Services Program (SASP)—\$35 Million Request.*—This formula grant addresses the extreme needs of sexual assault victims by allowing States, tribes, and territories to provide critically needed direct services to victims and training and technical assistance to various organizations including law enforcement, courts, and social services. In 2009, 56 percent of rape crisis centers were forced to reduce staff due to a lack of funds. A 2010 survey revealed that 25 percent of rape crisis centers have a waiting list for crisis services.<sup>15</sup> Increased investment in SASP is essential to meet the needs of sexual assault victims.

*Rural Grant Program—\$41 Million Request.*—The rural grant program supports services for victims of domestic and sexual violence living in rural and isolated areas. These victims face unique barriers to leaving an abusive situation, including a small number of programs serving a large geographic area, harsh weather conditions that can make travel difficult, under-resourced law enforcement, and a lack of essential services including child care, legal services, and public transportation. Restoring funding of this critically needed program to the fiscal year 2011 level of \$41 million is needed to sustain these services.

#### *Level Funding Requests for Key Violence Against Women Act Programs*

Each authorized VAWA program plays a critical role in sustaining a holistic response to domestic and sexual violence. The individual programs cannot meet the increasing demand for services with continual funding cuts.

*Grants To Encourage Arrest Policies and Enforcement of Protection Orders Program (GTEAP)—\$50 Million Request.*—GTEAP helps communities develop and sustain a seamless and comprehensive criminal justice response to domestic violence, enhancing victims' safety and holding perpetrators accountable. In Maryland, GTEAP supports the innovative Lethality Assessment Program, which includes a

<sup>12</sup> *Domestic Violence Counts 2010: A 24-Hour census of domestic violence shelters and services across the United States.* The National Network to End Domestic Violence. (January 2010).

<sup>13</sup> 2010 Biennial Report to Congress on the Effectiveness of Grant Programs Under the Violence Against Women Act. U.S. Department of Justice, Office on Violence Against Women.

<sup>14</sup> STOP (Services • Training • Officers • Prosecutors) Program 2010 Report, U.S. Department of Justice, Office on Violence Against Women.

<sup>15</sup> *National Alliance to End Sexual Violence (2010).* Internet survey of 1,300 rape crisis centers with 644 responses.



screening tool and protocol for first responders and others to assess lethality and link victims to services. Maryland experienced a 41-percent decrease in domestic violence homicides over the span of 3 years after implementing this program and jurisdictions in 11 other States have also implemented this successful tool. Ongoing funding for GTEAP will allow communities across the country to continue this life-saving work.

*Civil Legal Assistance for Victims—\$41 Million Request.*—Research indicates that the practical nature of legal services gives victims long-term alternatives to their abusive relationships.<sup>16</sup> However, the retainers or hourly fees for private legal representation are beyond the means of most victims of domestic violence, dating violence, sexual assault and stalking. In fact, almost 70 percent of all victims are without legal representation.<sup>17</sup> The Civil Legal Assistance for Victims (LAV) program is the only federally funded program designed to meet the legal needs of victims. According to Catholic Charities, Inc. of Mississippi, “the Legal Assistance Clinic has been proactive in working closely with other governmental agencies to ensure that client’s issues pertaining to housing (relocation or lease transfer) or employment issues are handled and resolved in a timely manner. Moreover, we have also worked very closely with social service agencies to ensure that clients receive the needed support services and other referrals to agencies/organizations.” Continued funding is needed to ensure victims have access to these needed services.

*Transitional Housing Grants—\$25 Million Request.*—These grants give victims a safe place to begin to rebuild their shattered lives. In just 1 day in 2011, 5,275 adults and 8,501 children were housed in domestic violence transitional housing programs. On the same day, however, 6,714 requests for emergency shelter or transitional housing were denied due to a lack of capacity.<sup>18</sup> The extreme dearth of affordable housing produces a situation where many victims of domestic violence must return to their abusers because they cannot find long-term housing,<sup>19</sup> while others are forced into homelessness.<sup>20</sup> Sustained funding for the Transitional Housing program will allow more States and localities to ensure that victims do not have to make these unfathomable choices.

*Remaining Violence Against Women Act Programs.*—To end the intergenerational cycle of violence and address the needs of children and youth, we request \$12 million for the consolidated VAWA youth and prevention programs. Additionally, we request at least fiscal year 2012 funding levels for the remaining VAWA CJS programs.

#### *Victims of Crime Act Fund Cap—\$1 Billion Request*

VOCA, passed in 1984, created the VOCA Fund as a protected source of funding for crime victim programs. The Fund does not depend on taxpayer dollars—it derives entirely from fines and penalties paid by Federal offenders. To ensure a consistent distribution of the Fund to victim service providers each year, the Congress set a cap on the Fund, saving the amount collected over the cap to ensure its stability. Currently, the VOCA Fund has an estimated balance of more than \$5 billion.

The VOCA fund supports a formula grant to States for victim assistance programs, which provide victims with support and services in the aftermath of crime. Most domestic and sexual violence programs, which are at the heart of the response to victims, rely on continued VOCA funding to sustain their programs. With more than 2,000 community-based domestic violence programs, VOCA provides emergency shelter to approximately 300,000 victims, as well as counseling, legal assistance, and preventative education to millions of women, men, and children annually.<sup>21</sup> This funding is absolutely crucial to keeping victims and their children safe. In order to meet the growing demand for these lifesaving services, I urge the subcommittee to release \$1 billion through the VOCA cap.

<sup>16</sup> See: Farmer, A., & Tiefenthaler, J. (2003). “Explaining the Recent Decline in Domestic Violence”, *Oxford Journals*; MacFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic and White Women*.

<sup>17</sup> Carter, T. (2004) Pour It On: Activists Cite Rising Need for Lawyers to Respond to Domestic Violence, *A.B.A. Journal*, pg. 73.

<sup>18</sup> Domestic Violence Counts 2011: A 24-Hour census of domestic violence shelters and services across the United States. The National Network to End Domestic Violence. (February 2012).

<sup>19</sup> Correia, A., *Housing and Battered Women: A case study of domestic violence programs in Iowa*. Harrisburg, PA: National Resource Center on Domestic Violence. March, 1999.

<sup>20</sup> Charlene K. Baker, Cook, Sarah L., Norris, Fran H., “Domestic Violence and Housing Problems: A Contextual Analysis of Women’s Help-seeking, Received Informal Support, and Formal System Response,” *Violence Against Women* 9, no. 7 (2003): 754–783.

<sup>21</sup> National Coalition Against Domestic Violence, *Detailed Shelter Surveys* (2001).

CONCLUSION

An increasingly efficient, comprehensive, and life-saving response to victims, created and sustained by VAWA, FVPSA, and VOCA funding, has made tremendous strides toward preventing and ending domestic and sexual violence in this country. However, as these challenging economic times take a devastating toll on the ability of shelters and rape crisis centers to meet the needs of victims seeking help, victims face traumatic and life-threatening situations with no support. We recognize the difficult decisions you are faced, but we urge you to invest in these life-saving, cost-effective programs that help break the cycle of violence, reduce related social ills and save our Nation money now and in the future.

PREPARED STATEMENT OF THE NATIONAL WILDLIFE FEDERATION

On behalf of the National Wildlife Federation (NWF), our Nation’s largest conservation advocacy and education organization, and our more than 4 million members and supporters, I thank you for the opportunity to provide testimony which includes funding recommendations for the National Oceanic and Atmospheric Administration (NOAA), the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA). While NWF supports numerous programs under the jurisdiction of this subcommittee, including NOAA’s Estuary Restoration Program, Coastal Zone Management Grants Regional and Coastal Zone Management and stewardship; the purpose of this testimony is to recommend fiscal year 2013 funding levels (totaling \$35.2 million) for specific environmental education and climate change education programs that we believe are vital to NWF’s mission to inspire Americans to protect wildlife for our children’s future.

This subcommittee has taken a leadership role in funding environmental education and climate change education at the Federal level. While we appreciate the subcommittee’s leadership, we believe that the overall Federal investment in environmental education and climate change education programs nationwide—pennies per capita—is woefully inadequate. NWF also supports climate change education and environmental education programs across the Federal agencies at the U.S. Forest Service, Environmental Protection Agency, Department of Education, and Department of the Interior.

SUMMARY OF RECOMMENDATIONS

[In millions of dollars]

Agency	Program	Fiscal year 2012 enacted	Fiscal year 2013 NWF recommendation
NOAA	Bay Watershed Education and Training [B-WET] .....	7.2	7.2
NOAA	Environmental Education Initiatives, including Environmental Literacy Grants ..	8.0	8.0
NSF	Climate Change Education .....	10.0	10.0
NASA	Climate Change Education .....	10.0	10.0

*The Need for Environmental Education*

As our Nation moves toward a clean-energy economy and creates new “green jobs”, we must ensure that our education infrastructure keeps pace. As is increasingly recognized by business leaders, environmental literacy provides critical knowledge that is essential for the success of a 21st century workforce—equipping students with the skills to understand complex environmental issues, thus enabling them to both make better informed decisions as citizens and help find solutions for the challenges facing our Nation. Studies have demonstrated that environmental literacy is fundamental to improving student achievement in STEM (science, technology, engineering, and math) education, to creating a stronger economy through green jobs, and to promoting environmental stewardship. To be successful as a Nation under a new clean-energy economy, we must have an environmentally literate citizenry that has the knowledge to find new, innovative solutions to protect our planet.

*National Oceanic and Atmospheric Administration*

*Environmental Literacy Grants*

NWF supports the fiscal year 2012 baseline for NOAA’s Environmental Literacy Grants and requests \$8 million in fiscal year 2013. NOAA’s Office of Education oversees several Environmental Education Initiatives, the largest initiative being the

Environmental Literacy Grants (ELG) program which helps to establish new partnerships that deliver educational materials to thousands of teachers and students. The ELG program enables NOAA to partner with the top science centers, aquaria, and educators in the country to educate the public about vital issues around our changing planet. It also allows NOAA to leverage the vast array of climate science being undertaken to increase public understanding and the quality of education. These funds are awarded on a competitive basis and are increasingly used to build capacity at the national and regional levels.

*Bay Watershed Education and Training Programs*

NWF supports funding NOAA's B-WET program at \$7.2 million in fiscal year 2013. Administered by NOAA since 2003, the B-WET program offers competitive grants to leverage existing environmental education programs, foster the growth of new programs, and encourage development of partnerships among environmental education programs within watershed systems. B-WET's rigorously evaluated programs are implemented by region, which allows the unique environmental and social characteristics of the region to drive the design of targeted activities to improve community understanding, promote teacher competency, and enhance student interest and achievement in science. A fundamental goal of the program is to demonstrate how the quality of the watershed affects the lives of the people who live in it. B-WET supports programs for students as well as professional development for teachers, while sustaining regional education and environmental priorities. B-WET awards have provided environmental education opportunities to more than 100,000 students and 10,000 teachers. With an increase in funding in fiscal year 2008, B-WET expanded from the Chesapeake Bay, California, and Hawaii to also include the Pacific Northwest, the northern Gulf of Mexico, and New England. Sustained funding of \$7.2 million in fiscal year 2013 will enable this successful program to continue addressing the needs of some of America's largest watersheds.

*National Aeronautics and Space Administration*

*Climate Change Education Grant Program*

NWF supports funding NASA's Climate Change Education Grant Program at \$10 million in fiscal year 2013. In fiscal year 2008, the Congress appropriated funds for the first time to address climate change education by providing funding for climate change education grants through NASA. In August 2008, NASA announced a Request for Proposals for a first-ever competitive grant program seeking applications from educational and nonprofit organizations to use NASA's unique contributions to climate and Earth system science. The goals of the program include:

- improving the teaching and learning about global climate change in elementary and secondary schools and on college campuses;
- increasing the number of students using NASA Earth observation data/NASA Earth system models to investigate and analyze global climate change issues;
- increasing the number of undergraduate students prepared for employment and/or to enter graduate school in technical fields relevant to global climate change; and
- increasing access to high-quality global climate change education among students from groups historically underrepresented in science.

NWF recommends that the NASA climate change education program be primarily used for grantmaking purposes, and focus not only on education about climate science, but also advance education that focuses on the connections and relationships between climate change, the economy, energy, health, and social well-being.

*National Science Foundation*

*Climate Change Education Grant Program*

The National Wildlife Federation supports funding NSF's Climate Change Education (CCE) Grant Program at \$10 million in fiscal year 2013. While public awareness and concern for environmental issues continue to rise, the vast majority of the public remains demonstrably illiterate about the impact of the environment on their lives and how their decisions and actions contribute to it.

Yet CCE is newly emerging as a field, with few materials, curricula, models, standards, or professional development opportunities to fill the void. Furthermore, CCE is inherently interdisciplinary; and as a result, it often falls through the cracks in traditional science education.

NSF initiated the CCE grant program in fiscal year 2009. This program is aimed at improving K-12 to graduate education in climate change science and increasing the public's understanding of climate change and its consequences. In fiscal year 2012 CCE was appropriated \$10 million. The Congress should sustain fiscal year 2012 appropriation levels in fiscal year 2013 at \$10 million to aid in the develop-

ment of the next generation of environmentally engaged scientists and engineers by supporting awards in the following areas:

- increasing public understanding and engagement;
- development of resources for learning;
- informing local and national science, technology, engineering, and mathematics (STEM) education policy;
- preparing a climate science professional workforce; and
- enhancing informed decisionmaking associated with adaptation to and mitigation of climate change impacts.

These emerging priorities lie at the intersection of social/behavioral/economic and Earth system sciences.

#### CONCLUSION

Providing Federal support for environmental education is a critical strategy in securing our new clean-energy future and preparing the next generation for the challenges and opportunities ahead. Thank you again for providing NWF with the opportunity to provide testimony.

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#### PREPARED STATEMENT OF THE NATURAL SCIENCE COLLECTIONS ALLIANCE

The Natural Science Collections Alliance appreciates the opportunity to provide testimony in support of fiscal year 2013 appropriations for the National Science Foundation (NSF). We encourage the Congress to provide NSF with at least \$7.373 billion in fiscal year 2013.

The Natural Science Collections Alliance is a nonprofit association that supports natural science collections, their human resources, the institutions that house them, and their research activities for the benefit of science and society. We are comprised of more than 100 institutions which are part of an international community of museums, botanical gardens, herbariums, universities, and other institutions that house natural science collections and utilize them in research, exhibitions, academic and informal science education, and outreach activities.

Federal support for science is an investment in our Nation's future. The NSF supports research that creates new knowledge. NSF-sponsored research also helps to drive innovation and economic growth. The agency supports job creation directly by awarding research grants to scientists and institutions, and through the acquisition of research infrastructure and instrumentation. NSF also trains the next generation of researchers and science educators. Collectively, these activities provide the foundation for the Nation's research enterprise and generate information that ultimately drives economic growth, improves human health, addresses energy needs, and enables sustainable management of our natural resources.

The progress of basic scientific research requires a sustained and predictable Federal investment. Unpredictable swings in Federal funding can disrupt research programs, create uncertainty in the research community, and impede the development of solutions to the Nation's most pressing problems. NSF's budget request for fiscal year 2013 would sustain critical research and education efforts while funding 300 new research grants.

NSF's Biological Sciences Directorate (BIO) is the primary Federal supporter of basic biological research. BIO serves a vital role in ensuring our Nation's continued leadership in the biological sciences by providing about 62 percent of Federal grant support for fundamental biological research conducted at our Nation's universities and other nonprofit research centers such as natural history museums. BIO's support of transformative research has advanced our understanding of complex living systems and is leading the way forward in addressing major challenges, such as conserving biodiversity, combating invasive species, and developing new bio-inspired technologies.

Equally important, BIO provides essential support for our Nation's biological research infrastructure, such as natural science collections and university-based natural history museums. These research centers enable scientists to study the basic data of life, conduct modern biological and environmental research, and provide undergraduate and graduate students with hands-on training opportunities. Additionally, NSF's Directorate for Geosciences and Office of Polar Programs support data and specimen collections that contribute to our understanding of the Earth's systems.

#### *Support for Scientific Collections*

Scientific collections play a central role in many fields of biological research, including disease ecology, biodiversity, and climate change. They also provide critical

information about existing gaps in our knowledge of life on Earth. Indeed, the Federal Interagency Working Group on Scientific Collections recognized this value in their 2009 report, which found that “scientific collections are essential to supporting agency missions and are thus vital to supporting the global research enterprise.”

We strongly encourage the Congress to support NSF’s request for \$10 million to support the digitization of high-priority U.S. specimen collections. NSF’s investment in digitization would enable the scientific community to ensure access to and appropriate curation of irreplaceable biological specimens and associated data, and will stimulate the development of new computer hardware and software, digitization technologies, and database management tools. This effort is bringing together biologists, computer science specialists, and engineers in multidisciplinary teams to develop innovative imaging, robotics, and data storage and retrieval methods. These tools will expedite the digitization of collections and contribute to the development of new products or services of value to other industries.

In addition to supporting digitization efforts, NSF supports curation and preservation of important biological specimens. We are concerned, however, about NSF’s proposal to change the Collections in Support of Biological Research (CSBR) program from an annual to biennial competition. This change would effectively cut by one-half support for preservation and care of our Nation’s biological sciences collections. In addition to preserving important biological specimens for ongoing and future research, CSBR awards are an important source of revenue for American-owned companies that specialize in cabinetry and supplies used by museums and universities. CSBR awards also directly employ researchers and curators and are used to train the next generation of biological scientists. Given the current financial strain at many museums and universities, CSBR funding is a critical lifeline that helps to ensure proper curation of specimens. We urge the Congress to restore the proposed funding cut of \$4 million and to encourage other NSF directorates to join with BIO in providing research support to our Nation’s natural science collections, which include mineral, water and ice, anthropological artifacts, and biological specimens.

#### *Other Programs*

The fiscal year 2013 budget would continue efforts to better understand biological diversity. Funding is included for the Dimensions of Biodiversity program, which supports cross-disciplinary research to describe and understand the scope and role of life on Earth. Despite centuries of discovery, most of our planet’s biodiversity remains unknown. This lack of knowledge is particularly troubling given the rapid and permanent loss of global biodiversity. Better understanding of life on Earth will help us to protect valuable ecosystem services and make new bio-based discoveries in the realms of food, fiber, fuel, pharmaceuticals, and bio-inspired innovation.

The Directorate for Geosciences (GEO) also supports research and student training opportunities in natural history collections. GEO supports cross-disciplinary research on the interactions between Earth’s living and nonliving systems—research that has important implications for our understanding of water and natural resource management, climate change, and biodiversity.

Within the Directorate for Education and Human Resources, the Advancing Informal STEM Learning program is furthering our understanding of informal science, technology, engineering, and mathematics (STEM) education. This program, formerly called the Informal Science Education program, supports projects that create tools and resources for STEM educators working outside traditional classrooms, such as at museums, botanic gardens, and zoos. The program also builds professional capacity for research and development. We urge the Congress to restore the proposed 22-percent cut to the program.

#### CONCLUSION

Continued investments in scientific collections and the biological sciences are critical. The budget request for NSF will help spur economic growth and innovation and continue to build scientific capacity at a time when our Nation is at risk of being outpaced by our global competitors. Please support an investment of at least \$7.373 billion for NSF for fiscal year 2013.

Thank you for your thoughtful consideration of this request and for your prior support of the National Science Foundation.

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#### PREPARED STATEMENT OF THE NORTHWEST INDIAN FISHERIES COMMISSION

Mr. Chairman and members of the subcommittee, thank you for the opportunity to provide testimony on the Department of Commerce fiscal year 2013 appropriations. My name is Billy Frank, and I am the chairman of the Northwest Indian

Fisheries Commission (NWIFC). The NWIFC is comprised of the 20 tribes that are party to the *United States vs. Washington*<sup>1</sup> (*U.S. vs. Washington*). We support funding for National Oceanic and Atmospheric Administration (NOAA)—National Marine Fisheries Service (NMFS) and the National Ocean Service (NOS). We are identifying four specific funding needs:

SUMMARY OF FISCAL YEAR 2013 APPROPRIATIONS REQUEST

NWIFC specific funding requests:

- \$110 million for the Pacific Coastal Salmon Recovery Fund (NOAA/NMFS);
- \$20 million for the Regional Ocean Partnership Grants Program (NOAA/NOS);
- \$3 million for the Pacific Salmon Treaty Chinook Annex (NOAA/NMFS); and
- \$16 million for the Mitchell Act Hatchery Program (NOAA/NMFS).

The NWIFC also supports the budget priorities and funding requests of the National Congress of American Indians.

We also want to bring to your attention an initiative that we have been pursuing—our Treaty Rights at Risk Initiative. The treaty rights of the western Washington treaty tribes are in imminent danger. Specifically, the treaty-reserved right to harvest salmon is at risk. The danger exists due to diminishing salmon populations, which limits or eliminates our right to harvest. All this is due to the inability to restore salmon habitat faster than it is being destroyed. We have called on Federal Government to implement their fiduciary duties by better protecting salmon habitat. The Federal Government has a trust responsibility to the tribes and the tribes' treaties are constitutionally protected. By fulfilling these Federal obligations and implementing our requested changes, I have no doubt that we will recover the salmon populations. It is imperative that we are successful with this initiative as salmon are critical to the tribal cultures, traditions and their economies.

When our tribal ancestors signed treaties, ceding millions of acres of land to the United States Government, they reserved fishing, hunting, and gathering rights in all traditional areas. These constitutionally protected treaties, the Federal trust responsibility and extensive case law, including the *United States vs. Washington* decision (1974), all consistently support the role of tribes as natural resource managers, both on and off reservation. In Washington State, these provisions have developed into a successful co-management process between the Federal, State, and tribal governments. These arrangements have helped us deal with many problems, but still require additional support to meet the many new challenges like air and water pollution and climate change.

Of particular interest to us is the Pacific Coastal Salmon Recovery Fund. This is a critical funding source in restoring salmon habitat. This funding source continues to assist tribes in the implementation of salmon recovery plans and moves us in the direction of achieving the recovery goals, which is a direct request in our Treaty Rights at Risk initiative. We also appreciate a number of the National Ocean Policy initiatives that support key Federal, state and tribal partnerships. Our specific requests are further described below.

*Justification of Requests*

*\$110 Million for the Pacific Coastal Salmon Recovery Fund*

The Pacific Coastal Salmon Recovery Fund (PCSRF) is a multi-state, multi-tribe program established by the Congress in fiscal year 2000 with a primary goal to help recover wild salmon throughout the Pacific Northwest and Alaska. The PCSRF seeks to aid the conservation, restoration, and sustainability of Pacific salmon and their habitats by financially supporting and leveraging local and regional efforts. Recognizing the need for flexibility among tribes and the States to respond to salmon recovery priorities in their watersheds, the Congress initially provided funds for salmon habitat restoration, salmon stock enhancement, salmon research, and implementation of the 1999 Pacific Salmon Treaty Agreement between the United States and Canada. PCSRF is making a significant contribution to the recovery of wild salmon throughout the region.

The tribes' overall goal in the PCSRF program is to restore wild salmon populations. The key tribal objective is to protect and restore important habitat that promotes the recovery of Endangered Species Act (ESA) listed species and other salmon populations in Puget Sound and along the Washington coast that are essential for western Washington tribes to exercise their treaty-reserved fishing rights consistent

<sup>1</sup>*United States vs. Washington*, Boldt Decision (1974) reaffirmed Western Washington Tribes' treaty fishing rights.

with *U.S. vs. Washington* and *Hoh vs. Baldrige*.<sup>2</sup> These funds will also support policy and technical capacities within tribal resource management departments to plan, implement, and monitor recovery activities.

It is for these reasons that the tribes strongly support the Pacific Coastal Salmon Recovery Fund. The tribes have used these funds to support the scientific salmon recovery approach that makes this program so unique and important. Related to this scientific approach has been the tribal leadership and effort which has developed and implemented the ESA-listed Puget Sound Chinook Recovery Plan approved by NOAA.

Unfortunately, the PCSRF monies have decreased over the past decade from the fiscal year 2002 amount of \$110 million. Restoration of this line item in fiscal year 2013 to the \$110 million level will support the original intent of the Congress and enable the Federal Government to fulfill its obligations to salmon recovery and the treaty fishing rights of the tribes.

*\$20 Million for the Regional Ocean Partnership Grants Program*

The Hoh Tribe, Makah Tribe, Quileute Tribe, and the Quinault Indian Nation have deep connections to the marine resources off the coast of Washington. They have pioneered cooperative partnerships with the State of Washington and the Federal Government in an effort to advance the management practices in the coastal waters. However, to have an effective partnership, the tribes, and their partners need additional funding.

The four tribes, the State of Washington and NOAA's NOS, through the Marine Sanctuary Program, have formed the Intergovernmental Policy Council (IPC), which is intended to strengthen management partnerships through coordination and focus of work efforts. Through this partnership, the entities hope to maximize resource protection and management, while respecting existing jurisdictional and management authorities. In addition to this partnership with the Marine Sanctuary Program, the four tribes have proposed a mechanism by which they can effectively engage with the West Coast Governors' Agreement for Ocean Health to create a regional ocean planning group for the west coast that is representative of the States and sovereign tribal governments with an interest in the ocean.

The four coastal tribes and the State also wish to engage in an ocean monitoring and research initiative to support and transition into an ecosystem-based fisheries management plan for the Washington coast. This tribal-State effort would be in collaboration with NOAA and consistent with regional priorities identified by a regional planning body. Effective management of the ocean ecosystem and its associated resources requires the development of baseline information against which changes can be measured. This initiative will expand on and complement existing physical and biological databases to enhance ecosystem-based management capabilities. In turn, this will support ongoing efforts by the State and tribes to become more actively engaged in the management of offshore fishery resources.

For the tribes to participate in this regional ocean planning body, and for the tribes and State to conduct an ocean monitoring and research initiative off the Washington coast, they will need funding to support this effort. The Regional Ocean Partnership Grants program, within the National Ocean Service Coastal Management account, would be an ideal program to support tribal participation with the West Coast Governors' Agreement to address ocean governance and coastal/marine spatial planning issues.

In addition, the economic value associated with effective marine resource protection is huge. Not only are marine areas crucial for our natural resources and those that use them—they are bridges of commerce between nations and continents. Healthy oceans are essential if we value stable climates that will sustain our economies and our lives. Tribes must be partners in the efforts to research, clean up, and restore the environment in order to deal with identified problems.

*\$3 Million for the Pacific Salmon Treaty 2008 Chinook Annex*

Adult salmon returning to most western Washington streams migrate through United States and Canadian waters and are harvested by fisherman from both countries. For years, there were no restrictions on the interception of returning salmon by fishermen of neighboring countries.

In 1985, after two decades of discussions, the Pacific Salmon Treaty (PST) was created through the cooperative efforts of tribal, State, United States and Canadian governments, and sport and commercial fishing interests. The Pacific Salmon Com-

<sup>2</sup> *Hoh vs. Baldrige*—A Federal court ruling that required fisheries management on a river-by-river basis.

mission (PSC) was created by the United States and Canada to implement the treaty, which was updated in 1999, and most recently in 2008.

The 2008 update of the treaty gave additional protection to weak runs of Chinook salmon returning to Puget Sound rivers. The update provides compensation to Alaskan fishermen for lost fishing opportunities, while also funding habitat restoration in the Puget Sound region.

The PSC establishes fishery regimes, develops management recommendations, assesses each country's performance and compliance with the treaty, and is the countries' forum to reach agreement on mutual fisheries issues. As co-managers of the fishery resources in western Washington, tribal participation in implementing the PST is critical to achieve the goals of the treaty to protect, share, and restore salmon resources.

We support the fiscal year 2013 NOAA fisheries budget which includes \$3 million to implement the 2008 Pacific Salmon Treaty Chinook Annex. Specifically, the funds would be used for Coded-Wire-Tag Program Improvements (\$1.5 million) and Puget Sound Critical Stocks Augmentation (\$1.5 million).

*\$16 Million for the Mitchell Act Hatchery Program*

Salmon produced by the Mitchell Act hatcheries on the lower Columbia River are critically important in that they provide significant harvest opportunities for both Indian and non-Indian fisheries off the coast of Washington. This hatchery production is intended to mitigate for the lost production caused by the hydropower dam system on the Columbia River. This hatchery production is also important in that it dampens the impact of Canadian fisheries under the terms of the PST Chinook Annex on Puget Sound and coastal stocks. This funding provides for the operations of this important hatchery program and is required to mitigate for the Federal hydropower system on the Columbia River.

OUR MESSAGE

We generally support the administration's fiscal year 2013 budget with the changes noted above. The tribes strive to implement their co-management authority and responsibility through cooperative and collaborative relationships with the State and local communities. The work the tribes do benefits all the citizens of the State of Washington, the region, and the Nation. But the increasing challenges I have described and the growing demand for our participation in natural resource/environmental management requires increased investments of time, energy, and funding.

We are sensitive to the budget challenges that the Congress faces. Still, we urge you to increase the allocation and appropriations that can support priority ecosystem management initiatives. For the sake of sustainable health, economies, and the natural heritage of this resource, it is critically important for the Congress and the Federal Government to do even more to coordinate their efforts with State and tribal governments.

CONCLUSION

We are facing many environmental and natural resource management challenges in the Pacific Northwest, caused by human population expansion and urban sprawl, increased pollution problems ranging from storm water runoff to de-oxygenated or "dead" areas in the Hood Canal, parts of Puget Sound and in the Pacific Ocean. The pathway to the future is clear to us. The Federal, State, and tribal governments must strengthen our common bond and move forward with the determination and vigor it will take to preserve our heritage.

Western Washington tribes are leaders in protecting and sustaining our natural resources. The tribes possess the legal authority, technical and policy expertise, and effectively manage programs to confront the challenges that face our region and Nation. The activities and functions we perform also benefit the entire northwest region.

The tribes are strategically located in each of the major watersheds, and no other group of people is more knowledgeable about the natural resources. No one else so deeply depends on the resources for their cultural, spiritual, and economic survival. Tribes seize every opportunity to coordinate with other governments and nongovernmental entities, to avoid duplication, maximize positive impacts, and emphasize the application of ecosystem management. We continue to participate in resource recovery and habitat restoration on an equal level with the State of Washington and the Federal Government because we understand the great value of such cooperation.

Together, we must focus on the needs of our children, with an eye on the lessons of the past. We ask for the Congress to continue to support our efforts to protect



and restore our great natural heritage and support our funding requests. Thank you.

PREPARED STATEMENT OF THE NSF TASK FORCE OF THE ASME TECHNICAL COMMUNITIES—KNOWLEDGE AND COMMUNITY SECTOR

INTRODUCTION TO THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS

Founded in 1880 as the American Society of Mechanical Engineers (ASME), ASME is a not-for-profit professional organization that enables collaboration, knowledge sharing, and skills development across all engineering disciplines, while promoting the vital role of the engineer in society. ASME codes and standards, publications, conferences, continuing education, and professional development programs provide a foundation for advancing technical knowledge and a safer world. ASME conducts one of the world's largest technical publishing operations, holds more than 30 technical conferences and 200 professional development courses each year, and sets some 600 industrial and manufacturing standards.

NATIONAL SCIENCE FOUNDATION FISCAL YEAR 2013 BUDGET REQUEST OVERVIEW

The National Science Foundation (NSF) Task Force of ASME's Knowledge & Community Sector is pleased to comment on NSF's fiscal year 2013 budget request, in support of this year's proposed funding level of \$7.37 billion for NSF.

With its commitment to sponsoring broad-based, cross-cutting programs that expand the boundaries of science and engineering, the NSF is vital in guiding the Nation's nondefense-related research and education. As acknowledged by the administration and the Congress, for the United States to remain globally competitive, prosperous, and secure, the Nation must support transformative, fundamental research that fosters invention and leads to ground-breaking societal advances. Such a paradigm produces a high-tech workforce, stimulates economic growth, addresses critical national challenges, and sustains our Nation's standing as a global leader.

The total fiscal year 2013 NSF budget request is \$7.37 billion, representing an increase of 4.8 percent more than the \$7.03 billion estimate for NSF in fiscal year 2012. While the present budget request still places the NSF far behind the goals of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (America COMPETES) Act, the NSF Task Force feels this is a responsible budget given the current fiscal environment.

Research and Related Activities comprises the major portion of the total NSF request at \$5,983 billion, a 5.2-percent increase more than the fiscal year 2012 level. All of NSF's research directorates receive notable increases in fiscal year 2013. These increases should help the Directorates to recover from the post-2004 NSF budget cuts but would still not bring total NSF funding to its all-time high 2004 level (in fiscal year 2012 adjusted dollars). The resources for the Engineering Directorate (ENG) increase by 6.1 percent more than the fiscal year 2012 level to \$876.3 million, of which \$165.2 million is budgeted through mandate for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs that ENG administers for all of NSF.

ENG comprises the disciplinary-area divisions of Chemical, Bioengineering, Environmental, and Transport Systems, up 4.7 percent to \$179.4 million; Civil, Mechanical and Manufacturing Innovation (CMMI), up 6.6 percent to \$217 million; and Electrical, Communications and Cyber Systems, up 7.1 percent to \$114.3 million. Industrial Innovation and Partnerships increases 8.7 percent to \$210.3 million; Emerging Frontiers in Research and Innovation increases 3.2 percent to \$32 million; and Engineering Education and Centers increases 2.7 percent to \$123.27 million.

NSF will continue to support research and education efforts related to broad, foundation-wide investments. A share of the ENG budget (allocated from the constituent divisions), will contribute to these initiatives. The following key activities receive increases:

- Faculty early career development (up 4.9 percent to \$216 million);
- Graduate Research Fellowships (GRF) (up 22.6 percent to \$243 million); and
- Research at the Interface of Biological, Math, and Physical Sciences (up 50.9 percent to \$30 million).

Notable reductions include:

- NSF's Climate Change Research program (a 37.4-percent cut to \$6 million), and
- the Networking and Information Technology Research and Development (R&D) program (a 6-percent cut to \$1,207.2 million).

NSF-wide funding for the National Nanotechnology Initiative increases by 6.3 percent to \$434.9 million for fiscal year 2013. In another agency-wide technology pro-

gram, the administration has proposed significant new funding for a cross-cutting advanced manufacturing initiative entitled Cyber-enabled Materials, Manufacturing, and Smart Systems (CEMMSS), totaling \$257 million in fiscal year 2013, an increase of 80.9 percent from roughly \$142 million in fiscal year 2012. Funding for CEMMSS includes \$20.8 million in NSF funding for the National Robotics Initiative, which partners with National Aeronautics and Space Administration, National Institutes of Health (NIH), and United States Department of Agriculture to promote U.S. leadership and education aimed at next generation robotics.

Another initiative which the Task Force views as critical to re-establishing U.S. leadership in clean-energy technology is the Science, Engineering, and Education Sustainability (SEES) program. SEES, proposed for a 29.2-percent increase to \$203 million in fiscal year 2013, will integrate NSF's climate, energy, and engineering programs to increase U.S. energy independence, enhance environmental stewardship and reduce energy use and carbon intensity, while generating continued economic growth.

THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS-NATIONAL SCIENCE  
FOUNDATION TASK FORCE POSITION

AFFIRMATION AND ENDORSEMENT

The ASME NSF Task Force highly endorses NSF's crucial function in directing basic research and integrated education programs that keep America at the vanguard of science, engineering, and technology. NSF possesses an exceptional record of comprehensive and flexible support of a breadth of research, from "curiosity-driven" science to targeted initiatives. This achievement has been made possible via strict adherence to the independent peer-review process for merit-based awards. The proposed increases under the President's fiscal year 2013 budget should allow NSF to properly sustain and expand these efforts and commitments, advancing discovery and learning, spurring innovation, and honing the Nation's competitive edge.

The fiscal year 2013 budget request represents a 4.8-percent increase more than fiscal year 2012 funding. Almost all of the total increase for NSF is in R&D activity funding, totaling \$5.98 billion, an increase of 5.6 percent more than fiscal year 2012 funding. Sufficient investment in fundamental science and engineering research, that involves both established and emerging areas, is essential in recognizing and nurturing innovation, in preparing the next generation of scientific talent and leaders, and in producing the products, processes, and services that improve health, living conditions, environmental quality, energy conservation, and national security for all Americans.

Overall, the Task Force also supports and commends activities within ENG. NSF's support of "fundamental research that can contribute to addressing national challenges" is exemplified within ENG. It is important to emphasize that it is through such fundamental science and engineering investment that the next generation technologies are spawned. Examples of successes emanating from ENG include using a technique of catalytic fast pyrolysis in a fluidized bed to make green gasoline from sawdust and other plant materials. Researchers have designed snake robots with sensor-based exploration that maneuver in three dimensions and navigate all manners of terrain, building a map to establish their location; current applications range from search and rescue to minimally invasive heart surgery to archaeological exploration. Researchers have developed a new material, with a low-temperature nonmagnetic phase and a strongly magnetic high-temperature phase that is capable of converting heat into electricity, with implications in revolutionizing power plant technology.

NSF leads the U.S. nanotechnology research effort, and ENG is the focal point within NSF for this key national research endeavor. ASME has strongly supported the National Nanotechnology Initiative (NNI) since its inception as an NSF investment area in fiscal year 2000. The administration has requested \$434.9 million for the NNI in fiscal year 2013, a 6.3-percent increase. The Task Force strongly supports this funding, particularly for investments in activities that will increase research in two key areas—nanomanufacturing and environmental health and safety.

Finally, ASME continues to support NSF's vision of "a nation that capitalizes on new concepts in science and engineering and provides global leadership in advancing research and education." Thus, ASME commends the President's expansion of the Faculty Early Career Development and the Graduate Research Fellowships programs. Funding for the Faculty Early Career Development awards will support exceptionally promising college and university junior faculty who are most likely to become the academic leaders of the 21st century. The fiscal year 2013 request provides substantial increases for some of NSF's flagship graduate fellowship and traineeship programs, but does not universally increase investments:

- \$243 million is provided for the GRF program (an increase of 22.6 percent);
- \$52 million (a reduction of 13.6 percent) for the Integrative Graduate Education and Research Traineeship Program; and
- \$27 million for the Graduate Science, Technology, Engineering, and Mathematics (STEM) Fellowships in K–12 Education program (a reduction of 0.2 percent).

NSF also supports the Research Experiences for Undergraduates program at \$68 million (an increase of 3.7 percent), the Research Experiences for Teachers program at \$5 million (–21.6 percent), and the Research in Undergraduate Institutions program at \$40 million, (the same level as last year).

#### QUESTIONS AND CONCERNS

ASME’s key questions and concerns arising from the fiscal year 2013 budget request center on:

- the need for sustainable funding for NSF;
- low-funding success rates for new grants, and low funding levels for existing grants;
- funding ranking for ENG with respect to other Directorates within NSF; and
- the need for increased funding for core disciplinary research within ENG.

NSF is the only Federal agency devoted “to the support of basic research and education across all fields of science and engineering”. While comprising only a small percentage of the total Federal budget for R&D, NSF provides 22 percent of the Federal support given to academic institutions for basic research overall, or 61 percent when medical research supported by the NIH is excluded. Moreover, while NSF does not directly support medical research, its investments do provide the technologies in diagnosis, medicine, pharmaceutical manufacturing, and drug delivery that are essential for the medical sciences and related industries. Given recent appropriations to provide NSF with budget increase despite the long-term fiscal challenges posed by our national debt, the ASME NSF Task Force lauds the Congress and the administration for their recognition of the unique role that NSF plays in the scientific enterprise, and encourages them to provide sustainable funding for NSF in fiscal year 2013 for the future prosperity of our Nation.

Although the funding success rate for research grants at NSF has increased over the past few years, it is still well less than the 30-percent level of the late 1990s, a trend projected to continue in fiscal year 2013. The 2011 funding success rate is estimated at 22 percent, evincing that budget increase of 1.7 percent in fiscal year 2012 and the slated budget increase of 4.8 percent for fiscal year 2013 would still prevent a large number of excellent, meritorious proposals from being funded. Nonetheless, even maintaining current grant size and duration is not enough. An extended period of constant grant sizes has diminished buying power for grants due to inflationary effects, thus limiting the ability of grant recipients to adequately support research and student development. Note that the bulk of the grants are budgeted for graduate student stipend and tuition. Noteworthy, ENG has a funding success rate for research grants of 5 percent less than the average for other NSF directorates (ENG achieved a 17 percent success rate versus approximately 22 percent for NSF-wide in 2011). Moreover, ENG is also reduced its average annualized award size to \$110,000 in fiscal year 2011, down more than \$6,500 from the fiscal year 2010 level.

ENG is the single largest source of Federal funding for university-based, fundamental engineering research—providing 45 percent of the total Federal support in this area. However, ENG (less SBIR/STTR) is still only fourth in total funding (at \$711.1 million) of the six Directorates within NSF, despite receiving an increase of 5.7 percent in the fiscal year 2012 (excluding SBIR/STTR). Our Nation’s long-standing global prominence in technological innovation may be jeopardized if such investments in basic engineering research and education are hindered by dearth of Federal funding in engineering.

The total funding for nonpriority-area core disciplinary research, from which new priority areas and even new disciplines are often engendered, within ENG should still be scrutinized. Funding for broad, Directorate-wide priority areas (e.g., Cyber-enabled Materials, Manufacturing, and Smart Systems; Clean-Energy Technology; and National Nanotechnology Initiative) and the SBIR/STTR program within ENG constitute almost one-half of the budget request for ENG. The Task Force does not advocate for the redistribution of monies from investment priority-areas into nonpriority core areas, but rather provide significant increases for completely flexible core funds in order to develop the creative and novel ideas that feed the comprehensive fundamental science, engineering, and technology knowledge base, which serves to advance this Nation’s health, prosperity, and welfare, and security.

## CONCLUSION

The ASME NSF Task Force urges the Congress to support the administration's request at a minimum of \$7.37 billion for fiscal year 2013, and enthusiastically supports the NSF's strategic plan of "empower the Nation through discovery and innovation." We commend the Congress and the administration for their recent support for NSF in the fiscal year 2012 appropriations process, but remain concerned that inadequate funding will impede those pursuing research oriented careers in STEM disciplines.

We are further concerned the goals of the America COMPETES Act have largely fallen off of the national agenda. U.S. investments in science and technology have consistently paid back into the economy—generating new jobs and new industries—far more than taxpayers have invested. The lack of focus on scientific and technological competitiveness is particularly worrisome for America's future global competitiveness given the continued strong growth in R&D investments around the world. The Congress should work to fulfill the goals of the America COMPETES Act in order to stimulate our economy with the fruits born from science and technology. Sustained yearly increases in the NSF's budget are needed for both core disciplinary research and integrated education. Increasing award duration would promote a more stable and productive environment for learning and discovery. Longer time-tables would also provide researchers with opportunities to deliver expanded education and research experiences to students. We encourage the Congress to make available these needed resources for NSF in fiscal year 2013.

## PREPARED STATEMENT OF THE OCEAN CONSERVANCY

Thank you for this opportunity to provide Ocean Conservancy's recommendations for fiscal year 2013 funding for National Oceanic and Atmospheric Administration (NOAA). We urge the Congress to provide an overall funding level of \$5.3 billion for NOAA in order to fully fund the request for NOAA's satellite procurements and restore overall funding for ocean and coastal programs to fiscal year 2010 levels. Within that total we recommend the following funding levels for the following specific programs:

[In millions of dollars]

Account, program, or activity	Fiscal year 2012 enacted	Fiscal year 2013 President's budget	Fiscal year 2013 recommended level
Operations research and facilities:			
National Ocean Service:			
Regional ocean partnerships .....	3.5	4.0	10.0
Marine debris .....	4.60	<sup>1</sup> 3.40	5.25
National Marine Fisheries Service:			
Expand annual stock assessments .....	63.5	68.6	68.6
Fisheries statistics .....	23.1	23.5	24.4
Office of Oceanic and Atmospheric Research:			
Integrated ocean acidification .....	6.2	6.4	11.6
Program Support: Office of Marine and Aviation Operations .....	182.9	196.2	196.2
<b>TOTAL, NOAA .....</b>	<b>4,964.0</b>	<b>5,133.0</b>	<b>5,300.0</b>

<sup>1</sup> Proposed funding for Marine Debris in fiscal year 2013 is unclear as NOAA has moved the Marine Debris program line into the Habitat Conservation and Restoration and merged it with several other programs.

Ocean Conservancy has worked for nearly 40 years to address ocean threats through sound, practical policies that protect our ocean and improve our lives. We recognize that real leadership means real cooperation—between governments, businesses, scientists, policymakers, conservation organizations, and citizens. Our focus is on creating concrete solutions that lead to lasting change—so we can benefit from the ocean for generations to come.

We simply cannot afford the underfunding of NOAA's ocean and coastal programs. NOAA's mission in protecting, restoring, and managing our oceans and coasts is vitally important not only to our oceans and coasts, but also to our coastal and national economies. In 2009, according to the National Ocean Economics Program, coastal tourism and recreation contributed more than \$61 billion to the Gross Domestic Product and accounted for more than 1.8 million jobs. Covering two-thirds of Earth's surface, the ocean is home to 97 percent of all life. Even the air we

breathe is connected to a healthy ocean—more than one-half of the oxygen in the atmosphere is generated by ocean-dwelling organisms.

While we recognize these are tough fiscal times, and the Congress is trimming Government budgets across-the-board, NOAA's ocean programs have been particularly hard-hit with a nearly 14-percent reduction since 2010. With satellite procurement costs continuing to grow, we urge the Congress to maintain a balanced portfolio on investments across NOAA's missions. Americans shouldn't have to choose between forecasting the weather and protecting our ocean. We need both.

We recommend a total funding level of \$5.3 billion for NOAA. This funding supports the President's request for the Procurement, Acquisition, and Construction account, while restoring funding for the Operations Research and Facilities account to fiscal year 2010 funding levels. Providing the resources needed to make smart choices for a healthy ocean will not just benefit those who live and work along the coast, but the American economy and environment as a whole.

Within the recommended funding of the Operations, Research, and Facilities account, Ocean Conservancy would like to highlight the following as top priorities for robust funding:

*Investments in Fisheries Science and Information*

*Expand Annual Stock Assessments, \$68.8 million.*—Stock assessments provide critically needed resources for fisheries managers to assess priority fish stocks and implement the requirement for annual catch limits (ACLs). The survey and monitoring and stock assessment activities funded under this line give fishery managers greater confidence that their ACLs will avoid overfishing while providing optimal fishing opportunities. Because the information provided by stock assessments is so vital to the near-term implementation of ACLs and long-term goals for sustainable management of U.S. fisheries, increased funding for stock assessments should remain among the highest priorities in fiscal year 2013 and beyond. We have turned the corner on ending overfishing and the information provided by stock assessments is needed to sustain the progress we have made and to continue to improve fisheries management for the long-term health of fish and fishermen.

*Fisheries Statistics: Marine Recreational Fisheries Monitoring, \$24.4 million.*—Despite their often sizeable economic and biological impacts, much less data are collected from recreational saltwater fisheries than commercial fisheries due to the sheer number of participants and limited sampling of anglers' catches. Improved sampling and timelier reporting of catch data are needed for successful management of marine recreational fisheries. NOAA has recently begun to implement the new Marine Recreational Information Program (MRIP) with the goal of providing better regional monitoring of recreational fishing participation, catches, landings, and releases of finfish species in marine waters and estuaries for all 50 States and the U.S. territories and Commonwealths. Since its inception in 2008, MRIP funding has increased to expand the program's capability, but significant additional funding is still needed to provide more frequent and timely data for more effective in season management of recreational fisheries. An increase of \$1.3 million more than the fiscal year 2012 enacted level is needed for MRIP for a funding level of \$24.4 million for Fisheries Statistics in fiscal year 2013.

*Office of Marine and Aviation Operations Operations and Maintenance \$196.2 million.*—Base funding for NOAA's Office of Marine and Aviation Operations (OMAO) supports a fleet of 10 Fishery Research Vessels whose primary mission is to provide baseline information on fish populations that is critical to the development and regular updating of fishery stock assessments for the catch-setting process. More than 80 percent of stock assessments for species rely on this data. In recent years, however, rising operating costs (largely attributable to rising fuel costs) and budget constraints have sharply reduced the base-funded days at sea (DAS) for NOAA's fleet. The number of base-funded DAS for NOAA's fleet declined 40 percent between 2006 and 2011 forcing NMFS to spend its program funds to "buy back" days at sea not covered by OMAO in order to maintain its regularly scheduled surveys and collect data that is needed to set appropriate catch limits. In order to meet the number of DAS needed to collect the data required by managers, we support the President's budget request of \$196.2 million.

*Regional Ocean Partnership Grants, \$10 million.*—The Regional Ocean Partnership (ROP) grants program provides competitively awarded funds to projects that support regional priorities for ocean and coastal management and science. Regional approaches continue to be the most effective and efficient way to address ocean management challenges. Dozens of coastal Governors have come together voluntarily to establish ROPs that bring together State and Federal agencies, tribes, local governments, and stakeholders to tackle ocean and coastal management issues of common concern, such as pollution, habitat restoration, and siting offshore energy.

While priorities, structures, and methods may differ, these partnerships are collectively working toward an improved ocean environment and a stronger ocean-related economy for the Nation. Competitively awarded grants for ROPs ensure that ocean management is a State-driven process where priorities are determined by actual, on-the-ground needs. Without these competitive grant funds, States and their partnerships will be less able to assert local and regional management needs, and their ability to leverage the Federal Government's expertise and capacity will be weakened.

While we greatly appreciate the President's budget request for \$4 million for ROP grants, the reality is that \$4 million spread across the entire Nation's coastal regions falls far short of what State partnerships actually need. Without this increase, it is possible that some regions and regional entities may receive either no funding or only very limited funding. Increased Federal support for ROPs—which represent every coastal and Great Lakes State in the continental United States—will ensure that funding will reach more regions and strengthen more States' ability to foster sustainable use of our oceans, coasts, and Great Lakes. For these reasons, we request that the ROP Grants line-item within NOAA's National Ocean Service (NOS) be increased to \$10 million.

*Marine Debris, \$5.25 million.*—Marine debris has become one of the pervasive pollution problems facing the world's oceans, coasts, and waterways. Research has demonstrated that persistent debris has serious effects on the marine environment, wildlife and the economy. Marine debris in its various forms including derelict fishing gear and plastics, causes wildlife entanglement, destruction of habitat, and ghost fishing. It also presents navigational hazards, causes vessel damage, and pollutes coastal areas. The problem of marine debris has been growing over the past several decades and natural disasters such as the March 2011 Japanese tsunami tragedy can exacerbate an already challenging issue. Trash travels and research indicates that tsunami debris could impact the Northwestern Hawaiian Islands in the spring of 2012 and the west coast of the United States in 2013.

While the quantity of marine debris in our ocean has greatly increased, funding for NOAA's Marine Debris Program has remained well less than the authorized level of \$10 million. We were pleased to see an additional \$600,000 for marine debris removal in 2012, but additional resources are needed to ensure NOAA has the capacity to monitor and respond to the impacts of debris from the tsunami and other sources. In order to sustain current programs and allow NOAA the capacity to evaluate, track and clean up the debris from the tsunami which is likely to impact U.S. shores, for fiscal year 2013 we request \$5.75 million, \$750,000 more than fiscal year 2012 funding levels.

In addition, the administration has proposed moving the Marine Debris Program out of the NOS and into the National Marine Fishery Service's (NMFS) Habitat Conservation and Restoration Program. We have significant concerns with this proposal. When the Congress passed the Marine Debris Act of 2006, the Marine Debris Program was deliberately placed within NOS. The program's role includes conducting scientific research, addressing navigational hazards, identifying the economic impacts of debris, and preparing and responding to marine debris events. If placed under the umbrella of NMFS's Habitat Conservation and Restoration Program, the effort and the scope Marine Debris Program could be restricted. Working closely with NOS's Office of Response and Restoration's (ORR) emergency division, the program has collaborated on tsunami debris response through modeling, assessment, and preparation. At a time when the potential impacts of the tsunami are unknown, it seems a close connect between ORR and the Marine Debris Program should be a priority.

*Integrated Ocean Acidification Program, \$11.6 million.*—In recent years, scientists have raised the alarm about ocean acidification—a process whereby ocean waters' absorption of carbon dioxide emissions alters marine acidity. Over the last 250 years, oceans have absorbed 530 billion tons of carbon dioxide, triggering a 30-percent increase in ocean acidity. These changes can have far-reaching consequences for marine life, including economically important species like shellfish and corals. For example, the shellfish industry in the Pacific Northwest has been devastated in recent years as more acidic waters encroached upon important oyster hatcheries, nearly wiping out several years-worth of oyster "seed".

Recognizing the dire need for better understanding of this emerging economic threat, in early 2009 the Congress passed and enacted the Federal Ocean Acidification Research and Monitoring (FOARAM) Act. Under FOARAM, the Congress instructed NOAA to establish an ocean acidification program to coordinate research, establish a monitoring program, develop adaptation strategies, and provide critical research grants to improve the understanding of ocean acidification's ecological and socioeconomic impacts. Because economic impacts like those seen in the shellfish in-

dustry are on the leading edge of what will be a growing problem, adequate funding for this line item is critical to fulfill the Congress' directives and build the scientific foundation needed to protect vulnerable industries from ocean acidification.

While the President's budget requests \$6.4 million for Integrated Ocean Acidification for fiscal year 2013, we believe that the President's fiscal year 2012 request of \$11.6 million is far more reflective of the actual on-the-ground needs. As stated in the President's fiscal year 2012 NOAA congressional budget justification, funding at the \$11.6 million level will allow NOAA to develop more cost-efficient acidification sensors for monitoring; conduct an assessment of acidification effects on commercial and recreational marine fish stocks; and create a Coral Reef Ocean Acidification Observing Network. By increasing the programmatic funding for Integrated Ocean Acidification to this level, NOAA will be able to take these concrete actions to more effectively tackle the economic, on-the-ground implications of ocean acidification and prepare more effectively for future adaptation strategies that will protect our Nation's key ocean and coastal economic assets.

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#### PREPARED STATEMENT OF THE PACIFIC STATES MARINE FISHERIES COMMISSION

The following testimony is being submitted in response to the administration's proposal to terminate funding for the Inter Jurisdictional Fisheries Act (IJFA) Grants to States, a longstanding line item account within the National Marine Fisheries Service budget. In addition to the fiscal year 2013 proposed termination, the administration has zeroed out the IJFA Grants program for fiscal year 2012 as part of its spend plan, although the Congress appropriated \$1,157,000 for this year.

Traditional funding levels for the IJFA have been roughly \$2.5 million annually. These grants serve to support the conservation and management of fish species which occur in both Federal and State waters. For the west coast, the funding is used to support conservation and management tasks not currently being undertaken by National Oceanic and Atmospheric Administration (NOAA) or the Regional Fishery Management Councils. IJFA is a dollar-for-dollar matching program. The States and the Interstate Marine Fisheries Commissions have considered this program to be a cornerstone in the Federal-State fishery management partnership. The administration's decision to terminate this program effectively nullifies this partnership.

Set forth below is an explanation of how the States of Alaska, Washington, Oregon, Idaho, California, and the Pacific States Marine Fisheries Commission (PSMFC) use IJFA matching grants. If the program funding is terminated, these activities will cease as well or NOAA will be required to allocate internal resources for their continuation.

#### USES OF INTER JURISDICTIONAL FISHERIES ACT FUNDS BY THE WEST COAST STATES AND PACIFIC STATES MARINE FISHERIES COMMISSION

Washington and Oregon use the majority of their IJFA funds for groundfish data collection and analysis activities that directly support the implementation of Pacific Coast Groundfish Fishery Management Plan.

In addition, a portion of these funds directly support the cost of yelloweye rockfish surveys using remotely operated vehicles, yellow rockfish longline surveys, and nearshore rockfish tagging projects providing the essential charter boat rental, equipment/gear, data processing, and salary for technicians involved in coastal. A portion of the funds support management of Oregon's Pink Shrimp Fishery. Ocean shrimp are an interjurisdictional fishery found on the west coast. Resource management of shrimp requires monitoring and sampling of fishery catches and logbooks. IJFA funds directly support biologists in monitoring, sampling, and management coordination of the shrimp fishery.

In California IJFA funds support the coastal pelagic species program. Pacific Sardines, Pacific Mackerel, and Jack Mackerel account for nearly 86,000 tons of commercial catch in California.

Field personnel funded by IJFA funds monitor daily landings of Pacific Sardine and Pacific Mackerel made to major commercial fish dealers and processors. Data from samples are used to determine the composition of the catch from which estimates of population size determine recommended harvest amounts for adoption by the Pacific Fishery Management Council.

Field biologist and temporary help staff are also funded by IJFA funds to participate in at-sea cruises designed to collect fishing independent information on the status of coastal pelagic species. These fishery independent data are also used as part of sock assessment efforts to determine allowable harvest levels.

In Idaho IJFA funds support field biologists in carrying out activities to determine the abundance and migratory patterns of steelhead returning to the Snake River.

This information is a critical component to setting management, harvest, and escapement levels conforming to *United States vs. Oregon* and United States-Canadian Treaty obligations.

In Alaska, IJFA funds support salmon research activities in southeast Alaska. The funds have been used to complete four subprojects including Pink and Chum Salmon stock evaluations, Coho Salmon spawning research, salmon catch sampling, and troll fishery management methods research.

IJFA funds are used by PSMFC to coordinate the Tri-State Dungeness Crab Fishery. This is the largest economic fishery in the west coast and seasons are managed on an Interjurisdictional fishery basis. Without IJFA funding of meetings and workshops would not be possible and State management of Dungeness Crab could become a Federal responsibility.

In addition PSMFC has used IJFA funds to establish a new initiative to support and encourage increased scientific and conservation for coastal cutthroat trout (CCT) throughout their geographic distribution (from California to Alaska). The effort includes nine State, Federal, tribal, and provincial partner agencies. This IJFA funded range-wide initiative is important because it helps coordinate activities for fish species that is typically underfunded. It is necessary because the trout has a complex regulatory history, for example, it is currently listed as a sensitive species by many of our partner agencies, and was listed as threatened under the Endangered Species Act (ESA). Finally, these trout hold a unique place in the angling world as it is 1 of 2 sea-going trout in Western North America. The PSMFC initiative has resulted in two technical workshops and a national symposium, a framing document that outlines the needs and broad-scale priority actions for CCT, a status assessment in collaboration with the Western Native Trout Initiative, and an ambitious and successful data gathering project.

Since 1991, IJFA funds have been used by the PSMFC to sponsor biennial west coast workshops on steelhead management. Topics for these workshops include stock status, ESA activities, life histories of steelhead, life histories and historical abundance of steelhead, and technology applications for steelhead studies. This unique forum allows steelhead managers and researchers on a coastwide basis (United States and Canada, including Alaska and Idaho) to discuss common problems and to share insights into possible solutions.

IJFA funds also support the Technical Subcommittee (TSC) of the Canada-U.S. Groundfish Committee, which has met at least annually since 1960. The purposes of the TCS are to:

- Exchange information on the status of groundfish stocks of mutual concern and coordinate, whenever possible, desirable programs of research.
- Recommend the continuance and further development of research programs having potential value as scientific basis for future management of the groundfish fishery.
- Review the scientific and technical aspects of existing or proposed management strategies and their component regulations relevant to conservation of stocks or other scientific aspects of groundfish conservation and management of mutual interest.
- Transmit approved recommendations and appropriate documentation to appropriate sectors of Canadian and U.S. governments and encourage implementation of these recommendations.

IJFA funds support PSMFC staff for habitat conservation and marine debris abatement work through participation in three primary Interjurisdictional forums:

- the Pacific Fishery Management Council's (Council) Habitat Committee;
- the West Coast Governor's Agreement on Ocean Health marine debris action coordination team; and
- the Pacific Marine Estuarine Fish Habitat Partnership.

Work regarding climate change strategies and planning for the Pacific Northwest was also pursued. IJFA project funding allowed PSMFC to play active roles in preparing for, participating in, and doing follow-work for the Council Habitat Committee and serving as the vice chair of that committee. This committee advised the Council on conservation and resource topics that influence habitat productivity. These include duties mandated by the Federal Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94-265) to comment on significant issues that affect salmon productivity. Additionally, Essential Fish Habitat, climate change and ecosystem-based fishery management and topics regarding water issues, are frequently a part of its agenda.

Since 1999 the PSMFC's Aquatic Invasive Species (AIS) Program (with the support of IJ funds) has worked to prevent and/or minimize impacts of AIS, particularly those species that affect fisheries and the habitat upon which those fisheries de-



pend. The program elements include eradication, research, monitoring, educational outreach, interjurisdictional planning, and coordination.

IJFA funds are critical and providing support for the AIS program particularly in the past 5 years as west coast steelhead and salmon waterbodies are being threatened by quagga and zebra mussels. Zebra and quagga mussels are some of the economically damaging aquatic organisms to invade the United States. The destructive powers of these prolific mollusks lies in their sheer numbers and their ability to biofoul and restrict the flow of water through intake pipes, disrupting supplies of drinking, cooling, processing, and irrigating water to the Nation's domestic infrastructure.

A quagga/zebra mussel infestation in any of these salmonbearing watersheds would be a disastrous step backward for the recovery of these imperiled species and has heightened the urgency of management initiatives to halt further range expansion.

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PREPARED STATEMENT OF REBECCA UNDERWOOD—PARENT/GUARDIAN/ADVOCATE

I wish to express my appreciation to the Senate Appropriations Committee Subcommittee on Commerce, Justice, Science, and Related Agencies for this opportunity to submit written testimony for the record of the hearing held on Wednesday, March 8, 2012, to consider fiscal year 2013 appropriations for the Department of Justice (DOJ).

As noted during Attorney General Eric Holder's testimony and subsequent questions from the subcommittee members on Wednesday, March 8, 2012, budget realities exist. Dollars are precious. The Civil Rights Division has requested additional funds to strengthen civil rights enforcement, including enforcement of the Civil Rights of Institutionalized Persons Act (CRIPA) as part of a Vulnerable People Priority Goal. I write to express my deep concern regarding DOJ activities under CRIPA/Americans with Disabilities Act (ADA)/*Olmstead* enforcement resulting in the closure of intermediate-care facilities for individuals with severe and profound developmental/intellectual disabilities against resident's choice. Federal tax dollars are currently being spent by DOJ under the guise of "civil rights enforcement" to undermine and dismantle a system of care for our most vulnerable citizens, those with severe and profound developmental/intellectual disabilities. In the process of "civil rights enforcement", DOJ, due to blatant disregard for the individual choice requirements of ADA, is overriding individual civil rights.

My interest in this issue is as the mother and co-legal guardian of our son who due to profound neurological impairment occurring at birth, has functional abilities of a 4–12-week-old infant despite his 32 chronological years. In addition to the profound neurological impairment due to subarachnoid hemorrhages, pulmonary hemorrhages impaired his respiratory functional status. He requires and receives 24/7 intensive skilled nursing care in a State-owned and -operated Medicaid-certified intermediate care facility for individuals with developmental disabilities (ICF/DD). This placement was not our only choice when we could no longer provide the intensive care our son requires, but it definitely was and continues to be the best choice for our son. He has thrived in this setting beyond our wildest expectations. Our son will never walk, talk, roll over, be able to hold his own head up, speak a word or call me "momma" or even recognize me as his mother. He is medically fragile. His care needs are intensive. He is appropriately served by a highly trained, specialized team will be difficult and extremely costly to duplicate in a smaller setting that DOJ favors.

DOJ policies and actions work to eliminate the safe homes for vulnerable people like my son. Claiming that Medicaid-certified facilities (ICFs/DD) are "isolated" and "segregated", the Civil Rights Division commences investigations aimed at closure and elimination of this option of care for our most vulnerable loved ones.

*Civil Rights Enforcement in Wisconsin*

DOJ descended upon Wisconsin to conduct "investigations" of 2 of our 3 State-owned and -operated facilities for people with developmental disabilities, including our son's facility, under authority of CRIPA. Surprisingly, a whole year passed following the "investigations" without word from DOJ as to their findings despite the fact that DOJ had committed substantial resources to wide-ranging investigations of two major facilities—investigations that supposedly met the criteria for activity commencement under CRIPA. It was later learned that one of the initial DOJ consultants had written a favorable report of the conditions within our son's facility. The report never surfaced and this consultant has never been used by the DOJ again.

DOJ then requested to return to “assess progress” since the previous visit—but with new consultants. These consultants produced the obligatory derogatory report alleging egregious and flagrant violations of residents’ civil rights. DOJ proposed—Wisconsin rejected—that the residents be transitioned out. Clearly DOJ’s goal was not merely to correct what DOJ defined as egregious and flagrant conditions and violations but to actually shut these facilities down.

Then, as now, parents and guardians were left out of the “investigations”. As one attorney from the Civil Rights Division wrote regarding the request of Wisconsin families to be consulted and involved in the investigations:

“There are many committed and commendable private organizations and individuals that have an important role in overseeing the care residents in institutions receive. However, their ‘participation’ and ‘representation’ in investigative tours is ‘inappropriate.’”

Involving the parents and legal guardians of residents was “inappropriate” in the eyes of the DOJ. Parents were denied the right by the DOJ’s Civil Rights Division to be involved in the investigations of the alleged violations of their children’s civil rights.

We were stymied for years in our attempts to learn the nature of the complaints that prompted this wide-ranging investigation. It was not complaints from residents and their families, but instead from outside sources—agencies and organizations that continue to this day to advocate against the option of Medicaid-certified and -licensed congregate care facilities.

History appears to be repeating itself in how DOJ conducts CRIPA/ADA/*Olmstead* investigations. Bolstered by advocacy organizations that are also using Federal funds to work to undermine and effect the elimination of the option of Medicaid-certified congregate care settings for our most vulnerable citizens, DOJ is now seeking additional funds for the Civil Rights Division to strengthen civil rights enforcement as part of the Vulnerable People Priority Goal.

The DOJ’s Civil Rights Division is moving fast and furious in States across the country declaring that the civil rights of vulnerable persons who reside in ICFs/DD are being violated even though the legal guardians have carefully chosen an ICF/DD setting after much careful deliberation.

Misguided DOJ ADA/*Olmstead* enforcement policies which ignore and disregard individual choice regarding residential services are affecting and harming thousands of vulnerable people with severe and profound disabilities who function as infants and toddlers despite having the chronological age of adults.

The United States Supreme Court Justices were quite clear on the issue of individual choice in the *Olmstead* decision:

“We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle to benefit from community settings . . . Nor is there any Federal requirement that community-based treatment be imposed on patients who do not desire it.”

#### *Civil Rights Enforcement in Georgia*

In October 2010, DOJ reached a settlement agreement with the State of Georgia by which all individuals with developmental disabilities are required to transition out of their Medicaid-certified facilities against their choice. Families and legal guardians were not consulted or allowed to be involved in the development of the agreement which is mandating the relocation of their vulnerable family members, individuals with the most severe and profound levels of developmental and intellectual disabilities. They are “vulnerable people.”

When the settlement agreement with the State of Georgia was announced, the Assistant Attorney General for Civil Rights referred to the agreement as a “template for *Olmstead* enforcement activities across the country”. What this said to families across the country is that DOJ intends to force the closure of all ICFs/DD and force residents out against their choice into community-based settings.

I support the option of community-based residential settings and services for those who choose and can benefit from those settings. However, forced transitions to community-based services and settings against choice, under the guise of “*Olmstead* enforcement”, are in complete opposition to the actual ruling of the United States Supreme Court in *Olmstead*.

#### *Civil Rights Enforcement in Arkansas*

Following a multiyear CRIPA/ADA civil rights investigation, Arkansas defended the Conway Human Development Center in Conway, Arkansas, at trial in Federal court in September 2010. The cost to Arkansas families and taxpayers to prevail in

court was in excess of \$4 million. The costs incurred by DOJ in this grand defeat and borne by Federal taxpayers in this misguided litigation is unknown.

Federal District Court Judge Leon Holmes, in his ruling dismissing the case, noted DOJ's complete disregard for family and guardian input:

"Most lawsuits are brought by persons who believe their rights have been violated. Not this one . . . All or nearly all of these residents have parents or guardians who have the power to assert the legal rights of their children or wards. Those parents and guardians, so far as the record shows, oppose the claims of the United States. Thus the United States [Department of Justice] is in the odd position of asserting that certain persons' rights have been and are being violated while those persons—through their parents and guardians disagree."

*Civil Rights Enforcement in Virginia*

A settlement agreement has recently been reached between the DOJ Civil Rights Division and the Commonwealth of Virginia. If this settlement agreement is accepted by the Court, closure of ICFs/DD will result. Families, not permitted an opportunity for input, have been forced to file a motion to intervene to protect their loved ones from being displaced.

In Virginia, as in Georgia and my State of Wisconsin, parents and legal guardians who expressly opposed closure were ignored. The blatant disregard by the DOJ for the choice requirements of *Olmstead* cannot be allowed to continue.

*Conclusion and Request*

In ruling in *Olmstead*, the Supreme Court Justices interpreted the ADA to require choice. Current activities of DOJ, operating out of public view and disregarding family and guardian involvement, to coerce States to cease operating programs (ICFs/DD) which provide life sustaining services for persons with lifelong, severe intellectual disabilities are not in the public interest. In light of budget realities we must ask if the best use of public dollars is the deinstitutionalization activities being carried out by the DOJ which run counter to the choice requirement of *Olmstead* which DOJ claims to be "enforcing" while displacing affected vulnerable people from their life sustaining services.

I refuse to believe that it was the intention of the Supreme Court Justices in the *Olmstead* decision that DOJ would time after time, in State after State, decide that the civil rights of each and every resident of a State-operated, Medicaid-certified ICF/DD are being violated simply because the resident or their legal representative has not chosen community-based services. What is choice if there is no choice?

I respectfully request the subcommittee to provide oversight and accountability of the devastating activities of the DOJ by which States are coerced into closing ICFs/DD, forcing vulnerable persons to be dislocated from their life-sustaining services. Please discontinue funding deinstitutionalization programs of the DOJ Civil Rights Division which, through a misguided and harmful agenda, denies choice, and is undermining and working to effect the elimination of a life sustaining option of care under the guise of "civil rights enforcement".

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PREPARED STATEMENT OF THE REGIONAL INFORMATION SHARING SYSTEMS PROGRAM

The Regional Information Sharing Systems (RISS) is a proven, trusted, and innovative program that supports local, State, Federal, and tribal criminal justice agencies in their effort to successfully resolve criminal investigations and ensure officer safety. There is no other program in existence through which officers can receive the level of support that RISS provides. Although the demand for RISS's services grows each year, the fiscal year 2012 appropriation for RISS was severely decreased from the fiscal year 2011 appropriation of \$45 million to \$27 million. RISS and law enforcement agencies nationwide have already felt the effects of this \$18 million reduction. On behalf of the hundreds of thousands of officers and public safety professionals RISS serves, we urge you to restore fiscal year 2013 RISS funding to \$45 million.

RISS has spent nearly 40 years building a valuable and cost-effective program that is used and trusted by officers and criminal justice professionals in all 50 States, the District of Columbia, U.S. territories, Australia, Canada, England, and New Zealand. RISS consists of six regional centers that tailor their services to meet the needs of their unique regions while working together on nationwide initiatives. RISS supports efforts against organized and violent crime, gang activity, drug activity, terrorism, human trafficking, identity theft, and other regional priorities, while promoting officer safety. The support provided by RISS has enabled law enforcement and public safety agencies to increase their success exponentially.

RISS offers law enforcement agencies and officers full-service delivery, from the beginning of an investigation to the ultimate prosecution and conviction of criminals. An officer can query intelligence databases, retrieve information from investigative systems, solicit assistance from research staff, utilize surveillance equipment, receive training, and use analytical staff to help prosecute criminals. Law enforcement agencies and officers rely on RISS for its diverse and far-reaching services and programs. Without access to these services, thousands of law enforcement agencies and hundreds of investigations will suffer.

RISS has been at the forefront in providing resources to enhance officer safety. More than 19,000 law enforcement officers have died serving our Nation. The RISS Officer Safety Event Deconfliction System (RISSafe) is an essential component to helping ensure that our officers are safe. RISSafe stores and maintains data on planned law enforcement events, with the goal of identifying and alerting affected agencies and officers of potential conflicts impacting law enforcement efforts. RISSafe is the only comprehensive and nationwide deconfliction system that is accessible on a 24/7/365 basis and available to all law enforcement agencies.

Since RISSafe's inception in 2008, more than 456,800 operations have been entered. Of those operations, 32.5 percent, or 148,646, have resulted in an identified conflict. Currently, 19 RISSafe Watch Centers are operational, 13 of which are operated by organizations other than RISS. These organizations have invested resources to support this critical officer safety program. Many agencies have adopted internal policies mandating the use of RISSafe. RISSafe continues to proliferate throughout the country, with demand increasing each day. It is impossible to put a cost to the number of officers RISSafe has already prevented from harm or, worse, death.

The RISS Officer Safety Web site was deployed in March 2011 and has been visited more than 13,000 times. The Web site serves as a nationwide repository for issues related to officer safety, such as concealments, hidden weapons, armed and dangerous threats, videos, special reports, and training. RISSafe and the RISS Officer Safety Web site are two important components of the U.S. Attorney General's Law Enforcement Officer Safety Initiative, along with VALOR and the Bulletproof Vest Initiative. Efforts are underway to bidirectionally interconnect the secure VALOR Web site with the RISS Officer Safety Web site. RISS also provides officer safety training and develops and distributes publications about emerging threats, such as the Sovereign Citizens Movement special research report. With more than 800,000 law enforcement officers across the country, more support to ensure their safety is essential.

RISS provides a full complement of investigative support services, including analysis, investigative and research support, equipment, training, publications development, field services support, and technical assistance. Since 2000, RISS has assisted in training more than 668,000 individuals, conducted more than 326,000 on-site visits, loaned almost 57,000 pieces of equipment, and produced more than 290,000 analytical products. These statistics show how RISS is impacting law enforcement efforts, but the real success stories come directly from agencies and officers. For example, RISS staff provided support in a child pornography case involving digital forensics analysis. The collection of pornography discovered was one of the largest, with more than 100,000 images. With RISS's help, the case led to an 18-year sentence.

On January 8, 2011, United States Representative Gabrielle Giffords hosted a "Congress on Your Corner" gathering in Tucson, Arizona, to talk with her constituents. As the event began, a gunman entered the crowd and shot Representative Giffords. The gunman turned on the crowd, killing 6 individuals and seriously wounding 12 others. The shooting was recorded on video by a store security camera. There was an urgent need to locate an audio/video analyst to clarify the still photos taken from the video surveillance to determine whether an accomplice was at large. RISS was contacted to assist in this effort. The results of the RISS analyst's work enabled law enforcement to close a potential lead, saving valuable law enforcement time and resources.

The same types of successes are happening in jurisdictions across the country. Since 2000, agencies utilizing RISS's services and resources made more than 57,360 arrests and seized more than \$942.5 million in narcotics, property, and currency. RISS is an excellent return on investment for our country. All law enforcement and public safety entities are facing tightened budgets and limited resources. RISS helps augment law enforcement efforts. A Pennsylvania police officer said, "RISS offers services and support that law enforcement cannot obtain anywhere else. Analytical products, equipment loans, and training are important tools for law enforcement. Connectivity to RISSNET is absolutely critical to solving multijurisdictional crimes."

Historically, law enforcement agencies have faced obstacles related to information sharing, communications, and technology. Many problems stemmed from the fact

that although these agencies individually held pieces of information, they lacked a mechanism to securely collect and exchange information. Consequently, law enforcement's response to criminal activity was often fragmented, duplicative, and limited. Since the inception of the RISSNET in 1997; however, many of these obstacles have been resolved. RISSNET is a secure Sensitive But Unclassified (SBU) law enforcement information sharing cloud provider. RISSNET provides access to millions of pieces of data; offers bidirectional information sharing; and connects disparate State, local, and Federal systems. Agencies can easily connect to RISSNET, securely share information and intelligence, and query multiple systems simultaneously.

Our Nation's public safety mission requires an interoperable information-sharing environment to proactively solve crimes. RISSNET is a critical component in meeting this need. RISSNET also serves as the secure communications infrastructure for other critical resources and investigative tools. Currently, 86 systems are connected or pending connection to RISSNET and more than 400 resources are available via RISSNET to authorized users; the owners of these resources rely on RISSNET for its secure infrastructure. By connecting agencies and systems to RISSNET, rather than funding the build-out of new stand-alone systems, hundreds of millions of dollars are saved and millions of data records are easily and quickly accessible by law enforcement. Examples of RISSNET resources include the RISS Criminal Intelligence Databases (RISSIntel), RISSafe, the RISS National Gang Program (RISSGang), the RISS Automated Trusted Information Exchange (ATIX), the RISSLeads Investigative Bulletin Board, the RISSLinks data-visualization and link-analysis tool, the RISS Center Web sites, and secure email.

The RISSIntel user interface provides for real-time, online federated search of 15 RISS partner intelligence databases, including State systems and CalGang, and does not require the RISSNET user to have a separate user account with the respective partner systems. In fiscal year 2011, RISSIntel contained more than 3.1 million intelligence records and users made almost 4 million inquiries. These records include individuals, organizations, and associates suspected of involvement in criminal activity, as well as locations, vehicles, weapons, and telephone numbers. The interaction between RISSafe and RISSIntel provides comprehensive officer safety event and subject deconfliction services.

RISSGang is the only comprehensive gang resource that offers a criminal intelligence database, a Web site, a secure bulletin board, and specific news and publications. The RISSGang database provides access to gang information, including suspects, organizations, weapons, photographs, and graffiti. RISSGang provides for a federated search, including CalGang. RISS is connecting other gang databases to RISSNET. RISS ATIX is a communications and information sharing capability that enables law enforcement, public safety, and private sector entities to share terrorism and homeland security information in a secure, real-time environment. RISS ATIX includes discipline-specific Web pages, a secure bulletin board, document library, and email.

RISSLeads provides authorized law enforcement officers with the ability to post information regarding cases, investigative leads, or other law enforcement issues. Authorized users are able to view and respond to posts. Connecting law enforcement officers across jurisdictional boundaries is crucial in detecting and apprehending today's mobile and sophisticated criminals.

Each RISS Center maintains a Web site to provide users with easy access to RISSIntel and other resources, such as the National Railroad Trespasser Database, the Cold Case Database, the Forensic Accounting Database, and the Pseudoephedrine Violator Tracking System. Because of demand from agencies and officers, RISS has expanded its Pawnshop Database nationwide. The number of investigative records available through these different systems exceeds 28 million.

RISSNET is 1 of 4 SBU networks participating in the Assured SBU Interoperability Initiative under the auspices of the White House and the Office of the Program Manager, Information Sharing Environment (PM-ISE). The goal is to provide simplified sign-on and access to a variety of system-to-system enhancements within an interoperable and protected SBU environment for local, State, Federal, and tribal law enforcement, regardless of agency ownership of the individual network. RISS is the only non-Federal partner providing the critical State, local, and tribal law enforcement piece essential to the Nation's information sharing environment. RISS is at the forefront in providing federated access and simplified sign-on. The Federal Bureau of Investigation Law Enforcement Online users, the Chicago Police Department users, and the Pennsylvania Justice Network users access RISSNET resources via Federated Identity.

RISS continuously seeks and is sought out by others to enable new information sharing partnerships that leverage its secure SBU information sharing capabilities. Most recently, several State Medicaid Fraud Control Units (MFCUs) began pursuing

the use of RISSNET to securely share information, strategies, best practices, lessons learned, and other information to help in their detection and prosecution efforts. Ultimately, this project has the potential to support Medicare and other healthcare fraud investigations and information sharing efforts. In addition, RISS supports the Nationwide Suspicious Activity Reporting Initiative, the National Virtual Pointer System, the National Center for Missing & Exploited Children, the National Gang Intelligence Center, the United States Secret Service, and the United States Attorneys' Offices. RISS continues to connect fusion centers to RISSNET, integrate RISS services and tools into fusion center operations, and provide training. RISS is supported by the International Association of Chiefs of Police, the National Sheriffs' Association, the National Narcotic Officers' Associations' Coalition, and the National Alliance of Gang Investigators Associations.

It is respectfully requested that the Congress restore fiscal year 2013 funding for RISS to the fiscal year 2011 amount of \$45 million so that this essential information sharing and public safety program can continue to serve our Nation. Inadequate funding and support for RISS could cost lives, hinder investigations, and impact the safety of our communities. It would be counterproductive to require local and State RISS members to self-fund match requirements, as well as to reduce the amount of Bureau of Justice Assistance discretionary funding. Agencies require more, not less, funding to fight the Nation's crime problem. RISS is unable to make up the decrease in funding that a match would cause, and it has no revenue source of its own. Cutting the RISS appropriation by requiring a match should not be imposed on the program.

RISS provides resources and capabilities to share critical information nationwide, serves as a secure platform for other criminal justice entities, and provides investigative support services that, in many cases, agencies would not otherwise receive. RISS is essential in creating a safer working environment for our Nation's law enforcement. Appropriate funding will enable RISS to continue effectively serving the criminal justice community. For additional information on the RISS Program, visit [www.riss.net](http://www.riss.net). RISS appreciates the support this committee has continuously provided to the RISS Program and is grateful to provide this testimony.

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LETTER FROM RICHARD M. WHITMAN, NATURAL RESOURCES POLICY DIRECTOR,  
OREGON GOVERNOR'S OFFICE

MARCH 20, 2012.

The Hon. BARBARA A. MIKULSKI, Chairwoman,  
*Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, United States Senate, Washington, DC.*

The Hon. KAY BAILEY HUTCHISON, Ranking Member  
*Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, United States Senate, Washington, DC.*

DEAR CHAIRWOMAN MIKULSKI AND SENATOR HUTCHISON: The Governor of Oregon is committed to working together with California and Washington to improve ocean health off the west coast. In 2008, our then Governor Kulongoski released the action plan for the West Coast Governors Alliance on Ocean Health, together with the Governors of California and Washington. As recommended by both the U.S. Commission on Ocean Policy and the Pew Oceans Commission, the action plan uses a collaborative approach to address some of our region's most pressing ocean and coastal management challenges, such as preparing coastal communities for the effects of sea level rise.

The purpose of this letter is to request support for \$10 million in the fiscal year 2013 budget for the nine regional ocean partnerships in the United States. These grants will provide essential support for the development and implementation of action plans within each region. Additionally, I request appropriation language stating that 10 percent of the total funding be divided equally to existing partnerships for operations support, and that the remaining funding broadly support the development and implementation of regional priorities as determined by the partnerships through competitive solicitations.

The alliance affirms our commitment to work together on seven priority issues:

- Ensuring clean coastal waters and beaches;
- Protecting and restoring healthy ocean and coastal habitats;
- Promoting the effective implementation of ecosystem-based management of our ocean and coastal resources;
- Reducing adverse impacts of offshore development;
- Increasing ocean awareness and literacy among our residents;

- Expanding ocean and coastal scientific information, research, and monitoring; and
- Fostering sustainable economic development throughout our diverse coastal communities.

Regional approaches can advance Federal interests in ocean management through coordination with other levels of government by providing direct resources to address the unique needs of a region, as well as integrated, efficient, and effective management of ocean resources.

The plan advances key priorities of the National Ocean Policy in areas such as water quality, ocean and coastal research and mapping, coastal pollution, and habitat protection and restoration. The West Coast Governors Alliance works closely with representatives of the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Department of the Interior to implement the regional action plan, and will continue to collaborate with the interagency Subcommittee on Integrated Management of Ocean Resources.

Our request to support funding for regional ocean partnerships in the fiscal year 2013 budget will help the region, and regional ocean partnerships throughout the United States, implement effective regional ocean governance to the benefit of coastal communities and all who benefit from healthy coasts and oceans.

Thank you for considering this request to support \$10 million in fiscal year 2013 funding for the regional ocean partnerships in the United States. This level of funding will help the West Coast Governors Alliance on Ocean Health implement its actions plan, and will improve the economic and environmental health of both the west coast and the Nation.

Sincerely,

RICHARD M. WHITMAN,  
*Natural Resources Policy Director,*  
OREGON GOVERNOR'S OFFICE.

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PREPARED STATEMENT OF THE SEA GRANT ASSOCIATION

Madam Chair and members of the subcommittee, my name is Jonathan Pennock and I am the director of the University of New Hampshire Marine Program and the New Hampshire Sea Grant College Program. I am submitting this testimony in my capacity as president of the Sea Grant Association (SGA). SGA appreciates very much the support the Congress has provided the National Sea Grant College Program over the years. Because of that support, Sea Grant has been able to deliver a number of quantifiable benefits to the residents of our ocean and coastal communities which are documented below. In that light, to continue to provide similar expected benefits to coastal residents in the future, the SGA recommends that National Oceanic and Atmospheric Administration (NOAA) be funded at the level recommended by the Friends of NOAA Coalition (\$5.3 billion) and that the National Sea Grant College Program within NOAA be funded in fiscal year 2013 at \$69 million.

Recognizing the constraints in the budget process, this amount is \$18.5 million less than the authorized level for fiscal year 2013. While it represents an increase of \$6 million more than the amount appropriated in the fiscal year 2012 appropriations act, it is consistent with guidance provided in the conference report that accompanied the fiscal year 2012 appropriation that said: "the Committee recognizes the important role the Sea Grant program plays in connecting coastal and Great Lakes communities with practical research and results, and encourages the growth of this program in future budget requests."

For more than 40 years, the National Sea Grant College program has worked to create and maintain a healthy coastal environment and economy. The Sea Grant network includes more than 30 programs based at top universities in every coastal and Great Lakes State, Puerto Rico, and Guam. The programs of the Sea Grant network work together to help citizens understand, conserve, and better utilize America's coastal, ocean and Great Lakes resources. A partnership between universities and the Federal Government's National Oceanic and Atmospheric Administration (NOAA), Sea Grant directs Federal resources to pressing problems in local communities. By drawing on the experience of more than 3,000 scientists, engineers, public outreach experts, educators and students from more than 300 institutions, Sea Grant is able to make an impact at local and State levels, and serve as a powerful national force for change.

Sea Grant invests in high-priority research, addressing issues such as population growth and development in coastal communities; preparation and response to hurricanes, coastal storms, and tsunamis; understanding our interactions with the ma-

rine environment; fish and shellfish farming; seafood safety; and fisheries management. The results of this research are shared with the public through Sea Grant's integrated outreach program, which brings together the collective expertise of on-the-ground extension agents, educators, and communications specialists. The goal is to ensure that vital research results are shared with those who need it most and in ways that are timely, relevant, and meaningful.

#### THE ECONOMIC IMPORTANCE OF THE NATION'S COASTAL COMMUNITIES

More than one-half of the Nation's population lives in coastal watershed counties and this coastal population has increased by nearly 51 million people over the past 40 years. It is expected to grow by another 10 percent in the next decade. The coastal economy contributed \$8.3 trillion to the Nation's Gross Domestic Product resulting in 66 million jobs and wages worth an estimated \$3.4 trillion (NOAA 2009). Much of this economic activity comes from commercial fishing (estimated at \$4 billion per year and 1 million jobs), recreational fishing (estimated at \$73 billion per year and supporting more than 320,000 jobs), our Nation's seaports (\$1.9 trillion worth of imports came through U.S. ports in 2010 supporting an estimated 13 million jobs), and coastal tourism (\$531 billion in 2010). Additionally, more than 50 percent of the total energy produced domestically occurred in coastal States including natural gas production, electricity generation, and oil and gas production. Coastal areas are providing opportunities for renewable energy development with projects that seek to extract energy from the movement of ocean water due to tides, currents, or waves; from the temperature differential between hot and cold ocean water; and from strong winds in offshore ocean environments.

#### SEA GRANT'S CONTRIBUTIONS TO THE ECONOMIC HEALTH OF THE NATION'S COASTAL COMMUNITIES

According to data collected for the 2-year (2009 and 2010) period by the National Sea Grant Office within NOAA, the Sea Grant program delivered the following benefits to the Nation:

- Nearly \$243 million in direct economic benefits to the Nation, which represents nearly a 4 to 1 return on the Federal investment;
- An estimated additional \$146 million in other Federal, State, and nongovernmental resources was leveraged for research, extension, and other services to support the ocean and coastal enterprise;
- 144 new businesses were created, 1,271 businesses were retained, and more than 8,100 jobs were created or retained due to Sea Grant efforts;
- 768 communities across the Nation have adopted more sustainable economic or environmental development practices and policies;
- More than 340 communities adopted hazard resiliency practices with Sea Grant assistance to make them better prepared to cope with or respond to hazardous coastal events;
- More than 5,000 individuals or businesses received new certifications in hazard analysis and critical control point handling of seafood products, improving the safety of seafood consumption by Americans across the country;
- More than 40,000 acres of degraded ecosystems were restored as a result of Sea Grant activities; and
- Sea Grant supported more than 1,700 undergraduate and more than 1,400 graduate students, and some 800,000 K–12 students were reached with information about marine and Great Lakes science and resources.

The National Sea Grant College program is one of the very few nationally competitive grant programs that can demonstrate this kind of real impact at the local, State, and national levels.

#### SEA GRANT WILL CONTINUE TO ADDRESS THE ECONOMIC AND ENVIRONMENTAL POSITION OF AMERICA'S COASTAL COMMUNITIES

Since its creation in 1966, the National Sea Grant College Program has been at the forefront of addressing economic opportunities and environmental issues facing coastal communities through its research and outreach efforts. For every Federal dollar provided for this program, between one and two additional non-Federal dollars are contributed by non-Federal entities, thus leveraging and extending the impact of the Federal investment. With additional funding and guidance from the Congress, Sea Grant could bolster its network resources and focus on preparing communities to better prepare for and recover from extreme events such as coastal storms or oils spills, or reversing the trend of working waterfront enterprise losses (such as fish harvesting/processing facilities and marinas), and advancing the coastal tourism industry in sustainable ways.



Over the next 5 years, Sea Grant will concentrate effort in four areas:

- healthy coastal ecosystems;
- sustainable coastal development;
- a safe and sustainable seafood supply; and
- hazard resilience in coastal communities.

These four interrelated focus areas emerged from the NOAA and program's strategic planning process as areas of critical importance to the health and vitality of the Nation's coastal resources and communities. They respond to issues of major importance to NOAA, are consistent with the work of the NOAA coastal program integration effort, and are topical areas in which Sea Grant has made substantial contributions in the past and is positioned to make significant contributions in the future.

In each of the four focus areas, Sea Grant has identified goals to pursue and strategies designed to take advantage of its strengths in integrated research, outreach, and education, and its established presence in coastal communities. Understanding relationships and synergies across focus areas is vital to achieving the focus area goals. Sea Grant is one of many partners working to address these complex and interrelated issues. Understanding how activities in one area can support and complement other activities, and using partnerships to accomplish shared goals, are strategies inherent to Sea Grant, and will be central to achieving the goals outlined in the NOAA and program's strategic plan.

America must use its coastal resources wisely to sustain the health and productivity of coastal communities. With the requested Federal funding that will leverage significant State and local support, the National Sea Grant College Program will be uniquely positioned to continue its contributions to our coastal communities. As such, the Sea Grant Association requests \$69 million in Federal Sea Grant funding in fiscal year 2013.

Thank you for the opportunity to present these views. SGA would be happy to provide answer questions or provide additional information to the subcommittee.

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PREPARED STATEMENT OF SEARCH—THE NATIONAL CONSORTIUM FOR JUSTICE  
INFORMATION AND STATISTICS

INTRODUCTION

I am Kelly Harbitter, Programs and Policy Advisor for SEARCH. I write to you today on the Department of Justice (DOJ) funding to be provided for in the fiscal year 2013 Commerce, Justice, Science, and Related Agencies appropriations bill. SEARCH recommends that the National Criminal History Improvement Program (NCHIP) receive appropriations of \$25 million.

SEARCH is a State criminal justice support organization created by the States and comprised of Governors' appointees from each State. Each State pays dues annually. SEARCH's mission is to promote the effective use of information and identification technology by justice agencies nationwide. SEARCH has a longstanding partnership with DOJ to promote information sharing, as well as to protect personal privacy within the criminal justice community. It is from this perspective—and on behalf of these State partners—that I would like to address the level of NCHIP funding as set forth in the President's proposed budget released on February 13, 2012.

As you know, NCHIP received an allocation of \$5 million in the recent budget proposal. SEARCH recognizes that these are difficult budgetary times, and as such, the States have been judicious in their investment in criminal history improvement over the past several years. But the demand for accurate, complete, and timely criminal records continues to grow at a rapid pace, and there should be a priority placed on NCHIP funding. Indeed, despite the single-digit budget allocations, State applications for NCHIP funding over the last several years have been nearly five times the budgeted amounts. SEARCH recommends that NCHIP receive appropriations at a level considerably higher than the President's proposal, at \$25 million rather than \$5 million. This level of funding reflects the States' identified needs and will enable States and territories to continue to improve the quality, timeliness, and accessibility of criminal history records.

NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM

The NCHIP program was first initiated in 1995, and has been extraordinarily successful in helping States to improve the accuracy, reliability, and completeness of their automated criminal history record systems.

DOJ administers NCHIP through the Bureau of Justice Statistics (BJS) in DOJ's Office of Justice Programs (OJP). NCHIP responds to a DOJ objective to enhance the criminal justice capabilities of State governments by improving the accuracy, completeness, and timeliness of criminal history records. These State systems support Federal records systems, including the Federal Bureau of Investigation (FBI) Interstate Identification Index (III).<sup>1</sup> III consists of records, 70 percent of which are maintained by the States and only 30 percent are maintained by the FBI.<sup>2</sup>

BJS, with limited funding, has been widely recognized for its extraordinary efficiency, effectiveness and accomplishments in the NCHIP program. The last two Government Accountability Office (GAO) reports on NCHIP (in 2004 and 2008) highlighted the program's continued success in meeting its goals and the significant progress States made toward automating State criminal history records and making them accessible nationally.<sup>3</sup> The reports also noted BJS' adherence and enforcement to the important oversight issues the Congress is concerned with regarding grant programs today. Indeed, the States—including the State repositories—have devoted massive efforts and resources over many years toward building automated, criminal history record databases that are accurate, complete, and reliable. Notwithstanding the efforts of BJS and the States, there continue to be significant shortfalls in arrest reporting; in disposition reporting; and in accuracy and data quality. Most significantly, approximately one-half of arrest records contained in the FBI III database are missing dispositions.<sup>4</sup>

#### NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM FUNDING

The President's fiscal year 2013 budget would provide \$5 million for NCHIP. This is not a sufficient amount to promote the program's success.

Despite NCHIP's noted success, this gradual reduction in funding has adversely affected the program. NCHIP has been so significantly underfunded that some States no longer receive any allocation from the NCHIP grants. A pattern of underfunding State efforts to maintain effective criminal history records reverberates across the entire criminal justice system, not only in the individual States. Because State criminal history records are the primary source for the FBI III database, any constraints on the States weakens the ability of many Federal programs to identify threats and keep our Nation safe.

In fact, the accuracy, completeness, and reliability of the Nation's criminal history record system has a more important and comprehensive impact today than ever before, including for law enforcement investigations; for officer safety; for sentencing and other criminal justice purposes; for expungement and other re-entry strategies; for homeland security and antiterrorism purposes; for public noncriminal justice purposes, including security clearances and employment suitability; for private sector risk management purposes; and for research and statistical programs that provide critical guidance for justice assistance decisions and for shaping law and policy. Without an adequate level of funding for the States, the quality of criminal records available nationwide will be negatively impacted.

#### STATE SUCCESSES WITH NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM FUNDING

*Virginia.*—With NCHIP funds, the Virginia State Police personnel provide electronic access to criminal history records on-site at gun shows. This ensures rapid response to the National Instant Criminal Background Check System (NICS) and prevents the transfer of firearms to prohibited persons. NCHIP funds have also furthered efforts in Virginia to improve the completeness and accuracy of computerized criminal history files and the Court Automated Information System. Between October 2010 and December 2011, the completion rate for missing dispositions reached approximately 95 percent. Virginia plans to use NCHIP funds to achieve additional goals to research, resolve, and enter as many missing final court disposi-

<sup>1</sup>The Interstate Identification Index is the national system designed to provide automated criminal history record information. The III stores the criminal history records of Federal offenders and records of offenders submitted by all States and territories.

<sup>2</sup>*Survey of State Criminal History Information Systems 2010*, Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs (November 2011) (*available at*: <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>).

<sup>3</sup>See GAO reports (*available at*: <http://www.gao.gov/new.items/d04364.pdf>; <http://www.gao.gov/new.items/d08898r.pdf>).

<sup>4</sup>The Attorney General's Report on Criminal History Background Checks, United States Department of Justice, section III.6, p. 18 (June 2006) (*available at*: [http://www.justice.gov/olp/ag\\_bgchecks\\_report.pdf](http://www.justice.gov/olp/ag_bgchecks_report.pdf)).

tions associated with Virginia criminal history records as possible, as well as assist with the ever-increasing problem of juvenile arrests and dispositions.

*Michigan.*—Michigan has used NCHIP grants since the program began to enhance its automated criminal history record system and integrate it with the Automated Fingerprint Identification System (AFIS). NCHIP also funded a number of data quality studies and improvement projects to improve the completeness, accuracy, and disposition reporting associated with Michigan criminal history records. The State has also significantly reduced disposition backlogs. By mid-2000, Michigan had surpassed the 95-percent goal of complete, accurate, and timely electronic reporting of criminal dispositions (established by The Crime Control Act of 1990) for adult felonies. Michigan continues its success with initiatives with the courts and prosecutor's offices for enhanced interfaces to the criminal history.

*New York.*—New York has used NCHIP funds since the beginning of the program to support major initiatives to modernize and vastly improve the ability to provide critical information services to New York's State and local criminal justice agencies. One of the most important achievements has been to solve the problem of missing dispositions in the criminal history repository. Working with the courts, the State repository agency identified system and database problems that contributed to unresolved arrest events. The attention to these problems resulted in a completion rate for missing dispositions of greater than 92 percent. NCHIP funds also supported enhancements to domestic incident reporting practices in New York. Law enforcement officers, preparing to execute a warrant at a suspect's home, benefit from knowing if the suspect has any criminal history in domestic violence. These funds were also used to develop the New York State Integrated Justice portal, a single access point for public safety practitioners to access the State's justice systems and data.

*Nevada.*—The Nevada Department of Public Safety was able to clear a backlog of more than 300,000 court dispositions with NCHIP funding. The Department says this monumental task could not have been completed without NCHIP funding.

*Florida.*—In Florida, citizens and visitors to the State are safer today thanks to the productive use of NCHIP funding. Since 1995, Florida's criminal justice community has used NCHIP funding to make many major improvements in the collection and sharing of information in support of public safety. Among the most significant accomplishments supported by NCHIP are:

- creation of a secure statewide Criminal Justice Network for information sharing among criminal justice agencies;
- automation of court disposition reporting (the rate of adult felony dispositions has been improved from around 60 percent in 1995 to more than 75 percent at the end of 2011 for all felony arrests dating back to 1911);
- background screening for volunteers and employees working with children, the elderly and disabled; and
- enhancement of information sharing about the State's more than 58,000 sexual offenders and predators.

*Alaska.*—Alaska has used NCHIP funding since 1996 for:

- independent repository audits;
- implementing automated interfaces and charge tracking systems;
- developing uniform offense citations table;
- addressing missing dispositions critical to NICS, recidivism studies, and the repository;
- implementing Live Scan stations, (which raised compliance rates from 56 percent to more than 90 percent for mandatory fingerprinting at the Anchorage courthouse during the 2-year pilot project); and
- the electronic sharing of automated court criminal records and more. Undertaking these projects would not have been possible without the help from NCHIP.

*Hawaii.*—In Hawaii, NCHIP funding has been indispensable to laying the foundation for the State's fully integrated justice information sharing system. The Hawaii Integrated Justice Information Sharing (HIJIS) was designed to build statewide information sharing capabilities across the whole of the justice and public safety enterprise, to facilitate information exchange with Federal, State, county agencies, and to leverage national information sharing standards and best practices. In addition, among the many activities that Hawaii's NCHIP funding has allowed the State to accomplish are the following:

- Design, develop, and implement CJIS-Hawaii, the enhanced statewide criminal history record information system;
- Partner with the State court system to share real-time disposition and court status data;
- Enable CJIS-Hawaii to share information with the national NCIC Protection Order and National Sex Offender Registry systems;

- Implement a statewide integrated booking and mugshot system;
- Deploy livescans at all county police departments and Sheriff's Offices, accomplishing a paperless and electronic process end to end; and
- Design, develop, and implement a "lights out" automated identification process for the State so that response times are instantaneous and based on positive identification.

#### CONCLUSION

Congressional support through the NCHIP program to the State criminal history repositories is vital. The Federal investment can be leveraged many times over by contributing to the ability of State and local criminal justice agencies to provide timely, accurate, and compatible information to Federal programs such as III.

On behalf of SEARCH, its Governors' appointees, and the thousands of criminal justice officials who participate in the SEARCH network and who benefit from SEARCH's efforts, I thank you for your consideration.

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#### PREPARED STATEMENT OF THE SOCIETY FOR INDUSTRIAL AND APPLIED MATHEMATICS

This written testimony is submitted on behalf of the Society for Industrial and Applied Mathematics (SIAM) to ask you to continue your support of the National Science Foundation (NSF) in fiscal year 2013 by providing NSF with \$7.373 billion. In particular, we urge you to provide the request level for key applied mathematics and computational science programs in the Division of Mathematical Sciences and the Office of Cyberinfrastructure.

We are submitting this written testimony for the record to the Subcommittee on Commerce, Justice, Science, and Related Agencies of the Committee on Appropriations of the U.S. Senate on behalf of the SIAM.

SIAM has approximately 13,000 members, including applied and computational mathematicians, computer scientists, numerical analysts, engineers, statisticians, and mathematics educators. They work in industrial and service organizations, universities, colleges, and Government agencies and laboratories all over the world. In addition, SIAM has almost 500 institutional members, including colleges, universities, corporations, and research organizations.

First, we would like to emphasize how much SIAM appreciates your subcommittee's continued leadership on and recognition of the critical role of the NSF and its support for mathematics, science, and engineering in enabling a strong U.S. economy, workforce, and society.

Today, we submit this testimony to ask you to continue your support of NSF in fiscal year 2013 and beyond. In particular, we request that you provide NSF with \$7.373 billion, the level requested for this agency in the President's fiscal year 2013 budget request.

As we are reminded every day, the Nation's economic strength, national security, and public health and welfare are being challenged in profound and unprecedented ways. Addressing these challenges requires that we confront fundamental scientific questions. Computational and applied mathematical sciences, the scientific disciplines that occupy SIAM members, are particularly critical to addressing U.S. competitiveness and security challenges across a broad array of fields: medicine, engineering, technology, biology, chemistry, computer science, and others.

SIAM recognizes the challenging fiscal situation, and notes that in the face of economic peril, Federal investments in mathematics, science, and engineering remain crucial as they power innovation and economic growth upon which our economy and fiscal health depend.

#### NATIONAL SCIENCE FOUNDATION

NSF provides essential Federal support for applied mathematics and computational science, including more than 60 percent of all Federal support for basic academic research in the mathematical sciences. Of particular importance to SIAM, NSF funding supports the development of new mathematical models and computational algorithms, which are critical to making substantial advances in such fields as climate modeling, energy technologies, genomics, analysis and control of risk, and nanotechnology. In addition, new techniques developed in mathematics and computing research often have direct application in industry. Modern life as we know it—from search engines like Google to the design of modern aircraft, from financial markets to medical imaging—would not be possible without the techniques developed by mathematicians and computational scientists. NSF also supports mathematics education at all levels, ensuring that the next generation of the U.S. work-

force is appropriately trained to participate in cutting-edge technological sectors and that students are attracted to careers in mathematics and computing.

Below are highlights of the main budgetary and programmatic components at NSF that support applied mathematics and computational science.

#### NATIONAL SCIENCE FOUNDATION DIVISION OF MATHEMATICAL SCIENCES

The NSF Division of Mathematical Sciences (DMS) in the Directorate for Mathematical and Physical Sciences (MPS) provides the core support for all mathematical sciences. DMS supports areas such as algebra, analysis, applied mathematics, combinatorics, computational mathematics, foundations, geometry, mathematical biology, number theory, probability, statistics, and topology. In addition, DMS supports national mathematical science research institutes; infrastructure, including workshops, conferences, and equipment; and postdoctoral, graduate, and undergraduate training opportunities.

The activities supported by DMS and performed by SIAM members, such as modeling, analysis, algorithms, and simulation, provide new ways of obtaining insight into the nature of complex phenomena, such as the power grid, software for military applications, the human body, and energy-efficient building systems. SIAM strongly urges you to provide DMS with the budget request level of \$245 million to enable sustained investment by NSF in critical mathematical research and related mathematical education and workforce development programs.

In particular, investment in DMS is critical because of the foundational and cross-cutting role that mathematics and computational science play in sustaining the Nation's economic competitiveness and national security, and in making substantial advances on societal challenges such as energy, the environment, and public health. NSF, with its support of a broad range of scientific areas, plays an important role in bringing U.S. expertise together in interdisciplinary initiatives that bear on these challenges. DMS has traditionally played a central role in such cross-NSF efforts, with programs supporting the interface of mathematics with a variety of other fields, such as geosciences, biology, cybersecurity, and solar energy.

SIAM supports DMS's participation in the several new NSF-wide initiatives, including Cyber-Enabled Materials and Manufacturing for Smart Systems (CEMMSS), which would support partnerships between mathematical scientists, computer scientists, physical scientists, and engineers to develop computational tools for transforming materials discovery to power our manufacturing base and help advance myriad technologies. In addition, SIAM continues to support DMS's role in enabling interdisciplinary work through participation in the Research at the Interface of Biological, Mathematical, and Physical Sciences (BioMaPS) initiative, which supports research in mathematical and computational biology to expand our understanding of biological processes and inspire potentially transformative new technologies for manufacturing and energy.

#### NATIONAL SCIENCE FOUNDATION OFFICE OF CYBERINFRASTRUCTURE

Work in applied mathematics and computational science is critical to enabling effective use of the rapid advances in information technology and cyberinfrastructure. Programs in the NSF Office of Cyberinfrastructure (OCI) focus on providing research communities access to advanced computing capabilities to convert data to knowledge and increase our understanding through computational simulation and prediction.

SIAM strongly urges you to provide OCI with the budget request level of \$218.3 million to invest in the computational resources and science needed to solve complex science and engineering problems. In addition, SIAM strongly endorses OCI's efforts to take on the role of steward for computational science across NSF, strengthening NSF support for relevant activities and driving universities to improve their research and education programs in this multidisciplinary area.

The programs in OCI that support work on software and applications for the next generation of supercomputers and other cyberinfrastructure systems are very important to enable effective use of advances in hardware, to facilitate applications that tackle key scientific questions, and to better understand increasingly complex software systems. SIAM strongly supports the proposed increase in funding for OCI data activities, including data infrastructure, tools, and repositories. The explosion in data available to scientists from advances in experimental equipment, simulation techniques, and computer power is well known, and applied mathematics has an important role to play in developing the methods and tools to translate this shower of numbers into new knowledge.

SIAM continues to support the agency-wide initiative Cyberinfrastructure Framework for 21st Century Science and Engineering (CIF21). This program works to de-

velop comprehensive, integrated, sustainable, and secure cyberinfrastructure to accelerate research and capabilities in computational and data-intensive science and engineering.

#### SUPPORTING THE PIPELINE OF MATHEMATICIANS AND SCIENTISTS

Investing in the education and development of young scientists and engineers is a critical role of NSF and a major step the Federal Government can take to ensure the future prosperity and welfare of the United States. Currently, the economic situation is negatively affecting the job opportunities for young mathematicians at universities, companies, and other research organizations. It is not only the young mathematicians who are not being hired that suffer from these cutbacks. The research community at large suffers from the loss of ideas and energy that these graduate students, postdoctoral fellows, and early career researchers bring to the field and the country suffers from the lost innovation.

In light of this situation, SIAM strongly supports NSF's proposed fiscal year 2013 increases in the Graduate Research Fellowship (GRF) program and the Faculty Early Career Development (CAREER) program. The GRF program would receive \$243 million, which would support 2,000 new graduate student awards. The CAREER program would receive \$216 million and would support an additional 40 CAREER awards, totaling 440 new awards for fiscal year 2013 if funded.

Before reaching the graduate and early career stage, young mathematicians and scientists gain critical interests and skills as undergraduates. SIAM supports efforts by NSF to improve undergraduate science, technology, engineering, and mathematics (STEM) education, and notes the key role that mathematicians play in training for these fields. As interdisciplinary research questions become increasingly central to scientific progress, students need early exposure to research experiences and interdisciplinary challenges. SIAM supports the newly proposed Expeditions in Education Initiative, which will better link NSF research and education activities to enable hands-on learning for students on cutting-edge systems and challenges across disciplines.

#### CONCLUSION

We would like to conclude by thanking you again for your ongoing support of NSF that enables the research and education communities it supports, including thousands of SIAM members, to undertake activities that contribute to the health, security, and economic strength of the United States. NSF needs sustained annual funding to maintain our competitive edge in science and technology, and therefore, we respectfully ask that you continue robust support of these critical programs by providing \$7.373 billion for NSF in fiscal year 2013.

We appreciate the opportunity to provide testimony to the subcommittee on behalf of SIAM. SIAM looks forward to providing any additional information or assistance you may ask of us during the fiscal year 2013 appropriations process.

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#### PREPARED STATEMENT OF THE NATURE CONSERVANCY

Thank you for the opportunity to offer comments on the fiscal year 2013 appropriations for the National Oceanic and Atmospheric Administration (NOAA). The Nature Conservancy (Conservancy) is an international, nonprofit conservation organization working around the world to protect ecologically important lands and waters for nature and people. Our mission is to conserve the lands and water upon which all life depends.

As the Nation enters the fiscal year 2013 budget cycle and another year of fiscal challenges, the Conservancy recognizes the need for fiscal austerity and stresses our concern that the natural resource stewardship programs should not shoulder a disproportionate share of cuts in this budget.

Our recommendations this year do not exceed the President's budget request except in cases in which the ocean and coastal programs have borne a severely disproportionate cut and will result in the inability for NOAA to meet its critical stewardship mandates. Moreover, as a science-based and business-oriented organization, we believe strongly that the budget levels we support represent a prudent investment in our country's future that not only help NOAA achieve their most critical missions by catalyzing local and regional action, but will also reduce risks and ultimately save money based on tangible economic and societal benefits natural resources provide each year to the American people.

*Fisheries Management.*—The 2007 amendments to the Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA) were intended to end over-

fishing in the United States and reduce destructive fishing practices in U.S. waters. Further, it included new provisions that create mechanisms for communities to engage in conservation efforts while securing the contribution of marine fisheries to their local economies. NOAA Fisheries, in implementing the MSFCMA, has made important strides in addressing these challenges and strengthening fisheries management; however, much more needs to be done. To recover fish stocks so that they provide food and jobs to struggling fishermen now and in the future, we need to recover overfished stocks, reduce destructive fishing practices, restore coastal habitats that produce fish, and support the efforts of fishermen and local communities that depend on fishing. The following NOAA programs are essential to achieving healthy coastal habitats and continued robust fisheries management.

*Fisheries Habitat Restoration*<sup>1</sup>.—Marked by the President’s fiscal year 2013 request, we are increasingly concerned that NOAA views investment in habitat restoration subordinate to more traditional fisheries management undertakings. As the gulf oil spill made tragically clear, healthy coastal habitats are essential to the economic and social well-being of coastal residents as well as others throughout the Nation that rely on coastal communities for commerce, food, and recreation. Coastal wetlands and nearshore waters produce the fish and shellfish that feed America. Furthermore, salt marshes, oyster reefs, seagrass meadows, and coral reefs help to prevent erosion and protect our communities from storm surges. Since 2001, The Nature Conservancy and NOAA have partnered through the community-based Restoration program (funded under the Fisheries Habitat Restoration line item along with the Open Rivers Initiative) to restore the health of degraded habitats in places and ways that benefit not just local marine life, but communities and coastal economies as well.

Through the 124 community-based projects supported in the first decade of this partnership, NOAA and the Conservancy have helped protect vital coastal and marine habitat, restore species that keep coastal systems healthy, remove invasive species, create shellfish spawning sanctuaries and re-establish water flows to estuaries. Beyond the environmental benefits, these projects have shown that restoration pays off for coastal communities, producing jobs for direct restoration work and supporting coastal communities through increased fish production. A recent economic analysis of oyster reef restoration in the Northern Gulf of Mexico provided compelling evidence for such claims, finding that two reefs totaling 3.6 miles would increase economic output of commercial finfish and crab landings by \$35,000 per year; cut wave height and energy significantly, reducing shoreline erosion and associated damages to private property and public infrastructure; and remove up to 4,160 pounds of nitrogen per year from Bay waters.<sup>2</sup>

Through our on-the-ground experience we recommend \$22 million for the Fisheries Habitat Restoration in the fiscal year 2013. Moreover, we request that no less than \$9 million should be made available for competitive cooperative agreements through the Community-based Restoration Program (CRP). Additional funding beyond cooperative agreements and program administration of CRP should be dedicated to the Open Rivers Initiative.

*National Catch Share Program*.—Catch Shares give participating fishermen a stake in the benefits of a well-managed fishery and align the incentives for resource stewardship with the natural incentive for fishermen to increase their earnings with a sustainable business model. Transition to these systems is difficult and getting the design and implementation of these new catch share programs, including provisions to engage fishing communities, right is critical. The Conservancy supports the President’s fiscal year 2013 budget request of \$28 million for the National Catch Share Program.

*Annual Stock Assessments*.—The Magnuson-Stevens Act mandated annual catch limits in all fisheries to prevent overfishing by in place by 2011. While this milestone has been achieved, there is room for continued improvement in fishery data collection and stock assessments. Adequate stock assessments are essential for the sound management of fisheries and the sustainability of fishing resources. The Conservancy supports the President’s fiscal year 2013 budget request of \$69 million for annual stock assessments.

*Pacific Coastal Salmon Recovery Fund*.—The Pacific Coast Salmon Recovery Fund (PCSRF) is the most critical Federal program addressing major threats to Pacific salmon so that these fish can continue to sustain culture, economies, recreation, and

<sup>1</sup>Relocated in NOAA’s fiscal year 2013 bluebook under “Habitat Management and Restoration”.

<sup>2</sup>Kroeger, Timm (2012). “Oyster Reef Restoration in the Northern Gulf of Mexico: Ecosystem Services, Economic Benefits and Impacts, and Opportunities for Disadvantaged Coastal Communities.” The Nature Conservancy.

ecosystem health. This Federal funding source is tailored for each State, competitively awarded based on merit and has funded hundreds of successful, on-the-ground salmon conservation efforts. PCSRF invests in cooperative efforts to conserve species under the National Marine Fisheries Service (NMFS) jurisdiction and projects are matched at a 3:1 ratio (Federal/non-Federal) and have resulted in significant progress in protecting and restoring salmon across their range. Notably, the PCSRF has catalyzed thousands of partnerships among Federal, State, local, tribal governments, conservation, business, and community organizations. The Conservancy urges sustaining at least \$65 million for the competitive and proven PCSRF grants program.

*Species Recovery Grants.*—Through this program, NMFS provides grants to States to support conservation actions that contribute to recovery or have direct conservation benefits for listed species, recently de-listed species, and candidate species that reside within that State. We support the President fiscal year 2013 budget's request for \$4.8 million.

*Ocean Services.*—Over the years, and across many sites, NOAA has been an invaluable partner to the Conservancy. NOAA programs that provide practical, community-oriented approaches to restoration, resource management, and conservation are natural fits for the Conservancy's mission. The Coastal Services Center and National Estuarine Research Reserve programs educate hundreds of local community officials and practitioners to better ways to apply tools and science. In addition, NOAA's data, research and monitoring of coastal and marine systems directly provide data and decision-support tools that inform the safe operations of industry, prioritize habitats for restoration, and advance science-based management decisions. The following funding recommendations highlight critical programs that support productive coastal communities and healthy coastal and marine places.

*Coral Reef Conservation Program.*—The decline of coral reefs has significant social, cultural, economic, and ecological impacts on people and communities in the United States and around the world. The Conservancy works with NOAA's Coral Reef Conservation Program under a competitively awarded, multiyear cooperative agreement to address the top threats to coral reef ecosystems:

- climate change;
- overfishing; and
- land-based sources of pollution.

Together we develop place-based strategies; develop resilient marine-protected area networks; measure the effectiveness of management efforts; and build capacity among reef managers at the global scale. NOAA has undertaken a coral reef conservation priority setting exercise in all seven of the U.S. jurisdictions with coral reef resources. The Conservancy supports the President's fiscal year 2013 budget request of \$27 million to provide funding to support implementation of these conservation priorities, including more comprehensive mapping and data compilation and analysis on cold water corals in U.S. waters.

*Coastal and Estuarine Land Conservation Program.*—Created by the Congress in 2002 and formally authorized in 2009, the Coastal and Estuarine Land Conservation Program (CELCP) program has helped preserve approximately 45,000 acres of America's most important coastal areas. All Federal funding for CELCP is leveraged by at least an equal amount of State, local, and private investments. There is significant demand for coastal conservation that is not being met. In the last several years, NOAA has identified and vetted more than \$270 million in coastal projects that are eligible for CELCP program funding. The fiscal year 2013 President's budget request recommends the removal of all funds for CELCP. The Conservancy recommends including the fiscal year 2012 enacted level of \$3 million in the budget to minimally support a program that utilizes both acquisition and conservation easements to protect coastal and estuarine lands considered important for their ecological, conservation, recreational, historical, or aesthetic values.

*Regional Ocean Partnerships.*—The funding would provide support to implement priority actions identified by existing and developing Regional Ocean Partnerships including the Northeast Regional Ocean Council, the Mid-Atlantic Regional Council on Oceans, the South Atlantic Alliance, the Gulf of Mexico Alliance, the West Coast Governors' Agreement on Ocean Health, and the Council of Great Lakes Governors. These multi-state collaborations originated to address regional priorities such as habitat conservation and restoration, energy siting, coastal resilience to severe storms, coastal water quality, and regional data and science needs. Additional funding should be provided to support State and regional engagement in the development of marine planning, including stakeholder processes and consensus building tools, analysis of data and information, and facilitation of broad public participation in the planning process. The Conservancy urges a least \$4 million to advance vital regional ocean and coastal priorities.



*National Estuarine Research Reserve System.*—The National Estuarine Research Reserve System (NERRS) partners with States and territories to ensure long-term education, stewardship, and research on estuarine habitats. Atlantic, Gulf, Pacific, Caribbean, and Great Lakes reserves advance knowledge and stewardship of estuaries and serve as a scientific foundation for coastal management decisions. This unique site-based program around the Nation contributes to a systemic research, education, and training on the Nation's estuaries. The Conservancy recommends including the fiscal year 2012 enacted level of \$22 million in the budget.

*National Marine Sanctuaries Program.*—National marine sanctuaries support economic growth and hundreds of coastal businesses in sanctuary communities; preserve vibrant underwater and maritime treasures for Americans to enjoy; and provide critical public access for ocean recreation, research, and education. Investment in these sites do more than simply protect small areas of the ocean, but a downpayment on the many other Americans whose livelihoods are dependent on a healthy ocean and coasts. The Conservancy supports the President's fiscal year 2013 budget request of \$47 million.

Thank you for this opportunity to share with the subcommittee the Conservancy's priorities in NOAA's fiscal year 2013 budget. We would be pleased to provide the committee with additional information on any of the Conservancy's activities described here or elsewhere.

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PREPARED STATEMENT OF THE PLANETARY SOCIETY

The Planetary Society is deeply troubled with the priorities reflected in National Aeronautics and Space Administration's (NASA) fiscal year 2013 budget. If implemented, it will portend grave consequences for our Nation's ability to conduct deep-space science missions and could irreversibly erode unique aspects of the space industrial base needed for such missions.

Specifically, the disproportionate cut to the Planetary Science budget would force NASA to walk away from planned missions to Mars, to back out of international agreements with the European Space Agency (ESA), delay for decades any flagship missions to the outer planets, and radically slow the pace of scientific discovery, including the search for life on other worlds. We think this is the wrong direction for America's space program.

Planetary Science is the part of NASA that's actually conducting interesting and scientifically important missions. Spacecraft sent to Mars, Saturn, Mercury, the Moon, comets, and asteroids have been making incredible discoveries, with more to come from recent launches to Jupiter, the Moon, and Mars. The country needs more of these robotic space exploration missions, not fewer.

For the first time in human history, we have the tools available to directly test the hypothesis of whether there is, or has been, life on other worlds such as Mars or Europa. Such a discovery would be a seminal event in human history and would have a deep and profound impact on how we view our place in the Universe, much as Copernicus sparked the Age of Enlightenment 500 years ago with his theory that the Earth orbits the Sun, just like any other planet. We stand at the dawn of a similar period in which our knowledge and understanding of the Universe is poised to take another giant leap forward.

We understand that NASA is undertaking a review to examine options for potential future Mars missions, and we support efforts to put the program back on track, but we are also adamant that decisions for future planetary missions be guided by the most recent Planetary Science Decadal Survey of the National Research Council. It took almost 2 years to forge a consensus of 1,700 planetary scientists and should not be dismissed or watered-down. NASA's science programs have achieved great successes based on the decadal-survey process and all should be reluctant to abandon it.

While it may appear attractive to develop an integrated strategy for Mars science missions and an eventual human mission to Mars, the lack of clear goals and tangible program plans on the human side suggests the discussion is premature, at best.

We recognize the intense fiscal and budget pressure the country faces. We understand that agency programs are receiving unprecedented scrutiny and that budgets are shrinking. However, today's budget environment is also an opportunity to take stock of what's working and what's not working, and to adjust priorities.

Today, approximately 27 percent of NASA's budget goes to Science, with 8 percent of NASA's total going to Planetary Science. The human spaceflight program (SOMD + ESMD) consumes about 45 percent of NASA's budget, and the remaining 28 percent goes to aeronautics, technology, and infrastructure. The Planetary Soci-

ety is a strong supporter of both human and robotic space exploration and a strong advocate for investments in technology. However, given the impacts of the proposed fiscal year 2013 budget, some adjustments are needed.

Specifically, the Planetary Society recommends reallocating approximately 3 percent from within NASA's total budget to rebaseline the share for Science to at least 30 percent and restoring the \$300 million cut to Planetary Science to fund it at \$1.5 billion. This modest rebalancing will allow NASA to fully implement the decadal survey for Planetary Science, send a mission to Mars and prepare for missions to the outer planets, while allowing NASA to continue a robust program of missions in Earth Science, Astronomy, and Heliophysics.

We arrive at this conclusion primarily because NASA's Science program currently has an abundance of compelling world-class science missions with clearly defined mission goals and carefully crafted program plans that are poised to move out. We believe that a healthy and vibrant Science program is an excellent investment that will energize, engage, and inspire the next generation of scientists, engineers, educators, and the public, as has been the case with the Mars rovers and many other missions. The diversity and frequency of science mission opportunities laid out by the decadal survey will significantly contribute to thousands of high-tech jobs in the aerospace industry, at research laboratories, and in universities. These programs will stimulate the best and brightest with interesting and meaningful scientific and technical challenges that will make our Nation stronger and more competitive.

While we recognize these are difficult choices, we believe an increase in the share of the NASA budget for Science to 30 percent is the best place for the agency to make the most effective use of the taxpayers' money at this time and in today's budget environment.

We are at the brink of the next revolution in scientific understanding. A great Government will lead this pursuit and make these investments because it will make a difference to our society and to our children.

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PREPARED STATEMENT OF THE UNITED STATES SECTION OF THE PACIFIC SALMON COMMISSION

Mr. Chairman, my name is W. Ron Allen, and I serve as a Commissioner on the United States Section of Pacific Salmon Commission (PSC). The PSC was established in 1985 to oversee implementation of the Pacific Salmon Treaty (Treaty) between the United States and Canada. In May 2008, the PSC concluded bilateral negotiations that developed revised 10-year salmon fishing regimes to replace regimes that were expiring at the end of 2008. The provisions of the new fisheries agreements were approved by the United States and Canadian Federal governments and are being implemented for the 2009–2018 period. The U.S. Section is requesting that the Congress includes funding in the fiscal year 2013 National Marine Fisheries Service (NMFS) budget for the Pacific Salmon Treaty at \$9,708,000 and the Chinook Salmon Agreement at \$1,844,000.

The implementation of the Treaty is funded through the Departments of Commerce, the Interior, and State. The Department of Commerce funds implementation of the Treaty as line items under Salmon Management Activities. The funding for Salmon Management Activities in the President's fiscal year 2013 budget is similar to previous years. However, the line item breakout within Salmon Management Activities was not made available to us.

The U.S. Section recommends that the Congress:

—Fund the Pacific Salmon Treaty line item of NMFS at \$9,708,000 for fiscal year 2013 an increase in funding compared to \$5,600,000 in recent-year budgets.

This funding provides support for the States of Alaska, Washington, Oregon, and Idaho and the NMFS to conduct the salmon stock assessment and fishery management programs required to implement the Treaty's conservation and allocation provisions for Coho, Sockeye, Chinook, Chum, and Pink salmon fisheries. Included within the total amount of \$9,708,000 is \$400,000 to continue a joint Trans-boundary River Salmon Enhancement Program as required by the Treaty.

—Fund the Pacific Salmon Treaty Chinook Salmon Agreement line item of NMFS for fiscal year 2013 at \$1,844,000, level funding from what has been provided by the Congress in recent years. This funding is necessary to acquire the technical information to fully implement the abundance-based Chinook salmon management program provided for under the Treaty.

The funding identified above is for ongoing annual programs and does not include new funding specifically needed for full application of the revised agreement for 2009–2018 that was negotiated by the PSC and accepted by the governments of the

United States and Canada on December 23, 2008. Funding for implementing the revised treaty arrangements was part of NMFS fiscal year 2012 budget, and the U.S. PSC Commissioners recommend that it be continued in the fiscal year 2013 Federal budget.

The base Treaty implementation projects included in the Pacific Salmon Treaty line item consist of a wide range of stock assessment, fishery monitoring, and technical support activities for all five species of Pacific salmon in the fisheries and rivers from southeast Alaska to Washington, Oregon, and Idaho. The States of Alaska, Washington, Oregon, Idaho, the Federal NMFS, and the 24 treaty tribes of Washington and Oregon are charged with conducting the salmon fishery stock assessment and harvest management actions required under the Treaty. Federal funding for these activities is provided through NMFS on an annual basis.

The agency projects carried out under PSC funding are directed toward acquiring, analyzing, and sharing the information required to implement the salmon conservation and sharing principles of the Treaty. A wide range of programs for salmon stock size assessments, escapement enumeration, stock distribution, and catch and effort information collection from fisheries are represented. The information from many of these programs is used directly to establish fishing seasons, harvest levels, and accountability to the provisions of Treaty fishing regimes.

The base Treaty implementation funding of approximately \$5.6 million budget has essentially remained at this low level since the early 1990s. Since that time, the growing complexity of conservation-based, and Endangered Species Act compliant fishing regimes has required vastly more stock assessment, fishery compliance monitoring, and technical support activities. In order to continue to fulfill the Federal commitments created by Pacific Salmon Treaty, the States have had to augment Federal funding with other Federal and State support. For example, additional sources of funding have included Federal Anadromous Fish Grants, Federal Pacific Coast Salmon Recovery Funds (PCSRF), Federal Dingell-Johnson dollars, and State general funds. However, alternative sources for funding have been reduced or eliminated with the Anadromous Fish Grants eliminated in the Federal fiscal year 2010 budget, use of PCSRF monies constrained in fiscal year 2010 by new appropriations language and further constrained in 2012 by the NMFS, and State dollars and Dingell-Johnson grants cut significantly during the current economic downturn.

The economic impact of commercial and sport fisheries has been measured by the U.S. Fish and Wildlife Service at approximately \$2-\$3 billion per year to the States involved in the PST. To continue to implement the Federal PST conservation-based fishing regimes that contribute to the sustainability of salmon stocks and the large economic return to the States, the U.S. PSC members recommend an increase in base treaty implementation funding from the current \$5.6 million to \$9,708,000.

Effective, science-based implementation of negotiated salmon fishing arrangements and abundance-based management approaches for Chinook, southern Coho, Northern Boundary and Trans-boundary River salmon fisheries includes efforts such as increased annual tagging and tag recovery operations and application of other emerging stock identification techniques. The U.S. PSC members recommend that \$9,708,000 be provided for the NMFS Pacific Salmon Treaty line item in fiscal year 2013 for the States for Treaty technical support activities. The \$400,000 that has been provided in the separate International Fisheries Commissions line item since 1988 for a joint Trans-boundary River enhancement program with Canada is now included in this amount. The recommended amount for the combined projects represents an approximate increase of \$4,108,000 more than the amount appropriated for fiscal year 2012.

Beginning in fiscal year 1998, the Congress provided \$1,844,000 to allow for the collection of necessary stock assessment and fishery management information to implement a new abundance-based management approach for Chinook salmon coast-wide in the Treaty area. Through a rigorous competitive technical review process for project approval, the States of Alaska, Washington, Oregon, and Idaho, and the 24 treaty tribes use the funding to support research and data collection needed for abundance-based Chinook management. The U.S. Section recommends level funding of \$1,844,000 for fiscal year 2013 to support the abundance-based Chinook salmon management program.

The United States and Canada agreed in 1988 to a joint salmon enhancement program on the Trans-boundary Rivers, which are rivers rising in Canada and flowing to the sea through Southeast Alaska. Since 1989, the Congress has provided \$400,000 annually for this effort through the NMFS International Fisheries Commission line item under the Conservation and Management Operations activity. Canada provides an equal amount of funding and support for this bilateral program. The funding for the U.S. share is included in the \$9,708,000 the U.S. Section is recommending for the fiscal year 2013 NMFS Pacific Salmon Treaty line item.

This concludes the statement of the U.S. Section of the PSC submitted for consideration by your subcommittee. We wish to thank the subcommittee for the support that it has given us in the past. I will be pleased to answer any questions of the committee members.

SUMMARY OF PROGRAM FUNDING FOR THE U.S.-CANADA PACIFIC SALMON TREATY

	Fiscal year 2010 appropriation	Fiscal year 2011 appropriation	Fiscal year 2013 U.S. Section recommendation
Department of Commerce:			
Pacific Salmon Treaty line item .....	\$5,610,000	\$5,600,000	<sup>1</sup> \$9,708,000
Pacific Salmon Treaty—Chinook Salmon Agreement line item .....	1,844,000	1,844,000	1,844,000

<sup>1</sup> The recommended fiscal year 2013 amount includes \$400,000 provided for the Joint Trans-boundary River Enhancement Program currently funded under the NMFS International Fisheries Commission account.

Thank you for this opportunity to share the fiscal year 2013 budget requests of the Pacific Salmon Commission.

PREPARED STATEMENT OF THE UNIVERSITY CORPORATION FOR ATMOSPHERIC RESEARCH

On behalf of the University Corporation for Atmospheric Research (UCAR), I submit this written testimony to the Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies for the committee record. UCAR is a consortium of more than 100 research institutions, including 77 doctoral-degree granting universities, which manages and operates the National Center for Atmospheric Research (NCAR) on behalf of the National Science Foundation (NSF). I urge the subcommittee to support the following levels of science funding in the fiscal year 2013 Commerce, Justice, Science and Related Agencies Appropriations Act.

*National Science Foundation.*—At least \$7.373 billion, including \$106.6 million for NCAR within the Geosciences Directorate (GEO).

*National Aeronautics and Space Administration.*—\$5.073 billion for Science, and within this mission directorate, \$1.785 billion for Earth science, including \$440.1 million for Earth science research, and \$647 million for Heliophysics.

*National Oceanic and Atmospheric Administration (NOAA).*—\$5.008 billion, including \$413.8 million for the Office of Oceanic and Atmospheric Research (OAR), \$212.7 million for the OAR Climate Research line, and \$991.9 million for the National Weather Service (NWS).

Countless economic studies over the years have demonstrated the link between federally funded scientific R&D and economic vitality, industry and job growth, productivity, competitiveness, and innovation. Even in this difficult economic environment, we must maintain a balance of basic research elements including the scientific workforce; data collection, analysis and storage; computing; and facilities. As I describe below, I am concerned that the President’s budget request for fiscal year 2013 represents some imbalance within the science agencies.

*National Science Foundation*

I urge you to support the President’s fiscal year 2013 request of \$7.373 billion for NSF. NSF’s mission is to support basic research which is the basis for two key drivers of our economy—technology development and innovation. According to the NSF budget request, “In a given year, NSF awards reach nearly 1,900 colleges, universities, and other public and private institutions in 50 States, the District of Columbia, and Puerto Rico. In fiscal year 2013, NSF support is expected to reach approximately 285,000 researchers, postdoctoral fellows, trainees, teachers, and students.” As illustrated by these numbers, NSF is indispensable to the health and resiliency of our Nation’s scientific R&D enterprise.

*National Center for Atmospheric Research.*—NSF’s GEO supports a broad and diverse academic field that contributes to our understanding of long-term weather, extreme weather, dynamics of water resources, effects of the Sun on the Earth, effects of space weather on global communications, interactions of the Earth’s systems, energy resources, geologic hazards, and all aspects of the global oceans. UCAR endorses the President’s fiscal year 2013 request of \$906.4 million for NSF’s GEO.

However, I do have concerns within the GEO budget request that I would like to address, namely the proposed budget for the NCAR. In recent years, NSF has created constructive, cross-cutting initiatives meant to address issues of importance to the Nation, such as sustainability. Investment in these meritorious activities has

unfortunately come at the expense of established NSF programs and centers, many which complement the new initiatives. Given Federal budget pressures, this promises to undercut some of the basic, critical programs that NSF provides the Nation, including NCAR, an NSF Federally Funded Research and Development Center that expands the capacity of the Nation's academic community to understand weather, the composition of the atmosphere, Sun-Earth interactions, space weather, and the interactions between oceans and atmosphere.

Further, while NSF, GEO, and the Division of Atmospheric and Geospace Sciences in which NCAR resides, all show increases in the budget request for 2013, primarily to fund ongoing growth in the sustainability research portfolio, NCAR's proposed budget is decreased by 6.4 percent compared to the fiscal year 2012 estimate. The budget request language states, "This level of support protects the operation of the NCAR/Wyoming Supercomputer Center (NWSC), completed on time and within budget, and maintains support for other key community research infrastructure operated by NCAR." However, NCAR encompasses an integrated and well-leveraged combination of both science and facilities. Continuing full support for this infrastructure, including the added costs of operating the NWSC, while absorbing a cut to the NCAR budget of more than \$6 million, will place NCAR's basic science research and community support programs, some of the best in the world, in jeopardy. Cutting the laboratory would be counterproductive to the potential productivity of the NWSC, given the computing center's reliance on NCAR modeling and scientific expertise. With a balanced NCAR portfolio of science and facilities, NWSC operations will advance many fold critical weather and climate research contributions.

We estimate that real cuts, when all expenses are tallied, would amount to decreases to NCAR's scientific research on the order of 11 to 13 percent. Simply to maintain programs and infrastructure, NCAR would need an increase over the fiscal year 2012 appropriated amount. I urge the committee to support funding of \$106.6 million for NCAR within GEO's Division of Atmospheric and Geospace Sciences, and further, to direct the agency to maintain ongoing support for NCAR at sustainable levels in future budgets, including the financing of the NWSC operating costs, without reducing the NCAR base funding as an offset.

*National Aeronautics and Space Administration—Science Mission Directorate*

The research supported and data collected by National Aeronautics and Space Administration (NASA) Science Mission Directorate are essential to atmospheric sciences research and global Earth observations. Through the use of space observatories, satellites, and other probes, NASA helps us achieve a deeper understanding of Earth, including answers to how the Earth's long-term weather patterns may be changing. I urge the subcommittee to fund the Science Mission Directorate at \$5.073 billion, the amount appropriated in fiscal year 2012 and a level of funding that would help to keep on track future missions that are now threatened with delay.

*Earth Science.*—Given the promise of observatories such as the Orbiting Carbon Observatory 2 (OCO-2), I am pleased that the President's budget request proposes to increase funding for this and other Earth System Science Pathfinder missions in fiscal year 2013. The National Academy of Sciences decadal survey, *Earth and Space Applications from Space: National Imperatives for the Next Decade and Beyond*, released in 2007, continues to provide a critical set of recommendations of the most compelling needs in future Earth observations. Ice, Cloud and Land Elevation Satellite-2 (ICESat-2) and Soil Moisture Active-Passive (SMAP) are Tier 1 decadal survey missions funded within the Earth Systematic Missions line office. Expected to launch in 2014 and 2016, respectively, the fiscal year 2013 request keeps these important missions on schedule. However, other important missions recommended by the decadal survey are threatened with delays that jeopardize their future. Given the importance of these measurements to scientists, State and city planners, first responders, and Governors, the Nation must not allow any further delay in the deployment of these resources needed for our States and localities to wisely and appropriately adapt in the decades to come. I urge you to fund the President's request of \$1.785 billion for Earth science in fiscal year 2013.

While the fiscal year 2013 budget request provides funding to keep many important Earth science missions on track, it also proposes a \$6.5 million cut to Earth Science Research that is critical to translating missions into discoveries and new knowledge. At least 90 percent of the funds of this program are competitively awarded to investigators in academia, the private sector, laboratories, and other academic centers to utilize NASA data to further our understanding of Earth processes. A \$6.5 million cut portends the loss of ongoing research projects and critical grant money for atmospheric scientists at national universities and NCAR. I urge you to restore funding for Earth Science Research to \$440.1 million, the amount appropriated in fiscal year 2012.

*Heliophysics.*—With all of human civilization located in the extended atmosphere of the Sun, heliophysics is a critical discipline for understanding Sun/Earth connections. This research allows us to analyze the connections between the Sun, solar wind, and planetary space environments. NASA's Heliophysics division enables NCAR to serve the solar-terrestrial physics community through delivery of community models for the upper atmosphere, instrumentation for space and balloon flights, and solar and upper-atmospheric data from space and balloon missions. I urge you to fund Heliophysics at the requested \$647 million.

#### NOAA

All Americans benefit from the life-saving warnings produced by NWS. What many Americans do not understand is the research behind producing accurate forecasts. Satellite and ground observations collect data around the clock on real-time conditions. Computer models are run to produce projections and predictions as weather develops. Research collaborations with the Nation's leading universities and the private sector produce improved data analysis, enhanced forecasting capabilities, and technology development. Free and open access to forecasts and weather data enable broadcast meteorologists and others to reach citizens, local governments, and resource managers with critical information. The sum of the parts, when all are supported appropriately in a balanced manner, adds up to saved lives, protected property, enhanced homeland security, and benefits to the economy. Yet NOAA's budget is one of the least balanced of the scientific agencies. NOAA is roughly a \$5 billion agency, with nearly \$2 billion dedicated to satellite programs. These satellite observing systems, all located within NOAA's National Environmental Satellite, Data, and Information Service, will produce data that are absolutely essential to the Nation's weather, space weather, and climate forecasting capabilities. But they cause an imbalance to NOAA's budget that threatens to torque NOAA's mission and products. I urge you to support the requested fiscal year 2013 amount of \$5.008 billion for NOAA, but to consider increasing that amount to restore the balance to NOAA programs that will make it possible for the agency to provide the best scientific and operational products.

*Office of Oceanic and Atmospheric Research.*—In fiscal year 2011, the appropriated amount for OAR was \$416.6 million. For fiscal year 2013, the President requests a total of \$403.4 million, taking the office back almost to the 2009 level. While it may appear that OAR receives a healthy 7.7-percent proposed increase for fiscal year 2013, fiscal year 2012 cuts were much deeper than this increase. I urge you to fund OAR at the requested \$413.8 million (operations, research, and facilities (ORF) and procurement, acquisition, and construction (PAC) combined), recognizing that additional investment is needed to restore recent funding cuts to OAR that have resulted in the termination and downsizing of many important NOAA research programs.

One example of such fiscal year 2012 cuts at OAR is the Climate Competitive Research, Sustained Observations, and Regional Information program, which funds extramural research that leverages NOAA programs and provides some of the needed program balance to its portfolio. States rely upon the climate, weather, and water outlooks developed under this program to develop seasonal and yearly management plans for water, agriculture, energy, and fisheries. In addition to these critical regional outlooks, this account funds global ocean observing programs essential for accurate weather forecasting and satellite calibration and validation, which are required to reap full use of the billions invested in satellite observations. I urge you to fund OAR's Climate Research portfolio at the requested \$212.7 million, and to fund the President's request of \$146.3 million for Climate Competitive Research, Sustained Observations, and Regional Information.

*National Weather Service.*—As noted earlier, NWS is a 24/7 operation, and is this Nation's sole authoritative source for issuing warnings and forecasts related to weather, severe weather, and long-term weather trends. To continue providing these critical services to the country, NWS must have as much information about weather conditions as possible. The less information, the less accurate the forecast will be. Yet, the fiscal year 2013 request seems to cut multiple data gathering programs. Again, the loss of data gathering capabilities creates a serious imbalance to NWS activity. However, within NWS, we are extremely pleased with the progress being made by the Hurricane Forecast Improvement Program (HFIP) that promises great improvement in the reliability of hurricane forecasts. HFIP computing resources have been proposed for cuts in fiscal year 2013. Given the great promise of HFIP to save lives and property, I ask that that computing resource be restored. I urge you to fund NWS at the requested level of \$991.9 million (ORF and PAC combined) and to consider a higher level so that restoration of essential observing and computing facilities may be achieved.

Thank you for your service to our Nation's scientific enterprise and for the opportunity to express these views on behalf of the geosciences community.

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PREPARED STATEMENT OF THE UNIVERSITY OF COLORADO BOULDER

I write today to urge you to support the President's fiscal year 2013 budget request of \$413.8 million for the National Oceanic and Atmospheric Administration's (NOAA) Office of Oceanic and Atmospheric Research (OAR), which supports some of the Nation's most critical environmental research. Within OAR, I particularly support the Competitive Research, Sustained Observations and Regional Information program, which facilitates the production of regional, national, and global weather and water outlooks. The President's budget request of \$146.3 million for this program would restore the 20-percent cut it sustained in fiscal year 2012.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH

NOAA OAR funding supports research that increases the effectiveness of observations, monitoring, and modeling to help States manage their infrastructure, agricultural resources, fisheries, water resources, and natural disaster planning and response. Past research has focused on forecasting large storm events, seasonal wildfire forecasts, assessing local impacts of projected sea-level rise, improving seasonal precipitation forecasts to improve dam management for both flood control and water storage, and forecasting energy demand scenarios.

OAR funding also supports 18 Cooperative Institutes. These are located across 21 States, Puerto Rico, and the Virgin Islands and are affiliated with 48 universities and research institutions. The Cooperative Institutes are partnerships that benefit the Nation by leveraging the unique strengths of NOAA and universities and research institutions in areas ranging from satellite climatology and fisheries biology to atmospheric chemistry and coastal ecology. In addition to facilitating long-term, substantive research collaboration, the Cooperative Institutes facilitate the training of the Nation's next generation of both NOAA's and the Nation's scientific workforce. These cooperative entities—already strained by fiscal year 2012 budget cuts—are the very type of innovative partnerships the Federal Government should be promoting. Given the value of the Cooperative Institutes, further reductions to NOAA's research budget would have negative implications that extend far beyond any near-term budget savings.

In addition, some of NOAA's laboratories that support Cooperative Institutes and which are, in part, supported through OAR funds—such as the Geophysical Fluid Dynamics Laboratory in New Jersey, the Earth Systems Research Laboratory in Colorado, the Pacific Marine Environmental Laboratory in Washington, the Atlantic Oceanographic and Meteorological Laboratory in Florida, the Great Lakes Environmental Research Laboratory in Michigan, and the National Severe Storms Laboratory in Oklahoma—risk staff reductions and reduced research effectiveness as a result of budget cuts in NOAA's research portfolio.

COMPETITIVE RESEARCH, SUSTAINED OBSERVATIONS, AND REGIONAL INFORMATION

While OAR sustained a 10-percent cut in funding in fiscal year 2012 from fiscal year 2011 levels, the Competitive Research, Sustained Observations and Regional Information program carried a disproportionate amount of that burden with a 20-percent cut from fiscal year 2011 levels. The President's budget request would restore this program's funding to ensure continued support of critical science aimed at understanding the impact of atmospheric, oceanic, land-based, snow and ice processes on climate.

This competitive climate research program funds grant activities focused on climate observation and monitoring; Earth system science; modeling, analysis, predictions, and projections; and climate and societal interactions. These programs not only fund important research in these areas, but they also support unique tools such as observational instruments, data and information sets, and assessment teams. These measure key climate factors such as temperature, precipitation, runoff, and soil moisture, and contribute to regional decisionmaking across the United States to facilitate responses to climate variability and change.

CONCLUSION

Research that stems from NOAA's OAR budget has real and positive impacts on the Nation's well-being, allowing us to prepare for the impacts of shifts in weather,

water supplies, and storms. Just some examples of the research areas that could be negatively impact from further reductions include:

- Forecasting of hurricanes and El Niño-Southern Oscillation events;
- real-time sea level measurements used for tsunami warning systems;
- storm surge monitoring; and
- provision of data for early drought warning systems used by water and natural resource managers in the Colorado River Basin, California, and the shared watershed of Georgia, Alabama, and Florida.

Even in this fiscally constrained environment, the Nation must continue to invest in climate research, observations, monitoring, and modeling. I urge you to support the President's fiscal year 2013 budget request for NOAA OAR research at \$413.8 million, and the competitive climate research program at \$146.3 million. Funding at this level will enable the Nation's research institutions to continue their long and proud history of partnering with NOAA, industry, and other Government agencies to provide the Nation with useable atmospheric and oceanographic data to help plan for and respond to the impacts of climate variability and change.

Thank you for your consideration of this testimony.

#### PREPARED STATEMENT OF VOR

PROTECTING THE INTERESTS OF RESIDENTS OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH INTELLECTUAL DISABILITIES IN ACTIONS CONDUCTED BY THE DEPARTMENT OF JUSTICE'S CIVIL RIGHTS DIVISION THAT AFFECT THEIR CHOICE OF RESIDENCY

VOR, a national advocacy organization for people with intellectual disabilities/developmental disabilities (ID/DD) and their families express gratitude to the Subcommittee on Commerce, Justice, Science and Related Agencies for this opportunity to submit testimony for the record of the hearing on March 8, 2012, in consideration of fiscal year 2013 appropriations for the Department of Justice (DOJ). VOR's members look forward to working with Senators and their staff to ensure the civil rights of our most fragile citizens with ID/DD.

REQUEST THAT DEPARTMENT OF JUSTICE MEET ITS CHOICE OBLIGATIONS UNDER THE AMERICANS WITH DISABILITIES ACT IN DEPARTMENT OF JUSTICE ACTIONS INVOLVING INTERMEDIATE CARE FACILITIES

To protect the interests of the residents of ICFs for the DD and their families to be the primary decisionmakers regarding where they reside, in response to the blatant and repeated disregard of the ADA requirement for individual choice of residency by the DOJ's Civil Rights Division, VOR requests that the subcommittee include the following language in the DOJ Civil Rights Division appropriations:

- In any action taken by DOJ, including investigations, that involves the residents of an ICF/ID, DOJ shall consult with the residents (or, if a resident has a legal representative, the resident's legal representative) and families among all other interested parties before taking action.
- If, after taking action, families wish to intervene on behalf of their family member with ID/DD in the DOJ action, DOJ is encouraged to support such intervention.

#### ABOUT VOR

VOR is a national advocacy organization representing individuals with ID/DD and their families. VOR has thousands of members across the country, with representation in every State. Unlike other national advocacy organizations, VOR recognizes that individuals with ID/DD and their families are the primary decisionmakers regarding services and supports. We recognize that legitimate choice and person-centered supports are only possible in a system that offers a full array of quality residential and support options, from small homes to Medicaid-funded and licensed ICFs/ID.

RATIONALE: DEPARTMENT OF JUSTICE'S CIVIL RIGHTS DIVISION HAS ROUTINELY IGNORED OLMSTEAD'S CHOICE MANDATE

For fiscal year 2013 DOJ has requested an additional 25 attorneys and \$5.1 million to enable the DOJ's Civil Rights Division to, among other activities, "strengthen civil rights enforcement efforts" as part of the Attorney General's Vulnerable People Priority Goal. A portion of the requested increase will reportedly allow the Civil Rights Division to increase its enforcement of the Civil Rights of Institutionalized



Persons Act (CRIPA). Presumably any additional funds and attorneys, in part, would also be applied to the Civil Rights Division aggressive enforcement of *Olmstead*. According to a recent statement by Tom Perez, Assistant Attorney General for Civil Rights:

“The agreement with the Commonwealth [of Virginia] is part of a broad, nationwide effort to enforce the *Olmstead* decision. In the last 3 years, the Civil Rights Division has joined or initiated litigation to ensure community-based services in more than 35 matters in 20 States. We reached comprehensive agreements with the States of Georgia and Delaware that, like the agreement with Virginia, provide broad relief for thousands of individuals with disabilities.” (Tom Perez, “Department of Justice Transformative *Olmstead* Settlement”, February 6, 2012).

In DOJ actions in Virginia, Georgia, Illinois, Arkansas and other States, the legal “relief” for the affected individuals sought or supported by the Civil Rights Division has been the displacement of fragile individuals from life-sustaining, federally licensed supports (“deinstitutionalization”) without regard to choice and with little apparent concern for outcomes. These actions to enforce *Olmstead* are expressly contrary to the Supreme Court’s decision:<sup>1</sup>

“We emphasize that nothing in the ADA [Americans with Disabilities Act] or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings . . . Nor is there any Federal requirement that community-based treatment be imposed on patients who do not desire it.” 527 U.S. 581, 601–02(1999) (see also, Justice Kennedy’s concurring opinion, “It would be unreasonable, it would be a tragic event, then, were the Americans with Disabilities Act of 1990 (ADA) to be interpreted so that States had some incentive, for fear of litigation to drive those in need of medical care and treatment out of appropriate care and into settings with no assistance and supervision”).

Specifically, the Supreme Court held that community placement is only required when:

- The State’s treatment professionals have determined that community placement is appropriate;
- The transfer from an institutional setting to a less restrictive setting is not opposed by the affected individual; and
- The placement can be reasonably accommodated, taking into account the resources available. *Id.* at 587.

Increased funding for CRIPA or ADA enforcement for deinstitutionalization activities will undoubtedly result in expanded DOJ legal activities to undermine and ultimately eliminate the option of Medicaid-certified ICFs/DD.

Families and legal guardians of our country’s most vulnerable people with severe and profound ID/DD, who function at the level of infants and toddlers despite having the chronological age of adults, have strong objections to DOJ’s Civil Rights Division’s activities to “enforce the *Olmstead* decision.” Routinely, DOJ fails to seek or consider the input or protestations of the very individuals who have the greatest insights into the needs and desires of the affected individuals:

“. . . close relatives and guardians, both of whom likely have intimate knowledge of a mentally retarded person’s abilities and experiences, have valuable insights which should be considered during the involuntary commitment process.” *Heller v. Doe*, 509 U.S. 312 (1993)

“Individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families.” DD Act, 42 U.S.C. 15001(c)(3)(1993) (Findings, Purposes and Policies).

The following examples exemplify the Civil Rights Division’s blatant disregard for *Olmstead*’s choice requirements:

*United States v. Georgia*

A Settlement Agreement reached between DOJ’s Civil Rights Division with the State of Georgia in October 2010, prohibits the admission of any individual with a developmental disability to a State hospital (ICFs/ID) by July 1, 2011, and requires the transition of ALL individuals with developmental disabilities already living in

<sup>1</sup>VOR contends that DOJ actions to close ICFs/DD contrary to resident choice also violates the Federal Medicaid law which requires that ICF/DD residents be informed of alternatives under the home and community-based services waiver and be given the choice of either ICF/DD or home and community-based services waiver supports. 42 C.F.R. 441.302(c).

State ICFs/ID to community settings by July 1, 2015. Affected individuals were not afforded any choice and families and legal guardians expressly opposed the settlement: “[I]f everyone is forced to accept community living, then no one has choice.” (Resolution of the East Central Georgia ICF/ID Family Association Opposing Settlement Agreement, November 30, 2010).

Predictably, the 1-year implementation report by the court-appointed independent reviewer has found problems associated with the health and safety of displaced residents with regard to access to healthcare, medication, nutrition, and safety. Reportedly, there have been at least four deaths.

#### *United States v. Virginia*

A January 2012 Settlement Agreement between DOJ and the Commonwealth of Virginia continues to display the ideological agenda of the DOJ’s Civil Rights Division in its relentless effort to eliminate the option of Medicaid-certified ICFs/DD. If approved by the court, it will result in the closure of four public ICFs/DD. Families who had no meaningful opportunity to provide input to settlement terms but who expressly opposed closures were not listened to. A Motion to Intervene on behalf of residents of all Virginia ICFs/DD has been filed in an effort to protect individuals from displacement and harm. The Motion to Intervene demonstrates that DOJ has ignored choice, as required by *Olmstead*.

An earlier court decision from Virginia points to a pattern and practice by DOJ to disregard choice contrary to *Olmstead*:

“Thus, the argument made by ARC and the United States [DOJ] regarding risk of institutionalization fails to account for a key principle in the *Olmstead* decision: personal choice. And here, where more residents desire to remain in institutional care than the new facility can provide for, there is little to no risk of institutionalization for those whose needs do not require it and who do not desire it.” (*Arc of Virginia v. Kaine* (December 17, 2009) (see also, *Stanley Ligas, et al. v. Barry S. Maram, et al.*, 05 C 4331 (N.D. Illinois, July 7, 2009) (denying proposed settlement and decertifying class on finding that the named plaintiffs failed to meet the criteria set forth in *Olmstead* because class definition was not restricted to individuals who were eligible for, and desired, community placement).

#### *Arkansas*

In its CRIPA and ADA “civil rights” case against the State of Arkansas regarding its Conway ICF/ID, DOJ spent millions of Federal dollars and lost soundly. In his ruling dismissing the case, Federal District Court Judge Leon Holmes, addressed squarely the complete disregard by DOJ of family/guardian input and choice:

“Most lawsuits are brought by persons who believe their rights have been violated. Not this one . . . . All or nearly all of those residents have parents or guardians who have the power to assert the legal rights of their children or wards. Those parents and guardians, so far as the record shows, oppose the claims of the United States. Thus the United States [Department of Justice] is in the odd position of asserting that certain persons’ rights have been and are being violated while those persons—through their parents and guardians disagree.”

#### CONCLUSION: PLEASE CONDITION DEPARTMENT OF JUSTICE’S CIVIL RIGHTS DIVISION APPROPRIATIONS ON RESPECTING CHOICE

Choice is required by the ADA, as interpreted by *Olmstead*. Families and guardians of our country’s most vulnerable citizens seek relief from DOJ’s deinstitutionalization actions which are counter to the *Olmstead* choice mandate, counter to the best interests of the affected individuals who are displaced from life-sustaining services, and are pursued in complete disregard of the input of individuals and their families as primary decisionmakers. VOR requests the subcommittee to require DOJ to fulfill the ADA’s choice requirement by the following:

- In any action taken by the DOJ, including investigations, that involves the residents of an ICF/ID, DOJ shall consult with the residents (or, if a resident has a legal representative, the resident’s legal representative) and families among all other interested parties before taking action; and
- If after taking action, families wish to intervene on behalf of their family member with ID/DD in the DOJ action, DOJ is encouraged to support such intervention.

Thank you for your consideration.

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