

S. HRG. 111-999

# *Senate Hearings*

*Before the Committee on Appropriations*

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

*Fiscal Year* 2011

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

S. 3636

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

Commerce, Justice, Science, and Related Agencies, 2011 (S. 3636)

**COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL YEAR  
2011**

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**HEARINGS**

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

**S. 3636**

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE AND JUSTICE, AND SCIENCE, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011, 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 2011**

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**THURSDAY, MARCH 4, 2010**

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

The subcommittee met at 9:59 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairwoman) presiding.

Present: Senators Mikulski, Pryor, and Shelby.

DEPARTMENT OF COMMERCE

SECRETARY OF COMMERCE

**STATEMENT OF HON. GARY F. LOCKE, SECRETARY  
ACCOMPANIED BY APRIL BOYD, ASSISTANT SECRETARY FOR LEGIS-  
LATIVE AND INTERGOVERNMENTAL AFFAIRS**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

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

This is the first hearing of the—on the President's appropriations, and we will be taking testimony from the Department of Commerce and its Secretary, The Honorable Gary Locke. We note that the Secretary has been asked to be with the President at 11:30, so we would hope to conclude his testimony no later than 11:15.

And, Mr. Secretary, we'll try to work with you on that.

My colleague, Senator Shelby, is on his way, but I wanted to move to some other items before we turn to the Secretary for his testimony.

This subcommittee, in the spirit of reform, wants very much to get, really, value for the taxpayers' dollar. We will be availing ourselves of the excellent work done by the Inspector General and by our own arm, the Government Accountability Office, to give us advice and direction on how we can make wiser use of the taxpayers' dollars, stand sentry over cost overruns, and either clean up, or avoid, boondoggles.

At the conclusion of Mr. Locke's testimony, we will turn to the Inspector General, Mr. Zinser, to give us his observations, insights, and recommendations on how, using the power of the purse, we get more value in the purse. And we will take the inspector general's

report that he sent to the Office of the Secretary in January, and we will be using that as guiding principles.

And I will be asking, Mr. Secretary, some of those questions ourselves—the issues related to the census, the issues related to the overruns at NPOESS, the insurance of cybersecurity initiatives, and also how to really deal with the perennial and persistent backlog at the Patent Office.

We're excited about you being here today, and as we listened to the President's State of the Union, and carefully noted his appropriation request, we were heartened that the President and you share the same vision as this subcommittee, which is that the Commerce Department has all of the incredible agencies that form national assets to generate jobs in the United States of America, whether it's a robust effort on trade and export, making trade a two-way street—and not only for the big—not only for the big guys that are international, iconic brands, but small- to medium-sized businesses that are flourishing in my own State, be they Ellicott Machinery, which you visited and we appreciated, that has been dredging since the Panama Canal days, but how we can make sure that exports and the way we function—make sure that small- and medium-sized business know how to really participate in this dynamic new global market.

The other, looking at the Economic Development Administration, how that can be used as engines in local communities, not to just recycle the thinking of the old, like, "Give us the money and we're going to build an industrial park and hope a warehouse comes." Been there, done that, think we can get more value for our dollar, and more business growth, more job growth, if we use it. And we look forward to your vision and whether it has a realistic revenue request to it.

We're very proud of the National Institute of Standards and Technology, because you cannot compete in a global marketplace without standards. You can't—you can invent a product, but in order to produce the product, there must be standards.

We want those standards invented in the United States of America, working with our treasured allies. We want it to be "The Freedom Standard," not "The China Standard"—that is not a xenophobic reaction, but where there are democracies that have shown a robust desire for open and free markets, just like open and free speech.

You have the EU standard, we have our standard, there's the great harmonization. This gives us a great trading way, where we're not fighting over it. But he who controls the standard can control production and trade. So, that's why I want a freedom standard, looking at those countries that believe in freedom.

So, we're looking at the appropriations. We are pleased to be joining, again, with Senator Richard Shelby from Alabama. This subcommittee has always enjoyed a bipartisan effort.

So, our goal will be, No. 1, to be able to create jobs, generate jobs using the tools of the Federal Government to do that in the private sector. At the same time, there are constitutional obligations in the census.

We know that the President has provided, for the overall Commerce Department, an \$8.9 billion request. This is less than last



year, but it doesn't truly reflect the ongoing basic needs of the agency. There's a \$5 billion decrease, because we will be in the final stages of the 10-year census, and we'll be scaling back from \$7.3 billion to \$1.2 billion.

We'll have questions on the census, because we're really apprehensive about how the census will be conducted. We believe that every person here counts, and every person ought to be counted; and we've got to be able to count on the census to get it right.

As I said, few other departments have all of the agencies in place for America to be competitive and innovative in the new economy. Commerce's science and research programs use tech transfer to help and manufacture small businesses. Funding for the EDA continues to create financial links for high unemployment communities. We want to connect business with our agencies to be able to move ahead.

The new technologies and ideas deserve protection. This is why we support so strongly the Patent and Trademark Office. Last year—or this year—four—it sounds like a number in a lotto—four-four-four million—\$444 million in fee revenue from this year allowed them to better protect intellectual property.

In the area of international trade, there is going to be an increase of \$87 million, which we will—hope will be a new export push. Often, in the past, the Secretary of Commerce, and his agency, was looked upon to be the super sales agent for American business. And that wasn't a bad model, in another century, in another economy.

Now, we need our Secretary to be the chief executive officer of the Commerce Department, using every resource, and leveraging it, and making sure that we're in the global business, which is IT.

We also want to make sure that these agencies carry out their mission, and we will be looking to be sure that we are dealing with any potential issues related to boondoggle.

We have to keep an eye on the 2010 census operations. The overall census will cost \$14.7 billion, making this the highest-cost census ever. Even though the 2011 request from the census has decreased, the oversight and accountability must be continued.

Two years ago, we learned that the hand-held computer system that we bought was a techno-boondoggle, forcing the census takers to revert back to a paper-based system. Now we've learned that, without any real-time data this year, the Bureau of the Census may be unable to move resources quickly to achieve a complete count, and to ensure that that is accurate. I want to know what the census is—what is the issue around the census, to make sure we're functioning properly.

I also want to talk about NPOESS and NOAA. And I'll ask more questions about NOAA. We're very concerned that NPOESS, under the old framework, was eating as much as 36 percent of the NOAA appropriations. Wow, when they have so much to do—other weather issues, the management of our fisheries, climate data—that's important for policymakers to determine the nature of global warming. And what we understand now is that there's going to be a divorce between NASA, the Air Force, and NOAA. We would like to know what it will be and how to ensure that these very costly—that the overruns don't continue, that for all of the money that we

spent, we actually get science and information that greater protects the planet, and that we will now come to the point to have increased discipline.

The other issue is the Patent Office. And in the Patent Office, we've been continually concerned about cost overruns. We will be interested to know, in your testimony or in the Q&A, how you intend to reduce the backlog, which was a persistent problem often tied to poor morale, poor communication—gosh, we have lots of GAO and other internal reports that do that. Knowing of your strict adherence to management principles, we'd like to know how you've gotten a handle on this, even if you've gotten one at all; what would be the path forward. If we invent it, we want to protect it.

So, we look forward to hearing your testimony, and I want to turn to Senator Richard Shelby.

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Senator Mikulski—Madam Chairwoman.

This is the beginning of our fifth year working together on this subcommittee. We work closely together, sharing many of the same goals and expectations for the agencies that we oversee here. I'm pleased to serve beside you, once again, and want to thank you for your continued leadership on so many of these subjects.

I also welcome you back, Mr. Secretary—Secretary Locke—along with Inspector General Zinser, and look forward to learning more about your 2011 budget request for the Department of Commerce and what the Inspector General is doing to ensure that the Department's programs are being run efficiently.

The Nation relies heavily on the Department of Commerce to maintain America's competitiveness within the markets around the world. The Department provides avenues to promote the products and services of U.S. businesses, and then helps level the playing field by expanding, strengthening, and enforcing our international trade agreements.

Although, through the Department of Commerce, our country is able to maintain high technical standards as well as staying on the cutting edge of scientific research—all of which are fundamental to our Nation's leadership in the global marketplace—in particular, one area of the budget requests that accomplish this objective is a 7.3 percent increase in the National Institute of Standards and Technology's budget line. The \$918.9 million request maintains the commitment to budget levels authorized by the COMPETES legislation.

Key thrusts of this request will enable NIST to expand research on measurements and standards related to cybersecurity, health IT, the Smart Grid, and manufacturing applications.

Mr. Secretary, today we will also hear about programs that are not nearly as successful, and some that are complete failures. The administration has put forth a Department of Commerce budget request that attempts to balance priorities with a freeze on discretionary spending. Yet, this budget proposes \$1.1 billion increase, accomplished by offsetting reductions in the one-time cost of the decennial census and providing the Department of Commerce with a

significant increase in base spending. This budget simply hides a massive spending increase under the guise, I believe, of fiscal discipline through a hidden spending reduction.

Mr. Secretary, over the past year, we've learned of cost and schedule overruns within NOAA—within the NOAA Satellite Acquisition Programs—numerous information technology failures, disconcerting treatment of our fisheries, and glaring failures at the census. The National Oceanic and Atmospheric Administration, NOAA, faces many challenges in the year 2011, including the creation of the National Climate Service, the reorganization of the National Polar Orbiting Satellite Program, as well as addressing the system vulnerabilities of NOAA weather satellite data to security breaches.

Mr. Secretary, there are some proposed improvements in the management of NPOESS, but these changes are only cosmetic, I think. This restructuring will cost the taxpayers \$5 billion more than the original estimate. And, "What will this additional funding get the American taxpayer" is the question. Two satellites, which is four less than the six originally required.

I wish the failure of NPOESS was the only bad news to report about the management of national environmental satellite data and information services, but I believe there's more. For at least 4 years, NOAA has operated high-impact systems without the required security controls. The inspector general's 2009 Federal Information Security Management Act assessment of the Environmental Satellite Processing Center indicates that 110 of 134—or 82 percent—of the required security controls that should be implemented to control access to devices and information at the Center are lacking or nonexistent.

The inspector general indicates that, because of the lack of any security planning, the number of security vulnerabilities cannot ever be calculated. These failures show that the Department of Commerce is lacking in the competencies required to procure, operate, and protect the Government systems and the information they contain. The Department's total disregard for the sensitive information to which it's entrusted is an abomination. And if there is not a significant correction in the Department's direction, I will recommend that these programs, and any others that the IG questions, be ended.

From this point forward, the Department should be better served—would be better served to focus its attention on addressing the shortcomings and less on providing commentary to the IG's findings. Mr. Secretary, as NOAA attempts to actually manage NPOESS adequately, I'm concerned it may be doing the exact opposite of our Nation's fisheries, through over-regulation.

The Red Snapper Fishery provides valuable commercial and recreational opportunities in my State of Alabama, as well as being an enormous contributor to the economy. Both the fishermen's observations in my State and NOAA's own data show a dramatic increase in the nature of catchable red snapper in the Gulf of Mexico, and that's good. And yet, catch limits remain low and the season is shortened every year.

While we need to promote the health of this fishery, I believe we must balance environmental concerns with economic well-being.

We cannot overburden the hardworking men and women in the gulf whose livelihood depends on fishing by restricting their catch based on faulty science and data collection.

Today in the gulf, NOAA is continuing to put catch limits on fishermen when it lacks any comprehensive independent fisheries data that is critical to making accurate assessments of the health of the red snapper populations.

Without this independent, scientific information, the fishery and NOAA must rely on the fishery-dependent data, which are inherently biased against the fishermen and do not provide an accurate picture of the red snapper population.

I understand NOAA is required to end overfishing and rebuilt overfished stocks; we're all for that. But, fishermen along the gulf coast have suffered severe cutbacks in their catches for many years. If the science shows that stock is as healthy as it seems to be, I believe it's time for fisherman to benefit from their sacrifices.

Mr. Secretary, I want to work with you to make certain that NOAA has the resources to collect the independent data to implement fair and adequate fisheries management, and I believe you do, too.

Finally, Mr. Secretary, the Department is about to reach the height of, arguably, it's most important mission this year, the 2010 census. The census is vastly important to the representation in Congress and the allocation of Federal funds. It must proceed in as reliable and accurate manner as possible. This is an enormous undertaking that's already faced many challenges, as we both know.

During the 2010 census, the Department intended to incorporate new technology to reduce cost and to improve accuracy. Instead, we—the U.S. taxpayer—paid \$595 million for a technology that could not be operated and cannot be implemented.

The census has now turned back to the antiquated, paper-based accounting method. After wasting millions for the Department to revert back to paper and pencil counting, the Census Office spent \$2.5 million on a Super Bowl commercial to advertise that the census is required by law.

Further, the Bureau of the Census will also hire hundreds of thousands of temporary workers as part of their effort to count every single person in the Nation. There are disturbing news reports that 10,000 temporary hires were paid \$3 million for doing no work, another \$1.5 million was wasted on paying 5,000 people who worked for a single day or less, while an additional 581 employees have submitted questionable mileage reimbursement requests, and so on.

Mr. Secretary, there are many managerial failures at the Department of Commerce—and I realize it's big—many of which are highlighted today. The acquisition history of NPOESS, the overly restrictive management of the gulf fisheries, as well as the failed acquisition of the census hand-held demonstrates that management and acquisition oversight does not exist at the Department. Just these few examples show a systematic failure in the leadership at the Department I believe you need to address, and I believe you will.

Thank you.

Senator MIKULSKI. Mr. Secretary, we've got a big agenda and a little bit of time, so why don't you proceed?

STATEMENT OF HON. GARY F. LOCKE

Secretary LOCKE. Thank you very much, Chairwoman Mikulski and Ranking Member Shelby. It's a pleasure to be here.

All right, there we go.

Chairwoman Mikulski and Ranking Member Shelby, thank you very much. We're really pleased to join you to talk about the Department of Commerce's fiscal year 2011 budget, as proposed by President Obama.

With the 2010 census field operations ending this year, the President's \$8.9 billion budget request decreases overall spending from fiscal year 2010, but funds targeted increases for vital economic priorities, because, in these challenging times, the central mission of the Department of Commerce could not be more straightforward: helping American businesses become more competitive so they put more people back to work.

I want to highlight four areas where the Commerce Department's efforts, described in the fiscal year 2011, budget are integral to that goal of putting more people back to work.

First, businesses use our unparalleled statistical and technical research to develop new products, identify new markets, and make long-term investments. The National Institute of Standards and Technology, NIST, provides metrics that enable development of everything from a national Smart Grid, advanced manufacturing processes, to airport screening devices and new cybersecurity measures. As well, NIST provides consulting services to American manufacturers to become more efficient and profitable so they become more viable and competitive in a global economy.

Increasingly, businesses are turning to NOAA for its unmatched weather and climate observations, and much of NOAA's 2011 budget increase will finance NOAA's added responsibilities to implement that long-called-for restructuring of the National Polar-orbiting Operational Environmental Satellite System, called NPOESS. This effort will help us better meet civil and military weather forecasting, storm tracking, and climate monitoring requirements.

At a time where both businesses and President Obama have called for more accurate and readily available climate information, the 2011 budget assigns additional responsibilities to NOAA's proposed new Climate Service line office, which is the result of a proposed reorganization to bring together its observational and analytical resources, now scattered throughout NOAA, all under one roof.

A second key function of the Department of Commerce is overseeing the patent protection that has incentivized American inventors and entrepreneurs to create for more than 200 years. When I came to the Department of Commerce, the Patent and Trademark Office had a backlog of almost 800,000 patent applications and an over-3-year waiting period for an up-or-down determination on a patent application. We've already taken important steps to fix these problems, working with the employees and their representatives, knowing that every patent application waiting in line could be a new product not going to market and a new job not being created.

And through its short-term fee surcharge and other fee provisions, as well as make critical investments and upgrades to outdated IT systems, the 2011 budget will, along with management innovations and employee-driven process improvements, help the Patent and Trademark Office to whittle down the time it takes to grant or deny many patent applications to within 12 months by the year 2014, except those innovations that are also seeking FDA approval.

Area No. 3, Commerce provides direct consultation and funding to help communities develop crucial economic infrastructure. And through the Recovery Act's Broadband Technology Opportunities Program, or BTOP, by tomorrow we will have provided over \$1 billion to lay or activate over 20,000 miles of networked, high-speed Internet lines in underserved communities. The 2011 budget provides critical funding to ensure that all projects have rigorous oversight.

And this is a true public/private partnership, because just as the Federal Government might fund construction of a highway across a State and then have local governments build the streets that branch off of it, our infrastructure grants for high-speed Internet funds super high-speed Internet lines, or highways, that local providers, private sector, will then connect to, or tap into, to bring high-speed Internet service directly to homes and businesses.

The 2011 budget also provides \$75 million to our Economic Development Administration for planning and infrastructure grants to help communities identify their unique economic strengths and then develop regional innovation clusters, similar to what we've seen in Silicon Valley or the famous Route 128 corridor in Boston.

Area No. 4, in foreign countries, the Commerce Department serves as the lead advocate for U.S. companies looking to break into new markets or to grow their share in existing ones. The 2011 budget proposal provides a 20-percent increase to the International Trade Administration, which, among other things, will allow us to hire some 328 new trade specialists, mostly stationed in foreign countries, to seek out new customers and buyers for American-made goods. When American companies export more, they manufacture more. When they manufacture more, they hire more people.

International Trade Administration will play a key role in implementing the President's National Export Initiative, which aims to double America's exports over the next 5 years and support 2 million new jobs.

As we implement all of these programs, results, cost-effectiveness, and accountability are paramount objectives. So, we take to heart the Department's managerial challenges and operational issues, as identified by our inspector general, Todd Zinser, and his staff. His findings are acted upon and used to reevaluate other operations and serve as benchmarks or metrics of performance improvement. And we support the President's proposed 2011 budget to provide increased funding to the inspector general's office for increased oversight of our Department's acquisitions and contracts.

#### PREPARED STATEMENT

So, I thank you for the opportunity to come before you today. I know you have several questions, as you've already indicated. We

thank you for your continuing support of the Department of Commerce and its programs, and we look forward to this exchange.  
[The statement follows:]

PREPARED STATEMENT OF HON. GARY F. LOCKE

Chairwoman Mikulski, Ranking Member Shelby, and distinguished members of the subcommittee, I am pleased to join you today to talk about the Department of Commerce and the President's budget for fiscal year 2011. It has been my privilege to serve the American people for the past year, and I am grateful for President Obama's continued confidence in my ability to lead this great agency. We have accomplished a great deal since the beginning of this administration, and the subcommittee has played a critical role both in providing resources and conducting oversight to ensure that the Department achieves its mission.

Having steered the economy back from the brink of a depression, the administration is committed to moving the Nation from recession to recovery by sparking job creation to get millions of Americans back to work and building a new foundation for the long-term prosperity for all American families. To do this, the fiscal year 2011 budget makes critical investments in the key areas that will help to reverse the decline in economic security that American families have experienced over the past decade.

But even as we meet the challenge of the recession and work to build an economy that works for all American families, we must also change the way Washington does business—fixing programs that don't work, streamlining those that do, cracking down on special interest access, and bringing a new responsibility to how tax dollars are spent. I have been working hard to improve the way the Department of Commerce serves its customers, especially American entrepreneurs and businesses, the backbone of our Nation's economy. The Department is focused on strengthening the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship. The fiscal year 2011 budget reflects this ethic and will allow the Department of Commerce to better meet the needs of the American people.

The request of \$8.9 billion will enable the Department to effectively promote strong and equitable trade relationships critical to sustaining our Nation's ability to successfully compete in the global marketplace, improve our scientific and technological capabilities, upgrade our capabilities for weather and climate observations and forecasting, and ensure the long-term economic and ecological sustainability of our natural resources. This request is a significant decrease from our fiscal year 2010 appropriation, since major field operations for the decennial census will be completed in the current year.

The decennial census is an enormous undertaking, and we are urging everyone to mail in their forms this month. An increase of just 1 percent in the response rate will save the taxpayers roughly \$80 million. The Census Bureau is focusing extensive advertising and partnership activities on hard-to-reach populations, to encourage a high response rate and help meet our goal of achieving the most complete and accurate count of the Nation's population to date. We have expanded and accelerated those activities, with the subcommittee's support, using funds provided in the Recovery Act. Our partnership efforts have been well-received—we have already enlisted 207,000 partners. For comparison, at the end of the census in 2000 we had 140,000 partners. Our decision to advertise during the Super Bowl succeeded in reaching a massive audience—it was the most-watched TV event in history, with 116 million viewers. The results of these activities are promising: in the last 3 months, the share of people who have heard something about the census has increased from 35 percent to 75 percent, and the share of people who say they definitely or most likely will complete the census has gone from 77 percent to 85 percent.

Implementing all our Recovery Act programs effectively and efficiently remains a key priority for the Department this year and in the future. We have completed the Digital TV Converter Box Coupon program and returned unused funds to the Treasury. The pace of our grant and contract awards is increasing, and we remain on schedule to complete all awards this year. By the end of this week, we will have awarded 111 Broadband Technology Opportunity Program (BTOP) grants totaling \$1.1 billion. For example, a \$39.7 million broadband infrastructure grant to the ION Upstate New York Rural Broadband Initiative will serve more than 70 rural communities in upstate New York and parts of Pennsylvania and Vermont by constructing a 1,308 mile network and immediately connecting more than 100 anchor institutions, including libraries, State and community colleges, and health clinics.

Our second round of grants will focus on expanding Middle Mile broadband infrastructure that connects critical community anchor institutions—such as schools, hospitals, libraries, and public safety agencies—and attracts end-user connections provided by the private sector to consumers and businesses, creating a ripple effect of economic development throughout communities.

Having addressed such critical needs, the fiscal year 2011 President's budget is designed to help put our country back on a fiscally sustainable path. This will require a high level of budgetary discipline and a number of hard choices and painful tradeoffs. Nonetheless, the budget includes targeted investments in Commerce programs that meet major national needs, like export promotion that supports job creation, and research and development that can spur new ideas, new products, and new industries.

The budget provides \$534 million, a 20-percent increase, to the International Trade Administration (ITA), for its role in the National Export Initiative, a broad Federal effort to increase American exports. ITA will strengthen its efforts to promote exports from small- and medium-size enterprises, help enforce U.S. trade law, fight to eliminate barriers to sales of American products and services and improve the competitiveness of U.S. firms. President Obama has issued a challenge to double U.S. exports over the next 5 years. By increasing the number of U.S. firms that export and enabling them to increase their volume of exports, new higher-wage jobs will be created, and U.S. companies will be better able to compete in the expanding global marketplace.

The budget includes \$919 million for the National Institute of Standards and Technology (NIST), as part of the President's Plan for Science and Innovation. This proposed increase reflects the critical role that measurement science, standards, and technology services play in fostering innovation and encouraging economic growth. To support and enhance our world leadership in the physical sciences and technology, the NIST laboratories would address critical challenges in manufacturing, advanced alternative energy sources, cyber security, the Smart Grid and other important areas, and ensure that its facilities meet its needs to continue to produce world-class research. The budget also includes \$80 million for the Technology Innovation Program, which invests in game-changing new technologies that address critical national needs. The Hollings Manufacturing Extension Partnership will receive \$130 million to continue expanding its services to help smaller manufacturers adopt technological innovations that spur economic growth, and develop new products, expanded markets, process improvements, and more green technology jobs.

The request provides more than \$5.5 billion for the National Oceanic and Atmospheric Administration (NOAA), including investments to improve fisheries and the economies and communities they support, and to help green and blue businesses with a solid foundation of environmental information and stewardship. Much of this year's increase is to fund a major restructuring of the National Polar-orbiting Operational Environmental Satellite System (NPOESS). As it stands, the program is years behind schedule and billions over budget; independent reports and an administration task force have concluded that the program cannot be successfully executed with the current management and budget structure. However, the need for a successor system of polar-orbiting environmental satellites remains a national priority and is essential to meeting both civil and military weather-forecasting, storm-tracking, and climate-monitoring requirements. The restructured Joint Polar Satellite System will keep what works—common operating and ground systems, run by NOAA—but NOAA will separately procure the spacecraft for its highest priority orbit, as will the Air Force. NOAA's spacecraft procurement will be managed by the National Aeronautics and Space Administration, as has been the case with prior polar satellites and all geostationary satellites, and is fully funded in the NOAA request rather than shared with the Air Force.

Strengthening our knowledge on climate, weather and ecosystem sciences, as proposed in the budget, will also increase America's competitiveness. For example, the requested increase for the multi-agency Next Generation Air Transportation System would support enhanced weather information that, when fully integrated into the Federal Aviation Administration's operational decisionmaking process, could significantly reduce flight delays. There are also increases to strengthen NOAA's climate research and observation capabilities, including upgrades to climate science and improved modeling and assessments at the global, national and regional levels. In addition, we recently announced our plans to develop a NOAA Climate Service, and we look forward to working with the subcommittee toward that goal.

The budget includes \$2.3 billion for the U.S. Patent and Trademark Office (USPTO) to put the agency on a path to reduce first action pendency to 10 months and total pendency for patent applications to 20 months, implement a new, targeted hiring model, and make critical investments in its information technology, to sup-



port companies and innovators seeking to bring new products to market. The budget also gives USPTO full access to its fee collections and will strengthen its efforts to improve the speed and quality of patent examinations through an interim fee increase and fee-setting authority to better reflect the costs of providing services. Shorter pendency times at USPTO, in combination with patent reform legislation and other mechanisms for improving patent quality, can reduce legal uncertainty over rights and drive commercialization of new technologies.

In fiscal year 2011, with funding of \$46 million, the National Telecommunications and Information Administration (NTIA) will continue its important policy, spectrum management, and research programs that support emerging technologies and affordable, alternative communications services that can drive economic growth and create jobs. The administration and NTIA have moved aggressively to create an economic and regulatory environment in which innovations in information and communications technologies can flourish. In addition, as noted above, NTIA will focus on administering the billions of dollars in broadband grants being awarded this year; broadband is a central part of the infrastructure necessary for the economy to create jobs and thrive. The budget provides \$23.7 million for post-award administration and oversight of BTOP grants for construction and mapping, and for ongoing work with the FCC to maintain the national broadband map.

The budget includes \$1.3 billion for the Economics and Statistics Administration's (ESA) Census Bureau to process, tabulate, and release 2010 census data, conduct extensive evaluations of the census, improve the data collection methods of the American Community Survey (ACS), and begin a continuous update process of the Census Bureau's geospatial and address data, which is expected to produce long-run cost savings for the taxpayer. Understanding the demographic profile and economic structure of the Nation is key to any business or policy decision designed to promote job creation or to improve the economic well-being of American families. For example, the budget proposes to expand the ACS sample size, which will increase the reliability of ACS data, especially for areas with a population of 20,000 or less. This increased reliability will greatly benefit entrepreneurs and businesses by informing their decisions about where to expand their operations and providing better data on the changing economic, social, and demographic trends of their workforce and customers. It also will lead to more efficient allocations of more than \$400 billion in Federal funds to communities, ensuring that even the smallest of towns, communities, rural areas, and tribal lands get their fair share of funding for schools, transportation projects and job training.

The request also provides \$109 million for ESA's Bureau of Economic Analysis to develop new statistics that provide greater detail on key economic sectors to ensure that regulators, policymakers and businesses have all the necessary data at their disposal to make the most effective investment and economic policy decisions. This includes data on the American family's income, spending, savings and debt. More accessible data will help businesses of all sizes make better investment decisions that can, in turn, lead to job growth. The Bureau will also reinstate statistics on new direct foreign investment into the United States and produce data critical to analyzing the energy sector's contribution to U.S. economic growth, productivity, inflation, the trade balance, and income.

In fiscal year 2011, with funding of \$113 million, the Bureau of Industry and Security's (BIS) Office of Export Enforcement will step up its efforts to prevent illegal exports of sensitive dual-use goods and technologies that could endanger the Nation. Enhancements included within a \$10 million increase will strengthen counter proliferation, counterterrorism, and other national security programs and investigations. These funds will allow BIS to expand its field presence and increase coordination and liaison with the intelligence community as well.

The budget includes \$286 million for the Economic Development Administration (EDA), since competitive, high-performing regional economies are the building blocks of sustainable growth. As part of the administration's place-based initiative, the budget targets \$75 million toward planning and matching grants within EDA to support the creation of Regional Innovation Clusters that leverage regions' competitive strengths to boost job creation and economic growth. For example, EDA and NIST's Hollings Manufacturing Extension Partnership are currently partnering with the Departments of Energy, Education, and Labor, as well as the National Science Foundation and Small Business Administration on a joint Federal opportunity announcement for the Energy Regional Innovation Cluster. These agencies have issued a unique joint funding opportunity encouraging consortia from regions across the country to compete for a combined investment of up to \$129 million to accelerate the development of a Regional Innovation Cluster specializing in energy-efficient building technologies.

The \$32 million requested for the Minority Business Development Agency (MBDA) will further implement the Department's responsibilities under the Native American Business Development, Trade Promotion, and Tourism Act of 2000 and the Indian Tribal Regulatory Reform and Business Development Act of 2000. These funds will increase the activities and outreach of MBDA's Office of Native American Business Development and support research on Native American trade promotion and economic disparities.

The budget provides \$84 million for Departmental Management, including \$17.5 million toward renovation of the Herbert C. Hoover Building, the Department's 73-year-old headquarters in downtown Washington, DC. This long-term project, developed in coordination with the General Services Administration, addresses major deficiencies in the building's antiquated mechanical, electrical, plumbing, fire safety and security systems. The subcommittee's continued support for this project will yield great benefits for our working conditions. Also within the Departmental Management account, the budget provides small increases to improve cyber security by protecting sensitive information from increased malicious activities, and to strengthen our acquisition management workforce that is responsible for oversight of Department-wide activities. We are also requesting \$29 million for the Office of Inspector General, including additional funds to increase its oversight of Departmental acquisitions and contracts, and to support the Council of the Inspectors General on Integrity and Efficiency (established by the Inspector General Reform Act of 2008).

As part of the administration's line-by-line review of the budget to identify programs that are outdated, ineffective, or duplicative, we are proposing to terminate the Public Telecommunications Facilities Program and consolidate support for public broadcasters in the Corporation for Public Broadcasting. The budget also proposes to eliminate a yearly subsidy to a small number of firms in the worsted wool manufacturing industry that have already received about \$25 million over the past 5 years. Finally, we would rescind \$43 million of unobligated balances for the Emergency Steel Guaranteed Loan Program, which currently has no active loans, but leave \$5 million in the account in case there are future guarantee requirements.

In closing, the Department of Commerce has a broad mandate to advance economic growth, jobs and opportunities for the American people. While we are currently facing challenging economic times, this budget provides a blueprint for us to carry out that mandate and help the Nation rise to the challenge and forge ahead. Thank you for the opportunity to come before you today, and for your continuing support of the Department of Commerce and its programs. I look forward to your questions.

#### ADMINISTRATIVE STAFF VACANCIES

Senator Mikulski: Thank you, Mr. Secretary.

Well, we believe, in order to create jobs and also fulfill the mission of the Commerce Department and its agencies, you need the right resources, one of which is the money that is being requested in the President's budget.

However, I have another question related to management. You can't do your job without the right people. You've been in office less than 18 months, and we've asked you to be, not only the chief executive, but really the turnaround specialist at Commerce for many of the problems you've inherited. The boondoggle at Census, the boondoggle at NPOESS, the backlog at Patents preceded you. How many vacancies do you have in your top administrative staff that are pending confirmation?

Secretary LOCKE. We've actually made progress in the last few weeks, but we still have, I think, about a half a dozen still-pending confirmation, and notably the Under Secretary for the International Trade Administration. He just had his hearing, I believe, 2 days ago in the Senate Finance Committee, so we're very hopeful that that's a good sign.

## INTERNATIONAL TRADE ADMINISTRATION FUNDING

Senator MIKULSKI. Well, we would hope that these confirmations would move ahead.

Which then takes me to jobs, jobs, jobs, something that I know we share, on a bipartisan basis. Looking at the President's request, there have been requests for increased funding in the International Trade Administration. What would that increased funding do, and how would it help small- to medium-sized business be able to get into the trade arena?

Secretary LOCKE. Well, as I indicated, a large amount of that funding will be to bring on some 328 trade specialists, most of them stationed in our foreign countries. It is part of the President's National Export Initiative whose goal is to double American exports over the next 5 years. And we're primarily focusing on small- and medium-sized companies.

The United States, compared to other developed countries, does not export as much as other countries. And here's an interesting statistic. Of those companies in the United States that do export, 58 percent export to only one country. So, part of our program is to partner up with other organizations, including FedEx, UPS, the U.S. Postal Service—all of them have incredible databases, they know exactly who exports, what sectors, to what countries, volume. And if we can partner with them—and we've already received word from them that they do want to work with us—along with export/import—

Senator MIKULSKI. Yes, but that's not \$87 million. So, you want to hire more commercial officers to be in foreign countries.

Secretary LOCKE. That's right.

Senator MIKULSKI. We understand that. But, it means, then, if you're small- to medium sized, you've got to pick your country, and you've got to find your foreign commercial service officer. So, my small- to medium-sized business, that could export, won't know which country to call, who's going to need them. So, what, of your \$87 million, or of your International Trade Administration, will go so that these-sized businesses would know where to go, how their Government would be on their side, so they get out there and compete on the basis of everyone—cost, service, product ingenuity? So, what would be going on—are you going to be spending money in our own country?

Secretary LOCKE. Oh, yes. For instance, the partnership I announced indicated—with respect to FedEx or UPS—will actually be reaching out to today's exporters here in America and analyzing where they export to and say, "Based on our information, with the contacts and the people we have in foreign countries, if you now export to, let's say, Europe, we really think that you can export to Latin America or to Southeast Asia." So, we will be intensifying our outreach efforts to small- and medium-sized companies that are already engaged in exporting and say, "We believe, from the additional trade specialists stationed around the world, that we will find buyers and customers for you."

## PATENT AND TRADEMARK OFFICE FUNDING

Senator MIKULSKI. Well, we want to elaborate on that more, because I think you shared, in our office visit, the fact that you actually want to be running workshops around the country to do that.

But, let me get right on to the Patent Office. Maryland really is a State, from its innovative biotech and IT industries, and others, that really use the Patent Office. This includes our great iconic universities, Hopkins in Maryland, and our private sector. We hear two problems with the Patent Office. One is the incredible backlog. The second is that, while they're standing in line, they are worried that their ideas have been stolen, in this new cybersecurity world, and that, while we're working, in cybersecurity, to secure .military, or CyberShield, there's .gov. So, it's not like they're going to break into the Net of an individual company, they can just go cruising at the Patent Office.

So, my question to you: What is the amount that you're requesting? And do you think it's sufficient to do two things: help you reduce the backlog at PTO so that they can get decisions in a timely way—time is competitiveness; and, at the second time, that, while they're standing in line for approval, their idea is not being stolen by a foreign and economic adversary?

Secretary LOCKE. First of all, with respect to cybersecurity, this is an issue that the Inspector General's Office has identified, and I'm really pleased that the President's 2011 budget does call for significant increases in efforts on cybersecurity throughout the Department of Commerce, as well as with NIST, to help develop increased standards for all businesses, as well as government. And the Department of Commerce has been an integral player with the President's task force on identifying cybersecurity risk to our entire Nation.

But, with respect to the issue of the backlog, the President's proposed budget calls for letting us take advantage of fee increases, other fee, temporary measures, as well as more staff, so that we can reduce the backlog.

But, we just can't hire more staff. We also have to be smarter about how we use, and do things, within the Department of Commerce and the Patent and Trademark Office. You know, the office that patents innovations should also be using those innovations to help us significantly speed up our flow. We've worked with the labor unions already; we've changed the notorious count system, which was really a disincentive for high quality and faster processing of patents. And under the new evaluation system and the way of working with employees, employees now are encouraged to actually sit down and consult with those seeking a patent, so that they're not talking past each other and filing paperwork that doesn't address each others' concerns, so that we're able to resolve these issues and provide that guidance.

## PATENT AND TRADEMARK OFFICE BACKLOG

Senator MIKULSKI. So, what is the nature of the backlog now?

Secretary LOCKE. The backlog is around 700,000 applications. When we first took office, or joined the Department of Commerce, it was around 800,000, we've got it down to 700,000. And the time-

frame, though, for determination is still over 3 years. Our goal is to get it down to 12 months, unless you're also seeking FDA approval, because drugs or medical devices oftentimes take many years to go through the FDA process.

Senator MIKULSKI. Right. So, FDA is over here, but let's go to the other patents. So, your goal was to reduce it to 12 months.

Secretary LOCKE. Twelve months.

Senator MIKULSKI. When do you think you'll achieve that goal?

Secretary LOCKE. Our goal is to achieve that by the year 2014. We've already seen significant improvements, and, as a result we're already beginning to see increased revenue collections, just by using paralegals to take care of some of these issues where you have stacks and stacks—thousands of patent applications that have been tentatively approved by the patent examiners, but where some of the documents don't match up, the exhibits aren't properly labeled, and so forth. Instead of having patent examiners do that work, we're having paralegals and other clerical staff address those issues, then we're able to issue the patent, we collect more fees; because once a patent is approved there's a fee associated with that. We then turn around and—

Senator MIKULSKI. So, what—

Secretary LOCKE [continuing]. Use those fees to hire more people.

Senator MIKULSKI [continuing]. You're saying is that part of the money, then, is to be using appropriate staff, not just only lawyers trained in science and technology—which is not easy to come by, because whatever they can make in the Government, they could make four times as much in the private sector. Having said that—what you're saying, the use of other types of support staff will expedite this.

Secretary LOCKE. As well as upgrading our IT systems.

Senator MIKULSKI. Okay.

Secretary LOCKE. And, as we do so, making sure that they're not vulnerable to cyber attacks.

Senator MIKULSKI. Right. Senator Shelby.

#### RED SNAPPER STOCK DATA FLAWS

Senator SHELBY. Thank you, Senator Mikulski.

Mr. Secretary, in the area of red snapper stocks—you're familiar with that, on the gulf—in the Gulf of Mexico, I think, you know, the management of it is troubling. NOAA continues to use, we've been told, flawed data methods and survey programs that lack any real independent data. This—the fishery-dependent data and the flawed survey programs NOAA is basing its current decisions on seems inherently biased against the fishermen in the gulf and fails to provide any accurate picture of the real health of the fish stock. NOAA, with this unsound data, is imposing severe restrictions on the fishermen in my State. When will you begin to require NOAA to use transparent surveys and real, verifiable, independent data before assessing the health of a fish stock in the gulf? And why is your Department not doing more to ensure that the Government obtains and uses rigorous and timely data before undercutting the livelihoods of the hardworking people in this industry?

You know, we're all interested in fish stocks, we want them to flourish. It's been my information, from talking to people and read-

ing stuff that the red snapper has made a tremendous comeback, which we all like, in the Gulf of Mexico. We don't ever want it to be overfished, we want it to flourish. But, if this is true, if it's made this comeback, and NOAA's data is, maybe, not up-to-date, you know, not transparent, what can we look forward to there? What can you do there?

Secretary LOCKE. Well, first of all, Senator Shelby, I appreciate the concern, because, coming from the State of Washington, where we also have fishing issues—

Senator SHELBY. I know.

Secretary LOCKE [continuing]. In the Pacific, it's a very delicate balance.

Senator SHELBY. It is.

Secretary LOCKE. We understand that people's livelihood depend on, whether recreational fishing or commercial fishing—

Senator SHELBY. Both, sure.

Secretary LOCKE. We cannot allow overfishing, because if we decimate the stocks, then we ruin the livelihood for—

Senator SHELBY. Oh, I agree—

Secretary LOCKE [continuing]. Generations to come.

Senator SHELBY [continuing]. With you, totally. We all agree on that.

Secretary LOCKE. So, let me just say that, with respect to the red snapper, we do know that the stock seems to be reviving, and that's perhaps due to the conservation efforts of the past.

Senator SHELBY. True.

Secretary LOCKE. What we can say is that, I think, the—there's a council, the Gulf of Mexico Fisheries Management Council, that has recommended an increased catch quota for 2010, above the 2009 level, and it's our goal to approve and implement the Council's proposal. And we believe that the new fishing quota will be set higher than 2009 in time for the June start date of this recreational red snapper season.

Senator SHELBY. And you think this will happen soon, now. This is March, end of June, before June?

Secretary LOCKE. We believe that it will be announced in time so that everyone knows just how much more they will be able to catch. But, everyone's recommendation and recognizes—everyone recognizes the stock has recovered, and it's our belief, based on the Scientific Committee's recommendations, to increase the catch share above the 2009 level.

Senator SHELBY. Do you have any data, at your table now, that would tell us how much that would be? Or would that be a decision for the Scientific Committee?

Secretary LOCKE. I don't have that—

Senator SHELBY. Okay.

Secretary LOCKE. I don't have that specific information.

Senator SHELBY. But, it will be—it will be up some.

Secretary LOCKE. Yes.

Senator SHELBY. Based on the stock's recovery.

Secretary LOCKE. Based on the stock's recovery.

Senator SHELBY. Okay.

Secretary LOCKE. That's good news.

[The information follows:]

## NOAA RED SNAPPER UPDATE

The health of the red snapper stock is improving. The recent Southeast Data, Assessment and Review (SEDAR) assessment projected that overfishing of Gulf of Mexico red snapper ended in 2009. Mathematical models indicate the stock's reproductive potential increased significantly in recent years. The ratio of current to target spawning stock biomass (biomass of spawning fish) reached a low of 6.2 percent in 1988, gradually increased to 13.1 percent in 2006 before rapidly increasing to 21.9 percent in 2009. This means the red snapper stock is rebuilding, but remains below target biomass levels.

Based on this assessment, the Gulf of Mexico Fisheries Management Council's Scientific and Statistical Committee (SSC) recommended an increased catch quota from 5.0 million pounds (MP) to 6.945 MP in 2010. At its February meeting, the Gulf of Mexico Fisheries Management Council approved a regulatory amendment that would increase the Total Allowable Catch (TAC) from 5.0 MP to 6.945 MP and the commercial and recreational quotas to 3.542 MP and 3.403 MP, accordingly.

NOAA is currently reviewing the Gulf Council's proposal to increase the red snapper total allowable catch (TAC) from 5.0 MP to 6.945 MP. NOAA expects to publish a proposed rule for public comment in the coming weeks and a final rule implementing the TAC increase sometime this month (April) if we determine the proposed increase is consistent with applicable law. NOAA's goal is to approve and implement the Council's proposed TAC (if consistent with applicable law) and quota increases prior to the June 1 start date of the 2010 recreational red snapper fishing season. These increases are believed to still allow NOAA to prevent overfishing and remain on schedule for rebuilding.

In fiscal year 2011, the requested funding will target both fishery-dependent and fishery-independent research. Regarding fishery-independent research activities, funds will be used to create high-resolution habitat maps, provide needed biological and other data, conduct tagging and genetic studies, build new and improve existing ecosystem/stock assessment models, examine the effect of decreases in shrimp effort on red snapper populations; and develop fishery-independent catch and effort estimates for comparisons with commercial and recreational data.

## NIST'S ROLE IN THE AREA OF FORENSIC SCIENCE

Senator SHELBY. In the area of forensic science, Mr. Secretary, in February 2009 the National Academy of Sciences published its investigative report, quote, "Strengthening Forensic Science in the United States: A Path Forward," which was highly critical of the current status of forensic science in this country. The investigation found that forensic science testing, conducted in the 400 U.S. crime laboratories, lacks rigorous peer-reviewed scientific validation. That's troubling.

Secretary LOCKE, of the NAS's 13 recommendations—National Academy of Science—7 are core to the strength and capabilities of NIST. NIST is identified, dozens of times in the body of the report, as a critical partner, as you know, in the criminal justice system in resolving these deficiencies. And since this report was published, how has NIST supported forensic science in the criminal justice system? Has anything changed? Do you have any thoughts on that?

Secretary LOCKE. Well, as a former—

Senator SHELBY. And will they change?

Secretary LOCKE. As a former deputy prosecutor, and having worked with some of these issues—

Senator SHELBY. Right.

Secretary LOCKE [continuing]. About breathalyzers, machines—

Senator SHELBY. Sure.

Secretary LOCKE [continuing]. The reliability, and then seeing convictions tossed out or prosecutions halted, I have a great interest in making sure that—whether it's DNA profiling, biometric

measures to fingerprint analysis to measurements and analysis of firearms—

Senator SHELBY. That it works, in other—

Secretary LOCKE. We've got to make sure they work and that there are national standards that everyone agrees to—very high standards—and that they're very clear, so that the operators of these machines, the police officers, the State patrolmen are not—

Senator SHELBY. They're well trained.

Secretary LOCKE [continuing]. Responsible for—or expected to run and maintain these machines, and, if not properly done so, inadvertently, having all of these convictions tossed out.

Senator SHELBY. Sure.

Secretary LOCKE. So, NIST does play a very critical role, and we have about \$7.5 million annually that they spend to actually support the establishment and refinement of standards in the forensic science community.

For instance, NIST, right now, is even focusing on standards for the airport screening devices, to determine to what degree of accuracy they'll be able to detect certain things. And so, we're very proud of the work that NIST is doing.

Senator SHELBY. That's good.

Mr. Secretary, are you supportive—I assume you would be—of NIST taking on a larger role in supporting forensic science disciplines, including an increase in appropriations for this purpose?

Secretary LOCKE. Well, we very much support a greater role for NIST, because we think that, with its Nobel Laureate scientists, that it's a great resource and has really done great things for the country.

Senator SHELBY. Sure. I agree.

Secretary LOCKE. And so, we always look forward to a bigger, expanded role, within available dollars. But, more work for NIST, I think is a good thing.

#### NATIONAL EXPORT INITIATIVE

Senator SHELBY. Moving into different subjects, but it's all covered by Commerce, the National Export Initiative. As you mentioned in your opening statement, Mr. Secretary, the administration has created a National Export Initiative to meet the President's goal of doubling exports in 5 years, which we all support. Commerce leads the initiative and received a \$79 million increase for the International Trade Administration, 18 percent above 2011. ITA plans to hire 151 new Federal employees, but 51 will be headquarters staff of the 151—in other words, one-third—of which 15 employees will help with anti-dumping cases. This is important. But, the remaining new headquarters hires seem large for an initiative that was designed to expand markets overseas. Could you explain?

Secretary LOCKE. Well, we also need to make sure that, to help American companies compete and create jobs—

Senator SHELBY. Sure.

Secretary LOCKE [continuing]. That we have investigation, with the increased caseload and allegations raised, in terms of anti-dumping or countervailing duties, improper subsidies by different companies. That's equally important, because we are required to



investigate those as quickly as possible. And by making sure that we have impartial and fair determinations, but quick determinations, we can also help U.S. companies. We want to make sure that they're operating on a level playing field. And if we can help those companies by adjudicating these cases, we can actually increase their competitiveness, not just here, but around the world. So, that's also part of an export strategy.

Also, we are making sure that we focus on addressing barriers, trade barriers, market access issues imposed by other countries, to make sure that our companies can sell their products and services around the world. So, it's not just having foreign specialists around the world.

And I want to point out that the FTEs that we talk about, that are contained in the President's budget, are U.S. citizens. A lot of people that we're hiring are not U.S. citizens, but they are trade specialists—let's say, Hungarians stationed in Hungary, Brazilians stationed in Brazil, French stationed in France—to find customers and buyers for U.S. products and services. So, that's where we get a—come up with—

Senator SHELBY. I think that's smart.

Secretary LOCKE [continuing]. That's why we have some—that's why I say we're hiring close to 328—

Senator SHELBY. Okay.

Secretary LOCKE [continuing]. Trade specialists.

#### SATELLITES

Senator SHELBY. Okay. I want to get into the area of—and the chairwoman has been generous with our time, here—NOAA satellites, quickly.

The inspector general, as you know, highlighted the mismanagement of the National Polar-orbiting Operational Environmental Satellite System, pronounced “en-pose” [NPOESS]. It continues to be a—what a lot of us think is a disaster for the Department. In 1995, this program was projected to be six satellites with 13 instruments for \$8.5 billion, big ticket. In December 2008, the program was adjusted to four satellites with nine instruments for \$14 billion. This year, after reorganization and a name change to the Joint Polar Satellite System, the taxpayer gets two satellites with only five instruments for \$12 billion and a launch date delayed until 2016. What's going on here, Mr. Secretary?

Secretary LOCKE. Well, first of all, I believe that the two satellites you're talking about are the two satellites that would be under the control and jurisdiction and management and oversight of NOAA and NASA.

Senator SHELBY. That's right.

Secretary LOCKE. It's my understanding that we're still looking at a—the original NPOESS called for six, dropped to four. We're now engaging in a divorce, joint custody. I think there will be two that will be monitored by NOAA and NASA.

Senator SHELBY. Divorce first, and then joint custody.

Secretary LOCKE. Right, that's true. The program changes best reflect each agency's priorities.

Senator SHELBY. Okay.

Secretary LOCKE. Divorce first and joint custody. But there will be two that will be under the purview of NOAA——

Senator SHELBY. Okay.

Secretary LOCKE [continuing]. And two under the purview of Defense. So, it's still four.

But, you're right, originally six——

Senator SHELBY. It's a lot of money.

Secretary LOCKE [continuing]. Down to four, from \$8 billion for the six, now \$14 billion for the four. It——

Senator SHELBY. Is it going to work? I guess my bottom line——

Secretary LOCKE. It's going the wrong direction.

Senator SHELBY. Okay.

Secretary LOCKE. And that was——

Senator SHELBY. Well——

Secretary LOCKE [continuing]. Highlighted by the inspector general, as well as blue ribbon commissions, who basically said, "You've got to fix it, you've got to change it, you need a divorce; otherwise, you scrap the whole program."

Senator SHELBY. Are you going to do that?

Secretary LOCKE. That's why the President has supported, and the White House supports, this divorce. NOAA and——NOAA will be in charge of some of the ground and operational systems——

Senator SHELBY. Sure.

Secretary LOCKE [continuing]. For Defense satellites, as well as our satellites, but NASA, with its capabilities, proven acquisition capabilities, which now really runs the GOES-R Program——

Senator SHELBY. Sure.

Secretary LOCKE [continuing]. Which, over the last few years, has remained within budget; a troubled program before, but now pretty much on track—we're now using the GOES-R model, which is where NASA is responsible for the acquisition and the management, and we do the support.

So, we're hopeful, confident that this is a much better management structure, as recommended by everyone, including this committee.

Senator SHELBY. Absolutely.

Secretary LOCKE. And so, we're moving ahead.

Senator SHELBY. Thank you.

Thank you, Madam Chair.

Senator MIKULSKI. Senator Pryor.

Senator PRYOR. Thank you, Madam Chairman. Thank you for having this hearing today.

Secretary Locke, always good to see you, thank you, and——

Secretary LOCKE. Senator.

Senator PRYOR [continuing]. Welcome back to the subcommittee. And thanks again for coming to Arkansas last year; it was a great trip.

#### BROADBAND GRANTS

I have a question about rural broadband and a bottom-line question on that. What steps are you all taking there to make sure that the grants that are being allocated are being awarded to areas that need the grants and don't already have sufficient access to the Internet?

Secretary LOCKE. That is—thank you very much, Senator, that’s a critical question. And the criteria that we use in the Department of Commerce for our broadband, high-speed Internet grants are a “but for” test. But for this funding, would the private sector jump in? Or, absent this funding, would the private sector jump in? And if they will, then we don’t get engaged, because there’s no need to duplicate what the private sector is doing. With the scarce resources, we could be providing these dollars in other parts of the country that really need it.

As of tomorrow—or by the end of tomorrow, we will have announced over \$1 billion in broadband grants for this first round, another \$3 billion in the next round. We will have all of these completed and announced before the end of this fiscal year; and then, of course, the budget calls for increased funding for oversight.

But, I can tell you that what we’re doing under the Department of Commerce is what we call our “middle-mile projects”; basically, highways, rings, interstates of high-speed Internet, fiber-optic cable, or even using wireless systems. We’re connecting major institutions, hospitals, clinics, government facilities, libraries, colleges, and universities. And from this 20,000 miles of high-speed Internet fiber-optic that we’re deploying, private-sector providers—whether telephone companies, cable operators, whomever—are then able to tap into, or connect to, this ring and then provide the direct service to businesses and to homes.

Senator PRYOR. All right.

Secretary LOCKE. And without—and our test is, without this investment by the Government, the private sector does not have the funds to move into these communities. They don’t have the funds to build the main highway. And so, we’re making it easier for them.

Senator PRYOR. Are you confident that, as of tomorrow, when you finish your announcements, that all of the projects awarded will meet your “but for” test?

Secretary LOCKE. Yes. Yes. In fact, we’ve had 1,000—I think, 1,800 applications requesting some \$19 billion from this first-round pool of just a little over \$1 billion.

Senator PRYOR. Right. And then, when you do the subsequent rounds, you’ll still keep that “but for” test?

Secretary LOCKE. Yes. In fact, we’re clarifying it, we’re streamlining the process. We had to rely on thousands of independent reviewers, the same way like the National Institute of Health or other scientific foundations issue grants. We had three independent reviewers reading all the applications. We didn’t want to have an application rejected because of the quirks of one reviewer. So, we’re streamlining that process. We’re going to have at least two reviewers—outside, independent reviewers reading these various files and then submitting it. And then we still have to do a lot of due diligence within the Department of Commerce.

#### REGIONAL INNOVATION CLUSTERS

Senator PRYOR. Great.

You know that I’m interested in research parks. You and I have talked about that before. And I know you are, as well. And it seems that the research park idea—and they’ve had a lot of success in

Maryland and Alabama with these research parks—but it seems like that, that idea works very well with the administration’s idea of regional innovation clusters. Am I right in that? And are we moving in the right direction on trying to get more of these research parks around the country to tap into the innovative spirit of our country?

Secretary LOCKE. Very much so, and the President’s budget does call for moving funds into the—I can’t remember the specific—within the Economic Development Administration are—let me see, what is that—what’s that program? EAA?

VOICE. Economic Adjustment Assistance Program.

Secretary LOCKE. The Economic Adjustment Assistance Program. And that’s a more flexible program, where we can provide grants for communities to focus on planning and assessments of their strengths, and then also provide infrastructure grants to help them actually implement their ideas.

The whole notion of the regional innovation clusters is to have each community, or regions of the country, focus on their natural strengths, their assets—whether it’s colleges, universities, highways, some of the existing industries that are already there—to have them really focus on what they think is most viable, sustainable over the next several decades, and make sure that our grants are helping them further that vision and their goal.

And each part of the country may have totally different goals. One part might be on recreation, one part might be on tourism, another part might be on scientific research parks. But, we need to help each of the regions determine what their natural strengths are. And they may have several different goals, not just one. But, make sure that the grants that they’re applying for actually are consistent with, and in furtherance of, those regional innovation priorities.

#### PUBLIC TELECOMMUNICATIONS FACILITIES—PLANNING AND CONSTRUCTION

Senator PRYOR. Let me ask about public television. You—apparently the administration believes that the Public Telecommunications Facilities Program, the PTFP, at NTIA is no longer needed now that the digital transition is complete. And is it—am I right on this that the administration recommended the PTFP not be funded in 2011? I’m not sure that makes sense to me. Could you talk about that for a sec?

Secretary LOCKE. That is the recommendation of the administration, to not fund that, and to have—because, I think, in the past, 70 percent of the grants provided under that program went for digital equipment. And now that all the stations have converted to digital television, we think that it makes more sense to consolidate all the requests and programs under funding for the Corporation for Public Broadcasting.

Senator PRYOR. I may have that wrong, but I think that that program has been around much, much longer than digital transition. I think it’s been around 45 years, or something like that. And, I think you ought to at least look at that, to maybe try to continue that, because I’m sure there’s public television stations all over the country that have benefited from that funding over time.

## COMMERCE'S ROLE IN THE PRESIDENT'S NATIONAL EXPORT INITIATIVE

The last thing I wanted to ask is a little bit of a follow up on Senator Shelby's question about the goal of trying to double our exports over the next 5 years. I think that's a great goal; I think, like Senator Shelby says, everybody agrees with that. But, I would like to know what role the Department of Commerce is playing in there. You touched a little bit on it with Senator Shelby, but how does the Department of Commerce fit into achieving that goal?

Secretary LOCKE. Well, I think the Department of Commerce is really going to be the lead agency on that, but, of course, the President's National Export Initiative also calls for significant expansion of our agricultural exports, which is why, I believe, some \$50 million is allocated for the U.S. Department of Agriculture to help promote U.S. agricultural exports, reducing trade barriers that our agricultural communities and farmers face, as well as developing new overseas markets.

The President has also called for increased activity by the Export-Import Bank, especially focused on medium and small businesses, to make their loans; to increase loans that would benefit small- and medium-sized companies from the current \$4 billion to \$6 billion.

And the Department of Commerce, for instance, is the lead agency with respect to the Trade Promotion Coordinating Committee, which brings all the Federal agencies together. We've had several meetings already, and this working group of all of the different agencies will be to complement and actually do the work, as recommended, coordinated by the National Export Initiative.

What's different about the National Export Initiative from other efforts by other administrations—which have always focused on trying to increase exports—is that it is a Cabinet-level attention, with participation and direction by the President himself. And this is something that the President cares very, very deeply about; increasing exports. Because if we increase our exports, we're increasing manufacturing, and if we increase manufacturing to fill those orders, we're providing more jobs for the people.

Senator PRYOR. I agree. I think it's great.

Thank you, Madam Chair.

## NOAA FUNDING

Senator MIKULSKI. Mr. Secretary, I want to come back to NOAA. The reason is that, if you look at your appropriations request, it's \$8.9 billion for the entire Commerce Department, which deals with everything from national standards, which we hope become the international freedom standards, to trade policy, to economic development in local areas. But, if you look at it, of the \$8.9 billion, \$5 billion is NOAA. Half of your total appropriation is NOAA. And if you look at NOAA, 35 to 36 percent are in this satellite program. This is why we are obsessive about this. You have a big job to do to really be an economic engine. Of that 35 percent, we are apprehensive about getting our value.

## STIMULUS FUNDING

I'll just switch gears for a moment to the stimulus funding.

Four billion dollars went into building rural broadband. We held a separate hearing on that. You testified, you answered many of the questions, some of which Senator Pryor raised.

And, Senator, you'd find it very interesting, because they really did due diligence in anti-boondoggle, and yet moved it. But, it's going to end. Well, the need doesn't end. And over there, we've got NPOESS. Its apples and oranges. But, the fact is, is that for \$2 or \$3 billion, we wonder, what are we getting? And will what we're doing make a difference?

#### NOAA SATELLITES

So, for—one—I'll come to management issues at NOAA—but, what are we getting, with these two satellites that will have less answers than the original plan? And, are we truly saving money?

Then the other part of this is—you spoke about NOAA, which is under your purview, NASA, which is an independent agency but key to procurement, but the other partner at the table has been DOD, but they don't seem to be very involved in this divorce, and I wonder if they're picking up the money. We go from \$14 billion to \$11.9—close to \$12 billion. The NPOESS money, though there is a drop in it, jumps \$650 million a year. That's a lot of money.

And we wonder, are we going to see more escalating costs, and then you—or Dr. Lubchenco—has to go to other services, like the Weather Service, which we're so dependent upon, to pay for the increase in the satellite program.

So, here is my question. Now you're going to have the divorce—we have interesting metaphors about custody and so on—but, the fact is, for the NOAA part, it's going to cost more. And are we getting less science? And do you feel that there's a real disciplinary effort going on now to deal with this cost overrun?

There's a whole other school of thought that's advising us just to pull the plug on the program altogether. I don't want to do that, because it's been a lot of science and a lot of technology that's been developed here. And could you share with us this—can you see why—we are afraid that the voracious appetite of NPOESS will eat NOAA alive. And NOAA is already half of your appropriations request, and it's because of this particular satellite program.

Secretary LOCKE. I share those concerns, exactly, which is why the reports that I read, when I first became Commerce Secretary, from the expert committees, as well as the Inspector General's report, were very, very alarming.

As Senator Shelby indicated, originally it was supposed to be \$8 billion for six satellites, and then, more recently, its \$14 billion for only four satellites. NOAA and NASA will operate two of those four satellites—the afternoon orbits; the Defense Department will be in charge of the morning orbits and their satellites.

And it was a 50/50 cost-share arrangement. It was originally a 50/50 cost-share arrangement. So, what's really happening now is that, instead of the Defense Department paying one-half of our satellites and NOAA paying one-half of the Defense Department's satellites—that's why the increase in cost—we're now paying and responsible for, our satellites completely. But, it means that we will not be paying for the Defense Department's satellites later on, as they move forward.

We are very, very concerned that we have to have better management, for the very reason that it will eat up the budget of NOAA and the Department of Commerce. And that's why everyone recommended a complete restructuring; otherwise, the current trajectory was untenable, unacceptable. And either we make the changes or we terminate the program altogether. But, terminating the program would have left incredible vulnerabilities to our Weather Service. And people rely on that weather, whether it's forecasting hurricanes, to storms, to ocean conditions, and for fishing, and for business.

And it also impacts our defense capabilities, because even our NOAA satellites, in the afternoon, have military value and provide data to our defense forces. So, we cannot leave our defense forces and our men and women in armed services in harm's way because of a lack of data.

If we did nothing, some of our existing satellites will soon lose their operational capability, will end, and even fall from the sky. So, we would have a gap in weather and climate data, with no replacement in sight. So, that was also untenable. And that's why we moved very aggressively, urging the White House to convene a task force to really study this issue, brought together the experts that had advised us, issued the reports, and brought this to the attention of the highest levels within the White House. And we're pleased that decisions were made.

Senator MIKULSKI. Is this up at the Secretary's level? In other words, not just sitting at NOAA, is this with you?

Secretary LOCKE. I was engaged in those meetings. I was the one who went to the White House and presented the reports and said, "We have to do something. The current course is unacceptable." And we kept pushing and pushing. We got OMB, NASA, Defense, the Office of Science and Technology, and everyone else involved in the table, brought those experts in, and we kept pushing them. So, we're very pleased that a decision was made that followed the recommendations of both the inspector general's and the expert review panel's calling for a complete restructuring.

Now, of course, I tell the folks at NOAA, "You've gotten what you've asked for, the turd is in your pocket, and now we have to deliver." So, we're watching this—I am watching this very, very, very carefully.

Senator MIKULSKI. Well, we worry about NOAA. I'm very proud of the fact that it is headquartered in Maryland, as is NIST and the Census. The previous administrator had kind of a more hands-off, laissez-faire. But, as Senator Shelby has raised in his questions about NOAA, accurate numbers for red snapper, it's the same with crabs, it—the whole issue of overfishing and the decline of species is an issue.

We know that NOAA has very strong scientific capability, and we're really proud of that. But, now it needs very strong management capability that matches its scientific capability. And as it looks at creating new areas, like climate services—I understand the word is "climate services," not a "climate service." Am I correct in that? There's a difference that you provide data, but you're not standing up a new agency within an agency?

Secretary LOCKE. No, we're not standing up a new agency. It is a budget-neutral reorganization pulling together—we have climate data—

Senator MIKULSKI. I don't want to go into that, I want to come to the census.

Secretary LOCKE. All right.

Senator MIKULSKI. We need to have strong management at NOAA, and we'll come back to that.

#### 2010 CENSUS

Secretary LOCKE. All right.

Senator MIKULSKI. I've got to go to the census, which is giving us heartburn. The last big part of it—so just know that, that there's a big distinction between a "National Climate Service" and providing "national climates services," which is data.

The last big part of the 2010 census operation, quote, "addressing canvassing," had a 25-percent cost overrun. If we see this now with the next big phase, the so-called "nonresponse followup," a 25-percent cost overrun would be another \$675 million and be—have catastrophic consequences, in terms of really providing an accurate count in the timely manner, as what the founders and the constitutional mandate gave us. So, my question to you, how are we going to make sure we really have the nonresponse followup without adding a whole new 25-percent cost overrun, given the fact that our technology has failed?

#### ADDRESS CANVASSING COST OVERRUNS

Secretary LOCKE. It's of great concern to us. As both of you indicated, Senator Mikulski and Senator Shelby, we had to junk the hand-held computers. We did use hand-held computers for the address canvassing operation but reverted to a paper system for the nonresponse followup operation. We now have issues with respect to the software in—and assigning people, tracking their work performance, their hours, et cetera, et cetera. We've had—not had sufficient time to fully test that, so we're—everything is behind on that. But, that is proceeding. We're cautiously optimistic that there will be no problems with respect to that.

But, we do—we have had cost savings in other areas. We have had various other parts of the operation come in under budget, ahead of schedule, so we are amassing a reserve. We have also set aside a significant reserve of almost, I think, \$500 million with respect to the nonresponsive followup, the people going door-to-door.

Part of the cost overruns on that address canvassing dealt with the fact that we hire a lot of people, we train a lot of people, to have them ready to go. We always assume that some people, after a day or two, don't like the work and will quit, or that they simply don't show up. Because of this tough economy, we had very little attrition. We didn't have that many people not showing up, not many people quitting, not many people finding another job and saying, "Well, I don't need this temporary work."

The sources for the address canvassing overrun about which the Secretary testified, the training costs cited in the testimony, accounted for \$7 million of the cost growth in the operation. Other sources included the fact that the initial workload assumptions in



the budget were too low. In fact, the Census Bureau increased its estimate by \$41 million before the operation even began. The additional workload came from various sources including State and local governments and the post office. Another \$33 million of costs is attributed to the quality control (QC) component of the operation, which took more hours and mileage than expected. This was in large part due to the number of addresses that were found to be duplicates, or were otherwise deleted by the production listers, and had to be verified by the quality control listers. Last, the actual results included fingerprinting costs, for which \$7 million was budgeted separately.

#### REFINED ASSUMPTIONS FOR THE 2010 CENSUS

So, we've now built those—learned those lessons, and revised our estimates, in terms of how many people we need to actually bring on board when it's time to go knocking on the door. So, we're trying to incorporate all these lessons learned, to refine our models. In fact, based on some of the audits, as well as findings and our experience on the address canvassing, where we had to go find out—is the home still here? Is this building still here? Is this a new structure that's not listed on the Post Office rolls or the rolls of the local government? And that was the address canvassing.

We have taken a lot of that work and the lessons learned to completely rescrub all of our assumptions with respect to the non-responsive followup. So, we have taken these issues to try to constantly refine, we're cautiously optimistic. We'll have a better sense, around April 20, quite frankly, what we can expect by way of the workload expected for nonresponsive followup.

Based on past experience, by March 22, when we see how many people are actually sending in—sending back their census forms, we'll have a good indicator.

The Census Bureau will know the workload for the nonresponse followup operation around April 20. By around March 22, an interactive map showing the 2010 census participation rates as compared to the census 2000 will be made available to the public for tracking the current response rate down to the census tract level.

#### 2010 CENSUS DATA AVAILABILITY

And it's—in fact, Members of Congress and the mayors and the Governors will all have software, or programs, they can tap in, to actually see what's happening in their own communities and compare it against what happened in the year 2000. And that will give us the ability to immediately read just more public service announcements by local public officials, more outreach, more—a whole host of strategies to try to get more people to send back.

Senator MIKULSKI. That's how we'll do it, but we're—again, we're into the cost overrun.

The Secretary has to leave, momentarily, for an event at the White House, and we want to hear from the inspector general.

I'm going to say to my two colleagues, turning first to Senator Shelby, if we could stick to the theme of the census, which I know has been of great concern—did you have any questions on the census?

Senator SHELBY. I don't have any more. I think the Secretary understands my concern, and I think he shares that, and we just—and a lot of that happened before you came here, and I know that.

Senator Pryor.

Senator PRYOR. No.

Senator MIKULSKI. Well, Mr. Secretary, we know we've got a lot of followup to do. We want you to be able to keep your obligation to President Obama. And we really—we do look forward to staying in touch with your staff on these very vital issues that are affecting us.

So, thank you, and your presence here is——

Secretary LOCKE. Thank you.

Senator MIKULSKI [continuing]. Excused.

We now are going to ask Mr. Zinser to come up, our inspector general, to give us what he thinks are the big challenges and where we can—and his observations and insights on how we can get a better handle—using the appropriations process to get more value for our dollar.

Mr. Zinser, we're glad to see you. And really, on behalf of the subcommittee and, I think, of the Nation, we want to thank you for the job that you're doing.

I am a great believer in the inspector general process. The whole idea was waste, fraud, and abuse, and that we would have an independent force giving us this evaluation. And to the extent that you see, particularly, where there is waste or the possibility of cost overruns, where the boondoggle banging on our budget, banging on the mission of the agency, we welcome your observations about the Commerce Department, and any recommendations that you think we need to take in our appropriations process to ensure that we have smart government.

Please proceed.

#### **STATEMENT OF HON. TODD J. ZINSER, INSPECTOR GENERAL**

Mr. ZINSER. Thank you, Madam Chairwoman, Mr. Pryor. Thank you for the invitation to be here today.

As you well know, and as the Secretary just testified, the Department of Commerce faces many challenges. We have submitted a written statement that summarizes our January report on those issues, as we consider the top management challenges facing the Department.

Trying to narrow that list to a manageable number of priorities is a challenge in and of itself, given the very diverse mission of the Department. We drafted our report based on a thinking that too many priorities result in no priorities, so we identified five specific risk areas, which I will list in a moment.

But, our list does not include what is perhaps the overarching priority of the Secretary, which has his lead responsibilities in the area of economic growth and job creation. We recognize the importance of those responsibilities.

Our A list includes the decennial census, IT security, departmentwide, NOAA's Environmental Satellite Program, the American Recovery and Reinvestment Act, and the U.S. Patent and Trademark Office, to include significant financial management and process issues.

And if I could just make two more points, Madam Chairwoman. First, our list is not meant to criticize anyone or any program. We hope that it helps all of us focus on important problems.

And second, I think the subcommittee should know that I have found the leadership of the Department, almost to a person, to be very management-minded. They have rolled up their sleeves and seem intent on implementing much-needed management reform, and I think that's good for the Department and for the taxpayers.

PREPARED STATEMENT

With that, I'll conclude my remarks and respond to any questions you or other members of the subcommittee may have.  
[The statement follows:]

PREPARED STATEMENT OF HON. TODD J. ZINSER

Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee: Thank you for inviting us to testify today as you consider the fiscal year 2011 appropriations for the Department of Commerce. Today I will highlight five areas that we identify in our recent Top Management Challenges report and that the subcommittee may want to include on its short list of watch items. I will also address several organizational issues and other matters of importance to the Department.

The challenges I will discuss focus on the following five areas:<sup>1</sup>

—*Decennial Census*.—Mitigating issues with the 2010 decennial while addressing future census challenges.

—*Information Technology (IT) Security*.—Continuing to enhance the Department's ability to defend its systems and data against increasing cyber security threats.

—*National Oceanic and Atmospheric Administration (NOAA) Environmental Satellites*.—Effectively managing technical, budgetary, and governance issues surrounding the acquisition of NOAA's two environmental satellite programs.

—*American Recovery and Reinvestment Act*.<sup>2</sup>—Meeting the challenges of accountability and transparency with effective oversight of program performance, compliance, spending, and reporting.

—*United States Patent and Trademark Office (USPTO)*.—Addressing the Patent Office's resource and process issues.

Most of our audit and evaluation efforts this fiscal year are being expended in these areas. In planning our work for fiscal year 2011, we are, for the first time, conducting a formal risk assessment of Commerce activities to identify those most in need of oversight. Specifics on our current Top Management Challenges follow.

DECENNIAL CENSUS—CENSUS NEEDS TO ENSURE ACCURACY AND CONTAIN 2010  
DECENNIAL COSTS WHILE ADDRESSING FUTURE CENSUS CHALLENGES

With a life-cycle cost estimate now projected to total \$14.7 billion, the 2010 census is a massive undertaking made up of many moving parts. The bureau must integrate 44 separate operations (with a total of some 9,400 program- and project-level activities). In just over a week, the public will begin receiving their census forms in the mail. The rate at which they return their responses will be critical in determining the overall cost of the census. Households that do not mail back their forms will be visited by an enumerator during nonresponse follow-up (NRFU). The most expensive operation of the decennial, it is estimated that NRFU will cost \$2.3 billion.

The fiscal year 2010 decennial budget for carrying out the 2010 census involving the 10 question short form was \$6.9 billion, which included \$100 million carried over from fiscal year 2009. For fiscal year 2011, the bureau has requested slightly more than \$477 million to complete the 2010 census.

The mission of the census—to count each of the over 300 million people in more than 130 million households in the United States once, only once, and in the right place—is a daunting task. For decennial field operations, temporary bureau man-

<sup>1</sup>A more detailed discussion of these challenges is presented in our January 12, 2010, report, Top Management Challenges Facing the Department of Commerce, Final Report No. OIG-19884 (<http://www.oig.doc.gov>).

<sup>2</sup>American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

agement staff must run just under 500 local offices and manage over 600,000 temporary workers—while recruiting substantially more.

While much of the bureau's plan is on track, NRFU efficiency and accuracy are at some risk, and final decennial costs remain uncertain. The success of NRFU—which begins in just 8 weeks—hinges on how effectively Census controls the enormous NRFU workload and workforce, and it must do so using a Paper-based Operations Control System (PBOCS) which, because of system development problems, will have less functionality than planned and is currently experiencing performance problems. PBOCS is essential for efficiently making assignments to enumerators, tracking enumeration forms, and reporting on the status of the operation.

*Cost Containment is Essential for Field Operations, but Requires Strong Budget Estimation Capability and Effective Internal Controls*

The ability to produce valid budget estimates is essential for cost containment. Yet Census reported a 25-percent cost overrun for address canvassing and spent 41-percent less than anticipated for group quarters validation.<sup>3</sup> Inaccuracies of this magnitude in estimated budgets, combined with wide variances among early local Census offices in address canvassing costs, indicate significant weaknesses in the bureau's budget estimation capabilities.

Also essential to cost containment is better management of Census fieldwork. We found inefficiencies in wages, travel, and training during the address canvassing operation, including workers being paid to attend training classes but who subsequently performed little or no work, workers who made excessive mileage claims, and workers who were reimbursed for mileage at a higher-than-authorized rate. Given the significantly larger scale of NRFU, it is important that Census develop effective internal controls and ensure that managers scrupulously follow them during this operation.

The final decennial cost remains uncertain; three key factors could have significant cost impact. According to the bureau, the mail response rate could have the greatest impact, with enumerator productivity a second major cost driver. The third issue concerns the capabilities and performance of PBOCS for NRFU. This, along with the bureau's ability to implement effective workarounds for PBOCS shortfalls, will determine the ultimate schedule and degree of efficiency, and thus the final cost.

*OIG Oversight Plan For Decennial Operations*

The Office of Inspector General (OIG) will continue to monitor the bureau's progress on PBOCS and other key decennial activities. In addition, over the next several months, about 100 members of our staff will be participating in what is for us an unprecedented effort in scope and resource commitment to go on the road and observe Census workers in action. Such oversight, while census activities are ongoing, will allow us to immediately observe successes as well as any problems that might arise, and notify the bureau without delay.

*The Groundwork for an Improved and Cost-effective 2020 Census Should be set This Year*

The cost of the decennial census has doubled every decade since 1970 (not adjusted for inflation). On the current trajectory, the price of the 2020 census could total more than \$30 billion. Census must find ways to rein in costs while maintaining or enhancing accuracy. It is crucial for the bureau to lay the groundwork now for the 2020 census.

The Supplemental Appropriations Act of 2008<sup>4</sup> gave the Census Bureau an additional \$210 million to help cover spiraling 2010 decennial costs. As directed in the explanatory statement accompanying the act, OIG has been providing quarterly reports to congressional appropriations committees that assess the bureau's progress against its 2010 decennial plan. In our first quarterly report, we reported that the bureau's ability to effectively oversee decennial progress has long been hampered by inherent weaknesses in its systems and information for tracking schedule activities, cost, and risk management actions. Our recommendations to address these problems for the 2020 decennial emphasized the need for an integrated method for planning and tracking of budget, schedule, and progress.

To effectively plan and manage the next decennial, Census needs to significantly improve its cost estimation capabilities and provide a well-documented cost estimate as early as possible. Our first quarterly report also noted that Census needs to de-

<sup>3</sup>The group quarters validation operation is aimed at verifying information from all potential group quarters—such as dormitories and prisons—nationwide.

<sup>4</sup>Pub. L. 110–252, title II.

velop transparent decision documentation for the 2020 census that clearly identifies the basis for spending decisions and the rationale for changes to plans provided to Congress and other stakeholders.

The findings of our two subsequent quarterly reviews, combined with other evaluations we conducted throughout the decade, demonstrate that Census needs to identify more cost-effective approaches to the decennial and should give serious consideration to the use of such alternatives as administrative records, the Internet, and targeted address canvassing. These and other possible approaches have the potential to contain costs while increasing accuracy and efficiency.

INFORMATION TECHNOLOGY (IT) SECURITY—COMMERCE MUST CONTINUE ENHANCING THE DEPARTMENT'S ABILITY TO DEFEND ITS SYSTEMS AND DATA AGAINST INCREASING CYBER SECURITY THREATS

Commerce's budgets for information technology have increased since fiscal year 2008, primarily for investments at Census and NOAA (see table). Despite the millions of dollars spent on cybersecurity, Commerce's approximately 300 computer systems, many that process and store sensitive mission-critical data, are not always adequately protected.

COMMERCE BUDGET FOR IT AND IT SECURITY

[Dollars in millions]

Fiscal Year	IT Budget <sup>1</sup>	IT Security Budget <sup>1</sup>	Percentage of Budget Spent on IT Security <sup>1</sup>
2008 .....	\$1,789	\$116	7
2009 .....	\$2,273	\$170	8
2010 .....	\$3,042	\$240	8
2011 .....	\$2,631	\$307	12

<sup>1</sup> Rounded.

Source: Estimates provided by the Department of Commerce, Office of the Chief Information Officer.

While maintaining IT security is inherently challenging, Commerce's decentralized management structure adds to the difficulty. Commerce operating units have separate management structures that preclude direct accountability to the Department's Chief Information Officer (CIO). This decentralization gives the CIO only limited authority over the daily management of IT security within Commerce's operating units, and adds complexity to Department-wide information security initiatives.

*Commerce is Taking Steps to Strengthen its IT Security Workforce*

An audit we conducted in fiscal year 2009 found that the Department needed to devote more attention to the development, guidance, and performance management of its IT security personnel. We made recommendations to improve employee training, professional development, and performance management. Among the numerous improvements that the Department is now making, it plans to require professional certifications for employees with significant IT security responsibilities. This is a noteworthy step in building a highly competent IT security workforce—one that few, if any, civilian agencies are taking.

*Departmental Actions to Resolve Material Weakness in IT Security Are Showing Progress, but More Work Will Be Necessary*

The Federal Information Security Management Act of 2002<sup>5</sup> (FISMA) requires agencies to certify that their systems and data are protected with adequate, functional security controls before systems are authorized (accredited) to operate. If a management control weakness is sufficiently serious that the agency head determines it should be reported in the annual Performance and Accountability Report, it is termed a material weakness. IT security has been reported as a material weakness since fiscal year 2001 pursuant to the Federal Managers' Financial Integrity Act of 1982.<sup>6</sup> While the Department is continuing to make progress, our fiscal year 2009 FISMA review identified vulnerabilities in technical security controls that leave Department systems and data at risk for internal and external malicious at-

<sup>5</sup> Pub. L. 107-347, title III, §§ 301-302, 44 U.S.C. §§ 3541-3549, 40 U.S.C. § 11331.

<sup>6</sup> Pub. L. 97-255 (codified as amended in scattered sections of 31 U.S.C.).

tacks. Therefore, we recommended—and the Department agreed—that the material weakness should stand until more improvements are made.

We report on USPTO separately for purposes of FISMA because, as a performance-based organization, it submits a separate Performance and Accountability Report. Although the two USPTO systems we evaluated in fiscal year 2009 met FISMA requirements, we did not have sufficient evidence to recommend removal of the material weakness. In our view, the bureau has not demonstrated a consistent, effective process for certification and accreditation, and we continued to identify problems that we reported on in the past. Nevertheless, USPTO management determined that its IT security issues have been adequately resolved and did not report IT security as a material weakness in its fiscal year 2009 Performance and Accountability Report—a position with which we disagree.

In this fiscal year, the Department's CIO will begin implementing a 3-year plan that takes a Department-wide, holistic approach to improving Commerce's overall security posture. The plan addresses continuous monitoring of security controls, situational awareness, incident detection and response, and other aspects of an effective IT security program, including improving IT workforce competencies.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) ENVIRONMENTAL SATELLITES—NOAA MUST EFFECTIVELY MANAGE TECHNICAL, BUDGETARY, AND GOVERNANCE ISSUES SURROUNDING THE ACQUISITION OF TWO ENVIRONMENTAL SATELLITE SYSTEMS

NOAA is modernizing its environmental monitoring capabilities, in part by spending an estimated total of nearly \$20 billion on two critical satellite systems: the National Polar-orbiting Operational Environmental Satellite System (NPOESS) and the Geostationary Operational Environmental Satellite-R Series (GOES-R). Space acquisitions such as NPOESS and GOES-R are highly technical and complex; such programs have a history of cost overruns, schedule delays, and reduced performance capabilities.

The NPOESS and GOES-R programs have already suffered significant cost increases and delays. Because of serious problems with NPOESS, the program is beginning to undergo a restructuring, as discussed below. These programs will continue to require close oversight to minimize further disruption to the programs and prevent any gaps in satellite coverage. Such gaps could compromise the United States' ability to forecast weather and monitor climate, which would have serious consequences for the safety and security of the Nation.

*NPOESS Background*

The objective of NPOESS was to provide continuous weather and environmental data for longer term weather forecasting and climate monitoring through the coming two decades. NPOESS has been managed jointly by NOAA, the National Aeronautics and Space Administration (NASA), and the Department of Defense. NOAA and Defense shared the cost of the NPOESS program equally. The initial project plan called for the purchase of six satellites at a cost of \$6.5 billion, with a first launch in 2008. But problems with a key sensor raised costs and delayed the date of the first launch, even as the number of satellites in the system was reduced to four.

By December 2008, NPOESS' total estimated life-cycle cost had grown to \$14 billion. NOAA announced in March 2009 that it would delay the first launch to 2014 because of continuing problems with the sensor. It also delayed the planned NPOESS Preparatory Project<sup>7</sup> launch date from 2010 to 2011.

*Restructuring of the NPOESS Program Deemed Critical to Its Success*

In the spring of 2009, an independent team was appointed to examine the program's status. The team, comprising satellite experts from industry, academia, and government, found that the NPOESS program had a low probability of success. In the fall of 2009, NOAA, NASA, and Defense worked with the White House Office of Science and Technology Policy and the Office of Management and Budget to select the best option for restructuring. The option chosen, called Divergence, was considered the most feasible because it would not require Defense and NOAA to continue to try to resolve their conflicting perspectives and priorities. As a result, NOAA and NASA plan to acquire a separate satellite, called the Joint Polar Satellite System (JPSS).

The three agencies have formed a transition team to implement the Divergence plan. Although the complete details of the plan are still being developed, NOAA/

<sup>7</sup>The NPOESS Preparatory Project was planned as a risk-reduction effort to test NPOESS' new instruments in flight. NASA is taking the lead in this activity.

NASA intend to use the applicable components for JPSS that were funded and developed under the previous NPOESS structure.

Under Divergence, Defense will be responsible for the early morning orbit, Defense and the European Organization for the Exploitation of Meteorological Satellites will cover the mid-morning orbit, and a NOAA/NASA-managed JPSS acquisition will cover the afternoon orbit. The orbits are based on the local time that the satellite crosses the equator as it circles the earth. Satellite coverage in all of these orbits allows the same point on the earth to be sampled frequently enough and at the correct time of day (under sunlight or darkness) to meet each agency's operational requirements, provide sufficient data for both severe storm prediction and detection, and provide climate monitoring for our Nation's safety and security.

NOAA, NASA, and Defense will implement the transition plan from now into fiscal year 2011. To accomplish this, NOAA'S fiscal year 2011 budget request for JPSS totals \$1.1 billion, a \$679 million increase over the fiscal year 2010 budget. The JPSS program will continue development of the instruments needed for the afternoon orbit. The JPSS management structure is planned to be similar to NOAA's next generation GOES-R, in which NOAA manages the overall program with assistance from NASA. NOAA will acquire two JPSS satellites and will continue climate sensor acquisitions under the NOAA climate program. The cost estimate for JPSS is \$11.9 billion; this includes funding for transition of instrument acquisitions from Defense to NASA, NOAA's share of NPOESS contract termination costs, and procurement of two JPSS satellites.

Defense is also conducting a study to evaluate the best approach for maintaining continuity of its polar satellites. It has two remaining satellites under the ongoing Defense Meteorological Satellite Program (DMSP). The availability of DMSP satellites through 2018 could significantly delay the need to acquire a replacement satellite. However, it is essential that Defense maintain funding to account for the long lead time required to build satellite capability because it remains responsible for data continuity in the early-morning orbit beyond the last DMSP satellite's life span.

#### *GOES-R Background*

The GOES-R<sup>8</sup> system is intended to offer an uninterrupted flow of high-quality data for short-range weather forecasting and warning, as well as provide climate research data through 2028. NOAA is responsible for managing the entire program and for acquiring the ground segment, which is used to control satellite operations and to generate and distribute instrument data products. NOAA awarded the ground segment contract in May 2009, which has a 10-year duration and a total estimated value of \$736 million, if all options are exercised.

NASA's Goddard Space Flight Center in Greenbelt, Maryland, is responsible for acquiring the spacecraft and instruments for the program. In December 2008, NASA's award of the GOES-R spacecraft contract—with a total estimated value of \$1.1 billion for two spacecraft, including the options for two additional spacecraft—was protested by the losing bidder. Work stopped until the protest was withdrawn in August 2009. As a result, launch readiness for the two satellites was deferred by 6 months.<sup>9</sup>

According to program documentation, the overall GOES-R program acquisition is on track and within budget to meet the revised launch schedule for systems engineering and integration and both the flight and ground segments. The next significant program events are the system design reviews for the spacecraft and ground segment, scheduled for this month and next, respectively.

Any further delays in the satellite's launch readiness will increase the risk of NOAA's not meeting its requirement to have an on-orbit spare and two operational GOES satellites available to monitor the Pacific and Atlantic basins in 2015. We will monitor the program's cost and schedule to ensure that the bureau mitigates the risk of any further delays.

AMERICAN RECOVERY AND REINVESTMENT ACT—MEETING THE RECOVERY ACT CHALLENGES OF ACCOUNTABILITY AND TRANSPARENCY WITH EFFECTIVE OVERSIGHT OF PROGRAM PERFORMANCE, COMPLIANCE, SPENDING, AND REPORTING

The Department of Commerce received \$7.9 billion in funding under the American Recovery and Reinvestment Act of 2009 (see table). In addition to OIG, five Com-

<sup>8</sup>Since 1975, the GOES series of satellites have provided the United States with critical meteorological data for weather observation, research, and forecasting. Satellites in production are given letter designations, which are changed to numbers after the satellites reach orbit.

<sup>9</sup>The first satellite's launch date has been delayed from April to October 2015; the second from August 2016 to February 2017.

merce agencies received stimulus funding. Of the \$5.3 billion going to the National Telecommunications and Information Administration (NTIA), \$4.7 billion was for the Broadband Technology Opportunities Program (BTOP). With the goal of developing and expanding broadband services in areas that have no service or are underserved, as well as improving broadband access among public safety agencies, BTOP is by far Commerce’s most challenging stimulus program.

COMMERCE STIMULUS FUNDING <sup>1</sup>

NTIA .....	\$5 billion
Census .....	\$1 billion
NOAA .....	\$830 million
NIST <sup>2</sup> .....	\$610 million
EDA <sup>3</sup> .....	\$150 million
OIG .....	\$16 million

<sup>1</sup> Rounded.  
<sup>2</sup> National Institute of Standards and Technology.  
<sup>3</sup> Economic Development Administration.  
 Source.—OIG.

We have taken several steps to implement an appropriate oversight framework to track the stimulus activities undertaken by Commerce. These steps include the assignment of dedicated Recovery Act staff; advisory participation in Department steering committees and working groups; and development of training programs to include fraud awareness, administration of grants and contracts, and development and execution of a risk-based audit plan. Some of the larger challenges that Commerce faces, as identified by this oversight, are summarized below.

*Oversight Burden Will Increase in Fiscal Year 2011*

The sheer amount of Recovery Act money Commerce agencies received, coupled with the unique requirements of the act, makes ensuring appropriate spending—while also providing economic stimulus as quickly as possible—a particular challenge. Commerce agencies must spend funds appropriately with little time to prepare for the many new and expanded programs, grants, and contracts established under the act.

Attached to our testimony is a table that presents Department of Commerce Recovery Act obligations and spending. As of February 19 of this year, the Department had obligated approximately \$2.1 billion in funds and spent approximately \$649 million.

Although spending volumes are currently low, all funds must be obligated by fiscal year 2011. The need to distribute funds quickly to communities and businesses increases the risks for fraud, waste, and abuse in both Recovery Act-funded activities and those Commerce operations with more traditional funding mechanisms. Recovery Act agencies will need sufficient resources to ensure that programs are delivering as intended, while providing oversight to guard against misuse of funds. The Recovery Act substantially increases the Department’s contracting and grants workload, particularly at NIST and NOAA, whose grants and contracts offices must manage not only the over \$1.4 billion they received under the Recovery Act but also the \$4.7 billion BTOP program. NTIA relies on NIST and NOAA for grants administration because it does not have its own staff and systems for this purpose. Such increases place added pressure on these agencies to hire and retain qualified personnel.

The Recovery Act has provided a relatively significant funding increase for NIST and NOAA construction projects. To complete them successfully, these agencies will need to dedicate construction managers across Recovery Act grants, contracts, and regular appropriation-funded projects.

*Meeting Agency and Recipient Reporting Requirements*

The Recovery Act establishes specific reporting requirements for both agencies and fund recipients. Federal agencies must report key information such as awards, obligations, outlays, and major activities on a weekly basis. Fund recipients need to report on a quarterly basis the projects and activities created and their completion status, as well as jobs funded by stimulus money. Available to the American public, these data reports must accurately reflect the use and impact of Recovery Act funds. An effectively designed internal control structure that detects and prevents errors and omissions is vital to data integrity.

We recently reviewed the adequacy of key information technology and operational controls of the primary (source) grants, contracts, and/or financial systems for Cen-



sus, EDA, NIST, NOAA, and NTIA, to determine whether their controls ensure that the Commerce reports posted on <http://www.Recovery.gov> are complete, accurate, and reliable. Generally, the Commerce systems we reviewed had adequate data input/edit controls. However, the lack of automated data transmission or interfaces from the grants systems to Commerce's financial system could lead to errors.

Without additional automation, it will become more difficult for Commerce agencies to effectively manage their own reporting as the volume of grants and contracts increases; it will also be difficult to ensure complete and accurate recipient reporting. Additional automation would add efficiencies to the reporting process and decrease the risks of reporting errors and delays.<sup>10</sup>

In fiscal year 2009, the Recovery Accountability and Transparency Board asked Inspectors General to audit bureaus receiving Recovery Act funding to assess their ability to perform reviews, identify reporting omissions and errors, and notify recipients who should make appropriate and timely changes. Our audit found that Commerce and its bureaus have proactively ensured that Recovery Act recipients recognize and meet reporting requirements and deadlines. In addition, the Department has provided policy, guidance, and oversight to bureau grants and contracts officials to facilitate department-wide standard review processes. The Department agreed with our recommendations to fine-tune review procedures.<sup>11</sup>

*Effectively Setting Up and Managing the New Broadband Technology Opportunities Program*

A major Recovery Act initiative, NTIA's BTOP, faces significant application and pre-award review challenges to achieving its goals. The program aims to award over \$4.5 billion in grants in fewer than 18 months, a level of grants-award activity that no Commerce operating unit has ever undertaken.

With BTOP, NTIA has had to staff a program office, develop grants program rules and regulations, coordinate activities with several other departments and agencies (including Agriculture and the Federal Communications Commission), award grants, and perform effective oversight activities—all while limiting expenditures to 3 percent of the program's appropriation (\$141 million).

In early January, we met with the Assistant Secretary for Communications and Information to discuss the status of our evaluation. We communicated program challenges that—if unaddressed—we believed could cause NTIA to face difficulties in meeting its statutory deadline of issuing broadband grants by September 30, 2010, and in monitoring the grants after they are awarded. We shared the following concerns:

- NTIA faces operational challenges with its current staffing levels, especially given the program's complexity and deadline.
- Documentation is not consistently available for operational program procedures, program staff roles and responsibilities, and key management decisions.
- NTIA encountered problems with the application-intake system during the first round of the application process because the system was unable to handle the volume of applications submitted; this resulted in extending the deadline for receiving applications. While system modifications were made, there was only a short period of time in which to sufficiently test the system and ensure that adequate functionality and capacity were delivered for the second-round application cycle.
- NTIA also encountered challenges with the application review process. Volunteer peer reviewers failed to complete reviews or submit review scores in a timely manner. Supplemental contract reviewers were subsequently used to complete many of the application reviews. The review of applications was delayed nearly 3 months.

As NTIA enters its second round of issuing broadband grants, it needs not only to avoid the problems with applications intake and recruitment of sufficient reviewers but also to enhance internal program management operations for grants already awarded. In our opinion, the program is at risk of not being able to efficiently and effectively issue its second round of awards by the September 30, 2010, statutory deadline while simultaneously providing post-award monitoring of first-round recipients. Continued focus on improving program operations in these areas is critical.

<sup>10</sup> More Automated Processing by Commerce Bureaus Would Improve Recovery Act Reporting, Final Report No. OIG-19779, December 2009 (<http://www.oig.doc.gov/recovery/reports/ARR-19779.pdf>).

<sup>11</sup> Commerce Has Implemented Operations to Promote Accurate Recipient Reporting, but Improvements Are Needed, Final Report No. OIG-19847, October 30, 2009 (<http://www.oig.doc.gov/recovery/reports/Final%20Audit%20Report%20ARR-19847.pdf>).

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)—USPTO MUST ADDRESS ITS  
RESOURCE AND PROCESS ISSUES

With an enacted budget of \$1.7 billion in fiscal year 2010 and an fiscal year 2011 budget request of \$2 billion for patent operations, USPTO continues to struggle with increasing patent backlogs and the need to improve patent examination efficiency and quality.

As shown below, since fiscal year 2000, the number of patent examiners has more than doubled, yet the length of time to process a patent has increased 40 percent. Further, the backlog of applications awaiting review increased 139 percent.

COMPARISON OF ANNUAL PATENT WORKLOAD AND PENDENCY, FISCAL YEAR 2000 AND FISCAL  
YEAR 2009

	Fiscal Year 2000	Fiscal Year 2009	Change (percent)
Patent Examiners .....	2,900	6,200	114
Total Time to Process (months) .....	25	35	40
Applications Backlog .....	308,000	736,000	139
Applications Filed .....	312,000	486,000	56

Source.—USPTO.

Over the years, USPTO has worked to increase the number of patent examiners to address the growing backlog; however, simply adding to the workforce without improving processes and quality control will not suffice. The bureau must consider how to reform and reengineer the various components of the patent application process to ensure timely and high-quality application review. Further, its IT systems need to be updated to ensure that they are able to process increasingly complex applications safely and securely, and provide greater management oversight.

*Fee Structure, Funding Mechanisms Intertwined*

USPTO must also address challenges with its funding mechanisms and fee structure. It is now funded entirely by application, maintenance, and other fees paid by patent and trademark applicants and owners. Congress is also involved in this process by setting many of the fees legislatively and establishing a ceiling, through the appropriations process, as to the maximum amount of fees USPTO can spend in a given year. For fiscal year 2011, the administration proposes a 15-percent increase in certain patent fees to generate additional revenue to cover operating expenses. It also proposes that USPTO be given fee-setting authority and the authority to establish an operating reserve to manage operations on a multiyear basis.

In November 2008, our Top Management Challenges report suggested that USPTO's unique financing structure could become increasingly risky. Subsequent downturns in the U.S. and global economies quickly showed the structure's vulnerabilities. In the President's fiscal year 2009 budget, the bureau estimated that it would collect over \$1.8 billion in patent fees. However, by the end of that year, patent fee collections totaled just over \$1.6 billion. Multiple factors contributed to this difference, including a reduction in the number of patent applications filed and a decline in maintenance fees collected for existing patents. To align expenses with actual patent fee collections, USPTO took steps that included deferring the hiring of patent examiners, and curtailing or suspending overtime and training.

These reductions increase the risk to USPTO's ability to operate effectively in current and future years, and its capacity to ensure that America's intellectual property system encourages investment in innovation and contributes to a strong global economy. More immediately, USPTO may not be able to process as many patent applications, which will add to the backlog instead of working toward reducing it. In effect, fewer maintenance fees will be available to collect in the future because fewer patents are being issued today.

As a result, in our view, the Department and Congress must require transparency and quality with respect to USPTO's cost data. This could include a review of USPTO's cost accounting system and how the system could be used to support decisionmaking in general—and in the event of cost reductions in the future, such as those that were necessary in fiscal year 2009.

The Under Secretary of Commerce for Intellectual Property, who is also the Director of USPTO, has publicly acknowledged these and other difficulties. A 5-year plan contained in the President's fiscal year 2011 budget sets forth bold goals, such as reducing the time it takes for a patent application to be initially reviewed to 10 months (from the present 26 months) by fiscal year 2013. Similarly, by fiscal year

2014, the bureau’s goal for making a decision on a patent application is 20 months, down from the present 35.

OTHER CHALLENGES FACING THE DEPARTMENT OF COMMERCE

In addition to these five top management challenges, we have identified several organizational issues facing the Department in the coming year:

*Centralized Management and Oversight*

The Department needs to continue its actions to centralize management and oversight in order to make departmental operations more efficient, consistent, and productive. The Department’s operating units have long-standing and independent business models, cultures, and practices. This decentralized structure has created obstacles to Department efforts to integrate and administer internal processes such as financial services, human resources, grants and contracts management, IT, and major acquisitions. Increased centralization has the potential to yield cost savings.

Commerce awarded over \$2.2 billion in grants to some 4,000 recipients and over \$3.2 billion in contracts to over 7,000 contractors during 2009. Grants and contracts are administered by five separate bureaus, using three different grants systems and four different procurement systems. Additionally, the Department’s Office of Acquisition Management has limited authority over the agency’s grants and procurement offices, which further contributes to the inconsistent management approaches across the Department and adds to the difficulty in overseeing the effectiveness of operations and programs.

*Contracts and Grants Management Workforce*

Sufficient staffing for the contracts and grants management workforce has also been a long-standing issue for the Department. Now, primarily as a result of the Recovery Act, the Department and its operating units are issuing more grants and contracts than ever. According to Department data, there are more than 1,500 Commerce employees holding certifications in various acquisition positions (see table). While the Department does not track the number of grants personnel, we recently conducted a survey of the sufficiency and qualifications of the Recovery Act acquisition and grants workforce. Based on our survey, for the five Commerce agencies receiving Recovery Act funding, the grants workforce totaled over 800 employees. This includes grant officers, grants program managers, and grants specialists.

COMMERCE ACQUISITION WORKFORCE—NUMBER OF CERTIFIED PERSONNEL

Position	Personnel
Contracting Officer/Specialist .....	180
Contracting Officer’s Representative/Contracting Officer’s Technical Representative <sup>1</sup> .....	1,313
Program/Project Manager <sup>1 2</sup> .....	49
<b>Total .....</b>	<b>1,542</b>

<sup>1</sup> Employees in these positions may not all be currently working on acquisitions.

<sup>2</sup> Certifications are only required if managing major acquisitions.

Source.—Commerce Office of Acquisition Management.

Despite these numbers, however, the Department’s ability to appropriately issue and oversee grants and contracts is hampered by a serious shortage of skilled, specially trained staff. To ensure that grants and contracts are issued effectively and funds properly spent, the Department needs to build up the size and skills of this workforce and improve its oversight processes.

*NOAA Headquarters Leadership Structure*

NOAA continues to face the challenge of carrying out its multifaceted mission of understanding and predicting changes in the earth’s environment and conserving and managing coastal and marine resources to meet our Nation’s economic, social, and environmental needs. NOAA is realigning its headquarters leadership structure to streamline decisionmaking and provide greater policy-level attention to day-to-day management and oversight of its programs. The realignment is intended to provide additional strategic guidance and leadership direction for the bureau’s stewardship responsibilities, including fisheries.

One of the key components of this mission is management, research, and services related to the protection and rational use of living marine resources. We discussed NOAA’s need to balance conservation and commercial fishing in last year’s Top Management Challenges report. Over the past year, we have issued two reports that

demonstrate, in particular, the difficulty of achieving this balance. In our first report, we evaluated a series of issues regarding the work and scientific methods of the National Marine Fisheries Service's (NMFS) Northeast Fisheries Science Center.<sup>12</sup> Our second report, which we recently completed, provides an assessment of the policies and practices of the Office for Law Enforcement within NMFS and NOAA's Office of General Counsel for Enforcement and Litigation.<sup>13</sup>

*Commerce Headquarters Renovation*

Finally, the Department's headquarters, the General Services Administration (GSA)-owned Herbert C. Hoover building in Washington, DC is undergoing an extensive renovation. The renovation will take about 13 years and is estimated to cost almost \$960 million to complete. The project is being funded mostly by GSA, but has the greatest potential to disrupt Commerce operations and affect its workforce. Accordingly, the Department has a primary interest in ensuring that the renovation is completed on time, within budget, and free of fraud. To meet this goal, Commerce and GSA need to provide comprehensive oversight throughout the project's life cycle.

In conclusion, Madam Chairwoman, there is no doubt that the Commerce Department faces much important yet challenging work in fiscal year 2011. Accomplishing it will require continual management oversight, and we intend to perform our role as well in monitoring the progress of these essential programs. This concludes my prepared statement. I would be happy to respond to any questions that you or other members of the subcommittee may have at this time.

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<sup>12</sup> Memorandum to National Marine Fisheries Service re: Northeast Fisheries Science Center, February 26, 2009. (<http://www.oig.doc.gov/oig/reports/correspondence/Northeast%20Fisheries%20Science%20Center.pdf>).

<sup>13</sup> Review of NOAA Fisheries Enforcement Programs and Operations, Final Report No. OIG-19887, January 21, 2010 (<http://www.oig.doc.gov/oig/reports/2010/OIG-19887.pdf>).

**DEPARTMENT OF COMMERCE RECOVERY ACT SPENDING, AS OF FEBRUARY 19, 2010**  
[Dollars in millions]

Bureau	Purpose	Total Appropriation	Total Obligations <sup>1</sup>	Total Disbursements	Remaining Unspent	Percentage Remaining
EDA	Economic Investment—Economic Adjustment Assistance Program	\$150	\$148	\$6	\$144	96
Census	2010 Census—Additional personnel, training, targeted media purchases, and risk reduction.	\$1,000	\$340	\$210	\$790	79
NTIA:	Competitive grants to accelerate broadband deployment in unserved and underserved areas and to strategic institutions.	\$4,690	\$705	\$18	\$4,672	99
Broadband	Digital-to-analog converter box coupon program	\$650	\$338	\$332	\$318	49
Digital Television	Research, grants, research fellowships, and advanced research/measurement equipment and supplies.	\$220	\$87	\$16	\$204	93
Science/Technical Research/Services	Transfer from HHS for the Health Information Technology Program	\$20	\$1	\$1	\$19	98
NIST:	Transfer from Energy for the Smart Grid Interoperability Framework	\$10	\$2	\$1	\$9	94
Construction of Research Facilities	To address NIST's backlog of maintenance and renovation and for construction of new facilities and laboratories.	\$360	\$186	\$7	\$353	98
NOAA:	For backlog of research, restoration, navigation, conservation, and management activities.	\$230	\$212	\$47	\$183	80
Operations, Research, & Facilities	For construction and repair of NOAA facilities, ships, and equipment; to improve weather forecasting; and to support satellite development.	\$600	\$30	\$10	\$590	98
Procurement, Acquisition, & Construction	ARRA oversight	<sup>2</sup> \$16	\$1	\$1	\$15	94
OIG						
	<b>TOTALS</b>	<b>\$7,946</b>	<b>\$2,050</b>	<b>\$649</b>	<b>\$7,297</b>	<b>92</b>

<sup>1</sup> The obligation amount does not include activity for contracts awarded to other Federal agencies and referred to as interagency transfers. This is to remain compliant with OMB reporting guidance, which requires only the receiving agencies of funds to record obligation and spending activity to avoid double-counting of activity across Recovery Act programs. Given this, the obligation and spending levels reported are lower than the activity tracked in Commerce's financial records. The Department estimates amounts not included in the reporting to total \$355 million in obligations, which relate primarily to the NTIA Broadband Technology Opportunities Program and the NOAA Procurement, Acquisition, and Construction programs.

<sup>2</sup> Includes \$6 million from the Recovery Act that is available until September 30, 2013, and \$10 million transferred from the \$4.7 billion NTIA appropriation for oversight of the Broadband Technology Opportunities Program.

Source: Department of Commerce and OIG.

## CYBERSECURITY

Senator MIKULSKI. Well, I want to get right to the information technology issues and I'm going to translate that to the words of cybersecurity. And I would prefer that we continue, with staff, that conversation in a secure environment.

As a member of the Intelligence Committee—I know Senator Pryor is a member of the Armed Services Committee—we've both seen it from the purview of .military. We feel we need to protect .gov so we can ensure the future of .com. It's a klutzy metaphor, but there are issues that we believe need to be raised. We would like you really to look at the Commerce Department request to ensure that we're making prudent building-block investments on our cybersecurity, knowing you can't do this in a day. But, we believe that if we look at a properly planned, appropriately sequenced building-block approach, that, over the next few years, we could really secure .gov, particularly in those agencies that are most ready to be under these phishing expeditions—"p-h," not the kind that we enjoy on the bay. And we feel that that would be better in a more staff-oriented and classified environment where we could do that.

And I know this would be a keen interest of Senator Pryor and Senator Shelby, who once chaired the Intel Committee.

So, we get it, and we want to talk about it. We want this. Do you think the building-block approach is the good way to do it?

Mr. ZINSER. Yes. We have been working with the Department. We think they have a—they have a 3 year plan that they have developed; we think that plan has a lot of merit. But, we'd be happy to work with the staff and get into the details.

## NOAA SATELLITE PROGRAM

Senator MIKULSKI. Well, let me, right then go to one of my favorite topics, which is NOAA. You heard my comments to the Secretary. Close to a \$9 billion appropriations request, \$5 billion of that in NOAA; and of that, 35 percent, this satellite program that seems vociferous.

You've heard his recommendation—and it's not a debate with the Secretary; it's really your professional assessment—what tools would you recommend that we put in the appropriation, or report language, to encourage the agency to follow certain directions to ensure that, as we move forward with the new path, we get scientific value for our dollar and we really end this cost-overrun situation. Do you have thoughts that you could share with us on that?

Mr. ZINSER. Yes, Senator. I think that the NPOESS program, or now the JPSS program, can learn some lessons from GOES-R. And GOES-R did learn lessons from the problems with NPOESS.

## DEPARTMENT-LEVEL OVERSIGHT BOARD FOR ACQUISITIONS

But, one of the key things that remain for the Department to do is to establish a Department-level oversight board of some type to—and not just for JPSS or GOES-R; this really applies to major acquisitions, in general, but especially for the satellite program. Right now, the Department is still trying to develop a Department-

level acquisition oversight process, and they really need to do that for the satellite program.

Senator MIKULSKI. Mr. Zinser, are you talking about at Commerce or are you talking about at NOAA?

Mr. ZINSER. I'm talking about at Commerce, at the Secretary, Deputy Secretary level, some process for them to get some type of independent review of what NOAA is doing in the management of the program.

Senator MIKULSKI. Well, NOAA—you know, Commerce and—I know, it's an old saw now, as the Democrats have taken over, to say, "Oh, we inherited a mess from the last administration," but we did. In the census, you know, the techno-boondoggle there with Harris, where we gave them \$600 million and don't even have a bag of microchips to show for it. Now—and then we have the NPOESS model. Commerce doesn't seem to, within its various departments; know how to buy big technology. Do you—is this what you're looking at, in terms of an overall department? Perhaps you could flesh that out with us and give us your insights. Because we're not creating departments just for the sake of creating it, but we just can't have this at the Commerce Department. Money is too scarce, the missions are too important for it to go into something where we don't have anything to show for it at the end of the day. That's why the taxpayers are so grouchy. And we're grouchy, too.

My colleague, here, from Arkansas, has a reputation for, you know, frugality and thrift, and I feel the same way in this subcommittee. So—

Mr. ZINSER. Well, I think one of the big lessons from the handheld computer debacle—when the committees called the Secretary up to answer about that issue, the Secretary—Secretary Gutierrez—wasn't all that well informed on what the problems were, because his staff did not have a system in place to review those projects.

When Secretary Locke came in, I recommended that the heads of the agencies should have, at the administrator level, some type of dashboard of the mission-critical contracts that their bureau has, and they ought to visit those contracts on a regular basis to see how well they're progressing. I think that the—that leadership of the agencies have to be that involved in these major acquisitions.

Senator MIKULSKI. I think that's a very important lesson, and we would like to talk with you more about it, about the practicality of implementing some, working in conjunction with the Secretary.

I want to come back to the census issue, but—Senator Pryor.

#### INTERNET SECURITY/CYBERSECURITY

Senator PRYOR. Well, thank you, Madam Chair.

Let me just kind of follow up on one of the chairwoman's questions, here, about Internet security, cybersecurity. Are you generally confident about the Department of Commerce's ability to protect itself against cyberattacks?

Mr. ZINSER. We think there are a lot of risks involved. There are approximately 300 systems in the Department, and what we're trying to do is look at, departmentwide, the types of policies and procedures that they have in place at a departmental level.

One of the issues is that the management of IT security is very fragmented. There are—

Senator PRYOR. Is part of that the contractor issue, where they contract some of this out?

Mr. ZINSER. That's part of it. The other is just the structure for the chief information officers. There's a chief information officer for every bureau, and some bureaus have more than one. And trying to get all of those people on the same page and implementing the processes and procedures necessary is not easy.

And then the other part of the problem is individual systems and—the security of critical, individual systems—those systems involving weather, for example, or export control licenses and things like that.

Senator PRYOR. And is this sort of fractured management system—has that just evolved over time?

Mr. ZINSER. Sir, that is the nature of the Commerce Department. And, to their credit, the new leadership is trying to get a handle on that, and one of their goals is much more integrated management of the Department, and we've been pushing that for a long time.

Senator PRYOR. Okay. So, do you have a set of recommendations on how they should handle this?

Mr. ZINSER. We have been working with the CIO's office. They do have a plan in place. Some of it involves a "C" word that is not comfortable for people, which is "consolidation" of some of these responsibilities, but we have been working with them on that.

Senator PRYOR. Okay. And does it sound like they are taking those steps?

Mr. ZINSER. We're working with them on that, sir.

Senator PRYOR. Okay.

And I guess the last question is—back to, sort of, my original question—as they go through this process, is it your belief that the Commerce Department will become more secure from an Internet cybersecurity standpoint?

Mr. ZINSER. Yes, I do.

Senator PRYOR. Okay.

Thank you, Madam Chair.

Senator MIKULSKI. Senator Pryor, our next hearing will be with the FBI, and we will have—we'll follow the policy I established last year, which is, we'll have an open hearing. But, then, because the FBI has national security, counterterrorism, other counter issues, we're going to have a classified hearing. And I would welcome your—once again, your participation. But, some of these issues will also be a very good place to raise this with the FBI, because they're our law enforcement agency. And in many ways, what's happening at Commerce is, its cybertheft, of a grand scale, but, instead of stealing your money, they're stealing your intellectual property, coming in through .gov back to .com. Interesting, isn't it?

And we'll be able to go into more on that. And we're going to ask the Director to elaborate on it in his testimony.

Senator PRYOR. Great. Well, thank you for doing that, because I think that's the right approach. Thank you.



Senator MIKULSKI. Census. We're going into—we've now landed. You know, the 10 questions that take 10 minutes that determine 10 years are now in mailboxes, et cetera, and there's this magic number of March 22. Do you have any advice and direction on things that we could actually be doing right now, working with the—working with Commerce—Census, so that we don't have more cost overruns? And do you have any ideas on how we can recoup any of the money we spent that we didn't get value for our dollar?

Mr. ZINSER. Yes, Madam Chairwoman. The major risks for the decennial at this point—it is true, they are at battle stations at this point, and it is, in many respects, like a battle. There are a lot of things that are going to happen, and the experience of the field staff to work through those problems is a key.

Unfortunately, there are two critical systems that are having performance problems and functionality problems. The Secretary referenced them, they are aware of them. One involves something called a Paper-Based Operation Control System, which they'll use to deploy and manage all the 600,000 enumerators that will be doing nonresponse followup. The other is a more basic system, called DAPPS, which is a Decennial Applicant Personnel and Payroll System which is used to hire people and keep track of their time and pay them. Very important functions, both of those systems are having problems.

On the Paper-Based Operation Control System, it's to the point they're—they're developing, testing, and implementing in stages—kind of, in time for the specific operations. And the key is that they have to stop developing, and, for those functions they've got to drop, they've got to come up with workarounds. And the key is to develop those workarounds and have those applied uniformly across the country.

For example, one of the problems could be that not enough people in the regional offices can get onto this system all at the same time. Right now, the latest number I have is that five people in the local Census office can access the system at one time. Well, that wasn't the original criteria. There needs to be more people accessing that system. So, they have to come up with workarounds.

Another problem, for example, is that people at a lower level, their passwords—they can't access the system with their password. Well, one way to get around that, that we've heard, is that a supervisor will start giving people their passwords. You can't do that. You have to come up with a more uniform, acceptable workaround.

So, that's what we've recommended, they've got to come up with standard workarounds for those functionalities that they weren't able to sufficiently develop and implement.

Senator MIKULSKI. I think those are very good observations. And I know Secretary Locke has asked his team to stay behind, and we really encourage them to work with some of the insights provided by the inspector general so that really—I guess it's really the next 100 days.

## NONRESPONSE FOLLOWUP OPERATION

I have a question for Secretary Locke's management team. When will you be hitting the streets on the nonresponses, and when will you come to closure on that?

Ms. BOYD. I would love to have Dr. Groves follow up with you on that. I know the Secretary is doing a lot of work in order to lessen the—

Mr. ZINSER. Madam?

Ms. BOYD [continuing]. Need for nonresponse followup.

Senator MIKULSKI. Yes. Do you have the answer?

## TIMEFRAME FOR NONRESPONSE FOLLOWUP

Mr. ZINSER. Yes. The nonresponse followup operation runs from May 1 through July 10, so it'll be about a 10-week period.

Now, right now, as they start to ramp up and hire, employees go into training sometime before that, but they will actually hit the streets around May 1.

Senator MIKULSKI. So, they have to be hired and have their—remember that famous background check—

Mr. ZINSER. That's correct.

Senator MIKULSKI [continuing]. That gave us pause last year, because of access to vulnerable populations with an official badge from the United States of America? So that hiring has to be completed, and all appropriate background checks, by May 1. So, they have to be kind of street-ready—which is not like shovel-ready, but street-ready—

Mr. ZINSER. That's correct.

Senator MIKULSKI [continuing]. May 1.

Mr. ZINSER. That's correct.

Senator MIKULSKI. So, then it'll be May, June, and July.

Mr. ZINSER. Yes.

Senator MIKULSKI. Those 3 months are really the follow-up months.

Mr. ZINSER. Yes.

Senator MIKULSKI. So, that's the time that we really are concerned about—

Mr. ZINSER. Yes. What—

Senator MIKULSKI [continuing]. Underestimating what it's going to take.

Mr. ZINSER. What we have planned for our office, Senator, we have identified a number of operations, and our staff is going to go out and form observation teams. We're ramping up. And probably within about a month, I will have 75 percent of my staff out making observations about the way the enumeration is being conducted.

Senator MIKULSKI. But, the Secretary referenced that, on March 22, he'll have a picture of how the returns are going. I presume that would be based on the rate of return, by then, and projections of the next phase that—there's always the "Oh gosh, I forgot." So, we have to remind people to do the census when it arrives—the 10 minutes, the 10 questions, 10 years—and then, near the end of March, a really significant public education campaign, "Get your form in."

Mr. ZINSER. That—

Senator MIKULSKI. And the greater the rate of return, the less this—enumerators—

Mr. ZINSER. Correct.

Senator MIKULSKI [continuing]. Will be needed, isn't that—

Mr. ZINSER. The estimate is that, for every 1 percent increase in the mail response rate, the cost of the decennial will be reduced between \$80 million and \$90 million. So, right now the response rate is estimated to be 64 to 65 percent. If you can get that up to 75 percent, you're going to save \$800 million to \$900 million. And again, all of that is because of how labor-intensive and how many people have to be hired to go out and actually knock on doors and try to get this information in person.

And what the March 22 date represents is the tracking of that response rate. And the Census Bureau has plans to track that on a daily basis and target additional outreach to areas with a lower-than-expected response rate, and to get their partnerships involved in trying to get the response rate up.

Senator MIKULSKI. Well, thank you, this has been very insightful.

And before we conclude, is there anything that you feel you wanted to tell me, that we haven't covered?

Mr. ZINSER. No. We appreciate the opportunity to be here. I think that the risk areas that we've identified in our written statement are ones that we're going to continue to work on and try to keep the Department's attention focused on.

#### OFFICE OF INSPECTOR GENERAL FUNDING

Senator MIKULSKI. Well, thank you very much. Last year, the Commerce—Justice made sure that we carved out \$2 million for your office to help with the oversight, not to do it in a schoolmarmish way, but we need a lot of red alerts and alarms and—to know where, as you say, kind of like the dash—the lights on a dashboard—where are we in this process? We only have—we have such a mandated timeframe to do it right.

I believe we need to use all the tools of the new way of communicating, particularly the social networking. And when people hear “10 questions”—because the old census form was really cumbersome—but “10 minutes, 10 questions, determine Federal funds to your State for 10 years”—I think are a—very significant.

So, we thank you. We need to talk to you about your appropriations, as well, to ensure that you have what you need to continue this due diligence.

We'd like to thank you, and the people who work for you for giving us this kind of advice. It's really very edifying. And would you thank them for me?

Mr. ZINSER. Thank you, Senator.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. At this time I would like to ask the subcommittee members to submit any additional questions they have to the witnesses for the record.

[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

TRADE WITH CHINA

*Question.* U.S. paper manufacturers have claimed that China and Indonesia have two unfair trade practices for coated paper products:

—China and Indonesian governments have directly subsidized their countries' coated paper manufactures making it difficult for U.S. companies to compete with cheaper paper imports from Asia. The Department of Commerce's recent preliminary review showed that this claim seems to have some merit and warrants further investigation.

—China has manipulated its currency, fixing the value of the Yuan against the dollar, undervaluing their currency. Paper companies claim this is also a form of countervailing subsidy—same as directly funding paper companies. This currency manipulation affects many commodities than just paper products. To date, the Department of Commerce has not taken any action on this issue.

What is Commerce's position on China's currency manipulations?

*Answer.* President Obama underscored the need to rebalance the global economy in his speech at the Export-Import Bank's Annual Conference on March 11, 2010, by stating that for China, "a more market-oriented exchange rate will make an essential contribution to that global rebalancing effort."

The authority to monitor and report on currency manipulation is delegated by law to the Department of the Treasury. At the same time, as you point out, the Department has received an allegation in an on-going countervailing duty investigation that China's currency valuation represents a subsidy that should be countervailed under U.S. trade remedy laws. Let me assure you that the Department of Commerce is analyzing the currency allegation carefully and thoroughly to determine whether it meets the requirements under our statute for initiating a countervailing duty investigation. Finally, I want to reiterate that we are committed to vigorously enforcing our trade remedy laws to help ensure that U.S. producers and workers have a level playing field on which to compete with their foreign counterparts.

*Question.* How does Commerce's new National Export Initiative resolve this problem of currency manipulation with China, our second largest trade partner?

*Answer.* The National Export Initiative (NEI) is a critical new effort that will lead to long-term economic growth and the creation of new jobs. It is not intended to address directly the question of Chinese currency practices. However, to the extent that U.S. exporters may face a range of barriers to the Chinese market, the NEI is an enhanced and comprehensive program to help tackle such barriers and enable U.S. firms and workers to better position themselves to reap the benefits of expanded export opportunities. The NEI will help solve the related problems that stand in the way of our increasing exports to China and supporting more jobs being created in the United States.

This is the first time the United States will have a Government-wide export-promotion strategy with focused attention from the president and his cabinet. Under the NEI, \$140 million in additional funding—across Federal agencies—will be provided to help meet the President's goal of doubling exports during the next 5 years to support 2 million jobs in America.

In the State of the Union Address, the President outlined a series of proposals to create jobs and put the Nation on the path to sustainable economic growth, focusing on help for the Nation's small businesses. Proposals include a new tax cut for small businesses to encourage them to hire new employees and increase wages for existing employees, and a new initiative that will transfer \$30 billion from the Troubled Asset Relief Program (TARP) to a program that will support small business lending. The administration's efforts are focused on three key areas: (1) improving access to credit, especially for small- and medium-sized businesses; (2) expanding the administration's trade advocacy efforts; and (3) increasing the Government's focus on barriers that prevent U.S. companies from getting free and fair access to foreign markets.

The Department of Commerce will soon unveil a comprehensive and significant effort aimed at ramping up and maximizing exports—and job creation—during the next 12 months. President Obama's fiscal year 2011 budget called for an additional \$78.5 million to implement the strategies developed through the NEI and ultimately empower U.S. exporters as they compete in the global economy. The President's budget will allow ITA to bring on as many as 328 trade experts to serve as advo-

cates for U.S. companies to grow their export sales in 2011. ITA is going to put a special focus on increasing, by 50 percent, the number of small- and medium-sized businesses exporting to more than one market.

I have made it clear that one key to the successful implementation of the NEI is to address unfair foreign market barriers and to vigorously enforce our trade laws. I am committed to promoting a level playing field for U.S. companies and will work with Congress to ensure that U.S. companies benefit from strong enforcement of U.S. trade remedy laws in accordance with our international rights and the obligations of our trading partners.

#### ADVANCED IMAGING SOUNDER IN GEOSTATIONARY ORBIT

*Question.* A high spectral resolution imaging sounder in geostationary orbit, or “advanced imaging sounder,” will enable advance warning of severe weather events, including tornadoes, an hour or more before they are visible from satellite cloud imagery or by ground-based Doppler radar. Studies also show that wind profiles measured by such an advanced imaging sounder in geostationary orbit would enable significantly improved landfall prediction for hurricanes, both location and time. The National Academy of Sciences has recommended that the U.S. develop and launch an advanced imaging sounder in geostationary orbit, and the UN’s World Meteorological Organization has recommended that such advanced imaging sounders cover the globe as a part of the Global Observing System. The European advanced imaging sounder in geostationary orbit is scheduled to be launched in 2017. Other countries are also developing such advanced sounders. China has stated that they plan to launch such a sounder in geostationary orbit by 2015.

What is the status of U.S. plans to deploy an advanced imaging sounder in geostationary orbit?

*Answer.* Beginning in 2006, NOAA explored the concept for developing an advanced sounder and coastal imaging capability, called the Hyperspectral Environmental Suite (HES), for deployment on the Geostationary Operational Environmental Satellite-R (GOES-R) series. At that time and after reviewing other NOAA needs, NOAA determined that the concept was too technologically complex and expensive for NOAA to develop and implement for GOES-R. Currently, there is no on-going research within the United States to address the technological impediments we encountered on HES that would provide the needed foundation to allow NOAA to build and deploy the sensor on an operational GOES platform.

NOAA is aware that other nations are evaluating their capabilities to host an advanced sounder on its operational geostationary weather satellites. NOAA is monitoring those efforts and may consider developing collaborative partnerships with those agencies in order to address the challenges that currently exist with this technology.

NOAA remains open to hosting an advanced sounder on future GOES satellites.

*Question.* Is it correct that most of the western hemisphere, including the continental United States, may be one of the last regions of the globe to have such protection?

*Answer.* At this time, there are no advanced sounders in orbit on operational geostationary spacecraft and the capability is not available to cover any region of the globe. However, the Europeans and the Chinese are evaluating the possibility of placing this capability on their future operational geostationary satellites. Based on our assessment of these agencies plans, the Europeans would be the first to fly an advanced sounder capability in geostationary orbit. China has stated its interest in developing this capability but we do not have enough information to confirm their ability to implement these plans. Regardless, of which region gets protection first, NOAA is committed to keeping communications open to develop international partnerships that could result in benefits beyond any single region.

*Question.* What agency within the U.S. Government has responsibility for developing and deploying an advanced imaging sounder in geostationary orbit?

*Answer.* NASA has the responsibility to develop advanced technology, which when mature enough for operational use, could be made available to NOAA for hosting on an operational geostationary satellite. Following that initial technology development phase, NOAA would have the responsibility of deploying such new technology on its operational satellites. NOAA remains open to hosting an advanced sounder on future geostationary satellites once the technological challenges have been addressed.

*Question.* The Geosynchronous Imaging Fourier Transform Spectrometer (GIFTS) was to be a U.S. demonstration of an advanced imaging sounder at geostationary orbit. The instrument was built, but never launched. Why did we spend money to

build GIFTS, and then leave it sitting on the ground? What agency is responsible? What value would GIFTS bring to NOAA if it were re-furbished and launched?

Answer. The effort to develop GIFTS is primarily a NASA-funded activity. At the time GIFTS was being developed, NOAA considered using GIFTS as a risk reduction mission for its plans to develop an advanced sounder for GOES-R, such as HES. However, this opportunity was no longer available when the GIFTS development was halted. The future of GIFTS remains a NASA decision.

With respect to the value of GIFTS to NOAA, if GIFTS was re-furbished, launched, and proven on-orbit by NASA, it could potentially serve as a useful demonstration as a first flight of a new capability for possible use by NOAA. However, since GIFTS was developed in the early 2000s, NASA would need to evaluate the use of the dated parts and also consider the possibility of more cost effective newer developments.

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QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

NATIONAL MARINE FISHERIES SERVICE

*Question.* In California's Bay-Delta, the restrictions on pumping operations due to the Biological Opinions, one of which was issued by the National Marine Fisheries Service, are having severe ramifications for communities that rely on Delta exports for water supply. What is the Commerce Department planning to do to address the many other stressors in the Delta, including predator fish, toxic discharges such as ammonia, and pesticides such as pyrethroids?

Answer. The Commerce Department's National Oceanic and Atmospheric Administration is undertaking several actions to address the many stressors that jeopardize the existence of several threatened and endangered species that occur in California's Bay-Delta and are under the jurisdiction of the National Marine Fisheries Service (NMFS) including the following:

- NMFS' 2009 Central Valley Project and State Water Project (OCAP) biological opinion Reasonable and Prudent Alternative (RPA) includes a requirement to implement predation control actions including; interim operational restrictions on the Red Bluff Diversion Dam and the Clifton Court Forebay, as well as improvements in the primary and secondary louvers at the fish handling facilities (such as increasing the efficiency of the louvers and decreasing predation at the release sites).
- The RPA requires development of a salmonid life-cycle model that can be used to assess the impacts of non project-related stressors (other stressors) on juvenile and adult salmonids. In addition, NMFS has also created a process by which it can amend specific measures prescribed in the RPA based on new information such as the effects of other stressors through the annual science panel review required in the OCAP Biological Opinion.
- NMFS is collaborating with the Interagency Ecological Program to review and fund necessary studies in the Bay-Delta region that will identify impacts of other stressors.
- NMFS is in the final stages of completing the Central Valley Recovery Plan for salmon and steelhead. This plan identifies and prioritizes actions needed to recover Central Valley salmonids listed under the Endangered Species Act (ESA). The recovery plan lays out a framework for addressing all of the primary stressors that impact these species. Although the recovery plan does not set regulatory requirements it does guide future recovery efforts, consultations and conservation plans.
- NMFS is participating in the Federal Workplan and the newly formed California Landscape Level Conservation Plan, led by the Department of the Interior that will help bridge data gaps and bring agencies together in developing a multi-species ecosystem-wide plan for the Bay-Delta region.
- NMFS regularly consults on construction of new waste water treatment facilities, and analyzes the projected effects of nutrients and toxics in wastewater through these consultations.
- NMFS consults with the U.S. Environmental Protection Agency on water quality standards for toxics and on pesticide registrations.
- The Central Valley Water Quality Control Board and State Water Resources Control Board regularly request NMFS' technical assistance in analyzing and prioritizing water quality issue and impacts within the range of ESA-listed salmonids.
- In conducting ESA section 7 consultations on Central Valley projects involving impacts to channel margin habitat, (for example, repairs to levees), NMFS re-

quires action agencies to protect or improve riparian vegetation, shaded riverine habitat and sub-surface channel margin habitat conditions, so as to improve sheltering/refuge habitat for juvenile salmonids and reduce predation by non-native predators.

—NMFS is participating as a lead Federal agency in the planning and implementation of the Bay Delta Conservation Plan (BDCP). This is a broad-based habitat conservation plan intended to address the many stressors affecting the Bay Delta ecosystem while protecting water supply reliability for the State and Federal projects. A detailed description of NMFS' participation in the BDCP is provided below in the response to the following question.

*Question.* California's Natural Resources Agency is developing a habitat conservation plan with a group of stakeholders for the Bay-Delta with the dual goals of ensuring ecosystem restoration and water supply security. What resources is the Commerce Department prepared to commit to the Bay Delta Conservation Plan to ensure its timely completion and implementation?

*Answer.* NMFS is fully committed to the completion and implementation of the Bay Delta Conservation Plan (BDCP). NMFS has participated since the early stages of development of this plan and has created an entire branch of the NMFS Sacramento Area Office dedicated specifically to the completion and implementation of the BDCP. NMFS personnel that make up the BDCP branch include a Supervisor/Branch Chief, four full-time fishery biologists, a full time bio-modeler (currently being recruited), and a part time hydrologist/hydro-modeler (also currently being recruited). The Sacramento Area Office Supervisor is also heavily involved in the executive leadership of the BDCP. The Area Office Supervisor sits on several executive committees and management groups including the BDCP Steering Committee, BDCP Leadership Council, and the Program Executive Team (among others). NOAA General Council is also fully engaged in the BDCP process, attending Steering Committee meetings and other program coordination meetings, and providing frequent input into many aspects of the BDCP process. In total, NMFS and NOAA General Council participate in approximately 10 BDCP related meetings per week, often with 2 or more staff members attending each meeting.

NMFS is a lead Federal agency responsible for the development of an Environmental Impact Statement for the BDCP. NMFS will also be writing an ESA section 10 take permit for this habitat conservation plan, and conducting a formal ESA section 7 consultation on the issuance of the section 10 permit and the implementation of the BDCP. NMFS intends to continue to provide the necessary staff and other agency resources to insure the timely completion of these important elements of the BDCP and maintain continued involvement in the implementation, monitoring and adaptive management of the plan over the long term.

#### BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM

*Question.* While broadband penetration is continually improving, and clearly a top priority of the broadband stimulus funds, I want to emphasize to you the importance of also addressing broadband adoption—the extent to which families actually get broadband, as opposed to being unconnected to the “pipe” that passes by their home or apartment.

Adoption was detailed as a priority in the legislation passed by Congress. And, the American Reinvestment and Recovery Act mandated that at least \$250 million of the funds it provided be spent for grants to promote adoption. However, I understand that so far only \$39 million has been awarded to adoption applicants. I am very pleased that one of those applicants was in my own State of California, but many adoption applications are still pending, and those need to be given serious consideration.

Can you tell us about the NTIA's efforts on the broadband adoption grants and your expectations about the speed with which we can get these out the door and delivering?

*Answer.* I wholeheartedly agree with you regarding the vital role that adoption programs play in fulfilling the promise of broadband for all Americans. As of April 15, 2010, NTIA has awarded 12 Sustainable Broadband Adoption (SBA) grants totaling \$81 million in Federal grant dollars and impacting 14 States. Combined with \$23 million in applicant-provided matching funds, there is now a total of \$104 million dedicated to broadband adoption under the Recovery Act. The grants are designed to fund projects that promote broadband demand, including projects focused on providing education, awareness, and training, as well as access, equipment and support for broadband usage. To date, NTIA has awarded two SBA grants, totaling nearly \$15 million, that directly impact California, including: \$7.2 million to the California Emerging Technology Fund to increase adoption of broadband in vulner-

able and low-income communities in Los Angeles, the Central Valley, Orange County, San Diego, and the Inland Empire; and \$7.6 million to the Computers for Youth Foundation, Inc. and the Los Angeles Unified School District, which plan to expand a successful pilot program to increase broadband technology awareness and usage among an estimated 34,000 low-income individuals and 15,000 households in Los Angeles.

In the first funding round, NTIA expects to obligate approximately 44 percent of the statutory minimum allocation for SBA projects. By comparison, NTIA has awarded approximately 29 percent of its infrastructure funding allocation and 28 percent of its Public Computer Center project allocation in round one. NTIA recently received approximately 250 SBA project applications requesting approximately \$1.7 billion in the second round of grant funding. As required by the Recovery Act, NTIA is on track to award at least \$250 million for SBA projects by September 30, 2010.

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QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

EMERGENCY STEEL GUARANTEED LOAN PROGRAM

*Question.* The economic instability that began in 2008 and continues today led to idled steel plants, displaced steel workers, and a very tight credit market. For this reason and others, the steel industry supported Congressional action to keep an emergency capital loan program in place at current levels. In 2009, the Congress agreed to extend the Emergency Steel Guaranteed Loan Program until fiscal year 2011.

The President's fiscal year 2011 budget includes a proposal to cancel \$43 million of ESGLP unobligated funds, leaving \$5 million as a placeholder. In January 2004, the GAO issued an opinion that the appropriations available in this fund are not available for rescission by any Department, and that only the ESGLP Board has the authority to incur an obligation against this appropriation.

Mister Secretary, this leads me to ask these questions:

Under what authority does OMB propose to cancel unobligated ESGLP funds?

*Answer.* The administration has the authority to propose actions such as a cancellation of unobligated ESGLP funds, but the Congress has the sole authority to actually cancel the funds if you so choose.

The GAO opinion concerns the authority of the Secretary with respect to ESGLP funds, not the authority of Congress. It states that the Secretary does not have the discretion to draw on ESGLP funds to satisfy a general rescission of the Department's unobligated balances in an appropriations act. However, the budget proposes a specific legislative rescission of the ESGLP funds, not a general rescission that the Secretary would allocate. As a result, the proposal is not in conflict with the GAO opinion.

*Question.* What is the rationale for leaving \$5 million in this fund?

*Answer.* The Emergency Steel Loan Guarantee Board has not issued a loan guarantee in almost 7 years. While it is highly unlikely that another application for a loan guarantee will be received, in that event the remaining unobligated balance would be available to fund the credit subsidy and administrative expenses required.

SUBCOMMITTEE RECESS

Senator MIKULSKI. This hearing is concluded and we stand in recess until March 25 at 10 a.m., when we take the testimony of the NASA Administrator.

[Whereupon, at 11:35 a.m., Thursday, March 4, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 25.]



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

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**THURSDAY, APRIL 15, 2010**

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 (chairwoman) presiding.

Present: Senators Mikulski, Lautenberg, Pryor, and Shelby.

DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

**STATEMENT OF HON. ROBERT S. MUELLER, III, DIRECTOR**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

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

And today, the subcommittee will hear the FBI Director make the presentation of the FBI's budget and the priorities for fiscal year 2011. This morning, we are going to begin with an unclassified hearing that will focus primarily on the FBI's general budget and their budget request across the entire agency.

At the conclusion of that testimony and questions, we will move to a classified hearing to discuss specific budget issues related to the FBI's classified operations. We will essentially take a 10-minute break as we move to a secure facility.

Why are we doing this? The FBI has an incredible job, and we are really proud. Director Mueller, we welcome you. We are incredibly proud of the FBI and the job that we ask them to do in our own country, and the job they are doing around the world to protect the country and to protect the country's interests.

We know that we have asked the FBI, after the terrible events of 9/11/2001, in which you were on the job only a matter of days, to take on a new responsibility in terms of national security. We want to have a chance for you to amplify the needs that that unique unit has and to make sure that we are participating in ensuring that you have the resources to do it. We think the FBI has the right stuff. We want to make sure that we have given you the right resources.

So, as the chairperson of the subcommittee, I will be having three priorities with my discussion. One is American and domestic security, and how are we keeping our families and our communities safe. The other will be national security, and how the FBI is working in that arena. And the other is oversight and accountability. We need a spirit of reform. We need a spirit of watchdog. Senator Shelby and I want to stand very close sentry over anything that could be cost overruns where our budget is heading in the direction of a boondoggle.

The FBI does keep America safe. It is an agency that is on the job 24 hours a day, 7 days a week, and often, the men and women serving the FBI themselves are in grave danger as they protect us from everything from terrorists to organized crime. Fifty-six field offices, 33,000 staff, 13,000 special agents, those are all the numbers and support staff. Those are numbers and statistics, but behind them are men and women trying to protect us from some of the most despicable predatory behavior.

Five highlights of this new budget are those areas which we think are absolutely essential in the national interest. Senator Shelby and I have teamed up in being very concerned about the issue of financial service fraud. At his chairmanship and now ranking membership on the Banking Committee, he has been a leader for calling for more action, more help to deal with mortgage fraud and other white collar financial services. This will be a request of \$453 million.

At the same time, we know that we want to protect ourselves against organized crime, and there is a budget request of \$116 million for dismantling organized criminal syndicates and shutting down money launderers. This has significance for both domestic and also international activity.

Then there is the issue of child predators. What more vile crime in the world than to do harm to children, whether it is those who try to reach children on the Internet, to children who are kidnapped and placed in sexual servitude, to other aspects of the attack on children.

I think the FBI and this Director have had a very special commitment to this, and we want to ensure that there is the \$300-some million to deal with everything from children who have been exploited on the Internet, to those who are forced into prostitution.

On issues related to the gathering of intelligence on cybersecurity, there is a request of \$182 million; I will be pursuing that more in our classified hearing. And the issue of tracking and dismantling of weapons of mass destruction. So we look forward to working with you on that.

Last year there was \$135 million for the FBI's cyber efforts. This year, there is \$182 million, a \$46 million increase. We hope to hear about the need for new agents, analysts, and professional staff. We want to hear about that, as I said, in a more amplified, classified situation.

The FBI has also been charged with this national security mission, and much of the FBI budget increase is for the FBI's counterterrorism and intelligence. Counterterrorism alone makes up now 40 percent of the FBI's budget. The FBI requested over \$3 billion for counterterrorism activities, a \$113 million increase from 2010.

We want to hear how these funds are being used. I understand to disrupt terrorists, investigate terrorist crimes, and identify, track, capture, and defeat these terrorist sleeper cells, whether they are operating in the United States or overseas. I want to know if this budget request tackles these responsibilities.

In the area of community and American security, which is the traditional crime-fighting role, we know this FBI wants to continue to do their work fighting traditional crime-fighting efforts. We in Maryland are very proud of our Baltimore field office, the work that they do with the task forces, with the U.S. attorney. It is not only that they make headlines, but they really are out there catching the bad guys.

We hope this budget allows the FBI efforts to target sophisticated criminal organizations who threaten our communities. The 2011 budget lacks any substantial increases, however, to deal with violent crime in gangs. We are troubled by that, and we would like to hear your views on whether you think this request is appropriate or whether we should consider more.

In the area of mortgage fraud, the FBI provides \$453 million to be able to do this. This is \$75 million more. You are requesting 143 new agents, new forensic accountants, and 39 financial assistants.

I understand that there are over 3,000 mortgage fraud cases pending. That is amazing. And that is an amazing workload for the FBI to be handling, and again, we want to make sure you have the right people and the right support to do that.

We, on this subcommittee, on a bipartisan basis, want to send a very clear message to the predators—no more scamming, no more scheming, no more preying on hard-working families—that if you want to come after families, we are going to come after you.

I have elaborated on the issue of protecting children, from Innocent Images to Innocence Lost. We want to make sure we are doing all we can to target those predators.

A few months ago, a little girl lost her life to a sexual predator in Salisbury, Maryland. All of Maryland wept. The General Assembly has acted in increasing sentences. But you know what? We have got to stop the crimes before they happen, and there they are. They are out there on the Internet, which are essentially techno-playgrounds in which they are trying to recruit our children. We want to make sure we have the right resources and the right policies.

The other area the subcommittee will be asking about is our concern to protect against government boondoggles. Unfortunately, some years ago, the FBI ran into trouble when it tried to create a virtual caseload. We lost out on over \$117 million and what became essentially techno-junk that we had to throw away.

Now we understand that Sentinel, which should be the crown jewel, is running into problems. So we need to know, is this just a delay that comes from developing a complex technological product that needs to be used by a variety of people here and around the world? Or are we once more heading for some type of cost overruns where our agents don't have the tools they need to connect the dots?

We place very heavy demands on them. They should at least have the technology that they need, and the taxpayer really wants

value for the dollar. So that is the area where we hope to be able to go over. You do so much work. We could spend all day pursuing our questions, but those are the highlights that we want to pursue.

I would like to now turn to Senator Shelby, who, through his work on Banking and others, has been a real reformer and a real crime fighter.

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Senator Mikulski.

First of all, I want to recognize and extend my appreciation to the men and women of the FBI, who protect this country from terrorism and crime each day. We owe them a debt of gratitude, as well as you, the leader, Mr. Mueller.

In a few moments, Director Mueller will tell us how preventing terrorism is the FBI's top priority. However, the budget request doesn't necessarily reflect that. While the White House points to a \$25 million increase in the request for the FBI's counterterrorism efforts, the truth is that there are irresponsible and drastic cuts to the FBI's terrorism fighting capabilities.

The cuts totaled nearly \$162 million and were all made by presidential political appointees at the Office of Management and Budget, OMB. For every new dollar proposed by the White House to fight terrorists, six of counterterrorism dollars are cut. It makes no sense to me.

This request fails to support the FBI on several fronts—to work in theater with U.S. troops in Iraq and Afghanistan in identifying insurgents and terrorists, to respond to overseas terrorist incidents, and to assist foreign law enforcement partners in defeating terrorists who target U.S. interests and persons. The request cuts the FBI's overseas response funding by \$63 million. Yet I see no decrease in the terrorist threat or in the FBI's overseas response mission.

The White House does not appear to believe the assessment of its own Department of Homeland Security that states that terrorists' use of improvised explosive device, IED, remains one of the greatest threats to the United States. The administration ignores the Department of Defense analysis that IEDs are considered weapons of strategic influence and that the terrorists' use of IEDs is an enduring global and transnational threat.

As evidenced by the recent bombings on the U.S.-Mexican border, as well as the attempted bombings in Detroit and New York, the threat to the U.S. homeland appears to be increasing. Yet the administration cut the very funding I believe is necessary to ensure that the FBI has the tools and the facilities necessary to respond to this threat.

It is clear from the request that OMB is not relying on the right people when it is making decisions regarding the threat this country faces, both domestically and abroad. If OMB had consulted the experts, they would not have canceled, I believe, funding for the Terrorist Explosive Device Analytical Center, TEDAC. TEDAC provides the FBI and the U.S. military with forensic facilities needed to exploit IEDs and terrorist bomb-making materials evidence.

OMB's decision to eliminate TEDAC was based on a proposal from Joint IED Defeat Organization personnel to perform forensics

in theater. Since the release of the President's budget, the Joint IED Defeat Organization has abandoned the OMB-proposed approach to set up a Level 3 in-theater forensics capability.

Ironically, now the Joint IED Defeat Organization is seeking input from the FBI and the Defense Intelligence Agency to develop a practical near-term solution that meets the critical needs of the warfighter. This subcommittee, with an understanding of the transnational and enduring nature of terrorism, provided funding for a facility to address this need that would be well on its way to construction, if not for the administration.

Today, the Quantico TEDAC is overwhelmed. For the 56,000 boxes of IEDs and materials received since 2004, 37,000 are awaiting processing. Meanwhile, the FBI receives a monthly average of 700 new submissions. The FBI estimates that 86 percent of the backlog contains critical information like biometric intelligence, fingerprints, DNA, and so forth that would assist the U.S. military, the intelligence community, and the Federal law enforcement in identifying terrorists.

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

The United States needs to prepare for this threat. We in Congress have tried to give the FBI the tools it needs to do so. We have that obligation. In the end, the proposed cancellation there would leave this Nation unprepared and unprotected and is an unacceptable outcome.

On Tuesday, I sent you a letter outlining concerns regarding the decision by the FBI to revisit procedures relating to technical review of DNA data contained within the National DNA Index System. The Scientific Working Group on DNA Analysis and Methods is the official working group that advises the FBI on DNA analysis methods.

In 2008, the group sent letters to the House and Senate Judiciary Committees strongly opposing the loosening of the technical review standards and private DNA vendors' labs having access to the Combined DNA Index System, CODIS. The group's initial position was requested by the FBI lab director. I find it hard to believe, Mr. Director, that the strong sentiments expressed in these letters by your designee have since changed so drastically.

The State CODIS administrators, the American Society of Crime Lab Directors, prosecutors, and police departments from around the country have issued positions opposing the FBI's lab proposal to loosen review standards. In light of these strongly stated positions by these subject matter experts, the FBI laboratory mystifyingly ignored their concerns.

As I have said to you in my letter, I have serious reservations about how this announcement came about, and I am deeply concerned that it was possibly influenced by private DNA vendors exerting pressure on the FBI lab. I believe it is an abomination to victims, law enforcement, and the Constitution when Congress, the Department of Justice, and the White House blindly ignore the professional opinion of the most renowned DNA experts in the world

and begin down the path of considering changing laws and regulations affecting the integrity of evidence.

This is an extremely complicated and technical issue. And while I am not necessarily against evaluating and improving the current policy, I do believe the decision was hastily made without appropriate evaluation of the potential unintended consequences by the FBI laboratory. This issue must be carefully examined by the FBI and the leadership of all the State and local labs it directly affects.

I want to continue working with you, Mr. Director, to ensure that the FBI is provided the necessary resources to carry out the mission of protecting the American people, and I look forward to hearing your thoughts on these issues that I have raised and others this morning.

Senator MIKULSKI. Director Mueller.

STATEMENT OF HON. ROBERT S. MUELLER, III

Mr. MUELLER. Thank you, Chairwoman Mikulski and Senator Shelby, and I appreciate all the work that this subcommittee has done over the years to provide us with the resources we need to do our job.

I also appreciate the opportunity to appear before you to discuss our fiscal year 2011 budget. We are requesting, as I believe, Chairwoman Mikulski, you pointed out, approximately \$8.3 billion to fund more than 33,000 FBI agents, analysts, and staff, and to build and maintain our infrastructure. This funding is critical to carry out our mission of protecting the Nation from the ever-changing national security and criminal threats.

Let me start by discussing a few of the most significant threats. Fighting terrorism remains our highest priority at the FBI. Over the past year, the threat of a terrorist attack has proven to be persistent and global. Al-Qaeda and its affiliates are still committed to striking us in the United States. We saw this with the plot by an Al-Qaeda operative to detonate explosives on the subways in New York City and the attempted airline bombing on Christmas Day.

These incidents involved improvised explosive devices, or IEDs, and underscore the importance of our Terrorist Explosive Device Analytical Center, also known as TEDAC. TEDAC does more than support our military overseas. It also provides crucial intelligence in our fight against Al-Qaeda.

Homegrown and "lone wolf" extremists pose an equally serious threat. We saw this with the Fort Hood shootings; the attempted bombings of an office tower in Dallas and a Federal building in Springfield, Illinois; and the violent plans hatched by the Hutaree militia in Michigan.

We have also seen U.S.-born extremists plotting to commit terrorism overseas, as was the case with the heavily armed Boyd conspiracy in North Carolina and David Headley's involvement in the Mumbai attacks. These terrorist threats are diverse, far-reaching, and ever-changing.

And to combat these threats, the FBI must sustain our overseas contingency operations and engage our intelligence and law enforcement partners, both here at home and abroad. And that is why for fiscal year 2011, we are requesting funds for 90 new na-

tional security positions and \$25 million to enhance our national security efforts.

Turning to white collar crime, residential and now commercial mortgage fraud is the most significant threat in our efforts to combat financial fraud. Mortgage fraud investigations have grown five-fold since 2003, approximating now 2,900 such investigations. And more than two-thirds of those cases involve losses of more than \$1 million.

The FBI has developed new, intelligence-driven methods for identifying fraud suspects and trends. We are focused on the most serious cases relating to real estate professionals and insiders, not just borrowers. Just yesterday, the FBI's San Francisco field office arrested 18 mortgage bankers, real estate brokers, and real estate agents for falsifying financial documents in \$25 million worth of loans on 44 separate properties. This fraud alone resulted in over \$10 million in losses. We anticipate many more of these types of cases in the coming year.

Now, with passage of the healthcare reform legislation, the FBI will also be expanding and intensifying our efforts to root out Medicare and Medicaid fraud. Earlier this week, a Miami health clinic operator pleaded guilty to committing a \$55 million Medicare fraud where HIV and cancer services were never provided to patients. Instead, he and his partner spent millions on luxury cars and on thoroughbred racehorses.

As we have in the past, the FBI will use our intelligence-driven task forces to target those who exploit our healthcare programs through fraud. Given the planned expansion of these healthcare programs in the future, this will be among our highest priorities in the years to come.

Securities fraud is also on the rise. We have 33 percent more securities cases open today than we did 5 years ago. The economic downturn exposed a series of multi-billion dollar Ponzi schemes, unlike any seen in history. We must continue to deter these offenses by seeking the most serious sentences possible, like the 50-year sentence for Minnesota tycoon Thomas Petters handed down just last week.

We are requesting funds for 367 new positions and \$75.3 million for our white collar crime program to make sure we bring to justice those who commit fraud.

Turning next to the cyber threat, cyber attacks come from a wide range of individuals and groups, many with different skills, motives, and targets. Terrorists increasingly use the Internet to communicate, to recruit, to plan, and to raise money. Foreign nations continue to launch attacks on United States Government computers and private industry, hoping to steal our most sensitive secrets or to benefit from economic espionage. Criminal hackers and child predators pose a dangerous threat as well, as they use the anonymity of the Internet to commit crimes across the country and around the world.

These cyber threats undermine our national security, victimize our children, and weaken our economy. We are seeking 163 new positions and \$46 million for our cyber programs to strengthen our ability to defend against these cyber threats.

The fiscal year 2011 budget also requests additional funds for training facilities, information technology, forensics services, and other enforcement programs. My written statement, submitted for the record, discusses these requests in greater detail.

Over the past several years, we have worked to better integrate our strategic direction with a 5-year budget approach and more focused human resource management. The FBI's fiscal management is recognized by the Inspector General's annual audit as being among the top performers in the Department of Justice, and we are on pace to achieve our hiring and staffing goals this year.

Turning for a moment to Sentinel, as you mentioned, Madam Chairwoman—in order to ensure the success of our new case management system, we divided the project into four separate phases. This phased approach has two principal advantages. First, employees can gain immediate benefits from the new system as it is being built, and they are. Second, we can carefully examine what has been delivered to make sure it meets our expectations and the terms of the contract, as well as providing a solid foundation for the future phases of development.

Five weeks ago, we informed our prime contractor that the last segment of Phase 2 did not fully meet our expectations. Accordingly, we advised our prime contractor to partially stop work on Phase 3 and suspend work on Phase 4 until Phase 2 is fully delivered.

Piloting of the remaining Phase 2 capabilities will commence this summer. At the conclusion of a 4-week pilot, the results will be evaluated, any corrective action will be made, and then enterprise deployment of Phase 2 will occur. We will be presenting a new outline for the completion of Phases 3 and 4, along with any cost and timeline adjustments at that time.

In the meantime, thanks to this phased approach, Sentinel is currently being used by thousands of agents and supervisors each day and will become even more functional and effective once Phase 2 is complete. I would be happy to discuss this in more detail as questions are asked.

#### PREPARED STATEMENT

Chairman Mikulski and Ranking Member Shelby, I would like to conclude by thanking you and this subcommittee for your support of the FBI. I look forward to answering what questions you might have with regard to our 2011 budget or otherwise.

[The statement follows:]

#### PREPARED STATEMENT OF HON. ROBERT S. MUELLER, III

Good morning, Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee. On behalf of the more than 30,000 men and women of the Federal Bureau of Investigation (FBI), I am privileged to appear before the subcommittee to present and discuss the FBI's fiscal year 2011 budget. At the outset, I would like to thank you for your past support of the Bureau. Your support enables the FBI to achieve its three-fold mission: Protecting and defending the United States against terrorism and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to Federal, State, municipal, and international agencies and partners.

The FBI's fiscal year 2011 budget requests a total of \$8.3 billion in direct budget authority, including 33,810 permanent positions (13,057 special agents, 3,165 intelligence analysts (IAs), and 17,588 professional staff). This funding, which consists



of \$8.1 billion for salaries and expenses and \$181.2 million for construction, is critical to continue our progress started toward acquiring the intelligence, investigative, and infrastructure capabilities required to counter current and emerging national security threats and crime problems.

Consistent with the Bureau's transformation toward becoming a threat-informed and intelligence-driven agency, the fiscal year 2011 budget request was formulated based upon our understanding of the major national security threats and crime problems that the FBI must work to prevent, disrupt, and deter. We then identified the gaps and areas which required additional resources. As a result of this integrated process, the fiscal year 2011 budget proposes \$306.6 million for new or expanded initiatives—\$232.8 million for salaries and expenses and \$73.9 million for construction—and 812 new positions, including 276 special agents, 187 intelligence analysts, and 349 professional staff. These additional resources will allow the FBI to improve its capacities to address threats in the priority areas of terrorism, computer intrusions, weapons of mass destruction, foreign counterintelligence, white collar crime, violent crime and gangs, child exploitation, and organized crime. Also, included in this request is funding for necessary organizational operational support and infrastructure requirements; without such funding, a threat or crime problem cannot be comprehensively addressed.

Let me briefly summarize the key national security threats and crime problems that this funding enables the FBI to address.

#### NATIONAL SECURITY THREATS

*Terrorism.*—Terrorism, in general, and al-Qa'ida and its affiliates in particular, continue to represent the most significant threat to our national security. Al-Qa'ida remains committed to its goal of conducting attacks inside the United States and continues to leverage proven tactics and tradecraft with adaptations designed to address its losses and the enhanced security measures of the United States. Al-Qa'ida seeks to infiltrate overseas operatives who have no known nexus to terrorism into the United States using both legal and illegal methods of entry. Further, al-Qa'ida's continued efforts to access chemical, biological, radiological, or nuclear material pose a serious threat to the United States. Finally, al-Qa'ida's choice of targets and attack methods will most likely continue to focus on economic targets, such as aviation, the energy sector, and mass transit; soft targets such as large public gatherings; and symbolic targets, such as monuments and government buildings.

Homegrown violent extremists also pose a very serious threat. Homegrown violent extremists are not clustered in one geographic area, nor are they confined to any one type of setting—they can appear in cities, smaller towns, and rural parts of the country. This diffuse and dynamic threat—which can take the form of a lone actor—is of particular concern.

While much of the national attention is focused on the substantial threat posed by international terrorists to the Homeland, the United States must also contend with an ongoing threat posed by domestic terrorists based and operating strictly within the United States. Domestic terrorists, motivated by a number of political or social issues, continue to use violence and criminal activity to further their agendas.

*Cyber.*—Cyber threats come from a vast array of groups and individuals with different skills, motives, and targets. Terrorists increasingly use the Internet to communicate, conduct operational planning, propagandize, recruit and train operatives, and obtain logistical and financial support. Foreign governments have the technical and financial resources to support advanced network exploitation, and to launch attacks on the United States information and physical infrastructure. Criminal hackers can also pose a national security threat, particularly if recruited, knowingly or unknowingly, by foreign intelligence or terrorist organizations.

Regardless of the group or individuals involved, a successful cyber attack can have devastating effects. Stealing or altering military or intelligence data can affect national security. Attacks against national infrastructure can interrupt critical emergency response services, government and military operations, financial services, transportation, and water and power supply. In addition, cyber fraud activities pose a growing threat to our economy, a fundamental underpinning of United States national security.

*Weapons of Mass Destruction.*—The global Weapons of Mass Destruction (WMD) threat to the United States and its interests continues to be a significant concern. In 2008, the National Intelligence Council produced a National Intelligence Estimate to assess the threat from Chemical, Biological, Radiological, and Nuclear weapons and materials through 2013. The assessment concluded that it remains the intent of terrorist adversaries to seek the means and capability to use WMD against the United States at home and abroad. In 2008, the Commission on the Prevention

of WMD Proliferation and Terrorism concluded that “the United States Government has yet to fully adapt . . . that the risks are growing faster than our multi-layered defenses.” The WMD Commission warned that without greater urgency and decisive action, it is more likely than not that a WMD will be used in a terrorist attack somewhere in the world by the end of 2013.

Osama bin Laden has said that obtaining WMD is a “religious duty” and is reported to have sought to perpetrate a “Hiroshima” on United States soil. Globalization makes it easier for terrorists, groups, and lone actors to gain access to and transfer WMD materials, knowledge, and technology throughout the world. As noted in the WMD Commission’s report, those intent on using WMD have been active and as such “the margin of safety is shrinking, not growing.”

*Foreign Intelligence.*—The foreign intelligence threat to the United States continues to increase as foreign powers seek to establish economic, military, and political preeminence and to position themselves to compete with the United States in economic and diplomatic arenas. The most desirable United States targets are political and military plans and intentions; technology; and economic institutions, both governmental and non-governmental. Foreign intelligence services continue to target and recruit United States travelers abroad to acquire intelligence and information. Foreign adversaries are increasingly employing non-traditional collectors—e.g., students and visiting scientists, scholars, and businessmen—as well as cyber-based tools to target and penetrate United States institutions.

To address current and emerging national security threats, the fiscal year 2011 budget proposes additional funding for:

—*Counterterrorism and Counterintelligence Investigations and Operations.*—90 new positions (27 special agents, 32 IAs, and 31 professional staff) and \$25.2 million to enhance surveillance and investigative capabilities, improve intelligence collection and analysis capabilities, and enhance the Bureau’s Legal Attaché presence in Pakistan and Ethiopia.

—*Computer Intrusions.*—163 new positions (63 agents, 46 IAs, and 54 professional staff) and \$45.9 million for the Comprehensive National Cybersecurity Initiative to continue the enhancement of the FBI’s capacities for combating cyber attacks against the U.S. information infrastructure.

—*Weapons of Mass Destruction.*—35 positions (15 special agents and 20 professional staff) and \$9.1 million to develop further the FBI’s capacity to implement countermeasures aimed at detecting and preventing a WMD incident, improve the capacity to provide a rapid response to incidents, and enhance capacities to collect and analyze WMD materials, technology, and information.

—*Render Safe.*—13 new positions (6 special agents and 7 professional staff) and \$40.0 million to acquire necessary replacement aircraft critical to the timely deployment and response of specialized render safe assets.

#### MAJOR CRIME PROBLEMS AND THREATS

*White Collar Crime.*—The White Collar Crime (WCC) program primarily focuses on: Corporate fraud and securities fraud; financial institution fraud; public corruption; health care fraud; insurance fraud; and money laundering. To effectively and efficiently combat these threats, the FBI leverages the resources of our civil regulatory and criminal law enforcement partners by participating, nationally and on a local level, in task forces and working groups across the country. For example, the FBI participates in 86 corporate fraud and/or securities fraud working groups, 67 mortgage fraud working groups, and 23 mortgage fraud task forces. By working closely with our partners, to include the sharing of intelligence, the FBI is better able to develop strategies and deploy resources to target current and emerging WCC threats.

*Financial Institution Fraud.*—Mortgage fraud is the most significant threat within the financial institution fraud program. The number of pending mortgage fraud investigations against real estate professionals, brokers and lenders has risen from 436 at the end of fiscal year 2003 to over 2,900 by the end of the first quarter of fiscal year 2010. This is more than a 500 percent increase. Over 68 percent of the FBI’s 2,979 mortgage fraud cases involved losses exceeding \$1 million per case. Suspicious Activity Reports (SARs) regarding mortgage fraud increased from 6,936 in fiscal year 2003, to 67,190 in fiscal year 2009. If first quarter trends of fiscal year 2010 continue, the FBI will receive over 75,000 SARs by the end of fiscal year 2010.

*Corporate Fraud.*—The majority of corporate fraud cases pursued by the FBI involve accounting schemes designed to deceive investors, auditors, and analysts about the true financial condition of a corporation. While the number of cases involving the falsification of financial information has remained relatively stable, the

FBI has observed an upward trend in corporate fraud cases associated with mortgage-backed securities (MBS).

*Securities Fraud.*—The FBI focuses its efforts in the securities fraud arena on schemes involving high yield investment fraud (to include Ponzi schemes), market manipulation, and commodities fraud. Due to the recent financial crisis, the FBI saw an unprecedented rise in the identification of Ponzi and other high yield investment fraud schemes, many of which each involve thousands of victims and staggering losses—some in the billions of dollars. With this trend, and the development of new schemes, such as stock market manipulation via cyber intrusion, securities fraud is on the rise. Over the last 5 years, securities fraud investigations have increased by 33 percent.

*Public Corruption.*—The corruption of local, State, and federally elected, appointed, or contracted officials undermines our democratic institutions and sometimes threatens public safety and national security. Public corruption can affect everything from how well United States borders are secured and neighborhoods protected, to verdicts handed down in courts, and the quality of public infrastructure such as schools and roads. Many taxpayer dollars are wasted or lost as a result of corrupt acts by public officials.

The FBI also created a national strategy to position itself to effectively address the increase in corruption and fraud resulting from the Federal Government's economic stimulus programs, including expanding our undercover capabilities and strengthening our relationships with the inspectors general community on a national and local level.

*Health Care Fraud.*—Some of the most prolific and sophisticated WCC investigations during the past decade have involved healthcare fraud. It is estimated that fraud in healthcare industries costs consumers more than \$60 billion annually. Today, the FBI seeks to infiltrate illicit operations and terminate scams involving staged auto accidents, online pharmacies, durable medical equipment, outpatient surgery centers, counterfeit pharmaceuticals, nursing homes, hospital chains, and transportation services. Besides the Federal health benefit programs of Medicare and Medicaid, private insurance programs lose billions of dollars each year to blatant fraud schemes in every sector of the industry.

*Insurance Fraud.*—There are more than 5,000 companies with a combined \$1.8 trillion in assets engaged in non-health insurance activities, making this one of the largest United States industries. Insurance fraud increases the premiums paid by individual consumers and threatens the stability of the insurance industry. Recent major natural disasters and corporate fraud scandals have heightened recognition of the threat posed to the insurance industry and its potential impact on the economic outlook of the United States.

*Money Laundering.*—Money Laundering allows criminals to infuse illegal money into the stream of commerce, thus manipulating financial institutions to facilitate the concealing of criminal proceeds; this provides the criminals with unwarranted economic power. The FBI investigates Money Laundering cases by identifying the process by which criminals conceal or disguise the proceeds of their crimes or convert those proceeds into goods and services. The major threats in this area stem from emerging technologies, such as stored value devices; as well as shell corporations, which are used to conceal the ownership of funds being moved through financial institutions and international commerce. Recent money laundering investigations have revealed a trend on the part of criminals to use stored value devices, such as pre-paid gift cards and reloadable debit cards, in order to move criminal proceeds. This has created a "shadow" banking system, allowing criminals to exploit existing vulnerabilities in the reporting requirements that are imposed on financial institutions and international travelers. This has impacted our ability to gather real time financial intelligence, which is ordinarily available through Bank Secrecy Act filings. Law enforcement relies on this intelligence to identify potential money launderers and terrorist financiers by spotting patterns in the transactions conducted by them. The void caused by the largely unregulated stored value card industry deprives us of the means to collect this vital intelligence. Moreover, stored value cards are often used to facilitate identity theft. For example, a criminal who successfully infiltrates a bank account can easily purchase stored value cards and then spend or sell them. This readily available outlet makes it much more unlikely that the stolen funds will ever be recovered, thus costing financial institutions and their insurers billions of dollars each year.

#### *Transnational and National Criminal Organizations and Enterprises*

Transnational/National Organized Crime is an immediate and increasing concern of the domestic and international law enforcement and intelligence communities. Geopolitical, economic, social, and technological changes within the last two decades

have allowed these criminal enterprises to become increasingly active worldwide. Transnational/National Organized Crime breaks down into six distinct groups: (1) Eurasian Organizations that have emerged since the fall of the Soviet Union (including Albanian Organized Crime); (2) Asian Criminal Enterprises; (3) traditional organizations such as the La Cosa Nostra (LCN) and Italian Organized Crime; (4) Balkan Organized Crime; (5) Middle Eastern Criminal Enterprises; and (6) African Criminal Enterprises.

Due to the wide range of criminal activity associated with these groups, each distinct organized criminal enterprise adversely impacts the United States in numerous ways. For example, international organized criminals control substantial portions of the global energy and strategic materials markets that are vital to United States national security interests. These activities impede access to strategically vital materials, which has a destabilizing effect on United States geopolitical interests and places United States businesses at a competitive disadvantage in the world marketplace. International organized criminals smuggle people and contraband goods into the United States, seriously compromising United States border security and at times national security. Smuggling of contraband/counterfeit goods costs United States businesses billions of dollars annually, and the smuggling of people leads to exploitation that threatens the health and lives of human beings.

International organized criminals provide logistical and other support to terrorists, foreign intelligence services, and hostile foreign governments. Each of these groups is either targeting the United States or otherwise acting in a manner adverse to United States interests. International organized criminals use cyberspace to target individuals and United States infrastructure, using an endless variety of schemes to steal hundreds of millions of dollars from consumers and the United States economy. These schemes also jeopardize the security of personal information, the stability of business and government infrastructures, and the security and solvency of financial investment markets. International organized criminals are manipulating securities exchanges and perpetrating sophisticated financial frauds, robbing United States consumers and government agencies of billions of dollars. International organized criminals corrupt and seek to corrupt public officials in the United States and abroad, including countries of vital strategic importance to the United States, in order to protect their illegal operations and increase their sphere of influence.

Finally, the potential for terrorism-related activities associated with criminal enterprises is increasing due to the following: alien smuggling across the southwest border by drug and gang criminal enterprises; Columbian based narco-terrorism groups influencing or associating with traditional drug trafficking organizations; prison gangs being recruited by religious, political, or social extremist groups; and major theft criminal enterprises conducting criminal activities in association with terrorist related groups or to facilitate funding of terrorist-related groups. There also remains the ever present concern that criminal enterprises are, or can, facilitate the smuggling of chemical, biological, radioactive, or nuclear weapons and materials.

*Violent Crimes/Gangs and Indian Country.*—Preliminary Uniform Crime Report statistics for 2008 indicate a 3.5 percent decrease nationally in violent crimes (murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault) for the first 6 months of the year compared to the same period in 2007. This follows a slight decline (1.4 percent) for all of 2007 compared to 2006. While this overall trend is encouraging, individual violent crime incidents such as serial killings and child abductions often paralyze entire communities and stretch State and local law enforcement resources to their limits. In addition, crimes against children, including child prostitution and crimes facilitated through the use of the Internet, serve as a stark reminder of the impact of violent crime on the most vulnerable members of society. Since the inception of the Innocence Lost National Initiative in 2003, the FBI has experienced a 239 percent increase in its investigations addressing the threat of children being exploited through organized prostitution. The FBI addresses this threat by focusing resources on criminal enterprises engaged in the transportation of children for the purpose of prostitution using intelligence driven investigations and employing sophisticated investigative techniques. These types of investigations have led to the recovery of 915 children, 549 offenders convicted, and the dismantlement of 44 criminal enterprises.

*Gang Violence.*—The United States has seen a tremendous increase in gangs and gang membership. Gang membership has grown from 55,000 in 1975 to approximately 960,000 nationwide in 2007. The FBI National Gang Intelligence Center (NGIC) has identified street gangs and gang members in all 50 States and the District of Columbia. Thirty-nine of these gangs have been identified as national threats based on criminal activities and interstate/international ties. NGIC estimates the direct economic impact of gang activity in the United States at \$5 billion

and the indirect impact as much greater. Furthermore, NGIC identified a trend of gang members migrating to more rural areas. NGIC has also seen an expansion of United States based gangs internationally, with such gangs currently identified in over 20 countries.

*Indian Country.*—The FBI has 104 full-time dedicated special agents who currently address 2,406 Indian Country (IC) cases on approximately 200 reservations. Seventy-five percent of the cases are investigated in the Minneapolis, Salt Lake City, Phoenix, and Albuquerque Field Offices. Fifty percent of the cases involve death investigations, sexual and physical assault of children, and felony assaults, with little or no support from other law enforcement agencies due to the jurisdictional issues in IC. As a consequence, there are only half as many law enforcement personnel in IC as in similar sized rural areas. Furthermore, tribal authorities can only prosecute misdemeanors of Indians, and State/local law enforcement do not have jurisdiction within the boundaries of the reservation, with the exception of Public Law 280 States and tribes.

To address current and emerging crime problems and threats, the fiscal year 2011 budget requests additional funding for:

—*White Collar Crime.*—367 new positions (143 special agents, 39 IAs, and 185 professional staff) and \$75.3 million to address increasing mortgage, corporate, and securities and commodities fraud schemes, including a backlog of over 800 mortgage fraud cases with over \$1 million in losses per case.

—*Child Exploitation.*—20 new positions (4 special agents, 1 IA, and 15 professional staff) and \$10.8 million to enhance on-going Innocence Lost, child sex tourism, and Innocent Images initiatives.

—*Organized Crime.*—4 new positions (3 special agents and 1 professional staff) and \$952,000 to establish, in partnership with the Criminal Division of the Justice Department, a new integrated international organized crime mobile investigative team to focus on combating illicit money networks and professional money laundering.

—*Violent Crime/Gangs and Indian Country.*—2 new positions and \$328 thousand to provide enhanced forensic services for Indian Country investigations. Additionally, \$19.0 million is requested as a reimbursable program through the Department of the Interior to hire an additional 45 special agents and 36 professional staff to investigate violent crimes in Indian Country.

*Operational Enablers.*—FBI operations and investigations to prevent terrorism, thwart foreign intelligence, protect civil rights, and investigate Federal criminal offenses require a solid and robust enterprise infrastructure. Our operational and investigative programs are vitally dependent on core information technology, forensic, intelligence, and training services. Growth in FBI national security and criminal investigative programs and capabilities require investments in our core infrastructure. The fiscal year 2011 budget proposes 118 new positions (15 agents, 69 intelligence analysts, and 34 professional staff), and \$99.0 million for key operational enablers—intelligence training and transformation, information technology upgrades, improved forensic services, and facility improvements—including construction of a new dormitory building and renovations to existing facilities at the FBI Academy, Quantico.

*Program Offsets.*—The proposed increases for the fiscal year 2011 budget are offset, in part, by \$17.3 million in program reductions, as follows: \$10.3 million in travel; \$3.2 million in training; and a \$3.8 million reduction in vehicle fleet funding. The fiscal year 2011 budget also proposes an elimination of \$98.9 million of balances for the construction of a permanent facility to house the Terrorist Explosive Device Analytical Center (TEDAC), but maintains current funding and personnel for the FBI's TEDAC program, which is responsible for analyzing Improvised Explosive Devices that are used in Iraq and Afghanistan. In addition, to provide long-term support for overseas operations, the fiscal year 2011 budget proposes to recur \$39 million of the \$101.6 million enacted for Overseas Contingency Operations in the Consolidated Appropriations Act, 2010, a non-recurrence of \$62.7 million.

*Reimbursable Resources.*—In addition to directly appropriated resources, the fiscal year 2011 budget includes resources for reimbursable programs, including \$134.9 million and 776 full time equivalents (FTE) pursuant to the Health Insurance Portability and Accountability Act (HIPPA) of 1996; \$148.5 million and 868 FTE under the Interagency Crime and Drug Enforcement Program; and \$189.9 million and 1,303 FTE for the Fingerprint Identification User Fee and the National Name Check Programs. Additional reimbursable resources are used to facilitate a number of activities, including pre-employment background investigations, providing assistance to victims of crime, forensic and technical exploitation of improvised explosive devices by the Terrorist Explosive Device Analytical Center, and temporary assignment of FBI employees to other agencies.

## CONCLUSION

Chairman Mikulski and Ranking Member Shelby, I would like to conclude by thanking you and this subcommittee for your service and your support. Many of the accomplishments we have realized since September 11, 2001, are in part due to your efforts and support through annual and supplemental appropriations. I'm sure you will agree that the FBI is much more than a law enforcement organization. The American public expects us to be a national security organization, driven by intelligence and dedicated to protecting our country from all threats to our freedom. For 100 years, the men and women of the FBI have dedicated themselves to safeguarding justice, to upholding the rule of law, and to defending freedom.

From addressing the growing financial crisis to mitigating cyber attacks and, most importantly, to protecting the American people from terrorist attack, you and the subcommittee have supported our efforts. On behalf of the men and women of the FBI, I look forward to working with you as we continue to develop the capabilities we need to defeat the threats of the future.

Senator MIKULSKI. Budget or otherwise. Well, thank you very much, Director Mueller, for that testimony.

Issues related to the cybersecurity initiative, as well as the Christmas Day bombing attempt and the reforms that were instituted as a result of that, I am going to bring up more in our closed, classified hearing. But I want the record to show that this subcommittee is absolutely committed to the cybersecurity initiative.

The country is at war. The country is familiar with our wars in Iraq and Afghanistan, but we are at war right this very minute with cyber attacks on the United States, from cyber espionage, as you have said, to potential cyber terrorist attacks on things like critical infrastructure. And then the cyber activity that is coming through organized crime, in which they are leading some of the biggest bank heists in world history.

I have noted your speeches and, in fact, have been following cyber crime sprees through the way you have reported them in various conferences you have attended. It is shocking the amount of money and the amount of people that are being bilked. So it is everything from identity theft to cyber heists to cyber espionage that we will focus on in another environment.

But we are absolutely committed to that. I have just left a hearing of the Armed Services Committee, where I introduced General Alexander to be head of the Cyber Command to protect .mil. But then there is .gov, .com, and .usa. And the work of you and the homeland security are crucial.

So, well, let us go to protecting our communities. First, we want to acknowledge the excellent work that the FBI does in just being the FBI. The FBI is loved. The FBI is respected and often is brought into some of the toughest and most brutal situations. But this white collar crime—insidious, virulent, and despicable—is really undermining our families.

I would like to ask a question about mortgage fraud. My own home State in some zip codes has some of the highest mortgage fraud rates in the country. It is terrible to lose your home because of an economic downturn, but it is even worse if you have lost your home to some scam or scum that has bilked you out of it from predatory lending to others.

So we really want to be able to send a message to those who want to bilk American families when they are pursuing the American dream that we are going to come after you. So don't even go there in the first place. I want them to be so scared that the FBI

will come after them because you have exactly what you need to do that, that they don't even do it in the first place. And I want you to go after the ones who have done it.

And I know Senator Shelby feels the same passion I do. So can you tell us how many agents and accountants and so on you need for the mortgage fraud workload? Tell us the nature of the workload and tell us the nature of what you think is the way you would allocate staff to do that. In other words, do you need more paralegals, or do you need more agents? What is it that you need?

#### MORTGAGE FRAUD/WHITE COLLAR CRIME

Mr. MUELLER. Well, let me just start by saying we quite clearly share your sense of prioritization of these cases. And since we have 2,900 cases in the mortgage fraud arena alone, we have to prioritize there. We use a variety of methods of doing so, and we are leveraging not only our capabilities, but the capabilities of other Federal, State, and local agencies.

We currently have 90 task forces working around the country to address the mortgage fraud crisis. This year, in direct response to your question, we are requesting 211 personnel, and another \$44 million to address financial fraud.

With this level of cases, we have had to triage, without a doubt, and prioritize those cases. But we also are utilizing new methods, as I pointed out, of intelligence, and identifying scams through looking through a number of real estate records, real estate indices, and identifying a number of these schemes where there are quick turnovers and quick profits and the loss is spread around the community.

We have been very successful in the last couple of years in terms of indictments. I mentioned one in San Francisco recently, but I can get you the full rack-up in terms of what we have accomplished in the last couple of years.

[The information follows:]

Between fiscal year 2007 and fiscal year 2009, there were 829 arrests, 1,194 convictions, 99 dismantlement, 248 disruptions, 1,337 indictments, and 442 information within the FBI's Mortgage Fraud program.

We can always use more resources in the white collar crime arena. Not only do we have mortgage fraud, but you have the Ponzi schemes that I have alluded to. Last year, we had the Madoff scheme. I alluded as well to the Petters case out in Minneapolis, where he was recently sentenced to 50 years, and we have a number of those.

And so, whether it be the mortgage fraud cases, the Ponzi schemes, the securities fraud cases, or corporate fraud, we have probably close to 2,000 agents working in our white collar crime programs. We could always use more, but I think we are doing a good job in prioritizing and going after those who are most responsible for taking the public's money through fraudulent schemes.

Senator MIKULSKI. Well, am I correct in saying that in mortgage fraud and other areas of white collar crime, particularly financial services and also the Medicare/Medicaid fraud, that this is essentially the type of crime where those who are accused will bring in very high-priced lawyers because they often can afford it, and they

are going to do incredible docu-dumps on the FBI and the task forces involved in this. So these crimes could go on for years.

My question, in terms of your priority—is it that you are using technology to be able to scan documents, move these cases more expeditiously? And also, given the fact that this seems to also be tied to the economic downturn, as well as a greed spree, that the use of technology and so on will be able to help your agents? Could you tell us how you are going to set through those priorities?

#### TECHNOLOGY

Mr. MUELLER. It is a combination of two things. One is that technology enables us to utilize public records often to identify mortgage fraud schemes and the potential players. And with that information, you can identify one or more of those persons who should be investigated and indicted, fairly quickly, and then have those persons cooperate against other persons in the scheme.

The one thing you do not want to have happen is to be bogged down with rooms and rooms of documents and going through them over years. These people need to be brought to justice swiftly, and to do that, in some sense, you have to treat it as a narcotics case, where you have some individual who is inculpated in the scheme and press that person to divulge who others involved were and provide evidence.

And we push hard to do that, and by doing that, regardless of the quality of the lowering on the other side, the person will spend a substantial time in jail. Fifty years for Mr. Petters out of Minneapolis is an appropriate sentence.

#### SENTINEL

Senator MIKULSKI. I like the tough talk. We have to ask some tough questions, though, about another aspect. I want to come back, if there is time, on the sexual predator issues, as well as Medicare fraud. I know Senator Shelby has.

But I must raise a question about Sentinel. There have been delays in the development of Sentinel, the Bureau's new—it is a case management system, as I understand it. And you know we were all over the FBI for a number of years now—connect the dots, manage your cases better, communicate, collaborate, et cetera. And technology was to be a tool.

The FBI has had problems in doing this in the past. I want to know where we are on Sentinel. Is this just a normal delay that is involved in the development of any significant technology project, or are we on the road to boondoggle, and what would you be doing to avoid boondoggle?

Mr. MUELLER. Well, let me put some context into the discussion on Sentinel. There have been criticisms of the Bureau before in terms of technology, legitimate criticisms.

In many areas, we have been, I think, substantially successful in terms of providing the agents what they need. We have something like 27,000 BlackBerrys out there. There was a concern about access to the Internet.

Senator MIKULSKI. How many BlackBerrys?

Mr. MUELLER. Twenty-seven thousand BlackBerrys. We had problems with all personnel having access to the Internet. We have



30,000 persons with access to the Internet now. In terms of connecting the dots, we have developed a number of databases that enable us to connect the dots.

Now turning to Sentinel, which is a case management system. In the wake of Virtual Case File, after Phase 1 of the new contract, we went to what we called an incremental development plan. Phase 1 of that plan went very well. We implemented it in 2007, which gives some capabilities that are currently being used by approximately 2,000 of our personnel.

This is a four-phase project. When it came to the end of Phase 2 last fall, we saw two things happening. Development tasks were not closing at the planned rate, and costs were exceeding the planned levels. We had not seen that prior to last fall.

Upon finding that we had these issues to address, we brought in three outside objective entities for independent reviews. We brought in Mitre, Aerospace, and Booz Allen to determine what the problem was, and to a certain extent, they attributed the problem to coding defects.

With that information from the third-party independent reviewers, we issued a partial stop-work order in order to make certain that the quality of the product that we were receiving was up to par, and when we went to the field that it would be a product that would be welcomed by the users and would advance the users' capabilities on our systems.

We have been in the process in the last several weeks of clarifying and addressing those problems. My expectation is that the pilots will be initiated this summer.

I will tell you that when you have a project that goes over 4 or 5 years, some form of delay is, I wouldn't say inevitable, but needs to be identified, addressed and contained. I think we have done it here. But when you have a program where the requirements were laid down in concrete 4 or 5 years ago, technology changes, business practices change, complexity requirements change, and one can expect some minor delays. For us, it is working with our contractor to push it through and make certain that Phase 2 is completed this summer.

I will say, having been through this path before, I am cautiously optimistic that we are on the path to get that accomplished. If I do, at some point, believe that it is not working, I will take whatever steps are necessary on the contract to make certain we push through and get Sentinel on the desks of everyone who needs it.

Senator MIKULSKI. Well, do you believe that the contractor has had a sufficient wake-up call and is ready and cooperating with you, meaning the FBI and its chief information people—

Mr. MUELLER. I do believe that is the case. Senior management, with whom I have been in contact over the duration of this contract, understands that issues related to quality control have to be addressed and rectified and has put not just the senior-level management on it, but the persons that can accomplish that.

Senator MIKULSKI. Well, first of all, I want to acknowledge that you did oversight of the project, and I know—I believe you have been personally involved in overseeing this. Am I correct?

Mr. MUELLER. Yes, and we wanted oversight from all outside entities, including Congress. This is something that we want to make certain is successful. So, yes, I have had personal oversight of it.

Senator MIKULSKI. Oh, no, I know you weren't the only one. But often this is delegated, and then you went to three outside reviews to be sure that you were keeping this on track. So you feel confident that you have the plan to move this forward?

Mr. MUELLER. Yes.

Senator MIKULSKI. Do you have an estimate of cost?

Mr. MUELLER. Not yet.

Senator MIKULSKI. Do you have a complete plan on when this will be fully operational?

Mr. MUELLER. No. My expectation is that Phase 2 should be operational by the fall.

Senator MIKULSKI. So we will have this back from you before we mark up our bill?

Mr. MUELLER. Yes.

Senator MIKULSKI. Thank you. Well, thank you very much.

Mr. MUELLER. One other thing, if I can, Madam Chairwoman? It was supposed to be completed in 2010. And this delay, I want to acknowledge, is going to push it into 2011 for completion of this project. But my expectation is it will be completed in 2011.

Senator MIKULSKI. Thank you.

Senator Shelby.

#### TEDAC

Senator SHELBY. Thank you, Senator Mikulski, Chairwoman.

Mr. Director, as I indicated in my opening remarks, the administration's proposed rescission of \$98 million in funding for the Terrorist Explosive Device Analytical Center is troubling, given the FBI and the Joint Improvised Explosive Device Defeat Organization [JIEDDO]—how do you pronounce it?

Mr. MUELLER. I think "jay-doh."

Senator SHELBY. The JIEDDO commander's support for this facility. Do you believe, Mr. Director, that the TEDAC is a critical element necessary for the FBI to meet its responsibilities to the American public?

Mr. MUELLER. I absolutely do. I am a great believer in the benefits of TEDAC. It has shown itself over and over again to be exceptionally valuable in identifying IEDs, not just in the United States, but IEDs throughout the world.

Senator SHELBY. Did the FBI request additional funding to construct a facility to support the TEDAC mission above the amount Congress had already provided? You know we have been funding this for a number of years.

Mr. MUELLER. Well, there was the \$98 million I think we are talking about. And of course, we requested that funding and appealed it at the appropriate levels.

Senator SHELBY. When the FBI was informed of the proposal by the administration, OMB, to cancel the funding to construct the facility to support the mission, did the Bureau appeal that decision to OMB?

Mr. MUELLER. Yes, sir.

Senator SHELBY. Thank you.

So you basically believe it is necessary we build this facility because it will help you do your job to protect the American people?

Mr. MUELLER. Yes, sir.

Senator SHELBY. It is my understanding, Director Mueller, that the volume of submissions to TEDAC has overwhelmed its capacity, resulting in a substantial backlog. The FBI estimates that 86 percent of the 33,000 evidence boxes within the backlog contain DNA or fingerprints from a still unidentified insurgent who was involved in an IED attack against the U.S. military personnel who may seek to enter the United States.

Today, a terrorist could be stopped at a checkpoint in Afghanistan and go unidentified because the FBI has not yet analyzed the evidence against him because you don't have the facilities.

Mr. MUELLER. That is true, Senator. Throughout the world, the ability to identify persons who leave their fingerprints or DNA on IEDs is tremendously important, and the backlog to which you allude needs to be triaged. We have to take the most serious IEDs and prioritize. And having an additional facility with additional analysts, both from the military as well as ourselves, would quite clearly cut deeply into that backlog.

Senator SHELBY. It would help you tremendously, would it?

Mr. MUELLER. Yes, sir.

#### DNA POLICY

Senator SHELBY. I want to get into DNA policy, Director Mueller. Reducing the DNA backlog is one of the single most important issues facing all of law enforcement in this country, including the Bureau. But in doing so, I think we must do it the right way and guarantee the integrity of the process.

As stated in the FBI press release, the FBI is performing—and I will quote—“a review to determine what improvements can be made to facilitate more efficient and timely uploading of outsourced DNA data into the NDIS, and no changes have been made to any procedures or standards to date” in the press release.

Nearly every public crime lab in America, including the FBI's own advisory scientific working group on DNA analysis, are in favor of keeping the DNA technical review policy as it currently stands. After having seen the timing of the FBI's lab press release, correspondence from private DNA lab executives taking credit for pushing this initiative within the FBI, and celebratory statements praising the FBI for a position you just said the FBI has not changed or has indicated, I hope you share my concern about the origin of this decision.

I understand the FBI has a backlog of almost 300,000 DNA samples for the Federal DNA database, and I guess my question is, what are you doing to reduce this backlog? And when do you plan to have it eliminated completely?

Mr. MUELLER. Well, let me start with the backlog and then, if I could, discuss the uploading of DNA analyses that have been performed by private laboratories.

Senator SHELBY. Okay.

Mr. MUELLER. With regard to the backlog, we expect to have that backlog reduced to almost nothing by September of this year. We currently do 25,000 uploads into the database per month. We ex-

pect to go to 90,000 by September and reduce the backlog to the point where we can have a 30-day turnaround.

Now that reduction in backlog is attributable to several factors. The first was the 2009 budget. You gave us 29 additional personnel who have now been hired and are reducing that backlog. We are making enhanced use of robotics in new and different ways. And last, we have realigned staff. All of which I will say has been done under the auspices of our laboratory director.

Let me turn to the issue with regard to the role of private laboratories and nongovernmental entities compared to Governmental entities. Let me first start by saying that we have not, are not, and will not consider giving nongovernmental entities access to CODIS. That is not on the table.

We have been pressured by police departments and others to look at the technical review process, whereby a review is done by a private laboratory, and before it is uploaded into CODIS, there has to be a technical review. What we are looking at is if there are any ways to improve the efficiency and the timely uploading of the DNA samples into CODIS without reducing any of the quality control requirements that would allow, perhaps by reduction, samples that we do not want ingested into that system.

Senator SHELBY. Do we have your assurance that all voices of State and local crime labs will be at the table during any DNA policy review discussion? I mean—

Mr. MUELLER. Absolutely. And let me also say that I have heard what you have said about influence from the outside. I had not myself heard of that at all. What I had heard, and what ultimately triggered that I look at it, were requests by particular police departments that we improve and enhance the efficiency and the timeliness of the uploading of DNA samples, for example rape kits, into CODIS.

And in my mind, that is what triggered the review, and it is appropriate that we do it. It is certainly appropriate that we have the input of everybody involved as we go through that review.

Senator SHELBY. But the key to it is to protect the integrity of the system, is it not, and the evidence that comes from it?

Mr. MUELLER. Yes, sir.

Senator SHELBY. Thank you, Madam Chairwoman.

Senator MIKULSKI. Senator Pryor.

#### MEXICAN BORDER

Senator PRYOR. Thank you, Madam Chairwoman.

Director Mueller, thank you for being here today. I just have a few questions about your agency and some of your efforts.

We had a hearing in the Homeland Security Subcommittee, one of the subcommittees that I chair there, not long ago, about how the Mexican drug cartels are trying to corrupt the Customs and Border Protection agency here in the U.S., and maybe others, in terms of trying to provide money so that they will look the other way when they are bringing in drugs and people and everything else.

I know that you are very aware of that, but I am glad to see that there are a number of Federal agencies, including the FBI, who are trying to work on this. My question is, do you feel like we are mak-

ing the right kind of progress there? Because that is a very disturbing development to me.

Mr. MUELLER. I do, Senator. And I can speak to what we are doing, but also allude to what is being done by other agencies, particularly DHS.

We have 11 border corruption task forces now, where we have State, local, and other Federal agencies that are working on these task forces. From the perspective of the FBI, we have more than 100 cases of corruption that we are currently investigating along the border—many, if not most of them being investigated by these border corruption task forces.

I will also say that with the increase in personnel for Border Patrol, Immigration, and the like, there has been enhanced capability in DHS to address that problem, as well as enhanced exchange of information and working together on what is a very serious problem on the border.

Senator PRYOR. I noticed that there has been a lot of violence around the border area—especially to the south of us, but certainly it is spilling over into the United States, and it is touching the United States in various ways. Is the FBI concentrating some resources down there to try to get that under control at least within our borders?

Mr. MUELLER. Yes. In addition to addressing public corruption, the two other areas in which we have expanded our capabilities are cross-border kidnappings, and intelligence.

With regard to cross-border kidnappings, we have bilateral kidnapping task forces in Nuevo Laredo, just as an example. What one finds is that persons who have businesses in Mexico or family in Mexico, and live in the United States, will travel to either see family or their businesses, and are kidnapped. And so, there will be that cross-border dynamic. We have teams along the border that address that.

I would say that it has been fairly stable over the last couple of years. We haven't seen a peak. It is still an issue, but we haven't seen an uptick. These particular task forces with specialized capabilities have been effective in identifying the kidnapers and, working either under the Mexican judicial system or ours, incarcerating them.

One other aspect I will spend a moment on is the Southwest Intelligence Group. About a year ago, after visits to Mexico and with our Legal Attaché and looking at what we were doing along the border, I believed that we could enhance our information sharing by putting together an intelligence group down in El Paso.

It is a group that includes intelligence from each of our border offices, as well as our Legal Attaché office in Mexico City and headquarters, so that all are looking at the same intelligence and driving our activities. But it is also integrated with the other intelligence agencies and other intelligence groups that operate out of EPIC, the El Paso Intelligence Center.

#### DRUG INTERDICTION METRICS

Senator PRYOR. Let me ask about your metrics on how you measure your effectiveness. You have something like a kidnapping or a

murder, I think it is pretty easy to measure that, and you can see the numbers move up or down.

But my understanding is that the Mexican drug cartels have a presence in, I believe, it is 180 U.S. cities. I think there are three in my State, where they actually have a presence there, and a lot of the methamphetamine, cocaine, marijuana, et cetera, is coming up through Mexico.

Are you able to measure how effective your efforts are in preventing those drugs from coming into the United States in the first place, and the gang and general criminal activity that is almost pervasive in our country because of the Mexican drug cartels?

Mr. MUELLER. We traditionally have used a number of metrics such as the number of kilos of cocaine picked up coming across the border and the number of leaders who have been indicted and extradited. These metrics show you something, but not necessarily what would be most beneficial.

What we try to look at is if you have a pocket—it can be a gang, it can be Mexican traffickers—where do you have an impact on the community? Where you have a homicide rate of 20 percent in a particular area of the city one year, what we want intelligence to do is to look at, who are the shooters? Who is responsible for this 20 percent in this particular community? Then, what is the strategy for addressing it?

At the end of the day, I don't care how many leaders are arrested and go away forever, but I want to see a drop in that homicide rate, because that is the ultimate test. And so, we are trying to drive toward a metric system that goes further in evaluating the impact on the community, as opposed to the traditional statistics that we ordinarily have touted.

Senator PRYOR. Madam Chairwoman, if I could just ask one more question as a follow-up? Given the presence of the Mexican drug cartels and the intensity of their activity in Mexico, and the United States, do we have the right laws on the books? In other words, do you have enough tools in the toolbox that you can use?

I know years ago, the Congress passed the Racketeer Influenced and Corrupt Organizations Act [RICO] and other things. And in Arkansas, we have passed gang-type laws that, in effect, are like State RICO-type acts. But do you need any new laws on the books to help you address this very serious problem?

Mr. MUELLER. In terms of statutes, such as the RICO statute, the continuing criminal enterprise statute or gang statutes, not really. I do believe that along the border, as with the terrorism threats we face in this country, a greater understanding and necessity of sharing intelligence across the intelligence community and the law enforcement community is important.

Looking at a legal structure, a structure that enables us to share the information, or enables the foreign intelligence community to more easily share information on U.S. citizens with law enforcement communities such as ourselves, are areas that we ought to be looking at down the road. Because historically we have grown an intelligence community that looks outward, a law enforcement community that looks inwards—there are artificial distinctions that terrorists and criminals don't care about at all. For us to do the kind of work that we need to do, there has to be the maximum pos-

sible integration and flow of information from the intelligence community, whether it is in Mexico, Afghanistan, Yemen or Pakistan, with the domestic community. And there are still legal impediments to that flow of information that we ought to be working on.

#### CHILD PREDATORS

Senator MIKULSKI. Thank you very much, Senator.

Before we wrap up this open session, I have two points that I want to make. One is on the issue related to predatory behavior related to children.

In 1996, Innocent Images was established in Calverton, Maryland, because of a despicable situation with a little boy. As I understand it, the caseload has grown by more than 200 percent. That the caseload of Innocent Images has gone from 113 cases to where you have 2,500 opened right now in this situation.

Do you feel that you have enough resources to be dealing with this magnitude of caseload and also with the fact that this is now involved with international activity?

Mr. MUELLER. We could very easily, tomorrow, double, triple, or quadruple that caseload. There are so many opportunities out there. We have to, again, prioritize and triage. Throughout the country, we work with State and local law enforcement and hope to better leverage our capabilities with them.

As horrendous as this is, and everybody recognizes it is, State and local law enforcement are being cut. And so, the ability to leverage State and local law enforcement in this arena is not as great as I would like it to be.

We also have focused on what we call "Innocence Lost," where young children are brought into prostitution rings and the like. And so, we put our efforts there as well as Innocent Images.

The last thing I would say where we could always use additional funds that would be beneficial as part of the Innocent Images project is to bring our counterparts from overseas who are doing this to Calverton to work internationally on child pornography rings. That has been tremendously beneficial.

So, whether it is Innocence Lost or the projects we have with our international counterparts coming here for training and joint investigations, we could always use more resources. But I think we are doing a very good job with what we have.

Senator MIKULSKI. So the key here is working with local partners. Is that correct?

Mr. MUELLER. It is, local and international.

#### MEDICARE AND MEDICAID FRAUD

Senator MIKULSKI. And my last point is this. We just passed health insurance reform. And as I moved around my State, whether it was in diners or grocery stores or listening to people, they were saying read the bill, and others were saying expand access. One of the things that people really didn't believe was that we were going to help reduce costs by reducing waste, fraud, and abuse. When you use that phrase, they hold their sides and laugh. They don't think that we really mean it.

I believe that there is a real commitment on this subcommittee, and people like Senator Tom Coburn had excellent ideas. I believe Secretary Sebelius. We really have to do something.

Now I noted in your testimony how you recovered, I think, \$10 million from somebody who was supposed to be helping AIDS victims, and they were indulging in very lavish lifestyles. Mr. Director, I believe that there hasn't been nationally, in every agency, the kind of vigor that we need really in pursuing Medicare and Medicaid fraud. This is not finger-pointing at you in any way.

Does the administration now have a sense of real urgency to pursue this? And No. 2, do you feel in this year's fiscal request that you have the resources to do this?

This budget was submitted before we passed healthcare reform. But if we are going to show the taxpayer we are really serious about helping pay the bill by making sure that we get value for our dollar, value medicine, and also making sure we come after those who engage in fraud in Medicaid and in Medicare, could you share that with us? And that will be my last question on this.

Mr. MUELLER. We have received additional resources this year. I can tell you that in the future, we will be asking for substantial additional resources, and not just for us, but also with HHS, because much of the record keeping is in that domain. In order to get ahead of the curve, identifying the schemes could be done at the point of contact or the point of reimbursement, as opposed to waiting for the field work when they become endemic in a particular community.

We currently have seven task forces spread around the country, and we are in cities where we have identified the greatest threat. We will continue to do these intelligence reports as to where the threats are and come back for additional resources to address those threats once we identify particular pockets in the United States where it is most prevalent.

Senator MIKULSKI. Well, I am going to back you 100 percent on this because I want to say promises made, promises kept. We are really going to go after that fraud and abuse.

Senator Shelby?

#### INNOCENT IMAGES

Senator SHELBY. Thank you, Senator Mikulski.

I want to follow up in the area where she has been going. Mr. Director, in July 2007, you testified before the House Judiciary Committee that, and I will quote you, "Child exploitation is a substantial priority for the FBI," and I know it is. When asked why the FBI was not doing more then, you said, to the extent that I can obtain additional resources to address child pornography, you would be willing to do so, in other words.

Since that time, Congress has increased annual funding for the FBI's Innocent Images program from \$10 million to \$52 million. That is an increase of over 500 percent—perhaps not enough, I know. Has the FBI increased the number of child exploitation cases referred for prosecution here, and about how many? And if you don't know offhand—oh, I think you do offhand. You have got great staff here.



Mr. MUELLER. I can tell you in 2006, we had 918 arrests, in 2007, 1,114 and in 2008, 1,110. They were about the same in 2007 and 2008, and I would have to get you 2009. They have increased, but I hope that they would increase even more.

[The information follows:]

In fiscal year 2009, there were 1,062 arrests.

I will tell you, though, that I am not certain that the arrests in the United States totally reflect the work that has been done. Many who are involved in this activity can see the kind of attention it gets in the United States and often go offshore. The customers will be in the United States, but the focal point, the servers, the information will be in computers and servers in countries that have much more lax rules and much less developed approaches to addressing this.

One of the benefits that we have had from the Innocent Images project as we have grown it is the international capability. So, you will have the encrypted servers in the Netherlands or Romania or someplace else and will begin the investigation here. They will be investigated here, but the arrests will be made overseas. And so, it is a worldwide phenomenon. Borders are meaningless.

When you look at the metrics for the success of the program, we have to look at not just what is happening in the United States—we are pretty darned good at it—but what is happening internationally. And we are becoming even better at it internationally.

Senator SHELBY. But it is a sordid problem, is it not? And it is billions of dollars involved worldwide, is it not?

Mr. MUELLER. It is, indeed.

Senator SHELBY. We know you are committed to fighting that. And some of the people in the local and State law enforcement, they petition us at times and say the Bureau is not doing enough, are you not involved. But I believe you are involved. It is just a heck of a problem to get your hands around, isn't it?

Mr. MUELLER. It is. And there is not an FBI agent, analyst or support staffer in the United States who doesn't, when you can identify and free a victim who has been abused and it goes on the Internet. There is nothing more rewarding than freeing a victim from this kind of activity.

Senator SHELBY. But a lot of that child pornography is paid for through the credit card system, is it not?

Mr. MUELLER. It is.

Senator SHELBY. We have had hearings on that in the Banking Committee, and are working with the FBI and the Justice Department on that. And a lot of it can be traced to international crime syndicates, can it not?

Mr. MUELLER. It can. Much of the credit card usage is traced. Being on Banking, you know, groups like this are always looking for the next financial capability which minimizes any records. And consequently, these groups, such as organized criminal groups and terrorist groups, are always looking for the next card that will leave no trail whatsoever.

And they have been valuable tools in identifying the networks, and hopefully, they will continue to be valuable tools to identifying

the networks to the extent that they leave some sort of trail that we can follow.

Senator SHELBY. Thank you.

Thank you, Madam Chairman.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. If there are no further questions, Senators may submit additional questions for the subcommittee's official hearing record. We request the FBI's response in 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

##### CYBERSECURITY INITIATIVE

*Question.* The FBI requested \$182 million for the Cyber Initiative in fiscal year 2011. The FBI has unique authorities to collect domestic intelligence and investigate foreign intrusions to government and private networks.

Cyber intrusions are increasing, and threaten the U.S. economy and security. Foreign firms are hacking into U.S. corporate networks, stealing trade secrets and reducing U.S. competitiveness.

Terrorist groups and foreign nations building cyber intrusion abilities could shut down power grids and financial systems, and steal U.S. counterterrorism information, like IED jammer technology.

Could you describe the FBI's unique role in the protecting cyberspace, and what can you do that other agencies can't?

*Answer.* The FBI has a unique role in protecting cyberspace, as the FBI is the only agency within the U.S. law enforcement and Intelligence Community (IC) that has primary domestic law enforcement, counter-terrorism, and counter-intelligence authorities over all domestic investigative aspects of computer intrusion cases. Cyberspace transcends national borders, and the threat actors that operate through cyberspace utilize computers and networks, both domestically and abroad, to achieve their goals. While many threat actors may physically reside in another country, rarely do they reach out directly to their target. Instead, threat actors frequently "hop" from one computer to the next to cover their tracks, include passing through both foreign and domestic networks.

The FBI's ability to work with domestic victims of cybercrime and cyber espionage, and ferret out U.S.-based criminal and espionage operations has enabled U.S. Government and private sector targets alike to thwart attacks and help determine attribution. The FBI augments the rest of the USIC by providing this domestic role under a mature set of Constitutional, statutory, and executive branch authorities, established investigatory guidelines, and tightly interwoven judicial and congressional oversight, which helps protect the privacy and civil liberties of U.S. citizens. Similarly, through the federated efforts of the FBI's 56 Field Offices, the FBI can quickly target and collect information domestically and provide quick notification to potential victims of cyber crime, espionage, or attack.

The FBI also provides community leadership in the form of the National Cyber Investigative Joint Task Force (NCIJTF) which, by mandate of the President, is led by the FBI as the multi-agency national focal point for coordinating, integrating, and sharing pertinent information related to cyber threat investigations. This shared information is then used to determine the identity, location, intent, motivation, capabilities, alliances, funding, and methodologies of cyber threat groups and individuals—all of which is necessary to support the U.S. Government's full range of options across all elements of national power.

*Question.* How do we make sure that agencies communicate, coordinate and cooperate?

*Answer.* The FBI-led National Cyber Investigative Joint Task Force (NCIJTF) provides a collaborative work environment that promotes communication, coordination, and cooperation amongst member agencies. In fact, the NCIJTF recently received an award from the Office of the Director of National Intelligence for its successful role in interagency collaboration.

*Question.* How will you attract tech-savvy analysts and agents when they could make more money in the private sector?

*Answer.* Fundamentally, the FBI's ability to attract individuals who can make more money in the private sector relies on employee patriotism, the FBI's proud history, and the FBI's continuing ability to provide its workforce with meaningful, cutting edge opportunities to protect the country. The FBI Cyber Division and Directorate of Intelligence work in conjunction with the Human Resources Division to recruit tech-savvy analysts and agents.

*Question.* How will you keep pace with the advanced technology used by our adversaries?

*Answer.* The FBI Cyber Division has a Cyber Education and Development Unit which provides continuing specialized high-tech training to agents and analysts to keep pace with adversary cyber capabilities. The FBI Science and Technology Branch seeks to enable the FBI's continuing ability to collect, forensically recover, and manipulate information lawfully acquired in cyber cases. Still, numerous challenges remain. The FBI implemented a "Going Dark" program in response to the need to maintain lawful electronic surveillance, intelligence collection, and evidence gathering capabilities which, if eroded, will severely impact the FBI's ability to keep pace with our adversaries.

*Question.* Is the FBI's budget request for the cyber initiative adequate to meet your responsibilities?

*Answer.* The terrorist, nation-state, and criminal cyber threat, which takes advantage of systemic vulnerabilities in our increasingly networked, computer driven environment, continues to outpace the ability of the FBI and its government and private sector partners to drive it down or even keep it in check. Budget increases, however, have helped the law enforcement and the intelligence community better monitor and report on the threat, and have increased tactical successes to include the prevention of specific acts of network and data compromise.

*Question.* How will you expand you capabilities in future years?

*Answer.* The FBI expects future capabilities to focus on improved capacity, agility and efficiency, particularly with regards to analysis and collection; enhanced community situational awareness; and expanded collaboration with critical infrastructure owners and operators.

#### CHRISTMAS DAY BOMBING ATTEMPT

*Question.* In the aftermath of Christmas Day attempted bombing, the FBI was criticized for its handling of terrorist suspect Umar Farouk Abdulmutallab (Ab-dool-mu-tall-ab), who was immediately interrogated by local FBI agents, rather than specialized terrorist investigators.

Abdulmutallab was given a Miranda warning 10 hours after arrival, rather than being placed in military custody.

What is the success rate when terrorist suspects comply with the FBI in terms of valuable intelligence gathered and for convictions in Federal courts?

*Answer.* The FBI has a long history of successfully collecting valuable intelligence from the interrogation of detained terrorism subjects. Through interviews of individuals held in Federal criminal custody in the United States, as well as detainees held in U.S. military or foreign service custody abroad, the FBI has collected information that has led to the disruption of terrorist plots and has saved American lives. The FBI's rapport building techniques, as well as the legal incentives built into the Federal criminal process, routinely convince terrorist subjects to cooperate and provide voluntary statements during interviews. The results of these interviews are rapidly disseminated to the United States Intelligence Community (USIC) through the publication of Intelligence Information Reports (IIRs) and other intelligence products. Terrorist subjects who cooperate with the FBI contribute greatly to the USIC's understanding of terrorist networks by exposing operational activity, identifying leadership structures and associates, describing training methods, locating facilities and exposing facilitation networks.

*Question.* What value do FBI interrogations provide that outside terrorist interrogation unit does not?

*Answer.* The FBI cannot speak for other terrorist interrogation units and can only stress that the FBI has had a long history of successfully collecting valuable intelligence, leading to the disruption of terrorist plots and successful prosecutions of terrorists.

*Question.* Can you describe for us Mr. Abdulmutallab's cooperation pre-Miranda warning? What was his cooperation post-Miranda warning and is he cooperating now?

*Answer.* Although during his initial pre-Miranda interview, Umar Farouk Abdulmutallab deliberately provided misleading information to investigators, he did admit to facts and readily apparent details about the attack, including his desire

to detonate the bomb over the United States. The details of the story he told were fabricated and contained misleading information lacking intelligence and investigative value.

Initially, post-Miranda, Umar Farouk Abdulmutallab indicated he did not want to answer any additional questions regarding his bombing attempt. Subsequent to his indictment on January 6, 2010, FBI Detroit was able to gain his cooperation with law enforcement. In late January, Abdulmutallab agreed to begin participating in a series of proffer sessions in exchange for the possibility of a future plea agreement. He remains available for interviews as needed.

*Question.* Under what circumstances could Mr. Abdulmutallab have been turned over to the military to be held as an enemy combatant? Who would need to provide you that guidance—the President, the Attorney General?

*Answer.* Pursuant to Homeland Security Presidential Directive-5, the Attorney General has lead responsibility for any terrorism act committed within the United States. Consistent with that responsibility, the FBI will respond to the scene of any such attempted terrorist attack and will conduct an appropriate investigation in compliance with the Attorney General's Guidelines for Domestic FBI Operations. The FBI has no legal authority to proceed against a terrorism suspect who is arrested within the United States in any venue other than an Article III court.

There have been only two instances since 2001 in which civilians arrested within the United States were placed in military custody for some period of time. In both instances, the individuals were initially taken into custody and detained by Federal law enforcement officials. The transfers from law enforcement to military custody occurred by order of the Commander in Chief, and the civilians were later returned to Article III courts for disposition of their cases.

*Question.* Why was Mr. Abdulmutallab not on the No-Fly List?

*Answer.* The Terrorist Screening Center (TSC) did not receive a nomination to watchlist Umar Farouk Abdulmutallab prior to December 25, 2009, and, as a result, he was not watchlisted in the Terrorist Screening Database (TSDB). The inclusion of an individual on the No Fly list (which is a subset of the TSDB) requires both sufficient biographical information and sufficient derogatory information, so the possession of only one of these would have been insufficient for inclusion on the No Fly list. It is the FBI's understanding that information provided by the State Department contained sufficient biographic information but lacked sufficient derogatory information to place Abdulmutallab on the watchlist. We also understand that additional fragmentary information that included sufficient derogatory information but lacked sufficient biographic information was available from another agency, but that information was not linked to Abdulmutallab until after the attempted Christmas day attack.

Following the attempted terrorist attack on December 25, 2009, the President initiated a review and as a result, TSC was given two instructions.

- Conduct a thorough review of the TSDB and ascertain the current visa status of all known and suspected terrorists, beginning with the No Fly list. That process has now been completed.
- Develop recommendations on whether adjustments are needed to the watchlisting Nominations Guidance, including biographic and derogatory criteria for inclusion in Terrorist Identities Datamart Environment (TIDE) and TSDB, as well as the No Fly and Selectee lists. The Nominations Guidance refers to the Protocol Regarding Terrorist Nominations that the TSC issued to the watchlisting and screening community in February 2009, and its appendices issued at various dates (collectively, "2009 Protocol"). The Presidentially-directed review has been completed and adjustments have been made to the 2009 Protocol. The updated document has been renamed the "Watchlisting Guidance."

The Watchlisting Guidance was developed by an interagency working group that included representation from the Department of Justice, Department of Homeland Security, Central Intelligence Agency, National Security Agency, Department of Defense, Department of State, Department of Treasury, and the Office of the Director of National Intelligence. In response to the President's January 7, 2010 corrective actions memo, the interagency working group thoroughly reviewed the 2009 Protocol and applicable appendices to develop recommendations for the National Security Council/Homeland Security Council (NSC/HSC) Deputies Committee's approval.

Based on these recommendations, the NSC/HSC Deputies Committee approved the entire Watchlisting Guidance for issuance to the watchlisting and screening community in July 2010.

## OVERSEAS CONTINGENCY OPERATIONS

*Question.* The fiscal year 2011 request includes funding for Overseas Contingency Operations (OCO) totaling \$38 million, which is \$63 million less than fiscal year 2010 omnibus of \$101 million.

OCO support FBI operations in Afghanistan and Iraq, including international deployment, overtime and hazard pay, other counterterrorism requirements. Administration says DOD is pulling out of Iraq. But FBI is ramping up operations in Iraq and Afghanistan, working side-by-side with our military forces. FBI's presence is expected to remain for years to come in both. The Bureau stills need sufficient resources to carry out its mission.

What will the \$38 million requested for OCO be used for?

*Answer.* Current plans for the \$38 million requested for fiscal year 2011 Overseas Contingency Operations funding include support for technical collection efforts focused on terrorist targets, equipment and supplies for deployed personnel, language support, investigative operational costs, and funding for the Afghanistan mission.

*Question.* What is the reason for the \$63 million reduction for Overseas Contingency Operations support for FBI activities?

—What strain will this reduction place on FBI personnel stationed overseas?

—Can you tell us what you would not be able to do if this funding was cut?

—Will this reduced funding level put FBI personnel in danger?

—Would the loss of this funding make it more difficult for the Bureau to work internationally to combat and prevent terrorism?

*Answer.* The President must make many tough decisions as he prepares the annual budget request. The Overseas Contingency Operations (OCO) resources provided for in the President's fiscal year 2011 budget request will allow the FBI to continue to support its presence in Iraq and Afghanistan. The \$38 million requested for fiscal year 2011 OCO funding will provide support for technical collection efforts focused on terrorist targets, equipment and supplies for deployed personnel, language support, and investigative operational costs.

*Question.* How long will there be an FBI presence in Afghanistan and Iraq?

*Answer.* Currently, the FBI plans to maintain its presence in Afghanistan and Iraq and keep open its Legal Attaché offices in those countries.

## RENDER SAFE MISSION

*Question.* The FBI is now responsible for the Render Safe mission, which involves dismantling a radiological device on U.S. soil.

The fiscal year 2011 budget request includes \$91 million for the FBI's "Render Safe". This provides \$35 million for a multi-year purchase of two new specially-configured aircraft to carry out the Render Safe mission. The FBI currently uses one leased plane to carry out its mission. The lease that will end in fiscal year 2013.

Why does the FBI need two new planes when it currently conducts its mission with one?

*Answer.* Please note that classified details are required for a complete understanding of these Render Safe responses. Further information may be provided under classified cover.

Due to a National Security Council (NSC) imposed cost ceiling during the initial response development, the current lease provides a primary aircraft with secure and redundant communications systems and a backup aircraft to cover and support unexpected primary aircraft mechanical failure and maintenance down time. However, the current back up aircraft does not have the necessary communications systems to support the transmission and receipt of time critical data or the ability to communicate directly with on-site responders, FBI Headquarters Assets, and national leadership; facilitating the development of a Render Safe solution. As a result of the lack of communications on the backup aircraft, the U.S. Government assumes operational risk during maintenance down time (approximately 45 days per year). Outfitting both aircraft with the specialized communications is a critical mission component providing positive command and control from the responding Render Safe assets to the national leadership and the Department of Energy (DOE) National Laboratories. This link allows mandatory mission decisions to be relayed from the President and/or Attorney General to the response force. The in-flight communications also link the response force to the DOE National Laboratory, allowing the radiography to be simultaneously analyzed by the scientists and bomb technicians while en route to the incident site; thus, reducing the time required to assess the device once at the incident site. Without this capability, the response time from deployment of Render Safe assets to disarmament is increased, thus increasing the risk of mission failure.

Based on a 15-year mission life, acquisition of new response aircraft is approximately \$225,000 less expensive than extending the existing aircraft lease, if leasing were an option. Purchasing the two aircraft:

- Complies with the U.S. Government capital leasing regulations and OMB Circular A-11 stipulations.
- Saves approximately \$225,000 over a 15 year period versus current lease of the same duration, if leasing were an option. Saves approximately \$94 million over a 15 year period versus a two-aircraft lease of the same duration.
- Increases the FBI's ability to respond to multiple incidents; thus, in times of emergency the overall USG Emergency Render Safe response is increased by 100 percent.
- Increases the range of the response aircraft by approximately 25 percent.
- The new aircraft will include a modular design for the communications and antennae array. The new communications and antennae configuration will require a less intrusive (hull penetration) process to upgrade technologies as they change; thus creating a cost savings for labor.

*Question.* What is the cost of the current lease and how often has the current plane been used?

*Answer.* Please note that classified details are required for a complete understanding of these Render Safe responses. Further information may be provided under classified cover. The annual lease cost for the Render Safe mission aircraft is \$14.48 million. As noted in the previous response, the identified aircraft lease cost does not include the secure and redundant voice and data services and infrastructure used to establish the communications architecture.

Due to the deployment criteria agreed to by the National Security Councils Principals Committee, the Render Safe alert aircraft and responders maintain a stringent response requirement that renders the aircraft unavailable for other FBI mission taskings. Over the past year the alert aircraft has flown to support the following:

- Execution of four no-notice deployment exercises.
- Execution of four full scale, interagency field exercises, used to test Render Safe operational plans, and provide all echelons of the national response the experience to successfully face this threat.
- Weekly communications exercises with the interagency response assets and command centers.
- Re-location of the Render Safe alert response due to inclement weather at the alert staging location.

*Question.* What are the final overall costs for these new planes, including the special equipment and dedicated personnel?

*Answer.* Acquiring two, specially-configured, refurbished aircraft will cost approximately \$74.3 million and will require \$14.1 million in annual Operations and Maintenance (O&M) to provide for the crew and ground support personnel.

The aircraft can be purchased and refurbished within 1 year for \$35.8 million and would require the recurrance of the fiscal year 2011 requested funding, plus an additional \$2.7 million in the second year for specialized aircraft outfitting and mission preparation.

Based upon the proposed schedule, one of the two aircraft will be operationally available by the middle of the second year, and the second aircraft will be operationally available by the end of the second year, thus both will require O&M funding in the second year.

*Question.* Why is it important that you purchase these planes rather than renew the current lease?

*Answer.* The FBI conducted a Lease-Versus-Buy analysis in accordance with regulations established in the OMB A-11 circular, which determined that the requirement for the FBI to develop and maintain this capability prohibited the long-term continuation of the current aircraft lease.

The analysis also revealed that lease values quickly exceeded 90 percent of the market value of the aircraft and that the FBI would experience a payback within approximately 5 to 6 years when aircraft are purchased rather than leased. With a 10-year minimum capability requirement, the lease term exceeds 75 percent of the estimated economic lifetime of the asset, which is at least 25 years. Additionally, the present value of the minimum lease payments over the life of the lease, which would be a minimum of 10 years, exceeds 90 percent of the fair market value of the asset at the inception of the lease. As a consequence, the FBI cannot lease aircraft to meet the mission requirements.

OMB A-11 circular rules include the following:

- Ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease period.
  - The lease does not contain a bargain-price purchase option.
  - The lease term does not exceed 75 percent of the estimated economic lifetime of the asset.
  - The present value of the minimum lease payments over the life of the lease does not exceed 90 percent of the fair market value of the asset at the inception of the lease.
  - The asset is a general purpose asset rather than being for a special purpose of the Government and is not built to unique specification for the Government as lessee.
  - There is a private-sector market for the asset.
- The chart below demonstrates the breakout of the Fair Market Value and the allowable lease years:

ANALYSIS OF CURRENT AIRCRAFT LEASE

Fair Market Value .....	\$90.0 million
90 percent FMV .....	\$81.0 million
Annual Lease Costs .....	\$14.8 million
Years Lease Allowed <sup>1</sup> .....	6.8
Start/End Date .....	FY2007/FY2013

<sup>1</sup> Present Value of Lease Payments ≤ 90 percent FMV.

*Question.* How would you carry out your Render Safe mission without these aircraft?

*Answer.* Please note that classified details are required for a complete understanding of these Render Safe responses. Further information may be provided under classified cover.

During mission transition coordination, the Department of Defense (DOD) stipulated that they were unable to support the FBI with dedicated airlift and could only support the Render Safe mission with “in-system select” aircraft. The aircraft support would have an estimated 6–12 hour arrival time from notification. This would not meet the mission response requirement mandated by national leadership.

Discounting the current leased Render Safe aircraft, the FBI does not have any aircraft that satisfy the Render Safe mission operational requirements. Without the procurement of the requested aircraft, the FBI will be unable meet the directed domestic emergency Render Safe response time and would seek relief of the mission through the executive branch. This would require DOD to reassume the primary response and reduce the U.S. Government’s emergency Render Safe response capability. The FBI would continue to maintain the primary response to incidents requiring Render Safe operations within the National Capital Region on the current response timeline.

FBI ACADEMY

*Question.* Increased training and lodging levels at the FBI Academy have strained the facility infrastructure. It is operating at full capacity, and of the Academy’s three dorms, two date back to 1972 and one dates back to 1988 and are not up to industry standards. In fiscal year 2010, Congress provided \$10 million for an FBI Academy Architecture and Engineering study.

The fiscal year 2011 request includes \$74 million to expand facilities at the FBI Academy in Quantico, Virginia, which includes:

- \$67.6 million to expand training facilities and build new dorm.
- \$6.3 million to renovate existing dorms.

What are the specific infrastructure challenges at the FBI Academy?

*Answer.* The primary challenge is the aging infrastructure and the capacity of the infrastructure support systems, such as electrical, heating ventilation and air conditioning (HVAC), sewer, and water. Some of the oldest infrastructure components (firing ranges) were installed in the 1950s. The main “Academy” complex was constructed in 1972, and its infrastructure has gone 38 years without any appreciable upgrades or expansion. The Academy’s core infrastructure was originally designed to support approximately 500,000 square feet of space, but the FBI’s Quantico complex now consists of more than 2,100,000 square feet. Due to the age of the facilities, scheduled and unplanned repairs regularly eliminate 8 percent of bed and classroom space. The \$6.3 million requested in the fiscal year 2011 President’s budget for the

renovation of existing dormitories would help address this infrastructure challenge at the Academy.

The second infrastructure challenge at the FBI Academy concerns the classroom and dormitory capacity of the facility given increasing demands on the organization. With the extensive growth of the FBI's mission and workforce since 9/11, the Academy has been forced to use temporary classroom structures at Quantico and lease private sector space, with students being housed in local area hotels. These stop-gap arrangements are an inefficient use of student time on campus, and negatively impact the quality of education and training that FBI students receive. Additionally, these stop-gap arrangements consume significant annual resources that would be better directed to maintaining and expanding Academy facilities. The \$67.6 million requested in the fiscal year 2011 Request to Congress for the construction of a new dormitory and training facility would help address this infrastructure challenge at the Academy.

*Question.* How will your training requirements for the Academy continue to expand?

*Answer.* In addition to the increased number of students requiring specialized training at the Academy, the length of the programs for new agents and intelligence analysts (IAs) has also been extended. Existing curriculums were restructured to focus on areas such as foreign counterintelligence, cyber threats, and counterterrorism, among others. Additional courses devoted to legal requirements, analytical and technological tools and tradecraft have also been added. Joint training between new agents and IAs has also been expanded. This has significantly increased the total training weeks per year—by more than 90 percent since 1995—creating scheduling conflicts amongst the competing student groups at the Academy. There are also new requirements for specialized training; for example, with increased emphasis on Human Sources, additional interview rooms are required for practical exercises.

From 2005 to 2008, there has been a 201 percent increase in the number of FBI regional training events (19,851 to 39,894). The FBI would be better served by hosting more of these regional training events at the FBI Academy campus given the fact that courses require access to FBI classified networks and space, which are generally unavailable in non-FBI facilities.

*Question.* When do you expect the results of the FBI Academy Architecture and Engineering study?

*Answer.* The FBI's Acquisition Review Board met on June 24, 2010, and approved a Design-Build acquisition package with the Naval Facilities Engineering Command (NAVFAC). A purchase order was provided to NAVFAC on July 29, 2010, to initiate the beginning of the design work. The estimated completion date for the preliminary (15 percent) design work is July 2011. The scope of that effort includes architecture and engineering design services for:

- Site survey, campus-wide utility survey and analysis, topography survey, geotechnical survey and environmental assessment.
- Programming, site analysis and planning and conceptual design options.
- Detailed construction cost estimates and schedules.

*Question.* What are the top three improvements you want to see at the Academy?

*Answer.* Upgrade and expansion of the entire Academy exterior infrastructure systems, to include electrical, HVAC, sewer, water, data, IT, telephone, and security to bring outdated facilities up to code and industry standards.

Complete renovation including interior and infrastructure upgrades for FBI Academy dormitories, upgrading critical life, health, and safety infrastructure to meet current industry standards and codes.

Complete renovation and interior infrastructure upgrades for all original Academy classroom buildings, to include upgrading critical life, health, and safety infrastructure and modernizing classroom spaces to better utilize current technology and instruction practices and expand capacity.

#### LEGAT OFFICES

*Question.* The FBI is now a global intelligence and law enforcement agency. The Legat offices (which stand for "Legal Attaché") are the FBI's front line operations overseas. The FBI operates in over 60 countries around the world.

Do you plan to expand the Legat offices?

*Answer.* The International Operations Division's Executive Management (IOD EM) periodically evaluates the distribution of our Legat offices in order to ensure that the FBI is best prepared to meet the current and emerging global threats. IOD EM has developed and utilized numerous tools, as well as received input from Legat and Headquarters personnel to better understand the gaps in our current infra-



structure, to address emerging threats and increasing workload demands. As a result of this process, the FBI requested the opening of a new Legat office in Addis Ababa, Ethiopia and the expansion of the Legat Islamabad, Pakistan in the fiscal year 2011 budget. IOD is currently in the process of refining its 5 year expansion plan, which will be the basis for requesting future expansions of the Legat Program.

*Question.* How important are these offices to fighting the global war on terror?

*Answer.* The FBI's international presence is critical to the FBI's mission to protect the United States against terrorist attacks. The Legal Attaché (Legat) Program integrates the FBI's efforts with international counterparts and serves as a force multiplier. The Legat Program leverages the expertise and information from international law enforcement and intelligence counterparts to coordinate global efforts to defeat terrorism. Effective coordination and information sharing requires the FBI to develop working-level partnerships and relationships built on trust, mutual respect, and two-way information sharing. This cannot be accomplished without a permanent international presence. As such, every agent and analyst involved in the Legat Attaché Program exponentially increases the overall capabilities of the FBI's domestic workforce and provides the most effective means possible to combat international terrorism and criminal threats.

*Question.* Do the Legat offices have the equipment (IT, telecommunications) they need?

*Answer.* The FBI equips Legats with the same tools and technology available to the domestic field offices. As part of the several ongoing information technology initiatives, the FBI recently doubled the bandwidth of all the Legat offices in Fall 2009 so that Legat personnel could access critical intelligence databases. The Legat Program is also in the process of constructing Sensitive Compartmented Information Facilities (SCIFs) in a majority of offices, which will enable the deployment of higher-level classified computer systems to all Legats. Information technology systems at the higher-level classification level are required for communications with other U.S. Intelligence Community partners and to exploit any information obtained to identify possible U.S.-based connections.

*Question.* How satisfied are you with the level of interagency cooperation in the Embassy's where the Legats operate?

*Answer.* The Legats have made great strides over the years to enhance interagency cooperation in the Embassies. Overall, we are very satisfied with the level of cooperation that currently exists and continue to strive to enhance and maintain key relationships in the Embassies. These in-country relationships are critical to ensure sharing of information and coordination of operations related to the FBI's mission.

#### MORTGAGE FRAUD—PREDATORY LENDING

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

Last year, this subcommittee gave you \$75 million to hire 50 new agents and 60 forensic accountants dedicated to investigating mortgage fraud, bringing the total number working on this problem to over 300 agents. We need to continue this surge in mortgage fraud investigations.

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

*Answer.* Congressional support in prior fiscal years has greatly enhanced the FBI's capability to address mortgage fraud; however, both the scope and available resources to address the criminal threat continues to require the FBI to prioritize investigations. The mortgage fraud workload of the FBI is escalating, and in fiscal year 2010, over 68 percent of the FBI's 3,045 mortgage fraud cases involved losses exceeding \$1 million per case. Moreover, the FBI anticipates it will receive over 75,000 Suspicious Activity Reports (SAR) in fiscal year 2010, an increase of over 241 percent since 2005. FBI intelligence, industry sources such as the Mortgage Asset Research Institute (MARI), and recent reports by the Special Inspector General of the Troubled Asset Relief Program (SIGTARP) predict an increase in foreclosures, financial institution failures, regulatory agency/independent auditor fraud referrals, and governmental housing relief fraud. These risk based indicators of mortgage fraud indicate that even prioritized investigations will persist or grow in fiscal year 2011 and beyond. Therefore, the nature of the criminal problem, the prolonged economic downturn, increased foreclosures, and continued profitability of mortgage

fraud combine to create a prognosis of increased mortgage fraud workload, which will require a significant increase in FBI resources to address the threat.

The FBI has approximately 358 special agents, 26 intelligence analysts and 39 forensic accountants/financial analysts devoted to investigating mortgage fraud matters in fiscal year 2010. While the FBI has made every effort to implement new and innovative methods to detect and combat mortgage fraud, even if the FBI focuses on the most egregious cases, only a portion of cases referred can be addressed with the current level of available resources. Using the FBI's current resource level, from August 1, 2008 through September 30, 2009, the FBI helped obtain 494 mortgage fraud convictions. On 06/18/2010, Operation Stolen Dreams was concluded and, with the assistance of 7 participating Federal agencies, has thus far resulted in 650 indictments and 391 convictions.

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

*Answer.* While it is accurate that the FBI moved criminal investigative resources to counterterrorism in the months and years immediately following September 11, 2001, more recently the FBI has reallocated resources from lower priority white collar criminal programs to address the growing mortgage fraud problem. The FBI has more than 358 special agents addressing mortgage fraud, and many of those resources have come from other lower priority white collar crime investigations. For example, since fiscal year 2007, the FBI doubled the number of mortgage fraud investigators, leaving only 106 special agents available to investigate the approximately 1,900 remaining financial institution fraud investigations. As previously mentioned, congressional support for mortgage fraud in prior fiscal years has greatly enhanced the FBI's capability; however, both the scope and available resources to address the criminal threat continues to require a prioritization of investigations.

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

*Answer.* Predatory lending occurs primarily during the loan origination process and the FBI is continuing to investigate loan origination fraud. Therefore, the FBI will continue to educate analysts, investigators, and accountants on ways to identify and investigate schemes where industry insiders target vulnerable populations, and how to address this and other loan origination schemes. Successfully addressing the problem will require understanding the ways to identify where origination fraud has occurred, what factors leave a community vulnerable, and which techniques can be best employed to mitigate the threat.

In addition to new training that will be developed, the FBI continues to provide regular training to new and experienced agents and regularly shares information on best practices, emerging trends, and successful sophisticated techniques with its law enforcement partners. For example, the Mortgage Fraud training courses focus on proactive intelligence, basic mortgage fraud investigative tools and resources, and enforcement measures that can be used to efficiently and effectively combat mortgage fraud. The training also provides an understanding of the mortgage lending process, including the entities, paperwork, and regulatory agencies involved. These training classes include industry and law enforcement experts, such as the Housing and Urban Development—Office of the Inspector General and the Federal Deposit Insurance Corporation, to educate agents, analysts, and forensic accountants on the various types of mortgage fraud schemes, including predatory lenders.

*Question.* How can you do more to help State and local officials investigate predatory lenders?

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

#### HEALTH CARE FRAUD

*Question.* Now that the historic healthcare reform legislation is law, we must do more to combat healthcare and insurance fraud that cost U.S. citizens more than \$60 billion annually. We need to make sure law enforcement has the resources it needs to investigate these crimes and prosecute the scammers.

What role is the FBI already playing in healthcare fraud investigations and prosecutions?

Answer. The FBI investigates fraud committed against government sponsored programs and private insurance programs. The vast majority of FBI investigative resources within healthcare are devoted to the identification and prosecution of subjects involved in defrauding Medicare, Medicaid, and private insurers.

The FBI also investigates healthcare industry *qui tam* matters that involve civil actions undertaken by the United States against companies that defraud healthcare systems or engage in activity that is potentially harmful to the public. These investigations involve the dedication of significant investigative resources, and often result in significant monetary judgments.

In addition to these types of fraud, the FBI investigates threats to public safety in the pharmaceutical supply chain, including Internet pharmacy matters and related drug diversion activity. These investigations are often worked closely with the Drug Enforcement Administration, the Food and Drug Administration, Immigration and Customs Enforcement, and other law enforcement agencies. Additionally, the FBI proactively works with Health and Human Services—Office Inspector General (HHS—OIG), State Medicaid Fraud Control Units, and private insurers in the healthcare industry in an effort to curb Health Care Fraud (HCF).

The FBI has approximately 400 special agents and 300 professional support personnel devoted to investigating HCF matters. These investigative resources are allocated to FBI field offices based on threat indicators in the field office's area of responsibility.

In the 24 month period between 10/01/2007 through 09/30/2009, the FBI indicted 1,745 subjects in HCF investigations, and helped obtain 1,332 convictions. More significantly, FBI HCF investigations resulted in approximately \$3.7 billion in court-ordered criminal forfeiture and restitution obligations, representing a substantial return on the investment of investigative resources. This figure does not include the more than \$4 billion in civil recoveries obtained pursuant to *qui tam* investigations, which are worked with the Civil Division of the Department of Justice.

The FBI is an active participant in the Health Care Fraud Prevent and Enforcement Action Team (HEAT), an interagency effort announced in May 2009 between the Department of Justice and the Department of Health and Human Services to improve coordination and enforcement of healthcare fraud cases. HEAT's creation and ongoing collaboration has allowed top-level law enforcement agents, criminal prosecutors and civil attorneys, and staff from DOJ and HHS to examine lessons learned and innovative strategies in our efforts to both prevent fraud and enforce current anti-fraud laws around the country. As part of HEAT, the FBI has agents assigned to each of the Medicare Fraud Strike Force teams that are now in seven different cities around the country.

*Question.* With passage of the historic Patient Protection and Affordable Care Act, what new responsibilities does the FBI have to combat healthcare fraud?

Answer. Under the Patient Protection and Affordable Care Act (PPAC), the FBI will have new or additional responsibilities, which include:

- Increased requirements for the FBI to ensure Health Care Fraud (HCF) losses, particularly to the Government sponsored programs Medicare and Medicaid, are properly detected and calculated so court ordered restitution and/or forfeiture calculations can be recorded;
- More vigorous enforcement of the anti-kickback statute as part of the False Claims Act; and
- More investigative/enforcement responsibilities involving obstruction of Government HCF investigations that utilize Health Insurance Portability and Accountability Act (HIPAA) subpoenas as this act elevates HIPAA subpoenas to the same level as Federal grand jury subpoenas.

*Question.* What is the Medicare Fraud Strike Force and what role does the FBI play in it?

Answer. The FBI is the primary investigative agency assigned to the DOJ Medicare Strike Force. Initiated in March 2007, the Strike Force became part of the overall Health Care Fraud Prevention and Enforcement Team (HEAT) initiative in 2009, under the oversight of the Attorney General and the Secretary of HHS. The Strike Force is currently active in 7 cities (Miami, New York, Los Angeles, Detroit, Tampa, Baton Rouge, and Houston), with a total of 63 investigative personnel from the FBI assigned to Strike Force teams. In addition, 83 FBI special agents are assigned to non-Strike Force HCF matters in Strike Force cities. In each Strike Force location, multiple teams comprised of FBI and HHS—OIG personnel, along with USDOJ and USAO prosecutors, are responsible for identifying, investigating, and prosecuting HCF directly related to Medicare. In each Strike Force city, the FBI has dedicated special agents, analysts, and professional staff to Strike Force investigative operations that target Medicare fraud. In addition to the personnel dedicated directly to the Strike Force, other non-Strike Force special agents and analytical personnel

conduct HCF investigations outside the Strike Force. In total, the FBI has approximately 411 special agents and 301 professional support personnel assigned to HCF, of which 15 percent are devoted directly to Strike Force matters. In terms of accomplishments, the FBI and HHS–OIG aggressively investigate instances of fraud against Medicare, with over 2,500 HCF FBI investigations pending during fiscal year 2010. FBI initiatives under the Strike Force have included infusion therapy fraud, durable medical equipment, home health, and other schemes that resulted in significant dollars losses to Medicare from fraud and abuse.

For fiscal year 2011, Dallas and Chicago have been identified as new Strike Force cities. Accordingly, the FBI has increased HCF staffing levels in these cities to support the introduction of the Strike Force, with 33 special agents now assigned to those locations.

At the Headquarters level, the FBI is a member of the HEAT committee and multiple subcommittees at DOJ that play a key role in identifying future Strike Force locations and establishing policy regarding deployment of resources. The FBI has established a team of analytical personnel at the Financial Intelligence Center (FIC) to evaluate Medicare data, conduct trend analysis, and identify potential fraud and abuse within Medicare and Medicaid. The FBI is also in the process of gaining direct access to CMS data. With this information and real-time analysis capability, the FBI will be better able to identify fraudulent billing and claim activity related to Medicare.

As part of the Strike Force, the FBI has established investigative working relationships with numerous State programs offices and private insurers. These partnerships allow the FBI to monitor and investigate HCF that crosses both public and private programs.

*Question.* Do you believe we need to commit more funding to stop fraud in Medicare, Medicaid and other healthcare benefits programs?

Answer. Continued funding to combat fraud in Medicare, Medicaid, and other healthcare benefits is needed. The resources available to the FBI to combat healthcare fraud (HCF) are provided to the FBI through Health Insurance Portability and Accountability Act (HIPAA) and other healthcare specific congressional appropriations. The FBI receives the majority of its funding for HCF via mandatory funding provided through HIPAA. The passage of the Affordable Care Act provided that FBI HCF resources received under HIPAA would be tied to inflation, and would increase with inflation until fiscal year 2020.

However, inflationary adjustment calculations for FBI HCF funding are tied to increases in Consumer Price Index—Urban (CPI-U) which were zero in 2009 and 2010. The 2011 increase is estimated to be only 1.1 percent. This has resulted in a freeze of baseline funding for the FBI at fiscal year 2008, 2011 will only provide \$2.5 million in additional funding.

In fiscal year 2010, the FBI received \$3.9 million in 2-year supplemental funding from the Health Care Fraud Abuse and Control Account (HCFAC) discretionary appropriation to hire 12 additional special agents and 3 investigative professional staff personnel for the Medicare Fraud Strike Forces. The positions were allocated in fiscal year 2010. The fiscal year 2011 President's budget, currently pending before Congress, requests additional discretionary HCFAC funding to provide for the annualization of these positions as well as additional FBI healthcare fraud positions.

In fiscal year 2011, approximately 82 percent of all FBI HCF funding will be used to pay employees salaries (Comp/Benefits), with most of the remaining 18 percent absorbed by infrastructure costs such as case investigative funding, office space, equipment, supplies, and transfers. The FBI does not receive funding to support HCF initiatives in the area of drug diversion, *qui tams*, or staged auto accidents. As a result, the FBI has established investigative priorities with HCF to ensure the FBI remains committed to combating HCF and ensuring investigative resources are allocated to the highest priority investigative matters.

#### STOPPING INTERNET CHILD PREDATORS

*Question.* Sexual predators use Internet as their new weapon of choice to target children. More children are online and at risk. The Innocent Images program, located in Calverton, Maryland, allows the FBI to target sexual predators on the Internet. The Innocent Images workload has increased dramatically, from 113 cases opened in 1996 to 2,500 cases opened in 2007—a 2,000 percent increase. FBI's budget request includes \$53 million for the Innocent Images program. Last year, Congress provided \$14 million more for Innocent Images, but the fiscal year 2011 request is only \$300,000 more.

How are you addressing the growing threat of child predators on the Internet, given that the request includes no new resources to investigate child predators who prey on children online?

Answer. Unfortunately, the ever-growing challenges that the Internet poses to law enforcement in pursuit of child predators have greatly increased. In response, the FBI's Innocent Images National Initiative Program (IINIP) strives to ensure that limited resources are maximized and equitably leveraged against the most egregious threat of child predators on the Internet. Specifically, IINIP is aggressively targeting producers, online sex rings, and mass distributors of child pornography.

*Question.* Can you give us an update on your Innocent Images International Task force? How many international officers have been trained in Calverton? How many countries have joined these Task Forces?

Answer. The Innocent Images International Task Force (IIITF) has evolved into a cohesive task force model, which includes partnering with the FBI's international offices (Legats) in order to identify, initiate, and further long-term enterprise investigations targeting online child exploitation transnational enterprises. The FBI's partnerships strategically formed with the IIITF member agencies have resulted in several joint investigations and case coordination meetings. The Innocent Images National Initiative Program (IINIP) has established a communication platform, defined protocols for intelligence sharing, and increased operational coordination of transnational online child sexual exploitation investigations with our IIITF members. Both our domestic and international partners, as well as non-government organizations, have benefited from an expansion of the IIITF operational capabilities and liaison relationships. As of August 2010, 90 Task Force officers have been trained in Calverton from 42 countries.

#### STATE AND LOCAL LAW ENFORCEMENT—FIGHTING VIOLENT CRIME

*Question.* The Justice Department estimates there are roughly 1 million gang members in 30,000 gangs in all 50 States and the District of Columbia. With gang membership rising and violent crime continuing to be a problem, local law enforcement needs a strong partnership with Federal Government.

Currently, there are 160 Safe Streets Violent Gang Task Forces. These partnerships allow FBI agents and State and local law enforcement to work as teams to fight street crime. However, the FBI has not had the resources to expand this program and requests no additional funding in fiscal year 2011.

How are joint Federal-State task forces effective in helping local law enforcement fight violent crime?

Answer. As part of the Safe Streets Violent Crime Initiative, the FBI currently operates 163 Violent Gang Safe Streets Task Forces in 56 FBI Field Offices. These Task Forces are comprised of 746 FBI agents, 1,548 deputized State or local law enforcement officers (Task Force officers), and 44 other Federal law enforcement officers (Task Force agents). Through July 2010, the Violent Gang Safe Streets Task Forces have made 5,515 arrests and helped obtain 2,508 convictions.

In another part of the Safe Streets Violent Crime Initiative, the FBI manages 43 Violent Crimes Safe Street Task Forces, which are comprised of 200 FBI agents and 317 Task Force officers, and focus on violent crimes such as kidnapping, extortion, bank and armored car robbery, Hobbs Act commercial robbery, and murder for hire. Through July 2010, the 43 Violent Crimes Safe Street Task Forces have made 1,106 arrests and helped obtain 447 convictions.

The Task Forces help local law enforcement fight violent crime and gangs in several ways. Task Forces avoid redundancy in the response of law enforcement to violent crimes that have both a Federal and a State or local nexus. The FBI initiates and coordinates investigative efforts and intelligence sharing with affected local, State, and Federal law enforcement agencies, thereby avoiding the duplication of investigative and enforcement efforts and maximizing resources. Task Forces also aid areas where Federal law enforcement is the only realistic option to combat violent crime.

The following are examples of Task Force successes:

*Newport News, Virginia.*—The Dump Squad Gang first came to the attention of Newport News law enforcement in 2000. Members of the Dump Squad, which claimed affiliation with the Bloods Street Gang, engaged in narcotics distribution, firearms offenses, and a host of violent crimes, including violent crimes targeting local law enforcement. Using intelligence to identify the gang's structure, and a strategy focused on unsolved homicides, drug-related robberies, and aggravated assaults, in March 2009 the Task Force obtained 39 charges of violence in aid of racketeering against 10 of the Dump Squad's 30 known or suspected members. To date, all but one of the defendants has been convicted. Information derived from cooper-

ating defendants has closed several unsolved homicides, and the areas previously controlled by the Dump Squad have seen a significant reduction in major violent offenses since the arrests.

*Easton, Pennsylvania.*—The Easton Police Department requested Federal assistance due to a sharp rise in gang- and drug-related violence attributed to gangs from local neighborhoods and from New York City. Through the use of controlled crack cocaine purchases, consensually monitored and recorded conversations, judicially authorized wiretaps, physical surveillance, search warrants, the development of confidential human sources and cooperating defendants, and other law enforcement techniques, in March 2008 the Task Force obtained Federal indictments against 40 individuals and State charges against an additional 10 individuals. The mayor of Easton has advised that, since these arrests, the city of Easton has not experienced a single drug or gang related homicide. According to the Easton Police Department, this has been the longest period of time without such an occurrence in over 15 years.

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

*Answer.* The FBI's Violent Gang Safe Streets Task Force Initiative and the FBI's Violent Crime Safe Streets Task Forces both work with State and local law enforcement to fight violent crime and gangs. Two key resources that are needed to continue these programs: (1) funding for special agents, and (2) funding for investigative techniques and equipment.

The FBI requires investigative resources to maintain the number of Safe Streets Task Forces in operation. Funding for FBI special agents would enable the FBI to open additional Safe Streets Task Forces in areas across the United States where Federal law enforcement assistance for local agencies has been non-existent. The equipment resources are necessary due to the increase in investigative productivity that would come from the expansion of the number of Safe Streets Task Forces that the FBI would be able to operate with additional special agents.

To assist local law enforcement in the war on gangs, the FBI would like to use its Violent Gang Safe Streets Task Forces. These task forces would give the FBI a chance to prevent violent crime through the proactive suppression of criminal street gangs operating in areas across the United States where there is little or no Federal law enforcement presence. Proactive suppression of the threat would correlate to a direct decrease in violent crime in the areas where new Violent Gang Safe Streets Task Forces are operated.

To assist local law enforcement in the war on violent crime, the FBI would like to use its Violent Crime Safe Streets Task Forces. This would allow field offices to realize the benefits of working closely with State and local agencies to address their violent crime problem.

#### STATE AND LOCAL LAW ENFORCEMENT—FIGHTING TERRORISM

*Question.* Joint Terrorism Task Forces (JTTFs) are teams of Federal and State law enforcement working together to identify and respond to terrorist threats at the local level. There are now more than 100 JTTFs led by the FBI. Local and State police rely on the FBI for information, guidance, leadership and training, as well as for critical intelligence information about threats to our country.

How beneficial are the Task Forces?

*Answer.* The participation of State, local, and Federal law enforcement partners on Joint Terrorism Task Forces (JTTFs) creates a "force multiplier" benefit. By having State and local officers and participants from other Federal agencies, the JTTFs are able to address many more cases than the FBI could handle alone. The utilization of the JTTFs is not, however, limited to local responses to terrorist threats. The members of the JTTFs, including Task Force officers, representing State, local, and other Federal agencies, are frequently deployed overseas to investigate terrorism cases at a global level.

The FBI is faced with a formidable task that experience has shown is best achieved through the utilization of the vast resources and personnel dedicated to task forces. JTTFs cover thousands of leads in response to calls regarding counterterrorism-related issues. These leads address potential threats to national security and require a significant amount of coordination and resources. Overall, greater interaction and cooperation between FBI special agents and their counterparts exist due to the task force concept, which has led to a more focused, integrated, and resource conscious approach to counterterrorism investigations.

At the direction of the FBI's Counterterrorism Division (CTD), National Joint Terrorism Task Force (NJTTF), the JTTFs have implemented numerous tripwires across the United States to various industries such as mass transportation, storage facilities, and bulk fuel distributors to provide indicators of potential use/targeting

by terrorists. The JTTFs have disseminated Tripwire Indicator Cards to such industries and businesses in their respective areas of responsibility for awareness and contact information.

The significant benefit of the JTTFs is the unique expertise, perspectives, and tools each agency provides, whether at the Federal, State, local or tribal level. For example, U.S. Immigration and Customs Enforcement can provide support to ongoing counterterrorism investigations through their databases, as well as through their ability to charge terrorism subjects with immigration and customs violations outside the FBI's jurisdiction. The participation of State and local law enforcement agencies provides the ability to charge terrorism subjects on unrelated State charges where the offenses do not meet the threshold for a Federal offense. The Department of Energy and the Nuclear Regulatory Commission's participation provides highly specialized expertise and capabilities that would prove invaluable upon receipt of legitimate terrorist threats to U.S. nuclear power plants. The participation of multiple Department of Defense (DOD) assets provides expertise across several areas including, but not limited to, criminal investigations, intelligence, human intelligence, and combatant command operations. Each participatory law enforcement agency offers its own statutory authorities which provide far greater latitude in charging terrorism subjects.

*Question.* Will their role be expanded in the future?

*Answer.* The FBI expanded the number of Joint Terrorism Task Forces (JTTFs) to ensure greater access to Federal, State, and local agencies. There are currently 104 JTTFs across the United States in 56 FBI field offices and 48 FBI resident agencies. Currently, there are 656 State and local agencies that participate on JTTFs nationwide. In addition, JTTFs include representatives from the U.S. Intelligence Community and the Departments of Homeland Security, Defense, Justice, Treasury, Transportation, Commerce, Energy, State, and Interior, among others. The FBI anticipates that both the level of Federal, State, and local participation and the number of JTTFs will grow in the future to ensure the mitigation of emerging threats.

#### SENTINEL

*Question.* There have been delays in the development of Sentinel, the Bureau's new case management system. These important technological tools and computer upgrades are supposed to help protect our citizens. The FBI has a dangerous legacy of failed programs like Sentinel, and I want to know the facts behind these delays.

What has caused the delays in Sentinel, and how will these problems be handled?

*Answer.* The FBI's leadership believes it prudent to ensure that the Sentinel application meets the needs of its users.

Phase 2, Segment 4 began in January 2009 with a scheduled completion date of October 16, 2009. In October 2009, the FBI evaluated Segment 4 for acceptance and determined that the segment was not ready for deployment. Lockheed Martin (LM) requested, and the FBI approved, two separate schedule extensions to provide them the opportunity to complete the integration, testing, and resolution of noted deficiencies. The FBI conditionally accepted Segment 4 in November 2009, but identified a number of "liens" that were to be resolved. In December 2009, Program Management Office (PMO) testers and FBI executive management identified a significant number of deficiencies and system change requests. The PMO initiated the first of three independent assessments to evaluate the quality, usability, and maintainability of the code delivered. Resources were diverted from Phase 3 to address the corrective actions and functionality enhancements in Phase 2.

In March 2010, the FBI issued a partial stop-work order to suspend part of Phase 3 and all of Phase 4 development to focus LM's resources on the successful delivery of Phase 2, Segment 4 system capabilities. In July, the FBI extended the stop-work order and expanded it to include the remainder of Phase 3.

During the period between the partial stop work and the full stop work order, the FBI gathered additional information that led to the decision to reexamine the program's path forward. The use of an incremental development strategy allowed this opportunity. This was also an appropriate step to mitigate unwarranted program cost and schedule overrun. The FBI is currently examining an alternative approach that will bring Sentinel to a successful conclusion.

*Question.* Have any capabilities actually been deployed? Is anyone using them, and, if so, what is the user feedback?

*Answer.* Yes, capabilities have been deployed. Various capabilities have been deployed in the past, as well as necessary hardware and infrastructure upgrades that improve the operation of the system, but are not directly visible to the user.

- Since the completion of Phase 1, there have been significant upgrades to Sentinel's functionality, including the addition of a more modern, user-friendly web-based interface, customizable "workboxes" that summarize a user's cases, automated movement of files between Sentinel and the automated case system, improved online help and search functions, and hyperlinks within cases.
- Sentinel has implemented a security architecture that enforces the confidentiality, integrity, and availability of all classified and privacy data. The FBI has also integrated an Intelligence Community standard marking tool to minimize cost and maximize standardization of markings to enable security and appropriate sharing.
- Segment 4 of Phase 2 was deployed FBI-wide on July 26, 2010, offering the most significant capabilities to users since Phase 1.

New capabilities include:

- Four electronic forms:
  - The Electronic Communication, a revised form used to record information pertaining to a case and document administrative matters. It is also used to share information, similar to an inter-office memorandum.
  - The Lead Request Form, a new form used to document the request for work to be performed by another individual or a group within the FBI, referred to as "setting the lead."
  - The Import Form, another new form used to import other documents and attachments into Sentinel.
  - The Interview Form (FD-302), a revised form that will continue to serve as a testimonial record of investigative activity.
- Electronic Workflow*.—A series of connected steps for creating and sharing documents and obtaining approval. Digital signatures will be applied to the documents through the approval process. Employees will be able to track the progress of the document. This eliminates the need to physically move a document from one place to another, increasing efficiency, saving time, and routing costs.

*Question.* When will the project be completed? How much over budget will it be?

*Answer.* As indicated previously, functionality and capabilities have been deployed and are in use by the FBI. The cost of delivery of the capabilities through Phase 2 exceeded the contract value and schedule, but the Bureau has yet to exceed the \$451 million program budget. There is currently \$45.5 million of ceiling still available within the program budget.

Utilizing the remaining available program budget authorization, the FBI hopes to take advantage of the technology advancements that have been made since the Sentinel contract was awarded in March 2006. It is believed all of the functionality objectives of Sentinel can be achieved by altering the engineering approach and leveraging the advancements in commercial available software, as well as other FBI IT projects.

As the FBI Director stated in recent congressional testimony: "There was an overarching budget for this project. The FBI hopes to stay within that budget. There are ongoing negotiations, but I am mindful of the necessity of maximizing the products that we get and minimizing the cost to the taxpayer. Which is why . . . we're looking at alternative capabilities and with less reliance on contractors that can prove to be more expensive than if you can do it yourself in-house."

*Question.* What are you doing to address the budget and schedule impacts?

*Answer.* Given the delays associated with completion of Phase 2, the FBI is consulting with industry experts to evaluate our plan to finish Sentinel. The FBI is examining ways to reduce costs and limit our reliance on contractors. That process is underway but it is incomplete. Once that assessment is finished, the FBI can brief the subcommittee on the results.

The FBI extended the stop-work order to allow outside experts to review its plan to finish this project and to ensure the LM resources are focused on the completion of Phase 2.

*Question.* Is the system not functioning correctly? Are the problems small, unrelated issues, or are there signs of larger systematic issues?

*Answer.* Yes, Sentinel is working and is currently being used by thousands of FBI employees every day. On July 26, 2010, the FBI deployed the remainder of Phase 2 across the FBI. Phase 2 has been tested in the field and will give all FBI users the ability to create investigative reports, conduct searches, and manage their daily work far more efficiently.

There have been a range of problems identified with the system that required additional time to resolve. These problems resulted in schedule delays and cost impacts. Through multiple external assessments, the fundamental architecture and systems have been found to support capabilities that will enhance the FBI's mission.



At present the FBI is consulting with industry experts on a potential plan to complete Sentinel. The FBI is also reviewing ways to reduce costs and limit our reliance on contractors. This review is underway, but it is not complete; the FBI anticipates this review will be completed by early fall 2010.

NATIONAL SECURITY LETTERS

*Question.* National Security Letters (NSL's) are useful counter-terrorism tools that allow the FBI to conduct searches without getting court orders, and allow agents to analyze telephone, computer and bank records without warrants.

The PATRIOT Act made NSLs easier to obtain, but also requires the Inspector General (IG) to monitor the use of NSLs and report back to Congress.

The IG released two reports on NSLs which found significant intelligence violations. The IG estimates over 6,000 NSL violations from 2004–2006. That's 8 percent of all NSLs issued. Violations include:

—Eleven “blanket NSLs” without proper approval in 2006.

—Unauthorized collection of over 4,000 billing records and phone numbers.

This subcommittee recognized a problem with NSL management, and provided \$10 million in fiscal year 2010 to establish the Office of Integrity and Compliance for oversight of NSLs.

What are you doing to improve NSL training for FBI employees?

Answer. Following the first Office of Inspector General (OIG) Report on National Security Letters (NSLs), the FBI's National Security Law Branch (NSLB) developed a new NSL training module that incorporated the findings of the IG. This training addressed the common errors discussed in the OIG's Report, including typographical errors, confusion regarding 18 U.S.C. § 1681v, and required legal reviews and approvals. In December 2007, FBI's NSLB and Training Division developed and launched an online training course concerning NSLs. In addition to live training, the online training course continues to be used for refresher training and for training personnel whose duties now require them to handle NSLs. NSLB is currently reviewing the online training course to ensure that this training remains up-to-date. The FBI also deployed a separate NSL subsystem in the Foreign Intelligence Surveillance Act Management System (FISAMS) in January 2008, and simultaneously launched a training course in FISAMS on creating NSLs. The training was mandatory for all employees involved in issuing NSLs, and the training continues to be used for refresher training and for training new personnel handling NSLs.

*Question.* Will you make NSL training mandatory for all employees involved with NSLs?

Answer. Yes, the National Security Letter (NSL) training is mandatory for all employees involved with NSLs.

*Question.* Do you agree with the IG's recommendation that the Office of Integrity and Compliance needs more staff to carry out its oversight role?

Answer. The Office of Integrity and Compliance's (OICs) personnel has increased since its inception in fiscal year 2007, from 12 employees to 16 employees. Staffing needs are reviewed periodically on an enterprise-wide basis. Personnel allocations are made through a principled process that considers a number of factors, including operational needs, funding, risk, opportunity, and mandated congressional allocations. In that regard, it is our understanding that the Inspector General's recommendation was based, at least in part, on the assumption that audits performed as part of the compliance process would be conducted by OIC personnel. That is incorrect. OIC requests the FBI's Inspection Division to conduct such audits. OIC and the Inspection Division work closely to identify and prioritize auditing requirements and to develop audit protocols for targeted risk areas. OIC's personnel needs will continue to be monitored.

*Question.* Do you have the right computer systems to improve the way you issue and track NSLs?

Answer. Yes. In January 2008, the FBI deployed the National Security Letter (NSL) subsystem in the Foreign Intelligence Surveillance Act Management System to address reporting and other issues in the NSL process. The subsystem prompts the drafter to enter information about the subject, the predication for the NSL, type of NSL, recipients of the NSL, and the target of the NSL. The subsystem routes the NSL to various higher-ranking officials who must review and approve the NSL request before it can be issued. After all required approvals have been obtained, the subsystem generates the electronic communication (EC) and the NSL for signature by the special agent in charge, assistant director in charge, or designated FBI-Headquarters approving official. Thereafter, the subsystem automatically uploads the EC documenting the NSL and the NSL itself into the FBI Automated Case System. This process collects all the information required for congressional reporting.

## TERRORIST WATCHLIST

*Question.* The Terrorist Watchlist is the intelligence community's main list of terrorism suspects, and is maintained at the FBI's Terrorist Screening Center. It is shared with the Intel community at the National Counterterrorism Center.

More than 1.1 million known or suspected "terrorist identities" are on the list, representing approximately 400,000 individuals. A single individual can generate numerous "terrorist identities" or records. 20,000 names are added each month.

The Inspector General recently reported that the terrorist watchlist continues to have unacceptable errors, noting that the FBI is delayed in reporting names to the terrorist watch list by up to 4 months. FBI also failed to remove names once determined that they do not pose a threat, while other information was simply inaccurate or outdated.

How much time does it take the FBI to add someone to the watch list, and what are you doing to cut that time?

*Answer.* The DOJ Inspector General Reports (issues 08-16 and 09-25) are based on data collected approximately 2½ years ago and many aspects of the FBI watchlist process and internal oversight have completely changed. At the time of the report, there was no formal policy requiring case agents to submit watchlist nominations, modifications, or removals in a specified timeframe. After an internal study of the issue, the FBI provided new guidance in January 2009 (before the issue of 09-25) requiring agents to submit all watchlist nominations, modifications, or removals within 10 business days. This time is needed in order to take raw intelligence received from a variety of sources and conduct initial database checks and additional investigation to ensure that the reasonable suspicion standard is met. Specific identifying details such as name, date of birth, address, social security number, etc is vital to populate the watchlist and ensure that another person with a similar name and date of birth is not incorrectly encountered. The FBI's Counterterrorism Division (CTD), Terrorist Review Examination Unit (TREX) at FBI Headquarters, which reviews these submissions for accuracy and compliance with the United States Government (USG) watchlisting policy, then has an additional 5 business days for nominations and 10 business days for modifications or removals to complete their oversight actions.

FBI formal guidance was approved on December 7, 2009, which included the ability to expedite the watchlist process when a specific threat or urgent circumstance demands immediate action. This expedited process has been used and results in immediate placement on the watchlist and selectee/no-fly list by personnel assigned to the Terrorist Screening Center (TSC). The FBI's CTD TREX follows through with all necessary documentation submitted from the field that supports the immediate watchlisting action taken.

While a remarkable achievement in less than 18 months, the FBI is taking additional steps to reduce the time it takes to get a person watchlisted. Most significant is the updating and integration of two manual forms into a single database which incorporates all FBI business workflow and tracks the submission record from the time it is created by a case agent all the way through export by the FBI for watchlisting. The FBI's CTD TREX led an interagency team of experts to update the forms and ensure all data fields match those used by the National Counter Terrorism Center (NCTC) Terrorist Identities Datamart Environment. Not only is the database expected to reduce the processing time for case agents and CTD's TREX, but also reduces the NCTC ingest time from over 8 minutes per record down to under 30 seconds. This database also incorporates compliance metrics and reports with much of the data automatically generated. The database has been in development for the past 10 months and is nearly ready for field-level testing with anticipated deployment to all field offices by the end of the calendar year.

*Question.* How are you improving training for your staff to increase accuracy in adding names to the list and removing names from the list?

*Answer.* To increase the accuracy and speed of a watchlist nomination or removal, the FBI's CTD TREX personnel were trained as Subject Matter Experts (SME) in watchlisting. In order to apply criteria which is consistent with the USG watchlisting guidance, SME's from the TSC provided baseline training to CTD's TREX personnel. This training included detailed review of current watchlist policy, along with specific examples which required students to apply the standard. Supplementing this training is a mandatory monthly unit training which focuses on new guidance, trends, and round-table problem solving. As a result of this training upgrade, the number of rejections from the TSC for FBI nominations which do not meet the watchlisting criteria has dropped to nearly zero. To assist new personnel and provide a detailed reference guide for all employees, the CTD's TREX updated

and expanded the unit Standard Operating Procedures, which contains step-by-step procedures for each watchlisting task.

An important aspect of the CTD's TREX transition is the reorganization of personnel into four distinct teams and conversion of four GS-12 positions into GS-13 supervisors, who are responsible for the internal workflow and resolution of problems. These supervisors identify topics for additional unit training.

*Question.* What are the major obstacles in shortening the time it takes to place someone on the no-fly list?

*Answer.* There are few obstacles to quickly place the subject of an FBI investigation on the No Fly list when intelligence indicates the person presents an imminent threat and meets the established No Fly criteria. Procedures are in place to support such action, and the process has been tested with real-world threats. The Counterterrorism Division's (CTD) Terrorist Review Examination Unit (TREX) is in direct contact with the Terrorist Screening Center to complete an expedited addition to the No Fly list. For example, when case agents identified the subject of the recent attempted Times Square bombing, the CTD's TREX used the expedited nomination process to add this individual to the No Fly list in less than 1 hour. The subject then attempted to fly later that same day and was prevented from departing the country.

*Question.* Have you given your managers in field offices more responsibility to review nominations before they are sent to headquarters?

*Answer.* The FBI has given field supervisors more responsibility to ensure all subjects of FBI investigations are properly added, modified, or removed from the watchlist. Quarterly file reviews now include a mandatory certification by the field supervisor that the watchlist status for the subject of the investigation has been reviewed and is accurate. The Counterterrorism Division's (CTD) Terrorist Review Examination Unit (TREX) provides each supervisor a mid-month report which alerts them of cases currently showing non-compliance and allows them to rapidly correct these deficiencies. Supervisors also receive best practices gleaned from field offices which show consistent outstanding compliance. For example, many field offices require submission of the watchlisting form at the same time as the case opening paperwork. The CTD's TREX has incorporated a detailed feedback system using mandatory Primary and Alternate Watchlist Coordinators in each field office. Not only are problems resolved through a single point of contact for the office, but also trends and changes in policy are communicated through the coordinators.

*Question.* Are you working with the Director for National Intelligence (DNI) to make sure this problem is fixed across all intelligence agencies?

*Answer.* As part of the President's taskings following the attempted terrorist attack on December 25, 2009, the FBI's Terrorist Screening Center (TSC) was directed to "develop recommendations on whether adjustments are needed to the watchlisting Nominations Guidance, including biographic and derogatory criteria for inclusion in the Terrorist Identities Datamart Environment and Terrorist Screening Database, as well as the subset Selectee and No Fly lists." The Nominations Guidance referred to the TSC issued on February 25, 2009, and eight appendices issued at various dates (collectively, 2009 Protocol). The Presidentially-directed adjustments to the 2009 Protocol and all the appendices were approved by the Deputies in July 2010 and have been renamed "Watchlisting Guidance."

The Watchlisting Guidance was developed by TSC's Interagency Policy Board Working Group, which functioned as a sub-Interagency Policy Committee (IPC) for the White House National Security Staff's Information Sharing and Access (ISA) IPC. Both the IPC and the sub-IPC included representation from the Department of Justice, Department of Homeland Security, Central Intelligence Agency, National Security Agency, Department of Defense, Department of State, Department of Treasury, Office of the Director of National Intelligence, the National Counterterrorism Center, the FBI, and the TSC. In response to the President's January 7, 2010, "corrective actions" memo, the sub-IPC thoroughly reviewed the 2009 Protocol and applicable appendices to develop recommendations for the IPC and the Deputies Committee. The IPC also recommended a new appendix on the handling of terrorism information collected when there is a positive match to a known or suspected terrorist.

Based on these recommendations, the National Security Council (NSC)/Homeland Security Council (HSC) Deputies Committee incrementally approved certain modifications to the Watchlisting Guidance for immediate implementation on March 5 and April 5, 2010. The NSC/HSC Deputies Committee approved the entire Watchlisting Guidance for issuance to the watchlisting and screening community on July 16, 2010.

## FBI LONG TERM PLANNING

*Question.* Every national security and defense agency releases a 5-year budget—except the FBI. I sit on the Senate Intelligence Committee and the Defense Appropriations Subcommittee, where I am provided with DOD, NSA, the CIA budget requirements not just for this year, but for 5 years. This long-term view helps us know what it will really take to keep our Nation safe. I only see the FBI's budget 1 year at a time, even though the FBI's intelligence and counterterrorism activities are a key part of the national intelligence strategy. The administration's exclusion of the FBI in the Intel 5-year budget implies that the FBI plays a secondary security role.

Why is the FBI excluded from providing us with information on its counterterrorism needs in future years?

*Answer.* The FBI and the Department continue to develop goals that include appropriate analysts, technology, and facilities to address the national security and intelligence community needs. While the FBI and the Department cannot share predecisional, deliberative budget information, we will continue to inform the subcommittee of our programs and needs and be sure the subcommittee's policy and funding decisions are made in the context of all appropriate information.

*Question.* Do you agree that the FBI should provide Congress with its long term budget plans just like the rest of the intelligence community?

*Answer.* The FBI and the Department continue to develop goals that include appropriate analysts, technology, and facilities to address the national security and intelligence community needs. While the FBI and the Department cannot share predecisional, deliberative budget information, we will continue to inform the subcommittee of our programs and needs and be sure the subcommittee's policy and funding decisions are made in the context of all appropriate information.

*Question.* In spite of this OMB muzzle on budget numbers for future years, can you provide the subcommittee with information on your long-term requirements? Specifically:

- The numbers of agents and analysts
- Technologies and equipment
- Partnerships with State and local law enforcement

*Answer.* The FBI and the Department continue to develop goals that include appropriate analysts, technology, and facilities to address the national security and intelligence community needs. While the FBI and the Department cannot share predecisional, deliberative budget information, we will continue to inform the subcommittee of our programs and needs and be sure the subcommittee's policy and funding decisions are made in the context of all appropriate information.

## QUESTION SUBMITTED BY SENATOR FRANK R. LAUTENBERG

*Question.* In January, I asked the Department of Justice for information about the June 2009 shooting of two soldiers in Arkansas by Abdulhakim Muhammad, who claims to be a member of Al Qaeda. The Department has not responded. I understand that the FBI had investigated Mr. Muhammad prior to the shootings.

Was Mr. Muhammad on a terrorist watch list at the time of the shootings?

*Answer.* The Terrorist Screening Center (TSC) would be pleased to provide a members briefing regarding the watchlist status of the above-referenced individual. It is the general policy of the United States Government to neither confirm nor deny whether an individual is in the TSC's Terrorist Screening Database (TSDB) because it is derived from sensitive law enforcement and intelligence information. The non-disclosure of the contents of the TSDB protects the operational counterterrorism and intelligence collection objectives of the U.S. Government, as well as the personal safety of those involved in counterterrorism investigations. The TSDB remains an effective tool in the U.S. Government's counterterrorist efforts because its contents are not disclosed. It is important to note that the watchlist contains only the identities of known or suspected terrorists which meet the "Reasonable Suspicion" standard for inclusion in the TSDB. As records meeting this criterion are continually added to the watchlist, modified to be more accurate, or removed for a variety of reasons, the watchlist is constantly being updated to serve as a more accurate tool for the TSC's terrorism screening and law enforcement partners.

## QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

## TERRORIST EXPLOSIVE DEVICE ANALYTICAL CENTER—1

*Question.* As indicated in my opening remarks the administration's proposed rescission of \$98 million in funding for the construction of the Terrorist Explosive Device Analytical Center is troubling especially given the FBI's and the JEIDDO commanders support for this facility.

Director do you believe that TEDAC is a critical element necessary for the FBI to meet its responsibilities to the American public?

*Answer.* Yes. The forensic and technical exploitation of improvised explosive devices (IEDs) by the Terrorist Explosive Device Analytical Center (TEDAC) supports the intelligence and information requirements of the military, intelligence, homeland security and law enforcement communities. TEDAC is also recognized by coalition partners, friendly foreign governments, and U.S. partners as the focal point within the U.S. Government for exchanging information from IED attacks against U.S. interests abroad and at home. TEDAC receives IEDs not only from Iraq and Afghanistan, but also other foreign countries and areas, such as Pakistan, the Philippines, and the Horn of Africa. IEDs remain the terrorist primary weapon of choice against U.S. interests and these groups operate world-wide. Exploitation conducted by the TEDAC to date has resulted in the identification of over 400 terrorists previously unknown to the U.S. Government. The information derived from the exploitation of devices submitted to TEDAC is available to U.S. law enforcement as well as our coalition partners. Continued identification of these subjects is vital to preventing terrorist attacks and identifying terrorist networks operating in the United States and abroad.

*Question.* Did the FBI request additional funding to construct a facility to support the TEDAC mission above the amount the Congress had already provided?

*Answer.* Regarding budget deliberations, the nature and amounts of the President's decisions and the underlying materials are confidential. The administration's position was transmitted in the budget.

*Question.* When the FBI was informed of the proposal to cancel the funding provided by Congress to construct a facility to support the TEDAC mission, did the Bureau appeal that decision to OMB?

*Answer.* Regarding budget deliberations, the nature and amounts of the President's decisions and the underlying materials are confidential. The administration's position was transmitted in the budget.

*Question.* Director Mueller, do you believe that TEDAC as funded by this subcommittee is still necessary and if you do believe it is necessary can you tell us why Redstone Arsenal was chosen as the location to build this facility?

*Answer.* The administration's position was transmitted in the budget. However, I can describe why Redstone Arsenal was chosen as the location to build the facility. Upon receipt of funding in the fiscal year 2008 appropriation for a Terrorist Explosive Device Analytical Center (TEDAC) facility, the FBI acquired architectural and engineering services to design and plan the facility. Among the first steps was to conduct an independent site selection study, to identify, evaluate and recommend sites that would meet TEDAC's operational requirements. Due to the need to transport, process, and test explosives materials, site selection was limited to U.S. military installations. Using publicly available data for 17 requirements, divided into three categories—operational (e.g., length of runways, explosives disposal capability, weather to support continuous year-round operations), workforce (e.g., science and engineering employees as percentage of workforce, proximate agencies and universities doing similar or related work), and quality of life (e.g., cost of living, 4-year colleges and university availability, and housing), the independent study identified and rated eight potential sites. Based on weighted scores of the evaluation requirements, the U.S. Army Redstone Arsenal, Huntsville, Alabama, was ranked highest among the eight sites. Once a primary site was identified, the FBI contracted architectural and engineering firm initiated preliminary geotechnical engineering, wetlands, and cultural surveys, as well as a preliminary surface soil screening of various parcels at Redstone Arsenal to confirm the suitability of the site. Based upon the site selection and favorable preliminary site studies, FBI executive management accepted the recommendation of Redstone Arsenal as the site for a permanent TEDAC facility.

## TEDAC—2

*Question.* Homeland Security Presidential Directive-19 (HSPD-19) Combating Terrorist Use of Explosives in the Homeland, states, in part, "Terrorists have repeatedly shown their willingness and ability to use explosives as weapons world-

wide, and there is ample intelligence to support the conclusion that they will continue to use such devices to inflict harm. The threat of explosive attacks in the United States is of great concern considering terrorists ability to make, obtain, and use explosives”

Is that statement describing the threat from terrorist use of explosives still accurate?

Answer. Yes. Terrorists and insurgents continue to show their willingness to use explosives as a primary tactic against U.S. and coalition forces. Due to the low cost and ease of availability of improvised explosive devices (IED) components and precursors to explosives, along with the success that terrorists and insurgents have had with explosive attacks, they will continue to use explosives to inflict harm. IEDs and explosives have been the method of attack in recent domestic incidents as well, such as the Christmas Day attempt to bomb a Northwest Airlines flight, the Times Square car-bombing attempt, the attempt to detonate IEDs in New York City subways and other locations, and the attempts to blow up Federal buildings in Texas and Illinois.

*Question.* Under HSPD–19, the Attorney General was directed to prepare a national strategy on how to deter, prevent, protect against, and respond to explosives attacks. Does the new TEDAC facility enable the FBI to fulfill its assigned responsibilities under the HSPD–19 national strategy and implementation plan?

Answer. A new Terrorist Explosive Device Analytical Center (TEDAC) facility would enable the FBI to continue meeting its responsibilities under the HSPD–19 strategy and plan, and provide an enduring capability to operate at increased capacities at times when long term conflicts and increased attacks. A new TEDAC facility would have full dedicated capabilities to function as a center of excellence, to analyze and report on evidentiary submissions from improvised explosive device (IED) attacks. A new facility would provide timely actionable intelligence on new tactics, techniques and procedures of IED activity against U.S. interests, and will be able to operate at a high capacity when needed.

TEDAC—3

*Question.* Director Mueller, the volume of submissions to TEDAC has overwhelmed its capacity, resulting in a substantial backlog. The FBI estimates that 86 percent of the 33,000 evidence boxes within that backlog contain DNA or fingerprints from a still unidentified insurgent who was involved in an IED attack against U.S. military personnel and who may seek to enter the United States. Today, a terrorist could be stopped at a checkpoint in Afghanistan and go unidentified because the FBI has not analyzed the evidence against him or her.

Are you concerned that individuals involved in IED attacks against our military personnel could go undetected and therefore could enter the United States and engage in terrorist activities?

Answer. Yes. The potential biometric information within the Terrorist Explosive Device Analytical Center (TEDAC) backlog—fingerprints and DNA—could enable the identification of an unknown terrorist or insurgent attempting to enter the United States. Processing of the backlog to harvest fingerprints and DNA, and the uploading of such information into national databases such as the FBI’s Integrated Automated Fingerprint Identification System (IAFIS), which is used by the Department of Homeland Security and Department of State to screen persons at the border and applying for visas, and the Combined DNA Index System (CODIS), is critical to preventing persons associated with IED attacks from gaining entry to the United States and to identifying such persons who may have already gained entry.

*Question.* Can you provide this subcommittee with any instances where this has occurred?

Answer. Example 1: In July 2009, the Terrorist Explosive Device Analytical Center (TEDAC) conducted an Integrated Automated Fingerprint Identification System (IAFIS) search against fingerprints recovered from an improvised explosive device (IED) cache in 2008. These prints were matched to an individual admitted to the United States as a refugee in 2009. Although the individual had been enrolled in the Department of Defense biometric systems in 2008, he was not identified as a U.S. refugee until the TEDAC ran prints recovered from cache materials against IAFIS records.

Example 2: In March 2010, the TEDAC identified fingerprints recovered from an item found in an IED cache in Iraq. The fingerprints belonged to a foreign national who had traveled to the United States on a valid B2 (business) visa in the past and whose visa remains valid. The TEDAC is assisting the law enforcement agencies of the foreign country with the investigation via the Legal Attaché office.

Example 3: In June 2010, the TEDAC matched fingerprints recovered from a document found in an IED cache in 2004 with an individual admitted as refugee in 2009. The match was made between the original print and records in the IAFIS criminal file submitted by local law enforcement as a result of criminal activity on the part of the refugee.

Example 4: In 2009, the TEDAC identified a large number of unexploited documents and media which had been submitted as IED items. As a result of this effort, the TEDAC identified the print of an individual granted a visa to enter the United States on a handwritten document associated with the kidnapping and murder of two U.S. soldiers in Iraq in 2006. In addition, the TEDAC discovered other information which, when exploited, identified new subjects in the United States who had foreign contacts attempting travel to the United States.

#### OVERSEAS CONTINGENCY OPERATIONS

*Question.* Last year, the administration requested and Congress supported \$101 million for FBI overseas contingency operations. This funding allows the Bureau to deploy agents and analysts overseas to work side-by-side with U.S. military personnel to assist in identifying terrorists and insurgents. The bureau also uses these funds to work with foreign law enforcement in places such as Southwest Asia, and the Horn of Africa, to counter Al-Qaeda affiliates that target U.S. persons. Now only 1 year after requesting funding for overseas contingency operations, this administration is proposing to cut that funding by \$63 million.

Director Mueller, would the loss of this funding make it more difficult for the Bureau to work internationally to combat and prevent terrorism?

Answer. Obviously, more funding for purchasing equipment, logistics, training, etc. is always better than less. That said, the FBI will continue to work effectively internationally to combat and prevent terrorism.

*Question.* Why would the administration cut your funding for this critical mission by \$63 million?

Answer. In light of constrained resources, the President must make many tough decisions in developing the annual budget request.

#### SERIAL MURDERS AND RAPES

*Question.* Recently, the Washington Post ran an article about a serial rapist who is believed responsible for as many as 17 attacks over the past 13 years—these attacks have occurred in Maryland, Virginia, Rhode Island and Connecticut. Now, it appears this serial rapist has returned to Virginia and is suspected of forcing three trick-or-treating teenage girls into a wooded ravine at gunpoint. Thirteen years, seventeen attacks, and still at large.

When you have instances like this one, where the same person can victimize women—including teenagers—for 13 years and in multiple States, we need to ensure the FBI is able to assist our local police departments and sheriff's offices with forensic, behavioral, and other investigative assistance and expertise.

Director Mueller, are you satisfied that the Bureau is doing enough to assist State and local law enforcement in addressing serial crimes, like this one? If not, what additional capabilities do you believe are needed?

Answer. The FBI supports State and local law enforcement to address serial crimes in multiple capacities. The first is through enhancement and maintenance of the Combined DNA Index System (CODIS) database. DNA profiles generated from serial crimes are entered into the CODIS database system, including the National DNA Index System (NDIS), and compared to millions of crime scene and offender profiles. When DNA profiles are linked to different crimes and/or offenders, leads and/or perpetrators are identified and reported by FBI to the State and local law enforcement agencies who are investigating these crimes.

In addition, the FBI's National Center for the Analysis of Violent Crime (NCAVC) provides behavioral-based operational support to Federal, State, local, tribal, and foreign law enforcement, as well as intelligence and security agencies involved in the investigation of unusual, high-risk, vicious, or repetitive violent crimes, communicated threats, terrorism, and other matters. The NCAVC is a component of the Critical Incident Response Group (CIRG), and consists of the Behavioral Analysis Unit (BAU) and the Violent Criminal Apprehension Program (ViCAP).

The BAU interacts with State/local law enforcement agencies on a daily basis, providing support to their investigations through services such as crime analysis, profiles of unknown offenders, linkage analysis, investigative suggestions and interview/interrogation strategies. BAU staff members also provide training to thousands of law enforcement personnel every year on topics such as serial murder, sexual assault, behavioral analysis of violent crimes, and other related topics. BAU oper-

ational services are supported by their research program, in which BAU personnel collaborate with outside academic/scientific individuals and organizations to study violent offenders and how they commit their crimes. Insights gained through research are refined into innovative investigative techniques, and are shared with the law enforcement community through training presentations and publications. A book written specifically for criminal investigators on the topic of serial murder was published by the BAU. Thousands of copies have been distributed to law enforcement investigators nationwide, and it is available on the FBI Web site.

ViCAP maintains a national database, which represents a comprehensive collection of information related to both solved and unsolved homicides, sexual assaults, missing persons and unidentified human remains. The database allows participating law enforcement agencies to make cross-jurisdictional matches of significant violent crimes, and ViCAP personnel can assist those agencies in the identification and linkage of similar cases based upon factors detailed in the ViCAP Web submissions. ViCAP can also provide analytical support that includes, but is not limited to: the creation of maps, matrices and timelines, and the use and/or coordination of other resources and databases.

#### INNOCENT IMAGES

*Question.* Mr. Director, in July 2007, you testified before the House Judiciary Committee that “child exploitation is a substantial priority” of the FBI. When asked why the FBI was not doing more, you said, “. . . to the extent that I can obtain additional resources to address child pornography” you would “be willing to do so.” Since that time, Congress has increased annual funding for the FBI’s “Innocent Images” program from \$10 million to \$52 million. That’s an increase of over 500 percent.

Has the FBI increased the number of child exploitation cases referred for prosecution?

*Answer.* The FBI does not track the number of cases referred to Federal, State, local, or international partners for prosecution. The Innocent Images program does, however, capture statistics related to arrests, information/indictments, and convictions.

In fiscal year 2010, the Innocent Images National Initiative (IINI) Program documented the following statistical accomplishments: 954 arrests; 933 information/indictments, and 983 convictions.

*Question.* How many actual agents and analysts are assigned full-time to child exploitation?

*Answer.* The FBI measures special agents dedicated to a program by counting agent work years, i.e., funded staffing levels (FSL). In fiscal year 2010, the FBI utilized 245 FSL for Innocent Images. Also, there are 11 full-time Innocent Images intelligence analysts dedicated to the program at the national level, as well as additional field office intelligence analysts who work the program as assigned. Innocent Images also includes dedicated forensic examiners and management and program analysts.

*Question.* Can you tell this subcommittee why—after Congress has increased FBI funding fivefold—we are hearing reports from law enforcement across the United States that the FBI’s commitment of resources and personnel to the child exploitation crisis is decreasing?

We know you are committed to fighting child exploitation and would appreciate your assistance in getting to the bottom of this.

*Answer.* Time Utilization and Record Keeping (TURK) data clearly demonstrates the FBI’s commitment of time and resources to the Innocent Images program. In 2001, TURK information reported the utilization of 154 funded staffing level (FSL) for Innocent Images. In 2009, TURK information reported 251 special agent FSL for Innocent Images. This year, TURK is expected to surpass last year’s numbers. In addition, the FBI continues to facilitate State and local prosecutions through FBI-led Cyber Crime Task Forces and is responsible for successfully leveraging international support through its Innocent Images International Task Force (IIITF).

#### DNA POLICY

*Question.* Director Mueller, reducing the DNA backlog is one of the single most important issues facing all of law enforcement. But in doing so, we must do it the right way and guarantee the integrity of the process.

As stated in the FBI Lab press release, and I believe I heard in your statement, the FBI is performing “a review to determine what improvements can be made to facilitate more efficient and timely uploading of outsourced DNA data into NDIS and no changes have been made to any procedures or standards to date”. Nearly



every public crime lab in America, including the FBI's own advisory Scientific Working Group on DNA Analyses, are in favor of keeping the DNA technical review policy as it currently stands.

After having seen the timing of the FBI lab's press release, correspondence from private DNA lab executives taking credit for pushing this initiative with the FBI, and celebratory statements praising the FBI for a position you just said the FBI has not changed, I hope you share my concern about the origin of this decision.

I understand the FBI has a backlog of almost 300,000 DNA samples for the Federal DNA database. What are you doing to reduce this backlog and when do you plan to have it eliminated completely?

Answer. The FBI received \$30.6 million in the fiscal year 2009 budget, which has enabled the FBI to hire staff, purchase high-volume, high-speed testing equipment, and increase automation. The robotics are fully implemented, a majority of the positions received are filled, and the new hires are either handling samples or completing their training. The FBI also reorganized its lab in order to maximize efficiency.

As of July 1, 2010, the backlog for the National DNA Index System/Combined DNA Index System database is 165,303 samples. The FBI has steadily reduced the backlog by over 147,000 samples from its peak of 312,379 samples in December 2009. The FBI expects to eliminate the backlog in September 2010.

*Question.* Did I hear you correctly in your statement that the FBI is not considering any policy changes regarding access to the National DNA Index System and access by private laboratories?

Answer. The FBI is not considering policy changes regarding access by private laboratories to National DNA Index System/Combined DNA Index System. Administration of this system of law enforcement identification information is a governmental function and only government agencies should have direct access to the system.

*Question.* Can I have your assurance that all voices of State and local crime labs will be at the table during any DNA policy review discussion?

Answer. The FBI maintains an ongoing dialogue with the many various stakeholders of CODIS in an effort to better understand and represent the needs of the entire law enforcement and forensic communities regarding this valuable system. This dialogue is carried out, in part, through regular exchanges and meetings of the American Society of Crime Laboratory Directors (ASCLD) and the International Association of Chiefs of Police (IACP), as well as among professional and accrediting organizations; meetings with CODIS State administrators; an annual CODIS users meeting; and the Scientific Working Group on DNA Analysis Methods (SWGDM). As participation in CODIS is voluntary, the FBI believes a cooperative approach with stakeholders ensures maximum participation and partnership.

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#### QUESTIONS SUBMITTED BY SENATOR GEORGE V. VOINOVICH

##### INTELLECTUAL PROPERTY ENFORCEMENT PRIORITIZATION

*Question.* I have been a long-time champion of increased efforts to enforce intellectual property (IP) rights in the United States and abroad. These crimes against American companies and American workers result in significant economic losses, and the nature of these products imposes serious health and welfare risks on the public. Unfortunately, a March 2008 GAO Report (GAO-08-157) found that among the five key Federal agencies that play a role in enforcing IP rights, such enforcement is not a top priority.

Since this report was issued, and in light of passage of the PRO-IP Act and other Congressional actions to emphasize the need for an increased focus on IP enforcement, what specific steps or activities has the Federal Bureau of Investigation (the "Bureau") undertaken to increase the prioritization of intellectual property rights protection?

Answer. The FBI's highest Intellectual Property Rights (IPR) priorities are theft of trade secrets and the distribution of counterfeit goods that pose an immediate threat to health and safety. The FBI's goal is to disrupt and dismantle international and domestic criminal organizations that manufacture, distribute, and procure intellectual property unlawfully.

Through funding received in the fiscal year 2009 appropriation, and in accordance with the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act, the FBI designated 31 special agents to solely work IPR investigations. Through funding received in the fiscal year 2010 appropriation, and in accordance with the PRO-IP Act, the FBI designated an additional 20 special agents to work

IPR investigations. The disbursement of investigative resources provides 22 of the 25 DOJ Computer Hacking and Intellectual Property (CHIP) units a local and highly qualified agent facilitating the surging of resources on the highest priority IP matters.

In fiscal year 2010, the FBI Cyber Division conducted an extensive strategic review of the IPR program. This effort included a review of the threat information from our partners in industry associations, international and domestic law enforcement, and the Intelligence Community. In addition, the FBI reviewed and analyzed the current case portfolio to ensure the most significant threats were addressed. This analysis provided the foundation for the consolidation of certain IPR investigative resources into four enhanced squads in Los Angeles, New York, San Francisco, and Washington, DC. The enhanced squads will facilitate the development of Subject Matter Experts (SMEs) in priority IP areas and allow for the greater use of complex investigative techniques in penetrating, disrupting, and dismantling criminal organizations which thrive from the counterfeiting of goods.

The FBI provided extensive IPR training to domestic and international partners, as well as significantly increased intensive training on Statutory Authorities; DOJ Enforcement Efforts; Major Case Initiatives; Case Studies; Intelligence Analysis for IPR Cases; Federal Partner Efforts (Department of Homeland Security—U.S. Immigration and Customs Enforcement, Department of Homeland Security—U.S. Customs and Border Protection, Food and Drug Administration, U.S. Postal Inspection Service); and Industry Subject Matter Expert Presentations (e.g., International Anti Counterfeiting Coalition). Currently, all special agents receive an overview of the laws governing IPR violations during New Agents Training (NAT) at the FBI Academy. Development is underway for a comprehensive core IPR curriculum that will be integrated into the standardized NAT and in furtherance of the Agent Career Track curriculum. All Cyber Career Track agents receive additional IPR specialized training during the 2 week, post NAT program. This training consists of IPR program overview, PRO-IP Act overview, case initiation/investigative techniques, guidance regarding the importance of interagency partnerships, and the benefits of industry coordination efforts. The FBI also provides cross program training to IPR designated special agents in organized crime (OC) and counterintelligence matters. Conversely, OC and counterintelligence designated agents also receive IPR program training. This cross program training ensures the highest priority IPR investigations are developed regarding theft of trade secrets and those with an OC criminal enterprise nexus.

The FBI established an Intelligence Fusion Group at the National Intellectual Property Rights Coordination Center (NIPRCC) with partner agencies to define the IPR threat picture/domain, share strategic intelligence, establish joint collection requirements, produce joint intelligence products, and develop the Intellectual Property Rights Committee National Strategy. In August 2010, the FBI deployed a special agent and an intelligence analyst team to Beijing, China, and New Delhi, India, to establish stronger working relationships in countries posing significant threats to U.S. Intellectual Property and to provide input to the IPR Domestic/International Domain Threat Assessment. The FBI is also an integral part of the Department of Justice's Task Force on Intellectual Property and worked closely with the administration to develop the Joint Strategic Plan on Intellectual Property Enforcement.

*Question.* What are the next five specific steps the Bureau will undertake to continue to increase the priority of IP enforcement? Please provide a timeline to implement these steps.

*Answer.* In coordination with National Intellectual Property Rights Coordination Center (NIPRCC) Intelligence Fusion Group, the FBI is leading the Domestic/International Domain Threat Assessment effort. This comprehensive intellectual property (IP) assessment will include not only information from NIPRCC partner agencies, industry, investigative case information, open source, and human source reporting, but also threat information from component teams in target rich international locations such as Beijing and New Delhi. Target date for completion is Spring 2011.

FBI will increase case openings in the high priority investigation areas of theft of trade secrets and health and safety.

The FBI intends to place an additional special agent in both Beijing and New Delhi for a period of 1 year to augment existing resources. This placement of additional resources in IP target rich locations overseas will support the FBI's international mission to defeat national security and criminal threats by building a global network of trusted partners and strengthening international capabilities. Dedicated personnel will enhance strategic partnerships with foreign law enforcement, intelligence and security services, and other government agencies by sharing knowledge, experience, capabilities, and exploring joint operational opportunities to increase international IP enforcement efforts. Target date for deployment is November

2011. The FBI will continue its involvement with the Joint Liaison Group (JLG), IP Working Group through attendance at the biannual meetings with the Chinese Ministry of Public Security (MPS) regarding joint criminal investigations. The next scheduled JLG meeting is November 2010. In support of this effort, the FBI will, in conjunction with the Computer Crimes and Intellectual Property Section, fund and provide approved training in selected cities in China. Target date is dependant upon China's MPS.

The FBI will fund and lead the collaborative effort to design and establish the NIPRCC Web site. The site will support IPR enforcement, awareness, education, and networking through the following:

- Incoming complaint submission
- Facilitate inter-agency lead deconfliction
- Provide IPR information, awareness, education, and outreach
- Showcase upcoming enforcement training opportunities

Full implementation is targeted for fiscal year 2011.

The FBI is currently developing an IPR curriculum that will be integrated into the standardized New Agent Training (NAT) at the FBI Academy. Target date for completion is June 2011.

#### RELATIONSHIP BETWEEN INTELLECTUAL PROPERTY THEFT AND CRIME/TERRORISM

*Question.* A 2009 RAND study, as well as other analysis, concludes that there was clear evidence that terror groups, as well as organized criminal enterprises, engage in various forms of IP theft because it is a low-risk, high-profit enterprise. Are you aware of any specific Government-wide systematic review of the ties between and among terror groups and/or organized crime and IP theft? If not, are you aware of any plans within the Department of Justice or any other department or agency to conduct such a review?

*Answer.* The FBI collaborated and produced a joint National Intellectual Property Rights Coordination Center (NIPRCC) intelligence product entitled "Intellectual Property Crime: Threats to the United States" dated 06/24/2010 in which the following information was presented as it relates to ties among terror groups and/or organized crime and IP theft:

- The NIPRCC assesses with high confidence that intellectual property crime poses a more far-reaching and serious threat than just economic loss to the rights holder by putting public safety at risk, funding organized crime and terrorist activity, and eroding the United States' technological advantage.
- As part of the previously described Domestic/International Domain Threat Assessment effort, the FBI, in conjunction with the NIPRCC, will evaluate available intelligence regarding possible ties between and among terror groups and/or organized crime and IP theft. This assessment will seek to identify intelligence gaps and make recommendations for further actions to address the existing and/or emerging threat.

#### THE NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER

*Question.* As noted in the 2008 GAO Report, the National Intellectual Property Rights Coordination Center (the "Center") was created to improve and coordinate Federal IP enforcement efforts, and its mission has received specific expressions of support from members of this subcommittee over a number of years. Despite this support, the GAO Report stated that for a variety of reasons the Bureau's participation in the Center has been spotty to non-existent.

- Please provide a detailed description of the Bureau's role in supporting the Center.
- In late 2008, the Center relocated to a new facility. Since this move, please provide a description of the Bureau's staffing resident to the facility, including a description of the roles being played by these employees. In addition to any resident staff, please describe how other Bureau staff has worked with the Center to coordinate IP enforcement initiatives and investigations.

*Answer.* On April 15, 2010, the FBI's IPR Unit (IPRU) collocated within the National Intellectual Property Rights Coordination Center (NIPRCC).

- Five FBI Headquarters (HQ) special agents assigned to the operational IPRU, which is embedded within the NIPRCC.
- Three FBI-HQ agents assigned to the NIPRCC conduct investigations and deconflict leads and case information with partner agencies.
- Two FBI-HQ agents assigned to the NIPRCC provide strategic guidance, facilitate the development of intelligence, and oversee the field office IPR programs, agents, and investigations.

The FBI established an Intelligence Fusion Group (IFG) at the NIPRCC with the partner agencies to define the IPR threat picture/domain, share strategic intelligence, establish Intellectual Property Rights Commission joint collection requirements, produce joint intelligence products, and develop the IPRCC National Strategy. Members of the IFG include FBI, U.S. Immigration and Customs Enforcement, U.S. Postal Inspection Service, U.S. Patent and Trademark Office, U.S. Customs and Border Protection, National Crime Intelligence Service, and the Food and Drug Administration. Through this process, the FBI led the drafting of the June 2010 National Joint Product Intelligence Assessment entitled, "Intellectual Property Crime: Threats to the United States." Through the IFG, the FBI continues its development of Threat Tasking Packages (TTPs) based on established IPR Collection Requirements. Once completed, the TTPs will be forwarded to field offices nationwide whose responses will help formulate a National Domain Threat picture.

Through a coordinated effort by the partner agencies at the NIPRCC, the ICE Field Operations unit oversees a weekly coordination and investigative case deconfliction meeting. During this meeting partner agencies discuss recently initiated investigations and task the partner agencies to query their respective databases for any investigative overlap. This coordination streamlines the effective use of limited resources. This coordination meeting is also used to deconflict incoming leads and to investigate opportunities to initiate joint agency investigations.

*Question.* If no staff has been resident at this new facility, please provide a detailed explanation of why. When do you expect such staffing to be completed?

*Answer.* The FBI currently has personnel dedicated to this facility.

*Question.* Outside the efforts of the Center, what programs has the Bureau created to reach out to companies, trade associations, and other stakeholders in terms of improving referrals and investigations related to IP enforcement?

*Answer.* The FBI strengthened its coordination with law enforcement and industry point of contacts regarding Organized Crime as demonstrated by participation and shared training during the 7th Annual International Conference on Asian Organized Crime and Terrorism in St. Paul, Minnesota, May 16–21, 2010. This annual conference brings together law enforcement officers and industry from all over the world to strategize and learn about the latest trends in Asian Organized Crime. A segment of this training focused on counterfeiting activities of Asian Organized Crime Groups.

The FBI provided comprehensive intellectual property rights program training in September 2009 for those special agents funded by the act, which included industry subject matter expert presentations (e.g., International Anti Counterfeiting Coalition). This interface with IP industry representatives established points of contacts for case referrals.

The FBI has led a Major Case Initiative, Fractured Skies, focusing on counterfeit aircraft investigations since 2007 and is now coordinating the initiative from the National Intellectual Property Rights Coordination Center (NIPRCC). Members of the Fractured Skies Task Force (FSTF) consist of representatives from Immigration and Customs Enforcement, National Aeronautics and Space Administration, Air Force—Office of Special Investigations, Defense Criminal Investigative Service, Department of Transportation—Office of Inspector General, Federal Aviation Administration, Naval Criminal Investigative Service, United States Coast Guard, and the United States Patent and Trademark Office. The goal of the FSTF is to share intelligence, report and refer case information, and initiate joint investigations regarding counterfeit aircraft parts.

FBI provided subject matter expert training during aircraft industry conferences, such as Surface Mount Technology Association Center for Advanced Lifecycle Engineering and Aerospace Industries Association. This interface with industry representatives also established points of contacts for case referrals.

During the 2010 International Anti-counterfeiting Coalition spring conference sponsored by the U.S. Immigration and Customs Enforcement, the FBI participated in roundtable discussions regarding the IP threat and future usage of best practices. This event was the launch of the NIPRCC Informal Advisory Working Group, mirroring the FBI led quarterly industry meetings. Both of these working groups, at the management and executive level, will be coordinated and held through the NIPRCC.

The FBI continues to support InfraGard public outreach efforts (with over 37,000 members) and partners with the National White Collar Crime Center to form the premier cyber crime reporting and referral portal at the Internet Crime Complaint Center ([www.ic3.gov](http://www.ic3.gov)).

*Question.* If the Bureau were to receive additional IP enforcement funding, for example \$10 million, please describe how you could use such funding to increase IP

enforcement activities, and how quickly such resources could be deployed and the effect such resources would have on reducing IP theft.

Answer. Should the FBI receive an additional \$10 million to increase intellectual property enforcement activities, the funding would be used to hire additional personnel and for non-personnel funding as delineated below:

- Twenty-seven Special Agent positions (25 field positions, 2 Program Managers assigned to the National Intellectual Property Rights Coordination Center (NIRPCC);
- Two Professional Support Employee positions (Management Program Analysts) assigned to the NIRPCC;
- Ten Field Ratio, Professional Support positions;
- One Field Ratio, Information Technology position;
- Six Field Ratio, Investigative Support positions; and
- \$175,000 in non-personnel funding

The above cited personnel would be deployed within a 6 to 12 month period upon receipt of congressional funding. This time period allows for processing of Field Office intra-divisional personnel realignments and New Agent Training, hiring and transfers. Additional agents would result in increased case openings on high priority threat areas, which would lead to the disruption and dismantlement of more organized, international intellectual property rights criminal enterprises.

Senator MIKULSKI. The subcommittee will temporarily recess and reconvene in Hart 219, the Intelligence Committee hearing room, to continue the discussion in a classified arena.

#### SUBCOMMITTEE RECESS

This subcommittee stands in recess until Thursday, April 22, at 10 a.m., when we are going to take the testimony of the NASA Administrator.

Thank you very much.

Mr. Director, we will see you over there. We will convene no later than 11:30 a.m.

Mr. MUELLER. Thank you.

[Whereupon, at 11:15 a.m., Thursday, April 15, the subcommittee was recessed, to reconvene at 10 a.m. Thursday, April 22.]



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

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**THURSDAY, APRIL 22, 2010**

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

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

Present: Senators Mikulski, Shelby, Hutchison, Voinovich, and Cochran.

Also present: Senators Bennett and Hatch.

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**STATEMENT OF HON. CHARLES F. BOLDEN, JR., ADMINISTRATOR**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

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

Today, we will be meeting with the Administrator and very interested parties, including our good Senator from Utah, Senator Hatch, on the NASA, the national space agency's fiscal year 2011 budget.

I would like to make my opening remarks, and then turn to my colleague, and then, Senator Hatch, to you. Is that agreeable, Senator?

Senator HATCH. Of course, it is.

Senator MIKULSKI. I know the Judiciary Committee is meeting.

Well, we are going to be welcoming Administrator Bolden, of course, our colleague Senator Hatch, and then Mr. John Frost, a member of the NASA Aerospace Safety Advisory Panel, who will be speaking to the subcommittee to ensure that no matter what we decide, we ensure the safety of the astronauts.

The 2011 NASA budget is \$19 billion, \$276 million more than 2010. The top highlight of this new budget includes major investments in science—\$5 billion in 2011. This is an especially heartened plus-up in Earth science. We will be talking about that in a minute.

The other that we think is quite heartening is extending the life of the International Space Station to continue its operation through 2020 and possibly beyond, meaning better value for our dollar and

better value for our astronauts' efforts. We have spent a lot of time building the space station. Now we have got to spend our time using the space station.

It is time to retire the space shuttle, and the President provides for that at the end of calendar 2010—only three more flights to go after 30 years of exceptional and honorable service. The President's budget also increases funding for aeronautic research, \$72 million above 2010, and a must-do to keep America competitive.

There are extremely dramatic changes to the Constellation program to be—and that will be a subject, I know, of a great deal of focus. And in the area of the Constellation program, we want to be sure and clarify, is the President talking about canceling the Constellation program or restructuring the Constellation program? It will be a major source of, I know, a deep Earth probe from this subcommittee.

#### SCIENCE BUDGET

I just want to come back to the science budget which I think, while we are going to focus a lot on Constellation, we must focus on the other aspects of NASA. There is this strong emphasis on Earth science, and the budget also includes \$1.5 billion for planetary science, for research on asteroids, Mars, Saturn, beyond—all that we need to do in order to get ready to go there.

There is also within the astrophysics budget request \$688 million for cosmic origins. We would note for our subcommittee to remember the astrophysics appropriation also supports the Hubble Space Telescope, celebrating its 20th anniversary in space, and also the building of the James Webb telescope.

We look at the field of heliophysics and how the Sun's solar flares affect our lives, including the solar probe for a launch. We note how important that is because solar flares could take down our power grid, and all that we need to know about early warnings and information is there.

#### HUMAN SPACE FLIGHT

As I said, the President retires the shuttle, and we want to work with the subcommittee and with all in Florida and connected to the shuttle for an honorable retirement.

Let us go directly to the area of human space flight. The area of controversy is huge. NASA requests \$2.4 billion for exploration. It is below the 2010 level by \$1.4 billion. That is big. The budget originally said cancel the Constellation program. The President, in going to Florida, elaborated and some say clarified that we are not canceling. He is not recommending the cancellation of Constellation, but rather restructuring it. This is of very, very, very keen interest in this subcommittee.

#### CONSTELLATION

Constellation was to be our way to go to the Moon and to Mars. A crew vehicle made up of Ares the rocket, Orion the crew capsule. The cargo vehicle made up of Ares V and also the Crew Moon Lander.



Now, just let me say what my position is. I need to know more, and that is the purpose of this hearing. And if we need to have more, we are going to do it. Congress needs to know more. We owe it to the American people. We owe it to the taxpayers. And we owe it to the astronauts to be very clear about what we are going to do and how are we going to do it. I need to know more details.

I want to know if this is the program that the Congress and the American people are going to support from one administration to the next. We cannot reinvent NASA every 4 years. Every new President can't have a new NASA agenda. That is the purpose of today's hearings. We are here to get the facts. It is not about finger-pointing. It is about pinpointing.

I have been in contact with the leaders in the space field, including our colleague, Senator Shelby, as well as Bill Nelson, our Commerce Committee authorizer. I outlined a basic set of principles that will guide me in this hearing, and it will guide me as I do the appropriation.

#### SAFETY

First of all, no matter what we do, my No. 1 priority is astronaut safety. We must have a reliable transportation system to protect our astronauts during launch, mission execution, and reentry.

And I want to be sure that we are applying the same safety standards for deep space exploration as we will for low-orbit work. We want to be sure that the astronauts, when they suit up, know that we have cared for them and want to protect them.

#### THE NEED FOR A DESTINATION

Second, we need a destination. NASA has been a mission-driven agency since its creation. Having a clear direction and a clear destination tends to keep us focused on what we need to do, the budget to which we need to adhere, and the involvement of our international partners.

I would hope that whatever we do, to focus on the fact that we do need a balanced space program that includes human exploration, a reliable and safe transportation system for both low-orbit and deep space, robust science to save our science and explore our universe, and aeronautics research to keep our country competitive. The key purpose of the space exploration must always include science and not only be derring-do missions. We also need a plan for whatever we decide for workforce transition.

The retirement of the space shuttle is anticipated to proceed as planned. This causes job dislocation anyway. We don't want to be dismissive of that. We have got to be mindful of that. This is really a big transition. Then, if we are going to cancel or restructure Constellation, it causes major dislocation in a variety of States, all of whom I know will articulate their concerns.

#### CONTRACT TERMINATION

In protecting the astronauts, we also need to protect the taxpayer. This new plan has significant issues with contract termination. We need to be sure that we are not paying for closing down one, or, are we going to be paying down one set of contracts to close

them out, and then paying to start new contracts? It is very complex, and I am puzzled, quite frankly, about how we are going to do it.

We also want to be sure that we do not lose our technology, no matter what the cancellation or transition is, and we do not lose our industrial base.

So we look forward to hearing where we are going to go, how we are going to get there, how we are going to protect the astronauts, and how we are going to protect the taxpayer. We have a lot of questions as we launch this hearing.

I would like to now turn to my colleague, Senator Shelby.

OPENING STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Madam Chairwoman, for having this critical hearing to examine the administration's continually changing plans for the future of human space flight.

The President's new plan, like his old one, shows that NASA's leadership team still does not understand the issues at stake. While the administration may have realized that its initial budget request was a failure, the new plan from the same team still ends this country's human space flight program.

Mr. Administrator, your plan does nothing more than continue the abdication of America's leadership in space. The President's own Augustine Commission highlighted what we all believe, that our human space flight program must be worthy of a great nation. I have read NASA's budget, and I find it to be anything but great.

The President's plan only ensures that for decades to come, the United States will be both subservient to and reliant on other countries for our access to space. Future generations will learn how the Chinese, the Russians, and even the Indians took the reins of human space exploration away from the United States.

This request, I believe, abandons our Nation's only chance to remain the leader in space and instead chooses to set up a welfare program for the commercial space industry. It is a plan, I believe, where the taxpayer subsidizes billionaires to build rockets that NASA hopes one day will allow millionaires, and our own astronauts, to travel to space.

The administration claims that if we build up this so-called commercial rocket industry, the private sector market will magically materialize to produce more expendable launches at a lower cost, earlier than the schedule of Constellation. What NASA and this administration have failed to disclose to the U.S. taxpayer is that NASA has no verifiable data to support their claim.

The head of the Office of Science and Technology Policy, Dr. Holdren, as well as you, Mr. Administrator, have testified that NASA did not conduct independent market research to show that this private launch market even exists.

Let me repeat that. The White House adviser on science and technology policy testified that there was no real research or verification done on the viability of the administration's approach for the commercial market to sustain America's space future. Instead, this administration is relying on information provided by the very people who stand to receive billions in taxpayer subsidies to promote their unproven products.

The primary source the administration can cite is a 2002 Futron study that has proven to be overly optimistic. This study was based on a survey of affluent individuals that predicted 33 commercial passengers would have flown between 2002 and 2010. To date, eight space tourists have gone beyond sub-orbital space.

Former Martin Marietta chief executive Thomas Young testified before Congress that the Air Force, in the 1990s, tried to commercialize their space program. The Air Force then, as NASA is proposing now, ceded top-level management of the national security space program to industry under a contracting approach called Total System Performance Responsibility.

TSPR required Air Force project managers to stand back and let industry have total responsibility of the space systems they created for the U.S. Government. Mr. Young stated, and I will quote, that "the results were devastating, and the adverse impact is still with us today." Those are his words. This misguided program ended up costing the taxpayers billions to correct.

Also in the 1990s, commercial companies made significant investments in evolved expenditure and launch vehicles based on a commercial market that never materialized to support their vehicles. In the end, the Government had to keep this domestic commercial launch provider alive with billions of taxpayers' dollars.

We have made these mistakes before, Mr. Administrator. Albert Einstein said the definition of insanity is doing the same thing over and over again and expecting different results. I believe that is the case here.

With this past experience in mind, where are the recent, truly independent market analysis of the booming commercial sector for delivering people to low-Earth orbit and back? We should make those public and let there be a real debate about whether taxpayers should shoulder the cost of building space rides for millionaires.

The truth is when troubles mount and a commercial rocket market again fails to materialize, the taxpayers, I believe, will be called upon to bail out these companies and their investors, a recurring theme with this administration.

#### SAFETY

Other than the Augustine Commission's cursory examination of safety, there is no evidence that NASA has done any in-depth analysis related to the safety concerns of putting humans on a commercial rocket. I remain steadfast in insisting on safety as the first priority for the space program. Nothing less is acceptable.

And contrary to NASA's position on commercial safety, the Aerospace Safety Advisory Panel, whose sole focus is to ensure that lives are not needlessly lost in our space program, stated in their 2009 report that no commercial manufacturer is currently human rating requirements qualified, despite some claims and beliefs to the contrary.

This is after the 2008 report, written in part by you, Mr. Administrator, declaring that commercial vehicles, I will quote you, "are not proven to be appropriate to transport NASA personnel." I will ask some questions about how you could, in 2008, state that this industry was incapable of safely transporting astronauts, and yet today say just the opposite.

Madam Chairwoman, I find this abrupt change in opinion to be without evidence and highly suspect. NASA's safety experts agree that current commercial vehicles are untested and unworthy of carrying our most valuable assets—our Nation's astronauts.

As a resounding rebuke of the Augustine options and their biased and overly optimistic view of newcomers to commercial space, the Aerospace Safety Advisory Panel reaffirmed what has been known for some time, and I will quote, "To abandon Ares I as a baseline vehicle for an alternative without demonstrated capability nor proven superiority, or even equivalence, is unwise and probably not cost-effective. The ability of any current COTS design to close the gap or even provide an equivalent degree of safety is speculative. Switching from a demonstrated, well-designed, safety-optimized system to one based on nothing more than unsubstantiated claims would seem a poor choice. Before any change is made to another architecture the inherent safety of that approach must be assessed to ensure that it offers a level of safety equal to or greater than the program of record."

#### COMMERCIAL ORBITAL TRANSPORTATION SYSTEM (COTS)

A year ago, I had some very strong criticisms of the COTS program, and those criticisms are just as valid today as they were then.

This request represents nothing more than a commercially led, faith-based space program. Today, the commercial providers that NASA has contracted with cannot even carry the trash back from the space station much less carry humans to or from space safely.

These providers have yet to live up to the promises they have already made to the taxpayer. Not a single rocket or ounce of cargo has been launched since we met last year. Instead of requiring accountability from these companies, the President's budget proposes to reward those failed commercial providers with an additional bailout.

The President's retreat from his initial proposal last week was rolled out in the shadow of the rocket that is the basis of the new commercial vision for the future of human space flight. Yet this visionary company's first foray into rocketry—the Falcon 1—was 4 years delayed in launching a successful rocket. After three failures and a cost escalation of 50 percent, it finally got its rocket off the ground.

The Falcon 9, the very vehicle the President touted a week ago as the future for NASA, is 2 years behind schedule and counting. Yet the President's budget rewards the commercial space industry with an additional \$312 million bailout to deliver on already-signed contracts in the hope that they will actually be able to deliver something someday. This equals a 60 percent cost overrun for an unproven commodity.

Given the current record of repeated failure to deliver on their agreements, the continued schedule delays, and now the cost overruns, I believe that the President canceled the wrong rocket program.

Mr. Administrator, this plan lacks vision, is unrealistic, and jeopardizes our entire human space exploration program. I am as-

tounded by the enthusiasm with which NASA leadership has maligned the years of hard work by your own engineers.

Congress has a responsibility, I believe, to those whom your plan will put in the unemployment line, something your leadership team dismisses as mere collateral damage. However, we do not see it that way. To us, they are people who already have been devoting and maintaining the leadership and heritage of 50 years of space flight.

The jobs that are promised to be created will hardly materialize before the pink slips begin to arrive. Once those highly skilled workers leave, they will likely never come back. Given the way they have been treated so far this year, I would hardly blame them.

Now, you are even attempting to undermine the letter and the spirit of the law as it relates to the current funding of Constellation. Your destructive actions toward the Constellation program will only ensure that members cannot trust you. Mr. Administrator, you are creating an atmosphere where you and your leadership team have become a major impediment, I believe, to moving forward.

Under the administration's plan, NASA, as we know it, will never be the same. Today, NASA is immediately associated with success in spite of insurmountable odds. There is a deeply ingrained respect for what NASA can do because of what NASA has done and is doing today.

If this proposal is the best that we can do as a Nation, then we do not deserve, I believe, the rich heritage of human space flight, which previous generations sacrificed for to make the country's space program what it is—great.

The proposed NASA budget abandons most of Constellation in favor of an unproven commercial option that will devastate any goal the United States has in exploring beyond low-Earth orbit. The President's announcement of his new plan last week merely replaced one visionless plan with another.

It is clear that the administration, and more specifically you, Mr. Administrator, do not believe that American leadership in human space flight is a priority worth fighting for. No matter how many summits, press releases, or parades you conduct, hope is not a strategy. This plan would destroy decades of U.S. space supremacy by pinning our hopes for success on unproven commercial companies. This budget is not a proposal for space exploration worthy of this great Nation.

Thank you.

Senator MIKULSKI. Senator Hatch?

#### STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Well, thank you, Madam Chairwoman, Senator Shelby, Senators Cochran, Bennett, Voinovich, and Hutchison. It is a privilege for me to be with you. I would ask, Madam Chairwoman, that my full statement be placed in the record.

Senator MIKULSKI. Without objection.

[The statement follows:]

## PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Chairwoman Mikulski, Senator Shelby, Senator Bennett, and Members of the Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, thank you for affording me the opportunity to make these brief comments during the subcommittee's hearing on the National Aeronautics and Space Administration's ("NASA") fiscal year 2011 budget request.

For more than 50 years, our Nation has made a commitment to lead the world in space exploration. This was never more eloquently expressed than by President John F. Kennedy when he said: ". . . our leadership in science and industry, our hopes for peace and security, our obligations to ourselves as well as others, all require us to . . . become the world's leading space-faring nation." I believe NASA Administrator, Charlie Bolden, recently echoed this sentiment when he expressed his strong support for a space program that inspires the creation of the technological innovations which are essential to our Nation's future prosperity.

Therefore, I am puzzled by the administration's fiscal year 2011 NASA budget request.

This proposal calls for the termination of Project Constellation, and its associated rocket systems, the Ares I and "heavy-lift" Ares V. As a result, if ratified by Congress, our Nation could capitulate its position as the world leader in space exploration as well as forgo the technological harvest which has historically accompanied such endeavors.

Let me be clear, if Project Constellation is cancelled, our Nation will not, in the near-future, be able to travel beyond low-Earth orbit. This is ironic considering the President's and NASA Administrator Bolden's recent statements that the ultimate objective of our space program is Mars.

To be fair, the President has spoken of choosing a new heavy-lift system by 2015. Yet, in a time of greatly diminished financial resources, we cannot afford to throw away the \$10 billion our Nation has invested in Project Constellation and the Ares systems and then spend billions more to research and develop new heavy-lift technologies. This point is especially germane since the other heavy-lift technologies contemplated may or may not match the capabilities of solid rocket motors.

I believe Neil Armstrong, the first man on the moon, James Lovell, the commander of Apollo 13, and Eugene Cernan, the commander of Apollo 17, said it best. If we follow the administration's plan "we will have lost the many years required to recreate the equivalent of what will be discarded."

This conclusion was echoed by the independent Aerospace Safety Advisory Panel, which in 2009 stated "to abandon Ares I as a baseline vehicle for an alternative without demonstrated capability nor proven superiority, or even equivalence, is unwise and probably not cost-effective."

In other words, an alternative to Project Constellation will take years of additional time and cost billions more.

Some opponents argue Project Constellation is a troubled endeavor. The truth is quite to the contrary. Just last fall, the world witnessed the launch of the Ares I-X rocket from the Kennedy Space Center in a stunning and successful test. In addition, the heavy-lift Ares V is designed to leverage the engineering and technologies used on Ares I. Therefore, one can surmise, in the end, there will be overall savings using this comprehensive approach versus the piecemeal approach proposed by the administration. Together, the Ares system of rockets provides our Nation and our astronauts with the most reliable, most affordable, and safest means of reaching low-Earth orbit and beyond—a fact which NASA itself has affirmed.

Let me emphasize that point. Ares is the safest system. Nothing comes close. The 2005 NASA Exploration Systems Architecture Study, of which Administrator Bolden was a member of the study's independent review team, concluded the Ares system is 10 times safer than the current Space Shuttle. This was reaffirmed by the Aerospace Safety Advisory Panel which stated that "the ability of any current COTS design to close the gap or even provide an equivalent degree of safety is speculative." The Panel also concluded that "switching from a demonstrated, well-designed, safety-optimized system to one based on nothing more than unsubstantiated claims would seem a poor choice."

This only underscores the administration's proposal relies on utilizing unproven private businesses as the means to transport our astronauts to the International Space Station. It also should be noted, many of the companies which are expected to bid for these contracts are start-ups. These new start-ups do not have any experience in carrying humans, or even cargo, into space. In addition, even under these corporations' most optimistic near-term proposals, their systems will not be able to travel beyond low-Earth orbit.

Some have argued, in this difficult fiscal environment, Project Constellation is simply too expensive and should fall victim to the budget ax. Again, this is not the case. The administration's proposed plan actually increases NASA's budget by more than \$6 billion over the next 5 fiscal years. In addition, cancelling the Ares system, and the plans associated with it, will cost the taxpayer an additional \$2.5 billion because of contractual obligations. On top of these costs, since private businesses have never previously developed a low-Earth orbit system to transport humans to the International Space Station or a heavy-lift system to explore deeper into the cosmos, one can naturally hypothesize lengthy delays and expensive cost overruns for this novel venture. It is also not hard to imagine when the inevitable delays and cost overruns occur that these private enterprises will turn to the Government with requests for additional funds.

Project Constellation should also be seen as an investment in our Nation's future economic competitiveness. In fact, studies have shown for every dollar invested in space exploration, seven dollars has been returned to our economy through the development of new technologies and industries. For example: the revolutionary developments in computers, smoke detectors, water filters, portable X-ray machines, Computer-Aided Topography, Magnetic Resonance Imaging technologies, and advanced plastics are a few of the thousands of products which were developed because of the space program. In addition, I learned, just this week, the Boeing Corporation's work on the International Space Station's electrical systems led to the development of the electrical systems for the 787 Dreamliner, which will be a major U.S. export for the foreseeable future.

Congress should also consider the nexus between the Ares system and the ability of our Nation to maintain future strategic deterrent programs. Both the Ares rockets and our land-based Intercontinental Ballistic Missile (ICBM) force use solid-rocket motors. Our Nation will shortly complete the modernization of our ICBM fleet. Since the early 1990s, NASA has served as the backbone of the solid-rocket motor industry, providing stability to offset the often inconsistent production requirements of the military and commercial sector. Therefore, the termination of Ares would cripple the solid-rocket motor industrial base and could push it beyond recovery for this and future generations.

This was one of the primary reasons I authored an amendment which was included in the fiscal year 2008 Defense Authorization Act which required the Department of Defense to conduct a study on the status, capability, viability, and capacity of the solid-rocket industrial base. The report concluded maintaining the solid-rocket industrial base is "essential to meeting national security objectives." The report also stated "delays in the NASA Ares program could have significant negative impact on the large solid-rocket motor prime contractor industrial base and more significantly on the sub-tier supplier base, specifically material suppliers."

Accordingly, I arranged for the inclusion of a second amendment in the fiscal year 2010 Defense Authorization Act. This additional amendment requires the Secretary of Defense to devise a plan to maintain the solid-rocket industrial base in order to sustain currently deployed strategic and missile defense systems and preserve an intellectual and engineering capacity to support the development and production of next-generation rocket motors. I look forward to studying its conclusions when it is published in July of this year.

However, I must admit my surprise upon learning, during a meeting between myself and Administrator Bolden last Friday, that NASA and Department of Defense officials have only recently begun to discuss the future of maintaining the solid-rocket industrial base. Frankly, I do not understand how NASA could have devised its budget request without closely coordinating its proposal with the Department of Defense, especially since the solid rocket industrial base is "essential to meeting national security objectives."

Finally, cancelling Project Constellation will have a profound effect on the employment of thousands of jobs during a period of financial uncertainty. Studies indicate approximately 12,000 jobs will be lost when the Space Shuttle program ends next year and at least another 12,000 will lose their jobs if Project Constellation is terminated. Many of these individuals have unique skills which are not easily transferred to other positions.

Therefore, based upon these facts, I can only reach one conclusion. If Project Constellation is cancelled, our Nation's objective of sending an astronaut to Mars will be replaced with the fleeting hope that one day, some day, we will be able to explore the cosmos again. In addition, our national security could be irretrievably harmed.

Again, Chairwoman Mikulski, Senator Shelby, Senator Bennett and members of the subcommittee, thank you for affording me this opportunity to share my thoughts with the subcommittee.

Senator HATCH. Well, thank you.

I am puzzled. I have to admit I am puzzled by the administration's request. This proposal calls for the termination of Project Constellation and its associated rocket systems, the Ares I.

Senator MIKULSKI. Senator Hatch, we really want to hear every word.

Senator HATCH. Should I move a little closer?

Senator MIKULSKI. Is the microphone on, sir?

Senator HATCH. Yes, it is on. Senator Feinstein always says, "Orrin, quit mumbling." I have got to speak a little louder, I am afraid.

Well, like I say, this proposal calls for the termination of Project Constellation and the associated rocket systems, the Ares I and the heavy-lift Ares V. As a result, if ratified by Congress, our Nation could capitulate our position as the world leader in space exploration, as well as forego the technological harvest which has historically accompanied such endeavors.

Let me be clear, if Project Constellation is canceled, our Nation will not in the near future be able to travel beyond low-Earth orbit. This is ironic considering the President's and NASA Administrator Bolden's recent statements that the ultimate objective of our space program is Mars.

To be fair, the President has spoken of choosing a heavy-lift system by 2015. Yet in a time of greatly diminished financial resources, we cannot afford to throw away the \$10 billion our Nation has invested in Project Constellation and the Ares systems and then spend billions more to research and develop new heavy-lift technologies. This point is especially germane since the other heavy-lift technologies contemplated may or may not match the capabilities of solid rocket motors.

I believe Neil Armstrong, the first man on the Moon, James Lovell, the commander of Apollo 13, and Eugene Cernan, the commander of Apollo 17, said it best. If we follow the administration's plan, "we will have lost the many years required to re-create the equivalent of what will be discarded."

This conclusion was echoed by the independent Aerospace Safety Advisory Panel, which in 2009 stated "to abandon Ares I as a baseline vehicle for an alternative, without demonstrated capability nor proven superiority, or even equivalence, is unwise and probably not cost-effective."

In other words, an alternative to Project Constellation will take years of additional time and cost billions of dollars more.

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Therefore, one can surmise in the end there will be overall savings using this comprehensive approach versus the piecemeal approach proposed by the administration. Together, the Ares system of rockets provides our Nation and our astronauts with the most reliable, most affordable, and safest means of reaching low-Earth orbit and beyond.



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Now, this was reaffirmed by the Aerospace Safety Advisory Panel, which stated, "The ability of any current COTS design to close the gap or even provide an equivalent degree of safety is speculative." The panel also concluded "switching from a demonstrated, well-designed, safety-optimized system to one based on nothing more than unsubstantiated claims would seem a poor choice."

Now this only underscores the administration's proposal that relies on utilizing unproven private businesses as the means to transport our astronauts to the International Space Station. It also should be noted, many of the companies which are expected to bid for these contracts are startups.

These new startups do not have any experience in carrying humans or even cargo into space. In addition, even under these corporations' most optimistic near-term proposals, their systems will not be able to travel beyond low-Earth orbit.

Some have argued in this difficult fiscal environment Project Constellation is simply too expensive and should fall victim to the budget ax. Again, this is not the case. The administration's proposed plan actually increases NASA's budget by more than \$6 billion over the next 5 fiscal years. In addition, canceling the Ares system and the plans associated with it will cost the taxpayer an additional \$2.5 billion because of contractual obligations.

On top of these costs, since private businesses have never previously developed a low-Earth orbit system to transport humans to the International Space Station or a heavy-lift system to explore deeper into the cosmos, one can naturally hypothesize lengthy delays and expensive cost overruns for this novel venture. It is also not hard to imagine when the inevitable delays and cost overruns occur, that these private enterprises will turn to the Government with requests for additional funds.

Project Constellation should also be seen as an investment in our Nation's future economic competitiveness. In fact, studies have shown for every dollar invested in space exploration, \$7 has been returned to our economy through the development of new technologies and industries.

Congress should also consider the nexus between the Ares system and the ability of our Nation to maintain future strategic deterrent programs. Both the Ares rockets and our land-based intercontinental ballistic missile force use solid rocket motors. Our Nation will shortly complete the modernization of our ICBM fleet.

Now, since the early 1990s, NASA has served as the backbone of the solid rocket motor industry, providing stability to offset the often inconsistent production requirements of the military and commercial sector. Therefore, the termination of Ares would cripple the solid rocket motor industrial base and could push it beyond recovery for this and future generations.

Let me just say again, Madam Chairwoman and all of the other Senators on this illustrious subcommittee, I just want to thank you for affording me the privilege. I had much more in my original

statement, but I just wanted to get some of these ideas across. And I want to thank you very much for affording me this privilege to appear before your very important subcommittee.

Senator MIKULSKI. Well, thank you very much, Senator Hatch.

You know, your support of science is well known within the institution. We have worked well together on the FDA. We were happy to have you.

Also, I am devoted to the fact that Senator Jake Garn, another man of Utah, once chaired this subcommittee. He was a good friend and a mentor to me when I got started. I have conveyed to Senator Garn, and I want to say to the two Senators from Utah, if Senator Garn would also like to submit testimony or so on, I would be enthusiastic about welcoming it and look forward to welcoming him.

[The statement follows:]

PREPARED STATEMENT OF HON. JAKE GARN, FORMER SENATOR FROM UTAH

Madam Chair, and distinguished members of the subcommittee, former colleagues and, in the case of Senator Bennett, my successor in the seat previously held with such great distinction by his father, Senator Wallace Bennett. I consider it a privilege to be asked to submit testimony to the subcommittee regarding the very serious issues facing the Congress with regard to the fiscal year 2011 budget request for NASA.

I am well aware of the challenges you face, especially when a requested budget and changing priorities present very real challenges and would bring about changes that not all members can agree to and represent a major departure from current direction and programs—without a compelling case having been made for those changes.

Your challenge is even greater, when dealing with human space flight issues, in the face of the current economic situation, from which you and the country are still struggling to emerge, because human space flight—or any other programs NASA undertakes, whether space science, earth and climate observation, or advanced aeronautics research and technology—are not cheap.

Possibly more than ever before, we are being forced to decide whether these activities are of real and material value to the country, or just extravagant and exciting things that, in an era of scarce resources, the country is better setting aside. That, really, is the underlying issue that I believe the subcommittee and the Congress—and the American people—must come to grips with and which will decide, in the end, whether we stay in the business of space or not. Especially in the business of human space exploration.

Even before I left the Senate in 1992, after my flight aboard the Space Shuttle Discovery in April of 1985, I was asked to make far more speeches and appearances than ever before in my Senate career. I'm sure it will not surprise any of the members that, in the vast majority of those appearances, I didn't get a lot of questions about the nuances and details of the appropriations process or specific issues before the subcommittee or the Banking Committee, but I did—and still do—get *many* questions about what it was like to go into space, and view the Earth from that vantage point. Especially with the younger audiences and students. I know first-hand the extraordinary catalyst that space exploration—and especially human space exploration—has for exciting and inspiring young people to pursue studies and careers in sciences, technology, engineering and mathematics. I think that is something that must not be forgotten as you wrestle with the challenges of establishing the proper levels of funding for NASA and the programs you will support.

I am one who absolutely believes that our Nation would not have become a leader in technology and innovation without the extra catalyst provided by the space program. In recent years, we have, as a Nation, lost sight of that. As the future of the space program has seemed uncertain, after the Columbia accident, and we have begun to plan the end of space shuttle operations and even the premature, in my view, termination of the space station in 2015 that had been the plan up to this point, we have begun to lose the drawing power of space. I believe that has been reflected in the findings of the “Gathering Storm” report, prepared several years ago under the leadership of Norm Augustine.

It is somewhat ironic that Norm was asked to chair the Human Space Flight Review Committee last year to examine options for moving our human space flight programs into a more positive direction which, if we are able to do so as a Nation,

will enhance our competitive posture once again. And if we fail to do so, we will make the problems identified in the “Gathering Storm” report even deeper and even more damaging to our long-term economic stability.

That is why I am so concerned about the Obama administration’s response to the Augustine panel report. The administration seemed to ignore the most salient point of the report—that a space program “worthy of a great Nation” was one that needed adequate and sustained funding levels beyond those that had been provided over the past 5 years since the announcement of the Vision for Exploration by President Bush. The committee made it clear that the Constellation program was experiencing many of the problems that it was experiencing because the funding levels promised in the projections made in the 2005 budget request were not only not met, they were reduced by several billions of dollars, cumulatively.

I know that you know those details. And I know, too, that the allocations made available to the subcommittees on appropriations every year have their genesis in the budget resolution, which is largely based on the budget request. And the Bush administration failed to request the amounts it had originally projected to support the Vision for Exploration. The Bush administration also failed to request a single dime of funding to reimburse NASA for the cost of re-certifying the shuttle program for its return to flight after Columbia. As you know, Madame Chair, that was more than \$2.5 billion that NASA had to absorb within an essentially flat budget. You and Senator Hutchison were successful in adding a down-payment of a little over \$1 billion to reimburse NASA for those costs, and it was unanimously adopted by the Senate—a remarkable achievement. Only to have it taken out in subsequent negotiations between the House and the White House over an Omnibus appropriations bill—because the White House didn’t support it.

I remind you this is the Bush administration I am talking about. MY party was in control. But were they, in reality?

After the President’s Vision for Exploration announcement, the implementation of that plan was left to be managed and controlled not by NASA, but by the nameless, faceless, green eye-shaded bureaucrats in the Office of Management and Budget. The budget drove the policy after that, and the budget drove the program to the edge of a cliff. Not just Constellation, but the entire U.S. human space flight program. Because the budget plan included insisting on stopping the shuttle at the end of fiscal year 2010—whether its mission was accomplished or not. It didn’t start out that way in the President’s announcement. The announcement said the shuttle would retire “after the completion of the space station—which was expected to be in 2010.” But within a year, in the next budget cycle, that qualifier went away and fiscal year 2010 became a hard, unequivocal date. Why? Because the budgeteers’ plan was to take the money from the shuttle and move it to Constellation which was expected, by then, to be ready to “bend metal” and move to its next phase of development. That’s the reason for the shuttle retirement: to meet the demands of a budget plan. It’s not about safety, which I’ll refer to in more detail in a moment; it’s about money.

And the budgeteers weren’t satisfied with just raiding the Shuttle pot. They chose to take the space station funding, as well. They told the Congress, when asked, that funding of the space station beyond 2015 was “beyond the budget planning horizon.” But in reality they planned to use the space station operating funds to take Constellation to the next level of development; the manufacturing of the heavy-lift vehicle. That way they could still, they reasoned, “support” Constellation and the Vision, but not have to increase the top-line for NASA funding. They didn’t care about the scientists and researchers that had planned to conduct research on the space station, once it was completed. They had already thrown most of them overboard in 2005, when they decreed that the station would be used only for “exploration-related” research. A group of over 900 principal investigators—and their associated students and universities and organizations—was reduced to no more than 30. It took the 2005 NASA Authorization Act to even provide them a life-line, by requiring that at least 15 percent of all ISS research would be in non-exploration-related disciplines.

The budgeteers also didn’t care about what our international partners thought about having only a 5 year period of full operations for scientific research, instead of the 10 to 15 they had anticipated when they signed on to the partnership. Those partners have been wondering for the past 2 years, at the least, what the future held for the ISS, because they knew that NASA was not able to make concrete plans about the U.S. participation without the permission of the budgeteers.

National Space Policy and International Relations with our ISS partners have been driven by the Office of Management and Budget. Not by the policy process at the White House, which allowed that to happen by, at the very least, benign neglect. Not by the Congress, which, despite overwhelmingly passing authorization bills

since 2005 which endorsed the Exploration program at funding levels needed to actually have a chance at succeeding, never received a budget request that matched those levels. The Congress could only have increased those funds to necessary levels by taking the money from somewhere else within NASA or finding an off-set elsewhere within the allocations, and we all know how difficult that is to accomplish.

These are the failures of the prior administration to follow up on the Policy of the Vision for Exploration with the budget to make it happen. The question now is whether the current administration is going to do the same.

The good news is that, at least for the space station, they have agreed with the Augustine Report observation that continuing its support and operations to at least 2020 is the right and smart thing to do. It simply makes no sense to invest something like \$100 billion to build and operate it and then not provide the opportunity for scientists to finally use it as long as possible, now that is nearly complete.

What does NOT make sense to me, or to many people I've spoken to, is to cut the ribbon on the completed space station and then unilaterally and arbitrarily remove—for no more than budgetary reasons, again—the only independent means the United States has to get there: the space shuttle.

Not only that, the Obama administration proposal is to rely exclusively, for domestic capability to reach the space station, on a commercial capability that has, as yet, not been adequately defined. And even if commercial is broadly defined to include the larger, established companies, like Boeing, ATK, Lockheed Martin, United Launch Alliance, etc., as I think it should be, as well as the newer, more "entrepreneurial" style companies like SpaceX or the longer-established Orbital Sciences, none of them could conceivably provide a proven, human-rated crew launch capability within 3 or 4 years and likely even longer.

In the meantime, we are left with only one means of access to the newly-completed space station: Russian Soyuz vehicles, for which we must pay an average—today—of \$56 million per seat. And remember, we also are obligated to pay for at least two of those seats per year for our European, Japanese and Canadian partners, under the terms of the intergovernmental agreement that established the partnership.

And there is one more major failing of the administration's plan. That is that there is no consideration given, anywhere that I can see, to taking steps to ensure the space station can actually remain a viable, healthy and functional spacecraft through the year 2020. In 2005, there were 28 remaining space shuttle missions planned to the ISS. It was anticipated they would not only complete the assembly, but continue to be available to bring down equipment to be refurbished and returned to the space station, as well as exchange crews without relying on Soyuz, except for emergency crew rescue capability, and bring scientific samples and equipment back to earth for analysis and upgrades. But, once again, the masters of the budget in OMB decreed that NASA could only plan to fly 17 of those missions—plus one additional for making a Hubble servicing mission.

The result was a scramble to make sure that the 17 authorized flights were loaded with essential spare and replacement parts to ensure the station could be maintained at full capacity. But the choices made in juggling the payloads to provide that assurance were based on an internal planning date for an end-of-life for the station in 2015. Now the plan is to continue its life to at least 2020, but without the benefit of the servicing capabilities of the space shuttle which, for large and heavy items, can only be provided by the space shuttle.

Senator Hutchison has seen this problem clearly, and has raised it in speeches and statements in hearings of the Commerce Committee, and here as a member of this subcommittee. I completely agree with her that a new assessment must be made, immediately, of what the potential equipment servicing and replacement and down-mass requirements are expected to be from 2015 to at least 2020, and determine whether the space shuttle must be available, in the short term, to deliver essential spares before it is retired. That is the only reasonable and responsible course, if one is truly serious about extending the ISS life-time. Without that analysis, there is simply no way to know if the promise of 2020 operations is only an empty gesture, with more risk than many potential researchers—or investors in commercial crew and even cargo launch development—will be willing to expose their time and resources to.

Let me repeat the last part of that, since the administration has placed such extreme reliance on the commercial sector to develop new cargo and crew launch capabilities. Without the space station as a viable, fully functional destination, there is no business case for those companies to develop their launch and delivery systems. None. At least in the crucial high-risk period of actually developing those systems. No space station equals no NASA anchor contracts for services, and no basis for ensuring investors that they should ante up the necessary matching capital to make

those efforts succeed. How the administration could adopt and propose a course that leaves the only active U.S. human spaceflight program remaining after the Shuttle, for the next 4 to 7 years, exposed to that sort of risk is simply inconceivable to me. It probably flies in the face of the painful lessons we are supposed to have learned in the past 2 years about secure and responsible management and oversight of investment practices.

That, I believe, is perhaps the major Achilles Heel of the President's plan. They can talk all they want about plans to increase utilization of the space station, and project extra hundreds of millions over time to support that, but their failure to have a plan to protect those opportunities makes that talk nothing more than empty promises. And there appears to be no interest on the part of the administration to address it in the short term through the only means available to do so: a plan for the potential continued availability of the space shuttle.

As I said before, this decision is purely budgetary, and not one—as many have tried to portray it—a matter of safety. Because the OMB has been successful in creating and promoting the Big Lie that there simply is not, cannot, and never will be an increase in NASA funding levels, even those in the aerospace industrial and support communities who know what it necessary to provide assured sustainability for the space station have not protested the shuttle termination, because they fear their opportunities for participation in the movement beyond low-earth orbit will be jeopardized by the lack of the “cash cow” represented by the end of the shuttle program. Even companies like Boeing, ATK, Lockheed-Martin, who benefit from both ongoing shuttle and station operations, are afraid or unwilling to support shuttle extension of ANY kind, for fear of having their Constellation and exploration contracts reduced and that program stretched out to the point where it makes no more sense from a cost and schedule stand-point. You can't blame them, since no one in the White House or so far a majority in the Congress, is willing to step up to the plate and demand that this Nation provide the level of funding that is absolutely necessary to secure our leadership role in space—or even our role as a second-rate participant in the community of space faring nations.

I don't need votes from ATK employees in Utah any more, so I am not advocating alternatives to the Obama plan in order to ensure their corporate interests. I am doing so because it is the right thing, I believe, for this Nation to not abandon all of the investments made in the Constellation program, and to fail to continue the capability to operate shuttles in support of the space station—even at a greatly reduced flight rate, and therefore at a greatly reduced annual cost.

I have referred frequently to the space station. As you recall, Madam Chair, in our early days working together on the subcommittee, we spoke a great deal about human space flight, and the space station, back in the days when our colleague, Senator Dale Bumpers, was actively trying to stop that program. You came to have a greater appreciation for the scientific potential of the station. Science and research has always been an important value to you. We joined together in efforts to defeat those early attempts to kill the station, and you continued that in the years after I left the Senate. In 2005, under Senator Hutchison's leadership of the Science and Space Subcommittee of Commerce, the ISS was designated as a national laboratory. I know that you were there when the Memorandum of Understanding was signed between NASA and the National Institutes of Health, setting the stage for their active use of the unique qualities of the microgravity environment to do a host of research—important to the health and well-being of people all over the world. I know the USDA research programs have signed a similar MOU, and announcements of opportunity for research have been issued—with more to follow. If you haven't had a briefing from NIH lately, I encourage you to invite Dr. Stephen Katz to come in and fill you in on the exciting potential they see.

I know, too, that you are deeply concerned about ensuring the safety of our astronauts, and that you are seeking to work closely with the authorizing committees, and Senators Nelson, Vitter and Hutchison, in making sure that safety is of the highest priority in our human spaceflight activities. I applaud all of that, and encourage you to continue those efforts.

I believe Senator Hutchison has established a strong working relationship with Democrat House counterparts in developing and introducing a Human Spaceflight Assurance and Enhancement Act, on a bipartisan and bicameral basis. That kind of approach is the best way for this problem to be addressed. Space exploration has always been a bipartisan effort, and it should continue to be so. The concerns I have and the current debate about the Obama plan is not about political expediency. It is about a way to preserve American leadership, for all Americans to receive the benefits of space exploration in their daily lives, right here on Earth.

Let me conclude by focusing for a moment on the matter of safety, as it relates to the shuttle, the Soyuz, and to any of the planned or hoped for developments in

finding replacements to the shuttle for sending humans into space to realize the science potential of the space station and to prepare to move beyond low-earth orbit to new and exciting destinations.

If someone tells you that the space shuttle is “too unsafe to fly” they are either very poorly informed or deliberately deceitful.

If someone else tells you that the space shuttle is “safe” to fly, they are either very poorly informed or deliberately deceitful.

I believe both statements to be true. And not only of the space shuttle, but of any human spaceflight vehicle. That creates an inescapable conclusion that I believe applies now—and likely will always apply to human space flight vehicles: they will never be completely safe and their “relative” safety will always depend on the question of “compared to what?”

In discussions about the shuttle replacement vehicle options, it is often argued that those vehicles will be “safer” than the shuttle, and that is based primarily on two arguments. One, that they will be simpler and less complex vehicles and two, that they will have a crew escape system for getting away from an errant or exploding launcher during ascent. It seems “logical” that that can be described as a “safer” system. On the other hand, regardless of how a spacecraft gets into orbit, it is necessary for it to return to Earth for a successful mission.

The current plan is to use the Russian Soyuz spacecraft for both ascent and descent for the 5 to 7 years between the last planned shuttle flight and the first manned TEST flight of a new vehicle, whether Government-developed or commercially-developed. Not only will we be setting the clock back to the initiation of a new and un-proven system we “hope” will work because we have paper designs and probabilistic risk assessments that say they “should.” But remember Norm Augustine’s comment about never flying on an aircraft with a tail number of less than 10. New systems inevitably have a potential high rate of “infant mortality” for the vehicles in their testing stages.

In the meantime, while waiting for those systems to be “proven,” we will be voluntarily relying on the Soyuz system, about which we have little insight into its production and maintenance standards or detailed component designs, and which has no “escape system” during re-entry. Furthermore, it has a record of having lost two crews during re-entry—that we know of. Not only that, two of its last six flights have experienced still-unexplained “anomalies” that caused the re-entry profile to be “ballistic” and which resulted in dangerous gravity forces being applied to the crews and, if steeper and more uncontrolled, could have led to the serious injury or, more likely, death of the three occupants. Imagine the situation if that were to happen under the current plan. It would mean that we would then be in a position where six crew members would still be aboard the space station and their ONLY way back to earth, in an emergency, would be on two vehicles identical to the one that would have just “crashed” and injured or killed their three recently-departed crew mates.

And again, why will this be the case? Because the budget-masters in the bowels of the White House decreed that the Nation simply could not afford to continue flying a proven system, that has been actually made safer than ever before as a result of the \$3 billion invested in redesign, modifications, recertification of systems, and improved processing techniques after the Columbia accident. How does any of this make sense for the Nation that has been the leader in human spaceflight for the past 50-plus years?

Let’s remember, too, how we established that leadership. We began by launching men with names like Shepard, Grissom, Carpenter, Glenn, and Cooper, on vehicles that were converted ballistic missiles, and which in fact had seen demonstrated failure rates exceeding those of either Soyuz or the Shuttle. Yet we launched them and held our collective breath, and were lucky enough not to lose any of them on launch. We came close to losing some of them during flight and upon re-entry, like John Glenn whose heat shield may or may not have been damaged and whose retro-rock- et pack was kept aboard during re-entry to hopefully hold it in place, but itself created a dangerous and uncertain re-entry profile. We had a Gemini spacecraft careen wildly out of control on orbit, until Neil Armstrong managed to get it back under control. And of course, later we had the crew of Apollo 13 battle against all odds to survive a circuit of the moon and return to Earth long enough to make a barely successful re-entry based on the sheer skill—and a lot of luck—of their crew and the innovative and determined supporting cast on the ground.

Human spaceflight, in reality, is no “safer” today than it was in those early days. We are just better equipped and experienced to handle the risks presented by the speeds and stresses needed to escape Earth’s gravity. Today, that skill and experience is reflected wholly in the space shuttle program and the people who prepare the shuttles to fly, operate them in space, and fly them back to Earth. We have now learned not only how to avoid or at least reduce the kind of ascent damage that

doomed Columbia, but we've shown we can closely inspect the thermal protection system and vehicle structures in flight and, if necessary repair them on orbit, none of which was possible before Columbia. And if the vehicle is structurally sound upon re-entry, nothing else in existence has the resiliency, maneuverability and capability to adapt to the sub-space flight environment that the orbiters have, to ensure a safe re-entry and landing.

Despite all of that, we seem intent on pressing hard—and possibly dangerously hard—to meet a schedule to rapidly fly out the remaining five shuttle missions in as short a time as possible—precisely the kind of pressure that was cited as a significant contributor to both the Challenger and Columbia accidents. And then we can rush to shut them down and lose the skilled workforce that maintains, assembles and operates them, creating a surge in unemployment within a key sector of the country's technical industry, where we are already facing major competitive challenges from abroad, and eliminating thousands of the very kinds of jobs that would otherwise draw more and more students into the study of the critical areas of science, technology, engineering and mathematics! And again, why are we going down this path? Because we can't "afford" to sustain the most magnificent space flying system ever developed while at the same time developing its successor systems?

How can anyone believe it makes sense to follow this plan for purely budgetary reasons—when we have just spent close to a trillion dollars on short-term relief on efforts that we will never really know whether they kept the Nation from going over an economic cliff or not? The Nation's space programs—led by the excitement and challenges of the human space flight program—are known to have been the most consistent and effective "engine of excellence" in technology, innovations and science for the past 50 years . . . the question should be: How can we afford not to fully support them and ensure that they remain indisputable factors in driving our Nation's technical, industrial and scientific excellence, securing our competitive position, and sustaining our global leadership?

Despite what I believe is the compelling logic suggesting we reconsider the decision to terminate the space shuttle at the end of the current manifest, the administration has chosen to hide behind the Bush administration mistaken plan—driven by OMB—to terminate the Shuttle program on, or close to, a date certain. But let me remind you just why they cannot credibly pretend that an irreversible decision was made that they are simply implementing. In the 2008 NASA Authorization bill, enacted in October of that year—before the election—there was language written specifically to preserve the option of some degree of continued shuttle flights for the President—whoever it was—until at least the end of April 2009. NASA was directed to take no action before that date which might preclude continuing shuttle operations. NASA insisted right up until the expiration of that provision that they were in compliance, 4 months into the current administration.

When the fiscal year 2010 budget was released the following week, it established the Augustine Panel, as mentioned above, to review options for the future direction of U.S. human spaceflight. Members of Congress encouraged NASA—and were assured by NASA that it was the case—that the option of continued shuttle operations would not be lost during the period of the Augustine review. In fact, NASA briefed the Augustine panel on a range of options for extended shuttle flights for 2, 3, and 5 year periods, and raised no concerns about it being impossible to do. And, on the basis of that information, one of the options provided to the President was to continue shuttle flights until 2015. So the option to continue shuttle operations was available to President Obama, and he cannot now credibly claim that it was a decision set in stone 5 or 6 years previously. He has chosen not to continue those operations, and so that decision—and the consequences that may follow from it, are, and will always be, his responsibility. That is simply a fact. And the Congress, even today, has that option open to them, and they, too, will own the consequences of allowing that decision to go unreviewed, and unmodified.

I believe I have stated why the need to reconsider the wisdom of that choice is something this subcommittee and the Congress as a whole, must seriously address. I strongly support Senator Hutchison's efforts to ensure that a review of space station requirements is conducted and an informed decision made before the only capable and proven system of human spaceflight this country has is lost by default and a failure to accept responsibility for the results.

That decision must not be driven by fear of another possible failure. That same fear could easily be the reason for backing away from any future crew launch system, because whatever the mathematical risk calculations one can apply, based as much on theory as experience, will be at the mercy of the incredible forces necessary to propel humans into space. The human errors that can creep into the most careful and sound engineering designs, manufacturing processes and launch preparations will always be there, to one degree or another.

Those who fly aboard the shuttle, the Soyuz, or, I'm sure, the Shenzhou, know that reality. But every single one of them is a volunteer, as I was, and as Senator Bill Nelson was.

I will never forget the experience, just under a year after I flew aboard the space Shuttle Discovery, when I flew down to the Kennedy Space Center with John Glenn and then-Vice President Bush, to meet with the families of the Challenger crew, just hours after that tragic loss. We walked into the room where the family members were gathered and the first thing June Scobee, the wife of Challenger's Commander Dick Scobee, said to us in a strong, determined voice and speaking for all those grieving family members, was that we must make sure the shuttle was not cancelled; that it would be returned to flight and that the dream of those brave crew members must be kept alive.

After the Columbia accident in 2003, there was a ceremony at the Space Mirror Memorial located at the Visitor's Center at the Kennedy Space Center to enter the names of Columbia's crew members to that large mirror. Dr. John Clark, husband of Laurel Clark, who was lost as a member of Columbia's crew, spoke for the families on that occasion. He said that despite the risks, America must remain a space faring nation and not become a space fearing nation.

Madam Chair, I know you feel strongly that safety is the number one priority. And no stone should be left unturned in understanding risks, identifying ways to mitigate them, and continuously improving our launch systems and spacecraft designs. But at some point, if we are to remain a space faring nation, and keep the dream of human spaceflight alive, and honor the sacrifice of those who gave their lives in its advancement, and for our future generations, we need to find the will and the commitment as a Congress, and as a nation, to "Go for launch."

Senator HATCH. Well, thank you. He will want to do that.

Senator MIKULSKI. Yes, and I would welcome that, and I would welcome any conversations with him.

Senator HATCH. Well, you have been great. I really appreciate it, and I appreciate every one of you on this panel. Thank you so much.

#### INTRODUCTION OF ADMINISTRATOR BOLDEN

Senator MIKULSKI. You are welcome.

I am going to call up Administrator Bolden to present the administration's testimony. Administrator Bolden is really also General Bolden, who served in the Marine Corps with a great deal of distinction, a graduate of the Naval Academy like John McCain, a Marine helicopter pilot who went on to be an astronaut in the Astronaut Hall of Fame. So we look forward to his testimony.

I want to remind members that we have a two-tier hearing, that after Administrator Bolden and questions from our colleagues, we will also then hear from John Frost of the Aerospace Advisory Committee, and I know this committee's deep commitment.

Senator Bennett, I understand you have a time challenge. I would like for Administrator Bolden to present his testimony. Then let us work out how we can accommodate everyone with the greatest courtesy, but robust questioning.

Administrator Bolden?

#### STATEMENT OF HON. CHARLES F. BOLDEN, JR.

Administrator BOLDEN. Madam Chair and members of the subcommittee, thank you for the opportunity to discuss the President's fiscal year 2011 budget request for NASA. I am incredibly grateful for the support and guidance of this subcommittee, and I look forward to working with you on consideration of the President's bold new direction for the agency.



All of us at NASA were honored to host the President one week ago at the Kennedy Space Center, where he said, and I quote, "I am 100 percent committed to the mission of NASA and its future because broadening our capabilities in space will continue to serve our society in ways we can scarcely imagine, because exploration will once more inspire wonder in a new generation, sparking passions, launching careers. And because, ultimately, if we fail to press forward in the pursuit of discovery, we are ceding our future."

Since the introduction of the budget, many have asked what is the destination for human space flight beyond low-Earth orbit under the President's plan? As the President made very clear last Thursday, NASA's deep space exploration efforts will include crude test flights early next decade of vehicles for human exploration beyond low-Earth orbit, a human mission to an asteroid by 2025, and a human mission to orbit Mars and return safely to Earth by the 2030s.

We can and must identify the missing capabilities needed for such a mission or such a suite of missions and use them to help define many of the goals of our emerging technology development. The right investments in technology will allow us to map out a realistic path to this destination that will continue to inspire generations of school children, just as it inspired me many years ago growing up in Columbia, South Carolina, and watching Buck Rogers go to Mars with ease each week from my seat in the balcony of the Carolina Theater.

#### FISCAL YEAR 2011 BUDGET REQUEST

The President's fiscal year 2011 budget request for NASA is \$19 billion, as you have mentioned, including an increase of \$276 million over the enacted 2010 level. Longer term, I am pleased that the budget commits to an increased investment of \$6 billion in NASA science, aeronautics, and enabling technologies over the next 5 years compared with last year's plan. All of us at NASA appreciate the President making NASA such a high priority at a time when budget realities dictate reductions and freezes for other worthwhile programs.

As we celebrate the 40th anniversary of Earth Day today, I want to note that the proposed budget supports an enhanced, robust program of Earth science research and observation. Earth observation from space produces the critical data sets we need to understand our changing planet. At the same time, we will continue our robust efforts to observe the rest of the universe through missions like the Hubble telescope and the Solar Dynamics Observatory, for which we released its first stunning images of the Sun yesterday.

With the President's new vision, the NASA budget will invest much more heavily on technology, research, and development than recent NASA budgets. This will foster new technological approaches, standards, and capabilities that are critical to enable next-generation space flight, Earth sensing, and aeronautics capabilities. These investments will produce additional opportunities for U.S. industry and spur new businesses such as a recently announced partnership between NASA and General Motors to build an advanced dexterous humanoid robot, R2.

## CONSTELLATION PROGRAM

As the Constellation program is transitioned in an orderly manner, I want to thank all of the NASA employees and contractors who have worked so hard on the program. Their commitment has brought great value to the agency and to our Nation, and they will continue to play a pivotal role in NASA's future. Many of the things NASA has learned from the Constellation program will be critical as the agency moves forward, especially as we restructure the Orion project as a crew escape vehicle and incremental test crew vehicle for missions beyond low-Earth orbit.

However, as the Augustine Committee concluded, the overall human space flight program is on an unsustainable trajectory. If we continue on our current course, we will have to make even deeper cuts to the other parts of NASA's budget, terminating support of the International Space Station early and reducing our science and aeronautics efforts.

The President's proposal to transition Constellation enables us to present a 2011 budget that includes the flagship technology demonstration and development program that allows us with our international and commercial partners and other Government entities to demonstrate critical technologies; automated autonomous rendezvous and docking and closed-loop life support systems; heavy-lift research and development that will investigate a broad scope of R&D activities to support development, test, and ultimately flight of a heavy-lift launch vehicle sooner than projected for the Constellation program as assessed by the Augustine Committee.

As the President committed, we will decide on the right heavy-lift vehicle no later than 2015; robotic precursor missions to multiple destinations in the solar system in support of future human exploration including missions to the Moon, Mars and its moons, Lagrange points, and nearby asteroids; significant investments for the development of commercial crew and further cargo capabilities; in concert with our international partners, extension of the utilization of the International Space Station to 2020 and beyond; pursuit of cross-cutting space technology capabilities led by the newly established Office of the Chief Technologist to spawn game-changing innovations to make space travel more affordable and sustainable; climate change research and observations which will enable NASA to substantially accelerate and expand its Earth science capabilities, including a replacement for the Orbiting Carbon Observatory; aeronautics R&D, including critical areas of next-generation air transportation system or NextGen, green aviation, and safe integration of unmanned aircraft systems into national air space; education initiatives, including the Summer of Innovation pilot program to inspire middle school students and better equip their teachers for improved classroom performance in STEM-related courses.

We understand that many concerns are being expressed about this budget, but I believe it is the right vision for NASA. I look forward to continued discussion with you and our authorizers about your concerns and how we might solve them. I want to acknowledge to the subcommittee the subcommittee's concerns that details such as our justification documents were slow in reaching you. I

apologize and ask for your continued patience as we finalize the details of this historic change in NASA's direction.

Americans and people worldwide have turned to NASA for inspiration throughout our history. Our work gives people an opportunity to imagine what is barely possible, and we at NASA get to turn their dreams into real achievements for all humankind through the missions we execute. This budget gives NASA a road map to even more historic achievements as it spurs innovation, employs Americans in exciting jobs, and encourages people around the world.

PREPARED STATEMENT

Madam Chair, thank you again for your support and that of this subcommittee. I would be pleased to respond to any questions from you or other members.

[The statement follows:]

PREPARED STATEMENT OF HON. CHARLES F. BOLDEN, JR.

Madam Chair and members of the subcommittee, thank you for the opportunity to appear today to discuss the President's fiscal year 2011 budget request for NASA. NASA is grateful for the support and guidance received from this subcommittee through the years and looks forward to working with you on enactment of the President's bold new direction.

The President's fiscal year 2011 budget request for NASA is \$19.0 billion, which represents an increase of \$276.0 million above the amount provided for the agency in the fiscal year 2010 Consolidated Appropriations Act (Pub. L. 111-117), and an increased investment of \$6.0 billion in NASA science, aeronautics, human spaceflight and enabling space technologies over the next 5 years compared with last year's budget plan. Enclosure 1 displays the details of the President's fiscal year 2011 budget request for NASA.

Before I discuss the details of the NASA budget request, I would like to talk in general about the President's new course for human exploration of space. With this budget, the United States has positioned itself to continue our space leadership for years to come.

The President's fiscal year 2011 budget request is good for NASA because it sets the agency on a sustainable path that is tightly linked to our Nation's interests. One measure of this is that it increases the agency's top-line, in a time when many agencies have been flat or taken a cut. Even more, it reconnects NASA to the Nation's priorities—creating new high-tech jobs, driving technological innovation, and advancing space and climate science research. It puts the agency back on track to being the big-picture innovator that carries the Nation forward on a tide of technological development that creates our future growth. We should make no mistake that these are the drivers for NASA's proposed budget increase of \$6 billion dollars over the next 5 years.

At the highest level, the President and his staff, as well as my NASA senior leadership team, closely reviewed the Augustine Committee report, and we came to the same conclusion as the Committee: The Constellation program was on an unsustainable trajectory. And if we continue on that course, at best we would end up flying a handful of astronauts to the moon sometime after 2030. But to accomplish that task, we would have to make even deeper cuts to the other parts of NASA's budget, terminating support of the International Space Station (ISS) early and reducing our science and aeronautics efforts. Further, we would have no funding to advance the state of the art in any of the technology areas that we need to enable us to do new things in space, such as lowering the cost of access to space and developing closed-loop life support, advanced propulsion technology, and radiation protection. The President recognized that what was truly needed for beyond LEO exploration was game-changing technologies; making the fundamental investments that will provide the foundation for the next half-century of American leadership in space exploration. In doing so, the President put forward what I believe to be the most authentically visionary policy for real human space exploration that we have ever had. At the same time, under the new plan, we will ensure continuous American presence in space on the ISS throughout this entire decade, re-establish a robust and competitive American launch industry, start a major heavy lift R&D

program years earlier, and build a real technological foundation for sustainable, beyond-LEO exploration of our moon, near-Earth asteroids, Lagrange points, and, ultimately, Mars.

Now let me turn to describe the fiscal year 2011 NASA budget request in detail.

#### HIGHLIGHTS OF THE FISCAL YEAR 2011 BUDGET REQUEST

The President has laid out a bold new path for NASA to become an engine of innovation, with an ambitious new space program that includes and inspires people around the world. Beginning in fiscal year 2011, the United States will pursue a more sustainable and affordable approach to human space exploration through the development of transformative technologies and systems. As the Constellation Program is ended in an orderly manner, NASA will encourage the development of commercial human spaceflight vehicles to safely access low-Earth orbit and will develop new technologies that will lay the foundation for a more exciting, efficient and robust U.S. human exploration of the solar system than we are currently capable of, while further strengthening the skills of our workforce and our Nation in challenging technology areas. NASA will also invest increased resources in climate change research and observations; aeronautics research and development (R&D), including green aviation; space technology development of benefit across the entire space sector; and education with an emphasis on Science, Technology, Engineering and Mathematics (STEM) learning.

Here is a broad outline of the fiscal year 2011 budget plan followed by more details. In fiscal year 2011, NASA will undertake:

- Transformative technology development and demonstrations to pursue new approaches to human spaceflight exploration with more sustainable and advanced capabilities that will allow Americans to explore the Moon, Mars and other destinations. This effort will include a flagship demonstration program, with international partners, commercial and other Government entities, to demonstrate critical technologies, such as in-orbit propellant transfer and storage, inflatable modules, automated/autonomous rendezvous and docking, closed-loop life support systems, and other next-generation capabilities. It will also include projects that are smaller and shorter-duration, which will demonstrate a broad range of key technologies, including in-situ resource utilization and advanced in-space propulsion.
- Heavy-lift propulsion research and development that will investigate a broad scope of R&D activities to support next-generation space launch propulsion technologies, with the aim of reducing costs and shortening development timeframes for future heavy-lift systems for human exploration.
- Robotic precursor missions to multiple destinations in the solar system in support of future human exploration, including missions to the Moon, Mars and its moons, Lagrange points, and nearby asteroids.
- Significant investments for the development of commercial crew and further cargo capabilities, building on the successful progress in the development of commercial cargo capabilities to-date. NASA will allocate these funds through competitive solicitations that support a range of higher- and lower-programmatic risk systems and system components, such as human rating of existing launch vehicles and development of new spacecraft that can ride on multiple launch vehicles.
- Extension of the lifetime of the International Space Station (ISS), likely to 2020 or beyond, in concert with our international partners, with investments in expanded ISS utilization through upgrades to both ground support and onboard systems and use of the ISS as a National Laboratory.
- Pursuit of cross-cutting Space Technology capabilities, led by the newly established Office of the Chief Technologist, which will fund advancements in next-generation technologies, to help improve the Nation's leadership in key research areas, enable far-term capabilities, and spawn game-changing innovations that can unlock new possibilities and make space activities more affordable and sustainable. A NASA focus on innovation and technology will enable new approaches to our current mission set and allow us to pursue entirely new missions for the Nation.
- Climate change research and observations, which will enable NASA to substantially accelerate and expand its Earth Science capabilities, including a replacement for the Orbiting Carbon Observatory, development of new satellites recommended by the National Academy of Sciences Decadal Survey, and development of smaller Venture class missions. This investment will ensure the critically important continuity of certain key climate measurements and enable new measurements to address unknowns in the climate system, yielding expanded

understanding of our home planet and improved understanding of climate change.

- Aeronautics research and development, including critical areas of the Next Generation Air Transportation System, environmentally responsible aviation, and safe integration of unmanned aircraft systems into the national airspace.
- Education initiatives, including the recently announced Summer of Innovation pilot program involving NASA scientist and curricula to inspire middle-school students and their teachers with exciting experiences that spur those students to continue in STEM careers.

I wish to emphasize that NASA intends to work closely with the Congress, including this subcommittee, to make a smooth transition to the new Exploration program, called for in the President's request, working responsibly on behalf of the taxpayers. With my deepest gratitude, I commend the hard work and dedication that thousands of NASA and contractor workers have devoted to Constellation over the last several years. Their commitment has brought great value to the agency and to our Nation, and they will continue to play a pivotal role in NASA's future path. Many of the things NASA has learned from the Constellation program will be critical as the agency moves forward.

The following contains more detail on the summary points made above, in the standard budget order for NASA's appropriation accounts.

#### SCIENCE

The President's fiscal year 2011 request for NASA includes \$5,005.6 million for Science. The NASA Science Mission Directorate (SMD) continues to expand humanity's understanding of our Earth, our Sun, the solar system and the universe with 59 science missions in operation and 30 more in various stages of development. The Science budget funds these missions as well as the research of over 3,000 scientists and their students across our Nation. The recommendations of the National Academies/National Research Council (NRC) decadal surveys help to guide SMD in setting its priorities for strategic science missions; and SMD selects competed missions and research proposals based on open competition and peer review.

The fiscal year 2011 budget request for Science includes \$1,801.7 million for Earth Science. This request increases investment in Earth Science by \$1.8 billion from fiscal year 2011 to fiscal year 2014 compared to the fiscal year 2010 budget, for a more aggressive response to the challenge of climate change. NASA will rapidly develop an Orbiting Carbon Observatory-2 mission for launch early in 2013 and a GRACE Follow-On mission for launch in late 2015, respectively, to initiate and extend key global climate data sets. This request accelerates several high-priority Decadal Survey missions that will advance climate research and monitoring. The increased funding accelerates launch of the Soil Moisture Active/Passive (SMAP) mission by 6 months from its estimated date at the recent agency Key Decision Point (KDP)-B review, to November 2014. ICESAT-2 is advanced by 5 months relative to the estimated date at its recent agency KDP-A review, to October 2015. The Climate Absolute Radiance and Refractivity Observatory (CLARREO) mission and the Deformation, Ecosystem Structure and Dynamics of Ice (DESDynI) mission are each accelerated by 2 years, with both launching in late 2017. Thus, the budget request allows all four Tier-1 Decadal Survey missions to be launched between 2014 and 2017. In addition, NASA—working with the U.S. Global Change Research Program—will be able to identify and begin development for accelerated launch of selected Tier-2 Decadal Survey missions focused on climate change. The budget supports critical continuity of climate observations, including a Stratospheric Aerosol and Gas Experiment III (SAGE III) instrument to be developed for deployment on the ISS, while also supporting an accelerated pace of smaller "Venture class" missions. Finally, increased resources for Earth Science will allow NASA to expand key mission-enabling activities, including carbon monitoring, technology development, modeling, geodetic ground network observations, and applications development including the highly successful SERVIR program.

At present, NASA Earth-observing satellites provide the bulk of the global environmental observations used for climate change research in the United States and abroad. This year, analyses of NASA satellite measurements quantified the rates of ground water depletion since 2003 in California and in India's Indus River valley—rates that are unsustainable for the future. NASA conducted the first ICEBridge airborne campaigns in both Arctic and the Antarctic, to maintain the critical ice measurements during the gap in time between the ICESAT-1 and -2 satellites.

In fiscal year 2011, the Glory and Aquarius missions will launch; and fiscal year 2011 should close with the launch of the NPOESS Preparatory Project. The Landsat Data Continuity Mission will complete spacecraft integration and test, the Oper-

ational Land Imager will be delivered, and the Thermal Infrared Sensor will continue development. The Global Precipitation Mission will complete its System Integration Review in preparation for the beginning of assembly, integration and testing. During fiscal year 2011, the SMAP mission will transition from formulation to development, and ICESAT-2 will begin design. Also in fiscal year 2011, instrument development and observations initiated under the first Venture class solicitation for sustained airborne missions will reach full funding, and the next Venture class solicitations will be released—this time for space-based mission instrument, and complete mission, developments. Engineering studies and focused, actively-managed technology investments—instruments, components, and information systems—continue for the suite of future missions recommended by the National Research Council (NRC) Decadal Survey. In fiscal year 2011, the Earth Science Technology Program will make additional, competitively-selected, instrument technology investments to meet decadal survey measurement goals. Earth Science Research and Applied Sciences Programs will continue to employ satellite observations to advance the science of climate and environmental change, mitigation, and adaptation. NASA will demonstrate the use of Uninhabited Aerial Systems in field campaigns addressing atmospheric trace gas composition and hurricane genesis, and NASA's modeling and data analysis efforts will contribute to assessment activities of the Intergovernmental Panel in Climate Change and the U.S. Global Change Research Program.

The fiscal year 2011 budget request for Science includes \$1,485.8 million for Planetary Science. The current NASA planetary missions continue to make new discoveries and return fascinating images, including a previously unknown large and askew ring of Saturn and a near-complete map of the surface of Mercury. Mars continues to intrigue with signs of water ice just below the surface at mid-latitudes. The Mars rover Spirit is now an in situ science prospector, while Opportunity continues to roll toward the crater Endeavor. The Moon Mineralogy Mapper instrument on India's Chandrayaan-1 mission detected small amounts of water and hydroxyl molecules at unexpectedly low latitudes on the lunar surface. NASA selected three new candidate mission concepts for further study under the New Frontiers program, and will select the winning concept in fiscal year 2011 to proceed to development. NASA will issue its next Discovery Announcement of Opportunity this year, and will select mission concepts and fund concept studies in fiscal year 2011. NASA will also begin Advanced Stirling Radioisotope Generator development in fiscal year 2011 to be available as an option to improve the performance of the radioisotope-fueled power sources for use in the next Discovery mission. The Mars Science Laboratory will complete development in fiscal year 2011 for launch in fall 2011, beginning the most comprehensive astrobiology mission to the Red Planet to date. The MAVEN Mars aeronomy mission will continue development for launch in late 2013. NASA will establish a joint Mars Exploration Program with the European Space Agency (ESA) with a trace gas orbiter mission, including a European technology demonstration lander. In fiscal year 2011, NASA plans to select instruments for the mission via a joint Announcement of Opportunity. To advance scientific exploration of the Moon, NASA will launch the GRAIL mission in late 2011 and continue development of LADEE for launch in 2013. Continuing its exploration of the outer planets, NASA will launch the Juno mission to Jupiter in August 2011. NASA will continue studies that support the possibility of a new major Outer Planets Mission concept pending the outcome of the NRC decadal survey now in progress, and will coordinate with ESA on a solicitation for science instruments. The new NRC Decadal Survey in Planetary Science should be complete in fiscal year 2011. The fiscal year 2011 budget request increases NASA's investment in identification and cataloging of Near Earth Objects and, with the Department of Energy, begins funding the capability to restart Plutonium-238 production here in the United States.

The fiscal year 2011 budget request for Science includes \$1,076.3 million for Astrophysics. The golden age of Astrophysics from space continues, with 14 observatories in operation. Astrophysics research, technology investments, and missions aim to understand how the universe works, how galaxies, stars and planets originated and developed over cosmic time, and whether Earth-like planets—and possibly life—exist elsewhere in the cosmos. The NASA Kepler telescope has discovered five exoplanets, ranging in size from Neptune to larger than Jupiter, demonstrating that the telescope is functioning as intended; additional discoveries are anticipated in the coming months and years. NASA's newest space observatory, WISE (Wide-Field Infrared Explorer), has captured its first look at the starry sky and its sky survey in infrared light has begun. Radio astronomers have uncovered 17 millisecond pulsars in our galaxy by studying unknown high-energy sources detected by the Fermi Gamma-ray Space Telescope.

The Hubble Space Telescope is operating at its peak performance thanks to the very successful servicing mission last year by the STS-125 crew. The Herschel and

Planck missions, led by the European Space Agency with NASA as a partner, launched in 2009 and are returning remarkable scientific results. In fiscal year 2011, NASA will complete most of the development of the NuSTAR mission and prepare it for launch. NASA will also begin developing the Gravity and Extreme Magnetism (GEMS) mission recently selected in the Explorer small satellite program. The James Webb Space Telescope (JWST) continues to make good progress in development toward a 2014 launch. Flight hardware for the many JWST subsystems is being designed, manufactured and tested, including the 18 segments of its 6.5-meter primary mirror; and the mission-level Critical Design Review for JWST will occur this spring. The SOFIA airborne observatory successfully conducted its first open-door flight test in December 2009—a major milestone toward the beginning of early science operations this year. The NRC is conducting a new Decadal Survey in astronomy and astrophysics, which will set priorities among future mission concepts across the full spectrum of Astrophysics, including dark energy, gravity wave, and planet-finding missions; the “Astro2010” Decadal Survey is expected in September.

The fiscal year 2011 budget request for Science includes \$641.9 million for Heliophysics. The Heliophysics operating satellites provide not only a steady stream of scientific data for the NASA research program, but also supply a significant fraction of critical space weather data used by other Government agencies for support of commercial and defense activities in space. These data are used for operating satellites, optimization of power transmission networks, and supporting communications, aviation and navigation systems. The NASA Aeronomy of Ice in Mesosphere (AIM) satellite has provided the first comprehensive, global-scale view of the complex life cycle of Earth’s highest clouds, Polar Mesospheric Clouds, finding clues to why they appear to be occurring at lower latitudes than ever before. The STEREO B spacecraft recently observed a sunspot behind the Sun’s southeastern limb—before it could be seen from Earth. In a few days, this sunspot produced five Class M solar flares of the kind that disturb radio signals on Earth, signaling the end of the Sun’s extended quiet period of recent years. The Solar Dynamic Observatory (SDO), launched on February 11, will provide images of the Sun of unprecedented resolution, yielding new understanding of the causes of solar variability and its impact on Earth. In fiscal year 2011, the Radiation Belt Storm Probes mission will complete hardware manufacturing and begin integration and testing. The Solar Orbiter Collaboration with the European Space Agency will continue in formulation, and the Solar Probe Plus mission will undergo an initial confirmation review at the end of fiscal year 2011. The Magnetospheric Multi-scale mission will continue development toward a Critical Design Review. IRIS, a recently selected small Explorer mission, will hold its Critical Design Review in fiscal year 2011. The next Explorer Announcement of Opportunity will be released in 2010, with selection for Phase A studies in fiscal year 2011. NASA is working with the NRC to arrange for the next decadal survey in Heliophysics.

#### AERONAUTICS RESEARCH

The U.S. commercial aviation enterprise is vital to the Nation’s economic well being, directly or indirectly providing nearly 1 million Americans with jobs. In 2008 aerospace manufacturing provided the Nation with a trade surplus of over \$57 billion. In the United States, more than 60 certified domestic carriers operate more than 28,000 flights daily, moving nearly 1 million travelers each day. We expect these flights to be safe, affordable, and convenient. We expect airlines to offer flights when and where we want to travel. In business and in our personal lives, the aviation industry is a key enabler to our way of life and the smooth functioning of our economy. However, the air transport system is near maximum capacity given today’s procedures and equipment. Rising concerns about the environmental and noise impacts of aviation further limit future growth.

The fiscal year 2011 budget request for Aeronautics is \$579.6 million, an increase of \$72.6 million, which will strongly support our existing portfolio of research and development to directly address these most critical needs of the Nation and enable timely development of the Next Generation Air Transportation System (NextGen). Through a balanced research and development portfolio, NASA’s Aeronautics Research Mission Directorate (ARMD) is exploring early-stage innovative ideas, developing new technologies and operational procedures through foundational research, and demonstrating the potential of promising new vehicles, operations, and safety technology in relevant environments. Our goals are to expand capacity, enable fuel-efficient flight planning, reduce the overall environmental footprint of airplanes today and, in the future, reduce delays on the ground and in the sky, and improve the ability to operate in all weather conditions while maintaining the current high safety standards we demand.

The fiscal year 2011 budget request for Aeronautics includes \$228.5 million for the Fundamental Aeronautics Program, which seeks to continually improve technology that can be integrated into today's state-of-the-art aircraft, while enabling game-changing new concepts such as Hybrid Wing Body (HWB) airframes which promise reduced drag (thus improving fuel burn) and open-rotor engines which offer the promise of 20 percent fuel burn reduction compared to today's best jet engines. In partnership with Boeing and the Air Force, NASA has completed over 75 flights of the X48B sub-scale HWB aircraft at Dryden Flight Research Center in the last 2 years to explore handling and control issues. NASA is partnering with General Electric and Boeing to evaluate performance and integration of new open-rotor engine concepts in propulsion wind tunnels at the Glenn Research Center. NASA is also addressing key challenges to enable new rotorcraft and supersonic aircraft, and conducting foundational research on flight at seven times the speed of sound. American Recovery and Reinvestment Act funds have enabled NASA to recommission a full-scale airframe structural test facility and to improve wind tunnels at the Langley, Ames, and Glenn Research Centers that are needed to assess new concepts that hold the promise of significant reductions in aircraft weight and fuel consumption. In partnership with industry, NASA has just initiated the first new Government-funded effort on low NO<sub>x</sub> combustors in 15 years. In fiscal year 2011, NASA will invest \$20.0 million to design, build, and demonstrate a new generation of aircraft engine combustors that will lower the emission of harmful nitrogen oxides by 50 percent compared with current combustors while ensuring compatibility with current and future alternative aviation fuels.

A key research goal is to develop synthetic and bio-derived alternatives to the petroleum-derived fuel that all jet aircraft have used for the last 60 years, but little is known about the emissions characteristics of these alternative fuels. In 2009, NASA led a team of eight partners from Government agencies, industry, and academia in measuring emissions from an aircraft parked on the ground operating on various blends of synthetic and standard jet fuel. This team discovered that synthetic fuel blends can reduce particulate emissions by as much as 75 percent compared to conventional jet fuels, which would offer a major improvement in local air quality around airports. Using results from this and other research efforts, NASA has established a publicly-available database of fuel and emissions properties for 19 different fuels and will perform similar tests on biofuels as they become available.

The fiscal year 2011 budget request for Aeronautics includes \$82.2 million for Airspace Systems. The focus of this program is to develop improved air traffic management procedures, which will expand the capacity and reduce the environmental footprint of the air transportation system. Using flight data from just the top 27 airports in the country, NASA systems analysis results indicate that nearly 400 million gallons of fuel could be saved each year if aircraft could climb to and descend from their cruising altitude without interruption. Another 200 million gallons could be saved from improved routing during the cruise phase of flight. Achievement of such operations requires that aircraft spacing in the air and on-time arrival and departure from the regions around our major airports be greatly improved. New satellite-based navigation aids such as the ADS-B system that the Federal Aviation Administration (FAA) is installing throughout the country can enable these improvements, but safe and efficient operational procedures must first be developed, validated, and certified for operational use. In 2009, NASA partnered with FAA, United Airlines, and Air Services Australia to validate pilot and controller procedures for a new concept originally developed by NASA that enables aircraft to safely conduct climbs and descents outside radar coverage in close proximity to nearby traffic. NASA also provided safety analyses needed for regulatory approval. The procedures benefit both airlines and the traveling public by providing long-haul oceanic flight with easier access to fuel-efficient, turbulence-free altitudes. United Airlines is expected to begin flying the oceanic in-trail procedures on revenue flights in May 2011.

The fiscal year 2011 budget request for Aeronautics includes \$113.1 million for the Integrated Systems Research Program. Begun in fiscal year 2010, this program evaluates and selects the most promising "environmentally friendly" engine and airframe concepts emerging from our foundational research programs for integration at the systems level. In fiscal year 2011, the program will test integrated systems in relevant environments to demonstrate that the combined benefits of these new concepts are in fact greater than the sum of their individual parts. Similarly, we are integrating and evaluating new operational concepts through real-world tests and virtual simulations. These efforts will facilitate the transition of new capabilities to manufacturers, airlines and the FAA, for the ultimate benefit of the flying public. In addition to strongly supporting our ongoing research portfolio, the fiscal year 2011 budget request includes increased funding to expand our research in new priority areas identified through close consultation with industry, academia and



other Federal agencies. In fiscal year 2011, NASA will initiate a \$30 million targeted effort to address operational and safety issues related to the integration of unmanned aircraft systems into the National Airspace System and augment research and technology development efforts by \$20 million, including grants and cooperative agreements, to support NASA's environmentally responsible aviation research.

The fiscal year 2011 budget request for Aeronautics includes \$79.3 million for the Aviation Safety Program. This program conducts research to insure that aircraft and operational procedures maintain the high level of safety which the American public has come to count on. Safety issues span aircraft operations, air traffic procedures, and environmental hazards and this program is supporting research and delivering results in all three areas. American carriers operate 6,500 aircraft on more than 28,000 flights daily. For most of the day the FAA is controlling more than 4,000 aircraft in the sky at the same time. Further increases in capacity will require increased levels of automation for command and control functions and to analyze vast amounts of data, as well as increased complexity of the overall system. It now costs more to prove today's flight-critical systems are safe than it does to design and build them. The Joint Planning and Development Office has identified Verification and Validation (V&V) of aviation flight-critical hardware and software systems as one of the major capability gaps in NextGen. Therefore in fiscal year 2011, NASA is initiating a new \$20 million research activity in V&V of aviation flight-critical systems to develop methodologies and concepts to effectively test, validate and certify software-based systems that will perform reliably, securely, and safely as intended.

NASA will continue to tackle difficult issues that threaten the safety of commercial flight, ranging from human/machine interaction to external hazards such as weather and icing, as the aircraft industry has come to rely on NASA expertise in predicting the effects of icing on aircraft performance at low and intermediate altitudes. However, over the last 10 years a new form of icing problem has surfaced, occurring primarily in equatorial regions at high cruise altitudes and causing engine power loss or flameout. These conditions cannot be duplicated in any existing ground test facility. To study this problem, in 2009 NASA initiated an effort to modify the Propulsion Systems Laboratory at the Glenn Research Center to enable research on ways to mitigate the effects of high-altitude icing and development of new engine certification procedures.

The fiscal year 2011 budget request for Aeronautics includes \$76.4 million for the Aeronautics Test Program (ATP), which makes strategic investments to ensure availability of national ground facilities and flight assets to meet the testing needs of NASA and the Nation. The program also invests in the development of new test instrumentation and test technologies. One such example is ATP's collaboration with the Aviation Safety Program to provide a new testing capability in the NASA-Glenn PSL facility to address the threat of high-altitude ice crystals to jet engine operability. The program recently demonstrated for the first time the ability to generate ice crystals at the very cold temperatures ( $-60$  °F) encountered at commercial aircraft cruise altitudes. The PSL high-altitude ice crystal capability will become operational in fiscal year 2011. The program also completed the development of a new Strategic Plan to provide the vision and leadership required to meet national goals; provide sustained support for workforce, capability improvements, and test technology development; and provide strategic planning, management, and coordination with NASA, Government, and industry stakeholders. This plan will provide informed guidance as ATP develops a critical decision tool for building well-coordinated national testing capabilities in collaboration with the Department of Defense through the National Partnership for Aeronautical Testing (NPAT).

Partnerships with industry, academia, and other Federal agencies are critical to the success and relevance of NASA research. Through close collaboration, NASA ensures that it works on the right challenges and improving the transition of research results to users. NASA is using NASA/FAA Research Transition Teams (RTTs) to conduct joint research and field trials to speed acceptance of new air traffic management procedures. The agency is also coordinating management and operation of the Federal Government's large aeronautics ground test infrastructure through the NPAT. Through NASA Research Announcements (NRAs), NASA solicits new and innovative ideas from industry and academia while providing support for Science, Technology, Engineering, and Math departments. The agency also funds undergraduate and graduate scholarships, Innovation in Aeronautics Instruction grants to improve teaching programs at the university level, and sponsor student design competitions at undergraduate and graduate levels for both U.S. and international entrants. By directly connecting students with NASA researchers and our industrial partners we become a stronger research organization while inspiring students to choose a career in the aerospace industry.

## EXPLORATION

The fiscal year 2011 budget request for Exploration is \$4,263.4 million, an increase of \$483.6 million above the fiscal year 2010 enacted level. Included in this budget request is funding for three new, robust programs that will expand the capabilities of future space explorers far beyond those we have today. NASA will embark on these transformative initiatives by partnering with the best in industry, academia and other Government agencies, as well as with our international partners. These partners have been integral to much of NASA's previous success and are vital to our bold new vision.

NASA will encourage active public participation in our new exploration missions via a new participatory exploration initiative. Additionally, the fiscal year 2011 budget request builds upon NASA's commercial cargo efforts by providing significant funding for the development of commercial human spaceflight vehicles, freeing NASA to focus on the forward-leaning work we need to accomplish for beyond-LEO missions. The fiscal year 2011 budget request is a 40 percent increase over last year's investment in the Human Research Program, to help prepare for future human spaceflight exploration beyond low-Earth orbit. Lastly, the Exploration fiscal year 2011 budget request includes funding for the Constellation Program close out activities spread across fiscal year 2011 and fiscal year 2012.

In the near term, NASA is continuing Constellation work to ensure an orderly closeout of the program in fiscal year 2011 and to capture of all of the knowledge learned through its key efforts. The Constellation Program is focusing on completing its Preliminary Design Review (PDR), which will conclude this year. NASA believes that completing the Constellation PDR will support not only the close-out process for Constellation, but also will ensure that historical data from Constellation work is documented, preserved and made accessible to future designers of other next-generation U.S. human spaceflight systems.

The Exploration fiscal year 2011 budget request includes three new robust research and development programs that will enable a renewed and reinvigorated effort for future crewed missions beyond low-Earth orbit:

—*Technology Development and Demonstration Program.*—\$652.4 million is requested in fiscal year 2011, and a total of \$7,800.0 million is included in the 5 year budget plan, to invent and demonstrate large-scale technologies and capabilities that are critical to future space exploration, including cryofluid management and transfer technologies; rendezvous and docking technologies; and closed-loop life support systems. These technologies are essential to making future exploration missions more capable, flexible, and affordable.

—*Heavy-Lift and Propulsion Research and Development Program.*—\$559.0 million is requested in fiscal year 2011, and a total of \$3,100.0 million is included in the 5-year budget plan, for an aggressive, new heavy-lift and propulsion R&D program that will focus on development of new engines, propellants, materials and combustion processes that would increase our heavy-lift and other space propulsion capabilities and significantly lower operations costs—with the clear goal of taking us farther and faster into space consistent with safety and mission success.

—*Robotic Exploration Precursor Program.*—\$125.0 million is requested in fiscal year 2011, and \$3,000.0 million is included in the 5-year budget plan, for robotic missions that will pave the way for later human exploration of the Moon, Mars and nearby asteroids. Like the highly successful Lunar Reconnaissance Orbiter and Lunar Crater Observation and Sensing Satellite missions that captured our attention last fall, future exploration precursor missions will scout locations and demonstrate technologies to locate the most interesting places to explore with humans and validate potential approaches to get them there safely and sustainably.

Cross-agency teams for each of these three areas are working to develop plans that delineate key areas for research and development, specify milestones for progress and set launch dates for relevant missions. They will report to the Administrator over the coming months, and the results of their efforts will be shared with the Congress when they are complete.

The Exploration fiscal year 2011 budget request for Commercial Spaceflight is \$812.0 million, which includes \$500.0 million to spur the development of U.S. commercial human spaceflight vehicles, and a total of \$6 billion in the 5-year budget plan. This investment funds NASA to contract with industry to provide astronaut transportation to the International Space Station as soon as possible, reducing the risk of relying solely on foreign crew transports, and frees up NASA resources to focus on the difficult challenges in technology development, scientific discovery, and exploration. We also believe it will help to make space travel more accessible and

more affordable. An enhanced U.S. commercial space industry will create new high-tech jobs, leverage private sector capabilities and energy in this area, and spawn other businesses and commercial opportunities, which will spur growth in our Nation's economy. And, a new generation of Americans will be inspired by these commercial ventures and the opportunities they will provide for additional visits to space. NASA plans to allocate this fiscal year 2011 funding via competitive solicitations that support a range of activities such as human rating existing launch vehicles and developing new crew spacecraft that can ride on multiple launch vehicles. NASA will ensure that all commercial systems meet stringent human-rating and safety requirements before we allow any NASA crew member (including NASA contractors and NASA-sponsored International partners) to travel aboard a commercial vehicle on a NASA mission. Safety is, and always will be, NASA's first core value.

In addition to the \$500 million identified for crew transportation development efforts, the budget also includes \$312.0 million in fiscal year 2011 for incentivizing NASA's current commercial cargo program. These funds—by adding or accelerating the achievement of already-planned milestones, and adding capabilities or tests—aim to expedite the pace of development of cargo flights to the ISS and improve program robustness.

Today, NASA is using \$50.0 million from the American Recovery and Reinvestment Act of 2009 to help drive the beginnings of a commercial crew transportation industry. Through an open competition, in early February, NASA awarded Space Act Agreements to five companies who proposed ideas and concepts intended to make commercial crew services a reality. While there are many vibrant companies out there that we hope to partner with in the future, these five companies, along with our two currently funded Commercial Orbital Transportation Services partners (Space Exploration Technologies and Orbital Sciences Corporation) are at the forefront of a grand new era in space exploration.

The Exploration fiscal year 2011 budget request includes \$215.0 million for the Human Research Program, an increase of more than 40 percent over the fiscal year 2010 enacted level, and an investment of \$1,075 million over the 5-year budget plan. The Human Research Program is a critical element of the NASA human spaceflight program in that it develops and validates technologies that serve to reduce medical risks associated for crew members.

The Exploration fiscal year 2011 budget request includes \$1,900.0 million for Constellation Closeout requirements, and a total of \$2,500.0 million over the fiscal year 2011–2012 timeframe. These funds will be used for related facility and close-out costs, potentially including increased costs for Shuttle transition and retirement due to Constellation cancellation. The agency has established senior planning teams to outline options for Constellation close out expeditiously and thoughtfully and to assess workforce, procurement and other issues, which will report to the Administrator over the coming months, to ensure that people and facilities are best utilized to meet the needs of NASA's new missions. NASA will work closely with the Congress as these activities progress.

NASA recognizes that this change will personally affect thousands of NASA civil servants and contractors who have worked countless hours, often under difficult circumstances, to make the Constellation Program successful. I commend the investment that these dedicated Americans have made and will continue to make in our Nation's human spaceflight program. Civil servants who support Constellation should feel secure that NASA has exciting and meaningful work for them to accomplish after Constellation, and our contractor colleagues should know that NASA is working expeditiously to identify new opportunities for them to partner with the agency on the new Exploration portfolio.

#### SPACE TECHNOLOGY

Through the new Space Technology Program, led by the recently established Office of the Chief Technologist, NASA will increase its support for research in advanced space systems concepts and game-changing technologies, enabling new approaches to our current mission set and allowing the pursuit of entirely new missions. Using a wide array of management, funding, and partnership mechanisms, this program will engage the brightest minds in private industry, across the NASA Centers, and throughout academia. This new program builds upon the success of NASA's Innovative Partnerships Program and directly responds to input from multiple NRC reports, as well as the Augustine Committee. The Space Technology program will meet NASA's needs for new technologies to support future NASA missions in science and exploration, as well as the needs of other Government agencies and the Nation's space industry in a manner similar to the way NACA aided the early aeronautics industry. Many positive outcomes are likely from a long-term NASA ad-

vanced space systems concepts and technology development program, including a more vital and productive space future than our country has today, a means to focus NASA intellectual capital on significant national challenges and needs, a spark to renew the Nation's technology-based economy, an international symbol of our country's scientific and technological leadership, and a motivation for many of the country's best young minds to enter into educational programs and careers in engineering and science.

The fiscal year 2011 budget request for Space Technology is \$572.2 million, and \$4,925.9 million is included in the 5-year budget plan. With this initiative, NASA will expand its Technology and Innovation portfolio to include: open competitions to stimulate highly innovative, early-stage space system concepts and ideas; development of technologies that can provide game-changing innovations to address NASA and national needs; and development and infusion of cross-cutting capabilities into missions that address needs from multiple NASA Mission Directorates, other Government agencies, and commercial activities in space, while fostering and stimulating a research and development culture at NASA Centers. Beginning in fiscal year 2011, activities associated with the Innovative Partnerships Program are transferred to Space Technology.

The need for advanced capabilities is increasing as NASA envisions missions of increasing complexity to explore and understand the Earth, our solar system, and the universe. Technology and innovation are critical to successfully accomplishing these missions in an affordable manner. The Space Technology program will enhance NASA's efforts to nurture new technologies and novel ideas that can revolutionize our aerospace industrial base, as well as to address national and global challenges and enable whole new capabilities in science and exploration that will be of benefit to the Nation. Key focus areas include communications, sensors, robotics, materials, and propulsion. The Space Technology program will use open competitions such as NASA Research Announcements and Announcements of Opportunity, targeted competitions such as those for small business (SBIR), universities (STTR), and engage early career scientists and engineers. NASA will also continue to use challenges and prizes to stimulate innovative new approaches to technology development and will encourage partnerships with both established and emerging commercial space industries. Through the three major elements of this program—Early-Stage Innovation, Game-Changing Innovation, and Crosscutting Capabilities—a broad suite of management, funding and partnership mechanisms are employed to stimulate innovation across NASA, industry and academia.

The Early-Stage Innovation program element sponsors a wide range of advanced space system concept and initial technology development efforts across academia, industry and the NASA Centers. This program element includes: (a) the Space Technology Research Grant program (analogous to the Fundamental Aeronautics program within NASA's Aeronautics Research Mission Directorate) that focuses on foundational research in advanced space systems and space technology; (b) re-establishment of a NIAC-like Program to engage innovators within and external to the agency in accordance with the recommendations of the NRC's *Fostering Visions of the Future* report; (c) enhancement of the Innovative Partnership Programs Seed Fund into a Center Innovations Fund to stimulate aerospace creativity and innovation at the NASA field Centers; (d) NASA's SBIR/STTR program to engage small businesses; and (e) the Centennial Challenges Prize Program to address key technology needs with new sources of innovation outside the traditional aerospace community. Competitive selection is a major tenet of all the activities within this low technology readiness level (TRL) program element.

The Game Changing Innovation program element focuses on maturing advanced technologies that may lead to entirely new approaches for the agency's future space missions and solutions to significant national needs. Responsive to the NRC report, *America's Future in Space: Aligning the Civil Space Program with National Needs*, this program element demonstrates the feasibility of early-stage ideas that have the potential to revolutionize future space missions. Fixed-duration awards are made to PI-led teams comprised of Government, academia and industry partners. These awards are evaluated annually for progress against baseline milestones with the objective of maturing technologies through ground-based testing and laboratory experimentation. NASA intends to draw from DARPA's experience to create and implement collaborative game-changing space technology initiatives. New technologies considered may include advanced lightweight structures and materials, advanced propulsion, power generation, energy storage and high bandwidth communications. With a focus on such potentially revolutionary technologies, success is not expected with each investment; however, on the whole, and over time, dramatic advances in space technology enabling entirely new NASA missions and potential solutions to a wide variety of our society's grand technological challenges are anticipated.

A Crosscutting Capabilities program element matures a small number of technologies that are of benefit to multiple customers to flight readiness status. Technical risk, technology maturity, mission risk, customer interest, and proposed cost are discriminators planned for use in the selection process. For infusion purposes, proposing teams are required to have a sponsor willing to cost share a minimum of 25 percent of the planned development effort. With objectives analogous to the former New Millennium program, NASA will pursue flight demonstrations not only as standalone missions, but also as missions of opportunity on planned NASA missions as well as international and commercial space platforms. The Commercial Reusable Suborbital Research Program (which provides suborbital flight opportunities for technology demonstrations, scientific research and education), the Facilitated Access to the Space environment for Technology (FAST) project (which focuses on testing technologies on parabolic aircraft flights that can simulate microgravity and reduced gravity environments) and the Edison Small Satellite Demonstration Missions project (which develops and operates small satellite missions in partnership with academia), are also included in this program element.

NASA has had past success in the development of game-changing technologies and the transfer of its products and intellectual capital to industry. As an example, consider the Mars Pathfinder mission of the early 1990s. In addition to accomplishing its science and technology objectives, Mars Pathfinder established surface mobility and ground truth as important exploration principles, created a groundswell of interest and a foundational experience for a new generation of Mars scientists and engineers, re-engaged the public with Mars as a destination worthy of exploration, led to the creation of NASA's Mars program and establishment of a Mars program budget line, and led to a wide spectrum of small missions to Mars, the asteroids, comets and other bodies in our solar system. For NASA's robotic exploration program, Mars Pathfinder was clearly a game-changer. In a more recent example, consider NASA's recent improvements to thermal protection system (TPS) materials through an Advanced Capabilities development project. Over 3 years, a NASA-industry team raised the TRL of 8 different TPS materials from 5 different commercial vendors, eventually selecting the best as the system for the Orion heat shield. In addition to providing a heat shield material and design for Orion on time and on budget, this Advanced Capabilities development project re-invigorated a niche space industry that was in danger of collapse, re-established a NASA competency able to respond to future TPS needs. For example, the team identified a potentially catastrophic problem with the planned MSL heat shield and remedied the problem by providing a viable alternate heat shield material and design within stringent schedule constraints. The mature heat shield material and designs have been successfully transferred to the commercial space industry, including the TPS solution for the SpaceX Dragon capsule. Beginning in fiscal year 2011, the new NASA Space Technology program aims to strengthen and broaden these successful innovation examples across a wide range of NASA enterprises and significant national needs.

#### SPACE OPERATIONS

The fiscal year 2011 budget request includes \$4,887.8 million for Space Operations, funding the Space Shuttle program, the International Space Station Program, and the Space and Flight Support program.

The fiscal year 2011 budget request for the Space Shuttle program is \$989.1 million. In 2009, the Space Shuttle flew five times, delivering to the ISS its final set of solar arrays and the equipment needed to support a six-person permanent crew; servicing the Hubble Space Telescope; completing the assembly of the three-module Japanese Kibo science laboratory; outfitting the Station with two external payload and logistics carriers, the Materials Science Research Rack-1, the Fluid Integrated Rack, the Minus 80-Degree Laboratory Freezer, a treadmill, and air revitalization equipment; and, delivering key supplies.

In 2010, the Shuttle is slated to fly out its remaining four missions, including the recently completed STS-130 mission. In April, Shuttle Discovery will carry up critical supplies for the ISS using a Multi-Purpose Logistics Module (MPLM) and the Lightweight Multi-Purpose Experiment Support Structure Carrier (LMC). Atlantis will launch in May with the Russian Mini-Research Module-1, as well as the Integrated Cargo Carrier—Vertical Light Deployment (ICC-VLD). This summer, Endeavour will carry the Alpha Magnetic Spectrometer (AMS) and attach it to the Station's truss structure. The AMS is a particle physics experiment, which will use the unique environment of space to advance knowledge of the universe and contribute to understanding the universe's origin. AMS is presently undergoing critical thermal and electrical testing at the European test facilities in the Netherlands. If

these tests are successful, AMS will ship to KSC in May for the July launch. The final Shuttle mission, STS-133, is targeted for September of this year. Discovery will carry supplies to ISS, as well as an MPLM that will be installed on ISS as a permanent module, expanding the Station's storage volume. This flight will mark the completion of ISS assembly.

For almost 30 years, the Space Shuttle has carried U.S. and international astronauts into orbit; played a key role in the construction, outfitting, and resupply of the ISS; serviced the Hubble Space Telescope five times; served as an Earth-orbiting laboratory through the Spacelab and SpaceHab missions; and deployed a diverse array of payloads, including science probes and research experiments (such as the Magellan mission to Venus and Earth-orbiting tether experiments), communications satellites; and even student projects. NASA recognizes the role the Space Shuttle vehicles and personnel have played in the history of space activity, and looks forward to transitioning key workforce, technology, facilities, and operational experience to a new generation of human spaceflight exploration activities.

Fiscal year 2011 will be the first full year of major Space Shuttle Program (SSP) transition and retirement (T&R) activities. T&R is focused on the retirement of the SSP and the efficient transition of assets to other uses once they are no longer needed for safe mission execution. These activities include identifying, processing, and safing hazardous materials, and the transfer or disposal of SSP assets, including the preparation of Orbiters and other flight hardware for public display. T&R also covers severance and retention costs associated with managing the drawdown of the SSP workforce.

A key element of America's future in space is the International Space Station. The fiscal year 2011 budget request for the International Space Station Program is \$2,779.9 million. As of May 2009, the ISS has been able to support a 6-person permanent crew, and during the STS-127 mission last July, the Station hosted 13 astronauts representing the 5 space agencies in the ISS partnership, including those of the United States, Russia, Japan, Europe and Canada. The three major science labs aboard ISS were completed in 2009 with the delivery of the Exposed Facility of the Japanese Kibo module. In addition, the first flight of Japan's H-II Transfer Vehicle (HTV) was successfully carried out last fall, adding a new cargo-carrying spacecraft to the fleet.

This year will mark the completion of assembly of the ISS—the largest crewed spacecraft ever assembled, measuring 243 by 356 feet, with a habitable volume of over 30,000 cubic feet and a mass of 846,000 pounds, and powered by arrays which generate over 700,000 kilowatt-hours per year. The ISS represents a unique research capability aboard which the United States and its partner nations can conduct a wide variety of research in biology, chemistry, physics and engineering fields which will help us better understand how to keep astronauts healthy and productive on long-duration space missions. Funding for ISS research is also reflected in the Exploration budget request and in the Space Technology budget request.

The fiscal year 2011 budget request includes a dramatic increase in the Nation's investment in the research and capabilities of the ISS. With this investment, NASA will be able to fully utilize the ISS and increase those capabilities through upgrades to both ground support and onboard systems. Importantly, this budget extends operations of the ISS, likely to 2020 or beyond. This budget makes a strong commitment to continued and expanded operation of the ISS. The United States as leader in space made this first step and will now work with the other ISS international partners to continue International operation of the ISS. ISS can inspire and provide a unique research platform for people worldwide.

ISS research is anticipated to have terrestrial applications in areas such as biotechnology, bioengineering, medicine and therapeutic treatment. The fiscal year 2011 budget request for ISS reflects increased funding to support the ISS as a National Laboratory in which this latter type of research can be conducted. NASA has two MOUs with other U.S. Government agencies, and five agreements with non-government organizations to conduct research aboard the ISS. NASA intends to continue to expand the community of National Laboratory users of the ISS. This budget request supports both an increase in research and funding for cargo transportation services to deliver experiments to the Station.

ISS can also play a key role in the demonstrations and engineering research associated with exploration. Propellant storage and transfer, life support systems, and inflatable technology can all benefit by using the unique research capabilities of ISS.

In addition to supporting a variety of research and development efforts, the ISS will serve as an incubator for the growth of the low-Earth orbit space economy. NASA is counting on its Commercial Resupply Services (CRS) suppliers to carry cargo to maintain the Station. The first CRS cargo flights will begin as early as 2011. It is hoped that these capabilities, initially developed to serve the Station,

may find other customers as well, and encourage the development of further space capabilities and applications. The suppliers involved will gain valuable experience in the development and operation of vehicles that can: (1) fly to the ISS orbit; (2) operate in close proximity to the ISS and other docked vehicles; (3) dock to ISS; and, (4) remain docked for extended periods of time.

As a tool for expanding knowledge of the world around us; advancing technology; serving as an impetus for the development of the commercial space sector; demonstrating the feasibility of a complex, longterm, international effort; and, perhaps most importantly, inspiring the next generation to pursue careers in science, technology, engineering, and mathematics, the ISS is without equal.

The fiscal year 2011 budget request for Space and Flight Support (SFS) is \$1,119.0 million. The budget request provided for critical infrastructure indispensable to the Nation's access and use of space, including Space Communications and Navigation (SCaN), the Launch Services Program (LSP), Rocket Propulsion Testing (RPT), and Human Space Flight Operations (HSFO). The SFS budget also includes a new and significant investment in the 21st Century Space Launch Complex, intended to increase operational efficiency and reduce launch costs by modernizing the Florida launch capabilities for a variety of NASA missions, which will also benefit non-NASA users.

In fiscal year 2011, the SCaN Program will begin efforts to improve the robustness of the Deep Space Network (DSN) by initializing the replacement of the aging 70m antenna capability with the procurement of a 34m antenna. The NASA DSN is an international network of antennas that supports interplanetary spacecraft missions and radio and radar astronomy observations for the exploration of the solar system and the universe. The DSN also supports selected Earth-orbiting missions. In the third quarter, a System Requirements Review (SRR) of the Space Network Ground Segment Sustainment (SGSS) Project will be conducted, and the Program will have begun integration and testing of the Tracking and Data Relay Satellites (TDRS) K&L. In the area of technology, the Communication Navigation and Networking Reconfigurable Testbed (CoNNeCT) will be installed on ISS. This test bed will become NASA's orbiting SCaN laboratory on the ISS and will validate new flexible technology to enable greater spacecraft productivity. NASA will also have its first optical communication system ready for integration into the Lunar Atmosphere and Dust Environment Explorer (LADEE) spacecraft. In addition, the Disruption Tolerant Networking (DTN) protocols will complete their development at the end of fiscal year 2011 and should be ready for operations throughout the solar system. The SCaN operational networks will continue to provide an unprecedented level of communications and tracking services to over 75 spacecraft and launch vehicles during fiscal year 2011.

The LSP has five planned NASA launches in fiscal year 2011 including Glory, Aquarius, Juno, NPOESS Preparatory Project (NPP) and the Gravity Recovery and Interior Laboratory (GRAIL) mission. In addition to processing, mission analysis, spacecraft integration and launch services, LSP will continue to provide support for the development and certification of emerging launch services.

The RPT Program will continue to provide test facility management, and provide maintenance, sustaining engineering, operations, and facility modernization projects necessary to keep the test-related facilities in the appropriate state of operational readiness. These facilities will support many of the tests planned under ESMD's propulsion research program.

HSFO includes Crew Health and Safety (CHS) and Space Flight Crew Operations (SFCO). SFCO will continue to provide trained crew for the manifested Space Shuttle requirements, four ISS long-duration crew rotation missions. CHS will identify and deliver necessary core medical capabilities for astronauts. In addition, CHS will gather astronaut medical data critical for determining medical risk as a result of space flight and how best to mitigate that risk.

The 21st Century Launch Complex initiative will primarily benefit NASA's current and future operations at the Kennedy Space Center (KSC), but will also help to improve KSC launch operations for future and current non-NASA users of the range, with the goal of transforming KSC into a modern facility. This new initiative focuses on upgrades to the Florida launch range, expanding capabilities to support commercial launch providers, such as commercial cargo flights and future commercial crew flights in support of ISS, and expendable launch vehicles in support of the Science mission directorate payloads and robotic precursor missions. Additional areas under consideration include modernization activities to support safer and more efficient launch operations; enhancing payload processing capabilities through capacity increases, improvement, and modernization, in addition to potentially relocating the KSC perimeter where appropriate and feasible, to enable certain existing private sector facilities to lie outside the security perimeter, thus making it far more

convenient to use those facilities; environmental remediation to reduce the impact on the surrounding areas; and supporting the modernization of the launch range capabilities. We will fully coordinate this activity with all users of the range.

#### EDUCATION

The fiscal year 2011 budget request for Education is \$145.8 million. This budget request furthers NASA's commitment to inspiring the next generation of explorers in the STEM disciplines. In fiscal year 2011, NASA will continue to strongly support the administration's STEM priorities and will continue to capitalize on the excitement of NASA's mission to stimulate innovative solutions, approaches, and tools that inspire student and educator interest and proficiency in STEM disciplines. This strategy will increase the distribution and impact of NASA progressive opportunities for elementary and secondary teachers, university faculty, students of all ages, and the public.

In fiscal year 2011, NASA will support the administration's STEM education teaching and learning improvement efforts, including Race to the Top and Educate to Innovate, while continuing efforts to incorporate NASA content into the STEM education initiatives of other Federal agencies. This summer, NASA will launch Summer of Innovation, an intensive STEM teaching and learning program targeted at the middle school level that includes follow-on activities during the school year. NASA content and products will be incorporated into evidence-based summer learning programs across participating States with the goal of improving student academic performance and motivating them to pursue further education and successful careers. The fiscal year 2011 request includes funding for Summer of Innovation over a 3-year period.

NASA will also continue to partner with academic institutions, professional education associations, industry, and other Government agencies to provide K-12 teachers and university faculty with the experiences that capitalize on the excitement of NASA discoveries to spark their student's interest and involvement. Examples of such experiences are the NASA student launch initiatives and other hands-on payload development and engineering opportunities. The fiscal year 2011 budget request also places increased emphasis on Education and cyber-learning opportunities and expands teacher pre-service, professional development and training programs. Additionally, NASA seeks to prepare high school students for undergraduate STEM study through experiences that blend NASA research and engineering experiences with classroom study and mentoring. Another agency education goal is to broaden community college participation in NASA research and STEM workforce development.

In fiscal year 2011, the agency aims to increase both the use of NASA resources and the availability of opportunities to a diverse audience of educators and students, including women, minorities, and persons with disabilities. An example is the Innovations in Global Climate Change Education project that will be implemented within the Minority University Research and Education Program. The project will seek innovative approaches to providing opportunities for students and teachers to conduct research using NASA data sets to inspire achievement and improve teaching and learning in the area of global climate change.

#### CROSS-AGENCY SUPPORT

NASA Cross-Agency Support 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. Cross-Agency Support includes two themes: Center Management and Operations and Agency Management and Operations. The fiscal year 2011 budget request includes \$3,310.2 million for Cross Agency Support.

NASA's fiscal year 2011 budget request includes \$2,269.9 million for Center Management and Operations, which funds the critical ongoing management, operations, and maintenance of nine NASA Centers and major component facilities. NASA Centers continue to provide high-quality support and the technical talent for the execution of programs and projects.

NASA's fiscal year 2011 budget request includes \$1,040.3 million for Agency Management and Operations, which funds the critical management and oversight of agency missions, programs and functions, and performance of NASA-wide activities, including five programs: Agency Management, Safety and Mission Success, Agency Information Technology Services, and Strategic Capabilities Assets Program. Beginning in fiscal year 2011, activities associated with the Innovative Partnerships Pro-



gram are transferred to the Space Technology program. The fiscal year 2011 budget request provides:

- \$428.1 million for Agency Management, which supports executive-based, agency-level functional and administrative management requirements. Agency Management provides for the operational costs of Headquarters as an installation; institutional and management requirements for multiple agency functions; assessment and evaluation of NASA program and mission performance; strategic planning; and independent technical assessments of agency programs.
- \$201.6 million for Safety and Mission Success activities required to continue strengthening the workforce, training, and strengthening the fundamental and robust checks and balances applied on the execution of NASA's mission, and to improve the likelihood for safety and mission success for NASA's programs, projects, and operations. The engineering, safety and mission assurance, health and medical independent oversight, and technical authority components are essential to NASA's success and were established or modified in direct response to many of the key *Challenger* and *Columbia* accident board recommendations for reducing the likelihood for future accidents. Included under Safety and Mission Success is the Software Independent Verification and Validation program.
- \$177.8 million for Agency Information Technology Services, which encompasses cross-cutting services and initiatives in IT management, applications, and infrastructure necessary to enable the NASA Mission and improve security, integration and efficiency of agency operations. NASA plans significant emphasis on continued implementation of five major agency-wide procurements to achieve the following: (1) consolidation of IT networks leading to improved network management, (2) consolidation of desktop/laptop computer services and mobile devices to improve end-user services, (3) data center consolidation to provide more cost-effective services, (4) agency public Web site management to improve access to NASA data and information by the public, and (5) agency business systems development and maintenance to provide more efficient and effective business systems. NASA will also continue to improve security incident detection, response, and management through the Security Operations Center.
- \$29.8 million for the Strategic Capabilities Assets Program (SCAP). This program funds the costs required to sustain key agency test capabilities and assets, such as an array of flight simulators, thermal vacuum chambers, and arc jets, to ensure mission success. SCAP ensures that assets and capabilities deemed vital to NASA's current and future success are sustained in order to serve agency and national needs. All assets and capabilities identified for sustainment either have validated mission requirements or have been identified as potentially required for future missions.

#### 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 for closed facilities, and environmental compliance and restoration. The fiscal year 2011 budget request includes \$397.4 million for Construction and Environmental Restoration, made up of:

- \$335.3 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 program are safe, secure, environmentally sound, and operate efficiently. The agency continues to place emphasis on achieving a sustainable and energy-efficient infrastructure by replacing old, inefficient, deteriorated building with new, efficient, high performance buildings that will meet NASA's mission needs while reducing future operating costs.
- \$62.1 million for Environmental Compliance and Restoration (ECR) Program, which supports the ongoing cleanup of current or former 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 for future missions. This program also supports strategic investments in environmental methods and practices aimed at reducing NASA's environmental footprint and lowering the risks of future cleanups.

#### CONCLUSION

Americans and people worldwide have turned to NASA for inspiration throughout our history—our work gives people an opportunity to imagine what is barely possible, and we at NASA get to turn those dreams into real achievements for all humankind. This budget gives NASA a roadmap to even more historic achievements as it spurs innovation, employs Americans in fulfilling jobs, and engages people

around the world as we enter an exciting new era in space. NASA looks forward to working with the subcommittee on implementation of the fiscal year 2011 budget request.

Madam Chair, thank you for your support and that of this subcommittee. I would be pleased to respond to any questions you or the other members of the subcommittee may have.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION—PRESIDENT'S FISCAL YEAR 2011 BUDGET REQUEST SUMMARY  
 [Budget Authority, in millions of dollars]

	Fiscal Year 2009 Actual	Recovery Act	Fiscal Year 2010 Enacted	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015
<b>Science:</b>								
Earth Science .....	1,377.3	325.0	1,420.7	1,801.8	1,944.5	2,089.5	2,216.6	2,282.2
Planetary Science .....	1,288.1	.....	1,341.3	1,485.7	1,547.2	1,591.2	1,630.1	1,649.4
Astrophysics .....	1,229.9	75.0	1,103.9	1,076.3	1,109.3	1,149.1	1,158.7	1,131.6
Helioastronomy .....	607.8	.....	627.4	641.9	647.6	679.8	704.4	750.8
<b>Total, Science .....</b>	<b>4,503.0</b>	<b>400.0</b>	<b>4,493.3</b>	<b>5,005.6</b>	<b>5,248.6</b>	<b>5,509.6</b>	<b>5,709.8</b>	<b>5,814.0</b>
<b>Aeronautics and Space Research and Technology:</b>								
Aeronautics Research .....	500.0	150.0	507.0	579.6	584.7	590.4	595.1	600.3
Space Technology .....	.....	.....	.....	572.2	1,012.2	1,059.7	1,063.9	1,217.9
<b>Total, Aeronautics and Space Research and Technology .....</b>	<b>500.0</b>	<b>150.0</b>	<b>507.0</b>	<b>1,151.8</b>	<b>1,596.9</b>	<b>1,650.1</b>	<b>1,659.0</b>	<b>1,818.2</b>
<b>Exploration:</b>								
Exploration Research and Development .....	.....	.....	.....	1,551.4	2,577.4	3,318.9	3,623.3	3,979.3
Commercial Spaceflight .....	.....	.....	.....	812.0	1,400.0	1,400.0	1,300.0	1,300.0
Constellation Transition .....	.....	.....	.....	1,900.0	600.0	.....	.....	.....
Constellation Systems .....	3,033.2	400.0	3,325.8	.....	.....	.....	.....	.....
Advanced Capabilities .....	472.3	.....	454.0	.....	.....	.....	.....	.....
<b>Total, Exploration .....</b>	<b>3,505.5</b>	<b>400.0</b>	<b>3,779.8</b>	<b>4,263.4</b>	<b>4,577.4</b>	<b>4,718.9</b>	<b>4,923.3</b>	<b>5,179.3</b>
<b>Space Operations:</b>								
Space Shuttle .....	2,979.5	.....	3,139.4	989.1	86.1	.....	.....	.....
International Space Station .....	2,060.2	.....	2,317.0	2,779.8	2,883.6	3,129.4	3,221.9	3,182.8
Space and Flight Support .....	725.0	.....	724.2	1,119.0	1,220.6	1,123.9	1,140.7	947.7
<b>Total, Space Operations .....</b>	<b>5,764.7</b>	<b>.....</b>	<b>6,180.6</b>	<b>4,887.8</b>	<b>4,290.2</b>	<b>4,253.3</b>	<b>4,362.6</b>	<b>4,130.5</b>
<b>Education .....</b>	<b>169.2</b>	<b>.....</b>	<b>183.8</b>	<b>145.8</b>	<b>145.8</b>	<b>145.7</b>	<b>145.7</b>	<b>146.8</b>
<b>Cross-Agency Support:</b>								
Center Mgmt & Ops .....	2,024.3	.....	2,067.0	2,270.2	2,347.4	2,427.7	2,509.7	2,594.3

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION—PRESIDENT'S FISCAL YEAR 2011 BUDGET REQUEST SUMMARY—Continued

[Budget Authority, in millions of dollars]

	Fiscal Year 2009 Actual	Recovery Act	Fiscal Year 2010 Enacted	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015
Agency Mgmt & Ops .....	921.2	.....	941.7	841.2	842.2	849.1	856.8	867.9
Institutional Investments .....	293.7	50.0	23.4	.....	.....	.....	.....	.....
Congressionally Directed Items .....	67.2	.....	63.0	.....	.....	.....	.....	.....
Total, Cross-Agency Support .....	3,356.4	50.0	3,095.1	3,111.4	3,189.6	3,276.8	3,366.5	3,462.2
Construction and Environmental Compliance and Restoration:								
Construction of Facilities .....	.....	.....	381.1	335.2	316.3	319.5	344.6	349.0
Environmental Compliance and Restoration .....	.....	.....	67.2	62.1	47.5	47.4	48.9	49.5
Total, Construction and Environmental Compliance and Restoration .....	.....	.....	448.3	397.3	363.8	366.9	393.5	398.5
Inspector General .....	33.6	2.0	36.4	37.0	37.8	38.7	39.6	40.5
Total, NASA Fiscal Year 2011 .....	17,782.4	1,002.0	18,724.3	19,000.0	19,450.0	19,960.0	20,600.0	20,990.0
Year to Year Change (percent) .....	.....	.....	5.3	1.5	2.4	2.6	3.2	1.9

## SAFETY

Senator MIKULSKI. Thank you very much, Administrator Bolden.

I am going to ask a few questions, and then the courtesy of Senator Shelby says we will turn to Senator Bennett. Then we will return to our regular order and go straight on down. Does that sound like a good way to go?

Administrator Bolden, I have many questions. Actually, I have 13 pages of questions. And my original questions were going to focus, of course, on space science as well as human exploration, but I think we have got to get right to the human exploration aspects.

My No. 1 concern, while we have to always look at the budget, is the safety of the astronauts. Many members on this subcommittee have been to launches, but we have also been there when the Challenger went down, and witnessed the terrible tragedy of the Columbia. We say a grateful Nation will never forget. Well, whatever course of action, we don't want to forget.

So my question will be the safety standards. First of all, how will you ensure the safety of the astronauts in this new proposed program? And will NASA have one safety standard for humans in space, not one safety standard for Government development programs that are very tough and another for commercial companies?

One commercial company said they could produce a crew vehicle in 3 years. Well, that sounds promising. It also sounds ambitious. My look at the history books showed that the shuttle took 12 years from when President Nixon approved it to the first human test, from 1969 to 1981. Again, tell me about the safety standards, and are we going to have one set of safety standards for low-orbit and commercial vehicles and so on, because it would be my hope that there is one safety standard.

Administrator BOLDEN. Madam Chair, as has been pointed out already by several speakers, I was a member of the Aerospace Safety Advisory Panel, the NASA safety advisory panel that now advises me. When I was a member of that panel, as John Frost, who will testify after me will comment, we were concerned that NASA was not sharing its human rating requirements with the commercial vendors.

I think and I hope Mr. Frost will attest to the fact that since my becoming the NASA Administrator, we share the human rating standards with all of the prospective vendors, whether they are large or small business, whether they are entrepreneurial or not. We are actually developing a set of human rating requirements for commercial vehicles that will take the massive numbers of engineering requirements and various other requirements and put them in one source document that will be available for all who wish to enter the commercial launch market.

In terms of safety and reliability are very interesting factors. When I talk about safety of a vehicle and satisfying myself that a vehicle is safe, there are a number of criteria that have to be met. The No. 1 criteria are demonstrated reliability. I would point out that we have three candidate vehicles at the present time: Ares I, Falcon 9, and Taurus II. The demonstrated reliability of all three vehicles is zero. We have never flown an Ares I. We have never flown a Falcon 9. We have never flown a Taurus II. So while there

are predictions of the safety of all these vehicles and their reliability, they are equal. They are all zero.

I will also point out that when we flew the space shuttle, when I came to NASA in 1980, the predicted reliability and safety factors for the space shuttle, I think, was going to be 1 in 1,000. We were going to fly 50 flights a year. I think most people know that we now struggle, the maximum we flew when I was in the astronaut office, I think we had a banner year in which we flew nine space shuttle missions. That was an incredible year for us.

The demonstrated reliability of the space shuttle today is 1 in 125, or somewhere in that neighborhood. So I would caution anyone to get carried away with predicted safety and predicted reliability numbers because we all know, as we say in the military, that no plan survives crossing the line of departure. So I am very comfortable that I can guarantee before I put a human being in any vehicle, whether it is Government-produced or commercially produced, it will meet the safety standards that have been required.

Senator MIKULSKI. Do I take it to say that there will be one safety standard?

Administrator BOLDEN. There will be one safety standard for any vehicle that carries human beings from this planet to anywhere.

#### CONTRACT TERMINATION

Senator MIKULSKI. Well, thank you for that. I would like to ask a contract termination question. Because if this is what you want, if this is what the President is proposing, how do you intend to handle contract termination and the workforce dislocation? But for us, and I know others will be asking questions about safety—

Administrator BOLDEN. Yes, ma'am.

Senator MIKULSKI. But what is your plan for the contractors who will be forced to terminate your work if this proposal is accepted? And are you planning to terminate all Constellation contracts? The issue of saving technology is one thing, but this has tremendous implications for our budget.

Administrator BOLDEN. Yes, ma'am. Madam Chair, we are in the process of transitioning the Constellation program from where it was when I inherited it to where it is going to be in the future. The term contract—termination liability, potential termination liability is one that has caused a lot of angst recently, and it is because it is a term that is used in procurement and it is a factor in all of NASA contracts. Every NASA contract has a stipulation that the contractor should provide for termination expenses, and every contractor knows that. So we are not changing requirements. We are not modifying requirements. Those have existed in prior NASA contracts, and they exist in our contracts today.

Senator MIKULSKI. I am puzzled by this. How have you been reminding contractors of their obligation to have reserve funds. How does that square with the fiscal 2010 appropriations law that prevents you from terminating or restructuring contracts for this fiscal year?

Administrator BOLDEN. I cannot terminate anything that has to do with the Constellation program, and we are doing that. If I can just make just one minor correction—we are not informing contrac-

tors that they have to maintain reserve funds. We are reminding them that it is their responsibility to determine—I guess technically for them, it is to determine what level of risk the company is willing to accept in terms of being able to handle a termination if it should come. So we are not telling them that they need to reserve funds. We are telling them that they do have to be aware of the fact that termination liabilities, some of them lie on them by their contract. It is the company's determination of what level of risk they want to incur, whether they put aside funds or whether they assume that they are not going to need them.

Senator MIKULSKI. Well, I want to ask more about this.

Administrator BOLDEN. Yes, ma'am.

Senator MIKULSKI. I do want to make sure that other members have a chance.

Senator Bennett.

I have a great deal of questions about this.

STATEMENT OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you very much, Madam Chairwoman, and I very much appreciate your courtesy in allowing me to participate in this.

General Bolden, I am a businessman. If I was sitting on the board of directors and you were making this pitch to the board of directors as to the direction in which you are going to take the company, I would tell you, you haven't made the sale. And let me give you four areas where I think you have failed to make the sale.

PREPARED STATEMENT

By the way, Madam Chairwoman, I have a formal statement and would appreciate it put in the record.

Senator MIKULSKI. Without objection.

[The statement follows:]

PREPARED STATEMENT OF SENATOR ROBERT F. BENNETT

Madam Chairwoman, I would like to express my appreciation to you for allowing me to join this subcommittee hearing this morning. This issue is extremely important to Utah and to me personally, so I am sincere in my gratitude.

Utah has a rich history in supporting NASA's human space exploration missions. For decades, talented workers in Utah have helped engineer, design, and manufacture solid rocket motors that have safely and efficiently launched our astronauts into outer space. We have launched over 100 shuttle flights, all of which have begun their journey on solid rocket motors made in Utah, a fact of which I am extremely proud. Even though there have been some setbacks along the way, they have made us stronger and have taught us valuable lessons that have made subsequent flights safer and more reliable.

And now, at the end of this year, the Space Shuttle that has helped the United States maintain its role as the leader in space exploration, leading to life-changing technological discoveries along the way, will be retired. But the end of the Space Shuttle was not supposed to be the end of human space exploration. Rather, the Constellation program, which grew out of the Challenger disaster several years ago, was supposed to seamlessly take over for the Space Shuttle to continue to ferry our astronauts to the International Space Station and, eventually, beyond low-earth orbit by venturing back to the moon and eventually to mars, a plan that was approved by both Republican and Democratic leadership.

And now after several years and billions of dollars of investment in this program, the President has decided to cancel the program. Why? To me, it's not clear, and neither the President nor anyone in his administration has made a compelling case for why we should abandon the Constellation program. The President made a decision to cancel the Constellation program and laid out his vision for space exploration

earlier this year, and then last week he “revised” that vision. This type of “on-the-fly” decisionmaking has made me very concerned about who may actually be making these decisions.

Regardless, I have several very serious concerns about canceling the Constellation program. If we are going to cancel this program and pursue a different path, we should only do so under the following conditions: (1) the President has demonstrated a clear vision for human space exploration and adequately explained why it is superior to the Constellation program; (2) the alternative provides significant advantages in cost, schedule, performance, and safety; (3) the potential consequences of changing course mid-stream do not outweigh the anticipated advantages of such a significant shift in policy; and (4) we are able to maintain our leadership in space exploration. Unfortunately, the President’s alternative plans to replace the Constellation program fail these conditions miserably.

First, since the President announced he was cancelling the Constellation program, he has already announced changes to his new plan. His new plan is short on details and expected costs, relying on the commercial industry to take over the role of transporting crew and cargo to the International Space Station, increasing the role of robotics for exploration, and speeding up development of a “heavy lift” vehicle by 2015. The problem is that the commercial industry has not proven to be able to meet any safety or budget deadlines and the Constellation program already has a heavy lift vehicle, the Ares V, in the works. So, here we have a program that is meeting all of its milestones and has a demonstrated capability to achieve our space objectives with Constellation, and we are scrapping it for a commercial industry that has not proven its worth in space travel and for a heavy lift vehicle that we will begin working on in 5 years. And do we intend to go to the moon? To Mars? To an asteroid? What exactly do we hope to achieve with the new plan envisioned by the President? The problem is I can’t tell.

Second, the President’s alternative plan will actually cost us more money and delay our ability to get ourselves into space. The Ares program, which is a major component of Constellation, is a prime example of how this program is on track. Just last year we launched a successful test flight of the Ares I rocket. It went perfectly. It has been under design and testing phases for over 4 years, with \$6 billion already invested in perfecting the rocket. The Ares I is built off of the same manufacturing format as the current rockets that have been putting our space shuttle into space for over two decades, so we know we have a proven technology that takes advantage of an existing manufacturing base and capability. Scrapping this investment and starting fresh does not make sense to my business sense. The Augustine Panel said we’d need about \$3 billion a year to keep the program on track. This year alone the President wants to spend \$2.5 billion to cancel the Constellation program, with billions more in funding set aside to subsidize the commercial industry. This makes no sense. And finally, the Ares I design is proven to be the safest mode of transporting our astronauts. The Safety Advisory Panel that found that the model embraced by Ares would be the safest for our astronauts, and now we are going to pretend that safety doesn’t matter. This has me very concerned. The President’s alternative plan does not provide significant advantages in cost, schedule, performance, or safety.

My third point of concern is regarding the consequences of canceling Constellation. I don’t believe the administration fully understands the drastic impact this decision will have on our national security. Ending Constellation will devastate an industrial base critical to our national security. The Constellation Program is powered by the Ares I, a large scale solid rocket motor. If there are no large solid rocket motors in production with the cancellation of Constellation (other than NAVY D-5 at 12 motors a year under their “warm line” program), the current industrial base will be too large to support small solid motor production, requiring massive layoffs. In Utah alone, this means losing about 2,000 jobs. Producing only small solid motors would not be sufficient to keep the supplier base engaged as many of them would go out of business or stop producing highly specialized components because the economies of scale won’t justify the decision to remain in business. This will certainly lead to price spikes at the Department of Defense for smaller tactical missiles (which are solids-based), and lead to hundreds of millions of dollars in price increases on tactical weapons systems every year. It could also mean that DOD may have difficulty getting solid-based tactical missiles produced in the future at all, which is not good for either readiness or costs.

And finally, I don’t believe the current plan of the President will allow the United States, a country which has been the leader in space technology development for over 40 years, to continue to lead the world in space exploration. It’s almost embarrassing that we will rely on the Russians to take our astronauts into space starting next year. And what happens if the commercial industry isn’t able to deliver on



time? Do we rely on the Russians for the next decade to meet our space needs? And what about other emerging nations like China and India? Will they surpass the United States? Of course I applaud other nations in further developing their technologies, but I believe if we continue down the path this President wants to take us, we will lose our global competitive advantage that space exploration has helped us develop. We cannot allow this to happen.

#### SCIENCE

Senator BENNETT. The four areas that I think you haven't made the sale are No. 1, the science; No. 2, protecting the industrial base; No. 3, the money; and No. 4, the law. And let me run through those very quickly, and then you can respond to them as you will.

You made a statement just now that I find incredible when you say the demonstrated reliability of Ares is zero. Now, you probably have seen this, but let me show it to you. Time magazine just 6 months ago, in November 2009, published the 50 best inventions of the year, and No. 1 of the 50 is Ares—the best invention of the year. Doesn't sound like shabby science to me. It doesn't sound like something that is obsolete.

And they say—you can contradict this—they talk about this, and I am quoting from Time, "In 2004, the U.S. committed itself to sending astronauts back to the Moon and later to Mars, and for that, you need something new and nifty for them to fly. The answer is the Ares I, which had its first unmanned flight on October 28 and dazzled even the skeptics."

That doesn't sound like there is no demonstration of reliability. I think there is a definition problem here. None of the other things you talked about can match the tested perfection of Ares with the test that has already been done. So I challenge that one.

#### INDUSTRIAL BASE

No. 2, the industrial base, you said the President will make a decision as to what will be done by 2015. If you kill the industrial base of solid rocket motors now with this action, in 2015 you cannot get it back.

This is not like—this is not saying, "Well, we are going to stop buying this kind of car, and we will look at buying another kind of car or pickup truck or SUV 4 or 5 years from now, and there is an industrial base that will have those kinds of cars or trucks available to us." This is the only game in town.

And you shut down the industrial base of rockets, solid rocket motors, and there will be no contractors available in 2015 if you make the decision that is the way you want to go. And I think that is a very significant issue you have to address now.

#### PROTECTING THE MONEY

No. 3 Money, you have not made the case that this is going to save money. And let me point out two particular things with respect to money. On the—Senator Shelby has referred to this already—the fiscal 2011 budget includes \$2.5 billion in Constellation contract termination costs; \$6 billion for new commercial providers, whom we don't really know who they are, who likely will suffer the normal cost and schedule growth that has been referred to in the opening statements already with their level of inexperience; an additional \$312 million for COTS money that was never planned.

So you have got the \$2.5 billion. You have got the uncertainty of where you are going. And it seems to me, a much more responsible use of taxpayer dollars would be to use the combined \$8.8 billion that is represented in your budget to finish the program that has had 5 years' worth of progress and accomplishments and is designed to deliver a safer and more reliable way to send our astronauts to orbit than something that we are just guessing about.

I think the prudent financial circumstance is to stay with what we have got instead of plunging into the unknown. And looking at construction costs, I would like you to address what I find a significant gap in your money calculations. You stated in congressional testimony that the Ares program to fly would cost approximately \$4 billion a year.

Doug Cook, the Associate Administrator for Exploration Systems Mission Directorate, recently stated in testimony that the recurring cost for Ares is \$140 million per flight, you have got to have a lot of flights at \$140 million to get to the \$4 billion per year. I find that to be a disturbing kind of thing that I think you need to explain.

#### PROTECTING THE LAW

Finally, the law, this subcommittee—Congress in the fiscal 2010 omnibus appropriations bill expressly prohibited using any 2010 funds to terminate or in any way change or modify the Constellation program. Just yesterday, ATK received a notice that funds for their contract under the launch abort system will be limited, and no additional funds will be forthcoming after April 30, 2010. That is a week away.

It seems to me this is a clear violation of the law that says no money will be used—no funds will be used in any way to change or modify the program for fiscal 2010. Fiscal 2010 has not run out yet.

So, to summarize what I said in the beginning, I think your conclusion on science runs afoul of the experience of what we have found with the testing of Ares. I think the threat to the industrial base casts doubt upon your ability to do something in 2015 if the President decides, or whatever President it is decides they want to go back to solid rocket motors. They won't be able to. I think your numbers on the money don't add up, and I think what is being done right now is a contravention of the law.

So I would very much appreciate your reaction to those four points.

#### SCIENCE

Administrator BOLDEN. Thank you, Senator. I will try to go down the line.

The first thing is the science. And with all due respect, we are very proud of having been recognized for the No. 1 invention of the year by a number of different authoritative publications and the like.

Perhaps we were not very good in explaining to people that Ares I-X is not Ares. Ares I-X was a four-segmented rocket that had a dummy fifth stage, fifth segment, and a dummy interstage, and a

dummy nose cap. The Ares I vehicle is a five-segmented solid rocket motor that has never flown.

So we are very proud of Ares I-X and its recognition for what it did because it gave us 700 pieces of data from sensors that were put on the vehicle, and I always told people it was the greatest wind tunnel test conducted by humans ever. But that was not an Ares I. That was an Ares I-X, an experimental rocket that we wanted to do a number of things just to demonstrate that the shape and form would work.

So the science does—

Senator MIKULSKI. In the interest of time, we are not going to have a debate. We appreciate the extensive data that you could provide, but if you could answer the question, because there are several other members, I would like to keep a well-paced hearing.

#### PROTECTING THE MONEY

Administrator BOLDEN. Yes, ma'am. The money—there is a big difference between the per-flight cost and recurring costs. Most of the recurring costs from shuttle and from Constellation would come from just maintaining the infrastructure. So that is the reason that the money difference is.

#### PROTECTING THE LAW

The law—we have not terminated any contracts. We have not directed anyone to stop work on anything. If you were talking about the launch abort system test that is still scheduled for May—I may be misunderstanding your comment. But the launch abort system test is still scheduled for May 5, and we are very much looking forward to seeing that because, again, we will get a lot of data from that test.

#### INDUSTRIAL BASE

And then the industrial base, unfortunately, the solid rocket industry has been overcapitalized for many, many years. It was far overcapitalized for the shuttle because we said we were going to fly 100 missions a year, or 50 missions a year. And that is what it was set up to service. We ended up flying eight missions a year.

It would have been overcapitalized—it was overcapitalized for the shuttle. It would have been grossly overcapitalized for Constellation. And so, the business decision, and since you are a businessman, sir, the business decision that needs to be made by the only company that is legitimately in that industry right now is “how do I downsize?” if they want to be competitive.

There is a big difference between what NASA uses in solid rocket motors. We use large, segmented, solid rocket motors. Since the cancellation of the Titan program, there is no other use for that type of solid rocket motor. So we are carrying 70 percent of the industry for a capability that nobody uses but NASA.

I am concerned about the industrial base, and we are doing everything we can to work with our counterparts in DOD, to work with ATK to help them in any way we can because we still need solid rocket motors.

Senator MIKULSKI. Administrator Bolden, we need really shorter—

Administrator BOLDEN. Those are the four questions.

Senator MIKULSKI. I need good answers, and so does Senator Bennett, but—

Administrator BOLDEN. I am done.

Senator MIKULSKI. No, he asked about the law.

Administrator BOLDEN. I said, ma'am, we have not violated the 2010 Appropriations Act and the stipulations in that. I have not terminated any contracts nor directed people not to go forward with, to my knowledge.

Senator MIKULSKI. Senator Bennett, I know you had many more questions. I must turn to other members. I want to ask the Administrator and also invite my colleagues to submit other questions in writing, to leave them open for the record so that there is an extensive record of these deliberations and proceed that way.

Is that satisfactory?

Senator BENNETT. Absolutely, Madam Chairwoman. I very much appreciate your courtesy and apologize for letting my enthusiasm and desire to engage get hold of me.

Senator MIKULSKI. We have got a lot of people who want to talk and ask questions.

Let us turn to Senator Shelby, the ranking member.

Senator SHELBY. Thank you, Madam Chairwoman.

#### SPACE PROGRAM

Madam Chairwoman, I have two articles. One appeared in Tuesday's Globe and Mail in Toronto regarding the space program, and one appeared in Florida Today, and I would like to ask that they be made part of the record.

Senator MIKULSKI. Without objection.

[The information follows:]

[From Globe and Mail, Tuesday, April 20, 2010]

There is no doubt, given the serious deficits facing the United States Government, that some retrenchment at NASA was unavoidable. The space administration will spend \$18.6 billion in 2010, an increase of \$900 million over 2009. These are not insignificant figures, even in the context of vast U.S. Government expenditures. However, the plan to fundamentally reposition NASA to concern itself more with "earth science" goes beyond an exercise in fiscal rectitude. U.S. President Barack Obama has lowered the ambition of America.

In February, Mr. Obama cancelled the Constellation program, which committed the United States to returning people to the moon by 2020. "We've been there before," he said, adding "there's a lot more of space to explore." Except that most experts think a Moon mission is a practical and necessary first step to sending people to Mars, and the cancellation means that the \$10 billion already spent on the mission has been wasted.

Mr. Obama's own plan, announced last week, really only feigns interest in space exploration, and indeed, were it not for some funding for a new crew capsule, would have effectively ceded manned spaceflight entirely to Russia. Mr. Obama did announce a fuzzy commitment to land on an asteroid by 2025, and to land people on Mars by 2035, but these are more or less sops to science fiction enthusiasts. Without an interim step of a return to the Moon, such missions may prove impracticable. Contrast this with Mr. Obama's 60 percent hike over the next 5 years in funding for NASA's Earth sciences program, with its overarching emphasis on climate change research.

That is no doubt also a priority. But somehow, investments in Earth science research satellites, airborne sensors and computer models, do not have the same capacity to inspire the popular imagination, and generate the potential for game-changing innovation, as NASA's traditional mission to "pioneer the future in space

exploration." As Neil Armstrong has written, "Without the skill and experience that actual spacecraft operation provides, the United States is far too likely to be on a long downhill slide to mediocrity." Under the Obama plan, space is not the final frontier, Earth is.

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[From Florida Today, April 16, 2010]

A "DEVASTATING" PLAN—OBAMA DOESN'T GET IT; SPACE IS LAST FRONTIER

*KENNEDY SPACE CENTER.*—President Obama in effect pulled the plug on our space program in a speech here Thursday, although he masked it with some vague long-term suggestions.

The late President John F. Kennedy must have turned over in his grave. JFK launched the moon-landing program in the 1960s because he understood that any nation that wants to remain No. 1 on Earth must also be No. 1 in space.

We are now No. 2 behind Russia and soon may be No. 3 behind China. Even India and Brazil are developing ambitious space programs.

Obama's proposal not only abandons our space shuttle, he also has no timetable or real plan for what he says ultimately will send humans to Mars. Obama doesn't seem to care that soon we will have to hitchhike rides with the Russians just to get our astronauts to the International Space Station.

Unfortunately, some political and business leaders in Florida are buying the Obama plan because it may provide a few jobs for some of those thousands who will be unemployed here when the shuttle program ends. That should not be the most important of our Nation's concerns.

Fortunately, some of those who pioneered our space program get it. Neil Armstrong, the first human to step on the moon, called the Obama plan "devastating."

Obama's proposal is all about money priorities and our inexcusable war costs, not about peaceful world leadership. His proposed budget for 2011 makes that clear:

—*Wars.*—\$159.3 billion.

—*Space.*—\$19 billion. That suggests Obama thinks that wars in places like Afghanistan and Iraq are nearly 10 times more important than exploring the last frontier in space. I voted for Obama for president. But, Neuharth lives in Cocoa Beach. He is the founder of "USA Today" and FLORIDA TODAY.

CONSTELLATION PROGRAM

Senator SHELBY. And I would like to quote just a little from, first, Tuesday's Globe and Mail about the Obama plan. This plan basically, they say, and I paraphrase, "U.S. President Barack Obama has lowered the ambition of America. Under the Obama plan, space is not the final frontier, Earth is." That is part of the article.

Under the Florida Today article, appeared April 16, says, "Obama doesn't get it. Space is last frontier. President Obama, in effect, pulled the plug on our space program in a speech here Thursday," talking about in Florida, "although he masked it with some vague, long-term suggestions. The late President John F. Kennedy must have turned over in his grave. JFK launched the Moon landing program in the 1960s because he understood that any nation that wants to remain No. 1 on Earth must also be No. 1 in space."

A couple of questions, it is my understanding, Mr. Administrator, that there has been a lot of internal discussion at NASA regarding how to circumvent the fiscal year 2010 language that limits NASA's ability to terminate or to alter the current Constellation program. Given the importance of this issue, we need to understand here in the subcommittee the legality of the decisions NASA is making related to the program of record, especially in view of legislation.

Could you provide to this subcommittee, the Appropriations Committee overview, within the next week a letter and the decision documents from NASA's general counsel regarding NASA's interpretation of the 2010 appropriations language and the applicability of the Antideficiency Act. Could you do that?

Administrator BOLDEN. I will do that, sir.

[The information follows:]

There are no "decision documents from NASA's General Counsel." NASA has neither intended nor attempted to circumvent the restriction on terminating Constellation programs, projects, or activities. Instead, NASA's focus has been on ensuring compliance with the strict terms of the provision. The fiscal year 2010 appropriations act contained a general appropriation for Exploration activities without specifically addressing the Constellation program. The appropriations act then included a provision that there be no termination or elimination of the architecture of Constellation, and no creation or initiation of a new program, project, or activity without further authority. The fiscal year 2010 appropriations act provided as follows:

". . . Provided, That . . . none of the funds provided herein and from prior years that remain available for obligation during fiscal year 2010 shall be available for the termination or elimination of any program, project or activity of the architecture for the Constellation program nor shall such funds be available to create or initiate a new program, project or activity, unless such program termination, elimination, creation, or initiation is provided in subsequent appropriations acts."

Title III, Consolidated. Appropriations Act, 2010, Public Law No. 111-117, 123 Stat. 3034 (2009).

GAO defines "program, project, or activity" (PPA) as "an element within a budget account." Terms and Definitions, "A Glossary of Terms Used in the Federal Budget Process," GAO-05-734SP Budget Glossary, September 2005. "Program activity" is defined as "[a] specific activity or project as listed in the program and financing schedules of the President's budget." *Id.*

Thus, based on established usage, the restriction on Constellation termination contained in the 2010 appropriations act is limited to termination of a PPA, or an element within the Exploration account. NASA has not terminated any specific contract, although NASA could do so under the restrictive language of the appropriations act, which only prohibits termination of any program, project, or activity of the Constellation architecture.

The Antideficiency Act ("ADA") provides in relevant part that no officer of the United States may make or authorize an expenditure or obligation exceeding an amount available in an appropriation, fund, or formal subdivision of funds. 31 U.S.C. §§ 1341(a)(1), 1517. The ADA also requires that an agency ensure it does not contract for work in excess of the appropriations available to fund the work. 31 U.S.C. §§ 1341(a)(1), 1517. Most of the Constellation contracts, including all of the major primes, are incrementally-funded, cost-reimbursement contracts, which are required to have, and do contain, a Limitation of Funds ("LOF") clause to ensure work is performed within the limits of the funding allotted to the contract. The LOF clause (Federal Acquisition Regulation 52.232-22), in paragraph (h), states "the Government is not obligated to reimburse the Contractor for any costs incurred in excess of the total amount allotted by the Government to this contract, whether incurred in the course of the contract or as a result of termination" (emphasis added). Allotted funding therefore includes all costs under the contract, for performance and for any costs resulting from termination.

NASA is acting to comply with both the ADA and the fiscal year 2010 appropriations act. The fiscal year 2010 appropriations act, prohibiting use of funds for termination of Constellation PPA, does not require that NASA risk an ADA violation, and certainly does not create an exception to the ADA. Reading the fiscal year 2010 appropriations act with the ADA, NASA is bound to take steps to ensure that the Constellation contracts are managed according to their existing terms, including the express terms of the Limitation of Funds clause. GAO, Principles of Appropriations Law Vol. 11, at 7-48 (2009). As stated previously, NASA has not terminated any Constellation contracts; but NASA has issued letters to two Constellation contractors, reminding the companies of obligations under the LOF clause. This is prudent contract management, intended to avoid coercive deficiencies in violation of the ADA, and should not be interpreted in any other way. Most importantly, it does not terminate any PPA within the Exploration account.

Senator SHELBY. Okay. Has NASA sought any guidance from the Department of Justice on this? And if so, what was their legal opinion? Could you—

Administrator BOLDEN. Sir, I will submit that for the record. [The information follows:]

NASA received input from the Department on the drafting of the letters referenced above. However, NASA did not receive a legal opinion from the Department.

Senator SHELBY. And the subcommittee.

Administrator BOLDEN. Just in summary, the discussion with the Department of Justice had to do with potential termination liability, as the chairwoman was, Madam Chair was talking.

#### ARES I VERSUS FALCON 9

Senator SHELBY. Thank you.

I want to get into Ares I versus the Falcon 9. General Bolden, it is my understanding that you have stated to congressional members that you think Ares and Orion are no safer than the Falcon 9 and Dragon capsule. However, according to a July 2009 independent safety review of rocket options initiated by NASA, the Valador report states that the Ares I launch vehicle “is clearly the safest launch vehicle option and that it is superior to all other options.”

What information do you have that validates the safety of the Falcon 9? And if you have it, would you furnish it to the committee?

Administrator BOLDEN. Sir, we will get what information we have. But my comment to people over the last week has been, specifically when asked by Senator Hatch earlier, my gut tells me that Ares would be safer than anything else, but that is not what the data says.

Senator SHELBY. But you will furnish this to the subcommittee?

Administrator BOLDEN. I will furnish the data, yes, sir. Yes, sir. [The information follows:]

#### DEMONSTRATED SAFETY RECORD

Any current risk estimates for future launch vehicles are based on modeling probabilistic risk analysis (PRA). When referring to safety records, demonstrated safety records are far more important.

Both NASA's Ares-I program and SpaceX have launched test flights—NASA's Ares I-X suborbital flight and SpaceX's inaugural Falcon 9 orbital flight. However, even SpaceX has not yet flown its Dragon capsule, so these flights do not equate to a demonstrated safety record, and thus no design has yet proven itself to be safer.

#### ACCESS TO SPACE

Senator SHELBY. The new capsule plan. The latest plan restructures the Orion capsule so that it will be the—as we understand will be nothing more than a space station escape pod. I fail to see how this escape pod will lessen our reliance on other nations for our access to space. We are still going to pay the Russians for a roundtrip. We are going to pay for a commercial rocket and capsule, and we will now pay to build our own return vehicle. What is the—tell me, explain this to me.

Administrator BOLDEN. Sir, the restructuring of the Orion program is actually an—it is my desire that it be an incremental approach to develop a vehicle that will one day take us to the Moon

and Mars and beyond low-Earth orbit. We need to have a domestically produced capability to get crews back and forth to the International Space Station, and the original version that the President talked about last week would be a vehicle that we could get there much quicker than anyone else because we don't have to human rate it for ascent. We would send it to space just on any launch vehicle, but it would be rated to comply with the visiting vehicle requirements and rated for human rating for entry, descent, and landing.

#### COMMERCIAL SPACE FLIGHT

Senator SHELBY. General Bolden, if the commercial route is truly the route that you are headed; wouldn't it be cheaper and wiser to just use a Dragon capsule for this purpose? If not, why not?

Administrator BOLDEN. Senator, we hope it would be cheaper and wiser, and that is our long-range intent. The first use of a re-structured Orion, is because we think we can get it there in 3 years. So that gives us a domestically produced return vehicle on the International Space Station in 3 years. It also relieves some of the pressure from the commercial vendors to try to deliver a vehicle that has the human-rated capability in a shorter period of time.

#### SAFETY PROGRAM

Senator SHELBY. General, you are a four-time veteran of space flights as an astronaut, and each time you arrived safely home, thank God. You have also been a member of the Aerospace Safety Advisory Panel, a group that was founded to help ensure the safety of our astronauts. Of all the possible people to lead NASA on its missions of human exploration, you are more than qualified to understand the role of safety.

Now you appear to be deliberately choosing to ignore safety concerns from the very people at NASA that you entrusted your life with and you came home four times. Could you explain to the subcommittee and the people at NASA who made the United States such a leader in space for 50 years, why you, as the Administrator, are ignoring their record, basically, they claim, of safety and engineering excellence?

Administrator BOLDEN. Are you referring to the ASAP, sir?

Senator SHELBY. I am talking about the overall safety program.

Administrator BOLDEN. Oh, I am not ignoring the inputs of anyone from the safety program.

Senator SHELBY. They believe you are.

Administrator BOLDEN. If you ask Bryan O'Connor, who is my conscience, he is my Director of Safety and Mission Assurance, Bryan, I think, will tell you that I listen to him every day. John Frost is going to come up, and I think John Frost will tell you that I listen to him every day. We are decidedly looking at everyone's concerns on safety, and that is why I can assure everybody that before we put a human in a vehicle and launch him off this planet, we are going to have the safest possible vehicle.

I am a safety professional. It is my life. It is in NASA's core values, and there are not a lot of other companies in the country that can say that safety is one of their core values.



Senator SHELBY. But you benefited from it four times, did you not?

Administrator BOLDEN. I flew four times, and I had every confidence in the world that I was going to return safely to Earth, and that is going to be the case with every astronaut that I launch, whether they are on a privately produced vehicle, a foreign-produced vehicle, or any other vehicle.

Senator SHELBY. That is not the message that is being received at NASA right now.

Thank you, Madam Chair.

Senator MIKULSKI. Senator Cochran.

#### ROBUST TESTING PROGRAM

Senator COCHRAN. Madam Chairwoman, thank you for your leadership in this subcommittee.

And Mr. Administrator, we appreciate your cooperation with the subcommittee. I remember our visit in my office when you were making the rounds of the Hill after assuming the position you now have, and I was very impressed with your commitment to moving us forward in the space exploration program, and got the impression that that also includes a robust testing program.

We are very proud of the fact that in my State, the Stennis Space Center provides testing facilities and experience to help make sure that we do have demonstrated reliability, which were your words to describe your test for NASA safety standards.

Do you continue to have the view that a robust testing program is essential to a reliable and safe and successful space exploration program?

Administrator BOLDEN. Senator, I continue to hold that. There is nothing better than a robust testing program. The \$312 million that the President has proposed in the fiscal year 2011 budget for commercial will allow us to buy down some risk by trying to help the commercial industries do maybe some more tests than they may have planned in their present portfolio. So I am a believer in tests.

Senator COCHRAN. Well, I was worried that the budget request doesn't have any funds that are specifically designated for the testing program at Stennis Space Center.

Administrator BOLDEN. Senator, the heavy-lift propulsion development program will contain tests that will be run at Stennis. I think you know we are continuing the retrofits to the A-3 test stand. We already have commercial entities that have contracted to test their engines at Stennis. Stennis is critical. It is vital to the future of any kind of space flight because we want it to be the center for testing of propulsion systems, whether they are for the military, commercial, or NASA.

Senator COCHRAN. Well, that is reassuring, and I appreciate the clarification of that. I also want to let you know that we appreciate the comments that you are 100 percent committed to the mission of NASA and its future. Broadening our capabilities in space will continue to serve our society in ways we can scarcely imagine. I share that enthusiasm and commit to you our best efforts here in this subcommittee to identify how we can invest the public funds so that we achieve those goals.

Administrator BOLDEN. Thank you, sir.  
 Senator COCHRAN. Thank you.  
 Senator MIKULSKI. Senator Voinovich.

#### GLENN RESEARCH CENTER—PLUMBROOK FACILITY

Senator VOINOVICH. Thank you, Madam Chairwoman.

First of all, I would like to say that NASA Glenn in my State and the Plum Brook station are unique and a powerful resource for our State. More than 3,500 highly skilled civil service and contractor employees work at these facilities, and your agency's economic impact to the State exceeds \$1.2 billion.

Further, it is a catalyst for 1,200 aerospace-related companies in our State, companies that employ more than 100,000 Ohioans. And the undertow in a lot of the comments that you are getting today is that NASA has been very, very helpful to our respective States, and the Constellation program has been very important to NASA Glenn.

On the other hand, last year, for every dollar this country spent, we borrowed 41 cents. Our debt is out of control. It is not sustainable. As far as we look down the road, we have budgets that are not balanced. And we have to come to some point where we start to analyze what we are doing. And I think that it is important that you do a better job of clarifying just exactly what it is that you are trying to get done.

Administrator BOLDEN. Yes, sir.

#### PRIVATE SECTOR COMPETITION

Senator VOINOVICH. Are you trying to get a rocket made real quickly so you can go up to the space station, and you think you can do it better by having competition from the private sector? Are you intending to go to Mars and the rest of it, as President Bush talked about? And if you are, I think you mentioned how far out is it and what are the things we have to do in order to reach it?

But I think that you have to do a better job of clarifying things.

Administrator BOLDEN. Yes, sir.

#### NASA AND COMMERCIAL COMPANIES

Senator VOINOVICH. And the question I want to ask you is that the thing that you laid out in your budget represents a fundamental shift in the direction and fundamental shift in the relationship that NASA has with commercial companies. What was it about the way the agency has been doing business that led the agency and this administration to believe it is needed to undertake such a dramatic overhaul in the way you are doing business?

Is it because of the budget? Is it because you think you can get there quicker by going the route you are going? Or is it a combination thereof?

Administrator BOLDEN. Senator, if I can summarize it, the No. 1 thing is we are trying to meet the expectations of the Congress and the Nation that go back to the 2008 Space Act that put as a primary challenge to NASA to help develop a commercial space industry. We see that commercial space industry as allowing NASA to focus on exploration beyond low-Earth orbit, while the commer-

cial industry provides access to low-Earth orbit. So it is a combination of things.

But we are not trying to do anything fast. I have always heard it said if you want it quick and fast, you will get it quick and fast, and it probably won't be very good. So urgency is important. Speed is not something that I am asking my people to do with any of this, but I do want them to try to get us where we want to go with a sense of urgency.

#### INTERNATIONAL SPACE STATION

Senator VOINOVICH. Well, there is a lot of feeling in the country that we are going to have to rely upon the Russians to get up to the International Space Station. And by the way, more countries should be paying for the operation of that, and I would like you to look into that and how we can get others to pick up the tab because we are not Uncle Sugar anymore. We are in a little different position. In fact, we are probably worse off than some of the people that are our partners up there.

But the fact is people are concerned about that. How much are they going to charge us? How long is that going to last? That has got something to do with how people feel about where we are going. We want to get out from under them.

Administrator BOLDEN. Yes, sir. Senator, that will require a fundamental change in the way that NASA and its partners have operated the International Space Station. From day one, the fundamental agreement was that the Russians would provide access for humans to and from the International Space Station. NASA, because we had the most remarkable vehicle ever known to man and the space station that could carry large cargo, would provide the vehicle to carry cargo to orbit. So it is not new that we rely on the Russians to get humans to the International Space Station and back. That has always been a basic, fundamental agreement in the partnership. So that is not new.

#### SUSTAINABLE EXPLORATION PROGRAM

The other fundamental change is that this President, through his budget, has decided that he must and we must build a sustainable exploration program, and the way we were operating until now was not sustainable. That was my gut feel as an outside observer, in the 14 years that I was outside NASA after my leaving before and coming back now, and this—we are now going to have a sustainable program.

Senator VOINOVICH. You are going to have to do a big job—

Administrator BOLDEN. Oh, yes, sir. I understand.

Senator VOINOVICH [continuing]. Convincing this subcommittee about it not being sustainable—

Administrator BOLDEN. Yes, sir.

Senator VOINOVICH [continuing]. And what you are doing with the money that we are going to make available to you. And many of us are interested in whether or not the money that we have already put into Orion is just going to be poured down the drain, or whether or not it is going to be able to stay in the game in terms of competition in order to go forward with this because of all the work that we have done.

Administrator BOLDEN. Yes, sir. We intend to do that.

Senator MIKULSKI. Senator Voinovich does that—

Senator VOINOVICH. That is it.

Senator MIKULSKI [continuing]. Complete your testimony?

Senator VOINOVICH. Thank you.

Senator MIKULSKI. Senator Hutchison.

#### SPACE PROGRAM

Senator HUTCHISON. Well, thank you, Madam Chairwoman, and I do appreciate your holding this hearing, and I would say that as the ranking member of the Commerce Committee, I have invited the Administrator to come to a hearing next week where others have been invited, but have been told the Administrator is not available. And I hope, Madam Chairwoman, that changes, General Bolden, because I think after the incredible consequences of the President's decision that I would ask you to be available.

Senator MIKULSKI. Senator, may I inquire the day, time and date of the hearing?

Senator HUTCHISON. April 28 at what time? 2:30.

Senator MIKULSKI. Perhaps, Senator, Administrator Bolden's able staff could check it while we are engaging in this questioning.

Administrator BOLDEN. Madam Senator, I think there may be some confusion or lack of communications between your office and mine. It was my understanding that we had moved the hearing to May 12, and I was going to be there because I am scheduled to be at the Johnson Space Center on the day of the hearing that you originally scheduled, but we will resolve the issue.

#### SCIENCE

Senator HUTCHISON. Thank you.

General Bolden, I read your testimony. I have heard your testimony. I have heard the President's speech. And it just doesn't all come together. And I will say that I was one who was very supportive of your nomination for the reasons that others have stated because I knew that you would be committed to the missions of NASA and would understand it and would be a great leader.

But I am concerned about a very mixed message. The President says that he is committed to science. I don't see how you can have a commitment to science, but not a commitment to having humans in space at the same time. Because the space station is right now one of the key areas of science. There are others—the Hubble, which I support completely, and all of the other scientific missions—but the space station is the future.

#### INTERNATIONAL SPACE STATION

Congress and the President have embraced extending the space station until 2020, but we have not been assured that we can get people there. And I know you said that it isn't a change that the Russians were tasked with putting people in the space station, but it was always envisioned, in my estimation, that American shuttles would be going to the space station.

For one thing, you have to make sure that you have the equipment. The second thing is you need to make sure that if there are

repairs or something that you might need in the future, that you have the maximum capability. We were never going to have a gap in the beginning. Now, the gap started coming, of course, because, frankly, I think NASA has been starved throughout several administrations.

So I think that you are going to have to work with us, I hope in a constructive way, toward keeping people in space and keeping American control over our own destiny.

#### COMMERCIAL CAPABILITY

The emphasis, to the tune of \$6 billion, into a very fledgling commercial capability I just think is not sound, and it is certainly not going to be reliable. They are very short—I mean, it was even said that you have all of the expenses of closing down a contract, but then we are going to have to have new contracts.

So let me just say that I am skeptical and very disappointed that we would have a goal of keeping science in the forefront, but no plan to keep people involved in that effort under American control and under the control of NASA.

I think we are too heavily relying in the President's plan on commercial capabilities, which we had a hearing in Commerce Committee. We had the leaders of the commercial—the two commercial space operations. They are, in my opinion—I attended the hearing—not ready for this kind of reliance, and I don't think we can take that kind of chance.

#### CREW RETURN VEHICLE

So let me just ask you the questions that I can. If the Russian Soyuz has an accident or something happens that the crew return vehicle isn't operable, what if you had the accident, and it grounded the Soyuz for an extended period of time and we don't have our own reliable efforts?

Or I would ask you, how long would it take before the six-person crew that would still be aboard the International Space Station at certain points would have to evacuate using two of the Soyuz vehicles that just experienced a critical failure, assuming the failure occurred on descent? I mean, what are your plans here?

Administrator BOLDEN. Senator, I am going to try to understand the scenario you are placing. If that scenario takes place between now and 2015 with the existing program of record, Constellation, after shuttle is retired in September, or whenever we fly our last mission, we have no way to get Americans or anyone else to the station. We have two vehicles on station. We would be able to get the six-person crew home, but that would terminate all use of the International Space Station. The Constellation program was not going to provide that capability. The gap that you refer to actually began in 2004, probably began even before then. But when the vision for space exploration was given and then not funded sufficiently, the gap began to materialize and grow and grow and grow.

As Senator Voinovich mentioned, one of my primary drivers in recommending to the President what I did was I could not responsibly ask him to put the Nation into even more debt by putting the amount of money into Constellation that would have been required for us to try to catch it up. In fact, we still would not have been

able to gain that gap. Money can do a lot of things. It would not have been able to close the gap appreciably. So we were looking at about 2015 before we would have a domestic, NASA-built, with industry, capability to get humans to space.

Senator HUTCHISON. Well, General Bolden, the starving of NASA started before 2004.

Administrator BOLDEN. Oh yes, ma'am. I agree. I agree.

Senator HUTCHISON. I mean it has been starved for over 20 years. And so, we don't need to place blame so much as we need to address the issue.

Administrator BOLDEN. Yes, ma'am. I agree.

#### CONSTELLATION MISSION

Senator HUTCHISON. And I am concerned. First of all, I think we need to go forward with the Constellation or the next generation. If skipping from Ares I to Ares I-X or Ares V is necessary, I am not committed to the Constellation, but I am committed to the Constellation mission.

Administrator BOLDEN. Yes, ma'am.

Senator HUTCHISON. Which is to transport people to and from the space station, and with all due respect, I think we ought to be looking at not adding to the number of shuttles, but delaying the timeframe. That would bridge a gap, and it can be done if all of us work together without an additional budget over and above what the President is asking. It is reworking the budget that the President has said is the budget.

But if we had over 2 or 3 years, the same number of space shuttles so that you have the ability to assess and use the Soyuz in between to take people to and from, I think that would be a much more innovative approach. And it would give us more of the filling in of the gap for emergencies or for the scientific capabilities at the same time that we are developing our own Constellation-type operation.

So I hope that we can work on something that would not say we are going to be closed down in September, and 2015 would be the first time. In fact, in your own testimony, you said that we would be able, under the President's plan which you are supporting, to put humans into space early in the next decade. Well, I am assuming that since this is 2010, you are talking about 2020. That is early in the next decade.

Administrator BOLDEN. Perhaps I didn't make myself clear. Under the President's budget and his vision, we will have humans going beyond low-Earth orbit in 2020 or very shortly after that.

I have just selected a class of astronauts in this past year who were brought on strictly to occupy and operate the International Space Station. In reference to your concern about science, we now have the capability with a fully occupied International Space Station to do incredible science. And thanks to the President recommending that we—and funding—providing the funds to extend the International Space Station to 2020 and beyond, we now know that we are going to have 10 more years of human occupation and science being done on-station.

## INTERNATIONAL SPACE STATION SURVIVAL

Senator HUTCHISON. I know that my time is up. Let me finish with just the last direct question. And that is, the Soyuz has an accident, and we can't get there for 2 years or 3. How can the station survive? How is that possible? Even the Augustine report said——

Administrator BOLDEN. Ma'am, the International Space Station use will, as I said, in the scenario that you mention in today's environment, with the program of record, unfortunately, because we allowed this gap to grow, there is no way to do what you and I both want to do. We will be single-string once the shuttle stops flying.

Senator HUTCHISON. I think we can——

Administrator BOLDEN. We will be just like we were after the Columbia accident, for a couple years.

Senator HUTCHISON. I think we can fix it, General Bolden.

Administrator BOLDEN. Yes, ma'am.

Senator HUTCHISON. And a couple years would be okay. Five, 7, 10, is not okay, and I hope that all of the Senators that are interested in this will work with you, with the administration. I think we can do better than this.

Thank you.

Administrator BOLDEN. Thank you very much.

## CLOSING REMARKS TO NASA

Senator MIKULSKI. Thank you, Senator Hutchison.

There are many more questions, but Mr. Frost has been quite patient. It is now 11:30. We anticipate a vote over the next 30 minutes, so we want to hear from Mr. Frost and have time to really explore the safety issue.

So, Ambassador you are in treaty negotiations. And what we will have will be a whole series of other questions we will submit to you and to your team for our record. I will have a particular set of questions related to space science and particularly also to green science.

We are heartened by the fact that the President did provide reliable, undeniable, survivable \$5 billion in the science appropriations request. But we just don't want to be spending money. We also want to be able to get results for our science.

I am so proud of the work that is done at Goddard. You can't be the Senator that has the Hubble telescope kind of based in your State, if you will, through Goddard and the Space Telescope Institute at Hopkins, without being very proud of what we do in science. It is what the world relies on us to be able to do. We want to make sure we have money in the appropriations, but that we also have outcomes we seek. So we will move with that.

So we will excuse you today. Obviously, there must be more conversations on this around our mission, around our workers and the industrial base, and look forward to further conversation with you.

Administrator BOLDEN. Thank you very much.

Senator MIKULSKI. Thank you very much.

Administrator BOLDEN. I appreciate it. Thank you.

Senator MIKULSKI. Thank you, Administrator Bolden.

The chair now calls Mr. John C. Frost, who is a member of the NASA Aerospace Safety Advisory Panel. He comes with a distinguished background in safety, serving both DOD, as well as his work in NASA. And rather than going through a long bio, I am going to put your bio in the record so that, really, you come with extensive experience, outstanding credentials, and a real commitment to both safety and knowing what Government needs to do, that when Government asks people to do things that we keep them safe.

[The information follows:]

#### BIOGRAPHICAL SKETCH OF JOHN FROST

Mr. John C. Frost is an independent safety consultant who retired from Federal Service with 33 years of Safety Engineering experience. Mr. Frost was the Chief of Safety for the Army Aviation and Missile Command (AMCOM) with worldwide responsibility for missile and aircraft safety. Mr. Frost directed and implemented a comprehensive System Safety Program for all aspects of a major high technology organization that develops, fields and supports all of the state-of-the-art aircraft and missile/rocket systems for the Army worldwide and provides facilities and services for approximately 20,000 residents, workers, visitors and contractors on Redstone Arsenal. Prior to this, he served as the Chief of the MICOM Safety Office and held other supervisory positions leading various Missile Command (MICOM) System Safety, Radiation Protection, Explosive Safety, Test Safety and Installation Safety program elements. Mr. Frost began his Federal career in the Safety Office of the Army's Electronics Command at Fort Monmouth, New Jersey, where he became Chief of System Safety Engineering.

Mr. Frost was born and raised in Birmingham, Alabama and earned a Bachelor of Science in Electrical Engineering from the University of Virginia where he was a DuPont Scholar. He completed a Master of Science specializing in safety engineering from Texas A&M and an additional year of advanced safety engineering training. Mr. Frost is a senior member of the International System Safety Society, a professional member of the American Society of Safety Engineers, and remains active in various system safety organizations and initiatives. He was previously registered in Massachusetts as a professional engineer in the specialty of safety engineering and as a certified safety professional. He and his wife Linda, of 33 years, have two sons, Christopher and Hampton.

Senator MIKULSKI. So why don't we get right to your testimony, and thank you for your patience.

#### STATEMENT OF JOHN C. FROST, COUNCIL MEMBER, AEROSPACE SAFETY ADVISORY PANEL

Mr. FROST. Thank you, Madam Chair. I appreciate that, and I think that is a good path ahead.

Good morning to you, to Ranking Member Shelby, and the rest of the subcommittee, if they had been here.

I do appreciate the opportunity to approach the panel and explain our views on these issues. I am very comforted to see that you obviously have read what we have written and you are already very tuned in to our concerns.

Our chairman, Admiral Dyer, could not be with us today, but he sends his regards to you all.

The Aerospace Safety Advisory Panel, or the ASAP, was created by Congress in 1968 to provide independent safety assessments and recommendations to NASA after the tragic Apollo 1 fire that took the lives of three of our astronauts. We also advise Congress on NASA's overall safety challenges and performance. We issue quarterly recommendations to the NASA Administrator, and we publish an annual report to Congress.



Our role here may be somewhat unique because, as we say in Alabama, we don't have a dog in this fight. So maybe we can bring that view to the table.

Before I begin, I want to express a heartfelt commendation that I believe is shared by every member of the ASAP. That commendation is for the quality of leadership and the commitment to safety that has long been demonstrated by Administrator, General Charlie Bolden. When it comes to the safety of our astronauts, I can think of no better hands for the agency to be in.

Now, on to our key 2009 findings, first, the life of the space shuttle is nearing its end. In view of the inherent hazards of the shuttle design, the age of the critical subsystems that it contains, and the need to recertify the fleet, the panel believes that the life of the space shuttle should not be extended significantly beyond completion of its current manifest. To do so would require substantial efforts even after which the vehicle could not be considered safe by modern standards.

Second, I will address the follow-on to the shuttle, which is really the subject today, I think. After detailed evaluations, we have found that because of the fundamental vehicle architecture choices made at its concept stage, the use of the heritage-based subsystems with proven track records, and the intense involvement of the experienced NASA safety design professionals, the Ares I and the Orion offer the basis for a high degree of inherent safety.

In fact, they are being designed to provide a tenfold improvement over the safety of any existing vehicles. In our opinion, such inherent safety simply cannot be taken as a given in possible alternative launchers, as some would like to be the case. As we have already been quoted a couple of times today from our 2009 report, we believe that to abandon Ares I as a baseline vehicle for any alternative without demonstrated capability nor proven superiority, or even equivalence, is unwise and probably not cost-effective.

We are aware that commercial entities hope to provide safe and low-cost access to orbit in the future, and we look forward to their innovations. We do support their work, but we must point out that NASA has not yet even established what the safety requirements for these commercial providers will be. The potential safety of these alternatives cannot be evaluated until the safety requirements, such as the acceptable risk level for loss of crew, are established and the proposed designs are evaluated against them.

Our bottom-line safety recommendation is to not abandon the progress already made on the program of record before determining if the alternatives can provide equal or better safety for our astronauts.

My third topic concerns the workforce. NASA has developed detailed transition plans that carefully map the skills and the funding streams to move from the shuttle operation to the Ares-Orion development. If a major change in the mission of these workers is the path that is chosen, it is imperative that a new plan be developed quickly to clearly show these workers their place in the new vision. Otherwise, we face a risk of loss of the key personnel that are essential to safe space flight.

Finally, I must report to you that we are seeing examples of facility degradation, which concern us, across NASA. Adequate fund-

ing for NASA facilities and infrastructure must be considered on an even ground with that of the more visible missions that come out of these facilities.

In conclusion, Madam Chair, the ASAP believes that America's human space flight program stands at a critical juncture today. Choices made today will impact the safety of astronauts for at least a generation to come. Safety must be an inherent part of the vehicles that we use to launch those astronauts. It cannot simply be added on after the fact.

Just as importantly, the resources provided to NASA must be consistent with whatever mission they are assigned, and both the resources and the mission must be kept stable. Asking NASA to attempt too much too fast with too little can only lead to danger and to disappointment.

I will be happy to answer any questions that you or the other members may have.

[The statement follows:]

PREPARED STATEMENT OF JOHN C. FROST

Good morning Madam Chair, Ranking Member Shelby and other members of the subcommittee. Thank you for the opportunity to discuss the Aerospace Safety Advisory Panel's observations as they relate to the scope of your subcommittee. Because of a schedule conflict, our chairman, Admiral Joseph Dyer could not be with us today but sends his best regards.

Let me start with a brief background of the Aerospace Safety Advisory Panel, or ASAP. The ASAP was established by Congress in 1968 to provide independent safety assessment and recommendations to NASA after the tragic Apollo 1 fire that took the lives of three astronauts. By law, we now serve two functions: (1) Provide independent safety advice to the NASA Administrator; and, (2) Advise Congress on NASA's overall safety challenges and performance. We visit different NASA Centers and activities once a quarter where we probe and question all the elements of the Agency's safety program, both for spaceflight and for terrestrial operations. We issue quarterly recommendations to the NASA Administrator and publish an annual report to Congress, summarizing our findings and recommendations. I will attempt to very briefly summarize for you our key findings and observations from the last year as they relate to your pending budget considerations.

First, let me express a heartfelt commendation that I believe is shared by every member of the ASAP. That commendation is for the quality of leadership and commitment to safety that has been long demonstrated by the new administrator General Charlie Bolden. When it comes to the safety of our astronauts, I can think of no better hands for the agency to be in.

Now on to the key findings of our 2009 report that relate most directly to the issues that your subcommittee is dealing with at this time.

*Space Shuttle.*—As you know, the life of the Space Shuttle is nearing its end. Because of the Herculean efforts of the managers and workers at NASA and its contractors, this complex flying machine has performed admirably during its 29 year life. Sadly, the very power and complexity that enable it to accomplish the wide variety of missions for which it was designed, have also contributed to two tragic accidents and the loss of 14 lives. The ASAP has closely monitored Shuttle operations since its inception. In view of the inherent hazards of the basic Shuttle multi-function design, the age of some critical subsystems, and the need to recertify the fleet as identified by the Columbia Accident Investigation Board, the Panel believes that the life of the Space Shuttle should not be extended significantly beyond completion of its current manifest. To do otherwise would require funding the substantial efforts required to ensure that life extension vulnerabilities are identified and corrected in a timely manner. Additionally, the inherent risk of continuing to operate this system would have to be accepted by the Nation's leaders.

*Follow-on to Shuttle.*—The Panel has intensely monitored the progress of the Space Shuttle replacement program since its beginnings. We found that the Ares 1 vehicle has been optimized for crew safety since its inception. Because of fundamental vehicle architecture choices made at its concept stage, the widespread use of heritage-based subsystems with proven track records and the intense involvement of experienced NASA space design professionals serving as the systems integrators,

the ASAP believes the Ares 1/Orion offer a high degree of inherent safety. In fact, they are being designed to provide a tenfold improvement over the safety of existing vehicles. In our opinion, space vehicle safety simply cannot be taken as “a given” as some would like to be the case. As we stated in our 2009 report to Congress, “To abandon Ares 1 as a baseline vehicle for an alternative without demonstrated capability nor proven superiority, or even equivalence, is unwise and probably not cost-effective.” We are aware of course that several commercial entities hope to provide safe, low-cost access to Low Earth Orbit in the not too distant future. We have not evaluated their proposals and cannot comment on their eventual safety; however we must point out that NASA has not yet established any safety requirements for these commercial providers. Even more importantly, the agency has not yet established a process that can provide the right mix of insight and oversight to ensure the safety of NASA astronauts traveling in these vehicles. The safety of potential commercial providers cannot be evaluated until key safety requirements, such as the acceptable risk level for Loss of Crew, are established and proposed designs are evaluated against them. While progress is now being made on establishing these requirements and processes, it is too early to tell if the commercial options that are contemplated can eventually be deemed safe enough for our astronauts. Our bottom line recommendation is to not abandon the well-established progress already made on the Program of Record in favor of an alternative, until such time that it is determined that the alternative provides equal or better safety for our astronauts.

*Workforce Transition.*—The “magic bullet” that has allowed NASA to achieve the incredible feats for which they are known around the world is its highly dedicated and motivated workforce. At every Center that we visit, we see this dedication and excitement in every face. Maintaining this talent, momentum, and enthusiasm during a time of transition from a Shuttle based Manned Spaceflight Program to an alternative is the key to the future of the agency. In the past 4 years, NASA has expended significant effort developing detailed transition plans that map skills, talent, and necessary funding streams from a “Shuttle Centric” organization to one that is Ares/Orion based. The Panel has found this Transition Plan paying off already in the form of workers’ excitement and satisfaction over their role in the coming exploration of our solar system. If a major change in the future roles and missions of these NASA workers is the path chosen, it is imperative that a new transition plan be developed quickly, clearly showing these workers their place in the new vision. The turmoil created by uncertainty can result in loss of key personnel which presents obvious safety concerns.

*Infrastructure.*—As the panel visits the various Centers, we carefully watch for facility conditions that could contribute to mishaps or hurt mission performance. I must report to you that we are seeing examples of such conditions which concern us. While, to a person, the employees “can-do” attitudes help them cope with the impediments of these conditions, it is inevitable that worker performance and safety could be impacted. Adequate funding for NASA facilities and infrastructure must be considered on even ground with that of the more visible missions that actually come out of these facilities.

In conclusion, Madam Chair, in the view of the ASAP, NASA stands at a critical juncture. Choices made today about the future of Human Spaceflight will impact the safety of astronauts for a generation to come. Most importantly, resources and schedules provided to NASA must be consistent with whatever mission they are assigned. Asking NASA to attempt too much, too fast, with too little can only lead to danger and disappointment. I will be happy to answer any questions that you or the other members of the subcommittee may have about our observations.

Senator MIKULSKI. I am going to turn to Senator Shelby to ask his questions. He has many duties also related to the Financial Services.

Senator Shelby.

Senator SHELBY. Thank you. Thank you, Madam Chairwoman.

Mr. Frost, welcome to the subcommittee. We are glad to have you here, but more than that, we appreciate your background and your statement.

The future of human space flight is being proposed to be given, as I understand it, to companies that have never launched humans before. That is disturbing to me because your own panel for years has advised that they are not ready. If there is substantial risk in

relying on unproven commercial providers to put our astronauts in orbit, do you have a suggestion on how to reduce that risk?

Mr. FROST. The risk that the panel sees is principally the unknown nature of their abilities. If we bet our entire future on those as yet unproven abilities, there is risk that they may not pan out. A common method of handling that kind of risk is hedging your bet or as one member of the Augustine panel I believe was quoted as saying, "If it is a horse race, bet on the field, and then you can pick the winner a little later."

So keeping redundant capabilities and not being single-string dependent can greatly reduce that risk. There is a cost to that.

Senator SHELBY. A big cost, though, isn't it?

Mr. FROST. That is right.

Senator SHELBY. Do you believe that NASA should relinquish its role in ensuring safety through rigorous testing during development and production if NASA were to allow their astronauts to fly on any spacecraft, commercial or otherwise?

Mr. FROST. At the current time, for NASA to put its employees, its astronauts onboard something as potentially hazardous as a rocket ship, they are going to have to have a robust program to check its safety. There may come a day when it becomes as routine as a commercial airline. That day is far away, in my personal opinion.

Senator SHELBY. Thank you, Madam Chairwoman.

Thank you, sir.

Senator MIKULSKI. First of all, Mr. Frost, I would like to thank you for the service that you have done through the ASAP Committee, and also please thank the other people who participate, who put a lot of time into this, and we have read your reports. We also note that there is regularity to the actual visitation, that this isn't some think-tank egghead intellectual exercise reading memos or mathematical simulations. And we take to heart all of your comments, including the degradation of the NASA facilities and your caution about maintaining morale and competency among our workforce.

Well, let us get right to this whole issue of going commercial. There is an inherent tension here between boldness and innovation and looking because technology moves fast in its development, much faster than Government contracts and procurement. But at the same time, we are not sending cases of Tang into space. We are sending our astronauts and the astronauts from other countries. They rely on us.

So here goes the question. On page 3 of your testimony, you say, "We have not evaluated their proposals and cannot comment on their eventual safety." Here is the key point. "However, we must point out that NASA has not yet established any safety requirements for their commercial providers."

Now, as you recall, in my questions to General Bolden, I said is there going to be a single standard? He told me yes. Then he told me they have this manual that they have either developed or are in the process of completing. I am confused. Is there a standard? Is there not a standard? Is there a manual? Could you share with us your comments on this?

Mr. FROST. Yes, I will be happy to. My understanding is, and we have been briefed and evaluated this very carefully, that NASA does have a human rating—NPR, it is called. It was recently updated in 2008. It specifically did not address and exempted commercial providers. It was aimed at the type of program where NASA manages the hardware. And that is critical because the way you state and explain and track the safety requirements depends on the kind of program it is.

If you are buying a taxi ride, you have a different set of requirements than if you are developing a taxi. So that was exempted. The ASAP made that a primary recommendation for, I think, about 2 years that that section of the standard be built out so that the people trying to develop commercial vehicles knew what to aim for.

General Bolden has taken the initiative to make that a priority. The current estimate is that some type of standard for those commercial providers will be available by the end of 2010 setting the requirements.

Senator MIKULSKI. So if, in fact, you say to these bold, innovative companies on which we are now betting the future of our astronauts going to the space station or in a low orbit there is going to be a safety standard, but we won't have it complete until 2010?

Mr. FROST. That is the current estimate. That is correct. And I might point out that that is the hardware requirements. Then we need a process, set of processes that will take longer.

Those processes depend on how much knowledge we have of the provider. If we don't have much insight into how they develop their rocket ship, if you will, then we will need very extensive testing and verifications. And that process will take longer, in my opinion, than 2010.

Senator MIKULSKI. So then there are the processes. Now, there is the hope that they will be ready to go in 3 years. You know, that is all part of the glitz and the glory that we are hearing about, that they are going to be ready to go in 3 years, when—I am looking at the development of the shuttle—we have followed the development of the shuttle together. Senator Shelby and I came to the Congress and have worked together since we came, and the shuttle had problems. But remember, the shuttle was going to go 100 flights, and it was going to be like the Greyhound bus to wherever we wanted to go.

Now what I am saying, is if, in fact, the safety manual is not done until 2010, and those processes that are really mandatory, usual, and customary, then how could a commercial vehicle just getting what they need to know in the standards, be able to meet a 3-year timeframe? Do you think that is realistic?

Mr. FROST. I am not privy to the development schedule of the COTS folks. That sounds highly optimistic to me.

Senator MIKULSKI. I am not trying to pin you down. I am trying to get your experience.

Mr. FROST. My experience would be that that is going to be a tough schedule to meet. And one safety concern that drives our panel is that they are designing parts of those vehicles today. There are engineers at tables picking safety factors and design features that may or may not comply with the requirements that will

be developed later in the year. In which case, we will either have to accept the risk or step back and redesign. Both involve risk.

Senator MIKULSKI. So they are designing today without having the firmness and definite—the definite nature of NASA standards.

Mr. FROST. That is correct. They are attempting to design to what they think the standards will be. And if they are right, then we will be in good shape. And if they are wrong, then we will have difficulty.

Senator MIKULSKI. Next question. Senator Hutchison presented a really doomsday scenario. When she said it, actually, I thought, “Oh, my gosh, she is so right.” I think you get a flare here. When it comes to the space program, we have really been a bipartisan group. And for those of us who have the centers and meet with the astronauts and so on, you know, we feel like we are all in this together.

But when Senator Hutchison said she is concerned about bringing them back home if something happens to Soyuz, Bolden says it would be the end of the space station. Well, yes, it is also the end of those astronauts that are up there.

What do you think? Because you talked about it in your testimony, you say “end the shuttle.” Senator Hutchison presents this very troubling scenario. Is there a way we can have it both ways, which is to have a shuttle on reserve for rescue, keep flying it maybe for a specific mission, but have it? In other words, is she on to something that we should explore?

Because in both your oral and written remarks, you say it is time to say good-bye to the shuttle, and every scientist, engineer, et cetera, and NASA Administrator has said the same. Could you tell us what you think about extending the life of the shuttle? And would it be possible, or is it really would be—what would be your observations?

Mr. FROST. I will be happy to. First, to the premise, I think she is absolutely on to something of the nightmare scenario, that being single-string dependent, having humans in orbit, and only one elevator to get there subject to catastrophic failure, in which case it can be shut down, as we have seen, is definitely a high risk, and I think needs to be thought of.

There are several solutions. Minimizing the gap, in my view, is the best approach. You could keep flying the shuttle. There is no question. We see no—we call it “knee of a curve.” It won’t wear out in July, but it is getting old, and principally, it has a very high level of risk.

Each launch is something like 1 chance in 78 to maybe 1 chance in 100, somewhere in that range, of losing the crew, the more times you fly it, the more likely that you are going to find that result.

Senator MIKULSKI. In other words, just to be sure of the risk analysis, after a certain date, the longer you keep the shuttle flying, the more increased the risk to the astronauts.

Mr. FROST. We don’t see an increase per flight, but as you do more flights, it is like playing Russian roulette. The more times you pull the trigger, the more likely you—

Senator MIKULSKI. I know you math whizzes will get into probabilities, but I think we got the picture. Thank you.

Mr. FROST. But we don't see the shuttle wearing out immediately. It is simply that there is great risk involved, and the Nation could accept that risk. And the astronauts, I am sure, are willing to live with it. That is a very high level of risk, in our opinion.

Senator MIKULSKI. But what do you think—you know, we all have these kind of now movie fantasies, the way we think the world works like the movies or now like video games. Could you literally take the shuttle and put it aside and keep it prepped and ready to go if there would have to be a very daring rescue mission?

Mr. FROST. I think the movie was "Space Cowboys"—great movie.

In safety, there is a concept called OPTEMPO, and that is that if you fly too many missions too frequently, it becomes unsafe. You are pressing your crews too hard. But on the other side of that, if you fly too rarely, they lose their skills, their edge, and their abilities. They don't remember exactly how to tighten the bolts that they used to know how to tighten, and safety degrades greatly. And that curve is generally a bell-shaped curve. If you just put the shuttle in storage and didn't use it, I would have great concern about the reliability of that launch as it came out of cold storage.

Senator MIKULSKI. Well, I appreciate that. This is my final question. Will the ASAP Committee be involved in assessing the safety issues of these commercial enterprises?

Mr. FROST. Yes, we have made that a central focus of our committee. We are not staffed to do a technical evaluation and an independent review of the hardware, but we will look at the processes that will be used to do that.

Senator MIKULSKI. Well, I think these were excellent.

Senator Shelby, do you have—

Mr. Frost, first of all, I would like to thank you for your answers here, I think they were very instructive to us. We would look forward possibly as this—our process of evaluation goes on to come back to you and other members of the committee. Again, thank you for excellent testimony.

We would also welcome from the committee this issue of center infrastructure degradation, because no matter what we do, we have got to keep—we have got to make sure that they are fit for duty.

So thank you very much. This subcommittee will excuse you, but we would ask you and your committee to be available for ongoing—and the staff—for ongoing conversation.

Mr. FROST. We will be happy to do that. Thank you.

Senator MIKULSKI. Senator Shelby.

Senator SHELBY. Madam Chairwoman, I just want to thank Mr. Frost, too, for his incisive answers and his background and his experience of safety.

Thank you.

Mr. FROST. Thank you.

Senator MIKULSKI. I also want to note that for NASA's 2011 budget, it affects many States, and I know that there is an interest in other Senators with this topic and that there are going to be follow-up questions that are budgetary, programmatic, mission-focused, and how we can do this within this budget.

Senator SHELBY. Madam Chairwoman, I hope we could reserve the right to hold another hearing on this matter, if warranted.

Senator MIKULSKI. I absolutely agree that we will hold another hearing to be able to pursue any topics. I would suggest now that our able staff connect with NASA, really sift through this rather content-rich nature of what we have listened to.

I would also like to thank all of the members who participated for their civility and for their very insightful questions. I believe if we all focus on where we want America to be in space, and how we protect Americans who we ask to do things we will be able to find solutions to how we work through these complex challenges.

Again, Mr. Frost, thank you.

#### ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions this morning, Senators may submit additional questions for the subcommittee's official record. We are going to ask NASA's response within 30 days.

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

QUESTIONS SUBMITTED TO HON. CHARLES F. BOLDEN, JR.

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

#### COMMERCIAL SPACE FLIGHT

*Question.* As part of canceling Constellation, NASA has advocated for the commercial space sector to support low-orbit mission, spending \$6 billion in the next 5 years for commercial crew and cargo vehicles.

What led the administration to put its faith in commercial space flight for transporting crew to low Earth orbit?

*Answer.* A more robust role for the private sector in spaceflight has been recommended by many groups over the years, including the U.S. Congress in the 2005 and 2008 NASA Authorization Acts. Most recently, the Augustine Committee found that: "Commercial services to deliver crew to low-Earth orbit are within reach."

NASA has a long history of partnership with the commercial space sector. Nearly all NASA Science payloads are launched aboard commercially owned and operated vehicles. And the commercial sector is instrumental in each space shuttle launch, as nearly 90 percent of the shuttle workforce are industry contractors. Additionally, the commercial space industrial sector has a demonstrated record of safe and reliable launches. For example, United Launch Alliance, a provider of commercial launch services, has successfully launched 25 Department of Defense (DOD) satellites consecutively. This impressive launch record underscores a continuing capability to deliver high-value payloads to orbit via an established U.S. commercial space industry.

*Question.* What if this commercial venture fails?

*Answer.* NASA is confident in the ability of our commercial cargo partners to develop the capability to deliver cargo to/from the International Space Station, and to ultimately deliver cargo under the Commercial Resupply Services (CRS) contracts. We also are looking forward to working with commercial partners on a commercial crew development effort in the near future.

The development of a commercial crew transportation capability shares the same risks that are typical in any aggressive, challenging space hardware development program. NASA is in the process of structuring its plan to support development of a commercial crew transportation capability, should the fiscal year 2011 budget provide funding for this activity. The President's budget request provides NASA with resources to support the development efforts of multiple providers and to provide significant technical support during the development phase. This will maximize the likelihood that selected commercial providers will successfully complete development activities and will minimize the impact to the agency if any one commercial provider is not fully successful in its development activities.

*Question.* Does this mean the United States won't be able to send astronauts into space for 10 years?

*Answer.* NASA is in the process of developing a procurement solicitation for commercial crew, should the fiscal year 2011 appropriation include this activity. There-



fore, the timing for the availability of commercial crew services will not be known until NASA receives proposals for the development of this capability. However, the Augustine Committee had noted that commercial crew launch service could be in place by 2016. Estimates provided to the Augustine Committee by potential providers said commercial crew services could be in place 3 to 5 years from the point of funding.

*Question.* What is NASA's back-up plan?

*Answer.* With regard to cargo, NASA plans to pre-position spares onboard the ISS with the final logistics flights to provide some margin for delay in commercial cargo services. Additionally, NASA plans to rely on the transportation capabilities of Russia, the European Space Agency and Japan to transport cargo to ISS. Russia's Progress vehicle has been providing cargo services to ISS through a contract with NASA. The ESA Automated Transfer Vehicle had a successful initial flight to the space station in 2008. The Japanese HII Transfer Vehicle had a successful first flight in 2009. ESA's and Japan's services are provided through barter agreements. Beyond that, there is no planned back-up capability for ISS commercial cargo. Time-ly commercial cargo capability is critical for effective ISS operations. Without U.S. commercial cargo capability, the crew size and research operations planned for ISS would need to be reduced.

With regard to commercial crew transportation services, NASA hopes to award development funding for up to four proposals, thus increasing the chances that multiple partners would succeed at developing a commercial crew vehicle. After the commercial crew services procurement is released, NASA is hopeful that more than one partner will be selected to supply those services, thus providing redundancy of capabilities. Additionally, should those capabilities fail to materialize on time, NASA has purchased Soyuz seats through 2014 and has legislative authority to purchase additional seats through July 1, 2016. If we need to purchase seats beyond July 1, 2016, NASA would need to extend the current exception under the Iranian North Korean Syria Nonproliferation Act that permits purchase of Soyuz launch services. Lastly, NASA intends to provide significant technical support to commercial providers during the development and demonstration phase, thereby helping to increase their chances of success both programmatically and with respect to safety.

*Question.* Did NASA look at options other than the commercial sector?

*Answer.* This information is pre-decisional.

*Question.* What about building upon the successes of the Delta and Atlas rocket programs and using Evolved Expendable Launch Vehicles (EELV) as an interim means to reach the space station?

*Answer.* Evolved Expendable Launch Vehicles (EELVs), including the Delta and Atlas rockets, are commercial vehicles and they are certainly candidates for the Commercial Crew Program. In fact, the program will be open to any domestic company interested in providing these services in accordance with existing U.S. laws and policies. Any domestic company that had been part of the Constellation Program can, if it chooses, compete with others as part of this new commercial crew transportation program. In addition, Boeing and United Launch Alliance were chosen earlier this year for NASA awards under our Commercial Crew Development (CCDev) initiative designed to develop and demonstrate technologies that enable commercial human spaceflight capabilities.

*Question.* How do you balance leaving companies alone while managing oversight of issues like safety, cost and performance, and technical soundness?

*Answer.* Safety is and always will be NASA's first core value, so we will provide significant—but not intrusive—oversight over any commercial venture, whether it be cargo or crew. For example, NASA has a Commercial Orbital Transportation Services (COTS) Advisory Team comprised of approximately 100 NASA technical experts from across the agency. These experts work with our partners and review partner technical and programmatic progress for each milestone and provide progress assessments to NASA's Commercial Crew Cargo Program Office. Additionally, they participate in all major design reviews providing technical review comments back to our partners. The advisory team provides another method by which NASA gains confidence that our partners will be able to perform their flight demonstrations.

One of the strengths of the COTS venture is that companies are free to do what they do best, that is developing truly unique spaceflight vehicles using innovative processes that are not available within the Federal bureaucratic framework. NASA provides requirements that they must meet and we ensure that they have met those requirements, but we try not to dictate how they meet those requirements. For example, each COTS partner must successfully verify compliance with a detailed set of ISS interface and safety requirements prior to their planned ISS berthing missions. These requirements are imposed on all visiting vehicles wishing to visit to the

International Space Station (ISS). Both COTS partners are currently working with the ISS program on a daily basis to ensure they meet the ISS visiting vehicle requirements. This also helps to give NASA independent insight into their progress and it builds confidence in their abilities.

With regard to commercial crew, at no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. Simply put, U.S. astronauts will not fly on any spaceflight vehicle until NASA is convinced it is safe to do so. NASA has unique expertise and history in this area, and a clearly demonstrated record of success in transporting crew. NASA will bring that experience to bear in an appropriate way to make sure that commercial crew transportation services are a success both programmatically, and with respect to safety. At no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. For example, NASA will have in-depth insight of the vehicle design via NASA personnel who are embedded in the contractor's facility. Additionally, NASA will impose strict requirements and standards on all providers that will be carefully evaluated and reviewed at multiple stages before a vehicle system is certified by NASA for crewed flight.

*Question.* If the program experiences cost overruns, who pays? The companies or the Government?

*Answer.* With regard to potential cost overruns in the Commercial Crew Development program:

If NASA uses SAAs, it is likely that such agreements will be structured similarly to NASA's COTS development SAAs. For the COTS SAAs, the Government provided a pre-negotiated set amount of funding to our two current partners. Each partner is awarded funding as they successfully meet pre-negotiated milestones and commercial partners are responsible for additional costs in excess of NASA's investment.

If NASA uses fixed-price contracts, those contracts will similarly use pre-negotiated performance-based milestones. So, under this approach as well, the company will be responsible for any cost overruns. NASA's investment will be fixed.

*Question.* What are commercial companies contributing to this plan?

*Answer.* Although NASA is still preparing a strategy to support development of commercial crew, in general, we intend for NASA's investment to supplement private investment in developing a commercial crew capability, thus providing strong incentive for industry partners to perform and "stay in the game."

It is important to remember that NASA did not specify a minimum level of cost sharing for COTS partners because the agency felt that it would be inappropriate to prejudge a potential partner's business case. NASA reviewed each proposal as a whole, and assessed each proposal based on its own merits. That included review and evaluation of the type of vehicle system proposed, the development process proposed, as well as market factors such as the potential for other non-government customers, the amount of investment each company plans to contribute, the company's experience in similar endeavors, etc. No single factor is necessarily more important than another.

*Question.* Who are the other customers? Is there a market for sending humans into space?

*Answer.* NASA has not conducted any market surveys. However, there are general indicators that such a market exists. For example:

- From an historical perspective, Russia and the United States have been providing human space transportation services to astronauts from other countries since 1978. Since that time, Russia and the United States have transported nearly 100 astronauts representing 30 nations. In addition, eight people have flown to space in the past decade as spaceflight participants.
- Another strong indicator came from NASA's CCDEV solicitation. In answer to NASA's CCDEV solicitation for commercial crew spaceflight concepts, the agency received 36 proposals—an indicator that there is robust interest from U.S. industry in developing human spaceflight capabilities.
- Helping to support an enhanced U.S. commercial space industry will create new high-tech jobs, leverage private sector capabilities, spawn other businesses and commercial opportunities, and spur growth in our Nation's economy.
- Most importantly, the administration's proposal to extend and fully utilize the ISS provides a reliable, sustainable market for commercial human space transportation services likely to 2020 or beyond.

Studies in the public domain suggesting that commercial providers can be successful include:

- Collins, P. and Isozaki, K. "Recent Progress in Japanese Space Tourism Research," IAC Italy, October 1997.
- O'Neil, Bekey, Mankins, Rogers, Stallmer "General Public Space Travel and Tourism," NASA-MSFC, March 1998.

- Aerospace Commission “Final Report of the Commission on the Future of the United States Aerospace Industry,” November 2002.
- Space Tourism Market Study, Futron Corporation, 2002.
- Webber, D. and Reifert, J. “Filling in Some Gaps”, Executive Summary of the Adventurers’ Survey of Public Space Travel,” September 2006.
- Commercial Spaceflight Federation “Commercial Spaceflight in Low Earth Orbit is the Key to Affordable and Sustainable Exploration Beyond,” input to the Review of U.S. Human Space Flight Plans Committee, June 29, 2009.
- Final Report of the Review of U.S. Human Spaceflight Plans Committee, 2009.

*Question.* Are we subsidizing space tourism?

Answer. NASA is not subsidizing space tourism. Rather, NASA is helping to develop a critical capability that is needed by the agency. By investing \$6 billion in commercial crew efforts over the next 5 years, NASA can focus on the forward-leaning work we need to accomplish for beyond-LEO missions. Additionally, this investment will:

- Reduce the risk of relying solely on Russia to transport astronauts to the ISS following the retirement of the space shuttle;
- Free up NASA resources to focus on the difficult challenges in technology development, scientific discovery, and exploration;
- Make space travel more accessible and more affordable.
- Build an enhanced U.S. commercial space industry that creates new high-tech jobs, leverages private sector capabilities, spawns other businesses and commercial opportunities, and spurs growth in our Nation’s economy.
- Inspire a new generation of Americans by these commercial ventures and the opportunities they will provide for additional visits to space.

#### SPACE SHUTTLE RETIREMENT

*Question.* The President’s budget makes it clear that the space shuttle will retire at the end of 2010, marking the end of an era. Only four more launches are planned. Do you need any additional funding to close out the shuttle program?

Answer. No. The President’s fiscal year 2011 budget request includes \$600 million to fly the space shuttle through the first quarter of fiscal year 2011. The last shuttle mission, STS–134/AMS, is now scheduled for February 2011. Because of additional savings that have been identified in 2010, NASA will not require funding beyond that requested in the President’s budget to close out the space shuttle program.

*Question.* Will we have the right people in place to safely see the shuttle program all the way to the end?

Answer. While many space shuttle workers have expressed the desire to stay with the program until the shuttle retires, NASA and its space shuttle contractors have worked to ensure that the program retains the critical skill mix needed to fly out the remaining missions safely. As one example, NASA has offered retention bonuses for workers who continue with the program through shuttle retirement. The contractors are conducting incremental layoffs designed to ensure that they can meet shuttle manifest requirements safely, and the agency is confident that the program will have the personnel necessary to accomplish this.

*Question.* What steps are you taking to make sure a major safety misstep does not occur as workers face the end of the program and the potential loss of their job?

Answer. NASA and its contractors are emphasizing the criticality of focusing on each of the remaining missions in turn in order to ensure a safe flight. Each mission is processed and flown according to time-tested procedures and safety protocols, and reporting lines of communication encourage employees to raise any safety concerns they may have. The agency and shuttle contractors are also supporting a variety of efforts to help transition workers after the end of the program.

*Question.* What are the budgetary implications of the delay in the Advanced Magnetic Spectrometer (AMS) which will delay STS–134?

Answer. The President’s fiscal year 2011 budget request includes \$600 million to fly the space shuttle through the first quarter of fiscal year 2011. If STS–134, which will carry the AMS experiment to ISS, launches in February 2011, as currently planned, NASA will not require further funding beyond that requested in the President’s fiscal year 2011 budget request.

#### WORKFORCE TRANSITION

*Question.* The retirement of the space shuttle program will affect as many as 12,000 workers. The Constellation program was supposed to help transition some—though not all—of this high-tech workforce over to good jobs. Now, with the proposed cancellation of Constellation, the “Jobs Gap” grows larger and deeper. The ad-

ministration has suggested that 1,700 new jobs over 5 years in Florida will help support commercial rockets.

On April 15, President Obama pledged \$40 million to help displaced Florida space workers transition to new, high-technology jobs.

Where does the proposed \$40 million come from?

Answer. To ease the transition for workers dislocated while the new space strategy is being implemented, the President, on June 11, 2010, as part of a fiscal year 2011 budget amendment, proposed to dedicate up to \$100 million of the funds requested for the Constellation transition in fiscal year 2011 to transform the regional economy around KSC and prepare the workforce for these new opportunities, as well as other geographic areas affected to the shuttle and Constellation transitions.

*Question.* What about workers in other severely impacted States? What is the plan for transitioning these workers to other jobs?

Answer. As noted in an earlier response, the administration has recently announced a comprehensive initiative, funded at a level up to \$100 million, to support economic growth and job training in Florida and other regions affected by the shuttle retirement and other programmatic changes in NASA's exploration program. While the initiative began on April 15 when the President announced a \$40 million initiative to aid the areas around Kennedy Space Center, the group was also directed to prepare a plan that "explores future workforce and economic development activities that could be undertaken for affected aerospace communities in other States, as appropriate."

Several States and county officials have been applying for workforce-related grants through existing Federal programs. On June 2, 2010, Secretary of Labor Solis announced the award of an additional \$15 million in workforce re-training funds for aerospace workers in Brevard County, Florida. In addition, on April 30, 2010, the Department of Labor announced a \$1.2 million grant to assist approximately 200 workers affected by layoffs at ATK Launch systems in Corinne, Utah, in connection with the transition of the space shuttle and Constellation programs. It is our understanding that the communities impacted within the State of Texas have also applied for assistance from the Department of Labor.

In 2009, NASA established the Space Shuttle Transition Liaison Office (SSTLO) in response to direction in the NASA Authorization Act of 2008 (Public Law 110-422). The agency was directed to assist local communities affected by the termination of the space shuttle program by offering non-financial, technical assistance to the identified communities and to identify services available from other Federal, State, and local agencies to assist in such mitigation. NASA is working diligently to determine how best to leverage these efforts to support the transition resulting from the proposed cancellation of Constellation. Specifically, the Office:

- Serves as a clearinghouse by gathering and disseminating information to the affected communities about opportunities available through other Federal, State, and local agencies; and,
- Serves as a key point of contact for the community beyond NASA for information about how the agency is working with local communities to provide non-financial, technical assistance during transition.

The SSTLO consists of several organizations including NASA Headquarters, the NASA Human Space Flight Centers, shuttle prime contractors, and State and local organizations in communities affected by shuttle retirement. To identify applicable resources and build partnerships with other Federal departments and agencies, members of the SSTLO established relationships with the Employment and Training Administration, Department of Labor, and the Economic Development Administration in the Department of Commerce. Ongoing SSTLO meetings are leading to communication at the State and local level among the workforce and economic development agencies and the affected companies and communities.

#### COST OF CONSTELLATION

*Question.* To date, NASA has already spent roughly \$9.5 billion on Constellation. The fiscal year 2011 budget requests an additional \$1.9 billion just to terminate the program.

The Augustine Commission has suggested that Constellation would require billions more annually than what the Bush administration had budgeted for it. The Commission suggested that even with this investment, the U.S. gap in access to low earth orbit could last until 2019.

How much money—over and above the levels provided—would be needed to finish the Constellation Program?

Answer. The Constellation Program is envisioned in two phases—the ISS phase and the beyond-low Earth orbit or lunar phase.

The first key milestone for the ISS phase is the Initial Operational Capability (IOC) for Ares I and Orion, which is defined as the first crewed flight of Orion to the ISS. Based on the fiscal year 2010 President's budget request, NASA anticipated that Constellation would need approximately \$35.2 billion total to achieve IOC for Ares I and Orion in March 2015. As of May 2010, NASA had spent \$10.6 billion on Constellation—leaving \$24.6 billion—or around \$23 billion if the \$1.9 billion for Constellation termination in the fiscal year 2011 budget request were applied to continue Constellation. (Note, at this time, a March 2015 IOC is not achievable due to fiscal year 2010 funding constraints such as the Continuing Resolution, the enacted fiscal year 2010 appropriation, termination liability, and new Construction of Facility appropriations controls on the total Program.)

For the Augustine review in the summer of 2009, NASA estimated that the Constellation Program of Record, using Orion, Ares I, Altair, Ares V, and supporting elements, could deliver a crewed lunar mission by 2020, for \$109 billion since the inception of the Constellation Program. Of this \$109 billion since inception, \$100.2 billion would be required in fiscal year 2010 and out (the same time period as the Augustine estimates), and \$96.7 billion would be required in fiscal year 2011 and out. If the \$1.9 billion of Constellation transition funding in the President's fiscal year 2011 budget were applied to continue the Program of Record, approximately \$95 billion of additional funding would be required in fiscal year 2011 and beyond. However, achieving a crewed lunar mission by 2020 for this funding assumes that authority to proceed with lunar development occurs early in fiscal year 2011, and sufficient funding is available in the early years of lunar development.

*Question.* If NASA's budget were to receive no additional funds, where would you cut in the existing budget to come up with the annual amount needed to cover the cost of finishing Constellation?

*Answer.* If NASA were to continue development of Ares I and Orion, the year-to-year rate would be approximate to the total of \$5.4 billion per year, which would include funding for Ares and Orion development as well other Constellation elements (mission control, launch complex, ground processing facilities, program integration functions, etc.) However, it is unwise to fund Constellation on this year-by-year situation because a development program such as Constellation needs a steady and dedicated funding stream to succeed, and unfortunately, given tight budget years, that funding stream has come at the expense of other NASA programs and projects.

If NASA were to take the entire amount for Exploration in the President's fiscal year 2011 budget request and assumed runout and apply it to continuing Constellation and the fiscal year 2010 Advanced Concepts theme that supports Constellation—assuming that NASA has a flat-line budget with zero growth through 2020, there would be a shortfall of more than \$50 billion through 2020 when Constellation was expected to return to the Moon. Under this same zero-growth funding scenario through 2020, funding for the remaining agency programs—earth and space science, aeronautics, technology, space station, and center and agency operations—would need to be reduced by about one-third. Even if ISS were not extended through 2020, funding for the remaining agency programs would need to be reduced by about one-sixth through 2020.

*Question.* How expensive would Constellation be to operate annually compared with the space shuttle and how would those costs compare to what you expect to pay annually to utilize the purely commercial system envisioned in the 2011 budget request?

*Answer.* NASA estimates the complete costs of operating two Constellation flights per year to the ISS as \$3.6–\$4 billion per year in the 2016–2020 timeframe. This estimate would include funding for sustaining engineering; production/refurbishment of flight hardware; all ground operations; all mission operations; EVA suits; program integration etc.

This is comparable to appropriately-inflated shuttle costs, given that Constellation is based on shuttle hardware, infrastructure, and practices.

NASA does not know what costs commercial crew vendors will be able to achieve, but the intent is that a commercial, less-prescriptive, requirements-based approach, coupled with innovative and clean-sheet infrastructure, will result in costs substantially lower than shuttle or Constellation.

*Question.* Are there elements of the existing Constellation program that you would consider retaining as part of an overall path forward on human space flight?

*Answer.* Following the release of the fiscal year 2011 budget request, NASA established six study teams within NASA's Exploration Systems Mission Directorate to ensure we understand the steps (and the implications of those steps) that would need to be taken for an orderly transition of the Constellation program and to plan for the implementation of the new Exploration program. The work undertaken by

these teams is a necessary part of that planning. One team, the Constellation Transition team, has initiated a broad survey of current workforce, contracts, facilities, property, security, knowledge capture, information technology, and other Government agency interface issues to determine what infrastructure and hardware could be used by the new programs and projects.

Despite the early nature of these planning efforts, NASA is optimistic that there will be many capabilities developed by the Constellation program that will feed forward into the new programs. For example, options using the Orion capsule are currently being pursued for autonomous rendezvous and docking; and many of the capabilities we are pursuing at a low level through the Exploration Technology Development program are directly applicable to the new programs. Other important areas that will enable further advancement in the new initiative areas are: advanced robotics, propulsion development and test, friction stir welding, autonomous landing and hazard avoidance, and entry, descent, and landing technologies.

Given that the fiscal year 2011 budget request is still pending with Congress, NASA has not yet made any final decisions with regard to what capabilities will and will not transfer to the new programs. Therefore, it would be premature for NASA to provide estimates about how much the agency has already invested in these technologies.

*Question.* If NASA employed testing and oversight functions like those used by the Air Force in its launch program, how much money could be saved in completing all or at least some of the critical parts of the Constellation program?

*Answer.* An apples-to-apples comparison between NASA and the U.S. Air Force is extremely difficult for several reasons:

- The Air Force EELV fleet is in operational mode, whereas the Constellation program is currently in the design, development, test and evaluation phase of the program.
- The Air Force launch program only manages the launch vehicle and ground systems required to support launch, whereas the Constellation program currently includes two launch vehicles, a capsule to carry astronauts to the ISS and to the Moon, as well as all the ground and mission operations infrastructure to operate the capability and future lunar surface capabilities.
- Many of the costs incurred by the Ares I and early Constellation elements actually support development of future Constellation architectural elements, such as the Ares V and the Altair lunar lander.

*Question.* The \$1.9 billion to terminate this program seems like a large amount. What exactly will these funds cover?

*Answer.* The fiscal year 2011 budget request transitions away from the Constellation program, and in doing so, provides a total of \$2.5 billion in fiscal year 2011 and fiscal year 2012 for Constellation closeout and transition costs—funding that is expected to cover closeout activity associated with facilities, environmental remediation, workforce, and prime and support contracts. A portion of this funding will also be used to support the retraining of shuttle program contractors as that program is brought to a successful close. It should be noted, however, that at present, the breakdown of costs is not complete. The agency is using the current budget planning activities to develop the details; and an implementation plan and coordinated communications with NASA responsible offices and current Constellation contractors are required to further refine this estimate, which is consistent with past planning experience and cost estimation for the Space Shuttle Transition and Retirement. NASA's experience with close-out of the shuttle program will serve as a useful reference for the complexity of the tasks and the potential associated costs.

#### CONTRACT TERMINATION—FOLLOW-UP

*Question.* Under the fiscal year 2011 budget plan, NASA will eventually need to terminate the Constellation program and the Government contracts that go with it. The fiscal year 2010 bill prevents NASA from canceling Constellation. It seems clear that current law prevents NASA from terminating or significantly restructuring contracts in the current fiscal year.

At our April 22 hearing, you stated: “We are reminding them (the contractors) that it is their responsibility to determine, I guess technically for them, it's to determine what level of risk the company is willing to accept in terms of being able to handle a termination if it should come. So, we are not telling them that they need to reserve funds. We're telling them that they do have to be aware of the fact that termination liabilities, some of them lie on them by their contract. And it's the company's determination of what level of risk they want to incur, whether they put aside funds or whether they assume that they are not going to need them.”

What does this mean in practical terms? Is the ultimate impact to reduce the amount of work planned in 2010? Are you essentially forcing the contractors to self-terminate so you won't have to?

Answer. The cited testimony is clear on this point. NASA is not forcing the contractors to do anything, but has simply reminded certain of them that the terms of their contracts limit the obligations of the Government for reimbursement of costs, including termination costs, to the amount allotted to the contract.

*Question.* Is this NASA's usual practice? What has NASA done regarding termination liability when it has terminated contracts in the past?

Answer. NASA has terminated very few contracts in the past, and we are not aware of a situation in which NASA waived contract terms during the termination of a contract.

*Question.* Are you planning to terminate all Constellation contracts?

Answer. NASA has no current intention of terminating any Constellation contracts in fiscal year 2010.

*Question.* What will it cost to terminate work related to Constellation in fiscal year 2011, both for Government employees and for contractors?

Answer. NASA recognizes that the transition away from the Constellation program will personally affect thousands of NASA civil servants and contractors. Civil servants who support Constellation should feel secure that NASA has exciting and meaningful work for them to accomplish after Constellation, and our contractor colleagues should know that NASA is working expeditiously to offer new opportunities for them to partner with the agency on our new Exploration portfolio.

With regard to contract termination costs, NASA is working with our prime contractors to gather current estimates of their potential termination liability (PTL) costs should Constellation contracts be terminated. The chart below provides PTL estimates as of June 21, 2010. Please note that PTL costs can vary over time, depending on current contract activity, such as status of long-lead items, active sub-contractors and suppliers, facility/lease costs etc.

[In millions of dollars]

Current PTL required for Prime Contracts	As of June 21, 2010
ATK .....	\$500
Lockheed Martin .....	350
PWR .....	48
Boeing .....	81
Oceaneering .....	15
Current PTL required for non-Prime Contracts .....	66

With regard to program transition and termination costs, NASA is confident that the \$2.5 billion provided in the fiscal year 2011 budget for Constellation closeout and transition would be sufficient to cover closeout activity associated with facilities, environmental remediation, workforce, and prime and support contracts. However, at present, the breakdown of costs for transitioning away from Constellation is not complete, for several reasons:

—Following the release of the fiscal year 2011 budget request, NASA established six study teams within ESMD to ensure we understand the steps (and the implications of those steps) that would need to be taken for an orderly transition of the Constellation Program and to plan for the implementation of the new Exploration program. One team, the Constellation Transition team, has initiated a broad survey of current workforce, contracts, facilities, property, security, knowledge capture, information technology, and other Government agency interface issues to determine what infrastructure and hardware could be used by the new programs and projects—information that will be key to understanding the exact costs for Constellation transition. However, the work of each team is still ongoing. It is expected that these teams will complete a majority of their work by the end of the third quarter of fiscal year 2010, and we will share those findings with Congress as they are finalized.

—Additionally, NASA is still developing mission requirements and subsequent cost estimates for the development of an emergency crew return vehicle, announced by the President on April 15, 2010. NASA hopes to be able to finalize these cost estimates in the near future and provide them to Congress.

*Question.* How do you propose to pay for contract termination costs?

Answer. Except for two contracts that contain a special termination costs clause, the Constellation prime contract terms limit the Government's obligation to make payments, including payments for termination costs, to the amounts allotted to the contracts. Accordingly, termination costs would be paid with funds allotted to the

contracts. For the two contracts containing special termination clauses, termination costs would be paid from funds that NASA is required to, and has, set aside for that purpose.

#### SATELLITE SERVICING

*Question.* Building upon the important role that humans have played in the success of Hubble by servicing it a record five times, this subcommittee provided funds in fiscal year 2009 and 2010 for the development of a sustained aggressive satellite servicing capability.

What is NASA doing with the \$20 million provided in 2009 and the \$50 million in 2010 to develop a full scale, world class satellite servicing program? What activities are involved? What are near term technical and schedule milestones to demonstrate critical tasks like “in flight” refueling of satellites?

*Answer.* The Satellite Servicing Study has two major thrusts. The first is an analytical study in which NASA is engaging with industry, academia, and other agencies to determine the extent of the potential satellite servicing market and the customers’ capability needs. A Request for Information (RFI) on the Feasibility of Using Human Spaceflight or Robotic Missions for Servicing Existing and Future Spacecraft was released on December 8, 2009, and openly solicited ideas on satellite servicing concepts and capabilities. NASA received over 70 responses to the RFI.

Subsequently, NASA conducted an International Workshop on On-Orbit Satellite Servicing at the University of Maryland University College Inn and Conference Center, March 24–26, 2010. The workshop brought together 234 registered participants from industry, academia, other U.S. Government agencies and foreign entities. Others participated via Webex, Twitter, and Ustream (audio). The live audio stream received 280 hits on the first day. The opening plenary addressed NASA’s vision for satellite servicing as well as national security space and commercial space perspectives. The remainder of the workshop was divided into 5 themed sessions with over 50 presentations. About one-half of the RFI respondents spoke at the workshop. The themes addressed Missions and Customers of Satellite Servicing, Business and Commercial Case for Satellite Servicing, Servicing with Humans, Robotic Servicing Technology, and more general Servicing Technology. Presentations clearly marked for unrestricted distribution are available on the servicing study Web site at [http://servicingstudy.gsfc.nasa.gov/workshop\\_1\\_presentations.htm](http://servicingstudy.gsfc.nasa.gov/workshop_1_presentations.htm).

Fact finding discussions are continuing between NASA and potential servicing customers, technologists, systems developers and operators, including other Government agencies, commercial satellite operators and possible commercial servicing providers. NASA is also developing several notional satellite servicing mission concepts which will help identify implementation approaches, costs, and technology gaps. A report documenting findings from these analytic activities will be issued this fall. This report will provide a foundation upon which to determine future spacecraft servicing architectures, desired capabilities and future implementation plans, including cost and schedule.

The second thrust involves implementing two technology demonstrations on the International Space Station (ISS) using the station’s Special Purpose Dexterous Manipulator (SPDM) “Dextre” robot. The Robotic Refueling Dexterous Demonstration (R2D2) will show that a robotic mission can potentially refuel and repair satellites which were not designed for on-orbit servicing. It will include an end-to-end refueling demonstration as well as a busy-board for demonstrating the ability of the robot to access and interface with satellite test ports. An R2D2 Systems Requirements Review (SRR)/Preliminary Design Review (PDR) was held in March 2010. A Critical Design Review was conducted in June 2010. Hardware completion is planned for October 2010. The other demonstration is a Dextre Pointing Package (DPP) to enhance orientation and control of Dextre. DPP, positioned to view vehicles as they approach or depart ISS, will be used to evaluate various sensors and algorithms for future autonomous acquisition, rendezvous, and capture of customer spacecraft. The DPP SRR/PDR was conducted in June 2010. Hardware integration is scheduled for completion in December 2010. Additionally, robotic technology development capability at West Virginia University is being established to refine and mimic orbital robotic contact dynamics in the ground environment. This will assist in developing algorithms for on-orbit use. A 1G demonstration is planned for August 2010. These demonstrations will reduce risk and enable future satellite servicing missions.

*Question.* Is NASA having any success in enlisting the interest of other Federal agencies in developing this capability?

*Answer.* NASA is discussing satellite servicing needs and potential collaboration opportunities with other Federal agencies, mostly in the National Security community. Additionally, relevant systems, technologies and needs of the Department of



Defense and other Government agencies were addressed in presentations at the International Workshop on On-orbit Satellite Servicing held at the University of Maryland University College Inn and Conference Center, March 24–26, 2010.

*Question.* What are the five top tasks that you envision this satellite servicing capability having, how much funding would each task require, and what is the relative schedule for executing and completing each task or capability development?

*Answer.* Please see earlier response. Fact finding discussions are ongoing between NASA and potential servicing customers, technologists, systems developers and operators, including other Government agencies, commercial satellite operators and possible commercial servicing providers. NASA is also developing several notional satellite servicing mission concepts which will help identify implementation approaches, costs, and technology gaps. A report documenting findings from these analytic activities will be issued this fall. This report will provide a foundation upon which to determine future spacecraft servicing architectures, desired capabilities and future implementation plans, including cost and schedule.

#### SATELLITE ACQUISITION

*Question.* NASA serves as the procurement agent for its own large satellites and for complex satellite systems on behalf of other Government agencies. To ensure the best value for the Government, procurement law is very specific about the circumstances when NASA and other Federal agencies may pursue contracts in a manner other than by full and open competition.

What are NASA's guidelines for issuing sole source contract awards for spacecraft above \$50 million and which NASA official(s) are responsible for approving these awards?

*Answer.* In addition to applicable Federal Acquisition Regulations, the guidelines for issuing sole source contract awards are set forth in the NASA Federal Acquisition Regulation Supplement (NFS), 1806.304–70 (<http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>) Approval of NASA justifications. These guidelines apply to all sole source contract awards regardless of the commodity or service as follows:

For proposed contracts over \$11,500,000 but not exceeding \$78,500,000:

—*Concurring Officials.*—Center Procurement Officer and Center or Headquarters Competition Advocate

—*Approving Official.*—Head of the contracting activity.

For proposed contracts over \$78,500,000:

—*Concurring Officials.*—Center Procurement Officer, Center or Headquarters Competition Advocate, Head of the contracting activity and, Agency Competition Advocate

—*Approving Official.*—Assistant Administrator for Procurement

The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director. For proposed contract actions requiring approval by the Assistant Administrator for Procurement, the original justification shall be forwarded to the Assistant Administrator for Procurement, Office of Procurement, Program Operations Division. Regardless of dollar value, class justifications shall be approved by the Assistant Administrator for Procurement.

*Question.* Does NASA plan to acquire or procure any commercial spacecraft from industry under other than full and open competition, leading to a sole source contract, for any science missions with a spacecraft value of greater than \$50 million?

*Answer.* NASA's Science Mission Directorate is committed to full and open competition leading to the selection of its spacecraft and hardware. Missions and instruments are selected based on their scientific merit through peer review. However, in the wake of the loss of the competitively selected Orbiting Carbon Observatory (OCO) in February 2009 and in response to national needs for a carbon monitoring capability, NASA has awarded JPL authority for a near-identical OCO replacement, OCO-2. This unique procurement strategy minimizes the cost, schedule, and performance risk of the replacement mission.

With the restructuring of the NPOESS program, NASA is now assuming responsibility for the procurement of the Nation's next generation weather and environmental monitoring satellites. Options to procure spacecraft to minimize any gaps in NOAA's weather and climate monitoring requirements will consider sole source procurements where appropriate.

*Question.* If so, what is the justification for these sole source spacecraft?

*Answer.* For the OCO-2 procurement, JPL concluded that any deviation from the original OCO mission would require substantial re-engineering/re-testing, re-writing of existing documentation, and would infuse significant risk to the project. To minimize additional testing and mitigate risk, JPL's intent is to procure identical items wherever possible. For example, the Orbital spacecraft bus procurement will provide

for an exact duplicate of the OCO spacecraft while the Northrop cryocooler procurement will provide for the closest-to-identical replacement cryocooler currently available.

Continuity of measurements supporting accurate weather and climate predictions is a clear national priority. No sole-source decisions have been made to date for any future NPOESS/JPSS spacecraft. Any sole-source procurements of spacecraft for the future Joint Polar Satellite System will be considered only if required to ensure continuity at reasonable risk.

#### EARTH SCIENCE

*Question.* NOAA and NASA are leaders in the U.S. Climate Change Research Program. With an increase in severe storms and severe drought, accurate seasonal and yearly forecasts are becoming more of a necessity. The amount of Earth observation data coming from NASA's satellites, reinforce the concerns that our data must be handled properly and efficiently, and not ending up in a "data mortuary".

Are there clear lines for collaboration between the NOAA and NASA, especially when it comes to moving research to operations?

*Answer.* Yes. NASA and NOAA established a Joint Working Group (JWG) in response to section 306(a) of the NASA Authorization Act of 2005. The JWG meets at the level of the NASA Earth Science Division Director and the NOAA Assistant Administrator for Satellite and Information Services. The JWG meets approximately quarterly, with the next meeting planned for July 9, 2010. In this forum, NASA and NOAA coordinate plans for Earth observation and research, and especially the subject of transitions of NASA research satellite capabilities to NOAA for NOAA operation in support of NOAA's mission. NOAA's fiscal year 2011 budget request to begin development of the Jason-3 ocean altimetry mission is the first major outcome of this joint planning. Jason-1 (following TOPEX Poseidon) was a joint NASA/CNES (France) mission; Jason-2 was developed and launched by NASA/CNES, but is being operated by NOAA and EUMETSAT (NOAA's European counterpart). Jason-3 will be developed as NOAA/EUMETSAT partnership (with NASA/JPL's assistance under a reimbursable agreement).

In the area of research, NASA and NOAA are collaborators with the DOD and NSF in the Joint Center for Satellite Data Assimilation, which works to accelerate the use of research satellite data to improve routine weather and climate prediction using global numerical models. NASA and NOAA established the Short-term Prediction Research and Transition (SPoRT) Center in 2002 to demonstrate the application of NASA satellite measurements to improve short-term weather forecasts on regional and local scales. NASA continues to operate 13 satellites that provide many of the space-based observations needed by the U.S. Global Change Research Program to accomplish its research goals. Data from several of these satellites are also used by NOAA for climate monitoring.

The GOES program, begun in 1974, is another example of NOAA-NASA cooperation. NOAA funds and manages the program and determines the need for satellite replacement. NASA acts as NOAA's acquisition agent to design, develop, and launch GOES satellites. After a satellite is launched and checked out by NASA, the spacecraft is turned over to NOAA for its operation. The latest GOES satellite, GOES-15, was launched on March 4, 2010, and is presently in the final stages of on-orbit checkout.

In addition to cooperation on satellite systems, NASA and NOAA also have a history of collaborating on research campaigns. For these campaigns, NASA and NOAA contribute aircraft, ships, and/or sensors to make complementary measurements of environmental conditions of interest to both agencies. For example, in 2008, NASA collaborated with NOAA on the Southern Ocean Gas Exchange Experiment (GasEx) to study how gases move between the atmosphere and oceans under high winds and seas. NASA funded science investigations that took place on-board NOAA's Research Vessel Ronald H. Brown. In April 2010, NASA concluded the Global Hawk Pacific mission (GloPac), the initial science mission with the Global Hawk Unmanned Airborne System (UAS). GloPac's purpose is to obtain unique observations of the lower stratosphere and upper troposphere in association with NASA's Aura satellite and both NASA- and NOAA-instrument teams participated in the campaign. In the future, NASA is planning the Genesis and Rapid Intensification Processes (GRIP) airborne campaign for summer 2010 to better understand how tropical storms form and develop into major hurricanes. NASA plans to use the DC-8 aircraft and the Global Hawk UAS. NOAA will participate and deploy one or two low-altitude P-3 aircraft and possibly a Gulfstream IV aircraft for the upper troposphere measurements.

*Question.* What percentage of NASA's earth science data is utilized by scientists? How does that utilization compare with NOAA's satellite data?

*Answer.* In fiscal year 2009, the NASA Distributed Active Archive Centers (DAACs) distributed over 250 million data products to users around the world. In fiscal year 2009, NASA recorded over 910,000 distinct users of EOSDIS data and services. Ninety percent of the distributed products and 88 percent of the distributed volume (Gigabytes delivered) went to science users. Data is also typically accessed for educational or applications purposes.

Last year, the DAACs identified 466 papers that used data from NASA DAACs in various peer-reviewed science journals, such as *Advances in Space Research* and *Journal of Geophysical Research*. As it is not mandatory that researchers who use NASA data cite the source of that data, this number represents a low estimate of the numbers of papers that used NASA data.

NASA does not monitor the use of NOAA data. However, NASA scientists do make broad use of the NOAA data.

*Question.* Now that NASA will be heavily involved in the successor program to NPOESS, how will you ensure that it undertakes this task effectively without diverting budget or manpower resources from the key missions to which NASA is committed and which are presented in the 2011 budget?

*Answer.* The Joint Polar Satellite System program will actually be easier to manage from a budget and manpower planning standpoint for NASA than NPOESS was. In NPOESS, NASA did not have a direct development management role; NASA needed to identify manpower resources to help with NPOESS instrument development problems on a non-predictable basis. JPSS, on the other hand, will be run much the way the POES program was for three decades. NOAA will budget for the program and reimburse NASA for its satellite development work; since all JPSS work is reimbursable, there is no impact to NASA's budget. This more stable program, with stable roles, enables effective long term planning. POES and GOES proceeded in parallel with NASA's development of the Earth Observing System in the 1990s and early 2000s, and the workforce synergies were beneficial to both programs. We foresee the same for JPSS and NASA's development of its research missions.

While JPSS will require an unusually rapid ramp-up, Goddard currently manages 18 flight projects and has a large and experienced workforce. The immediate challenge will be the need to quickly assign a cadre of very experienced senior level managers, and GSFC has already identified a strong leadership team to initiate the transition from NPOESS to JPSS. Many of these individuals are coming off programs that have launched in the past months or are about to launch, including Hubble Space Telescope Servicing Mission 4 and the Solar Dynamics Observatory. The plan is to ramp up to 150 Civil Servant and Contractor employees during the first year, with an ultimate program/project size of 300–350 people. In the short term, Goddard will manage the reassignment of people with the intent of minimizing impact to its other flight projects.

*Question.* What efforts will NASA take to make its earth science more relevant to pressing regulatory challenges like carbon monitoring and other greenhouse gas issues?

*Answer.* The President's fiscal year 2011 budget request includes funds for an Orbiting Carbon Observatory-2 mission to be developed for launch in February 2013. The policy and science communities look forward to the availability of these data, from which CO<sub>2</sub> sources and sinks can be inferred. Further, the OCO-2 funds are planned to enable generous instrument spare parts development. This will both reduce risk in OCO-2 schedule and, upon achievement of a successful OCO-2 launch, enable assembly of a second instrument copy to be flown as a mission of opportunity or as part of the Decadal Survey ASCENDS mission. The result will be extended data continuity, which is essential for carbon monitoring.

The fiscal year 2011 budget request also funds the continuation of NASA's pilot Carbon Monitoring System activities begun in fiscal year 2010. The goal of these activities is to generate and test an improving set of products on carbon storage and exchange between the surface and the atmosphere. These information products will be provided on a regular basis to policy and decisionmakers as well as to scientists and program managers designing the future evolution of a carbon monitoring capability.

For other greenhouse gases and aerosols, the fiscal year 2011 budget request funds the refurbishment of an existing Stratospheric Aerosols and Gas Experiment-III (SAGE III) to be hosted on the International Space Station, which operates at an ideal orbital inclination for this instrument. NASA continues development of the Ozone Mapper and Profiler Suite-Limb instrument for flight on NPP in a collaborative activity with NOAA on climate data continuity.

As part of the Earth Science Research Program, NASA is investing over \$160 million in research related to understanding the quantity of carbon on the Earth's surface, in the atmosphere, and the oceans, as well as how carbon is cycled between these reservoirs. The Carbon Cycle and Ecosystem Program uses six NASA satellites already in operation to monitor global carbon levels. The Land Cover and Land Use Change program, which is part of the Carbon Cycle and Ecosystems Program, monitors and models the interactions of land cover and land use change with the carbon cycle. New research opportunities through the Carbon Cycle and Ecosystems Program seek to better understand and model human-ecosystem-climate interactions.

*Question.* We have an annual report of Hubble's science accomplishments. Why have we never received anything comparable for NASA's earth science program even though we spend more than \$1.5 billion per annum on it? What are the five most important discoveries in NASA's earth science program for each of the past 5 years? (2004–2009)

*Answer.* While NASA's Earth Science program does not have an equivalent to Hubble's Space Telescope Institute which prepares that annual report, we do report annually on Earth science accomplishments through the Aeronautics and Space Report of the President and through contributions to the annual Our Changing Planet report of the U.S. Global Change Research Program. NASA would be pleased to provide more information on our accomplishments in Earth Science in any form the subcommittee would find useful.

2009

#### *NASA Satellite Reveals Dramatic Arctic Sea Ice Thinning*

Using the ICESat spacecraft, researchers showed that Arctic sea ice thinned dramatically, with thin seasonal ice replacing thick "multi-year" ice as the dominant type for the first time on record. These measurements represent the first time that changes in ice thickness and volume were measured over the entire Arctic Ocean. Such information is used to calculate annual ice production and has shown periods of near-zero replenishment of the multi-year ice cover and significant transport of ice out of the Arctic. [http://www.nasa.gov/home/hqnews/2009/jul/HQ\\_09-155\\_Thin\\_Sea\\_Ice.html](http://www.nasa.gov/home/hqnews/2009/jul/HQ_09-155_Thin_Sea_Ice.html)

#### *Methane, Carbon Monoxide Heat Up the Home Planet*

A team of NASA researchers at the Goddard Institute for Space Studies found that two greenhouse gases have a significantly more powerful impact on global warming than previously thought. In a paper published in October, the team conducted one of the first modeling experiments designed to rigorously quantify the impact of greenhouse gas-aerosol interactions on climate and air quality. The study found that methane's global warming impact has been underestimated, and the combined impact of emissions that cause both warming and air pollution have as much effect on warming as carbon dioxide. This improved knowledge of the warming effect of these greenhouse gases will help policymakers devise more efficient strategies to mitigate climate change. <http://eosps.gsf.nasa.gov/newsroom/viewStory.php?id=1585>

#### *NASA Satellites Unlock Secret to Northern India's Vanishing Water*

Using NASA satellite data, scientists found that groundwater levels in northern India have been declining by as much as 1 foot per year over the past decade. A team of hydrologists led by Matt Rodell of NASA's Goddard Space Flight Center found that northern India's underground water supply is being pumped and consumed by human activities, such as irrigating cropland, and is draining aquifers faster than natural processes can replenish them. The finding is based on data from NASA's Gravity Recovery and Climate Experiment (GRACE), a pair of satellites that sense changes in Earth's gravity field. These changes directly relate to changes mass distribution, including water masses stored above or below Earth's surface. The results were published in October. [http://www.nasa.gov/topics/earth/features/india\\_water.html](http://www.nasa.gov/topics/earth/features/india_water.html)

#### *Using NASA Data to Improve Public Health Tracking*

High concentrations of 2.5 micron particulate matter (PM<sub>2.5</sub>) are associated with heart and lung disease. Accurately monitoring concentrations of PM<sub>2.5</sub> are difficult using ground observations alone. Similarly, 10 micron PM (from naturally occurring dust) are associated with asthma and other respiratory distress in the desert Southwest. NASA and the CDC have been partners in linking PM<sub>2.5</sub> and PM<sub>10</sub> and health observations to enhance public health surveillance through the CDC Environmental Public Health Tracking Network (EPHTN). The EPHTN, a surveillance tool

that scientists, health professionals, and—for the first time—members of the public can use to track environmental exposures and chronic health conditions, went operational in July 2009. NASA was an integral partner in enhancing the capabilities of this system as it was developed, using surfacing algorithms, modeling capabilities, and observations from and CALIPSO. <http://www.naphsis.org/index.asp?bid=983>

#### *NASA Researchers Evaluate Impacts of the Montreal Protocol*

A team of NASA-led scientists have simulated “what might have been” if chlorofluorocarbons (CFCs) and similar chemicals were not banned through the Montreal Protocol. CFCs are known to deplete ozone in the atmosphere, which results in an increase in ultraviolet radiation reaching the surface of the Earth. The simulation used a comprehensive model that included atmospheric chemical effects, wind changes, and radiation changes. The simulation has shown that, without regulation, by 2065, 67 percent of the overhead ozone would be destroyed in comparison to 1980. Large ozone depletions in the polar region would become year-round rather than just seasonal, as is currently observed in the Antarctic ozone hole. Ozone levels in the tropical lower stratosphere remain constant until about 2053 and then collapse to near zero by 2058 as a result of “polar ozone hole” chemical processes developing in the tropics. In response to ozone changes, ultraviolet (UV) radiation increases, tripling the “sun-burning” radiation in the northern summer mid-latitudes by 2065. <http://www.atmos-chem-phys.net/9/2113/2009/acp-9-2113-2009.html>

2008

#### *Arctic Sea Ice Decline Continues*

In September, Arctic sea ice coverage reached the second-lowest level recorded since the dawn of the satellite era, according to observations from the NASA-supported National Snow and Ice Data Center at the University of Colorado. While slightly above the record-low set in September 2007, this season further reinforces the strong negative trend in summer sea ice coverage observed during the past 30 years. In March, when the Arctic reached its annual maximum sea ice coverage during the winter, scientists from NASA and the data center reported that thick, older sea ice was continuing to decline. NASA developed the capability to observe the extent and concentration of sea ice from space using passive microwave sensors. [http://www.nasa.gov/home/hqnews/2008/sep/HQ\\_08234\\_Artic\\_Sea\\_Ice.html](http://www.nasa.gov/home/hqnews/2008/sep/HQ_08234_Artic_Sea_Ice.html)

#### *Linking Rainfall Amounts to Pollution*

Rainfall data from TRMM has shown the impact that human activities have on the environment. Researchers found that midweek storms in the southeastern United States tend to be stronger, larger, and wetter than weekend storms. They found a positive correlation between this precipitation data and airborne particle pollution data from the EPA, concluding that human activities such as driving help seed the atmosphere and encourage rain. [http://www.nasa.gov/home/hqnews/2008/feb/HQ\\_08031\\_pollution\\_rain.html](http://www.nasa.gov/home/hqnews/2008/feb/HQ_08031_pollution_rain.html)

#### *Mapping Global Carbon Dioxide*

Using data from the Aqua satellite, a NASA-led research team produced the first global satellite maps of carbon dioxide in the Earth’s mid-troposphere. From the data, the team found that carbon dioxide concentrations are highly dependent on atmospheric circulation patterns and major surface sources of carbon dioxide. Concentrations vary by hemisphere due to the relative abundance of land in the Northern Hemisphere. <http://www.nasa.gov/topics/earth/features/airs-20081009.html>

#### *Understanding Microseisms*

A team led by NASA-scientists were able to pinpoint a source of microseisms, small Earth tremors created when ocean waves traveling in opposite directions merge together, solving a 50-year-old mystery. The researchers found that some microseisms originate in the North Atlantic Ocean, where ocean waves combine to form stationary waves that beat down on the ocean floor, causing it to vibrate. These vibrations generate seismic waves that propagate for thousands of miles. <http://www.jpl.nasa.gov/news/features.cfm?feature=1626>

#### *Identifying the Influence of El Niño Storms on Wintertime Storms*

A team of NASA-led scientists have found that El Niño-Southern Oscillation (ENSO) events can lead to more intense winter storms in certain regions in the United States, specifically, the west coast, Gulf States, and the Southeast. By comparing historical rainfall and snow records and computer models, the scientists

found that ENSO events can double the probability of certain extreme winter storms. <http://eosps0.gsfc.nasa.gov/newsroom/viewStory.php?id=826>

2007

#### *NASA Satellites Unearth Antarctic "Plumbing System"*

Scientists using NASA satellites discovered an extensive network of waterways beneath a fast-moving Antarctic ice stream that provide clues as to how "leaks" in the system affect sea level and the world's largest ice sheet. Data from the Moderate Resolution Imaging Spectroradiometer instrument aboard NASA's Aqua satellite, and data from the Geoscience Laser Altimeter System on NASA's Ice Cloud and Land Elevation Satellite, provided a multi-dimensional view of changes in the elevation of the icy surface above a large subglacial lake and surrounding areas during a 3-year period. Those changes suggest the lake drained to the nearby ocean. [http://www.nasa.gov/vision/earth/lookingatearth/antarctic\\_plumbing.html](http://www.nasa.gov/vision/earth/lookingatearth/antarctic_plumbing.html)

#### *Using NASA Satellites to Predict Tropical Cyclone Intensity*

NASA and university scientists announced in November 2007 the development of a promising new technique for estimating the intensity of tropical cyclones from space. This new method of estimating intensity requires cloud profiling information from over or near a storm's eye, including simultaneous, accurate measurements of cloud-top temperatures from the Aqua satellite, and cloud-top height and cloud profiling information from the CloudSat satellite. Both satellites fly in formation as part of NASA's "A-Train" of Earth-observing satellites. Initial results show the technique's estimates agreed with available weather data and this method could one day supplement existing techniques, assist in designing future tropical cyclone satellite observing systems, and improve disaster preparedness and recovery efforts. <http://eosps0.gsfc.nasa.gov/newsroom/viewStory.php?id=809>

#### *Using NASA Satellites to Study Algal Blooms*

NASA satellite data helped scientists solve a decades-old puzzle about how vast blooms of microscopic plants can form in the middle of otherwise barren mid-ocean regions. The research team published findings in May 2007 that used the data to show that episodic, swirling current systems known as eddies act to pump nutrients up from the deep ocean to fuel such blooms. Data sets came from NASA's TOPEX/Poseidon, Jason, Aqua and QuikSCAT satellites. The fate of all of that biomass also is important, as plankton blooms can remove substantial amounts of carbon dioxide from surface waters and sink it to the deep ocean. The plants in the bloom either die and sink when the bloom runs its course or are consumed by animals, which then make fecal pellets that drop to the sea floor. <http://eosps0.gsfc.nasa.gov/newsroom/viewStory.php?id=771>

#### *NASA Satellites Measure Antarctic Snow Melt*

A 2007 study led by team of NASA and university scientists found clear evidence that extensive areas of snow melted in west Antarctica in January 2005 in response to warm temperatures. This was the first widespread Antarctic melting ever detected with NASA's QuikScat satellite and the most significant melt observed using satellites during the past three decades. The affected regions encompass a combined area as big as California. Changes in the ice mass of Antarctica, Earth's largest freshwater reservoir, are important to understanding global sea level rise. Large amounts of Antarctic freshwater flowing into the ocean also could affect ocean salinity, currents and global climate. The 2005 melt was intense enough to create an extensive ice layer when water refroze after the melt. However, the melt was not prolonged enough for the melt water to flow into the sea.

#### *Amazon Rainforest Resilient to Drought*

Using data from Terra and TRMM, researchers have found that the Amazon Rainforest is more drought-tolerant than originally predicted. Forest productivity increases and the forest canopy becomes greener during the dry season when more light is available due to cloudless conditions. Unlike plants in the pasture regions, plants in the forest are able to tap into deep soil water during the short dry season, allowing them to continue growing. <http://eosps0.gsfc.nasa.gov/newsroom/viewStory.php?id=801>

2006

#### *NASA Satellites and Science Ozone Studies*

NASA-funded researchers have provided new insights into the processes driving ozone chemistry and the impacts of ozone on pollution and climate change. By tracking chemicals present in the Earth's atmosphere using Aura, the researchers found

that the burning of biomass in the tropics increase pollution by producing carbon monoxide and nitrogen oxides, two pollutants that lead to the formation of ozone. In a second study, researchers found that the amount of ozone in the tropics is dependent on the Madden-Julian Oscillation is a cyclical pattern of slow, eastward-moving waves of clouds, rainfall and large-scale atmospheric circulation anomalies that can strongly influence long-term weather patterns around the world. Low-pressure systems increase the amount of subtropical total ozone. <http://eosps0.gsfc.nasa.gov/newsroom/viewStory.php?id=730>

*NASA Satellites Show Decline of Arctic Perennial Sea Ice*

In fiscal year 2006, analysis of NASA data showed that Arctic perennial sea ice, which normally survives the summer melt season and remains year-round, shrank abruptly by 14 percent between 2004 and 2005. According to researchers, the loss of perennial ice in the East Arctic Ocean neared 50 percent during that time as some of the ice moved from the East Arctic to the West. Researchers have long suggested that the icy surface of the Arctic's waters is retreating due to a warming climate. Sea ice functions as an indicator of changing water, air, and sea surface temperatures, and is important to the continued well-being of Arctic mammals such as polar bears. A research team that used NASA's QuikScat satellite to measure the extent and distribution of perennial and seasonal sea ice in the Arctic discovered that, while the total area of all the Arctic sea ice was stable in winter, the distribution of seasonal and perennial sea ice experienced significant changes. <http://eosps0.gsfc.nasa.gov/newsroom/viewStory.php?id=696>

*NASA Satellites Show Changes in Greenland and Antarctic Ice Sheets*

In the most comprehensive survey ever undertaken of the massive ice sheets covering both Greenland and Antarctica, NASA scientists confirmed that climate warming is changing how much water remains locked in Earth's largest storehouses of ice and snow. The survey showed a net loss of ice from the combined polar ice sheets between 1992 and 2002 and a corresponding rise in sea level. The survey provided the first documentation of the extensive thinning of the West Antarctic ice shelves, an increase in snowfall in the interior of Greenland, and thinning at the edges. All these phenomena are indicators of a warming climate previously predicted by computer models.

*NASA Scientists Uncover Lost Mayan Ruins*

Using remote sensing capabilities from satellites and NASA airborne instruments, researchers were able to locate Mayan architectural sites otherwise not visible in the dense jungle of Guatemala. Remote sensing instruments were able to detect changes in the local fauna indicative of the presence of Mayan buildings. Certain plant species were suppressed around building sites, while other plants were discolored due to changes in soil chemistry from the erosion of the buildings. <http://eosps0.gsfc.nasa.gov/newsroom/viewStory.php?id=651>

*Using Satellites to Predict Wildfires*

By observing plant conditions from space, researchers are able to predict when and where wildfires may occur. Plant moisture and the proportion of live to dead plant material, as measured by MODIS and AVIRS, provide strong indicators of the conditions favorable for wildfires. Such data can be assist operational agencies in their forecasting of fire potential across the United States. [http://www.nasa.gov/centers/goddard/news/topstory/2006/wildfire\\_threat.html](http://www.nasa.gov/centers/goddard/news/topstory/2006/wildfire_threat.html)

2005

*NASA Satellites Assist in Hurricane Katrina Recovery Efforts*

NASA's Earth-observing "eyes in the sky," including Earth orbiting satellites, aircraft, and the International Space Station, provided detailed images of the flooding and devastation in areas affected by Hurricanes Katrina and Rita. NASA, along with academic institutions and partner agencies, worked to ensure that the Department of Homeland Security and the Federal Emergency Management Agency had the best available information to aid the rescue and recovery effort. The images and associated data helped characterize the extent of the flooding, the damage to homes, businesses, and infrastructure, and the potential hazards caused by the storms and their aftermath. [http://www.nasa.gov/mission\\_pages/hurricanes/main/index.html](http://www.nasa.gov/mission_pages/hurricanes/main/index.html)

*NASA Satellites Assess the Impacts of the Indonesian Earthquake and Tsunami*

The December 2004 Indonesian earthquake caused a massive tsunami to wash over 10 countries in South Asia and East Africa. NASA satellites were able to capture the effects of the earthquake and tsunami in this region. Using Earth observa-

tions from before and after the Indonesian earthquake, NASA scientists calculated that it slightly changed the planet's shape; the Earth's oblateness (flattening on the top and bulging at the equator) decreased by a small amount and the North Pole shifted by about 2.5 centimeters. The earthquake also increased the Earth's rotation and decreased the length of day by 2.68 microseconds. Physically, this is like a spinning skater drawing their arms closer to the body resulting in a faster spin. <http://www.jpl.nasa.gov/news/news.cfm?release=2005-009>

#### *Developing a Decision-support Capability in Central America*

Through NASA's Applied Sciences Program, scientists developed SERVIR, a regional visualization and monitoring system that integrates many different satellite data sets, forecast models, and ground-based observations in order to provide better information to policymakers and stakeholders on a range of issues including disaster management, agricultural development, biodiversity conservation and climate change. SERVIR serves communities in Central America by providing easily accessible customized visualization tools and services utilizing NASA data. Building on the success of SERVIR in Central America, NASA expanded SERVIR in 2008 to serve communities in East Africa. SERVIR-Africa is primarily focused on applications related to disasters, health, and biodiversity. <http://www.servir.net/>

#### *Measuring the Earth's Radiation Budget*

Using a combination of global climate models, ground-based measurements, and satellite observations, NASA researchers found that the Earth absorbs about 0.85 Watts of energy per square meter more than is radiated back to space. While some of this imbalance has led to increased global temperatures and snow and ice melt, a large portion of the energy is absorbed by the Earth's oceans making the overall effect to the Earth's temperature less than what would otherwise be expected. <http://www.giss.nasa.gov/research/news/20050428/>

#### *Monitoring Sea Level*

Using a number of NASA satellites, including TOPEX/Poseidon, Jason, ICESat, and GRACE scientists were, for the first time, able to understand the rate at which the Earth's sea level is changed by establishing a reference sea level independent of land. Such information can be used not only to measure changes in sea level, but also can be used to identify the causes of those changes and their significance. For example, this information can be used to monitor the rate at which ice is growing or shrinking. [http://www.nasa.gov/home/hqnews/2005/jul/HQ\\_05175\\_sea\\_level\\_monitored.html](http://www.nasa.gov/home/hqnews/2005/jul/HQ_05175_sea_level_monitored.html)

2004

#### *Black Soot and Snow—a Warmer Combination*

A NASA study found that emissions of soot, or black carbon, alter the way sunlight reflects off snow. A computer simulation indicated that soot may be responsible for as much as 25 percent of observed global warming over the past century. Soot on snow absorbs more of the Sun's energy and heat than icy, white backgrounds, which reflect the Sun's rays. With global warming, many snow- and ice-covered areas are already melting. As can be seen when glaciers and ice sheets melt, they tend to get dirtier as the soot becomes even more concentrated. Soot thereby adds to the warming effect as ice melts, making icy surfaces darker and absorbing more solar energy. Soot is generated from traffic, industrial pollution, outdoor fires, and household burning of coal and other fuels, and is the product of incomplete combustion. <http://www.giss.nasa.gov/research/news/20031222/>

#### *Satellites Used To Discover Chameleon Species New to Science*

NASA-supported biologists developed a modeling approach that uses satellite data and specimen locality data from museum collections to successfully predict the geographic distribution of 11 known chameleon species in Madagascar. The model also helped lead to the discovery of seven additional chameleon species new to science. The discovery shows that NASA satellite data and data from museum collections can help identify places to survey for new species of life, while locating areas likely to be of conservation importance. The study appeared in the December 2003 issue of the *Nature* journal and demonstrated that existing museum collections and satellite measurements of Earth's surface and climate hold great promise for the accurate prediction of species distributions. <http://www.nasa.gov/vision/earth/livingthings/lizards.html>



### *Measuring the Lense-Thirring Effect*

The combined use of high-accuracy space geodetic tracking of the LAGEOS 1 and 2 satellites and GRACE gravity field data has validated the Lense-Thirring effect as predicted by Einstein's theory of General Relativity. As we have come to learn from Einstein, the gravity of massive objects warp the time and space continuum. This same theory also predicts that rotating massive objects drag this continuum with them; the Lense-Thirring effect calls this frame dragging. By carefully monitoring shifts in the position of the two LAGEOS spacecraft, researchers were able to identify anomalous motions consistent with those predicted by the Lense-Thirring effect. [http://www.nasa.gov/vision/earth/lookingatearth/earth\\_drag.html](http://www.nasa.gov/vision/earth/lookingatearth/earth_drag.html)

### *Hurricanes Help Plants Bloom in "Ocean Deserts"*

By measuring ocean color from the SeaWiFS instrument on the SeaStar satellite, scientists have found that ocean productivity increases in the wake of a hurricane over a 2-3 week period. The high winds associated with a hurricane help bring nutrients and phytoplankton to the ocean's surface, helping the plants to bloom. In addition, the scientists found that the larger the hurricane, the larger the resulting bloom. <http://www.gsfc.nasa.gov/topstory/2004/0602hurricanebloom.html>

*Question.* Isn't it true that we are relying on more and more satellite based assets for Earth science data? What is NASA doing to consider working with the commercial satellite sector for advancing Earth science missions?

*Answer.* Space-based assets are essential for providing global, frequent, consistent and optimal resolution sampling to create the data sets that form the foundation for much Earth science research. NASA works with the commercial satellite sector to acquire spacecraft and launch services, and to some extent instruments, for these satellite assets. An example is our work with Orbital Sciences Corporation, a leading commercial satellite firm in all three areas, in the Glory mission.

With respect to commercial satellite firms that develop and deploy their own satellite systems for communications or remote sensing, NASA's relationship is one of synergy. The commercial market for remote sensing, for example, is in imagery with a resolution of less than 2 meters. NASA does not compete with the commercial sector in this area; we develop and operate remote sensing satellites with coarser resolution (but more frequent revisit times and tighter calibration). NASA and the commercial sector benefit from each other's efforts; NASA satellite data provides the contextual imagery that users of high-resolution commercial satellites employ to aid in interpretation of higher resolution imagery.

In limited instances, NASA is also able to purchase Earth science data from commercial satellite sources. The longest-running instance is NASA's involvement with the Sea-viewing Wide Field-of-view Sensor (SeaWiFS) instrument that flies aboard GeoEye's SeaStar spacecraft, which launched on August 1, 1997. NASA uses SeaWiFS to acquire data that are critical for the study of the role of the oceans in the Earth's biogeochemical process, especially the effect of the temporal and spatial variability in phytoplankton and their impact on the global carbon cycle. Under this arrangement, NASA provided approximately \$30 million up front to the development of the instrument, and maintained a close involvement with SeaWiFS since its inception, especially in the areas of algorithm development, calibration/validation, and archival and distribution of data for scientific research. Since 2005, NASA has had a contractual relationship with GeoEye for a large volume of space-based multispectral imagery of the Earth from the SeaWiFS instrument.

The future holds the prospect of more collaborative NASA/commercial satellite partnerships. The fiscal year 2011 budget request funds a new feature of the Venture class program—annual competitive solicitations for development of Earth observing instruments to fly on missions of opportunity. Coupled with the development of standard instrument-to-spacecraft interfaces funded in the fiscal year 2011 budget, this will enable NASA to take advantage of rapidly-emerging opportunities for international and commercial partnership offers.

### CYBER SECURITY

*Question.* During fiscal years 2007 and 2008, NASA reported 1,120 security incidents that resulted in unauthorized access to sensitive information. NASA has taken action to better defend against cyber attacks, but GAO recently concluded that NASA remains vulnerable. Basic IT security practices, such as using proper password protection, encrypting sensitive information and restricting access to privileged systems are not being implemented.

Why has NASA neglected to fully implement its own information security program?

Answer. In recent years, NASA has struggled with the paradox of using its budget to satisfy dated FISMA requirements and implementing a meaningful risk-based approach to securing NASA's information systems. An inordinate investment in compliance rather than a true understanding of risk fails to improve security and has placed NASA at greater risk of data loss, disruption to enterprise services, and disruption to mission operations.

In the face of these challenges, and with limited resources, NASA has begun to implement the following capabilities to improve situational awareness and to operationalize compliance-based activities:

- The Security Operation Center (SOC) centrally collects and analyzes network monitoring and incident data to identify attack trends. As a result of the SOC's initial operating capability, NASA has discovered the great extent of network traffic that must be monitored and the resources required to remediate incidents across the agency.
- The Cyber Threat Analysis Program (CTAP) identifies common and advanced threats, vulnerabilities, and attack vectors in order to develop risk profiles and mitigation solutions for the agency. NASA is now increasingly aware of the alarmingly advanced, persistent nature of the attacks against its information systems, and of the resources required to detect and respond to these attacks.
- NASA's IT Security Enterprise Data Warehouse (ITSEC-EDW) will provide a near-real-time inventory of all network assets, including such security information as existing vulnerabilities, patch status, anti-virus status, and conformance to standard configurations (e.g., FDCC, USGCB). As more data sources are integrated into ITSEC-EDW NASA will gain a more complete view of its risk posture, and will become capable of supporting automated continuous monitoring of the agency's most critical security controls.
- NASA's migration to the use of HSPD-12 compliant smart cards further enhances the secure access to desktop and application resources across the agency.
- The IDMax portal ensures that secure account authorization to NASA applications is established, controlled, and terminated as part of the employee and contractor management processes. NASA must now work to integrate additional applications into this portal.

Additionally, NASA is working closely with the White House, the Federal CIO, Department of Homeland Security, Department of State, OMB, and public sector organizations such as the SANS Institute to further realize the benefits of a truly risk-based information security program. NASA's emphasis must clearly be to securely enable its mission by balancing risk with mission and business needs.

NASA is working diligently to improve its information security programs and has made great strides toward a more complete approach.

*Question.* How does NASA's fiscal year 2011 budget improve IT security when the request for "IT Management" drops from \$28.6 million to \$16.1 million?

Answer. In previous years, IT Security was captured under IT Management Project Reporting Activities (PRA) but during the budget formulation cycle for FY 2011, the OCIO reprogrammed its budget to better align functionalities and capabilities or the agency-wide IT service (AITS) projects to the PRA. Therefore, the IT Security programs originally budgeted under IT Management are being executed under Infrastructure to more accurately align NASA with Industry standards.

The fiscal year 2011 IT Infrastructure budget, which includes IT Security, increases significantly due to the above mentioned realignment and also as AITS is focusing on improving IT security and efficiency, NASA is implementing new AITS contracts that consolidate or replace agency and center specific contracts. Currently, there are multiple approaches in place for funding for IT services across the NASA Centers making it difficult to efficiently execute critical IT services. Additionally, funding was transferred to AITS for transformation and renewal of the NASA IT network infrastructure at the NASA Centers. This IT initiative will mitigate IT security threats and vulnerabilities through network security zones and provide enterprise-wide benefits of consolidated network management and monitoring, coupled with sufficient capacity and reliability to support increasing mission-related data transfer requirements.

#### FINANCIAL MANAGEMENT

*Question.* Last year, Congress appropriated \$18.7 billion for NASA, this subcommittee's largest account. GAO and the NASA inspector general have both recently reported that financial management at NASA continues to be a serious problem. Recent independent reviews by Ernst & Young have identified significant financial deficiencies at NASA that lead to delayed and inaccurate reporting.

How has NASA met the IG's and GAO's recommendation for better financial management?

Answer. As of September 30, 2009, NASA had one remaining material weakness related to legacy property, plant, and equipment, or PP&E, and two other significant, but not material, deficiencies. The first deficiency related to processes used to estimate NASA's Environmental Liability. The second deficiency related to a lack of substantial compliance with the Federal Financial Management Improvement Act of 1996, resulting primarily from a lack of integration between NASA's real property system and its core financial system.

NASA is working closely with the IG, GAO and the agency's auditors, Ernst & Young, to resolve these remaining weaknesses. NASA is working on three specific actions that directly address fiscal year 2009 financial audit recommendations:

- As encouraged by Ernst & Young, NASA is adopting a new accounting standard, SFFAS No. 35, Estimating the Historical Cost of General Property, Plant, & Equipment: Amending Statements of Federal Financial Accounting Standards 6 and 23, that will help to resolve the legacy PP&E material weakness. SFFAS No. 35 permits the agency to establish auditable estimates for those legacy assets—particularly the International Space Station and space shuttle, and real property—for which the agency does not have the full historical cost records or for which it would not be cost effective to recreate such records.

NASA, in collaboration with the IG, GAO, and its auditor, is working to establish the basis for reasonable estimates, the approaches for implementing those bases, the information required to support the resulting estimates, and the timeframe within which the estimates can be generated.

- NASA continues to utilize the agency's ongoing Continuous Monitoring Program (CMP) to monitor and improve key financial activities and controls. The CMP is a monthly process that provides for robust and rigorous reviews to validate the quality and sufficiency of information for key accounts and accounting transactions. Changes in key processes are accompanied by reviews and, if required, improvements in the related CMP control activities.

- NASA has integrated its real property asset financial records into the core financial system's asset management module in fiscal year 2010. This improves overall PP&E accounting, and addresses the FFMIA weakness identified in the auditor's fiscal year 2009 Report on Internal Control.

Today, using current systems and processes, NASA is able to track and control its funds, account for the costs related to individual programs and projects, and manage the agency's day-to-day operations. The agency is committed to resolving its remaining weakness and deficiencies as it continues to improve its financial management.

*Question.* Please break out by program area, the 2010 and 2011 budgets for civil servant salaries and expenses, travel and support service contractors, including a crosswalk by each NASA field installation and headquarters.

Answer. For fiscal year 2010, we have provided budget for civil service salaries and expenses, travel and procurement by center at the mission level. The estimates are based on actual labor and travel costs through April 2010 with projections through the remainder of the fiscal year. At the agency level, NASA does not budget and account specifically for support contractors, but accounts for all contract and grant activities including support contractors, prime contractors, facilities and other items within the procurement line. Please note that the Headquarters Procurement funding estimate for 2010 includes approximately \$500 million that has not yet been distributed to centers.

FISCAL YEAR 2010 APPROPRIATION FUNDING ESTIMATES

[In millions of dollars]  
 [Projections based on costs through April 30 and budget distributions through June 23]

	TOTAL	HO <sup>1</sup>	ARC	GRC	LaRC	DFRC	GSFC	MSFC	SSC	JSC	MSC	JPL
Science .....	4,448	388	180	39	80	65	2,173	139	3	21	266	1,094
Labor .....	277	1	28	10	19	13	186	16	1	4		
Travel .....	17	1	2	1	1	1	9	1				
Procurements .....	4,154	386	151	28	60	51	1,978	122	2	16	266	1,094
Aeronautics Research .....	500	43	107	128	164	56	2					
Labor .....	184	38	55	55	75	16						
Travel .....	6	1	1	2	2							
Procurements .....	310	43	67	72	86	40	2					
Exploration Systems .....	3,757	107	98	133	92	39	31	1,279	106	1,660	169	43
Labor .....	445	32	32	51	42	8	8	125	5	117	59	
Travel .....	20	2	2	2	2	1		3		6	1	
Procurements .....	3,293	106	65	80	48	31	23	1,151	101	1,537	109	43
Space Operations .....	6,142	403	14	43	6	8	246	893	38	3,927	387	178
Labor .....	429	3	3	15	2	1	21	61	8	217	101	
Travel .....	19	1		1			1	3		8	4	
Procurements .....	5,694	401	11	27	4	7	224	829	30	3,701	281	178
Education .....	180	60	7	14	16	15	49	3	1	8	5	2
Labor .....	3											
Travel .....	1											
Procurements .....	177	60	6	14	16	15	48	3	1	8	4	2
Cross-Agency Supt .....	3,193	415	255	277	323	72	495	433	64	453	381	25
Labor .....	1,204	190	100	87	116	37	242	143	21	148	120	
Travel .....	34	9	2	3	4	1	3	4	1	4	3	
Procurements .....	1,954	216	153	187	202	35	250	286	42	301	259	25
CoF & ECR .....	488	65	36	70	18	22	45	27	33	74	66	14
Labor .....												
Travel .....												
Procurements .....	488	65	36	70	18	22	45	27	33	74	66	14
OIG .....	36	36										
Labor .....	28	28										
Travel .....	1	1										
Procurements .....	8	8										
TOTAL .....	18,724	1,517	697	704	697	277	3,041	2,774	245	6,143	1,273	1,356

Labor .....	2,570	218	201	218	254	74	458	346	35	486	280	0
Travel .....	97	15	7	8	10	4	13	12	1	19	8	0
Procurements .....	16,057	1,284	489	478	433	200	2,570	2,417	209	5,638	984	1,356

<sup>1</sup>HQ Procurement funding includes approximately \$500 million that has not yet been distributed to centers.

For fiscal year 2011, we have provided a spreadsheet, attached, that shows how NASA civil service labor and expenses are proposed to be reallocated from the programs and projects for establishment of a new Civil Service Labor and Expenses theme. This information was submitted to the Committees on Appropriations by letter dated June 1, 2010. These estimates are based on centers' pricing analysis of total center FTE ceilings and their associated expenses, and inputs provided by the missions on the required civil service, travel and procurement requirements by project. Because of the competitive nature of many of the agency's projects across all missions and the uncertainty of which center may win the selection, NASA budgets these funds at NASA Headquarters until the completion of the selection process. These competitive selection processes limit the ability to provide complete budget data at the center by mission level for the civil service salaries and expenses, travel and procurement estimates that are requested.

	Fiscal Year 2011 Request	Labor Transfer	Updated Fiscal Year 2011
Science			
Earth Science:			
Earth Science Research:			
Earth Science Research and Analysis .....	324.6	-36.2	288.4
Computing and Management .....	113.5	-7.1	106.4
Total, Earth Science Research .....	438.1	-43.3	394.8
Earth Systematic Missions:			
Global Precipitation Measurement (GPM) .....	128.8	-17.1	111.7
Glory Mission .....	21.9	-1.3	20.6
Landsat Data Continuity Mission (LDCM) .....	156.8	-11.9	144.9
NPOESS Preparatory Project (NPP) .....	64.4	-5.6	58.8
Ice, Cloud, and land Elevation Satellite (ICESat-2) .....	68.5	-12.2	56.3
Soil Moisture Active and Passive (SMAP) .....	82.5	-2.4	80.1
Other Missions and Data Analysis .....	286.5	-27.8	258.7
Total, Earth Systematic Missions .....	809.3	-78.3	731.0
Earth System Science Pathfinder:			
Aquarius .....	17.0	-0.4	16.6
OCO-2 .....	171.0		171.0
Venture Class Missions .....	79.5		79.5
Other Missions and Data Analysis .....	36.2	-2.1	34.1
Total, Earth System Science Pathfinder .....	303.8	-2.5	301.3
Earth Science Multi-Mission Operations .....	161.2	-7.3	153.9
Earth Science Technology .....	52.8	-6.3	46.5
Applied Sciences: Pathways .....	36.6	-3.5	33.1
Total, Earth Science .....	1,801.8	-141.2	1,660.6
Planetary Science:			
Planetary Science Research:			
Planetary Science Research and Analysis .....	131.0	-6.6	124.4
Other Missions and Data Analysis .....	23.9	-2.3	21.6
Education and Directorate Management .....	5.1	-0.3	4.8
Near Earth Object Observations .....	20.3		20.3
Total, Planetary Science Research .....	180.4	-9.1	171.3
Lunar Quest Program:			
Lunar Science .....	74.7	-3.6	71.1
Lunar Atmosphere and Dust Environment Explorer .....	57.9	-7.6	50.3
International Lunar Network .....	4.0	-1.5	2.5

	Fiscal Year 2011 Request	Labor Transfer	Updated Fiscal Year 2011
Total, Lunar Quest Program .....	136.6	- 12.7	123.9
Discovery:			
Gravity Recovery and Interior Laboratory (GRAIL) .....	104.8	- 0.1	104.7
Other Missions and Data Analysis .....	97.2	- 2.3	94.9
Total, Discovery .....	202.0	- 2.4	199.6
New Frontiers:			
Juno .....	184.2	- 0.6	183.6
Other Missions and Data Analysis .....	39.6	- 1.5	38.1
Total, New Frontiers .....	223.8	- 2.1	221.7
Mars Exploration:			
2009 Mars Science Lab .....	231.6	- 0.5	231.1
MAVEN .....	161.2	- 6.5	154.7
Other Missions and Data Analysis .....	140.0	- 1.4	138.6
Total, Mars Exploration .....	532.8	- 8.3	524.5
Outer Planets .....	103.5	- 2.1	101.4
Technology .....	106.5	- 8.0	98.5
Total, Planetary Science .....	1,485.7	- 44.8	1,440.9
Astrophysics:			
Astrophysics Research:			
Astrophysics Research and Analysis .....	60.2	- 5.0	55.2
Balloon Project .....	27.1	- 4.0	23.1
Other Missions and Data Analysis .....	68.7	- 1.2	67.5
Total, Astrophysics Research .....	156.1	- 10.1	146.0
Cosmic Origins:			
Hubble Space Telescope (HST) .....	102.7	- 3.6	99.1
James Webb Space Telescope (JWST) .....	444.8	- 23.3	421.5
Stratospheric Observatory for Infrared Astronomy (SOFIA) .....	79.6	- 12.6	67.0
Other Missions and Data Analysis .....	60.6	- 2.0	58.6
Total, Cosmic Origins .....	687.7	- 41.5	646.3
Physics of the Cosmos: Other Missions and Data Analysis .....	103.3	- 6.0	97.3
Exoplanet Exploration: Other Missions and Data Analysis .....	42.5	- 1.7	40.8
Astrophysics Explorer:			
Nuclear Spectroscopic Telescope Array (NuStar) .....	32.1	- 0.4	31.7
Gravity and Extreme Magnetism .....	21.0	- 5.3	15.7
Other Missions and Data Analysis .....	33.6	- 4.1	29.5
Total, Astrophysics Explorer .....	86.7	- 9.8	76.9
Total, Astrophysics .....	1,076.3	- 69.0	1,007.3
Heliophysics:			
Heliophysics Research:			
Heliophysics Research and Analysis .....	31.7	- 1.4	30.3
Sounding Rockets .....	48.9	- 4.7	44.2
Research Range .....	19.6	- 1.5	18.1
Other Missions and Data Analysis .....	66.7	- 11.1	55.6

	Fiscal Year 2011 Request	Labor Transfer	Updated Fiscal Year 2011
Total, Heliophysics Research .....	166.9	- 18.7	148.2
Living with a Star:			
Radiation Belt Storm Probes (RBSP) .....	140.0	- 1.1	138.9
Solar Probe Plus .....	14.1	- 0.6	13.5
Other Missions and Data Analysis .....	60.2	- 2.1	58.1
Total, Living with a Star .....	214.3	- 3.8	210.5
Solar Terrestrial Probes:			
Magnetospheric Multiscale (MMS) .....	143.8	- 18.2	125.6
Other Missions and Data Analysis .....	19.1	- 1.3	17.8
Total, Solar Terrestrial Probes .....	162.9	- 19.5	143.4
Heliophysics Explorer Program:			
IRIS .....	69.0	- 2.0	67.0
Other Missions and Data Analysis .....	28.7	- 1.8	26.9
Total, Heliophysics Explorer Program .....	97.7	- 3.9	93.8
New Millennium .....	0.1	.....	0.1
Total, Heliophysics .....	641.9	- 45.8	596.1
Total, Science .....	5,005.6	- 300.8	4,704.8
Aeronautics and Space Research and Technology			
Aeronautics Research:			
Aviation Safety .....	79.3	- 33.4	45.9
Airspace Systems .....	82.2	- 22.4	59.8
Fundamental Aeronautics .....	228.5	- 102.6	125.9
Aeronautics Test .....	76.4	- 25.6	50.8
Integrated Systems Research .....	113.1	- 20.6	92.5
Total, Aeronautics Research .....	579.6	- 204.6	375.0
Space Technology:			
Early Stage Innovation:			
Space Technology Research Grants .....	70.0	- 3.9	66.1
NIAC Phase I and Phase II .....	3.0	- 0.5	2.5
Center Innovations Fund .....	50.0	- 8.5	41.5
SBIR/STTR .....	165.6	- 7.3	158.3
Centennial Challenges .....	10.0	.....	10.0
Total, Early Stage Innovation .....	298.6	- 20.2	278.4
Game Changing Technology:			
Game-Changing Developments .....	123.6	- 19.0	104.6
Small Satellite Subsystem Technologies .....	6.0	- 1.2	4.8
Total, Game Changing Technology .....	129.6	- 20.1	109.5
Crosscutting Capability Demonstrations:			
Technology Demonstration Missions .....	75.0	- 7.5	67.5
Edison Small Satellite Demonstration Missions .....	10.0	- 1.3	8.7
Flight Opportunities .....	17.0	- 1.2	15.8
Total, Crosscutting Capability Demonstrations .....	102.0	- 10.1	91.9
Partnership Development and Strategic Integration .....	42.0	- 9.7	32.3



	Fiscal Year 2011 Request	Labor Transfer	Updated Fiscal Year 2011
Total, Space Technology .....	572.2	- 60.2	512.0
Total, Aeronautics and Space Research and Technology .....	1,151.8	- 264.8	887.0
Exploration			
Exploration Research and Development:			
Technology Demonstration .....	652.4	- 111.1	541.3
Heavy Lift and Propulsion Technology .....	559.0	- 67.6	491.4
Robotic Precursor Missions .....	125.0	- 31.0	94.0
Human Research .....	215.0	- 19.0	196.0
Total, Exploration Research and Development .....	1,551.4	- 228.7	1,322.7
Commercial Spaceflight:			
Commercial Cargo .....	312.0	- 5.3	306.7
Commercial Crew .....	500.0	- 18.5	481.5
Total, Commercial Spaceflight .....	812.0	- 23.8	788.2
Constellation Transition .....	1,900.0	- 337.6	1,562.4
Constellation Systems:			
Constellation Systems .....			
Commercial Crew and Cargo .....			
Advanced Capabilities:			
Human Research Program .....			
Exploration Technology Development .....			
Lunar Precursor Robotic Program .....			
Total, Exploration .....	4,263.4	- 590.1	3,673.3
Space Operations			
Space Shuttle:			
Space Shuttle Program:			
Program Integration .....	284.8	- 46.4	238.4
Flight and Ground Operations .....	373.2	- 21.8	351.4
Flight Hardware .....	331.1	- 15.3	315.8
Total, Space Shuttle .....	989.1	- 83.5	905.6
International Space Station:			
International Space Station Program:			
ISS Operations .....	1,923.0	- 173.2	1,749.8
ISS Cargo Crew Services .....	856.8		856.8
Total, International Space Station .....	2,779.8	- 173.2	2,606.6
Space and Flight Support (SFS):			
21st Century Space Launch Complex .....	428.6	- 13.7	414.9
Space Communications and Navigation:			
Space Communications Networks .....	371.2	- 19.4	351.8
Space Communications Support .....	62.6	- 4.9	57.7
TDRS Replenishment .....	19.0	- 4.5	14.5
Total, Space Communications and Navigation .....	452.9	- 28.8	424.1
Human Space Flight Operations .....	114.4	- 28.7	85.7
Launch Services .....	78.9	- 33.8	45.1

	Fiscal Year 2011 Request	Labor Transfer	Updated Fiscal Year 2011
Rocket Propulsion Test .....	44.3	- 7.1	37.2
Crew Health and Safety .....			
Total, Space and Flight Support (SFS) .....	1,119.0	- 112.1	1,006.9
Total, Space Operations .....	4,887.8	- 368.8	4,519.0
Education			
Higher Ed. STEM Education:			
STEM Opportunities (Higher Education) .....	16.9	- 0.9	16.0
NASA Space Grant .....	27.7	- 1.4	26.3
Experimental Program to Stimulate Competitive Research .....	9.3	- 0.5	8.8
Minority University Research & Education Program .....	27.2	- 1.4	25.8
Global Climate Change Education .....			
Total, Higher Ed. STEM Education .....	81.0	- 4.2	76.8
K-12 STEM Education:			
STEM Student Opportunities (K-12) .....	46.1	- 2.0	44.1
STEM Teacher Development (K-12) .....	16.7	- 0.7	16.0
K-12 Competitive Educational Grant Program .....			
Total, K-12 STEM Education .....	62.8	- 2.7	60.1
Informal STEM Education:			
Science Museums and Planetarium Grants .....			
NASA Visitor Centers .....			
NASA Informal Education Opportunities .....	2.0	- 0.7	1.3
Total, Informal STEM Education .....	2.0	- 0.7	1.3
Total, Education .....	145.8	- 7.6	138.2
Cross-Agency Support			
Center Management and Operations:			
Center Institutional Capabilities .....	1,776.1	- 590.1	1,186.0
Center Programmatic Capabilities .....	494.0	- 346.8	147.2
Total, Center Management and Operations .....	2,270.2	- 936.9	1,333.3
Agency Management and Operations:			
Agency Management .....	432.0	- 244.4	187.6
Safety and Mission Success:			
Safety and Mission Assurance .....	49.0	- 11.9	37.1
Chief Engineer .....	103.6	- 40.6	63.0
Chief Health and Medical Officer .....	4.1		4.1
Independent Verification and Validation .....	45.0	- 5.0	40.0
Total, Safety and Mission Success .....	201.6	- 57.5	144.1
Agency IT Services (AITS):			
IT Management .....	16.1	- 0.5	15.6
Applications .....	79.1	- 8.6	70.5
Infrastructure .....	82.6	- 3.6	79.0
Total, Agency IT Services (AITS) .....	177.8	- 12.7	165.1
Strategic Capabilities Assets Program:			
Simulators .....	11.7	- 4.8	6.9
Thermal Vacuum Chambers .....	8.4	- 1.8	6.7

	Fiscal Year 2011 Request	Labor Transfer	Updated Fiscal Year 2011
Arc Jets .....	9.7	-2.6	7.2
Total, Strategic Capabilities Assets Program .....	29.8	-9.1	20.7
Total, Agency Management and Operations .....	841.2	-323.7	517.5
Civil Service Labor and Expenses .....		2,792.6	2,792.6
Congressionally Directed Items .....			
Total, Cross-Agency Support .....	3,111.4	1,532.0	4,643.4
Construction and Environmental Compliance and Restoration			
Construction of Facilities:			
Institutional CoF .....	280.8		280.8
Science CoF .....	40.5		40.5
Exploration CoF .....			
Space Operations CoF .....	14.0		14.0
Total, Construction of Facilities .....	335.2		335.2
Environmental Compliance and Restoration .....	62.1		62.1
Total, Construction and Environmental Compliance and Restoration .....	397.3		397.3
Inspector General			
IG Program			
Inspector General .....	37.0		37.0
Total, NASA Fiscal Year 2011 .....	19,000.0		19,000.0

*Question.* Why has NASA failed to comply with the subcommittee's repeated directives to provide more budget detail in the Congressional justifications like is submitted by the DOD and individual military services in their R-2 documentation as part of their budget justifications?

*Answer.* NASA is not aware of repeated directives to provide more budget detail in the Congressional justifications like is submitted by the DOD and individual military services. NASA provides information that is comparable to the DOD R-2 documentation for all of NASA's projects in formulation and development within the Congressional Justification Budget book. Both the formulation and development sections in the Congressional Justification book provide descriptions of the project's purpose, parameters, deliverables, schedule commitments, budget trace from previous years President's budget submission, a description of project management, acquisition strategy and independent reviews which far exceed documentation requirements for R-2. In addition, the projects in development sections contain additional information for explanation of project changes, project commitments, development cost and schedule summary, development cost details and project risk management.

#### NASA-SPONSORED CONFERENCES

*Question.* Starting in 2008, this subcommittee asked NASA's Inspector General (IG) to examine the costs NASA was spending on its conferences. In a report released on March 23, the IG found that NASA had failed to follow NASA and Government guidelines regarding conference planning, resulting in excessive travel and food and beverage costs.

At one conference, the IG found that NASA spent \$66 per person per day on coffee, fruit, cookies, and bagels. Ironically, this was the same conference put on for NASA procurement officials whose job is to spend the Government's money wisely. Do you think this was a reasonable and appropriate expense?

*Answer.* We agree that \$66 per civil servant would have been excessive for light refreshments alone. However, that was not the case with the Procurement Training Conference, since the price for food and beverages (F&B) was part of a package deal

that included hotel meeting rooms at no additional charge. This bundling of facility rentals and services like F&B is a common practice, and hotels will regularly discount or omit charges for meeting rooms when a minimum level of services and occupancy are procured. All of the other hotels reviewed as potential sites for the Procurement Training Conference offered similar, but more expensive, bundled rates for F&B and meeting room charges.

If you compare this to another meeting NASA recently held in Annapolis, Maryland, the per person charge for meeting rooms was almost as high as the per person charge for meeting rooms plus refreshments (bundled) at the Procurement Training Conference. A competitive comparison used to plan the Annapolis conference showed that rates in Annapolis and Baltimore hotels for facilities rental alone ranged from \$20,570 to \$45,000, for a meeting one-third the size, as compared to the bundled F&B/facilities charge of \$62,611 for the Procurement Training Conference. Thus, per person charges for facilities rental plus F&B for the Procurement Training Conference (\$65.84) were only slightly higher than per person charges in the Baltimore/Annapolis area quoted for hotel meeting room rentals alone (\$61.22). The Baltimore/Washington area is expensive, but there are advantages to holding some events in this area. In conclusion, the comparison shows that charges for the Procurement Training Conference appear to have been reasonable all circumstances considered.

*Question.* How will NASA meet the IG's recommendation for better financial management in its conference planning?

*Answer.* NASA's IG noted in its report that the Procurement Training Conference was held prior to the issuance of NASA's revised conference policy, NASA Interim Directive (NID) 9312.1, on January 12, 2009. In the past year NASA has implemented a number of process improvements and issued two updates to NID 9312, the most recent being issued on April 23, 2010. With each iteration, NASA has improved its ability to track and report on conferences, and increased the level of detail required for approval of a NASA Sponsored Conference. A key focus for the changes in the first two versions of NID 9312 was on insuring that NASA did not exceed the Congressionally mandated \$5 million cap on fiscal year 2009 conference spending and 50 person limit on foreign conference attendance. A new NASA Conference Tracking System was implemented to automate key parts of this process in conjunction with use of NASA's e-Travel systems. With the most recent update to NID 9312 and its revised reports, NASA has incorporated all the further recommendations made by the IG in its March 23, 2010 report. Among other enhancements relating to NASA Sponsored Conferences, approval is now required in advance for any Government furnished meals or snack/refreshment service, and NASA now specifically requires written justification and senior level approval (Center Director or equivalent) for charges in excess of 33 percent M&IE for light refreshments.

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#### QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

##### OVERVIEW

*Question.* Like many of my colleagues on this subcommittee, I was encouraged by the administration's new vision for NASA. The bold decision to eliminate the Constellation program will enable NASA's to dedicate the necessary resources to develop the required technologies for manned spaceflight beyond low-earth orbit and the moon. I believe that this is an appropriate role for NASA, and I share the Presidents belief that these changes will also create jobs and benefit the domestic U.S. space industry as a whole.

However, the President's budget and his justification lacked specificity. Specifically, the budget was lacking details in three critical areas: astronaut and rocket safety, preservation of strategic industrial capacities, and exploration timelines.

##### SAFETY

Proponents of the Constellation program believe that the Ares rocket is a proven rocket that meets higher safety standards than the private rockets which the President proposes to use to ferry astronauts and cargo to the International Space Station in the coming years.

Is the Ares I a safer rocket than the Falcon 9 or Taurus II?

*Answer.* Ares I was designed to be the safest crew vehicle ever flown, but that was based on modeling probabilistic risk analysis (PRA). When referring to safety records, it is best to speak in terms of demonstrated safety records. Although NASA and SpaceX have both launched test flights—NASA's Ares I-X suborbital flight and SpaceX's inaugural Falcon 9 orbital flight (a non-NASA flight), these test flights do

not equate to a demonstrated safety record. Neither vehicle has entered its operational phase and hence neither vehicle has a demonstrated safety record. As such, NASA does not have any documentation about the Falcon 9's safety record or PRA that it can provide to the subcommittee at this time.

*Question.* Will NASA safety standards be relaxed to accommodate the private companies who are developing rockets for NASA?

*Answer.* Safety is and always will be NASA's first core value, so we will provide significant—but not intrusive—oversight over any commercial venture, whether it be cargo or commercial. NASA will have equivalent safety standards for commercial crew. At no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. NASA has unique expertise and history in this area, and a clearly demonstrated record of success. NASA will bring that experience to bear in the appropriate way to make sure that commercial crew transportation services are a success both programmatically, and with respect to safety. Simply put, U.S. astronauts will not fly on any spaceflight vehicle until NASA is convinced it is safe to do so.

*Question.* What oversight will NASA conduct to ensure that high standards are set for crew and cargo safety in privately owned NASA space launch vehicles?

*Answer.* As noted in the above response, safety is and always will be NASA's first core value, so we will provide significant—but not intrusive—oversight over any commercial venture, whether it be cargo or commercial.

For example, NASA has a Commercial Orbital Transportation Services (COTS) Advisory Team comprised of approximately 100 NASA technical experts from across the agency. These experts work with our partners and review partner technical and programmatic progress for each milestone and provide progress assessments to NASA's Commercial Crew and Cargo Program Office. Additionally, they participate in all major design reviews providing technical review comments back to our partners. The advisory team provides another method by which NASA gains confidence that our partners will be able to perform their flight demonstrations.

One of the strengths of the COTS venture is that companies are free to do what they do best, that is developing truly unique spaceflight vehicles using innovative processes that are not available within the Federal bureaucratic framework. NASA provides requirements that they must meet and we ensure that they have met those requirements, but we try not to dictate how they meet those requirements. For example, each COTS partner must successfully verify compliance with a detailed set of ISS interface and safety requirements prior to their planned ISS berthing missions. These requirements are imposed on all visiting vehicles wishing to visit to the ISS. Both COTS partners are currently working with the ISS program on a daily basis to ensure they meet the ISS visiting vehicle requirements. This also helps to give NASA independent insight into their progress and it builds confidence in their abilities.

With regard to commercial crew, at no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. Simply put, U.S. astronauts will not fly on any spaceflight vehicle until NASA is convinced it is safe to do so. NASA has unique expertise and history in this area, and a clearly demonstrated record of success in transporting crew. NASA will bring that experience to bear in an appropriate way to make sure that commercial crew transportation services are a success both programmatically, and with respect to safety. At no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. For example, NASA will have in-depth insight of the vehicle design via NASA personnel who are embedded in the contractor's facility. Additionally, NASA will impose strict requirements and standards on all providers that will be carefully evaluated and reviewed at multiple stages before a vehicle system is certified by NASA for crewed flight.

*Question.* Will the Aerospace Safety Advisory Committee have the access and authority it needs to review/suggest modifications to new launch vehicles prior to NASA missions?

*Answer.* The Aerospace Safety Advisory Panel will be provided access to review new launch vehicles development to the same level that NASA has access and the Aerospace Safety Advisory Panel will continue to have the authority to make recommendations or suggestions to NASA concerning the launch vehicles.

#### PRESERVATION OF STRATEGIC SOLID ROCKET CAPACITY

*Question.* In an interview with Deputy Undersecretary of the Air Force for Space Programs Gary Payton, published in Space News on April 19, 2010, Deputy Undersecretary Payton concluded that the President's new direction for NASA would have a small, but manageable, impact on Navy and Air Force ballistic missiles, and only

a “trivial impact” on DOD space launch capacity. Do you share Deputy Undersecretary Payton’s conclusions? Will the President’s new direction for NASA undermine the ability for the Department of Defense to conduct meaningful space and missile programs?

Answer. I share the view that the President’s direction will not undermine DOD’s ability to conduct meaningful space programs. I believe that we have to rely upon the assessment of DOD’s leadership on this matter, and I do. I also recall General Kehler, Commander of Air Force Space Command, stating in a recent hearing that, while he saw the potential for some challenges regarding solid rocket motors, those challenges would be manageable. At the same time, my colleagues in DOD have stated that the investment that NASA plans in terms of research and development for a new liquid engine is a good opportunity in which DOD would very much like to collaborate. They see that as a good opportunity for the country going forward. DOD also sees our plans to improve launch infrastructure as a mutually beneficial one. We similarly see potential benefits to national security from some of our COTS and technology investments. NASA and DOD work closely on the management of the National government space enterprise, and discussions are under way at all levels about ensuring we carefully consider and maintain the space industrial base that supports both our civil and national security needs.

*Question.* With the wind-down of the space shuttle program already disrupting the job market in the aerospace industry, what additional disruption do you expect to occur in the aerospace job market as a result of the termination of the Constellation program?

Answer. The President’s fiscal year 2011 budget request for NASA is \$19.0 billion, which represents an increase of \$276.0 million above the amount provided for the agency in the fiscal year 2010 Consolidated Appropriations Act (Public Law 111–117), and an increased investment of \$6.0 billion in NASA science, aeronautics, human spaceflight and enabling space technologies over the next 5-years compared with last year’s budget plan. The President’s strategy and accompanying funding increase means more jobs for the country, more astronaut time in space, and more investments in innovation. NASA has initiated planning activities to be able to effectively and efficiently implement these new activities in a timely manner upon enactment of the fiscal year 2011 budget.

The proposed changes to the human spaceflight program in the fiscal year 2011 budget request will have an impact on civil service and contractor workforce planning. While NASA is not planning reductions to the civil service workforce, the nature of the work done by the civil service workforce would change under the President’s fiscal year 2011 budget plan. NASA has also made preliminary program assignments across the Centers for new or extended activities proposed in the fiscal year 2011 budget, helping to clarify the work opportunities for contractors under the proposed portfolio and preparing NASA to execute the work content.

Also in fiscal year 2011, NASA will provide up to \$100 million from within the funds requested for the National Aeronautics and Space Administration’s Exploration account to develop a plan to spur regional economic growth and job creation along the Florida Space Coast and other affected areas. This workforce plan furthers the administration’s bold new course for human space flight, which revitalizes NASA and transitions to new opportunities in the space industry and beyond.

In 2009, NASA established the Space Shuttle Transition Liaison Office (SSTLO) in response to direction in the NASA Authorization Act of 2008 (Public Law 110–422). The agency was directed to assist local communities affected by the termination of the space shuttle program by offering non-financial, technical assistance to the identified communities and to identify services available from other Federal, State, and local agencies to assist in such mitigation. NASA is working diligently to determine how best to leverage these efforts to support the transition resulting from the proposed cancellation of Constellation. Specifically, the Office:

- Serves as a clearinghouse by gathering and disseminating information to the affected communities about opportunities available through other Federal, State, and local agencies; and
- Serves as a key point of contact for the community beyond NASA for information about how the agency is working with local communities to provide non-financial, technical assistance during transition.

*Question.* What steps will NASA take to ensure that the job market disruptions caused by the termination of both the space shuttle and Constellation programs in fiscal year 2011 do not cause a long term brain-drain in the United States or hurt the long term viability of the domestic space industry?

Answer. The President’s fiscal year 2011 budget request and plans articulate a strong commitment to NASA’s mission and future U.S. human space exploration. NASA will ensure continuous American presence in space on the International

Space Station (ISS) throughout this entire decade and likely beyond, re-establish a robust and competitive American launch industry, launch more robotic probes into our solar system as precursors for human activity, invest in a new heavy lift research and development (R&D) program, and build a technological foundation for sustainable, beyond-LEO exploration, with more capable expeditions in lunar space, and human missions to near-Earth asteroids, the Moon, Lagrange points, and, ultimately, Mars. NASA will embark on these transformative initiatives by partnering with the best in industry, academia and other government agencies, as well as with our international partners.

Many positive outcomes are likely from a long-term NASA advanced space systems concepts and technology development program, including a more vital and productive space future than our country has today, a means to focus NASA intellectual capital on significant national challenges and needs, a spark to renew the Nation's technology-based economy, an international symbol of our country's scientific and technological leadership, and a motivation for many of the country's best young minds to enter into educational programs and careers in engineering and science.

NASA has initiated planning activities to be able to effectively and efficiently implement these new activities in a timely manner upon Congressional enactment of the fiscal year 2011 budget. On April 7, NASA outlined the agency's planned major program assignments across the agency's centers for new or extended activities proposed as part of the President's fiscal year 2011 budget request. These planned assignments build on the deep knowledge and expertise that NASA has built up over five decades, recognize the wealth of experience, commitment, and expertise resident at the NASA Centers, and expand upon the strengths at each center. The establishment of program offices and initiation of effort in support of new or extended activities for this proposed new work is contingent upon congressional approval of the President's fiscal year 2011 request for these activities. These planned program assignments will enable NASA to engage workforce at the agency's centers in formulation activities and planning activities to minimize disruption in the job markets.

#### EXPLORATION TIMELINES

*Question.* The President's budget and justification do not include a timeline with set benchmarks and destinations. I believe that these goals are necessary, and that they will help drive the important work being done at NASA. Will you please elaborate on when NASA will be able to accomplish the following tasks under the President's proposal, and under the program of record?

After the shuttle retires, when will NASA be able to re-supply the Space Station with cargo? If the Constellation program is continued, when would the United States be able to resupply cargo to the ISS?

*Answer.* Whether or not the Constellation program is continued, NASA plans to rely on U.S. industry to re-supply the International Space Station (ISS) with cargo after the space shuttle retires. NASA anticipates that the first two such flights under the Commercial Resupply Services (CRS) contracts will be in July and October 2011. The agency can also continue its use of Russian Progress cargo spacecraft through the end of calendar year 2011, in the event the CRS vehicles are delayed.

Under Constellation—the Program of Record—the Orion Crew Exploration vehicle was not designed to carry cargo to the ISS. Rather, NASA was planning to depend on commercial cargo providers to resupply the ISS, along with international partners.

*Question.* After the shuttle retires, when will NASA be able to carry astronauts to the space station? If the Constellation program is continued, when would the United States be able to transport astronauts to the ISS?

*Answer.* After the retirement of the space shuttle, NASA will continue its use of the Russian Soyuz spacecraft for crew transportation and rescue services for U.S., European, Japanese, and Canadian ISS astronauts until a U.S. commercial crew transportation system becomes available, possibly as early as 2015.

The Augustine Committee noted that commercial crew launch service could be in place by 2016. Estimates provided to the Augustine Committee by potential providers said commercial crew services could be in place 3 to 5 years from the point of funding.

Under the Program of Record and based on fiscal year 2010 funding constraints, NASA can no longer achieve an Initial Operational Capability (IOC) for Ares I and Orion—the first crewed flight to the ISS—in March 2015. The Augustine Committee concluded that, were the ISS to be deorbited in 2015, IOC could take place in the mid-late 2010s.

Under the proposed fiscal year 2011 budget request, NASA is targeting 2015 as the start of commercial-crew transportation services, with development efforts beginning in 2011.

*Question.* When will NASA be able to carry astronauts beyond low earth orbit under the President's plan? If the Constellation program is continued, when will U.S. astronauts be able to leave low earth orbit?

*Answer.* Under the proposed fiscal year 2011 budget, NASA plans to develop the technologies that would allow NASA to support manned beyond-LEO missions in the mid-2020 timeframe, if funding was later provided for such missions as part of later budget cycles.

The Augustine Committee concluded that the Program of Record, constrained to the fiscal year 2010 budget profile, would be capable of crewed missions beyond low Earth orbit in the late 2020s and a lunar landing well into the 2030s. In support of that committee, NASA estimated that the Constellation Program of Record, could deliver a crewed lunar mission by 2020 using Orion, Ares I, Altair, Ares V, and supporting elements, for \$109 billion since the inception of the Constellation Program. Of this \$109 billion since inception, \$96.7 billion would be required in fiscal year 2011 and out.

*Question.* When will NASA astronauts reach the Moon under the President's proposal? When would astronauts be able to reach the Moon under the program of record?

*Answer.* Please see the above response for an answer to the human lunar return date under the current program of record.

Under the President's fiscal year 2011 budget request, NASA would build technologies with the goal of supporting a sequence of deep-space destinations matched to growing capabilities, progressing step-by-step, beginning with crewed flight tests—perhaps a circumlunar mission—early next decade of vehicles for human exploration beyond LEO, a human mission to an asteroid by 2025, and a human mission to orbit Mars and return safely to Earth by the 2030s. A date for a manned lunar mission, however, has not been established.

NASA also plans to send precursor robotic missions to candidate destinations such as the Moon, thus paving the way for later human exploration of the Moon, Mars and its moons, and nearby asteroids. Like the highly successful Lunar Reconnaissance Orbiter and Lunar Crater Observation and Sensing Satellite missions that captured the Nation's attention last fall, future exploration precursor missions will scout locations, gather key knowledge and demonstrate technologies to identify the most compelling and accessible places to explore with humans and validate potential approaches to get them there and back safely. These missions will provide vital information—from soil chemistry to radiation dose levels to landing site scouting to resource identification—necessary to plan, design and operate future human missions. These missions will help us determine the next step for crews beyond LEO, answering such questions as: Is a particular asteroid a viable target for crewed mission? Do the resources at the lunar poles have the potential for crew utilization? Is Mars dust toxic? NASA plans to begin funding at least two dedicated precursor missions in fiscal year 2011, and to identify potential future missions to begin in fiscal year 2012 and/or 2013.

Additionally, a new portfolio of explorer scouts will execute small, rapid turnaround, highly competitive missions to exploration destinations. Generally budgeted at between \$100–\$200 million lifecycle cost, these missions will allow NASA to test new and innovative ways of doing robotic exploration of destinations of interest to future human exploration. Selected projects may provide multiple small scouting spacecraft to investigate multiple possible landing sites, or provide means of rapid-prototyping new spacecraft approaches.

*Question.* When will NASA astronauts reach Mars under the President's proposal? When would astronauts be able to reach Mars under the program of record?

*Answer.* Based on the information provided to the Augustine Committee, as outlined in the above response, NASA estimated that the Program of Record could achieve a manned Mars mission in the 2030s. While the Augustine Committee noted that Mars should be the ultimate destination for human exploration, it did not provide a specific date for when such a mission could be achieved by the Program of Record or under any of the options the committee developed. Under the proposed fiscal year 2011 budget, NASA plans to develop the technologies that would allow NASA to support a manned Mars mission in the 2030s, as part of a sustainable beyond-LEO human exploration program.

*Question.* The President stated in his April 13, 2010 speech at Kennedy Space Center that the plan to utilize the commercial space industry for low earth orbit missions has the potential to save the American taxpayer money. How much do you



expect the shift toward private industry handling low earth orbit services to save American taxpayers?

Answer. NASA anticipates that industry, through increased efficiencies will be able to provide human space transportation to low-Earth orbit (LEO) at a lower cost than would be possible through the use of Government-operated transportation systems, though the magnitude of the savings is not known at this time. In addition to making space travel more accessible and more affordable, the agency believes that an enhanced U.S. commercial space industry will create new high-tech jobs, leverage private sector capabilities and energy in this area, and spawn other businesses and commercial opportunities, which will spur growth in our Nation's economy.

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QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

COMMERCIAL SPACE FLIGHT INITIATIVE AND ISS ACCESS AND SAFETY

*Question.* In your response to my question at the hearing, you said that you agree that if there were an accident with the Soyuz, either with the launch vehicle on ascent or the crew module on descent, which were serious enough to ground the Soyuz for an extended period of time while an accident investigation were completed and any necessary changes made, that same Soyuz vehicle would be the only vehicle astronauts could use to evacuate the ISS.

How long would it be before the six-person crew still aboard the ISS would have to evacuate?

Answer. In addition to providing crew rotation capabilities, the Soyuz vehicle also plays a critical role as the crew rescue vehicle. The Soyuz is currently the only vehicle that can provide this function for ISS expeditions, as it is the only vehicle that remains on-orbit for extended periods of time and provides emergency crew return capability. As explained in detail below, should there be a stand-down on Soyuz launches, NASA and its International Partners would have 2–4 months to understand the Soyuz issue and to resolve it before the ISS would need to be de-crewed.

Should there be an incident which results in Soyuz vehicles being grounded, there are several factors involved in determining the timeframe in which to downsize the ISS crew or de-crew the ISS. For this scenario, these factors include Soyuz spacecraft life and the length of time the on-orbit crew has been on board ISS.

The Soyuz spacecraft maximum mission duration is 200 days (vehicle launch to vehicle landing), due to systems certification. Mission duration beyond 200 days exceeds the certified lifetime of the vehicle and is not recommended.

Based on a myriad of health factors, including radiation exposure and other biomedical factors, a continuous on-orbit limit of 220 days for crewmembers has been established. Crew rotations are planned so that no crewmember is on-orbit longer than 220 days at a time. Should a reduction in crew size or de-crewing of the ISS be necessary, NASA and the ISS International Partners have developed guidelines and a timeline for an orderly de-crewing of the ISS. In general, the procedures for the reduction in crew size or de-crewing of ISS begin 15 days prior to the departure of the Soyuz and involve configuring the ISS for an extended period of unmanned operations.

Indirect handovers are planned to most effectively utilize the ISS resources and ground support operations. ISS docking port availability and utilization requires that a Soyuz vehicle depart prior to its replacement arriving at ISS. Russian assets are utilized to support both a Soyuz landing and a Soyuz launch, including the contingency support should an abort occur during launch. The availability of these resources and time required to support both events dictate a 2-week interval between a Soyuz landing and the subsequent launch of its replacement vehicle.

Moreover, typical spacing between Soyuz launches is a minimum of 2 and a maximum of 4 months. If a problem arose with a Soyuz launch, the on-orbit Soyuz would have 2–4 months of life remaining. Therefore, NASA and its International Partners would have 60–120 days to understand the Soyuz issue and to resolve it before the ISS would need to be de-crewed.

*Question.* Under this scenario, how will NASA determine if it is safe for astronauts escaping or otherwise departing the station to use versions of the same vehicle that just suffered an accident or failure significant enough to ground the entire Soyuz fleet?

Answer. NASA and Roscosmos (and its major contractors) have developed over the years a close working relationship in regard to safety and flight worthiness. As demonstrated by the Soyuz separation anomaly resolution, Roscosmos shared with NASA in-depth information about the design and safety of the Soyuz in a timely

manner in order to assess the re-entry risk to the crew. In the event of a grounding of the Soyuz launch vehicle and spacecraft, NASA fully expects that Roscosmos will again share vital data that are necessary to ensure the safety of our crew.

*Question.* If, in this scenario, the ISS crew had to abandon the station, how long could the untended ISS remain viable in a minimal state of ground-controlled automated activity, before its orbit might deteriorate or systems might begin to fail without crew maintenance, to the point it would be irretrievable or impossible to reactivate once the Soyuz were able to fly again?

*Answer.* NASA has plans and procedures in place for the crew to take necessary measures to configure the ISS platform in order to maintain safe untended operations for an extended period. Among the tasks the crew would perform would be to configure the ISS for a minimum power usage and close all hatches. The ISS systems that are needed to maintain a stable and viable vehicle are robust in their ability to perform even after failures and anomalies. Key systems such as the electrical power system; guidance, navigation and control; communications; and active propulsion have multiple layers of redundancy. The ISS could also be boosted to a higher orbit to maintain sufficient altitude without a risk of re-entry for several years.

*Question.* Given the seriousness of this very plausible and possible scenario, it is of great concern to me that answers to these questions are not clearly available and have not been fully addressed before the decision was made to launch the country on this path for human space flight, with only a single life-line to and from to the International Space Station for any period of time.

Please explain why these contingencies have not been fully—and satisfactorily—addressed before the fiscal year 2011 budget and the new plan for human space flight was adopted by the administration?

*Answer.* The reliance of the ISS partners on a single crew transportation system (Soyuz) for a period of time between the retirement of the space shuttle and the development of a follow-on system was established years ago when it was determined to retire the shuttle at the completion of ISS assembly. NASA cannot simultaneously fund continuing shuttle operations while developing the next generation U.S. human space flight program, so a period of “single-string” reliance on Soyuz was unavoidable. The new direction for the agency aims to minimize this period by encouraging a robust commercial space industry that can provide crew transportation services to the United States and its European, Japanese, and Canadian ISS partners.

*Question.* From the standpoint of relatively near-term human spaceflight, the President’s proposed budget and associated plan seem focused on: (a) The development of a commercial, as opposed to Government-owned human space flight launch capability and (b) The continuation—and expansion—of support to the International Space Station to at least 2020.

Would you agree with me that, in actual fact, the two initiatives are directly interwoven, in that the real driver behind the business case for commercial space launch capability—for both cargo, as under the COTS program now underway, and for human space flight, at least in its early stages—is the existence of a viable, healthy, safe and functioning International Space Station?

*Answer.* NASA considers the ISS a key component in the agency’s attempt to encourage and promote a robust commercial space industry, both in terms of the scientific and engineering research that can be conducted aboard this National Laboratory in orbit and as a destination that requires the transportation of personnel and cargo to and from low-Earth orbit (LEO). The continuing viability of ISS as both a spacecraft and research facility bolsters the business case for commercial space launch capability.

*Question.* As you begin to develop the requirements for a competition for a commercial crew development contract, what would be the target date for full operational capability, and how would you define that? If a target date has not been set, what is your best estimate for when a commercial crew launch system might be fully operational?

*Answer.* NASA is targeting 2015 as the start of operations for commercial crew services. However, NASA may adjust this date as we receive proposals from industry.

#### SUSTAINABILITY OF INTERNATIONAL SPACE STATION

*Question.* In 2005, the OMB mandated that of the 28 remaining flights then planned in support of ISS; NASA could only plan on performing 17 of them (plus an option for 1 for Hubble Telescope servicing). NASA was forced to reconfigure the payloads from the 10 cancelled missions to ensure that necessary spares and re-

placement parts could be delivered to the ISS on the 17 remaining flights. However, the decisions made regarding critical spares and equipment was based on what was at that time an internal planning date for end-of-life for ISS as 2015.

Given the near-certain extension of ISS—pressed by the Congress in the 2008 NASA Authorization Act, and now agreed to by the administration, what steps are you taking to understand the requirements for sustaining the ISS vehicle and systems through 2020?

Answer. As part of NASA's yearly budgetary planning cycle, the ISS Program has defined the necessary spares, logistics, operations, training and transportation services necessary to extend the operations of the ISS to at least 2020. NASA along with its International Partners is also in the process of certifying the ISS platform to 2028.

*Question.* The 2008 NASA Authorization Act (Public Law 110-422) required a report, within 9 months of enactment (Due July 15, 2009) of what would be necessary to sustain the ISS vehicle and systems through at least 2020. That report was received on August 9, 2009. It provided information that was not particularly helpful and contained contradictory information—such as descriptions of critical systems for which analysis would be done in 2011—after the planned end of shuttle operations. For many of these systems it appears transport to the ISS appears unlikely on any vehicle other than the shuttle. In most cases, reliance for delivery was placed on “planned” availability of COTS cargo capability, because the additional cargo-delivery systems, the Russian Progress vehicle, the Japanese HTV and the European ATV, would still leave a short-fall of 40 metric tons of required supplies. There was no analysis of the potential impact of a failure of either the COTS cargo capability or the ATV and HTV systems, neither of which had flown to the ISS at that stage. Most importantly, there was no analysis of potential spare part requirements that might need the space shuttle payload bay in order to deliver them to the station.

What, if anything, has been done since August of last year, when the report was filed, to ensure us that NASA has a complete understanding of what is needed to sustain the space station through at least 2020? If that has in fact been studied, please detail extensively the results and knowledge gained.

Answer. The planning and analysis required to keep ISS flying is a continuous process. There is a real-time component that monitors on-board failures and spares. The goal is to keep adequate spares on ISS to cover all failures. With the retirement of the shuttle, NASA is repositioning almost all available spares on orbit, so the agency is protecting against multiple component failures. There is also a strategic component for manifest planning. NASA runs models with reliability and maintenance estimates. These models are used to set the basic yearly launch upmass estimates. The models are continually updated with real failure rate data. In summary, the ISS storage space is almost fully utilized. The agency has a process in place that has been demonstrated to keep ISS flying. This process has been updated, and NASA has adequate margin to maintain ISS with the remaining shuttle flights, the European Automated Transfer Vehicle (ATV), the Japanese H-II Transfer Vehicle (HTV), and commercial cargo coming on line in late 2011.

*Question.* Since the decision to extend the space station was announced as part of the fiscal year 2011 budget request, what additional work has been done—or started—that would provide the Congress the confidence that the needs of ISS sustainability are fully understood and considered? If that has in fact been studied, please detail extensively the results and knowledge gained.

Answer. As part of NASA's yearly budgetary planning cycle, the ISS Program has defined the necessary spares, logistics, operations, training and transportation services necessary to extend the operations of the ISS to at least 2020. NASA along with its International Partners is also in the process of certifying the ISS platform to 2028.

*Question.* It seems clear that there is no way of knowing, with any degree of assurance, whether or not there are requirements for spares, replacements, or refurbishment of parts that would require shuttle flights beyond the end of this year in order to protect our investment in the space station and maximize its research potential. That suggests an inability to guarantee the “destination” of the space station with a low risk profile sufficient to allow commercial transportation systems, for either cargo or crew, to be able to convince investors that they should put venture capital into those projects.

Given that situation, would NASA and the administration consider the option of stretching out the remaining manifest (remaining shuttle flights) into the end of next year, combined with the activation of the contingency mission as a full mission capable of taking payloads to the space station, while immediately conducting the assessment necessary to determine whether there are requirements that could be met by using that added mission?

Answer. In formulating the payloads to be carried to ISS under the current space shuttle manifest, NASA carefully reviewed the station's likely requirements for spares, replacements, and refurbishment of parts in order to ensure the continued viability of ISS after the retirement of the shuttle. By the time the manifest has been completed, ISS will have been fully assembled (this is essentially the case now) and outfitted for long-term operations and utilization. After this point, the cargo capacity of the shuttle will no longer be required, and future components will be compatible with existing and anticipated cargo vehicles. Even such critical large items as Control Moment Gyros (CMGs) can be redesigned and/or repackaged to fly aboard smaller vehicles (in the case of CMGs, several smaller gyros can take the place of a single large unit).

Stretching out the shuttle manifest would be disruptive to our workforce, and potentially increase risk, since the operating tempo would be reduced to a point where personnel proficiency might suffer. In addition, the Aerospace Safety Advisory Panel recommended against an extension of the shuttle past the current manifest for these reasons. At this time, STS-335 is slated as the Launch On Need (LON) mission for STS-133, should that flight encounter an emergency.

*Question.* Regarding the new plan announced by the President to revive the Orion Crew Exploration Vehicle, but in a design modification that would allow it to be launched unmanned on an expendable launch vehicle, to serve as a life-boat for the ISS: How is that development going to be paid for, and what is your estimate for the cost and the schedule for delivery to the ISS?

Answer. NASA is currently assessing cost and schedule to develop an emergency crew return derivative of the Orion spacecraft, per this new direction from the President's April 15, 2010 address. The goal is to be as cost effective as possible, taking maximum advantage of the work performed to date on Orion design, development, and testing while deferring further work on systems that would provide capabilities not needed for emergency crew return.

It is not yet determined precisely where the funding will come from. The sources will be dependent on the magnitude of the estimated cost, which is still in work. The total proposed budget for NASA did not change with this new direction to develop an Orion emergency crew return module. Therefore, its costs will need to be offset by reductions to other line-items.

*Question.* How many such vehicles would be required? Would they be cycled every 6 months, like the Soyuz vehicles, or would they have a longer on-orbit stay-time?

Answer. NASA is just beginning to assess what the specific requirements for an emergency crew return derivative of the Orion spacecraft should be. Very likely, the four-person capability currently in work under the Constellation program of record will be preserved for this emergency return variant. The specifics of an Orion-derived crew return spacecraft are in development.

*Question.* How many seats would they provide? Would they enable the four seats per year that the United States is still obligated to provide under the Memoranda of Understanding and Intergovernmental Agreements for ISS signed in 1998?

Answer. NASA is just beginning to assess what the specific requirements for an emergency crew return derivative of the Orion spacecraft should be. Very likely, the four-person capability currently in work under the Constellation program of record will be preserved for this emergency return variant.

*Question.* Would that mean that the total station crew size could be expanded to seven, as originally planned, thus enabling greater potential for crew time being applied to research, as opposed to ISS maintenance?

Answer. The ISS today is capable of supporting a crew of seven as originally designed.

*Question.* If so, how would that impact the cargo and supply requirements?

Answer. This has not been factored into the extension assessment.

*Question.* Given the three-seat limitations on Soyuz, would that make it impossible to expand the station crew size because of no way to deliver the sufficient number of crews to ISS?

Answer. If Soyuz were the only vehicle to service ISS, the crew size could not be increased to seven permanent crew.

*Question.* If so, what is the advantage of developing and using the Orion as a crew-rescue vehicle only?

Answer. It will enable a cost-effective American crew escape capability that will increase the safety of our crews on the space station, reduce our dependence on foreign providers, and simplify requirements for commercial crew providers.

This effort will also help establish a technological foundation for future exploration spacecraft needed for human missions beyond low Earth orbit and will preserve some high-tech contractor jobs in Colorado, Texas, and Florida.

Continuing Orion as a rescue vehicle only will reduce costs by simplifying the design and eliminating development, testing, and production costs for systems associated with launching humans such as the Orion launch abort system and human rating the expendable launch vehicle. Continuing work associated with launching humans to the ISS aboard Orion would be duplicative of the commercial crew development efforts.

*Question.* How would the cost of development and launch of the Orion CRV compare to the cost of simply continuing to pay for Russian Soyuz to serve the crew escape function?

*Answer.* NASA procures services from Roscosmos that cover all aspects of transportation and rescue using Soyuz. This includes crew training, launch, landing, and having the spacecraft available at ISS for a 6-month “increment” as a rescue vehicle, should an emergency arise. The cost of using the Soyuz uniquely as a rescue vehicle has not been broken out, and would need to be negotiated, in any case.

#### CONTINUOUS U.S. HUMAN SPACEFLIGHT CAPABILITY—COMPLIANCE WITH THE LAW

*Question.* In the 2005 NASA Authorization Act, signed into law as Public law 109–155, the Congress stated that it was “the policy of the United States to possess the capability for human access to space on a continuous basis.” The law went on to make it clear that such capability for human access to space on a continuous basis was to be provided by U.S. transportation systems, not by other nations’ capabilities that we would “rent” or purchase access from. It is also a matter of international agreement, within the ISS implementing agreements, that the U.S. would be responsible for providing access to the ISS for European, Japanese, and Canadian crew members. The decision to terminate space shuttle operations in 2010, at least 4 years before any replacement U.S. capability was then planned to be available, was a direct violation of both the spirit and the letter of that law. When you and your Deputy Administrator each took the oath of office as Administrator, after confirmation by the Senate, you both swore to uphold the laws of the United States.

What have you done, since assuming your positions, to ensure that the law of the United States, establishing a policy of continuous U.S. capability for human space flight, is upheld?

*Answer.* As noted in the above response the “gap” in U.S. human spaceflight capability was the result of NASA not having sufficient resources to simultaneously fund continuing shuttle operations while developing the next generation U.S. human space flight program. The fact of the gap has been long established; the questions have been how long the gap would last, and what domestic system(s) the United States would use in the future. The new direction for the agency aims to minimize this period by encouraging a robust commercial space industry in LEO that can provide crew transportation services to the U.S. and its European, Japanese, and Canadian ISS partners.

*Question.* If a proposal by the administration—whether the Obama administration or the Bush administration, created and imposed on NASA by the Office of Management and Budget, or by the Office of Science and Technology Policy—represents a direct circumvention of the law, what is your responsibility, as the Administrator of the agency empowered to implement that law, to take steps to inform the authors of that proposal that their actions are in violation of the law, and to insist that they adhere to the law and policy established by the Congress?

*Answer.* It is the responsibility of everyone in public service to uphold the laws of the United States, and to ensure that proposals they advocate adhere to the law. In April 2009, NASA submitted to the Congress its Human Space Flight Capabilities report, which responded to language in section 611(a) of the NASA Authorization Act of 2008 (Public Law 110–422) directing NASA to report on the lack of a U.S. human space flight system to replace the space shuttle upon its planned retirement. This requirement was an amendment to a reporting requirement in section 501 of the NASA Authorization Act of 2005 (Public Law 109–115), referenced above. This report was required by law in case it was determined that the United States would not be able to maintain the capability for human access to space on a continuous basis.

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#### QUESTIONS SUBMITTED BY SENATOR ROBERT F. BENNETT

##### BUDGET PROCESS

*Question.* The decision to shut down the Ares I and V programs have significant impact to the Aerospace Industrial base, especially to the Solid Rocket Motor industry. In lieu of this, did you coordinate or consult with the Department of Defense

when making this decision to shut down Constellation which will have immediate and far-reaching impacts to our national defense?

If so, when was this done and with whom?

Answer. NASA, the Department of Defense (DOD), and the National Reconnaissance Office (NRO) have worked closely on the management of the Nation's space enterprise for many years. In the context of the President's budget proposal and subsequent Congressional action, discussions have been underway at all levels about ensuring that we carefully consider and maintain the Nation's space industrial base. I have been working with Secretary of the Air Force Michael Donley, General Robert Kehler, the Commander of Air Force Space Command, and General Bruce Carlson, the NRO Director, throughout my tenure as NASA Administrator on these crucial subjects. While the President has proposed a restructuring of the Constellation program, he is also seeking to invest significant funding to develop technologies and infrastructure to enable human exploration both to low-Earth orbit and beyond. These provide to benefits to both DOD and NASA, as evidenced by statements by senior DOD representatives on the subject over the past months.

I have held several discussions with Secretary Donley, General Kehler, and General Carlson on this topic and met most recently with them on June 24, 2010. A key objective of these discussions has been to help ensure that we remain aware of launch options from a strategic perspective. I am committed to continuing to work closely with the DOD and the NRO as we move forward. As one example among many, the Office of the Undersecretary of Defense for Industrial Policy is leading a Solid Rocket Motor Industrial Base assessment in order to plan for the impact of changes in NASA's program, and NASA is a key participant in this assessment. We are additionally working with the national security space community on several other reviews and assessments to ensure that our civil and national security space objectives are met, while ensuring a robust national space industrial base.

*Question.* When did you learn of the cancellation of the entire Constellation program?

—Were you directly part of this decision?

—Considering this was the largest program eliminated in the Federal budget for fiscal year 2011, did you discuss cancellation of the entire program with the President directly?

—If not, who told you of the cancellation of Constellation?

Answer. I can tell you that I participated in the construction of the fiscal year 2011 budget request. That's part of my responsibility as the NASA Administrator, and I represent the inputs that NASA made to the budget formulation process.

*Question.* Were NASA's top technical and program folks engaged in crafting the budget? If so, who was involved with crafting the technical details of this new plan?

Answer. Key NASA personnel were involved in the preparation of the fiscal year 2011 budget request.

#### CONSTELLATION COSTS

*Question.* The administration seems to be throwing out different cost figures about how expensive it would be to simply continue the Ares program. General Bolden testified in front of the House Science Committee on March 23 by asserting that Ares would cost \$4–\$4.5 billion a year, and \$1.6 billion per flight, which seems awfully inflated. However, in a subsequent House Science Subcommittee hearing on March 25, NASA Associate Administrator for Exploration Systems Doug Cooke, testified that an earlier NASA written cost estimate provided to Representative Suzanne Kosmas (D-FLA) in 2009, citing a “marginal” cost of \$176 million per launch was still a “reasonable estimate.” (his words). This NASA estimate further clarifies that if there were only one Ares I/Orion flight in a given year, the cost would be \$919 million. (It explains that the \$919 million figure represents both fixed costs of \$781 million, and marginal costs of \$138 million). This \$919 million figure for one flight is roughly the same as the \$1 billion cited by the Augustine report. However, and this is key . . . the document goes on to explain that most of the fixed costs are in the first flight. And that subsequent flights of the Ares/Orion are much cheaper. In fact, this NASA document states that a second flight would cost \$138 million, and a third flight would cost another \$138 million, and a fourth flight another \$138 million, and so-on. So, given both NASA written and oral testimony in this regard, it is entirely possible to fly the Ares 1 with Orion capsule for continuing U.S. space flight to low earth orbit, and the International Space Station (ISS) and stay within NASA's constrained budgets. For example, for approximately \$1.5 billion, it seems that NASA could fund 4 launches of the Ares and Orion in a given year, continuing a robust manned space program and not having to rely on the Russians for transportation. This is well within NASA's budget. Do you disagree with previous NASA

testimony on Ares costs? What are the correct cost figures, and what specifically do you include in those cost figures?

Answer. To understand the cost of the Ares I project, it is important to understand the full cost of the Constellation Program. Based on the fiscal year 2010 budget request, NASA estimates it would cost approximately \$5.4 billion in fiscal year 2011 to continue the full Constellation Program, including Ares I and Orion development and testing, and all supporting elements (ground processing facilities, mission control, program integration etc.), which together would lead to an Initial Operational Capability for two crewed flights to the International Space Station per year. Of the \$5.4 billion figure, the Ares I project was estimated to cost \$2.1 billion, with Orion costing \$1.8 billion, and other Constellation supporting elements equating to about \$1.5 billion.

The fiscal year 2011 budget request transitions away from the Constellation Program. Therefore, under this assumption, if NASA were required to continue only the Ares I project, the cost to do so would be about approximately \$4–\$4.5 billion in fiscal year 2011—which would pay for the project elements and also include the full cost of all supporting elements outlined in the fiscal year 2010 budget request, such as ground processing facilities, mission control, program integration etc. Without these supporting elements, the Ares I could not fly. This scenario also assumes that Orion would be cancelled, so close-out costs for Orion were factored into this estimate. (Note: Without an Orion, this scenario would not provide an IOC capability.) Additionally, it is important to remember that under the fiscal year 2010 budget request and its 5-year runout, the Constellation Program as a whole was expected to begin ramping up work in fiscal year 2011, and in doing so, was expected to also begin assuming additional Shuttle infrastructure and workforce costs in addition to increased development costs, currently estimated to be \$600–700 million. Therefore, those costs are factored into the continuation cost estimate.

With regard to marginal costs for Ares I, NASA recognizes that there is often confusion with regard to publicized flight cost estimates associated with the Ares projects, largely because those estimates often include different assumptions. One key point of confusion, for example, comes from the fact that the Ares I and Ares V share significant fixed costs for vendor production base and sustaining engineering, since both vehicles would use similar solid rocket boosters, upper stage engines and avionics. Therefore, there are two ways to consider the cost of an Ares I flight—one, where the Ares I fixed costs are lower because it is assumed that certain fixed operational costs would be shared with the Ares V, and another, where the Ares I fixed costs are higher because the current shared-cost scenario is not assumed.

In general, NASA does not budget by flight, but rather by fixed and marginal costs expected on an annual basis. The fixed cost (i.e. prime and non-prime support labor, costs of facilities) would be the cost that must be incurred whether one rocket or multiple rockets are built. In other words, the fixed cost is absorbed by the first annual flight and is not counted again that year. The marginal costs, on the other hand, are those costs that can be cleanly attributed to the production of one unit, and that cost is generally the same, unit by unit. So for each subsequent annual flight, NASA adds on only the marginal cost, given that the fixed cost has already been absorbed into the first. It is important to note, however, that NASA's formula of calculating the cost of an Ares I flight (or subsequent annual flights) does not include the project costs for the associated support elements, such as ground operations, mission operations, EVA and program integration. Those costs would be book kept under their respective project lines.

With regard to the cost per flight, NASA currently estimates that both Ares I and Orion account for \$69 million each in marginal costs for a flight unit, thus totaling \$138 million in marginal costs for each flight since each flight would be assumed to have a capsule and a rocket. However, the fixed cost per flight would vary based on whether Ares I and Ares V shared operational costs were assumed.

For example, the fiscal year 2010 budget request assumed that Ares I and Ares V would share some operational costs—approximately \$700 million per year, which would, in turn, equate to lower fixed costs for the Ares I. Therefore, under that scenario—which was provided to Congressman Aderholt's staff in November 2009—the total cost for the first flight would be \$919 million (\$781 million in fixed cost plus \$138 million in marginal costs) with each subsequent flight costing \$138 million extra in marginal costs, as outlined in the chart below:

ESTIMATED ANNUAL OPERATIONS FIXED AND MARGINAL COSTS FOR ARES I AND ORION WITH  
ARES I AND ARES V SHARING OPERATIONAL COSTS

[In millions of dollars]

	Fiscal Year 2008
Fixed Costs (Ares I and Orion) .....	781
Marginal Cost for 1st flight .....	138
Total Cost for 1st flight .....	919
Marginal Cost for 2nd flight .....	138
Total Cost for 2 flights per year .....	1,057
Marginal Cost for 3rd flight .....	138
Total Cost for 3 flights per year .....	1,195

Note.—This assumes Ares I fixed costs are shared with Ares V. It also excludes fixed costs for supporting elements.

However, if the assumption is that Ares I and Ares V would not share operational costs, it is equally true to say that the cost of an Ares I flight is nearly \$1.6 billion. Under this scenario, all operational costs would be carried by Ares I—which would account for an approximate \$700 million increase in the fixed cost for Ares I. Thus, under this scenario, the total cost for the first flight would be \$1.461 billion in fixed cost plus \$138 million in marginal costs, with each subsequent flight costing \$138 million extra in marginal costs, as outlined in the chart below:

ESTIMATED ANNUAL OPERATIONS FIXED AND MARGINAL COSTS FOR ARES I AND ORION WITH  
ARES I CARRYING ALL OF THE OPERATIONAL COSTS

[In millions of dollars]

	Fiscal Year 2008
Fixed Costs (Ares I and Orion) .....	1,461
Marginal Cost for 1st flight .....	138
Total Cost for 1st flight .....	1,599
Marginal Cost for 2nd flight .....	138
Total cost for 2 flights per year .....	1,737
Marginal Cost for 3rd flight .....	138
Total Cost for 3 flights per year .....	1,875

Note.—This assumes Ares I fixed costs are not shared with Ares V. It also excludes fixed costs for supporting elements.

*Question.* What, in your opinion, is a higher priority—the safety of our astronauts or potential cost savings? With that in mind, I'd like to quote from the Aerospace Safety Advisory Panel's 2009 annual report which states, "the Ares I vehicle has been designed from the beginning with a clear emphasis on safety. Its architecture was selected by NASA's Exploration System Architecture Study (ESAS) team because of its potential to deliver at least 10 times the level of crew safety as the current shuttle. The launch vehicle configuration has been developed to provide the best possible allowances for crew escape in the event of a launch failure." In your opinion, what are safer, solid rocket motors or a propulsion system based on liquid fuel? I'd like to know what are NASA's plans to ensure that any manned system designed and developed by private industry will be as safe as the system which is being developed under Project Constellation, the current program of record.

*Answer.* One measure of launch vehicle safety is identifying the approximate probability of failure for the launch vehicle which can then be determined by summing up the chances of failure of all of its subsystems. For launches of U.S.-built vehicles in the last 20 years, problems with the propulsion system represented a significant portion of all failures therefore addressing reliability during the design of a launch vehicle is paramount to ensuring a safe vehicle. The type of propulsion system (solids versus liquids) is not a discriminator; rather simplicity and redundancy are the keys to high design reliability for any system and launch vehicles are no exception.

With regard to commercial crew, at no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. Sim-



ply put, U.S. astronauts will not fly on any spaceflight vehicle until NASA is convinced it is safe to do so. NASA has unique expertise and history in this area, and a clearly demonstrated record of success in transporting crew. NASA will bring that experience to bear in the appropriate way to make sure that commercial crew transportation services are a success both programmatically, and with respect to safety. At no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. For example, NASA will have in-depth insight of the vehicle design via NASA personnel who are embedded in the contractor's facility. Additionally, NASA will impose strict requirements and standards on all providers that will be carefully evaluated and reviewed at multiple stages before a vehicle system is certified by NASA for crewed flight.

COTS AND RESUPPLYING THE INTERNATIONAL SPACE STATION WITH CARGO AND CREW

*Question.* Please explain the line in the fiscal year 2011 budget proposal for commercial cargo of \$312 million. The COTS program was established under a Space Act Agreement which has a fixed cost attached to it. If so, why a few years later is there a need to throw additional money at the Space Act Agreement holders? Could this be seen as a funding stream for the COTS providers because they are behind schedule and costs?

*Answer.* The fiscal year 2011 budget request includes \$312 million for commercial cargo development efforts, which NASA intends to allocate as follows:

- \$288 million would be an augmentation to the current Commercial Orbital Transportation Services (COTS) funded agreements for additional milestones that would add additional capabilities or tests that would reduce risks and expedite the pace of cargo delivery for the ISS. The funding would be equally split between SpaceX and Orbital.

- \$14 million would be for currently negotiated milestones expected to be completed in fiscal year 2011—part of the original \$500 million COTS investment.

- \$10 million would be for program operations for the Commercial Crew and Cargo Office at Johnson Space Center in fiscal year 2011.

*Question.* Administrator Bolden I would like to understand what NASA and the taxpayers have received for this total COTS expenditures to date of approximately \$618 million? What hardware has been delivered? What services have been provided? What does NASA own, IP rights?

*Answer.* The dollar amount cited in the question includes payments made as part of the COTS cargo development effort and the Commercial Resupply Services (CRS) contract.

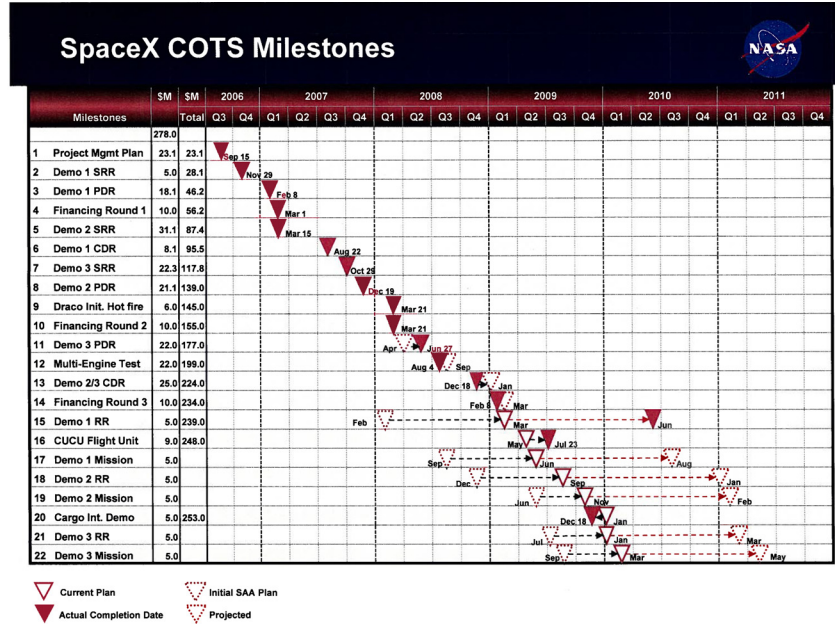
With regard to COTS, expenditures as of mid June 2010 for our two funded Space Act Agreement (SpaceX and Orbital Sciences) total \$393 million. To date, our partners have completed all major design reviews, including Preliminary and Critical Design Reviews. Both partners have begun testing programs designed to qualify their respective cargo transportation systems for launch and spaceflight environments. Additionally, both partners are progressing through the ISS visiting vehicle integration.

SpaceX has recently completed its Falcon 9 maiden flight, including the Dragon capsule qualification unit. Although this was a non-NASA milestone, this flight provided data for the company to verify launch-vehicle operations for the new vehicle, and NASA expects data gathered from this test flight will be instrumental to our first COTS demonstration. NASA's COTS Demo flight 1 hardware is progressing. The COTS Demo 1 flight first stage has completed integration and is being readied for the integrated stage testing in Texas. Likewise, the COTS Demo 1, second stage integration, has been completed and is being readied for its integrated stage testing in Texas. Once integrated stage testing is complete, both stages will be shipped to Cape Canaveral for flight. The COTS Demo 1 Dragon Capsule integration is finishing up. The integrated spacecraft has been powered up and is currently flowing data to mission control. Currently, the launch is scheduled for August.

Orbital continues to make progress as well. Its first stage static test article has been completed and initial static tests have been completed. The first stage engine, AJ-26, is currently planned to begin testing at the NASA Stennis Space Center in August this year.

Regarding intellectual property (IP) rights for the COTS agreements, since 1980, with the passage of the Bayh-Dole Act (with regard to small businesses, universities and non-profits) and 1983, under Executive Order 12591 (with regard to large business), it has been the policy of the Federal Government to permit contractors and others who receive Federal funds to develop technology to retain the commercial rights to that technology, including the right to make a profit from technology developed with funds received from the Federal Government. Consistent with Bayh-Dole





*Question.* The COTS program was designed to create lower cost cargo access to the ISS. With the current Resupply Service Contracts for SpaceX costing \$135 million per flight and Orbital costing \$235 million per flight, and with Doug Cooke’s recent testimony that the much more robust Ares vehicle recurring flight cost of \$178 million per flight, are we really finding dramatic cost savings through COTS, doesn’t seem like it from these numbers?

*Answer.* The aforementioned CRS and Ares I costs cannot be compared in the manner cited because the missions are different. While Ares I was designed to go to the ISS, it was designed to carry crew and not cargo. The CRS missions, on the other hand, are designed to carry only cargo, so comparing costs between the two missions is not appropriate.

Under CRS, NASA is purchasing cargo delivery services via a fixed-price contract. Thus, NASA is paying a pre-set cost per delivery, and therefore, the company is responsible for paying for its own infrastructure and personnel costs, for example. However, NASA will have additional costs for its own infrastructure and workforce associated with commercial crew.

In comparison, and as noted in an earlier response, NASA’s estimate for Ares I marginal costs reflects only the costs that can be cleanly attributed to the production of one unit. However, that number does not include the fixed development costs for the Ares I program, nor does it include the project costs for the associated support elements, such as ground operations, mission operations, EVA and program integration. Therefore, to understand the cost of the Ares I project, it is important to understand the full cost of the Constellation Program.

*Question.* The original plan for commercial transportation to space was to have the COTS providers demonstrate cargo capability before moving to crew, a logical progression in spaceflight capabilities. What has changed that pushes us to begin commercial crew investment before even a single cargo demonstration has occurred?

*Answer.* Nothing has changed. NASA is still pursuing an incremental strategy by establishing commercial cargo resupply services prior to establishing the provision of commercial crew services. NASA has always planned for the eventual provision of commercial crew services and Congress authorized NASA to pursue those activities in the NASA 2008 Authorization Act. Congressional authorization, coupled with the endorsement of the Augustine Committee which stated in its final report that “Commercial services to deliver crew to low-Earth orbit are within reach,” and the decision to extend the life of the ISS likely to 2020 or beyond, enabled the administration and NASA to fund the development and demonstration of commercial crew transportation as part of the President’s fiscal year 2011 budget request.

*Question.* Is this putting too great of pressure on these companies, helping to ensure their failure?

*Answer.* NASA has not yet selected the companies that will provide commercial crew services. However, NASA will evaluate the capability of all bidders during the proposal evaluation process and select those companies that have the necessary capabilities and plans for providing commercial crew services.

*Question.* Current projections for new entrants into national human spaceflight, like India, project 10–12 years before ready for first human launch, and China has demonstrated that it took them 11 years after they had a certified launch vehicle to be ready. Why do we believe a commercial crew capability could occur in less than 5 years? On what do we base that projection besides claims of companies that have not placed a single human into space?

*Answer.* During previous COTS announcements, multiple commercial companies proposed a crew transportation capability that could be developed in 36–48 months. These inputs were from established, low-risk companies who have placed humans into space, as well as smaller entrepreneurial companies.

*Question.* Given NASA has not yet delivered human rating requirements for commercially provided vehicles, coupled with the fact that the COTS providers are running about 2 years behind on their cargo capability, how can you expect crew capability by 2015 and have confidence in this schedule?

*Answer.* NASA has recently released a draft set of commercial human rating requirements for industry to review and provide comments. Comments were due back to NASA by June 18. These comments will be used to mature the requirements set in time to support a commercial crew announcement that meets the program's timeline.

During previous COTS announcements multiple commercial companies proposed a crew transportation capability that could be developed in 36–48 months. These inputs were from established, low-risk companies who have placed humans into space, as well as smaller entrepreneurial companies.

Both SpaceX and Orbital have encountered technical challenges and schedule delays normally attributed to complicated endeavors such as fielding new launch vehicles and spacecraft. SpaceX, however, proceeded from signing the NASA SAA to launching its Falcon 9 launch vehicle in less than 48 months. Orbital Sciences is on target to fly its Taurus II in approximately 40 months from SAA signature.

It is important to note that both of these COTS efforts include not only the launch vehicle but also spacecraft and all needed ground and mission support capabilities as well.

*Question.* General Bolden, as we all know, the acquisition process, especially one of the magnitude of designing, and developing a manned space capability, is full of milestones, testing, reviews and much, much more. I'm curious to know, what are the acquisition-related steps that would need to be followed by the Government in the development and procurement of commercial crew transport services, e.g., development of a COTS-like demonstration program; COTS RFP preparation and release; competition for COTS awards; negotiation of COTS agreements; DDT&E phase; demonstration phase; RFP preparation and release for commercial crew transport contracts; contract competition, award, negotiation, potential protest resolution, etc.; and certification for operations involving U.S. astronauts before commencing commercial crew transport services to the International Space Station? Historically, how long has it taken to complete such acquisition steps in the development of new aerospace systems to be used by the Government?

*Answer.* NASA released a Request for Information (RFI) in May 2010, which represented a critical element in the agency's overall proposed strategy for commercial crew. This RFI requested industry feedback to the NASA plans for certifying commercial crew vehicles for NASA services, including the Draft Commercial Human Rating Plan. In addition, the RFI sought input on the general acquisition strategy and philosophy. A second RFI is planned in the late summer timeframe for industry feedback on the ISS Service Requirements Document (SRD) and Interface Requirements Document (IRD). With this feedback, NASA will finalize the remaining requirements, reference documents, and acquisition strategy.

Information from these RFIs will be used to finalize NASA's proposed commercial crew acquisition strategy. Upon strategy approval, the draft announcement (including ISS SRD and IRD) will be completed and released for further comment, clarification, and questions from industry.

Historically, it has taken 6–9 months from instrument release (Request for Proposal (RFP), Announcement of Opportunity (AO), NASA Research Announcement (NRA), Cooperative Agreement Notice (CAN), Space Act Agreement (SAA)) to award.

## CONSTELLATION

*Question.* Was there any consideration of taking more of a “Commercial” approach to Constellation? Allowing for the cost and schedule savings that could be accomplished by taking this type of approach, but keeping the workforce transition plans in place and leveraging the investment in the program and benefiting from the safety regime incorporated, couldn’t this be a prudent way to consider moving forward? Was this even considered and if so, what were the reasons that this approach was not selected, what concerns do you have to this approach?

*Answer.* Budget formulation discussions are pre-decisional information and cannot be provided for the public record. However, in general, as part of normal fiscal year 2010 operations, the Constellation Program has been in discussions with the prime contractor about ways to reduce costs and improve schedule. Additionally, the commercial crew competition will be fully open, so the Ares I and Orion contractors can compete for those development awards as well.

*Question.* Can you explain what the White House has done with the human spaceflight budget? While NASA’s top line increases by \$6 billion over the next 5 years, the Exploration account contains significant reductions over that same period. Over the next 4 years, the budget run-out for Exploration is almost \$6 billion below last year’s run-out. In just this year’s request alone the Exploration budget has a \$1.8 billion cut from last year’s projected number, how is that a commitment to Human Space Exploration? This also includes the \$1.9 billion of close out costs for fiscal year 2011 also, so the actual budget for Exploration is that much lower even. Doesn’t this go completely against the funding recommendation by the Augustine panel your boss commissioned?

*Answer.* In the fiscal year 2011 President’s budget request, the requested budget for Exploration is almost \$500 million more than the fiscal year 2010 enacted level, and the projected budget for Exploration in fiscal year 2015 is \$1.4 billion higher than the fiscal year 2010 enacted level—an increase of 37 percent in 5 years. While the fiscal year 2011 budget request, reflects less funding for Exploration than anticipated in the fiscal year 2010 request, funding for NASA as a whole increases \$6 billion over 5 years despite a tough budget environment.

Although funding for Exploration decreases when compared to the fiscal year 2010 budget runout, funding was increased for other spaceflight priorities that were either critical to enable a safe and effective near-term human spaceflight program—such as allowing the shuttle to safely complete its manifest, extending the International Space Station to 2020 and enhancing its utilization—or that were key to supporting human spaceflight activities in the long-term, such as cross-cutting technology; and developing commercial crew transport capabilities.

Extending the spatial and temporal boundaries of human spaceflight is an important goal for the Nation and for NASA. However, human spaceflight remains an endeavor with substantial risks, and these risks must be identified, managed and mitigated appropriately to achieve the Nation’s goals in space. Thus, as highlighted in the Review of U.S. Human Spaceflight Plans Committee report and as supported by the fiscal year 2011 budget request, investment in a well-designed and adequately funded space technology program is critical to enable progress in exploration. Exploration strategies can proceed more readily and economically if the requisite technology has been developed in advance. That is why the fiscal year 2011 budget request is so critical for NASA.

*Question.* NASA’s Safety Advisory Panel, which you were a member of prior to becoming Administrator, strongly advised you against the new approach you are defending today. Can you explain why this path was chosen from a safety perspective? And how as a former member of this panel that worked on the recently released report, can you argue with its findings? Have their findings drastically changed since you were on the ASAP?

*Answer.* I was a member of the NASA Aerospace Advisory Panel (ASAP) from August 2006 to July 2009 and did not work on the development of their 2009 Annual Report. The administration’s decision to undertake a new plan for human exploration was based in large measure on the findings and recommendations provided by independent Review of U.S. Human Spaceflight Plans Committee, chaired by Norm Augustine, which delivered its final report to NASA and the White House in October 2009. The new plan for NASA’s exploration activities outlined in NASA’s fiscal year 2011 budget request was not considered during my tenure on the ASAP. As we move forward to implement our new plan for human exploration, however, I can assure you that NASA remains committed to safety in all aspects of our activities. I frequently meet with the members of the ASAP in my capacity as the NASA Administrator and I have asked the ASAP to continue to independently review and

assess our proposed activities and to provide specific recommendations on how NASA should be proceed to ensure the safety of our people and our programs.

*Question.* Part of the Ares/Orion plan was to enable a smooth workforce transition of the space shuttle program. With thousands of Aerospace critical skills at stake, announcing the cancellation of Constellation has created quite a high level of unrest across the industry. What plan do you have now to address this?

*Answer.* The President's fiscal year 2011 budget request for NASA is \$19.0 billion, which represents an increase of \$276.0 million above the amount provided for the agency in the fiscal year 2010 Consolidated Appropriations Act (Public Law 111-117), and an increased investment of \$6.0 billion in NASA science, aeronautics, human spaceflight and enabling space technologies over the next 5-years compared with last year's budget plan. The President's strategy and accompanying funding increase means more jobs for the Nation, more astronaut time in space, and more investments in innovation. NASA has initiated planning activities to be able to effectively and efficiently implement these new activities in a timely manner upon enactment of the fiscal year 2011 budget.

The proposed changes to the human spaceflight program in the fiscal year 2011 budget request will have an impact on civil service and contractor workforce planning. While NASA is not planning reductions in the civil service workforce, the nature of the work done by the civil service workforce would change under the President's fiscal year 2011 budget plan. NASA has also made preliminary program assignments across the centers for new or extended activities proposed in the fiscal year 2011 budget request, helping to clarify the work opportunities for contractors under the proposed portfolio and preparing NASA to execute the work content.

In 2009, NASA established the Space Shuttle Transition Liaison Office (SSTLO) in response to direction in the NASA Authorization Act of 2008 (Public Law 110-422). The agency was directed to assist local communities affected by the termination of the space shuttle program by offering non-financial, technical assistance to the identified communities and to identify services available from other Federal, State, and local agencies to assist in such mitigation. NASA is working diligently to determine how best to leverage these efforts to support the transition resulting from the proposed cancellation of Constellation. Specifically, the Office:

- Serves as a clearinghouse by gathering and disseminating information to the affected communities about opportunities available through other Federal, State, and local agencies; and
- Serves as a key point of contact for the community beyond NASA for information about how the agency is working with local communities to provide non-financial, technical assistance during transition.

The NASA workforce amendment would provide up to \$100 million from within the funds requested for the National Aeronautics and Space Administration's Exploration account to develop a plan to spur regional economic growth and job creation along the Florida Space Coast and other affected areas. This workforce plan furthers the administration's bold new course for human space flight, which revitalizes NASA and transitions to new opportunities in the space industry and beyond.

*Question.* The fiscal year 2011 budget includes \$2.5 billion in Constellation contract termination costs, and \$6 billion for new "commercial providers" who likely will suffer the normal cost and schedule growth especially with their level of inexperience and \$312 million for additional COTS money that was never planned. It would seem to be a much more responsible use of taxpayer dollars to use this combined \$8.812 billion to finish the program that has had 5 years worth of progress and accomplishments that is designed to deliver a safer, more reliable, way to send our astronauts to orbit then to hope that the "commercial" providers might come through? Can you please explain how this is not a waste of taxpayer dollars.

*Answer.* At the highest level, the President and his staff, as well as NASA senior leadership, closely reviewed the Augustine Committee report, and came to the same conclusion as the committee: The human spaceflight program was on an unsustainable trajectory.

To continue on the previous path we had to decide to either continue the ISS, support a program to get humans beyond LEO, or to make even deeper cuts to the other parts of NASA's budget. Further, we would have insufficient funding to advance the state of the art in any of the technology areas that we need to enable us to do new things in space, such as lowering the cost of access to space and developing closed-loop life support, advanced propulsion technology, and radiation protection.

The President determined that what was truly needed for beyond LEO exploration was game-changing technologies; making the fundamental investments that will provide the foundation for the next half-century of American leadership in space exploration.

Following the release of the fiscal year 2011 budget request, NASA established six study teams within Exploration Systems Mission Directorate (ESMD) to ensure we understand the steps (and the implications of those steps) that would need to be taken for an orderly transition of the Constellation Program and to plan for the implementation of the new Exploration program. Despite the early nature of these planning efforts, NASA is optimistic that there will be many capabilities developed by the Constellation Program that will feed forward into the new programs. For example, options using the Orion capsule are currently being pursued for autonomous rendezvous and docking; and many of the capabilities we are pursuing at a low level through our Exploration Technology Development Program are directly applicable to the new programs. Other important areas that will enable further advancement in the new initiative areas are: advanced robotics, propulsion development and test, friction stir welding, autonomous landing and hazard avoidance, and entry, descent, and landing technologies.

#### SOLID ROCKET MOTORS AND THE INDUSTRIAL BASE

*Question.* In the Solid Rocket Motor Capabilities report to Congress that was released in June 2009, in the executive summary on page 47 it says, "Delays in the NASA Ares program could have significant negative impact on the large solid rocket motor prime contractors industrial base, and on some of the SRM sub-tier base, specifically material suppliers." So the key phrase was "significant negative impact." So if a delay in NASA's Ares program would have a significant negative impact, what would the cancellation of the Ares program have if the administration recommendation goes through as part of the NASA budget in fiscal year 2011? If a delay is a significant negative impact on solid rocket motor industrial base, what's an outright cancellation going to do to the solid rocket industrial base?

*Answer.* NASA is currently the only customer for large segmented PBAN solid rocket motors and a major user of Ammonium Perchlorate (AP) used to make solid rocket motors (SRMs). As such, cancellation of Constellation would have a major impact on these two industries. However, NASA and DOD are continuing to jointly assess the impacts in the joint study lead by the Office of the Undersecretary of Defense for Industrial Policy on the SRM industrial base. The DOD does not use PBAN large segmented SRMs, but rather smaller monolithic SRMs for strategic missiles, interceptors, and launch vehicle strap-on booster, so they are currently studying the impacts and options as part of the SRM industrial base study. NASA and DOD are also jointly studying heavy lift launch and propulsion related options in a different study, so NASA's future demand for SRBs is not yet clear. Constellation cancellation would require the DOD to fully carry the costs of the necessary SRM industrial base for National security needs and AP costs would likely increase given the lower demand and associated reduced economies of scale.

*Question.* Please explain why the new Space Exploration plan seeks to stop using solid rocket motors which are the most reliable and capable first stage booster in NASA's inventory with over 100+ successful missions and decades of continuous design and manufacturing process improvements to rely upon a new, unproven system that could put the lives of our Nation's astronauts in jeopardy?

*Answer.* One measure of launch vehicle safety is identifying the approximate probability of failure for the launch vehicle which can then be determined by summing up the chances of failure of all of its subsystems. For launches of U.S.-built vehicles in the last 20 years, problems with the propulsion system represented a significant portion of all failures therefore addressing reliability during the design of a launch vehicle is paramount to ensuring a safe vehicle. The type of propulsion system (solids versus liquids) is not a discriminator; rather simplicity and redundancy are the keys to high design reliability for any system and launch vehicles are no exception.

With regard to commercial crew, at no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. Simply put, U.S. astronauts will not fly on any spaceflight vehicle until NASA is convinced it is safe to do so. NASA has unique expertise and history in this area, and a clearly demonstrated record of success in transporting crew. NASA will bring that experience to bear in the appropriate way to make sure that commercial crew transportation services are a success both programmatically, and with respect to safety. At no point in the development and acquisition of commercial crew transportation services will NASA compromise crew safety. For example, NASA will have in-depth insight of the vehicle design via NASA personnel who are embedded in the contractor's facility. Additionally, NASA will impose strict requirements and standards on all providers that will be carefully evaluated and reviewed at multiple stages before a vehicle system is certified by NASA for crewed flight.

At the highest level, the President and his staff, as well as NASA senior leadership, closely reviewed the Augustine Committee report, and came to the same conclusion as the committee: the human spaceflight program was on an unsustainable trajectory. To continue on the previous path we had to decide to either continue the ISS, support a program to get humans beyond LEO, or make even deeper cuts to other parts of NASA's budget. One key area that is a contributor to the unsustainable nature of the human spaceflight program is the size of the propulsion industrial base. Additionally, we would have had insufficient funding to advance the state of the art in any of the technology areas that we need to enable us to do new things in space, such as lowering the cost of access to space and developing close-loop life support, advanced propulsion technology, and radiation protection. The President recognized that what was truly needed for beyond LEO exploration was game-changing technologies; making the fundamental investments that will provide the foundation for the next half-century of American leadership in space exploration.

With regard to commercial crew, as has been stated earlier, safety is and always will be NASA's first core value. Simply put, U.S. astronauts will not fly on any spaceflight vehicle until NASA is convinced it is safe to do so.

*Question.* What will happen to the unique workforce that our Nation's defense programs rely upon for the future needs in the Solid Rocket Motor industry if this cancellation of the Ares program is preserved?

*Answer.* NASA, a discretionary funding-based civil space agency, is not responsible for primary support to the Nation's defense programs. If the Ares projects are cancelled, the DOD will have to fund an appropriately-sized SRM industrial capacity commensurate with its current and future requirements. NASA and DOD are jointly assessing the impacts and solution options. The Office of the Undersecretary of Defense for Industrial Policy is leading a SRM Industrial Base assessment in order to plan for this impact and adequately meet national security needs.

*Question.* What role do you see the Solid Rocket Motor industry playing in the President's requested plan? What timeframe would solid rocket work be available in the new plan so as to not have to layoff the entire workforce and shutter needed facilities?

*Answer.* Although NASA has almost 30-years of extensive experience with solid rocket motors on the space shuttle, if humans are to explore destinations beyond low-Earth orbit in the 2020–2025 timeframe, the Nation needs to aggressively bring about an affordable launch capability. The fiscal year 2011 budget request focuses on investing in technologies to improve the costs of liquid propulsion systems in an effort to reduce the overall cost of launch, as well as maintain the propulsion industrial base. NASA will begin heavy-lift vehicle system analyses on all launch vehicle concepts to determine the best affordable and reliable approach.

The fiscal year 2011 budget request does not provide specific funding for SRM development or direct production. However, NASA and DOD are jointly studying heavy lift launch and propulsion-related options in a different study, so NASA's future demand for SRBs is not yet clear. Additionally, any domestic company, including those who have been part of the Constellation program, can, if they choose, compete to be part of NASA's proposed commercial crew development program.

*Question.* In the technology development program account being created, there is funding for a new 1st stage liquid motor. Who is intended to be the customer using the new liquid first stage motor? How does the research on a new Liquid first stage engine impact the future of the solid rocket industry for NASA and DOD?

*Answer.* The fiscal year 2011 budget request funds NASA to develop affordable engines for use by multiple customers (NASA, other Government agencies, and commercial) with associated technologies to support those engine development activities. NASA plans to work closely with DOD and commercial entities to develop an affordable, highly reliable hydrocarbon engine that will have multiple users. While there are significant synergies for propulsion system development between NASA and DOD, negotiations are currently underway to formalize a mutually-beneficial development effort to meet the National needs.

As a part of normal program formulation activities, NASA will continue to examine the trade space with regard to heavy-lift vehicles for the next-generation human spaceflight system. The most recent NASA heavy lift study was conducted in November 2009, which resulted from recommendations of the Augustine Committee for NASA to move toward a "flexible path" human exploration. This study included variations of LOX/LH2 heavy lift vehicle architectures with solid rocket boosters and as well as LOX/Hydrocarbon heavy lift launch vehicle architectures. The LOX/Hydrocarbon vehicle concepts were less mature than the LOX/LH2 concepts at the time of the November study.



NASA plans to continue studying heavy-lift issues in partnership with the DOD to continue to mature the LOX/Hydrocarbon concepts and to assess potential commonality between NASA, DOD, and potential commercial needs with the primary figure of merit of as “affordability and operability.” As part of this ongoing review, NASA and DOD plan to perform an assessment of the industrial base, as required by Congress.

PRESIDENT’S APRIL 15 SPEECH IN FLORIDA

*Question.* When the President rolled out his plan for the future of NASA and the manned space program last week, he stated that one of the advantages in re-directing NASA and cancelling the program of record was that his new strategy “begins major work on building a new heavy lift rocket sooner, with a commitment to decide in 2015 on the specific heavy-lift rocket that will take us deeper into space. Can you please explain to me how waiting another 5 years to decide on what technology to use to get us beyond Low Earth Orbit will allow us to develop a heavy-lift capability sooner than what is currently planned with the Ares V? Can you provide a timeline that lays out the specific details how this new plan will be faster?”

*Answer.* NASA’s goal is to reduce costs and shorten development timeframes for future heavy-lift systems for human exploration. The Nation needs to aggressively bring about an affordable launch capability if humans are to explore destinations beyond low earth orbit in the 2020–2025 timeframe.

The fiscal year 2011 budget request includes funds for NASA to conduct the important research and development and analysis necessary to make an informed decision on a heavy-lift vehicle no later than 2015. A primary focus of this effort will be to conduct research and development on a U.S. first-stage hydrocarbon engine for potential use in heavy lift and other launch systems, as well as basic research in areas such as new propellants, advanced propulsion materials manufacturing techniques, combustion processes, propellant storage and control, and engine health monitoring. Additionally, NASA will initiate development and testing of in-space engines. Areas of focus could include a liquid oxygen/methane engine and lower-cost liquid oxygen/liquid hydrogen engines. This work will build on NASA’s recent R&D experience in this area, and the test articles will be viewed as a potential prototype for a subsequent operational engine that would be re-startable and capable of high acceleration and reliability. These technologies will increase our heavy-lift and other space propulsion capabilities and is intended to significantly lower costs—with the clear goal of taking us farther and faster into space consistent with safety and mission success criteria. In support of this initiative, NASA will explore cooperative efforts with the DOD and also develop a competitive process for allocating a small portion of these funds to universities and other non-governmental organizations. This research effort along with many of our new technology initiatives will be coordinated with the broader agency technology initiative led by NASA’s new Chief Technologist.

In addition to investing in transformative heavy-lift technologies, on April 15, 2010, the President called upon NASA to select a rocket design no later than 2015 and then begin to build it; a decision no later than 2015 means that major work on building a new heavy-lift rocket will likely begin 2 years sooner than in the previous plan.

NASA is in the process of assessing the best approach for implementing this new direction. The initial strategy employs a rigorous systems analysis effort starting at the overall launch vehicle system level to define the top-level requirements for the heavy lift launch system that can support multiple end users. This includes setting performance goals, identifying lift capability, propellant suite for each launch vehicle stage as examples of top-level requirements.

On May 3, 2010, NASA issued a Request for Information (RFI) seeking general information regarding potential launch or space transportation architectures (expendable, reusable, or a hybrid system) that could be utilized by multiple customers (e.g., NASA, commercial and other Government agencies). The RFI solicits information regarding propulsion system characteristics; technology challenges for propulsion systems; as well as innovative methods to manage a heavy-lift development program to include effective and affordable business practices. The RFI is open to the broad space community, including commercial, other Government agencies and academia. Information obtained from the RFI will be used for planning and acquisition-strategy development for current heavy-lift planning activities, funded in the fiscal year 2010 Consolidated Appropriations Act (Public Law 111–117).

Related to the RFI, on May 19, 2010, NASA posted a draft Broad Area Announcement (BAA). This draft BAA is soliciting proposals for a Heavy Lift and Propulsion Technology Trade study and seeks industry input on technical solutions in support

of heavy lift system concepts studies. This draft BAA requests offerors to expand upon the previous NASA technical assessments. The final BAA solicitation, issued on June 30, 2010, incorporates information obtained via the RFI as well as inputs from an Exploration industry workshop held in May 2010. These concept studies will include architecture assessments of a variety of potential heavy lift launch vehicles and in-space vehicle architectures employing various propulsion combinations and how they can be deployed to meet multiple mission objectives. All possible launch vehicle concepts will be evaluated to identify the best configuration to meet the Nation's needs. In addition, the studies performed during the execution of the BAA will identify technology gaps for heavy lift and propulsion systems to influence the suite of space launch propulsion technologies that need to be addressed as part of a development program. (Please note, the BAA is addressing fiscal year 2010 planned activities which may also contribute to future plans and activities.)

The first major decision point for a heavy lift launch vehicle is anticipated to be in March 2011, at the completion of the BAA study effort, where NASA will have defined the optimum lift capability to meet multiple end users (NASA, DOD, and commercial) propellant suite for the launch vehicle stages, engine thrust level as well as other launch vehicle performance goals. At this point, without additional study funding, NASA will have the necessary information to make an informed decision to start the development of a heavy lift launch vehicle, pending adequate funding is available for the follow on heavy-lift vehicle development effort.

*Question.* When the President submitted his budget in February, it was thought by many that he was proposing cancelling the entire Project Constellation Program to include the Orion crew capsule? Can you provide insight as to why the change? In other words, what happened between February and April of this year that made him change his mind? Was the decision based on a cost analysis or some new requirement? To that end, did NASA program managers and cost analysts review the program at that time to compare the pros and cons of a full Orion crew capsule versus one that will only be used as an emergency escape vehicle?

*Answer.* The President clarified our position on Orion during his April 15 speech at Kennedy Space Center, Florida. NASA's efforts to develop an emergency rescue vehicle would be based on the good work already completed on the Orion crew capsule and would focus the effort to provide a simpler and more efficient design that would provide crew emergency escape from the ISS and serve as part of the technical foundation for advanced spacecraft to be used in future deep space missions. This approach also would preserve a number of critical high-tech industry jobs in key disciplines needed for our future deep space exploration program. NASA has put together a formulation team including Headquarters and Center personnel to develop a baseline approach that meets these requirements, balanced with the other priorities proposed in the President's fiscal year 2011 budget request. NASA will provide this information to Congress, including estimated costs, as soon as they are finalized.

*Question.* Since the President is proposing an increase in the NASA budget of \$6 billion over the next 5 years, the change in NASA emphasis is clearly not about trying to reduce deficit, correct? With the overall budget increasing, how much does the exploration portion for the budget change? If the previous exploration budget did not result in a sustainable program, how does a major reduction of \$2 billion this year for exploration and \$6 billion over the next 4 years alleviate that problem? Doesn't such a major reduction in exploration budget substantiate the public concern that we are on a path to nowhere?

*Answer.* In the fiscal year 2011 President's budget request, the requested budget for exploration is almost \$500 million more than the fiscal year 2010 enacted level, and the projected budget for exploration in fiscal year 2015 is \$1.4 billion higher than the fiscal year 2010 enacted level—an increase of 37 percent in 5 years. While the fiscal year 2011 budget request, reflects less funding for exploration than anticipated in the fiscal year 2010 request, funding for NASA as a whole increases \$6 billion over 5 years despite a tough budget environment.

The fiscal year 2011 budget request outlines an innovative course for human space exploration, but does not change our goal—extending human presence throughout our solar system. NASA will lead the Nation on this new course of discovery and innovation, providing the technologies, capabilities and infrastructure required for sustainable, affordable human presence in space. NASA's investment in gaining critical knowledge about future destinations for human exploration, as well as transformational technology development and demonstration will serve as the foundation of NASA's ongoing space exploration effort, broadening opportunities for crewed missions to explore destinations in our solar system that we have not been to before.

The President stated in his speech at KSC on April 15, 2010, that, “Early in the next decade, a set of crewed flights will test and prove the systems required for exploration beyond low Earth orbit. And by 2025, we expect new spacecraft designed for long journeys to allow us to begin the first-ever crewed missions beyond the Moon into deep space. So we’ll start—we’ll start by sending astronauts to an asteroid for the first time in history. By the mid-2030s, I believe we can send humans to orbit Mars and return them safely to Earth. And a landing on Mars will follow. And I expect to be around to see it.”

With a NEO and Mars as the key long-term destinations for NASA, we must begin to identify missing capabilities needed for such a mission. Mass is a huge barrier for a Mars mission because higher mass drives up cost, and it slows down progress. More mass without advanced technologies, such as advanced propulsion techniques or ways to prevent fuel boil-off in space, means that it will take more trips to lift resources into LEO for Mars missions and substantially more flights required to transport required resources to Mars. The same sort of scenarios also apply to missions for other beyond-LEO missions—more mass without advanced technologies will only serve to drive up costs and extend schedule, pushing our chances of breaking free of LEO even further into the future.

In summary, while a timeline and budget plan for a manned Mars and other beyond-LEO missions is still in work, NASA believes that the benefits of the aforementioned technology development efforts along with anticipated infrastructure efficiencies will lead to sustainable manned missions to beyond-LEO destinations sooner and at less cost than missions currently envisioned under the Constellation Program.

*Question.* Please quantify how the new plan creates 2,500 more jobs than Constellation would have by 2012? Since the new plan is advertised to be so good at creating new jobs in general and in Florida in particular, why is a \$40 million transition program needed to retrain the displaced aerospace workers at Kennedy Space Center? Is this also going to be available in other States impacted by this decision?

*Answer.* The fiscal year 2010 plan, which included retirement of the space shuttle and little need for build-up of workforce for Constellation launches, shows a drop of nearly 7,000 in total workforce demand in Florida, from just over 14,000 total contractors needed in 2010 to approximately 8,500 needed in 2012. These estimates include direct labor and support labor in Florida, both contractor and civil servant, for both fiscal year 2010 and fiscal year 2011 President’s budget request (PBR) plans.

The fiscal year 2011 PBR plan extends the space shuttle 3 months, and locates a large amount of work in Florida, including but not limited to the 21st Century Space Complex construction and the program office for the Commercial Crew Program. Additionally, NASA’s proposed plan identifies Kennedy Space Center as the deputy program office for the new Flagship Technology Demo program, which will bring some additional workforce demand. The estimates are that workforce demand for the fiscal year 2011 PBR plan will begin and remain higher than the fiscal year 2010 plan, starting at nearly 15,000 needed and falling to approximately 12,000 needed in 2012. This is an increase of as much as 3,500 over the fiscal year 2010 plan, depending on assumptions of how much design and manufacturing work the commercial crew providers locate in Florida.

NASA will continue to refine these estimates as program definition matures in preparation for the August 2010 Workforce Transition Strategy report submitted to Congress.

The space shuttle program employs thousands of people in the Kennedy Space Center area. While the proposed fiscal year 2011 programs and funding planned for the Kennedy Space Center will create more jobs than the previous plans, NASA anticipates job losses in the community by the end of space shuttle program. The transition funding mentioned is intended to mitigate the impact of this loss.

The administration has recently announced a comprehensive initiative, funded at a level up to \$100 million, to support economic growth and job training in Florida and other regions affected the shuttle retirement and other programmatic changes in NASA’s exploration program. While the initiative began on April 15, 2010, when the President announced a \$40 million initiative to aid the areas around Kennedy Space Center, the Task Force established pursuant to the President’s direction was also directed to prepare a plan that “explores future workforce and economic development activities that could be undertaken for affected aerospace communities in other States, as appropriate.”

Several States and county officials have been applying for workforce-related grants through existing Federal programs. On June 2, 2010, Secretary of Labor Solis announced the award of an additional \$15 million in workforce re-training funds for aerospace workers in Brevard County, Florida. In addition, on April 30,

2010, the Department of Labor announced a \$1.2 million grant to assist approximately 200 workers affected by layoffs at ATK Launch systems in Corinne, Utah, in connection with the transition of the space shuttle and Constellation programs. It is our understanding that the communities impacted within the State of Texas have also applied for assistance from the Department of Labor.

*Question.* The latest proposal by the President changes the Orion crew capsule development effort to provide stand-by emergency escape capabilities for the space station—thereby reducing our reliance on foreign providers. Does this in any way impact our ability to send U.S. Astronauts into space? If not, how much are we planning on spending on this “empty-shell” capsule? Isn’t the net result an expensive crew escape vehicle that duplicates what Soyuz already does and eliminates capability of using Orion for beyond Low Earth Orbit (LEO) missions? Does this change in Orion mission change the potential termination liability to Lockheed-Martin if Orion were to have been cancelled as proposed in original budget submittal from the President?

*Answer.* NASA will provide details of this plan, including estimated costs, as soon as they are finalized.

In addition to developing a U.S. commercial crew capability, creating an American-made crew escape capability will improve our ability of sending astronauts into space because it will lessen our dependence on foreign providers. Currently, NASA has purchased Soyuz seats through 2014 and it has legislative authority to purchase additional seats through 2016. However, if we need to purchase seats beyond July 1, 2016, NASA would need to secure legislative relief from the Iranian North Korean and Syria Nonproliferation Act.

While it is likely that the President’s proposed change to the Orion crew capsule would change Lockheed Martin’s current estimate of potential termination liability, it is too early in the process to estimate the difference.

*Question.* In late 1990s and early 2000s NASA embarked on game changing technology developments and spiral development of launch vehicles to significantly reduce cost of access to space, as part of Next Generation Launch Technology (NGLT) and 2nd Generation Launch Vehicle (2ndGen) programs. These initiatives resulted in the spending of billions of dollars on X-33 and X-34 single stage to orbit (SSTO) vehicles, RS-84 LOX/RP engine, and Orbital Space Plane (OSP), to mention a few, all of which were canceled. How is the current plan going to be successful when the same approach failed a decade ago? Why do we want to spend \$3 billion on heavy lift technology development of a LOX/RP engine that is the same technology that flew on Saturn V 40 years ago? How is LOX/RP engine development considered game changing technology development?

*Answer.* Several recently released reports have described the agency’s current plans for development of vehicles to access to LEO as being unsustainable for various reasons. The Office of Science Technology and Policy (OSTP) also performed an assessment of the current U.S. space launch industry (published in a report dated December 22, 2009) and came to a key conclusion: that although “. . . the U.S. space launch propulsion industrial base provides a diverse range of technologies and more than adequate production capacity . . .” the current U.S. industrial base “. . . is under significant stress, due largely to low demand.” The OSTP report further identifies a key driver in the loss of U.S. space launch services to foreign providers is due to development costs and overall performance. This situation has numerous serious consequences for the Nation, including loss of the global space launch market to foreign providers to the atrophy of the propulsion systems supply chain and associated loss of workforce skills and sub-tier providers. This imbalance between supply and demand could lead to the erosion of the Nation’s technical leadership should this overcapacity and low demand scenario be allowed to continue.

An approach to solving this imbalance is to direct the U.S. Government to invest in space launch propulsion-related activities that will “identify potential breakthrough cost savings or performance opportunities in launch vehicle propulsion.” (OSTP December 22, 2009 report.)

*Question.* Orion is part of Project Constellation. As such, it is being designed and developed concurrently with other major components of the program. I assume it is being designed to fly on an Ares rocket. Since the proposed plan appears to cancel Ares, are there any concerns that designing the capsule independently of the booster will create mating problems or interoperability problems at some point in the future?

*Answer.* The Orion Crew Exploration Vehicle is being designed—and will continue to be designed until a change is authorized by Congress—to fly on an Ares I launch vehicle. In the President’s proposed plan, the emergency return vehicle (ERV) variant of Orion would be launched on an existing expendable launch vehicle system. Integration of the ERV with its launch vehicle (including factors such as physical

mating interfaces, interoperability, induced loads environments, and rocket lift capability) will be extremely important to assess in detail as the design and implementation moves forward, assuming Congress approves the President's budget recommendation. Preliminary, low-fidelity assessments to date suggest that there are feasible options for launching an ERV on an existing rocket. Design-driving loads and environments induced by Ares I, for which Orion is currently designed, are expected to envelope those for existing rockets. Thus, major problems with launch vehicle integration are not expected.

*Question.* Specifically related to cost, I would also like to know NASA's plans for operating the Orion crew capsule. Can you tell me how expensive it will be to launch the escape capsule? Would an Orion escape capsule be redundant seeing the Russian Soyuz capsule that our American astronauts would still need to use to get to the ISS would be docked and capable of being used as an emergency capsule?

*Answer.* NASA has put together a formulation team including Headquarters and Center personnel to develop a baseline approach for the ERV. NASA will provide details of this plan, including estimated costs, as soon as they are finalized. However, in general, the objective is to create an American crew escape capability that will increase the safety of our crews on the space station, reduce our dependence on foreign providers, and simplify requirements for other commercial crew providers. This effort will also help establish a technological foundation for future exploration spacecraft needed for human missions beyond low-Earth orbit and will preserve some critical high-tech contractor jobs in Colorado, Texas, and Florida.

*Question.* I imagine the escape vehicle would need to be periodically inspected and replaced to ensure it is operational in the critical time of need. How often would the Orion emergency escape capsule need to be replaced once docked to the ISS? To go beyond Low Earth Orbit, will another crew capsule need to be developed, i.e. will Orion have the capability of being used for anything other than an emergency vehicle for the ISS? How much money is saved by restricting the Orion crew capsule vice the current program of record? Does the analysis for any potential cost savings take into account the money NASA would provide private industry to develop a different manned crew capsule?

*Answer.* The ERV would have to be maintained in a safe and ready state during its entire stay at the ISS. Indeed, periodic inspections and checkouts by the ground and/or ISS crew will likely be required, but details for such will not be established until design work commences. The current Orion Crew Exploration Vehicle is being designed to stay docked to ISS for up to 210 days. In contrast, the ERV would be designed to at least equal this life, but a longer docked life is being assessed as a goal for the ERV requirements. Initially, the ERV would be designed only for the ISS emergency return mission. However, per the President's proposed plan, it will also serve as a technical foundation for a future crew exploration vehicle. The specific extensibility of ERV technologies to the future vehicle(s) is currently being assessed. A bottoms-up cost estimate for the ERV is in work, along with the program requirements, acquisition plan, and implementation strategy. Results are expected to be completed over the next couple of months, and cost comparisons with the existing Orion project will be available at that time.

#### FUTURE OF CONSTELLATION

*Question.* General Bolden, in a meeting with two of my colleagues in the Utah Congressional Delegation on Friday April 16, you reportedly clarified that, as far as you are concerned, the Constellation program was not dead under the administration's new plan. You reportedly said that you wished that the term "cancelled" could be removed from the current debate. What do you mean, exactly, by stating that you don't think Constellation is dead? It's clear that you would kill the Ares solid rockets, would you not? You would kill everything except a scaled-down Orion space capsule? Is that one piece of hardware from Constellation—the Orion capsule, sufficient for you to consider that Constellation lives? Please define what you mean by Constellation is still alive?

*Answer.* Following the release of the fiscal year 2011 budget request, NASA established six study teams within ESMD to ensure we understand the steps (and the implications of those steps) that would need to be taken for an orderly transition of the Constellation program and to plan for the implementation of the new Exploration program. The work undertaken by these teams is a necessary part of that planning. One team, the Constellation Transition team, has initiated a broad survey of current workforce, contracts, facilities, property, security, knowledge capture, information technology, and other Government agency interface issues to determine what infrastructure and hardware could be used by the new programs and projects.

Despite the early nature of these planning efforts, NASA is optimistic that there will be many capabilities developed by the Constellation program that will feed forward into the new programs. For example, options using the Orion capsule are currently being pursued for autonomous rendezvous and docking; and many of the capabilities we are pursuing at a low level through our Exploration Technology Development program are directly applicable to the new programs. Other important areas that will enable further advancement in the new initiative areas are: advanced robotics, propulsion development and test, friction stir welding, autonomous landing and hazard avoidance, and entry, descent, and landing technologies.

Additionally, on April 15, 2010, President Obama laid out the goals and strategies for his new vision for NASA. In doing so, he directed NASA to build on the good work already completed on the Orion crew capsule and focus the effort to provide a simpler and more efficient design that would provide crew emergency escape from the ISS and serve as part of the technical foundation for advanced spacecraft to be used in future deep space missions. NASA plans to be able to launch this vehicle within the next few years, creating an American crew escape capability that will increase the safety of our crews on the space station, reduce our dependence on foreign providers, and simplify requirements for other commercial crew providers. This approach also will preserve a number of critical high-tech industry jobs in key disciplines needed for our future deep space exploration program.

#### NASA'S GOALS

*Question.* General Bolden, one of the biggest criticisms of the administration's and NASA's old and new plan is the lack of a clear goal for all of this new science and technology that you purport to develop and fund on the carcass of Constellation. The President said he hopes to live to see the day when the United States has a mission to Mars, or to an asteroid. That's all well and good, but that's so vague without a specific roadmap on how to get there. At least Constellation had a clear goal; back to the moon as a stepping stone for perfecting long-term basing in space, and then on to Mars. Does this new, revised plan have a specific goal, with specific timelines or milestones we can look to in judging its effectiveness?

*Answer.* Under the fiscal year 2011 budget proposal, NASA would build technologies to support a sequence of deep-space destinations matched to growing capabilities, progressing step-by-step, beginning with crewed flight tests—perhaps a circumlunar mission—early next decade of vehicles for human exploration beyond LEO, a human mission to an asteroid by 2025, and a human mission to orbit Mars and return safely to Earth by the 2030s. A date for a manned lunar mission, however, has not been established.

NASA's ESMD would lead the Nation on this new course of discovery and innovation, providing the technologies, capabilities and infrastructure required for sustainable, affordable human presence in space. Many of these capabilities have been recommended consistently for at least 24 years in national level reports of committees and commissions addressing future human space exploration. ESMD's investment in gaining critical knowledge about future destinations for human exploration, as well as transformational technology development and demonstration will serve as the foundation of NASA's ongoing space exploration effort, broadening opportunities for crewed missions to explore destinations in our solar system that we have not been to before. We have not sent people beyond low-Earth orbit in 38 years, and this budget gives us the great opportunity to focus on scouting and learning more about destinations to further explore our solar system and to develop the game-changing technologies that will take us there. It is important that we pursue these objectives to continue leading the world in human space exploration.

Pursuant to the President's proposed new course, NASA has initiated planning activities to be able to effectively and efficiently implement these new activities in a timely manner upon Congressional enactment of the fiscal year 2011 budget. In April, NASA outlined for the subcommittee the agency's planned major program assignments across the agency's centers for new or extended activities proposed as part of the President's fiscal year 2011 budget request. These planned assignments build on the deep knowledge and expertise that NASA has built up over five decades, recognize the wealth of experience, commitment, and expertise resident at the NASA centers, and expand upon the strengths at each center. Additionally, following the release of the fiscal year 2011 budget request, NASA established study teams within ESMD to ensure we understand the steps (and the implications of those steps) that would need to be taken for an orderly transition of the Constellation Program and to plan for the implementation of the new initiatives in the Exploration program. The work undertaken by these teams is a necessary part of that planning.

NASA is taking prudent steps to plan for the new initiatives included in the fiscal year 2011 budget request, including Requests for Information (RFI), workshops, and preliminary studies. NASA is eager to seek external input from industry, academia, and other partners, and plans to accomplish this via a series of RFIs and industry workshops conducted this spring and into the summer. Doing so will ensure that NASA receives important feedback from our space partners before it begins to finalize its implementation plans for the proposed technology demonstrations and human spaceflight systems development activities that will be supported by the fiscal year 2011 budget, once approved by Congress. During CY 2010, NASA plans to issue a series of program formulation documents seeking input from the broader space community.

Finally, NASA also has established the Human Exploration Framework Team (HEFT) to serve as a cross-agency planning activity. The team is being led by the ESMD and staffed with technical leaders from across NASA centers. The team is focused on developing and reviewing the integrated set of requirements and technologies required for future human spaceflight missions to many destinations, including Mars. As part of its broad integration charter, HEFT will develop implementation recommendations on the performance and pacing requirements for the technologies needed for future human exploration missions using “design reference missions,” or DRMs. These DRMs will be the basis for validating capabilities and missions for 5-, 10-, and 15-year horizons, with milestones including crewed missions beyond the Moon into deep space by 2025, sending astronauts to an asteroid, and eventually landing on Mars. NASA expects to have initial products from the HEFT team this summer.

#### FUTURE OF SOLID ROCKETS AND ARES TECHNOLOGY

*Question.* General Bolden: Do you foresee any opportunity for NASA to avail itself of the Ares solid rocket technology under the new revised announcement by the President? Will Ares be considered eligible to compete for any of the \$3.1 billion he announced for research and development into a heavy-lift vehicle?

*Answer.* NASA will begin heavy lift vehicle system analyses on various launch vehicle concepts to determine the best approach that meets the affordability and reliability figures of merit. The administration is not opposed to using solid rocket motors. Concept heavy-lift launch vehicles could include solid rocket motors as well as liquid strap-ons and all concepts will be evaluated during a rigorous systems analysis effort to identify the best heavy-lift configuration to meet the Nation’s needs.

#### QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

##### ROCKET TESTING COMPLEX

*Question.* Administrator Bolden, the budget includes more than \$2 billion over the next 5 years for development of a 21st Century Launch Complex at Kennedy Space Center. I am concerned that we are building a 21st Century Launch Complex, but will be stuck with a 20th century engine testing complex. No rocket will be launched from Kennedy without first undergoing extensive testing at Stennis. Yet there are no funds in the budget request for facility upgrades at Stennis. Given NASA’s interest in safety, shouldn’t we invest a proportional level of resources into NASA’s premier engine testing complex? What upgrades would you propose to make Stennis a 21st century rocket testing complex?

*Answer.* NASA is providing \$13.8 million in American Recovery and Reinvestment Act appropriations for the following activities at Stennis Space Center (SSC): (1) test stand upgrades to support commercial AJ26 engine testing; (2) modernization of the high pressure gas facilities that support the test stands; (3) completion of test complex communication systems; and (4) repair of the Test A2 liquid oxygen/hydrogen delivery system. These activities can support both NASA and commercial engine development activities. In the initial fiscal year 2010 Operating Plan, NASA added \$3.0 million for the A-3 test stand, increasing the budget from \$16.9 million to \$19.8 million in fiscal year 2010. The additional funds have enabled work to continue on this project.

Beyond these efforts, NASA is working to determine what further investments are to be made at SSC to support launch vehicle testing. The Exploration Systems Mission Directorate has identified preliminary estimates for Stennis facility requirements in support of Heavy Lift and Propulsion Technology, which involve test stand investments that are expected to be needed for all heavy-lift options being addressed. While preliminary assessments are still being refined, NASA currently expects to conduct fiscal year 2011 effort in the following areas:

- Continued Construction of A-3 Rocket Propulsion Test Facility.
- E-Complex (RP component testing); funding will support test stand design activities and long lead item ordering.
- B2 Test Facility (RP engine testing); funding will support design activities, refurbishment, long-lead ordering.
- LOX/LH2 engine testing; Exploration Systems will likely recommend LH2 testing of an existing engine but it will not require facility mods.

## HEAVY LIFT VEHICLE

*Question.* Mr. Administrator, when we met in October, I was very pleased to hear your enthusiasm for NASA's role in development of a Heavy Lift Vehicle and for the unique capabilities the A-3 test stand at Stennis is going to provide for the engine testing of these vehicles. As NASA moves forward with research, development and testing of a Heavy Lift Vehicle, what will be the role of this unique national asset, the A-3 test stand, and is completion of its construction critical to the development of a Heavy Lift Vehicle?

*Answer.* NASA made a determination in June to complete the A-3 test stand. NASA is in the early planning stages of identifying the preliminary engine testing that will be required within the heavy lift program, and specific test facilities have not been identified to date.

## TESTING OF COMMERCIAL LAUNCH VEHICLES

*Question.* Given the proposed focus of allowing the private sector to develop and operate Low Earth Orbit launch vehicles and your commitment to safety, it seems NASA's testing facilities would take on an increased significance. What are your plans to ensure testing capabilities and facilities are adequately funded for the future, and what role could you see Stennis Space Center playing in the testing of commercial launch vehicles?

*Answer.* NASA is providing \$13.8 million in American Recovery and Reinvestment Act appropriations for the following activities at Stennis Space Center (SSC): (1) test stand upgrades to support commercial AJ26 engine testing; (2) modernization of the high pressure gas facilities that support the test stands; (3) completion of test complex communication systems; and (4) repair of the Test A2 liquid oxygen/hydrogen delivery system. These activities can support both NASA and commercial engine development activities.

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- LOX/LH2 engine testing; Exploration Systems will likely recommend LH2 testing of an existing engine but it will not require facility mods.

NASA's upgrades at SSC can support both Government and commercial launch vehicle testing, and the agency will make the facility available as an option for commercial vendors.

## HEAVY LIFT VEHICLE

*Question.* Administrator Bolden, President Obama said in his speech last week that he is committed to choosing a final design for the new Heavy Lift Vehicle no later than 2015. You and I agreed in our October meeting that development of a Heavy Lift Vehicle is one of the most critical initiatives NASA will take on in the coming years. Would choosing a Heavy Lift Vehicle design earlier than 2015, say in 2011 or 2012, accelerate the President's proposals and fill some of the Space Center mission gaps that have members of this body so concerned? This seems like it could be a major part of a fairly reasonable compromise between the President's goals and the wishes of those in Congress who are concerned about the cancellation of Constellation.



Answer. NASA's goal is to reduce costs and shorten development timeframes for future heavy-lift systems for human exploration. The Nation needs to aggressively bring about an affordable launch capability if humans are to explore destinations beyond low-Earth orbit in the 2020–2025 timeframe. Thus, as noted in the question, on April 15, 2010, the President called upon NASA to select a rocket design no later than 2015 and then begin to build it; a decision no later than 2015 means that major work on building a new heavy-lift rocket will likely begin 2 years sooner than in the previous plan. NASA is in the process of assessing the best approach for implementing this new direction. The initial strategy employs a rigorous systems analysis effort starting at the overall launch vehicle system level to define the top-level requirements for the heavy lift launch system that can support multiple end users. This includes setting performance goals, identifying lift capability, propellant suite for each launch vehicle stage as examples of top-level requirements.

On May 3, 2010, NASA issued a Request for Information (RFI) seeking general information regarding potential launch or space transportation architectures (expendable, reusable, or a hybrid system) that could be utilized by multiple customers (e.g., NASA, commercial and other Government agencies). The RFI solicits information regarding propulsion system characteristics; technology challenges for propulsion systems; as well as innovative methods to manage a heavy-lift development program to include effective and affordable business practices. The RFI is open to the broad space community, including commercial, other Government agencies and academia. Information obtained from the RFI will be used for planning and acquisition-strategy development for current heavy-lift planning activities, funded in the fiscal year 2010 Consolidated Appropriations Act (Public Law 111–117).

Related to the RFI, on June 30, 2010 NASA posted a Broad Area Announcement (BAA). This BAA is soliciting proposals for a Heavy Lift and Propulsion Technology Trade study and seeks industry input on technical solutions in support of heavy lift system concepts studies. It requests that offerors expand upon previous NASA technical assessments and incorporates information obtained via the RFI as well as inputs from an Exploration industry workshop held in May 2010. These concept studies will include architecture assessments of a variety of potential heavy lift launch vehicles and in-space vehicle architectures employing various propulsion combinations and how they can be deployed to meet multiple mission objectives. All possible launch vehicle concepts will be evaluated to identify the best configuration to meet the Nation's needs. In addition, the studies performed during the execution of the BAA will identify technology gaps for heavy lift and propulsion systems to influence the suite of space launch propulsion technologies that need to be addressed as part of a development program. (Please note, the BAA is addressing fiscal year 2010 planned activities which may also contribute to future plans and activities.)

The first major milestone for a heavy lift launch vehicle is anticipated to be in March 2011, at the completion of the BAA study effort, where NASA will have defined the optimum lift capability to meet multiple end users (NASA, DOD, and commercial) propellant suite for the launch vehicle stages, engine thrust level as well as other launch vehicle performance goals.

#### SAFETY AND MISSION ASSURANCE TECHNICAL AUTHORITY

*Question.* The Center Management and Operations Program, Safety and Mission Assurance (SMA) Technical Authority fiscal year 2011 budget has an increase of \$4 million over the fiscal year 2010 enacted level (\$51.6 million fiscal year 2010 enacted to \$55.5 million fiscal year 2011), however, Stennis Space Center, who received funding in fiscal year 2010 is not included in this portion of the President's fiscal year 2011 budget. Stennis is the only center to receive funding in fiscal year 2010 and not be included in the fiscal year 2011 budget. Your fiscal year 2010 budget projected continued funding for SMA Technical Authority at Stennis Space Center? What has changed to cause that funding to no longer be necessary?

Answer. The table included on Page CROSS—12 of the fiscal year 2011 budget estimates are incorrect. The total shown for SMA Technical Authority is correct, but the Stennis Space Center line was inadvertently omitted from the table. The correct table is shown below:

[In millions]

SMA Technical Authority	2010 Enacted	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015
Ames Research Center .....	\$3.4	\$3.8	\$3.9	\$4.1	\$4.2	\$4.4
Dryden Flight Research Center .....	\$4.6	\$4.9	\$5.0	\$5.2	\$5.4	\$5.6
Glenn Research Center .....	\$2.1	\$2.2	\$2.3	\$2.4	\$2.5	\$2.6
Goddard Space Flight Center .....	\$12.6	\$14.5	\$15.1	\$15.8	\$16.4	\$17.1

[In millions]

SMA Technical Authority	2010 Enacted	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015
Johnson Space Center .....	\$6.8	\$6.6	\$6.8	\$7.1	\$7.3	\$7.6
Kennedy Space Center .....	\$9.3	\$10.7	\$11.0	\$11.3	\$11.6	\$11.9
Langley Research Center .....	\$3.1	\$3.2	\$3.3	\$3.4	\$3.6	\$3.7
Marshall Space Flight Center .....	\$8.2	\$8.5	\$8.8	\$9.2	\$9.4	\$9.8
Stennis Space Center .....	\$1.3	\$1.4	\$1.4	\$1.5	\$1.5	\$1.5
Total .....	\$51.6	\$55.6	\$57.6	\$59.9	\$62.0	\$64.2

Note.—Totals may not sum precisely due to rounding.

#### QUESTIONS SUBMITTED TO JOHN C. FROST

#### QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

##### SPACE STATION SAFETY AND SUSTAINABILITY

*Question.* On page two of your Annual Report for 2009, it is stated: “While many threats impact the safety of the astronauts and the ISS, one of the biggest challenges is resupply and sustainability. A combination of shuttle, Soyuz and Progress flights has performed this mission admirably over the past 6 years.” It went on to describe NASA plans to develop commercial Cargo Resupply Services, as well as developments of resupply capabilities by the European and Japanese space agencies, and express “satisfaction” at the progress being made in developing those capabilities. Beyond that, there is not much said about space station safety and sustainability in your report. Elsewhere in your report, and in the previous year’s report, your panel states its view that continued shuttle flights beyond the planned termination date of 2010 is “unwise.” You don’t say it is “unsafe,” as many media reports and others have claimed.

I presume that, if the Panel felt the space shuttle was “unsafe” you would have recommended it stop flying immediately. Is that a correct assumption?

*Answer.* Safety is a concept that only has meaning in a comparative sense. No significant activity, especially one in space, is free of risk. The question to be asked is whether the anticipated risk exceeds that which the program has found as acceptable. If the ASAP felt that the risk involved in continuing to fly the shuttle to complete its manifest was inconsistent with the level NASA had judged as acceptable, or if the risks were unnecessary or inconsistent with policies and procedures that NASA had described as applicable, the ASAP would have certainly informed NASA and Congress of that fact. Our reports to Congress have consistently provided the assessment that while the shuttle does not, and cannot, offer the degree of safety that a modern, safety optimized vehicle can provide, given the scrupulous attention to detail and extraordinary care NASA has been applying to its support, it is capable of completing its assigned missions with a risk that NASA has long accepted.

*Question.* During questioning following your verbal testimony, you claimed the shuttle was unsafe simply because each flight increases the odds of an accident on the next flight, not because each shuttle deteriorates in an unsafe manner from one flight to the next. This analysis is not included in any ASAP report. Please detail extensively any reasons or rationale ASAP considers shuttle flights beyond the planned termination date of 2010 to be “unsafe” or “unwise.”

*Answer.* The ASAP does not believe that “each flight increases the odds of an accident on the next flight”. As I stated in my testimony, because the shuttle’s systems have not exhibited signs of an imminent “wear out”, its short term risk is thought to be relatively steady. The increasing risk that I referred to in my testimony was the accumulation of risk over time with each launch as the shuttle’s safety systems are challenged more and more times. Statistically, this can be equated to rolling dice. The probability of eventually rolling snake eyes is proportional to the number of times you roll the dice. That being said, the Shuttle certainly is an aging system which, over the years, has had desirable safety improvements tabled or only partially implemented because of its limited remaining service life. The risk decisions behind those choices would need to be reexamined were the shuttle to continue to fly for any significant extended period. Additionally, many Shuttle components are gradually reaching the end of their safe use life. These components would also require evaluation, test and potential replacement. The Columbia Accident Investigation Board recognized that this process was both natural and inevitable and there-

fore recommended that if the shuttle were to be extended that it go through a rigorous recertification program. We agree.

*Question.* It is clear that no thorough and complete analysis has been done by NASA to ensure that the basic space station systems, including life support systems, aboard the ISS will be able to function through 2020 without additional spares, replacements, or refurbishment. It is also unclear whether any such items that might be needed are of a size and weight that can only be delivered by the space shuttle (things like spare radiators or solar arrays, which are essential for power and thermal control of the station.)

Shouldn't this be an issue of concern to the Aerospace Safety Advisory Panel?

*Answer.* We agree and have begun a more detailed look at these issues. The ISS life extension is significant and could have broad safety implications.

*Question.* Have you begun any review of this issue or requested information from NASA, in view of the decision to extend the station through at least 2020?

*Answer.* While the Panel has not performed a detailed assessment of an ISS life extension, the Panel did provide one member of a congressionally mandated cross functional review in 2007 of the space station survivability given the various risks to which it is exposed. That review concluded that the largest threat to ISS survivability was Micrometeorite/Orbital Debris impact. Recommendations were made to minimize that risk. The ASAP has now begun to look at the various issues that are involved in the ISS life extension.

*Question.* In your report for 2009, you mention the Safety and Mission Assurance Technical Excellence Program (STEP) and state "One STEP goal is to transition the Safety and Mission Assurance professionals' focus from an operating focus for shuttle and space station to a design focus for building the next generation of manned space vehicles."

Given a decision to extend the station through 2020, shouldn't there remain a focus by the STEP program on space station safety issues?

*Answer.* Yes, recent programmatic changes, including the ISS life extension, will require adjustments in the focus of the STEP Program.

*Question.* Which safety issues in particular should be assessed?

*Answer.* Significant changes are being proposed in the role that NASA personnel play in the research and development, acquisition, and operation of space programs. The proposed use of commercial providers for crew transport in particular would require a very different approach to verification, validation, and certification than NASA has traditionally used. Once policies to address these requirements are solidified, significant changes in the training, allocation, and organization of NASA personnel may be required. STEP will need to be adjusted accordingly.

#### HUMAN RATING REQUIREMENTS—COMMERCIAL AND SOYUZ

*Question.* The ASAP Report addressed the issue of Human Rating Requirements for commercial crew capabilities, which had been raised as an option during the Augustine panel review—a review of which the report was rather critical. While a focus by the panel on the development of those requirements is appropriate, a statement made in that section of the report regarding potential international crew transportation services raises significant concern. The report (on page 6) states: "International transportation service that would extend beyond that currently in use (Russia) should be evaluated against the same performance standard as COTS human transportation services from U.S. Vendors." Obviously, without actually saying it, the reference is to the Russian Soyuz crew transportation system.

A reading of that language suggests that the Soyuz is exempt from "the same performance standard as COTS human transportation services." What would the basis be for that exemption?

*Answer.* The Soyuz has already passed through the "gate" of NASA human rating by virtue of assessments done prior to its utilization by NASA crews and its long history of providing safe transport to Russian Cosmonauts. This history, and a close working relationship between the agencies of the two countries, has provided NASA with significant insight into the design and operation of the Soyuz and given them confidence in its abilities.

*Question.* Has the Panel conducted any sort of review of safety and reliability measures for the Soyuz vehicle? If so, have you reported on that review? If not, can you explain why not?

*Answer.* The Panel has had regular discussions with senior NASA experts on their processes for gaining confidence in the Soyuz system. Particular attention was focused on resolution of re-entry anomalies that were experienced in recent years. While the Panel itself is not privy to the details of the Soyuz vehicles, we have

gained confidence that NASA officials are taking reasonable steps to gain the required insight.

*Question.* Are you suggesting that the Aerospace Safety Advisory Panel is completely satisfied, whether by any independent analysis or direct assessment, that the crew vehicle on which the United States will rely for its only human access to space for the next 5 to 7 years is “safe enough” for us to be comfortable in accepting that reliance?

*Answer.* As explained above, the Panel’s assessment has been of the NASA processes used to gain confidence in the Soyuz system. While we cannot independently validate the safety of the Soyuz, we are aware of no issues that lead to significant concern at this time.

*Question.* A full one-third of the last six Soyuz flights returning to Earth, have experienced “unexplained anomalies.” In two cases, the vehicles returned in a steeper-than-normal trajectory and experienced erratic movement during re-entry, caused by an improper separation of the descent module from the rest of the spacecraft. The crews were subjected to much higher gravity loads—if not dangerously high, at least uncomfortably high, from all reports. In another previous case, there was minor disturbance caused by what was reportedly the uneven packing and mounting of waste materials in the upper module, before it separated from the descent module. In none of these cases do we know for sure what took place. Steps have been taken to try to avoid what is thought to be the problem, but it has not been verified.

If this were to happen with the space shuttle, what would be the result? Wouldn’t it be necessary to ground the fleet until the cause was determined and repairs or adjustments made? Why is this acceptable for continued U.S. reliance on the Soyuz?

*Answer.* Both the shuttle and the Soyuz flight teams examine each and every anomaly that occurs on their system on each flight. Just as they do for shuttle anomaly assessments, senior NASA officials sat with their Russian counterparts during the assessments for the problems described above. They reported to us that similar rigorous assessment techniques were used in both countries. Most probable causes have been identified and steps taken to prevent recurrence. It is worth noting that these anomalies demonstrated one of the unique safety features of the Soyuz design: its inherent reentry aerodynamic stability that does not rely on complex guidance components to maintain alignment during reentry.

*Question.* If at any time in the next 5 to 7 years something more serious were to happen during a Soyuz descent, and if it were serious enough to force the grounding of the Soyuz fleet for an extended period of time (a year or more), it might be necessary, due to the on-orbit limits of the Soyuz, for the six crew members still on board the space station to have to abandon the space station—using the same kind of vehicle which had experienced the problem which forced the grounding of the fleet.

Has your panel considered such a possibility? Could that possibly be considered a “wise” or “safe” choice for this Nation to make, to have placed our astronauts—and our partners’ astronauts—in that position?

*Answer.* This is one of the risks that the Panel will be evaluating in the coming months. As I stated in my testimony, there is an increased risk of forced station abandonment once we are limited to a single means of ISS crew access. The steps being taken to minimize this risk will be examined, as will the impact of such a potential abandonment, both on the crew and the danger an abandoned ISS might pose to those on the ground.

#### ASAP CHARTER

*Question.* I have expressed some concerns I have about the thoroughness and appropriateness of some of the statements made in previous reports by your Panel. The Aerospace Safety Advisory Panel (ASAP) operates under the Federal Advisory Committee Act (FACA). That act imposes a requirement on the Committees of Jurisdiction to make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be “abolished or merged with any other advisory committee, or whether the responsibilities of such advisory committee should be revised.” In addition, the Charter of the ASAP states that it is to advise the NASA Administrator and the Congress.”

Based on your experience on the Panel, do you believe there is any sense that there should be greater interaction between the appropriate congressional committees and the Panel, beyond simply briefing the Congress on its annual reports?

*Answer.* The Panel, as currently constituted, is a strategic resource for Congress and NASA focused on processes, plans, and policies that are necessary to maximize safety rather than the detail design assessments of hardware. While the results of our deliberations are shared freely with both NASA and Congress, it must be re-

membered that since we only meet formally four times a year, the availability of material that would be of interest to the committees is somewhat limited. We have quickly responded to all requests for support from both NASA and Congress and will happily do so for any in the future.

*Question.* Would that include a practice of briefing the Congress before publicly releasing the annual report, which the panel failed to do in releasing the Report for 2009?

*Answer.* Our annual report is based directly on the results of our quarterly reviews which are specific and readily available. Due to the time sensitivity of many of these subjects, I suggest that an ongoing dialog concerning questions members may have about these reports may be of more value.

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QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

*Question.* I think our memories of the Challenger and the Columbia remind us of the risks our Astronauts willingly accept, just as Administrator Bolden did when he piloted the Discovery to deliver the Hubble telescope to space exactly 20 years ago this Saturday, April 24. I know NASA continues to look for ways to reduce the frequency of accidents. In your role as a NASA safety expert, could you help me understand to what degree and in what ways does robust engine testing minimize the risk of future accidents and ensure that our brave Astronauts come home safely?

*Answer.* The propulsion component of any space transportation system is one of the most critical pieces of hardware for a safe and successful mission. It is the source of the most significant risks of catastrophic failure during launch. In the case of either solid or liquid rockets, testing is one of the most basic validation techniques to show that the systems analysis and safety studies are accurate and correct. For the case of solids, no test of the actual rocket that will be on the vehicle can be accomplished (it has only a one-time use), however testing must be done on a statistically significant sample to prove that our safety analysis is valid. On liquid or multi-use propulsion, we have the advantage of actually firing the engine which will be on the vehicle and then examining its condition after such a trial firing. This provides an extra margin of safety for engines of this type. There is no question, in either case, that testing both in development and in production/operations where possible provides a fundamental mechanism to validate safety assessments and performance analysis. Vigorous and extensive testing of rocket motors was one of the touchstones of Dr. Wernher von Braun's approach to development of human rated rockets like the Saturn V.

*Question.* President Obama's new plan calls for the use of contractor owned and operated launches for the first time ever. His critics have said that the private sector cannot provide the level of safety that has been provided by NASA. The first time a commercial launch company experiences a significant accident, scrutiny of NASA for releasing direct control of launch activities and the President's plan will be jeopardized. Understanding that NASA already places great value on safety do you believe that NASA will need to place an even greater emphasis on commercial engine testing and safety to ensure the chances of such an accident are minimized.

*Answer.* While the already high degree of emphasis on safety may not change under the proposed new acquisition strategy, the techniques for ensuring the safety of the vehicles carrying our astronauts certainly will. The classical acquisition strategy of direct and detailed NASA involvement in every step of space vehicle design provides NASA with deep insight into the design features, potential failure modes, robustness, and reliability of the systems and their components. This deep insight may not be available with commercial providers who independently develop systems using their own procedures, approaches, and experience base. The current NASA work process will have to be replaced with a different approach that has not yet been developed. This approach may well include significantly more test and demonstration of safety critical components such as engines.

SUBCOMMITTEE RECESS

Senator MIKULSKI. This subcommittee stands in recess until Thursday, April 29 at 10 a.m., when we will take the testimony of Attorney General Eric Holder.

The subcommittee stands in recess.

[Whereupon, at 11:50 a.m., Thursday, April 22, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 29.]



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

THURSDAY, MAY 6, 2010

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

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

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

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

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

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, everybody.

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

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

[The statement follows:]

PREPARED STATEMENT OF SENATOR RICHARD C. SHELBY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[The statement follows:]

PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT OF HON. ERIC H. HOLDER, JR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

[The statement follows:]

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

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

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

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

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

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

#### STRENGTHEN NATIONAL SECURITY

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

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

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

#### AGGRESSIVE PURSUIT OF FINANCIAL FRAUD

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

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

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

#### REDUCE VIOLENT CRIME AND DRUG TRAFFICKING

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

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

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

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

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

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

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

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

#### PROTECT CIVIL RIGHTS

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

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

#### COMBAT INTERNATIONAL ORGANIZED CRIME

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

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

#### MAINTAIN PRISONS, DETENTION, PAROLE AND JUDICIAL AND COURTHOUSE SECURITY

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

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

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

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

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

#### ENFORCE IMMIGRATION LAWS

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

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

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

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

#### ENSURE PUBLIC SAFETY IN TRIBAL COMMUNITIES

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

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

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

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

#### CONCLUSION

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

Today I have highlighted critical areas that require attention and resources so that the Department can fulfill its mission to enforce the Nation's laws and protect our national security. I hope you will support me in the execution of these worthy efforts. As always, we are aware that there are tough decisions and challenges ahead, and I look forward to working with you as we move forward.

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

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

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

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

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

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

Attorney General HOLDER. Yes, that was.

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

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

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

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

#### COPS PROGRAM

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

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

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

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

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

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

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

Attorney General HOLDER. I am not—

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

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

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

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

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

[The information follows:]

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

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

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

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

#### TIMES SQUARE BOMBING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### BP OIL SPILL

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



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

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

Senator LEAHY. Thank you very much.

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

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

Senator Lautenberg, you were the second to arrive.

Senator LAUTENBERG. Thank you, Madam Chairwoman.

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

Senator LAUTENBERG. Thank you, Madam Chairwoman.

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

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

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

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

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

TIMES SQUARE BOMBER

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

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

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

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

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

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

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

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

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

## FIREARM BACKGROUND CHECKS

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

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

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

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

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

## JUVENILE MENTORING

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

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

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

Senator LAUTENBERG. Thank you.

Thank you, Madam Chairwoman.

Senator MIKULSKI. Thank you, Senator.

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

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

And welcome, Attorney General Holder.

Attorney General HOLDER. Good morning.

## 9TH CIRCUIT VACANCY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator MURKOWSKI. Appreciate that.

Thank you, Madam Chair.

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

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

#### NARCOTICS CONTROL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator MIKULSKI. Oh.

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

Senator MIKULSKI. We'll, wait a minute.

#### MIRANDA RIGHTS

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

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

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

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

Senator FEINSTEIN. Is there any exception?

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

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

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

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

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

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

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

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

Attorney General HOLDER. The courts have never said exactly.

Senator FEINSTEIN. The courts have not said.

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

Senator FEINSTEIN. Prior use?

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

#### SHAHZAD INTERROGATION

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



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

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

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

Senator FEINSTEIN. You do not?

Attorney General HOLDER. No.

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

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

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

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

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

Senator FEINSTEIN. All right. Thank you, General.

Thank you, Madam Chairwoman.

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

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

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

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

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

#### CYBERSECURITY

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

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

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

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

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

Senator MIKULSKI. That is right.

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

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

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

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

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

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

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

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

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

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

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

Attorney General HOLDER. That is fine.

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

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

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

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

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

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

#### TIMES SQUARE BOMBER ARREST

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator MURKOWSKI. Madam Chair, can I just ask?

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

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

Senator MIKULSKI. Right, and it has worked well.

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

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

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

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

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

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

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

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

RACHAEL WILSON

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

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

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

Thank you very much. And you are excused.

Attorney General HOLDER. Thank you.

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

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

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

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

#### **STATEMENT OF HON. GLENN A. FINE, INSPECTOR GENERAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

#### PREPARED STATEMENT

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

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

[The statement follows:]

#### PREPARED STATEMENT OF HON. GLENN A. FINE

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

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

#### COUNTERTERRORISM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### PROTECTING CIVIL RIGHTS AND CIVIL LIBERTIES

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

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

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

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

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

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

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

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

#### RESTORING CONFIDENCE IN THE DEPARTMENT

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

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

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

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

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

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

## FINANCIAL CRIMES, VIOLENT CRIME AND CYBER CRIME

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

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

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

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

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

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

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

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

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

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

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

#### RECOVERY ACT FUNDING AND GRANT MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

#### DETENTION AND INCARCERATION

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

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

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

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

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

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

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

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

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

#### FINANCIAL MANAGEMENT

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

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

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

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

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

#### CONCLUSION

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

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

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

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

Mr. FINE. That is correct, yes.

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

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

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

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

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

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

#### WATCH LIST REFORM

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

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

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

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

#### GRANT DISBURSEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

#### TRAINING AND OVERSIGHT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. FINE. Absolutely.

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

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

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

Thank you.

Mr. FINE. Thank you very much.

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

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

#### ADDITIONAL COMMITTEE QUESTIONS

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

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

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

#### QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

#### FINANCIAL FRAUD—PREDATORY LENDING

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

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

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

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

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

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

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

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

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

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

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

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

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

#### HEALTH CARE FRAUD

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

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

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

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

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

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

#### *United States Attorneys*

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



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

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

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

#### *Civil Division*

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

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

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

#### *Criminal Division*

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

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

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

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

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

#### *Civil Rights Division*

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

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

#### *Federal Bureau of Investigation*

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

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

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

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

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

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

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

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

The mission of HEAT is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### TASK FORCES—STATE AND LOCAL LAW ENFORCEMENT

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

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

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

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

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

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

*Question.* Will their role be expanded in the future?

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

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

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

#### STOPPING CHILD PREDATORS

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

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

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

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

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

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

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

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

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

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

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

#### SECOND CHANCE ACT

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

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

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

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

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

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

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

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

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

#### TIMES SQUARE BOMBING ATTEMPT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### FUNDING FOR TERRORIST TRIALS

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

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

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

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

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

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

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

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

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

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

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



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

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

#### COURTHOUSE SECURITY

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

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

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

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

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

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

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

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

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

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

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

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

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

#### SOUTHWEST BORDER VIOLENCE—DEA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### CRIMINAL INVESTIGATIONS AND PROSECUTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ADVANCING THE RULE OF LAW

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

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

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

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

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

#### DHS–DOJ DISPARITY ALONG THE SOUTHWEST BORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### AFGHANISTAN—FIGHTING NARCO-TERRORISM—DEA

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

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

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

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



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

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

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

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

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

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

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

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

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

#### RACHAEL WILSON CASE—PUBLIC SAFETY OFFICERS' BENEFITS

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

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

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

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

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

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

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

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

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

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

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

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

What criteria does OJP use in hiring those contractors?

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

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

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

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

#### CURBING LAVISH SPENDING

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

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

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

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

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

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

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

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

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

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

PRISONS—THOMSON PRISON FACILITY

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

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

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

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

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

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

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

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

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

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

PRISONS—OVERCROWDING

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

What is the current crowding rate in Federal prisons?

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

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

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

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

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

#### PRISONS—UNDERSTAFFING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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#### QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

##### RISS PROGRAM FUNDING

*Question.* I believe that information sharing among law enforcement agencies plays a critical role in the fight against crime and terrorism. I have long supported the Regional Information Sharing System (RISS) program, which enhances the ability of local, State, Federal, and tribal criminal justice agencies to keep our communities safe by improving law enforcement technology and information sharing. The Department's fiscal year 2011 budget requests \$9 million for the RISS program, a reduction of \$36 million from last year's enacted level. I am concerned that this severe reduction could result in the dismantling of the RISS program and hamper our ability to share law enforcement information and technology across jurisdictions.

Information and intelligence sharing are critical to fighting increasingly expansive criminal networks, and RISS has proven to be successful in identifying and targeting criminal conspiracies and terrorist cells.

Do you agree that information sharing among law enforcement agencies is critical for the safety and security of our country?

Answer. Without question, the Department of Justice agrees that information sharing among Federal, State, local and tribal law enforcement is critical for national security and public safety. It is for this reason that the Department joined with more than 30 national organizations representing State, local, and tribal law enforcement; the Department of Homeland Security; and the FBI in signing the National Criminal Intelligence Sharing Plan (NCISP). The NCISP still serves as a blueprint document, along with the National Information Sharing Strategy issued by the White House, in protecting the safety and security of America.

The Department promotes greater sharing of national security and criminal justice information among Federal, State, and local law enforcement partners through a number of programs, including the FBI's Law Enforcement Online, which provides access to the National Data Exchange system. Additionally, the Department has demonstrated its support for information sharing by providing over \$335 million to the Regional Information Sharing System (RISS) Program since fiscal year 2000.

*Question.* Why did the Department of Justice request only \$9 million for the RISS program in fiscal year 2011?

Answer. RISS provides a very important resource for sharing law enforcement information through a secure network by Federal, State, local, and tribal law enforcement agencies, while maintaining local control over the data to be shared. Since 2000, the Department of Justice has provided more than \$335 million for the RISS Program, in addition to millions in discretionary funding through various competitive and non-competitive programs.

While the Department proposed a reduction to dedicated funding for the RISS program in the fiscal year 2011 budget, it remains committed to ensuring that the vital functions of law enforcement information-sharing continue without interruption. We will continue to work with our partners to maintain and expand current capabilities through discretionary funding requested in the fiscal year 2011 budget by considering options such as:

- Engaging RISS through the Byrne Justice Assistance Grants (JAG) Program or Byrne Competitive Program to provide competitive grant-funded training and technical assistance to law enforcement around the United States.
- Seeking support for State-maintained RISS Centers through the Byrne JAG Program.
- Re-evaluating user fees charged to member agencies to determine if such fees, with moderate increases or restructuring, can better support RISS.

#### POST CONVICTION DNA TESTING

*Question.* One of the key programs created in the Innocence Protection Act was the Kirk Bloodsworth Post Conviction DNA Testing Grant Program. Kirk Bloodsworth was a young man just out of the Marines when he was arrested, convicted, and sentenced to death for a heinous crime that he did not commit. He was the first person in the United States to be exonerated from a death row crime through the use of DNA evidence.

This program provides grants to States for testing in cases like Kirk's where someone has been convicted, but where significant DNA evidence was not tested. The last administration resisted implementing the program for several years, but we worked hard to see the program put into place. This year however the Department's budget did not include a request for the Kirk Bloodsworth grant program. Can you explain why the Department did not specifically request any funds for post conviction DNA testing?

Answer. In fiscal year 2008, the Office of Justice Programs (OJP) awarded \$7.8 million under the Post-Conviction DNA Testing Assistance program, and in fiscal year 2009, awarded an additional \$9.8 million.

The program has been very successful and based on initial reports from the fiscal year 2009 grantees, significant progress has been made. However, in response to the fiscal year 2010 solicitation, the Department's National Institute of Justice (NIJ) received only four applications requesting a total of \$1.6 million. Of these four applications, only one was a new applicant. The remainder was current grantees requesting continuation funds. Given this demand history in fiscal year 2010, the Department did not request funding for this initiative in fiscal year 2011. However, funds within the fiscal year 2011 request for the DNA Initiative, which includes "\$150 million for DNA-related and forensic programs and activities (including related research

and development, training and education, and technical assistance),” can be made available to meet the needs in this area.

#### MENTALLY ILL OFFENDERS

*Question.* The Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) was signed into law in 2004 and authorizes a \$50 million grant program to be administered by the Department of Justice. The bill received unanimous, bipartisan support in both chambers of Congress and is supported by a broad spectrum of leaders representing the diverse fields of law enforcement, corrections, the courts and mental health. The Mentally Ill Offender program provides assistance to States and communities to mount new programs or expand existing programs that can both reduce costs and help these offenders return to productive lives.

The MIOTCRA program received \$12 million in fiscal year 2010 and is in high demand. Of the 250 grant applications submitted in 2006, only 11 percent were funded, awarding only 28 jurisdictions in 19 States with additional resources to design and implement or improve upon their mental health programs. Despite this need, the Department’s fiscal year 2011 budget request did not include funds for the MIOTCRA program.

I appreciate the Department’s request for increased funding of Drug, Mental Health and Problem-Solving Courts, but unfortunately that funding would not encompass many of the key elements of the Justice and Mental Health Collaboration Program, which was established by MIOTCRA. Court-based grantees constitute only 40 percent of the current MIOTCRA grantees, and MIOTCRA program dollars also go toward many other types of initiatives, including mental health and substance abuse treatment for incarcerated mentally ill offenders, community reentry services, and cross-training of criminal justice, law enforcement and mental health personnel. How does the Department plan to address this gap in services?

*Answer.* The Department agrees that the Mentally Ill Offender Treatment Crime Reduction Act (MIOTCRA) Program has produced very promising results and is committed to furthering these efforts to promote the use of evidence-based and innovative strategies to address mental health issues. It is important to note, however, that the proposed Problem-Solving Courts Program funding, while required to be awarded to a court or court agency initially, could be sub-awarded to other types of agencies in the community to address mental health needs in order to form a more effective response to mental health issues. Additionally, OJP has consistently made Byrne JAG funds and Byrne Competitive Program funds available for the MIOTCRA Program, in addition to new resources recently made available to address mental health issues within the justice system, such as Second Chance Act funding.

#### INTELLECTUAL PROPERTY ENFORCEMENT

*Question.* Intellectual property is critical to our Nation’s economy. It is the engine that drives our contemporary economy and will fuel our future. Industries that rely on intellectual property protection accounted for roughly one-half of all U.S. exports and represented an estimated 40 percent of U.S. economic growth in 2006, the last year in which our economy grew in all four quarters.

I authored the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) (Public Law 110-403), which authorized programs to strengthen the protection of our intellectual property. I am pleased that the Department’s fiscal year 2011 budget request includes funds for economic, high technology and Internet crime prevention grants, including grants authorized by the PRO-IP Act. I believe there is a critical need for the Federal Government to take a leading role in protecting intellectual property rights in order to prevent billions of dollars in losses due to piracy and mitigate health and safety risks from trade in counterfeit goods. Will you work with Congress to ensure that a significant portion of funds provided for economic, high technology and Internet crime prevention are devoted to intellectual property enforcement?

*Answer.* Yes, the Department of Justice and the Department of Homeland Security will work with Congress to ensure that an appropriate level of funds is devoted to intellectual property enforcement.

#### NEW BLACK PANTHER PARTY VOTER INTIMIDATION INVESTIGATION

*Question.* Some constituents have expressed a continuing interest in the Justice Department’s decisions with regard to its resolution last year of a civil suit against members of the New Black Panther Party for voter intimidation. I know that you have explained the basis of these decisions in the past, but in order to ensure clarity on the subject, please set out why the Department decided to resolve the New Black Panther Party case in the way that it did, how the decision was made, what steps

were taken if any to ensure that the decision was made on the merits and not based on political motivations, and what the results were in the case.

Answer. Please see the Department's response to this question set forth in its letter to Senator Leahy of August 10, 2010. See Attachment 1.

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, DC 20530, August 10, 2010.

The Honorable PATRICK J. LEAHY,  
*United States Senate,*  
*Washington, DC 20510.*

DEAR MR. CHAIRMAN: This responds to your letter, dated August 2, 2010, regarding *United States v. New Black Panther Party for Self-Defense*, a case arising out of events in Philadelphia, Pennsylvania in 2008, and filed under section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b).

On January 7, 2009, the Department filed a complaint seeking injunctive and declaratory relief under section 11(b) of the Voting Rights Act against four defendants: two individuals who appeared at the Philadelphia polling place on November 4, 2008, Minister King Samir Shabazz and Jerry Jackson; the New Black Panther Party for Self-Defense; and its leader, Malik Zulu Shabazz, who is not alleged to have been present at the Philadelphia polling place. The complaint alleged that the defendants violated section 11(b) because they attempted to engage in, and engaged in, both voter intimidation and intimidation of individuals aiding voters.

None of the defendants responded to the complaint in the case. That did not, however, absolve the Department of its legal and ethical obligations to ensure that any relief sought was consistent with the law and supported by the evidence. The entry of a default judgment is not automatic, and the Pennsylvania Bar Rules impart a clear duty of candor and honesty in any legal proceeding; those duties are heightened in the type of ex parte hearing that occurred in this matter. See Pa. RPC 3.3(d). At the remedial stage, as with the liability stage, the Department remains obliged to ensure that the request for relief is supported by the evidence and the law. In discharging its obligations in that regard, the Department considered not only the allegations in the complaint, but also the evidence collected by the Department both before and after the filing of the complaint.

For the reasons explained below, based on that review, the Department sought and obtained an injunction against defendant Minister King Samir Shabazz, the only individual known to the Department to have brought a nightstick to a Philadelphia polling place in November 2008. Following its review, the Department concluded, however, that the evidence did not warrant seeking an injunction against the other defendants named in the complaint, and dismissed the claims against those defendants.

LEGAL ANALYSIS RELEVANT TO LIABILITY UNDER SECTION 11(B) OF THE VOTING RIGHTS ACT

Section 11(b) of the Voting Rights Act prohibits anyone, whether or not acting under color of law, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any person for voting or attempting to vote or for aiding any person to vote or attempt to vote or for exercising any powers or duties under certain sections of the Voting Rights Act. Section 12(d) of the Voting Rights Act, 42 U.S.C. § 1973j(d), provides for the filing of a civil action by the Attorney General to secure preventive relief for a violation of such statute. In 1968, Congress repealed the criminal penalties for violations of section 11(b) that were part of the original 1965 Voting Rights Act. Public Law 90-284, § 103, 82 Stat. 73, 75 (1968).

There have been very few cases brought under section 11(b). Possible explanations include the limited remedies available under section 11(b) of the Voting Rights Act and the challenging legal standard of proof. As a result, the Department can find records of only three civil actions filed under this provision since its enactment in 1965, prior to the case of *United States v. New Black Panther Party for Self-Defense*. One of these cases settled before trial, and in both of the others, the court ruled that the Department had failed to establish a section 11(b) claim. Those cases are: (1) *United States v. Harvey*, 250 F. Supp. 219 (E.D. La. 1966) (Threats of eviction and other economic penalties against black sharecroppers who had recently registered to vote found not to be form of intimidation, threat or coercion prohibited by section 11(b)); (2) *United States v. North Carolina Republican Party*, Civil Action No. 91-161-CIV-5-F (E.D.N.C.) (section 11(b) claim regarding pre-election mailing resolved by consent decree dated Feb. 27, 1992); and (3) *United States v. Brown*, 494 F. Supp. 2d 440, 477 n. 56 (S.D. Miss. 2007) (Publication by county political

party chairman of list of voters to be challenged if they attempted to vote in party primary election found not to be form of intimidation, threat or coercion prohibited by section 11(b)). Indeed, as demonstrated in the *Brown* case, section 11(b) cases can be extremely difficult to prove. In that case, the most recent Federal district court to reject a section 11(b) claim noted that the United States had “found no case in which plaintiffs have prevailed under this section.” *Id.*

The events that led to the Philadelphia section 11(b) case referenced in your letter occurred at a predominantly African American polling place, on the day of the most recent Federal general election, November 4, 2008. The Department concluded that the evidence collected established that Minister King Samir Shabazz violated section 11(b) by his conduct at the polling place on that election day. This evidence included his display of a nightstick at the polling place during voting hours, an act which supported the allegation of voter intimidation. The Department therefore decided to seek an injunction against defendant Minister King Samir Shabazz. In approving the injunction, the district court found that the United States had alleged that Minister King Samir Shabazz “stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b).” (Order of May 18, 2009, at 1). The court entered judgment “in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location in the city of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b).” Judgment (May 18, 2009). The Federal court retains jurisdiction over enforcement of the injunction until 2012.

After reviewing the evidence, the Department concluded that there was insufficient evidence to establish that the New Black Panther Party or Malik Zulu Shabazz, who was not at the polling place when the relevant events occurred, violated section 11(b). Prior to the election, the New Black Panther Party for Self-Defense made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States. To the Department’s knowledge, the single polling place in Philadelphia is the only location where an incident occurred. This apparent fact is inconsistent with the notion that the Party or Malik Zulu Shabazz directed a campaign of intimidation. The Department also considered the statement posted by the Party on its Web site regarding the incident. The statement posted on the Party Web site provided: “Specifically, in the case of Philadelphia, the New Black Panther Party wishes to express that the actions of people purported to be members do not represent the official views of the New Black Panther Party and are not connected nor in keeping with our official position as a party. The publicly expressed sentiments and actions of purported members do not speak for either the party’s leadership or its membership.” As of May 2009, the Department had information indicating that this statement was posted prior to the filing of the civil action. A separate statement posted on the Party Web site, dated January 7, 2009 (the same date that the complaint in this case was filed), reported the suspension of the Philadelphia chapter because of these activities.

Absent sufficient proof that the New Black Panther Party or Malik Zulu Shabazz directed or controlled unlawful activities at the polls, or made speeches directed to immediately inciting or producing lawless action on election day, claims against those parties based merely upon their alleged “approval” or “endorsement” of Minister King Samir Shabazz’s activities were, in our view, insufficient to establish legal liability. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982). The Department therefore decided, based on its review of applicable legal precedent and the totality of the evidence, to dismiss the claims against the New Black Panther Party and Malik Zulu Shabazz.

Finally, the Department also concluded that the allegations in the complaint against Jerry Jackson, the unarmed defendant present at the Philadelphia polling place, did not have sufficient evidentiary support. The Department’s determination was based on the totality of the evidence. In reaching this conclusion, the Department placed significant weight on the response of the law enforcement first responder to the Philadelphia polling place on election day. A report of interview of the local police officer who responded to the scene, which is included in the Department’s extensive production to the U.S. Commission on Civil Rights indicates that the officer interviewed Mr. Jackson, confirmed that he in fact was a certified poll watcher, and permitted Jackson to remain at the polling place.

## LEGAL ANALYSIS APPLICABLE TO THE SCOPE OF THE INJUNCTION UNDER SECTION 11(B)

After the clerk of court filed an administrative entry of default against defendant Minister King Samir Shabazz, the Department was required to file a motion with the court, setting forth its view of the legally appropriate scope of injunctive relief. Based on the facts in the case and the relevant legal precedent, the Department concluded that a nationwide injunction was not legally supportable in the case against Minister King Samir Shabazz. The Supreme Court has emphasized that an injunction must be “no broader than necessary to achieve its desired goals.” *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 765 (1994). To that end, a reviewing court must pay “close attention to the fit between the objectives of an injunction and the restrictions it imposes on speech” in keeping with the “general rule . . . that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” See *ibid.* (citation omitted).

Because injunctive relief is tailored to its objectives, a focus upon the facts alleged by the Department was critical to determining the scope of the injunction that could have been obtained. The Department alleged that Minister King Samir Shabazz is a resident of Philadelphia and is the leader of the Philadelphia chapter of the NBPP. Complaint ¶5. The complaint alleged that on November 4, 2008, Minister King Samir Shabazz brandished a weapon and made racially threatening and insulting remarks while standing in front of the entrance of a polling place in Philadelphia. Complaint ¶¶8–10. The complaint further alleged that on this specific occasion Minister King Samir Shabazz pointed the weapon at individuals, tapped it in his hand and elsewhere, and made menacing and intimidating gestures, statements and movements toward individuals who were present to aid voters. Complaint ¶¶9–10.

The evidence was insufficient to show that Minister King Samir Shabazz had engaged or planned to engage in a nationwide pattern of the kind of conduct he exhibited at the polling place in Philadelphia, or that he was inclined to disregard the injunction. Cf. *United States v. Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996) (finding the scope of a nationwide injunction in a Freedom of Access to Clinic Entrance Act (FACE) case appropriate because of a protestor’s “consistent, repetitious, and flagrant unwillingness or inability to comply” with the proscriptions of the law, his “serious intent to do bodily harm to the providers and recipients of reproductive health services,” and the possibility, if the injunction were geographically limited, that he “could easily frustrate the purpose and spirit of the permanent injunction simply by stepping over State lines and engaging in similar activity at another reproductive health facility” (quotation and citation omitted)). Absent such facts, in other FACE cases, the geographic scope of injunctions the Department has obtained has been quite narrow, generally limited to a certain number of feet from a given clinic, see *United States v. Scott*, No. 3:95cv1216, 1998 U.S. Dist. LEXIS 10420 (D. Conn. June 25, 1998), or simply preventing protestors from impeding ingress and egress to a particular clinic. See *United States v. Burke*, 15 F. Supp. 2d 1090 (D. Kan. 1998); *United States v. Brock*, 2 F. Supp. 2d 1172 (E.D. Wis. 1998).

Given the facts presented, the injunction sought by the Department prohibited Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the city of Philadelphia, or from otherwise violating 42 U.S.C. 1973i(b), (see Order of May 18, 2009, at 4). The Department considers this injunction tailored appropriately to the scope of the violation and the requirements of the First Amendment, and will fully enforce the injunction’s terms. Section 11(b) does not authorize criminal penalties, monetary damages, or other kinds of relief.

In sum, we believe that the decision of the then Acting Assistant Attorney General for Civil Rights to proceed with the claims against Minister King Samir Shabazz and to dismiss the claims against the three other defendants was based on the merits and reflects the kind of good faith, case-based assessment of the strengths and weaknesses of claims that the Department makes every day.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,

RONALD WEICH,  
*Assistant Attorney General.*



## QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

## MAY 2010 TIMES SQUARE PLOT

*Question.* I believe the HIG should be used where we can obtain the most valuable intelligence possible, but I also understand that the HIG cannot be everywhere and that intelligence officials from CIA and other agencies make up the Joint Terrorism Task Force (JTTF) in each field office.

Was the HIG deployed in this case? If not, what does the HIG have that the Joint Terrorism Task Force personnel could not provide as far as expertise for interrogations?

*Answer.* The High-Value Detainee Interrogation Group (HIG) deployed in the Shahzad case to assist the New York Joint Terrorism Task Force (JTTF) with interrogators, subject matter experts, and reports officers. During the deployment, the HIG brought counterterrorism subject matter experts from FBI, the Central Intelligence Agency, the National Geospatial-Intelligence Agency, the Department of Defense, the National Counterterrorism Center, and others to observe the interrogation, and to provide advice, counsel, and intelligence requirements to the interrogators. In addition, HIG reports officers ensured that the results of the interrogation were disseminated to the Intelligence Community (IC) within hours after each session. This detailed level of expertise in areas as diverse as geospatial mapping, behavioral analysis, and foreign terrorist network associations does not typically reside in the JTTF. The interagency composition of the HIG, and its full-time focus on coordinating interrogation resources across the IC, enables the HIG to rapidly identify and deploy the right resources and IC counterterrorism assets to augment a JTTF as needed.

*Question.* Does the New York JTTF have the lead for this case? Please describe what kind of experience the New York JTTF has interrogating terrorist suspects.

*Answer.* Yes, the New York JTTF has the lead for this case. Currently, the New York JTTF has more than 400 personnel from 50 different law enforcement, public safety, intelligence, military, and critical infrastructure agencies. The New York JTTF has handled some of the most high-profile, high-threat terrorism investigations, including the first bombing of the World Trade Center in 1993, the bombing of the USS *Cole* in 2000, the second attack on the World Trade Center in 2001, and the most recent attempted bombing in New York's Times Square.

## SHAHZAD ARREST ALTERNATIVES

*Question.* It is my understanding that Mr. Shahzad is cooperating and has waived his Miranda warnings as well as his right to be presented before a magistrate judge.

Please tell us what other options the FBI had other than arresting Shahzad and reading him his rights. As an American citizen could he be detained without formal charges against him? For how long?

*Answer.* Regardless of nationality, any person arrested in the United States is entitled to certain Constitutional rights. There are a number of laws and rules that govern what must occur when a suspect is arrested. First and foremost, the U.S. Supreme Court has held that the Fourth Amendment requires that the facts justifying the arrest be presented to a court "promptly." Moreover, Rule 5 of the Federal Rules of Criminal Procedure requires that the defendant be taken before a judicial officer "without unnecessary delay," at which time the court will advise the defendant of his rights. With the exception of questions designed to ensure the immediate public safety and the safety of the arresting officers (the so-called *Quarles* exception), Miranda warnings are generally required in order for responses to questions posed while the defendant is in custody to be admissible in court against the defendant.

The FBI has no legal authority to proceed against a terrorism suspect who is arrested within the United States in any venue other than an Article III court. There have been only two instances since 2001 in which civilians arrested within the United States were placed in military custody for some period of time. In both instances, the individuals were initially taken into custody and detained by Federal law enforcement officials. The transfers from law enforcement to military custody occurred by order of the President, and the civilians were later returned to Article III courts for disposition of their cases.

*Question.* Please explain how reading someone their Miranda rights can facilitate their cooperation in a criminal case. Is reading a suspect their rights sometimes part of a plan to get them to waive their rights to allow more intelligence gathering than not reading someone their Miranda rights would produce?

*Answer.* Many criminal defendants, including those arrested for crimes related to terrorism, waive their Miranda rights and talk voluntarily to investigators. In many

other cases, defendants decide to cooperate after consulting with counsel. Indeed, where defense attorneys conclude that the Government has strong evidence to support a conviction and lengthy sentence, they often encourage their clients to cooperate. Miranda warnings are far less determinative of the prospects for obtaining long-term cooperation in the criminal justice system than other factors, such as the strength of the Government's case against a defendant, the skill and expertise of the interrogator, and the interrogator's background knowledge about the target and the subject matter.

#### FBI SURVEILLANCE RESOURCES

*Question.* Chairwoman Mikulski and I are very intent on getting the FBI the surveillance resources it needs. I believe we could use more FBI teams—especially in our major cities.

Is it true that the FBI surveillance team lost Shahzad?

*Answer.* In May 2010, Faisal Shahzad attempted to detonate a car bomb in Times Square. Attempts by the FBI New Haven Division's armed Mobile Surveillance Team to keep him under surveillance failed when he slipped away and eluded surveillance until his capture aboard a commercial flight preparing to depart the country. Bad weather precluded the use of aviation to track Shahzad. Had a surveillance aircraft been available, it is likely that Shahzad would not have been able to break contact with the squad covering him.

*Question.* I think we should spend more money to give the FBI the resources it needs, so how much more money can you spend in fiscal year 2011 to hire and train more FBI surveillance teams?

*Answer.* The FBI's fiscal year 2011 Request to Congress includes an additional 30 Mobile Surveillance Team—Armed (MST-A), positions (18 agents) and \$6,100,000.<sup>1</sup> The fiscal year 2011 cost per new Mobile Surveillance Team (MST)<sup>2</sup> position is \$174,000; the cost per new MST-A position is \$217,000.

The MST-A program does not directly hire new agents; MST-A Agents work FBI investigative cases for 11 years, on average, prior to their assignment to a MST-A squad. Upon assignment to a MST-A squad, the MST-A program provides surveillance training, photography training, and Tactical Emergency Vehicle Operations Course (TEVOC) training, which totals 3 weeks. The MST-A program can train 63 agents per year, which equates to 7 MST-A teams.

*Question.* How long will it take to get more teams hired and trained to deploy?

*Answer.* The FBI has a large applicant pool for the MST positions, which traditionally can be hired and trained within the fiscal year. The MST-A positions, which are filled by experienced FBI Agents, are also traditionally filled and trained within the fiscal year.

#### DEPARTMENT OF JUSTICE FUNDING

##### *Border Law Enforcement Grants*

*Question.* Through the American Recovery and Reinvestment Act in 2009, the Chula Vista Police Department, on behalf of the local HIDTA, the California Border Alliance Group, was awarded \$2.86 million from the Justice Department's Bureau of Justice Assistance to support existing HIDTA-supported task forces with local representation from five agencies along the southern border.

With only 6 months into the grant project, the task force thwarted seven kidnappings and two murders in the United States and prevented two murders in Mexico.

As the United States continues to combat narcotics trafficking and related violence, this grant permitted more local participation in Federal task forces ultimately allowing for better intelligence gathering.

This grant model has proven successful in San Diego. Have other grant recipients experienced similar success? If so, do you plan to ask for a continuation of this grant opportunity in the fiscal year 2012 budget?

*Answer.* The progress you have described in Chula Vista is impressive. While other grantees have reported strong progress in creating and retaining jobs as well as in enhanced criminal enforcement, they are early in the process of implementation and progress will continue to be monitored.

Regarding future budget requests, the President has included in the fiscal year 2011 budget request a program called Smart Policing, which allows local law enforcement agencies such as Chula Vista to apply for funding to implement evidence-based and innovative enforcement efforts, which could include involvement in task

<sup>1</sup> MST-A was formerly known as the Special Operations Group (SOG).

<sup>2</sup> MST was formerly known as the Special Surveillance Group (SSG).

forces. In addition, the Byrne Justice Assistance Grants (JAG) Program was proposed at \$519 million, and the Byrne Competitive Program was proposed at \$30 million. Each of these programs could fund initiatives such as that implemented in Chula Vista. In addition, we are working closely with the Office of National Drug Control Policy (ONDCP) to coordinate our funding efforts with those under the High Intensity Drug Trafficking Area (HIDTA) Program.

*Question.* Would it be worthwhile to extend these grants for longer terms to allow better planning and sustainability by law enforcement?

*Answer.* The Department's Bureau of Justice Assistance (BJA), which administers the Chula Vista grant, takes a proactive stance on this issue. Typically, grantees that submit a 12-month budget are given as much as 18 months to plan and implement the project. Additionally, BJA is flexible with grant extensions, allowing local agencies to expend funding for additional time, when needed and when the law permits, to accommodate planning and sustainability concerns.

#### EL PASO INTELLIGENCE CENTER (EPIC)

*Question.* As Chair of the Senate Caucus on International Narcotics Control, I hosted a hearing entitled "Drug Trafficking Violence in Mexico: Implications for the United States". Several witnesses discussed the importance of intelligence sharing and the great benefit that the El Paso Intelligence Center (EPIC) is to the administration's National Southwest Border Counternarcotics Strategy, which was released in June 2009. DEA has requested funding for an expansion and renovation project to enlarge the existing EPIC facility since 22 of the agencies participating at EPIC, 8 are planning to add personnel in the next year.

Is this expansion at EPIC critical for the intelligence sharing process?

*Answer.* In order to facilitate information sharing with the various El Paso Intelligence Center (EPIC) partners, a DOJ-DHS Leadership Meeting was held at EPIC on June 8, 2010. Attending the meeting were Drug Enforcement Administration Administrator M. Leonhart; DEA Chief of Intelligence A. Placido; DHS Under Secretary C. Wagner; Customs and Border Protection (CBP) Commissioner A. Bersin; United States Border Patrol (USBP) Chief M. Fisher; U.S. Immigration and Customs Enforcement (ICE) Deputy Assistant Secretary Pena; FBI Deputy Assistant Director D. Cardona, USMS Assistant Director M. Earp; Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Deputy Director K. Melson; and several other high-ranking officials. Various topics regarding the information sharing process were discussed and ultimately decided upon at this meeting. A few examples are detailed below:

- EPIC shall provide enhanced tactical cueing, analysis and analytic products designed to assist field investigators and interdictors perform their official duties.
- ATF will stand-up a joint interagency Firearms and Explosives Trafficking Unit. (Note: This unit became operational in July 2010 with 3 ATF staff.)
- The EPIC sharing model will be expanded to provide interdictors access to sensitive information via inclusion of CBP personnel in SOD and the OCDETF Fusion Center;
- DOJ/DEA would seek funds to develop a backup of the OCDETF Fusion Center's database at EPIC;
- EPIC will work with the Intelligence Community to acquire additional information to assist law enforcement operations;
- EPIC and its members will explore ways to expand technical collection along the entire length of the SWB;
- EPIC should expand training opportunities to State and local law enforcement officers which will forge/enhance the bond between interdictors at the border and the interior of the United States. Increasing the flow of information between these two groups will enhance the quality of intelligence and the efficiency of interdiction operations and criminal investigations; and
- Rather than creating another center, the focus should be on the formation of a new EPIC Section (Border Intelligence Fusion Section) to address border-centric intelligence needs. The number of personnel for this new EPIC Section has not yet been determined.

To allow space for the various agencies relocating to EPIC, expansion is necessary to provide for plans discussed/agreed upon at the IS Conference. In December 2008, the Army Corps of Engineers (ACE) conducted a study at EPIC regarding current space versus growth potential in the existing facility. At that time, the study showed that the facility consisted of a total of 324 available work spaces and that it housed 340 personnel from the various participating agencies. Since the ACE study, EPIC has grown to its current staffing level of 460. Conversion and reallocation of other-than-workspace areas has provided an additional 65 workstations for a total of 389

existing work spaces. The recently converted gym and mail room to office space has provided the facility an additional 17 work areas.

During fiscal year 2011, 8 agencies (listed below) plan to add a total of 47 positions to the current EPIC staff of 460 and during fiscal year 2012–2015, 7 agencies (listed below) plan to add an additional 83 positions.

Agency	Increase
Current EPIC Staff .....	460
Fiscal Year 2011:	
ATF .....	+ 6
FBI (Southwest Intel Group) .....	+ 1
USMS .....	+ 7
National Guard Bureau .....	+ 17
Texas Counterdrug .....	+ 3
JTF-North J-2 .....	+ 9
USCG .....	+ 2
DEA .....	+ 2
Total Fiscal Year 2011 .....	+ 47
New EPIC Section .....	(1)
Fiscal Year 2012–Fiscal Year 2015:	
ATF .....	+ 2
USMS .....	+ 4
National Guard Bureau .....	+ 47
JTF-North J-2 .....	+ 14
CBP .....	+ 9
USCG .....	+ 3
DEA .....	+ 2
Total Fiscal Year 2012–Fiscal Year 2015 .....	+ 83

<sup>1</sup> TBD.

The above increases would bring the EPIC staffing level to 590 by fiscal year 2014–2015.

#### NARCO-TERRORISM

*Question.* I believe that unless we address the drug problem in Afghanistan with the same level of resolve as the insurgency we will fail to stabilize the country. The Drug Caucus has found that the Taliban's terrorist operations are increasingly propelled by its huge narcotics profits, with as much as \$169 million coming from a single heroin trafficker in a 10-month period. At present, the DEA, which has units to address this type of narco-terrorism, does not have the manpower to devote to fulltime operations in Afghanistan, but has already been effective in combating major drug violators who are providing weapons to the Taliban. For a fraction of our national investment in Afghanistan, a DEA unit could be dedicated to removing narco-terrorists from the battlefield in direct support of the administration's top national security priorities.

I am asking for funding in the fiscal year 2010 supplemental or in fiscal year 2011 appropriations to stand up a new Terrorism Investigations Unit at DEA's Special Operations Division to focus on Afghanistan.

Have the existing Terrorism Investigations Unit been effective and do you agree that more resources are needed to address threat of narco-terrorism?

*Answer.* DEA has two enforcement groups within its Special Operations Divisions (SOD) with the mission of investigating high-level foreign-based drug traffickers and narco-terrorists organizations—the Bilateral Investigations Unit and the Terrorism Investigations Unit. Both units have been able to disrupt and dismantle some of the world's most dangerous drug trafficking organizations, as well as organizations that have supplied funding and arms to terrorists. The investigative success of these units has strengthened DEA's international partnerships and proven to be an invaluable prosecutorial tool for the U.S. Government.

The groups primarily conduct joint investigations with DEA Foreign Offices working toward U.S.-based prosecutions in coordination with SOD's Counter-Narcoterrorism Operations Center (CNTOC), DEA's central hub for addressing the increase in narco-terrorism related issues and investigations. The CNTOC's primary mission is to coordinate all DEA investigations and intelligence linked to counter-terrorism

and narco-terrorism; targeting, investigating, and extraditing individuals who are involved with drug proceeds that finance terror; and coordinating terrorism-related information with the FBI and other U.S. Government agencies.

The Bilateral Investigations Unit primarily pursues cases of drugs being exported to the United States under 21 U.S.C. § 959, and has actively investigated major Mexican and Colombian drug traffickers. Since its formation in 2002, the Bilateral Investigations Unit has realized numerous successes including the indictments of Ismael Zambada-Garcia and two key lieutenants; Ignacio Coronel Villarreal; and the late Arturo Beltran Leyva and Hector Beltran Leyva. Additionally, the Bilateral Investigations Unit indicted 17 Gulf Cartel members under Operation Dos Equis.

In 2007, the DEA established the Terrorism Investigations Unit, a second enforcement group that works within SOD. Under the authority of 21 U.S.C. § 960a, this Unit investigates international criminal organizations that use illicit drug proceeds to promote and finance foreign terrorist organizations and acts of terror. These DEA agents have also produced impressive case results such as the arrest of notorious arms trafficker Viktor Bout and his associate Andrei Smulian; the arrest of arms trafficker and terrorist Monzer Al Kassar; the capture of Haji Bashir Noorzai, reputedly Afghanistan's biggest drug kingpin with ties to the Taliban and Al Qaeda and the leader of one of the largest drug trafficking organizations in the Central Asia region; and the capture of Haji Baz Mohammad, an Afghan heroin kingpin who was the first defendant ever extradited to the United States from Afghanistan.

During December 2009, the investigative efforts of the Terrorism Investigations Unit resulted in Federal prosecutors charging three West Africans with plotting to transport tons of cocaine across Africa in concert with Al Qaeda, using 21 U.S.C. § 960a for the first time against that group. This investigation highlights the growing trend of ties between drug traffickers and Al Qaeda as the terrorist group seeks to finance its operations in Africa and elsewhere.

While the nexus between drugs and terrorism is not a new phenomenon, the speed of its growth in the recent past has been dramatic. Based on the overwhelming success of these two investigative units and the potential to further expand the Government's prosecutorial reach beyond our traditional borders, DEA believes that a third enforcement group would generate immediate results on a global scale; specifically in Afghanistan. Senate Report 111-229, that accompanies the Senate's fiscal year 2011 appropriations bill for Commerce, Justice, Science, and related agencies, directs DEA to use existing resources to create an additional Terrorism Investigations Unit.

#### GUN SHOWS

*Question.* This April marked the 11th anniversary of the Columbine High School massacre. All four of the guns used by the killers were purchased through private sellers at gun shows. No background checks were required for these sales due to a gap in Federal law known as the Gun Show Loophole. Moreover, according to ATF data, gun shows are a major source of firearms trafficked into Mexico by drug cartels. Mayors Against Illegal Guns—a bipartisan coalition of over 500 mayors from across the country—has written a memorandum to the administration, called the Blueprint for Federal Action on Illegal Guns, that lays out specific administrative reforms that the Justice Department and ATF could undertake to improve enforcement at gun shows.

What is the Justice Department's overall strategy to address illegal sales at gun shows?

*Answer.* In support of efforts to reduce violent crime and protect the public, ATF has a comprehensive strategy for addressing illegal firearms trafficking at gun shows. While gun shows and flea markets provide an outlet for firearms collectors, dealers and sportsmen to engage in the lawful commerce of firearms, they can also provide opportunities for prohibited persons, including violent offenders, to illegally obtain firearms. The unregulated sale of personal firearms at gun shows can increase the likelihood of criminal activity such as trafficking and straw purchases. Frequently at these events, criminals are able to obtain firearms with no background check and crime guns may be transferred with no records kept of the transactions.

ATF's National Firearms Trafficking Enforcement Strategy went into effect in June 2009, guided by a detailed implementation plan to identify, investigate, disrupt, and refer for prosecution illicit firearms traffickers, including proactive strategies to identify and target illegal firearms traffickers at gun shows and flea markets in their jurisdictions. There are two main elements to this strategy:

*Element 1 (Pursue Investigations Where There is Reasonable Cause to Believe Violations Have Occurred).*—ATF Special Agents conduct investigations when there is

reasonable cause to believe a violation of the Federal firearms laws has occurred. As with all investigations, ATF bases its decisions to conduct investigative operations at gun shows on significant law enforcement intelligence and information from sources that indicate illegal activity is occurring at a specific gun show. ATF often conducts these operations with the support of and in cooperation with State and local law enforcement agencies. These joint law enforcement efforts have proven to be successful in ensuring the lawfulness of firearms transactions at gun shows.

In addition to investigating Federal firearms licensees (FFL) believed to be violating Federal law, ATF also investigates private sellers who appear to be engaged in the business of dealing firearms without a license. Some individuals may do so without criminal intent and in ignorance of the law. Others engage in firearms trafficking purposefully. In both cases, through coordinated investigative and outreach efforts, ATF seeks to identify such persons, whether they operate out of gun shows or other venues, and deter this illegal activity.

*Element 2 (Conduct Proactive Outreach Activities That Educate Gun Show Participants and Attendees).*—ATF industry operations investigators (IOIs) provide outreach at gun shows by proactively educating attendees and preventing the illegal diversion of firearms. ATF IOIs have held pre-gun show seminars for sellers to educate them on Gun Control Act requirements and assist them in detecting and preventing straw sales. ATF IOIs have also staffed booths at numerous gun shows to provide information and assist with questions from sellers and purchasers. In addition, ATF IOIs have displayed posters and distributed flyers to gun show attendees on the “Don’t Lie for the Other Guy” program. These flyers explain the legal requirements applicable to gun show participants, which vary as among FFL from within the State where the gun show is held, FFLs from other States, and private individuals.

*Question.* Has the Justice Department and ATF implemented the mayors’ recommendation to enhance gun show enforcement? Does it have any plans to do so? *Answer.* ATF’s responses to the mayors’ recommendations are listed below:

—*Recommendation 10.*—When tracing guns, ATF National Tracing Center (NTC) personnel should be trained to routinely ask the FFL who sold the gun whether the recovered gun was purchased at a gun show and the location of that gun show, and then use the data to identify problematic gun shows. The NTC began requesting information regarding the location where the sale of a firearm took place (specifically whether the sale occurred at a gun show and if so, the location thereof) from FFLs in June 2008. Our ability to retrieve this information in an automated manner will be improved when ATF’s firearms systems are fully upgraded, a process which is estimated to be completed approximately 2 years from now.

—*Recommendation 11.*—ATF field agents should have the discretion to conduct criminal enforcement operations at gun shows when trace data, prosecutions, and witness statements suggest a particular show is a source of crime guns. ATF field divisions currently have the necessary latitude to conduct criminal enforcement investigations at gun shows given the set of facts outlined by the mayors.

—*Recommendation 12.*—ATF should increase enforcement activities to deter sales to prohibited purchasers by unlicensed gun sellers. ATF currently uses all available information and intelligence to target unlicensed sellers at gun shows who are engaging in illegal activities. ATF recognizes that gun shows are often used by illegal firearms sellers and buyers, and targets these illegal activities as an investigative priority. Through ATF’s coordinated investigative and outreach activity, ATF seeks to deter sales to prohibited persons by licensed and unlicensed sellers. ATF Industry Operations Investigators (IOIs) complement ATF’s criminal enforcement endeavors at gun shows by taking a proactive approach to educate attendees and prevent diversion of firearms. ATF IOIs have held pre-gun show seminars for sellers to educate them on Gun Control Act (GCA) requirements and assist them in detecting and preventing straw sales. ATF IOIs have also staffed booths at numerous gun shows to provide information and assist with questions from sellers and purchasers. In addition, ATF IOIs have displayed posters and distributed flyers to gun show attendees on the “Don’t Lie for the Other Guy” program. These flyers explain the legal requirements applicable to gun show participants, which vary as among FFLs from within the State where the gun show is held, FFLs from other States, and private individuals.

—*Recommendation 13.*—ATF should investigate private sellers at gun shows who appear to be engaged in the business without a license. ATF currently performs such investigations as part of its firearms trafficking strategy. ATF investigates private sellers who appear to be engaged in the business of dealing firearms

without a license. Some individuals may do so without criminal intent and in ignorance of the law. Others engage in firearms trafficking purposefully and with full knowledge of the law. In both cases, ATF seeks to identify such persons, whether they operate out of gun shows or other venues, and deter this activity.

—*Recommendation 14.*—At gun shows known for criminal activity, agents should have discretion to compare purchasers' addresses reported on Form 4473 to their State driving records. At gun shows, as with sales at other locations, FFLs are required to confirm a buyer's residence address by comparing the address documented by the purchaser on the ATF Form 4473 with the purchaser's identification document. The information provided by purchasers is particularly important because it is used to initiate the background check process required by the GCA. Confirmation of residence addresses through residence checks has proven to be an important tool to ensure the lawfulness of firearms transactions and to prevent straw purchases. However, Federal laws do not require firearm buyers to submit to any background checks from private non-licensed dealers.

#### ATF RESOURCES

*Question.* The stated goal of ATF is to inspect Federal licensed firearms dealers once every 3 years—an important practice for ensuring dealer compliance with Federal laws and regulations. Yet in 2007, ATF inspected only 9.3 percent of FFLs—an average rate of one inspection every 11 years.

Do you believe DOJ, and specifically ATF, currently receive adequate funding and resources to conduct firearms compliance inspections of dealers every 3 years?

*Answer.* ATF currently has approximately 640 industry operation investigators (IOIs) conducting firearms compliance inspections on a 6-year cycle. This amounts to 11,000 firearms compliance inspections conducted a year. The primary objectives of these inspections are to educate the industry concerning regulatory requirements, and to promote compliance and additional internal controls to prevent and detect diversion. Although ATF believes a 3-year inspection cycle would be optimal, its current "risk-based" approach directs existing resources to Federal firearms licensees (FFLs) with a history of noncompliance. Additionally, with the added resources provided in recent years to address firearms violence along the Southwest border ATF has increased the number of IOIs on-board and has been able to conduct 3-year inspection cycles in this high priority geographic area.

*Question.* In addition, when do you expect the President to announce a nominee for the Director of the ATF?

*Answer.* The administration recognizes the importance of the ATF Director position, and we expect that the President will announce a nominee for Director of ATF as soon as possible.

#### SOUTHWEST BORDER PROSECUTION INITIATIVE

*Question.* In April, I wrote a letter to the subcommittee with Senators Boxer, Cornyn, Hutchison, Bingaman and Udall asking that funding for Southwest Border Prosecution Initiative (SWBPI) be restored in fiscal year 2011. The SWBPI program reimburses State, county, parish, tribal, and municipal governments for costs associated with the prosecution and pre-trial detention of Federal-initiated criminal cases declined by local offices of the United States Attorneys. This important funding provides local law enforcement agencies with the means to prosecute drug trafficking and violent crime cases that have been initiated federally but referred to local jurisdictions along the southwest border.

If this funding is not restored, will U.S. Attorneys continue to refer cases to State and local jurisdictions for prosecution? If not, do the U.S. Attorneys in the Southwest border States have sufficient resources to deal with the increased caseload?

*Answer.* Local, State, and tribal prosecution offices are important partners with the five Southwest border Districts in prosecuting criminal offenses that originate along the border between the United States and Mexico. Without this partnership, thousands of criminal cases, namely narcotic offenses, would not be prosecuted.

Although the U.S. Attorney's Offices have been allocated additional Assistant U.S. Attorney (AUSA) positions to devote to the investigation and prosecution of Southwest border type offenses and criminal immigration offenses, they still require the assistance of the State, local and tribal prosecution offices to prosecute lower level drug trafficking crimes, simple possession drug offenses and certain juvenile offenses. Since 2008, the Department has allocated an additional 111 new AUSA positions to the 5 SWB Districts. Due to the additional attorney resources, each of the five SWB Districts saw a dramatic increase in its felony caseload from fiscal year 2007 to fiscal year 2009. Arizona increased its felony caseload by 1,153 cases; south-

ern California increased its felony caseload by 1,567 cases; New Mexico increased its felony caseload by 1,155 cases; southern Texas increased its felony caseload by 2,674 cases and western Texas increased its felony caseload by 2,118 cases. The additional resources that the State, local and tribal courts can employ to address and combat criminal offenses along the Southwest border increases the total number of criminal offenders that can be successfully prosecuted.

#### THOMSON FACILITY

*Question.* The fiscal year 2011 Bureau of Prisons (BOP) budget request for the Thomson prison is \$236.9 million, including funds to purchase (\$155 million), renovate (\$15 million), and staff (\$66.9 million) the facility. The prison will add 1,600 high security beds to the Federal system. Some have argued, I believe incorrectly, that moving these detainees creates a new terrorist target “in the heartland of America”.

Can you describe the modifications that will be made to the facility to ensure that it will be able to house high-risk Federal inmates and former Guantanamo detainees?

*Answer.* Additional modifications would be needed to meet BOP’s security standards to house high security inmates. Below is a list of the major modifications needed, together with examples of the necessary security enhancements: New stun-lethal fence and new razor ribbon to meet BOP guidelines; new fence alarm system; new rear gate and sallyport gates; construction of facilities building and storage area; and security upgrades, such as: Door locks, hardening of recreation cages behind units, adding security fencing within compound, installing additional cameras tied to the monitoring system, installing radio system base and portables, adding additional security lighting within compound, installing anti-crash bollards in front of institution and rear, and constructing holding cells in receiving and discharge area.

Acquisition and activation of the Thomson facility will reduce the BOP’s shortage of high security, maximum custody cell space. If it is determined that a portion of the facility is required for detainee management purposes, then the BOP would operate the Thomson facility as a high-security administrative maximum prison with Federal inmates and make a portion available to the Department of Defense (DOD) to house a limited number of detainees. DOD would also be solely responsible for the detainees housed in its separate portion of the facility and DOD would be responsible for any additional security upgrades to the institution that it deemed necessary. However, the facility would be owned by the BOP, and the Department would intend to pay the acquisition costs.

*Question.* How different will this facility be from the Supermax facility in Florence, Colorado?

*Answer.* The Thomson facility was built for the State of Illinois as a maximum security prison and was completed in 2001. It could be used fairly quickly after some modifications, which would reduce costs and save several years of construction time, as compared to constructing a new facility. Moreover the Thomson facility would enable the Bureau of Prisons (BOP) to move the most disruptive and violent inmates out of existing general population U.S. Penitentiaries (USPs) to a newer, more modern facility better suited to the controls required to manage the Special Management Unit (SMU) and Administrative Maximum (ADX) type population.

Once modified, Thomson would be similar to ADX Florence in security standards and daily operations. Acquiring Thomson would not replace ADX Florence, but rather help alleviate inmate crowding levels and provide safer conditions for staff and inmates. The number of supermax beds available in BOP facilities has not increased since ADX Florence was activated in 1994. ADX type and SMU inmates require specific higher security standards. Individual cells are required for ADX type inmates and, therefore, require more space to operate. The Thomson facility is not only larger than the ADX, but by acquiring Thomson, the BOP would gain a fairly new high security facility with ample bed space to house ADX type and SMU inmates, at a lower cost and within a shorter timeframe, than building a new facility from the ground up.

As it stands now, its size, age, and existing security features make it the best, and possibly, only, candidate to be retrofitted to meet Federal maximum security requirements.

#### VOCA FUNDING

*Question.* On June 24, 2009, Senator Leahy introduced the Crime Victims Fund Preservation Act of 2009, of which I am a cosponsor. The bill would establish minimum funding levels for the Crime Victims Fund for fiscal years 2010 through 2014.



The amount made available to the fund would be increased by 23 percent each year from \$705 million in fiscal year 2010 to \$1.6 billion in fiscal year 2014.

Does the Justice Department have a position on this bill and are the funding levels proposed in the bill sufficient?

Answer. The administration remains strongly committed to preserving the integrity of the Crime Victims Fund and to supporting all victims of crime. The Crime Victims Fund also provides support for programs targeting women who are victims of crime and provides resources for victim service providers. Like the Crime Victims Preservation Act, the fiscal year 2011 President's budget contemplates an increase in the cap for the Crime Victims Fund. For fiscal year 2011, the administration has proposed a \$95 million (13.5 percent) increase to the Crime Victims Fund cap for a total of \$800 million. Of the total amount requested, \$100 million is set-aside to support programs to combat violence against women. For a given year, the cap for the Crime Victims Fund is determined as part of the budget development process for that year. Therefore, at this time, the Department has no position on the appropriate level for the cap in future years.

#### CRIME VICTIMS CLINICS

*Question.* In 2004, Senator Kyl and I successfully enacted legislation, the Crime Victims' Rights Act, to provide the victims of violent crimes a set of procedural rights under Federal law, and to ensure that they have a standing to assert their rights before a court.

The act also authorized Federal funding for victims' clinics for pro bono legal counsel and support services. With the assistance provided through these clinics, victims understand their rights, learn how to actively engage in the case against their offender, and ensure that they are not treated by the justice system as only a "witness to" or "piece of evidence in" the case.

These clinics are essential to victims' understanding of their rights and their subsequent ability to request the enforcement of these rights at court. The Office for Victims of Crime has been helpful in providing startup funds for clinics in some States, but this funding is almost exhausted. In order to fully implement and validate the Crime Victims' Rights Act, we believe that the clinics require a constant stream of funding.

Will you work with us to locate a dedicated funding stream for these victim clinics?

Answer. OVC formally communicated to State Victims of Crime Act (VOCA) Victim Assistance Administrators in June 2010 that they were authorized to use formula VOCA funding to support legal clinics that offer legal services to crime victims. This clarification was a pivotal step in support for the legal clinics, as previously most States believed that the existing VOCA Guidelines prohibited them from supporting legal clinics with VOCA funding. To ensure continued progress, the Department's Office for Victims of Crime (OVC) supports the institutionalization and expansion of the crime victims' rights enforcement programs authorized for funding by subsections 103(A) and (b)(4) of the CVRA. OVC is in the process of revising existing guidelines for VOCA victim assistance funding and developing regulations that will further clarify and articulate the policy that it is appropriate and allowable to use this funding to support legal assistance to crime victims for issues related to their criminal victimization, including legal representation during criminal proceedings.

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#### QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

*Question.* My understanding is that a legally purchased firearm was recovered in the Times Square bombing suspect Faisal Shazad's car at JFK Airport. As you know, NICS background check records for firearm purchases are destroyed in 24 hours after a purchase is approved.

Do you think that destroying NICS background check records that were used in approving a gun purchase in just 24 hours is a good idea?

Answer. National Instant Criminal Background Check System (NICS) background check records for "proceeded" transactions (i.e., background checks that reveal no prohibiting information about the purchaser) are contained in the NICS Audit Log. Information in the NICS Audit Log concerning proceeded transactions is required by law to be destroyed within 24 hours. NICS has been complying with that requirement since July 21, 2004, without incident. Regardless of the length of retention, moreover, information in the NICS Audit Log concerning proceeded transactions may only be used for limited purposes, which do not include routine law enforcement functions. As a result, changing the retention period for NICS Audit Log infor-

mation would not necessarily make that information more available as an investigative tool.

*Question.* In the absence of the requirement to destroy the NICS background check record of Faisal Shahzad in 24 hours, do you believe that the FBI would have known right away by reviewing his background check record that the suspect had purchased a firearm and could be armed with it?

*Answer.* If Mr. Shahzad attempted to purchase a firearm from a Federal firearm licensee, a NICS background check record would have been created. Even assuming that this record was maintained in the NICS Audit Log beyond 24 hours, however, it would not reveal whether the firearm was actually transferred. Moreover, as noted above, the FBI's ability to use that record for law enforcement purposes is constrained by law.

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QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

NIST FORENSICS

*Question.* Attorney General Holder, The National Academy Forensics Study made 13 recommendations to shore up deficiencies identified by their investigation. The areas requiring attention are standards, practices, protocols, research, ethics, education, training, accreditation, certification, proficiency testing, report writing and testimony. Included in the recommendations is the creation of a national institute of forensic science.

What is your opinion on this report and its recommendations?

*Answer.* The Department welcomed the report of the National Research Council of the National Academies of Science (NAS) entitled, Strengthening Forensic Science in the United States: A Path Forward (the NAS report). The report is an important contribution to the public discourse on the state of the forensic science community, and it recommends many useful steps to strengthen the community and enable it to continue to support an effective criminal justice system. In fact, many of these steps are familiar to those in the forensic science community, including DOJ, and have been discussed among practitioners for some time.

*Question.* What is your Department doing to address these recommendations? Is there a timeline for action?

*Answer.* The Department of Justice is participating in the inter-agency Subcommittee on Forensic Science (SOFS) of the National Science and Technology Council, organized by the White House's Office of Science and Technology Policy. The SOFS is currently preparing recommendations for coordinated, comprehensive executive branch action to advance the goals of the NAS report.

*Question.* The report cites the need for increased scientific research in the forensic disciplines, how is the administration going to address this recommendation? Are you working with science agencies like NIST, NSF, and OSTP?

*Answer.* The Department of Justice is participating in the inter-agency Subcommittee on Forensic Science (SOFS) of the National Science and Technology Council, organized by the White House's Office of Science and Technology Policy. DOJ and NIST are the co-chairs of the SOFS, and NSF is an active participant. The SOFS is working on coordinated, comprehensive executive branch action to advance the goals of the NAS report, including increased scientific research. For example, on a recommendation from the SOFS, in September 2010 NSF sponsored a symposium on cognitive bias and forensic science. This recommendation from the SOFS responds directly to issues raised in chapter 4 of the NAS report.

In addition, the Department's National Institute of Justice (NIJ) has several projects in place that address the need for more funding of forensic science research:

- NIJ awarded \$7.9 million in fiscal year 2009 and \$7.2 million in fiscal year 2010 under a solicitation entitled, "Fundamental Research to Improve Understanding of the Accuracy, Reliability, and Measurement Validity of Forensic Science Disciplines."

- NIJ recently issued its first-ever grant solicitation focused on research and development for medicolegal death investigations and in June 2010, NIJ held its first symposium for medical examiners and coroners in an effort to identify their research needs.

- NIJ's Office on Investigative and Forensic Sciences recently initiated an NIJ-Forensic Sciences Foundation grant program which provides research grants to students in FEPAC accredited colleges and universities.

*Question.* In my opinion, the solution to the issues raised by the NAS is going to involve more than just the Department's assets. While I don't think the creation of a separate and independent National Institute of Forensic Science is realistic, I do

think that some type of partnership between Justice, NIST, and NSF will be required. Would you be supportive of this type of arrangement?

Answer. As noted above, the Department already works closely with NIST and NSF through the SOFS and supports continued close cooperation to jointly improve forensic science.

#### ADAM WALSH ACT RESOURCES

*Question.* There are an estimated 135,000 non-compliant sex offenders in the United States and the Marshals Service estimates they need a dedicated force of 500 deputies working on these cases to fully implement the Adam Walsh Act.

In March 2010, President Obama appeared on “America’s Most Wanted” with John Walsh and made a pledge to increase funding and personnel for enforcement of the Adam Walsh Act. The President highlighted that “it is very important for us to build up U.S. Marshals’ capacity. That is something we want to do in the Federal budget . . . my expectation is that we will get support, bipartisan support, from Congress on this issue because it is so important to every family across America.”

If fully funding the Adam Walsh Act is a priority for the President, why didn’t DOJ request additional resources for the Marshals Service in the fiscal year 2011 budget request?

Answer. The Adam Walsh Child Protection and Safety Act is a significant and landmark piece of legislation that considerably enhances the ability of the Department to respond to crimes against children and vulnerable adults and prevent sex offenders who have been released back into the community from victimizing other people. In fiscal year 2011, the administration is requesting \$336 million for Adam Walsh Act related activities, an increase of \$20 million (6.3 percent) to support implementation of the provisions of the Act.

*Question.* Can Congress expect to receive an amended fiscal year 2011 request adding resources for Adam Walsh Act enforcement?

Answer. The Department is not aware of any pending supplemental requests or budget amendments that would direct additional resources to the Department specifically to enforce the Adam Walsh Act. However, most of the activities authorized by the act are already performed as part of the Justice Department’s traditional mission. In most instances, for programs where the act authorized specific funding levels, the Department is spending at or above those levels.

#### DANGER PAY FOR USMS AND ATF PERSONNEL IN MEXICO

*Question.* While the DEA and FBI receive danger pay for their personnel in Mexico due to prior authorizations passed in 1990 and 2002, the Marshals Service and ATF do not have this same authorization language. USMS and ATF personnel face the same risks as their DEA and FBI counterparts in Mexico and should be equally compensated.

Due to recent killings of consulate workers in Juarez, the State Department added danger pay for all U.S. Government employees working in six Mexican cities (Juarez, Matamoros, Monterrey, Nogales, Nuevo Laredo, and Tijuana). State’s guidelines are limited to where personnel are “posted”; therefore, USMS and ATF personnel who are officially posted in Mexico City (not on State’s list of six Mexican cities) will not receive danger pay.

How is this administration working to rectify this danger pay disparity among DOJ law enforcement personnel working in Mexico?

Answer. This subject is complicated by the random nature of the violence that could put our employees in harm’s way, and the diversity of operational requirements between FBI, DEA, USMS, and ATF. We have made great strides in the last year to better understand this issue and other steps besides danger pay are promotions for those who serve in Mexico.

Within the last year, the Department of State has authorized danger pay for five cities in Mexico. In addition, during recent discussions with State, we have been made aware that a 5 percent Hardship Allowance based upon “danger” factors at a post has been authorized for four additional cities in Mexico, including Mexico City.

Currently Danger Pay is authorized for the following cities in Mexico: Ciudad Juarez at 15 percent; Matamoros at 15 percent; Monterrey at 15 percent; Nogales at 15 percent; and Tijuana at 15 percent.

Danger factors within the Hardship Differential provide 5 percent additional at the following posts: Guadalajara is at 5 percent but would be at zero otherwise; Hermosillo is at 15 percent but would be at 10 percent otherwise; Merida is at 15 percent but would be at 10 percent otherwise; and Mexico City is at 15 percent but would be at 10 percent otherwise.

The Department of State has assured us that they are regularly monitoring the situation in Mexico.

*Question.* Why was danger pay for USMS and ATF not included as a legislative need in the fiscal year 2011 budget request?

*Answer.* The administration is currently addressing this issue; therefore, a legislative proposal at this time would be premature.

*Question.* When can Congress expect to see a proposed legislative solution to this issue?

*Answer.* DOJ and the Department of State are working collaboratively on the issue of Danger Pay in Mexico and have made great strides within the last year, as noted in response to your previous question. We are actively engaged in discussions on a legislative package that would bring parity between our agencies, though the timing of such legislation has not been decided. We are committed to ensuring the safety of our employees stationed abroad and appreciate the level of interest and support you have provided us on this issue.

#### DHS-DOJ DISPARITY ALONG THE SOUTHWEST BORDER

*Question.* On April 19, Senators McCain and Kyl released a 10-point plan to increase Southwest border security. The plan proposes adding resources to DHS, particularly Border Patrol, but not for DOJ's components. Many Southwest border districts are already operating at capacity, particularly the Marshals Service and Office of Detention Trustee, in terms of space to hold detainees. Adding more resources without balancing the request to include DOJ agencies could lead Southwest border districts to the breaking point.

Does the administration believe there is parity between DHS and DOJ along the Southwest border?

*Answer.* The administration is working to facilitate parity between DHS and DOJ on the Southwest border. Any increase in Department of Homeland Security (DHS) enforcement activity has a "downstream" impact on workload and resource requirements that affect the rest of the criminal justice system, including both DOJ and the Judiciary. A principal area of concern along the Southwest border is the existing capacity of the prosecutorial, judicial, detention and incarceration components to respond to increased efforts by law enforcement. Currently, the annual number of apprehensions outpace prosecutorial capacity for criminal cases involving illegal immigration, drug trafficking, border violence and gangs; litigation and adjudication capacity for immigration cases moving through the Federal courts; detention capacity for the criminally accused as they move through the criminal justice system; and incarceration capacity for the criminally convicted after they are sentenced.

Additional funding directed at certain critical chokepoints could make matters worse if it is provided without considering the entire scope of Southwest border requirements. These chokepoints include: limits in human capital, training and facilities for new personnel (both operational and administrative); and infrastructure and other physical capital constraints along the Southwest border, particularly USMS cellblock/courthouse space, detention/incarceration beds, and tactical support resources. Outside of the DOJ, the limited number of courtrooms, judges, magistrates, and other members of the judiciary further restrict the Federal Government's ability to increase prosecutorial caseload and process larger numbers of offenders in the justice system.

*Question.* If the McCain-Kyl plan makes its way to legislation, what resources would DOJ agencies need to maintain parity with DHS?

*Answer.* Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow the Department of Justice to expand our investigations and prosecutions. With the \$196 million provided, the Department will be able to surge Federal law enforcement officers to high crime areas in the Southwest border region by funding more than 400 new positions and temporarily deploying up to 220 personnel. Specifically, Justice funding would increase the presence of Federal law enforcement in the Southwest border districts by adding seven ATF Gun-runner Teams, five FBI Hybrid Task Forces, additional DEA agents and Deputy U.S. Marshals, equipment, operational support, and additional attorneys and immigration judges and to support additional detention and incarceration costs for criminal aliens in coordination with Department of Homeland Security enforcement activities. The supplemental would also provide funding to support Mexican law enforcement operations with ballistic analysis, DNA analysis, information sharing, technical capabilities, and technical assistance. However, some of these funds were required for Justice to prosecute the current level of Operation Streamline prosecutions. Any significant increase in resources of the Border Patrol will have a signifi-

cant downstream impact on the Department of Justice and the Administrative Office of the Courts.

*Question.* How would DOJ component agencies—the Marshals Service, Office of Detention Trustee, U.S. Attorneys Office—be affected if Operation Streamline is expanded to all districts along the Southwest border?

*Answer.* The capacity of the criminal justice system in the Southwest border region presents a very real impediment that needs to be addressed before Operation Streamline can be expanded beyond its present scope. These impediments include the physical constraints of courthouses along the border, including the number of defendants that can be housed and processed in a given day; the number of judges, magistrates, and other judicial personnel; and the number of detention beds where defendants can be housed in reasonable proximity to a given courthouse. Presently, courthouse structures in the region are inadequate to process large numbers of additional defendants. Moreover, the U.S. Marshals Service and U.S. Attorneys would have to modify or waive a number of their internal requirements in order to process an increase in defendants. Even increasing the daily shift of operations within the courthouses, particularly in Tucson, Arizona and San Diego, California, would be insufficient to process the increase in defendants likely to arise from expanding Operation Streamline.

Increased Department of Homeland Security (DHS) enforcement activity in the Southwest border region would have a “downstream impact” on workload and resource requirements—affecting the rest of the criminal justice system, including the Justice Department and the Administrative Office of the U.S. Courts (AOUSC). For example, felony drug arrests and subsequent additional investigations would likely increase, resulting in the need for additional Drug Enforcement Administration agents and support staff, and the need for additional attorney and intelligence analyst personnel deployed as part of the Organized Crime Drug Enforcement Task Forces Program. Further, additional Alcohol, Tobacco, Firearms and Explosives personnel would be needed to address gun trafficking arrests and investigations. In addition, Operation Streamline would increase the fugitive warrant workload, which in turn further impacts the USMS. The workload of other parts of the system, including the Executive Office for Immigration Review and the Civil Division’s Office of Immigration Litigation, would also increase. As stated previously, AOUSC would likely require additional courthouse space, judges, magistrates, and other judicial personnel to accommodate pressures resulting from the increased DOJ investigative and prosecutorial workload.

*Question.* Can DOJ provide this subcommittee with a detailed report about the resources needed if Operation Streamline was expanded to all Southwest border districts?

*Answer.* Operation Streamline has been viewed as a consequence-based prosecution initiative in which many U.S. Customs and Border Protection (CBP) apprehensions are criminally prosecuted. Operation Streamline is currently in place in some form in several sectors in the Southwest border region. However, even in those sectors where Operation Streamline is in place, many of the programs have a “daily cap” in terms of prosecutions based on resource limitations of Department components and Federal courts. For example, although CBP arrests several hundred individuals each day in the Tucson, Arizona Sector, only 70 cases per day are prosecuted under the auspices of Operation Streamline. This number is capped at 70 cases due to resource limitations of the U.S. Marshals Service cellblock and personnel, courtroom space, availability of court personnel, and detention bed space.

In order to implement Operation Streamline across the entire Southwest border region in a true zero-tolerance form, Department components and the Federal court system would need additional resources, such as:

- Additional personnel would be needed by the U.S. Marshals Service, the U.S. Attorneys Offices, and the courts.
- Additional resources for the Federal Prisoner Detention Fund would also be required.
- Additional construction funding would be needed to exponentially enlarge cellblock space in all Southwest border U.S. Courthouses.

At this time, the Department cannot provide a detailed report about the resources needed Government-wide if Operation Streamline was expanded to all Southwest border districts. Many of the Department cost inputs fluctuate. For example, detention costs are dependent on both detainee population levels and per diem jail rates. These levels and the average per diem jail rate would fluctuate as the immigration workload shifted to other border zones with less stringent immigration enforcement policies. Other factors impacting costs, also unknown, include time in detention (which is at the discretion of the courts; average sentence terms from Operation

Streamline cases have not been uniform across Operation Streamline locations) availability of bed space, as well as courthouse and cellblock space limitations.

Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow us to expand our investigations and prosecutions. With the \$196 million provided, the Department will be able to increase the presence of Federal law enforcement in the Southwest border districts by adding seven ATF Gunrunner Teams, five FBI Hybrid Task Forces, additional DEA agents and Deputy U.S. Marshals, equipment, operational support, and additional attorneys and immigration judges and to support additional detention and incarceration costs for criminal aliens in coordination with DHS enforcement activities.

DEA-EPIC-ICE

*Question.* Mr. Attorney General, I understand that there is considerable confusion about providing support to the law enforcement community in the interdiction of bulk currency and that at least two centers—the El Paso Intelligence Center or EPIC and the Bulk Currency Smuggling Center operated by ICE—are competing with one another to provide similar services to law enforcement.

Are you aware of this and what can you tell us about plans to assure that tax dollars are not being wasted?

*Answer.* DEA and the Department of Justice are aware of the ICE Bulk Currency Smuggling Center (BCSC). The Department is aware that there may be duplication of effort and confusion over the bulk currency activities of the BCSC and DEA's El Paso Intelligence Center (EPIC). Several meetings between DEA—representing EPIC—and ICE—representing the BCSC—have recently been held to address this matter and to assure the effective and efficient expenditure of appropriated funds. There has been some progress in these discussions but the matter has not yet been conclusively resolved. Since 1974, EPIC has operated as an interagency intelligence center providing tactical support to law enforcement organizations dealing with illegal aliens, weapons, contraband drugs and, by extension, the currency that represents the proceeds of these illegal activities. As a multi-agency tactical intelligence center with representatives from 20 Federal agencies, including ICE, and liaisons assigned from Colombia and Mexico, EPIC has been responsible for tactical cueing and providing intelligence and de-confliction for law enforcement agencies from across the country for more than three decades.

BUREAU OF PRISONS/THOMPSON CORRECTIONAL CENTER

*Question.* The fiscal year 2011 budget requests a total of \$237 million—\$170 million for purchase and renovation and \$67 million for equipping and staffing—the Thompson Correctional Center. The Thompson Correctional Center is an Illinois State Prison that would be converted into a high security U.S. Penitentiary. It is also the site that the administration has identified for relocating terrorists who are currently housed at GITMO.

Mr. Attorney General, was the \$237 million for Thompson Correctional Center part of the Department of Justice fiscal year 2011 budget request to OMB? Or was this funding added to the Department's request by the administration?

*Answer.* Regarding budget deliberations, the nature and amounts of the President's decisions and the underlying materials are confidential. As described in the fiscal year 2011 Congressional Justification, the Thomson facility provides an opportunity to alleviate prison overcrowding in a cost effective manner. As of August 12, 2010, BOP institutions are crowded 37 percent over rated capacity, causing triple bunking in low and medium security institutions, and double bunking in high security institutions. Crowding is 53 percent over capacity in high security facilities. Capacity must be expanded to promote safe prison operations for both staff and inmates.

NATIONAL DRUG INTELLIGENCE CENTER

*Question.* The Department is requesting \$45 million for the National Drug Intelligence Center.

Mr. Attorney General, was the \$45 million for the National Drug Intelligence Center part of the Department of Justice fiscal year 2011 budget request to OMB? Or was this funding added to the Department's request by the administration?

*Answer.* The Department of Justice fully supports the \$45 million included in the fiscal year 2011 President's budget request for NDIC. The funding represents the ongoing cost to maintain NDIC operations and does not reflect an enhancement of NDIC's programs. Deliberations that led to the President's budget decisions are confidential to the executive branch, and congressional justification materials describe requests made in the fiscal year 2011 President's budget.

## DRUG INTELLIGENCE CENTER

*Question.* The subcommittee understands that OMB suggested shutting down all but the Document and Media Exploitation activities of the National Drug Intelligence Center since OMB believed the drug analysis functions are duplicated in other Federal drug intelligence centers. OMB believed such an action would save \$22 million in fiscal year 2011—\$22 million that could be used for combating terrorism and other high priorities that I believe OMB has not funded at the appropriate levels.

Mr. Attorney General, do you believe there is merit to the OMB suggestion? Is the analytical function of the National Drug Intelligence Center duplicative of other centers?

*Answer.* The National Drug Intelligence Center (NDIC) provides beneficial intelligence products to the Department as well as other drug law enforcement stakeholders. Deliberations on the future of NDIC that led to the President's budget decisions are confidential to the executive branch, and congressional justification materials describe requests made in the fiscal year 2011 President's budget.

*Question.* Mr. Attorney General, you are requesting \$42 million to expand the DEA's El Paso Intelligence Center. Would it make sense to consolidate the drug analysis work at the National Drug Intelligence Center into DEA's El Paso Intelligence Center?

*Answer.* The funds being requested to expand EPIC are to accommodate an anticipated growth in the number of U.S. and international partners that are now collaborating to advance our interests in securing the SWB and confronting transnational criminal organizations.

Deliberations that led to the President's budget request are confidential to the executive branch, and congressional justification materials describe requests made in the fiscal year 2011 President's budget.

## ADMINISTRATION "EARMARKS"

*Question.* Congress is often chastised by the administration for funding projects and programs—derisively called “earmarks”—that were not proposed in the President's budget. What the administration does not willingly identify are the “earmarks” that they add to an agency's budget for their initiatives. So, Madame Chairwoman, I'd like to bring some transparency to the process—just as we are required to declare and itemize our requests, so should the administration.

Mr. Attorney General, for the record, would you provide a list of the projects and programs and associated funding that was added to your fiscal year 2011 budget request by the administration and which were not included in your original budget request to the OMB.

*Answer.* Regarding budget deliberations, the nature and amounts of the President's decisions and the underlying materials are confidential. Information describing the President's request can be found in congressional justifications.

## PEER REVIEW COSTS AT DOJ

*Question.* Previously at OJP, there had been questionable peer review problems, in particular at the National Institute of Justice, where peer reviewers were actually reviewing contracts that their lobbyist were competing for.

What is the average cost of reviewing an application within the Office of Justice Programs?

*Answer.* Office of Justice Programs (OJP) peer review cost averages, as well as a breakdown of the costs for each of the OJP bureaus and program offices from fiscal year 2006 through fiscal year 2009, are detailed on the attached spreadsheet. See Attachment 2.

SUMMARY OF OFFICE OF JUSTICE PROGRAMS PEER REVIEW COST DATA FISCAL YEAR 2006 TO FISCAL YEAR 2009

Program Office	Fiscal Year 2006 Total Peer Review Cost	Fiscal Year 2006 Total Number of Applications Peer Reviewed	Fiscal Year 2006 Average Peer Review Cost per Application	Fiscal Year 2007 Total Peer Review Cost	Fiscal Year 2007 Total Number of Applications Peer Reviewed	Fiscal Year 2007 Average Peer Review Cost per Application	Fiscal Year 2008 Total Peer Review Cost	Fiscal Year 2008 Total Number of Applications Peer Reviewed	Fiscal Year 2008 Average Peer Review Cost per Application <sup>1</sup>	Fiscal Year 2009 Total Peer Review Cost	Fiscal Year 2009 Total Number of Applications Peer Reviewed	Fiscal Year 2009 Average Peer Review Cost per Application
BIA	\$280,000	789	\$355	\$1,061,058	2,486	\$427	\$1,381,184	2,046	\$675	\$3,959,506	7,215	\$549
BIS <sup>2</sup>	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	\$49,082	156	\$315
CCDO	\$22,050	63	\$350	\$20,950	55	\$381	\$23,891	56	\$427	\$53,222	91	\$585
NIJ <sup>4</sup>	\$1,176,233	2,019	\$583	\$1,282,720	2,383	\$538	\$1,572,875	1,609	\$978	\$1,536,148	1,679	\$915
OJDIP	\$296,021	663	\$446	\$509,815	1,164	\$438	\$747,979	949	\$788	\$2,601,590	4,421	\$588
OVC	\$60,448	135	\$448	\$83,862	116	\$723	\$136,051	102	\$1,334	\$400,316	452	\$886
SMART <sup>5</sup>	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	\$102,832	110	\$935	\$85,349	90	\$948
<b>Total Amount<sup>6</sup></b>	<b>\$1,834,752</b>	<b>3,669</b>	<b>\$436</b>	<b>\$2,958,405</b>	<b>6,204</b>	<b>\$501</b>	<b>\$3,964,812</b>	<b>4,872</b>	<b>\$856</b>	<b>\$8,685,213</b>	<b>14,104</b>	<b>\$684</b>
<b>Average Amount</b>												

<sup>1</sup>Fiscal year 2008 costs included the development and implementation of an OJP peer reviewer database that is used by all OJP bureaus and offices.  
<sup>2</sup>BIS did not implement the OJP peer review process until fiscal year 2009; BIS conducted their peer review entirely in-house and did not use OJP's Grants Management System (GMS).  
<sup>3</sup>N/A.  
<sup>4</sup>Concept papers are included in NIJ's total number of applications, and did not have in-person peer review. The number of concept papers were fiscal year 2006: 967; fiscal year 2007: 1,159; fiscal year 2008: 636; fiscal year 2009: 180.  
<sup>5</sup>SMART did not start administering and peer reviewing their own grants until fiscal year 2008.  
<sup>6</sup>Fiscal year 2009 cost and application data includes American Reinvestment and Recovery Act of 2009 (ARRA) funding applications. The peer review contract cost in fiscal year 2009 decreased due to the volume of ARRA applications, many of which were reviewed internally.



*Question.* What has OJP done to ensure this hasn't happened again?

Answer. Within 48 hours of OJP assigning applications to a peer reviewer, the peer reviewer is required to disclose any conflict of interest on the OJP Disclosure of Conflict of Interest form. This form is retained in OJP's Grants Management System (GMS). If a peer reviewer discloses a conflict of interest with any applicant, OJP's Bureau or Program Office, in consultation with the Office of the General Counsel (OGC), will review the Disclosure of Conflict of Interest form and determine if the peer reviewer needs to be removed from the peer review of the application(s). If the peer reviewer is removed from the peer review process, the reviewer's access to the application(s) is eliminated.

To prevent conflicts of interest during the application review process, NIJ issued, in June 2010, internal guidance entitled National Institute of Justice Guidelines on the Administration and Management of NIJ Grant Programs (the "Guidelines"), for the administration and management of all NIJ grant programs to ensure that key aspects of the pre-award and award process for grants and cooperative agreements are documented. Beginning with fiscal year 2010 awards, all NIJ staff involved in the pre-award evaluation process are required to complete a Disclosure of Conflict of Interest form, which is reviewed by the immediate supervisor, certifying that they have reviewed the OJP OGC Guidance on Conflicts of Interest and indicate if they perceive that they have a conflict with any of the applications they have been assigned to review. If the memorandum cites a possible conflict, the supervisor will review the signed memorandum, consider the conflict, review the subject employee's Confidential Financial Disclosure Report, and make a determination about whether or not a conflict exists. The supervisor may work with NIJ's Office of Operations staff to consult with OGC when input is deemed necessary. If the supervisor determines a conflict exists, he or she must recuse the staff member from dealing with a specific grant application or from an entire solicitation. Similar procedures to avoid conflicts of interest exist throughout OJP.

Additionally, NIJ staff attended mandatory ethics training in November 2009 conducted by OJP's OGC.

*Question.* There will be differences in costs between bureaus in OJP. Why is there such a difference?

Answer. OJP bureaus and program offices conduct one or more of the following three types of peer review: standard review, internal review, and in-person review. The type of peer review determines, in large part, the cost.

A standard peer review process includes, but is not limited to: creating standard forms for solicitations; three peer reviewers reviewing approximately 15 applications each; a \$125 per application stipend for each peer reviewer; technical assistance for the peer review process and OJP's Grants Management System (GMS); a conference call or a webinar with the peer reviewers to discuss the initial peer review scores within a defined variance; and post review activities such as developing the funding tables and drafting the non-funded letters. External reviewers are used in this process, but are not brought to a central location for discussion and consensus review.

An internal review process includes the same activities as the standard review process, but DOJ employees are used as reviewers. Unlike outside reviewers, Federal employees do not receive a stipend for reviewing applications. Finally, an in-person review also includes costs such as travel, hotel, and per diem, for bringing the reviewers to a central location.

The following chart details estimated fiscal year 2010 costs based on the type of peer review process utilized by the respective bureau or program office.

Bureau or Program Office	Estimated Fiscal Year 2010 Cost Per Application	Elected Processes
Bureau of Justice Assistance (BJA) .....	\$800	Standard Peer Review Process.
Bureau of Justice Statistics (BJS) .....	\$500	Internal and External Reviewers.
Community Capacity Development Office (CCDO).	.....	CCDO cancelled competitive solicitations in fiscal year 2010.
National Institute of Justice (NIJ) .....	\$925 or	Standard Process with 4 (versus 3) reviewers. The additional peer reviewer increases the cost by \$125 per application.
Office of Juvenile Justice and Delinquency Prevention (OJJDP).	\$1,250 \$800	In-Person Meeting. Standard Peer Review Process.
Office for Victims of Crime (OVC) .....	\$860	Standard Peer Review Process.

Bureau or Program Office	Estimated Fiscal Year 2010 Cost Per Application	Elected Processes
Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office (SMART)	\$860	Standard Peer Review Process.

—BJS costs are lower because BJS conducts mostly internal (DOJ employee) peer reviews. An internal peer review process eliminates the \$125 stipend that is paid to non-Federal employee peer reviewers. Also, the contractor does not need to provide technical assistance on how to use OJP's Grants Management System.

—NIJ, as an independent scientific research agency, has higher costs because of the complexity of its research methodological issues, and its need to conduct both standard and in-person peer reviews. In-person peer reviews allow for the effective exchange of scientific information and provide a forum for peer reviewers to discuss and debate various approaches to conducting criminological experiments. The in-person costs are higher because they include travel costs (airfare, hotel, meals and expenses) for the peer reviewer. Also, NIJ costs are higher for standard peer reviews because NIJ often uses four or more peer reviewers instead of three peer reviewers. An additional peer reviewer increases the cost of a standard peer review by \$125 per application. For both standard and in-person peer reviews, additional activity is undertaken to develop the NIJ specific funding tables (in lieu of the more standardized scoring/tier reports prepared for other agencies/offices, and to identify each application's principal investigator for inclusion in the funding table and application summary).

—OVC and SMART generally conduct standard peer reviews, but the costs are slightly higher because a reduced number of applications are assigned per panel, thereby increasing the number of reviewers and panels. In addition, all or most applications are discussed during consensus reviews, which increase the duration of the reviews.

*Question.* Please list the costs from fiscal year 2006 to fiscal year 2009 and explain if there is a significant difference in costs.

*Answer.* Please see the attached chart that lists, for each year from fiscal year 2006 to fiscal year 2009, the total peer review cost, the number of applications peer reviewed, and the cost per application for each fiscal year for each OJP bureau and program office.

The current OJP peer review contract supported the fiscal year 2008 and fiscal year 2009 peer review process. The overall cost of peer review increased from approximately \$4 million in fiscal year 2008 to \$8.7 million in fiscal year 2009 because the number of applications peer reviewed increased from 4,872 to 14,104. The increase in the number of applications OJP received and peer reviewed in fiscal year 2009 was largely due to funding appropriated pursuant to the American Reinvestment and Recovery Act (Recovery Act) of 2009. It is important to note that per application peer review costs were less in 2009 than in 2008 due to the fact that program offices had to assume many of the peer review tasks themselves in order to handle the unanticipated volume of Recovery Act applications.

In fiscal years 2006 and 2007, the peer review services for each of the OJP bureau and program offices were covered under individual contracts in each of the program offices. In fiscal year 2007, OJP awarded a new consolidated peer review contract. The consolidated peer review contract did not start providing peer review support for the OJP bureaus and program offices until fiscal year 2008. The consolidated peer review contract supported a standard peer review process across OJP. This included additional tasks and a standard fee of \$125 per application for the peer reviewers. It also included the development and maintenance of an OJP Peer Review Database. Development of the database was a necessary, but added peer review cost. The OJP Peer Review Database currently has over 4,000 peer reviewers registered. The OJP bureaus and program offices must select peer reviewers from the Peer Review Database.

Comparing application costs across fiscal years is difficult for two primary reasons: (1) Different contractors were used in 2006 and 2007 than in 2008 and 2009, and (2) the number and complexity of the tasks were different in each of the fiscal years. Comparing different tasks between fiscal years and among program offices is made more difficult by several variables that determine the per application costs. Among those variables that account for varying costs are:

- The number of tasks conducted by the contractor (Program offices request different levels of support, so costs are not standard across program offices in OJP.)
- The number of peer reviewers on each panel (Some program offices require four peer reviewers instead of the standard three reviewers per panel.)
- Whether reviews are conducted onsite or via telephone (The costs of transporting peer reviewers in to a central location is exponentially more expensive, but is often necessary.)
- The specialization and qualifications of the peer reviewers (Program offices, such as the National Institute of Justice, require professionals with specific qualifications, such as doctoral degrees, or professional expertise in an unusual subject.)
- Whether the contract costs include mailing non-funding letters with edited panel comments (Some program offices prepare and mail their own non-funding letters.)
- The manner in which consensus is reached (in person vs. via telephone) and whether or not consensus is required (Again, this relates to the transportation costs for bringing together panel members for a consensus review. Larger awards may require onsite consensus review.)

Accordingly, it is difficult to make an absolute comparison among fiscal years because contractors, tasks, practices, and scenarios differed during this time span. While many efficiencies have been introduced over the past 3 years, OJP also has placed new and additional requirements on the contractor in order to ensure that there is transparency in the award process and that fair and open competition can be properly documented.

See Attachment 2.

*Question.* If the application costs increased under the current contract for peer review services over the last 3–4 years, what is this attributable to?

*Answer.* The current OJP peer review contract supported the fiscal year 2008 and fiscal year 2009 peer review process. The overall cost of peer review increased from approximately \$4 million in fiscal year 2008 to \$8.7 million in fiscal year 2009 because the number of applications peer reviewed increased from 4,872 to 14,104. The increase in the number of applications OJP received and peer reviewed in fiscal year 2009 was largely due to funding appropriated pursuant to the American Reinvestment and Recovery Act of 2009.

*Question.* Finally, what cost containment strategies are contemplated?

*Answer.* In an effort to streamline the process and reduce costs, OJP released a Request For Quotation (RFQ) in July 2010 for peer review activities in fiscal year 2011–fiscal year 2015. In addition, the OJP bureau and program offices perform continuous reviews to reduce costs and, whenever appropriate, choose to complete peer review tasks in-house and/or conduct a standard peer review instead of a higher-cost in-person peer review.

*Question.* Please have OJP's OCFO task OAAM (Office of Audit Assessment and Management) to prepare these cost work ups, and the bureaus and program offices confirm the figures for accuracy before submitted.

*Answer.* See attached chart, also provided in response to Senator Shelby's Questions 20 and 23. See Attachment 2.

#### FORENSICS COST ANALYSIS

*Question.* As you know I am opposed to NIJ's efforts of bailing out their friends with taxpayer dollars to cheapen the quality of evidence by outsourcing DNA work to private contractors, as I believe we need to build our crime labs up and increase their capacity so that they can respond to the ongoing increase of cases that come that way. I find it unfortunate that many politicians have put unrealistic mandates on the crime labs yet they have not provided them the tools to meet those mandates and as a result they are forced to outsource. I am very concerned with your agencies clear leaning toward private contractors on this matter, particularly NIJ. Your office continues to put together panels with handpicked agencies so that you can present outcomes that support your position.

Please provide me a clear cost analysis of doing business with a private lab and include in that the cost to work the case from reception; including detection of stains on all items, identification of those stains, isolating and examining portions of those stains, and testifying in court.

*Answer.* NIJ provides Forensic DNA Backlog Reduction grants directly to State and local government laboratories for the purpose of reducing their backlogs. Backlog reduction activities may include the provision of overtime to DNA analysts, the purchase of supplies required for the DNA analysis of samples, and/or the outsourc-

ing of samples to accredited fee-for-service laboratories for DNA analysis. NIJ also provides funding to State and local government laboratories to purchase equipment and hire/train DNA analysts so they can build their capacity to the point where they will not have to rely on assistance from private labs.

NIJ's primary backlog reduction program, the Forensic DNA Backlog Reduction Program, provides funding to States and units of local government through grants. Recipients of these grants may choose to send casework evidence samples to accredited fee-for-service laboratories for DNA analysis if they do not have the capacity to conduct the analysis themselves. Because NIJ does not establish or manage casework contracts with private laboratories, it is difficult to assess the total cost of doing business with the private laboratories. Some private laboratories post their fee schedules publicly (e.g. <http://www.bodetech.com/solutions/dna-identification-services/forensic-casework-price-list>), and based on the examination of selected budgets submitted with requests for funding in fiscal year 2009, the estimated cost of outsourcing casework can range from \$200 to \$2,500 per case, with an approximate average of \$994 per case; however, this is not a full analysis of all costs involved and may be influenced by other variables such as the number of samples tested per case, the extent of forensic testing (i.e., identification of stains or screening for biological fluids), differing types of DNA analysis methods (e.g., STR, Y-STR, mtDNA), or variations in the number of samples requested per month. Additionally, NIJ does not allow Forensic DNA Backlog Reduction Program grant funds to be used for expert witness testimony, and as such, does not collect information regarding the costs associated with court testimony.

NIJ's other Forensic DNA backlog reduction program, the Convicted Offender and/or Arrestee DNA Backlog Reduction Program, provides funding through grants to State laboratories that perform forensic DNA analysis for upload to the Offender Index of the Combined DNA Index System (CODIS). Through the grant program, a State may request up to \$35 per sample to perform DNA analysis in its own CODIS laboratory, or it may contract up to \$35 per sample to a qualifying private fee-for-service laboratory to perform the DNA analysis. Qualifying laboratories are those that are accredited, have obtained a National Environment Policy Act Finding of No Significant Impact from OJP, receive mandatory annual DNA audits, and as such, are on the list of approved vendors. The current list of qualifying laboratories consists of five private laboratories; however, any accredited laboratory can become a qualifying laboratory by contacting NIJ and meeting and completing all requirements.

If a State has samples that were collected from convicted offenders and/or arrestees and are pending DNA analysis for upload to CODIS, and the State does not wish to establish or manage a contract with a private laboratory, that State can request that NIJ contract directly with the private laboratory for the DNA analysis of the backlogged convicted offender and/or arrestee samples. Because NIJ allows States that receive grants from the Convicted Offender and/or Arrestee DNA Backlog Reduction program to use granted funds to send backlogged samples to private laboratories, contracts between OJP and private laboratories are established only at a State's request. These contracts are established and managed by OJP's Acquisitions Management Division. In fiscal year 2009, the contracted cost per sample ranged from \$22.90 to \$32.00. Similar costs are anticipated for fiscal year 2010.

#### NATIONAL ACADEMY OF SCIENCE STUDY

*Question.* Does the Department of Justice have or is it developing a position on any of the issues of forensic reform as noted in the National Academy of Science report? Please include accreditation of laboratories and other forensic service providers, certification of those individuals who provide testimony in court regarding their findings, initiating research to determine what has yet to be done to improve the various examinations conducted, what support can be given to help laboratories to develop the capacity to handle casework received in an acceptable timeframe, and what support can be given to encourage students to pursue careers in forensic science and forensic pathology?

*Answer.* The Department of Justice has not itself taken a position on the specific recommendations of the NAS report, but rather has participated in the inter-agency Subcommittee on Forensic Science (SOFS) of the National Science and Technology Council, organized by the White House's Office of Science and Technology Policy. The SOFS is currently preparing recommendations for coordinated, comprehensive executive branch action to advance the goals of the NAS report.

*Question.* In an effort to fully understand this change in FBI Laboratory policy and what prompted this sudden policy change, I'm submitting the same questions I mailed to Director Mueller in a letter, to the Department of Justice so we can have these answers on record. I request that you provide the answers to the following questions and produce all documents and information requested for the record.

The FBI laboratory is one of the few executive board members of American Society of Crime Lab Directors (ASCLD), who issued the aforementioned position statement in support of the status quo and restricting access to NDIS to public labs. Explain why the FBI Laboratory, who has representation on this body's executive board, contradicts the position so soon after ASCLD's release of its position statement. Did undue pressure change the FBI position?

*Answer.* The FBI Laboratory's position regarding private laboratory access to the National DNA Index System (NDIS) does not contradict that of the American Society of Crime Lab Directors (ASCLD). The FBI's March 23, 2010 press release clearly states, "The administration and operation of the National DNA database is an inherently governmental function that supports criminal investigations conducted by our Federal, State, local, and tribal law enforcement partners. Therefore, the FBI's assessment does not include re-evaluating access to NDIS." Both the ASCLD position statement and the FBI's press release reaffirm support for the status quo that private laboratories should not have access to the NDIS. Both statements also support looking for ways to enhance the NDIS process so that DNA profiles can optimally assist in fighting crime.

Several members of the forensic community, including ASCLD, have been interested in improving the process of analyzing, reviewing, and entering DNA profiles into NDIS. The President of ASCLD requested the FBI's ex-officio (non-voting) member of the Board of Directors to communicate with the ASCLD Advocacy Committee. The extent of those communications was to understand the problems perceived by State and local crime laboratory directors and to advise of potential efforts the FBI Laboratory may consider to help all NDIS laboratories. However, there was no pressure whatsoever put upon the FBI's ex-officio member for the FBI to change its policy on private laboratory access to NDIS or other related policies that would benefit private DNA laboratories.

*Question.* The FBI's Scientific Working Group on DNA Analysis Methods (SWGDM), CODIS State Administrators, and ASCLD have all issued positions strongly supporting the status quo and restricting access to NDIS. With these and other subject matter experts supporting the current FBI procedures and national standards, who specifically at the FBI decided to move toward loosening these standards and made the decision to change this policy?

*Answer.* As previously noted, the FBI's March 23, 2010 press release clearly states, "The administration and operation of the National DNA database is an inherently governmental function that supports criminal investigations conducted by our Federal, State, local, and tribal law enforcement partners. Therefore, the FBI's assessment does not include re-evaluating access to NDIS." The scope of the current review is limited to a re-evaluation of NDIS procedures to determine whether time/backlog efficiency improvements would be possible, with no diminution in the current level of NDIS integrity. Again, the FBI Laboratory is not considering any changes to NDIS access, which is currently limited to Federal, State and local criminal justice agencies.

*Question.* Provide the names, dates, and attendees of any meetings held between the FBI Laboratory Director or his representative, and representatives of vendor DNA laboratories prior to this press release.

*Answer.* The FBI Laboratory Director has had the following relative interactions with vendor laboratory representatives prior to the release of the March 23, 2010, press release:

- Brief courtesy discussions with vendor participants at professional meetings, such as the International Association of Chiefs of Police (IACP), American Academy of Forensic Sciences, ASCLD, CODIS Conference, etc. At no time at any of these events did he discuss FBI Laboratory requirements or vendor capabilities.
- On October 23, 2009, at the request of the IACP, the FBI Laboratory Director and the Executive Assistant Director of the FBI's Science and Technology Branch, Louis Grever, met with IACP deputy executive director Jim McMahon and IACP member Howard Safir (former NYPD Police Commissioner, IACP president, and current CEO of Bode Technology). Mr. McMahon's and Mr. Safir's stated purpose was to represent the opinions of senior law enforcement officials regarding the value of DNA and the need for faster turnaround times.

All present were cognizant of Mr. Safir's current position with Bode Technology, and the conversation was never allowed to stray into discussion of Bode's capabilities or FBI requirements relative to contracted DNA analysis. It is noted that Bode Technology is currently under contract to the FBI for providing DNA support to Metropolitan Police Department (MPD) casework and laboratory workspace for MPD laboratory staff.

—On November 2, 2009 Jeff Boschwitz of Orchid Cellmark approached the FBI Laboratory Director on the exhibitor floor of the CODIS Conference and requested a meeting to discuss various issues of interest to Orchid Cellmark. The FBI Laboratory Director expressed that this meeting would be inappropriate per the Federal Acquisition Rules and FBI Ethics procedures. Subsequent e-mail attempts by Mr. Boschwitz to engage the Laboratory Director were unanswered. The FBI Laboratory Director has had no other communications of any kind with Mr. Boschwitz or Orchid Cellmark.

Prior to issuing the press release, representatives of the FBI Laboratory engaged in conversations with the ASCLD, SWGDAM, CODIS State Administrators, the Police Executive Research Forum (PERF), the IACP, and other Federal, State, local, and tribal agencies, including the Los Angeles Police Department (LAPD), to determine if a re-evaluation was necessary. The FBI did not engage with lobbyists or industry representatives on this issue.

*Question.* Did the FBI issue this press release because of pressure from Congress, lobbyists, or industry representatives?

*Answer.* No, the FBI did not issue the March 23, 2010 press release because of pressure from Congress, lobbyists, or industry representatives. Rather, the decision by the FBI to re-evaluate current policies, standards, and protocols was informed and influenced by inquiries to the FBI Laboratory by members in the law enforcement and forensic community.

The issue of DNA backlogs and the technical review process has drawn significant attention from Congress, and the FBI has been contacted by Members of Congress and/or their staffs by letter and phone. FBI representatives have had meetings and conversations with Members of Congress and/or their staff regarding the DNA backlog, technical review, and other related issues. For example, representatives of the FBI Laboratory met with staff from the Senate Judiciary Committee on March 2, 2010 to discuss potential efficiencies that could be gained by this re-evaluation of policies, standards, and protocols. Members of Congress and/or their staffs have expressed their interest in legislating on the issue of DNA backlogs. While the FBI is aware that Congress has the authority to legislate this issue, the FBI is more concerned with the accuracy, the backlogs, and the long turnaround times for casework, which decreases the utility of NDIS to solve crime.

Prior to the press release, the FBI Laboratory engaged in conversations with the LAPD, ASCLD, SWGDAM, CODIS State Administrators, PERF, the IACP, and other Federal, State, local, and tribal agencies to determine if a re-evaluation was necessary.

The FBI Laboratory is aware of activity by lobbyists and industry representatives who seek either private laboratory access to CODIS and/or a repeal of the 100 percent technical review requirement. The FBI has not interacted with individuals representing either of these groups.

*Question.* Was the FBI told by Congress, lobbyists, or industry representatives that if the FBI does not move in this direction, changes will be legislated? If so, who?

*Answer.* While Members of Congress and/or their staffs have expressed interest in legislating these issues, the FBI was not expressly told by Congress, lobbyists, or industry representatives that changes would be legislated in the absence of action by the FBI. While the FBI is aware that Congress has the authority to legislate this issue, the FBI is more concerned with the accuracy, the backlogs and the long turnaround times for casework, which decreases the utility of NDIS to solve crimes. The FBI Laboratory is obligated to ensure the quality and integrity of the data in NDIS, as well as ensure operational efficiency. The re-evaluation described in the March 23, 2010 press release is a responsible measure to fulfill these obligations.

*Question.* Has the FBI attended any meetings with the National Institute of Justice (NIJ) and discussed vendor laboratories? If so, please provide details and all documentation of the items discussed.

*Answer.* The FBI has not attended any meetings with the National Institute of Justice (NIJ) to discuss vendor laboratories since 2006.

*Question.* Provide specific details of the FBI's past experience with vendor DNA laboratories, to include the name of the vendor laboratory and the results of any lab errors that were detected by the FBI after the vendor review was conducted.

Answer. Since 2003, the FBI Laboratory has participated in four outsourcing contracts. These contracts are as follows:

- Outsourcing to Orchid Cellmark of nuclear DNA casework for serology and Short Tandem Repeat (STR) analysis. Contract amount was \$1,100,000. Period of performance was from September 2003 through July 2007.
- Outsourcing to Orchid Cellmark of nuclear DNA casework for retesting purposes. Contract amount was \$113,000. Period of performance was from September 2003 through September 2005.
- Outsourcing to The Bode Technology Group of Federal Convicted Offender database samples for STR analysis. Contract amount was \$1,000,000. Period of performance was from February 2004 through December 2006.
- Outsourcing to The Bode Technology Group of Metropolitan Police Department (MPD) backlog cases for serology and STR analysis, as well as space for the operation of the MPD DNA Laboratory, has totaled \$2,100,000 to date. The period of performance has spanned September 2008 to present.

During the FBI's technical review of the outsourced Federal Convicted Offender data, several errors were identified with the vendor (The Bode Technology Group) laboratory data. These errors can be classified into the following categories: administrative, clerical, quality, and incorrect profiles. Administrative and clerical errors included items such as missing or incomplete paperwork and typographical errors. Quality issues occurred when the vendor laboratory reported data that did not meet the FBI's interpretation guidelines. These samples had to be reanalyzed by the vendor laboratory. Finally, there were instances in which the reported profile was determined to be incorrect during the FBI technical review of the data. In these instances, the samples had to be reanalyzed by the vendor laboratory. Any errors that were identified during the FBI's technical review of data submitted by the vendor laboratory were subsequently corrected and ultimately accepted by the FBI.

Administrative, clerical, and quality issues were also observed with the outsourced serology and STR analyses conducted by the vendor laboratory (Orchid Cellmark) on both contracts initiated in September 2003. Most significantly, the vendor laboratory notified the FBI Laboratory of the improper testing and reporting of laboratory results by an Orchid Cellmark examiner on submitted FBI Laboratory casework. In these instances the samples were reanalyzed by the vendor laboratory, and further reviewed by the FBI Laboratory, prior to ultimate acceptance.

*Question.* Provide specific details on the architecture and scope of what the FBI plans to do after this press release. What will the process entail? How long will this evaluation last?

Answer. The FBI's "Initiative to Enhance NDIS Efficiency" began with a kick-off meeting on April 26, 2010 during which the objectives of this re-evaluation were established. The participants invited to this meeting included representatives from the IACP, SWGDAM, the Police Executive Research Forum, ASCLD, the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), Forensic Quality Services-International, the National Institute of Standards and Technology (NIST), the National Institute of Justice (NIJ), and the New Scotland Yard Metropolitan Police Service (United Kingdom). Representatives from these agencies attended the meeting, with the exception of the IACP and the New Scotland Yard Metropolitan Police Service.

At this meeting, the FBI presented a strawman proposal for the re-evaluation of NDIS policies, standards, and procedures and began discussions with these groups on the process under which the NDIS re-evaluation is to be conducted. The FBI Laboratory has reached out to additional stakeholder groups most likely to be affected by any change in NDIS processes and practices for their comments. The FBI then presented this strawman proposal to additional stakeholders, such as the NDIS Board, CODIS State Administrators, SWGDAM Executive Board, and ASCLD Board. The groups were requested to provide feedback and suggestions. The FBI is looking at all proffered proposals and comments to determine the best course of action.

The FBI expects to maintain communication with these various groups as their comments and information is gathered. The FBI will continue to seek their input on the acceptability and feasibility of any proposed changes to the operation of the National DNA Index. Additionally, the FBI hopes to collect data and suggestions from jurisdictions that have been successful in reducing their DNA backlogs. Once the FBI has all the relevant information, it will evaluate the data and determine a timeline, as well as if a pilot project is needed. Based on the stakeholder input, the changes will be discussed with SWGDAM, who, if necessary and in agreement, will recommend changes to the Quality Assurance Standards to the FBI Director.

*Question.* Once the evaluation is completed, who at the FBI will decide whether any procedures should be changed?

Answer. Once the FBI's re-evaluation of all NDIS policies, standards, and procedures is complete, FBI Laboratory management will propose recommended changes (if any) to the FBI Director. When the FBI Director approves changes to the Quality Assurance Standards, the NDIS Procedures Board will make changes to the operational procedures of NDIS. The NDIS Procedures Board is composed of 12 individuals representing the FBI, SWGDAM, CODIS State Administrators, and State and local labs providing the highest volume of criminal and offender casework to NDIS. The NDIS Procedures Board approves changes to NDIS Procedures based upon a majority vote for which a quorum of members is present. Any proposed changes will be compliant with current legislation governing the operation of CODIS.

*Question.* If any changes are recommended, will the FBI require the CODIS State Administrators to unanimously endorse the proposed changes as it is the individual States who are affected most by a reduction in the review of vendor DNA data? If not, why is the FBI ignoring the opinions and concerns of these experts?

Answer. The FBI recognizes that the States, and the DNA records that they contribute, are responsible for the success of the NDIS. The FBI's practice has always been to seek out the views and opinions of the CODIS State Administrators, the NDIS Procedures Board, and the SWGDAM, with respect to any fundamental changes in the operation of NDIS. This is generally done at either the semi-annual CODIS State Administrators meetings or at NDIS Procedures Board and SWGDAM meetings. For situations requiring a more immediate response, the FBI solicits comments or input via e-mail requests. The FBI encourages CODIS State Administrators to make their views known during such meetings or through written communications. All of their views/comments are reviewed and carefully considered by the FBI before any new procedure or change is implemented. In those instances in which a substantial change to existing procedures is contemplated, the FBI often institutes such a change on a pilot basis to further evaluate the need for the change and the impact, if any, on the CODIS community. The FBI understands the importance of the CODIS community in the continued success of the CODIS and NDIS Programs.

With regard to this particular re-evaluation of NDIS policies, standards, and procedures, the FBI conducted an initial meeting with the CODIS State Administrators May 11-12, 2010, and plans to meet with them again in November 2010 to discuss potential revisions to NDIS procedures. FBI will solicit the opinions of these individuals at every step in the re-evaluation process. The FBI has also established an e-mail address for distribution of regular updates on the NDIS procedural re-evaluation, as well as for ease of solicitation of feedback from all interested in the re-evaluation process.

*Question.* Federal law directs SWGDAM to oversee changes to the FBI's quality assurance standards. Newly revised standards were just completed last year. At that time, did the Office of General Counsel of the FBI review the new standards and indicate that the FBI should loosen the standard of review for vendor labs? Will the FBI require a unanimous endorsement from SWGDAM on any proposed changes? If not, why not?

Answer. The DNA Identification Act of 1994 specifies that the FBI Director's Quality Assurance Standards shall be developed, and if appropriate, revised by the DNA Advisory Board (DAB), an entity established by the act and tasked with these responsibilities. The act also defined the Board's tenure to not exceed 5 years. The first meeting of the DAB occurred in May 1995 and the last in December 2000. The DNA Advisory Board recognized the Quality Assurance Standards would require direction and management beyond their 5 year tenure, and identified TWGDAM (Technical Working Group for DNA Analysis Methods), later re-named SWGDAM (Scientific Working Group for DNA Analysis Methods) as an appropriate body to provide such support. When the DNA Advisory Board was dissolved in December 2000, it was their recommendation that future revisions to the Quality Assurance Standards be performed by SWGDAM.

As an advisory authority, and not derived from a statutory role, the FBI's SWGDAM accepted the DNA Advisory Board's recommendation for maintaining and providing recommendations to the FBI Director for the Quality Assurance Standards. SWGDAM revised the Quality Assurance Standards in 2007 and 2008. These revisions were vetted not only by accrediting agencies, specifically the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and Forensic Quality Services (FQS), but also by the governmental laboratories and the public. All comments received by the deadline were considered by SWGDAM. After the public review, the proposed revisions were forwarded to the FBI's Office of General Counsel (OGC) for review. The FBI's OGC requested minor revisions to language in the standards, but did not presume to offer counsel on any technical issues, including the technical review requirement. The recommended revisions to



the Quality Assurance Standards were approved by the FBI Director and went into effect July 1, 2009.

The FBI is fully engaging SWGDAM on any proposed changes regarding the NDIS enhancement proposals, especially with regard to the FBI Director's Quality Assurance Standards. The SWGDAM by-laws specify that the affirmative vote of the majority of a quorum of SWGDAM members shall be an act of SWGDAM. Therefore, a unanimous endorsement by SWGDAM of any proposed changes to the Quality Assurance Standards is not required under SWGDAM's current by-laws.

*Question.* The FBI's CODIS Unit reports that the current framework has aided approximately 100,000 investigations and to date, has never incorrectly identified an offender to law enforcement. The FBI is now implementing the new Federal law where a DNA sample will be collected from Federal arrestees. By the FBI's own estimate, it will receive more than a million additional DNA samples a year. Provide the justification on why the FBI is considering loosening the quality standards when the number of samples the FBI will be putting into the database is going to increase dramatically.

*Answer.* The FBI continues to endorse the highest quality standards possible for DNA analyses as an active member of many groups which espouse quality in forensic science, to include SWGDAM, ASCLD, and ASCLD/LAB. Having managed NDIS for 12 years, the FBI has a thorough understanding of the effect of data quality on the ability of the National DNA Database to aid investigations and solve crimes. The re-evaluation of policies, standards, and procedures being performed must ensure that quality and integrity of data are priorities, and under no circumstances will the FBI make changes to procedures that will endanger the effective operation of NDIS. The FBI has no intention of lessening quality standards, but rather has the goal of making the operation of NDIS more efficient for all who use information derived from this system.

*Question.* Do you plan to outsource any of the testing related to the increase in Federal DNA collections, and if so, why?

*Answer.* The FBI does not currently plan to outsource any of its Federal DNA Database Program testing. The FBI does use the services of contractor staff working within the FBI Laboratory to process DNA samples submitted under the Federal Convicted Offenders Program (FCOP). The FBI continues to build its capacity to be able to analyze 90,000 samples per month and is on track to eliminate its offender backlog later this year. When the backlog is eliminated, the FBI Laboratory envisions achieving a 30-day turnaround on samples submitted under current legislation.

*Question.* The FBI is proposing that they perform site visits and audits to screen private labs to participate as an "AOL" associated outsourcing laboratory. Do they know how many private labs they will accommodate? Will they use existing resources to do this or ask for more money or positions to handle this workload?

*Answer.* The FBI Laboratory offered a "strawman" proposal to its stakeholders to stimulate discussions on if, and how, the operation of the National DNA Index System could be enhanced to better serve the law enforcement and CODIS communities. Input and comments from its stakeholders revealed that the "strawman" proposal was not a direction that a majority of its CODIS community was comfortable in pursuing at this time. As a result, the initial proposal is no longer under consideration. Instead, the FBI is reviewing proposals that would necessitate minor changes to the FBI Director's Quality Assurance Standards (QAS) for Forensic DNA and DNA Databasing Laboratories to provide States with additional flexibility in data review and their database and searching operations.

While the associated outsourcing laboratory proposal is no longer under consideration, it has been suggested that the FBI's performance of site visits, if acceptable under the QAS, would provide some additional flexibility to the States for accepting ownership of outsourced DNA records. The FBI will be reviewing this proposal with all of its stakeholders to determine if additional personnel or resources would be necessary to perform on-site visits of private laboratories.

*Question.* Does the FBI plan to propose this process for offender samples and move the process to ease work samples after a pilot project?

*Answer.* At this time, only minor changes to Quality Assurance Standards for both Forensic DNA and DNA Databasing Labs are being considered. These changes will give the States options for performing the 100 percent technical review, to include the use of contractors or assistance from other NDIS-participating laboratories. At this time, there are no immediate plans to conduct a pilot project.

*Question.* The FBI apparently supports dropping the quality assurance practice of public labs technically reviewing data produced by private labs prior to upload to CODIS. The American Society of Crime Lab Directors (ASCLD) and CODIS technical administrators cite a number of concerns with quality of data from private labs

that raise the concern. If public labs must own the data after it is tested by the outsourced private lab, why does the FBI feel that a review of that data is no longer warranted as an important quality assurance measure? (Note: ASCLD is concerned about taking ownership of data that has not been reviewed by public labs only prior to upload. Developing a profile and acquiring a hit in the database only generates an investigative lead in many cases. Additional work and court testimony often has to be performed as follow up.)

Answer. The “strawman” proposal offered to the law enforcement community included the concept of transferring the responsibility of data quality to the private laboratory. The feedback provided by ASCLD and the CODIS State Administrators indicated that this was not a favorable option and strongly opposed the removal of the 100 percent technical review requirement. Alternative suggestions, which will give States additional flexibility on review of outsourced data, are being considered.

*Question.* Does the FBI plan to make a path for private labs to eventually have the capability to upload samples to NDIS to some extent? ASCLD opposes any access by private entities, approved by the FBI or otherwise, to have access to confidential public information. Why does the FBI appear to lean toward developing data to support some level of access by private labs to NDIS?

Answer. As mentioned in our March 2010 press release announcing the review of the National DNA Index System, the FBI believes that participation in NDIS is an inherently governmental function that is properly limited to criminal justice agencies for law enforcement identification purposes. The FBI does not support permitting private organizations or entities direct access to NDIS, and the FBI has no plans to collect data to support any efforts for private entities to obtain access to NDIS.

*Question.* The FBI stated that private labs have assisted with testing one-half of the current offender profiles that public labs have uploaded to the database (not casework samples). They appear to cite this statistic as some sort of justification or entitlement for working with private labs. What is their view on the importance of citing the number of cases that public labs have been forced to outsource due to a lack of capacity in their own labs?

Answer. In describing the success of the National DNA Index System in generating investigative leads for criminal investigations, the FBI acknowledges the contributions of Federal, State, local and private laboratories that have generated the DNA records contained in NDIS. The number of investigations aided by NDIS is attributable to the number of DNA records stored at the national level. Through the NDIS review process, the FBI is working together with our stakeholders to provide the flexibility to the States to operate their DNA databases in the most efficient manner appropriate to their individual needs, whether the data is generated in-house or outsourced.

*Question.* The FBI recently surveyed all NDIS labs in an effort to assess the current DNA backlog. The majority of the DNA review problems for offenders and cases is limited to only a few labs, and including the FBI as one of the worst. The FBI is not in favor of making the raw survey results public and are proposing an elaborate plan before even looking at the data to even see what the problem is.

Answer. No response required.

#### BOP

*Question.* OMB’s Capital Programming Guide (OMB Circular No. A–11, Part 7) provides very specific direction regarding the analysis required to justify capital investments. Please describe the step-by-step process the Bureau of Prisons and the Department undertook to justify the purchase of the Thomson Correctional Center (TCC). In particular, please share with us the results of your cost-benefit and risk analyses? What viable alternatives were examined and what were the decisive factors that favored Thomson?

Answer. BOP Capacity Planning Committee has explored various possibilities to increase higher security bed space. In considering the Thomson Correctional Center, BOP’s capacity planning and analysis followed the guidance set forth by OMB Circular A–11, Part 7. Continuing increases in the Federal inmate population pose a substantial and ongoing challenge for BOP—particularly at the medium and high security levels. BOP must increase its capacity, and can do so by acquiring and renovating existing structures, expanding existing facilities (where infrastructure permits), and constructing new prisons. The fiscal year 2011 activation of the Thomson facility would reduce the crowding rate in BOP high security institutions from 53 percent to 46 percent over rated capacity. Without this acquisition, crowding in BOP high security institutions is expected to reach 57 percent over rated capacity.

BOP representatives visited the Thomson facility in 2009 and 2010 and determined that the institution was suitable, with modifications, to meet BOP's specific needs for special administrative high security bed space. After the State of Illinois indicated its interest in a sale, BOP researched the State's construction costs, met and spoke with facilities staff at Thomson, and developed preliminary estimates for maintenance and retrofit requirements. As part of the President's budget request, the OMB Exhibit 300s are posted on the Department's Web site and is available at: <http://www.justice.gov/jmd/2011justification/exhibit300/>.

The Thomson facility is uniquely different than other properties the BOP has considered. The Thomson facility is modern, was never fully utilized, and was built specifically to house maximum security inmates. Based on other ongoing construction projects, BOP estimates that it would cost between \$200 million and \$300 million to construct an equivalent high security facility in the current market, and it would take approximately 3 to 4 years to complete the Environmental Assessment process, proceed through the procurement process, and complete construction. The costs and time to activate the Thomson facility are expected to be significantly less; given security criteria for Administrative Maximum (ADX) and Special Management Unit (SMU) inmates, BOP determined the Thomson acquisition would be the best value.

*Question.* Because of the proximity of the TCC to the Mississippi River, environmental concerns were raised about the prison that faded when the decision was made not to open the prison. What were those concerns? Have you conducted an Environmental Assessment/Environmental Impact Statement to support purchase of the TCC? If not, how did you by-pass National Environmental Policy Act requirements?

*Answer.* The Bureau of Prisons (BOP) has not received information regarding specific environmental concerns leading to the decision by the State of Illinois to construct the Thomson facility. However, BOP intends to conduct an Environmental Assessment pursuant to the National Environmental Policy Act; it is anticipated that the environmental impacts to the Mississippi River will become part of the overall analysis. As with any Environmental Assessment, if significant environmental impacts would result from the acquisition and activation of the Thomson facility that cannot appropriately be mitigated, BOP would conduct an Environmental Impact Statement.

*Question.* The TCC was completed in 2001 and has remained empty, save a 200-bed minimum security unit, since then. The facility appears to fit the classic definition of a "white elephant." What happened in Illinois that led them to abandon the prison the minute it was completed a decade ago? What, specifically, has the State of Illinois done and spent to prevent the empty facility from deteriorating over the last decade? Have Federal engineers inspected the TCC and reported on its material condition? If so, what were the results of their inspection? If not, when will such an inspection be conducted?

*Answer.* According to the State of Illinois, although the high security portion of the Thomson facility was never fully operational, the State has been operating a 200-bed minimum security camp adjacent to the secure facility. According to State officials, the high security portion of the facility was never opened because of state-wide fiscal concerns. In terms of upkeep, BOP officials have visited the facility on multiple occasions and inspected the institution thoroughly. The institution has been well-maintained and is suitable, with modification, to meet the needs of the Federal Prison System.

*Question.* BOP is on record, repeatedly so, opposing the purchase of low- or medium-security privately-funded and built prisons, because of inherent design flaws that were operationally unacceptable and too expensive to fix. How does the TCC compare to BOP design and construction standards for the "Supermax" or other ultra-secure Federal facilities? Presuming much of this was done prior to making Thomson known and in anticipation of using it as a replacement for Guantanamo Bay's Detention Facility, have military officers responsible for the detention of terrorists at Guantanamo Bay inspected the TCC and provided an analysis of the security and safety of the facility? If not, will such an inspection be conducted?

*Answer.* Throughout BOP's history, the agency has acquired former military installations, college campuses, and a seminary to convert them for Federal prison use. Several of these locations included existing buildings that required renovations and security enhancements to provide suitable housing for low and minimum security inmates. BOP also acquired the U.S. Disciplinary Barracks in Lumpoc, California in 1959, which was modified and converted into U.S. Penitentiary Lumpoc, now a medium security institution.

BOP's interest in acquiring Thomson is consistent with its earlier position. In contrast to earlier acquisitions, the Thomson facility has already been built to modern, high security correctional facility specifications rather than having to be converted

to prison use. In earlier years, most prisons offered to BOP for purchase were old, obsolete facilities that were no longer desired by States moving to newly constructed, modern prisons.

*Question.* The “Presidential Memorandum—Closure of Detention Facilities at the Guantánamo Bay Naval Base,” issued December 15, 2009 must have reflected the summation of considerable analysis by the Departments of Defense and Justice regarding the incarceration of terrorists on U.S. soil. What bodies were convened to conduct this analysis, who was involved, and where are the results of their labors?

*Answer.* The Justice, Homeland Security, and Defense Departments collaborated to assess potential U.S. facilities for the Guantánamo Bay detainees, including several interagency meetings and site visits to the facility in Thomson. This work was part of a broader effort by the Detention Policy Task Force, created pursuant to Executive order 13493, to evaluate options for the apprehension, detention, trial, transfer, release, or other lawful disposition of individuals captured or apprehended in connection with armed conflicts or counterterrorism operations. The preliminary evaluation process also included discussions with Illinois stakeholders once the administration identified the Thomson facility as a likely candidate, such as: the Director of the Illinois State Police, the Director of the Illinois Department of Corrections, the Director of the Illinois Emergency Management Agency, and multiple regional, county, and local law enforcement officials.

#### THOMSON PRISON

*Question.* How did BOP determine that Thomson met the ADX/high bed space need?

*Answer.* BOP staff made multiple site visits to tour the Thomson facility and compare its security features with BOP administrative maximum, special management and general population high security bedspace. BOP staff determined that the institution was suitable to meet BOP’s special administrative high security bedspace needs and could become fully operational fairly quickly after acquisition, modification and hiring and training staff.

*Question.* What were the construction costs to the State of Illinois?

*Answer.* BOP’s understanding is that the cost to the State of Illinois has been reported at \$140 million.

*Question.* What were estimates for maintenance and retrofit requirements?

*Answer.* As requested in the fiscal year 2011 President’s budget, the BOP estimates \$15 million is required for security and infrastructure upgrades.

*Question.* Why don’t we offer a fire sale price, and no more, for this white elephant to ensure costs to acquire, retrofit, and activate the facility are “significantly less” than new construction?

*Answer.* Federal law requires the amount paid for the negotiated purchase of real property to be just compensation which is not less than the fair market value determined by an appraisal completed in accord with 42 U.S.C. § 4651, 49 CFR part 24, and the Uniform Appraisal Standards for Federal Land Acquisitions. Further, the Department of Justice believes the costs and benefits of acquiring (within 1 year) and modifying a never opened, solidly built, 1,600-cell, high security facility in Thomson, Illinois, for approximately \$170 million outweighs the cost (up to \$300 million in the current market) and time for constructing (approximately 3 to 4 years) a new high security facility.

*Question.* When is the formal appraisal going to be completed?

*Answer.* The formal appraisal is expected to be completed in Fall 2010.

*Question.* What are all of the applicable rules and regulations for purchasing Thomson that BOP must fully comply with?

*Answer.* BOP must comply with the following Federal rules and regulations:

- The National Environmental Policy Act of 1969 and its implementing regulations;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations;
- A Procedural Guide for the Acquisition of Real Property by Governmental Agencies Title Standards 2001;
- 18 U.S.C. Chapters 301 and 303; and
- Any other relevant authorization and/or appropriations laws.

In addition, Illinois State rules and regulations may impact the BOP and are unknown at this time.

*Question.* Please break down the OMB Circular No. A–11, part 7 into its individual steps and provide the documentation required by the circular where appropriate.

Answer. As part of the President's budget request, and in accordance with guidelines set forth by OMB Circular A-11, part 7, the OMB Exhibit 300s are posted each year at the following Web site: <http://www.justice.gov/jmd/2011justification/exhibit300/>.

*Question.* When does BOP intend to conduct an Environmental Assessment pursuant to the National Environmental Policy Act?

Answer. The Environmental Assessment began in June 2010. BOP anticipates the Environmental Assessment will be completed in Fall 2010.

*Question.* Provide an engineer's report on material condition and needed modifications.

Answer. BOP does not produce an "engineer's report"; however, the Bureau's assessment, according to Correctional Programs and Facilities experts, concluded that additional modifications would be needed to meet BOP's security standards to house high security inmates. The following lists the major modifications needed and provides examples of the necessary security enhancements: New stun lethal fence and new razor ribbon to meet BOP guidelines; new fence alarm system; new rear gate and sallyport gates; construct facilities building and storage area; and security upgrades, such as door locks, hardened recreation cages behind units, addition of security fencing within compound, installation of additional cameras and tie to monitoring system, installation of radio system base and portables, additional security lighting within compound, installation of anti-crash bollards in front of institution and rear, and construction of holding cells in receiving and discharge area.

The number of administrative maximum (ADX or "super max") beds available in the Federal prison system has not increased since ADX Florence was activated in 1994. Acquisition of the Thomson facility, which is significantly larger than ADX Florence, will expand BOP's capacity to confine ADX and Special Management Unit (SMU) inmates at a lower cost and within a shorter timeframe than building a new facility.

The Thomson facility is unique in that it is modern, was never fully utilized, and was built specifically to house maximum security inmates. Completed in 2001, the Thomson facility could be used fairly quickly after some modifications were completed. It could be acquired and readied for use, at today's lower costs, more rapidly than constructing a new facility, saving several years. The Thomson facility would enable BOP to move the most disruptive and violent inmates out of existing general populations U.S. Penitentiaries to a newer, more modern facility better suited to the controls required to manage the ADX- and SMU-type populations. Some features of the Thomson facility that compare extremely well with other administrative high units are: The amount of bedspace available (1,600 cells); flat land geography that allows unobstructed line of sight; good infrastructure with plenty of sewer and water capacity; and a central layout for program space, hospital, food service, education.

*Question.* Provide information on CCA medium-security facilities previously negotiated or discussed.

Answer. BOP currently contracts to house low security criminal aliens, BOP is not aware of any Corrections Corporation of America facilities offered for sale to BOP.

*Question.* Please provide the Defense Department inspection findings.

Answer. The Department of Justice does not have a copy of the Defense Department's inspection findings.

*Question.* Please provide the December 15 letter from Secretary Gates and AG Holder detailing some of the security enhancements envisioned for the Thomson facility.

Answer. Attached is the requested letter to Governor Quinn of Illinois, which was signed by Attorney General Holder (Justice), Secretary Clinton (State), Secretary Gates (Defense), Secretary Napolitano (Homeland Security) and then Director Blair (National Intelligence). See Attachment 3.

DECEMBER 15, 2009.

The Honorable PAT QUINN,  
Governor of Illinois,  
Chicago, Illinois 60601.

DEAR GOVERNOR QUINN: On January 22, 2009, President Obama issued Executive order 13492, directing the closure of the detention center at Guantanamo. A key purpose of this Order was to protect our national security and help our troops by removing a deadly recruiting tool from the hands of al-Qa'ida. This should not be a political or partisan issue. This action is by the Nation's highest military and civilian leaders who prosecuted the war against al-Qa'ida under the previous' and continue to do so today. It is also supported by five previous Secretaries of State who in both Democratic and Republican administrations, including those of Presidents Nixon, Ford, George H.W. Bush, Clinton, and George W. Bush.

On November 12, 2009, you wrote to Defense Secretary Robert Gates and Attorney General Eric Holder proposing that the Federal Government work with the State of Illinois to acquire the Thomson Correctional Center to house Federal inmates and a limited number of detainees from Guantanamo Bay, Cuba. We appreciate the leadership and assistance you and Senator Dick Durbin have provided during our evaluation of this proposal. We also would like to thank Thomson Village President Jerry "Duke" Hebler and the people of Thomson and the surrounding region for their support and hospitality.

We write to inform you that the President has directed, with our unanimous support, that the Federal Government proceed with the acquisition of the facility in Thomson. Not only will this help address the urgent overcrowding problem at our Nation's Federal prisons, but it will also help achieve our goal of closing the detention center at Guantanamo in a timely, secure, and lawful manner.

Executive order 13492 directed us to close the detention facility at Bay and to conduct a review of the most secure and efficient way to adjudicate each of the Guantanamo detainee cases. This is part of the President's aggressive posture in the fight against al-Qa'ida that uses all instruments of our national power, including: keeping the pressure on al-Qa'ida and its leadership globally; strengthening homeland security and increasing cooperation and intelligence sharing among Federal agencies and between the Federal Government and State and local authorities; recognizing our values as a critical piece of our battle against our enemies; prosecuting detainees in Federal courts, which have safely and securely prosecuted terrorists for many years; trying detainees for violations of the law of war in military commissions, which were reformed by bipartisan legislation signed by the President in October; and transferring detainees to their home countries or third countries that agree to accept them, when consistent with our national security interests and humane treatment policies.

As the President has made clear, we will need to continue to detain some individuals currently held at the Guantanamo Bay detention facility. To securely house these detainees, Federal agencies plan to work with you and other State officials to acquire the nearly vacant maximum security facility in Thomson, Illinois. This facility will serve dual purposes. First, the Department of Justice will acquire this facility primarily to house Federal inmates. The Bureau of Prisons has a pressing need for more bed space in light of current crowded conditions. Second, the Defense Department will operate part of the facility to house a limited number of detainees from Guantanamo. The two parts of the facility will be managed separately, and Federal inmates will have no opportunity to interact with Guantanamo detainees.

The security of the facility and the surrounding region is our paramount concern. The facility was built in 2001 to maximum security specifications, and after acquisition it will be enhanced to exceed perimeter security standards at the Nation's only "supermax" prison in Florence, Colorado, where there has never been an escape or external attack. Federal departments and agencies, including the Departments of Homeland Security, Justice, and Defense, will work closely with State and local law enforcement authorities to identify and mitigate any risks, including sharing information through the State's "fusion center" and working with the Federal Joint Terrorism Task Force.

The President has no intention of releasing any detainees in the United States. Current law effectively bars the release of the Guantanamo detainees on U.S. soil, and the Federal Government has broad authority under current law to detain individuals during removal proceedings and pending the execution of final removal orders.

Federal officials also have consulted with local, county, and State law enforcement authorities to begin the process of identifying additional resources they may require to handle the increased population of Federal inmates and detainees. We are pleased that Illinois law enforcement authorities endorsed this plan in a letter to the Secretary of Defense and the Attorney General dated December 2, 2009. We also note that more than 30 villages, towns, cities, counties, chambers of commerce, and other community and business organizations have sent letters, approved resolutions, or otherwise expressed their support for this plan. We are greatly encouraged by this support, and we commit to working with local authorities closely as this process moves forward.

There are many steps still to be taken and many requirements still to be met, but we look forward to working with you to complete the Federal acquisition of the facility in Thomson.

Sincerely,

HILLARY CLINTON,  
*Secretary of State.*

ROBERT M. GATES,  
*Secretary of Defense.*

ERIC H HOLDER, JR.,  
*Attorney General.*

JANET NAPOLITANO,  
*Secretary of Homeland Security.*

DENNIS C. BLAIR,  
*Director of National Intelligence.*

*Question.* Provide more details and work products in response to the original question: What bodies were convened to conduct this analysis resulting in the December 15 letter referenced above, who was involved, and where are the results of their labors? Any other pertinent info you can offer would be appreciated as well.

*Answer.* Department of Justice officials have participated in a number of inter-agency meetings, work activities, and site visits of the Thomson facility. Visits and discussions have served as opportunities to engage local community members and law enforcement representatives; inform congressional, Office of Management and Budget, Department of Defense staff, and Illinois State legislators; assess compatibility with the operational and security needs of the Federal prison system; and educate surrounding communities of employment opportunities.

In addition, the Director of BOP has testified at hearings before the Illinois State Legislative Commission on Government Forecasting and Accountability and congressional appropriations committees on plans to purchase Thomson. The Department has also participated in a several congressional briefings with the Senate and House appropriations committee staff regarding the acquisition, renovation, and activation of the Thomson facility.

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QUESTIONS SUBMITTED BY SENATOR MITCH MCCONNELL

*Question.* Currently, Federal correctional officers from Bureau of Prisons facilities in Kentucky, USP McCreary and FCI Manchester, have advised that they are not authorized to carry Oleoresin Capsicum (OC) spray as a means of defense from personal attacks from inmates who are often armed with improvised weapons. In light of the fact that the safety device is standard-issue in State prisons and local detention facilities across the United States, is the Bureau of Prisons considering the use of OC spray as standard-issued equipment to aid in increasing officer safety while on duty?

*Answer.* The Bureau of Prisons' (BOP) inmate management philosophy focuses on constructive and frequent interaction and communication between staff and inmates. In accordance with this approach, BOP does not issue less lethal devices to staff for everyday interaction with inmates and everyday performance of their duties and responsibilities. Implementing this policy promotes a less confrontational environment between staff and inmates. Further, it does so without providing the temptation or opportunity for inmates to obtain such devices through aggressive behavior. In all secure institutions (low, medium, and high-security), staff are authorized to use an array of less lethal munitions and devices (e.g., chemical agents and pepper ball launchers, etc.), but only during emergency situations. To further enhance safety and security, certain less lethal munitions have been placed in strategic areas for prompt access. Securely storing devices inside the institution with clearly established management controls, rather than in the outside armory only, ensures easier access and quicker response times to emergency situations.

BOP's inmate management philosophy, with its focus on the utilization of confrontation avoidance techniques, has worked well for the vast majority of inmates. BOP continues to review other aspects of institution operations and BOP policies and procedures to determine what else might be done to enhance safety and security and address staff concerns, consistent with the mission of the agency.

*Question.* In 2008, Bureau of Prisons Director Harley Lappin enacted a policy change to provide correctional officers with stab-resistant vests. The policy made the decision to wear a stab-resistant vest voluntary for each individual officer. However, the policy also dictates that if an officer chooses to wear a vest, he or she must do

so at all times regardless of an officer's posting, duties, or proximity to inmates, thus creating a deterrent to officers opting to wear vests. Has the BOP considered whether such a restrictive policy discourages officers from wearing these protective vests and has it conducted any research to determine the impact of its policy to date?

Answer. BOP reached an agreement with the Union regarding the vest implementation plan. All staff members who request a stab resistant vest are required to wear the vest while on duty except (1) during Annual Training, (2) when assigned to phone monitoring outside the secure confines of the facility, and (3) when assigned to the control center. Under the vest Implementation plan, each staff member who receives a fitted stab resistant vest is given a 6 month phase-in period. At any time during that initial 6 month period, the staff member may turn in the vest if he/she no longer desires one.

*Question.* In 2004, Congress passed the Law Enforcement Officers' Safety Act. This law allows law enforcement officers, including Bureau of Prisons correctional officers, to carry firearms when off-duty to defend themselves and their families. However, BOP has never reached an agreement allowing for storage of officers' personal weapons at BOP facilities. Has BOP considered providing storage for staff's personal weapons, or in the alternative, allowing staff to equip their vehicles with in-car gun safes?

Answer. The storage of personally owned firearms at Federal correctional and detention facilities would reduce the safety and security of the environment for staff, inmates, and the community. For instance, the storage of personal firearms on BOP property would provide opportunities for inadvertent mishaps regarding lost, stolen, or misplaced weapons and/or ammunition. In addition, the accidental discharge or misplacement of a personal weapon or ammunition could pose a significant threat to staff, inmates, and the general public.

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QUESTIONS SUBMITTED BY SENATOR GEORGE V. VOINOVICH

OPERATION STREAMLINE

*Question.* Operation Streamline is a program where illegal immigrants are prosecuted and face jail time for crossing the border. This program has contributed to a 49.5 percent reduction in apprehensions by the Border Patrol along the Southwest border. It has also demonstrated the great cooperation between the U.S. Department of Homeland Security, the Department of Justice, and the Judiciary. Unfortunately, Operation Streamline, as successful as it is, is not fully utilized in all areas of the Southwest border. In the Tucson Sector, there is an artificial cap of 70 prosecutions per day in the face of hundreds of daily apprehensions. Does the Department of Justice support maximizing the use of Operation Streamline in all sectors along the Southwest border?

Answer. Border security and immigration policy continue to be a priority for the Department of Justice (the Department or DOJ). With regard to the Southwest border, the Department's efforts are focused on combating large and sophisticated criminal organizations, and the Department has devoted unprecedented resources to that effort. The Department generally supports consequence-based enforcement programs such as Operation Streamline as one of various tools that assist law enforcement in controlling illegal immigration and related violence. Operation Streamline programs are in place in four of the five Southwest border districts. It is, however, implemented differently in each of the districts, as a result of varying local conditions.

Operation Streamline has an enormous impact on the Department, as would any fast track immigration enforcement initiative. For example, capacity and infrastructure constraints (e.g. courthouse, cell block space, and ventilation systems) restrict the number of detainees or cases that can be processed by the Federal courts.

Funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow the Department to expand investigation and prosecution efforts along the Southwest border. With the \$196 million provided, the Department will be able to surge Federal law enforcement officers to high crime areas in the Southwest border region by funding more than 400 new positions and temporarily deploying up to 220 personnel. Justice funding will also increase the amount of equipment, operational support, and attorneys and immigration judges in order to support additional detention and incarceration costs for criminal aliens in coordination with Department of Homeland Security (DHS) enforcement activities.

*Question.* In fiscal year 2009, there were 39,183 apprehensions accepted for prosecution under Operation Streamline across the entire Southwest border. Of those



15,550 were in one sector Tucson. But, these 15,550 prosecutions represent only a fraction of the 241,673 apprehensions made in the Tucson Sector in fiscal year 2009. It would appear that much more can be done.

Please identify what additional resources are in the fiscal year 2011 President's request to expand Operation Streamline.

Answer. As stated previously, the Department of Justice is a committed partner in the Operation Streamline initiative. While the fiscal year 2011 President's budget does not break out separately all funds related only to Operation Streamline, in total, the fiscal year 2011 budget requests \$3.49 billion for the Department of Justice's Immigration and Southwest border related activities. This represents an increase of \$228 million (7 percent) from the fiscal year 2010 enacted level. Additionally, funding provided in the 2010 Emergency Border Security Supplemental Appropriations bill will allow the Department to expand investigation and prosecution efforts along the Southwest border into fiscal year 2011. With the \$196 million provided, the Department will be able to surge Federal law enforcement officers to high crime areas in the Southwest border region by funding more than 400 new positions and temporarily deploying up to 220 personnel. Justice funding will also increase the amount of equipment, operational support, and attorneys and immigration judges in order to support additional detention and incarceration costs for criminal aliens in coordination with DHS enforcement activities.

*Question.* What funding and additional personnel would be required for the Department of Justice to support doubling the number of Operation Streamline prosecutions in the Tucson Sector in fiscal year 2011? Please provide a table that displays costs and personnel for each component within the Department of Justice and the recurring costs for fiscal years 2012 through 2016 needed to do this.

Answer. Many of the Department's cost inputs along the Southwest border are unpredictable. For example, detention costs are dependent on both detainee population levels and per diem jail rates. These levels and the average per diem jail rate fluctuate depending on a number of factors, including sector in which the program operates. In fiscal year 2009, the highest per diem rate paid was in the San Diego border sector. The detention costs range from as little as \$41 to as high as \$111.45 per detainee per day. Other factors impacting costs include time in detention and availability of bed space, as well as courthouse and cellblock space limitations. Length of sentence is one variable that is at the discretion of the courts and sentence terms from Operation Streamline cases.

The differences in how each border sector operates Operation Streamline and unpredictable cost inputs make accurately estimating the full cost of implementation (however that is defined) difficult. To address these complexities, the National Academy of Sciences is currently studying the downstream effects of DHS immigration-related programs on the Department of Justice. Specifically, the purpose of the study is to develop, test, and select a budget model that accurately captures fiscal linkages between the two Departments and leverage the linkages into an estimate of the Department's immigration-related costs. Congress mandated the study in the Commerce, Justice, Science and Related Agencies Appropriations Act for 2009. The study started in January 2010 and is expected to be completed and provided to Congress in June 2011.

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of the Department's immigration-related costs. Congress mandated the study in the Commerce, Justice, Science and Related Agencies Appropriations Act for 2009. The study started in January 2010 and is expected to be completed and provided to Congress in June 2011.

*Question.* Are there any factors that would prohibit the expansion of Operation Streamline in the Tucson Sector?

*Answer.* In total, the fiscal year 2011 budget requests \$3.49 billion for the Department of Justice's Immigration and Southwest border related activities. This represents an increase of \$228 million (7 percent) from the fiscal year 2010 enacted level. A significant expansion of Operation Streamline would require additional appropriate enforcement and detention capacity, which could require a redirection of resources from other priority mission areas.

There are a number of factors that would inhibit the expansion of Operation Streamline. Capacity and infrastructure constraints (e.g., courthouse, cell block space, and ventilation systems) restrict the number of detainees or cases that can be processed.

*Question.* The Department of Homeland Security Appropriations Act, 2010, requires the Department of Homeland Security, in consultation with the Department of Justice and the Administrative Office of the United States Courts, to submit a report to the Committees on Appropriations and the Committees on the Judiciary on resources needed by the Department of Homeland Security, the Department of Justice, and The Judiciary to increase the effectiveness of Operation Streamline programs and the resources needed to utilize this program in additional sectors. This report was due in December 2009 and is now several months overdue. Has the Department of Justice completed its portion of the report and submitted that information to the Department of Homeland Security and the Office of Management and Budget? If not, when will it do so?

*Answer.* The Department provided its information to the Department of Homeland Security (DHS). DHS has reported that the Operation Streamline report was sent to the Hill on August 16, 2010.

#### CONCLUSION OF HEARINGS

Senator MIKULSKI. So the subcommittee will stand in recess, subject to the call of the Chair in cooperation with the ranking member.

We are in recess.

[Whereupon, at 11:52 a.m., Thursday, May 6, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2011

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

## NONDEPARTMENTAL WITNESSES

[CLERK'S NOTE.—At the direction of the subcommittee chairman, the following statements received by the subcommittee are made part of the hearing record on the Fiscal Year 2011 Commerce, Justice, Science, and Related Agencies Appropriations Act.]

### PREPARED STATEMENT OF THE REGIONAL INFORMATION SHARING SYSTEMS (RISS) PROGRAM

For more than 30 years, the Regional Information Sharing Systems (RISS) Program has been a leader in providing the necessary tools and critical services for law enforcement as well as other criminal justice and public sector entities. RISS consists of six regional centers that support and serve the unique needs of their individual regions while working together on national-scope issues. RISS is a premier information sharing program, offering secure communications, access to intelligence databases, and investigative resources and services. The RISS Program respectfully requests that Congress appropriate \$65 million for fiscal year 2011.

As the economy continues to struggle, criminal justice agencies are tightening budgets, decreasing resources, and limiting efforts. RISS serves as a force multiplier, offering a one-stop shop to effectively and efficiently aid agencies in tackling crime problems. Through RISS services, criminal justice agencies are provided secure information sharing capabilities and investigative support services that, in many cases, they would not otherwise receive.

The RISS Centers provide investigative support services to more than 96,000 officers from more than 8,500 criminal justice agencies at the local, State, Federal, and tribal levels. RISS operates in all 50 States, the District of Columbia, U.S. territories, Australia, Canada, and England. RISS links thousands of criminal justice agencies through secure communications and provides information sharing resources and investigative support to combat multijurisdictional crimes. RISS strives to enhance the ability of criminal justice agencies to identify, target, and remove criminal conspiracies and activities while promoting officer safety.

The support provided by RISS has enabled law enforcement and public safety agencies to increase their success exponentially. Because of these successes, as well as the many remaining needs throughout the criminal justice community, RISS continues to experience an increased demand for its services. Continued and additional funding is needed in order to meet this demand and continue to build upon the Nation's information sharing environment. In addition to continuing its current services, RISS will utilize requested funds for the initiatives listed below.

- Expand and continue to deploy the RISS Officer Safety Event Deconfliction System (RISSafe) throughout the six RISS regions.
- Enhance the RISSGang Program, develop gang training and publications, and connect gang intelligence systems.
- Enhance the RISS Secure Intranet (RISSNET) to improve functionality, security, and resources and to expand agency connectivity and officer/agency access.
- Support border initiatives by developing training and providing secure information sharing.

- Continue to develop and enhance the Combat Meth Project.
- Expand the RISS Automated Trusted Information Exchange (RISS ATIX) by enhancing communications and developing an off-line notification and alert capability.
- Expand the Pawnshop Database nationwide.
- Continue to participate in the Nationwide Suspicious Activity Reporting Initiative (NSI).
- Continue to support and expand fusion center partnerships and connectivity.

RISS is Federal funded but locally managed by its member agencies. The Bureau of Justice Assistance (BJA), Office of Justice Programs, U.S. Department of Justice, administers the RISS Program. The RISS Centers operate under the BJA Funding and Administration Guidelines of the RISS Program and the Criminal Intelligence Systems Operating Policies (28 Code of Federal Regulations [CFR] part 23). Each of the six RISS Centers has developed operating policies and procedures that comply with the Federal guidelines and regulations. The RISS Centers have adopted a privacy policy that fully complies with 28 CFR part 23.

RISS developed and continues to operate RISSNET, which offers state-of-the-art technology to support law enforcement demand for rapid communications and information sharing nationwide. Through RISSNET, member agencies can securely exchange information and electronically access RISSNET resources, including the RISS Criminal Intelligence Databases (RISSIntel), RISSafe, the RISSGang Program, RISS ATIX, the RISS Investigative Leads Bulletin Board (RISSLeads), a data-visualization and link-analysis tool (RISSLinks), the RISS Search Engine (RISSearch), the RISS Center Web sites, and secure e-mail.

In fiscal year 2009, more than 3.4 million records were available in RISSIntel and more than 3.1 million inquiries were made to the system. RISSIntel has proved a successful tool to securely share criminal intelligence and connect law enforcement officers. In addition, member agencies have access to various State, regional, Federal, and specialized criminal justice intelligence systems connected to RISSNET. By connecting systems to RISSNET, rather than funding the build-out of infrastructure for new stand-alone information systems, hundreds of millions of dollars can be saved and millions of data records can be easily and quickly accessed by law enforcement. Currently, almost 100 agency systems are connected or pending connection to RISSNET, including 32 High Intensity Drug Trafficking Areas, 36 State agency systems, and 28 Federal and other systems. RISSNET offers the ability to select one or all connected systems and conduct a federated search.

As part of the continued commitment to promote and enhance officer safety, RISS deployed RISSafe. 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. As of January 22, 2010, 152,265 events were entered into RISSafe, resulting in 52,469 identified conflicts. Without this resource, law enforcement agencies might have interfered with each other's cases and officers might have been injured or killed.

The RISSGang Program is a comprehensive investigative tool consisting of a criminal intelligence database, a Web site, informational resources, and secure communications to aid and support gang-related investigations. RISS ATIX is available to thousands of law enforcement and public safety agencies. RISS ATIX Participants include local, county, State, and tribal levels of emergency management, law enforcement, and government, as well as public and private utilities, transportation, chemical manufacturing, environmental protection, banking, and hospitality industries. RISS ATIX resources include Web pages that contain general and community-specific information, links to restricted and public Web sites, and other sources of terrorism and disaster-related information. The RISS ATIX Bulletin Board provides secure online conferences for users to collaborate and post information. The Document Library provides informational and educational materials. ATIX secure e-mail enables the distribution of alerts and sensitive but unclassified (SBU)/controlled unclassified information (CUI).

Some law enforcement agencies do not have the personnel, training, or support to tackle complex multijurisdictional crimes. RISS not only provides secure communications and access to intelligence databases but also provides services to enhance and improve the ability to detect, apprehend, and successfully prosecute criminals. The following summarizes RISS's information and investigative support services.

- Information Sharing.*—Operation of RISSNET and its applications and tools.
- Analysis.*—RISS analysts developed 35,655 products in fiscal year 2009 for investigators and prosecutors to help increase their ability to identify, detect, and apprehend suspects as well as enhance prosecutorial success. Products include flowcharts, link-analysis charts, crime scene diagrams, telephone toll analysis

and financial analysis reports, digital forensics analysis, and audiovisual enhancement services.

—*Investigative Support.*—RISS intelligence research staff responded to 96,293 requests in fiscal year 2009 to conduct database searches and research numerous resources.

—*Equipment Loans.*—Pools of highly specialized investigative and surveillance equipment are available for loan to member agencies for use in multijurisdictional investigations. In fiscal year 2009, 5,669 pieces of equipment were borrowed.

—*Confidential Funds.*—RISS provides funds to purchase contraband, stolen property, and other items of an evidentiary nature or to provide for other investigative expenses. RISS provided \$664,785 in confidential funds in fiscal year 2009.

—*Training.*—RISS Centers sponsor or cosponsor training classes, meetings, and conferences that build investigative expertise for member agency personnel. In fiscal year 2009, 78,852 criminal justice professionals received RISS training.

—*Publications.*—Each center develops and distributes publications, bulletins, and reports focusing on local and national issues. In fiscal year 2009, the centers distributed 255,798 copies of documents to law enforcement personnel.

—*Field Services Support.*—The integration of field services is unique to RISS, whereby individuals regularly contact law enforcement and public safety agencies to ensure that RISS is meeting their needs. RISS field staff conducted 25,242 on-site visits in fiscal year 2009 to train, support, and help integrate RISS services. This one-on-one support has resulted in trusted relationships and a program prized among its members.

Through the services and support provided by RISS, member agencies made 4,975 arrests in fiscal year 2009. In addition, seizures or recoveries of more than \$27 million in narcotics, property, and currency resulted from member agency cases in which RISS services were used.

RISS continues pursuing and refining partnerships and programs in order to leverage proven technology and expand information sharing. Some of these include connecting fusion centers to RISSNET, supporting NSI, partnering with the National Gang Intelligence Center, participating in the National Virtual Pointer System, enhancing gang investigators' ability to share intelligence data, and expanding the capabilities and resources of RISS ATIX.

The National Criminal Intelligence Sharing Plan (NCISP) and the Law Enforcement Information Sharing Program (LEISP) Strategy were developed to focus on national parameters for information and intelligence sharing. RISS is noted in both documents as a mechanism to facilitate secure information sharing.

There is a critical need to provide a seamless SBU/CUI solution. Local law enforcement officers/analysts need one single sign-on and access to an interoperable SBU/CUI environment, regardless of ownership. To accomplish this, interoperability requirements must be defined. RISSNET—along with the U.S. Department of Homeland Security's Homeland Security Information Network, FBI LEO, and the Intelligence Community's Intelink—have been identified by the Interagency Policy Committee (IPC) formed within the jurisdiction of the executive office of the President as the four SBU/CUI networks necessary to be involved in the interoperability initiative to ensure timely and effective information sharing among local, State, Federal, and tribal agencies. RISS will play a major role in this development process. RISS has made strides in this area, through the LEISP initiatives, to connect users via Federated Identity to the Federal Joint Automated Booking System (JABS). Currently, 89 RISSNET users are accessing JABS via Federated Identity, and 1,756 non-RISSNET users are accessing RISS resources via Federated Identity.

In addition, each RISS Center has developed partnerships and programs to meet the needs of its unique region. Some examples include the Project Safe Neighborhoods Mapping and Analysis Program, the National Identity Crimes Law Enforcement Network, the Cold Case Locator System, the Metals Theft Initiative, the Master Telephone Index, the Pawnshop Database, the Combat Meth Project, and the Cold Hit Outcome Project.

RISS is supported and endorsed by numerous groups, including 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.

Without continued funding and support for RISS, law enforcement and public safety efforts will be severely hampered. Specifically, RISS and its users will experience the following:

- Reduced expansion of RISSafe
- Inability to effectively support RISS ATIX and RISSGang
- Limited expansion of RISSNET and redundancy of system applications

- Minimal enhancement of the RISSNET Portal
- Limited support for border initiatives
- No expansion of the Pawnshop Database
- Decreased support services, limited analytical support, and fewer training opportunities
- Delayed and/or a lack of new connectivity among agencies and users
- Limited support for information sharing initiatives

It is respectfully requested that Congress appropriate \$65 million for fiscal year 2011 to continue RISS's efforts. Local and State law enforcement depend on RISS for information sharing, investigative support, and technical assistance. It would be counterproductive to require local and State RISS members to self-fund match requirements, as well as to reduce the amount of BJA discretionary funding. Local and State 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 operates one of the most important law enforcement information sharing programs in the Nation. RISS plays a part in ensuring that law enforcement and public safety have the information and resources necessary to secure our country. For additional information, please visit [www.riss.net](http://www.riss.net). RISS appreciates the support this subcommittee has continuously provided to the RISS Program and is grateful to provide this testimony.

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PREPARED STATEMENT OF THE NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Thank you for the opportunity to submit testimony to this subcommittee in support of \$44 million in funding for the Commerce Department's Public Telecommunications Facilities Program (PTFP) in fiscal year 2011. As the president and CEO of the National Federation of Community Broadcasters (NFCB), I speak on behalf of 250 community radio stations and related individuals and organizations across the country including many Low Power FM stations. NFCB is the sole national organization representing this group of stations, which provide independent local service in the smallest communities and the largest metropolitan areas of this country. Nearly one-half of NFCB's members are rural stations, and one-half are controlled by people of color.

In summary, the points we wish to make to this subcommittee are:

- PTFP funding is unique. It is the only funding source available to help get new stations on the air and ensure that public broadcasting is available everywhere in the United States.
- In the current budget, a loss of PTFP will mean an irreplaceable loss in new community radio stations because of an unprecedented number of new licensees in the pipeline flowing from a large number of radio stations granted new construction permits by the Federal Communications Commission. This new licensing opportunity will not come again.
- PTFP is a targeted program carefully managed to replace necessary equipment by leveraging public with private funds.
- PTFP will help public and community radio stations prepare to provide emergency information during natural or man-made disasters.
- PTFP will help fund for conversion of public radio to digital broadcasting, which has only recently begun.

PTFP is poised to fund new stations that have recently been granted construction permits by the Federal Communications Commission. PTFP is the only program available that supports new station construction. No alternate funding exists—the Corporation for Public Broadcasting does not support stations until they have been on the air for 1 year. The solid funding levels for CPB will not translate into production of new stations. The opportunity in this budget year is unique because of its timing. In 2007, the Federal Communications Commission opened up a new licensing window for new noncommercial radio stations. This was the first opportunity to apply for new radio stations in a decade. Because of the scarcity of radio spectrum, this is the last significant licensing windows for new public radio stations unless new spectrum is allocated to radio broadcasting. Community radio has put an immense effort into recruiting new and diverse applicants who are just now receiving their construction permits from the FCC and are able to apply for PTFP funding. With adequate funding and support, the new group of applicants has the potential to fund construction of 45 new community radio stations authorized by the FCC in its most recent licensing window and double the number of Native American radio stations in this country. Federal funding is particularly critical to stations broad-

casting to rural and underserved audiences which have limited potential for fund-raising due to sparse populations, limited number of local businesses, and low income levels. In addition, PTFP often funds translator stations to expand the geographic coverage of an existing station.

PTFP is a targeted program carefully managed to replace necessary equipment by leveraging public with private funds. Funding from PTFP has been essential to keep public radio stations on the air by funding the replacement of equipment, often items that have been in use for 20 or more years. The program is administered carefully to be certain that stations are acquiring the most appropriate type of equipment. They also determine that equipment is being properly maintained and will not fund the replacement of equipment before an appropriate period of time in use. Even so, PTFP funding is a matching program, so Federal money is leveraged with a local commitment of funds. This program is a strong motivating factor in raising the significant money necessary to replace, upgrade and purchase expensive broadcast equipment.

PTFP will help public and community radio stations prepare to provide emergency information during natural or man-made disasters. As we saw during the severe storms and devastating hurricanes of the last few years, radio is the most effective medium for informing a community of weather forecasts, traffic issues, services available, evacuations, and other emergency conditions. Since everyone has access to a radio and they are portable and battery operated, a radio is the first source for this critical information. Radio stations therefore must have emergency power at both their studios and their transmitter in order to provide this service.

We support \$44 million in funding to ensure that both the ongoing program will be continued, and hope that that there will be additional financial resources available to help cover the cost of improving the emergency infrastructure of public broadcasting stations. This additional funding is considered an urgent need if community stations are to withstand and continue broadcasting through extreme weather or other emergency situations. At a time when local service is being abandoned by commercial radio, PTFP aids communities developing their own stations which provide local information and emergency notifications.

The National Federation of Community Broadcasters supports PTFP funding to help public radio to convert to digital to provide more public service and keep up with the market. While television's digital conversion was completed last year, radio is also converting to digital. Commercial radio stations are converting to digital transmission, and public radio should not be left behind. The digital standard for radio has been approved by the Federal Communications Commission, and over 400 public radio transmitters have been converted. Public digital radio signals will provide more public service. Most exciting to public radio is that stations can broadcast two or more high quality signals, even while they continue to provide the analog signal. Additional digital audio channels will potentially more than double the service that public radio can provide, particularly to unserved and underserved communities. For example, public radio will be able to add services in languages other than English, or will be able to add distinctive cultural, music, or news programming.

In sum, community radio supports \$44 million in funding for the Public Telecommunications Facilities Program in fiscal year 2011. PTFP funding is unique. It is the only funding source available to help get new stations on the air and ensure that public broadcasting is available everywhere in the United States. Federal funding distributed through the PTFP is essential to continuing and expanding the public broadcasting service throughout the United States. PTFP funding is critical to ensuring public radio's readiness to provide life-saving information to communities in the event of local disasters, as we have seen during weather emergencies in the past few years. With the advent of digital broadcasting, PTFP funding is helping with the conversion to this new technology. It is particularly critical for rural stations and those serving low income communities. PTFP funds new stations, expanding the reach of public broadcasting to rural areas and to audiences that are not served by existing stations. Finally, it replaces obsolete and worn out equipment so that existing public stations can continue to broadcast high quality programming in a carefully targeted, fiscally responsible manner.

Public radio is the most vibrant part of the radio dial, bringing a diverse spectrum of news, information and entertainment to millions of listeners every day. PTFP will give us an unprecedented opportunity to be sure that radio is providing local news and journalism, enhancing local culture, and bringing new communities into the information age.

Thank you for your consideration of our testimony.

## PREPARED STATEMENT OF THE INSTITUTE OF MAKERS OF EXPLOSIVES (IME)

Dear Madam Chairman: On behalf of the Institute of Makers of Explosives (IME), I am submitting a statement for inclusion in the subcommittee's hearing record regarding the proposed fiscal year 2011 budget for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Arson and Explosives (A&E) program.

## INTEREST OF THE IME

The IME is the safety and security association of the commercial explosives industry. The production, distribution, storage and use of explosives are highly regulated. ATF is one of the agencies that play a primary role in assuring that explosives are identified, tracked, and stored only by authorized persons. The ability to manufacture, distribute and use these products safely and securely is critical to this industry. We have carefully reviewed the administration's fiscal year 2011 budget request for ATF, and have the following comments about its impact on the commercial explosives industry.

## ATF'S EXPLOSIVES REGULATORY PROGRAM

The administration's fiscal year 2011 budget request proposes to support ATF's regulation and oversight of explosives industries at a level that will sustain current services. In fiscal year 2010, this program was increased by 9 FTE to 383 FTE.

The Bureau's Explosives Industry Programs Branch has embraced the Obama administration's pledge to be more transparent and accountable. To help us do our job better, data about theft and diversion of commercial explosives is being shared on an annual basis. ATF is continuing efforts to enhance data capabilities. These efforts should be supported.

We are pleased to report that the \$200,000 set-aside provided the Bureau in fiscal year 2009 to begin addressing its pending regulatory backlog has borne fruit. In January, ATF finalized its rule on the storage of shock tube with detonators.<sup>1</sup> By statute, ATF is supposed to "take into consideration . . . the standards of safety and security recognized in the explosives industry" when issuing rules and requirements.<sup>2</sup> We believe ATF followed this directive in issuing the shock tube final rule. Four other rulemakings of importance to IME are still pending; the oldest dating to 2001. We hope to continue to see progress in this area. We are grateful to Congress for its oversight of this issue.

In the absence of rulemaking that is capable of keeping up with new developments and practices, industry must rely on interpretive guidance and variances from rules to conduct business. While we appreciate the Bureau's accommodations, these stop-gap measures do not afford the 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.

## INDUSTRY STANDARDS

We take seriously the statutory obligation that ATF take into account industry's standards of safety when issuing rules and requirements. We have endeavored to fulfill this obligation through the development of industry best practices for safety and security, participation in relevant standard-setting organizations, and 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 research efforts, and in other standard setting activities.

In this regard, IME has spent years developing and validating a credible alternative to strict interpretation of quantity-distance tables used to determine safe setback distances from explosives. IME collaborated with the Department of Defense Explosives Safety Board and Canadian and U.S. regulatory agencies, including ATF. The result is a windows-based computer model for assessing the risk from a variety of commercial explosives activities called IMESAFR.<sup>3</sup> 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

<sup>1</sup> 75 FR 3160 (January 20, 2010).

<sup>2</sup> 18 U.S.C. 842(j).

<sup>3</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.



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. Following this effort, ATF is starting to recognize this powerful assessment tool as a potential alternative for the regulated community to meet quantity-distance limitations. ATF has taken advantage of opportunities to partner with IME and is deliberating whether to accept this or any other risk-based approach to explosives safety. ATF should be encouraged to recognize the benefits of risk-based modeling and develop policy that would allow the use of such models to meet regulatory mandates.

#### PERFORMANCE MEASURE IMPROVEMENTS

We have expressed concern at the drop in the performance of the Bureau's A&E programs as measured by the Program Assessment Rating Tool (PART).<sup>4</sup> During assessment year 2004, the A&E program was rated "moderately effective." By 2008, the rating of the A&E program had fallen to "adequate." The program's scores fell in all categories:

Section	Score—2004 (percent)	Score—2008 (percent)
Program Purpose & Design .....	100	80
Strategic Planning .....	88	75
Program Management .....	100	43
Program Results/Accountability .....	67	40

As a result, ATF developed improvement plans to be implemented in the arson and explosives program:<sup>5</sup>

—ATF will continue to work with the FBI to implement the provisions of a Memorandum of Understanding between the two agencies.

—ATF will establish a performance measure based on in-depth evaluation of the application of select training it provides.

While these are worthy goals, we question whether they are sufficient to address all programmatic shortfalls. For a number of years, IME has expressed concern about the lack of appropriate measures to assess the ATF's performance as a regulator of the commercial explosives industry.<sup>6</sup> Instead of adding such performance indicators, however, ATF has discontinued all prior performance measures and outcomes and replaced them with three metrics, of which only one applies to the Bureau's explosives regulatory program.<sup>7</sup> The "outcome measure" for the explosives regulatory program is "improve public safety by increasing compliance with Federal laws and regulations by explosives industry members."<sup>8</sup> While a laudable objective, the Bureau provides no metrics to assess whether this objective has been achieved.<sup>9</sup> Absent information of this type, it is unclear how Congress can effectively oversee ATF's handling of its responsibilities toward the regulated community or determine the adequacy of its budget request.

ATF states that in fiscal year 2009, it received a "clean audit opinion."<sup>10</sup> However, the measures or scores used in the audit are not disclosed so there is no way to determine where progress has been made relative to the PART assessments. Anecdotally, we believe that ATF's arson and explosives program is more responsive. However, we would welcome an independent audit of the program to corroborate that the Bureau has reversed the trend reflected in the last two PART reviews with regard to its "resource utilization, strategic planning, program management,

<sup>4</sup> <http://www.whitehouse.gov/omb/expectmore/detail/10002202.2008.html>. PART was developed by OMB to assess and improve program performance of the Federal Government. ATF's A&E programs are measured together because A&E investigators are cross trained and only 32 percent of the ATF A&E budget goes to explosives regulatory activities.

<sup>5</sup> Fiscal Year 2011 ATF Budget Submission, page 63.

<sup>6</sup> IME has requested performance measures such as the percent of perfected explosives applications acted on within 90 days; the number of background checks that ATF has performed, within what average timeframe, and of those, how many individuals failed to receive clearance, and of those, how many appealed the Bureau's findings; the number of rulemakings outstanding and their priority; and turnover rates among agents and inspectors.

<sup>7</sup> Fiscal Year 2011 ATF Budget Submission, pages 57–61.

<sup>8</sup> Fiscal Year 2011 ATF Budget Submission, pages 58 and 60.

<sup>9</sup> Other Federal Government agencies have such metrics. For example, see the fiscal year 2011 budget submission for the U.S. Department of Transportation's Pipeline and Hazardous Materials program.

<sup>10</sup> Fiscal Year 2011 ATF Budget Submission, page 63.

and program results.”<sup>11</sup> We believe that the timing for such an audit is consistent with the administration’s pledge of transparency and accountability.

#### LEADERSHIP

The resolution of these issues may have to wait the appointment of a new director. The ATF has been without a director since August 2006. We hope that an appointment will soon be announced. The Bureau 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 important role played by ATF in helping our industry achieve and maintain safe and secure workplaces. Industry and the public trust that ATF has the resources to fulfill its regulatory responsibilities. It is up to 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.

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#### PREPARED STATEMENT OF THE COASTAL STATES ORGANIZATION

The Coastal States Organization (CSO) is a nonpartisan, nonprofit organization that represents the interests of the Governors of the 35 coastal States, territories and commonwealths in Washington, DC. 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 2011, CSO supports the following coastal programs and funding levels within the National Oceanic and Atmospheric Administration (NOAA):

Coastal Zone Management Program (§§ 306/306A/309)—\$88 million

Coastal and Estuarine Land Conservation Program—\$60 million

CZM and Stewardship \$12.5—million

Every American, regardless of where he or she lives, is fundamentally connected to our 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 quality of life. 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. GDP and over 2.3 million jobs to our citizens. In addition, the annual contribution of coastal counties is in the trillions of dollars, 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 only 18 percent of the U.S. land area. If these counties were their own country, they would have the world’s second largest economy. Coasts and oceans also add to the quality of life of nearly one-half of all Americans who visit the seashore each year; the non-market value of recreation alone is estimated at over \$100 billion.

Today, our Nation’s coasts are as vital for our future as they are vulnerable. As a result of their increasing draw and economic vitality, 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, can be proven to show that the country is in danger of losing these invaluable assets. Despite the difficult budgetary times, we need to provide more funding and support for the key programs that are on the front lines of this daily battle, the programs utilizing the advances in coastal and ocean science, research, and technology to manage our coastal and ocean resources for future generations.

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 and the Coastal and Estuarine Land Protection Program. These programs reside within the National Oceanic and Atmospheric Administration (NOAA) and provide direct funding or services to the States and territories, which account for a small portion of the total NOAA Federal budget. 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

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<sup>11</sup> Fiscal Year 2011 ATF Budget Submission, page 63.

investment in our Nation's coasts. Increased funding for these programs that provide on-the-ground services to our local communities and citizens is well worth the investment.

COASTAL ZONE MANAGEMENT PROGRAM (§§ 306/306A/309)

CSO requests that these grants be funded at a level of \$88 million, an amount that will be shared among the 34 States and territories that have approved coastal zone management programs. Pursuant to the Coastal Zone Management Act (CZMA), NOAA and the States partner 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 reduce environmental impacts of coastal development, resolve conflicts between competing coastal uses, and provide critical assistance to local communities in coastal planning and resource protection.

The CZMA State grants have essentially remained level-funded for 9 years, resulting in a decreased capacity in the State coastal zone management programs and less funding being granted out to local communities. An increase in funding to \$88 million provides an additional \$300,000–\$800,000 for each State and territory based on a Federal formula that takes into account coastal population and shoreline mileage. With the additional funding, States and territories could focus on near-term activities that would prepare their coastal communities to adapt to climate change, develop renewable energy sources, and conserve and restore habitat and working waterfronts. The following is a representative list of activities that the States and territories could pursue with the increased funding:

- Acquire high resolution topography and bathymetry mapping data (for example, LIDAR, shallow water-penetrating LIDAR) and/or integrate these and existing datasets for consistent statewide coverage and public dissemination;
- Invest in research, mapping and modeling to enable decisionmaking for renewable energy development;
- Host workshops to assist local officials to assess resources and identify strategies to integrate climate change adaptation measures into local policies, regulations and programs;
- Conserve and restore coastal habitat for storm protection, water-filtering benefits, fish nurseries, and recreation and preserve waterfront property for businesses dependant on access to the water to flourish;
- Foster coordinated permitting review and siting guidance among State and Federal agencies for offshore renewable energy development;
- Work to implement new or modify existing State and local policies, regulations and programs to address climate change impacts, including those related to building design and construction, wetland conservation and restoration, stormwater systems and roadways, shore protection, and general public infrastructure; and
- Support outreach and extension activities related to science and public education with partners such as the National Estuarine Research Reserves and Sea Grant College Programs.

Under the current level of funding, most States and territories receive between \$850,000 and \$2 million to carry out their coastal management programs based on a formula accounting for shoreline miles and coastal population. Appropriate at the time, a cap of \$2 million was instituted years ago to allow for funding to spread more evenly across the States and territories, so as to prevent most of the funding from going entirely to the larger, more heavily populated States. But, now, over 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. 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 over and above 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.

## COASTAL AND ESTUARINE LAND CONSERVATION PROGRAM

CSO requests \$60 million for the Coastal and Estuarine Land Conservation Program (CELCP). Authorized by 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 recreation states to other uses.” To date, Congress has appropriated nearly \$260 million for CELCP. This funding has allowed for the completion of over 125 conservation projects, with more in progress. CELCP projects in 27 of the Nation’s 35 coastal States have already helped preserve approximately 45,000 acres of the Nation’s coastal treasures. All Federal funding has been leveraged by at least an equal amount of State, local, and private investments, demonstrating the broad support of the program, the importance of coastal protection throughout the Nation, and the critical role of Federal funding to its success.

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.

This March, the CELCP program was formally authorized as part of H.R. 146, the Omnibus Public Lands Management Act of 2009, once again showing the broad, bipartisan support for coastal and estuarine land conservation. In recognition of the significant demand for CELCP projects, H.R. 146 authorized the program at \$60 million annually.

## CZM AND STEWARDSHIP

CSO requests \$12.5 million for CZM and Stewardship under NOAA’s Office of Ocean and Coastal Resources Management (OCRM). OCRM provides support to the States and territories by providing program liaisons, and processing grants and program changes for the Coastal Zone Management Program, as well as leading the development of NOAA’s Coastal Strategy. It also administers the Coastal and Estuarine Land Conservation Program (CELCP), leads coral reef conservation activities, and manages the development of a National System of Marine Protected Areas. With all of these vested responsibilities, and to administer all of its programs adequately, OCRM needs this funding to be the best possible partner to the States and territories.

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. Thank you for taking our requests into consideration as you move forward in the fiscal year 2011 appropriations process.

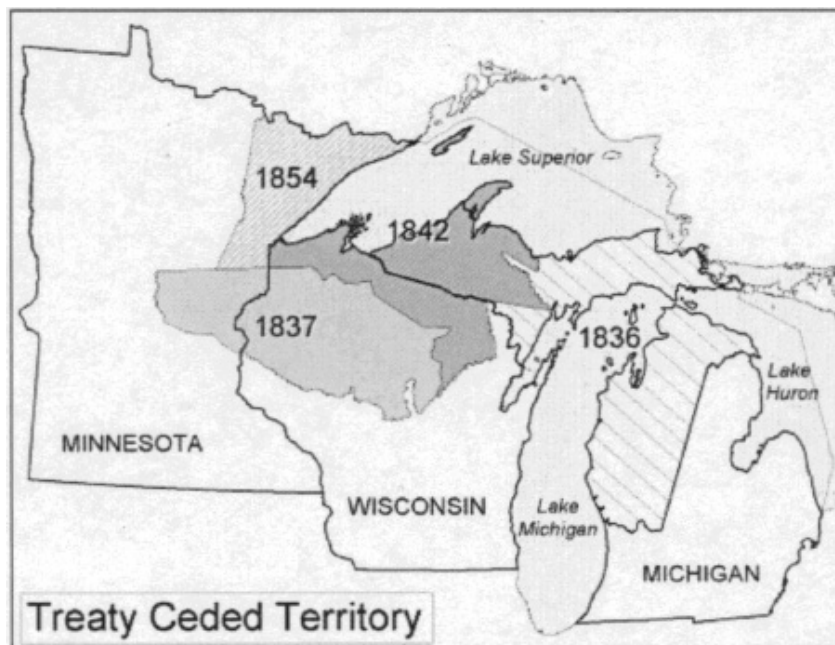
## PREPARED STATEMENT OF THE GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

*Summary of GLIFWC’s Fiscal Year 2011 Testimony.*—GLIFWC supports the administration’s fiscal year 2011 proposal to increase tribal COPS funding to \$67 million but not the \$15 million reduction in the Tribal Resources Grant Program (TRGP). The administration’s proposal to set aside tribal funding within the Universal Hiring Program (UHP) is timely given the great need in Indian country. However, the proposed decrease of \$15 million for the Tribal Resources Grant Program (TRGP) is an unwise trade-off that will undercut the effectiveness of tribal law enforcement. Not only must new officers be trained and equipped, something which cannot be done with UHP funding, but fully-staffed agencies still need the logistical support that the TRGP provides. The TRGP has enabled GLIFWC to solidify its communications, training, and equipment requirements, essential elements that help ensure the safety of GLIFWC officers and their role in the proper functioning of interjurisdictional emergency mutual assistance networks in the treaty ceded territories.

*Ceded Territory Treaty Rights and GLIFWC’s Role.*—GLIFWC was established in 1984 as a “tribal organization” within the meaning of the Indian Self-Determination

Act (Public Law 93-638). It exercises authority delegated by its member tribes to implement Federal court orders and various interjurisdictional agreements related to their treaty rights. GLIFWC assists its member tribes in:

- Securing and implementing treaty guaranteed rights to hunt, fish, and gather in Chippewa treaty ceded territories; and
- Cooperatively managing and protecting ceded territory natural resources and their habitats.



For over 25 years, Congress and various administrations have funded GLIFWC through the BIA, Department of Justice and other agencies to meet specific Federal obligations under: (a) a number of U.S./Chippewa treaties; (b) the Federal trust responsibility; (c) the Indian Self-Determination Act, the Clean Water Act, and other legislation; and (d) various court decisions, including a 1999 U.S. Supreme Court case, affirming the treaty rights of GLIFWC's member tribes. GLIFWC serves as a cost efficient agency to conserve natural resources, to effectively regulate harvests of natural resources shared among treaty signatory tribes, to develop cooperative partnerships with other Government agencies, educational institutions, and non-governmental organizations, and to work with its member tribes to protect and conserve ceded territory natural resources.

Under the direction of its member tribes, GLIFWC operates a ceded territory hunting, fishing, and gathering rights protection/implementation program through its staff of biologists, scientists, technicians, conservation enforcement officers, and public information specialists.

*Community-based Policing.*—GLIFWC's officers carry out their duties through a community-based policing program. The underlying premise is that effective detection and deterrence of illegal activities, as well as education of the regulated constituents, are best accomplished if the officers work within tribal communities that they primarily serve. The officers are based in reservation communities of the following member tribes: in Wisconsin—Bad River, Lac Courte Oreilles, Lac du Flambeau, Red Cliff, Sokaogon Chippewa (Mole Lake) and St. Croix; in Minnesota—Mille Lacs; and in Michigan—Bay Mills, Keweenaw Bay and Lac Vieux Desert. To develop mutual trust between GLIFWC officers and tribal communities, officers provide outdoor skills workshops and safety classes (hunter, boater, snowmobile, ATV) to 300 tribal youth in grades 4-8 annually. Recently GLIFWC officers worked to support drug and alcohol prevention efforts in the Lac du Flambeau school system by sponsoring a snowshoe making workshop for tribal youth.

*Interaction With Law Enforcement Agencies.*—GLIFWC’s officers are integral members of regional emergency services networks in Minnesota, Michigan and Wisconsin. They not only enforce the tribes’ conservation codes, but are fully certified officers who work cooperatively with surrounding authorities when they detect violations of State or Federal criminal and conservation laws. These partnerships evolved from the inter-governmental cooperation required to combat the violence experienced during the early implementation of treaty rights in Wisconsin. As time passed, GLIFWC’s professional officers continued to provide a bridge between local law enforcement and many rural Indian communities.

GLIFWC remains at this forefront, using DOJ funding to develop interjurisdictional legal training attended by GLIFWC officers, tribal police and conservation officers, tribal judges, tribal and county prosecutors, and State and Federal agency law enforcement staff. DOJ funding has also enabled GLIFWC to certify its officers as medical emergency first responders trained in the use of defibrillators, and to train them in search and rescue, particularly in cold water rescue techniques. When a crime is in progress or emergencies occur, local, State, and Federal law enforcement agencies look to GLIFWC’s officers as part of the mutual assistance networks of the ceded territories. In fact, the role of GLIFWC’s officers in these networks was further legitimized in 2007 by the passage of Wisconsin Act 27. This law affords GLIFWC wardens the same statutory safeguards and protections that are afforded to their DNR counterparts. GLIFWC wardens will now have access to the criminal history database and other information to identify whom they are encountering in the field so that they can determine whether they are about to face a fugitive or some other dangerous individual.

DOJ has acknowledged that, “[t]he officer-to-population ratio still remains lower on Indian reservations than in other jurisdictions across the country . . . tribal law enforcement has a unique challenge of patrolling large areas of sparsely populated land” (DOJ 2011 budget summary). GLIFWC’s participation in mutual assistance networks located throughout a 60,000 square mile region directly addresses this problem in an effective and cost efficient manner.

*GLIFWC Programs Funded by DOJ.*—GLIFWC recognizes that adequate communications, training, and equipment are essential both for the safety of its officers and for the role that GLIFWC’s officers play in the proper functioning of interjurisdictional emergency mutual assistance networks in the ceded territories. GLIFWC’s COPS grants have provided a critical foundation for achieving these goals. Significant accomplishments with Tribal Resources Grant Program funds include:

—*Increased Versatility and Homeland Security.*—In 2007, GLIFWC used COPS funding to obtain a 22-foot boat to expand patrol capabilities and coverage on Lake Superior. This boat also provides greater versatility than GLIFWC’s larger patrol boat to access bays and harbors in the Lake. In 2008, GLIFWC used COPS funding to purchase an incident command center trailer that will be used to provide a base for enforcement activities and to improve response to incidents that trigger joint law enforcement actions.

—*Emergency Response Equipment and Training.*—Each GLIFWC officer has completed and maintains certification as a First Responder and in the use of life saving portable defibrillators. Since 2003, GLIFWC officers have carried First Responder kits and portable defibrillators during their patrol of around 275,000 miles per year throughout the ceded territories. In remote, rural areas the ability of GLIFWC officers to respond to emergencies provides critical support of mutual aid agreements with Federal, State, and local law enforcement agencies.

—*Ice Rescue Capabilities.*—Each GLIFWC officer maintains certification in ice rescue techniques and was provided a Coast Guard approved ice rescue suit. In addition, each of the patrol areas was provided a snowmobile and an ice rescue sled to participate in interagency ice rescue operations with county sheriffs departments and local fire departments.

—*Wilderness Search and Rescue Capabilities.*—Each GLIFWC officer has completed Wilderness Search and Rescue training. The COPS Tribal Resources Grant Program also enabled GLIFWC to replace a number of vehicles that were purchased over a decade ago, including 10 ATV’s and 16 patrol boats and the GPS navigation system on its 31-foot Lake Superior Patrol Boat. These vehicles are used for field patrol, cooperative law enforcement activities, and emergency response in the 1836, 1837 and 1842 ceded territories. GLIFWC officers also utilize these vehicles for boater, ATV, and snowmobile safety classes taught on reservations as part of the Commission’s Community Policing Strategy, providing critical outreach to tribal youth.

Consistent with numerous other Federal court rulings on the Chippewa treaties, the United States Supreme Court re-affirmed the existence of the Chippewa’s treaty-guaranteed usufructuary rights in *Minnesota v. Mille Lacs Band*, 526 U.S. 172

(1999). As tribes have re-affirmed rights to harvest resources in the 1837 ceded territory of Minnesota, workloads have increased. In addition, a consent decree signed in 2007 will govern the exercise of treaty rights in inland portions of the 1836 ceded territory in Michigan, where one of GLIFWC's member tribes exercises treaty rights.

But for GLIFWC's COPS grants, this expanded workload, combined with staff shortages would have limited GLIFWC's effective participation in regional emergency services networks in Minnesota, Michigan and Wisconsin. The effectiveness of these mutual assistance networks is more critical than ever given: (1) national homeland security concerns; (2) State and local governmental fiscal shortfalls; (3) staffing shortages experienced by local police, fire, and ambulance departments due to the call up of National Guard and military reserve units; and (4) the need to cooperatively combat the spread of methamphetamine production in rural areas patrolled by GLIFWC conservation officers. Examples of the types of assistance provided by GLIFWC officers follow:

- As trained first responders, GLIFWC officers routinely respond to, and often are the first to arrive at, snowmobile accidents, heart attacks, hunting accidents, and automobile accidents (throughout the ceded territories) and provide sheriffs' departments valuable assistance with natural disasters (e.g. floods in Ashland County and a tornado in Siren, Wisconsin).
- Search and rescue for lost hunters, fishermen, hikers, children, and the elderly (Sawyer, Ashland, Bayfield, Burnett, and Forest Counties in Wisconsin and Baraga, Chippewa, and Gogebic Counties in Michigan).
- Being among the first to arrive on the scene where officers from other agencies have been shot (Bayfield, Burnett, and Polk Counties in Wisconsin) and responding to weapons incidents (Ashland, Bayfield, Burnett, Sawyer, and Vilas Counties in Wisconsin).
- Use of a thermal imaging camera (purchased through the TRGP) to track an individual fleeing the scene of an accident (Sawyer County, Wisconsin).
- Completing snowmobile death investigations in cooperation with other agencies using skills learned through investigation training funded through the TRGP program (Vilas County).
- Organizing and participating in search and rescues of ice fishermen on Lake Superior (Ashland and Bayfield Counties in Wisconsin), Lake Superior boats (Baraga County in Michigan and with the U.S. Coast Guard in other parts of western Lake Superior), and kayakers (Bayfield County in Wisconsin).

In 2010, GLIFWC proposes to utilize DOJ TRGP funding to provide: (1) training to maintain law enforcement, first aid, and emergency rescue certifications; (2) specialized training in human tracking to support cooperative efforts with newly stationed Lake Superior border patrol agents and other agencies; (3) the capability to issue electronic tickets (e-tickets); and (4) equipment necessary to maintain officer safety and efficiency. TRGP resources will allow GLIFWC conservation officers to conduct essential cooperative conservation, law enforcement, and emergency response activities. We ask Congress to support a restoration of the DOJ COPS TRGP program to its fiscal year 2010 level.

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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 2011. I write to request the continued funding of the following programs at the following levels:

- Paul Coverdell Forensic Science Improvement Grant Program (the "Coverdell Program") at \$35 million through the National Institute of Justice (the "NIJ");
- Kirk Bloodsworth Postconviction DNA Testing Program (the "Bloodsworth Program") at \$5 million through the NIJ;
- The Capital Litigation Improvement Grant Program at its current level of \$5.5 million, so that the Wrongful Conviction Review Program may continue to be funded at its current level, \$3.0 million, through the Bureau of Justice Assistance (the "BJA"); and
- The National Institute for Standards and Technology Preservation of Evidence Working Group (the "NIST Preservation Working Group") at \$350,000 through the NIJ.

Further, I will discuss a concern with regard to block-granting these important programs.

As you may know, the Innocence Project represents convicted persons who seek to prove their innocence through post-conviction DNA testing. To date, 252 men and

women have been exonerated by such testing nationwide. The mission of the Innocence Project is to free innocent people and prevent wrongful convictions through reform. Yet it is very important to note that this work has tremendous benefit for the public safety. There are two aspects to this. First, every time DNA identifies a wrongful conviction, it enables the identification of the real perpetrator of those crimes. Indeed, the true perpetrators have been identified in 106 of the DNA exoneration cases. What's more, the reforms that can prevent wrongful convictions are simply measures to enhance the accuracy of criminal investigations and prosecutions, and thus have the effect of enhancing criminal investigations and strengthening criminal prosecutions.

We recognize, through our work with Congress, that these dual benefits are well recognized by this body, and it has been our great pleasure to work closely with many of you on the very programs we're supporting in this testimony. I am writing to underscore the value of these programs to both safety and justice, and to request the continued funding of each of these critical programs in fiscal year 2011.

#### COVERDELL PROGRAM

Recognizing the need for independent Government investigations in the wake of forensic scandals, Congress created the forensic oversight provisions of the Coverdell Program, which provides State and local crime laboratories and other forensic facilities with much needed Federal funds.

The Innocence Project views the Congressional mandate under the Coverdell Program as a crucial step toward ensuring the integrity of forensic evidence. Unfortunately, however, because of administration problems at its outset, the Coverdell Program is only now beginning to reach its potential as a rigorous oversight mechanism. And now, more than ever, as forensic science budgets find themselves on the chopping block in State legislatures all over the country, their very survival may be dependent upon these Federal funds. With such import and capacity for positive change, we ask that you continue to fund the Coverdell Program at, in the very least, its current level of \$35 million.

#### BLOODSWORTH PROGRAM

The Bloodsworth Program provides hope to inmates who might otherwise have none by helping States more actively pursue post-conviction DNA testing for those who claim innocence. Tied to funding are those "innocence incentive" requirements discussed above. As we have testified to the House and Senate Judiciary Committees in the past, under President Bush, the NIJ moved very slowly and hesitantly on implementation of the Bloodsworth Program. Despite its authorization for 5 years, these monies were only disbursed in two of those years. The good news is that once these program funds began flowing, they had a solidly positive impact that led to even more success in the subsequent offering. Many organizational members of the national Innocence Network partnered with State agencies that have received Bloodsworth funding.<sup>1</sup> According to the Innocence Network's President, Keith Findley, the Bloodsworth Program will dramatically improve the ability of Innocence Network members to meet the tremendous need for post-conviction DNA testing. Many of the projects funded under the Bloodsworth Program will enable projects in various States to proactively search for and identify forcible rape, murder and non-negligent manslaughter cases in which DNA testing can prove guilt or innocence, but which are otherwise overlooked or hidden.<sup>2</sup>

It is worth noting that the Bloodsworth Program does not fund the work of Innocence Projects directly. In fact, the Office of Justice Programs has encouraged State applicants to draft proposals that fund a range of entities involved in settling innocence claims, from law enforcement agencies to crime laboratories. 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

<sup>1</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>2</sup>Strengthening Our Criminal Justice System: Extending the Innocence Protection Act. 111th Cong., 1st Sess., 10 (2009) (testimony of Keith Findley, President of the Innocence Network).



that those who have committed violent crimes are identified and behind bars.”<sup>3</sup> Such joint efforts have followed in Connecticut, Louisiana, Minnesota, North Carolina and Wisconsin.

The Bloodsworth Program will continue to be vital to States’ work in providing meaningful post-conviction review of innocence claims. As such, we ask that you continue to fund the Bloodsworth Program at its current funding level of \$5 million.

#### WRONGFUL CONVICTION REVIEW PROGRAM

Particularly when DNA isn’t available, or when it alone isn’t enough to prove innocence, those innocents languishing behind bars require expert representation to help navigate the complex issues that invariably arise in their bids for post-conviction 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 even 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 carved-out of its Capital Case Litigation Initiative funding to create the Wrongful Prosecution Review (now the Wrongful Conviction Review) discretionary grant program.<sup>4</sup> The program provides applicants—non-profits and public defender offices dedicated to exonerating the innocent—with funds geared toward providing high quality and efficient representation for potentially wrongfully convicted defendants in post-conviction claims of innocence. Eleven offices in 10 States received a total of \$2,475,285 for fiscal year 2009.

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 post-conviction 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. Accordingly, we urge you to re-appropriate the Capital Litigation Improvement Grant Program at its current level of \$5.5 million, so that the Wrongful Conviction Review Program may continue to be funded at its current level through the BJA.

#### NIST PRESERVATION WORKING GROUP

The need for the NIST Preservation Working Group is particularly pressing as outdated policies and practices still fail to consider the power of DNA in biological evidence. And, while many State legislators have expressed a desire to more effectively and efficiently preserve evidence to harness the probative power of DNA, they find themselves unable to secure the information necessary to do so. Failures in preservation practice can frustrate even the most aggressive efforts to solve active cases and cold cases or the quests of the wrongfully convicted to prove their innocence.

With funds recently disbursed by the NIJ, the NIST Preservation Working Group is currently being formed. Its first meeting is tentatively scheduled for June 2010, when the group will gather to begin its critical work toward identifying and recommending best practices for the preservation of biological evidence. According to Sue Ballou of NIST, generally, \$60,000 covers a meeting of 25 attendees. The \$250,000 will cover labor costs as well as travel, per diem and other costs for all invitees to the year’s meetings, which will number at least three. However, Ms. Ballou estimates that \$350,000 would enable the group to more quickly and thoroughly complete its critically important mandate of educating the States on the proper preservation of evidence. As such, we ask that Congress provide funding to the NIJ sufficient for the disbursement of \$350,000 for fiscal year 2011 so that the NIST Preservation Working Group may carry on with its work—so that “the discovery of preserved biological evidence—to protect the innocent and the public at large—will no longer have to rely on serendipity and happenstance.”<sup>5</sup>

<sup>3</sup> Arizona receives Federal DNA grant, <http://community.law.asu.edu/news/19167/Arizona-receives-federal-DNA-grant.htm> (last visited Mar. 17, 2010).

<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).

<sup>5</sup> Reauthorization and Improvement of DNA Initiatives of the Justice for All Act of 2004, 110th Cong., 2d Sess., 27 (2008) (testimony of Peter Neufeld, Esq.).

AN ADDITIONAL NOTE ON THE DEPARTMENT OF JUSTICE'S REQUESTED BUDGET FOR  
FISCAL YEAR 2011

The Department of Justice's fiscal year 2011 budget request appears to do away with many of the above programs as separate programs; instead, it seems to advocate providing a blanket \$150 million for what is termed "DNA Initiative."<sup>6</sup>

We are particularly concerned about the impact that block-granting the above programs will have on the requirement incentives that the Bloodsworth Program and the Wrongful Conviction Review Program currently provide for States to prevent wrongful convictions and otherwise ensure the integrity of evidence.<sup>7</sup> These incentives have proven significant for the advancement of State policies to prevent wrongful convictions.

To the extent these incentives would no longer exist, or be diminished, if delivered in block grant form, the Innocence Project would recommend that they not be so delivered and that Congress maintain and fund the individual programs in order to preserve their important incentive and performance requirements. Doing away with these requirements would thwart the original intent of the JFAA, which was to provide funding only to States that demonstrate a commitment to preventing wrongful convictions in those areas. Should these innocence protection requirements of the above programs remain in full force and in all instances despite a change to block grants, however, this specific issue will no longer be of concern.

CONCLUSION

Thank you 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.

PREPARED STATEMENT OF THE NATIONAL FISH AND WILDLIFE FOUNDATION

Madam Chairman and members of the subcommittee: Thank you for the opportunity to submit testimony regarding fiscal year 2011 funding for the National Fish and Wildlife Foundation (Foundation). The Foundation's fiscal year 2011 funding request is fully authorized and each Federal dollar appropriated will be matched by a minimum of one non-Federal dollar. We respectfully request your approval of funding through the National Oceanic and Atmospheric Administration (NOAA) at the following levels:

- Three million dollars to help fishing communities in the transition to catch share programs—National Marine Fisheries Service's (NMFS) Operations, Research and Facilities appropriation; and
- Two million dollars to foster coordination between NOAA, State, tribal, and local partners in comprehensive marine spatial planning—National Ocean Service's (NOS) Ocean and Coastal Management appropriation.

Since its inception, the Foundation has leveraged \$500 million in Federal funds into more than \$1.6 billion in on-the-ground and in-the-water conservation with less than 5 percent aggregate overhead to the Federal Government and fewer than 90 staff nationwide.

The Foundation was established by Congress in 1984 to foster public-private partnerships to conserve fish, wildlife and their habitats. The Foundation is required by law to match each Federal-appropriated dollar with a minimum of one non-Federal dollar. We consistently exceed this requirement by leveraging Federal funds at a 3:1 average ratio while building consensus and emphasizing accountability, measurable results, and sustainable conservation outcomes. fiscal year 2011 funds will allow the Foundation to uphold our mission and expand our successful partnership with NOAA.

SUSTAINABLE FISHERIES AND CATCH SHARES

This \$3 million NOAA–NMFS request will support the Foundation's Fisheries Innovation Fund which is a grant program to assist fishing communities in the design and implementation of catch shares. This new initiative is a priority for the Foundation in fiscal year 2011 and closely aligned with NOAA's budget priorities. The pur-

<sup>6</sup>U.S. Department of Justice, fiscal year 2011 Budget Request Factsheet, pp. 13, 15. <http://www.justice.gov/jmd/2011factsheets/pdf/law-enforcement.pdf>.

<sup>7</sup>We have previously advocated for the reauthorization and appropriation of all programs originally intended to be tied to the post-conviction DNA testing access and preservation of evidence requirements under section 413 of the JFAA. Congress, in doing so, will only add to the incentives discussed above.

pose of the Fund is to partner with NOAA, private partners, and local communities to catalyze the development and implementation of limited access privilege programs (“LAPPs”), or catch shares, for the Nation’s marine fisheries. The Foundation will build on our successful grant-making partnerships in gear modification/exchange, bycatch reduction, and marine debris prevention to implement this grant-making and technical assistance program. Private partners have already committed to support the Fund and leverage Federal funds with their own matching contributions.

It is notable that the administration’s fiscal year 2011 request includes \$54 million to initiate a National Catch Share Program. This is an important step and the Foundation is committed to helping NOAA implement this program consistent with the Federal Catch Share Policy. As a neutral consensus builder with a proven track record of success, the Foundation has a unique role to play as a non-regulatory partner in NOAA’s efforts to implement catch share programs.

The Draft Catch Share Policy states that NOAA will “encourage public-private partnerships and facilitate collaboration with State and local governments, regional economic development districts, public and private nonprofit organizations, and tribal entities to help communities address problems associated with long-term fishery and community sustainability.” The Foundation is well-positioned to help NOAA implement this particular aspect of the policy by serving as a conduit to members of the fishing community in the design of catch share programs. The Foundation’s role will be to build trust and effective partnerships within local communities and, among other things, provide grants to improve their capacity to participate in the catch share design process.

As an example, we have recently made an investment in the State of Maryland to build a sustainable blue crab fishery in the Chesapeake Bay through development of catch shares. Our role was to help build trust between the regulators and the fishermen by promoting fishermen-to-fishermen learning opportunities about catch shares.

In the Gulf of Mexico, we have provided grants to enable fishermen to meet regulatory requirements to convert their fishing gear, free of charge, to avoid bycatch. We operated similar gear conversion programs for New England lobsterman. The Fishing for Energy Program, established in 2008 with NOAA, Covanta Energy, and Schnitzer Steel allows fishermen to dispose of derelict gear, free of charge, that Covanta converts to create energy. This successful partnership has benefited fishermen through collection and disposal of over 250 tons of derelict fishing gear from 18 ports in the United States.

The Foundation looks forward to working with NOAA as a funding partner in fiscal year 2011 to develop catch share programs that are well-designed and thoughtfully prepared to foster healthy, profitable fisheries that are sustainable and beneficial to coastal communities.

#### MARINE SPATIAL PLANNING AND MARINE PROTECTED AREAS

This \$2 million NOAA–NOS request will support the Foundation’s Marine Protected Areas (MPAs) Fund which is a grant program focused on the implementation of marine spatial planning conservation priorities. The Fund was established in 2009 in partnership with NOAA’s MPA Center to provide grants that will foster collaboration at all levels of government to work together at regional, national and international levels to strengthen the management, protection, and conservation of MPAs.

MPA’s play a critical role in the conservation of marine and coastal resources and span a range of habitats including open ocean, estuaries and inter-tidal zones. There are a variety of MPA programs at the Federal, State, tribal and local level that make up the new National System of MPAs. The Interagency Ocean Policy Task Force Framework for Effective Coastal and Marine Spatial Planning identifies MPAs as a primary tool for conservation of the marine environment. The Foundation’s MPA Fund can deliver tangible results that contribute to the marine spatial planning conservation goals of the Interagency Ocean Policy Task Force by enhancing coordination of Federal, State, tribal, and local MPAs.

With fiscal year 2011 funding, the Foundation will continue grant-making to support effective management, including strengthening of technical, scientific and enforcement capacity, and facilitating participation of stakeholders in planning efforts needed to ensure the success of the National System of MPAs. Further, the Fund will help to: (1) enhance the protection of U.S. marine resources by providing new opportunities for regional and national cooperation; (2) support the national economy by helping to sustain fisheries and maintain healthy marine ecosystems for

tourism and recreation businesses; and (3) promote public participation in MPA decisionmaking by improving access to public policy information.

The administration's fiscal year 2011 budget request recognizes the need and importance of marine spatial planning and ocean governance. To that end, we respectfully ask for your support of the Foundation's MPAs Fund in fiscal year 2011.

#### CONCLUSION

As the congressionally-chartered Foundation for NOAA, the Foundation is uniquely positioned to help the agency implement priority programs and leverage Federal investments to support our shared conservation objectives. Direct appropriations through NOAA in fiscal year 2011 will accelerate our collective efforts to fully implement the Fisheries Innovation Fund and the Marine Protected Areas Fund. NOAA appropriations of \$5 million in fiscal year 2011 would be matched at a minimum by an additional \$5 million from non-Federal sources. As a trusted, neutral consensus builder, the Foundation stands ready to assist NOAA with implementation of these Federal programs by catalyzing effective local partnerships to protect marine and coastal resources while ensuring continued economic benefits for local communities.

Madam Chairman, we greatly appreciate your continued support and hope the subcommittee will approve funding for the Foundation in fiscal year 2011.

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#### PREPARED STATEMENT OF THE ASME TECHNICAL COMMUNITIES' NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) TASK FORCE

The ASME Technical Communities' National Institute of Standards and Technology (NIST) Task Force is pleased to have this opportunity to provide comments on the fiscal year 2011 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 2011 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 ASME AND THE NIST TASK FORCE

Founded in 1880 as the American Society of Mechanical Engineers, ASME is a worldwide engineering society of over 127,000 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 NIST'S FISCAL YEAR 2011 BUDGET REQUEST

The administration's budget request for NIST in fiscal year 2011 is \$918.9 million. This represents a \$62.3 million increase over the fiscal year 2010 appropriated amount and is on target to reach the doubling goal by fiscal year 2017, as identified by the administration for this agency.

This budget includes \$584.6 million for the Scientific and Technical Research and Services (STRS), NIST laboratory research and \$9.9 million for the Baldrige National Quality Program. A large portion of the NIST budget is devoted to the Industrial Technology Services programs, which consist of the Technology Innovation Program (TIP) as well as the Hollings Manufacturing Extension Partnership (MEP). This budget requests \$79.9 million for TIP, a \$10 million increase over the fiscal year 2010 appropriated amount. Additionally, it requests \$129.7 million for the Hollings Manufacturing Extension Partnership (MEP), a \$4.6 million increase over the fiscal year 2010 appropriated amount.

The NIST laboratories are critical to the economic health and national security of the United States as outlined in the President's Innovation Agenda, inspired, in part, by the bipartisan "America COMPETES Act of 2007" (Public Law 110-69), which authorizes the doubling of funding at key Federal agencies, including NIST. Therefore, the NIST Task Force will be very anxious to learn more about NIST Director Dr. Gallagher's proposal for reconfiguring the NIST laboratories to better reflect technological innovations in manufacturing and product development. Additionally, the important work of NIST in the area of standards, including serving as the U.S. inquiry point for the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement, is vital to ensuring that U.S. technology and products are not unduly handicapped in the global market.

#### NIST'S STANDARDS MISSION

Part of the mission of NIST is to promote the use of American codes and standards in countries and industries around the world as a means of enhancing U.S. competitiveness. 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 are frequently adopted by Government agencies as a means of establishing regulatory requirements. They are vital to the economic health of many industries, and—more important—they help to ensure the health and safety of the American people and of citizens in countless nations around the world.

The Department of Commerce and NIST have an indispensable role in ensuring acceptance by other nations of U.S.-developed standards that incorporate technological advances and that meet changing industry, regulatory, and public safety needs. Congress should 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 governments of many of our key trading partners invest significant resources—in the millions of dollars—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 assist 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.

#### TASK FORCE POSITION

In the President's fiscal year 2011 budget request, the Task Force supports the increases for TIP and MEP. The Task Force is tentatively supportive, pending a detailed plan from the NIST Director, of the recent announcement to undertake a restructuring of the NIST laboratories. These laboratories conduct critical research in areas like high-technology manufacturing and nanotechnology which have the potential to establish new industries and keep the U.S. manufacturing base strong.

The erosion of U.S. manufacturing jobs has become a key issue for the MEP to develop sustainable practices for the industry. 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 \$129.7 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 Task Force is pleased by the robust funding increase requested for the TIP. The TIP provides cost-shared funding to industry for high-risk research and development projects with potentially broad-based economic benefits for the United States. One key difference between the TIP program, versus its predecessor the Advanced Technology Program (ATP) is the inclusion of universities to draw upon the technical talents housed in these institutions for breakthroughs in "high risk, high reward" research for manufacturing. The Task Force supports the funding request for TIP to serve as an initial down payment to investing in high-risk research and development.

The Task Force firmly believes that TIP and the MEP are critical to the Nation's future economic well-being and the health of the U.S. science, engineering, and technology base. These programs hold the potential to improve the transfer of new discoveries and developments in science and engineering to innovative technologies, global quality practice, and profitable manufacturing capabilities on the shop floor. The NIST Task Force has long supported MEP and TIP as a catalyst of technological innovation and is pleased to see the administration's support for these two critical programs as NIST seeks to facilitate the development of new industries that will catalyze manufacturing and industrial practices in the United States.

The Task Force is in full support of the \$584.6 million proposed funding for the Scientific and Technical Research and Services (STRS) directorate in the fiscal year 2011 budget. This funding will help support building and fire research, information technology, and manufacturing engineering laboratories.

#### CONCLUSION

Despite the proposed freeze on discretionary funding for the next three fiscal years, the administration has demonstrated a willingness to support increases for key NIST initiatives for fiscal year 2011. Accordingly, the Task Force remains strongly supportive of these initiatives as well as the underlying goals of NIST as it related to advanced manufacturing and technological innovation.

#### PREPARED STATEMENT OF THE AMERICAN PHYSIOLOGICAL SOCIETY

##### NATIONAL SCIENCE FOUNDATION AND NASA

The American Physiological Society (APS) thanks the subcommittee for its sustained support of science at the National Science Foundation (NSF) and NASA. The scientific research and technology development programs supported by these two agencies are critical to the future technological excellence and economic stability of the United States. In this testimony, the APS offers its recommendations for the fiscal year 2011 budgets for the NSF and NASA.

—The APS recommends that Congress fund the fiscal year 2011 NSF budget at a level of \$7.68 billion.

—The APS urges Congress to restore cuts to NASA's life sciences research budgets and make every effort to fully fund the proposed 42 percent increase in the Human Research Program.

The APS is a professional society dedicated to fostering research and education as well as the dissemination of scientific knowledge concerning how the organs and systems of the body work. The Society was founded in 1887 and now has nearly 10,000 members who do research and teach at public and private research institutions across the country, including colleges, universities, medical and veterinary schools. Many of our members conduct physiology research that is supported by funds allocated through the NSF and NASA.

##### MOMENTUM FROM ARRA SHOULD BE MAINTAINED AT THE NSF

With passage of the America COMPETES Act of 2007, Congress authorized a doubling of the agency's budget over several years. Unfortunately, the NSF budget failed to grow at the authorized levels in subsequent years and fell behind the doubling goal significantly. Congress remedied this in the American Recovery and Reinvestment Act of 2009 (ARRA), which provided an additional \$3 billion in fiscal year 2009 and 2010. This additional funding has allowed the NSF to significantly expand its efforts to fund cutting edge research and support the scientific enterprise. To date, the ARRA investment has provided funding for 4,599 competitive awards, supporting more than 6,700 investigators, including 2,352 new investigators.<sup>1</sup> In order to maintain the momentum generated by the ARRA investment and sustain the agency's research capacity, the APS recommends that Congress fund the fiscal year 2011 NSF budget at a level of \$7.68 billion.

The basic science initiatives funded by the NSF are driven by the most fundamental principles of scientific inquiry. The agency provides support for approximately 20 percent of Federal funded basic science and is the major source of support (68 percent) for non-medical biology research, including integrative, comparative, and evolutionary biology, as well as interdisciplinary biological research. It has been shown time and again that the knowledge gained through basic biological research

<sup>1</sup>NSF fiscal year 2011 Budget Request to Congress [http://www.nsf.gov/about/budget/fy2011/pdf/01-Overview\\_fy2011.pdf](http://www.nsf.gov/about/budget/fy2011/pdf/01-Overview_fy2011.pdf).

is the foundation for more applied studies that lead to improvements in the lives of humans, animals and ecosystems.

The majority of the funding NSF provides is awarded through competitive, merit-based peer review, which ensures that the best possible projects are supported. NSF has an excellent record of accomplishment in terms of funding research endeavors that have produced results with far-reaching potential. Listed below are just a few recent advances in biological research that were supported by the NSF.

- Using three-dimensional computational models, researchers investigating the design and functionality of stents used to open blocked blood vessels showed that appropriate sizing of stents is necessary to prevent disturbances in blood flow and mechanical stress on the blood vessel wall. These processes contribute to blood vessels becoming re-blocked over time, leading to the need for additional treatment.<sup>2</sup>
- Researchers studying how inhaled particles, such as nanoparticles, pass from the lung into the rest of the body compared how well natural barriers blocked such particles in developing versus adult lungs. They found that developing lungs were more susceptible to allowing the passage of particles than adult lungs.<sup>3</sup>
- Researchers studying factors contributing to birth weight demonstrated that at high altitudes, babies born to mothers of Andean descent had higher birth weights than those born to mothers of European descent. They hypothesize that genetic factors in the Andean mothers contributed to increased blood flow and oxygen delivery to the developing fetus, resulting in more rapid growth late in pregnancy.<sup>4</sup>

In addition to funding innovative research in labs around the country, the NSF also fosters the next generation of scientists through education programs. The APS is proud to have partnered with NSF in this program to provide training opportunities and career development activities to enhance the participation of underrepresented minorities in science. The APS was recognized for these efforts in 2003 with a Presidential Award for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM), funding for which was provided by NSF and was reinvested in our education programs. We believe that NSF is uniquely suited to administer science education programs of the highest quality, and we recommend that Congress continue to provide Federal funds for science education through the NSF.

The America COMPETES Act and the ARRA demonstrate the strong support of Congress for the NSF because of its highly-regarded research and education programs. The APS thanks Congress for these votes of confidence in the NSF and joins the Federation of American Societies for Experimental Biology to recommend that the agency be funded at a level of \$7.68 billion in fiscal year 2011.

SUPPORT FOR LIFE SCIENCES RESEARCH AND THE HUMAN RESEARCH PROGRAM SHOULD  
BE INCREASED AT NASA

NASA sponsors research across a broad range of the basic and applied life sciences, including gravitational biology, biomedical research and the Human Research Program (HRP). The gravitational biology and biomedical research programs explore fundamental scientific questions through research carried out both on Earth and aboard the space shuttle and International Space Station, environments that offer the unique ability to conduct experiments in the space environment. The HRP at NASA conducts research and develops countermeasures with the goal of enabling safe and productive human space exploration.

During prolonged space flight, the physiological changes that occur due to microgravity, increased exposure to radiation, confined living quarters, and alterations in eating and sleeping patterns can lead to health problems and reduced ability to perform tasks. APS scientists are actively engaged in research that explores the physiological basis of these problems with the goal of contributing to the development of countermeasures. The knowledge gained from this research is not only relevant to humans traveling in space, but is also directly applicable to human health on Earth. For example, some of the muscle and bone changes observed in astronauts after prolonged space flight are similar to those seen in patients confined to bed rest. Some recent advances made by NASA funded physiologists are below.

- Scientists studying the effects of exercise on astronauts who spent 6 months aboard the International Space Station found that despite regular exercise, they

<sup>2</sup>H. Y. Chen et al., *J Appl Physiol* 106, 1686–91 (May, 2009).

<sup>3</sup>R. Dickie, M. Cormack, M. Semmler-Behnke, W. G. Kreyling, A Tsuda, *J Appl Physiol* 107, 859–63 (Sep, 2009).

<sup>4</sup>C. G. Julian et al., *Am J Physiol Regul Integr Comp Physio*, 296, R1564–75 (May, 2009).

still experienced a decrease in muscle mass. This indicates the need to determine how to improve the effectiveness of such exercise programs.<sup>5</sup>

—Researchers investigating how breathing changes during space flight showed that during certain stages of sleep, astronauts showed differences in their breathing patterns.<sup>6</sup>

NASA is the only agency whose mission addresses the biomedical challenges of manned space exploration. Recently the amount of money available for conducting this kind of research at NASA has dwindled. The overall number of projects and investigators supported by NASA through the HRP, National Space Biomedical Research Institute and Exploration and Technology Development program has decreased markedly over the last 5 years, falling from more than 900 projects funded in fiscal year 2005 to only 336 in fiscal year 2009.<sup>7</sup> In the past, appropriations legislation specified funding levels for biomedical research and gravitational biology, but recent internal reorganizations at NASA have made it difficult to understand how much money is being spent on these programs from year to year. The APS recommends that funding streams for these important fundamental research programs be clearly identified and tracked within the NASA budget.

The fiscal year 2011 budget request to Congress includes a planned 42 percent increase in the HRP budget. We applaud this proposal and urge Congress to make every effort to fully fund that request. The APS also calls on Congress and NASA to restore cuts to peer-reviewed life sciences research.

As highlighted above, investment in the basic sciences is critical to our Nation's technological and economic future. The APS urges you to make every effort to provide these agencies with increased funding for fiscal year 2011.

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#### PREPARED STATEMENT OF THE AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association (APPA) is the national service organization representing the interests of over 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 45 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 Department of Justice's (DOJ) Antitrust Division and the Federal Trade Commission (FTC) play critical roles 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 and the FTC more critical than ever.

APPA supports adequate funding for staffing antitrust enforcement and oversight at the FTC and DOJ. For the FTC's fiscal year 2011 budget, we support the President's budget request of \$314 million. We were pleased with the fiscal year 2011 funding level of \$167 million for the DOJ Antitrust Division, which is a slight increase from the previous year.

We appreciate the opportunity to submit this statement outlining our fiscal year 2011 funding priorities within the Commerce, Justice and Science Subcommittee's jurisdiction.

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#### PREPARED STATEMENT OF THE PEW ENVIRONMENT GROUP

The Pew Environment Group (PEG) appreciates the opportunity to provide testimony on the National Oceanic and Atmospheric Administration's (NOAA) fiscal year 2011 budget request. Specifically, we would like to comment on the fisheries data collection and analysis request of the National Marine Fisheries Service (NMFS). In order to meet critical new fisheries management requirements, we request a total of \$380.9 million for data collection and analysis, which is an increase of \$58.4 million over the President's fiscal year 2011 budget request.

In 2006, Congress reauthorized and amended the Magnuson-Stevens Fishery Conservation and Management Act to finally put an end to overfishing, i.e., taking fish

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<sup>5</sup>S. Trappe et al., *J Appl Physiol* 106, 1159–68 (Apr, 2009).

<sup>6</sup>R. C. Sa, G. K. Prisk, M. Paiva, *J Appl Physiol* 107, 1406–12 (Nov, 2009).

<sup>7</sup>Advanced Capabilities Division Research and Technology Task Book <http://peer1.nasaprs.com>.



from the ocean faster than they can reproduce. To achieve that objective, Congress required Federal fishery managers to establish science-based annual catch limits (ACLs) that do not allow overfishing for all U.S. ocean fisheries. As these ACLs are developed, it is imperative that Congress appropriate the funding necessary to continue providing and improving the scientific information fisheries managers need to guide decisions that will sustain our fisheries. ACLs must be based on science, not politics, to ending overfishing and rebuild depleted fisheries.

Improvements in data collection and analysis will enable fishery managers to better achieve the goal of the 2006 amendments, ending overfishing. The following core data collection and monitoring programs should be increased by a total of \$58.4 million over the President's fiscal year 2011 budget request. This represents an increase of \$35.5 million over fiscal year 2010 enacted funding levels, for a total of \$380.9 million. This increase is broken down into specific budget categories below.

*Fisheries Research and Management Programs: +\$11.4 Million Over the President's Request, for a Total of \$190.9 Million, an Amount Equal to the Fiscal Year 2010 Enacted Level.*—Fisheries research and management programs provide accurate and timely information and analysis on the biology and population status of managed fish as well as the socioeconomics of the fisheries that depend on those populations. Such information is critical for the development of fisheries management measures to ensure that they end overfishing. In NOAA's fiscal year 2011 budget request, \$11.4 million is transferred from the Fisheries Research and Management Programs line item into the National Catch Share Program line item. We believe that any increases for catch share programs should be made with new money, not transferred from existing general research programs that should be available for all fisheries. Because of their vital role in ending overfishing, Fisheries Research and Management Programs should be funded at no less than the fiscal year 2010 enacted level of \$190.9 million. Additionally, no funds from the line item should be transferred to the National Catch Share Program, because those funds would become permanently unavailable to fund research and management programs for the vast majority of Federal managed fisheries that are not currently in a catch share program, and may not be included in one in the future.

*Expand Annual Stock Assessments: +\$10 Million Over the President's Request, for a Total of \$61.7 Million, an Increase of \$10.7 Million Over the Fiscal Year 2010 Enacted Level.*—Stock assessments are the basic scientific tool that scientists use to determine the health of fisheries. A stock assessment provides estimates of population size and the amount of fishing that the population can sustainably support. The President's budget request of \$51.7 million would only provide the capability to assess 57 percent of the 230 commercially and recreationally important fish stocks managed by the Federal Government.<sup>1</sup> However, NMFS's goal is to assess all major fish stocks and conduct annual baseline monitoring for all Federal-managed fish species.<sup>2</sup> Using funds appropriated under this budget line, NMFS plans to update fish stock assessments, support the implementation of ACLs, support fishery independent surveys, expand fishery dependent sampling, and improve ACL forecasting through enhanced modeling. Increased funding for data collection and monitoring will increase certainty in determining fish population sizes and the amount of fishing these populations can sustain, thus enabling managers to increase fishing opportunities.

*Cooperative Research: +\$10 Million Over the President's Request, for a Total of \$17.1 Million, a Decrease of \$500,000 Below the Fiscal Year 2010 Enacted Level.*—Cooperative research programs pay fishermen, operating under the direction of Federal scientists, to collect fisheries data, and test new more sustainable fishing gear and practices. In addition to the information collected, cooperative research programs build partnerships among scientists and fishermen. They are also an effective way to provide financial relief for struggling fishermen, while also creating a more transparent process and providing a cost-effective way to improve the data upon which fisheries management decisions are made.

In 2003, NMFS estimated that it would need \$25.5 million for cooperative research by fiscal year 2009.<sup>3</sup> The President's fiscal year 2011 budget request transfers \$6 million out of the cooperative research line item and into the National Catch Share Program line item. Although NMFS asserts that the \$6 million will be used

<sup>1</sup>National Oceanic and Atmospheric Administration, Budget Estimate for fiscal year 2010, Exhibit 13, p. 217.

<sup>2</sup>National Oceanic and Atmospheric Administration, "NOAA's National Marine Fisheries Service Requirements for Improved and Integrated Conservation of Fisheries, Protected Resources and Habitat," January 2003.

<sup>3</sup>Id. NMFS 2003 5 year assessment estimated the need for cooperative research to be \$22.75 million above fiscal year 2003 levels by fiscal year 2009, for a total of \$25.50 million.

for cooperative research in catch share fisheries, there is no guarantee that it will continue to be used for cooperative research in the future. In addition, taking funds from general cooperative research, where it would be available for all fisheries, and restricting it to only catch share fisheries, short changes the vast majority of fisheries that are not catch share fisheries. Moreover, the President's budget request decreases funding for cooperative research an additional \$4.565 million. Therefore, NMFS proposes to cut the cooperative research funding available to all fisheries by \$10.5 million, in other words a 60 percent decrease in funding available to all fisheries from fiscal year 2010 enacted levels. We request an increase of \$10 million, for general cooperative research funding available to all fisheries, for a total of \$17.1 million, close to fiscal year 2010 enacted levels.

*Survey and Monitoring Projects: +\$6 Million Over the President's Request, for a Total of \$30 Million, an Increase of \$6.2 Million Over the Fiscal Year 2010 Enacted Level.*—NOAA has stated that “many fisheries lack adequate and timely monitoring of catch and fishing effort.”<sup>4</sup> Survey and monitoring projects provide critical support for implementation of the new ACL requirement. Increased funding will improve that accuracy of ACLs and will increase the percentage of stocks with assessments. Two of the most important needs overall are research vessel surveys to collect fishery independent information on abundance and distribution of fish populations.<sup>5</sup> Additional funding for fishery-independent surveys, monitoring, and research will improve estimates of ecosystem change, fishing mortality, and population size.

*Fisheries Statistics: +\$11 Million Over the President's Request, for a Total of \$32.4 Million, an Increase of \$11.3 Million Over the Fiscal Year 2010 Enacted Level.*—Given the fact that there are great data collection needs in the south Atlantic, and Gulf of Mexico recreational fisheries, PEG recommends that the entire \$11 million increase go toward the Marine Recreational Information Program (MRIP), a new saltwater recreational fishing data collection program that is partially included in the Fisheries Statistics line. MRIP funding should total \$20 million, an increase of \$11 million over the fiscal year 2010 enacted level of \$9 million. Increased funding will improve data on recreational fishing catch (both landed and released fish) and participation. One promising new technology is electronic reporting, which could improve the timeliness and accuracy of recreational data. Additional resources could be used to develop and deploy such new systems. Better quality data on marine recreational fishing, which contributes roughly \$80 billion annually to the U.S. economy,<sup>6</sup> will allow scientists to better estimate fishing mortality and set ACLs more accurately, thus reducing the risk of overfishing. In addition, improving the timeliness of recreational data will allow managers to take action before an ACL is exceeded. This will lead to less restrictive management decisions and more fishing opportunities.

*Observers/Training: +\$10 million over the President's Request, for a Total of \$48.8 million, an Increase of \$7.7 Million Over the Fiscal Year 2010 Enacted Level.*—NMFS has been required by law to establish a standardized bycatch (incidental catch of non-target ocean wildlife) reporting system since 1996. Fishery observers (trained biologists who go to sea on commercial fishing vessels) collect close to real-time commercial fishing catch and bycatch data and important information on fishing practices, gear use, where and when fishing occurs, compliance, and biological samples not available from dockside sampling. Observer programs are “often the best means to gather current information on fisheries status” and enable effective management, even though currently only 40 fisheries have observer programs.<sup>7</sup> Additional funding for observer coverage will improve the quality and quantity of fisheries data, especially estimates of bycatch mortality, information that is critical to estimating populations size and sustainable fishing levels.

In 2003, NMFS recommended that the National Observer Program be funded at \$104 million by fiscal year 2009. The increased funding would have been used for research and development into innovative fishing gear to reduce bycatch, implementation of bycatch reduction strategies, and implementation of statistically valid observer coverage in all fisheries. Unfortunately, in the President's fiscal year 2011 budget request, Observers/Training suffers more than \$3 million in terminations, re-

<sup>4</sup>Id. at 166.

<sup>5</sup>Marine Fisheries Stock Assessment Improvement Plan: Report of the National Marine Fisheries Service National Task Force for Improving Fish Stock Assessments. October 2001. NOAA Technical Memorandum NMFS-F/SPO-56.

<sup>6</sup>NOAA, Saltwater Recreational Fishing Factsheet, 2009. Available at [http://www.nmfs.noaa.gov/sfa/PartnershipsCommunications/rec\\_fishing\\_facts.pdf](http://www.nmfs.noaa.gov/sfa/PartnershipsCommunications/rec_fishing_facts.pdf).

<sup>7</sup>National Oceanic and Atmospheric Administration, Budget Estimate for fiscal year 2011, p. 191.

sulting in a request of \$38.8 million. Increasing that request to \$48.8 million would be a down payment on fully funding the observer program.

#### CONCLUSION

NMFS data indicates that 37 of the 190 assessed commercially and recreationally important fish stocks (about 20 percent) are subject to overfishing. It is essential to increase funding to support research, data collection and assessment activities necessary to put an end to this overfishing. Congress established the legal tool to accomplish this in 2006 by requiring the implementation of science-based ACLs that end and prevent overfishing for U.S. fisheries. Now it must provide the funding to collect and analyze the information necessary to continue meeting that requirement and sustaining healthy fisheries. Increasing funding for data collection and analysis will significantly improve the Federal Government's efforts to maintain viable fisheries and healthy marine ecosystems.

#### PREPARED STATEMENT OF THE AMERICAN INDIAN HIGHER EDUCATION CONSORTIUM

On behalf of this Nation's 36 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 2011.

#### SUMMARY OF REQUEST

*National Science Foundation (NSF)—Education and Human Resources Directorate (EHR).*—Since fiscal year 2001, a TCU initiative has been funded and administered under the NSF-EHR. This competitive grants program enables Tribal Colleges and Universities 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 done comprehensive institutional needs analysis and developed plans for how to address their institutional and NSF goals, with primary institutional goals being significant and sustainable expansion and improvements to STEM programs. We strongly urge the subcommittee to reject the recommendation included in the President's fiscal year 2011 budget proposal to combine the NSF minority serving institutions programs into a consolidated minority undergraduates in STEM program. If all funds are competed as a single program there is no recognition of the uniqueness of these various communities or an assurance that these communities will be served equitably. We further request that the subcommittee support funding the separate TCU Program, at a minimum of \$15.5 million.

#### BACKGROUND

Tribal Colleges and Universities are accredited by independent, regional accreditation agencies and like all U.S. institutions of higher education, must undergo stringent performance reviews on a periodic basis 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 poor institutions. In fact, TCUs are the most poorly funded institutions of higher education in the country.

First, while Tribal Colleges and Universities are public they are not State institutions. Consequently, our institutions receive little or no State funding. In fact, very few States provide operating support to our institutions for the non-Indian students attending TCUs, which account for about 21 percent of our enrollments. However, if these students attended a State institution, the State would be required to provide the institution with operational support for them. This is something we are trying to rectify through education and public policy change at both the State and local levels.

Second, 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. In fact, 3 of the 10 poorest counties in America are home to Tribal Colleges.

Finally, the Federal Government, despite its trust responsibility and treaty obligations, has never fully funded our primary institutional operations source, the Tribally Controlled Colleges & Universities Assistance Act of 1978. Today, TCUs are appropriated \$5,784 per full-time Indian student, which is still considerably less than the authorized level of \$8,000 per Indian student. In fact, if you factor in inflation, the buying power of the current appropriation is \$965 less per Indian student than it was when it was initially funded almost 30 years ago, when the appropriation was \$2,831 per Indian student.

TCUs effectively blend traditional teachings with conventional postsecondary curricula. They have developed innovative ways to address the needs of tribal populations and are overcoming long-standing 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 may otherwise never have known postsecondary education success.

#### JUSTIFICATIONS

##### *National Science Foundation/Education and Human Resources Directorate*

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 indicates that many do not successfully complete the course in 1 year. Without question, a tremendous amount of the TCUs' already limited resources are spent addressing the failings of K-12 education systems.

To help address this, our institutions have developed strong partnerships with our K-12 feeder schools and are vigorously working, often through NSF-TCU programs, to actively and consistently engage young students in community and culturally relevant science and math programs.

Beginning in fiscal year 2001, NSF-TCUP made essential capacity building assistance and resources available to TCUs, either through direct funding or by leveraging funding from other sources. In the less than 10 years since the program began, NSF-TCUP has become the primary Federal program for building STEM capacity at the Nation's 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. American Indians are more aware of the importance of STEM to their long-term survival, particularly in areas such as climate change. Partnerships between TCUs and major research institutions are emerging in areas of education and research, including pre-engineering.

A goal stated in the President's fiscal year 2011 budget proposal with regard to NSF-EHR is "increasing participation of students from groups traditionally underrepresented in STEM." Though consolidating the various minority serving institutions' (MSIs) undergraduate programs in the NSF Undergraduate/Graduate Student Support budget line may seem like a step toward streamlining funding and administration of duplicative Federal programs and enhancing participation of minority students in STEM, the result will likely be quite the opposite, for the following reasons:

- Each of the MSI specific programs is designed to address the unique challenges and issues facing the communities served by the respective groups of MSIs, including Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), and TCUs; and perhaps of the greatest significance, TCUs are extensions of the Federal recognized tribes that charter them and as such are subject to the unique government-to-government relationship. Consolidating TCU programs with other programs simply because they too target a minority population disregards tribal sovereignty.
- MSIs are not able to compete for funding at the same level not to mention the majority institutions that would now be eligible. Those institutions that are able to employ a professional grant writing staff will be successful in competing for the proposed universal pool of limited funding. Therefore, the consolidation of MSI-STEM programs may bolster participation of some minority student groups, but it will come at the expense of others.
- The President's budget proposal would: (1) consolidate three currently active undergraduate programs, and (2) add to the pool of eligible applicants at least 226 HSIs, heretofore not funded under Undergraduate/Graduate Student Support budget line as well as majority institutions that produce underrepresented STEM graduates. The proposed increase of \$13 million to the new program is undoubtedly inadequate to accommodate the vastly enlarged pool of eligible applicants.

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, Tribal Colleges and Universities that have been awarded an NSF-TCUP grant have been able to enhance their STEM instructional offerings, workforce development, and outreach programs. At Navajo Technical College (NTC), for example, STEM enrollment has increased by 32.5 percent over just the past year and a total of 52.6 percent over the past 6 years. Outreach programs at NTC include the Internet to the Hogan project, which has increased the college's high performance computing capacity and brought heretofore nonexistent broadband access to the surrounding community. Unfortunately, not all of the TCUs have been able to benefit from this program; yet, funding for this vital program has been static, and the percentage of proposals funded has declined each year since 2004. We strongly urge the subcommittee to resist the recommendation to combine programs for minority institutions and to recognize tribal sovereignty and support retaining the separate NSF-TCU program at a minimum of \$15.5 million, to help ensure that much needed undergraduate programs and community services are expanded and continued in the communities served by the Nation's Tribal Colleges and Universities.

PRESIDENT'S FISCAL YEAR 2011 BUDGET

The President's fiscal year 2011 budget proposal proposes merging separate programs that serve unique minority constituencies into a consolidated program for minority undergraduates in STEM fields. We request that the subcommittee reject the budget recommendation and continue to support separate funding for each of the affected programs, namely: Tribal Colleges and Universities Program (TCUP); Historically Black Colleges and Universities Undergraduate (HBCUUP); Louis Stokes Alliances of Minority Participation (LSAMP); and the new program Hispanic Serving Institutions.

CONCLUSION

We respectfully request that in fiscal year 2011, Congress recognize the unique nature of each of the minority communities and the capacity of the various minority serving institutions and their contributions to their respective communities and retain the following separate programs: NSF TCU program; HBCUU program; and LSAMP program; and fund the newly established Hispanic Serving Institutions program. Thank you for your continued support of TCUs and for your consideration of our fiscal year 2011 Commerce, Justice, Science and Related Agencies (NSF) appropriations request.

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PREPARED STATEMENT OF THE AMERICAN SHORE AND BEACH PRESERVATION ASSOCIATION (ASBPA)

Dear Chairman Mikulski and Ranking Member Shelby: I am writing on behalf of the American Shore and Beach Preservation Association, a group dedicated to preserving, protecting and enhancing the beaches, shores and other coastal resources of America. It is impossible to deny the financial, social and environmental benefits of maintaining and protecting our valuable coastal resources. There are many agencies involved in this important work; however I would like to highlight some programs and services administered by the National Oceanic and Atmospheric Administration (NOAA). The work being done by NOAA is critical to the protection of these important national treasures, however the current level of funding to support these programs and services is severely lacking. Without an increase in Federal funding, these programs will not be able to function properly, if at all. Increased financial support for NOAA is needed to strengthen the scientific research that underlies management and policy decisions, such as fisheries management, and to improve ocean and coastal stewardship. Specifically, we request your support for the following programs in the fiscal year 2011 Commerce, Justice and Science appropriations bill. These programs will continue to strengthen and support our economy.

*Integrated Ocean Observing System (IOOS).*—Enacted in 2009, the IOOS is a valuable tool in data distribution through a partnership between the Federal and local government. This data is used consistently by local officials to support their decisionmaking process in policy formation as it related to marine issues. Not only is this information used to promote efficiency and safety of day to day marine operations, it also is used to sustain and protect healthy ecosystems, strengthen the

predications of potential coastal hazards and to stimulate local and national economic development.

We are asking for an investment of \$53 million in funding for fiscal year 2011, to include \$33 million for regional IOOS programs. This funding would be used to provide new observing, modeling, and visualization technologies, support observing platforms for deploying sensors, and establish regional data information centers. NOAA will use a competitive process to allocate funding to regional associations, thereby ensuring that the American public receives the greatest return for its investment in the form of a nationally consistent system for critical ocean information, forecasts and timely warnings.

*National Sea Grant Program.*—The National Sea Grant Program is a partnership between NOAA and 32 university-based programs that addresses national, regional, and local coastal, ocean, and Great Lakes issues. The result of this critical partnership is a further understanding and better stewardship and management of ocean, coastal and Great Lakes resources.

Additionally, the program supports local communities and industries with sound data to be used in decisionmaking as well as to support the connection of the two often competing interests. We request \$79.5 million for the National Sea Grant Program in fiscal year 2011, the amount authorized in the National Sea Grant College Program Amendments Act of 2008.

*Coastal Zone Management Program (CZMP).*—Coastal regions are vital to the national economy, to include tourism, industry and transportation of goods. Though our coastal region is 17 percent of the land area of the United States, it is home to more than one-half of its population. The Coastal Zone Management Program (CZMP) is used to safeguard against common threats to coastal areas, to include poorly designed and planned development, hurricanes and flooding, as well as threats that we are still trying to understand, such as sea level rise.

This Federal-State partnership designed to balance the protection of our coastal and ocean resources with the need for sustainable development of coastal communities. The program helps reduce environmental impacts of coastal development, resolve conflicts between competing coastal uses, and provide critical assistance to local communities in coastal planning and resource protection. Without an increase in funding of CZMP grants, States and territories are unable to keep up with the increasing complex coastal challenges. We request \$112.4 million for the CZMP in fiscal year 2011.

We recognize and understand the fiscal constraints facing the subcommittee in crafting the fiscal year 2011 Commerce, Justice, Science, and Related Agencies appropriations bill. However, we feel that these are valuable investments in our oceans and coasts, and we feel that these would benefit not only these areas, but our Nation as a whole. Thank you for your consideration and please feel free to contact me with any questions.

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PREPARED STATEMENT OF THE AMERICAN SOCIETY OF AGRONOMY, CROP SCIENCE SOCIETY OF AMERICA, AND THE SOIL SCIENCE SOCIETY OF AMERICA

FISCAL YEAR 2011 APPROPRIATIONS—SUPPORT FOR NATIONAL SCIENCE FOUNDATION

Dear Chairman Mikulski, Ranking Member Shelby, and members of the subcommittee: The American Society of Agronomy, Crop Science Society of America, and Soil Science Society of America (ASA, CSSA, and SSSA) are pleased to submit the following funding recommendations for the National Science Foundation (NSF) for fiscal year 2011. ASA, CSSA, and SSSA understand the challenges the Senate Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee faces with the tight science budget for fiscal year 2011. We also recognize that the Commerce, Justice, and Science Appropriations bill has many valuable and necessary components, and we applaud the efforts of the subcommittee to fund critical research through the National Science Foundation (NSF). ASA, CSSA, and SSSA recommend that the Subcommittee on Commerce, Justice, Science, and Related Agencies increase the fiscal year 2011 funding level for NSF to \$7.424 billion, the level requested by the administration. This strong level of funding will enable NSF to continue to fund worthy projects that promote transformational and multidisciplinary research, provide needed scientific infrastructure, and contribute to preparing a globally engaged science, technology, engineering, and mathematics workforce.

With more than 25,000 members and practicing professionals, ASA, CSSA, and SSSA are the largest life science professional societies in the United States dedicated to the agronomic, crop and soil sciences. ASA, CSSA, and SSSA play a major

role in promoting progress in these sciences through the publication of quality journals and books, convening meetings and workshops, developing educational, training, and public information programs, providing scientific advice to inform public policy, and promoting ethical conduct among practitioners of agronomy and crop and soil sciences.

BIOLOGICAL SCIENCES DIRECTORATE

*Molecular and Cellular Biosciences (MCB)*

The Molecular and Cellular Biosciences division of the NSF Biology Directorate provides funding for critical research that contributes to the fundamental understanding of life processes at the molecular, subcellular, and cellular levels. Programs such as the Microbial Observatories and Microbial Interactions and Processes program increase the understanding of microbial distribution in a variety of ecosystems—a primary step in evaluating microbial impact on ecosystem function. Furthermore, while we agree that considerable advances investigating interactions between microbial communities and plants have been made, critical gaps remain requiring additional study to understand the complex, dynamic relationships existing between plant and microbial communities.

*Biological Infrastructure (DBI)*

The emergence of a bioeconomy requires greater reliance on plants and crops, further expanding their use into the energy sector. To meet the increased demands and develop more robust crops, additional fundamental understanding regarding the basic biology of these crops is needed. The Plant Genome Research Program (PGRP) accomplishes these objectives by supporting key NSF projects. 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 U.S. Department of Energy and the U.S. Department of Agriculture, the Plant Genome Research Program has financed the Maize Genome Sequencing Project—a sequencing project for one of the most important crops grown globally. Finally, the International Rice Genome Sequencing Project published in 2005 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. Finally the PGRP and the Bill and Melinda Gates Foundation co-fund the Basic Research to Enable Agricultural Development (BREAD) program. This program supports basic research to allow academic and industrial researchers to expand the breeders' toolkit and exploit the diversity of agronomically useful traits in wild and domesticated crop plants and to accelerate the development of new plant varieties through marker-assisted breeding specifically to accommodate the needs of developing countries. ASA, CSSA, and SSSA are very supportive of this program.

GEOLOGICAL SCIENCES DIRECTORATE

*Atmospheric Sciences (ATM)*

Changes in terrestrial systems will have great impact on biogeochemical cycling rates. The Atmospheric Sciences Division funds critical programs, such as Atmospheric Chemistry, that increase understanding of biogeochemical cycles. Soils and plants make up one of the largest sinks and sources for several environmentally important elements.

*Earth Sciences (EAR)*

The Earth Sciences Division supports research emphasizing improved understanding of the structure, composition, and evolution of the Earth, the life it supports, and the processes that govern the formation behavior of the Earth's materials. EAR supports theoretical research, including the biological and geosciences, the hydrologic sciences, and the study of natural hazards. An important program funded within this division is the Critical Zone Observatories which focuses on watershed scale studies that advance understanding of the integration and coupling of Earth surface processes as mediated by the presence and flux of fresh water.

We also support the premise that was laid out in the BIO/GEO Dear Colleague Letter: "Update: Emerging Topics in Biogeochemical Cycles (ETBC)". The letter encourages advancement in quantitative and/or mechanistic understanding of biogeochemical cycles, including the water cycle and suggests that interdisciplinary proposals are put forth that address biogeochemical processes and dynamics within and/or across terrisphere, hydrosphere, or atmosphere. We find that these types of interdisciplinary endeavors are critical to solving many of the pressing issues that

we, as a society, face today. We also support efforts made in collaboration with the Directorate for Social, Behavioral, and Economic Sciences (SBE) to encourage productive interdisciplinary collaborations between the geosciences and the social, behavioral, and economic sciences.

#### ENGINEERING DIRECTORATE

##### *Chemical, Bioengineering, Environmental and Transport Systems (CBET)*

The Environmental Engineering and Sustainability program and its Energy for Sustainability sub-program support fundamental research and education in energy production, conversion, and storage and is focused on energy sources that are environmentally friendly and renewable. Most world energy needs are currently met through the combustion of fossil fuels. With projected increases in global energy needs, more sustainable methods for energy production will need to be developed, and production of greenhouse gases will need to be reduced.

#### DIRECTORATE FOR EDUCATION AND HUMAN RESOURCES

##### *Division of Graduate Education*

ASA, CSSA, and SSSA are dedicated to the enhancement of education, and concerned about recent declines in enrollment for many sciences. To remain competitive, scientific fields need to find new, innovative ways to reach students. The programs offered in the Education and Human Resource Directorate accomplish this goal. The Graduate Teaching Fellows in K-12 Education program offers graduate students interested in teaching an opportunity to get into the classroom and teach utilizing new innovative methods. Graduate students are the next crop of scientists, therefore opportunities for study must be increased with the ever-increasing demands of science. Global problems rely on scientific discovery for their amelioration; it is critical that the U.S. continue to be a leader in graduate education. ASA, CSSA, and SSSA recommend strong support for the Integrative Graduate Education and Research Traineeships (IGERT) program.

Because education is the key for our future competitiveness, it is essential that sustainable, long-term support for these and other educational programs be made.

##### *Division of Undergraduate Education*

Advanced Technological Education (ATE) program focuses on the education of technicians for the high-technology fields that drive our Nation's economy. We support continued, strong funding for this program. The program involves partnerships between academic institutions and employers to promote improvement in the education of science and engineering technicians at the undergraduate and secondary school levels.

#### NSF WIDE PROGRAMS

##### *Cyberlearning Transforming Education (CTE)*

ASA, CSSA, and SSSA fully support the cross-cutting program in NSF on cyberlearning for transforming education. The program will establish a new multidisciplinary research which will fully capture the transformative potential of advanced learning technologies across the education enterprise. We are excited about the opportunities that CTE holds to better communicate and transfer information about basic science performed by our members. Recruiting the next generation of high quality scientists is one of the main focuses of our membership and new information on how we can communicate and train these students using technologies available through cyberlearning will help propel our sciences into the future. In addition to the educational benefits, cyberlearning may also help us better understand how to coordinate and communicate science even within our community of researchers.

##### *National Nanotechnology Initiative (NNI)*

Regarding the Environmental, Health and Safety program under the NNI, we find that the President's request of \$33.01 million, to be well justified in order to support a rapidly growing field of science that presents both new opportunities for human health, the environment, agricultural science, but also unprecedented risks if not well researched and reviewed to identify appropriate safety measures. We are excited that the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA), and the European Union (EU) will collaborate on implementation of a joint solicitation for nano environmental health and safety protocol.



*Science, Engineering, and Education for Sustainability*

To create a more sustainable future, ASA, CSSA, and SSSA strongly believe that more students must be trained as scientists to bring new and revolutionary approaches to environmental and agroecosystem science. Economic incentives and misconceptions steer students in the basic sciences away from careers in the agronomic, crop, and soil sciences. If current trends continue, our workforce will lack the highly trained agronomists, soil scientists, plant breeders, pathologists, entomologists and weed scientists necessary to make the technical advances essential to meet future production and sustainability challenges, let alone control new, emerging invasive weed and insect species and pathogens that will continue to threaten agricultural systems. Thus, we applaud the efforts put forth by the administration to make investments in this area.

*U.S. Global Change Research Program*

The U.S. Global Change Research Program (USGCRP) seeks to better understand how the interplay between natural factors and human activities affects the climate system. The USGCRP engages 13 U.S. agencies in a concerted interagency program of basic research, comprehensive observations, integrative modeling, and development of products for decisionmakers. NSF provides support for a broad range of fundamental research activities that provide a sound scientific basis for climate-related policy and decisions. ASA, CSSA, and SSSA support an appropriation for the U.S. Global Change Research Program at \$370 million as the President requests in the fiscal year 2011 budget.

Biological systems are critical to mitigating the impacts and effects of climate change. Additional research is needed to examine potential crop systems, plant traits, wetland properties, and other ecosystem adaptations to help manage climate change. The basic sciences of agroecosystems, plant improvement, soils, and riparian and wetland ecology need support as well.

As you lead the Senate in deliberation on funding levels for the National Science Foundation, please consider American Society of Agronomy, Crop Science Society of America, Soil Science Society of America as supportive resources. We hope you will call on our membership and scientific expertise whenever the need arises.

Thank you for your thoughtful consideration of our requests.

## PREPARED STATEMENT OF THE AMERICAN MUSEUM OF NATURAL HISTORY

## OVERVIEW

Recognizing its potential to support NASA in its goals to pioneer the future in space exploration, scientific discovery, and aeronautics research; to develop a balanced overall program of science, exploration, and aeronautics; and to establish new and innovative programs to enhance understanding of our Earth, other planets, asteroids, and comets in our solar system, as well as the search for life around other stars, the American Museum of Natural History (AMNH) seeks \$3.5 million to contribute its unique science, education, and technological capacity to helping the agency to meet these goals.

## ABOUT THE AMERICAN MUSEUM OF NATURAL HISTORY

The American Museum of Natural History (AMNH) is one of the Nation's preeminent institutions for scientific research and public education. Since its founding in 1869, the Museum has pursued its joint mission of science and public education. It is renowned for its exhibitions and collections of more than 32 million natural specimens and cultural artifacts. With some 4 million annual on-site visitors—approximately one-half of them children—it is one of the largest and most diverse museums in the country. Museum scientists conduct groundbreaking research in fields ranging from all branches of zoology, comparative genomics, and informatics to Earth science, biodiversity conservation, and astrophysics. Their work forms the basis for all the Museum's activities that seek to explain complex issues and help people to understand the events and processes that created and continue to shape the Earth, life and civilization on this planet, and the universe beyond.

## COMMON GOALS AND ACCOMPLISHMENTS OF AMNH AND NASA

For many years, NASA and AMNH have shared a joint commitment to advancing scientific research and to integrating that research into unique educational tools and resources. Over the years, the Museum has successfully pursued a number of competitive opportunities, has cultivated rich relationships with NASA divisions such as the Science Mission Directorate's Heliophysics division and the Informal Edu-

cation program, and has worked with the agency to develop innovative technologies and resources that reach audiences of millions in New York, across the country, and around the world.

The Museum's educational mission is fueled by and reflects cutting-edge science, including the work of our scientists in collaboration with NASA centers and researchers. In keeping with that mission, the Museum has built a set of singular national resources that bring current science and integrated NASA content to total audiences of more than 16 million in New York City, across the country, and around the world. One such resource, Science Bulletins—immersive multimedia science encounters, presenting science news and discoveries in various, flexible formats—is already on view in nearly 40 locations across the country (including eight NASA visitor centers), with more being added. In the New York area alone, the Museum reaches nearly 4 million annual on-site visitors, including more than 450,000 children in school groups, with millions more visiting online.

In fiscal year 2011, AMNH seeks to build on the sustained successes of these collaborations by reaching even larger audiences with a program to communicate current science content—about NASA science and missions in particular—to diverse national audiences. The program encompasses:

#### PRESENTING CURRENT SCIENCE IN PUBLIC SPACES—SCIENCE BULLETINS

Science Bulletins is a nationally distributed, multi-media science exhibition program designed to address the need of informal science institutions to communicate and interpret current science by informing the public about ongoing scientific exploration and recent discoveries. Presenting the latest science news in a variety of high-definition formats—including laboratory and field footage, 3-D animation, and data visualization, all co-developed and vetted for scientific rigor by PhD scientists—the Bulletins program is at the leading edge of research and education. We propose the following activities:

- Increasing Science Bulletins Dissemination.*—In addition to AMNH, Bulletins are currently on view at 38 subscribing venues across the country (including 8 NASA visitor centers), with annual audiences of more than 13 million. To increase the program's reach and impact, and to make it more accessible to a wider variety of institutions and audiences, AMNH will undertake a graphical redesign and technical innovation of the program that will increase the Bulletins' flexibility for use in a variety of live, auto-run, and interactive programs. These innovations, which will make the program more user-friendly, customizable, and affordable, will enable AMNH to extend the reach of Bulletins to new and diverse audiences.
- R&D and Program Delivery.*—AMNH will develop new visualization methods to advance the communication of current science, and will utilize them in developing and distributing the Bulletins program. AMNH will release approximately 26 bi-weekly updates, create 6 new feature documentaries, and increase Web site visits in the Bulletins focused on the earth, space, and biosphere. Science Bulletins DVDs will also be distributed in New York City schools.
- Science Bulletins on the Web.*—AMNH will continue to promote the Bulletins Web site as a resource for formal education and educators, providing materials online to facilitate classroom use.

#### *Visualizing and Disseminating Current Science Data*

Visualization of real, large scale datasets into digital planetarium shows marks one of the Museum's signature achievements in the new era of digital dome technologies. AMNH proposes to draw on its unique expertise and capacity in visualizing astrophysics data from NASA and other sources to create a new digital space show that will engage children, families, and general audiences worldwide.

The Museum has very successfully leveraged past NASA investments with funds from other Government and private sources, and will support the present project with funds from non-Federal as well as Federal sources. The Museum looks forward to continuing to contribute its unique resources and capacity to helping the agency meet its goals.

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#### PREPARED STATEMENT OF THE SOCIETY FOR INDUSTRIAL AND APPLIED MATHEMATICS (SIAM)

*Summary.*—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 2011 by providing NSF with \$7.424 billion, a 7.2 percent increase over NSF's fiscal year 2010 appropriated level.

In particular, we urge you to provide at least the request level for key applied mathematics and computational science programs in the Division of Mathematical Sciences and the Office of Cyberinfrastructure.

WRITTEN TESTIMONY

My name is Douglas Arnold, and I am the President of the Society for Industrial and Applied Mathematics (SIAM). I am 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.

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 over 400 institutional members—colleges, universities, corporations, and research organizations.

First, I would like to emphasize how much SIAM appreciates your subcommittee's continued leadership on and recognition of the critical role of the National Science Foundation (NSF) and its support for mathematics, science, and engineering in enabling a strong U.S. economy, workforce, and society. In particular, we thank you and your colleagues for the significant increases in funding provided for NSF in the fiscal year 2010 Consolidated Appropriations bill.

Today, I submit this testimony to ask you to continue your support of NSF in fiscal year 2011 and beyond. In particular, we request that you provide NSF with \$7.424 billion, the level requested by the President for this agency in his fiscal year 2011 budget. This represents a 7.2 percent increase over NSF's fiscal year 2010 appropriated level and would continue the effort to double funding at NSF, as endorsed by Congress in the America COMPETES Act and by the President in his fiscal year 2011 budget request.

As we are reminded every day, our 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, computer science, and others.

Other countries have observed the success of the U.S. model and are investing in research and education. Without sufficiently increasing support for science, engineering, and mathematics, the U.S. pre-eminence in innovation will be compromised.

NATIONAL SCIENCE FOUNDATION

The National Science Foundation (NSF) provides essential Federal support of 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. NSF also supports mathematics education at all levels, ensuring that the next generation of the U.S. workforce is appropriately trained to participate in cutting-edge technological sectors and that students are attracted to careers in mathematics and computing.

I will now briefly highlight the main budgetary and programmatic components at NSF that support applied mathematics and computational science.

NSF DIVISION OF MATHEMATICAL SCIENCES

The NSF's Division of Mathematical Sciences (DMS) provides the core support for all mathematical sciences, including areas such as analysis, applied mathematics, combinatorics, computational mathematics, probability, and statistics. 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, global climate change, software for military applications, the human body, and energy efficient

building systems. SIAM strongly urges you to provide DMS with at least the budget request level of \$253.46 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. DMS has traditionally played a central role in cross-NSF interdisciplinary efforts that bear on these challenges, with programs supporting the interface of mathematics with a variety of other fields.

SIAM deeply appreciates DMS's role in enabling interdisciplinary work and supports the expansion of this work in fiscal year 2011. In particular, the proposed increase within DMS for the NSF-wide Science, Engineering, and Education for Sustainability initiative would support the development of potentially transformative mathematical, statistical, and computational methods needed for analysis and simulation of climate models and increase DMS investment in an existing program on solar energy. In addition, the proposed establishment of a new Life Sciences Interface initiative involving DMS and other NSF units is particularly timely in light of the challenges outlined in the recent National Research Council report on "A New Biology for the 21st Century," which emphasizes the need for development of new information sciences and new education programs in order to create a quantitative approach in biological sciences to tackle key challenges in food, environment, energy, and health.

#### NSF 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 at least the budget request level of \$228.1 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 interdisciplinary 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 fiscal year 2011 increase in funding for OCI software activities, particularly the proposed new Software Institutes program, aimed at supporting a community of partnerships among academia, government laboratories, and industry for the development and stewardship (expansion, hardening, and maintenance) of sustainable end-to-end software systems. SIAM also supports the proposed increase in OCI data activities. 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.

#### 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 that 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 who will suffer from these cutbacks. The research community at large will suffer from the loss of ideas and energy that these graduate students, postdoctoral fellows, and early career researchers bring to the field, and the country will suffer from the lost innovation.

In light of this situation, SIAM strongly supports NSF's proposed fiscal year 2011 increases in the Graduate Research Fellowship (GRF) program and the Faculty Early Career Development (CAREER) program. We also strongly endorse OCI's participation in these programs as part of efforts to create opportunities in the

interdisciplinary area of computational science and engineering and nurture the development of young researchers in this emerging field.

#### MATHEMATICS AND INTERNATIONAL SCIENCE AND ENGINEERING

Science knows no borders, and nowhere is this more true than in mathematics. Mathematical research typically advances through the close collaboration of small groups of researchers, without the need for expensive equipment and using universal mathematical notation to minimize language obstacles. In addition, mathematics, as an enabling discipline for all of science and technology, and as a foundation for science education, plays a key role in addressing many of the most challenging problems that the world faces, such as climate change, infectious disease, and sustainable energy generation. International scientific cooperation is not just good science; it can also aid in promoting United States international policy goals by building relationships and trust with other countries, enhancing the global image of America, and spurring global development.

SIAM believes strongly in the Federal Government's support of international science and technology initiatives, including cooperative research programs that further scientific knowledge applicable to major societal challenges, promote development of research and education capabilities abroad, and introduce U.S. students to global issues and collaborative relationships.

#### CONCLUSION

SIAM is aware of the significant fiscal constraints facing the administration and Congress this year, but we note that, in the face of economic peril, Federal investments in mathematics, science, and engineering create and preserve good jobs; stimulate economic activity; and help to maintain U.S. pre-eminence in innovation, upon which our economy depends.

I would like to conclude by thanking you again for your ongoing support of NSF and actions you have already taken to enable NSF and the research and education communities it supports, including thousands of SIAM members, to undertake the activities that contribute to the health, security, and economic strength of the U.S. NSF needs sustained annual funding to maintain our competitive edge in science and technology, and therefore we respectfully ask that you continue your robust support of these critical programs into the future, starting with providing \$7.424 billion for NSF for fiscal year 2011.

I appreciate the opportunity to provide testimony to the subcommittee on behalf of SIAM and look forward to providing any additional information or assistance you may ask of us during the fiscal year 2011 appropriations process.

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#### PREPARED STATEMENT OF THE NATIONAL COUNCIL OF EEOC LOCALS, No. 216, AFGE/AFL-CIO

Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee, my name is Gabrielle Martin and I am the president of the National Council of EEOC Locals, No. 216, AFGE/AFL-CIO. The Council is the exclusive representative of the bargaining unit employees at the Equal Employment Opportunity Commission (EEOC), including investigators, attorneys, administrative judges, mediators, paralegals, and support staff located in offices in 53 cities around the country. I want to thank you for the opportunity to submit testimony on the proposed fiscal year 2011 budget for the EEOC. Our number one "ask" is that this subcommittee support the fiscal year 2011 budget request to increase EEOC's funding from \$367 million to \$385 million. The request is in line with the amount that this subcommittee included in its fiscal year 2008 report language, which was passed by the Senate. We understand that you will receive testimony from many well deserving programs. Nevertheless, the Council can confirm from the perspective of EEOC's frontline workers that the increase is absolutely necessary and justified. Moreover, the budget request should be considered a restoration of funds after several years of frozen budgets. Service today at the EEOC is still impacted by the loss of 25 percent of EEOC's frontline staff since fiscal year 2001. To ensure that EEOC can effectively enforce workplace discrimination laws that help Americans get and keep jobs, the Council urges the inclusion of bill and report language which: (1) adopts the fiscal year 2011 budget request for EEOC, increasing funding to \$385 million; (2) raises the staffing to 3,000 FTEs, i.e., the same level as 1994, the last time that EEOC's charge receipts were close to the record high levels of recent years; (3) maintains oversight of headquarters and field restructuring, including the Office of

Federal Operations; and (4) directs EEOC to implement the Full-service Intake Plan to provide real help to the public and reduce the backlog.

*Introduction.*—The EEOC’s mission is to enforce this Nation’s laws, which protect against discrimination in employment based on race, color, religion, sex, national origin, age, and disability. As of 2009, EEOC is also responsible for enforcing the Americans with Disabilities Act Amendments Act (ADAAA), the Genetics Information Nondiscrimination Act (GINA), and the Lilly Ledbetter Act. The fiscal year 2011 budget request is needed so that EEOC’s dedicated employees have the resources to keep discrimination out of the workplace so Americans can stay on the job.

*Thank you to This Subcommittee for Fiscal Year 2010 Funding and to Senator Mikulski for Statements at the Recent Help Hearing Regarding Backlog and Need for Confirmation of EEOC Nominees.*—The Council first wishes to thank this subcommittee supporting the fiscal year 2010 budget request increasing EEOC’s funding to \$367 million. Also, the fiscal year 2010 Omnibus conference report language called for oversight of agency staffing and Federal sector changes. It also directed EEOC that its workload projections account for a Federal Arbitrator’s decision regarding the agency’s illegal overtime practices.<sup>1</sup> Finally, the Omnibus Act bill language retained oversight, which prevents EEOC from taking any action to restructure without first coming to the subcommittee. The Council also wishes to extend a special thank you to Chairwoman Mikulski for her continued advocacy for EEOC. Most recently at the March 11, 2010 HELP Hearing on Pay Equity, Senator Mikulski raised the critical issue of EEOC backlog and pressed for confirmation of permanent leadership. The Council is grateful for your efforts and looks forward to working with EEOC’s new leadership.

*Adopt the Fiscal Year 2011 Budget Request to Increase EEOC’s Budget From \$367 Million to \$385 Million.*—While this subcommittee has increased EEOC’s budget, EEOC is still playing catch-up from 5 years of level funding. EEOC’s workload has never been higher, even as staffing levels remain inadequate. The chart included with this testimony illustrates EEOC’s troubling customer service trends from fiscal year 2001 through fiscal year 2010. If EEOC is to break these trends, so that it more effectively can enforce the laws on the books, it needs to be funded at no less than the fiscal year 2011 budget request.

*More Frontline Staff is Needed to Offer Timely Assistance and Tackle a Giant Backlog.*—After losing 25 percent of its staff since fiscal year 2001, EEOC took steps to “rebuild” in fiscal year 2009, but the gains barely kept pace with attrition.<sup>2</sup> The EEOC ended fiscal year 2009 with 2,192 FTEs, a minimal increase from fiscal year 2008’s 2,174 FTEs.

The inevitable result when EEOC’s slashed workforce cannot keep up with the increased workload is that the backlog goes from bad to worse. According to EEOC’s budget justification, the backlog is anticipated to rise to 96,865 cases in fiscal year 2010 and 105,203 cases in fiscal year 2011.<sup>3</sup> Thus, roughly an entire year’s incoming inventory is getting shelved in order to process the previous year’s complaints. Moreover, since fiscal year 2006, charge filings at EEOC have exceeded resolutions, with the trend expected to continue at least through fiscal year 2013. (See chart and Budget Justification).

These unreasonably high workloads of 250 cases do not allow investigators to do an effective and timely job of interviewing witness, reviewing documents, attempting conciliation, etc. Quick resolutions could mean saving the jobs of the applicants and workers who file these charges. But, landing in EEOC’s backlog puts off assistance for 294 days, i.e., over 9 months. Justice delayed is justice denied for these workers.

In order to effectively enforce its mission and reduce the backlog, the Council requests that Congress raise EEOC’s staffing to 3,000 FTEs, i.e., the same level as 1994, the last time that EEOC’s charge receipts were close to the current record high numbers. The Council supports maintaining report language directing EEOC to submit “quarterly reports on projected and actual agency staffing levels so that

<sup>1</sup> The damages phase of the case remains ongoing unless a settlement can be reached.

<sup>2</sup> “EEOC will have 42 percent of its employees eligible for retirement between fiscal years 2007 and 2012, which includes 46 percent of its investigators and 24 percent of its attorneys.” OIG Semiannual Report, 10/30/07. Additional attrition has occurred in the ranks of the hearing officers (administrative judges), who are often selected for higher paid administrative law judges at Social Security, where they have the subpoena power and support staff that they are lacking at EEOC. According to the GAO, the EEOC has 13 percent fewer administrative judges than it did in fiscal year 2005.

<sup>3</sup> The White House fiscal year 2011 budget request projected that the backlog would grow even higher, i.e., 104,450 in fiscal year 2010 and 122,452 in fiscal year 2011. The EEOC fiscal year 2011 budget justification that followed contained these slightly lower figures.

the subcommittee can better monitor EEOC's personnel resources." However, to ensure hiring keeps up with attrition, it is suggested that the report language also include benchmarks for where actual frontline staffing should be at the end of each quarter.<sup>4</sup> Finally, report language should be maintained directing that workload projections account for a Federal Arbitrator's decision regarding the agency's willful and illegal overtime practices, because unreasonably high investigator caseloads demonstrate EEOC has not hired enough staff.

*For the Current Fiscal Year 2010, Oversight Is Needed To Ensure Hiring Is Prioritized.*—Historically, EEOC ends each year with "hollow FTEs," i.e., about 200 positions below the authorized ceiling. Therefore, for the current fiscal year 2010, the Council urges this subcommittee to exercise its oversight, including monitoring the quarterly staffing submissions, to ensure that EEOC does in fact hire up to the 2,556 FTEs authorized. If this year's staffing is not achieved, then fiscal year 2011's projections for staffing, resolutions, and backlog will all be undermined. Most importantly, the public needs frontline EEOC employees immediately available to help them get jobs and keep jobs.

*Bill Language Should Retain Oversight of EEOC Restructuring.*—On January 1, 2006, as part of a nationwide field restructuring, EEOC downsized a dozen offices. The restructuring added bureaucratic layers, but no frontline staff. EEOC should now revisit the restructuring to fix its worst inefficiencies, such as States that were split between two districts. The EEOC should also keep its promise to reduce top-heavy offices to a 1:10 supervisor to employee ratio. Redeployed supervisors can help the frontline without added cost.

The final phase of EEOC's repositioning is the delayed restructuring of headquarters. Also, recent internal plans to reorganize the EEOC's Office of Federal Operations (OFO) have proposed adding additional layers of high levels of management at the expense of frontline administrative judges. The Council urges the subcommittee to retain bill language regarding oversight of this restructuring. Additionally, Congress should assure a transparent process for public and internal stakeholders to have an opportunity to provide feedback of a draft plan.

*Direct EEOC To Implement the Full-Service Intake Plan To Provide the Public Real Help and Reduce the Backlog.*—EEOC's current backlogs and poor customer service can be attributed to its stubborn insistence on continuing to use a failed call center model. Though the House and Senate CJS subcommittees in fiscal year 2008 defunded an outsourced call center, EEOC currently uses an in-house center mirroring that failed model.

Council 216 submitted a comprehensive plan for a national Full-Service Intake Plan 6 months ago, which EEOC's leadership is reviewing at a snail's pace. The plan calls for staffing each field office with a compliment of positions and grades able to advance the intake process from pre-charge counseling through charge filing, handling the flood of downloadable intake questionnaires and responding to over 5,000 unanswered e-mails.<sup>5</sup> The plan should help EEOC avoid the high rates of turnover. The plan satisfies the interest of Congress to "provide more substantive assistance to callers and resolve a greater number of calls at the first point of contact." (H.R. 110-919). The plan also produces cost savings. It also implements part of EEOC's backlog reduction plan, which according to EEOC's OIG should include a renewed emphasis on pre-charge counseling. In turn, investigative staff, who would be relieved from many of these intake responsibilities, could focus on investigating cases to reduce the backlog.

The Council supports maintaining report language directing EEOC "to develop and implement a multiyear plan to increase EEOC staffing to the levels necessary to achieve backlog reduction in a timely manner." The Council would respectfully request the language be expanded to include a direction that the Full Service Intake Plan be incorporated into the backlog reduction plan.

*"Fast Track" for Feds Requires Stakeholder Input and Oversight Before Implementation.*—For several years, EEOC has been internally debating controversial changes to the hearing process, called "fast track," which would direct administrative judges (AJs) to cut off discovery and deny hearings for many Federal employees. In these fast-tracked cases, the EEOC AJ is forced to accept the investigative record submitted by the Federal agency alleged to have committed discrimination. A more

<sup>4</sup>The Council understands that as of fiscal year 2011, agency budget projections are to concentrate on actual staffing, rather than ceilings. This makes oversight even more critical so that EEOC ends fiscal year 2011 with no less than the 2,577 FTE actual staffing reflected in the fiscal year 2011 justification.

<sup>5</sup>The units would be comprised of some new staff and current staff, including converting in-house call center operators to investigator supporter assistants.

straightforward way to reduce Federal backlog and processing times is to replenish AJs, down 13 percent since fiscal year 2005, and provide them support staff.

The Council represents AJs, who oppose mandatory tracking, because it re-writes the regulations to remove judicial independence to manage cases and interferes with fair hearings. Outside stakeholders must also be given an opportunity to weigh in on the current plan. Therefore, the Council supports maintaining current report language requiring oversight before implementation.

#### CONCLUSION

In closing, I want to again thank the chairwoman, ranking member and the subcommittee for allowing me to provide testimony. I hope my statement will give you insight into the difficult challenges facing EEOC.



EEOC'S TROUBLING CUSTOMER SERVICE TRENDS <sup>1</sup>

	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010
Full Time Employees .....	2,924	2,787	2,617	2,462	2,349	2,250	2,137	2,174	2,192	2,470
Backlog .....	32,481	29,041	29,368	29,966	33,562	39,946	54,970	73,941	85,768	96,685
Charge Receipts Filed .....	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402	93,277	101,653
Resolutions .....	90,106	95,222	87,755	85,259	77,352	74,308	72,442	81,081	85,980	93,284
Avg. Charge Processing .....	182	171	160	165	171	193	199	229	294	( <sup>2</sup> )

<sup>1</sup> National Academy of Public Administration report, 2/2/03; EEOC Budget Requests; www.eeoc.gov.

<sup>2</sup> Not available.

## PREPARED STATEMENT OF THE ASSOCIATION OF SCIENCE-TECHNOLOGY CENTERS

Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee—my name is Bud Rock and I am the chief executive officer of the Association of Science-Technology Centers (ASTC).

ASTC is a nonprofit organization of science centers and museums dedicated to furthering public engagement with science among increasingly diverse audiences. Science centers are sites for informal learning and are places to discover, explore, and test ideas about science, technology, engineering, and mathematics. They feature interactive exhibits, hands-on science experiences for children, professional development opportunities for teachers, and educational programs for adults. In science centers, visitors of all ages become adventurous explorers who together discover answers to the myriad questions of how the world works—and why. ASTC has nearly 600 members, including 445 operating or developing science centers and museums in 44 countries, who engage over 80 million people annually in intriguing educational science activities and explorations of scientific phenomena. The recently released Science and Engineering Indicators 2010 says that 59 percent of our fellow citizens visited an informal science venue in the past year. Science centers vary widely in scale, from institutions like the Maryland Science Center in Baltimore's Inner Harbor and the McWane Center in Birmingham, Alabama, to the ECHO Lake Aquarium and Science Center in Burlington, Vermont and the SEE Science Center in Manchester, New Hampshire.

ASTC works with science centers and museums like these to address critical societal issues, locally and globally, where understanding of and engagement with science are essential. As liaisons between the science community and the public, science centers are ideally positioned to heighten awareness of critical issues including energy and environmental issues; infectious diseases; the space program; increase understanding of important new technologies; and promote meaningful informed debate between citizens, scientists, policymakers, and the local community.

## THE IMPORTANT CONTRIBUTION OF SCIENCE CENTERS TO IMPROVING STEM EDUCATION

Science centers offer places where science and citizens can meet. Many centers have scientists on staff and some feature research facilities on-site. Through exhibits and programming, such as lecture series and science cafés, science centers help to bring current research findings to the public and encourage discussion and debate of current science issues. Science centers also encourage the public to become involved in research projects themselves.

Science centers reach a wide audience. Most have membership programs, including family memberships. Many offer programs designed for senior citizens. Some train students to serve as docents and “expert explainers”. In addition to the hands-on, experiential exhibits and programs that are the hallmark of science centers, many have large-format theaters, planetariums, and outdoor science parks. Through outreach programs, science centers also extend their work well beyond their buildings.

School groups make up a significant percentage of science center and museum attendance—an estimated 17.7 million student visits worldwide in 2009 (12 million in the United States). But school field trips are just the beginning; most science centers offer demonstrations and workshops, school outreach programs, professional development for teachers, curriculum materials, science camps, overnight camp-in programs, and resources for home schoolers. Many also offer after-school and youth employment programs.

Last year the Congress—led by this subcommittee—appropriated about \$1.4 billion for science, technology, engineering and mathematics (STEM) education through the National Science Foundation (NSF), the National Oceanic and Atmospheric Administration (NOAA), and the National Aeronautics and Space Administration (NASA).

This subcommittee is singularly responsible for nearly 40 percent of all the Federal support for STEM education.

There is a strong consensus that improving science, technology, engineering, and mathematics education is critical to the Nation's economic strength and global competitiveness in the 21st century. Reports have emphasized the need to attract and educate the next generation of American scientists and innovators. For example, the National Academies' 2005 report, *Rising Above the Gathering Storm*, recommends that the Nation increase its talent pool by vastly improving K–12 science and mathematics education. In order to improve STEM education, we must draw on a full range of learning opportunities and experiences, including those in informal, non-school settings. Informal science education can take place in a variety of places and through a wide variety of media such as science centers and museums, film and

broadcast media, aquariums, zoos, nature centers, botanical gardens, and after-school programs. Informal learning can happen in everyday environments and through everyday activities as well.

The Committee on Learning Science in Informal Environments was established by the National Research Council (NRC) of the National Academies to undertake a study of the status of, and potential for science learning in informal environments. In January 2009, the National Academies Committee released a report entitled *Learning Science in Informal Environments: People Places, and Pursuits*, which stated, “Beyond the schoolhouse door, opportunities for science learning abound . . .” The Academy found, among other things, that there is ample evidence to suggest that science learning takes place throughout the life span and across venues in non-school settings. Another key issue highlighted in the report is the role of informal STEM education in promoting diversity and broadening participation. The Academy found that informal environments can have a significant impact on STEM learning outcomes in historically underrepresented groups, and informal learning environments may be uniquely positioned to make STEM education accessible to all.

VITAL FEDERAL SUPPORT FOR INFORMAL STEM EDUCATION IS PROVIDED BY NSF, NOAA AND NASA

*National Science Foundation.*—Scientific discoveries and technological innovations have profound impact on individuals and societies. STEM education shapes our everyday lives and holds the potential to produce solutions to daunting problems facing the Nation. This prospect calls for unprecedented energy and innovative efforts to promote public understanding of—and engagement with—STEM, its processes, and implications. Informal learning settings offer learners of all ages enjoyable opportunities to become interested in STEM and more knowledgeable about the world around them. Such learning experiences foster a better informed citizenry and inspire young people to consider STEM careers in which they may help address societal challenges. NSF’s Informal Science Education (ISE) program supports projects that promote lifelong learning of science, technology, engineering, and mathematics by the public through voluntary, self-directed engagement in STEM-rich informal learning environments and experiences. The ISE program invests in projects that:

- Advance knowledge through research and evaluation about STEM learning in informal environments;
- Design, implement, and study models, resources, and programs for STEM learning in informal environments; and/or
- Expand the capacity of professionals engaged in the work of informal STEM education programs.

The fiscal year 2011 budget for NSF’s ISE program is \$64.4 million—2.4 percent below the fiscal year 2010 level. In fact, NSF support for ISE has been frozen in recent years at about \$65 million since at least fiscal year 2007.

*National Oceanic and Atmospheric Administration.*—Since 2005, NOAA’s Office of Education has promoted the improvement of public environmental literacy through competitive education grants, also known as Environmental Literacy Grants. The recipients of Environmental Literacy Grants have consistently demonstrated: (1) alignment with NOAA’s goals and NOAA’s Education Strategic Plan; (2) a robust project evaluation plan; (3) partnership with NOAA offices and programs to leverage NOAA scientific, educational and human resources; and (4) the promotion of ocean and/or climate literacy—the components of environmental literacy closely tied to NOAA’s mission. Additionally, NOAA strives to fund projects that complement other grant programs and educational efforts offered by other offices within NOAA, and by other Federal agencies, such as the U.S. Environmental Protection Agency, NASA and NSF.

Successful NOAA projects catalyze change in K–12 and informal education through development of new partnerships, programs, and materials that not only increase knowledge of scientific phenomena, but also provide opportunities for the application of that knowledge to societal issues. To date 59 competitive awards have been made supporting a wide range of projects from teacher training, to experiential learning for youth and families, to the development of media products, and public opinion research.

In the face of this progress, the administration’s budget would reduce NOAA’s education programs by over 28 percent.

*National Aeronautics and Space Administration.*—NASA’s Education program works to: foster a science, technology, engineering, and math workforce in fields that support NASA’s strategic goals; attract students to the disciplines through a progression of education opportunities; and build strategic partnerships between formal

and informal education providers. NASA's education programs have been evaluated as part of the administration's program assessment process with the following findings: NASA has taken several steps to improve the Education program's potential to strengthen and measure its performance. For instance, the agency developed a new education framework and implementation plan as well as new metrics by which to evaluate the program's achievement of intended outcomes; the program has made considerable progress in focusing the program's plans on achieving meaningful outcomes. The program has established baseline performance standards and has begun to collect and report some performance data against its new metrics; and the program has developed a solid plan and set aside resources to conduct independent evaluations of the portfolio's effectiveness and efficiency; now the program must implement that plan.

Despite these improvements, the administration's budget for fiscal year 2011, NASA's education programs would decline by nearly 21 percent.

#### ASTC AND EDUCATE TO INNOVATE

As mentioned previously, the administration has recently released its latest edition of the biennial Science and Engineering Indicators report. This report says that the state of U.S. science and engineering is strong, but that U.S. dominance of world science and engineering has eroded significantly in recent years, primarily because of rapidly increasing capabilities among East Asian nations, particularly China. On the heels of that report, the administration announced a new set of public-private partnerships in the "Educate to Innovate" campaign committing more than \$250 million in private resources to attract, develop, reward, and retain science, technology, engineering, and mathematics teachers. This initiative is responsive to data, presented in Indicators, showing that American 15-year-olds are losing ground in science and math achievement compared to their peers around the world.

ASTC applauds the President's Educate to Innovate initiative and ASTC members are active participants in this campaign. ASTC also applauds the efforts of the private sector to commit more than \$250 million in resources to attract and retain K-12 STEM teachers. At the same time, we believe that any effective campaign to improve the quality and effectiveness of the STEM education provided to our students and teachers is grounded in a deeper appreciation by the public—and decision-makers—in the importance of STEM education for the long term health and well-being of our Nation.

It is for this very reason that on January 28, ASTC leadership met with officials of the Office of Science and Technology Policy to put forth a new "Youth Inspired" initiative that is comprised of two parts:

"Two Million Hours to the Future," capitalizes on the fact that science centers and science museums are key partners for supporting the Nation's youth in becoming the innovative and creative thinkers needed for the 21st century workforce. We propose that 300 science centers and science museums, representing each of the 50 States, could engage approximately 30 students per year through either afterschool or youth employment programs. With at least 1 hour of in-person contact per week per student, the initiative would cumulatively reach 2 million hours of science and personal development at the end of 3 years.

"Two Million Teachers to Inspire," is a national initiative that takes advantage of the important role that science centers play in developing and supporting STEM teachers in America's schools. Through the initiative—which will be supported in part by private and corporate funding and substantial in-kind institutional investment—ASTC will collect, catalog, and share best practices in teacher professional development, providing a valuable resource for the 2 million teachers our members impact every year.

#### CONCLUSION

The reductions proposed by the administration for valuable informal STEM education programs at NSF, NOAA and NASA are counterproductive given all the concern expressed by public and private thought leaders regarding the importance of STEM education for the long term health and well being of the Nation. Informal STEM education programs reach over 80 million people a year—children, parents, teachers, and even adult learners—with irreplaceable hands-on experiences that stimulate creativity and foster a valuable appreciation for the role of science and technology in the world around us—both today and tomorrow.

To that end, ASTC urges the Congress—understanding the bounds of fiscal constraints—to continue to recognize the value of informal STEM education. ASTC respectfully requests the subcommittee to reverse the reductions proposed by the administration. In fact, to the maximum extent possible, ASTC suggests that given the

fact these programs have remained relatively level since at least fiscal year 2008; they should be re-vitalized at a rate commensurate with the administration's intent to double the NSF over the next 10 years.

Thank you for the opportunity to present these views. I would be happy to respond to any questions or provide additional information should it be needed by the subcommittee.

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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 \$7.424 billion for the National Science Foundation (NSF) for fiscal year 2011. The testimony also highlights the importance of biology, particularly plant biology, as the Nation seeks to address vital issues including climate change and energy security. ASPB would also like to thank the subcommittee for its consideration of this testimony and for its strong support for the basic research mission of the National Science Foundation.

Our testimony will discuss:

- Plant biology research as a foundation for addressing food, fuel, climate change, and health concerns;
- The rationale for robust funding for the National Science Foundation while maintaining a well proportioned science portfolio with support for all core science disciplines, including biology; and
- The rationale for continued support for NSF education and workforce development programs that provide support for the future science and technical expertise critical to America's competitiveness.

The American Society of Plant Biologists is an organization of more than 5,000 professional plant biologists, 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, CLIMATE CHANGE, 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 almost always the primary producers in ecosystems. Indeed, basic plant biology research is making many fundamental contributions in the areas of fuel security and environmental stewardship; the continued and sustainable development of better foods, fabrics, and building materials; and in the understanding of basic biological principles that underpin improvements in the health and nutrition of all Americans. To go further, plant biology research can both help the Nation predict and prepare for the impacts of climate change on American agriculture, and make major contributions to our Nation's efforts to combat a warming climate.

In particular, plant biology is at the interface of numerous scientific breakthroughs. For example, the interface between plant biology and engineering is a critical frontier in biofuels research. Similarly, the interface between plant biology and chemistry contributes to biofuel production, as well as the identification of novel, bioactive compounds for medical use. With the increase in plant genome sequencing and functional genomics, the interface of plant biology and computer science is essential to our understanding of complex biological systems ranging from single cells to entire ecosystems.

Despite the fact that basic plant biology research—the kind of research funded by the NSF—underpins so many vital practical considerations, the amount invested in understanding the basic function and mechanisms of plants is relatively small when compared with the impact it has on multibillion dollar sectors like energy and agriculture.

ROBUST FUNDING FOR THE NATIONAL SCIENCE FOUNDATION

The American Society of Plant Biologists encourages the subcommittee to fund the National Science Foundation at robust levels that would keep the Foundation's budget on a doubling path over the next several years.

The fiscal year 2011 NSF budget request would fund the NSF at \$7.424 billion in fiscal year 2011, keeping the Foundation budget on a path for doubling. ASPB

enthusiastically supports this request and encourages proportional funding increases across all of the science disciplines funded by the NSF.

As scientific research becomes increasingly interdisciplinary with permeable boundaries, a diverse portfolio at the NSF is needed to maintain cutting-edge research and innovation. The most pressing problems of the 21st century will not be solved by one science or method, but by numerous innovations across the research spectrum. This funding enables the scientific community to address challenging and basic cross-cutting research questions regarding climate change, sustainable food supply, energy, and health, all of which are impacted by or involve basic research in plant biology supported by the NSF. This idea is reflected in the National Research Council's report "A New Biology for the 21st Century: Ensuring the United States Leads the Coming Biology Revolution."

The NSF Directorate for Biological Sciences (BIO) is a critical source of funding for nonbiomedical research, supporting innovative research ranging from the molecular and cellular levels to the ecosystem and even biosphere levels. Much of this funding has been provided to individual investigators; however, the NSF has also supported major research programs over the longer term. These investments continue to have significant pay offs, both in terms of the knowledge directly generated and in deepening collaborations and fostering innovation among communities of scientists.

The BIO Plant Genome Research Program (PGRP) is an excellent example of a high impact program, which has laid a strong basic research foundation for understanding plant genomics as it relates to energy (biofuels), health (nutrition and functional foods), agriculture (impact of climate change on agronomic ecosystems), and the environment (plants' roles as primary producers in ecosystems). The American Society of Plant Biologists asks that the PGRP continue to be a separate funding line within the NSF budget, as in years past, and that the PGRP continues sustained funding growth over multiple years to address 21st century biology issues. For fiscal year 2011 ASPB asks that PGRP be funded at the highest possible level.

Without significant and increased support for BIO and the NSF as a whole, promising fundamental research discoveries will be delayed and vital collaborations around the edges of the disciplines will be postponed, thus limiting the ability to respond to the pressing scientific problems that exist today. Increased funding for the NSF with proportional increases throughout the Foundation will also serve as a catalyst to encourage young people to pursue a career in science. Low funding rates throughout the NSF can be discouraging to early career scientists and dissuade them from pursuing a career in scientific research.

#### CONTINUED SUPPORT FOR NSF EDUCATION AND WORKFORCE DEVELOPMENT PROGRAMS

The National Science Foundation is a major source of funding for the education and training of the American scientific workforce. The NSF's education portfolio impacts students at all levels, including K-12, undergraduate, graduate, and post-graduate. Importantly, the Foundation also offers programs focused on outreach to and engagement of underrepresented groups.

The Integrative Graduate Education and Research Traineeship (IGERT) program is just one example of NSF's commitment to education. IGERT is successful in fostering the development of novel programs that provide multidisciplinary graduate training. As discussed above, it is at the intersections of traditional disciplines that the greatest opportunities for scientific advancement can be found. The American Society of Plant Biologists 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 revitalize and expand NSF's fellowship programs—such as the Postdoctoral Research Fellowships in Biology, the Graduate Research Fellowship (GRF) and the Faculty Early Career Development (CAREER) programs—and, thereby, to provide continuity in funding opportunities for the country's most promising early career scientists. Additionally, such continuity and the broader availability of prestigious and well-supported fellowships may help retain underrepresented groups in the science, technology, engineering, and mathematics (STEM) fields. ASPB further encourages the NSF to develop "transition" awards that will support the most promising scientists in their transition from postdoctoral research to full-time, independent, tenure-track positions in America's universities. The NSF might model such awards after those offered by the NIH and initially championed by private philanthropies, such as the Burroughs Wellcome Fund and the Howard Hughes Medical Institute.

ASPB urges the NSF to further develop programs aimed at increasing the diversity of the scientific workforce by leveraging professional scientific societies' commit-

ment to provide a professional home for scientists throughout their education and careers to help promote and sustain broad participation in the sciences. ASPB is also concerned over the proposed change to consolidate the Historically Black Colleges and Universities Undergraduate Program, the Louis Stokes Alliances for Minority Participation program, and the Tribal Colleges and Universities Program into the Comprehensive Broadening Participation of Undergraduates in STEM program. Discreet focused training and infrastructure support programs for Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities remain vitally important. These institutions are key producers of members of the STEM workforce, therefore ASPB recommends that distinct funding amounts be specified for Hispanic Serving Institutions, Historically Black Colleges and Universities, and Tribal Colleges and Universities within the proposed Comprehensive Broadening Participation of Undergraduates in STEM program.

Finally, as this subcommittee oversees the White House Office of Science and Technology Policy (OSTP) appropriations, ASPB asks that the subcommittee direct OSTP to coordinate interagency development and implementation of a strategy to address the recommendations made in the National Research Council's (NRC) report "A New Biology for the 21st Century: Ensuring the United States Leads the Coming Biology Revolution." The report accurately lays out the current status, potential and challenges for "New Biology" and how increased efforts in these areas can address major societal and environmental challenges. The National Science Foundation has a critical role to play in an interagency strategy and initiative in this area, as do other agencies such as the Department of Energy, the U.S. Department of Agriculture, and the National Institutes of Health.

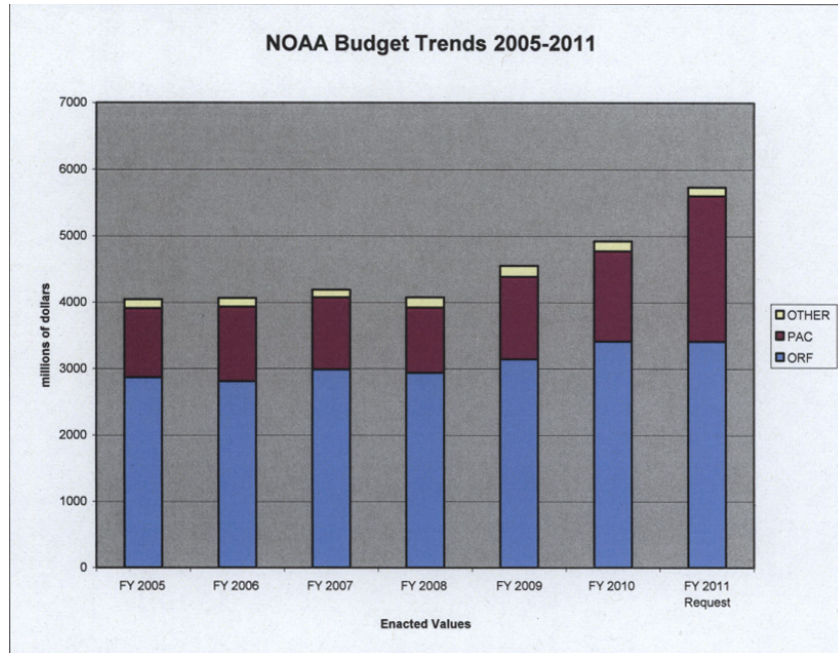
Thank you for your consideration of our testimony on behalf of the American Society of Plant Biologists. Please do not hesitate to contact the American Society of Plant Biologists if we can be of any assistance in the future.

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PREPARED STATEMENT OF OCEANA

Dear Chairwoman Mikulski, Ranking Member Shelby and members of the subcommittee, on behalf of more than 320,000 members of Oceana, the world's largest international organization focused solely on ocean conservation, I submit the following testimony on the fiscal year 2011 budget for the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. I request that this testimony be submitted for the official record.

NOAA's responsibilities are wide-ranging and essential to healthy oceans, public safety, and a vital economy. The agency provides fisheries management, coastal and marine conservation, weather forecasting, climate monitoring, and many other vital services. Despite the indispensable products and services that NOAA provides, the agency has been chronically underfunded. At first glance, the President's budget for fiscal year 2011 appears to buck this trend by increasing NOAA's funding to \$5.5 billion, but the vast majority of that increase is directed toward Procurement, Acquisition, and Construction (PAC) account while Operations, Research, and Facilities (ORF) account remains relatively flat-funded.

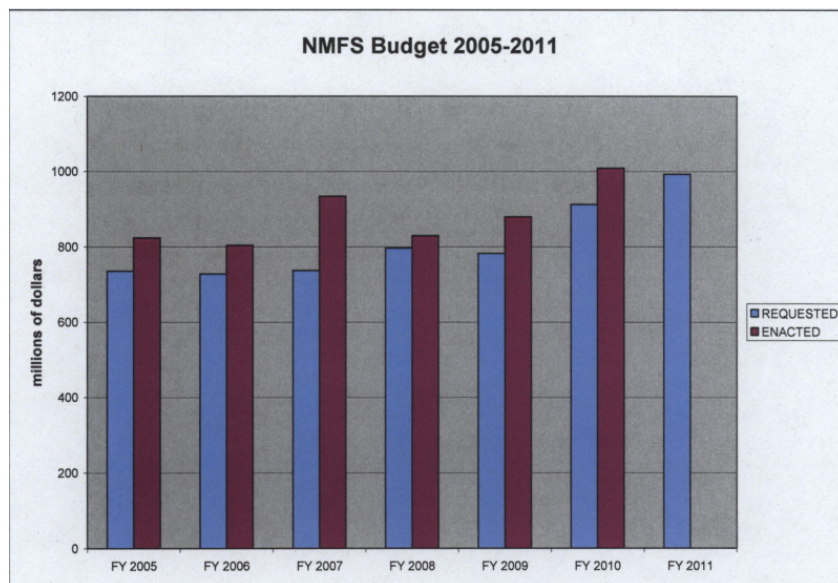


As evidenced above, the seemingly sharp increase in NOAA funding is primarily directed toward the PAC account. The vast amount of the increase in the PAC account is directed to satellites. While the satellite program is important and in need of increased funding, this increase must not come at the expense of NOAA's programmatic work, which operates under the ORF account. Funding for ORF has essentially idled since 2004, which, when accounting for inflation, has resulted in less money for ocean conservation and management.

Oceana strongly encourages the subcommittee to provide \$8 billion for NOAA in the fiscal year 2011 Commerce, Justice, Science appropriations bill. NOAA provides crucial services which are fundamental to the health of our oceans, coastal communities, and economy. While we are pleased that the President's request calls for increased funding for NOAA, many programs in the ORF account remain severely underfunded, and we ask that resources are directed toward marine research, management, and conservation programs including the following:



## NATIONAL MARINE FISHERIES SERVICE (NMFS)



The President's fiscal year 2011 budget requests for the National Marine Fisheries Service, NMFS, is less than the previous year's enacted level. This decrease is disappointing, as many NMFS programs remain underfunded, while the President himself has cited challenges facing our oceans, including, "habitat loss, fishing impacts, invasive species, [and] disease." Increased funding is needed to address these problems and to strengthen the following programs:

*Fishery Observer Programs—\$50.9 Million (Fiscal Year 2010 Enacted—\$41.1 Million)*

Fishery observers are independent scientists who collect data aboard working fishing vessels, and record the entire composition of what is brought aboard the boat. This is a more complete record than landings data which only record what is brought to port, failing to account for bycatch, the incidental catch of non-target fish species or marine wildlife. This bycatch is thrown overboard, often dead or dying. According to NMFS, 85 fisheries require observer coverage and only 42 of those have any amount of coverage. Of those 42, less than one-half have adequate levels of coverage. Observer coverage needs to increase to provide accurate and precise estimates of bycatch in commercial fisheries to allow for better fishery management.

*Stock Assessments—\$60.0 Million (Fiscal Year 2010 Enacted—\$51.0 Million)*

Fishery management must be supported by adequate data and science. Quantitative stock assessments provide the scientific basis for setting catch limits that allow for the maximum fishing effort while preventing overfishing. Strong science leads to healthy fisheries and a healthy economy. According to NOAA, only 128 of 230 major U.S. fish stocks were considered to have inadequate stock assessments in 2007. Based on an estimated cost of approximately \$1 million per stock assessment, NOAA would require an additional \$100 million above last year's funding in order to develop adequate stock assessments for all 230 major stocks, so by comparison, the increase sought is modest.

*Enforcement—\$75.0 Million (Fiscal Year 2010 Enacted—\$65.7 Million)*

Fisheries laws are ineffectual without adequate enforcement. Successful implementation of new legal requirements for annual catch limits (ACLs) and accountability measures in all U.S. fisheries will demand increased funding. Additional resources are needed to establish a program for enforcement and surveillance of Illegal, Unregulated and Unreported (IUU) fishing within the existing NMFS fisheries enforcement program. IUU fishing is a major threat to fisheries sustainability and value, marine habitat, and the livelihoods of fishermen and local communities. In-

creased funding would be used to identify and take action against vessels engaged in IUU fishing.

*Deep Sea Coral Conservation—\$7.0 Million (Fiscal Year 2010 Enacted—\$2.5 Million)*

The Magnuson Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) directed NOAA to establish a Deep Sea Coral Research and Technology Program, to map coral habitats and help scientists understand deep sea coral biology and ecology. These delicate, slow-growing corals often serve as nurseries for commercially and ecologically important fish and a variety of marine wildlife. These corals are extremely vulnerable to destructive fishing gear, and increased funding is necessary to map the location of, and minimize gear impacts on deep sea coral habitat.

*Sea Turtle Research and Conservation—\$26.4 Million (Fiscal Year 2010 Enacted—\$14.6 Million)*

Oceana urges the subcommittee to reject the administration's funding cut to marine turtle programs, and instead, expand upon existing funding. Sea turtles have been swimming the oceans for more than 100 million years, yet today, all six species of sea turtles in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). Commercial fisheries alone are authorized to kill 10,000 and injure an additional 334,000 turtles each year. This mortality is compounded by other challenges such as marine debris, pollution, coastal development, vessel strikes, and climate change. Additional funding is needed to research the cumulative impact of these threats, and to ensure the recovery of imperiled sea turtle populations.

*Marine Mammal Protection—\$82.0 Million (Fiscal Year 2010 Enacted—\$49.7 Million)*

Oceana requests that funding be restored to fiscal year 2005 enacted level of \$82 million. There are 13 domestic species of marine mammal that are currently protected under the ESA, all marine mammals are protected under the Marine Mammal Protection Act, and NMFS is the agency primarily responsible for their management. Increased funding is needed for updated stock assessments and research cruises, bycatch monitoring and reporting, research on avoidance and bycatch reduction techniques, the formation of take reduction teams, and implementation and enforcement of conservation measures for marine mammals.

#### NATIONAL OCEAN SERVICE

*Oil Spill Response and Restoration—\$29.2 Million (Fiscal Year 2010 Enacted—\$10.8 Million)*

NOAA's office of Response and Restoration (OR&R) is the lead trustee for the public's coastal natural resources and the scientific leader for oil spill response, assessment, and restoration. OR&R's mission is to respond to, protect and restore habitats, communities and economies injured by oil spills, hazardous waste sites, and vessel groundings. Renewed interest in oil drilling in the ocean threatens marine life and ocean ecosystems. Starting in fiscal year 2004 OR&R saw a steady decrease in its funding levels calling into question its ability to respond to two major events simultaneously. Increased funding levels are essential if OR&R is to return to its historic funding levels and for OR&R to complete its designated mandates.

*Integrated Ocean Acidification Initiative—\$15.0 Million (New Program in Fiscal Year 2011)*

Our oceans absorb approximately 30 percent of anthropogenic carbon dioxide emissions, amounting to more than 460 billion tons since the Industrial Revolution. Once the carbon dioxide is absorbed, it reacts with seawater to form carbonic acid. Among other things, the increased acidity prevents marine organism, such as pteropods, mussels, oysters, lobsters, and corals, from forming their calcified shells or skeletons. The acidity of our oceans' surface water has already increased by approximately 30 percent, and while the chemistry of this process is well understood, the breadth of the impact that it will have on marine ecosystems remains unknown. In 2009, Congress passed the Federal Ocean Acidification Research and Monitoring Act which authorized appropriations for ocean acidification research divided amongst NOAA and NSF. This money will support new technologies, monitoring systems, improved modeling, and dedicated research programs.

New Programs in NOAA this year include a new Climate Service and work on Coastal and Marine Spatial Planning, as well as participation in the Ocean Policy

Task Force, as directed by President Obama. New funding will be required to fulfill these new directives:

*National Climate Service.*—Will bring together all the agency's climate science and products and make them available in one location, which will allow for improved communication and coordination within the agency, and will enhance accessibility to decisionmakers and the general public. The Climate Service will build upon current climate research, observations, modeling, predictions and assessments, but aggregate the information in one place.

*National Ocean Policy.*—An Interagency Ocean Policy Task Force was established on June 12, 2009 by President Obama. The Task Force was charged with developing recommendations for a comprehensive national policy for the protection, maintenance and restoration of our oceans, coasts and Great Lakes; a structure to coordinate and implement the policy throughout the Federal Government; and a framework for coastal and marine spatial planning (CMSP). At the onset of President Obama's administration, he said, "We have a stewardship responsibility to maintain healthy, resilient, and sustainable oceans, coasts, and Great Lakes resources for the benefit of this and future generations." Now, NOAA must be provided the resources to follow through.

*Coastal and Marine Spatial Planning.*—Is a tool to implement the National Ocean Policy throughout U.S. waters and address the ever-growing demands on our oceans such as renewable energy development, commercial and recreational fisheries, protecting marine wildlife, habitat protection, marine shipping, aquaculture, recreation, and many other activities. An initial investment in MSP will allow the United States to take a comprehensive approach to managing our coasts and oceans, rather than relying on sector-by-sector management. MSP will allow for improved planning with an emphasis on science-based decisionmaking.

Thank you for your consideration of these recommendations.

NOTE.—Oceana received no funding from a Federal grant (or subgrant thereof) or contract (or subcontract thereof) in the current fiscal year or either of the two previous fiscal years.

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PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF STATE ALCOHOL AND DRUG ABUSE DIRECTORS, INC.

Chairwoman Mikulski, Ranking Member Shelby, members of the subcommittee, thank you for your leadership on issues related to addiction. I serve as executive director of the National Association of State Alcohol and Drug Abuse Directors or NASADAD, which includes our component groups the National Prevention Network (NPN) and National Treatment Network (NTN). Our members are responsible and accountable for planning, managing and improving each State's substance abuse prevention, treatment and recovery system.

*State Substance Abuse Agency-supported Services to Criminal Justice Populations.*—In a NASADAD inquiry of the membership released in February 2009, State substance abuse directors were asked to estimate the percentage of cases referred to them from the criminal justice system. NASADAD found that 13 States estimated between 31 and 40 percent; 12 States estimated between 41 and 50 percent; 10 States estimated between 51 and 60 percent; and 3 States estimated between 61 and 70 percent of referrals came from the criminal justice system.

The principle source of funding for NASADAD members is SAMHSA's Substance Abuse Prevention and Treatment (SAPT) Block Grant, which represents 40 percent of State substance abuse agency expenditures. Yet funding for the SAPT Block Grant has been stagnant over the past few years. While we certainly appreciate the increase of \$20 million for the program in fiscal year 2010, it is estimated that an additional \$403.7 million was needed just to maintain services at fiscal year 2004 levels.

As a result, DOJ-supported programs represent an extremely critical resource for State substance abuse agencies as they provide services to such a large percentage of criminal justice populations. A critical component of this work is the promotion of policies that require strong and direct linkages between Federal programs pertaining to addiction and State substance abuse agency directors. This direct linkage helps promote clinically appropriate standards of care; accurate performance and outcome data; and effective, efficient and coordinated service delivery.

*Fiscal Year 2011 Recommendations.*—We respectfully ask for your support of the following recommendations as you consider fiscal year 2011 appropriations for DOJ programs:

—*Residential Substance Abuse Treatment (RSAT)*—\$45 million.—NASADAD supports \$45 million, an increase of \$15 million compared to fiscal year 2010, for

the Residential Substance Abuse Treatment (RSAT) program. RSAT benefits all 50 States by awarding grants for the establishment of drug treatment programs within State and local correctional facilities. These grants call for collaboration between the criminal justice administrators and State substance abuse agencies to help ensure that evidence-based practices and qualified personnel are available to assist offenders address their substance abuse problems. With an estimated 80 percent of all offenders in the criminal justice system having some level of substance abuse problem, programs like RSAT that offer treatment during incarceration, matched with aftercare services, are vital to any successful reentry strategy.

—*Enforcing Underage Drinking Laws (EUDL)*—\$25 million.—NASADAD is extremely concerned with the administration’s proposal to consolidate all title V programs within the Office of Juvenile Justice and Delinquency Prevention (OJJDP) into one funding stream. This proposal would have the effect of eliminating the EUDL program which is housed within title V.

The EUDL program is allocated as a block grant to every State and the District of Columbia in order to help reduce underage drinking and improve public safety through the enforcement of laws, policies and sanctions. The EUDL program also includes discretionary grant portfolio to help local jurisdictions initiate and maintain underage drinking laws programs. Overall, EUDL encourages collaboration between State agencies, which is critical when establishing a comprehensive Statewide underage drinking strategy. In addition to alcohol compliance checks, States use the funds to help local coalitions, schools and communities expand their substance abuse prevention efforts and their work with law enforcement. EUDL is a critical tool that helps law enforcement and the prevention and treatment field work together to reduce the negative effects of underage drinking.

The proposal to eliminate EUDL funding arrives during a time when substance abuse prevention resources are dwindling. In fiscal year 2010, the Department of Education’s Safe and Drug Free Schools and Communities (SDFSC)—State Grants program was eliminated—representing a loss of approximately \$300 million. In fiscal year 2011, the administration is proposing a \$9 million decrease in the Substance Abuse and Mental Health Services Administration’s (SAMHSA) Drug Free Communities (DFC) grant program. The loss of EUDL funds would represent another devastating loss for State substance abuse prevention systems. NASADAD requests level funding, or \$25 million, for the EUDL program.

—*Second Chance Act Programs*.—NASADAD is supportive of funding for Second Chance Act programs. The statute itself notes the importance of State substance abuse agencies, noting “successful reentry programs require close interaction and collaboration with each State’s Single State Authority for Substance Abuse as the program is planned, implemented and evaluated.” While NASADAD supports finding for all Second Chance Act programs, we offer specific recommendations for the following:

—*Adult and Juvenile Offender State and Local Reentry Demonstration Projects*—\$50 million.—The Adult and Juvenile Offender State and Local Reentry Demonstration Projects provide grants to State and local governments to coordinate reentry efforts and establish best practices. Allowable uses of the funds include substance abuse treatment, employment services, housing, mental health treatment, mentoring, among other things. The authorization also requires a strong linkage with the State substance abuse agency. NASADAD believes that the projects are vital in helping offenders successfully reenter society and requests \$50 million in fiscal year 2011, an increase of \$13 million compared to fiscal year 2010.

—*State, Tribal and Local Reentry Courts*—\$15 million.—The State, Tribal and Local Reentry Courts program authorizes the Attorney General to make competitive grants to States, local governments, and Indian tribes that improve drug treatment in prisons, jails, juvenile facilities; develop and implement programs for “long-term substance abusers” through assessment, treatment and case management; provide recovery support services; and establish pharmacological treatment services as part of drug treatment programs. Each eligible applicant must certify that the program has been developed in consultation with the State substance abuse agency. NASADAD requests \$15 million for the reentry courts in fiscal year 2011, representing an increase of \$5 million compared to fiscal year 2010.

—*Grants for Family-Based Substance Abuse Treatment*—\$12.5 million.—The Second Chance Act authorized grants to States, local governments and Indian tribes to develop and implement comprehensive family-based substance abuse treatment programs. The program must ensure coordination and consultation with the State substance abuse agency. NASADAD requests \$12.5 million for

this program in fiscal year 2011, representing an increase of \$5 million compared to fiscal year 2010.

*—Offender Reentry Substance Abuse and Criminal Justice Collaboration Program—\$15 million.*—The Second Chance Act authorized competitive grants to States, local governments, and Indian tribes for the purpose of improving drug treatment programs in prisons, jails, juvenile facilities and reducing drug and alcohol use by “long-term substance abusers.” Grants may support assessments, treatment, case management services, recovery support, and pharmacological drug treatment services as part of any drug treatment program. Each eligible applicant must certify that the program has been developed in consultation with the State substance abuse agency and certify the program is clinically appropriate and provides comprehensive treatment. NASADAD requests \$15 million for this program in fiscal year 2011, for an increase of \$2 million compared to fiscal year 2010.

*Drug Courts—\$65 million.*—DOJ’s Bureau of Justice Assistance (BJA) reports that all 50 States and the District of Columbia, several Native American Tribal courts, two territories and two Federal courts operate drug courts. Drug courts work to address the high level of drug use and abuse found within the non-violent offender population by linking them to substance abuse treatment programs. Reports have shown drug courts to improve retention rates—a significant factor in recovery—and reduce recidivism. The Association also encourages strong linkages with State substance abuse agencies in the planning and implementation of the Drug Court Program. This partnership will ensure that drug courts use clinical treatment standards set by the State substance abuse agency, discourage system fragmentation, promote sustainability and encourage the use of common client level performance and outcomes data.

NASADAD opposes the administration’s fiscal year 2011 proposal to consolidate the Drug Court and Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) programs into a Problem Solving Court Program. The Association recommends stakeholder dialogue and consensus before any such changes are proposed. NASADAD recommends implementing \$65 million for the Drug Court Program in fiscal year 2011, representing an increase of \$20 million compared to fiscal year 2010.

*Mentally Ill Offender Act Program—\$15 million.*—The Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) is an authorized program aimed at preventing the mentally ill and those with co-occurring mental health and substance use disorders from revolving in and out of the criminal justice system without appropriate treatment. Again, the Association remains concerned about the proposal to consolidate the MIOTCRA program with the Drug Court Program. While one aspect of the MIOTCRA program focuses on mental health courts, a large piece of the program seeks to foster collaboration between the criminal justice, mental health and substance abuse agencies to ensure that mentally ill offenders receive the appropriate treatment services they need. We hope that Congress will provide \$15 million for the MIOTCRA program in fiscal year 2011, representing an increase of \$3 million compared to fiscal year 2010.

*Byrne/Justice Assistance Grants (JAG)—\$1.1 billion.*—The Edward Byrne Memorial Justice Assistance Grant (JAG) program is the primary provider of Federal funding for criminal justice activities to State and local jurisdictions. This program supports a broad range of activities including education, prevention and treatment for substance use. Specifically, the 2007 application notes that a core purpose area is drug treatment programming. NASADAD encourages strong linkages with State substance abuse agencies in the planning and implementation of Byrne/JAG. NASADAD joins our criminal justice coalition partners in calling for the authorized funding level of \$1.1 billion in fiscal year 2011.

*Appreciation DOJ-SAMHSA Partnership.*—NASADAD recognizes the work of DOJ and SAMHSA as they partner on issues pertaining to addiction and crime. This work has moved forward under the leadership of Ms. Laurie Robinson, Assistant Attorney General, Office of Justice Programs (OJP); Ms. Pam Hyde, SAMHSA Administrator; Dr. Eric Broderick, SAMHSA’s Deputy Administrator; Dr. H. Westley Clark, Director of the Center for Substance Abuse Treatment (CSAT); and others.

Thank you for the opportunity to provide input. We look forward to working with the subcommittee on these important issues.

## PREPARED STATEMENT OF THE NATURAL SCIENCE COLLECTIONS ALLIANCE

The Natural Science Collections Alliance (NSC Alliance) appreciates the opportunity to provide testimony about the President's fiscal year 2011 budget request for the National Science Foundation (NSF). We encourage Congress to appropriate the President's requested \$7.424 billion for NSF.

NSC 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 over 100 institutions who 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.

The NSF drives scientific and general economic innovation and supports job creation through research grant awards to scientists and research institutions, supporting the acquisition of research instruments and investments in research infrastructure, and supporting the education and training of undergraduate and graduate students. These and other NSF programs underpin the Nation's research enterprise. Research funded by NSF generates knowledge and ideas that spur economic growth, stimulate innovation, and improve our understanding of the world in which we live.

The President's budget request for fiscal year 2011 would invest \$6.019 billion in the Research and Related Activities (R&RA) programmatic accounts. Through R&RA, the agency supports innovative research that advances the frontiers of our natural, physical and social science disciplines. Included within this request is \$767.81 million for the Biological Sciences Directorate (BIO), a 7.5 percent increase over the fiscal year 2010 enacted.

The President's budget would provide the Geosciences Directorate (GEO) with \$955.3 million in fiscal year 2011, a 7.4 percent increase.

As the primary Federal funder of basic biological research, BIO serves a vital role in ensuring our Nation's global leadership in the biological sciences. BIO provides 68 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. The Directorate supports transformative research that has improved our understanding of complex living systems and is helping to address major new challenges—mitigating and adapting to climate change, understanding and conserving biodiversity, and developing new bio-inspired technologies.

NSF provides essential support for our Nation's natural science collections. These research centers enable scientists and students to study the data of life for the history of the planet, conduct modern biological, geological, cultural, and environmental research, and provide undergraduate and graduate students with the opportunity to learn directly from nature.

The President's budget request for NSF includes important funding for natural science collections. Ten million dollars is allocated to continue efforts to digitize and network U.S. specimen-based research collections. This funding is desperately needed to increase access to the data and specimens in our Nation's scientific collections. Collections play a central role in many fields of biological research, including disease ecology and predicting outbreaks of disease, biodiversity, and climate change. They also provide critical information about existing gaps in our knowledge of life on Earth.

The importance of scientific collections to our Nation's research infrastructure was recognized by the Federal Interagency Working Group on Scientific Collections, which reported that: ". . . scientific collections are essential to supporting agency missions and are thus vital to supporting the global research enterprise."

The fiscal year 2011 budget request includes important funding to continue efforts to better understand biodiversity. Funding is included for cross-disciplinary research to define the impacts of biodiversity on ecosystem services and human well-being. Additionally, the Science, Engineering, and Education for Sustainability (SEES) program would continue to study the scope and role of biodiversity in climate adaptation and ecosystem sustainability.

Within the R&RA program, GEO provides some support for research and student training opportunities at natural science collections. GEO supports cross disciplinary research on the interactions between Earth's living and non-living systems—research that has important implications for our understanding of climate change, water and natural resource management, and biodiversity.

The President's budget provides important funding for the Informal Science Education program within the Education and Human Resources division. This program works to advance our understanding of informal science, technology, engineering,

and mathematics (STEM) learning. This program supports projects that create tools and resources for STEM educators working in science museums and outside of traditional classrooms. The Informal Science Education program builds professional capacity for research, development, and practice in the field. The administration's fiscal year 2011 budget would decrease funding for the program by \$1.6 million from fiscal year 2010 enacted. This program is too important to the future of our Nation to have its budget cut. We encourage Congress to restore the proposed cut and to provide important new funding for the Informal Science Education program.

A sustained Federal investment in NSF is prudent. Public investments in biological sciences research have been shown to generate a \$2 to \$10 return on each dollar invested. The President's 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 \$7.424 billion in NSF for fiscal year 2011.

Thank you for your consideration of this request.

#### PREPARED STATEMENT OF THE MARINE FISH CONSERVATION NETWORK

On behalf of the nearly 200 environmental organizations, fishing associations, aquariums, and marine science groups dedicated to conserving marine fish and achieving sustainable fisheries, the Marine Fish Conservation Network submits the following testimony for the record on the fiscal year 2010 budget for National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration (NOAA). For fiscal year 2011, the Network is asking the subcommittee to increase funding for core fisheries conservation and management programs \$69.2 million above the President's fiscal year 2011 budget request, in the following program areas:

#### NMFS FISHERIES RESEARCH AND MANAGEMENT BUDGET LINES

[In millions of dollars<sup>1</sup>]

	Fiscal Year 2010 Enacted Budget	Fiscal Year 2011 President's Budget	Fiscal Year 2011 MFCN Request
Expand annual stock assessments .....	50.9	51.7	61.7
Survey and monitoring .....	23.7	24.1	30.0
Fisheries statistics .....	21.0	21.4	32.4
Observer program .....	41.0	38.8	60.0
Cooperative research .....	17.5	7.1	17.1
Reducing bycatch .....	3.4	3.4	10.0
Reduce fishery impacts to EFH .....	0.5	0.5	5.0

<sup>1</sup> Numbers rounded to nearest \$100,000.

NOAA and NMFS are responsible for the management and conservation of fisheries resources that are the economic lifeblood of many coastal communities, but NOAA Fisheries has long been underfunded and needs additional resources to meet its conservation mandates for fisheries.<sup>1</sup>

Recent budget increases supported by this subcommittee have enabled NMFS to expand its data collection and stock assessment capabilities, but significantly more support is needed to address the needs of our Nation's fisheries. For instance, NOAA's own analysis indicates that current funding levels for expanded stock assessments provide the capability to assess less than 60 percent of the 230 major fish stocks that comprise the Fish Stock Sustainability Index (FSSI).<sup>2</sup> Without increased funding for improved data collection and expanded stock assessments, many fishery annual catch limits (ACLs) will be determined without assessments or using assessments that are infrequently updated. In such cases, fishery managers are compelled to set ACLs lower to account for the higher uncertainty and risk of overfishing. Funding to improve stock assessments decreases uncertainty and therefore may allow increased fishing opportunities.

Additional resources are also needed to support improved data collection and management of our recreational fisheries. Despite their often sizeable economic im-

<sup>1</sup> See, for instance, USCOP (2004), pp. 274-304, and NOAA/NMFS, Requirements for Improved and Integrated Conservation of Fisheries, Protected Resources and Habitat, January 2003.

<sup>2</sup> See President's fiscal year 2010 budget request, Congressional Submission, Exhibit 13, pp. 215-217.

portance to coastal communities, much less data is collected from recreational fisheries than commercial fisheries.<sup>3</sup> The lack of timely recreational fisheries data has created situations in which recreational fisheries must be managed using Marine Recreational Fisheries Statistics Survey (MRFSS) data that are not designed for the purpose of preventing fisheries from exceeding ACLs. We urge the subcommittee to address this shortcoming and provide funding for a recreational fishery data collection system that prioritizes the timely collection and analysis of recreational catch data.

Therefore, we request increases in the following NMFS Fisheries Management and Research programs for activities related to the collection of baseline data collection supporting the implementation of the new mandates and requirements of the MSRA aimed at ending overfishing and achieving sustainable, productive fisheries:

*Expand Stock Assessments: +\$10 Million Over the President's Request for a Total of \$61.7 Million.*—The Omnibus Appropriations Act of 2010 funds this program at NOAA's requested fiscal year 2010 level of \$50.9 million. While we welcome and support the increase in funding, it is not sufficient to achieve the agency's goal of developing stock assessments for all 230 major stocks in the Fish Stock Sustainability Index (FSSI). Fishery managers have substantially greater confidence that catch limits will prevent overfishing when the ACLs are based on an assessment. The requested funding level we request in fiscal year 2011 is needed to ramp up the capability to provide stock assessments for all major fisheries. Timely, updated stock assessments will reduce the scientific uncertainty and may enable fishery managers to set higher ACLs while still preventing overfishing and rebuilding overfished stocks.

*Survey and Monitoring Projects: +\$6 Million Over the President's Request for a Total of \$30 Million.*—The enacted fiscal year 2010 budget restores funding for this program to the level sought by NOAA in the fiscal year 2009 budget request in recognition of the fact that this activity provides essential baseline data needed for developing and updating stock assessments. Nevertheless, many regions will continue to experience chronic underfunding of basic resource surveys and data collection (both fishery-independent resource surveys and fishery catch sampling and monitoring) required to support stock assessment development and scientific recommendations for catch limits. We request that fiscal year 2011 funding for this program be increased to at least \$30 million in order to support expanded resource surveys and improved stock assessments in all regions, for both commercial and recreational fisheries. Additional funding will improve scientific estimates of stock size and reduce uncertainty, improving the ability of fishery managers to set ACLs that prevent overfishing while increasing fishing opportunities.

*Fisheries Statistics: +\$11 Million Over the President's Request for a Total of \$32.4 Million.*—The 2006 amendments to the Magnuson Stevens Act required NMFS to improve the quality and accuracy of marine recreational fishery data with a goal of achieving acceptable accuracy and utility for each fishery within 2 years. The Omnibus Appropriations Act of 2010 includes \$9 million in total funding for the Marine Recreational Information Program (MRIP), less than one-half of the \$20 million per year that is needed to fully implement the MRIP and expand the National Registry to State and Federal waters. We recommend a funding level of \$32.4 million for fiscal year 2011, reflecting an increase of \$11 million over the President's fiscal year 2011 request to the MRIP to provide more timely data needed to manage recreational fishery catch limits and avoid overages that can result in reduced fishing opportunities in future years.

*Fisheries Observers/Training: +\$21.2 Million Over the President's Request for a Total of \$60 Million.*—The President's fiscal year 2011 budget request would cut observer program funding from \$41 million in fiscal year 2010 to \$38.8 million. Current funding levels support at-sea observer programs in about 40 fisheries nationwide, only 23 of which were considered by NMFS to have adequate levels of observer coverage in 2009.<sup>4</sup> Nearly three-quarters of U.S. fisheries assessed for observer coverage have very little or no coverage, based on a 2004 national bycatch assessment<sup>5</sup> and updated information in 2009.<sup>6</sup> Additional funding for observers

<sup>3</sup>USCOP (2004), p. 281.

<sup>4</sup>See President's fiscal year 2010 budget request, Congressional Submission, Exhibit 13, p. 245. The full list of fisheries prioritized for observer coverage in 2004 can be found in: U.S. Dep. of Commerce/NOAA/NMFS, Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs, NOAA Technical Memorandum NMFS-F/SPO-66, October 2004. 108 p.

<sup>5</sup>The full list of fisheries assessed for observer coverage in 2004 can be found in: U.S. Dep. of Commerce/NOAA/NMFS, Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs, NOAA Technical Memorandum NMFS-F/SPO-66, October 2004. 108 p.

<sup>6</sup>See President's fiscal year 2010 budget request, Congressional Submission, Exhibit 13, p. 245.



will provide improved fisheries catch and bycatch data that is essential to produce stock assessments, reduce bycatch, monitor fishery compliance with catch limits, and increase industry confidence in scientific information used to set catch limits.

*Cooperative Research: +\$10 Million Over the President's Request for a Total of \$17.1 Million.*—The President's fiscal year 2011 budget proposes to cut \$4.56 million from this budget line and transfer another \$6 million to cooperative research under the Catch Shares budget line. Funding for this budget line supports research in partnership with fishermen to help improve the quality of fish assessments and assessment of non-target bycatch mortality, among other things. In addition to contributing to more assessment information, cooperative research funds partnerships between key stakeholders and NMFS, increasing stakeholder confidence in the data and creating a more transparent process. The amount requested for this budget line is intended to restore the funding that the President's budget proposes to remove, in order to provide additional opportunities for cooperative research in fisheries that are not part of catch share programs.

*Bycatch Monitoring and Reduction: +\$6.6 Million Over the President's Request for a Total of \$10 Million.*—The President's fiscal year 2011 request \$3.4 million maintains stable funding for this program, but current funding is woefully inadequate to address the scope of the problem. Greater funding is needed to develop and test bycatch reduction technologies, to support cooperative research opportunities with fishermen, and to collect and process reliable fisheries bycatch information for use in stock assessments and management decisionmaking. The Network recommends that Congress provide at least \$10 million in fiscal year 2011 for the Bycatch Reduction Initiative as part of a plan to ramp up program funding toward the \$30 million per year level recommended by the U.S. Commission on Ocean Policy.<sup>7</sup>

*Reduce Fishing Impacts on Essential Fish Habitat (EFH): +\$4.5 Million Over the President's Request for a Total of \$5.0 Million.*—The President's fiscal year 2011 request of \$0.53 million would keep this program on life support, and the low level of funding for this budget line item speaks to the low priority given to protection of vulnerable EFH. The Magnuson-Stevens Act of 1996 gave fishery managers a clear mandate to identify and protect EFH. Healthy fish habitat is an essential precondition for rebuilding overfished stocks and sustaining fisheries over the long-term. Program funding should reflect that importance. The Network recommends that Congress provide no less than \$5 million in fiscal year 2011 for EFH conservation as part of a plan to ramp up program funding toward the \$15 million per year level recommended by the U.S. Commission on Ocean Policy.<sup>8</sup>

Increased investments in these fisheries programs will improve efforts to set sustainable catch limits and monitor compliance, facilitate the rebuilding of fisheries to meet their full economic and biological potential, and increase fishing industry confidence in the science being used to make management decisions.

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#### PREPARED STATEMENT OF NATIONAL PUBLIC RADIO

Chairwoman Mikulski and Ranking Member Shelby, this statement asking for an increase in funding for the fiscal year 2011 Public Telecommunications Facilities Program (PTFP) is submitted on behalf of the public radio system including NPR and the roughly 800 public radio stations that serve communities large and small throughout the United States. While everyone recognizes that these are extraordinarily challenging times, PTFP has been significantly underfunded for the past several years. Each year of underfunding brings the consequence of reduced public radio service. Public broadcasting's request of \$44 million for PTFP will begin to address the long list of pressing needs within the public broadcasting station community. This level of funding will ensure that public radio stations can improve and expand their valued public service offerings to local communities nationwide. As the chairwoman and Senator Shelby well know, PTFP is the only Federal funding program that assists stations with replacement of equipment that has been damaged or simply worn out.

NPR and its more than 850 public radio station partners operate as an independent, nonprofit media organizations nationally acclaimed for news, information, music and entertainment programming. Today, more Americans than ever—over 33 million people—are tuning into public radio programming and listening to NPR and public radio stations on a weekly basis. Our audience has grown 66 percent in the past 10 years, bucking a precipitous decline in other media and a general overall

<sup>7</sup> See USCOP 2004: Table 30.1; Appendix G.

<sup>8</sup> USCOP 2004: Table 30.1; Appendix G.

decline in radio listening. Public radio stations independently select and produce community appropriate programming that best serves their listening areas.

Since 1962, public radio stations have utilized PTFP grants for replacement, maintenance and necessary upgrades of audio production and broadcast transmission equipment. PTFP is a competitive matching grant program to help public broadcasters, State and local governments, and Native American tribes construct facilities to bring educational and cultural programs to the public. Run by the National Telecommunications and Information Administration (NTIA) under the Department of Commerce, this program provides financial assistance to stations for capital projects such as replacing outdated hardware, purchasing new equipment to expand service to underserved and un-served areas, and converting to digital technology.

This essential capital grant program is available to public broadcasters, many of whom are constrained in their ability to finance capital expenditures. Stations cannot pass their costs on to their listeners, and most cannot take out loans for such projects, especially in this challenging economic climate and those in rural areas. The matching-grant structure of PTFP allows public radio stations to leverage funding from local government and private entities while providing the money needed to help defray the high costs of capital projects.

Fiscal year 2011 brings an important opportunity for public radio broadcasters. In 2007, the Federal Communications Commission (FCC) opened a filing window for non-commercial educational radio stations, the first such frequency filing opportunity in more than 7 years. The response from public radio stations has been enormous, with several hundred applications filed for new frequencies to improve or provide first service for communities across America. Each of these new frequencies, once approved by the FCC, will require a station build-out, adding to the vitally important matching grant financing provided by PTFP.

The subcommittee should also be made aware that 35 new stations serving tribal communities are waiting to be built. The tribal participation in the FCC's 2007 new frequency window indicates that Native Americans are highly interested in securing terrestrial radio stations for their communities. Radio still works in Indian Country where broadband penetration is less than 10 percent, where 911 services are sparse and where roads remain to be paved. These stations are anchor institutions, engaging tribal members in the information stream about health, public safety, education, and electoral processes.

The demand for PTFP funding far exceeds the amount of funds available. In fiscal year 2009, there were over 220 applications requesting more than \$48 million in funding through PTFP, yet only \$20 million was made available. Unfortunately, budget constraints have limited the amount of funds available for PTFP grants. Annual appropriations for the program in fiscal year 2004 were cut by 50 percent (from \$43.2 million in fiscal year 2003 to \$21.8 million). Funding levels for the past 7 years have remained at that level or lower. Increasing PTFP this year to its pre-2004 level of \$44 million will help to meet the demand for this small, but important program, to help them to expand coverage to underserved and un-served areas.

In this era of local public radio stations utilizing digital technology to expand their public service reach, computer systems rely on software which needs constant updating and replacement. PTFP funding will be essential to stations that need to maintain reliable digital equipment and service that meets the needs of their communities. PTFP funding is the primary funding source for station equipment and technology needs.

In fiscal year 2009, PTFP approved 63 radio awards totaling \$6.422 million. The largest radio grant went to construct a new public radio station on 90.5 MHz in Shiprock, New Mexico, that will provide first and local origination service to 31,883 people and additional service to 11,166 people on the Navajo Indian Reservation and the Four Corners area of Colorado, New Mexico, Arizona, and Utah.

Thirty-five radio grants were awarded to extend new public radio service to over 400,000 people and provide additional service to almost 2 million people. Two of the projects will fund booster stations to improve service to portions of New York City where coverage is shadowed by Manhattan skyscrapers. Communities that will receive first or expanded public radio service are: Bella Vista, Burney and Susanville, CA; Boulder, Dove Creek, Montrose, Salida and Wiley CO; Milledgeville and Young Harris, GA; Caldwell, ID; Manhattan, KS; Frederick, MD; Cloquet, Hinkley, Nett Lake and Redwood Falls, MN; Greenville, MS; Box Elder (Rocky Boy Indian Reservation), MT; Okracoke, NC; Fort Totten, ND; Des Moines, Shiprock (Navajo Indian Reservation) and Tucumcari, NM; Acra, Mt. Beacon and New York City, NY; Bend and Brightwood, OR; Spearfish/Belle Fourche, SD; Gloucester Point, Gloucester Courthouse and Lexington, VA; Medical Lake, Mount Vernon and Port Townsend, WA; and Fort Washakie (Wind River Indian Reservation), WY.

A grant will permit KPBX–FM, Spokane, WA, to distribute additional program streams for broadcast on five digital repeater stations in Omak, Oroville, Twisp, and Brewster, WA; and Kellogg, ID. Also, NPR was awarded a planning grant to determine the feasibility of digital conversion of radio reading services for the blind and low vision community.

Maintaining service is also one of PTFP's main priorities. PTFP is the only source of funds for local public radio stations to replace equipment damaged or destroyed by disasters such as hurricanes, tornados, floods, wildfires, earthquakes and ice storms. In fiscal year 2009, the program awarded 26 projects to replace urgently needed equipment at public radio stations. PTFP priorities when issuing grants include expansion of public broadcasting to underserved and un-served areas of the country. For more than 46 years, the program has played a major role in the development and expansion of public radio throughout the country. Today, more than 93 percent of the American public can listen to a public radio station in their community.

On behalf of public radio stations all across America, NPR urges the subcommittee to approve \$44 million for PTFP.

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#### PREPARED STATEMENT OF THE AMERICAN GEOLOGICAL INSTITUTE

To the chairwoman and members of the subcommittee: The American Geological Institute (AGI) supports fundamental 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 Earth, energy and the environment has fueled economic growth, mitigated losses and sustained our quality of life. The subcommittee's leadership in expanding the Federal investment in basic 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 a total budget of \$7.424 billion for NSF; \$919 million for NIST, \$5.554 billion for NOAA, and \$1.802 billion for Earth Science at NASA.

AGI is a nonprofit federation of 46 geoscientific and professional societies representing more than 120,000 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 and interaction with the environment.

*NSF.*—AGI applauds the President's request for an overall budget of \$7.424 billion for NSF and the administration's commitment to science. AGI greatly appreciates Congress's support for science and technology in recent appropriations and through the America COMPETES Act of 2007 as well as the American Recovery and Reinvestment Act of 2009. The forward-looking investments in NSF are fiscally responsible and will pay important dividends in future development and innovation that drives economic growth, especially in critical areas of sustainable and economic natural resources and reduced risks from natural hazards. The investments will save jobs, create new jobs, support students and provide training for a 21st century workforce.

*NSF 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 ultimately sustain and transform life on this planet. About 63 percent of support for university-based geosciences research comes from this directorate.

The President's request for fiscal year 2011 asks for \$281 million for Atmospheric Sciences, \$199 million for Earth Sciences, \$378 million for Ocean Sciences and \$98 million for Innovative and Collaborative Education and Research (ICER) within GEO. Much of the geosciences research budget is for understanding that which is critical for current national needs, such as climate change, water and mineral resources, energy resources, environmental issues and mitigation of natural hazards. AGI asks the subcommittee to strongly support these essential investments.

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 information and understanding that is used by researchers and managers in the public, government and private sector. Among the major facilities, the Academic Research Fleet would receive \$77 million, EarthScope

Operation would receive \$26 million, Incorporated Research Institutions for Seismology (IRIS) would receive \$12.73 million, Ocean Drilling Activities would receive \$46 million, and the National Center for Atmospheric Research would receive \$108 million. AGI strongly supports robust and steady funding for infrastructure and operation and maintenance of these major facilities.

Now is the time to boost geosciences research and education to fill the draining pipeline of skilled geoscientists and geo-engineers working in the energy and mining industries; the construction industry; the environmental industry; the academic community; K–12 education; and in Government, such as the United States Geological Survey as well as State and local government natural resource and emergency management agencies.

*NSF Support for Earth Science Education.*—Congress can improve the Nation's scientific literacy by supporting the full integration of Earth science information into mainstream science education at the K–12 and college levels. AGI supports the Math and Science Partnership (MSP) program, a competitive peer-reviewed grant program that funds only the highest quality proposals at NSF. The NSF's MSP program focuses on modeling, testing and identification of high-quality math and science activities whereas the Department of Education MSP program does not. The NSF and Department of Education MSP programs are complementary and are both necessary to continue to reach the common goal of providing world-class science and mathematics education to elementary and secondary school students.

Improving geoscience education to levels of recognition similar to other scientific disciplines is important because:

- 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.
- 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 policy making 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.

*NOAA.*—AGI supports the President's request for increased funding for NOAA for a total budget of \$5.554 billion. AGI supports the requested increases for the National Weather Service for analysis, modeling and upgrading of observing systems; for the Oceanic and Atmospheric Research program; and for the National Environment Satellite, Data and Information Service. All three programs are critical for understanding and mitigating natural and human-induced hazards in the Earth system while sustaining our natural resources. AGI continues to support the implementation of the U.S. Ocean Action Plan of 2004 and believes the funding requests are consistent with the recommendations of the plan.

*NIST.*—We applaud the President's request for an increase in research and related funding for NIST in fiscal 2011 for a total budget of \$919 million. Basic research at NIST is conducted by Earth scientists and geotechnical engineers and used by Earth scientists, geotechnical engineers and many others 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 strongly support increases for Measurements and Standards for the Climate Change Science Program, Disaster Resilient Structures and Communities and the National Earthquake Hazards Reduction Program (NEHRP). The climate change research will improve the accuracy of climate change measurements, may reduce satellite costs and may help to guide climate change policy. The hazards 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 NEHRP, but has received only a small portion of authorized and essential funding in the past. AGI strongly supports a doubling of the NIST budget over 5 to 7 years as authorized in the America COMPETES Act of 2007, so that core research functions at NIST are maintained, while needed funding for climate change and hazards are provided.

NASA.—AGI supports the vital Earth observing programs within NASA. AGI strongly supports the requested budget of \$1.8002 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. In addition some satellites need to be launched at a particular time and in a particular sequence to meet mission objectives. The requested increase for fiscal 2011 and proposed increases for future years are wise and well-planned investments and AGI requests the support of the subcommittee for this budget outline.

I 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 SEARCH, THE NATIONAL CONSORTIUM FOR JUSTICE  
INFORMATION AND STATISTICS

INTRODUCTION

I am Ron Hawley, executive director of SEARCH. Thank you, chairwomen and members of the subcommittee for the opportunity to speak to you today and for your past support. The efforts of your outstanding subcommittee staff are also greatly appreciated. SEARCH has requested a \$500,000 earmark from the Department of Justice, Byrne Discretionary Grant Program in the Commerce, Justice, Science, and Related Agencies appropriation bill for the SEARCH Justice Information Sharing Technical Assistance Program.

SEARCH is a State criminal justice support organization 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 criminal justice agencies nationwide.

PAST SEARCH PROGRAMS

SEARCH has a well-earned record for providing on-site technical assistance and training to State and local criminal justice agencies in the planning, development, implementation and management of information sharing activities for over 40 years. This record and our qualifications were recognized by the U.S. House of Representatives in Resolution 851 passed on November 17, 2009. Because of these qualifications, SEARCH has been a key partner with the U.S. Department of Justice and member of the Global Information Sharing Initiative (Global) working to develop the tools and resources needed by these agencies. This participation uniquely positions SEARCH with expert knowledge of the design, use and implementation of these resources.

For more than 20 years, SEARCH operated the highly regarded National Technical Assistance and Training Program, the only no-cost service for small- and medium-sized criminal justice agencies to assist them in: (1) enhancing and upgrading their information systems; (2) building integrated information systems that all criminal justice agencies need; (3) promoting compatibility between local systems and State, regional and national systems; (4) developing and delivering high-tech anti-crime training; and (5) providing computer forensic technical assistance support.

However, in recognition of the rapid advancements in information sharing technology, SEARCH has updated and improved our program offerings and proposes to implement a new program, the SEARCH Justice Information Sharing Technical Assistance Program.

THE SEARCH JUSTICE INFORMATION SHARING TECHNICAL ASSISTANCE PROGRAM

The SEARCH Justice Information Sharing Technical Assistance Program would support Congress and the administration's goals in reducing crime and recidivism. SEARCH proposes to use the funding to provide direct assistance to State and local criminal justice agencies in the Sacramento area and throughout California where those activities can influence and assist in the effective implementation of information sharing systems by law enforcement, courts, correctional agencies and other State and local criminal justice agencies throughout the Nation. The technical assistance will help agencies plan for and implement the standards, tools and resources developed by the U.S. Department of Justice in partnership with Global to

support standardized information sharing across the country. The program will contribute to the overall safety of our communities by making sure decisions made by our law enforcement, courts, correctional agencies and others are based on access to timely, secure and accurate information. Through the program, SEARCH will provide needed expertise to allow these agencies to leverage scarce resources in these economically challenging times. All of this will be done with a fundamental focus on safeguarding privacy and civil liberties.

Over the past several years, the U.S. Department of Justice has effectively developed numerous standards, templates, policies and tools to facilitate information sharing. While these tools represent great strides in facilitating consistent information systems and practices across agencies nationwide, they are complicated to understand and implement. Thus, many State and local agencies require expert assistance to adopt them, and they typically do not have the staff expertise or funding to support such assistance.

Congress and the administration have focused renewed attention on solving prevailing problems in the justice arena: youth and gang violence; jail and prison crowding; successful reentry and second chance act programs; evidence-based policing; and tracking potential terrorists, arsonists and bombers, to name a few. While there are many policy and operational considerations in dealing with these issues, one that cannot be overlooked is the information sharing that is critical to the effectiveness of these programs. Without State and local automated information sharing capabilities, these programs will be greatly hampered in meeting their goals and objectives. If information sharing is improved effectively, it often creates opportunities to hire or deploy more line officers through resource efficiencies.

Because SEARCH works nationally, we will be able to replicate successful implementation strategies in California and from one State or locality and disseminate and transfer those strategies to other States and localities. This unique program not only helps State and local agencies work more efficiently and effectively through the deployment of advanced information sharing techniques, but it also creates a foundation for a national information infrastructure for interoperable justice systems.

#### SEARCH TECHNICAL ASSISTANCE EXAMPLES

During the past year, SEARCH has provided on-site and in-house technical assistance to California agencies that has helped improve information sharing, reduce administrative costs, enhance operational efficiencies and better protect data that is shared.

SEARCH is helping Marin County, California, develop a secure solution for law enforcement and fire safety personnel to share critical event information instantly and accurately. SEARCH is examining the network security in a multi-disciplinary public safety environment to ensure law enforcement has access to criminal justice information while protecting the information from unauthorized users.

SEARCH is helping the California Department of Justice meet national standards for information sharing. The Department requested SEARCH help assure the system—as designed—complied with the National Information Exchange Model (NIEM) developed by the U.S. Department of Justice (DOJ) and the Global Justice Information Sharing Initiative. Compliance with NIEM is a requirement under several DOJ grant programs and is designed so that systems developed around the country will adhere to standards that will enable them to share information.

SEARCH is helping Napa County, California, replace several major justice agency systems with a new system. The goals of the effort are to improve public safety decisionmaking effectiveness, county administrative efficiency, and reduce overall costs in implementing new information sharing systems. SEARCH is assisting Napa with all phases of its process, including planning, comprehensive definition of needs, development of technical architecture and adherence to procurement best practices.

SEARCH develops resources for the rest of the country through the work it does in California. For example, SEARCH visited Los Angeles County, California, to do a thorough assessment and case study of its intelligence sharing processes. In a detailed publication that was developed as a result of this analysis, other States, large counties and regional consortia will be able to understand how Los Angeles has set up its intelligence sharing solution and what lessons learned can be transferred to their own environment.

#### INTENDED USE OF FUNDING FOR FISCAL YEAR 2011

For fiscal year 2011, SEARCH is requesting \$500,000 for the SEARCH Justice Information Sharing Technical Assistance Program. This request reflects continuing high demand for technical assistance from State and local criminal justice agencies in California and throughout the Nation.

If SEARCH is provided with the requested funding, SEARCH intends to utilize the funds to address goals in its information sharing work. Specifically, SEARCH intends to: (1) support through technical assistance the adoption of national law enforcement and public safety information technology standards; (2) contribute to the development of new and emerging law enforcement and public safety standards; (3) develop specific information sharing requirements for the re-entry of prisoners into society following incarceration; and (4) improve agencies' ability to measure and manage their information sharing initiatives.

#### THE PRESIDENT'S FISCAL YEAR 2011 BUDGET AND BYRNE GRANT PROGRAMS

I would also like to take this opportunity to address the President's fiscal year 2011 budget. The budget provides no funds for the Byrne Discretionary Grant Program. This approach has been used by the President in the budget proposals for many years, but fortunately Congress has recognized the inappropriateness of the approach and restored it to acceptable levels. Hopefully Congress will again recognize that the needs met in the past by this funding continue today and will again restore it to an adequate level.

I would also ask for enhanced funding for the Byrne Competitive Grant Program. The fiscal year 2008 Omnibus Appropriations Act established the competitive grant process for programs of national significance to prevent crime, improve the administration of justice, and assist victims of crime. The process is administered by the Office of Justice Programs (OJP) and national program organizations have been selected according to congressional objectives. However, the total amount of grant funding provided to all of the competing national programs has never exceeded \$40 million nor been able to fund even one-half of the worthy proposals received in response to the grant solicitation. The President's fiscal year 2011 budget provides \$30 million for this program. However, we believe that funding in the range of at least \$65 million is the minimum necessary to permit a workable and effective competitive grant program on a national scale. Otherwise, the under-funded program greatly reduces its chance for success.

Finally, I want to call your attention to a new program for State and local law enforcement assistance. This program, "Justice Information Sharing and Technology," is intended to support critical information sharing activities of the Department of Justice and its Global partners. SEARCH is encouraged to see the recognition for this program need and encourages its funding at the proposed level of \$15 million. SEARCH believes the program will be extremely valuable to justice information sharing nationwide.

#### CONCLUSION

Congressional support for the SEARCH Justice Information Sharing Technical Assistance Program is vital. The Federal investment of \$500,000 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 throughout the Nation. 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.

#### PREPARED STATEMENT OF THE ANIMAL WELFARE INSTITUTE

The Animal Welfare Institute welcomes this opportunity to submit testimony as you consider fiscal year 2011 funding priorities under the Commerce, Justice, Science and Related Agencies Appropriations bill. Our testimony will address activities under the Department of Justice (DOJ), including the FBI, and the International Whaling Commission, and requests \$720,000 for the National Animal Cruelty and Fighting Initiative under DOJ's Office of Justice Programs' (OJP) competitive Byrne Grant program.

#### DEPARTMENT OF JUSTICE

We wish to commend the DOJ's OJP for awarding, through its Bureau of Justice Assistance, a grant to the Association of Prosecuting Attorneys (APA) for its new program of training, technical support, and other assistance for prosecutors, members of the law enforcement community, and other involved parties to enhance the prosecution of animal abuse and animal fighting crimes. This is a very exciting development and we are proud to support APA in this new effort and to have been their partner for the first national training conference upon which the new program is built. We respectfully urge the subcommittee to provide \$720,000 to the BJA's Na-

tional Animal Cruelty and Fighting Initiative and to encourage its continued interest in addressing animal-related crimes.

The connection between animal abuse and other forms of violence has been firmly established through experience and through scientific studies. For example, dog fighting is prevalent among gang members. Also—as evidence of one of the most well-documented relationships—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. In 1997, the Massachusetts Society for the Prevention 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.

Animal abuse is, however, 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 46 States and the District of Columbia. But not all laws are created equal; a felony in one State may still 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 vigorous enforcement of the 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 problems may arise from confusion over jurisdiction or limitations in coverage—or by pressure to dispose of cases quickly.

This is where the Association of Prosecuting Attorneys’ animal cruelty/animal fighting program comes in. APA recognizes that animal cruelty and animal fighting crimes not only victimize some of the most innocent and vulnerable members of society, but they also create a culture of violence—and a cadre of violent offenders—that affects children, families in general, and society at large. Therefore, preventing and prosecuting these crimes will benefit not only the animals, but the entire community by reducing the overall level of violence.

In order to support and enhance the effectiveness of prosecutors in their efforts to achieve this goal, APA, thanks to BJA’s support, is implementing a program to provide the following: training conferences and webinars; publications; technical assistance; and online resources, including a library of briefs, motions, search warrants, legal memos, and state-by-state case law. It has assembled an 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.

All of this is directed toward two audiences: 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.

OJP/BJA showed great vision in recognizing that by identifying precursor crimes, such as animal cruelty and animal fighting, and ensuring adequate 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. Its support of the APA program sends a very strong message to prosecutors and law enforcement that crimes involving animals are to be taken seriously and pursued vigorously.

#### FEDERAL BUREAU OF INVESTIGATION

BJA’s recognition not only of the relationship between animal cruelty and other forms of violence, but also of the value of addressing animal cruelty crimes as part of an overall strategy for creating safer communities, raises the issue of tracking such crimes. Specifically, for many years the animal protection community has urged the FBI to include animal cruelty in its Uniform Crime Reporting/National Incident-Based Reporting System (UCR) program. As noted above, animal abuse is a crime, and in some cases a felony. It is part of the cycle of violence in commu-



nities, including domestic abuse and gang activity. Having data about animal-related crimes would enable law enforcement agencies and researchers to track these offenses; to understand better the factors associated with animal abuse and the characteristics of the perpetrators; and to identify when and where such crimes occur, thus facilitating more effective interventions.

Yet, for purposes of the UCR, statistics related to animal abuse are recorded under the category of "other," making them inaccessible for retrieval and analysis. In a report compiled in response to a Congressional request, even the FBI acknowledged substantial benefits to be achieved through the inclusion of animal cruelty data in its UCR: It would "enrich the NIBRS database" and "be advantageous to law enforcement, social scientists, and others studying the topic to have comprehensive data about these offenses." Most tellingly, the report noted that "because felony convictions for cruelty to animals are a disqualifier for prospective volunteers under the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Public law 108-21, data about these offenses are vital to law enforcement."

Despite the recognized value of this information, however, the FBI has not made any move to capture and report it in a usable form in its crime database. The FBI's failure in this regard is especially ironic since it was among the first to identify the link between animal cruelty and other crimes, identifying it as a behavior common among serial killers.

A new proposal is being prepared for presentation to the FBI that is simpler than previous proposals and would meet the dual need of gaining important information about animal cruelty crimes while minimizing cost and disruption for the FBI. This proposal would not involve creating a separate reporting category for animal cruelty crimes; rather it suggests adding "animal" to the victim segment of the 52 existing data elements. (Currently, the victim segment includes such victim details as age, gender, race, relationship to offender, and type of injury.) No new data elements would be created and no segments of the data elements would be expanded.

We respectfully ask the subcommittee to direct the FBI to give serious consideration to this proposal and to work with interested Members of Congress and representatives of the animal protection community to include animal cruelty crimes in the Nation's crime report in order to achieve the benefits of such inclusion as outlined above and recognized by the FBI.

#### DEPARTMENT OF COMMERCE

While we enthusiastically support funding worthwhile programs such as those of the BJA, we cannot support funding for programs whose outputs conflict with the interests of the American public. Sadly, that is the case with the current situation with respect to commercial whaling, which the National Oceanic and Atmospheric Administration seems intent on helping to revive. Indeed, the United States stands on the brink of dismantling one of the cornerstone measures of American conservation leadership—the moratorium on commercial whaling—and with it, sealing the fate of many of the world's whales whom we once thought we had saved.

Years of bipartisan leadership saw the commercial whaling moratorium adopted during the Reagan administration, while the Clinton administration saw the establishment of the Southern Ocean Whale Sanctuary. Despite these massive initiatives and assurances by the current administration for sound science, transparency, and that "the commercial whaling moratorium is a necessary conservation measure," it now appears that U.S. influence is being used to broker an ad-hoc "deal" at the International Whaling Commission (IWC). This so-called deal would: (1) overturn the intent behind the moratorium, allowing for a resumption of commercial whaling at a time when whales are still recovering from years of overexploitation and are facing ever increasing anthropogenic threats, and (2) legitimize the commercial whaling undertaken by Japan as a way of flouting the moratorium by conducting it under the guise of scientific research. Further, the deal will permit the continuation and potential expansion of the international trade in whale products and discontinue annual meetings of the IWC—the very body established to conserve and manage the world's great whales.

The justification for this remarkable deal is to placate three nations—Japan, Norway and Iceland—that persist in whaling for commercial gain despite the rest of the world having agreed decades ago that the great whales are worth more alive than dead—as key components of our oceans' ecosystems and as global species enjoyed by millions of people through whale-watching. Moreover, despite repeated international efforts, supported by the majority of IWC member nations, asking these three countries to cease their whaling practices, they have ignored such requests and have actually expanded their whaling operations.

Not only will the deal undermine decades of conservation gains for whales, but the process used to produce it also lacked any of the transparency that the Obama administration purports to promote. Not only were the negotiations that led to the deal held behind closed doors, but the U.S. delegation to the IWC, led by Ms. Monica Medina, NOAA's Principal Deputy Under Secretary for Oceans and Atmosphere and U.S. Commissioner to the IWC, also failed to engage U.S. non-governmental organizations in a meaningful or substantive dialogue about U.S. negotiating positions at the meetings. Furthermore, AWI believes it is entirely disingenuous to claim that the U.S. position on the deal has yet to be determined, considering that the United States both initiated the process to develop a deal and was the leading proponent of finding a compromise that would ostensibly satisfy all. This deal is not acceptable to AWI or, we suspect, to the vast majority of American citizens, your constituents, who strongly oppose killing whales for commercial gain.

Unfortunately, time is short—the principles of the deal were already presented at an IWC meeting held in early March, and it is now being finalized for discussion and a vote at the full Commission in June. We urge the subcommittee to demand that the United States' position on whales, whaling, the IWC, and most importantly, on the current "deal," be provided forthwith and that any future funding of NOAA's IWC program be contingent on its providing complete and satisfactory answers as well as maintaining the historic U.S. leadership role in protecting whales and opposing commercial whaling.

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PREPARED STATEMENT OF THE COUNCIL ON UNDERGRADUATE RESEARCH

The Council on Undergraduate Research (CUR) is an organization dedicated to the promotion of undergraduate research as a means by which students of mathematics, technology, the natural, physical and social sciences, as well the arts and humanities may participate in the intellectual life of our society. To this end, CUR encourages faculty and their students to collaborate as partners in their explorations of uncharted intellectual terrain.

The symbiosis established between the faculty member and the undergraduate collaborator energizes and informs the faculty member's teaching and research while simultaneously introducing the student to the joys of discovery, as well as to lessons in persistence, problem-solving, and critical thinking. Faculty conducting research with undergraduates benefit enormously by having undergraduate collaborators invested in the research enterprise help to advance the faculty research program. Undergraduate students benefit from the opportunity both to learn the breadth and depth of their chosen fields of inquiry as well as to contribute meaningfully to the expansion of knowledge.

Presently, individual and institutional members representing nearly 600 colleges and universities from across the United States support the educational and research initiatives established by CUR to ensure that research partnerships between faculty and their students are encouraged and nurtured. A primary concern for CUR is that these partnerships facilitate the attainment of professional productivity and intellectual integrity at the standards of excellence consonant with those recognized by professional scholarly and research societies.

Research and research infrastructure funding provided by the National Science Foundation has been critical for the support of original, significant research that involves undergraduates, not only personally, but for the entire membership represented by CUR. Additionally, funding and legislative acknowledgment of the benefits of undergraduate research can help to reduce or minimize the barriers to undergraduate research, while promoting innovation in postsecondary education.

Accordingly, CUR strongly urges the subcommittee to increase funding for dedicated funding streams that support undergraduate research at the National Science Foundation and requests that the subcommittee include the below report language in the fiscal year 2011 Commerce, Justice, Science and Related Agencies bill:

"Undergraduate research programs are flourishing at various types of institutions of higher education around the country and funding should be used to expand or improve these programs or help develop new programs at emerging research institutions. The subcommittee acknowledges that studies show that participation in undergraduate academic research programs improves college persistence rates among students, particularly among minority, low income, and first generation college students. Reviews of existing undergraduate research programs have also shown that these programs can boost undergraduate students' interest in entering STEM fields and other high-demand career paths."

To provide a clear understanding of the importance of support for undergraduate research and the value of funding research on the Federal level, below are examples from CUR members on the impact of undergraduate programs funded by the National Aeronautics Science Administration, National Institute of Standards and Technology, and the National Science Foundation.

ROGER S. ROWLETT, PROFESSOR OF CHEMISTRY AT COLGATE UNIVERSITY (NY)

The NSF-MRI (Major Research Instrumentation) program and its predecessors provided essential research instrumentation at Colgate, which is a predominantly undergraduate institution, and has allowed faculty to learn state-of-the-art research techniques. NSF funds have allowed Colgate to have access to modern high-field NMR and protein and small-molecule X-ray crystallography. Colgate is the only undergraduate institution in the Nation to have a dual-beam X-ray diffractometer, and our students use the NSF-funded equipment in their research routinely.

Undergraduate access to modern research instrumentation is critical to training the next generation of scientists, and is a powerful enticement for recruiting a highly motivated and diverse pool of students into science careers. Over 90 percent of research students who have conducted research in my laboratory in the last decade have pursued postgraduate studies or careers in the sciences. The NSF-RUI (Research in Undergraduate Institutions) program has been a stalwart at providing the necessary support for individual faculty to conduct high-quality, publishable research with undergraduates at predominantly undergraduate institutions.

Historically, the NSF-REU (Research Experiences for Undergraduates) program has also helped establish our well-recognized summer undergraduate research program. The Department of Chemistry at Colgate held several consecutive REU grants in the 1990s which allowed Colgate to offer full-time summer research opportunities to not only our own students but also students from other institutions, some of which do not offer research opportunities to their undergraduates. The legacy of NSF-REU funding at Colgate is a self-sustaining and well-organized summer research program that supports 80 or more students in the natural sciences each year.

Support of high-quality research at undergraduate institutions is critical to the national science enterprise, and is a wise investment. Not only does research at predominantly undergraduate institutions result in original discoveries that are published in the scientific literature, it also sustains excellent teaching by keeping faculty at these institutions intimately embedded in their scholarly communities and current in their fields of study. Undergraduates who have research experiences are more likely to consider post-graduate studies in the sciences or pursue science careers, if my personal experience is any guide.

In addition to re-affirming its commitment to undergraduate research embodied in current programs which have been highly successful in improving undergraduate research and education, perhaps NSF should consider establishing new ("starter") faculty research grant opportunities.

CHRIS HUGHES, ASSOCIATE PROFESSOR OF PHYSICS, JAMES MADISON UNIVERSITY (VA)

The Physics and Astronomy Division of CUR (CUR-P&A) has recently worked with all of the major national physics organizations to develop a statement which says "We call upon this Nation's physics and astronomy departments to provide, as an element of best practice, all undergraduate physics and astronomy majors a significant research experience." Additionally, the American Astronomical Society (AAS), Society of Physics Students (SPS), American Physical Society Committee on Education (APS-CoE), and the American Association of Physics Teachers (AAPT) have adopted this or similar statements in agreement with CUR-P&A.

These statements are a significant signal that the academic physicists in the United States believe that an undergraduate education in physics or astronomy is incomplete without the experiential learning that comes from a research experience. Research is the utmost form of inquiry in the sciences and data shows that physics and astronomy majors who participate in research programs see improvement in their classroom performance and increased retention to graduation. Already, surveys of the approximately 6,000 graduates in P&A each year show that around 70 percent participate in some form of undergraduate research. This is an impressive figure, but it also means that there is an immediate need for opportunities for around 1,800 students each year.

One of the primary programs for funding undergraduate research has traditionally been NSF's REU. We would like to see these programs augmented to support even more students. Another program that will be critical to meeting this need is the NSF CCLI (Course, Curriculum and Laboratory Improvement) since this ad-

dresses the issue of building the infrastructure needed to support experiential learning at many institutions where this is not currently available.

DIANE HUSIC, PROFESSOR OF BIOLOGICAL SCIENCES, MORAVIAN COLLEGE (PA)

In 2004, I had just moved to Moravian College to chair and help revitalize the biology department. The college didn't have a strong track record of grant writing, but had hired several new faculty who were interested in both teaching and scholarship. As I took the new position, I also had just become a co-PI on an NSF Undergraduate Research Center pilot grant. The goal of our proposed project was to develop a consortium of faculty and students at seven institutions to promote greater interest amongst students in plant science. Living near the Palmerton Superfund site, we tapped into contacts at the Lehigh Gap Nature Center and Wildlife Refuge (LGNC) that had purchased 750 acres of the site and was beginning a restoration project using warm season native grasses. Our initial visit and subsequent summer research "field trip" prompted by the NSF-URC grant has subsequently led to wonderful partnerships and collaborative research that has transformed not only a mountainside, but also an academic department. Over the past few years, we have had 10 students and 2 faculty engaged in research there, the results of which have been presented at regional and national meetings. We are in the process of writing an ecological assessment report to be used by the LGNC, the EPA and other State and Federal agencies in developing the adaptive management plan for the site. Our department has taken the lead in organizing a consortium of researchers at 12 other partner colleges and universities and a number of State and Federal agencies who are involved in some aspect of the revitalization of the Lehigh Gap. State and Federal funds are supporting much of these efforts, and the site recently received funding from the Audubon/Toyota Together Green program—a project that brings together the local Audubon chapter and community and college volunteers.

The Department of Biological Sciences at Moravian College now routinely brings classes to the refuge/Superfund site for field trips and class-based research projects. Not only are biology and environmental studies majors benefitting from this unique outdoor laboratory, but also students in science courses that are required as part of the liberal studies curriculum. We have developed a new Conservation Biology and Ecological Restoration course in partnership with the Lehigh Gap Nature Center, and students in the premiere offering of course participated in the experimental design for the Together Green projects of habitat enhancement and deer exclosure studies which are now being implemented. Faculty are involved with K-12 teacher workshops in conjunction with the Lehigh Gap Nature Center and, along with some of the research students, serve as mentors to a youth naturalists group, the members of which are also involved in authentic research at the site. These youth were recently recognized by the National Audubon Society. This exhilarating partnership between citizen scientists, an academic department, other campuses, State and Federal agencies and the local community was prompted by a mere \$50,000 NSF grant!

Despite the examples of success stories noted above, there are many campuses where the teaching and research facilities and other infrastructure lag sorely behind and can't provide up-to-date inquiry-based learning opportunities for students, much less support faculty-student research. Economic difficulties threaten many, if not all, of our campuses and our collective efforts to enhance undergraduate scholarship and to be innovative in our research and curriculum. These threats come at a time when there is unprecedented evidence of the value of undergraduate scholarship for students in terms of engagement, learning, and retention. They also come at a time when President Obama and Congress have expressed deep concerns about the slipping status of U.S. competitiveness internationally.

Essential to the innovation that will be needed to meet these challenges is the development of a research-rich curriculum, high-quality undergraduate research experiences, first-rate faculty scholars and research mentors, modern outfitted facilities for teaching, learning and research and funds to support the actual research projects. Federal support, including grant funding from the National Science Foundation, is essential to enabling this innovation which can and does happen at undergraduate institutions and as a result of collaborative research between faculty and undergraduates.

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PREPARED STATEMENT OF THE WILDLIFE SOCIETY

The Wildlife Society (TWS) appreciates the opportunity to submit testimony concerning the fiscal year 2011 budget for the National Science Foundation (NSF). TWS requests that the subcommittee work to provide the National Science Foundation (NSF) with the \$7.424 billion requested by the President for fiscal year 2011, allow-

ing NSF to fund its many important programs, including the Biological Sciences directorate (BIO) at \$767.81 million.

The Wildlife Society was founded in 1937 and is a non-profit scientific and educational association representing over 9,100 professional wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to represent and serve wildlife professionals—the scientists, technicians, and practitioners actively working to study, manage, and conserve native and desired non-native wildlife and their habitats worldwide.

As stated in its mission, NSF exists to promote the progress of science; to advance the national health, prosperity, and welfare; and to secure the national defense. The budget for fiscal year 2010, along with the much-needed funding provided by the American Recovery and Reinvestment Act, were essential in enabling NSF to carry out its mission. However, this budget needs to be sustained in coming years if we are to benefit from the true potential of our Nation's scientific enterprise. Because of the issues posed to our national safety, infrastructure, and environment by a changing climate and a high jobless rate, TWS urges strong support for NSF in fiscal year 2011 to tackle these issues.

The basic, fundamental research performed with funding from NSF at our universities and research centers fuels innovation and drives economies around the Nation. NSF was the second largest provider of Federal R&D funding in 2008 (the latest year in which data is available), providing an excess of \$3.8 billion across numerous academic fields. These funds employ the scientists and personnel that conduct research and maintain equipment, they support graduate student salaries and undergraduate training opportunities, and they provide early career scientists with the support that enables them to develop successful lifelong research programs. In short, NSF provides the sturdy foundation upon which our Nation's impressive scientific legacy has been built.

This scientific legacy has not only allowed the United States to lead the world in scientific, engineering, and medical breakthroughs, but it also provides us with a means for continuing to lead the world through the pressing social issues of today. Our world needs science more than ever to research and develop practices that will enable us to adapt to climate change, conserve natural resources, and mitigate environmental degradation. NSF will play a major role in this as the largest single-agency funder of academic R&D in the environmental and basic non-medical biological sciences, having spent over \$1.057 billion in these two areas in 2008 alone.

The mission of the BIO directorate is to enable discoveries for the understanding of life, and its mission is particularly critical to the wildlife scientists represented by TWS. The basic biological and environmental science being performed by NSF scientists within the BIO directorate helps us determine the best strategies for fire prevention, illuminates effects of nitrogen on wildlife habitats, and helps us predict how air pollution affects organisms in glacial lakes. This sort of research provides us with resources for monitoring ecosystems and adapting to change. For example, a recent NSF-funded modeling study showed that diverting sediment-rich water from the Mississippi River through cuts in the levees below New Orleans could generate new land in the river's delta in the next century, equaling almost one-half the land that is expected to disappear in the same amount of time due to sea-level rise, storms, and erosion. Studies such as this will be invaluable for adapting New Orleans and other large centers of human population for the inevitable environmental changes of the coming centuries.

NSF also plays a major role in understanding how human, wildlife, and environmental health are closely intertwined. An example of this is a joint NSF and National Institutes of Health program on the ecology of infectious diseases that supports research into the underlying ecological and biological mechanisms behind environmental changes and the emergence of these diseases. Projects funded through programs such as this allow scientists to study how large-scale environmental changes, such as habitat destruction, invasive species, and pollution enable emergence of viral, parasitic and bacterial diseases in humans, domestic animals, and wildlife. This sort of research not only allows us to understand how disease is transmitted, but also helps scientists determine the unintended consequences of development projects and gives them the capacity to forecast disease outbreaks.

Moreover, NSF adds value to the lives of Americans by playing a role in conserving of our valuable natural resources, such as iconic species like the American Bison, and treasured landscapes like the Sonoran desert. These natural resources are managed and monitored by legions of natural resource professionals, including wildlife and fisheries biologists, conservation scientists, foresters, ecologists, range managers, wildlife veterinarians, and marine biologists, among others. In 2008, the Bureau of Labor Statistics estimated that there were approximately 30,000 conservation scientists employed in the United States; add to this number all of the

other professionals who work on ecological and natural resource issues, and many hundreds of thousands of individuals are employed in jobs that support our environment. NSF plays a key role in training these professionals to safeguard America's environment: during the course of their educational and research careers, most wildlife and ecological scientists receive training or mentoring made possible by NSF.

We ask you to keep NSF's vital role in mind as you continue through the fiscal year 2011 appropriations process, and fully fund NSF with the \$7.424 billion as requested by the President. This will allow NSF to provide \$767.81 million to the BIO directorate to continue to support the biological and environmental sciences that play an integral role in our national health, environment, and security.

We thank you for considering the views of wildlife professionals.

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PREPARED STATEMENT OF THE FLORIDA STATE UNIVERSITY

*Summary of Request.*—Florida State University is requesting \$3.5 million from the National Oceanic and Atmospheric Administration (NOAA) Air Research Laboratory (ARL) Account to fund the Consortium for the Study of Mercury in the Atmosphere.

Mr. Chairman, I would like to thank you and the members of the subcommittee for this opportunity to present testimony before this subcommittee. I would like to take a moment to briefly acquaint you with Florida State University.

Located in Tallahassee, Florida's capitol, FSU is a comprehensive Research university with a rapidly growing research base. The University serves as a center for advanced graduate and professional studies, exemplary research, and top-quality undergraduate programs. Faculty members at FSU maintain a strong commitment to quality in teaching, to performance of research and creative activities, and have a strong commitment to public service. Among the current or former faculty are numerous recipients of national and international honors including Nobel laureates, Pulitzer Prize winners, and several members of the National Academy of Sciences. Our scientists and engineers do excellent research, have strong interdisciplinary interests, and often work closely with industrial partners in the commercialization of the results of their research. Florida State University had over \$200 million this past year in sponsored research awards.

Florida State University attracts students from every State in the Nation and more than 100 foreign countries. The University is committed to high admission standards that ensure quality in its student body, which currently includes National Merit and National Achievement Scholars, Rhodes and Goldwater Scholars, as well as students with superior creative talent. Since 2005, FSU students have won more than 30 nationally competitive scholarships and fellowships including 3 Rhodes Scholarships, 2 Truman Scholarships, Goldwater, and 18 Fulbright Fellowships.

At Florida State University, we are very proud of our successes as well as our emerging reputation as one of the Nation's top public research universities. Our new President, Dr. Eric Barron, will lead FSU to new heights during his tenure.

Mr. Chairman, let me summarize our primary interest today. It is known that the atmosphere dominates mercury transport pathways, yet the fraction of mercury entering lakes and rivers that is natural vs. man-made, or global vs. local, is unknown. Most U.S. mercury emissions occur in the Northeast yet most mercury falls on Florida and the northern gulf coast. The sources of mercury falling on Florida are increasingly thought to be global rather than regional. Regional and global distributions of gaseous elemental mercury are unknown even though vapor mercury is the largest source of mercury to the atmosphere. These gaps in scientific knowledge undermine public policy initiatives to protect human health and natural environments and to find safe energy solutions to our power and transportation needs. Because of the critical impacts of mercury emissions on ecosystem and human health and the reliance of America's electric power grid on coal, a focused effort on the atmospheric mercury cycle is required to predict and regulate the dominant man-made sources.

The Southeastern Mercury Consortium, a partnership between NOAA's Air Resources Lab (ARL), Florida State University, Georgia Tech, the University of Miami, and the University of Tennessee Space Institute (UTSI) will study the large-scale sources and fates of atmospheric mercury. ARL's mercury research group pioneered ground and airborne measurements and models of atmospheric mercury. FSU's Oceanography and Isotope Geochemistry Programs in the National High Magnetic Field Lab excel in ultra-trace element chemistry and isotopes of mercury in global atmospheric and aquatic environments. GaTech's Schools of Earth and Atmospheric Sciences and Civil and Environmental Engineering have extensive regional and global programs in urban photochemistry, "tailpipe" and "smoke stack" gases, and

global mapping of reactive trace gases and aerosols from research airplanes and satellites. UM's Rosenstiel School has advanced new technologies to detect atmospheric mercury speciation. UTSI is pioneering sampling capabilities needed for next generation atmospheric mercury analyses with their existing research airplanes. Our efforts to map gaseous elemental mercury and reactive gaseous mercury in the air over the southeastern United States will fill the gap between ground-based time series observations in the coastal zones by adding synoptic flight level measurements. We are requesting \$3.5 million for this initiative.

Additionally, Mr. Chairman, I want to briefly address a reprogramming request that you have pending from the National Oceanographic and Atmospheric Administration (NOAA) related to the creation of NOAA Climate Service line office. The reorganization is an extremely important addition to NOAA and our Nation to bring together the agency's strong climate science and service delivery capabilities. This approach has been in discussion within the scientific community for some time, and the time has come for such an important action to be implemented. I join with many others representing that community in respectfully requesting this subcommittee approve NOAA's reprogramming request to create a Climate Service office.

With respect to the National Science Foundation (NSF), the President's request for fiscal year 2011 has requested \$6,018,830 for the Research and Related Activities appropriations account. Florida State University strongly supports that request and encourages the subcommittee to make every effort to find funds to reach that requested level. The NSF provides over one-third of all Federal funding received by FSU, the largest amount provided by any Federal agency to FSU. With NSF's traditional support for peer-reviewed competitive research projects, their strong support for the scientists and engineers at FSU is indispensable for our students, faculty, and for our Nation as well. Yet with all the fine work and programs at NSF, there is a glaring programmatic gap in the way NSF funds some research instrumentation. They have programs for smaller instrumentation (<\$5 million with MRI) and for large instruments and facilities (>\$100 million with MREFC), but no program for those instruments in the "mid-range" between these two programs. We encourage the subcommittee to review this programmatic gap at NSF and consider appropriate actions to redress this issue.

Mr. Chairman, this project and these issues are very important and I appreciate your consideration.

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#### 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 2011 appropriation for the National Science Foundation (NSF). The ASM is the largest single life science organization in the world with approximately 40,000 members. The ASM mission is to enhance the science of microbiology, to gain a better understanding of life processes, and to promote the application of this knowledge for improved health and environmental well being.

The ASM strongly supports the administration's fiscal year 2011 budget proposal for the NSF of \$7.4 billion, an 8 percent increase over the fiscal year 2010 appropriation.

The NSF is the only Federal agency dedicated to the support of basic research and education across all fields of science and engineering. Since 1950, the NSF has stimulated advances in multiple disciplines, through competitive grant awards. Seventy-four percent of the NSF's annual budget funds academic institutions, in support of approximately 241,000 scientists, students and teachers in all 50 States, the District of Columbia and Puerto Rico. NSF funding has supported 187 Nobel laureates, including 21 in the last 5 years alone. The ASM commends Congress for increasing NSF funding over the past 2 years, helping to reverse the erosion of Federal support for basic and applied research which declined from 64 percent to 60 percent between 2005 and 2008.

The American Recovery and Reinvestment Act (ARRA) provided additional funding that has helped NSF build on the Nation's past investment in research. In fiscal year 2009, the NSF evaluated over 45,000 grant proposals and made roughly 14,700 new awards, of which about 4,700 were ARRA funded. The ARRA grants are supporting more than 6,700 investigators, including 2,350 who had not previously received NSF funding.

Increased funding for the NSF in fiscal year 2011 will stimulate future discoveries by NSF supported researchers at nearly 2,000 U.S. institutions. The latest NSF report on science and engineering indicators, indicates that U.S. global R&D competitiveness is at risk. The United States accounts for about one-third of the \$1.1 trillion in annual global R&D expenditures. However, U.S. growth in R&D funding

averaged 5 to 6 percent annually between 1996 and 2007, while comparable growth rates in Asia were 10 to 20 percent. In the same period, U.S. technology export shares fell by about one-third, while China's share more than tripled. The NSF is critical to increasing public and private investment in R&D and encouraging technology and business innovation in the United States.

#### DIRECTORATE FOR BIOLOGICAL SCIENCES (BIO)

The ASM urges congress to fund BIO with \$767 million in fiscal year 2011, a 7.5 percent increase. BIO provides about 68 percent of Federal funding for nonmedical, academic basic research in the life sciences, including the environmental biology research needed to answer questions related to climate change. In addition, BIO researchers work to find solutions to create national energy independence, as well as the development of new biologically based materials for diverse applications and better management of the environment.

Researchers supported by NSF grants regularly make compelling discoveries that impact human health and well-being. Recent discoveries supported by the NSF include: (1) the isolation of one of the smallest known microbes found more than 3 km deep in an ice core and estimated to be more than 120,000 years old. This organism will help scientists to understand and study the limits of life and will also provide important information on the functionality of biomolecules in cold temperatures. (2) Research involving a representative legume, a group of plants that collectively feed one-third of the world's population. This has revealed a crucial control of the symbiosis through which a certain bacteria fixes nitrogen from the atmosphere in a form useful for plants. This research may lead to significant improvements in agricultural production and reduced dependence on fertilizers that require fossil fuels for production. (3) Researchers have used the growth responses of a common bacterium in stressful conditions as the basis for developing mathematical models to illuminate the complex decisionmaking behavior of humans. The responses of some microbes provide valuable insights about the kinds of processes that humans use in a range of activities from politics to economics.

The BIO funding portfolio reflects the ongoing evolution of biology from once distinct disciplines into multi faceted interdisciplinary programs comprising diverse institutions, research specialties, and mission priorities. For example, BIO is a key contributor to the U.S. Global Change Research Program involving 13 U.S. agencies, and a partner in the NSF Centers program supporting over 100 centers in 7 interdisciplinary program areas. These large collaborative programs tackle complex problems requiring significant investments in equipment, facilities, personnel and other crucial resources.

BIO also leverages multidisciplinary expertise in its own focus areas, including its Emerging Frontiers (EF) Division, which is designed as an incubator for 21st century biology. Programs include "Assembling the Tree of Life" (ATOL), an effort to assemble phylogenetic data for all major lineages of life, and "Ecology of Infectious Diseases" (EID), which includes goals to develop better predictive models of disease transmission. Recently awarded EID grants include spatial modeling of onchocerciasis in Africa by remote sensing, epidemiology of leptospirosis in Latin America, the role of environment and direct transmission in chronic wasting disease, and incidence gradients in Lyme disease in the eastern United States.

BIO has also developed a major new multidisciplinary initiative, "Dimensions in Biodiversity" that is intended to dramatically transform what we know and how we perceive Earth's living systems.

The ASM supports the administration's funding level of \$20 million for the National Ecological Observatory Network (NEON) in fiscal year 2011. NEON is an EF initiative and the first observatory of its kind. Designed to detect and enable forecasting of ecological changes, NEON will use cutting edge technology to collect data on climate change at 62 sites across the United States. It also will incorporate data from airborne observations, land use studies, invasive species studies and on-site experiments. The proposed \$20 million for NEON represents the 1st year of a 5 year project, with construction scheduled to begin this fiscal year and completion expected in fiscal year 2016. The data collected will be available to all users, serving a diverse constituency, and will help scientists forecast change at continental scales over multiple decades.

#### DIRECTORATES OF GEOSCIENCES, ENGINEERING, MATHEMATICAL AND PHYSICAL SCIENCES

The ASM urges congress to fund the Geosciences Directorate (GEO) the Engineering Directorate (ENG), and the Mathematical and Physical Sciences Directorate



(MPS), with the administration's proposed increases of 7.4 percent, 11 percent, and 4.3 percent, respectively.

The Geosciences Directorate encompasses wide ranging research activities that study living systems within the changing physical environment. For example, GEO supports the new Water Sustainability and Climate initiative that will understand and predict interactions among water quality and climate change, land use, present day water systems and services, and ecosystem characteristics. Within GEO, the Division of Earth Sciences (EAR) supports research that examines the shifting relationships between living and non living systems. The ongoing Continental Dynamics Program, for example, is identifying links between the geosphere, hydrosphere, atmosphere, and biosphere, funding large projects drawing from multiple disciplines. EAR funded research recently resulted in a discovery by geomicrobiologists that microbes living as biofilms in dark, oxygen free caves produce energy through previously unknown mechanisms that are still being studied. In an exploration of deep-sea venting systems, other researchers have shown that rare members of microbial communities can become dominant members; this result has broad implications for understanding the importance of microbial biodiversity in terrestrial and aquatic ecosystems.

NSF funding accounts for 39 percent of academic basic research in all engineering fields and is a significant contributor to the knowledge base and workforce development essential for U.S. economic vitality. Through advances in innovative biosensors, biomaterials, bioimaging, waste and water treatment, food engineering and more, the Engineering Directorate's Chemical, Bioengineering, Environmental and Transport Systems Division (CBET) funds research that affects industry, including those producing pharmaceuticals, food, and medical devices. This year, CBET is soliciting new grant proposals for its Biosensing Program, targeting identification and detection of existing or emerging pathogenic microorganisms and toxins, as well as smart field deployable molecular sentinels for monitoring food, water, and air quality.

Support of the Mathematical and Physical Sciences Directorate is critical to all scientific disciplines, as innovation increasingly depends on state of the art cybertools and computational techniques. NSF underwrites 65 percent of basic academic research in mathematics, 47 percent in physical sciences and 82 percent in computer sciences. Efforts in molecular biology, genomics and metagenomics, predictive infectious disease modeling, high volume drug discovery, and other fields now require collection and evaluation of massive amounts of data. MPS supports the development of new and innovative mathematical and statistical methods to better evaluate DNA sequence data. For example, MPS recently requested that researchers work to find new and improved mathematical and statistical methods to better evaluate an exponential increase in DNA sequence information for biological threats.

In addition, MPS funding for fiscal year 2011 will boost the directorate's broad impact programs. Including the Science and Engineering Beyond Moore's Law (SEBML) initiative to overcome current limits in communications and computation capability. MPS will also contribute to a new NSF wide priority investment, Science and Engineering Education for Sustainable Well Being (SEES), designed to integrate NSF's existing efforts in climate and energy research with new education and cyber based activities.

#### WORKFORCE DEVELOPMENT AND TRAINING

The ASM supports increased funding allocated to strengthen the NSF's own workforce, which is responsible for administering programs of impressive scope and complexity. For example, NSF staff facilitated nearly 239,000 proposal reviews in fiscal year 2009, involving almost 46,000 external reviewers.

NSF supports the Nation's goal of advanced training and education in science and engineering through its extensive system of fellowships, training grants, and investigator grants that benefit both graduate and undergraduate students. Training tomorrow's technical workforce is vital to sustaining and enhancing the Nation's scientific and economic competitiveness. To promote greater STEM training, NSF's fiscal year 2011 funding opportunities include: Interdisciplinary Training for Undergraduates in Biological and Mathematical Sciences (a joint BIO/MPS program); Cyberinfrastructure Training, Education, Advancement, and Mentoring for Our 21st Century Workforce (CI-TEAM); and a new program, Comprehensive Broadening Participation of Undergraduates in STEM. The success of these programs relies on adequate, consistent and long term funding in fiscal year 2011 and beyond.

## CONCLUSION

The National Science Foundation supports multiple research disciplines and its far-sighted approaches to research at the frontiers of discovery have pushed the Nation toward ever greater scientific achievements. The ASM urges Congress to provide an 8 percent increase for the NSF to ensure that basic and applied research in the United States is sustained in fiscal year 2011 and beyond.

The ASM appreciates the opportunity to provide written testimony and would be pleased to assist the subcommittee as it considers the fiscal year 2011 appropriation for the National Science Foundation.

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