

REAUTHORIZATION OF THE UNITED STATES DE-  
PARTMENT OF JUSTICE: CRIMINAL LAW EN-  
FORCEMENT

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON CRIME  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTH CONGRESS  
FIRST SESSION

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MAY 3 AND MAY 15, 2001  
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## CRIMINAL LAW ENFORCEMENT AGENCIES

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THURSDAY, MAY 3, 2001

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:36 a.m., pursuant to notice, in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [Chairman of the Subcommittee] presiding.

Mr. SMITH. The Subcommittee on Crime will come to order. We welcome all, witnesses and others as well.

As you all know, we had an unexpected vote occur a few minutes ago, which is why we're getting off to a little bit of a late start this morning, but it was unavoidable. I am going to have an opening statement in a minute, after which I will recognize Sheila Jackson Lee, who is substituting for the usual Ranking Member, Bobby Scott, today, although we're going to at least start off with Bobby Scott in attendance.

Let me read my statement, and then, Sheila, I'll recognize you or Bobby, whoever is going to lead the opening statement.

Today, the Subcommittee on Crime holds the first of two hearings on the reauthorization of the Department of Justice. The Department of Justice was last reauthorized by Congress in 1980. Since that time, there has been no complete examination of the authorities under which the department operates.

Chairman Sensenbrenner has stated his intention to introduce legislation to reauthorize the department this year. To prepare for the consideration of that legislation, he has asked all the Subcommittees to hold hearings on the activities of the DOJ components over which they have oversight jurisdiction, with particular emphasis on the Administration's proposed budget request for those components. The Subcommittee on Crime is charged with oversight of the seven the DOJ components, four of which are before us today.

Today's hearing focuses on the criminal law enforcement agencies of the Justice Department. They are the Federal Bureau of Investigation, Drug Enforcement Agency, United States Marshal Service, and the Federal Bureau of Prisons. The remaining three criminal law components of the Justice Department will be the subject of a hearing before the Subcommittee on May 15.

The FBI is the nation's premier law enforcement agency. Its 27,000 employees, including over 11,000 special agents, work in 56 field offices, approximately 400 satellite offices, and 39 foreign liaison offices. The FBI has the broadest mission of any other law en-

forcement agency, ranging from violent crime to white collar fraud to domestic terrorism and espionage.

The Drug Enforcement Administration is the world's preeminent drug law enforcement agency. Created in 1973, it is one of the newest Federal agencies and is responsible for enforcing the provisions of the control substances and chemical diversion trafficking laws and regulations of the United States. It employs over 8,000 people in 22 domestic field divisions in the 77 international offices in 56 countries.

The U.S. Marshal Service is the nation's oldest Federal law enforcement agency. Since 1789, U.S. Marshals have served in a variety of law enforcement activities. Today, the almost 4,000 employees of the service perform a variety of missions, including fugitive apprehension, court security, prisoner transportation and custody, witness protection, and asset seizure.

The 34,000 employees of the Federal Bureau of Prisons are charged with the custody of over 150,000 Federal prisoners in controlled environments of prisons and community-based facilities. Over 126,000 of these prisoners are incarcerated in the 98 institutions that the BOP presently operates.

The 73,000 employees of these four agencies are ably led by a talented group of officials. I am pleased that four of them are here with us today. We look forward to hearing from each of you about the challenges you face and the ways in which Congress can help you accomplish your goals.

At this point, I'll recognize the gentlelady from Houston, Ms. Jackson Lee, for her opening statement. And before I do that, Mr. Scott, I was just going to say for the benefit of those in the audience—do you want to explain why you need to move on in a short period of time?

Mr. SCOTT. Thank you, Mr. Chairman. We're in a markup in education, and I'll be going back and forth. So I've asked the gentlelady from Texas to serve as Ranking Member today, and she has graciously consented.

Mr. SMITH. Very good. Thank you.

Ms. JACKSON LEE. And I'd be happy to yield to the gentleman to submit—if he wishes to now offer his statement in the record, that would be fine.

Thank you very much. I'm delighted to assist because there's important work going on in both Committees.

Good morning, and let me thank the witnesses for their able representation, the very able agencies who we are very much in support of and particularly the American people. It is interesting the great responsibility that the Department of Justice has for the very concept of justice, and people do look to the department for the justice that they so rightly deserve.

So this morning, Mr. Smith, Chairman Smith, I thank you and the Ranking Member for holding this oversight hearing on the reauthorization of the Department of Justice. It is certainly my view that the Department of Justice should be properly funded to provide essential protection for the American people. It must have our full support to do the job. The Members of this Committee have begun to reach consensus or should begin to reach consensus on

funding priorities, and there can be little question that many of us share common goals and aspirations.

Additionally, I would say that it is important to have this opportunity to reauthorize the Department of Justice. It gives us the appropriate opportunity to review its work and to look for ways that it can improve its work. With respect to the efforts of prevention, rehabilitation, and alternatives to incarceration, I believe in the Year 2001, it's appropriate to address those questions, even with a department that heavily focuses on law enforcement.

With respect to drug enforcement, we need to continue to look for innovative and effective programs that treat addiction, abuse, as opposed to merely incarcerating offenders, but yet we must also provide the training and support systems that help engage our men and women who are on the front line.

We also need to do more to hire and diversify our Department of Justice as relates to minorities and women. For example, a recent OPM study found that while African Americans generally exceeded their relevant civilian labor force representation in 16 Federal executive departments, less than 16 percent of those employed by the Department of Justice were African American. The Department of Justice consisted of 37.7 percent women. That number was over 9 percent underrepresentative of what it should have been based on hiring practices regarding women in the civilian work force.

I also believe that it is important that the Department of Justice take on very difficult challenges, and one of them, of course, that the Congress has been grappling with and States have been grappling with include the whole concept of racial profiling. It is well known that there is representation, that the DOJ is undergoing a study. I would only suggest that this is an important enough crisis that we move with all due and deliberate speed, and if there is the opportunity to provide insight and instruction in the reauthorization, then I think, Mr. Chairman, we should be engaged in that process, because this is an effort that should be looked upon by both the executive as well as the legislative.

I am particularly interested—today, we have the law enforcement agencies. I'm particularly interested in hearing reports as it relates to the Federal Bureau of Prisons. We just had a hearing on prison industries that I think generated a lot of controversy, and so we'll be asking those questions.

I know that Mr. Marshall is engaged in a collaborative effort to protect this country as it relates to—I say drug infestation, but as you well know, I am heavily committed to rehabilitation and treatment, but I'm also committed to the right kind of equipment, and I will be concerned about the unfortunate circumstances that generated—though you may suggest that you were not particularly engaged in that effort, but I certainly want to know the tragedy that occurred with respect to the missionary plane and the fact that we need to be more astute in the work that we're doing.

So, Mr. Chairman, let me say that each and every one of the representatives here, we will look forward to hearing their testimony, but also I hope that they will appreciate our inquiries and inquisitiveness from the perspective of trying to improve the work of the Department of Justice for all America.

I yield back the balance of my time.

Mr. SMITH. Thank you, Ms. Jackson Lee. Before I introduce the witnesses, I'd like to thank two other individuals for their presence here.

Mr. CONYERS. Just a moment, sir.

Mr. SMITH. Yes. Actually, I was just getting ready to recognize the gentleman from Michigan, but I do so a little bit prematurely, and the gentleman from Michigan is recognized.

Mr. CONYERS. I didn't want to let this opportunity go by, Mr. Chairman. So I appreciate you recognizing me.

Mr. SMITH. The gentleman from Michigan, Mr. Conyers, is the Ranking Member of the House Judiciary Committee, and he's recognized for an opening statement or other remarks.

Mr. CONYERS. Thank you very much.

We welcome the witnesses, and I hardly know where to begin. We're dealing with two departments of government that are presenting increasing difficulties that have been going on during the course of my career in the Congress. Let me start with the drug policies that come out of the DEA. The problem is that we're dealing with policies that have been unsuccessful, to put it generously. The cost benefit of drug interdiction is completely out of touch with reality. Prevention treatment is not even on the books.

The RAN Corporation has found that \$34 million invested in treatment would reduce cocaine use as much as an expenditure of \$336 million for interdiction or \$246 million for enforcement.

The racism involved in the justice process is pretty well known. Blacks are more likely to be arrested, more likely to be charged, more likely to be convicted, more likely to get longer sentences, more likely to end up on death row. If anybody cares to comment about that, I'd be happy to entertain it during question period.

Now, the prisons, where are we on the prisons? I think we're approaching two million people in prisons. Many of them, one-third, are for marijuana arrests, mere possession. There's much overcrowding. We've got a disgraceful situation. Thanks to the body in which I serve, we've now started privatizing prisons, and we use it as a basis for industry spurts for small towns around the nation.

We're trying—we have—any kind of correction or bringing prisoners around is hardly in existence. The conditions are terrible for prisoners and sometimes for corrections officials as well. We've got a disgraceful situation in our Federal prisons, and so as the authorizing committee, we've got a lot of explaining, discussion, and meeting to do beyond this small brief meeting that we'll be holding here. I think the prisons are in a disgraceful state of condition, and they've been that way. This isn't something new.

The FBI is in pretty bad shape, I also might add. I think some of the gentlelady from Texas—in all of these things, the question of how minorities are being treated as Federal employees in these systems is in serious question and will be revisited and analyzed to a great extent.

So if you get the idea that I'm unhappy with the work of every agency here, save the U.S. Marshals, you're absolutely correct, and I'd love to discuss matters further with you.

Mr. SMITH. Thank you, Mr. Conyers.

I also appreciate the attendance of two other Members who are here, Mr. Chabot of Ohio and Mr. Hutchison of Arkansas, and are there any statements that you all wish to make?

[Mr. Chabot and Mr. Hutchison gesture in the negative.]

Mr. SMITH. If not, we'll proceed, and I'll introduce the witnesses.

Mr. Thomas Pickard is the deputy director of the FBI, a position he has held for the last 2 years. Prior to his current assignment, Mr. Pickard served as assistant director for the FBI's criminal investigative division. He began his career as a special agent in 1975 in the FBI's New York field office. In his 25 years of service, Mr. Pickard has worked on such cases as the trial of the New York Trade Center's bombers and the TWA Flight 800 investigation. Mr. Pickard received his bachelor's degree from St. Francis College and a master's degree from St. John's University.

Mr. Donnie Marshall is the administrator of the Drug Enforcement Administration. Mr. Marshall began his career in law enforcement in 1969 as a special agent with the Bureau of Narcotics and Dangerous drugs, a predecessor agency of the DEA. Mr. Marshall has served in a number of positions with the DEA, including resident agent in charge of Austin, Texas, county attache in Brazil, chief of domestic operations, and chief of operations. Mr. Marshall received his bachelor of science degree from Stephen F. Austin State University.

Kathleen Hawk Sawyer has served a director of the Federal Bureau of Prisons for over 8 years. She is a career public administrator in BOP and only the sixth director since it was established in 1830. She has held numerous positions within the BOP, including serving as warden of the Federal Correctional Institution in Butner, North Carolina and as the bureau's chief of staff training, being responsible for the bureau's three training centers. She received her bachelors degree in psychology from Wheeling Jesuit College in Wheeling, West Virginia and her master's degree and doctorate of education degree in counseling and rehabilitation from West Virginia University.

Mr. Louie McKinney was appointed as the acting director of the United States Marshal Service by President Bush in February. Prior to his appointment, he served as acting deputy director and special assistant to director of the Marshal Service. Mr. McKinney began his career with the Marshal Service in 1968. During 26 years with the Marshal Service, Mr. McKinney served as the chief inspector for INTERPOL, as well as United States Marshal for the U.S. Virgin Islands. Mr. McKinney holds a degree in police administration from the University of Maryland.

Now, we welcome all of you, and I just have to add that I've had the privilege of meeting with you all personally, most recently with Mr. McKinney yesterday, as a matter of fact; prior to that, a couple of weeks ago, with Dr. Sawyer when I had a wonderful—when Bobby Scott and I had a wonderful tour of five prison facilities in Pennsylvania. Mr. Marshall, we've talked before, and Mr. Pickard as well.

It's nice to know you all personally. It's nice to have you all here. The chief counsel, Glenn Schmitt to my right, reminds me that we are doing something unusual today, and that is giving you all 10 minutes to testify. All I can say is it will be appreciated if you de-

cide not to use the full 10 minutes, just because of our late start and because of the fact that we, unfortunately, expect perhaps some procedural votes on the House floor during the course of the day, though we don't know when they're going to occur.

In any case, we welcome all of you, look forward to your expert testimony, and I'm sure you look forward to our questions after that.

Mr. Pickard, we'll begin with you.

**STATEMENT OF THOMAS J. PICKARD, DEPUTY DIRECTOR,  
FEDERAL BUREAU OF INVESTIGATION**

Mr. PICKARD. Thank you, Chairman.

Chairman Smith, Congressman Scott, Congresswoman Jackson Lee, and Members of the Subcommittee, thank you for the opportunity to discuss the FBI's budget and authorization issues. The processes of authorization and oversight are vital, and we appreciate the efforts you and your staffs are making to examine our authorities and resource needs.

As all of you know, Louie Freeh announced Tuesday that he was stepping down as director of the FBI. It was a day all of us in the FBI knew would come eventually, but regret it has arrived. He enjoys enormous respect and admiration in the ranks, both for his vision and leadership and equally for his ethical expectations and integrity. No greater example can be set than he provided the right example for all of us to follow regardless the strength of the storms.

Externally, Director Freeh was known for much, things like greatly expanding our capabilities against terrorism, redesigning our crisis response capabilities, making us effective against international crime in a global arena, substantially enhancing our cyber crime fighting capabilities, and helping to reduce the level of violent crime against our citizens. Internally, it is other things not often public recognized. He put in place core values to guide all of us, including mandatory ethical training. He greatly expanded our employee assistance programs to help those in crisis.

He meets every new agent and contacts every family of those who have died. He speaks at the funerals of all those who are killed in the line of duty and personally comforts their families. He talks to every police chief who loses an officer in the line of duty and offers our assistance. He calls agents who are injured in the line of duty and ensures they're getting the best of available care. He has met with the families of those lost in terrorist cases in the incident in Kobar and the bombing of the Cole. He promises their deaths will not be forgotten and reminds us all of us every day that other things in our lives are very important and should not be unattended.

His devotion to his family extends to his FBI family. Louis Freeh is our director, and we are very, very proud of him and the vision he has brought to the FBI.

As for our budget, as many of you know, the FBI focuses its investigative resources and submits its budget requests consistent with our long-term strategic plan. The plan, implemented 3 years ago by Director Freeh after consultation with Congress, requires that we prioritize our efforts based upon a tiered approach, cal-

culated on factors such as potential harm to the national security, economic harm, public integrity, and other issues: Briefly, Tier I, those matters affecting national and economic security such as foreign counter intelligence, terrorism, cyber terrorism; Tier II, those crimes that affect the public safety or undermine the integrity of American society, such as organized crime, public corruption, civil rights, and international crime; and Tier III, those crimes that affect individuals and property where there is a substantial benefit in adding the Federal resources.

Guiding the implementation of our national priorities are the FBI's core values I mentioned that were put in place by Director Freeh. Briefly, they are a rigorous obedience to the Constitution, respect for the dignity of all those we protect, compassion and fairness in all we do, and uncompromising personal and institutional integrity.

With the above backdrop, the FBI's fiscal 2002 budget request is for a total of \$3,500,000 [sic] and 24,938 permanent positions, which includes 10,420 FBI agents. Included are 106 million for adjustments to base and 170 million in program increases. The program increases would provide 279 new positions, including 76 agents, and fund four critical initiatives in counterintelligence, counterterrorism, cyber crime, and infrastructure, all consistent with our strategic plan. This funding includes money to address preparation for the upcoming winter Olympics in Salt Lake and our Trilogy information infrastructure.

In addition to direct funding, the FBI requests 2,826 anticipated reimbursable work years in programs such as health care fraud, organized crime, drug enforcement, and other programs. Our statement submitted for the record contains detailed descriptions for our strategic plan and these initiatives.

For the sake of brevity, our accomplishments for this past year will be left with the statement in the record, but I would like to briefly touch on two very current and very critical issues, the Hanssen case and CI-21 or counterintelligence in the 21st Century. While the Hanssen case represents extraordinary investigative work that he has alleged to have spied without detection for a number of years, very simply, our internal security policies and practices are not adequate. We are approaching that possibility as rapidly and aggressively as we can, believing that while all risk can never be eliminated, we can and should do more to reduce the risk.

Director Freeh and Attorney General Ashcroft asked Judge Webster to review our internal security from top to bottom and identify anything and everything that needs to be improved or implemented. He is doing so with an able staff. They have complete and unfettered access and cooperation of the FBI, and I understand they are making substantial progress.

In the interim and in coordination with Judge Webster, Director Freeh has taken other actions to address the urgent vulnerabilities. Director Freeh has instituted broadened polygraph policy, enhanced information security auditing, enhanced background re-investigations, placed an internal security expert from the CIA in charge of our security program, and has changed the reporting lines so this individual reports directly to myself and the director.

He has also appointed a task force headed by Assistance Director Bob Dies to identify those security policies that are lacking. I fully expect many additional changes to be forthcoming from that task force, from Judge Webster's commission, and also from the inspector general.

The second issue is CI-21. While counterintelligence is not normally before this Committee, I mention CI-21 because counterintelligence is a significant part of the FBI's mission and represents a dramatic change in the Government's approach to counterintelligence. Borne out of the FBI's own self-evaluation, CI-21 represents the best opportunity ever for a government-wide coordinated approach to counterintelligence consistent with the national strategy designed to protect the nation's most valuable national security investigation, whether it is privately held or held by the Government. We appreciate those efforts, and CI-21 is a joint effort by DOD, CIA, the Department of Justice, and the FBI to produce in a formal way a common strategy and coordinated taskings.

The FBI's 11,000 agents are deployed in 56 field offices, as you said, Mr. Chairman, and 400 smaller independent resident offices, 44 legal attaches around the world, and are at our training academy located at Quantico. At any given time, we have nearly 100,000 investigative matters pending. During Fiscal Year 2000, the FBI investigations led to over 21,000 convictions and a host of other recoveries and fines.

What has become one of the most important aspects of our operation is our international component. With a little over 100 agents in 44 countries, we have made a significant difference as evidenced by the U.S.S. Cole bombing and also by the recent release of three Americans who were held hostage in Kenya.

The Subcommittee has received extensive briefings about the FBI's ongoing project to rebuild our obsolete information infrastructure. We call this Project Trilogy. As you know, Director Freeh brought in Bob Dies, a 30-year veteran of the IBM Corporation to lead this effort, which Congress has approved and begun funding.

Your staff has asked about our previous exception from title V for hiring and retention. More than any other time in history, we have a need for highly-trained computer scientists, engineers, and forensic experts. A short pilot project of this program demonstrated its utility, producing results we would otherwise not obtain. As the FBI is becoming increasingly more proactive, increasingly more technical, we must have the skills and abilities to deal with this.

Many of you have asked about the National Instant Criminal Background System or NICS. Last year, total NICS inquiries were 4,489,000. There were over 3,000,000 immediate proceeds and nearly 72,000 denials in that year, and the NICS system is now achieving a 99.7 percent availability. NICS relies on other systems, and as a result, sometimes has an availability of only 96.3 percent.

Finally, let me mention the Boston informant situation, so important to some of you. The conduct alleged is deplorable and reprehensible and deserving of the strongest possible condemnation. While I cannot comment on the pending criminal matter, Director Freeh and the attorney general established a task force of prosecutors and investigators to review the allegations going back to the mid-1960's. One former agent has been indicted, along with two al-

leged organized crime figures. Much more needs to be done, including investigation of the circumstances involving the murder of Teddy Deegan. We are fully committed to uncovering every detail and bringing every—and bringing before prosecution every facet of that investigation, just as we did in the Birmingham civil rights bombing. We cannot permit acts that happened 30 years ago to go on when justice must be ultimately served.

In the interim, the department has issued new guidelines for us on informant oversight, and we look forward to your questions.

[The prepared statement of Mr. Pickard follows:]

#### PREPARED STATEMENT OF THOMAS J. PICKARD

Good morning, Chairman Smith, Congressman Scott and other members of the Subcommittee. I am pleased to appear this morning as the Subcommittee considers the reauthorization for the Federal Bureau of Investigation (FBI).

The work of the FBI, whether it is catching criminals, drug traffickers, terrorists, and spies; providing training, investigative assistance, and forensic and identification services to our law enforcement partners; or developing new crime-fighting technologies and techniques, is made possible by the strong support of this Subcommittee. On behalf of the employees of the FBI, I thank you for your support.

#### CHALLENGES FACING THE FBI

I would like to begin by highlighting for the Subcommittee several of the challenges facing the FBI, and then update you on the implementation of the FBI Strategic Plan that we adopted in 1998 to prepare the FBI for the 21st Century. This plan and its vision of the FBI is especially important given the challenges and changes facing the FBI. I would then like to give you with an overview of our Fiscal Year 2002 budget request and conclude with a discussion of our evolving internal security strategies.

Increasingly, the crime problems and national security threats facing the FBI are transcending the traditional investigative programs under which the FBI operates. For example, the Southwest Border and East Caribbean crime strategies are based upon a coordinated attack against drug trafficking (organized crime/drugs program), violent crimes and gangs (violent crimes program), and public corruption (white-collar crime program). Emerging criminal enterprises from Eastern Europe and Eurasia tend to be involved not only in “traditional” organized crime activities, such as extortion, loan sharking, and street crime, but also complex money laundering, tax evasion schemes, medical fraud, and other “white-collar” offenses and international trafficking in prostitution.

We are also facing a growing internationalization of crime. Increasingly, cases being worked by FBI Agents on the streets of America are developing leads that take us to foreign lands for resolution. Recent events, such as the abductions and brutal murders of Americans in Uganda and Colombia, required the FBI to exercise its statutory extraterritorial jurisdiction and deploy investigative teams overseas. Organized criminal enterprises are often involved in related illegal activities on several continents. Communications networks and the Internet allow criminals in foreign countries to commit theft and fraud or to distribute child pornography in the United States without leaving their homelands.

To respond to these types of emerging crime problems and national security issues more quickly, the FBI must focus its efforts and resources along broader investigative strategies.

Another challenge facing the FBI is the changing demographics of our workforce. Since September 1993, when Director Freeh took the FBI’s helm, we have hired and trained approximately 4,800 new Special Agents. Agents hired since September 1993 represent about 41 percent of the agents on board today. While I am immensely proud of our agent workforce, I am also aware that it is a young workforce in terms of experience. Similarly, we have hired nearly 7,800 new support employees since September 1993 representing nearly 36 percent of our current support employees.

Keeping current with the fast pace of technology and more complex crime problems and issues requires a more technically trained and competent workforce. This applies not only in terms of our investigators, but also with respect to the scientists, engineers, analysts, and other support staff who help our agents do their jobs. We

are also recognizing that technically trained specialists are becoming an increasingly important part of our investigative teams.

Emerging technologies present both a challenge and an opportunity for the FBI to develop new methods and capabilities for preventing and investigating crime and protecting the national security. Criminals, terrorists, and foreign intelligence agents, mirroring legitimate businesses and society in general, have embraced information technology and recognize the potential of new efficiencies and capabilities in developing and maintaining criminal enterprises and other illegal activities. Traditional crimes, especially financial and commercial crimes, are now being committed in a digital world. Paper trails are now electronic trails. Records which were once written and stored in a safe are now written to electronic media and encrypted. At the same time, the same efficiencies and capabilities being exploited by criminals and others to commit crimes can also be used to improve the effectiveness of the FBI and law enforcement in fighting those very same illegal activities. We must be able to upgrade existing investigative techniques and technologies and to take advantage of emerging technologies to develop new capabilities to keep abreast of changing criminal problems and national security issues.

Ensuring an infrastructure to support the operational, information technology, administrative, safety, and security requirements of the FBI also presents challenges. The FBI employs over 27,000 employees, located in 56 major field offices, approximately 400 smaller resident agencies, four information technology centers, a fingerprint identification and criminal justice information complex, a training academy, an engineering research facility, and FBI Headquarters. We also operate Legal Attache Offices in 44 foreign countries on the continents of Africa, Asia, Europe, North and South America, and Australia. Tying these offices together are large, complex radio communications and telecommunications networks. In addition, we also operate and maintain a nationwide criminal justice, forensic, and investigative information systems and services, such as the Integrated Automated Fingerprint Identification System, the National Crime Information Center, the National Instant Criminal Background Check System (NICS), Law Enforcement On-line, the Violent Criminal Apprehension Program, and the Combined DNA Identification System, that are relied upon by federal, state and local law enforcement and criminal justice agencies.

#### FBI STRATEGIC PLAN UPDATE

Three years ago, we issued the FBI Strategic Plan, 1998-2003. This plan represented the culmination of work performed over a year's time by a strategic planning task force. This group conducted strategy sessions with every FBI investigative program, both criminal and national security, and met with FBI Special Agents in Charge and other field office representatives. In doing so, the task force not only identified the strategic direction and national priorities for the FBI, but it also performed a self-assessment of the FBI's capacity to achieve these goals. This self-assessment identified deficiencies and performance gaps that must be improved or completely eliminated if we are to be successful in dealing with emerging crime problems and more challenging threats and issues related to protecting the national security. Some of these deficiencies and performance gaps are being corrected by re-engineering processes and implementing policy decisions, while others may require funding and resources to mitigate.

Guiding the implementation of our national priorities is a statement of core values for performing the mission of the FBI, which Director Freeh personally wrote. Briefly, the core values established for FBI employees can be summarized as follows:

- rigorous obedience to the Constitution;
- respect for the dignity of all those we protect;
- compassion;
- fairness; and
- uncompromising personal and institutional integrity.

To accomplish the mission of the FBI, we must follow these core values. The public expects the FBI to do its utmost to protect people and their rights. Director Freeh emphasizes to FBI employees that observance of these core values is our guarantee of excellence and propriety in meeting the Bureau's national security and criminal investigative responsibilities.

The FBI Strategic Plan, 1998-2003, identified three major functional areas that define the FBI's strategic priorities. These three national priorities are: national and economic security; criminal enterprises and public integrity; and individuals and property. Within these three functional areas the FBI identified nine strategic goals

emphasizing the FBI's need to position itself to prevent crimes and counterintelligence activities, rather than just reacting to such acts after they occur, as follows:  
*National and Economic Security.* Our highest national priority is the investigation of foreign intelligence, terrorist, and criminal activities that directly threaten the national or economic security of the United States. We have established four strategic goals for this area:

- Identify, prevent, and defeat intelligence operations conducted by any foreign power within the United States, or against certain U.S. interests abroad, that constitute a threat to U.S. national security;
- Prevent, disrupt, and defeat terrorist operations before they occur;
- Create an effective and ongoing deterrent to prevent criminal conspiracies from defrauding major U.S. industries and the U.S. Government; and
- Deter the unlawful exploitation of emerging technologies by foreign powers, terrorists, and criminal elements.

Key Tier 1 Performance Indicators, 1999-2000

	1999	2000
Foreign Intelligence Surveillance Act Applications Processed	531	562
Counterespionage (CE) Arrests and Locates	16	11
CE Information and Indictments	18	9
CE Convictions and Pre-trial Diversions	17	6
Terrorist Incidents Prevented	7	tbd
Joint Terrorism Task Forces	23	29
Counterterrorism (CT)-related Arrests and Locates	305	596
CT-related Information and Indictments	139	223
CT-related Convictions and Pre-trial Diversions	186	241
FBI Field Computer Intrusion (CI) Squads/Teams	10	16
National Infrastructure Protection Center (NIPC) Crisis Action Teams Activated	6	3
NIPC Threat and Warning Notices Issued	33	36
Key Assets Identified	2,745	5,384
Infragard chapters	8	31
Infragard participants	18	392
CI-related Arrests and Locates	40	62
CI-related Information and Indictments	49	66
CI-related Convictions and Pre-trial Diversions	54	62
Health Care Fraud (HCF) Arrests and Locates	376	361
HCF Information and Indictments	696	819
HCF Convictions and Pre-trial Diversions	607	635
HCF Recoveries and Restitutions (\$000)	312,861	580,607
HCF Fines (\$000)	51,724	137,351

*Criminal Enterprises and Public Integrity.* Our second national priority is crimes that affect the public safety or which undermine the integrity of American society. These investigations are often targeted at criminal organizations, such as the La Cosa Nostra, cartels and drug trafficking organizations, Asian criminal enterprises, and Russian organized crime groups that exploit social, economic, or political circumstances. Another focus within this area is public corruption and civil rights. For this area, we have established four strategic objectives:

- Identify, disrupt, and dismantle existing and emerging organized criminal enterprises whose activities affect the United States;
- Identify, disrupt, and dismantle targeted international and national drug-trafficking organizations;
- Reduce public corruption at all levels of government with special emphasis on law enforcement operations; and
- Deter civil rights violations through aggressive investigative and proactive measures.

## Key Tier 2 Performance Indicators, 1999-2000

	1999	2000
U.S. based drug organizations affiliated with 13 national priority targets that were		
Identified	64	201
Dismantled	8	16
Percent of La Cosa Nostra members incarcerated	18%	22%
Eurasian Criminal Enterprises dismantled	3	6
Asian Criminal Enterprises dismantled	4	15
Safe Streets Task Forces (SSTFs)	165	175
SSTF Arrests and Locates	17,473	16,147
SSTF Information and Indictments	2,049	1,989
SSTF Convictions and Pre-trial Diversions	2,576	2,300
Violent Gang Task Forces	45	49
Violent Gang Arrests and Locates	N/A	5,987
Violent Gang Information and Indictments	N/A	2,549
Violent Gang Convictions and Pre-trial Diversions	N/A	2,315
Violent Gangs affiliated with 7 national target groups that were dismantled	31	37
Public Corruption (PC) Arrests and Locates	355	422
PC Information and Indictments	597	606
PC Convictions and Pre-trial Diversions	552	551
Civil Rights (CR) Arrests and Locates	240	145
CR Information and Indictments	204	149
CR Convictions and Pre-trial Diversions	257	195

*Individuals and Property.* Our third national priority is crimes that affect individuals and property. Within this area, we will develop investigative strategies that reflect the public's expectation that the FBI will respond to and investigate serious criminal acts that affect the community and bring those responsible to justice. Our strategic goal for this area is:

- Reduce the impact of the most significant crimes that affect individuals and property.

## Key Tier 3 Performance Indicators, 1999-2000

	1999	2000
Crimes Against Children (CAC) Resource Teams	35	35
CAC Arrests, Locates, Summons	872	1,004
CAC Information and Indictments	621	731
CAC Convictions and Pre-trial Diversions	591	802
Number of Missing Children Located	90	92
"Innocent Images" National Initiative (IINI) Undercover Operations	10	14
IINI Arrests, Locates, Summons	337	482
IINI Information and Indictments	307	421
IINI Convictions and Pre-trial Diversions	315	476
Safe Trails Task Forces (STTFs)	6	6
Indian Country (IC) Arrests and Locates	668	733
IC Information and Indictments	819	755
IC Convictions and Pre-trial Diversions	726	735

[Note: in some instances, data shown reflect updated information from the Department of Justice FY 2000 Performance Report and FY 2000 Performance Plan issued April 2001]

Overall, during FY 2000, FBI investigations led or contributed to the indictment of 19,134 individuals, the conviction of 21,420 individuals, and the arrest of 36,387 persons on federal, state, local, or international charges. Additionally, FBI investiga-

tive efforts led or contributed to \$946,811,505 in fines being levied, \$1,012,851,257 in recoveries of stolen property, and \$3,259,384,477 in court-ordered restitutions.

To achieve the strategic objectives that we have identified, the FBI has developed five operational support strategies that are designed to build enhanced investigative capabilities and effectiveness. These operational support categories are: intelligence, information technology, applied science and engineering, management, and assistance to state, local, and international law enforcement partners.

Key Support Performance Indicators, 1999-2000

	1999	2000
Students trained, FBI Academy:		
New FBI Special Agents	718	312
FBI employees (in-service, advanced)	11,250	11,767
State, local, and international	4,881	5,796
Other students trained (regional, local):		
State, local	117,599	120,233
International	7,105	7,709
Countries represented	121	161
Forensic examinations performed:		
Federal agencies	727,354	651,751
Non-federal agencies	139,354	120,101
Fingerprint identification services:		
Criminal cards processed	5,926,920	8,577,911
Civil card processed	6,496,415	6,743,428
Civil submissions with criminal records	565,929	701,164
Civil submissions using false identity	66,213	82,036
National Crime Information Center (NCIC) transactions	764,189,606	850,351,631
National Instant Check System:		
Checks performed by States	3,480,832	4,511,866
Checks performed by FBI	3,346,743	4,489,113
Persons with criminal records prevented from purchasing firearms (FBI checks)	62,189	71,890

For the FY 2002 budget, FBI program managers continued to use the FBI Strategic Plan, 1998-2003, and the five operational support strategies as guides for developing their resource requirements. Through an integrated strategic planning and budget framework, the FBI has significantly sharpened its focus for allocating resources based upon national priorities and strategic objectives that concentrate on the most significant crime problems and threats to the Nation.

OVERVIEW OF FY 2002 BUDGET REQUEST

For FY 2002, the FBI is requesting a total of \$3,507,109,000 and 24,938 permanent positions (10,420 agents) and 24,490 workyears for its Salaries and Expenses (\$3,505,859,000) and Construction (\$1,250,000) appropriations. For FBI Salaries and Expenses, this amount represents a net increase of \$277,377,000 from the current year and consists of \$106,569,000 for adjustments to base and \$170,808,000 for program increases. The adjustments to base include such items as the proposed 3.6 percent pay raise for FY 2002, higher federal employee health insurance costs, additional General Services Administration (GSA) rent costs, and annualization of prior year increases and pay raises provided by Congress. Program increases proposed for FY 2002 would provide 279 new positions, including 76 new agents, and \$170,808,000 for four budget initiatives: Counterintelligence; Counterterrorism; Cybercrime; and Infrastructure.

In addition to direct funded resources, the FY 2002 budget request assumes a total of 2,826 reimbursable workyears, including 1,041 agents. Under the auspices of the Interagency Crime and Drug Enforcement (ICDE) program, the FBI would be reimbursed for a total of 912 workyears, including 547 agents, and \$115,436,000 for FBI drug and gang-related task force investigations and operations. Pursuant to the Health Insurance Portability and Accountability Act of 1996, the FBI will receive \$101,000,000 in FY 2002 to fund 793 workyears, including 455 agents, for health care fraud enforcement. For user fee programs of the Criminal Justice Serv-

ices program, a total of 692 workyears are planned, based on estimated fees. The remaining reimbursable workyears are used to facilitate a variety of other activities, including victim/witness assistance, name checks for other federal agencies, facility and maintenance support to other agencies sharing FBI facilities, pre-employment background investigations, and detail assignment to other agencies.

At this point, I would like to describe in more detail the four budget initiatives proposed for FY 2002.

#### COUNTERINTELLIGENCE

Despite the fall of the Iron Curtain and the emergence of democracy in many of the countries formerly under the rule of communism, the threat posed to U.S. national, military, and economic security from foreign countries remains significant. Investigations in this area have become more complex as foreign intelligence services have expanded their focus from traditional military-related targets to new areas, including technology, intellectual property, economic espionage, and proliferation. The FBI continues to work closely with the intelligence community to identify and reduce the presence of hostile intelligence services in the U.S.

To keep pace with the changing counterintelligence threat to the U.S., the FBI is proposing a counterintelligence initiative that would provide an additional \$31,277,000 and 182 positions (62 agents) in four areas of this mission-critical responsibility:

- enhancing field investigative activities focused on identifying, preventing, and defeating intelligence operations conducted by any foreign power within the U.S. or against U.S. interests abroad that pose a threat to U.S. national security;
- improving national-level program management and coordination of field investigative activities;
- developing and acquiring technology to support FBI counterintelligence activities; and
- improving security countermeasures to ensure the reliability of FBI personnel and contractors and security of information and facilities. I will be discussing this at length later in my testimony.

#### COUNTERTERRORISM

The United States continues to face a serious, credible threat from terrorists both abroad and at home. The number of groups and individuals capable of carrying out a terrorist act has increased over the past several years. Of continuing concern to the FBI are groups and individuals for which political or religious beliefs constitute sufficient motivation for carrying out a devastating terrorist act.

To deal effectively with domestic and international terrorism, the FBI must concentrate on both prevention and response. The FBI's counterterrorism strategy is focused upon five inter-related elements to build and maintain an operational capacity for identifying, preventing, deterring, and investigating terrorist activities.

First, the FBI must have the capacity to respond to acts of terrorism committed in the U.S. and abroad when those acts are directed against the U.S. government or its interests. Second, the FBI must have the capacity to receive, react to, and disseminate counterterrorism information. Third, the FBI must develop its internal capacities to support proactive counterterrorism programs and initiatives. Fourth, the FBI must have the capacity to establish and maintain sound and productive relationships with other domestic and foreign law enforcement and intelligence counterparts. Fifth, the FBI must have the capacity to use all of the necessary assets and capabilities of the FBI and other U.S. government agencies to support and initiate complex investigations and operations against domestic and international terrorists and terrorist organizations. For FY 2002, the FBI is requesting increases totaling \$32,059,000 and 42 positions (8 agents) to improve and enhance existing counterterrorism capabilities and operations.

*2002 Winter Olympics Preparation.* The 2002 Winter Olympic Games have been designated a National Special Security Event. Consistent with FBI lead-agency responsibilities for intelligence collection and crisis management as contained in PDD-39 and PDD-62, the FBI is working closely with the United States Secret Service and other federal, state, and local law enforcement and consequence management agencies to plan for security and public safety issues for the 2002 Winter Olympic Games that will be hosted by Salt Lake City, Utah.

For FY 2002, the FBI requests increases totaling \$12,302,000 for 2002 Winter Olympic Games deployment. The funding requested will cover travel, per diem, vehicle lease, utilities, telecommunications, and FBI overtime costs for the planned de-

ployment of over 800 FBI personnel for the event period. The Salt Lake City games will be conducted at 20 official Olympic venues spread over a 6,000 square mile area. Olympic competition will take place simultaneously at 10 venues in 3 major cities and 6 remote mountain resort areas.

*Recurring Security Services.* The FBI is committed to implementing the security standards contained in the June 1995 Department of Justice report entitled, "Vulnerability Assessment of Federal Facilities." FBI facilities are often the target of potential terrorist threats. Safeguarding agency employees and physical security must be a priority. For FY 2002, the FBI requests an increase of \$2,020,000 to acquire contract guard services for 6 stand-alone field office facilities where GSA does not provide such service (\$1,600,000), replace an outdated closed-circuit television (CCTV) security system at FBI Headquarters (\$320,000), and replace three guard booths at FBI Headquarters to facilitate new visitor identification procedures (\$100,000).

*Incident Response Readiness.* Consistent with the provisions of PDD-62, the FBI initiated a long-term program in FY 2000 to develop law enforcement capabilities for the technical resolution of a weapons of mass destruction incident involving chemical, biological, or radiological threats or devices. Initial funding for this effort was provided through an interagency agreement with the Department of Defense. For FY 2002, the FBI requests 42 positions (8 agents) and \$17,737,000 to support ongoing efforts in the areas of threat assessment, diagnostics, and device render safe equipment.

#### CYBERCRIME

In recent years, technological advances have fundamentally changed the way of life in this country. Computers and networks allow millions of individuals to access, on a daily basis, a broad range of information services, databases, commerce, and communications capabilities that were previously unavailable. A combination of reduced cost for computer technology and increased storage capacity allows the accumulation, storage, and management of large amounts of information by individuals on personal computers and peripheral devices.

Many FBI investigations, especially those involving organized crime, drug trafficking, crimes against children, white-collar crime, counterintelligence, and counterterrorism, are encountering the use of computer technology to facilitate illegal activities. As a result, the FBI must develop the investigative and forensic capacities and capabilities to deal with the use of computer technology by criminals and others to commit crimes or undermine national security. For FY 2002, the FBI is requesting an increase of 33 positions (6 agents) and \$28,144,000 for providing specialized technical assistance to field investigators and for developing investigative tools for law enforcement to counter the use of digital technology by criminals, terrorists, and others.

*Technical Support to Field Offices.* Criminals and other subjects of FBI investigations are employing advanced, complex physical and electronic security technology to protect their operations from competing criminal groups and to thwart law enforcement from executing lawful searches of premises and conducting court-approved interceptions of communications. The ability of the FBI to overcome such defensive measures is often critical to the success of high profile investigations and operations and the collection of evidence. The FBI's Laboratory Division provides technical support to FBI field offices, as well as the Drug Enforcement Administration, United States Customs Service, and other federal, state, and local law enforcement encountering such problems. To be able to continue providing this assistance, the FBI is requesting an increase of 10 positions (4 agents) and \$1,358,000.

*Network Data Interception.* In the Omnibus Safe Streets Act of 1968, as amended, Congress provided the FBI with the basic legal authority to conduct the interception of oral, wire, or electronic communications in criminal investigations. The statutory authority to intercept communications in national security cases was provided by Congress in the Foreign Intelligence Surveillance Act. The use of court-authorized intercepts is the investigative tool of last resort, and allowed only after all other logical investigative avenues are exhausted. Often, the evidence collected through the use of court-authorized intercepts of communications is critical to the prosecution of criminal enterprise leadership who are otherwise able to insulate themselves through the use of intermediaries from direct ties to criminal acts and illegal activities. The increasing use of the Internet and world-wide web by criminals, terrorists, and intelligence agents to commit illegal acts and carry out conspiracies against U.S. national security has presented the FBI and law enforcement with new challenges in conducting court-approved interceptions of communications and obtaining evidence and intelligence.

Increasingly, affidavits for the interception of communications are including e-mails, file transfers, and Internet Relay Chat messages, within the scope of court orders. Emerging new digital technologies, such as Internet telephony, digital subscription lines, cable Internet, wireless Internet, and satellite communications, are likely to be exploited by criminals and others in their continuing efforts to thwart law enforcement detection. Law enforcement requires the development of capabilities and techniques for conducting court-approved interceptions of communications in existing and emerging digital environments.

For FY 2002, the FBI requests an increase of 7 positions (2 agents) and \$7,664,000 to develop and procure network digital interception technologies; to provide on-site assistance to field offices, pursuant to court-approved orders; and to provide training to FBI technically trained agents.

*Counterencryption.* The widespread use of digitally-based technologies and the expansion of computer networks incorporating privacy features and capabilities through the use of cryptography presents a significant challenge to the continued ability of law enforcement to use existing electronic surveillance authorities. The FBI is already encountering strong encryption in criminal and national security investigations. In 1999, 53 new investigations encountered encryption. The need for a law enforcement cryptanalytic capability is well documented in several studies, including the National Research Council's 1996 report entitled, "Cryptography's Role in Securing the Information Society." The report recommends high priority be given to the development of technical capabilities, such as signal analysis and decryption, to assist law enforcement in coping with technological challenges.

The Administration supports the enhancement of a centralized law enforcement capability within the FBI for engineering, processing, and decrypting lawfully intercepted digital communications and electronically stored information. For FY 2002, the FBI requests an increase of \$7,000,000 to further develop an initial operating capability that will allow law enforcement to obtain plain text and meet the public safety challenges posed by the criminal use of encryption. With this funding, the FBI intends to work with existing national laboratories and other government agencies to ensure all existing resources are used in executing processing functions. This approach will prevent duplication of effort.

Additionally, the FBI plans to acquire necessary computer hardware, software tools, technical expertise, and services to develop capacities in four counterencryption program areas: (1) analytical engineering; (2) signal analysis research; (3) counterencryption deployment; and (4) industry-assisted technology transfer. The FBI also requests an increase of 13 positions and \$1,202,000 for the collection and examination of evidence (devices and communications) which include encrypted materials and other electronic analysis forensic and technical examinations.

*Electronic Surveillance Data Management System.* With funding appropriated by Congress in FY 2001, the FBI is acquiring and installing new digital collection systems to update existing analog equipment currently being used in FBI field offices. For FY 2002, the FBI requests an increase of 3 positions and \$10,920,000 for the Casa de Web project which would serve as a distributed database that provides agents and analysts with access to *minimized* (not unprocessed) recordings of audio, data, and reports generated by digital collection systems. The Casa de Web system will consist of two separate databases, one for criminal law enforcement data and one for foreign counterintelligence data. This separation ensures compliance with Executive Order 12333 that prohibits the commingling of such materials. Firewalls and security protocols will prevent data from being accessed by unauthorized users and prevent external access of the system. The Casa de Web project is being coordinated with Trilogy, the FBI's information technology upgrade program.

Casa de Web will allow authorized agents, analysts, and translators to share and analyze *minimized* data on an inter and intra office basis. Analytical tools planned for Casa de Web, such as key word speaker identification, and speech recognition, will improve information and intelligence sharing capabilities and permit FBI Agents and analysts to view, listen, and act on collected *minimized* electronic surveillance information on a more timely basis.

#### INFRASTRUCTURE

To be successful, the FBI must have the capacity for collecting, storing, managing, analyzing, and disseminating case and intelligence information on a timely basis to its own investigative personnel, as well as other federal, State, and local law enforcement and the intelligence community. Existing systems and capacities must be upgraded to meet increased investigative demands. New technologies also present opportunities for making for effective and timely use of case information and intel-

ligence currently being collected. On a daily basis, the FBI depends on its core infrastructure to ensure its agents and support staff can perform their jobs. A strong, solid infrastructure is necessary for providing everyday tools and services, such as replacement and safe automobiles for responding to and conducting investigations and equipment and supplies for conducting forensic examinations of evidence.

*Trilogy.* Trilogy is the FBI's three-year information technology infrastructure upgrade initiative. Trilogy consists of three key components: User Applications, a collection of user-specific software applications and tools to enhance the ability of agents and support employees to organize, access, and analyze information; Information Presentation, replacement computer hardware and office automation software within each office to link employees at their desks with counterparts throughout the FBI; and Network, upgrades to acquire high-speed local and wide area networks and telecommunication circuits to deliver information between users and locations securely and quickly.

Congress provided the approval to proceed with the first year of the Trilogy implementation plan in FY 2001 and authorized the expenditure of \$100,700,000 in appropriated and unobligated prior year funds. Since receiving approval to proceed with this project, the FBI acquired the services of Mitretek Systems to provide management and technical assistance to the FBI Trilogy Program Office and the services of GSA's Federal Systems Integration and Management Center (FEDSIM) to act as the acquisition agent for the project. The FBI also selected the GSA Millenia contract as the acquisition vehicle for the project. In January 2001, the FBI, through FEDSIM, issued two task order requests (TORs) to the Millenia contractors. One TOR addresses the User Applications component of Trilogy, while the second TOR addresses the Information Presentation and Network components. In April 2001, after separately reviewing vendor proposals for both TORs, the FBI selected vendors. Contractor work is expected to commence by June 2001.

Second year implementation costs of the Trilogy project are estimated at \$142,390,000. To help meet this requirement, the FBI plans to allocate \$38,230,000 of existing base funding and apply \$36,500,000 of unobligated prior year funds toward Trilogy in FY 2002. To complete second year funding requirements, an enhancement of \$67,660,000 is required. Second year activities of the Trilogy project will focus on implementing multi-case analytical tools, intranet upgrades, and multimedia electronic case files; continuing office automation upgrades in field offices; and continuing upgrades to local and wide-area networks and telecommunications circuits. The third year of implementation will complete the office automation upgrades in field offices and at Headquarters, provide for additional wide-area network circuits, and permit additional improvements to FBI case databases.

*Telecommunications Services.* An enhancement of \$6,500,000 is requested to begin the replacement and upgrade of telecommunications equipment used to provide connectivity between FBI legal attache offices and the Department of State's (DOS) worldwide network and to provide telecommunications support for FBI participation in High Intensity Drug Trafficking Area (HIDTA) multi-agency investigations and meet special case needs. The DOS Diplomatic Telecommunications Service (DTS) is upgrading its telecommunications network over the next five years. This upgrade will require the FBI to replace its legacy equipment with new equipment compatible with the DTS network.

*Motor Vehicle Program.* An increase of \$4,007,000 is requested for the FBI motor vehicle program, including \$2,557,000 to replace an additional 110 vehicles with mileage exceeding 80,000 miles, \$450,000 for automotive diagnostic tools, and \$1,000,000 to upgrade the Vehicle Management System to enhance fleet management and maintenance.

*FBI Laboratory Activation.* Occupancy of the new FBI Laboratory facility at Quantico, Virginia, is scheduled to begin in Summer 2002. Activation of the facility will require an increase of 22 buildings and facilities management employees and \$1,161,000 to properly operate and maintain the new building.

Additionally, the FY 2002 budget proposes that \$40,000,000 from the Department of Justice Working Capital Fund be used to meet costs associated with the activation of the new facility. These costs include the following:

- \$3,868,750 for the transfer of 125 Laboratory Division employees;
- \$15,000,000 for general and specialized equipment;
- \$4,695,812 for office furniture and shelving;
- \$600,000 for information technology equipment, such as network routers, hubs, and multiple access units;
- \$908,438 for moving services;

- \$792,000 for part-year FY 2002 operations and maintenance costs, such as utilities; maintenance supplies; environmental testing, trash removal, and other miscellaneous services; and housekeeping, landscaping, and other building maintenance; and
- \$14,135,000 for decommissioning and renovation/ alteration of existing Laboratory Division space in the J. Edgar Hoover Building being vacated. This amount includes \$3,000,000 for abatement and clean-up activities and disposal of hazardous materials/waste and \$11,135,000 for renovations and alterations of approximately 131,000 square feet of space.

#### RELATED DEPARTMENTAL FUNDING REQUESTS

Mr. Chairman, I would like to highlight several requests for funding included within other Department of Justice programs that are considered important to FBI initiatives and programs.

*State and Local Bomb Technician Equipment.* Within the funding proposed for the Office of Justice Programs (OJP), \$10,000,000 is included to continue an FBI Laboratory-managed program of training and equipping approximately 386 accredited State and local bomb squads located in communities throughout the United States. Congress appropriated \$5,000,000 for this program in FY 2000 and \$10,000,000 in FY 2000. In FY 1999, the Department of Justice provided \$25,000,000 from the Working Capital Fund to initiate this effort.

Continuation of funding for this program will ensure State and local bomb squads are properly trained and equipped to deal traditional improvised and explosive devices, as well as the initial response to devices that may be used by terrorists or others to release chemical or biological agents. Through this program, the FBI has provided State and local bomb squads with weapons of mass destruction (WMD) protective search suits, real-time x-ray devices, multi-gas monitoring systems, portable radiation detectors, and computers to access the Chemical and Biological Organisms-Law Enforcement database. This initiative compliments the State and local bomb technician training and accreditation program that the FBI Laboratory provides at the Hazardous Devices School, Redstone Arsenal, Alabama.

*Grants for DNA Convicted Offender and Crime Scene Backlog Reduction.* Also, requested under Community Oriented Policing Services (COPS) program is \$35,000,000 for grants to reduce the backlog of DNA profiles for entry into the FBI's national Combined DNA Information System (CODIS) database (\$15,000,000), and to reduce the backlog of crime scene evidence awaiting DNA testing (\$20,000,000). These proposals are related to several on-going FBI Laboratory initiatives for improving State and local crime-fighting and forensic capabilities.

*White-Collar Crime.* The OJP, Justice Assistance appropriation proposes \$9,230,000 for the operations of the National White-Collar Crime Center (NW3C). The FBI has entered into a partnership with the NW3C to staff the Internet Fraud Complaint Center (IFCC), which opened in May 2000. The IFCC serves as a focal point for receiving and analyzing complaints from citizens and private industry victimized by Internet fraud and as a resource to federal, State, and local law enforcement and regulatory agencies.

#### LEGISLATIVE PROPOSALS

Mr. Chairman, the FY 2002 budget request includes several general provisions proposed by the FBI, including: danger pay, foreign cooperative agreements, railroad police training, and warranty reimbursement authorities. Director Freeh and I encourage the Subcommittee to include these general provisions as part of the FY 2002 Justice Appropriations Act.

*Danger Pay.* Section 108 would extend to the FBI the same authority that the Drug Enforcement Administration (DEA) currently enjoys for authorizing danger pay for personnel assigned to high risk overseas locations. For the FBI, this is both a pay equity issue for FBI Agents assigned to DEA Country Offices and a recognition of the increased threat facing FBI personnel performing extraterritorial investigations in foreign locations due to our counterterrorism responsibilities. At times, FBI personnel are deployed to overseas locations where, due to the nature of our work, they face a threat or hostile environment that does not always extend to all members of the United States diplomatic team in a particular country. This authority would allow the FBI to address those situations. This authority has been requested by the Administration in each of the past three budgets.

*Foreign Cooperative Agreements.* Section 109 would allow the FBI to credit to its appropriation funding that is received from friendly foreign governments for that country's share of joint, cooperative projects with the FBI. This authority would facilitate projects with friendly foreign governments, especially in support of our na-

tional security mission. The authority was first proposed by the Administration last year, was adopted by the House, but did not make its way into the final Conference bill.

*Railroad Police Training.* Section 110 would allow the FBI to establish and collect a fee to pay for the costs of railroad police officers participating in FBI law enforcement training programs authorized by P.L. 106–110, and to credit those fees to its Salaries and Expenses appropriation to cover the costs of providing such training. P.L. 106–110 authorized railroad police officers to attend FBI training programs, but directed that no federal funds be used to provide such training. Railroad police officers are willing to pay for such training; however, the law does not provide an authority for the FBI to collect and retain the fees to pay for the training. This provision provides the requisite authority.

*Reimbursement for In-house Warranty Work.* Section 111 would allow the Attorney General to seek and retain reimbursement from vendors for warranty repairs and maintenance performed in-house by Department of Justice employees when it is not possible for the vendor to perform such services. For example, FBI motor vehicles are equipped with radios that use government encryption devices. As a result, these vehicles cannot be left unattended at vendor repair facilities for servicing. FBI mechanics currently perform warranty work that normally would be provided at no cost by the vendor. Many vendors are willing to reimburse or credit the FBI for the cost of the warranty work provided in-house. This provision would provide the authority needed to enter into such agreements when there is a law enforcement, security, or mission-related reason that precludes vendor servicing and permits the crediting of payments received to the appropriate appropriation.

#### FBI INTERNAL SECURITY

Mr. Chairman, I would like to close my statement with an accounting of the FBI's evolving internal security strategies.

In the wake of the arrest of Special Agent Robert Philip Hanssen on espionage charges, Director Freeh asked Judge William H. Webster to conduct a thorough review of the FBI's internal security functions and procedures and to recommend improvements. As a former FBI Director, CIA Director, and Director of Central Intelligence, Judge Webster is, of course, uniquely qualified to undertake this review. Judge Webster has assembled an impressive team of highly credentialed individuals to assist him in conducting this review. Those members are: Clifford L. Alexander, Jr., Griffin B. Bell, William S. Cohen, Robert B. Fiske, Jr., Thomas S. Foley, and Carla A. Hills. Director Freeh is committed to providing Judge Webster and his team complete and timely access to FBI records, personnel, and resources to complete this task.

I understand that Judge Webster has also established a team of investigative attorneys to assist in this review. Those attorneys are currently conducting interviews and reviewing documents in order to formulate recommendations to improve FBI security policies and procedures. We welcome their recommendations and are committed to implementing them as expeditiously as possible.

In the meantime, Director Freeh has created an internal FBI Task Force made up of eight Assistant Directors to identify and implement interim changes to the FBI's security programs that are sufficiently urgent that we should not await the outcome of either Judge Webster's review or that of the Department of Justice Inspector General. To date, the FBI Task Force has implemented the following changes:

*Enhanced Computer Audit Procedures:* The FBI's most sensitive information is contained in electronic case files in the Automated Case System. Access is determined both by one's assignment and restrictions placed when the case is opened or data entered.

Director Freeh has instructed our personnel to implement regular reviews on our most sensitive cases—reviews that can highlight all individuals who have looked at the case files—so that the case agents and their supervisors can be responsible for assuring these cases are being accessed by only those with a need to know.

The FBI's Electronic Case File (ECF) Document Access Report (DAR) shows accesses to all documents in a particular case file for a specific period of time. The DAR shows the user who conducted the captured activity, the date and time, and the actions taken, i.e., list serials, view text, print, or download.

Case Agents will review the DARs every 90 days and, with their supervisors, will be responsible for resolving unexplained accesses. As part of the resolution process, the Agent and his supervisor may decide that more frequent monitoring of a specific case is warranted to determine whether accesses were anomalous and accidental or repeated and unauthorized.

This procedure should act as a strong deterrent as well as identify unusual entries into sensitive files. It will not stymie the flow of information necessary for effective counterintelligence. If this monitoring system had been in place, Hanssen would have known that every time he accessed a case or program as a result of "surfing," his entry would have been identified to the case Agent and questioned. And even though Hanssen did not conduct an unusual number of searches against FBI records, the fact that he was conducting these searches at all would have been immediately apparent and raised suspicions.

*Expanded Polygraph Program:* Currently, the FBI conducts polygraphs of all new employees prior to them beginning their service. In addition, individuals with access to certain sensitive programs or cases are polygraphed and, of course, the polygraph is used during serious internal inquiries to resolve unexplained anomalies and ambiguities.

As an interim measure, we have identified for periodic polygraph examination those individuals who, by the nature of their assignment, have broad access to the FBI's most sensitive information. This includes any level of employee in any field who has access to our most sensitive information, such as data base administrators. These polygraph examinations are currently underway. In addition, we are conducting polygraph examinations of those employees leaving for and returning from permanent foreign assignments.

Judge Webster will closely examine the entire polygraph issue to include random polygraphs and inclusion of the polygraph as part of the five-year reinvestigation every employee now undergoes.

As there are elsewhere in the Intelligence Community, there will be unexplainable false positives and, as we saw in the Ames case, false negatives. On balance, however, Director Freeh and I believe the potential for damage to be done by traitors outweighs these concerns. Accordingly, Director Freeh implemented this interim step with the full expectation that Judge Webster will examine this issue in its entirety and make further recommendations.

*Reassignment of Security Countermeasures Section:* The FBI Task Force recently recommended, and Director Freeh agreed, to temporarily establish the Security Countermeasures Section of the National Security Division as a separate entity run by a senior level executive from outside the FBI who will report directly to me. That status will remain as we pursue the necessary authority to effectuate this change.

This initial elevation of having Security Countermeasures report to me is intended to help implement the substantial policy and procedural changes under development by the AD Task Force and that will precipitate from the review by Judge Webster and the Inspector General.

#### SUMMARY

Mr. Chairman, Director Freeh and I are especially proud of the work being performed everyday by the employees of the FBI. Their ability to do that work—the work asked of us by the Congress through the laws it passes, by the President through executive orders, and by our federal, state, local, and international law enforcement partners—is a reflection of the strong fiscal support given to the FBI by this Subcommittee.

The budget proposed for the FBI for FY 2002 addresses the critical resource needs identified through our Strategic Planning process. These important investments will allow the FBI to meet the investigative and technological challenges we face as the FBI enters the 21st Century. These investments will also enable us to develop the core competencies that will allow us to be successful in investigating crimes, protecting national security, developing and sharing technical and forensic expertise, and working better with our federal, state, local, and international partners. I believe that the national priorities and objectives we have put forth reflect the expectations for the FBI that are held by the American people, as well as the Congress.

Congress, and this Subcommittee in particular, has been extremely generous in its support of the FBI over the past several years. Our successes in the field, whether they be preventing pedophiles from luring children over the Internet, to bringing terrorists from foreign lands back to the U.S. to stand trial for their actions, to protecting our Nation's critical infrastructure from cyber attacks, to fostering greater cooperation with foreign law enforcement through our Legal Attache Offices, were made possible because of your support for the FBI. As we look forward to FY 2002, I am hopeful that we can continue to depend upon your support.

Again, I thank you for this opportunity to appear before the Subcommittee.

Mr. SMITH. Okay. Thank you. Did I mispronounce your name? Is it Mr. Pickard?

Mr. PICKARD. You can call me anything.

Mr. SMITH. It just dawned on me. I think it is Mr. Pickard.

Mr. PICKARD. It's Pickard, somewhat like the TV show.

Mr. SMITH. Thank you, Mr. Pickard, for your testimony.

Mr. Marshall.

**STATEMENT OF DONNIE R. MARSHALL, ADMINISTRATOR,  
DRUG ENFORCEMENT ADMINISTRATION**

Mr. MARSHALL. Chairman Smith, good morning, Ranking Member Jackson Lee, and other Members of the Committee. It is indeed a pleasure to be here this morning as you hold these hearings, and thanks for having me.

Before I begin my testimony, I want to thank the entire Subcommittee. I really believe that without your support on both sides of the aisle, DEA could not continue to effectively and safely meet the growing challenges that are posed by today's what I consider to be very ruthless and predatory criminal drug trafficking organizations.

As members of the world's premier drug enforcement agent sill, DEA personnel are really international crime fighters, and those employees every day courageously confront and neutralize the world's most sophisticated international drug trafficking organizations. Whether we're working in South America or Asia or communities all across America, DEA is present at the cutting edge of law enforcement, and we're continuously adapting to the ever-changing dynamics of the criminal organizations and enterprises that we confront.

And I believe that DEA's efforts have had a major impact against global drug trafficking. As examples, I want to mention the demise of the Medellin and Cali cartels, and that demise is due in very large part to DEA's aggressive investigations and programs of international cooperation. By destroying those international syndicates, the cocaine threat in the U.S. appears to be leveling off somewhat, and other—the Columbian cartels are looking to Europe and other countries around the world to create their new markets. Likewise, the neutralization of the Southeast Asia-based drug insurgence groups, such as the Shang United Army, has all but eliminated the availability of Southeast Asian heroin in the United States.

Mexican-based methamphetamine traffickers, who during the early and mid-1990's flooded the U.S. market with the product of their methamphetamine superlabs, have also been hurt by our intensive law enforcements and chemical control efforts, and those efforts have resulted in price increases and purity decreases in methamphetamine and lower methamphetamine emergency room incidents.

That good news, however, I think is tempered by the challenges that lie ahead of us, continued challenges. We see that the Columbian-based traffickers are always ready to exploit their infrastructure, and they have very quickly capitalized on the voids that were created by our successes in Southeast Asian, and we see that Columbian groups now dominate the U.S. heroin market, and further, by relinquishing a part of that you domestic cocaine distribution network to Mexico-based operators, the Columbian traffickers have

really further insulated themselves from U.S. law enforcement intervention, and in the process they have empowered those Mexico-based organizations to the extent that the Mexico-based organizations are now the premier poly-drug traffickers threatening our nation.

Now, DEA has grown and developed tremendously over the years from a small start. We now have about 9,000 dedicated, courageous, and talented men and women, and we are committed to improving the quality of lives of citizens of the United States. Under my administrator's vision for DEA, we are committed to intelligence-based operations, and we place a premium on maintaining the public trust and confidence, ethical practices, integrity, training, technology, and last, the success of each and every individual employee of DEA.

We now have a 5-year strategy that's—that I have here, and we've discussed it with your staff. It's derived from the administrator's vision, and it directs our skills and resources on our core competency, which is the disruption and dismantling of major drug trafficking organizations wherever they operate in the world. That overall strategy focuses on DEA's efforts on international, national and regional, and local impact targets with the ultimate goal always being to destroy the major drug trafficking organizations by investigating, indicting, and imprisoning their leaders.

DEA now maintains 78 offices in 57 countries. These offices support DEA domestic investigations through foreign liaison, training of host country officials, bilateral investigations, and intelligence gathering. Domestically, as you said, Mr. Chairman, we operate 21 field divisions in addition to our special operations division at DEA headquarters, and we have offices in almost 350 U.S. cities in every State.

Some of our significant successes include Operation Mountain Express where we successfully target the methamphetamine precursor chemical providers; Operation Impunity II, which resulted in the seizure of over 5,000 kilograms of cocaine and arrested 141 of the top leaders of that organization; Operation White Horse, which we recently completed with the Columbia authorities and State and local authorities here in the United States was responsible for immobilizing an organization that was sending large quantities of heroine from Columbia to the northeastern United States.

Now, I have long said that the fight against drugs cannot be won through law enforcement alone, and I very deeply believe that. I believe in what I refer to as a holistic approach that includes a very strong element of law enforcement, but also includes treatment, education, and prevention. It's important, I think, that each one of those elements be strongly supported, and none of those elements should be implemented at the expense of others.

Now, in light of DEA's view of the threat posed by international drug trafficking in our country and in the world today, I want to outline for you some of the things that are in our 2002 budget request. For our salaries and expenses appropriation, the DEA is requesting a total of one and a half billion dollars, 7654 positions. That's an increase of about \$120 million and 134 positions over our currently-enacted 2001 levels.

We're seeking those increases in three initiatives. The first is for our special operations division and communications intercept initiative. We're seeking 15.1 million and 62 positions under that initiative, which is very critical to us because it will allow us to enhance staffing levels in key investigative units within the special operations division, and that will include support for drug enforcement investigations against the major organizations associated with the southwest border, Latin America, Caribbean, and Europe, and Asian. Now, that special operations division that's dealt with in this initiative has actually proven to be our very most effective tool against these criminal organizations.

Secondly, is our Firebird initiative. We've requested an increase of \$30 million in three positions for the global Firebird network. That is our primary office automation infrastructure. It also serves as the communication backbone for our MERLIN intelligence network, and it's a platform for a lot of other mission-critical data bases and operational systems.

Now, finally, we're requesting \$13.1 million and 69 positions, including 46 chemists, in our laboratory operations initiative, and this will allow us to meet mission-critical requirements within that laboratory support services program. Our chemists are very dedicated and talented people, and they provide a variety of essential services, including drug and evidence analysis, on-site assistance, very often essential for officer safety in clandestine laboratory seizures, and crime scene investigations. They provide vital courtroom testimony to support our prosecution efforts.

Now, collectively, I believe that the three initiatives that we've presented will really enable us to be more effective and go about meeting more effectively the mission requirements of our special agent work force, and it will also allow us to better support the prosecution of the command and control of drug offenders that are in charge of the major global drug trafficking organizations.

Mr. Chairman, that concludes my prepared remarks, and I'll be happy to take questions at the appropriate time. Thank you.

[The prepared statement of Mr. Marshall follows:]

PREPARED STATEMENT OF DONNIE R. MARSHALL

Mr. Chairman and Members of the Subcommittee, I am happy to appear before you today as you hold hearings on reauthorizing the Department of Justice. It has been more than 20 years since the Congress passed a new authorization bill for the Department, so I would like to review with you today some of the major DEA programs and initiatives that the Congress should be aware of as it considers crafting a new authorization.

Before my testimony today, I would like to take this time to express my sincere gratitude for your ongoing support. Without your support, DEA could not continue to safely and effectively meet the growing challenges posed by increasingly sophisticated and dangerous international drug trafficking organizations operating throughout the global community. Your efforts work to send a message to these traffickers that their assault on the citizens of this nation will not be taken lightly, and that we will continue to fight to ensure that our streets remain safe for generations to come.

The mission of the Drug Enforcement Administration (DEA) is to enforce the Controlled Substances laws and regulations of the United States and to bring to the criminal and civil justice system of the U.S., or any other competent jurisdiction, those organizations involved in the growing, manufacturing and/or distribution of controlled substances destined for illicit traffic in the United States. The DEA also recommends and supports non-enforcement programs aimed at reducing the availability of illicit controlled substances on both domestic and international markets.

To accomplish this mission, DEA works with international, federal, and state and local law enforcement partners to target and immobilize the organizations of major drug traffickers operating at all levels of the drug trade.

I have long said this fight can not be won through law enforcement alone. There must be a “holistic” approach to a global problem. DEA has in place a five-year strategic plan, which addresses the problems posed by illicit drug availability and abuse and provides for a comprehensive balanced approach. There is no doubt that interdiction and enforcement, coupled with education, prevention and treatment, are the essential elements for reducing the supply and demand of illicit drugs in this country.

DEA, in its capacity as the world’s leading drug enforcement agency and the only single-mission federal agency dedicated to drug law enforcement, has developed the unique ability to direct resources and manpower to identify, target, investigate and dismantle drug organizations headquartered overseas and within the United States. DEA’s strategy to successfully accomplish these goals is straightforward, requiring that the agency’s resources and manpower be focused on all three levels of the drug trade: the international, national/regional, and local levels. Each of these categories represents a critical aspect of the drug continuum, which affects communities across the nation.

The 9,000 dedicated men and women of the DEA are committed to improving the quality of life of the citizens of the United States. The agency directs and supports investigations against the highest levels of the international drug trade, their surrogates operating within the United States and those traffickers whose violence and criminal activities threaten towns and cities across the country. These investigations are intelligence-driven and frequently involve the cooperative efforts of numerous other law enforcement organizations.

DEA’s strategy to reduce drug trafficking at all levels of operation is flexible and reflects the constantly changing nature of the drug trade. In concert with the Department of Justice, our sister law enforcement agencies, and the Office of National Drug Control Policy (ONDCP), DEA has crafted an innovative and effective program to keep pace with developments and shifts in the drug trafficking spectrum and bring both national and international drug traffickers to justice.

DEA targets, investigates, and dismantles the most powerful drug syndicates operating around the world which are responsible for supplying drugs to American communities. The most significant drug syndicates operating today are far more powerful and violent than any of the other organized criminal groups that we have experienced in the history of American law enforcement. Unlike traditional organized crime, these new criminals operate on a global scale with transnational networks to conduct illicit enterprises simultaneously in many different countries. DEA has grown in sophistication and effectiveness to meet the challenge posed by international drug trafficking in the new century.

#### THE CHALLENGE POSED BY INTERNATIONAL DRUG TRAFFICKING ORGANIZATIONS

The main challenge DEA faced during the late 1980’s was posed by the major drug traffickers from Medellin, Colombia. These drug lords were investigated, arrested and prosecuted by the Colombian National Police (CNP), the DEA, and U.S. Federal prosecutors, beginning with the landmark return of Carlos Lehder to face drug charges in the United States, and ending with the death of Pablo Escobar at the hands of the CNP. During this same time frame, narcotics investigations by the DEA and other Federal, state and local entities created a choke point in South Florida and the Caribbean, through which most of the illicit drugs arriving in our country were being transported. These enforcement strategies led to the demise of the Medellin Cartel.

As the Medellin traffickers disintegrated, the Cali traffickers quietly coalesced and assumed power equal to that of their predecessors. Due to law enforcement’s response to the trafficking in the Caribbean, the Cali traffickers would later form an alliance with Mexican trafficking groups in order to stage and transport drugs across the Southwest Border. The drug traffickers from Cali were far more sophisticated than the Medellin group and eventually became deeply involved in all aspects of the cocaine trade, including production, transportation, wholesale distribution and money laundering. Whereas the Medellin traffickers seemed to revel in the terror and violence that became their trademark—and ultimately contributed to their downfall—the Cali traffickers attempted to avoid indiscriminate violence and sought to build their image as legitimate businessmen. The Cali leaders—the Rodriguez-Orejuela brothers, Jose Santacruz Londono, and Helmer “Pacho” Herrera-Buitrago—amassed fortunes and ran their multi-billion dollar cocaine businesses from high-rises and ranches in Colombia. Miguel Rodriguez-Orejuela and his associates com-

prised what was, until then, the most powerful international organized crime group in history.

During 1995 and 1996, intense law enforcement pressure was focused on the Cali leadership by the brave men and women of the Colombian National Police. As a result, all of the top trafficking leaders from Cali were either in jail or killed. During that time frame, U.S. law enforcement agencies were effectively attacking Colombian cells operating within the United States. With the Cali leaders imprisonment in Colombia and the successful attacks by law enforcement on their U.S. cells, traffickers from Mexico took on greater prominence. A growing alliance between the Colombian traffickers and the organizations from Mexico worked to benefit both sides.

Traffickers from Mexico had long been involved in smuggling marijuana, heroin, and cocaine across the U.S.-Mexico border, using entrenched distribution routes to deliver drugs throughout the United States. The Mexico-based organizations' emergence as major methamphetamine producers and traffickers also contributed to making them a major force in international drug trafficking. The Mexican traffickers, who were previously paid in cash by the Colombian traffickers for their services, began to routinely receive up to one-half of a shipment of cocaine as their payment. This led to Mexican traffickers having access to multi-ton quantities of cocaine and allowed them to expand their markets and influence in the United States, thereby making them formidable cocaine traffickers in their own right.

The U.S./Mexico border is now the primary point of entry for cocaine shipments being smuggled into the United States. According to a recent assessment, more than half of the cocaine smuggled into the United States crosses the Southwest Border. Today, traffickers operating from Colombia continue to control wholesale level cocaine distribution throughout the heavily populated northeastern United States and along the eastern seaboard in cities such as Boston, Miami, Newark, New York City, and Philadelphia. Traffickers operating from Mexico, however, control wholesale cocaine distribution throughout the western and Midwestern United States. The distribution of multi-ton quantities of cocaine once dominated by the Colombia-based drug groups is now controlled by Mexico-based trafficking groups in cities such as Chicago, Dallas, Denver, Houston, Los Angeles, Phoenix, San Diego, San Francisco, and Seattle.

Members of international crime groups today pose a much greater threat than did their Medellin and Cali predecessors. They have at their disposal the most sophisticated communications technology as well as faxes, the Internet, and other communications equipment. Additionally, they have in their arsenal radar-equipped aircraft, weapons and an army of workers who oversee the drug business from its raw beginnings in South American jungles to the urban areas and core city locations within the United States. All of this modern technology and these vast resources enable the leaders of international criminal groups to build organizations which, together with their surrogates operating within the United States, reach into the heartland of America. The leaders of these crime groups work through their organizations to carry out the work of transporting drugs into the United States, and franchise others to distribute drugs, thereby allowing them to remain beyond the reach of American justice. Those involved in drug trafficking often generate such tremendous profits that they are able to corrupt law enforcement, military and political officials in order to create and retain a safe haven for themselves.

Successes against the Medellin and Cali drug lords accelerated the decentralization of the international cocaine trade. In this new century, we are seeing "second generation" traffickers emerge on the scene as major players in the Colombian cocaine trade. They tend to be less willing to directly challenge government authority and are much more sophisticated in their methods of operation. They employ extensive utilization of wireless communication devices, which they change with great frequency. Other emerging characteristics are the use of computerized communications, elaborate concealment of clandestine cargo, and avoidance of becoming directly involved in retail distribution or even direct distribution to the U.S. market. The successful identification, investigation, and prosecution of these violators have become an even greater challenge to law enforcement both in the United States and Colombia.

#### THE RESPONSE: TODAY'S DEA

We can and should continue to identify and build cases against the leaders of the new criminal groups from Colombia. These criminals have already moved to make our task more difficult by withdrawing from positions of vulnerability and maintaining a much lower profile than their predecessors did. Just as there is a new generation of international drug traffickers operating in the world today, we have built

what is in many ways a new DEA, far more sophisticated than that which was created in the 1970s.

As an organization, DEA has grown and changed tremendously over the years. From 1,446 agents and 1,422 support personnel in 1973, we have grown to 3,772 agents and 4,340 support staff at the end of 2000. From our first budget of \$74 million in 1973, which increased to \$256 million in 1983, DEA's budget authority has grown to \$1.44 billion for the current year.

Domestically, we now operate through 21 Field Divisions, in addition to the Special Operations Division at DEA Headquarters, with offices in every State. Also within the United States, we work through the Organized Crime Drug Enforcement Task Forces (OCDETF) program. This program was initiated in 1982 to combine federal, state, and local law enforcement efforts into a comprehensive attack against organized crime and drug traffickers. DEA remains today as the leading initiator of OCDETF cases.

Our State & Local Task Force program carries out one of the DEA's priority initiatives-addressing the problem of drug-related violent crime with our state and local counterparts. These are currently 1,134 Special Agent positions dedicated to this enforcement effort working alongside 1,868 State or local police officers in 203 Task Forces. Of this number, 45 task forces are funded through the HIDTA program.

The High Intensity Drug Trafficking Areas (HIDTA) program was authorized by the Anti-Drug Abuse Act of 1988 and is administered by the Office of National Drug Control Policy. Its mission is to reduce drug trafficking throughout the country by coordinating federal, state, and local law enforcement efforts.

To ensure that criminals do not benefit financially from their illegal acts, federal law provides that profits from drug-related crimes. Asset forfeiture is an effective weapon because it removes the profit from such illegal activities. Asset forfeiture can also financially disable drug-trafficking organizations. Property is seized by the DEA only when it is determined to be a tool for, or the proceeds of, illegal activities such as drug trafficking, organized crime, or money laundering. The DEA has also launched major operations specifically targeting the money-laundering capabilities of major trafficking organizations.

Most of the drugs in the illicit traffic are products of illicit processing or synthesis. Until recently, there were virtually no legal impediments to obtaining the chemicals necessary to manufacture drugs of abuse, no records required to be maintained for inspection, and no penalties for negligence or willful diversion. The Chemical Diversion and Trafficking Act of 1988 extended the concept of commodity control to those chemicals most often used for the manufacture and synthesis of drugs of abuse. With the support of the State Department, the DEA pursued the same goal for incorporation into the U.N. Convention Against Illicit Drug Traffic of 1988 (the Vienna Convention). On these legal bases, DEA has established controls over a list of critical chemicals commonly diverted for the production of the major drugs of abuse.

Finally, Mobile Enforcement Teams (METs) were conceived in 1995 in response to the overwhelming problem of drug-related violent crime in towns and cities across the nation. MET teams assist local law enforcement officers in identifying major drug traffickers and organizations that commit homicide and other violent crimes, collecting, analyzing, and sharing intelligence, arresting drug traffickers and assisting in the arrests of violent offenders and gangs, seizing assets, and assisting prosecutors. METs have completed 294 deployments so far, with 18 more currently under way. There are 262 DEA Special Agents assigned to the MET Program nationwide, comprising 24 teams.

Overseas, the DEA now maintains 78 offices in 57 countries. These offices support DEA domestic investigations through foreign liaison, training of host country officials, bilateral investigations, and intelligence gathering. Through the International Visitor Program, DEA provides foreign officials and U.S. diplomats with briefs on drug trafficking trends and national and international counter narcotics activities.

DEA is also in the forefront of the forensic science industry. DEA's eight Regional laboratories make up the largest accredited federal lab system in the United States. They provide the best available forensic drug analysis to the law enforcement community. These Labs each serve a region of the country. The Northeast Laboratory is located in New York City, the North Central Laboratory in Chicago, the Southeast Laboratory in Miami, the South Central Laboratory in Dallas, the Southwest Laboratory in National City (CA), the Western Laboratory in San Francisco, and the Mid-Atlantic Lab in Washington, DC. In addition, the Special Testing Laboratory is in the Washington, D.C. suburbs.

The DEA's Computer Forensics Program (CFP) is the application of computer technology and specialized seizure and evidence handling techniques to retrieve in-

formation from computer systems for investigative or intelligence purposes. Like many other business people, drug traffickers rely on computers and electronic pocket organizers to store information. Modern law enforcement routinely encounters and seizes home computers, laptops, computer networks, pocket organizers, and magnetic media in every conceivable size and format. These items, when seized, are forwarded to the CFP for duplication and extraction of information in such a way as to preserve the integrity of the evidence in a court-admissible manner. The Computer Forensics Program was established in October 1994, and has processed hundreds of computer items and pieces of electronic equipment each year since then. Over the last five years, the number of cases and computer seizures have increased by approximately 30 percent each year.

Electronic surveillance is critical to our success in combating the drug problem in the United States. In fact, the vast majority of court authorized electronic surveillance actions are directly tied to enforcement of the controlled substances laws and regulations of the United States. Without this essential tool, we in drug law enforcement would be unable to prevent, investigate, and solve many of the crimes associated with the growing, manufacture, or distribution of illegal drugs. In order to meet the challenges presented by these sophisticated drug trafficking organizations, it is necessary for us to attack the command and control mechanisms of these organizations. Our center for targeting command and control is the *Special Operations Division (SOD)*, a combined DEA, U.S. Customs, FBI, IRS/Criminal Investigations, and DOJ/Criminal Division effort that supports ongoing investigations by producing detailed and comprehensive analyses of data revealing the activities and organizational structures of major drug trafficking and drug-related money laundering organizations and identifying relationships among traffickers and their related enterprises.

Today's international drug trafficking organizations are the wealthiest, most powerful, and most ruthless organized crime entities we have ever faced. We know from our investigations that they utilize their virtually unlimited wealth to purchase the most sophisticated electronic equipment available on the market to facilitate their illegal activities. The Special Operations Division has enabled us to build cases against the leaders of these powerful organizations by targeting their command and control communications with multi-jurisdictional criminal investigations based on state-of-the-art, court approved Title III electronic interceptions. We rely on the information and evidence gathered from these Title III interceptions of their communications to build a picture of the organizations, identify the individual members, and obtain evidence enabling us to make arrests and take apart whole sections of the criminal organizations at a time. The capability provided by SOD is at the core of our ability to make cases against the leadership and U.S.-based infrastructure of these powerful organizations that control the drug trade in our hemisphere.

Using the law enforcement tools available to today's DEA, as outlined above, in the past several years we have participated in a number of very significant investigations. These actions demonstrate not only the new sophistication of drug trafficking organizations at the beginning of the Twenty-First Century, but also the significance of the law enforcement response.

We continue to carry out cutting-edge, sophisticated investigations like Operation Millennium, which successfully targeted major traffickers who had previously operated without fear of capture or prosecution in the United States, believing that only their low-level operatives were at risk. These operations underscore the importance of cooperation among international drug law enforcement agencies. Such operations benefit from the closest possible cooperation between the DEA and our foreign counterparts. These investigations will continue to lead to the dismantling of major portions of the most significant drug trafficking organizations operating today. Allow me to review just a few of DEA's recent successes.

Operation Millennium, brought to a successful conclusion in 1999, effectively demonstrated that even the highest level traffickers based in foreign countries could not manage drug operations inside the United States with impunity. Operation Millennium was made possible by direct support from the governments of Colombia and Mexico. Operation Millennium effectively targeted major cocaine suppliers who had been responsible for shipping vast quantities of cocaine from Colombia through Mexico into the United States. Operation Millennium specifically targeted drug kingpin Alejandro Bernal-Madrigal, who, by his own admission, had been smuggling 30 tons, or 500 million dosage units, of cocaine into the United States every month.

Operation Mountain Express was a joint operation between DEA's Special Operations Division and the Office of Diversion Control. Mountain Express targeted traffickers of the methamphetamine precursor, pseudoephedrine. Existing regulations make it possible for California-based Mexican criminal organizations to purchase multi-ton quantities of pseudoephedrine for use in methamphetamine production.

Since January 2000, SOD coordinated a number of multi-jurisdictional investigations targeting pseudoephedrine traffickers, many of whom were of Middle Eastern origin, using 11 wiretaps during the course of the investigations.

Operation Tar Pit was a DEA led multi-jurisdictional investigation targeting a Mexican heroin transportation and trafficking organization based in Tepic, Nayarit, Mexico. Primarily, this organization imported multi-kilogram quantities of black tar heroin from Mexico into the United States. During the course of the operation, more than 30 Federal Title III investigations were conducted. In June 2000, a nationwide takedown occurred against Operation Tar Pit targets, which included the principal Mexican command and control members in Mexico, U.S. based cell heads, workers for each cell, couriers, and customers.

In November 2000, the DEA, FBI, U.S. Customs Service, and Federal prosecutors culminated an 18-month investigation targeting a multi-ethnic, transnational MDMA (Ecstasy) and cocaine distribution organization, following-up on enforcement action by Dutch police in the Netherlands. The investigation, known as Operation RED TIDE, was a textbook example of the new multi-agency, multi-national law enforcement cooperation needed to thwart organized crime in the 21st Century. As a result of this cooperative effort, Customs agents seized 1,096 pounds (2.1 million tablets) of MDMA, the largest single seizure of the drug in history. The head of the organization, Tamer Adel Ibrahim fled the U.S. after the seizure, but was quickly traced to Mexico and then to Europe by the multi-agency team. Ibrahim, along with others, was arrested and the Dutch National Police seized 1.2 million tablets of MDMA.

Operations like RED TIDE exemplify the unprecedented level of international law enforcement cooperation in effect today. The investigation targeting a transnational MDMA and cocaine trafficking syndicate was a cooperative effort by the U.S. law enforcement agencies, as well as the Dutch National Police/Regional Team South, Mexico's Fiscalia Especializad Para La Atencion De Delitos (FEADS), the Israeli National Police, the German Federal Police (Bundes Kriminal Amt), the Cologne Germany National Police Department, the Duisburg Germany Police Department, the Italian National Police and the French National Police.

This investigation is extremely important because MDMA (Ecstasy) is a new threat with the potential to cause great damage, especially to America's youth. Operation Red Tide has ensured that a large volume of Ecstasy that would have made it into the hands of our youth never hit the streets, and sent a strong message to the traffickers that the DEA is leading a truly global response to the drug threat.

Last December, the DEA, together with U.S. Customs and the FBI, completed Operation Impunity II, resulting in 141 arrests and the seizure of 5,266 kilograms of cocaine, 9,325 pounds of marijuana, and approximately \$9,663,265 in U.S. currency and assets. Impunity II follows earlier successes dating back to 1996 in Operation Limelight and Operation Impunity I and was the result of the outstanding coordination between federal, state, and local law enforcement officials and prosecutors across the country.

Operation Impunity II was a multi-agency law enforcement effort that targeted a wide-ranging conspiracy to smuggle thousands of pounds of cocaine and marijuana from Mexico, across the southwest border into Texas, for distribution throughout the United States. Impunity II targeted an organization that placed managers in the United States and retained the organizational command and control elements in Mexico. In addition to remnants from the Carrillo-Fuentes organization, agents learned that some members of the Mexican Gulf Cartel had also become associated with the organization, including Osiel Cardenas-Guillen, allegedly a former Gulf Cartel lieutenant. In addition to the domestic enforcement activity in this country, the United States Government presented provisional arrest warrants for extradition for eight Mexican nationals in Mexico and one Dominican national in the Dominican Republic.

In January of this year, Operation White Horse targeted a large scale heroin trafficking organization, directed by Wilson SALAZAR-Maldonado, which was responsible for sending multi-kilogram quantities of heroin from Colombia to the Northeastern United States via Aruba. The investigation was conducted jointly by the Colombian National Police, DEA Bogota, Curacao, Philadelphia and New York, and the Special Operations Division. This investigation resulted in 96 arrests, as well as the seizure of multi-kilograms quantities of heroin and cocaine, weapons and U.S. currency.

DEA remains committed to its primary goal of targeting and arresting the most significant drug traffickers in the world today. Our successes range from participation in the historic destruction of the Cali and Medellin Cartels to the recent operations just mentioned. In the future as well, DEA will meet the ultimate test of bringing to justice the drug lords who control their vast empires of crime, which

bring misery to so many nations. As we sustain a relentless assault against drug traffickers, we must insist that these drug lords be arrested, tried and convicted, and sentenced in their own countries to prison terms commensurate with their crimes, or, as appropriate, extradited to the United States to face justice in U.S. courts.

#### THE CURRENT DRUG TRAFFICKING THREAT TO THE UNITED STATES

The illegal drug market in the United States is one of the most profitable in the world. As such, it attracts the most ruthless, sophisticated, and aggressive drug traffickers. Drug law enforcement agencies face an enormous challenge in protecting the country's borders from drug traffickers who smuggle in cocaine, heroin, marijuana, and methamphetamine for distribution in U.S. neighborhoods as well as from domestic suppliers of these drugs.

Diverse groups traffic and distribute illegal drugs. Criminal groups operating from South America smuggle cocaine and heroin into the United States via a variety of routes, including land routes through Mexico, maritime routes along Mexico's east and west coasts, sea routes through the Caribbean, and international air corridors. Furthermore, criminal groups operating from neighboring Mexico smuggle cocaine, heroin, methamphetamine, amphetamine, and marijuana into the United States. These criminal groups have smuggled heroin and marijuana across the Southwest Border and distributed them throughout the United States since the 1970's. In addition to distributing cocaine and methamphetamine in the West and Midwest, these Mexico-based groups now are attempting to expand the distribution of those drugs into eastern U.S. markets.

Besides these criminal groups based abroad, domestic organizations cultivate, produce, manufacture, or distribute illegal drugs such as marijuana, methamphetamine, PCP, and LSD. By growing high-potency sinsemilla, domestic marijuana growers provide a product that easily competes with other suppliers. As demand for methamphetamine grows, especially in the West and Midwest, so, too, does the number of illicit laboratories that supply methamphetamine to a growing number of addicts. Finally, a small number of chemists manufacture LSD that is subsequently distributed primarily to high school and college students throughout the United States.

#### COCAINE TRENDS

The primary U.S. drug threat is cocaine, particularly in its smokable form known as "crack" cocaine. The trafficking, distribution, and abuse of cocaine and crack cocaine over the past decade, along with increasing drug-related violence, seriously debilitate the quality of life in many cities and towns across the country. Most of this nations drug law enforcement assets are directed against cocaine traffickers.

Crack, the inexpensive, smokable form of cocaine, continues to be distributed and used in most major cities. While cocaine use in the United States has declined over the past decade, the rate of use in recent years has stabilized at high levels. Crack cocaine usage, which drove these rates, has reached the saturation point in large urban areas throughout the country. Street gangs, such as the Crips and the Bloods, and groups of ethnic Dominicans, Puerto Ricans, and Jamaicans dominate the retail market for crack cocaine nationwide.

#### HEROIN TRENDS

Heroin is readily available in many U.S. cities as evidenced by the unprecedented level of average retail, or street-level, purity. The increased availability of high-purity heroin, which can effectively be snorted, has given rise to a new, younger user population. While avoiding the stigma and additional health hazards of needle use, this user group is ingesting larger quantities of the drug and, according to drug treatment specialists, progressing more quickly toward addiction.

#### *South American Heroin*

The availability of South American (SA) heroin, produced in Colombia, has increased dramatically in the United States since 1993. South American heroin is available in the major metropolitan areas of the Northeast and along the East Coast. Investigations also indicate the spread of South American heroin to smaller U.S. cities as well. Within the United States, ethnic Dominican criminal groups have played a significant role in retail-level heroin distribution in northeastern markets for at least the past two decades. Currently, Dominican groups dominate retail heroin markets in northeastern cities such as New York, Boston, and Philadelphia.

*Mexican Heroin*

Mexican heroin has been a threat to the United States for decades. It is produced, smuggled, and distributed by polydrug trafficking groups, many of which have been in operation for more than 20 years. Nearly all of the heroin produced in Mexico is destined for distribution in the United States. Organized crime groups operating from Mexico produce, smuggle, and distribute the black tar heroin sold in the western United States. Once the heroin reaches the United States, traffickers rely upon well-entrenched polydrug smuggling and distribution networks to deliver their product to the market, primarily in the metropolitan areas of the Midwestern, southwestern, and western United States with sizable Mexican immigrant populations.

*Southeast Asian Heroin*

High-purity Southeast Asian (SEA) heroin dominated the market in the United States during the late 1980s and early 1990s. Over the past few years, however, all indicators point to a decrease in SEA heroin available domestically. Despite the recent decline in trafficking of SEA heroin, Chinese criminal groups based in Asia remain the most sophisticated heroin trafficking organizations in the world.

*Southwest Asian Heroin*

While a large portion of Southwest Asian (SWA) heroin is consumed in Western Europe, Pakistan, and Iran, traffickers operating from Middle Eastern locales smuggle SWA heroin to ethnic enclaves in the United States. Criminal groups composed of ethnic Lebanese, Pakistanis, Turks, and Afghans are all involved in supplying the drug to U.S.-based groups for retail distribution. West African traffickers, who primarily smuggled SEA heroin to the United States in the 1990s, now also deal in SWA heroin.

## METHAMPHETAMINE TRENDS

Domestic methamphetamine production, trafficking, and abuse are concentrated in the western United States. Methamphetamine is also increasingly available in portions of the South. Clandestine laboratories in California and Mexico are the primary sources of supply for methamphetamine available in the United States.

Over the last decade, the methamphetamine trafficking and abuse situation in the United States changed dramatically. In 1994, ethnic Mexican drug trafficking organizations operating "super labs" (labs capable of producing in excess of ten pounds of methamphetamine in one 24-hour production cycle) based in Mexico and California began to take control of the production and distribution of methamphetamine domestically. The entry of ethnic Mexican traffickers into the methamphetamine trade in the mid-1990s resulted in a significant increase in the supply of the drug.

The primary points of entry into the United States for methamphetamine produced in Mexico have traditionally been California ports of entry, particularly San Ysidro. Although a great amount of methamphetamine still transits this area, ports-of-entry in south Texas are experiencing significant increases in smuggling activity.

The vast majority of methamphetamine precursor chemicals diverted to clandestine laboratories in the United States are dosage-form pseudoephedrine or ephedrine drug products. They are usually purchased from U.S. manufacturers and distributors who sell case quantities of the tablets. The finished methamphetamine is then distributed throughout the U.S. through preexisting smuggling methods to the traffickers.

## MARIJUANA TRENDS

Marijuana is the most widely abused and readily available illicit drug in the United States with an estimated 11.5 million current users. At least one-third of the U.S. population has used marijuana sometime in their lives. The drug is considered a "gateway" to the world of illicit drug abuse . . .

Marijuana smuggled into the United States, whether grown in Mexico or transhipped from other Latin American source areas, accounts for most of the marijuana available in the United States. Marijuana produced in Mexico remains the most widely available. Moreover, high-potency marijuana enters the U.S. drug market from Canada. The availability of marijuana from the Far East, primarily Thailand, generally is limited to the West Coast. U.S. drug law enforcement reporting also suggests increased availability of domestically grown marijuana.

## MDMA TRENDS

Commonly referred to as Ecstasy, XTC, Clarity or Essence, the chemical substance known as 3, 4-methylenedioxymethamphetamine (MDMA) is a synthetic psychoactive drug possessing stimulant and mild hallucinogenic properties. In the

early 1990s, MDMA became increasingly popular among European youth. However, it is within the last five years that MDMA use in the United States has increased at an alarming rate.

Although the vast majority of MDMA consumed domestically is produced in Europe, a limited number of MDMA laboratories operate in the United States. Law enforcement seized seven clandestine MDMA laboratories in the United States in 2000 compared to 19 seized in 1999. It should be noted that these labs were primarily capable of limited drug production. While "recipes" for the clandestine production of MDMA can be found on the Internet, acquiring the necessary precursor chemicals in the U.S. is difficult.

MDMA is manufactured clandestinely in Western Europe, particularly in the Netherlands and Belgium. Much of the MDMA is manufactured in the southeast section of the Netherlands near Maastricht. International MDMA traffickers based in the Netherlands and Belgium consistently use other European countries, such as France, England, Germany, and Spain as transshipment points for MDMA shipments destined for the United States. Russian, Israeli and European criminal organizations, the principal traffickers of MDMA worldwide, supply the United States with the drug.

#### IMPACT ON THE UNITED STATES

None of the major drug traffickers headquartered overseas could operate without the assistance of national and regional drug trafficking organizations which are responsible for trafficking huge quantities of drugs into U.S. communities. These organizations are comprised of a network of operatives who transport, store and distribute drugs and collect and repatriate drug proceeds throughout the United States and whose activities are directed by drug lords based in foreign countries. In many cases, national and regional drug trafficking organizations are comprised of numerous cells whose directors are responsible for specific tasks such as communications, financial matters and/or logistics. These cell heads are sent to the United States for a period of time to carry out the business mandates of the top drug lords and are given specific tasks to accomplish. The national and regional drug syndicates have infiltrated many states and communities, bringing with them the crime and violence once limited to major urban areas. A survey of recent DEA investigations revealed that over 400 investigations stemming from Operations Reciprocity and Limelight involved drug traffickers from foreign countries who had set up operations in various cities across the United States.

Local violent drug trafficking organizations also operate across the United States and are responsible for eroding the quality of life in many American communities. Previously centered in major urban areas, violent drug trafficking groups are now part of the landscape in smaller cities and rural areas. Fueled in large part by methamphetamine production and trafficking, violent drug trafficking organizations are now affecting the crime rates in smaller cities such as Spokane, Washington and Cedar Rapids, Iowa. While these local, violent groups appear to be unrelated to the large international drug trafficking organizations headquartered overseas, it is important to note that all of the cocaine and heroin that is trafficked by these groups is produced overseas and transported to the United States for eventual distribution on the local level.

#### DEMAND REDUCTION

The number one goal of the National Drug Strategy is to educate and enable America's youth to reject illegal drugs as well as alcohol and tobacco. DEA believes that there is a role for everyone to play in this goal, including law enforcement. Law enforcement may not take the lead in demand reduction efforts, but it has a unique perspective and wealth of experience to bring to the prevention arena. DEA special agents have seen first hand the terrible impact of drug abuse in communities, and speak with a compelling authority in explaining to citizens why this problem needs to be conquered. They also have great expertise in planning, organizing and implementing proactive efforts to deal with drug abuse.

As an example of DEA's contribution to drug prevention, Demand Reduction Coordinators (DRC's) have been instrumental in working with media to place public service announcements from the Partnership for a Drug-Free America in support of the President's Youth Media Campaign. Demand Reduction Coordinators worked collaboratively with state and local authorities to produce an educational video (several thousand distributed to date) for adults and adolescents in the Midwest to educate them about the dangers of methamphetamine. In New York and Washington, D.C., Demand Reduction Coordinators developed an ad campaign geared to engaging youth that is being posted on busses, subway trains, and taxis. And the Demand

Reduction Section has participated in satellite video conferences that were broadcast all over the United States.

Additionally the Demand Reduction Section, the Bureau of Justice Assistance, and the National Crime Prevention Council have conducted seminars for teams of community leaders from cities and towns that received MET deployments. The objective is to educate community leaders to start programs that prevent the return of the drug trafficking and violent crime that plagued their neighborhoods. CPD hosted a group of national experts in drug and crime prevention to review the proposed curriculum for this training.

The DEA web page is yet another way of reaching a large segment of the public with demand reduction information both for young people and their parents. But not everyone has access to computers, or is computer-literate. Therefore, DEA also reaches the public through publications and direct contact such as seminars, conferences and meetings with youth, parents, employers, employees, businesses, community and civic groups, teachers, coaches, clergy, prisoners, as well as law enforcement personnel.

The driving force behind DEA's demand reduction program has always been the particular credibility that law enforcement, and especially federal law enforcement officers bring to the drug prevention arena. DEA agents possess a certain authority because of their background and job experiences, which play an important role in the overall drug demand reduction picture. This is why DEA's current demand reduction program has been so successful.

#### *DEA's Strategic Plan*

In order to meet the enormous challenges posed by internationally-based narcotics traffickers and their surrogates within the United States, DEA has developed a five-year Strategic Plan which is a key part of our commitment to establish and maintain a clear focus on the outcome of our efforts. In its unique capacity as the world's leading drug enforcement agency, DEA carries out its legal mandate for enforcing provisions of the controlled substances and chemical diversion, trafficking laws and regulations, and serves as the single point of contact for the coordination of all international drug investigations.

To ensure mission success, DEA attacks all levels of drug trafficking using both traditional and innovative drug control approaches, focusing its enforcement operations on the full continuum of drug trafficking. This overall strategic approach is based on the recognition that the major drug traffickers, operating both internationally and domestically, have insulated themselves from the drug distribution networks but remain closely linked to the proceeds of their trade. Consequently, the identification and forfeiture of illicitly derived assets is a powerful tool in successfully destroying the economic base of the drug trafficking organization, as well as a means of proving a connection between violators and a criminal drug conspiracy at the time of prosecution.

In view of this assessment, DEA's investigative efforts are directed against the major international drug trafficking organizations and their facilitators at every juncture in their operations—from the cultivation and production of drugs in foreign countries, to their passage through the transit zone, and eventual distribution on the streets of America's communities. DEA's Strategic Plan takes into account the current drug trafficking situation affecting the United States, and works to identify the characteristics and exploit the vulnerabilities of all three levels of the drug trade. By focusing directly on the agency's investigative priority targeting system, DEA responds to each of the following levels simultaneously:

*International Targets:* DEA will eliminate the power and control of the major drug trafficking organizations and dismantle their infrastructure by disrupting and dismantling the operations of their supporting organizations that provide raw materials and chemicals, produce and transship illicit drugs, launder money worldwide, and halt the operations of their surrogates in the United States.

*National/Regional Targets:* DEA will continue an aggressive and balanced enforcement program with a multi-jurisdictional approach designed to help focus Federal and interagency resources on illegal drug traffickers, their organizations and key members who have control of an area within a region of the United States, and the drugs and assets involved in their activities.

*Local Initiatives:* DEA will continue to assist States and localities in attacking the violence that plagues our cities, rural areas, and small towns to protect our citizens from the impact of drugs, and help restore a positive quality of life. DEA considers this an important part of its overall strategy to complement the state and local efforts with specialized programs that bring DEA's intelligence, expertise, and leadership into specific trouble spots throughout the nation.

In each of the aforementioned forums, DEA seeks to identify, target, investigate, disrupt, and dismantle the international, national, state, and local drug trafficking organizations that are having the most significant impact on America. DEA's strategic goals reflect the agency's efforts to use its unique skills and limited resources in a manner designed to achieve maximum impact. This requires maintaining a clear focus on DEA's core competency—the destruction and dismantlement of drug trafficking organizations. The implementation of DEA's strategic plan is carried out with the “holistic” approach, which I mentioned at the beginning of my statement. This approach addresses the problems posed by illicit drug availability and abuse and provides for a comprehensive approach of interdiction and enforcement, coupled with education, prevention and treatment.

FY 2002 BUDGET REQUEST

For FY 2002, DEA is requesting a total of \$1.6 billion, 8,314 positions, and 8,171 FTE, of which \$1.5 billion, 7,654 positions and 7,515 FTE are funded by our Salaries and Expenses (S&E) Appropriation, and the remainder is funded by the Diversion Control Fee Account. For the S&E Appropriation, this represents an increase of \$120.6 million and 134 positions over the FY 2001 enacted levels. The increase consists of \$62.5 million needed to maintain our current level of operations and \$58.2 million and 134 positions (including 13 Special Agents) for three program initiatives: a Special Operations Division (SOD) and Communications Intercept Initiative, a FIREBIRD initiative, and a Laboratory Operations Initiative. I will briefly discuss each in turn.

First, DEA is seeking \$15.1 million and 62 positions (including 13 Special Agents) under the *Special Operations Division and Communications Intercept Initiative* to provide critical enhancements to its SOD and Investigative Technology programs. SOD is a comprehensive enforcement operation designed specifically to coordinate multi-agency, multi-jurisdictional and multi-national Title III investigations against the command and control elements of major drug trafficking organizations operating domestically and abroad. These resources will be used to enhance staffing levels in key investigative units within the SOD, to include support for drug enforcement investigations associated with the Southwest Border, Latin America, the Caribbean, Europe, and Asia. This request also augments DEA's funding base for contract linguists, and enhances DEA's investigative technology programs through new resources for equipment, technical support personnel, and training.

Second, under our *FIREBIRD Initiative*, DEA requests an enhancement of \$30 million and 3 positions for the global FIREBIRD network. FIREBIRD is DEA's primary office automation infrastructure. It provides essential computer tools for agents and support staff, including E-mail, uniform word processing, and many other forms of office automation software. FIREBIRD also serves as the communications “backbone” for DEA's MERLIN intelligence network, and serves as the platform for numerous other mission critical databases and operational systems. DEA is requesting funding to complete deployment of the system, provide vital network security, and support technology renewal of the system. The technology renewal resources will allow DEA to replace outdated technology and adopt a reasonable replacement cycle for FIREBIRD equipment.

Third and finally, DEA requests \$13.1 million and 69 positions (including 46 chemists) pursuant to our *Laboratory Operations Initiative* to meet mission-critical requirements within our laboratory services program. DEA's forensic chemists provide a variety of essential services, including drug and evidence analysis, on-site assistance for clandestine laboratory seizures and crime scene investigations, and vital courtroom testimony to support prosecution efforts. Likewise, the recent success of DEA's Operation Breakthrough program in providing the US Government with new scientific data on coca cultivation and cocaine production in Colombia has demonstrated the crucial role played by DEA forensic chemists and intelligence analysts in supporting the critical intelligence needs of senior US policy makers and the counterdrug intelligence community. We must be able to enhance our capability to carry out this type of strategic analysis and reporting. The requested funds and staffing are needed to address a growing backlog of exhibits and establish a laboratory equipment base that will better support program operations. Collectively, these resources will enable DEA to more effectively meet the mission requirements of its Special Agent workforce and better support the prosecution of drug offenders through timely analysis of evidence.

Mr. Chairman, that concludes my prepared remarks. I will be happy to take any questions you may have for me at this time.

Mr. SMITH. Thank you, Mr. Marshall.

Dr. Hawk Sawyer.

**STATEMENT OF KATHLEEN HAWK SAWYER, DIRECTOR,  
FEDERAL BUREAU OF PRISONS**

Ms. HAWK SAWYER. I'm also pleased to be appear before you today, and let me just thank you again, Chairman Smith and other Members of the Committee, for your great support of the Bureau of Prisons.

The Federal inmate population has increased more than six-fold in the last two decades from approximately 25,000 inmates in 41 institutions in 1980 to more than 150,000 in 98 institutions today. To address the population growth, the bureau's budget has grown from approximately \$330 million and 10,000 staff in 1980 to more than \$4 billion and about 34,000 staff today.

The FY 2002 budget requests about \$4.7 billion. 3.8 billion of that is for operations and 833 million is for capital budget. We estimate that rising utility costs could increase our expenses by nearly \$40 million within this year, and we believe this could go even higher in future years. Also, nearly 70 percent of our operating budget is consumed by staffing expenses. Thus any unfunded pay raises and benefit increases which must be absorbed have a dramatic impact.

The rapid growth of the inmate population has led to system-wide crowding of 32 percent above rate of capacity, with the most severe crowding at medium and high security institutions, which are 57 and 48 percent above capacity, and these institutions house our more intractable, more violent inmates. Three new facilities will be activated by the end of FY 2001, and we have an additional 26 new prisons under development. These will bring the total number of prisons to 127. The new institutions will provide approximately 33,000 new beds.

Despite the dramatically increasing inmate population and crowding levels, the bureau has experienced significant reductions in assaults on both staff and inmates, homicides, suicides, escapes from secure institutions, and other serious misconduct over the past several years. Our effective management of the inmates in institutions is due to our dedicated loyal and hard working staff. Direct supervision of inmates, including good communication, has proven to be a critical element of successful prison management.

The bureau employs an inmate classification system that minimizes the likelihood that vulnerable inmates will be housed with more sophisticated dangerous criminals. In recent years, the bureau has improved prison design and construction, made many physical plan improvements, and taken advantage of technological developments to further enhance our institutions' security.

Inmates typically have greater health care needs than the average citizen, and through variation cost-cutting strategies, the bureau has maintained inmate health care costs below inflation levels over the past 5 years, despite the fact that national health care expenditures have increased an average of approximately 5 percent per year during this period. Unfortunately, in the coming years, the cost of inmate medical care is likely to increase due to increasing numbers of inmates of all ages who have inordinate health care

needs and the steep increase in the cost and use of pharmaceuticals.

All sentenced inmates in Federal prisons are required to work except the relatively small number who are medically unable to do so. Approximately 25 percent of the bureau's medically able sentenced inmates work in Federal prison industries, or FPI, and we consider that our most important correctional program. By statute, FPI's mission is to employ and provide work skills training to the greatest possible number of inmates combined within the Bureau of Prisons. Research has demonstrated that inmates who worked in prison industries or completed vocational programming were 24 percent less likely to recidivate than those who did not and were 14 percent more likely to be employed following release from prison and earn higher wages than their nonparticipating peers. This research has also demonstrated that FPI programs provide even greater benefits to minorities who are at greater risk for recidivism.

By employing 25 percent of the bureau's work eligible inmates, FPI assists in the management of crowded prisons, contributing directly to the safety of staff and inmates. FPI does not receive appropriated funding for its operations and by statute must be economically self-sustaining. Operating only from sales revenues, FPI precludes the need for alternative inmate programs, lowering annual prison costs to taxpayers by hundreds of millions of dollars.

In addition to work, all bureau institutions offer a variety of educational and vocational training programs through which inmates gain knowledge and skills that help them become gainfully employed upon release. These programs have been shown by research to reduce recidivism, and the bureau is committed to addressing the educational deficits of all of our inmates.

The most intensive drug abuse treatment in the bureau is our residential drug treatment program. This treatment is designed for the approximately 34 percent of our inmate population that's been clinically diagnosed with a substance abuse or dependency disorder. The bureau continues to meet the statutory mandate of providing residential substance abuse treatment to all eligible inmates. Analysis of the bureau's residential drug program reveals that 3 years after release from custody, inmates who completed the bureau's drug abuse program were significantly less likely to be re-arrested and to reuse drugs.

The bureau places most of its inmates in community corrections centers or halfway houses prior to their release from custody in order to help them adjust to life in the community and find suitable employment and housing. Inmates in community correction centers are required to work and to pay a subsistence charge of 25 percent of their income to defray the costs of confinement.

And, recently, the bureau has given responsibility for carrying out Federal death sentences. Federal executions will be conducted at the execution facility at the United States Penitentiary at Terre Haute, Indiana, which is also the site of our special confinement unit or death row. Lethal injection is the method to be used in Federal executions. There are 21 individuals housed on the Federal death row. The last Federal execution was carried out in 1963. There are two executions scheduled for FY 2001. Timothy McVeigh

has a scheduled execution date of May 16, and Juan Raul Garza has a scheduled execution date of June 19.

I'm very proud of the Bureau of Prison staff and the job they do each and every day. Despite our record-setting population growth, evidenced by the net increase of 1800 new inmates in the bureau last month alone, our effective prison management is very evident. Such success cannot be expected to continue, though, with dramatic population increases and record-setting crowding without the resources we've requested to bring new capacity on line.

The bureau's mission involves myriad program and policy issues, and today I've just touched on a few of the key ones, and I again would like to thank you, Mr. Chairman and Members of the Committee. I'd be very happy to take any questions you might have.

[The prepared statement of Ms. Hawk Sawyer follows:]

PREPARED STATEMENT OF KATHLEEN HAWK SAWYER

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the operations of the Federal Bureau of Prisons. Let me begin by thanking you, Chairman Smith, Ranking Minority Member Scott, and other members of the Subcommittee for your strong support of the Bureau. I look forward to continuing our work with you and the members of the Subcommittee.

The Bureau continues to effectively meet our mission to protect society by confining offenders in facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

POPULATION GROWTH AND RESOURCES

The Federal inmate population has increased more than six-fold in the last two decades, from approximately 25,000 inmates and 41 institutions in 1980 to more than 150,000 inmates and 98 institutions today. (Of the 150,000 total, approximately 127,000 are in facilities operated by the Bureau of Prisons, and the remainder are in privately operated facilities and facilities managed by state and local governments). The growth stems from more Federal investigations, prosecutions, and convictions, and new legislation that dramatically altered sentencing in the Federal criminal justice system. The bulk of the growth since the mid-1980's resulted from increased sentences based on the Sentencing Reform Act of 1984 (which established determinate sentencing, abolished parole, and reduced good time) and mandatory minimum sentences enacted in 1986, 1988, and 1990. The past three fiscal years are particularly telling: in FY 1998, the population increased by 10,027 inmates (representing an 8.9 percent increase); in FY 1999, the increase was 11,373 (9.3 percent); and during FY 2000, the population increased by 11,436 inmates (an 8.6 percent increase).

To address this population growth, the Bureau of Prisons' budget has grown from approximately \$330 million in 1980 to more than \$4.3 billion today. The Bureau's approved staffing levels have risen from just under 10,000 in 1980 to nearly 34,000 in FY 2001. Approximately \$3.47 billion (81 percent) of the total budget is for daily operations (70 percent salaries and expenses), with the remainder for capital budget projects including construction, modernization and repairs, and for contract confinement and detention space.

The FY 2002 budget request totals almost \$4.7 billion; \$3.8 billion for operations and \$833 million for the capital budget. The operating budget will fund all existing facilities, including the five new facilities scheduled to be operational by the end of FY 2002 and nearly 20,000 more inmates we project will be in our custody. The budget request includes an increase of approximately \$128 million to cover the costs of housing Federal inmates in contract facilities. The Bureau of Prisons relies on the private sector (and state and local governments) to house approximately 15 percent of Federal inmates in correctional facilities and in community corrections centers.

One of our operating budget challenges this year and anticipated for next year is the cost of utilities across the country. We currently estimate that rising utility costs could increase our expenses by nearly \$40 million this year above last year, and we believe this could go even higher in future years, depending on weather pat-

terns and energy source costs. Additionally, nearly 70 percent of our operating budget is consumed by staffing expenses, thus any unfunded pay raises or benefit increases which must be absorbed have a dramatic impact. While the Bureau's primary mission is the incarceration of sentenced Federal inmates, the agency provides assistance to the U.S. Marshals Service (USMS) by confining pretrial detainees and presentenced offenders. The Bureau currently confines approximately one-third of the USMS detainee population. The Bureau also assists the Immigration and Naturalization Service (INS) by confining approximately 3,000 INS detainees in Bureau institutions and contract facilities.

We expect the inmate population to continue to increase for the next several years due to ongoing Federal law enforcement initiatives, particularly with respect to immigration, drugs and weapons offenders. In addition, we will be housing all District of Columbia sentenced felons (approximately 8,000 inmates) by the end of 2001 (as required by the National Capital Revitalization and Self-Government Improvement Act of 1997).

In the late 1980's and early 1990's the female inmate population often grew at a faster rate than the male population, but that trend has stopped and women have consistently represented approximately 7 percent (or less) of the Federal inmate population. The Bureau's current projections indicate the total inmate population could reach as high as 200,000 by 2006.

#### FACILITIES AND CROWDING

The Bureau confines inmates in institutions at four security levels (minimum, low, medium, and high) and has one maximum-security prison for the less than 1 percent of Bureau of Prisons inmates who require that level of security. The Bureau also operates detention centers that confine mostly pretrial detainees and presentenced offenders, and Federal medical centers that provide medical care to inmates who cannot be housed in general population facilities.

The rapid growth of the inmate population has led to system-wide crowding of 32 percent above the rated capacity, with the most severe crowding at medium-security and high-security institutions, which are 57 and 48 percent above capacity, respectively. Prison crowding contributes to increased inmate idleness due to an increased demand on limited services and facilities. It can also lead to an increased potential for inmate violence and staff turnover. These concerns are heightened for the Bureau because the higher levels of crowding are at the higher-security institutions (where the more-intractable, more-violent inmates are confined). With the support of Congress, the Bureau is making every effort to ensure that sufficient staff are available in its facilities to provide adequate prisoner supervision and offset the deleterious effects of crowding on inmate management.

For many years, the Bureau has been developing new capacity to meet the demand of its increasing inmate population guided by the following principles: (1) fully utilize and expand existing Federal institutions wherever cost effective and feasible; (2) construct new Federal prisons, preferably on surplus or donated property; (3) utilize alternatives to traditional imprisonment, such as community corrections centers, for appropriate offenders; and (4) contract selectively with the private sector and State and local correctional agencies, with full consideration of costs and public safety. The Bureau has had success in contracting with the private sector for the confinement of minimum- and low-security inmates, but has concerns with the private sector's ability to manage medium- and high-security inmates. Over the years, the private sector has had significant problems with the incarceration and management of inmates who would be classified by the Bureau as medium- and high-security. Also, a cost analysis (using the A-76 methodology) of the privately managed Taft Correctional Institution indicated that for the first two years of operations it would have been less expensive to the taxpayer to have the Bureau of Prisons operate the facility. Three new facilities will be activated by the end of FY 2001: USP Atwater, CA; USP Coleman, FL (this activation is imminent); and FDC Honolulu, HI. The Bureau of Prisons has 26 new facilities under development; these will bring the total number of institutions to 127: 10 are high-security United States penitentiaries, 15 are medium-security Federal correctional institutions, and one is a secure female facility. Of these 26, 19 facilities are fully-funded by Congress, and the remainder have site development and planning monies appropriated. In total, the new institutions will provide an additional 33,000 beds.

#### INMATE MANAGEMENT

The Bureau protects public safety by ensuring that Federal offenders serve their sentences of imprisonment in institutions that are safe, humane, cost-efficient, and appropriately secure. The Bureau helps reduce future criminal activity by encour-

aging inmates to participate in a range of programs (described below) that are proven to help them adopt a crime-free lifestyle upon their return to the community. These programs are an essential component to effective inmate management, and they are as important to the security and good order of Federal prisons as fences, daily counts and cell searches.

#### *Safety and Security*

Despite the increasing inmate population and crowding levels that have climbed from 22 percent over capacity in 1997 to 32 percent over capacity today, the Bureau has experienced significant reductions in assaults (on both staff and other inmates), homicides, suicides, escapes from secure institutions and other serious misconduct over the past several years. Only 2 staff have lost their lives in the line of duty.

Our effective management of the inmates and institutions is attributable to our dedicated, loyal and hardworking staff. The Bureau's commitment to instill in all staff the agency's culture and philosophy has been challenged in recent years as we hire large numbers of new staff to keep pace with the Bureau's aggressive activation of new facilities to help manage the increasing inmate population. We have met this challenge through formal training (mostly provided at our staff training centers) and mentoring by experienced staff at all of our institutions.

Bureau of Prisons wardens and other prison administrators employ the "Management By Walking Around" philosophy. Direct supervision of inmates, including good communication, has proven to be a critical element of successful prison management. Additionally, regardless of the specific discipline in which a staff member works, all employees are "correctional workers first." This means that everyone from secretaries to correctional officers to wardens is responsible for the security and good order of the institution. All staff are expected to be vigilant and attentive to inmate accountability and security issues, to respond to emergencies, and to maintain a proficiency in custodial and security matters, as well as in their particular job specialty. Additionally, as part of the culture and philosophy of the Bureau of Prisons, all staff serve as positive role models for inmates, thereby further emphasizing the behavioral changes that are encouraged in many of the inmate programs. There are, of course, a very small proportion of staff who engage in misconduct, for which they are sanctioned in accordance with the law and regulations. All allegations of staff misconduct are fully investigated, and, where warranted, referred for prosecution.

The Bureau of Prisons employs a validated inmate classification system to designate inmates to correctional facilities that provide the appropriate level of security and supervision. This system minimizes the likelihood that vulnerable offenders will be housed with predators or that first time non-violent offenders will be housed with sophisticated and dangerous criminals. In recent years, the Bureau of Prisons has improved prison design and construction, made many physical plant improvements, and taken advantage of technological developments to further enhance institution security, including the use of closed-circuit video recording equipment to deter and detect illicit inmate activities.

In order to detect, deter and control illegal drug use in Federal prisons, institution staff routinely search inmates and their property. Additionally, the Bureau regularly conducts urinalysis on random samples of inmates as well as members of disruptive groups, inmates who are suspected of using drugs, and inmates who have an institutional history of the possession, use, or distribution of drugs. Inmates are subject to disciplinary action if they test positive for a controlled substance or if they refuse to provide a urine sample. In fiscal year 2000, the random testing of inmates resulted in a positive test rate of 1.1 percent; the overall rate was 2.1 percent due to the inclusion of suspected inmates and inmates who have a history of drug use. Since the late 1990's, the Bureau has been employing ion spectrometry drug detection systems at many Federal prisons, which has bolstered our existing efforts to control the introduction of drugs into Federal prisons through inmate visiting rooms.

#### INMATE CARE AND PROGRAMMING

#### *Medical Care*

Inmates typically have greater health care needs than the average citizen. Many offenders have long-standing medical and dental concerns which either have been neglected in the past, or which have resulted from dysfunctional lifestyles involving drugs or alcohol abuse. As a result, many inmates may be as much as 10 years older physiologically than their chronological age—a fact that has clear implications for health care programming and costs.

The Bureau has developed and implemented several major health services initiatives designed to enhance efficiency and effectiveness of the Bureau's medical care.

These include an increased emphasis on managed care and infectious disease treatment programs.

Despite the national trend of rising health care costs, through various cost containment and cost cutting strategies, the Bureau has maintained inmate health care costs below inflation levels over the past 5 years, despite the fact that national health care expenditures have increased an average of approximately 5 percent per year during this period. Unfortunately, in the coming years, the cost of inmate medical care is likely to increase. This increase is attributable primarily to continually increasing numbers of inmates of all ages who have inordinate health care needs, and steep increases in the use and cost of pharmaceuticals.

Additional measures to control medical costs are underway. The Bureau is implementing telehealth capability at virtually every institution whereby a medical professional is able to diagnose and even treat patients from remote locations. The Bureau of Prisons is also restructuring staffing patterns and primary care provider teams, centralizing precertification for certain medical treatments, and implementing an inmate co-payment fee system that is expected to reduce unnecessary medical appointments.

#### *Mental Health Treatment*

In addition to substantial medical needs, many inmates are in need of some form of mental health care. Psychologists at Bureau of Prisons facilities offer inmates a range of psychological services and programs which include: initial psychological assessment, crisis intervention, suicide prevention, counseling, individual psychotherapy, and group psychotherapy. Additionally, psychologists offer inmates a number of specialty treatment programs to assist them in gaining greater insight into their specific psychological disorder(s) and in developing the skills needed to successfully overcome their problem(s). Some of the programs are described below, and others include the Sex Offender Treatment Program; the Trauma Treatment Program for female offenders who have been victimized by physical/sexual abuse and/or domestic violence; and both in- and out-patient programs for mentally ill offenders.

#### *Work Programs*

All sentenced inmates in Federal correctional institutions are required to work, except for the relatively small number who are medically unable to do so. Most inmates are assigned to institutional maintenance jobs such as a food service worker, orderly, plumber, painter, warehouse worker, or groundskeeper. Due to current levels of crowding, most work details are comprised of more inmates than necessary to accomplish the particular task. Staff must be continually creative to provide sufficient work opportunities. Approximately 25 percent of the Bureau's medically able, sentenced inmates work in Federal Prison Industries (FPI), the Bureau's most important correctional program.

*Federal Prison Industries (FPI).* The statutorily defined mission of FPI is to employ and provide skills training to the greatest possible number of inmates confined within the Federal Bureau of Prisons. FPI directly contributes to public safety by providing inmates with skills necessary to successfully reintegrate into society after release from prison. Rigorous research conducted by the Bureau of Prisons Office of Research and Evaluation has demonstrated that inmates who worked in prison industries or completed vocational programming were 24 percent less likely to recidivate than those who did not, and were 14 percent more likely to be employed following release from prison than their non-participating peers. This study showed that inmates who returned to the community with the skills and training provided by working in FPI earned higher wages (and paid more in taxes), providing additional benefits to the community. Finally, the research has demonstrated that FPI programs provide even greater benefit to minorities, who are at greater risk for recidivism. FPI does not receive any appropriated funding for its operations, and by statute must be economically self-sustaining. Operating off sales revenue, rather than appropriated funds, FPI precludes the need for alternative inmate programs, lowering annual prison management costs to taxpayers by hundreds of millions of dollars. Not only does FPI not cost taxpayers any money, it returns substantial amounts of money to the community: 73 cents of every dollar in FPI revenue is spent on purchases of raw materials and supplies from the private sector (in Fiscal Year 2000, this equated to \$410 million, 63 percent of which was directed to small, women- and minority-owned businesses) and 20 cents on each dollar is spent on staff salaries. The remainder (approximately 7 cents on each dollar) is paid to inmates, and even this money reaches the private sector: inmates are required to pay 50 percent of their FPI earnings to meet court-ordered obligations such as fines, restitution, and child support, and the money they spend in prison commissaries goes

to vendors in the community. In Fiscal Year 2000, inmates working in FPI paid \$2.5 million for victim restitution, fines, and child support.

In keeping with the statutory mandate to employ as many Federal inmates as possible, FPI has increased its operations, including the volume of sale and numbers of products, to keep pace with the increasing Federal inmate population. This growth has drawn increased attention to the program, and not all of it positive. Several industry trade associations and organized labor unions are actively opposed to FPI and any expansion of its operations. These groups suggest that FPI's impact on private industry and free labor is too great. They have, therefore, pursued legislatively, the elimination of FPI's "mandatory source" status for Federal procurement. The Bureau disagrees with this characterization of FPI's impact and strongly opposes the abolishment of FPI's mandatory source status without providing some type of alternative (such as providing FPI with the authority to offer its products to the commercial market) which would allow FPI to generate the business necessary to occupy its inmate workforce. FPI would also need ample time to transition to such new alternatives. With the Bureau inmate population projected to increase 33 percent by the year 2006, the greatest challenge facing FPI in the future will be its ability to continue to generate the requisite number of new inmate jobs, and thereby help prisoners prepare for a crime-free return to their community after release.

#### *Education Programs*

All Bureau of Prisons institutions offer a variety of education programs and occupational and vocational training programs based on the vocational training needs of the inmates, general labor market conditions, and institution labor force needs. Through all of these programs, inmates gain knowledge and skills that help them become gainfully employed upon release and avoid new criminal conduct. These programs have been shown by Bureau research to significantly reduce recidivism, and the Bureau is committed to addressing the education deficits with which inmates begin their incarceration. At present, just over one-third of all inmates are enrolled in more or more educational classes.

The Bureau requires that, with few exceptions, inmates who do not have a verified 12th-grade education participate in the literacy program for a minimum of 240 hours or until they obtain the GED credential. Non-English speaking inmates are required to participate in an English as a Second Language program until they are proficient in oral and written English. Institutions also offer literacy classes and adult continuing education.

#### *Substance Abuse Treatment*

In 1989, the Bureau designed a comprehensive substance abuse treatment strategy in an effort to change inmates' criminal and substance-abuse behaviors. In the drug abuse education component, inmates receive information about alcohol and drugs and the physical, social, and psychological impact of abusing these substances. Inmates who are identified as having a further need for treatment are encouraged to participate in non-residential or residential drug abuse treatment, depending on their individual treatment needs. Non-residential drug abuse treatment and counseling are available in every Bureau institution. Treatment includes individual and group therapy, as well as specialty seminars and self-improvement group counseling programs.

The most intensive drug abuse treatment in the Bureau is the residential drug abuse treatment program which is provided in 47 Bureau institutions. This treatment is designed for the approximately 34 percent of offenders with a diagnosed substance abuse or dependency disorder. Inmates who participate in the residential program are housed together in a separate unit of the prison that is reserved for drug treatment. The residential program provides intensive treatment, 5 to 6 hours a day, 5 days a week for 9 months. The remainder of each day is spent in education, work skills training, and other inmate programs. Upon completion of a residential substance abuse treatment program, aftercare treatment services are provided in the general population and in community corrections centers to ensure an effective transition from the residential program to the community.

The Bureau continues to meet the statutory mandate of providing residential substance abuse treatment to all eligible offenders. Based on empirical research regarding the effectiveness of treatment programs, we treat inmates toward the end of their sentence. While we have waiting lists for the programs, primarily the result of the statutory opportunity for a sentence reduction, we are able to treat all eligible offenders prior to release.

A rigorous analysis of the residential drug treatment program conducted by the Bureau's Office of Research and Evaluation revealed that three years after release

from custody, inmates who completed the Bureau's Residential Drug Abuse Treatment Program were significantly less likely to be rearrested and to use drugs, when compared to similar offenders who did not participate in the residential treatment. These findings suggest that the Bureau of Prisons' residential drug abuse treatment programs make a significant difference in the lives of inmates following their release from custody and return to the community.

*Other Treatment Programs—Changing Criminal Thinking*

Encouraged by the positive results of the residential substance abuse treatment program, the Bureau has implemented a number of new residential programs for special populations (including younger, high security, and intractable, quick-tempered inmates) who are responsible for much of the misconduct that occurs in Federal prisons. The cognitive restructuring approach used in the drug treatment programs was carried over as the foundation for programs to change the criminal thinking and behavior patterns of inmates. These programs focus on inmates' emotional and behavioral responses to difficult situations. While too early to assess value in terms of reducing recidivism, we have found that these programs significantly reduce inmates' involvement in institution misconduct. Previous studies have shown a strong relationship between institution misconduct and recidivism, so we are hopeful that the full evaluations of these programs will confirm their effect in reducing recidivism.

*Programs for Female Inmates*

Recognizing that female offenders have different social, psychological, educational, family, and health care needs, the Bureau continues to design and implement special programs for female offenders. Several facilities operate intensive programs that focus on helping women who have histories of chronic sexual, emotional, or physical abuse by addressing their victimization and enabling positive change. The Bureau also operates the Mothers and Infants Together (MINT) program for minimum security inmates who are pregnant. These offenders are housed in a community corrections center during their last two months of pregnancy, and remain there for three months after giving birth, in order to bond with the child.

*Religious Programs*

The Bureau of Prisons' religious programs are intended to provide inmates with opportunities to grow spiritually; to deepen their religious beliefs; to strengthen their religious convictions; and to reconcile with their God. Bureau institutions schedule services and meeting times for inmates of many religions and faiths. Religious programs are led or supervised by staff chaplains, contract spiritual leaders, and community volunteers of a variety of faiths. Chaplains provide and oversee inmate self-improvement forums such as scripture study and religious workshops and are available upon request to provide pastoral care, spiritual guidance, and counseling to inmates. Inmates may also request spiritual counseling from community representatives. Inmates are able to observe religious holy days and are able to wear and use religious items consistent with both their faith and with the security, safety, and good order of the institution. A religious alternative diet is available to those inmates whose religious beliefs include special diets.

*Faith Based Programs.* The Bureau is developing a residential faith-based pre-release pilot program for male and female inmates of various security levels. We expect to implement the program with Fiscal Year 2002 funding, at four geographically different sites. The initiative—which will be voluntary and open to inmates of any faith—aims to reduce crime and recidivism by providing participants with moral and spiritual principles that can influence their future decisions. There is a growing body of empirical evidence that demonstrates the potency of the “faith factor” to change behavior. This model initiative has a strong mentoring component during the pre-release phase and post-prison aftercare component designed to offer moral guidance and a caring community to help ex-offenders reenter society with hope and responsibility.

*Final Preparations for Release*

All of the Bureau's inmate programs are intended to prepare inmates for a successful return to the community. In fact, immediately upon their admission to Federal prison, offenders are told to begin “planning” for their eventual release and begin preparing to undertake a productive and successful lifestyle. The Bureau complements its array of programs with a specific Release Preparation Program in which inmates become involved near the end of their sentence. The program includes classes in resume writing, job seeking, and job retention skills. The program also includes presentations by officials from community-based organizations that help ex-inmates find employment and training opportunities after release from pris-

on. Mock job fairs are also provided to instruct inmates in appropriate job interview techniques and to expose community recruiters to the skills available among the inmate population.

*Community Corrections Centers*

The Bureau places most inmates in community corrections centers (halfway houses) prior to their release from custody in order to help them adjust to life in the community and find suitable post-release employment. The length of placement varies, up to 6 months, depending on the offenders' need to make arrangements to reintegrate into the community (such as establishing a residence and securing employment). Inmates in community corrections centers are required to work and to pay a subsistence charge of 25 percent of their income to defray the cost of confinement. Some Federal inmates are placed in home confinement for a brief period at the end of their prison terms. They serve this portion of their sentences at home under strict schedules, curfew requirements, telephonic monitoring, and sometimes electronic monitoring. After release from the halfway house or from the institution (for inmates not released through a halfway house), most inmates have a period of supervised release under the supervision of the U.S. Probation Office.

FEDERAL DEATH PENALTY

Recently, the Bureau was given responsibility for carrying out Federal death sentences. The Anti-Drug Abuse Act of 1988 made the death penalty available as a possible punishment for certain drug-related offenses. The availability of capital punishment in federal criminal cases expanded significantly with enactment of the Violent Crime Control and Law Enforcement Act of 1994. No inmate has been executed under these provisions, but there are 21 individuals currently housed on the Bureau of Prisons' death row.

Federal executions will be carried out at the Execution Facility at the United States Penitentiary, Terre Haute, Indiana, which is also the site of the high-security Special Confinement Unit (SCU or death row). Lethal injection is the method to be used in Federal executions. The United States Penitentiary at Terre Haute was selected based on its central location and the presence of an existing Federal penitentiary already on site. The last Federal execution was carried out in 1963. There are two executions scheduled for Fiscal Year 2001; Timothy McVeigh has a scheduled execution date of May 16, 2001 and Juan Raul Garza has a scheduled execution date of June 19, 2001.

CONCLUSION

I am very proud of the Bureau staff and the job they do each and every day. Despite our record-setting population growth, evidenced by the net increase of 1,800 new inmates in the Bureau last month alone, we see indications of our effective prison management. However, such successes cannot be expected to continue in the face of the dramatic population increases and record-setting crowding we project will occur in the next several years. Without the resources we have requested to bring additional capacity on line, our record of service may be in jeopardy.

The Bureau of Prisons' mission involves myriad program and policy issues. Today I have touched on just a few key topics. I would like to thank you, Mr. Chairman, Ranking Minority Member Scott, and Members of the Subcommittee for the opportunity to provide an update on the operations of the Bureau of Prisons. This concludes my prepared remarks, and I would be pleased to answer any questions you may have.

Mr. SMITH. Thank you, Dr. Hawk Sawyer.  
And Mr. McKinney.

**STATEMENT OF LOUIE T. MCKINNEY, ACTING DIRECTOR,  
UNITED STATES MARSHALS SERVICE**

Mr. MCKINNEY. Good morning, Mr. Chairman, Ranking Member Scott, and Members of the Subcommittee. Let me begin by thanking you on behalf of the men and women of the United States Marshals Service for your strong support. We look forward to continuing our successful working relationship with the Subcommittee.

On February 9th, President Bush appointed me acting director. My career with the Marshals Service, however, began in 1968. Dur-

ing my career, I've worked alongside thousands of dedicated people and held a number of leadership positions. I have served as a chief deputy U.S. marshal, chief inspector at INTERPOL, chief of the enforcement division, and I was appointed as U.S. marshal twice. I also helped initiate what became the witness security program.

Mr. Chairman, I'm honored to serve as acting director of the Federal Government's oldest law enforcement agency. As you know, the service must respond to a wide range of responsibilities. While we're part of the executive branch and report to the attorney general, our primary mission is to protect the Federal courts. We also confine, transport and produce prisoners for judicial proceedings. We apprehend violent fugitives. We execute court orders, including seizure, maintenance, and disposal of assets, and we return extradited criminals to the U.S.

Today, I would like to discuss the President's Fiscal Year 2002 budget request, and I'd like to describe our workload trends. For the next fiscal year, we request 4,128 permanent positions and slightly more than \$618 million for salaries and expense appropriations. In short, we are requesting 94 additional positions.

Allow me to discuss some key areas where these new employees would work. First, the Marshals Service has 2,272 persons engaged in protecting and supporting the judiciary. Those positions amount to almost \$303 million. For FY 2002, President Bush requests an increase of \$9.4 million for these judicial security missions. This is the lion's share of our budget request. The potential for danger to the judiciary is ever present. Unless the judiciary is adequately protected, our nation would be deprived of a cherished right: justice.

Another part of our work of which I am personally proud is our witness security program. It has been a true success story. Since 1971, over 16,000 witnesses and family members have entered the program. To date, no witness who has followed the rules has been harmed or killed.

Second, we also request \$6.6 million and nine additional positions for our construction appropriations. These resources are needed to help with the planning, design, and renovation of Marshals Service space and courthouses and Federal buildings.

Third, is prisoner detention. In recent years, the biggest change in our daily workload involves a growing number of prisoners. We must keep pace with Federal prosecutions of terrorist, criminal aliens, drug offenders, and violent criminals. Since 1995, the Marshals Service prison population had grown by 67 percent. That 67 percent national increase in prisoners doesn't paint the entire picture.

It's true that such numbers are climbing in all of our districts, but there is a regional impact as well. In our southwest border district, Texas, Arizona, and New Mexico, and California, the number of prisoners has skyrocketed by 178 percent. The cost of housing and caring for them is also climbing. \$725 million are needed for the Federal prison detention appropriation. That's about \$128 million increase over the last year.

Finding new jails and bed space for court prisoners is difficult everywhere. We find bed space at the lowest cost to the Government, using State and local agreements and private contracts, but our

budget reflecting a staggering fact. Next year, we will need the pay for 10.6 million jail days nationwide.

Fourth, moving our prisoners is another challenge. Mr. Chairman, the best known part of the prison transportation program is the Justice Prison and Alien Transportation System or JPATS. This is the real life Con Air. Last year, JPATS carried 250,000 prisoners and detainees for the Marshals Service, BOP, and INS. We also transported prisoners for the Department of Defense, Department of State, and a growing number of local and State law enforcement agencies. The JPATS system involves more than just planes. It requires a scheduling component just like any commercial airline. Overall, the President is requesting an additional \$3.5 million to handle the anticipated increase in the number of Marshals Service air transport movements.

Finally, there is our fugitive apprehension. Next year we'll devote over \$120 million to this effort. This will allow us to pursue 25,000 individuals wanted in Federal felony cases. It will fund much of our task force work and help us catch Federal, State, and local fugitives. It provides funding to catch and extradite international fugitives as well. Within our borders, we coordinate over 100 multi-agency task forces that join our deputies with State and local agencies.

Last year, this committee authorized the Marshals Service to establish permanent fugitive task forces. Task forces are a very effective tool. Allow me to give you an example. During the search for the Texas Seven last winter, we worked jointly with State, local and Federal offices. That task investigated numerous leads across the region. A tip from a citizen in Colorado helped deputy marshals and local officers pinpoint the fugitives. Six of the Texas Seven were then arrested, and the Marshals Service transported them back to Texas.

Catching bad guys is one of the things that we do best. Our fugitive hunters offer a proven return to the taxpayers. Here's the bottom line, Mr. Chairman: Since 1995, our tax forces have apprehended more than 58,000 Federal, State, and local fugitives. The U.S. Marshals Service's contribution to this nation is as old as the Constitution itself. We provide the safety for our judicial system. We protect judges, transport prisoners, and apprehend fugitives. The ultimate mission hasn't changed.

The U.S. Marshals guarantee that our citizens enjoy the same rights our founders promised in 1789. The first 13 marshals made a commitment to President Washington, one we still honor today, to provide a secure system where all Americans can pursue equal justice under the law.

Thank you for having me to speak to you, and today I look forward to answering any of your questions.

[The prepared statement of Mr. McKinney follows:]

PREPARED STATEMENT OF LOUIE T. MCKINNEY

Good morning, Mr. Chairman, Ranking Member Scott, and Members of the Subcommittee. Let me begin by thanking you, on behalf of the men and women of the Marshals Service, for your strong support. We look forward to continuing our successful working relationship with the Subcommittee.

On February 9th, President Bush appointed me Acting Director of the U.S. Marshals Service. However, my career with the Service began in 1968. I've worked

alongside hundreds of dedicated people, and have held a number of leadership positions. These include two appointments as a U.S. Marshal, and Chief of the Enforcement Division, (the division now known as the Investigative Services Division) which is responsible for fugitive investigations and arrests. I also helped initiate what became the Witness Security Program. Obviously, Mr. Chairman, I am honored to serve as Acting Director of the Federal Government's oldest law enforcement agency.

As the members of this Subcommittee well know, the Service is truly unique. It is a reflection of the great federal experiment our founders launched in 1789. The Service began as a highly practical, but not strictly centralized, law enforcement organization. Over the past two hundred and twelve years, our mission has remained distinctly broader in scope than our companion federal law enforcement agencies.

In addition, while we are part of the Executive Branch and report to the Attorney General, our primary mission is to protect and support the Judiciary. Consequently, we must respond to a diverse range of responsibilities. I personally have also participated in numerous special assignments and operations. These operations, like so many to which the Marshals Service responds, are precipitated by destructive events such as hurricanes or civil disturbances, or a rapid and unforeseen increase in the number of prisoner arrests, or prosecutions such as those now occurring along our Nation's southwest border. Whatever the mission, the men and women of the United States Marshals Service are prepared to meet the challenge.

#### AGENCY MISSION

One thing about our mission is certain. The oldest and greatest challenge for the Marshals Service is to protect the federal courts and ensure the secure operation of America's judicial system. The Marshals Service must:

- Protect judges and all other participants in the federal judicial system;
- Provide security at federal court facilities and eliminate any safety deficiencies;
- Safely confine, transport, and produce prisoners for judicial proceedings by using appropriate and cost-effective means whenever possible;
- Apprehend violent fugitives as quickly as possible;
- Execute court orders, including the seizure, maintenance, and disposal of assets;
- Secure the return of extradited criminals to the United States;
- Ensure the long-term safety of protected government witnesses; and,
- Serve government and private civil process.

#### BUDGET REQUEST OVERVIEW

Today, I would like to discuss both the President's fiscal year (FY) 2002 budget request for the Service as well as describe our workload trends. For FY 2002, we request 4,128 permanent positions, 3,993 full-time equivalents (FTE) and \$619,818,000 in the Salaries and Expenses appropriation. This request represents an increase of 94 positions, 98 FTE, and \$48,383,000 over the FY 2001 enacted level.

#### PROTECTION OF THE JUDICIAL PROCESS

In FY 2001, the Marshals Service will use 2,272 positions and \$302,811,000 to protect and support the Judiciary. The protection of judges and courthouses is one of the least understood, but most important, functions of American government. If federal jurists cannot preside over cases and render verdicts free from fear and intimidation, then our citizens cannot expect the judicial system to function fairly and impartially. In short, without this protection, our Nation would be deprived of its most cherished and fundamental right—justice.

The Marshals Service maintains this judicial process integrity by: ensuring the safe conduct of judicial proceedings as well as the personal protection of federal judges and other members of the court family; conducting detailed security surveys of both public buildings and the private residences of federal judges; providing enhanced security at federal courthouses and federal buildings housing court operations; stopping the unlawful entry of dangerous persons, weapons or other harmful devices into judicial areas; preventing the disruption of judicial proceedings; and, maintaining the custody, protection, and safety of prisoners who are brought to court for any type of judicial proceeding.

The Witness Security Program (WITSEC) has been a true success story for 30 years. It provides protection for government witnesses and their families whose lives may be endangered. These witnesses agree to provide critical testimony concerning

organized criminal activity, terrorism, or other serious crimes in exchange for security and freedom from prosecution. This protection is provided 24 hours a day to all such witnesses while they are in a “threat” environment, including trials and other court appearances. Witness Security Inspectors administer all matters relating to new identities, relocation, and program services to the witnesses and their family members. The number of convictions (89 percent success rate in cases where protected witnesses provided testimony) has been achieved because Justice attorneys could utilize this program. Since 1971, 16,181 participants (7,108 primary witnesses and 9,073 family members) have entered the Witness Security Program. To date not one witness who has followed the established rules has been harmed or killed as a result of their testimony.

The President requests an increase of 52 positions in FY 2002 (41 deputy marshals, 2 detention enforcement officers (DEOs), and 9 administrative personnel), 26 FTE, and \$9,394,000 to secure and equip U.S. courthouses. The request reflects the new three-tier operational workforce and includes deputy marshals (GS-082) rather than criminal investigators (GS-1811). We believe that the workload associated with courtroom protection and prisoner security can and should be accomplished with deputies.

#### COURTHOUSE CONSTRUCTION

The Service oversees all new construction and renovation of Marshals Service-controlled space in our courthouses and federal buildings. This program develops policy and specifications for the engineering, construction, planning, designing, and acquisition of space, and most important—ensures the physical security of both personnel of the Marshals Service and the Federal Judiciary. This security includes detention cell-blocks, prisoner circulation corridors, courtroom holding cells, prisoner/attorney interview rooms, prisoner elevators, vehicle sallyports, and vehicle parking areas.

The Marshals Service requests a total of 9 positions, 9 FTE, and \$6,621,000 in the FY 2002 Construction Appropriation. This funding will facilitate the renovation of Marshals Service space. Of the \$6,621,000 requested, \$5,949,000 is to initiate six renovation projects in 2002 and \$672,000 is for personnel compensation.

#### PRISONER DETENTION

The Marshals Service accomplished 516,854 prisoner productions and had in its custody an average daily prisoner population of 34,528 individuals during FY 2000. Since FY 1995, our prisoner population has increased 67 percent nationwide. The major force driving this increase is prisoner population growth along the Southwest Border (SWB), where the percentage has grown by an astonishing 178 percent.

The Federal Prisoner Detention (FPD) appropriation provides funding for housing, subsistence, medical care, and medical guard services for all federal detainees in our custody. The Marshals Service requests a total of \$724,682,000 for the FPD appropriation which includes a program increase of \$48,787,000 to house and care for detainees. These funds will allow us to keep pace with the accelerated prosecutions of violent criminals, drug offenders, criminal aliens, and terrorists.

The Marshals Service depends on state and local governments and the Bureau of Prisons (BOP) to house its detainees. We acquire detention bed space for federal detainees at the lowest cost to the government through IGAs, a program where a daily rate is paid to state and local governments, and the Cooperative Agreement Program (CAP) with state and local governments. With a CAP, capital investment funding is provided in exchange for a guarantee of a certain number of bed spaces. A daily rate is paid when these CAP bed spaces are used. The Marshals Service request supports 10.6 million IGA, CAP and contract jail days.

Although CAP resources are included in the Office of Justice Programs appropriation, the Marshals Service manages and administers this program. In addition to enabling the state and local governments to renovate their facilities, the CAP program provides a boost to communities through both the initial capital investment and the payments that are made when we use those jail beds. The acquisition of jail bed space through the CAP program helps avoid the most expensive bed space acquisition option, the construction of federal jail facilities. In FY 2000, the Marshals Service awarded over \$17 million in CAP funds to state and local facilities. In the State of Texas alone, we awarded \$10.3 million in CAP funds over the past five years, and in Virginia the five-year total is over \$8 million.

#### TRANSPORTATION—JPATS

Mr. Chairman, the most well-known component of our prisoner transportation program is the Justice Prisoner and Alien Transportation System (JPATS). Last year JPATS transported more than 250,000 pre-trial and sentenced prisoners and

detainees in the custody of the Marshals Service, BOP, or INS. Approximately 60 percent of the movements are accomplished via air and the remainder are ground movements. Our aircraft also provide prisoner transportation for Department of Defense (DOD), Department of State, as well as a growing number of local and state law enforcement agencies. On any given day, the system's reservation and location components perform like booking and information operations at commercial air and bus lines.

Although the Service manages JPATS, it is also a customer. As such, we are charged on a cost-per-seat basis payable to the JPATS Revolving Fund. Non-federal prisoners are handled on a reimbursable, space-available basis. When JPATS aircraft or ground transportation are unavailable or are not cost-effective, we use chartered or commercial aircraft, air ambulances, BOP buses, commercial buses, and trains. In FY 2001, JPATS received congressional funding of \$13.5 million to purchase two small aircraft to cost effectively replace its aging Sabreliners in the fleet.

We estimate moving 56,731 of our own prisoners via JPATS aircraft in FY 2002. For FY 2002, the President is requesting an additional \$3,458,000 to assist us with these air movements.

#### SPECIAL DETENTION NEEDS

The Marshals Service houses an ever-growing detainee population nationwide, but with unique regional impact. Between 1995 and 2000, our average daily detainee population grew 67 percent (from 20,652 to 34,528). During the same period, the Southwest Border districts' (District of Arizona, District of New Mexico, Southern District of Texas, Western District of Texas, and Southern District of California) average daily population has collectively grown 178 percent (from 3,795 to 10,537 detainees). Most of the growth in the Southwest Border (SWB) districts is a result of increased INS enforcement.

Law enforcement efforts along the SWB have significantly increased the number of apprehensions and arrests which, in turn, have generated an increased need for detention space for the Service. The number of prisoners processed has almost tripled in the Western District of Texas, where the average daily prisoner population is over 3,200 nearly 10 percent of our national total. It also has more than tripled in the District of Arizona to more than 2,100 average daily prisoners. A Deputy Marshal in a border district handles an average of 50 prisoners per day compared to a national average of 18. Successfully housing a detainee population of this magnitude, both nationwide and specifically in the Southwest Border districts, represents a constant challenge.

#### FUGITIVE APPREHENSION

The Marshals Service has primary responsibility for apprehending federal, state and local fugitives from justice to include: prison escapees; bail jumpers; parole and probation violators. The Marshals Service also enforce warrants from agencies without arrest power, bench warrants issued by federal judges, and warrants referred by the Drug Enforcement Administration (DEA). We project 915 FTE and \$120,240,000 to fugitive apprehension in FY 2002. These positions address the nationwide inventory of over 25,000 active federal felony arrest warrants as well as state and local fugitive warrants. We are also responsible for the administration and execution of federal misdemeanor warrants and federal traffic warrants.

In FY 2002, the President's budget requests a program increase of 15 positions, 8 FTE and \$1,002,000 for fugitive investigations in the District of Columbia, resulting from the increased warrant workload generated by the National Capital Revitalization Act of 1997.

The Marshals Service coordinates multi-agency task forces by teaming up with other federal, state, and local law enforcement agencies to concentrate apprehension efforts on violent fugitive felons and drug offenders. Let me give you an example of one of our success in this area. During the search for the seven violent Texas jail escapees last December and January, we worked jointly with federal agents and state and local officers to locate them. The Marshals Service investigated numerous leads both within and outside Texas. The Marshals Service Northern, Eastern, Southern, and Western Districts of Texas devoted all available resources to the investigation and conducted a lengthy and arduous surveillance. In addition to using traditional investigative techniques, we participated in command posts that received thousands of tips and reported sightings of the escapees nationwide and in Canada. All of these were reviewed, evaluated, and directed to the appropriate law enforcement agencies for investigation. A citizen's tip helped Deputy U.S. Marshals, along with local law enforcement, coordinate their efforts with a command post. The deputies conducted interviews, corroborated details, and helped establish surveillance on

a mobile home park. Six of the "Texas Seven" were subsequently arrested and the Marshals Service returned the prisoners to Texas.

In 1993, as part of the Attorney General's Anti-Violent Crime initiative, we joined with Federal, state and local law enforcement agencies to create a number of permanent fugitive task forces. The Marshals Service currently sponsors 106 task forces nationally. Since FY 1995 our task forces have apprehended more than 58,000 federal, state and local fugitives. In December 2000, President Clinton signed the Presidential Threat Protection Act. A portion of this act included a provision authorizing the Marshals Service to establish permanent fugitive task forces.

In addition to domestic fugitive investigations, our fugitive authority reaches beyond the boundaries of the United States to arrest fugitives who have fled the country. As an INTERPOL member, the Marshals Service works with foreign law enforcement officials and cooperates with DEA and Federal Bureau of Investigation (FBI) officials in foreign locations to apprehend and extradite fugitives. In FY 2000, the Marshals Service performed 279 international extraditions and provided coordination and support for foreign law enforcement agencies in 65 instances where fugitives were extradited from the United States to another country. Furthermore, the Marshals Service recently assigned deputies to the U.S. embassies in Mexico City; Kingston, Jamaica; and Santo Domingo, Dominican Republic.

#### SEIZED ASSETS MANAGEMENT

The Asset Forfeiture Program is one of DOJ's most potent weapons against organized crime, particularly when it targets large illegal drug enterprises. The success of the program relies on the close coordination between the FBI, DEA, INS, the U.S. Attorneys Office, and the Marshals Service. We have two primary roles relating to the asset forfeiture program: law enforcement and administrative. Deputy Marshals are responsible for executing court orders by physically seizing and securing assets. Administrative staff are responsible for ensuring that assets are properly managed and maintained while forfeiture action is pending. Once forfeited, the Marshals Service ensures that assets are disposed of in a timely and commercially sound manner. Without a sound property management program, seized assets would fall in disrepair, lose value and be more difficult for the Federal Government to dispose of in a timely manner. Currently, the program has 17,800 assets valued at \$918 million. Nationwide, the Marshals Service and U.S. Attorneys have entered into cooperative agreements regarding pre-seizure planning to ensure the quality of the forfeiture cases. We provide pre-seizure planning and property services to the DEA, FBI, INS, U.S. Postal Inspection Service and the Food and Drug Administration. These federal agencies work with state, local and international law enforcement agencies to investigate seized asset cases.

At the conclusion of forfeiture cases, participating state and local agencies, as well as foreign governments, can apply for an equitable share of the proceeds. Equitable sharing not only assists in providing much needed resources to continue the fight against crime the participating state and local law enforcement agencies, but also fosters cooperation with them. The Marshals Service processed sharing requests worth approximately \$169 million during FY 2000.

#### D.C. SUPERIOR COURT

The U.S. Marshals Service district for the Superior Court of the District of Columbia is unique in that the office performs all Marshals Service duties, and also functions like the local sheriff's office for our nation's capital. At Superior Court, we provide judicial security for 69 judges, 20 senior judges, 15 full-time magistrates, and 17 part-time magistrates. Court activity is conducted in 94 courtrooms and hearing rooms located in three separate buildings. We also serve process, apprehend fugitives and transport prisoners. The court operates 6 days a week, including holidays, and handles a wide variety of judicial cases.

As you may know, one of the goals of the National Capital Revitalization Act of 1997 was to close the Lorton prison facility. The impending closure will have a significant impact on the Marshals Service Superior Court office. Because the Marshals Service will assume increased responsibility for both prisoners and warrants previously performed by the District of Columbia government, the President has requested an increase of 27 positions, 13 FTE, and \$1,726,000 for the Marshals Service Superior Court district.

#### CONCLUSION

Mr. Chairman, as the United States Marshals enter their fourth century of service to our Nation, we can be proud of the men and women who serve faithfully and effectively preserving the security of our federal judicial system. Whether we are

protecting judges, transporting prisoners or apprehending fugitives, foremost in our mission is ensuring that our citizens enjoy the rights guaranteed by the Founders the year the first U.S. Marshal was appointed—equal justice under the law.

Thank you, for inviting me to speak before you today, and I look forward to answering your questions.

Mr. SMITH. Thank you, Mr. McKinney. By the way, I've been watching too many TV programs. When you watch shows, it's called witness protection program, but there's no such thing as witness security program. Is that correct?

Mr. MCKINNEY. That's correct, sir. There's no witness protection program.

Mr. SMITH. Once again, the media is wrong, but no side comments on that.

But anyway, Mr. Pickard, I'd like to start to address my questions to you, and if you would give me brief responses so I can try to get to several witnesses with my questions. The first, you anticipated, and it had to do with the Robert Hanssen, case and I appreciate everything that the FBI is doing to make sure that kind of the situation never develops again. However, my question is this: Is there really any good reason why the FBI over the last 20 years has not given random lie detector tests to agents in sensitive positions?

Mr. PICKARD. Mr. Chairman, we have given random polygraph tests to certain people assigned to certain positions within FBI headquarters. I myself took two random polygraph test while I was assigned to—

Mr. SMITH. How did Robert Hanssen get through 20 years without a lie detector test?

Mr. PICKARD. Mr. Chairman, we don't polygraph every employee. We polygraph the employees that are assigned to specifically sensitive investigations such as internal security or espionage matters.

Mr. SMITH. Okay.

Mr. PICKARD. He was not assigned to one of those areas, and as a result, he was not polygraphed.

Mr. SMITH. Okay. But in retrospect, anyone who is in such a sensitive position where you could lose agents as a result of leaked information should be polygraphed occasionally, I presume.

Mr. PICKARD. That's correct, and that's the new policy we have now, that 100 percent of the national security division employees will be polygraphed. We are now completing the polygraph of all our senior executives, myself included.

Mr. SMITH. Right. I understand.

Mr. PICKARD. And also, we're looking at other areas of employees who need to be polygraphed, such as our data base administrators.

Mr. SMITH. I understand. The FBI has also taken a recent new initiative to investigate child pornography. What specifically is the FBI doing in that area?

Mr. PICKARD. In that area, we have an initiative called the Innocent Images Task Forces that we've been developing around the country, and we have agents and local police officers working to find people who are going on the internet dealing in child pornography and also trying to lure children across State lines for illicit purposes.

Mr. SMITH. And then, lastly, as I recall, about one-third of the cocaine coming into the United States is now coming from Puerto

Rico and the U.S. Virgin Islands. What initiatives is the FBI taking to stop that one-third of the cocaine coming through those two areas?

Mr. PICKARD. We're working closely with the DEA and the Customs Service to address that. We've added additional agents to our office in San Juan, Puerto Rico, specifically to address the numbers we have down there. I don't have the exact number of agents we've added, but it's been substantial, and we've had a commitment down there to that.

Mr. SMITH. What are the circumstances that have allowed individuals to be able to ship that quantity of cocaine just from those two areas? What is there about Puerto Rico and the U.S. Virgin Islands that allows that situation to occur?

Mr. PICKARD. Mr. Chairman, I believe part of that is the geography of that situation there where you're so close to so many other islands. That is for many drug dealers a first port of entry. They can bring it in there. Once it's in there, it's almost within the continental United States as far as getting it to other areas.

Mr. SMITH. I mean where does the cocaine go next after—from Puerto Rico and the U.S. Virgin Islands?

Mr. PICKARD. It travels up to New York, also to Florida, but those are the two may main routes. I think Mr. Marshall could probably address that better than I could.

Mr. SMITH. Okay. Thank you, Mr. Pickard.

Mr. Marshall, not only would you address that last question, but would you also address the question that comes from a hearing we had about a month ago where we discovered that 62 percent of all drugs seized in the United States are now seized along the southwest border. So could you tell us what the DEA is doing to counter that as well as the cocaine coming from Puerto Rico and the U.S. Virgin Islands?

Mr. MARSHALL. Mr. Chairman, I'll be happy to try that, and you're right; and 60 or more percent of the drugs in the aggregate and particularly cocaine comes through Mexico. We have a southwest border strategy that we work very aggressively in concert with the FBI, Customs, Immigration, Border Patrol, and many, many State and local agencies. We also have a presence in Mexico itself, we work alongside the Mexican authorities there to try to dismantle the major drug trafficking organizations that are operating in and through Mexico and by extension with their cells inside the United States.

With regard to the Caribbean, we have a similar strategy, but it's tailored toward the diverse geography of the Caribbean. We work with many host country nations there. We've established intelligence information sharing networks with many of those countries. We have worked cooperative investigations down there, and we really believe that we have a comprehensive strategy to attack the drug organizations in both areas, frankly.

Mr. SMITH. Would you dare to guess how much you're going to reduce the flow over the next several years?

Mr. MARSHALL. Well, I think that it's hard to put numbers on that, Mr. Chairman, but I will say this: There are several positive things that have developed over the last number of years. First of all, drug abuse in this country is half what it was at the peak of

the drug epidemic in '79 and '80 and on into the early eighties. We're also seeing the drug trafficking organizations respond to pressures from U.S. and other law enforcement. We see that the Colombians are giving part of their U.S. markets over to the Mexico-based traffickers. We see that the Columbia cocaine cartels are focusing on creating new markets, not in the United States, rather in Europe and the former Soviet Union and other parts of the world.

When you see those kinds of fundamental changes in the way the drug trafficking organizations go about doing their business, I think you can recognize that we've had some success with law enforcement.

Mr. SMITH. Mr. Marshall, you've answered my question, and my time is up, and I want to sneak one more question into Dr. Hawk Sawyer real quickly, and that is that there are a number of privately-owned prisons that are either—privately-run prisons, I should say, that are either not being used at all or are not being used to their full capacity. I'm just curious. Why is that?

Ms. HAWK SAWYER. Well, I can really only speak to Bureau of Prisons' use of the private facilities, and we are the second largest user of private prisons in the country, but we've made the decision based upon the experience we've had with private corrections that the safest population to place in private prisons are minimum and low security inmates. Private sector prisons have had some very serious difficulty that's been occurring in the last few years handling medium and high security inmates. So we reserve private prisons only to house for us low level criminal alien cases.

Mr. SMITH. So you don't have enough minimum security prisoners?

Ms. HAWK SAWYER. We have enough capacity to house up to a certain number of minimum and low security inmates, and anything above that—we have not built a new low security institution for the last several years.

Mr. SMITH. Okay.

Ms. HAWK SAWYER. We've diverted those into private corrections.

Mr. SMITH. Okay. Thank you very much.

The gentleman from Michigan, Mr. Conyers, is recognized for his questions.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. Pickard, what is your budget request for the fiscal year?

Mr. PICKARD. The budget request for the FBI is \$3,500,000 [sic].

Mr. CONYERS. And is that larger than the last year's request?

Mr. PICKARD. Yes, it is. It's \$270 million larger than last year.

Mr. CONYERS. And, Mr. Marshall, what is your request for funds for the fiscal year?

Mr. MARSHALL. Our total request, sir, is an increase of—I'm sorry—a total of \$1.5 billion, approximately, and that's an increase of approximately 120 million over current year funding.

Mr. CONYERS. So what's the request total?

Mr. CONYERS. \$1.5 billion.

Mr. CONYERS. 1.5 billion, and how much is that over last year's?

Mr. MARSHALL. \$120 million, approximately.

Mr. CONYERS. And Dr. Hawk Sawyer?

Ms. HAWK SAWYER. Our total request is \$4.6 billion, and it's roughly \$300 million more than we requested last year—than we received last year.

Mr. CONYERS. Is that in your testimony?

Ms. HAWK SAWYER. Yes, sir.

Mr. CONYERS. Okay. Were those figures in your testimony?

[Mr. Marshall and Mr. Pickard gesture in the positive.]

Mr. CONYERS. Let me start with the FBI. Doesn't the FBI have responsibility for conducting investigations of violence and brutality under the color of law?

Mr. PICKARD. That is correct.

Mr. CONYERS. Do you know or can you find out for me how many such investigations have been conducted under Director Freeh?

Mr. PICKARD. I do not know the answer to that, but I'm happy to get my staff to find that out for you.

Mr. CONYERS. Okay. Now, we have a problem here of a question of race and the criminal justice system. I hope you've all heard about it, the fact that for 13 percent of the population, more people of color, mostly young males are arrested. More of them are convicted. More of them are sentenced to longer sentences, and more of them end up on death row. So there seems to be some kind of connection here. Has this come to your attention or has this discussion been raised with you, Mr. Pickard?

Mr. PICKARD. Yes, it has, and we've instituted some things to try to reach out to the community, try to work with the young people. We have a community outreach program, and a school outreach Junior Special Agent Program to try to address at an early age with the youngsters in the fifth and sixth grades values that we're looking for them, trying to help them to aspire to become FBI agents or to go into law enforcement, how to deal with confrontational situations.

Mr. CONYERS. Okay. Mr. Marshall, are you aware of this issue that I raise or is it a new one to you?

Mr. MARSHALL. Certainly, I'm aware of it, sir.

Mr. CONYERS. Okay. Let's discuss it. I mean, what's the problem here? More and more people of color are being locked up, and some suggest that because more are arrested and more end up convicted, more end up with longer sentences and proportionally more end up on death row. Is this something that you're sensitive too?

Mr. MARSHALL. Yes, we're certainly sensitive to that, Congressman, and I would like to describe a number of things that we're doing within our agency. First of all, we are focusing very much on creating a diverse work force, because the criminal organizations that we encounter are themselves very diverse. When we bring our agents in for basic agent training, we do quite a bit of training in the area of ethics, human dignity, community relations, the importance of maintaining public trust and confidence, and I think that we carry that throughout our training at all levels within DEA.

In my vision statement for DEA, I've articulated the importance that I place on diversity within the organization among our employees as well as the importance of maintaining public trust and confidence.

Mr. CONYERS. Excuse me.

Mr. MARSHALL. And, finally, if I could just add—

Mr. CONYERS. Okay. I'm going to have to ask for an additional minute, because my time is—

Mr. SMITH. Mr. Conyers, we're going to have a second round of questions. If I could ask you to hold off and finish up then.

Mr. CONYERS. All right. Okay. Please complete your statement.

Mr. MARSHALL. Finally, I would add, sir, that DEA is a criminal investigative organization. We do not randomly target the potential defendants that we investigate. We open an investigation when we receive from a source credible investigation that leads us to believe that the individual involved is a drug trafficker, and that's the basis for all of our investigations.

I would also point out that we don't investigate, as a normal course, simple drug possession. Only 5 percent of the drug prisoners in the U.S. prisons—and the majority of those were as a result of DEA investigations. Only 5 percent of those are for simple possession.

Mr. CONYERS. Thank you.

Mr. SMITH. Thank you, Mr. Conyers. I am going to have to leave because I have another engagement that is, unfortunately, in direct conflict with the last few minutes of this particular hearing, and I'm going to ask the gentleman from Wisconsin, Mr. Green, to serve as Chairman of the Crime Subcommittee, and he will continue until we finish.

But on the way to my leaving, thank you all for being here. It's been very, very helpful.

Mr. Green.

Mr. GREEN. [Presiding.] Thank you, Mr. Chairman.

As you know, being Members of Congress, we have the dubious distinction of being able to be in several places at the same time. I am still in the Housing Subcommittee just down the hall. I apologize for being late and not being able to be here to hear much of the testimony, but I do have a few questions I would like to ask.

For Mr. Marshall, there has been, obviously, a rise in the popularity of drugs created in the lab, Ecstasy, methamphetamine. Does the DEA expect this trend to continue, and what special problems do these drugs present to law enforcement agencies that are not associated with, for lack of a better term, more traditional agrarian drugs like marijuana, cocaine, and heroin?

Mr. MARSHALL. Congressman, I certainly hope that the trend does not continue, but unfortunately I suspect that it will. The problem we see with chemically-produced drugs that we don't see with the agrarian drugs are really several. Number one, it's difficult to attack these types of drugs because the precursor chemicals that they use very often have many other uses, not only in our country, but throughout the world. So we are a number of substances that are not illegal per se, but we have to limit the criminals' access to those chemicals in order to limit the production of these drugs.

They also present more of a problem because the chemically-produced drugs can basically be produced anywhere, the United States or any other country in the world, whereas with the agrarian drugs, save marijuana, those are produced outside the United States. So we have many, many significant challenges with chem-

ical drugs that we—that are different from the agricultural-based drugs.

Mr. GREEN. With those otherwise legal drugs that go into Ecstasy or methamphetamine, how do you limit access to those chemicals? What can we do?

Mr. MARSHALL. We have a number of programs whereby we have established what we call listed chemicals, and we try to identify the current chemicals that are used in various—production of the various drugs, and the main ones that we establish are List I chemicals, and we try to attack that through a number of means. We try to work with Customs to limit import and exports and investigate the backgrounds of companies that are either an importer or exporter, as well as the destination of those chemicals, and we do that with going both ways, frankly.

We try to have liaison with the chemical companies themselves, and we have a number of other programs where when we do encounter chemicals in the actual laboratories that we seize, we have an operation called Backtrack that tries to trace those chemicals back but to the companies through which they passed in getting to that lab, and then sometimes we will work with those chemicals, or sometimes we establish—I'm sorry—with those companies, or sometimes we establish that those companies themselves are either gray market companies or rogue chemical companies, in which case we have been known to criminally sanction the companies themselves.

Mr. GREEN. Thank you.

Mr. McKinney, switching gears, can you tell me how many outstanding Federal fugitive warrants there are at present?

Mr. MCKINNEY. Yes. As an approximate, 24,000, sir.

Mr. GREEN. I'm sorry?

Mr. MCKINNEY. 24,000.

Mr. GREEN. And how many new ones on average are issued each year?

Mr. MCKINNEY. Congressman, I can respond to your question as completely as possible, but please allow me to submit a statement for the record.

Mr. GREEN. Sure. We will look forward to seeing that. Then, finally, how many fugitives who are subject to a Federal fugitive warrant were apprehended last year? Do you know? Do you have that information?

Mr. MCKINNEY. I believe, sir, it's about 22,000. Correction, sir. It was 27,000.

Mr. GREEN. 27,000. Thank you. I understand that when special operations group team members are activated, the local U.S. Marshal in the district where the team member ordinarily works can deny that team member permission to participate in a special operations group mission. Is that accurate, and if so, why is it?

Mr. MCKINNEY. No, sir, it is not. That's controlled by headquarters. When the SOG is activated, it's strictly controlled by headquarters. They cannot deny the member to go on special assignment, we call it.

Mr. GREEN. So the local command doesn't have that ability?

Mr. MCKINNEY. No, sir.

Mr. GREEN. Okay. I appreciate it.

Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Green.

Let me get back to where I was about the question of race and the criminal justice system return to the prison system. Dr. Hawk Sawyer, are you familiar with the many claims of race being a factor in the incarceration and treatment of prisoners?

Ms. HAWK SAWYER. Yes, Mr. Congressman, I am.

Mr. CONYERS. And could we discuss it here in terms of what steps you're taking to alleviate this problem?

Ms. HAWK SAWYER. Well, in terms of alleviating the problem, it's a little tough for us to do it completely in that we don't control who comes into our institutions.

Mr. CONYERS. But you control what they do after they get there, completely.

Ms. HAWK SAWYER. Absolutely. That's what I was going to say. We don't control who comes in the door. We can only control the opportunities we provide for them once they are there, and we do several things. One is we assess the deficits of all of our inmates coming in, and often times our minority inmates do have educational deficits, work skills training deficits. They've perhaps been involved in drug abuse and require drug treatment, and we ensure that those inmates have those opportunities very readily available to them.

As I commented earlier in my opening comments, our Federal Prison Industries program, which is a wonderful work skills development program, has been shown to have a great impact upon recidivism, but also particularly for minor inmates.

Mr. CONYERS. I'm for the Federal Prison Industry system. I'm one of the few supporters you've got on the Committee.

Ms. HAWK SAWYER. I know you are, sir.

Mr. CONYERS. But there's only a fraction of people involved in that.

Ms. HAWK SAWYER. Well, 20 percent of our inmates.

Mr. CONYERS. You've got to go way beyond that. A lot of—those have to be the model prisoners, but what about the people that come in that are functionally illiterate, have never been through high school and are subject to all kinds of privations both before they got there and while they're in the prison?

Ms. HAWK SAWYER. Absolutely, Mr. Congressman. We have vast education programs that deal from special education needs. Every institution is required to have special education programs all the way up to GED programs. We impact the inmate at whatever level he comes into the institution.

Our work programs, every inmate has to work. So in addition to Prison Industries which employs 20 percent, we have vocational training programs through local technical colleges or from the institution itself, plus apprenticeship programs through Department of Labor. We try to ensure that every inmate coming in who does not have an employable skill when they join us, do have an employable skill when they walk out the door.

Mr. CONYERS. Well, that's good, and we want to continue these conversations beyond this hearing. I intend to contact all of you.

Ms. HAWK SAWYER. Very good, sir.

Mr. CONYERS. Do you remember your testimony before Appropriations Committee last year when you observed that three-quarters of the female prisoners should not even be in prison, but must be there because of mandatory minimums?

Ms. HAWK SAWYER. I think my comment in a fuller statement was that if the purpose is simply to impact recidivism and ensure that they do not return to crime, then three-quarters of them, you would get the same impact if they were not in prison, because the vast majority of our female inmates do not recidivate.

Mr. CONYERS. Are there other inmates who shouldn't be in prison because—but are there otherwise because of mandatory minimum sentences, which you are not responsible for?

Ms. HAWK SAWYER. It depends upon the purpose of incarceration. If the purpose is truly to ensure that they do not go out and commit new crimes, then there's a fair number of our population that do not go out and commit a new crime after their first offense. If the purpose is incapacitation or other things, then it's a little different discussion, but if the true purpose is really to ensure they don't recommit offenses, then, yes, there are a fair number of our population.

Mr. CONYERS. But how many are there that never committed violent offenses to begin with? A lot?

Ms. HAWK SAWYER. Yes.

Mr. CONYERS. So——

Ms. HAWK SAWYER. I'm not disagreeing with you, Mr. Conyers. It depends upon the purpose of incarceration. If it's to ensure that they don't recommit, the majority of our females do not. Twenty percent of our inmates that are with us are low level nonviolent offenders. So one could argue that those——

Mr. CONYERS. But a person comes before a judge. They get a sentence. The judge doesn't say I'm giving you five to twenty because we want to keep you in prison or I'm sentencing you to this because it is not the purpose of preventing you from committing further crimes. You come before the judge and you get it, and increasingly in the Federal system, the sentences are longer. Those that are seeking to prosecute and get longer sentencing terms ironically turn to the Federal system which sends more and more people to you and have you requesting 800 million more dollars for prisons.

Well, I'm sorry. We're going to have to figure out something better to do with our money. We can't keep building prisons from now on because we're sending people who haven't even committed violent crimes there.

Ms. HAWK SAWYER. You won't hear disagreement from me on much of that, sir.

Mr. CONYERS. Thank you.

Mr. GREEN. Thank you, Mr. Conyers.

Ms. JACKSON LEE, questions?

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and to again the witnesses. Let me indicate, Mr. Chairman, that there is an energy consumption hearing going on about two floors up, and we are obviously facing some very extreme issues as relates the question of energy utilization and energy capacity. So I apologize to the witnesses whose testimony I did not hear. I'm on two Committees that are functioning at the same time.

But I do want to pursue the line of questioning of my opening remarks and some other lines of questioning, particularly, the Ranking Member was sort of proceeding in the direction that I think is important to proceed in. It takes a lot of time sometimes to express the questions, and then we're shortened on time.

But, Dr. Sawyer, I think that you have the responsibility for presiding over a system, and I would imagine—I don't want to put words in your mouth—that you're not a stakeholder per se in the increased penalties that come about through the mandatory sentencing, but you fall victim to it, and all of us travel the country and of course hear so many painful complaints from family members of individuals who did come under that large net that we wish that those individuals whose crimes were non-violent, etc., would have some ability to come out.

Let me try to find out, because we were discussing a matter, and I will pursue that in a one-on-one, but what I was concerned about is I think what I was hearing as we were discussing the matter about how much time the person had served and your hands were tied, are your hands tied or is there something that we can help in reauthorization to give some leeway with respect to individuals who may be by their behavior, their health condition, or whatever their circumstances are, and their particular offense, really even in your mind, your academic mind, your management mind, warrant movement from a particular facility to a less secure, more healthful facility? Do you need legislation? Do you need policies? What do you need to assist you in that?

Ms. SAWYER. Well, we have authority to move individuals within our system from a more secure setting to a lesser secure setting. Where my hands are completely tied is to achieve any early release, early release from custody for anybody. The only options we have to, in essence, shorten someone's sentence—when parole was removed back several years ago, the only thing left to us now is the potential of up to 1 year off if you successfully complete drug abuse treatment and a compassionate release situation. If an individual is near death, has very serious terminal illness, we can petition the court for early release of those; but short of those two categories, we have no authority to enable anyone to release from custody earlier.

Ms. JACKSON LEE. But do you consider release from custody over to one of the halfway house circumstances?

Ms. HAWK SAWYER. No. A halfway house is simply a lessening of security for an inmate.

Ms. JACKSON LEE. So you can do that through internal policies?

Ms. HAWK SAWYER. We can. Our current policy indicates that individuals can go to the halfway house setting roughly 6 months prior to release. There are some exceptional cases that get a little more than that, but 6 months is our average. Part of that is a costing issue, because we obviously pay separately for the halfway house than we would for an entire institution, and also, part of it is that our experience with the halfway houses—and the halfway house individuals will say that anything more than 6 months in that kind of the setting really becomes very difficult for an individual because they really have one foot on the street and one foot inside an institution, and the many different factors that pull on

them, whether it be family, job, social, whatever, become very difficult for an extended period of time in that setting.

Ms. JACKSON LEE. Let me raise a point, and I think this is not something we can sort of pursue as we give and take here, but let me raise a point. I think that if you have that flexibility, it would be worthy of you looking at your internal procedures to analyze inmates on a case-by-case situation. You may find that there are some who are psychologically ready to be able to handle a longer period of time, being grateful that they have the opportunity to be in a less secure arena.

And I've again taken my time. I don't want to pursue that, but I raise a question about that. I'm concerned because I think it falls heavily on women. I think it falls heavily on minorities, particularly in the low grade offenses. When I say that, I'm talking about the nonviolent drug offenses that they've come in on, wrapped up in the RICO and the mandatory sentences, and that's where you find us, you know, 20 years we're still there, 9 years we're still there, and I think it's extremely tragic.

Let me also make mention to you that I personally want to engage in the questions dealing with a Federal detention center that is in the 18th Congressional District, just a private area, particularly on treatment of employees, and the diversity of employees as well is very important to me. So I would greatly appreciate it. We had that discussion.

I see the Chairman, but I hope the Ranking Member will get an extra 5 minutes so that I will be allowed to ask a few more questions, Mr. Chairman, and I'd be happy to yield at this time, but I would make that request and I'd appreciate it. Good.

Oh, I see—good. I see Mr. Scott is here. So I hope you will allow us, please.

Mr. GREEN. The Ranking Member has made a request, and the Chairman agrees. I'd like at this time to recognize Mr. Scott, who has not had his turn for questions yet.

Ms. JACKSON LEE. All right. Thank you very much. Thank you, Mr. Chairman.

Mr. GREEN. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I again apologize. We're having a markup in education, and things required my attendance.

Ms. Sawyer, I want to thank you for the opportunity to visit with several of your prisons, looking specifically at the prison industry and the success we've had there in terms of giving meaningful employment opportunities to prisoners so that they would be much less likely, as we found, to return to prison.

I had a question on a bill we passed either last year or the year before on co-pay for health care. Is it fair to say that after you've deducted administrative and accounting expenses that we didn't save any money by passing that bill?

Ms. HAWK SAWYER. The intent was not to save money directly in terms of the two dollars, the minimal cost we're going to be asking the inmates to pay. The intent is to reduce the frequency that inmates abuse sick call and show up in sick call lines when they really are not sick. We have not implemented that program yet, Congressman Scott. So I don't really know yet what the savings or lack thereof is going to be. We're still developing the regulations,

and then we have to negotiate it with our union. So it's liable to be almost a year before that thing is finally activated.

Mr. SCOTT. Okay. We also saw some of your drug rehabilitation programs. Do you have sufficient funds to enable all that want to get into drug rehabilitation to, in fact, get into drug rehabilitation?

Ms. HAWK SAWYER. Yes, sir. In FY 2001, we have had sufficient funds. We anticipate 14,000 inmates completing residential drug treatment in 2001. We are hopeful that our budget will allow us again in 2002, if we can get the amount that we've requested, to be able to ensure once again that all the inmates who need drug treatment and who are willing to enroll—and so far, 92 percent of all inmates who need drug treatment have been enrolling and successfully completing the program before release.

Mr. SCOTT. Do you have any evidence that the program is successful?

Ms. HAWK SAWYER. Yes, we do. We've been tracking them now for 3 years. Once they finish the program in the institution, they then go to a 6-month period in the halfway house. Then we've tracked them from 3 years after release from the halfway house, and we're seeing significant impact upon drug treatment. In fact, those who completed the program are 15 percent less likely to be rearrested 3 years after release, and we'll be continuing to track this over time.

Mr. SCOTT. Thank you. I'd like to ask the DEA representative a question on the—by focusing so much on international—the gentlelady from Texas mentioned the situation where the plane was shot down. The effect of focusing so much on the supply side, what effect is that having on international law enforcement? For example, how much of the international law enforcement corruption, killing of judges, and so forth is a direct result of United States drug policy?

Mr. MARSHALL. Well, with regard, sir—you asked several questions. With regard to the shoot down of the airplane, that was not an operation that DEA was involved in. Our international operations is a small part of DEA's overall operation. We have about 4500 special agents. We have about 500 of those stationed overseas.

The philosophy there is that we have our overseas people to work with host country authorities to gather intelligence, to support domestic, primarily domestic prosecutions. I think that the corruption aspect that you asked about, I think that obviously crime in general and drug crime as well has a corrupting effect on societies, on institutions and that sort of stuff. We have been, I think, very successful in some countries in providing training and institution building that go a long way toward countering those corruption—those corrupting influences, and I hope that we can have more of that impact in other countries as well.

Mr. SCOTT. Obviously, our goal is to reduce drug use. If you we're going to spend another billion dollars on the drug problem, is there any question in your mind that it all ought to go into rehabilitation if our goal is to use it as effectively as possible?

Mr. MARSHALL. No, I don't think it all should go into rehabilitation. I've said many, many times, and I've believed for many, many years and I continue to believe that we have to have a balanced

approach to our drug policy. If we focus too much on education and leave the law enforcement component out of it—

Mr. SCOTT. I didn't say leave. I said if you had an additional—leave everything else as it is, you had an additional billion dollars, where it could it be put to the best use?

Mr. MARSHALL. I, once again, put it in a balanced approach. I would increase our education and prevention programs substantially. I would increase law enforcement, perhaps more modestly than the education and prevention programs, but an increase nonetheless, and I would ensure that treatment was available for those that need treatment.

Mr. SCOTT. Mr. Chairman, could I have an additional minute? I have one additional question.

Mr. GREEN. Yes.

Mr. SCOTT. And that is on the—I guess it's somewhat related to the issue of profiling.

Mr. PICKARD, I guess it would be FBI. Is there any reason why we can't strictly enforce exclusionary rules to give—to remove any disincentive for police officers to break the law and use bigotry as a standard for who they stop?

Mr. PICKARD. Recently, the chief of police in Chicago, one of his officers was arrested, and he stated if officers act like criminals, they'll be treated like criminals, and I think that's the appropriate response we should have. We need the supervision of the officers, just as we try to make sure our agents are well supervised, and I think when that breaks down, you have incidents like you had in Los Angeles where there's a lack of supervision and other places where there's abuse by law enforcement authorities.

Mr. SCOTT. Specifically, on strict enforcement of the exclusionary rule where illegal evidence should not be admitted in the court?

Mr. PICKARD. I would defer to the decision of the judge in that particular case as to where they come out on it.

Mr. GREEN. As requested, Mr. Conyers, the chair will yield you an additional 5 minutes under your control for questions as you see fit.

Mr. CONYERS. Thank you, Mr. Chairman. Could I put in a request for the Ranking Member of the Committee, Ms. Jackson Lee, to get 5 minutes additionally as well?

Mr. GREEN. Sure.

Mr. CONYERS. Thank you so much.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. CONYERS. Let me ask if any of you are—if there are any among you who are unfamiliar with these figures: African Americans constitute 13 percent of the nation's drug users. They represent 35 percent of those persons arrested for drug possession and are 55 percent of those convicted for drug possessions and 74 percent of those sentenced to prison for drug possession. Question: Is there anybody that is unfamiliar with these statistics?

Mr. MARSHALL. That's the first time I've personally heard those exact numbers. I'm familiar with the concept though.

Mr. CONYERS. Okay.

Mr. PICKARD. I'm also unfamiliar with them.

Mr. CONYERS. I beg your pardon, Mr. Pickard.

Mr. PICKARD. I'm also unfamiliar with those.

Mr. CONYERS. This is new to you. Okay. I'd like the subsequently provide you with the source for these numbers.

Now, Mr. Marshall, do you see drug use as a medical problem as well as a legal problem?

Mr. MARSHALL. I see it as a medical problem, a legal problem, a crime problem, a social problem. It's a very complex problem, and people use drugs for many, many varying reasons. From my standpoint, I see one of the main reasons is that the criminal organizations are very shrewd and aggressive marketers of their product, and they market that product to the weak.

Mr. CONYERS. Now, look here—

Mr. MARSHALL. I think it's all of those problems rolled up into one.

Mr. CONYERS. Well, that's very nice, but drugs are addictive. That's the medical component. Drug users don't have to do anything but sell their product and addiction kicks in. So if you just see it out there as, okay, then that's why you answered Mr. Scott the way you did. If you had as much money to prosecute, criminalize, bring cases, incarcerate, you still wouldn't want to put the money to what gets people off of drugs, and that gets me to the RAN Corporation study, which I'm going to ask you with what familiarity you may have of it, and you can't read everything, but the RAN Corporation found that \$34 million invested in treatment would reduce cocaine use as much as an expenditure of \$336 million for interdiction.

Are you familiar with that?

Mr. MARSHALL. I'm not sure I'm familiar with those exact numbers, but again, I'm familiar with the concept, sir.

Mr. CONYERS. You get the idea. So if you're trying to eliminate the drug problem, this beats interdiction. This would be the way to go, and so if we keep having nice people that come up and run the DEA, run the prisons, run the FBI, run the criminal justice system, and I'm including U.S. attorneys that prosecute, and judges, we still get into the interdiction kick. \$1.3 billion into Columbia, a wonderful civil war going on there, which we're going to cut off the supply, but the demand is what brings drugs to America. It doesn't accidentally come here. It comes here because the biggest market on earth are people that want to use drugs, many of whom become hopelessly addicted.

Is this a theory you're familiar with, Mr. Marshall?

Mr. MARSHALL. It's a theory I'm familiar with. It's a theory that I don't completely agree with, sir.

Mr. CONYERS. You don't completely agree? Fine. Would you explain the parts where you have some reservation about that?

Mr. MARSHALL. Yes, I will. First of all, I want to comment, sir, that I am not opposed to treatment. If you look at everything that I have written, everything I have testified—

Mr. CONYERS. But you don't sound like it this morning. That's all I'm—I have to say that.

Mr. MARSHALL. If I might, I'll try to explain.

Mr. CONYERS. I haven't looked at everything you've read and said, but just from what we've heard in a couple hours, it doesn't sound like that I could put you in the pro treatment classification, but go ahead.

Mr. MARSHALL. Not at all, sir. You misunderstand what I say.

Mr. CONYERS. Oh, okay.

Mr. MARSHALL. I'm in favor of the balanced approach, which includes treatment, which includes education and prevention, but which also includes a strong—

Mr. CONYERS. But what don't you like about my theory that you've had some reservation about?

Mr. MARSHALL. I will try to get to that, if I may, sir.

Mr. CONYERS. Okay.

Mr. MARSHALL. The supply and demand is not as simple as saying demand creates supply.

Mr. CONYERS. It doesn't happen that way?

Mr. MARSHALL. No, it's not that way in all cases.

Mr. CONYERS. Well, how does it happen?

Mr. MARSHALL. If you will allow me, I will try to logically explain my position. It is not a typical supply and demand situation, because we see that we have weak and vulnerable people, young people in our society who are not equipped with the maturity or the good judgment to make good decisions about whether to use drugs. We have many people that are ill-informed on drugs and don't have the adequate knowledge when they make that first decision to start using drugs.

On the other hand, we have criminal organizations that aggressively market drugs to our young people to, to weak and vulnerable people who don't have the tools that they need to make good decisions. We have these organizations advertising on the internet that Ecstasy is a safe drug. We have these organizations putting heroin inside their shipments of cocaine as a condition of selling cocaine. We have heroin organizations that actively target methadone clinics.

Mr. CONYERS. They're just doing their jobs.

Mr. MARSHALL. They sell heroin to the very people who are trying to recover from addiction, and the marketing of drugs is a very, very significant part of our drug problem.

Mr. CONYERS. That does not—everything you said does not compromise my theory a bit. Well, then shouldn't we invest more money in prevention?

Mr. MARSHALL. Yes. I said that in my testimony. I've said that in many open pieces. I said it this morning in answer to one of the other questions. Absolutely yes.

Mr. CONYERS. Well, I don't see what the problem is then.

Mr. GREEN. Mr. Conyers, if you could wrap up.

Mr. CONYERS. I'm sorry.

Mr. GREEN. If you could wrap up your questions.

Mr. CONYERS. All right. All I want to do—we've got a—this is not an insignificant discussion we're having. If you think that my theory is compromised by the fact that criminal drug peddlers try to market to innocent young children, I quite agree with you, but all these kids out in the suburbs that are using every drug known on earth, they're not being hit up by criminal elements.

Mr. MARSHALL. Oh, quite the contrary. Quite a contrary, sir. They are.

Mr. CONYERS. Quite to the contrary? They're getting their supplies—usually they drive into the inner city to get all the supplies

they want, which is where we have a lot of problems where people that get incarcerated for drug possession end up with the Federal and State prisons when the bigger people go untouched. That's why we got a lot of low level people and people that are only in prison because of possession, filling up the prisons, talking about we need 800 more million dollars, and we need to privatize more prisons. I think that is not the correct direction.

Mr. MARSHALL. If I may—

Mr. GREEN. I'll allow your answer. I hate to cut this off, but we're running into a time constraint yet again. So finish your question.

Mr. MARSHALL. With all due respect, I am not against treatment, and if you've interpreted my comments as that, then I apologize. I am not against that.

With regard to the young people going into the inner cities for drugs, that's true with some drugs, but it's not by any means true with all drugs, and the flip side of my contention that we need to have a balanced approach would be, really, I think if we focus solely on treatment, we are treating people after they have become addicted. Wouldn't it be much, much better to prevent them from getting drugs in the first place and to give them the educational and the informational tools that they need to keep from becoming addicted in the first place?

Once they are addicted, those who become addicted, certainly they need treatment, and we need to have better and more treatment programs.

Mr. GREEN. Thank you, Mr. Marshall, for your testimony.

The chair would now recognize, finally, Ms. Jackson Lee for 5 minutes.

Mr. CONYERS. Would the gentlelady allow me 30 seconds?

Ms. JACKSON LEE. I'd be happy to, Mr. Conyers.

Mr. CONYERS. Mr. Marshall, the more I think about this, the more I feel like engaging you. How in the world can we be talking like this when you must know that at the high school level more than half the kids have experimented in drugs? Are those criminal elements that are in there pushing pot and marijuana and Ecstasy? Come on.

Mr. MARSHALL. I would ask you in return, sir, with all due respect—

Mr. CONYERS. Yes.

Mr. MARSHALL. How can we possibly abandon our youth who have not yet made that decision to begin using drugs and simply, Oh, well, let's treat them after they become addicted?

Mr. CONYERS. Prevention. That's what I've been talking about all day. That's how you prevent them.

Mr. MARSHALL. And so have I, sir. I've been talking about law enforcement, education, prevention, and treatment.

Mr. CONYERS. You've been trying to sell me that the criminal elements and drug people that are preying on these youngsters—they're experimenting with drugs all the time, and it's not taking criminal elements to do anything but provide them with the source for buying the drugs.

Mr. MARSHALL. That's a pretty significant role in the equation, the supply of drugs.

Ms. JACKSON LEE. Thank you very much. Thank you, Mr. Conyers for that line of questioning.

I going to try and put my questions in bullet points and solicit answers from you in that context, and let me say, Mr. McKinney, don't feel that absence makes the heart grow fonder or we're not found of you because we're absent in questioning you. Let me thank the U.S. Marshals Service for its work, and I might mention my United States Marshal, Marshal Contreras, for his great work. So we appreciate the efforts that you make, and we'll be looking at your budget and looking at reauthorization to see how we can be helpful.

I will ask you a question, if you could get it to me in writing, and if my memory serves me well, we implemented a new process. I think the legislation passed dealing with the civil service approach to appointments as opposed to presidential appointments. If you can give that to me in writing, whether I'm accurate in that, because I want to—I'd like to see how it's working, and I'd also like to pose a question on the professional.

Did not pass. I've been informed by counsel that it did not pass. So we're still under presidential appointments. So what I will say to you, my interest would be in the increasing diversity of the U.S. Marshals. I know that was a problem before, but I also would appreciate in writing if you could tell me what you have implemented for professional development, for professional training for the Marshals Service. And I apologize for not trying to get that verbally, but I if I could get that in writing, I would appreciate it very much. But thank you for the service.

Dr. Sawyer, let me—if I can just get some pointed questions. About 8 days from now, we are going to be engaged with Senator Hatch and Senator Clinton in a fundraising effort to help the children of prisoners, and maybe I cannot capture the eloquence of Mr. Conyers, but if you can understand that a dominant number of individuals who are incarcerated come from our communities over and over and over and over again.

I note that you have a limit, 300 minutes for these individuals to be talking to their family members. I always get calls about funerals. Sometimes I think the prison authorities make light of it. It's not a situation that is funny in our offices, but many times they're denied. Why can't we extend this 300 minutes? If I could just get a sentence, then I can expand it, because I've got a series of questions.

Ms. HAWK SAWYER. We absolutely support the relationship between our inmates and their families. It's a critical link to them adjusting properly when they release as well as touching their family in a positive way. The 300 minutes is a brand new thing that we've added on to our phones in order for us to get controls over those who abuse the telephone and commit illegal activity on the phones. It's a result of an inspector general investigation of our phone usage.

Seventy-five percent of our inmates do not even use the telephone for 300 minutes, and if there's ever a family emergency, we will always access phones for the inmate. So it's not intended to separate them from their families, just to control abusers.

Ms. JACKSON LEE. Let me pursue that with you. I'm thinking that if we get those numbers, I'd like to see how we can work through that. I think it's punitive, and I appreciate the inspector general's efforts, but I want to see how we can delineate the family-related calls if they want to do 10 hours if they're legal dealing with the family.

The other thing is the Human Rights Watch provided a report on the high rate of prisoner rape. That is one of the most abusive, violent, direct ways to create a violent person who then goes out and acts violently if they're ever released. What are you doing to address this problem?

Ms. HAWK SAWYER. That's an issue that we take very seriously in the Bureau of Prisons, and the incidence, I won't say is non-existent, but it's very, very low. There are three factors involved in preventing prison rapes. One is that you have a good classification system which separates your predators from your vulnerable inmates. Our classification system is very sound.

Two is you have a system where staff are out and about the institution all the time in the housing units, ensuring that if anything is happening there that we're aware of it; and thirdly, we have a very strong reporting system that once an inmate even let's us know that there's been an indication of a rape, we attack that very quickly. We send them out for medical care. We do the rape kit determination to determine whether or not anyone has actually been raped, and we will go after prosecuting the inmate that's been involved in carrying out the rape.

So, therefore, our incidence is very, very low. We need it to be at zero, but it is very, very low because of those three factors.

Ms. JACKSON LEE. And I would appreciate it if you would get that to me in writing, and I probably will want to meet with you on that. I hope any offices pay attention so that we can schedule the appointment, because I'm very concerned.

I have some questions on women incarcerated. So let me go forward.

Mr. Chairman, I'd ask an additional minute to pose to these two gentlemen here, Mr. Marshall and Mr. Pickard.

Mr. GREEN. No objection.

Ms. JACKSON LEE. Thank you very much.

Mr. GREEN. No objection.

Ms. JACKSON LEE. Mr. Marshall, let me just that please understand the depth of our just being overwhelmed or passionate about these issues. You are a good friend of mine from Texas, and I was getting ready to grab your introduction from Mr. Smith, but I just recall he's from Texas. So I didn't have a legitimate excuse to introduce you.

So let me really say to you that I appreciate the work that you've done. You were in the hot seat here the other day in the government oversight on some issues in Houston. I appreciated the way you handled that.

But what we are seeing is that the members from—say particularly the African American community, I think Mr. Conyers is making another point that young drug users is just overwhelming. So we're trying to find out how we can bust that open other than what you're doing, which is the incarceration issue. Do you have

any racial profiling language or instructions? Are you sensitive to the issue of racial profiling, or are you just taking a big net in the work that you do and just running people into it, and are you working on that to be assured that you're working to get those perpetrators, but not just profiling people and saying let me just lock you up? Let me just get this question so I can get both of you on the record.

Mr. Pickard, the FBI has always been looked to for the issues of justice, and I'm sure they're involved in this recent conviction, though it was delayed, down in Birmingham. We appreciate that. I'd like to be assured that when we try to engage the FBI—they did a very good job in the Jasper case. I wanted to thank you for that, but I wanted to make sure that when we engage or call the FBI that you are sensitive that when the community, particularly minority communities, call because they sense the balance.

I want to know do you have some blocks of responding to discrimination—when I say discrimination calls, say Cincinnati called you or someone is calling you from Houston, for example, because I've got a family that's been abused with a cross burning, etc., I've got a little slow response. How do you respond to that? And I also want to make sure that you are, in fact, implementing lie detector tests in light on the Hanssen situation.

If I can get quick answers, I think the Chairman will indulge me on those issues.

Mr. MARSHALL. Ms. Jackson Lee, I'm very sensitive to racial profiling issue. I feel like I'm addressing that in a number of ways. First of all, I speak out very strongly against that practice in public appearances wherever I go, both internal audiences, State and local police audiences, and audiences with the general public. I've covered that in many, many speeches that I give across the country.

Secondly, I strive for a diverse work force within DEA because I believe the more diverse we are, the more we are able to address these issues within our society and within our agency.

Third, we conduct a lot of training, both for our own employees and for State and local police officers, and we try to weave threads of ethics and threads of human dignity into that type of training, and all of that training where we—particularly our highway interdiction training that we do for State and local officers has a very, very strong unequivocal element that we do not condone, tolerate racial profiling, and on top that, it is bad investigative technique and should not be practiced in any way, shape, form, or fashion.

Mr. GREEN. Mr. Pickard.

Ms. JACKSON LEE. Thank you very much. I'll be in touch with you.

Mr. PICKARD. On the incident in Katy, Texas, I was called about that on Tuesday night. The SAC of the Houston division was up in a conference that we have with all the special agents in charge. The ASAC down there, Gail Seavy, I understand she called back to your office. Working with the local police, we have identified a 17-year-old suspect. We're trying to see whether his story is accurate or not, but we're in—we have identified an individual, and I think the response was appropriate for that, but we were very concerned about the Ross family in light of what had happened.

Ms. JACKSON LEE. Thank you. I thought the response initially was very timid. It might be because a Member of Congress was calling. I did find out a 17-year-old was—has been at least brought in under the circumstances. But people look to the FBI, and I thought they were particularly timid and confused about what was being asked, and the fact that there was history with the Ross family, I think there should have been a more pronounced We have it under advisement; I'm so glad you called; It is in our jurisdiction; We're going to be looking at it, as opposed to I'm talking to this or that or the constable or waiting to be called. Too timid.

I mean, I'm not asking to violate your procedures. I'm glad they did call you in Washington, and I'd like them to be more responsive, and it might have been because the SAC was out of town.

Mr. PICKARD. I would hope that that would not be the answer. The ASACs are there, empowered, and they should be able to respond to those situations.

As far as the Hansen matter, we're currently polygraphing almost 600 employees. That includes our senior executive service, all the employees who work national security matters, data base administrators who have the keys to the kingdom of our computer systems, as well as personnel who travel frequently internationally. When we complete that, the director and I will be taking a look at expanding that to other employees, and we'll also be waiting for the Webster Commission and the inspector general report.

Ms. JACKSON LEE. Thank you very much. I look forward to working with you.

Mr. GREEN. Thank you. I see that my colleague and friend, Mr. Barr has arrived.

Mr. Barr, 5 minutes for questions.

Mr. BARR. Thank you. I apologize for being late. We have a hearing down the hall in the Government Reform Committee, the Deegan murder case that the FBI I know is very much aware of, and that's still going on. So I apologize.

But I do appreciate the witnesses being here today, and I know there's been a lot of information. I don't think, though, that in a couple of areas, and these concern primarily the FBI, that there are being questions asked, and I would like to go into a little bit into the NICS system, the National Instant Check System.

Mr. Pickard, could you explain has the—it's my understanding the system has been shut down a couple of times recently. What occasioned those delays and delays in the National Instant Check System?

Mr. PICKARD. There were two incidents last year in which the NICS system was down, one in May and one shortly before the holidays at the end of the year. The first one in May was occasioned by a change in the software. We were trying to upgrade the software for the system. It's a very complex system. I've asked Assistant Director Bob Dies, who joined the FBI after 30 years in IBM, to personally go up there to take a look at the system, and he's come back to me with certain recommendations as far as vulnerabilities in the system and areas that we need to enhance so we do not have those system failures.

The incident in December of 2000, that occasioned by a power failure. The wiring of the system could have been done better. We

have since changed out that wiring system from when we go from the outside power to the battery power on the system.

Mr. BARR. So there have not been any shutdowns this year?

Mr. PICKARD. That is correct.

Mr. BARR. Okay. I know Mr. Dies is here. I had the opportunity to meet with him earlier in the week, and I appreciated that very much. We didn't talk about this in particular, but I know he is looking comprehensively at a lot of areas involving computers and software and technology and cyber crime for the bureau, and I appreciate that and would look forward to maybe speaking with him specifically about this at some point.

The other area that I wanted to get a little update on, if I could from you, Mr. Pickard, has to do with another area that we've gone into in the past and certainly will in the future, and it has to do not exclusively but essentially with the problems that we see in Project Carnivore. Now, I know that the name has been changed. Unfortunately for you all, I think the name Carnivore, which was such a misnomer in the first place, has sort of stuck, but what has been done with regard to the comprehensive look that the attorney general was taking at not just that project, but generally what needs to be done in order to more properly in the context of 21st Century technology, which was not with us when the electronics surveillance laws were last overhauled about three decades ago; where do we stand now in terms of that comprehensive look, and is the attorney general or are you, the bureau, prepared to make some recommendations to us at this point or in the near future with regard to protecting privacy concerns with the internet and electronic communications generally in today's world without unduly inhibiting the ability of law enforcement to gather necessary information with proper judicial oversight?

Mr. PICKARD. As you know, the world has changed so much from the telephone systems to the internet now. More and more communications, whether they be by E-mail or by voice, are now going over the internet systems. The Illinois Institute of Technology Research Institute did a study in December of 2000. It was commissioned by the attorney general to take a look at Carnivore. I don't think we'll ever get rid of that word. But they had certain technical recommendations. We're taking a look at them now.

The attorney general, John Ashcroft, is looking personally at the privacy considerations in it, and we've been providing briefings to him on that, and based upon them, we'll have a decision as to how to move out smartly so that we can protect the privacy of individuals, but also so that we have this ability to deal with the criminal element who has moved on to the internet.

Mr. BARR. Do you know at what stage the attorney general is in that comprehensive review?

Mr. PICKARD. I do not know. I'm sorry.

Mr. BARR. Okay. Would you check on that for us, please? Because that's something, certainly, not just in this Subcommittee, but the Committee generally, I think will be wanting to go into and perhaps some other Committees as well. And will both the bureau and the Department of Justice make itself available to communicate ideas and work with the Congress to see if there is a legislative framework that we can come up with?

Mr. PICKARD. Of course, we would. There are some recommendations that I think would help us greatly in this new information age.

Mr. BARR. Thank you.

And I'd just like to take this opportunity to thank the other witnesses here, and if you would please convey not only mine, but I speak and anticipate I speak for the entire Subcommittee and the entire Committee, and please convey to the men and women of your agencies the tremendous regard and thanks that we have for the work that they do. Thank you.

Mr. GREEN. I think that's an excellent note upon which to end this Subcommittee hearing. I thank all those in attendance for their patience, and we stand adjourned.

[Whereupon, at 12:35 p.m., the Subcommittee was adjourned.]



## CRIMINAL LAW COMPONENTS AT MAIN JUSTICE

TUESDAY, MAY 15, 2001

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 4:03 p.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [Chairman of the Subcommittee] presiding.

Mr. SMITH. The Subcommittee on Crime will now come to order.

I am going to recognize myself for purposes of an opening statement, and then I recognize Mr. Scott of Virginia for his opening statement as well, and then we will look forward to hearing from our three witnesses today.

The Subcommittee on Crime today holds the second of two hearings on the reauthorization of the Department of Justice. The Department of Justice was last reauthorized by Congress in 1980. Since then, there have been no complete examinations of the authorities under which the department operates.

Events from last week remind us why it is important for this Subcommittee to exercise its oversight responsibilities. The Subcommittee on Crime is charged with oversight of seven of the Department of Justice components.

The Subcommittee's first hearing held on May 3 featured four law enforcement agencies of the Department of Justice—the FBI, the DEA, U.S. Marshal Service, and the Federal Bureau of Prisons. Today's hearing focuses on the remaining three criminal law components of the Justice Department. They are the Criminal Division, the Office of Justice Programs, and the Community Oriented Policing Services Office, better known as COPS.

The Criminal Division was created in 1919 and is responsible for developing, enforcing, and supervising the application of all Federal criminal laws except those specifically assigned to other divisions. The division has the responsibility of overseeing criminal matters under more than 900 statutes. In addition to its direct litigation responsibility, the division formulates and implements criminal law enforcement policy and provides legal advice and assistance for Federal prosecutors and investigative agencies.

The Office of Justice Programs was established in 1984 to provide Federal leadership, coordination, and assistance to make the nation's justice system more efficient and effective in preventing and controlling crime. Through programs developed and funded by its bureaus and offices, OJP works to form partnerships among

Federal, State, and local government officials to reduce and prevent crime, improve the administration of justice in America, and meet the needs of crime victims.

The Community Oriented Policing Services Office was created by the Department of Justice to carry out the community policing grants program in the Violent Crime Control and Law Enforcement Act of 1994. The goal of the COPS program was to promote community policing and add 100,000 new officers on the street by the end of the year 2000. The COPS mission is to improve public safety in neighborhoods and communities throughout the country by building partnerships with communities, police agencies, and other public and private organizations.

Today's witnesses oversee some of the most significant components of our nation's criminal justice system since guarding public safety is one of the government's most essential duties. We look forward to hearing from the witnesses about the challenges they face and the ways in which Congress can help them accomplish their goals.

Now that concludes my opening statement, and the gentleman from Virginia is recognized for his.

Mr. SCOTT. Thank you, Mr. Chairman. I'm pleased to join you in convening this continuing series of hearings on reauthorization of the Department of Justice criminal law enforcement components.

It is interesting that we haven't had an oversight hearing like this because the department has been without authorization, as I understand it, for about 20 years.

Today we will hear from the department, the various offices, Office of Justice Programs, the Criminal Division and the COPS program, all of which play important roles in the Federal Government's effort to assist local and State governments to prevent, prosecute, and reduce crime.

Since over 98 percent of crime which occurs in this country is within the jurisdiction of States and localities, a review of major entities in DOJ which assist them is clearly in order.

I'd start by indicating that I've heard from more than one criminal justice consortium that they are generally very well-satisfied with the research priorities and support offered by OJP. We told them we wouldn't tell anybody if they told us the truth, and they still said that they were very satisfied.

We've also heard the COPS program has been very successful, particularly because it is administered with a lot less bureaucratic hassle and delay than most government programs have to deal with.

While I've heard that the Criminal Division has been very successful in its efforts, I've heard quite a bit about the growing federalization of minor street crime and the impact on minorities as a result of that effort. I can scarcely point the finger at the Criminal Division since much of the concentration on minor criminal activity is driven by policies in Congress, all too often by the political whims of the day.

The concern about federalization has been echoed from the left and the right. It includes a clarion call from the Chief Justice of the Supreme Court that we have to rethink the use of our Federal resources. Yet we still seem to be federalizing more street crime.

We heard the announcement yesterday of the president's nationwide Project Exile Program, which has been criticized in my jurisdiction by the Federal judges who said it turned their Federal courts into police courts—so I can hardly blame the Criminal Division for its concentration, although you can count on me to continue to criticize it.

I hope that we will take a close look at this overextension into the street crime area, which is traditionally exclusively a State and local matter.

So I look forward to the testimony of the witness and to discussing areas of mutual concern.

And again, thank you for convening the hearing.

Mr. SMITH. Thank you, Mr. Scott.

The gentleman from North Carolina, Mr. Coble, is recognized for his opening statement.

Mr. COBLE. I will please you, Mr. Chairman, and say to you, I have no opening statement, but it's good to have our witnesses with us.

Mr. SMITH. Thank you, Mr. Coble.

We will go to those witnesses, all of whom are from the Department of Justice today, and I will introduce them. They are Michael Horowitz, chief of staff, Criminal Division; Mary Lou Leary, acting assistant attorney general, Office of Justice Programs; and Ralph J. Justus, acting director, Community Oriented Policing Services, or COPS. We welcome you all, and we will begin with Mr. Horowitz.

**STATEMENT OF MICHAEL HOROWITZ, CHIEF OF STAFF,  
CRIMINAL DIVISION**

Mr. HOROWITZ. Chairman Smith, Ranking Minority Congressman Scott, Members of the Subcommittee, I am pleased to appear before you today to describe the activities of the Criminal Division of the Department of Justice. With your permission, I would like to begin with a brief statement and would ask that my full statement be submitted into the record. I presently serve as the chief of staff—

Mr. SMITH. Mr. Horowitz, let me interrupt you very quickly to say that the opening statements of all the witnesses will be made a part of the record. And I noticed yours was 39 pages long, so we're particularly happy to make your entire statement a part of the record.

Mr. HOROWITZ. I want to avoid a filibuster here. [Laughter.]

Mr. SMITH. Please proceed.

Mr. HOROWITZ. As you indicated, I presently serve as chief of staff in the Criminal Division. I have been a Federal prosecutor for the past 10 years, having served as a supervisor and line attorney in the United States Attorneys Office for the Southern District of New York, and I'm proud to have worked in the Criminal Division since January 1999.

I would like to outline for you briefly the division's unique role within the Department of Justice and Federal law enforcement. The mission of the Criminal Division is to work cooperatively with United States attorneys and State and local law enforcement to

deter criminal activity and to ensure that violations of Federal criminal law are properly and vigorously pursued.

The Criminal Division has responsibility for overseeing the enforcement, as you indicated, Mr. Chairman, of more than 900 Federal criminal statutes and advises the attorney general in setting and developing Federal law enforcement priorities and policies. Additionally, the division develops policies, procedures, tools, and training on prosecution techniques to improve the nation's crime-fighting capabilities.

One of the most important and growing areas of responsibility for the Criminal Division involves international law enforcement coordination. As international crime increases with the expansion of the Internet and the relative ease of international travel, the division has been hard at work to develop effective strategies to combat it.

For example, the Criminal Division is responsible for providing assistance to Federal, State, and local prosecutors and obtaining evidence from foreign governments. The division works with our foreign counterparts to develop legal assistance relations and partnerships and to strengthen foreign law enforcement institutions.

The effort by the division's Office of International Affairs to significantly expand the number of Mutual Legal Assistance Treaties has resulted in the growing exchange of evidence and the production of witnesses that leads to successful prosecutions, and it is responsible for the recovery of hundreds of millions of dollars in drug and fraud proceeds.

Similarly, the expanding network of extradition treaties form the basis for retrieving or returning defendants to the country where they can be most effectively prosecuted.

Another important area of Criminal Division responsibility involves training. For example, the division's Computer Crime and Intellectual Property Section has provided extensive training and practice manuals to Federal prosecutors and investigators regarding the investigation and prosecution of computer crime. In addition, the division provides special prosecutorial experience on a wide range of issues, including sensitive law enforcement areas such as title III electronic surveillance matters and the issuance of attorney subpoenas.

An example is the expertise developed by our Terrorism and Violent Crime Section relating to terrorism cases. Because of their expertise, the section directly participates in the investigation and prosecution of virtually all international terrorism cases and particularly critical domestic terrorism cases.

Further, it is the responsibility of the Criminal Division to address emerging crime—for example, computer crime and cyberterrorism—by providing personal support and resources if necessary.

As you know, communications networks, especially the Internet, link governments, businesses, and individuals in the same interconnected digital system. These networks offer great benefits but also provide an easy way to reach within our borders to combat criminal acts.

In this developing environment, the division's Computer Crimes and Intellectual Property Section and the Terrorism and Violent

Crime Section work toward preparing and equipping law enforcement to investigate cybercrime and to prevent cyberterrorism.

Increasingly, the type of cybercrime most likely to cause significant harm to consumers and businesses here and abroad is fraud over the Internet. Since 1999, the Fraud Section has overseen a comprehensive Internet fraud initiative that the department established to provide a coordinated approach to combating Internet fraud.

Another area where the Criminal Division plays a critical role is the coordination of complex, multijurisdictional cases. For example, an effective mechanism used to achieve the highest level of coordination and support for major narcotics cases is the special Operations Division. Prosecutors in our Narcotics and Dangerous Drug Section work together in SOD with agents and analysts from the DEA, the FBI, the Customs Service to support regional, national, and international criminal investigations and prosecutions, targeting the major criminal drug trafficking organizations threatening the United States.

The division currently operates on a fiscal year appropriation of \$110 million. For fiscal year 2002, the president's budget requests approximately \$112 million with enhancements requested to bolster some of the division's key programs in the areas of counterterrorism, cybercrime and international law enforcement. As a result of emerging computer technology over recent years, significant attention has been and continues to be focused on the vulnerability of critical infrastructure to cybercrime and cyberterrorist attacks.

The division is requesting enhancements of nearly \$3 million to strengthen its leadership role within the department in those areas. This request will support national strategies and priorities and help address the rising workload in the division's sections that handle the increasingly complex nature of crime resulting from globalization and a proliferation of technology.

Mr. Chairman and Members of the Subcommittee, I hope this overview is helpful to your understanding of the work of the Criminal Division, and I would be pleased to answer any questions that you have.

[The prepared statement of Mr. Horowitz follows:]

PREPARED STATEMENT OF TESTIMONY OF MICHAEL E. HOROWITZ

Chairman Smith, Ranking Minority Member Scott, and Members of the Subcommittee, I am pleased to appear today before you to describe the responsibilities and activities of the Criminal Division of the Department of Justice.

I presently serve as the Chief of Staff in the Criminal Division. I have been a Federal prosecutor for the past ten years, having served as a line attorney and supervisor in the U.S. Attorney's Office for the Southern District of New York, and am proud to have worked in the Criminal Division since 1999.

My testimony today will outline the Criminal Division's role within the Department of Justice and Federal law enforcement. The mission of the Criminal Division is to develop, enforce, and exercise oversight involving the prosecution of Federal criminal laws, in cooperation with the United States Attorneys, and State and local law enforcement officials. The Division oversees the enforcement of more than 900 Federal criminal statutes and advises the Attorney General in setting and developing Federal law enforcement priorities and policies. The Criminal Division also develops policies, procedures, tools, and training on prosecution techniques to improve the Nation's crime-fighting capabilities.

In addition, the Criminal Division provides special prosecutorial expertise on a wide range of unique domestic and international issues, as well as in sensitive law

enforcement areas, such as “Title III” electronic surveillance and attorney subpoenas. (“Title III” refers to title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.) Further, the Criminal Division addresses emerging crimes—for example, computer crime and cyber-terrorism—by providing personnel support and resources, in a flexible manner, as appropriate.

The Criminal Division also facilitates coordination and direction on many complex multi-jurisdictional cases, frequently working with other Federal, State, and local investigative agencies and authorities. By doing so, the Criminal Division provides oversight to ensure consistency and uniformity in developing an effective approach to fighting criminal activity.

Moreover, the Criminal Division works with our foreign counterparts to develop legal assistance relations and partnerships, as well as to strengthen foreign law enforcement institutions. The crime problem in the United States no longer rests solely within our borders, and we in the Criminal Division are responsible for providing assistance to Federal, State and local prosecutors in obtaining evidence from foreign governments. The Criminal Division is led by the Assistant Attorney General and five Deputy Assistant Attorneys General. Under their leadership and guidance, the Division’s Sections and Offices work in various subject-matter areas to address the law enforcement and criminal prosecution needs of each area. There are approximately 430 attorneys who work within the Criminal Division’s Sections and Offices. The Division currently operates on a Fiscal Year 2001 Appropriation of \$110 million. For Fiscal Year 2002, the President’s Budget requests approximately \$120 million, with enhancements requested to bolster some of the Division’s key programs. The Division’s FY 2002 request focuses on counterterrorism and cybercrime. As a result of emerging computer technology over recent years, significant attention has been, and continues to be, focused on the vulnerability of the critical infrastructure to cybercrime and cyberterrorist attacks. The Division is requesting enhancements of nearly \$3 million to strengthen its leadership role within the Department in these areas. Because the Division recognizes the complementary but interdependent roles played in meeting the emerging challenges of criminal law enforcement, the request includes not only attorney positions, but also analytical support and infrastructure protection improvements. In addition, the Division continues to work to implement effective strategic planning efforts, with the specific goal of developing processes that will better inform the resource and program decisions made by the Executive level managers.

In this era of globalization and lightning-fast communications across borders, the Criminal Division has endeavored to address such transnational threats. Many sophisticated criminal organization —whether drug traffickers, money launderers, computer hackers, terrorists, spies, or the like—do not limit their activities to one jurisdiction within borders: they operate throughout the world. Therefore, you will note throughout my remarks today that most of the responsibilities of the Criminal Division components span both domestic and international law enforcement.

I would like to take this opportunity to discuss some of the Criminal Division’s recent work and accomplishments in the area of counter-terrorism, cybercrime, international coordination and assistance, traditional law enforcement concerns, and providing support for Federal prosecutors nationwide. First, let me address the growing problems of terrorism and cybercrime, where the Division is seeking enhancements in FY 2002.

#### COUNTER-TERRORISM

The Division’s Terrorism and Violent Crime Section (TVCS) designs, implements, and supports law enforcement efforts, legislative initiatives, policies and strategies relating to domestic and international counter-terrorism, in coordination with other Federal, State, and local law enforcement agencies, and foreign counterparts. This includes direct participation in the investigation and prosecution of virtually all international terrorism cases and particularly critical domestic terrorism cases. These efforts are reflected in the Five-Year Interagency Counter-terrorism and Technology Crime Plan, which serves as the national strategy for counterterrorism.

Coordination of multi-district international counter-terrorism investigations by the Division supplies specific expertise and promotes consistency in the enforcement of a nationwide program to attack international terrorism. This involves: coordination with foreign intelligence agencies to obtain necessary information to support search and arrest warrants; review of the legal sufficiency of charges and pleadings; and coordination among offices to facilitate the timing of prosecutive steps optimal to multiple coordinated prosecutions. Many U.S. Attorneys’ Offices rely on the expertise developed by the Division. For example, Division attorneys provided significant support to the U.S. Attorney’s Office in Seattle in a major prosecution of ter-

rorism transcending national borders which resulted in the recent conviction of Ahmed Ressam.

Pursuant to the Department of Justice's Crisis Response Plan, TVCS serves as a central coordinator for the receipt and dissemination of information pertinent to ongoing critical law enforcement incidents. This program includes the Attorney Critical Incident Response Group, a core of Department attorneys, Assistant U.S. Attorneys, and the Crisis Management Coordinators, designated senior Assistant U.S. Attorneys in each U.S. Attorney's Office specially trained in crisis management. Under this program, instruction and materials are provided by TVCS so that, in the event of a terrorist or other critical incident, each U.S. Attorney's Office has a baseline of "in-house" expertise with additional support, as needed.

#### *Designation of Foreign Terrorist Organizations*

The Criminal Division also participates in and contributes to, on behalf of the Department, the inter-agency process of the Secretary of State's designation of Foreign Terrorist Organizations (FTOs), pursuant to the Anti-terrorism Effective Death Penalty Act of 1996. The Division has played a key role in the preparation of administrative records to support these designations, so as to withstand legal challenge. In October 1997, the Secretary of State designated a list of 30 FTOs, pursuant to the anti-terrorist financing provisions. The list was revised in October 1999. There are currently 29 FTOs.

#### *Cyber-terrorism*

The Criminal Division is similarly responding to the increasing threat posed by cyber-terrorism. Communication networks—especially the Internet—link governments, businesses, and individuals in the same interconnected digital system. These networks offer great benefits, but also provide a way to reach within our borders to commit terrorist acts. For instance, an individual with a computer and an Internet connection anywhere in the world could potentially break into critical systems, shut down an airport's air traffic control system, disrupt emergency services for an entire community, or launch a destructive "denial-of-service" attack.

In this developing environment, law enforcement must be prepared and equipped to investigate cyber-crime quickly and effectively. When a cyber-attack first occurs, it is not immediately clear whether the attack is state-sponsored cyber-warfare, cyber-terrorism by a transnational organization, or non-terrorist criminal activity, either domestic or foreign. Accordingly, America's national security will increasingly depend on strong and capable law enforcement organizations.

The Division's Computer Crime and Intellectual Property Section (CCIPS) led the Department's efforts to combat cyber-terrorism and to ensure critical infrastructure protection through its work on a Five-Year Counterterrorism Strategy, support to the National Infrastructure Protection Center, and extensive international work. CCIPS participated in the National Plan for Information Systems Protection process, resulting in the publication of the National Plan in January 2000 by the inter-agency group and the Critical Infrastructure Assurance Office.

#### COMPUTER CRIMES

Just as computer networks cross borders, computer crime is inherently multi-jurisdictional and international, with victims scattered around the Nation and the world. Thus, CCIPS plays an important role in coordinating and, oftentimes, leading multi-jurisdictional and international computer crime investigations and prosecutions.

The Criminal Division has made considerable progress in the fight against cybercrime. With respect to particular investigations and prosecutions, CCIPS coordinated the investigation and advised in the prosecution of, or took the lead in prosecuting, a large number of significant cybercrime cases, including the following:

1. The "denial of service attacks" that exposed the vulnerabilities of our infrastructure and gained national and international notoriety in February 2000, resulting in the successful prosecution of a Canadian juvenile;
2. The "Melissa Virus" (which resulted in a guilty plea and the defendant's admission to causing more than \$80,000,000 in damage at sentencing in December 1999); and
3. A juvenile who unlawfully hacked into a United States military computer network used by the Defense Threat Reduction Agency, leading to one of the first cases in which a juvenile was sentenced to detention in Federal court for computer hacking.

CCIPS also assisted in a tremendous number of investigations that required agents and prosecutors to obtain electronic evidence.

In the international arena, the Criminal Division works bilaterally with its foreign counterparts, including the United Kingdom, Australia, and Canada, among others. Moreover, CCIPS continues to chair the Group of Eight Subgroup on High-Tech crime and to work internationally in other fora to build international capabilities to fight cybercrime.

#### *Training on Computer Crimes*

The Criminal Division provides extensive training and manuals to Federal prosecutors and investigators regarding computer criminal enforcement. CCIPS created and trained a network of prosecutors, comprised of Assistant U.S. Attorneys from each U.S. Attorney's Office, called Computer- Telecommunications Coordinators (CTCs), to expand and improve expertise among Federal prosecutors. CCIPS also provided training to thousands of Federal agents, administrators, prosecutors, and private agents/administrators; conducted highly successful advanced and basic computer crime courses; and led the National Cybercrime Training Partnership in moving forward to teach existing courses and develop additional courses, particularly to State and local investigators and prosecutors. In addition, CCIPS has recently completed a manual, *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* (published in December 2000). CCIPS also works closely with the private sector, encouraging victims to report cybercrime and industry to develop mechanisms to prevent and to address cybercrime.

#### *Internet Fraud*

Increasingly, the type of cybercrime most likely to cause significant harm to consumers and businesses here and abroad, and to undermine consumer confidence in the Internet, is Internet fraud. Since 1999, the Division's Fraud Section has overseen a comprehensive Internet Fraud Initiative that the Department established to provide a coordinated approach to combating Internet Fraud. This initiative has six principal objectives:

- a. Development of information of the actual nature and scope of Internet fraud;
- b. Training of prosecutors and investigators;
- c. Development of investigative and analytical resources;
- d. Providing regional, national and international coordination;
- e. Providing litigation support and advice; and
- f. Conducting public education and prevention programs.

The Division's accomplishments to date in implementing the Initiative are impressive.

1. The Division has supported the establishment of the Internet Fraud Complaint Center, a joint project of the FBI and the National White Collar Crime Center. The Fraud Section has also worked with the Federal Trade Commission on providing more information about consumer frauds on the Internet to law enforcement agencies.
2. The Division has trained more than 260 Federal, State, and foreign prosecutors and Federal agents on Internet fraud since 1999 and has added an Internet fraud component to the basic Cybercrimes seminar at the National Advocacy Center.
3. The Division chairs the inter-agency Telemarketing and Internet Fraud Working Group, which brings together Federal law enforcement and regulatory agencies for closer cooperation. The Section, through the Group of Eight High-Tech Crime Subgroup, developed a proposal for coordinated action against Internet fraud, which was adopted by the G8 Crime Ministers in October 1999, and is continuing discussions in the G8 High-Tech Crime and Projects Subgroups.

#### INTELLECTUAL PROPERTY CRIMES

As computers and networks become more complex, it is increasingly hard to secure them from hackers through technical means. At the same time, our country's wealth is increasingly held not in hard assets but in intellectual property, which can be freely copied and disseminated in digital form over computer networks. In this developing information society, law enforcement plays a critical role.

With respect to its intellectual property mission, CCIPS continues to advance the Intellectual Property Rights Enforcement Initiative. That initiative includes:

1. Enhancing enforcement efforts in seven key jurisdictions;
2. Expanding investigator and prosecutor training;
3. Proposing legal and procedural reform; and
4. Streamlining industry referral procedures.

Under this initiative, CCIPS has coordinated charges and prosecutions for schemes to purchase and resell for profit counterfeit satellite television access cards in over a dozen cases, supported the investigation and prosecution of cases involving counterfeit computer chips (one case resulted in a \$2 million fine and over \$1 million in restitution), and devoted considerable resources to developing the manual, *Prosecuting Intellectual Property Crime*, which was published in December 2000.

Now, I would like to turn our attention to the increasing number of international cases and issues facing Federal criminal law enforcement today.

#### INTERNATIONAL AFFAIRS AND COORDINATION

As crime becomes more globalized, the Criminal Division is increasingly being called upon to work with foreign governments, to coordinate activities and issues with national, State and local officials, and to provide an overall perspective on international and national crime problems. International agreements, treaties, conventions, and policy initiatives form the framework for developing prosecutions and investigations that rely on evidence and witnesses that are overseas.

##### *International Law Enforcement Cooperation*

The United States' expanding network of Mutual Legal Assistance Treaties (MLATs) and MLAT cases have led directly to the recovery of hundreds of millions of dollars in drug proceeds, fraud proceeds, and other dollars, most of it either going to the Asset Forfeiture Fund or directly to victims. For example, last year we helped recover approximately \$180 million in drug proceeds located in Switzerland, and several years ago we arranged for the repatriation of approximately \$54 million in drug money from Luxembourg.

Once in place, these mutual legal assistance treaties, agreements, conventions and policy initiatives form the basis for exchanging evidence and witnesses that lead to successful prosecutions. Similarly, the expanding network of extradition treaties form the basis for retrieving or returning criminal defendants to the country where they can be most effectively prosecuted. When Federal, State, or local prosecutors need fugitives or evidence from abroad, the Office of International Affairs (OIA) has the sole responsibility for processing those requests. Similarly, when foreign prosecutors request assistance from this country, OIA coordinates the execution of such requests throughout the United States. This is a critical, central role in the smooth and effective handling of criminal cases requiring international cooperation.

Many of these cases involve matters of national and international importance, and have received widespread attention in the media, including:

- The U.S. extradition request to France on behalf of New York State and Federal authorities for James Kopp (accused of the 1998 murder of a reproductive health care provider). (This matter is pending resolution.)
- The U.S. requests to the United Kingdom and Germany on behalf of the Southern District of New York for the extradition of defendants charged in the bombing of the U.S. Embassies in Africa.
- Successful mutual legal assistance requests to Canada, France, and Germany that produced evidence critical to the conviction of Ahmed Ressaam for conspiracy to commit terrorist acts in the United States.

##### *Bilateral Treaties*

The Division's Office of International Affairs performs the critical role of negotiating the international treaties and agreements that make it possible for us to handle these cases effectively. In Fiscal Year 2000, 16 new bilateral treaties (eight extradition treaties and eight mutual legal assistance treaties) entered into force. In addition, 13 new bilateral treaties (four extradition treaties and nine mutual legal assistance treaties) received Senate ratification on October 18, 2000.

OIA's treaty program ensures that Federal, State, and local prosecutors will have the tools they need to obtain the return of major fugitives and the acquisition of important evidence. OIA will continue to make diligent efforts to ensure the smooth and effective implementation of all new treaties. Simultaneously, OIA will be negotiating several additional new treaties with "priority" countries, as determined by the Department (with extensive U.S. law enforcement input) and the U.S. State Department.

Of particular significance in recent years has been the pursuit of new extradition treaties that authorize the surrender of the requested country's nationals, often sheltered from extradition in civil law countries. Significant strides in this area have been made through the Division and OIA's efforts in Latin America (Bolivia, Paraguay, and Argentina) and Eastern Europe.

#### *International Conventions*

The Criminal Division is also integrally involved in a variety of important multilateral treaties, conventions, and policy initiatives dealing with transnational crime and international law enforcement cooperation. By way of example, recently the Division has devoted significant resources and expertise to the negotiation of the U.N. Transnational Organized Crime convention (signed in Palermo, Italy in December 2000), the Council of Europe cybercrime and corruption conventions, and a host of other anti-crime initiatives under the auspices of the Group of Seven (and now the "G-8"). The number and variety of such multilateral initiatives continue to grow.

Another function that the Division performs is the advancement of international criminal initiatives in multinational fora, such as the G-8, which requires a national perspective and resource-intensive negotiations best provided by a headquarters component.

#### FOREIGN INSTITUTION BUILDING

The Division provides many forms of assistance designed to develop and strengthen foreign law enforcement institutions so that they may be more effective partners in the fight against the transnational crime threatening American interests at home and around the world. Such assistance also promotes the establishment of the rule of law and the protection of fundamental human rights. Many of the Division's sections, such as the Asset Forfeiture and Money Laundering Section, the Narcotic and Dangerous Drug Section, the Office of Special Investigations, and the Computer Crime and Intellectual Property Section, provide subject-specific training to foreign prosecutors and law enforcement personnel.

In addition, two sections in the Division, the Overseas Prosecutorial Development Assistance and Training (OPDAT) and International Criminal Investigation Training Assistance Programs (ICITAP), provide assistance to foreign law enforcement institutions.

OPDAT was established to help harness the Department's resources to develop foreign justice sector institutions and to enhance the administration of justice abroad. OPDAT also assists foreign prosecutors and judicial personnel by providing technical assistance and skills development support. OPDAT supports the Department's interests by promoting the rule of law and regard for human rights, by preparing foreign counterparts to cooperate more fully with the United States in combating transnational crime, and by improving foreign judicial assistance to the United States.

Working closely with entities of the U.S. Agency for International Development and the State Department, OPDAT uses a best practices methodology to develop effective criminal codes and procedures, improve institutional structures and relationships, and enhance the professional capabilities of prosecutors, judges, defense attorneys, and select law enforcement officers to help create more responsive and responsible criminal justice systems abroad. Currently, OPDAT provides justice sector development assistance in Africa, Asia, Central and Eastern Europe, Latin America and the Caribbean, the Newly Independent States, including the Russian Federation, and the Middle East.

Another Division program that provides development assistance and training is the International Criminal Investigative Training Assistance Program (ICITAP). ICITAP's mission is to help achieve U.S. criminal justice and foreign policy goals by assisting foreign governments in developing the capacity to provide professional law enforcement services based on democratic principles, respect for human rights and the rule of law. ICITAP was created by the Department of Justice in 1986 to respond to the need to train criminal investigators in Latin America.

In the past five years, ICITAP has become a global, law enforcement development program, with projects in Africa, Asia, Central Europe, and the Middle East. Its activities have expanded to encompass two principal types of assistance projects: (1) the development of indigenous police forces during international peace operations; and (2) the enhancement of capabilities of existing police forces in emerging democracies. This assistance takes the form of police academy development, recruit training, in-service training for veteran officers, forensics training, education for senior managers, and help with strategic planning. To date, ICITAP has worked in over 70 countries, at a level ranging from \$25-35 million per year, for the past four years.

Strong efforts are being made by the Criminal Division, OPDAT, ICITAP, and the Department of State to identify substantive areas and countries where OPDAT and ICITAP can work together more closely to provide even more effective and sustainable assistance to foreign law enforcement institutions.

Let me next turn to areas of traditional law enforcement concern. As Attorney General Ashcroft has indicated, these areas, which include the problems of organized crime, gun violence and drug trafficking, will continue to be an important focus of the Department's work.

#### ORGANIZED CRIME

To achieve success in prosecuting domestic organized crime and labor racketeering groups, the Division's Organized Crime and Racketeering Section (OCRS) has been involved in setting national priorities for the organized crime program by coordinating with investigative agencies. The investigation and prosecution of these cases by the Strike Force Units within U.S. Attorneys' Offices in 21 Federal districts are supervised by OCRS.

In response to the alarming growth of transnational organized crime groups and the rapid increase in investigations and prosecutions involving overseas actors, the principal enforcement efforts are directed against groups such as Italian Organized Crime groups (including La Cosa Nostra and the Sicilian Mafia), Asian Organized Crime Groups (such as Chinese Triads and ethnic Asian gangs), and Russian Organized Crime. OCRS monitors the vast flow of information from classified and open sources on international organized crime figures, conducts liaison with the intelligence community, and performs specialized tasks, such as litigation under the Classified Information Procedures Act, that arise in the field's prosecution of international cases.

#### DRUG ENFORCEMENT

The Division's narcotics enforcement mission is to reduce the supply of illegal drugs in the United States by investigating and prosecuting priority national and international drug trafficking groups. The Division is also tasked with providing sound legal, strategic and policy guidance in support of that end. To achieve this mission, the Division works closely with Federal law enforcement agencies, their international counterparts, and U.S. Attorneys' Offices to provide guidance, direction, and resources at the national level for drug investigations and prosecutions.

##### *Special Operations Division*

An effective mechanism used to achieve the highest level of coordination and support for major narcotics cases is the Special Operations Division (SOD). Agents, analysts, and prosecutors from the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the U.S. Customs Service (USCS), and the Criminal Division, work together in SOD to support regional and national-level criminal investigations and prosecutions targeting the major criminal drug trafficking organizations threatening the United States.

The Criminal Division's Narcotic and Dangerous Drug Section (NDDS) directs and coordinates SOD investigations with Assistant U.S. Attorneys across the country to ensure that each district involved in a nationwide investigation is informed as to the actions taking place in the other districts and the interrelationship of each district in the overall criminal conspiracy. The Division's Asset Forfeiture and Money Laundering Section also works within SOD to coordinate complex international and domestic money laundering investigations and prosecutions.

The SOD strategy ensures that each district agrees to a coordinated plan of attack, so that large, nationwide trafficking groups are taken down in a single, well-timed enforcement action. The Division also deploys attorneys to assist in national priority SOD investigations, as needed. These cooperative efforts have resulted in a number of successful drug trafficking investigations:

- Operation "Mountain Express," targeting brokers of methamphetamine precursor chemicals, which resulted in 150 arrests in ten judicial districts nationwide, seizures of 10 metric tons of pseudoephedrine capable of producing 18,000 pounds of methamphetamine, 83 pounds of finished methamphetamine, two pseudoephedrine extraction laboratories, one methamphetamine laboratory, 136 pounds of processing chemicals, and \$8 million in cash.
- Operation "Rio Blanco," a multi-district SOD operation, resulted in the arrest of 55 individuals and the seizure of more than 3,000 kilograms of cocaine and over \$15 million in U.S. currency. The principal targets included high-ranking associates of the Arellano Felix organization in Mexico responsible for smuggling substantial quantities of cocaine into the United States.

- Operation “Tar Pit”, targeting Mexican heroin traffickers (over 200 arrests in eight judicial districts and in Mexico).

#### *Bilateral Case Initiative*

In addition, the Division coordinates the domestic prosecution of international drug trafficking organizations—often referred to as the Bilateral Case Initiative (BCI). The BCI aims to investigate and prosecute large transnational narcotics traffickers in U.S. courts, using evidence gathered by the law enforcement activities of foreign governments. It involves DEA’s Office of Foreign Operations, SOD, and the interagency Linear Approach Committee. The Division’s NDDS is currently involved in 19 separate ongoing investigations against high level trafficking and money laundering organizations operating in the Caribbean, South and Central America. Operation “Millennium” is probably the best known success of the BCI; it resulted in the indictment in the Southern District of Florida of 30 high-level Colombian traffickers, including Fabio Ocho-Vasquez and Alejandro Bernal-Madriral. Based upon recent changes in Colombian law, this operation has also led to efforts by NDDS, in coordination with the Division’s Office of International Affairs, to pursue extradition of many of the Colombian individuals indicted in this country.

#### *U.S./Colombia Initiative*

The Criminal Division, on behalf of the Department of Justice, has assumed lead responsibility for the planning and implementation of a comprehensive program of justice sector reform assistance to the Government of Colombia. Funding earmarked in last year’s emergency supplemental appropriation for the U.S./Colombia Initiative Justice Sector Reform Program to be implemented by the Departments of Justice and the Treasury totals \$88 million and includes: the establishment and expansion of specialized vetted Colombian law enforcement task forces; criminal code reform; prosecutor training; programs to enhance Colombia’s anti-money laundering and forfeiture efforts; an anti-kidnaping initiative; a judicial police training program; witness and judicial security programs; customs police training; maritime enforcement and port security; the multilateral case initiative; and prison security. Specific projects and program designs within the Justice Sector Reform Program have been carefully coordinated within the U.S. Government and with Colombian counterpart agencies to ensure that appropriate assistance will be provided to meet Colombia’s most pressing needs.

The Criminal Division, in close consultation with the Department of the Treasury, has coordinated an extensive interagency planning effort in each of the program areas and implementation of specific projects in each of the program areas has already commenced. Components participating in the planning and implementation of the U.S./Colombia Initiative Justice Sector Reform Program include: the Criminal Division; DEA; FBI; U.S. Marshals Service (USMS); U.S. Bureau of Prisons (BOP); Department of the Treasury (Enforcement); U.S. Customs Service (USCS); U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms (BATF); Internal Revenue Service (IRS); and Financial Crimes Enforcement Network (FinCEN). Personnel from the participating components and prosecutors from various U.S. Attorneys’ Offices will participate in the implementation of these important programs.

To manage and coordinate the implementation of the Justice Sector Reform Program in Colombia, the Division has assigned to the Embassy staff in Bogota a senior Assistant U.S. Attorney on detail to the Division. The Program Manager, together with an Executive Officer and staff, will be responsible for on-site coordination of the implementation and oversight of the U.S. Colombia Initiative Justice Sector Reform Program.

#### *Capital Crimes Unit*

Many Federal capital crime cases involve underlying drug charges. The Division’s Capital Crimes Unit supports and informs the Attorney General’s decisions regarding whether to seek the death penalty in each capital eligible case. The Unit’s efforts lead to the consistent and fair application of the death penalty in Federal cases. Attorneys in the Unit also assist other Department attorneys, including Assistant United States Attorneys around the country, with aspects of capital trials that are unique to death penalty cases. They also assist in appeals and post-conviction review.

#### MONEY LAUNDERING AND ASSET FORFEITURE

The Division’s Asset Forfeiture and Money Laundering Section (AFMLS) works closely with its law enforcement and regulatory partners to effect a coordinated approach to combating money laundering. The Division, in close coordination with the Department of the Treasury, has developed and begun implementing the National

Money Laundering Strategy, pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998. The first strategy was issued in September 1999 by the Secretary of the Treasury and the Attorney General, and was updated in March 2000. The 2000 Strategy set four overarching goals regarding domestic anti-money laundering enforcement efforts, regulatory and cooperative public-private preventive measures, partnerships with State and local governments, and international cooperation. These goals are supported by specific objectives and implemented through 65 specific action items. The Department is currently working with the Treasury Department to finalize the third National Money Laundering Strategy.

The Division also provides centralized policy and program oversight for the Asset Forfeiture Program. This Program is responsible for maximizing the law enforcement potential of laws designed to dismantle and destroy criminal enterprises and seize and forfeit the profits, proceeds and instrumentalities of crime. Such responsibilities include: deciding petitions for remission and mitigation of forfeitures in civil and criminal judicial cases; reviewing departmental equitable sharing cases that involve \$1 million or more; and reviewing departmental proposals to forfeit attorneys' fees and forfeit businesses.

Further, AFMLS provides training to Federal, State, and local law enforcement investigators and prosecutors in an effort to maximize the appropriate use of the asset forfeiture laws. Together with the Treasury Department and other Federal law enforcement agencies, the Division's AFMLS recently led an extensive outreach and education program to inform and instruct prosecutors and investigators of the most expansive changes in U.S. forfeiture law since 1984 and important Federal rule changes. This training and outreach effort has enabled U.S. Attorneys' Offices and law enforcement investigators to implement these new provisions and procedures effectively.

In furtherance of its international mission, the Division plays a significant role in several multilateral organizations that are dedicated to strengthening anti-money laundering enforcement around the globe. The most important of these organizations is the Financial Action Task Force (FATF). The FATF is comprised of 29 countries and 2 international organizations and is the principal international anti-money laundering organization in the world created by the Group of Seven Heads of State and Finance Ministers in 1989.

A recent FATF initiative, in which representatives from the Division and Departments of State and the Treasury participated, sought to publicly identify and cite "non-cooperative countries and territories" for failing adequately to combat money laundering. This effort culminated in a June 22, 2000, announcement citing 15 jurisdictions as "non-cooperative" in the fight against money laundering.

#### ANTI-CORRUPTION ENFORCEMENT AND OFFICIAL MISCONDUCT

The Division's Public Integrity Section oversees the Federal effort to combat abuses of the public trust by government officials. The Section investigates and prosecutes corruption offenses involving public officials at all levels of government. The Section has primary jurisdiction over allegations of criminal misconduct involving the Federal judiciary, oversees the investigation and prosecution of election crimes, and spearheads the Federal effort to address conflict of interest crimes.

The Public Integrity Section concentrates its litigation efforts on matters involving the abuse of the public trust by government officials, particularly officials in intelligence agencies and Federal law enforcement officers. Examples of recent prosecutions include the following:

- A former U.S. Customs Inspector has been convicted of conspiring to obstruct the Congress by creating fraudulent documents falsely indicating that a high-level Customs official was involved in drug trafficking. This was part of an effort by the defendant to cause the initiation of Senate hearings focusing on the Customs Service.
- A foreign service officer previously assigned to the U.S. Embassy in Guyana has pleaded guilty to issuing visas in exchange for bribes. When the defendant was arrested, over \$1,000,000 and ten gold bars (valued at \$300,000) were seized from him.

In addition, efforts to address the problem of corruption on an international basis has become a significant priority of the U.S. Government. The Public Integrity Section plays a lead role in the expanded anti-corruption efforts against foreign governments and international organizations. The focus of the Division's international activities has been with the ongoing anti-corruption efforts by the Council of Europe (the Group of States Against Corruption evaluation mechanism) and the United Nations. The Public Integrity Section, along with the Office of International Affairs,

also works with other countries in the hemisphere to ensure effective implementation of the Organization of American States Anti-Corruption Convention.

#### VIOLENT CRIME

The Division uses its expertise to develop and implement effective enforcement initiatives designed to enhance the effectiveness of the Federal law enforcement response to these crimes. Under the National Anti-Violent Crime Initiative (AVCI), the Division's Terrorism and Violent Crime Section (TVCS) has ongoing responsibilities in coordinating pertinent enforcement strategies with U.S. Attorneys' offices. Recognizing that no single solution should be imposed by headquarters, each U.S. Attorney's Office was asked to assess the violent crime problem in its district and tailor its program to address its specific violent crime concerns, with support and guidance provided by the Division. The effectiveness of this strategy has contributed significantly to the decrease in violent crime nationwide, and the AVCI has been a model for other national enforcement programs. The Division has also prepared comprehensive resource materials for use by U.S. Attorneys' Offices nationwide to assist them in implementing their gun prosecution programs.

#### FRAUD AND WHITE-COLLAR CRIMES

##### *Identity Theft*

Identity theft is the misappropriation of an individual's personal identification information, and it has emerged as an extremely significant law enforcement concern. The Division, through the Fraud Section, has been responsible for the development of policy and coordination with the FBI, the Department of the Treasury, the U.S. Secret Service, the Federal Trade Commission, and the Social Security Administration. The FTC recently established a referral system, pursuant to 1998 legislation, that will substantially facilitate and expedite criminal prosecutions of identity theft.

##### *Health Care Fraud*

The Criminal Division, through its Fraud Section, is also responsible for the coordination and investigation of several nationwide healthcare fraud investigations and prosecutions. For example, in January 2001, Columbia/HCA, the largest hospital chain in the U.S., entered into the largest government fraud settlement in history. Pursuant to a global criminal plea and civil settlement agreement negotiated by the Fraud Section, Columbia/HCA paid more than \$95 million in criminal fines and \$745 million in civil damages and penalties for defrauding government health care programs. At one point, there were criminal and civil matters open in over 30 districts. The Division's Fraud Section coordinated these investigations, including the coordination of nationwide search warrants, and had direct responsibility for handling some of the investigations. This effort required the resolution of a number of complex issues involving the United States Attorneys' Offices, the Department's Civil Division, the FBI, the Department of Health and Human Services, and the Securities and Exchange Commission, as well as the National Association of Medicaid Fraud Units.

#### INTERNAL SECURITY AND ESPIONAGE CRIMES

Bringing to justice individuals who spy on our country is a high priority for the Division. The Criminal Division's Internal Security Section is responsible for conducting, handling, and supervising the investigations and prosecution of all espionage cases, which constitute some of the most sensitive cases handled by the Department. The Internal Security Section is the Department's chief resource when it comes to addressing issues that arise in investigations and prosecutions under the various national security statutes and those that cut across intelligence and law enforcement lines. At the present time, the Division is actively engaged in a number of ongoing investigations and prosecutions, and is monitoring and assisting in countless others.

The Internal Security Section also oversees cases involving efforts on the part of foreign governments and other organizations to acquire U.S. military and strategic technology illicitly, and cases in which classified information has been disclosed publicly without authorization. One current initiative is to develop law enforcement strategies for investigations and prosecutions relating to offenses committed by countries known to sponsor terrorism and illegally to procure weapons and strategic technology from the United States.

As an increasing number of Federal criminal cases involve international issues, more and more cases involve intelligence agency participation and/or equities. The Internal Security Section serves as the Department's interface with the intelligence community on criminal cases involving intelligence community concerns. Depart-

ment policy requires that all communications by the U.S. Attorneys' Offices with the intelligence community on criminal cases be coordinated with the Division. Each year the Division participates in well over 50 cases involving the potential discovery and/or disclosure of classified information.

#### ALIEN SMUGGLING

Recently, the Criminal Division established an Alien Smuggling Task Force to ensure that the Department takes a comprehensive and coordinated approach to the growing problem of alien smuggling. The Task Force is involved in policy, operational, and training matters. The Task Force works closely with various government agencies, both within and outside the Department, including the Immigration and Naturalization Service (INS), the FBI, the Departments of State and Transportation (U.S. Coast Guard), the National Security Council, and the Intelligence Community.

The Task Force also assists other components of the United States Government in addressing unusual or complex issues pertaining to smuggling from particular countries, including China and Cuba. Currently, the Task Force is part of a group that focuses on China-based smuggling organizations, particularly those involved in the use of shipping containers. The Task Force also participates in the semi-annual U.S.-Cuba Migration Talks. On an international level, the Task Force works closely with U.S. law enforcement agents stationed abroad and with foreign counterparts on a variety of issues, including training, promoting the new U.N. protocol on migrant smuggling, enacting and enforcing alien smuggling laws, and investigating large and dangerous international alien smuggling organizations.

Domestically, and in support of its international efforts, the Task Force works with prosecutors throughout the United States, giving legal advice, coordinating multi-district investigations, and providing litigation support in particular cases, primarily those having sensitive intelligence or international aspects. For example, the Task Force assisted in a Federal prosecution in Houston involving an organization that smuggled women from Thailand to work as prostitutes. The Task Force also is creating an electronic brief bank to assist Federal prosecutors.

#### TRAFFICKING IN WOMEN AND CHILD EXPLOITATION

The Division's Child Exploitation and Obscenity Section (CEOS) has developed an expertise in the areas of trafficking of women for prostitution and use of the Internet by child pornography and pedophile rings and uses this expertise to represent the Justice Department internationally. CEOS attorneys have a broad perspective on sex exploitation issues that enables them to work with Interpol, the European Union, and others on sharing best practices to combat trafficking in persons and child pornography. CEOS also implements the Victims of Trafficking and Violence Protection Act of 2000 by providing training to foreign law enforcement, as called for by the Act.

CEOS is also uniquely positioned to advise the State Department on international issues involving sex exploitation. For example, CEOS has been instrumental in advising the Department of State on what would be consistent with U.S. law during the negotiations on the Optional Protocol on the Rights of the Child, the Convention on the Worst Forms of Child Labor, and the Protocol to Combat the Trafficking of Persons. CEOS has researched Federal law and the law of all 50 States to ensure that the United States can sign and ratify these multilateral instruments.

In addition, investigating and prosecuting crimes against children is one of the highest priorities of the Department and the Division. Both the FBI and the U.S. Customs Service have set as a priority the development of national and international-scale child pornography cases. Because such cases involve multiple districts, CEOS manages and coordinates such multi-jurisdictional cases.

#### WAR CRIMES AND SPECIAL INVESTIGATIONS

The Division's Office of Special Investigations (OSI) investigates and takes appropriate action against persons who, in conjunction with the Axis regimes, participated in the persecution of any person because of race, religion, national origin or political opinion between 1933 and 1945. Although the Office's workload was expected to decrease with the aging of its targeted criminal population, a number of factors have combined to expand workload over what was previously anticipated. These factors include:

1. The fall of Communism in Europe has generated scores of new investigations and numerous new prosecutions by permitting direct investigative access for the first time to archives that collectively house the largest group of captured

Nazi war documents extant. OSI is continuing to exploit access to archives in cities and villages throughout Eastern Europe and the former Soviet Union that have opened since the dissolution of the Soviet Union.

2. OSI has developed the expertise to investigate persons who participated in Japanese persecution during World War II.
3. OSI has assumed responsibility in major Administration and congressional initiatives, such as the massive inter-agency investigation into assets looted from victims of Nazi persecution, in which OSI took principal investigative responsibility (and lead departmental responsibility).
4. The Executive Branch has complied with the Nazi War Crimes Disclosure Act and the Japanese War Crimes Disclosure Act, as to which OSI has provided major logistical, historical and financial support, as well as departmental representation.

The Division anticipates that each of these factors will continue to expand the Office's workload.

Finally, I would like to address three Offices within the Criminal Division that support the prosecutorial and law enforcement functions of the Division and U.S. Attorneys' Offices.

#### ENFORCEMENT OPERATIONS

The Division's Office of Enforcement Operations (OEO) provides investigative and prosecutorial support, legal advice, and statutorily-required review and approval in almost 40 distinct subject areas. Among the investigative and prosecutorial support services that OEO provides to the U.S. Attorneys' Offices, Federal investigative agencies, and the various Criminal Division components are:

1. Reviewing all Federal requests to intercept wire, oral, and most types of electronic communications (discussed more fully below);
2. Authorizing or denying the entry of applicants into the Witness Security Program;
3. Reviewing and authorizing requests to apply for court orders permitting the use of video surveillance;
4. Reviewing and deciding applications for transfer made through the International Prisoner Transfer Program and serving as liaison between all governments involved in the program; and
5. Coordinating requests to immunize witnesses, subpoena attorneys or the media, or search the offices of attorneys who are suspects or targets of an investigation.

#### *Title III Electronic Surveillance*

As mentioned above, the Criminal Division's OEO reviews each application for court-authorized interception of wire, oral, and electronic communications, and makes a recommendation to the authorizing official as to the legality and appropriateness of the request. OEO attorneys, who are experts on electronic surveillance, work closely with Federal law enforcement officials in the drafting and review of these requests, as well as on the myriad of legal issues that arise during the course of investigations utilizing electronic surveillance and on legislative and policy matters involving electronic surveillance.

Because of enforcement efforts, such as the counterdrug Special Operations Division (discussed above), the number of new wiretaps in drug investigations has grown significantly. In Fiscal Year 2000, OEO processed the largest number of wiretap applications in its history, 1,607 (an increase from 1,591 in Fiscal Year 1999), and OEO projects another increase in Fiscal Year 2001—to approximately 1750 wiretaps. Nearly 80 percent of the wiretap applications processed by OEO were for narcotics investigations.

#### CRIMINAL APPELLATE ISSUES

The Division's responsibilities to develop, enforce, and exercise general oversight for Federal criminal laws are also carried out through the support provided by the Appellate Section, which prepares draft briefs and certiorari petitions for the Solicitor General for filing in the U.S. Supreme Court. The Appellate Section makes recommendations to the Solicitor General as to whether further review is warranted of adverse decisions in the District Courts and Courts of Appeals. In addition, the Section prepares briefs and argues cases in the Courts of Appeals and in District Courts in cases of national importance. Section attorneys also assist U.S. Attorneys

in preparing briefs for the Courts of Appeals and provide advice on the Antiterrorism and Effective Death Penalty Act, Commerce Clause issues, recent Supreme Court decisions, and a variety of other criminal legal matters.

#### POLICY AND LEGISLATION

The Office of Policy and Legislation (OPL): analyzes policy and management issues relating to the criminal justice system; identifies problems and emerging trends; develops options, recommendations and legislative proposals; and provides research, technical, and management support to senior managers in the Division and the Department. The Office is involved in projects that require regular interaction and coordination with U.S. Attorneys' Offices, the Office of Justice Programs, and Federal investigators, as well as other law enforcement officials. It works closely with the U.S. Sentencing Commission and provides legal support to the Advisory Committee on Criminal Rules and Evidence of the Judicial Conference regarding the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

#### CONCLUSION

Mr. Chairman and Ranking Minority Member Scott, I would like to thank you and the other Members of the Subcommittee for the opportunity to describe the responsibilities and activities of the Criminal Division. At this time I would be pleased to address any inquiries you might have regarding the Criminal Division. I look forward to continuing to work with you and the Members of your Subcommittee.

Mr. SMITH. Thank you, Mr. Horowitz.  
Ms. Leary?

#### **STATEMENT OF MARY LOU LEARY, ACTING ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS**

Ms. LEARY. Good afternoon, Mr. Chairman and Members of the Subcommittee.

I am very pleased to have this chance to come and discuss the programs and activities of the Office of Justice Programs.

As you know, OJP works with States and with local communities to improve their ability to reduce crime and illegal drug use, to improve the operations of the criminal and the juvenile justice systems, and to assist crime victims. We develop innovative crime reduction approaches. We provide technical expertise, funding, training, and other tools to assist communities in fighting crime.

We also conduct research to determine what works in reducing crime and improving our justice system. We disseminate the results of that knowledge to practitioners and policymakers throughout the country so that they can make well-informed decisions about how to allocate their Federal, State, and local resources.

As you know, Mr. Chairman, I have served as the Acting Assistant Attorney General at OJP for just over a year now, and during that time and during my previous many years with the Department of Justice, I have been really impressed by the many innovative initiatives developed through OJP and with the sound and fruitful partnerships that OJP has developed with State and local criminal justice practitioners.

I spent 16 years as a State prosecutor in Middlesex County, Massachusetts, initially, and then in the U.S. Attorney's Office here in DC before I came over to OJP. When I was in those positions, particularly at the U.S. Attorney's Office in DC, I had a chance to see firsthand the positive impact that many of the OJP programs, particularly Weed and Seed, can have on a community.

As a front-line prosecutor, I have seen the devastation that crime can wreak in a community, especially violent crime. But I have

really also seen how those crime-torn communities, with a lot of hard work and dedication at that local level and some targeted Federal resources, can take hold of it, turn their neighborhoods around, and make them safe places to live.

I want to thank you, Mr. Chairman, and Members of the Committee for your support for this kind of important work that OJP has been doing. I particularly appreciate your interest in the past year or so in our efforts to restructure our agency so that we can better meet the needs of our State and local constituents.

I am looking forward to giving my support and assistance to OJP's new leadership in this Administration to build on the work that has already been done to improve customer service, eliminate redundancy and enhance our operations at OJP.

Our goal is to improve OJP's abilities to serve State and local justice practitioners and to contribute to the Administration's priorities, which are reducing gun use, combating illegal drug use, guaranteeing the rights of all Americans and empowering communities in their fight against crime.

I am sure that you are aware that we just announced plans last week to award \$75 million in grants to help communities hire prosecutors who will be dedicated to the prosecution of firearms-related violent crimes.

This community gun violence prosecution program will help jurisdictions of every size more effectively prosecute gun-related crimes. This initiative sends a signal to would-be criminals that the community is ready and that they will face serious consequences if they use a gun to commit a crime.

We are planning in 2002 to build on this effort. We have requested almost \$50 million for a new program, and that program will provide grants to help States target gun criminals, increase arrests and prosecutions, and develop public awareness campaigns and partnerships to deter gun violence.

We also plan to support Project Sentry. That is a new effort that would establish safe schools task forces across the country to prosecute and supervise juveniles who carry or use guns illegally, as well as the adults who illegally furnish firearms to them. Project Sentry would also establish partnerships in the community, schools, and the like to help deter kids from gun-related violence.

We are planning to implement Project Child Safe. This new program will fulfill the President's promise to ensure that child safety locks are available for every handgun in America. We will award grants to State and local governments and establish a national toll-free hotline so that parents can use that to get more information about safe gun storage.

We are also working to break the cycle of drug use and crime. We plan to build on the success of our drug courts and our prison-based drug treatment programs to expand these efforts. Law enforcement is a very effective and an essential tool in combating violent crime, but treatment for the individual abuser is also very important.

Research shows that treatment, especially for incarcerated offenders, is very successful at both reducing drug use and reducing recidivism. For this reason, we requested an additional \$11 million to expand our Residential Substance Abuse Treatment program

next year. RSAT, as it is known, funds substance abuse treatment for offenders incarcerated in State and local correctional facilities.

We are also looking in 2002 for funding for a new initiative that will help overburdened prosecutors on the Southwest border increase drug case prosecutions. Thousands of Federal drug arrests occurring near the Southwest border are now being referred to county prosecutors because the quantity of drugs is too small to meet the threshold set by the U.S. Attorneys there. The \$50 million requested in the 2002 budget will assist counties near the Southwest border with the cost of prosecuting and detaining these referrals.

And as you know, Mr. Chairman, the Attorney General is strongly committed to ensuring the right of women to be protected against violent crime. Since the passage of the Violence Against Women Act in 1994, OJP has devoted over \$1.5 billion in funding as well as training, technical assistance, and other resources to help communities improve their response to domestic violence, sexual assault, and stalking.

In 2002, we have requested \$102.5 million in additional funding for Violence Against Women programs. This will expand existing programs and create several new programs under the Victims of Trafficking and Violence Protection Act of 2000.

There is \$15 million for a Safe Havens for Children Program, \$5 million for a new Elder Abuse and Neglect and Exploitation Prevention Program, and \$7.5 million for education and training to end violence against and abuse of women with disabilities.

Because crime is most effectively addressed at the local level, OJP is continuing to work to empower communities at that level in their fight against crime.

I think one of our great successes in that regard is the Weed and Seed program. It is now operating in over 250 communities.

As you know, that program was developed first in the Bush Administration. And in fact, in 1992, I ran the Weed and Seed program for then U.S. Attorney Jay Stevens here in DC. In that capacity, I saw for myself what a tremendous difference those programs can make.

When I took the lead with Weed and Seed, I worked in a neighborhood over in Northeast called the Langston-Carver neighborhood. There was a hard core of residents in that community had lived there for years. They raised their kids there. They were not about to give up on that community.

And they worked with law enforcement and with other community partners. They were trust-builders for us. They went out in the community and paved the way, and we all worked together. It was the most remarkable and satisfying result I've experienced as a prosecutor.

It started out small, and then we built on that. There was a law enforcement effort. We came in and cleaned up the neighborhood. And then we started looking at what the other problems were.

Neighborhood kids needed a safe place to go after school. We started a Safe Haven.

Elderly folks were unwilling and afraid to come out of their apartments. We started a program called "Grannies in the Hood"

to provide services and activities for the elderly. And they all came out.

Economic development, neighborhood cleanup, getting the abandoned cars removed, enforcing code violations—it was a team effort for all the local and Federal agencies and the residents of that community.

They ended up feeling not just safe but proud—proud of their neighborhood, proud of their neighbors, and proud of themselves.

This fiscal year OJP will award more than \$49 million to sustain existing Weed and Seed programs and to expand that to additional sites. Our 2002 budget request includes a \$25 million increase for Weed and Seed.

Mr. SMITH. Ms. Leary, are you nearing the end of your remarks?

Ms. LEARY. I certainly am. Three paragraphs.

In addition to these budget increases, there are some reductions in the OJP budget for four of our programs that have outlived their original purpose, their authorizations, or are less essential to the core Federal law enforcement functions.

These include discretionary grants, the State Criminal Alien Assistance Program, Local Law Enforcement Block Grant and State prison grants. And freeing these up will allow OJP and the Justice Department to focus on the other priorities that I mentioned with respect to guns, violence, and drugs.

My prepared statement gives you much more detail, and I am happy that you will be including that in the record. I look forward to working with you, the Members of this Committee, and new leadership at OJP. I will be happy to respond to any questions.

[The prepared statement of Ms. Leary follows:]

#### PREPARED STATEMENT OF MARY LOU LEARY

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to discuss the operations of the Office of Justice Programs (OJP) and its Fiscal Year 2002 budget. As you know, Mr. Chairman, for more than 30 years, OJP and its predecessor agencies have worked with state, local, and tribal officials and community leaders to help identify criminal and juvenile justice needs, develop innovative approaches to solving crime-related problems, leverage resources, and build capacity at the state and local levels to reduce crime and illegal drug use, improve their criminal and juvenile justice systems, and assist crime victims.

OJP provides funding, technical expertise, training, information-sharing, and other resources to state, local, and tribal governments. It also sponsors research to determine what works in reducing crime and improving justice operations and uses the results of research and evaluation in program planning and resource allocation to ensure the wise investment of taxpayer dollars.

During its 33-year history, OJP's structure has evolved as various new statutes have led to the creation of new infrastructure for program administration. As we discussed with this Subcommittee at a hearing in July 1999, at the direction of Congress, OJP has undertaken a review of its current structure and developed a reorganization plan that would consolidate and streamline agency programs and activities to more efficiently and effectively serve state, local, and tribal governments. A good deal of work has been conducted, to date, to implement the principles of the reorganization plan approved by Congress.

However, as you know, Mr. Chairman, the Department's leadership is currently in a period of transition. And, as strongly as I believe the reorganization will greatly benefit OJP, I also strongly believe that the new Department and OJP leadership should be afforded the opportunity to review the reorganization plan and to make recommendations to the current Administration before implementation of the new structure.

As you are aware, Mr. Chairman, OJP comprises five program bureaus and six program offices. The OJP program bureaus are:

- The *Bureau of Justice Assistance (BJA)* provides funding, training, and technical assistance to state, local, and tribal governments to combat violent and drug-related crime and to help improve the criminal justice system. Its programs include the Edward Byrne Memorial State and Local Law Enforcement Assistance formula and discretionary grant programs and the Local Law Enforcement Block Grants (LLEBG) program. BJA also administers the Bullet-proof Vest Grant Partnership Program, the State Criminal Alien Assistance Program, the Regional Information Sharing System (RISS) Program, and the Tribal Courts Program.
- The *Bureau of Justice Statistics (BJS)* collects and analyzes statistical data on crime, criminal offenders, crime victims, and the operations of justice systems at all levels of government. It also provides financial and technical support to state statistical agencies and administers special programs that aid state and local governments in improving their criminal history records and information systems.
- The *National Institute of Justice (NIJ)* supports research and development programs, conducts demonstrations of innovative approaches to improve criminal justice, develops new criminal justice technologies, and evaluates the effectiveness of OJP-supported and other justice programs. NIJ also provides major support for the National Criminal Justice Reference Service (NCJRS), a clearinghouse of information on justice issues.
- The *Office of Juvenile Justice and Delinquency Prevention (OJJDP)* provides grants and contracts to states to help them improve their juvenile justice systems and conducts innovative demonstration projects and research, evaluation, statistics, replication, technical assistance, and training programs to help improve the nation's understanding of and response to juvenile violence and delinquency.
- The *Office for Victims of Crime (OVC)* administers victim compensation and assistance grant programs created by the Victims of Crime Act of 1984 (VOCA). OVC also provides funding, training, and technical assistance to victim service organizations, criminal justice agencies, and other professionals to improve the nation's response to crime victims. OVC's programs are funded through the Crime Victims Fund, which is derived from fines and penalties collected from federal criminal offenders, not taxpayers. OJP's six program offices are:
  - The *Violence Against Women Office (VAWO)* coordinates the Department of Justice's policy and other initiatives relating to violence against women and administers grant programs to help prevent, detect, and stop violence against women, including domestic violence, sexual assault, and stalking. Since the passage of the Violence Against Women Act (VAWA) as part of the 1994 Crime Act, OJP has devoted considerable resources to help communities improve their responses to domestic violence, sexual assault, and stalking by treating these offenses as serious crimes. OJP has provided over \$1.5 billion under its VAWA grant programs to promote partnerships among law enforcement, prosecution, the courts, and victim advocates to ensure victim safety and accountability for offenders; to encourage arrest policies and improve investigations; to train law enforcement, court personnel, and victim advocates; to combat family violence in rural and tribal communities; to combat violence against women on college campuses; and to provide legal services to battered women.
  - The *Corrections Program Office (CPO)* provides financial and technical assistance to state and local governments to implement corrections-related programs, including correctional facility construction and corrections-based drug treatment programs. CPO also awards grants to construct jails on tribal lands to incarcerate offenders subject to tribal jurisdiction, manages the Center for Sex Offender Management, and administers OJP's offender reentry initiatives.
  - The *Drug Courts Program Office (DCPO)* supports the development, implementation, and improvement of drug courts through grants to local or state governments, courts, and tribal governments, as well as through technical assistance and training.
  - The *Executive Office for Weed and Seed (EOWS)* helps communities build stronger, safer neighborhoods by implementing the Weed and Seed strategy, a community-based, multi-disciplinary approach to combating crime. Weed and Seed involves both law enforcement and community-building activities, including economic development and support services. United States Attor-

neys are essential partners in the implementation of Operation Weed and Seed in communities throughout the country.

- The *Office of the Police Corps and Law Enforcement Education (OPCLEE)* provides college educational assistance to students who commit to public service in law enforcement, and scholarships—with no service commitment—for dependents of law enforcement officers who died in the line of duty.
- The *Office of State and Local Domestic Preparedness Support (OSLDPS)* is responsible for enhancing the capacity and capability of state and local jurisdictions to prepare for and respond to incidents of domestic terrorism involving chemical and biological agents, radiological and explosive devices, and other weapons of mass destruction (WMD). It awards grants for equipment and provides training and technical assistance for state and local first responders.

In addition, OJP's American Indian and Alaskan Native Desk (AI/AN) improves outreach to tribal communities. AI/AN works to enhance OJP's response to tribes by coordinating funding, training, and technical assistance and providing information about available OJP resources.

OJP has a Fiscal Year 2001 budget of over \$4.2 billion and a staff of 947 to administer more than 50 grant and other programs to assist state, local, and tribal governments in their law enforcement and other criminal justice responsibilities. The bulk of OJP funds is awarded to the states as block or formula grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance formula grant program, the Juvenile Accountability Incentive Block Grant and Juvenile Justice formula grants programs, and the prison construction grant program. Other large grant programs provide funds to local governments and agencies, as well as states. These include the Local Law Enforcement Block Grants Program and the Violence Against Women grant programs.

OJP bureaus and offices also administer limited discretionary grant funding. Discretionary funds are awarded directly by OJP bureaus and offices to state, local, and tribal agencies and private organizations for a wide range of activities relating to criminal or juvenile justice. Each year, a large portion of discretionary grant funds is earmarked by Congress for specific programs. Priorities for use of the remaining funds are developed each fiscal year and announced in the *OJP Program Plan*, as well as through application kits and individual program announcements.

In addition, OJP's Office for Victims of Crime administers the Crime Victims Fund, which is funded entirely by money paid in fines and penalties by federal criminal offenders—not taxpayer dollars. Fines collected in one year by U.S. Attorneys, the U.S. Courts, and the Bureau of Prisons are deposited into the fund and are used for grant awards in the following year. Grants from the fund are awarded to states to support organizations that provide direct services to crime victims and for state victim compensation programs.

OJP also sponsors training and technical assistance for state, local, and tribal justice practitioners and others to disseminate the results of proven programs and state-of-the-art practices and to build capacity at the state, local, and tribal levels to prevent and control crime and improve justice system operations. Often, jurisdictions are able to replicate a successful program solely as a result of committed local leaders receiving technical assistance or training in a proven new approach. OJP is currently working to improve its delivery of training and technical assistance by making more information available on the OJP Web site, by making greater use of technology in delivering training and technical assistance, and by continuing to coordinate OJP training and technical assistance initiatives within the agency and with other providers and consumers.

Research and evaluation—and disseminating those findings—also are central to OJP's mission. With the bipartisan support of Congress, money is now set-aside under most major OJP programs for evaluations to help determine what works, ways we can build on successful approaches, and to inform future federal spending.

OJP's diverse research programs have helped to develop such now accepted practices as community policing and use of DNA evidence in criminal court proceedings. OJP research also has resulted in the development of critical law enforcement equipment, such as bullet-resistant vests, provided insight into arrestee drug abuse patterns in major U.S. cities, and produced a wealth of statistical information to enhance our understanding of crime victimization, trends in law enforcement, and prisoner populations. OJP also sponsors research on juvenile justice issues, including measures to prevent school violence, and compiles statistics on juvenile crime and the juvenile justice system.

The results of OJP research and evaluation are disseminated widely so that policy makers and practitioners can use these findings to improve their criminal and juvenile justice programs and operations. Much data and other information are included

on OJP's Web site. OJP reports and conference calendars also are available through our publications clearinghouse, the National Criminal Justice Reference Service.

Through its grant, research, training, technical assistance and other initiatives, OJP is making an important contribution to the Administration's priorities of reducing gun crime, combating drug use, and empowering communities in their continued fight against crime. Later this year, for example, OJP will award \$75 million in grants to help communities hire prosecutors who will be dedicated to the prosecution of firearm-related violent crimes.

The President's Budget for Fiscal Year 2002 will build on this effort. While the total request of \$3.8 billion is a reduction from last year's level, it includes a number of new initiatives for reducing violent crime and increases to existing programs. It requests \$49.78 million for a new gun violence program that will provide grants to encourage states to increase the prosecution of gun criminals and assist them by providing funding to establish programs that target gun criminals through increased arrests and prosecutions and public awareness to deter gun crime. This funding will support Project Exile and Project Ceasefire type programs that vigorously enforce our gun laws and send a clear signal that our culture will not tolerate the illegal use of firearms.

Another \$20 million in 2002 funds would support Project Sentry. In conjunction with \$9 million requested by the Office of U.S. Attorneys to hire dedicated youth violence prosecutors, this funding would establish safe school task forces across the country that will also prosecute and supervise juveniles who carry or use guns illegally, as well as the adults who illegally furnish firearms to them.

To fulfill the President's commitment to ensure child safety locks are available for every handgun in America, \$75 million is requested for Project Child Safe. OJP will provide \$65 million annually to state and local governments on a dollar-for-dollar matching basis. The remaining \$10 million will be spent annually on administrative costs and advertising, including a national toll-free hotline to make sure all parents are aware of the program.

OJP also is working to help states and local jurisdictions combat illegal drug use and trafficking. Thousands of federal drug arrests occurring near the Southwest border are referred to county prosecutors because the quantity of drugs seized is too small to meet the threshold set by local U.S. Attorneys for prosecution. The Department's 2002 budget request includes \$50 million to assist counties near the Southwest border with the costs of prosecuting and detaining these referrals. OJP grants will be awarded based on Southwest county caseloads for processing, detaining, and prosecuting drug and alien cases referred from federal arrestees.

The Administration's 2002 budget also would expand OJP's Residential Substance Abuse Treatment (RSAT) Program, which provides funds for individual and group substance abuse treatment activities for offenders in residential facilities operated by state and local correctional agencies. While law enforcement is an effective and essential tool in combating the violent crime associated with illegal drug use in communities throughout our nation, treatment for the individual abuser is also important. Research has shown that treatment—particularly for incarcerated offenders—is successful in reducing both continued drug use and recidivism. For this reason, the Administration is requesting an additional \$11 million to expand residential substance abuse treatment in state prison systems.

In addition, we have requested \$5 million from NIJ's base funds to expand the Arrestee Drug Abuse Monitoring (ADAM) Program to 15 additional sites across the country, so that more communities will have sound data about the links between drugs and crime on which to base their law enforcement policies and offender treatment practices.

For 2002, the Administration has requested a \$102.5 million increase in Violence Against Women Act programs to support new and existing programs. This includes programs authorized under the Victims of Trafficking and Violence Protection Act of 2000, such as \$15 million for the Safe Havens for Children Pilot Grant Program; \$5 million for a new Elder Abuse, Neglect, and Exploitation Prevention Program; and \$7.5 million for education and training to end violence against and abuse of women with disabilities.

Because crime is most effectively addressed at the local level, OJP continues to work with communities to provide coordinated federal funding, training, technical assistance, and information-sharing to further empower communities in their fight against crime. This effort involves building on successful programs such as Weed and Seed, an initiative combining law enforcement and prevention that was developed during the first Bush Administration.

As a former United States Attorney, I saw first-hand the tremendous positive change and community and neighborhood support these programs generate. In addition, the methodology of the Weed and Seed strategy has been independently evalu-

ated and determined to work in reducing crime and improving the vitality of neighborhoods. The number of Weed and Seed sites has grown from 23 in 1993 to over 250 today. This fiscal year, OJP will award more than \$49 million to sustain existing Weed and Seed programs and to expand the project to additional sites. President Bush's FY 2002 budget includes a \$25 million increase for the Weed and Seed program, of which \$15.5 million replaces funding previously allocated from the Department's Asset Forfeiture Fund.

In addition to such increases, as you know, Mr. Chairman, the Administration also has proposed reductions in four OJP programs: Byrne discretionary grants; the State Criminal Alien Assistance Program; the Local Law Enforcement Block Grant Program; and state prison grants. These funding reductions will allow OJP and the Department of Justice to meet the other law enforcement assistance priorities highlighted in this testimony, as well as the Federal law enforcement initiatives discussed in the testimony of other Department witnesses.

In conclusion, Mr. Chairman, through its grant programs, training, technical assistance, research, evaluation, and information-sharing activities, OJP is working to help states, local governments, and Indian tribes improve their response to crime. It will continue to build on these efforts and to contribute to the Administration's priorities of reducing gun crime, combating illegal drug use, guaranteeing the rights of all Americans, and empowering communities in their fight against crime. I appreciate this Subcommittee's support of OJP's mission and programming, and look forward to continuing to work with you, Mr. Chairman, to support the needs of state, local, and tribal governments in reducing crime and illegal drug use, in sustaining justice system improvements, and in ensuring the safety of our communities and our citizens.

This concludes my prepared testimony. I would be pleased to respond to any questions you or the Members of the Subcommittee may have.

Mr. SMITH. Thank you, Ms. Leary.  
Mr. Justus?

**STATEMENT OF RALPH J. JUSTUS, ACTING DIRECTOR,  
COMMUNITY ORIENTED POLICING SERVICES**

Mr. JUSTUS. Mr. Chairman, Mr. Scott, and Members of the Subcommittee, I am pleased and honored to appear before you today as acting director of the office of Community Oriented Policing Services or COPS.

I came to the COPS office in 1999 after a career in both private and public sector management including 15 years in the Department of Justice.

Quite candidly, I do not have a background in policing. I have a Ph.D. in economics. But in my 2 years at COPS, I have gained a greater appreciation for the challenges facing the men and women law enforcement and for the commitment and dedication of these officers.

I think it is particularly appropriate that the Committee has chosen to hold this hearing during Police Week, the week set aside by President Kennedy to honor these brave men and women.

The COPS Office, created in 1994 as a product of a bipartisan effort to invest in the safety of our nation's neighborhoods, our office was charged with two major responsibilities: advancing community policing and funding additional law enforcement officers.

Today, I will share with you the significant results from communities across America.

First and foremost, I am proud to say that COPS will have funded a total of 115,000 officers by the end of this fiscal year. Already more than 73,000 of these officers are on the beat fighting crime and improving the quality of life in our neighborhoods. These grants have gone to more than 12,400 of our nation's 18,000 law enforcement agencies.

I am often asked why there is a gap between the officers funded and the officers on the street. As you may know, it takes law enforcement agencies an average of 18 months to recruit, hire, and train a qualified officer. This is, however, a necessary delay, ensuring that local agencies can carefully select and train officers who will serve in our neighborhoods.

While COPS has partnered with many of our larger cities, we have also made an important impact on small towns. More than 82 percent of our grants have gone to departments serving populations of 50,000 or less. The COPS Office has helped to create nearly 300 new law enforcement agencies where, but for COPS funding, these communities would not have a police department. COPS recognizes that adding even one officer to a rural department can have a significant impact on both officers and community safety.

COPS is proud of our successes in advancing the practice of community policing nationwide. Just this year, the Bureau of Justice Statistics showed that the number of community policing officers increased by 400 percent between 1997 and 1999.

Recognizing that advancing community policing requires a significant investment in training, COPS has created 28 regional community policing institutes, which are located throughout the country. To date, over 147,000 officers and community members have been trained in a variety of topic areas, including police ethics and unbiased policing, school safety, technology implementation, and basic community policy strategy.

COPS' unique relationship with police has allowed us to respond to emerging law enforcement challenges. After Congress made new funding available in 1998, COPS moved swiftly to fund the hiring of school resource officers to support safe and secure learning environments for all our children.

By the end of this fiscal year, COPS will have funded almost 5,000 school resource officers. We are proud to say this represents an increase in the number of school resource officers nationwide by nearly 40 percent.

I'd like to tell you about one of these officers, Sergeant Michael Webb. Sergeant Webb is with the Springfield Township Police Department. A COPS grant made it possible for him to walk the beat at Mt. Healthy Junior High School in suburban Ohio.

Without warning last September, an 8th grade student fired two rounds into the ceiling of a classroom filled with math students. Within minutes, Sergeant Webb entered the classroom with the distressed student. The handgun was still loaded, and the boy had stated his intention to kill his teacher.

Because of Sergeant Webb's constant presence in the school, he had developed a relationship with the 14-year-old and had insight into his troubled background. After a discussion between Sergeant Webb and the student, the boy agreed to hand over the weapon.

Sergeant Webb and other school resources officers perform a variety of functions, including teaching crime prevention classes, mentoring troubled students, and building mutual respect between law enforcement and student.

To continue this vital effort, the president seeks \$180 million in his fiscal year 2002 budget request to Congress to fund up to 1,500 additional school resource officers.

In addition to school safety, COPS has responded to the pressing technology needs of American law enforcement. More than \$1 billion in COPS technology grants has enabled 4,000 agencies to purchase state-of-the-art technology.

With COPS funds, the Oakland County, Michigan, law enforcement consortium purchased a comprehensive information system that enabled officers throughout the county to process reports on mobile data computers, submit reports, access fingerprints and mug shot data, and conduct a pre-booking—all of this from the field. In other words, officers can spend more time on the streets fighting crime and less time in the station out pushing paper.

Recognizing the importance and continued demand for law enforcement technology, the president has requested \$355 million in technology funds. Of this, \$100 million is dedicated for a new COPS Info Tech program, a \$20 million increase over the 2001 technology program. Info Tech continues to provide police with the technology that is critical to officer safety and effective community policing.

Recognizing excessive use of force and racial profiling undermines community trust and is a barrier to community policing, the Administration proposes \$17 million in fiscal year 2002 to strengthen the bonds between police and communities.

Since 1996, COPS has actively supported initiatives to promote police integrity. We have developed model problem-solving and peacemaking programs, technical assistance initiatives, and police integrity training to be delivered to law enforcement community members throughout the nation.

The COPS Office has provided significant resources to local law enforcement to fight the proliferation of methamphetamine. Already we have dedicated \$153 million to this effort. In fiscal year 2002, we'll commit an additional \$48 million to help State and local authorities clean up dangerous meth labs and to train police officers in enforcement activities.

Finally, recognizing the continuing unique needs of tribal communities, the COPS also will provide \$31 million in assistance to Indian country law enforcement. These funds will be designated for a comprehensive program designed specifically to develop and enhance tribal policing.

In conclusion, I am very proud of the COPS Office and the significant impact our grants have had on American law enforcement and the communities they protect and serve.

To date, over \$7.5 billion has been invested to make our nation better, communities stronger, and our streets safer. This is an accomplishment we can all be proud of.

On behalf of the COPS Office, I would like to thank you for the opportunity to testify about this important program. We look forward to working with you in the future, and I request that I may submit my full written testimony for the record. I would be pleased to answer any questions.

[The prepared statement of Mr. Justus follows:]

PREPARED STATEMENT OF RALPH JUSTUS

Mr. Chairman, Mr. Scott and members of the Subcommittee:

I am very pleased to appear before you today on behalf of the Office of Community Oriented Policing Services - or COPS. I am particularly honored to appear before this subcommittee and proud to represent the COPS Office as its Acting Director.

I came to the COPS Office in 1999 after a career in both private and public sector management, including eleven years in the Justice Department. Quite candidly, I do not have a background in law enforcement, I have a Ph.D. in economics. However, in my two years at COPS I have gained a greater appreciation for the challenges facing the men and women in law enforcement and for the commitment and dedication of these officers.

The COPS Office, created in 1994, is a product of a bipartisan effort to invest in the safety of our nation's neighborhoods. It is an embodiment of the concept that truly safe communities, schools, businesses and homes result from police and communities working together. Our Office was charged with two major responsibilities: to advance community policing and to fund additional law enforcement officers. Today I will share with you the significant results that are being achieved in the communities across America.

First and foremost, I am proud to say that to date, COPS has funded the addition of more than 110,000 officers and we expect to reach 115,000 by the end of this fiscal year. Already, more than 73,000 of those officers are on the beat, fighting crime and improving the quality of life in our neighborhoods. These grants have gone to more than 12,400 of our nation's 18,000 law enforcement agencies. The COPS office has helped create nearly 300 new law enforcement agencies, where but for COPS funding, these communities would not have a police department.

I am often asked why there is a gap between the officers funded and the officers on the street. It takes law enforcement agencies an average of 18 months to recruit, hire, and train a qualified officer. This is, however, a necessary delay, ensuring that local agencies can carefully select and train officers who will serve in our neighborhoods. With technology grants that redeploy officers to the street, our experience shows us this delay can take longer.

While COPS has partnered with many of our largest cities, we have also made an important impact in small towns. More than 82% of our grants have gone to departments serving populations of 50,000 or less. COPS recognizes that adding even one officer to a rural department can have a significant impact on both officers and community safety.

In addition to the substantial investment in funding the addition of law enforcement officers, the COPS Office is responsible for advancing community policing. In 1993 one study showed that just 15% of law enforcement agencies practiced community policing. Today, 86% of the nation is served by an agency that practices community policing. Just this year, the Bureau of Justice Statistics showed that the number of community policing officers increased by 400% between 1997 and 1999.

The COPS Office has advanced community policing not only by funding additional community policing officers but also by providing practical training and technical assistance and useful research on new strategies to reduce crime and increase public safety. To deliver this important training, COPS has created 28 Regional Community Policing Institutes (RCPIs) which are located throughout the country. To date over 147,000 officers and community members have been trained in a variety of topic areas including the prevention of racial profiling, school safety, technology implementation and basic community policing strategies. Collaborating with other federal and private agencies, the RCPIs provide an effective use of federal funds to deliver training.

COPS unique relationship with police has allowed us to respond to emerging law enforcement challenges. Regrettably, over the last several years, the safety of our nation's schools has been in doubt. After Congress made new funding available in 1998, COPS moved swiftly to fund the hiring of school resource officers and to foster police/school partnerships. By the end of this fiscal year, COPS will have funded almost 5,000 school resource officers. We are proud to say this represents an increase in the number of school resource officers nationwide by nearly 40%.

I'd like to tell you about one of these officers, Sergeant Michael Webb. Sergeant Webb is with the Springfield Township Police Department. A COPS grant made it possible for him to walk a beat in a suburban Ohio school, Mt. Healthy Junior High. Without warning last September, an 8th grade student fired two rounds into the ceiling of a room filled with math students. Within minutes, Sergeant Webb entered the classroom with the distressed student. The handgun was still loaded and the boy had stated his intention to kill his teacher. Because of Sergeant Webb's constant presence in the school he had the opportunity to develop a relationship with the 14-year-old and had insight into his troubled background. After a discussion between Sergeant Webb and the student, the boy agreed to hand over the weapon.

Sergeant Webb and other school resource officers perform a variety of functions, including teaching crime prevention classes, monitoring troubled students, and building mutual respect between law enforcement and students. COPS provides these officers and their school administrators with team based training they need to work in partnership to protect our children. To continue this vital effort, the President seeks \$180 million in his FY02 budget request to Congress to fund up to 1,500 additional school resource officers.

In addition to school safety, COPS has responded to the pressing technology needs of American law enforcement. More than \$1 billion in COPS technology grants has enabled 4,000 agencies to purchase state-of-the-art technology. With this technology, law enforcement agencies can better communicate with each other, share information, and make officers more effective and efficient.

With COPS funds the Oakland County, Michigan Law Enforcement Consortium purchased a comprehensive information system that enables officers throughout the county to process reports on mobile data computers, submit reports, access fingerprint and mugshot data, and conduct a pre-booking—all from the field. In other words, officers can spend more time on the street fighting crime and less time in the station house pushing paper.

Recognizing the importance and continued demand for law enforcement technology, the President has requested \$355 million in technology funds. Of this, \$100 million is dedicated for a new COPS Info Tech program, a \$20 million increase over the 2001 technology program. It will differ from our earlier technology programs by eliminating the burdensome redeployment tracking component. But remains similar by continuing to provide police with the technology that is critical to officer safety and effective community policing.

Another major component of technology that COPS will fund in 2002 is the Crime Identification Technology Assistance Act (CITA). CITA is slated to receive a \$21 million increase to provide assistance to states establishing or upgrading criminal justice information systems and identification technologies. CITA funding may also be used to provide support for state and local-level participation in nationally managed databases. Other technology programs that are also expected to be funded separately from CITA include the National Criminal History Improvement Program, DNA Backlog Elimination and the Crime Laboratory Improvement Program for a proposed \$35 million each.

Recognizing excessive use of force and racial profiling undermines community trust, and is a barrier to community policing, the Administration proposes \$17 million in FY02 to strengthen the bonds between police and community. Since 1996, the COPS Office has initiated a nationwide dialogue on police integrity, engaging law enforcement, community-based organizations, researchers, and practitioners in this critical discussion. From this dialogue, COPS has developed model problem solving and peacemaking programs, technical assistance initiatives, and police integrity training to be delivered to law enforcement and community members throughout the nation.

The COPS Office has provided significant resources to local law enforcement to fight the proliferation of methamphetamine. Already we have dedicated \$153 million to this effort. In 2002, we will commit \$48 million to help state and local authorities with meth lab enforcement and cleanup, of which \$20 million will be grants exclusively for cleanup.

Finally, recognizing the continuing, unique needs of tribal communities the COPS Office will provide \$31 million in assistance to Indian country law enforcement. These funds will be designated for a comprehensive program designed specifically to develop and enhance tribal law enforcement agencies through specialized training, the hiring of officers, as well as the funding of equipment, technology, and vehicles.

In conclusion, I am very proud of the COPS Office and the significant impact our grants have had on American law enforcement and the communities they protect and serve. To date over \$7.5 billion has been invested to make our nation better, communities stronger, and our streets safer. This is an accomplishment we all can be proud of.

On behalf of the COPS Office, I would like to thank you for the opportunity to testify about this important program. We look forward to working with you in the future.

I would be pleased to answer any questions you may have.

Mr. SMITH. Thank you, Mr. Justus.

Before we get to our questions, I want to acknowledge the presence of several Members who have joined us since our opening

statement. Mr. Barr, the gentleman from Georgia; the gentleman from New York, Mr. Weiner; the gentleman from Michigan, Mr. Conyers; and the gentlewoman from Texas, Ms. Jackson Lee.

Mr. Horowitz, let me begin my questioning with you. My first question goes to a subject that you mentioned at the very last or the very end of your oral testimony today, and that is the subject of cybercrime and cyberterrorism.

And that is of special interest, I think, to Members of this Subcommittee. And in fact, we are having one or more hearings on the subject of cybercrime between now and the end of June, so you may well be back to join us in discussing that subject more extensively.

But in any case, why is that the Department of Justice wants an increase in funds? Have you seen an increase in cybercrime and cyberterrorism? How bad is the situation?

Mr. HOROWITZ. Mr. Chairman, we have in fact seen a substantial increase in the problem of cybercrime and cyberterrorism largely, again, due to the international growth of the use of technology.

The problem has become international in nature. We find ourselves spending a considerable amount of time, for example, working with our partners in Europe and around the rest of the world in developing treaties and working arrangements so that when we have an attack such as, for example, the Love Bug attack which originated in the Philippines, that we can react to that, work with our partners around the world to as quickly as possible determine where the attack came from.

Because, as you know, when the attack first hits, you don't know whether it's an attack based within our borders, an attack coming from outside in, whether it is perhaps juveniles who are simply trying to harass or go after certain entities, or a terrorist attack of some sort. And there is a substantial amount of resources that go into that initial day and then several-week period where we in law enforcement are trying to learn that information.

Mr. SMITH. What is the current budget? And what have you asked for in the new budget?

Mr. HOROWITZ. Our current budget generally is \$110 million. We're asking for \$120 million. \$3 million of that increase would go toward both cybercrime and—both our Computer Crime and Intellectual Property Section, our Terrorism and Violent Crime Section, and our International Affairs Section, because they really need to work cooperatively to address this problem.

Mr. SMITH. One of the other responsibilities of the Criminal Division is reducing the international and national drug trafficking cartels and their influence. What is being done in that regard?

Mr. HOROWITZ. Well, at the Criminal Division level, we have a number of different programs that we're involved with, primarily our Special Operations Division, which works as I mentioned with all of law enforcement—the DEA, the FBI and the Customs Service—coordinating with our U.S. attorneys and our Criminal Division prosecutors to look at problems globally—nationally and internationally.

The problem has been, in the past, that prosecutors in perhaps my old district in the Southern District of New York, or pick any other district around the country, sees the problem as it is confined to their borders.

And one of the keys I think that we in the Criminal Division play is to make sure that picture goes broader, that it ties together, for example, the wiretaps that we might have in one office and in another office, and they would not on their own perhaps be interacting and recognizing that they each had relevant information for the other. And so we play a significant role there.

We obviously have the Plan Colombia, the U.S. Colombia initiative ongoing in the country of Colombia, in which the Criminal Division is playing an important role in the implementation of the plan and the \$88 million that has been—that has been appropriated for that plan.

We also have the bilateral initiatives that we are working with Mexico, which is obviously a very important participant in our drug interdiction efforts.

Mr. SMITH. Okay. That is good and encouraging news.

Mr. Horowitz, you probably anticipated my last question, which is this: Have you updated the computer technology within the Criminal Division of the Department of Justice?

Mr. HOROWITZ. We are actually undertaking that. We are about to undertake another step in the next year of upgrading all of our computers.

It has been, frankly, as chief of staff, one of the complaints I hear most from our prosecutors in the division, which is older computer equipment.

Mr. SMITH. Are you aware of any deficiency in your computer system as you sit here today?

Mr. HOROWITZ. No, I am not. The complaints that we have received are generally from the prosecutors there trying, using equipment that is perhaps now 1, 2 or 3 years old. And this year, I'm told, we will be in line to receive a substantial portion of the department's budget to upgrade our computer facilities, and that will certainly help.

Mr. SMITH. Thank you, Mr. Horowitz.

Mr. Justus, in regard to the COPS program, it seems to me that the funds designated by that program have not necessarily been targeted at those areas where the highest crime rates exist. Why is that?

Mr. JUSTUS. A couple reasons. One, the legislation we operate requires us to give half of the grant money to populations of over 150,000 and half of it to populations under 150,000.

While we do give substantial amounts of money to areas which are high-crime areas—

Mr. SMITH. Right. But within those two designations, over 150,000 people and fewer than 150,000 people, within those designations, have the funds been targeted at the areas of the highest crime rates?

Mr. JUSTUS. No, they haven't.

Mr. SMITH. Okay. Why is that?

Mr. JUSTUS. The expectation, the anticipation, is people that are having problems are applying for these grants. And community policing, I think, affects all facets of our communities.

Mr. SMITH. If individuals representing the areas with the highest crime rates haven't applied, they may need some education as to the problems they already have that they don't acknowledge.

We don't need to go into it in any more detail right now, but to me a lot of the funds in the COPS program should have been targeted at the highest crime—at the areas with the highest crime rates rather than just relying on sort of individuals to apply for the funds when many individuals might have needed those funds more. That's maybe a philosophical disagreement that I had with the program, but I thank you for your brief explanation.

The gentleman from Virginia, Mr. Scott, is recognized for his questions.

Mr. SCOTT. Mr. Chairman, I would like to defer to the gentlelady from Texas. She has another appointment.

Mr. SMITH. Okay. The gentlewoman from Texas is recognized for her questions.

Ms. JACKSON LEE. Thank you very much. I thank the Ranking Member. I thank the Ranking Member of the full Committee, and I thank the Chairman very much.

I have an opening statement, Mr. Chairman, that I'd just like to have submitted into the record.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

Thank you Chairman Smith for convening today's oversight hearing on the reauthorization of the Department of Justice.

It has been more than 20 years since the Department's last reauthorization. It is my view that the Department of Justice should be properly funded to so that it can continue to provide essential protection for all Americans. Whether it be for interdiction, research, preparedness, education, or alternatives to incarceration, the Department and its thousands of men and woman who we owe so much to deserve to have our full support so that they can do the job.

I look forward to our continued work in this Committee in reaching consensus on funding priorities, because there can be little question that many of us share common goals for the American people.

I believe that this Committee has a responsibility to insure that the Department is maximizing its resources in accordance with its appropriations requests, and that those funds are being used for the greatest possible social good. Good.

Today, we are happy to welcome representatives from the Office of Justice Programs (OJP), the Criminal Division, and the Office of Community Oriented Policing Services (COPS), and to evaluate their appropriations requests. The Office of Justice Programs (OJP) is seeking \$4.2 billion in FY 2002, compared to \$5.2 for FY 2001. The primary difference in these being the reduction in the COPS program which reached its goal of hiring and deploying 100,000 officers nationwide.

The Criminal Division is seeking increases in funding from \$110 million in FY 2001 to \$230 million in FY 2002. Lastly, the COPS program has been reduced by \$228 million for FY 2002, while leaving \$180 million for hiring School Resource Officers, and increasing technology assistance funding in other areas.

While we have much to be proud of in terms of the good work that is being done in the Department of Justice, I believe that much more work and effort ought to be spent to reform the system with an eye towards prevention, rehabilitation and alternatives to incarceration.

In our last hearing on this issue two weeks ago we began to discuss the ongoing problem of drugs, and what many of us on this Committee believe are systemic problems with our enforcement directives in the War on Drugs. To address this and other very serious problems we must focus in on what has been proven to work and what hasn't.

We should increase our support and build on our success, while at the same time we must learn from the mistakes of failed policies and failed programs, cut our losses and move on. For example, on May 10 at the White House the President stressed the need to expand drug treatment in the criminal justice system. Programs such as these have been proven to be effective because they seek to address the root of the problem, as opposed to merely incarcerating offenders, which most experts would agree, does little to address causes of abuse and recidivism.

According to the Bureau of Justice Statistics over 600,000 offenders a year are returning from America's prisons to their communities. This is encouraging because it demonstrates that rehabilitation works. However, I am concerned by the President's FY 2002 budget request, which decreases funding for reentry programs. It makes little sense to reduce what has been proven to work.

We must also continue to address and end the discriminatory and unfair practice of racial profiling which disproportionately effects minority men in this country. So while I applaud the recent attention given to this issue by the Attorney General, I believe that much more support and action is needed to increase awareness of the problem, so that we can begin to change the culture of racial profiling that exists in our Department of Justice. I hope that the Department will do all that it can to help end this insidious practice.

We must also do much more in our efforts to diversify the Department of Justice by hiring more minorities and women so that the Department reflects the rich diversity of the American people. To the Department's credit, hiring of Hispanics exceeded relevant civilian labor force representation, according to a recent OPM study. However, the same study shows that while African-Americans generally exceeded their relevant civilian labor force representation in 16 federal executive departments, less than 16% of those employed by the DOJ were African-American. And while the DOJ consisted of 37.7% women, that number was over 9% less than what it should have been based on overall hiring percentages of women in the civilian work force.

In all, our policies are due for a serious reexamination. I look forward to hearing your suggestions, and to our continued work together on providing sufficient resources for the Department of Justice and the American people.

Thank you Mr. Chairman.

Mr. SMITH. All Members' opening statements will be a part of the record.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me thank the witnesses for your work and commitment, and I know that your commitment is continuing. And I know that most of the Members of this Committee are lawyers and appreciate very much a great part of the work that the Department of Justice has to do.

Let me probe you on some concerns that I have with respect to some of our particular focuses.

And Mr. Justus, you were very certainly pronounced and you had anecdotal stories about the COPS program. I am aware of the IG's audit. I always think that we can improve upon what we have.

But I do note that over the course of the last 10 years or so or the period of time, let's say, that the COPS program has been implemented and the number of small jurisdictions and large jurisdictions that have utilized it, I do believe there is a correlation in the decrease in crime to the COPS program.

I'm concerned with taking \$228 million out of the program. And your focus certainly has a high calling—school resource offices.

On the other hand, I am concerned about an oversaturation of, in quotes, "police-like presence" in our schools. And I would hope that we would have a collaboration to deal with mental health services, counselors and others, who could equally gain the confidence of the particular student.

And so this is something I really am going to oppose, but I want to pose the question: What made you feel comfortable in focusing in this direction on that? And I'm going to ask you that very briefly, because I have some questions for the other individuals.

Mr. JUSTUS. Because I think the demand is out there in the community for the school resource officers, but we do have other programs that I think work in areas like you described, partnerships with community groups.

We have the school-based partnership, which we put \$30 million into 275 law enforcement agencies, to work with community groups to reduce violence in our schools and among our young people.

We have an after-school program in which we work with community groups, faith-based groups, to try to develop activities such as through PAL for kids after school.

We have a program that we are involved in called Safe Schools/Healthy Students where we work in cooperation with the Department of Education and Health and Human Services to get community groups involved in all aspects of young people's lives.

So we aren't just focusing all our efforts on school resource officers.

Ms. JACKSON LEE. And I appreciate that. If I might just interject just for a moment, and I won't pursue it. I'll work with you directly on my concern.

That speaks to the question that those kinds of resources, counselors, may be much better suited for school resource officers when I think the COPS program with fixing is one that has been evident, or there has been evidence that what we have seen in a diminishing of crime statistics, whether rural or urban, have been very effective.

Let me just, and I will engage you, but my time is short, so I thank you very much for that. I would like to discuss further with you—I continually always raise the questions of professional development of any kind of police officers, and I would like to talk to you with whether we've got any funding in there for continued police professional development as it relates to civil rights and human rights.

Mr. JUSTUS. I would be happy to, Congresswoman.

Ms. JACKSON LEE. I thank you very much.

Let me generally just speak to some concerns that I have as I look at the budgeting process, whoever may answer this.

I'm wondering if we've got a lot of dollars here, do we have—I understand the attorney general is investigating the issue of racial profiling. Where is the funding going to come to be remedial in the results of that?

And then secondarily, let me say, as it relates to Mr. Horowitz, I looked at the Criminal Division, has a lot to do with training of our prosecutors. Very fine work. We've got very fine prosecutors. But let me just say that all of us, all of us Mr. Horowitz, have absolute mud, egg, and whatever else we can have on our faces regarding Mr. McVeigh.

And as I note that you are dealing with training of prosecutors, though the light has been on the FBI, none of us can shun the total embarrassment of the insensitivity to the victims' families and all that goes in it, along with our concern for justice. And rightly so we're concerned for justice.

But the prosecutors also have the responsibility to probe and probe and probe and probe, and why did that not secure for them all of the documents that they needed to have, along with the chagrin that I assume the FBI is facing of not presenting them all the documents? If you would answer that question?

Can I have an additional 30 seconds for him to answer, please, Mr. Chairman?

Mr. SMITH. Yes, if the witness will please answer the question? Thank you.

Ms. JACKSON LEE. Thank you.

Mr. HOROWITZ. I will.

I agree with you, Congresswoman, that prosecutors need to be trained to perform at the highest ethical standards. They have a responsibility to carry out their duties fully but fairly. And we certainly—I know in my former office—spent a fair amount of time on training, and just for that reason.

With regard to the McVeigh case specifically, I can't sit here and tell you I have answers. Obviously, the inspector general is reviewing that issue, and I'd be hesitant to speculate as to what the reasons were. But I certainly understand your concerns about the importance of prosecutors taking a role in making sure that ethical responsibilities are carried out fully.

Ms. JACKSON LEE. I thank the Chairman. I thank the Ranking Member. I am going to pursue those lines of questioning with you all individually or in our respective offices on that, and I appreciate it.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Ms. Jackson Lee.

The gentleman from North Carolina—

Ms. JACKSON LEE. And thank you, Mr. Scott.

Mr. SMITH [continuing]. Mr. Coble, is recognized for his questions.

Mr. COBLE. Thank you, Mr. Chairman. I have another meeting I've got to attend, but I want to put this question to the panelists before I leave.

Each of your offices has a role in anti-cybercrime efforts. Tell us, if you will, how you all coordinate with one another, A; B, with States and localities; and, C, with private businesses in fighting cybercrime.

Mr. HOROWITZ. One of the things that our Computer Crime and Intellectual Property Section has worked diligently on is to develop relationships with industry to prevent a situation from where we are imposing our views and positions on industry but are working cooperatively with them to understand the problems they have in gathering evidence and producing it to us and trying to reach a solution that works for our concerns, reaches our concerns, but doesn't unnecessarily interfere with their business operation.

We also are trying to put together networks throughout the country of State, local, and Federal prosecutors to coordinate when we have a cybercrime attack, for example, in a locality, so that we can respond effectively to it. And that's one of the networks we are trying to build, not just here but internationally as well.

Mr. COBLE. And do you all do that with one another, I presume, in an open and continuing manner?

Ms. LEARY. Yes, we do, sir. Although speaking for the Office of Justice Programs, our efforts are really focused on helping State and local law enforcement agencies deal with cybercrime.

We sponsor the National White Collar Crimes Training Partnership in West Virginia, and that maintains—they do a lot of training and technical assistance and provide information about best practices and emerging trends to State and local law enforcement

agencies across the country. They also run centralized services so that an individual who has a complaint about fraud or Internet kind of complaints can register that complaint there, and the information gets shared, and local and State law enforcement agencies can better pursue it. So it kind of works in tandem.

Mr. COBLE. I've got you.

Mr. Justus?

Mr. JUSTUS. Similar to Office of Justice Programs, we are very active with State and local law enforcement in providing them with technology, giving them training and technical assistance so they can deal with issues like this.

Mr. COBLE. I thank you.

Mr. Chairman, with your permission, I am going to yield the balance of my time to the gentleman from Georgia.

Mr. BARR. I thank the gentleman for yielding.

Mr. Justus, I noticed I think that \$38 million have been requested for Project Child Safe, for trigger locks?

Ms. LEARY. That's an Office of Justice Programs.

Mr. BARR. Ms. Leary?

Ms. LEARY. That's correct.

Mr. BARR. To ensure that child safety locks are put on guns?

Ms. LEARY. That's right. This is—there's actually a State program in Texas now, which is called Project Child Safe, and this is a national version of it. And it is to provide funding so that every firearm can have a child safety lock.

Mr. BARR. How many people actually use safety locks, of those that are given to them? I know when you purchase a handgun now, you're given a safety lock. Does the department have any way of knowing how many of those are used or how many are just discarded?

Ms. LEARY. I really cannot answer that, but I will check and see if there is any background information about the number of child safety locks that are actually used. I will check on that and get back to you.

Mr. BARR. I mean, \$38 million is a lot of money. Isn't there—doesn't that also contemplate additional monies, matching monies from the States?

Ms. LEARY. Yes, it does.

Mr. BARR. Where's all that money going to go if—and how did you all come up with \$38 million for this? If handguns are already required to have a safety lock with them when they're sold, and a lot of folks already have safety locks anyway—I think there are something like only 65 million handguns nationally—how did you all come up with—that basically would be \$76 million if you have \$38 million that the feds are proposing plus an equal amount from the States.

It seems like an awful lot of money for something—granted, it sounds good. I mean, how can anybody argue with safety locks for the children?

But how do you come up with that figure and how do you have—I'm mystified as to how you would have any idea whether that money is going to be used wisely, whether it's going to have any impact. Did you all do a study before coming up with this amount of money?

Ms. LEARY. I think actually the program was quite successful in Texas. And I think there is a sense there are a lot of handguns out there that don't currently have child safety locks.

Mr. BARR. A lot of people have a sense that there's a lot of things out there, but we're talking about hard dollars here, taxpayer dollars.

I'd appreciate it if you could provide us with some background as to how you all came up with this, and if there are any studies other than the fact that, granted, it might have worked great in Texas. But what research has been done to justify basically proposing \$76 million for child locks?

Ms. LEARY. I'll be happy to look into the background research on that and provide it to you.

Mr. BARR. I'd appreciate that.

Mr. SMITH. Thank you, Mr. Barr.

Mr. Scott yields his time to the gentleman from New York, Mr. Weiner, and he is recognized for his questions.

Mr. WEINER. Thank you, Mr. Chairman.

Mr. Justus, is your name in any way responsible for your getting the job, or is it— [Laughter.]

Mr. JUSTUS. In part. In part.

Mr. WEINER. Did you change the name?

About the COPS program, one of the critiques that we hear, and I'm very pleased to read such favorable testimony about it, one of the things that we've heard police departments around the country express some concern about is not the program, because the program has been one of the most democratic with a small "D" programs in all of government, 12,000-some-odd police departments, 82 percent of them police departments of less than—representing police departments of less than 50,000 persons.

But one of the criticisms that has been made is that the Federal Government is funding these officers in the neighborhood of 110,000 to 115,000. And at the end of the program, police departments who might not have the ability to are being left to absorb the full cost of these officers.

And many of us believe that the COPS program should be reauthorized with greater flexibility, theoretically a Republican concept, to allow for officers that are on the beat, for the Federal Government to have some role in keeping them on the beat. Is that the position of the Administration?

Mr. JUSTUS. I can't speak for the Administration. I am a career employee.

But what I can tell you is, we did a survey last fall of on-the-street officers. And during that survey, we reviewed all of the grants that expired, some 7,000 grants, and we found in those grants that 92 percent of the officers were retained after the grant had expired and their requirement for retention. So we're pleased with the retention that is occurring right now.

Mr. WEINER. Forgive me. Perhaps Ms. Leary or Mr. Horowitz can answer the question about whether or not it is the Administration's position that we should provide police departments that we have helped with the COPS funding additional funding or extended funding under the reauthorization to allow them to help in retaining officers.

Is someone here empowered to speak for the Administration on that point?

Ms. LEARY. I think what I can speak to is that the Administration is eager to provide the cops who have been funded thus far with better equipment, more technology, and so they're trying to make the funding more flexible and direct some of the dollars toward providing those technological tools and toward addressing the issue of school violence. And that's the—

Mr. WEINER. But in fact the COPS MORE program has been eliminated?

Ms. LEARY. Yes. But the technology money that is available through COPS has been increased, and COPS MORE was basically a way for police departments to add technology, and they had to do these calculations, which were extremely difficult to do, frankly, about—

Mr. WEINER. Well, in fact, weren't the—the calculations, if you recall the history of this program, were in response to concerns by both parties here that money would be accountable, and that you'd be able to quantify the COPS money as being accountable for an additional cop on the street.

So when the COPS MORE program was eliminated, the Civilian Hire Program, which allowed COPS to get out, and I even think you used these words, to "get out from behind the desk and get out on the beat," to hire a less-expensive civilian to allow a more expensive and more skilled, theoretically, police officer. That program's been eliminated by the Bush Administration, hasn't it?

Ms. LEARY. I think they have shifted the emphasis, and it is looking more toward providing technology and school resource officers.

Mr. WEINER. So when the president stood up and talked about how it is necessary for us to have a zero tolerance, the other day, and stood with police officers, in fact the COPS program as it is envisioned for the future going forward is to have a dramatically reduced emphasis on actually hiring cops?

Ms. LEARY. For 2002, that is what the budget reflects, but I really can't speak to where the Administration is beyond that.

Mr. WEINER. Okay. Well, we're going to have to do a reauthorization bill; we can just discuss 2002.

But my concern is whether or not the Administration's position is that despite the successes of the COPS program, which are—overwhelmingly by percentage terms, the funding for the COPS program went to hire police officers. Is that right, Mr. Justus?

Mr. JUSTUS. That's right.

Mr. WEINER. Right. And here going forward, that is no longer going to be the emphasis of the COPS program. Is that fair to say, Ms. Leary?

Ms. LEARY. I think the emphasis is on—there's hiring for additional 1,500 officers, but the emphasis for those officers is in deploying them in the area of school safety.

Mr. WEINER. Got it.

Now, some police departments were notified in the middle of a 3-year grant process that their funding for civilians was going to be—was going to be stopped, right? Weren't letters—didn't letters

just go out, telling police departments that they ought not apply for the third year of the 3-year civilianization?

Mr. JUSTUS. MORE Civilian was a 1-year grant. And so there is not a renewal. It's a 1-year grant.

Mr. WEINER. The civilianization?

Mr. JUSTUS. Right. It's a 1-year grant.

Mr. WEINER. Okay.

Mr. JUSTUS. The UHP, the Universal Hiring grants are 3-year grants.

Mr. WEINER. Got it.

Let me just say—do I have time for one additional question, Mr. Chairman? I can do a second round, if you like.

Mr. SMITH. We're not going to have a second round. You can submit written questions, if you'd like. But in any case, the gentleman is recognized for an additional minute.

Mr. WEINER. Well, thank you.

One of the things that I am concerned about—switching subjects for a moment—and I'm not sure if this is Ms. Leary or Mr. Horowitz—is last year this Subcommittee pushed for and this Congress passed \$30 million for DNA backlog elimination. And in having discussions with folks at the Justice Department, we have no way to quantify the DNA backlog as it exists out there in the country, that there has been no effort to collect the information, that we have anecdotal information that says that there are evidence kits in New York that 12,000-some-odd kits. We have a third-party independent study that was done anonymously that came up with an estimate of the numbers.

Does Justice have any intention to formally request this information from police departments so that we can determine where to go next in terms of allocating additional funds for doing DNA analysis on all of these evidence kits that are sitting out there unanalyzed that Congress has expressed an interest, but we have no way of quantifying the problem?

Ms. LEARY. I will be happy to send you something on that, Mr. Weiner, because we do need to have that information. We are making efforts to find out the exact parameters of the backlog problem.

Mr. WEINER. Okay. And I would say to you, if there's any discrepancy about whether you have the jurisdiction to require it from police departments—because I know some of them may perceive this as being an embarrassment—I am sure Members of the House here, and I am sure this Committee, would be open to forcing police departments to notify.

Because one of the things we have to do is, if we're going to have a national DNA database, we can't just have offender samples in the database without having the evidence samples for it to work.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Weiner.

The gentleman from Ohio, Mr. Chabot, is recognized for his questions.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Justus, I apologize for not having heard your oral presentation. I did read over your written report, and you mention in the written report the case of a police officer, Sergeant Webb in Mt.

Healthy Junior High School in Cincinnati, which is in my congressional district. I want to thank you for mentioning that.

And the entire community was grateful for Sergeant Webb's quick thinking and his heroism in heading off a potentially deadly situation. And we certainly do owe a considerable gratitude to police officers all over this country who have really saved an awful lot of lives.

And I appreciate the fact that the COPS program has had a number of success stories. Of course, there have also been some reports by the Heritage Foundation, for example, and the non-partisan Urban Institute that are perhaps less favorable.

And I wanted you to address one thing. You had asserted in your statement that more than 73,000 police officers are on the beat as a direct result of the COPS program. How do you explain the results of the Urban Institute study that concluded that under the most optimistic scenario, the number of police officers will peak in 2001, this year, at 57,000. And I'm advised that that number is backed up by the inspector general's own research concluded in April 1999.

Would you address that issue, please?

Mr. JUSTUS. The Urban Institute study that was released was the first half of a study. The second half will be released some time this summer.

But the data that was used was older data. It was older—examples of grants that aren't representative of current grants.

They used, for example, the MORE '95 grants, which used a different system of accounting. So they estimated the peak that the on-the-street number would be some 68,000, and our own survey which is quite extensive—we contact every grantee that's gotten a hiring grant, and then we do a stratified random sampling of our MORE Technology, MORE Civilian grants, using a statistical process, technique, that was approved by the Bureau of Justice Statistics.

So we used quite an extensive and quite a detailed survey to arrive at the 73,600 figure last fall.

Mr. CHABOT. Okay. Also, is it true that some estimates have up to 41 percent of the participating police departments using COPS funds to supplant or to substitute for local funds already earmarked to pay officers' salary? And if so, isn't this practice contrary to the mission of the COPS program approved by Congress?

Mr. JUSTUS. We do extensive monitoring with site visits of all the grantees, particularly, you know, MORE grantees. And when we find a case that looks like supplanting, it goes to our legal division, to our general counsel office, and they are reviewed, investigated.

And we find very, very few cases of actual supplanting. Where we do, we go back and recoup the government's money.

Mr. CHABOT. So you've found some, but you would dispute the fact that it is as high as that particular—

Mr. JUSTUS. It's very—the numbers are surprisingly low and particularly given the numbers we end up investigating. We spend a lot of time monitoring and reviewing prospective cases of supplanting. The IG does reviews; OJP Office of Comptroller does some on-site visits. So there is some extensive monitoring that is done of all the grantees.

Mr. CHABOT. Thank you.

Mr. Chairman, several of the questions that I was going to ask have been previously asked. So at this time, I would like to yield the remaining time I have to Mr. Barr.

Mr. SMITH. Mr. Barr is recognized.

Mr. BARR. I thank the gentleman from Ohio.

Who should I address the question to regarding the Violence Against Women Act request? Ms. Leary?

There's a substantial increase in that, close to I guess about 40 percent increase. What specifically does the Administration propose to do with that substantial increase?

Ms. LEARY. We would be using that in part to enhance existing programs and—

Mr. BARR. The what?

Ms. LEARY. It is to enhance existing programs and to create some new programs, new programs in the area of disabled women who are victimized and abused, new programs in providing safe havens for children who are involved in domestic violence, and new programs involving elder abuse and violence.

I can give you the numbers. \$31 million will go to expanding the encouraging arrest policies and enforcement of protection orders program; \$15 million for the rural domestic violence enforcement program—that's an enhancement.

Mr. BARR. For the which?

Ms. LEARY. Rural domestic violence, \$15 million for the Safe Havens for Children that I mentioned. \$7.5 million for a new discretionary grant program, and that would include training and information on domestic violence, sexual assault and the like for women with disabilities. And then \$5 million of that will go toward the elder abuse project that I mentioned.

Mr. BARR. Okay, thank you.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Barr.

The gentleman from Michigan, Mr. Conyers, Ranking Member of the full Judiciary Committee, is recognized for his questions.

Mr. CONYERS. Thank you, Mr. Chairman. Thank you, Mr. Scott.

I would like to focus on drug policy in the criminal justice system, which has had a serious change since the '80's since the war on drugs was declared.

And I would like to ask Ms. Leary and Mr. Horowitz, are you aware of the discussion that goes on with reference to the war on drugs and race, that drug policies and enforcement have disproportionately affected African-Americans?

Mr. HOROWITZ. Well, I certainly understand that concern and the issue being raised. I'm not sure if you're referring to a particular article or a particular journal, but I understand—

Mr. CONYERS. No, I'm referring to the fact of the matter that people of color are disproportionately affected by the war on drugs in which, for example, African-Americans use about the same percentage of drugs as everybody else, but they get arrested 34 percent of the time, prosecuted 55 percent of the time, sentenced 74 percent of the time.

Is this new information or old stuff for you?

Mr. HOROWITZ. Not, I have read statistics. I can't tell you that I've read any in-depth articles or journals about it. I would certainly be willing to take a look at that and sit down with the incoming head of the Criminal Division and discuss the matter with him.

Mr. CONYERS. Ms. Leary, have you had experience or contact with this kind of discussion?

Ms. LEARY. Yes, I certainly have, and especially as a prosecutor on the local level in Massachusetts and then in DC as an AUSA. Of course, we prosecute both local and Federal crimes, and there's a lot of discussion about this particular issue.

At the Office of Justice Programs, we focus our efforts primarily on prevention and treatment. We provide through a wide range of our programs, both in the juvenile justice arena and adult drug prevention programs, education outreach and the like, and—

Mr. CONYERS. But incarceration has been the strategy of choice at the Federal level. That's what has accounted for the nearly tripling of the prison system in the United States. These are people arrested for possession, some for low-level sales, and that's why—so this is a massively important subject in terms of our strategies, namely the prosecution of low-level, peripheral users, nonviolent people, who are swelling the prison system as we speak.

Mr. HOROWITZ. Congressman, I certainly think, from the Criminal Division's standpoint, one of the issues, one of the things we want to focus on in working with the Federal prosecutors at least around the country, is on bigger picture, larger drug prosecutions to—I don't believe that local prosecutors, local Federal prosecutors, should be doing, as you indicated, smaller level drug cases.

And I think one of the things that is important for us certainly in the Criminal Division to do is try and understand a bigger picture and make sure we are doing the cases that should appropriately be brought at the Federal level but working cooperatively with our State and local prosecutors and law enforcement to make sure that they are pursuing matters at the State and local level.

Mr. CONYERS. Well, I am glad you realize that. But do you know that we have mandatory sentencing for these low-level crimes, plus we have disparity between crack and cocaine possessions and sales that again affect the color of those who are being prosecuted and locked up? True or false?

Mr. HOROWITZ. Well, every court at least that has looked at this, Congressman, has determined that the statistical presentations have not warranted overturning convictions or going beyond that. I understand that there is statistics that demonstrate different percentages amongst different groups being prosecuted—

Mr. CONYERS. Can I get an additional minute, Mr. Chairman?

Mr. SMITH. The gentleman is recognized for an additional minute.

Mr. CONYERS. It isn't a point that the prosecutions themselves are unfair; it's the strategy of targeting low-level people, inner-city communities, street-corner sales, where you will net people of color more easily prosecuted.

So it isn't that the prosecution is faulty. They were possessing, they were involved in sales, so it's not a matter that the court blew it. They were only operating within the context of a strategy that

emanates from the Department of Justice and, more specifically, your agency.

Mr. HOROWITZ. Well, as I said, I don't believe, in the efforts that we've undertaken in the Criminal Division certainly in the last few years, have been geared to going at a low level of drug dealing.

Mr. CONYERS. Oh, they sure have.

Mr. HOROWITZ. What we've tried to do is expand and think globally and nationally as well, as we target our prosecutions and investigations and where we investigate and prosecute.

Mr. CONYERS. Well, can you show me some numbers? I'll get some numbers for you that show that that's exactly what hasn't been going on, and that's the purpose of my comments.

Have you had a chance or are you familiar with the Sentencing Project, Mark Mauer, executive director?

Mr. HOROWITZ. I can't say that I am familiar—

Mr. CONYERS. Okay. Well, I'd like to send both of you that information, and I'd like you to—let's get into a written discussion about it.

Mr. HOROWITZ. Be happy to.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Conyers.

The gentleman from Arkansas, Mr. Hutchinson, is recognized for his questions.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

I wanted to ask a couple questions of Mr. Horowitz. In reference to the McDade law that was passed I guess the last Congress, which was of concern to me as to how that would impact our Federal prosecutors, what effect has the McDade law had on the Federal prosecutors across the country?

Mr. HOROWITZ. Well, Congressman, first of all, I want to reiterate what I said earlier, which is obviously we should be holding our prosecutors to a high ethical standard. They should be able to meet their ethical obligations.

But the law itself that you mentioned has had several unfortunate consequences and has significantly impacted our ability to undertake what are otherwise lawful law enforcement activity.

In particular, the focus on the State of Oregon, which had a bar rule that prohibited lawyers from engaging in deception, and the bar committee there disciplined the lawyer in a civil matter for engaging in deception.

Well, obviously we as Federal prosecutors, when the FBI, the DEA, the Customs Service come to us for advice on undercover activities that they want to engage in—and they do come to us and they're supposed to come to us for legal analysis, we obviously at that point are counseling them on engaging in deceptive activities.

The decision in Oregon has effectively shut down our ability, the FBI's ability, the DEA's ability and all the other law enforcement agencies' abilities, to carry out undercover investigations and drug prosecutions, white collar crime cases, child pornography matters, you could go down the line—organized crime matters.

And indeed, within the last few months, the State bar proposed a fix that the Oregon Supreme Court just struck down unanimously. And so we're back in the position we were in.

And I can tell you from my experience, I think that most defense lawyers would want to have the FBI, the DEA agents, the Customs Service agents consulting with prosecutors before undertaking undercover activity to get legal guidance rather than just have them go out uncounseled, which is going to be the result if they are going to be able to take that kind of activity in a State like Oregon.

Mr. HUTCHINSON. Has there been any other areas of difficulty besides Oregon?

Mr. HOROWITZ. Well, the other main concern is the issue of contact with represented parties, and the problem that we faced in, for example, organized crime cases where house counsel comes in and claims to represent all individuals, or in a corporate crime setting where an organization that has engaged in criminal conduct, perhaps the general counsel comes to us and says they represent everybody.

And that would impact our ability to talk with, for example, low-level employees who don't want to be represented by the general counsel. It would prevent the FBI from—us working with the FBI and other law enforcement agents, for example, to go interview people who might want to be interviewed by the department.

Mr. HUTCHINSON. Has the department created any new set of guidelines under McDade?

Mr. HOROWITZ. We have created an internal office to counsel prosecutors who have questions before they undertake steps that they fear might result in discipline, and that's worked quite well. We've sent guidance to the field generally.

But the other problem that we have is that lawyers in the department who have bar admissions for more than one State are uncertain, when they undertake activity, which State they need to worry about. Similarly, when criminal conduct crosses a number of different State jurisdictions, which bar rules do we have to worry about?

Mr. HUTCHINSON. Could we have a copy of those guidelines that you have?

Mr. HOROWITZ. Let me speak with our Office of Professional Responsibility and see what they—

Mr. HUTCHINSON. And do you see any effort that Congress should undertake in order to remedy these difficulties?

Mr. HOROWITZ. Well, I think that the main problems have arisen in those areas, and it is certainly an issue that I would want to consult with the new head of the Criminal Division on and get his input on, as well as work through the department, before laying out my personal views on what should be done. I would certainly be willing to bring that back and do that.

Mr. HUTCHINSON. Thank you.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Hutchinson.

The gentleman from Massachusetts, Mr. Delahunt, is recognized for his questions.

Mr. DELAHUNT. I thank the Chairman.

Mr. Horowitz, who has been nominated as the new chair of the Criminal Division?

Mr. HOROWITZ. Michael Chertoff.

Mr. DELAHUNT. Are you familiar with an article that Mr. Chertoff did relative to McDade, the McDade law?

Mr. HOROWITZ. I'm somewhat familiar with it.

Mr. DELAHUNT. Right. And he supports the McDade law, at least in that article, didn't he?

Mr. HOROWITZ. I will let him speak for himself as to why—

Mr. DELAHUNT. Right. Well, I've read the article, and my conclusion, and I guess I am speaking to my colleague over there, Mr. Hutchinson, I would suggest that he reads the article and—

Mr. HUTCHINSON. I got the message loud and clear. [Laughter.]

Mr. DELAHUNT. But you know, Mr. Horowitz, while we're on this, we have the Oregon case, okay? Now, do we have other cases?

Mr. HOROWITZ. When you say other cases—

Mr. DELAHUNT. Other cases that you feel have been impacted by—

Mr. HOROWITZ. There are a series of cases that I think have been impacted by our inability to—

Mr. DELAHUNT. You think have been impacted?

Mr. HOROWITZ. I believe have been.

Mr. DELAHUNT. You believe, but you don't know?

Mr. HOROWITZ. Well, I can go back, Congressman, and—

Mr. DELAHUNT. Will you forward to me a list of those cases?

Mr. HOROWITZ. I will forward to you what we can send up. One of the problems that we have is, a number of these issues are contacts involving grand jury matters, and obviously—

Mr. DELAHUNT. Well, we'll leave aside the grand jury matters.

Mr. HOROWITZ. Well, but—

Mr. DELAHUNT. Could you enumerate for me those that you are aware of that would not jeopardize the prosecution or an investigation to date, each and every one of them, Mr. Horowitz? Can you do that for this Committee?

Mr. HOROWITZ. I will go back and sit down with our Professional Responsibility Office and go through what they have and what—

Mr. DELAHUNT. Right. How many do you think there might be?

Mr. HOROWITZ. I don't know as I sit here, Congressman.

Mr. DELAHUNT. I mean, 100, 200?

Mr. HOROWITZ. Well, I don't know how many undercover cases, for example, are undertaken in Oregon—

Mr. DELAHUNT. I'll tell you what. Could you enumerate them, and then for those that you feel it is kind of in the "would have" category, which might jeopardize, could you give us a statistical—could you provide us with some statistics in terms of—

Mr. HOROWITZ. I could, for example, go back and speak with the law enforcement agencies on the number of undercover cases they would normally undertake in a State such as Oregon, because they would have difficulty—

Mr. DELAHUNT. I'm not normally—I'm not interested in normally, Mr. Horowitz. I'm interested in what has actually happened with the application of the McDade law.

Mr. HOROWITZ. Well, but what has happened, prosecutors haven't gone—

Mr. DELAHUNT. Well, all you've got to do is go back to the United States Attorneys Office in Oregon or the DEA or the FBI or what-

ever investigative agency is there in Portland, Oregon, and ask them.

Mr. HOROWITZ. I will do that.

Mr. DELAHUNT. Don't just speculate. You can ask them.

Mr. HOROWITZ. I will do that.

Mr. DELAHUNT. And you'll do that. I appreciate that.

Ms. LEARY, when did you serve in Middlesex?

Ms. LEARY. From 1982 to 1985. I served under Scott Harshbarger, and Tom Riley was the first assistant then.

Mr. DELAHUNT. All right, well, welcome.

Ms. LEARY. Thank you.

Mr. DELAHUNT. In terms of the Weed and Seed program, have there been follow-up research like a year, 2 years, 5 years? The program began, it was under the first Bush Administration.

Ms. LEARY. That's correct. I will be happy to send you the studies that we have.

Mr. DELAHUNT. Do you know anything off the top of your head? Does it show—I mean—

Ms. LEARY. It shows a positive impact.

Mr. DELAHUNT. Right. Do you have any interesting statistics that might enlighten the Committee?

Ms. LEARY. I can tell you, within individual Weed and Seed neighborhoods, designated neighborhoods, we have seen some pretty dramatic reductions. We had about a 20 percent reduction in one of the Weed and Seed sites in DC. But I will—

Mr. DELAHUNT. There was a program in Chelsea I remember years ago.

Ms. LEARY. Excuse me?

Mr. DELAHUNT. In Chelsea there was the Weed and Seed program.

Ms. LEARY. That's right.

Mr. DELAHUNT. I wonder—I think it would be really beneficial, if it doesn't exist, what's the use—to take a look-see at the long-term impact of Weed and Seed. I don't know if that research has ever been done, but I would be interested to take—to review and see those programs that were initiated at the beginning of the program and see what it looks like at different time intervals just to give us a sense of their efficacy in the long term and whether they really are—whether there's a heavy local investment such that it's sustained over a period of time.

Ms. LEARY. Yes, I'll be happy to provide that because—

Mr. DELAHUNT. I mean, it's really a community prosecution concept and—

Ms. LEARY. It is, and it works hand in hand with community prosecution. It's a great fit with community policing and community prosecution.

And in fact, in your district, there are some pretty successful examples.

Mr. DELAHUNT. Right. I think we had one in Brockton for a while.

Ms. LEARY. That is right, and Lowell.

Mr. DELAHUNT. Marianne Hinkle ran it, is running it.

Ms. LEARY. Yes.

Mr. DELAHUNT. Can I have one more question, Mr. Chairman?

Mr. SMITH. The gentleman is recognized for an additional 30 seconds.

Mr. DELAHUNT. In talking about VAWA, has there ever been a study done relative to the relationship between domestic violence, violence against women, and the rather dramatic decline in the level of all categories of violent crime over the past decade?

As you well know, domestic violence programs were initiated in the late '70's, continued, they've grown, they've been replicated all over the country.

My own observation has been that there is, if you examine the history of inmates incarcerated in our major penal institutions, they're clearly either the victims, witnesses to or the byproduct of a violent family.

And I wonder if that nexus, that relationship, has ever been reviewed.

Ms. LEARY. Yes. There are studies on that. I'll be happy to provide them to you. And as you can well imagine, they show that, for instance, in the case of children who are victims of domestic violence either directly or through observation—they're part of the family and this is going on all the time—that it creates a climate that produces oftentimes children who grow up to perpetrate violence or who become victimized themselves, and they get caught in this cycle.

There's a lot of research on that, and I'll be very happy to provide it.

Mr. DELAHUNT. Thank you.

Mr. SMITH. Thank you, Mr. Delahunt.

The gentleman from Florida, Mr. Keller, is recognized for his questions.

Mr. KELLER. Thank you, Mr. Chairman.

I have questions about two areas, one about the COPS program and second about the criminal enforcement of an intellectual property law.

So let's start with the COPS program, and Mr. Justus, you can take a crack at this. And maybe Ms. Leary will have something to say.

I want to make sure that I understand the gist of what we're doing here, and my reading of this is, we're going to spend more money on crime-fighting technology, about the same amount of money on school resource officers, and less money on hiring new police officers for community policing.

Mr. JUSTUS. That's correct. That's accurate.

Mr. KELLER. Okay. And it's that third prong that's probably going to have a little controversy, the less money for community policing.

And when I say controversy, at least in my jurisdiction—I'm from Orlando, where we're rapidly growing—and so I asked my Orange County sheriff, a guy named Kevin Beary, and I asked our local police officer chief of police, Jerry Demings, who's here today from Orlando, what they thought about this. And they love the COPS program. We had to add 60 new cops a year just to keep up with growth.

And so I want to tell you what they say and then what other folks say, and I want your opinion.

They say that this is a wonderful program, it's just where it needs to be, we don't want to have to rely on these local law enforcement grants because there's too much red tape.

Other folks said, well, the original purpose was to hire 100,000 cops; we've hired 100,000 cops, and to the extent you feel you need to hire even more, just use money from the local law enforcement grants.

With that as background, let me start asking a couple of questions.

First of all, can jurisdictions like the one I represent, say, Orange County, use local law enforcement grants to hire additional cops for community policing purposes?

Mr. JUSTUS. Can they in 2002?

Mr. KELLER. Yes, sir.

Mr. JUSTUS. No. There will be no new grants. The 115,000, the grants that are currently out there, are obligated, and your jurisdiction, if they have a grant, can continue to draw down on those grants for the full 3 years.

Mr. KELLER. Okay. I understand the COPS money grant will be gone after this budget.

Mr. JUSTUS. Right.

Mr. KELLER. Is there other local law enforcement grants, just the generic grants, that if they decide to use money from those grants can be used to hire additional police officers?

Mr. JUSTUS. Not police officers, not COPS grants, but school resource officers. We have, as you've noted, \$180 million in there for school resource officers.

Ms. LEARY. The Local Law Enforcement Block Grant has as one of its purpose areas training and hiring of law enforcement.

Mr. KELLER. Okay, that's what I'm getting at.

Now when I threw that back at the Orange County sheriff he said, yeah, but there's in his perception a lot more red tape associated with using money from the local law enforcement grants to hire cops than it would be to just get money straight from the COPS program.

What's your thoughts on that, Ms. Leary?

Ms. LEARY. Well, to be candid, there probably is more red tape. But nevertheless, States are able to manage the process and have been doing so for many, many years.

And I think one of the reasons that people cite red tape is that there are seven purpose areas for which that money can be used, and so it's kind of difficult for an individual police department to gain the leverage to push the use of the funds toward that particular purpose sometimes.

Mr. KELLER. This is a tough issue, and I appreciate both your candor on that.

But let me switch to Mr. Horowitz and ask you about the enforcement of criminal intellectual laws. I just had breakfast with a bunch of leaders of the software industry, and they told me their biggest concern was the enforcement of criminal laws dealing with copyright infringement, intellectual property. The gist of what they said is that a lot of their folks who steal movies and show them on the Internet are often kids, college students who have no fear

of \$100 million civil lawsuit, but they would fear spending about 6 months in jail.

But they're frustrated because the assistant U.S. attorneys have a lot bigger fish to fry on a daily basis, and they're not spending the money and the resources they believe to enforce these criminal laws.

Reading from your remarks, you indicated that one of the things you guys are going to do on this budget is to enhance the criminal prosecution efforts of intellectual property laws in seven key jurisdictions. Is that right?

Mr. HOROWITZ. That is.

Mr. KELLER. Is the middle district of Florida one of those seven key jurisdictions?

Mr. HOROWITZ. I don't believe it is, but let me double-check on that.

Mr. KELLER. Would it kill you to make that one of your key jurisdictions? [Laughter.]

We're home to Disney World and Universal Studios, so let me tell you what I told them, and you tell me if I'm giving good advice or not. I told them that it's my understanding that the U.S. attorneys have discretion on what type of things to prosecute, and that if you wanted more rigorous enforcement of these laws, go have a chat with your U.S. attorney, that it's pretty much a locally based decision. Is that accurate?

Mr. HOROWITZ. It is, and I think that's pretty sound advice to give them, to speak with their U.S. attorneys, make them aware of the problems that the particular constituents in the community are facing.

One of the things that I think you will be pleased to know is we just actually on May 1 through 3 held a training session—our Computer Crime and Intellectual Property session—for prosecutors from around the country, because one of the problems we also see is a lack of understanding of the significance of the problem and a concern or fear about an ability to understand, particularly the software theft that is going on. And so one of the things we try and do is get prosecutors from around the country to feel comfortable investigating these types of crimes and pursuing them.

Mr. KELLER. Okay. Thank you, Mr. Horowitz.

I yield back, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Keller.

The patient gentleman from Virginia is recognized for 5 minutes for his questions.

Mr. SCOTT. Thank you, Mr. Chairman. I'll yield briefly to the gentleman from New York. He had a follow-up question for Mr. Justus.

Mr. WEINER. Thank you.

Mr. Justus, previously, I talked about the elimination of the second and third years, in some cases the third years of the COPS MORE program provide for civilianization. And you answered that it was a 1-year program.

Let me just read from a letter dated February 8 with your signature. "In MORE program grant applications and grant owners manuals,"—this, by the way, is a letter to the city of New York—"In MORE program grant application and grant owners manuals

we advised agencies that grant awards for civilians may be renewed for 2 additional years beyond the additional grant period contingent upon the availability of future appropriations.”

And your testimony here is that the Administration has no intention of requesting future appropriations?

Mr. JUSTUS. That’s correct.

Mr. WEINER. And so, in fact, it is the position of the Administration to take a program that had originally been pitched as a 3-year program to make it a 1-year program, leaving cities like New York and other cities, frankly, who have benefited from the civilianization program are now not going to have the funds that they originally thought.

When an owners manual or the program grant manual says there are a couple more years coming down the pike and now to say there’s not, that to me is taking a 3-year program and making it a 1-year program. I thank you.

Mr. SMITH. Thank you, Mr. Weiner.

The gentleman from Virginia continues to be recognized.

Mr. SCOTT. Reclaiming my time, Mr. Chairman.

Mr. Horowitz, in reference to the FBI and McVeigh situation, is there any evidence that any prosecutors knew that evidence had not been turned over? Is there any evidence the prosecutors knew? Do you want to answer that or not? Or can you answer it yes or no?

Mr. HOROWITZ. I personally do not know, and I have not undertaken any investigation myself. Obviously, that’s been left to the inspector general to review.

Mr. SCOTT. It’s being reviewed right now?

Mr. HOROWITZ. Correct.

Mr. SCOTT. Okay. I wasn’t quite sure what kind of answer you gave to the gentleman from Michigan, the Ranking Member, about the crack/powder cocaine disparity. Is there a problem or not?

Some of us think we want to fix the problem, but if you don’t see it as a problem, then obviously you’re not going about to fix it. Is there a problem with the crack/powder cocaine disparity?

Mr. HOROWITZ. Well, on the issue of the disparity, Congressman, I would ask to reserve judgment. I think the assistant attorney general for the Criminal Division ought to be in place and be involved in that decision before I speak for him.

Mr. SCOTT. None of you are administrative political appointees, is that right?

Ms. LEARY. We are all career people.

Mr. HOROWITZ. Actually, I am in a political slot as chief of staff in the Criminal Division.

Mr. SCOTT. If you are not a political appointee, then you are somewhat reserved in speaking for the Administration. Can you speak for the Administration?

Mr. HOROWITZ. I can.

Mr. SCOTT. But you don’t want to in this case?

Mr. HOROWITZ. Well, I think this is an issue that I think is—that the head of the Criminal Division ought to be a participant in, in reaching a conclusion on.

Mr. SCOTT. We have talked about low-level criminals getting hauled into Federal court. Is that a good idea or a bad idea, Mr. Horowitz?

Mr. HOROWITZ. I'm sorry. Could you repeat that again?

Mr. SCOTT. Low-level defendants, low-level drug offenders being hauled into Federal court, clogging up the courts in a way that the chief justice has complained about.

Mr. HOROWITZ. I agree with you, Congressman, that we should not, at the Federal level, be focusing on small-level cases that don't have larger implications for the community. Although I will say that there are circumstances where prosecuting some small-level drug cases can make a difference in the community, and I have had personal experience with that in my old office.

Mr. SCOTT. Should they be prosecuted in the Federal court or the State court?

Mr. HOROWITZ. Well, the example that I can give you is, in New York City, we had an issue with drug dealing, marijuana dealing in Washington Square Park with individuals. The police department came to us with a problem where they had certain individuals who had 50, 60, 70 arrests and had never spent a day in jail and asked us to come in and to pursue the case federally. And we agreed to pursue only the most serious recidivists for what were essentially low-level drug dealing, but it meant—the community wanted to see that done.

Mr. SCOTT. How does the idea of not prosecuting low-level defendants, how is that consistent or inconsistent with Project Exile becoming nationalized?

Mr. HOROWITZ. Well, I think in terms of decisionmaking of discretion being exercised by the U.S. attorneys in each district, they need to have in place an understanding and a policy of what cases should come federally, what gun prosecutions should be taken federally, and what cases can appropriately and should appropriately be going to the State prosecutors.

Mr. SCOTT. And what would you tell the chief justice as what the standard should be?

Mr. HOROWITZ. I think, Congressman, it varies from district to district, case to case. I certainly wouldn't speak for all the U.S. attorneys around the country and what problems they face.

I think that's one of the strengths of the system we have set up in the department with local U.S. attorneys analyzing and evaluating the problems in their districts. And I certainly wouldn't want to speak for them.

Mr. SCOTT. So do I understand you're saying it is up to the local prosecutor to make—set the standards?

Mr. HOROWITZ. I think in terms of what cases to take, what cases to pursue as Federal prosecutions, the U.S. attorneys generally make those decisions in their districts.

Mr. SCOTT. How many U.S. attorneys are there?

Mr. HOROWITZ. Ninety-three I believe.

Mr. SCOTT. So you've got 90-some different standards. Somebody's going to say, bring them all. Is that a reasonable conclusion?

Mr. HOROWITZ. I don't know.

Mr. SCOTT. Mr. Chairman, could I have 1 additional minute? I wanted to ask—

Mr. SMITH. The gentleman is recognized for an additional minute.

Mr. SCOTT. Ms. Leary said some real nice things about Weed and Seed, when we've had police officers tell me that they've been so successful in some public housing areas that now the crime rate within the public housing area in several jurisdictions within my district is significantly lower than the overall crime rate, they've done such a good job.

Could you tell us anything about the president's budget as it relates to drug interdiction in public housing programs and where that budget might be going, up or down or eliminated? Mr. Horowitz, do you know?

Ms. LEARY. I can't really—

Mr. SCOTT. It's my understanding that he eliminated drug prevention programs in public housing in the HUD budget.

Mr. HOROWITZ. I don't know the answer to that as I sit here, Congressman. I could certainly go back and—

Ms. LEARY. I can't speak to that, but I'll be happy to look into it and send you something.

I know that we do a lot of work. In Weed and Seed in particular, there's a heavy emphasis on public housing neighborhoods. In fact, the one that I worked on in DC, Langston-Carver, has one section 8 and one public housing development, and they make a tremendous effort to concentrate efforts in those neighborhoods. Drug prevention—

Mr. SCOTT. Ms. Leary, you've done studies of what works and what doesn't work. There was a study done by the, I believe it was Harvard public health, Harvard School of Medicine, Harvard School of Public Health, with APT Associates from Cambridge and Chicago that did a longitudinal study. Are you familiar with that study?

Ms. LEARY. Study of?

Mr. SCOTT. Of what trajectory of getting into violence, a long-term following children and figuring out what the elements are in a particular community that these people—

Ms. LEARY. Chicago?

Mr. SCOTT. Yes, in Chicago.

Ms. LEARY. Yes. Yes. The Chicago study.

Mr. SCOTT. Is that—are the results of that study being put to use?

Ms. LEARY. Yes. As a matter of fact, it is. And we are using the results of that study to provide models for other districts, other locales who want to know what works and what doesn't work when we are trying to address these problems. So, yes, we are.

And that's one of the things that OJP tries very hard to do, is to study what we're doing and extract the best principles from that, and the disseminate it, because that's what we're all about, is helping communities nationwide—

Mr. SCOTT. Finally, are you familiar with the violence prevention protocols that four universities are working on, including Virginia Commonwealth University?

Ms. LEARY. Yes. And that's an example of the kind of work that we support, because they're studying it and they can develop proto-

cols that work. And then we put them to use in training other communities.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Scott.

That concludes our hearing. Mr. Horowitz, Ms. Leary, Mr. Justus, thank you for your testimony today. And the Subcommittee stands adjourned.

[Whereupon, at 5:42 p.m., the Subcommittee was adjourned.]

# A P P E N D I X

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## MATERIAL SUBMITTED FOR THE HEARING RECORD



**U. S. Department of Justice**  
Drug Enforcement Administration

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Washington, D.C. 20537

JUN 04 2001

JA

Honorable Lamar S. Smith  
Chairman, Subcommittee on Crime  
Room 207, Cannon House Office Building  
Washington, D.C. 20515

Dear Chairman Smith:

Thank you for the opportunity to testify before the Subcommittee on Crime on the Reauthorization of the Drug Enforcement Administration on May 3, 2001. Enclosed are the responses to your follow up questions for the hearing record and the edited transcript.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Donnie R. Marshall".

Donnie R. Marshall  
Administrator

Enclosure

## Post Hearing Questions

**Question 1. DEA has placed an emphasis on its intelligence operations employing over 700 analysts and funding the El Paso Intelligence Center (EPIC). What role does the intelligence analyst play in the war on drugs and what can be done to improve DEA operations?**

Intelligence is an essential element in drug law enforcement. In addition to being the lead federal agency for drug investigations, DEA is also the lead federal agency responsible for the collection, analysis and dissemination of drug law enforcement intelligence. Intelligence Research Specialists are assigned to the intelligence function throughout DEA—in domestic field divisions, foreign offices, at the El Paso Intelligence Center (EPIC) and at headquarters in Virginia. They also work alongside state and local law enforcement in High Intensity Drug Trafficking Area (HIDTA) offices nationwide.

Intelligence Research Specialists play a variety of critical roles in U.S. counter-narcotics operations. Intelligence Research Specialists perform telephone analysis relating to electronic intercepts from pen registers and Title III wiretaps, provide document exploitation analysis in support of investigations led by DEA Special Agents, and participate in debriefings of confidential sources and cooperating defendants. Intelligence Research Specialists also assist in the identification and analysis of high-level drug trafficking organizations and their methods of operation. Indeed, Intelligence Research Specialist support was instrumental to the success of a number of recent DEA operations, including Operation Millennium, Operation New Generation, Operation Impunity, and Operation Reciprocity.

**Question 1. Part b. Should the National Drug Information Center be relocated within DOJ so as to fall under the DEA?**

Though the DEA is heavily involved in the National Drug Information Center, questions regarding its relocation would be better answered by our parent agency, the Department of Justice.

**Question 2. Over the last several years we have seen that increased cooperation between law enforcement agencies has been responsible for a number of large seizures of drugs in the United States. Does the DEA plan to continue or expand its involvement in multi-agency investigations?**

The changing nature of the drug trade has necessitated an inter-agency approach to these new challenges. Just as the drug trafficking organizations have become more sophisticated and complex, DEA cooperative efforts such as state and local task forces, Organized Crime Drug Enforcement Task Forces (OCDETF), HIDTA, and specialized drug training have proved to be an effective answer.

DEA believes that this cooperation has improved and is continuing to improve the quality of investigations among federal law enforcement agencies. This opinion is shared by other agencies in the Intelligence Community. The 1998 *Review of the U.S. Counterdrug Intelligence Architecture* states that information sharing has improved in the last five years, according to hundreds of federal, state, and local officials interviewed.

DEA is engaged in a number of programs in which inter-agency cooperation is critical. The following programs are examples of the benefits of this cooperation.

Special Operations Division: The Special Operations Division (SOD) is a joint national coordinating and support entity comprised of agents, analysts, and prosecutors from the Department of Justice, Customs, FBI, and DEA. SOD performs seamlessly across both investigative agency and district jurisdictional boundaries, providing field offices with sanitized, actionable "tips and leads" for investigative action. Within SOD, no distinction is made among the participating investigative agencies. Where appropriate, state and local authorities are fully integrated into SOD-coordinated operations. Without question, SOD is one of the most effective and innovative developments in U.S. drug enforcement.

Linkage and Linear: For several years, DEA and the CIA have jointly chaired the Linkage and Linear programs, both of which are comprised of over a dozen federal agencies from the law enforcement and intelligence communities. Linkage concentrates primarily on heroin trafficking in southeast and southwest Asia, while Linear targets organizations that traffic cocaine and heroin in the Western Hemisphere. Both Linear and Linkage hold regional meetings, bringing together senior and working-level experts throughout the intelligence and law enforcement communities. This cross-fertilization of these two programs has contributed markedly to their success in promoting cooperation.

Interagency Exchange Programs: DEA has made excellent progress toward bridging the gaps that separate many federal agencies. DEA has exchanged personnel with other federal agencies at the supervisory and SES levels in order to improve agency cooperation, break down cultural barriers, and carry lessons back to their respective agencies. These exchanges have taken place in field offices and at headquarters. The FBI and DEA have exchanged personnel in select foreign offices to improve information sharing and pass time-critical leads between foreign and domestic field offices.

Counterdrug Intelligence Executive Secretariat (CDX): Perhaps one of the most significant developments in counternarcotics is a reformed drug intelligence architecture. DEA holds leadership roles in the new Counterdrug Intelligence Executive Secretariat (CDX) and the Counterdrug Intelligence Coordinating Group. These newly formed groups will greatly facilitate the smooth, timely, and efficient sharing of inter-agency drug-related intelligence across federal, state, and local agencies.

**Question 3. Wiretapping has been one of the most effective tools for the DEA in the war on drugs. With communications technologies constantly advancing, what problems are law enforcement agencies facing today that they did not have to confront five years ago?**

Drug trafficking organizations have used their wealth to obtain and exploit technologically advanced communications equipment and computer technology. Their sophisticated drug operations, including production, transportation, and distribution networks, are directly dependent on communications.

To respond to this threat and safeguard the American people from drugs and drug-related violence, DEA must have the resources to penetrate the communications infrastructure of these organizations at the regional, national and international levels. Law enforcement faces numerous investigative hurdles associated with new communications technologies. These challenges include the expansion of prepaid or debit cellular telephones; use of encryption technology and techniques; roaming capabilities of cellular phones; use of calling cards and two-way pagers; satellite communications; and increased use of Internet communications, all of which enhance the anonymity of the violator.

DEA continues to work closely with the communications industry to develop new approaches to keep pace with ever-changing wireless and telecommunications technologies. Among the issues under discussion with the telecommunications industry are standardization of costs associated with electronic evidence collection, the delivery of communications data to law enforcement, as required by the Comprehensive Assistance to Law Enforcement Act, and other technical issues that arise in criminal investigations. Finally, it should be noted that DEA's ability to recruit and retain technically qualified personnel will be a challenge in future years.

**Question 4. What steps has DEA taken in the area of demand reduction and how successful have your efforts been?**

Since its creation in 1973, DEA has engaged in a range of demand reduction activities. In 1986, DEA created the Demand Reduction Section to stimulate, support and coordinate DEA's prevention activities throughout the nation.

The DEA headquarters Demand Reduction Program staff oversees the development of national prevention and public awareness strategies and directs field division prevention activities and initiatives. In each of DEA's 22 field divisions and in other operational units throughout the country, Demand Reduction Coordinators (DRCs) implement regional demand reduction strategies and programs. DRCs, who are primarily Special Agents, possess a unique perspective on the current drug situation in America, making them well positioned to address issues of drug prevention and education.

DEA's Demand Reduction Program is unique among Federal agencies in that DEA provides communities and organizations not with funding but with people: DEA employees with knowledge, experience, commitment and credibility. In fiscal year (FY) 2001, DEA is devoting \$1 million and 34 full-time equivalent positions (eight at headquarters and 26 in the field divisions) to demand reduction, much of which is directed at youth or adults who are involved with youth, such as parents, teachers, school

nurses or counselors, leaders of youth-serving organizations, and employers. In addition, in all our field divisions, other DEA employees, including Special Agents in Charge and other managers assigned to enforcement groups, participate in demand reduction programs and activities of all kinds.

In FY 2000, DEA field division personnel spent almost 27,000 work hours engaged in nearly 3,300 demand reduction activities, including conducting presentations, training sessions, or events and serving on advisory committees or boards. These activities reached over 10 million people. DEA also distributed approximately 1.5 million publications and 17,000 videos, and produced another 3,000 media products of various types (billboards, bus signs, public-service announcements and advertisements, etc.).

**Question 5. There are three major program increases in the DEA's proposed budget. How do these programs rank on the DEA's priority list of projects?**

The three increases included in the President's Budget are among DEA's highest priorities for funding this year. Of course, there were other things that DEA requested that did not find their way into the President's Budget, but that is always the case.

**Question 6, Part A. There is \$30 million dollars requested for the Firebird computer network in the DEA budget. Will this appropriation allow for complete deployment of Firebird throughout the entire Drug Enforcement Administration?**

Yes, this appropriation will allow deployment to both domestic and foreign offices.

**Question 6, Part B. When will complete deployment be accomplished?**

Full deployment to include DEA foreign offices should be accomplished by October 30, 2002.

**Question 6, Part C. Of the money requested for Firebird, how much will be used for technology upgrade and will this remain a consistent figure in the coming years?**

The breakdown for this appropriation request is provided below:

- \$25.6 million will be used for technology renewal to replace outdated technology.
- \$2.5 million will be used to complete deployment of Firebird throughout DEA.
- \$1.9 million will be used for the design and implementation of intrusion detection systems for the DEA's network.

A total of \$25.6 million will be added to DEA's existing \$10 million technology review base for a revised base of \$35.6 million. The \$35.6 million will remain a consistent technology renewal base to sustain Firebird in the coming years.

**Question 6, Part D. Upon complete deployment, will DEA field agents be fully capable of communicating with prosecutions both at DOJ and in the U.S. Attorney Offices to facilitate transfer of draft search warrants, etc.**

No. At the present time, FIREBIRD is a closed system (DEA only) due to security issues. The \$1.9 million identified above for the design and implementation of intrusion detection systems is the first step DEA must take before opening its system to communications with other Department of Justice components.

**Question 7. There is \$13 million requested for Laboratory Operations with part of the money to be used to alleviate a growing backlog of exhibits. What is the current backlog of exhibits at DEA labs and how will this money be used to alleviate that backlog?**

The current backlog of exhibits is 9,788. However, it was necessary to utilize 14,000 hours of overtime in FY 2000 to analyze an additional 5,600 exhibits. Current projections are that the backlog will reach 16,000 exhibits by the end of FY 2001.

Of the \$13 million requested, \$8.9 million will be used to hire 46 chemists, 22 laboratory support technicians, and 1 administrative position. A total of \$4.1 million will be used to replace aging equipment. Approximately 15 percent of DEA's laboratory equipment is over 10 years old, is frequently inoperable (contributing to the backlog), and requires expensive repairs. Some of the older equipment can no longer be serviced and must be replaced.

**Question 8. Currently, when an exhibit is submitted to a DEA lab for examination, what is the average processing time to certify what type of drug was seized in an arrest? Will this budget reduce that processing time? How?**

The average turn-around time is currently 48 days per exhibit. The expectation is that this budget will reduce the average turn-around time to two weeks. The increases will raise the ratio from 18 Special Agents to one Chemist to 15 Special Agents to one Chemist. The purchase of new, automated analytical equipment to conduct analyses may reduce the processing time per exhibit.

**Question 9, Part A. The Special Operations Division has been responsible for a number of high profile drug investigations. How will the \$15 million requested increase for that division be used to enhance its effectiveness?**

Additional resources will allow SOD to vigorously pursue the increasing drug threat from drug trafficking organizations that transport drugs into the United States. DEA will dedicate additional personnel to SOD, which will coordinate and provide technical assistance to multi-jurisdictional Title III investigations at the regional, national and international level.

The additional personnel will provide technical assistance and analysis of sensitive information derived from classified and unclassified sources, which will be disseminated to field personnel. In addition, this funding will be used for contract linguists, operational expenses, travel and case-related expenses incurred in support of Title III and multi-jurisdictional operations directed against the highest level violators. This additional funding will also enhance DEA's technology, training, legal and Internet capabilities to meet expanding mission requirements.

**Question 9, Part B. What portion of the money requested for the increase in the Special Operations Division will be used to contract out for linguists to interpret wiretaps and why is this necessary?**

DEA has requested an additional \$6,427,819 to support its contract linguist program. Since 1991, the number of Title III intercepts conducted by DEA has increased at a steady rate; the number of languages encountered during DEA investigations has also increased. For example, DEA's linguist requirements frequently include Albanian, Arabic, Chinese dialects, Farsi, Haitian Creole, Hebrew, Jamaican patois, Korean, Lao, Portuguese, Punjabi, Russian, Serbo-Croatian, Spanish, Thai, Urdu, Vietnamese, and West African tribal languages.

DEA relies heavily on the use of contract linguists to interpret and translate operational and strategic intelligence obtained through SOD-supported Title III investigations. The information and intelligence that can be gleaned from Title III information is vital to expanding the scope of investigations that target the command and control structures of major drug trafficking organizations, as well as their transportation and distribution networks and financial operations.

Unfortunately, most of the targets of these investigations do not speak English, and therefore require the use of cleared contract linguists capable of speaking and understanding a multitude of languages. These linguists provide real-time translation of intelligence and information to the investigator. Immediate English translation is essential to develop an investigation by providing real-time investigative leads which expand the investigator's understanding of the overall criminal activity.

**Question 10: In the 105th Congress, the Omnibus Appropriations Bill included a provision offered by former Representative Joseph McDade that requires federal prosecutors to follow state bar rules and be subject to state bar disciplines in each State where the attorney engages in the attorney's duties. Please describe and provide some examples of the impact that McDade legislation has had on DEA operations.**

The problems created for Federal law enforcement by the McDade Amendment are highlighted by the events following the recent decision in *In re Gatti*, 330 Or. 517 (Or. Supr. 2000). The Oregon Supreme Court ruled that Oregon bar rules precluded attorneys from participating in any activity which involves deceit or misrepresentation. *Gatti* has been interpreted as applying to undercover investigations. The Court

specifically refused to recognize any form of exception for prosecutors. As a result of this decision, on September 13, 2000, the United States Attorney for Oregon advised DEA that they would no longer approve or authorize any undercover operations or consensual monitoring. Consequently, DEA's Oregon offices were forced to suspend the initiation of new undercover and consensual monitoring activities. All pending authorizations for Title III operations (wiretaps) have been indefinitely delayed.

McDade's application of state ethical rules to traditional federal prosecutor functions has resulted in a significant retreat on investigations which would routinely be pursued by DEA throughout the country. It has affected DEA's operations in every sector of the country. At the very least, when the McDade Amendment is an issue, DEA's activities are unreasonably delayed, often resulting in abandonment of otherwise appropriate investigations. In other cases, DEA has been directed not to investigate. For example, in Yakima, Washington in July, 1999, DEA received information from a confidential source (CS) that a defendant, who had been arraigned on federal drug charges and released on bond, was continuing to traffic in cocaine through the defendant's association with unknown third parties. The local task force began an investigation into the defendant's post-arraignment/post-bond activities and requested DEA's assistance in conducting an undercover purchase of cocaine from the defendant.

Upon consultation, the USAO refused to authorize DEA's participation in the investigation because of its concern that such an authorization would violate the McDade Amendment. We believe that decision was based upon an erroneous conclusion that the defendant's post-arraignment activities would be considered a continuation of activity encompassed by the pending indictment rather than new criminal conduct. As a result, DEA was prevented from participating in the investigation of the defendant's new criminal conduct and the criminal conduct of unknown third parties.



**U.S. Department of Justice**  
United States Marshals Service  
*Office of the Director*

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*Arlington, Virginia 22202-4210*

May 25, 2001

The Honorable Lamar S. Smith  
Chairman, Subcommittee on Crime  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

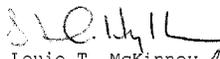
Dear Mr. Chairman:

This responds to your letter regarding post-hearing questions from the Oversight Hearing on the Reauthorization for the Department of Justice held on May 3, 2001.

Thank you for giving me the opportunity to discuss our budget request before the Subcommittee. We appreciate your support of the men and women of the United States Marshals Service.

I believe the enclosed responses will answer fully your questions. If you require further information, please contact me through the Office of Congressional Affairs at (202) 307-9220.

Sincerely,

  
Louie T. McKinney  
Acting Director

Enclosure

cc: The Honorable Bobby Scott  
U.S. House of Representatives

*An Accredited Law Enforcement Agency*

QUESTIONS FOR THE RECORD  
U.S. MARSHALS SERVICE  
OVERSIGHT HEARING ON THE U.S. DEPARTMENT OF JUSTICE

1. The Administration's budget states that the USMS is in the process of restructuring its work force into three categories: Criminal Investigators, Deputy U.S. Marshals, and Detention Enforcement Personnel.
  - a. why is this reorganization necessary?
  - b. will this achieve any cost savings through this reorganization?
  - c. upon what do you base this conclusion?
  - d. will training personnel in the new category of criminal investigators have less or different training than Deputy U.S. Marshals?

In discussions with management at Department of Justice (DOJ) and the Office of Management and Budget (OMB), the U.S. Marshals Service (USMS) determined that GS-1811 criminal investigators could no longer make up the majority of operational employees within the USMS.

In January 2000, after consultation with the Justice Management Division Budget Staff and OMB, it was decided that the USMS would modify its Fiscal Year (FY) 2001 President's Budget by requesting nothing but deputy marshals (GS-082) and detention enforcement officers (GS-1802) so that the USMS could begin to stratify its operational workforce. As criminal investigators left the agency, they would be backfilled with deputy marshals (GS-082) and detention enforcement officers (GS-1802). This is a more affordable hiring option for the USMS since neither deputy marshals nor detention enforcement officers earn Law Enforcement Availability Pay (LEAP). Deputy Marshals (GS-082) may advance to the GS-11 while Criminal Investigators (GS-1811's) may advance to the GS-12.

We have worked to put together an extensive and tailored training program for new recruits in each of our three categories of law enforcement positions. New Detention Enforcement Officers and Deputy United States Marshals receive an initial seven weeks of firearms, tactics, driving, legal, prisoner handling and prisoner transport in an integrated program taught by a combination of Federal Law Enforcement Training Center (FLETC) and USMS instructional personnel.

Deputy United States Marshal recruits then go on to receive an additional three weeks of intensive court security and protective service training taught by USMS Academy staff.

Though we do not have plans to hire new criminal investigative personnel in the foreseeable future, there is a customized 16 week training program for them which covers all of the material included in our 10 week program discussed above as well as participation in the criminal investigator training program taught by FLETC and USMS personnel. This program focuses on in-depth legal principles, evidence, surveillance, search and seizure, investigative techniques and interviewing.

2. The Deputy U.S. Marshals who serve on the Special Operations Group are drawn from across the country when the need arises. Wouldn't it be more efficient to have a permanent group of persons dedicated to these types of operations, who can train regularly and be deployed rapidly, such as the FBI's Hostage Rescue Team?

In prior years, the DOJ and OMB considered creating a permanent Special Operations Group (SOG). However, it was not deemed to be a priority or an effective use of resources at that time. The USMS may revisit this consideration in the future and work with the Department and OMB to determine if it is feasible to create a permanent SOG force.

3. Special Operations Group deputies were used at the Republican Convention in Philadelphia, at the World Bank demonstrations here in Washington, D.C., and in Puerto Rico during the recent demonstrations against the Navy's bombing there. Why are these personnel assigned to provide security for the execution of Timothy McVeigh on May 16? How many will participate and what will they do?

The USMS had planned to use approximately 30 deputy marshals for the May 16, 2001, execution of Timothy McVeigh. Twenty-four deputies were slated to work with 24 Bureau of Prison Correctional officers at the United States Penitentiary (USP), Terre Haute, Indiana, to control any possible disturbances with both anti- and pro-death penalty protesters. SOG was not slated to go to USP, Terre Haute, because the BOP has their own civil disturbance units and also had the services of the Indiana State Police tactical units and the FBI. The BOP civil disturbance units would respond to any requests from the 48 correctional officers and deputy marshals.

4. The USMS has requested \$3,625,000 and 52 additional positions to handle the workload generated by the opening of new Federal courthouses. How many new facilities are being opened this year?

The 52 positions requested will be used to staff courthouses scheduled for opening in 2002 or the latter half of 2001 in:

Helena, Montana  
Albuquerque, New Mexico  
Brooklyn, New York  
Denver, Colorado  
Washington, D.C.  
Providence, Rhode Island

5. USMS has requested an additional \$3,458,000 in funding to meet the anticipated costs of prisoner transportation due to the projected 11% increase in the Federal prisoner population.
- a. Do these funds simply represent the cost of increased use of the current air and ground assets?
  - b. Are there plan[s] to purchase additional assets in the near future?
  - c. What assets are planned for purchase and why?

These funds represent the additional expense associated with an increase in the number of air movements projected for FY 2002.

Assets purchased for JPATS are not purchased through the USMS Salaries and Expenses Appropriation. They are purchased through the JPATS Revolving Fund. In FY 2001, Congress appropriated \$13,500,000 in the JPATS Revolving Fund for the purchase of two Sabre-class aircraft to replace current aging small aircraft that are over 25 years old.

On May 3, 2001, FBI Deputy Director Thomas J. Pickard testified before the House Judiciary's Subcommittee on Crime with regard to the FBI's authorization. The post-hearing questions and answers are attached.

#### Post-Hearing Questions

1. **The Administration has requested \$28 million in new funding and 33 new positions for the FBI to support its cyber-crime initiative. Why is such a large increase needed?**

The challenge that computer-related crime presents to federal law enforcement in the 21st century is growing and, unlike other types of crime, is not confined to either state or national boundaries. The community, at all levels, is struggling to keep up with both advances in technology and burgeoning caseloads which have not only increased in number, but which have become more complex as computers and networks are encountered in virtually every investigative area. We are literally in a race with technology. Its impact will accelerate as industry continues to move toward greater storage capacities, increased bandwidth, increased mobility, and increased security through strong encryption. As a law enforcement community, we are entering the 21st Century in a position of great strength as a result of our history of strong cooperation and exceptional preparation. At the same time, we will continue to face many new challenges as computers and computer networks continue to change.

As an example of the prevalence of computer-related crime, the Internet Fraud Complaint Center (IFCC), a partnership between the FBI and the National White Collar Crime Center opened in May 2000 to address fraud the problem of fraud committed over the Internet. The IFCC received 30,503 valid criminal complaints in its first year of operation. Also, a recent study found that nearly one out of five young people who use the Internet regularly are exposed to unwanted sexual solicitations or approaches. The National Innocent Images initiative has resulted in more than 600 arrests since its development by the FBI in Baltimore in 1995. In April 2001, the National Infrastructure Protection Center reported a total of 1,219 pending cases involving computer intrusions.

To successfully meet this challenge, the FBI must focus on a pro-active approach based on a knowledgeable, well-trained investigative staff. Also, critical to our success in this area is our ability to equip high tech investigators with the advanced tools needed to investigate and prosecute high tech crime. Because the cybercriminal can transcend law enforcement jurisdictions, the FBI must prepare itself to be able to track, investigate, and apprehend the cybercriminal across the country and throughout the world. To deal promptly with cybercrime, the FBI must build on the progress it has already made in a number of key areas: 1) investigative management, 2) training, 3) technology.

The FBI continues to be committed to the development and sharing to technical tools to support high-tech crime investigators at all levels. The request of 33 positions and \$28,144,000 for the following items is intended to address immediate technology challenges in the area of technology area of electronic surveillance and encryption and allow to FBI to build upon the progress it has made to date:

<b>Item</b>	<b>Positions</b>	<b>Agent</b>	<b>FTE</b>	<b>Amount (\$000)</b>
Technical Support to Field Offices	10	4	5	\$1,358
Network Data Interception	7	2	4	\$7,664
Counter Encryption (CE) - Lab/Field Deployment/Electronic Device Analysis Personnel/Equipment	13	0	6	\$8,202
Casa De Web	3	0	2	\$10,920
<b>Total</b>	<b>33</b>	<b>6</b>	<b>17</b>	<b>\$28,144</b>

Technical Support to Field Offices - Over the past seven years technical support to field offices has been critical to the success of many high profile operations. However, the rapid evolution of technology has continued to provide the criminal element with capabilities that will preclude law enforcement generally and the FBI specifically from employing traditional electronic surveillance approaches. The emergence of digital technology driving communications and computer technology, the proliferation of radio frequency communication/data links as well as the implementation of encryption techniques require more point-source interception methods. Encryption is being applied to the operation of new security systems which must be defeated in order to perform surreptitious entries. Second, encryption itself will stimulate an increase in the number of requests for assistance from other agencies such as the National Security Agency, the Drug Enforcement Administration and the United States Customs Service.

Considering the dramatic rise in the number and impact of technology related/assisted crimes as well as the constant urge for increased security within the cyber community, these investigative scenarios will only increase in number and will require the law enforcement community to respond with innovative solutions. The capabilities provided by the FBI continue to be a valuable and viable solution. However, the advance of technology within the security industry parallels the rapid progress of technology within the communication and computer industries. This requires a constant strive for increased capabilities to address not only present day security equipment and methods, but also emerging technologies such as encryption. Such emerging technologies, if left unaddressed, will inevitably eliminate the viability of this court ordered investigative tool.

Network Data Interception - The ultimate objective is to provide field investigators with an integrated suite of automated data collection systems, operating in a low-cost and readily simple personal computer environment, which will be capable of identifying, lawfully intercepting and collecting data of investigative interest from a broad spectrum of data telecommunications transmissions mediums and networks. These substantial resource enhancements are required to progress development from current ad hoc, tactical data intercept systems to integrated modular systems, providing the field investigators with increased flexibility, simplicity and reliability and to ensure the privacy of communications not authorized for interception or disclosure, and to enhance training programs to enable field Technically Trained Agents and Investigators to install

and operate this complex equipment. Without enhanced nonpersonnel funding, the FBI will be unable to increase its capability for intercepting and processing computer data. As a result, valuable evidence to solve crimes and support the prosecution of child pornographers, drug traffickers, hackers, terrorist and other criminals will be unavailable for law enforcement.

Counter Encryption - Electronic and signal analysis capabilities are essential to the successful collection and analysis of intercepted and seized data. The FBI develops, deploys, and supports equipment to process intercepted signals to limit the quantity of information intercepted (pursuant to legal guidelines) and as an aid in monitoring, minimization, and presentation of intercepted data. Also, the FBI examines and reverse-engineers computer equipment, software, and peripherals to determine their operational characteristics to aid in the data collection process. Further, as the frequency of encounters with encryption increase, it is essential that the FBI be capable of utilizing techniques to defeat, as lawfully authorized, encryption products.

Encryption products provide robust security to conventional and cellular telephone conversations, facsimile transmissions, local and wide area networks, communications transmitted over the Internet, personal computers, wireless communications systems, electronically stored information, remote keyless entry systems, advanced messaging systems, and radio frequency communication systems. The FBI depends upon plaintext access from each of these systems to successfully collect evidence and has experienced an increase in requests for assistance to perform electronic and signal analysis to defeat encryption products. The FBI develops techniques to perform password guessing and also exploits implementation vulnerabilities of encryption products to gain access to the plaintext. These function require complex and exhaustive software and hardware analysis. The successful application of one or more of these tools to produce evidence in court is essential to the satisfactory resolution of virtually every "cyber-crime" investigation.

Casa de Web - A goal of the FBI is to have an effective intelligence sharing program. Currently, a capability does not exist that allows for automated information sharing of collected electronic surveillance intelligence or evidentiary material. Casa De Web will provide an interface between the FBI's electronic surveillance (ELSUR) central monitoring plant (CMP) in each field office and users connected to the field office's FBI local area network (LAN). Field offices will be connected to each other and with FBI Headquarters through the FBI's wide area network (WAN) as a part of the TRILOGY initiative to provide full enterprise-wide access to ELSUR collected by any field office. The objective of TRILOGY is to upgrade the FBI's infrastructure in a systematic approach and to provide to the end-user easy-to-use enterprise applications, integrated office productivity applications, and analytical tools over a network that can be incrementally scaled to support the secure intra-office and inter-office transfer of FBI information. The Casa De Web project and TRILOGY will work together so that TRILOGY users with the proper privileges can easily access case-related ELSUR data.

Casa De Web will archive audio, data, and reports produced by the CMP collection systems. It provides access to investigative information through an intranet to investigative agents, transcribers, and translators. It allows users who collect ELSUR in remote areas to receive automated language translation and transcription services if it is not available in that area.

It will automate the capability to prepare reports and to locally conduct investigative analysis. It will provide users with analytical tools for automated speaker identification, text key word spotting, voice key word spotting, and speaker identification.

**2. The Administration has requested \$31 million in new funding for the FBI for new program spending and 182 positions for its counterintelligence activities.**

**a. Why is such a large increase needed?**

Foreign nations and their intelligence services continue to attempt to gain access to sensitive US information through the recruitment of clandestine agents within targeted organizations or industries or through direct human and technical acquisition. These nations further attempt to influence the development of US policy through overt and covert means. Rapidly expanding technological capabilities have provided new means for foreign intelligence services to target, collect, and disseminate sensitive information from US Government and private sector entities.

The significance of these threats are illustrated by the recent arrest of former Supervisory Special Agent Robert P. Hanssen for allegedly committing espionage on behalf of Russia. This arrest also indicates that our adversaries will continue to strive to impede investigative operations, obtain sensitive information, and take illegal advantage of any opportunity presented to them through contact with the FBI, as well as other Federal agencies.

The program increase requested in the FBI's FY 2002 Congressional Budget Request in support of its counterintelligence activities would enable the FBI's field and headquarters managers to receive the resources necessary to effectively carry out our mandated counterintelligence responsibilities, as set forth in Executive Order 12333. Specifically, these program increases would enhance the FBI's collective capacity to:

- engage in investigative activities to identify, prevent, and defeat intelligence operations by any foreign power within the United States or against any US interests abroad that pose a threat to US national security;
- provide national (headquarters) coordination and oversight to efforts of the FBI's 56 field offices to identify and neutralize the threat posed by foreign intelligence collection activities;
- collect information in support of ongoing counterintelligence investigations and operations; and
- ensure the trustworthiness of FBI personnel, contractors, and information systems as well as ensuring the security of FBI facilities.

**b. What is the planned breakdown of the 182 positions?**

The distribution of the 182 positions requested among the four capacities touched upon above is as follows:

- engage in investigative activities to identify, prevent, and defeat intelligence operations by any foreign power within the United States or against any US interests abroad that pose a threat to US national security (**75 positions**);
  - provide national (headquarters) coordination and oversight to efforts of the FBI's 56 field offices to identify and neutralize the threat posed by foreign intelligence collection activities (**21 positions**);
  - collect information in support of ongoing counterintelligence investigations and operations (**58 positions**); and
  - ensure the trustworthiness of FBI personnel, contractors, and information systems as well as ensuring the security of FBI facilities (**28 positions**).
3. **The Administration has requested \$74.16 million for the second year of the FBI's 3-year information technology upgrade plan known as Trilogy. What is the status of this program?**

The Trilogy program has finished the procurement phase and winning contractors have been identified. One award has been made with the second award to be made within one week. This project is currently on schedule and is projected to remain within budget. It remains critical to the FBI to get the basic technology building blocks in place to support our mission.

4. **Please describe what the FBI's Violent Crime Program does and provide some examples of its accomplishments.**

The mission of the Violent Crimes and Major Offenders Program (VCMOP) is to reduce the incidence and impact of crimes of violence and of crimes against property that affect individuals, organizations, and communities. Consistent with the FBI's Strategic Plan, the VCMOP mission involves the proactive identification, disruption and dismantlement of criminal enterprises, as well as the swift, efficient and measured response to serious violent criminal acts which implicate core FBI jurisdiction, responsibilities and competencies.

The crime problems impacting the VCMOP are myriad and diverse, as they include a host of criminal violations and threats which impact individuals, organizations and property. This discussion of crime problems is best considered within the context of the FBI's organization of the VCMOP's primary areas of investigative responsibility. These areas are managed through subprograms, generally administered according to crime problem groupings comprised of: Violent Gangs (VG), Major Theft (MT), Violent Incident Crimes (VIC), Crimes Against Children (CAC), Indian Country (IC), Fugitives (FU), Special Jurisdiction (SJ), and Transportation Crime (TC).

Unlike other types of crime, violent criminal activity often requires an immediate response by the FBI, especially in the more traditional aspects of this program - bank robberies, extortions, kidnappings, Assaults on Federal Officers (AFOs), violent fugitives, and other acts of violence to persons and property. As such, the VCMOP strategy reflects a proactive posture that seeks to identify and neutralize emerging national crime trends while at the same time maintaining a strong reactive capacity to provide a timely, measured enforcement response to violent crimes that fall within the FBI's investigative responsibilities. The FBI's anti-violence strategies and contemporaneous application of resources involve task forces, joint investigations and close coordination/liaison with other federal, state and local law enforcement agencies. This approach has been very effective and must be sustained in order to ensure continued reductions in crime rates. The VCMOP will achieve greater efficiency through a measured response to reactive matters, refinement of task force operations, and more specific, proactive targeting of violent criminal enterprises.

The following crime problems reflect violations within the primary or exclusive investigative responsibility of the FBI and/or where the FBI shares concurrent jurisdiction with other federal or state law enforcement:

**- VIOLENT GANGS:**

Violent multi-jurisdictional gangs continue to present a serious crime problem across the United States. The emerging gangs are comprised of older, more experienced and sophisticated criminals that have formed networks with counterparts across the nation and internationally. These gangs continue to use violence and their criminal activities have become more sophisticated. They continue to target and victimize the communities wherein they operate as well as specific business sectors. As a result of targeted expansion and migration, the resources within their disposal, and the extent to which their criminal activity is multi-jurisdictional, gangs are as pandemic and threatening as at any time in American history and continue to present significant challenges to law enforcement.

The National Alliance of Gang Investigators Association (NAGIA) authored the February 2000, National Gang Threat Assessment report which highlighted several points concerning this issue. The NAGIA Threat Assessment estimates that the current national gang population has increased to over 30,000 gangs with over 800,000 members. Despite the fact the overall violent crime rate has dropped nationwide, NAGIA reported that many smaller communities have experienced increases, sometime double-digit increases, due to gang violence. NAGIA further reported that most large cities are impacted by moderate to significant levels of gang activity. These gangs have disrupted neighborhoods and infiltrated businesses, the military, and prisons. Gangs have spread throughout the nation through proliferation and migration, and many of the communities that have an identified gang problem have populations of under 25,000. Gang groups are active in federal and state prisons, and have infiltrated Indian Country. The gangs engage in a myriad of criminal activities including drugs, assaults, murder, robbery, theft, extortion and intimidation. Drug distribution and related violent activity is the most prevalent criminal activity involving gangs. In some communities, the larger, multi-jurisdictional gangs have formed associations with other organized crime and international drug enterprises, and cooperate

in or enforce their actions. Witness intimidation and related harassment by gangs has dramatically hindered gang prosecutions.

**- MAJOR THEFT ENTERPRISES:**

United States residents and corporations, preyed upon by criminal enterprises of increasing internationality, sophistication and violence, annually suffer billions of dollars in property and vehicle theft losses. In addition to occasioning higher consumer and insurance costs, these enterprises often violently target individuals engaged in important interstate commerce, as well as fund/facilitate collateral crime with stolen property. Moreover, the wholesale transportation of stolen U.S. products and vehicles abroad, with orders for stolen goods sometimes placed from outside the U.S., constitutes an affront to our economy and national integrity. Annually reported economic losses from these crimes, as established by government, business and insurance estimates, reaches \$7.5 billion for vehicle theft and \$12 billion for cargo theft. The heaviest and most concentrated losses are in those areas with port and cargo transfer/storage facilities.

The MT subprogram strategy focuses on the selective-targeting and proactive dismantlement of interstate/international MT racketeering enterprises. Serious property crime in the U.S. is systemic and encompasses: 1) Cargo/High Technology Theft; 2) National and International Vehicle Theft; and 3) Organized Theft Matters.

**Cargo/High Technology Theft:** Approximately 20% of cargo thefts involve violence, namely armed robbery, assault and murder. These crimes, of various character (e.g., high-tech robberies, diversion fraud, hijackings, etc.), are primarily committed by sophisticated criminal enterprises with strong connections to Central and South America, Eastern Europe and Asia. Extremely well-organized criminal enterprises with memberships often drawn along ethnic lines (i.e. Asian, Eastern European, Middle Eastern, El Salvadoran and Mexican-based groups) are active in the United States. These enterprises, which sometimes employ violent street gangs, have established complex and multi-jurisdictional theft, fencing and distribution mechanisms, and are sometimes involved in narcotics trafficking, money laundering and other property crimes.

**National and International Vehicle Theft:** The theft of motor vehicles is one of the most complex, costly and widespread problems confronting law enforcement and the American public. Despite decreases in the national vehicle theft rate over the past several years, the monetary value of vehicles stolen in the U.S. has remained fairly constant. Since 1996, fewer stolen vehicles have been recovered by law enforcement (68% in 1996 compared to only 65% in 1998). The National Insurance Crime Bureau (NICB) estimates that almost a quarter of a million stolen U.S. vehicles are illegally exported each year. In 1998, stolen U.S. vehicles from 41 states were located in 58 foreign countries.

**Organized Theft Matters:** Other areas within the MT Program have recently been the focus of congressional, industry and media attention. During the past year the FBI has received letters from members of Congress concerned about jewelry and gem (JAG) thefts, annually resulting in homicides as well as monetary losses of approximately \$150 million. Art theft and the

theft of articles of cultural heritage is a growing problem domestically and internationally, costing American society approximately \$500 million annually. Due to the notoriety of many of the stolen items, they must be transported to other countries to be sold. Moreover, the U.S. has become a major consumer for art and cultural artifacts stolen in other countries.

#### **- VIOLENT INCIDENT CRIMES:**

Crime Surveys conducted by Field Offices consistently identify violent crime as the most significant and persistent fears of American residents. The harmful impact of violent crime on individual victims and society collectively is psychologically and physically debilitating, and affects a wide range of political, social, and economic issues. Violent crime is generally perceived as singular and/or random acts that are primarily a problem dealt with on the state and local level. However, violent acts assume a larger and more ominous character when viewed within the framework of identified patterns and/or common "environments". Although recent statistics have demonstrated a downward trend in violent crimes, experience shows that criminal activity can cycle in level and intensity based on changes in certain demographic patterns, the numbers of criminals released from the prison populations and recidivism, changes in prosecution and sentencing parameters, the economy, and other intangible factors.

The FBI remains committed to combating violent incident crimes falling within federal jurisdiction (bank robberies, extortions, kidnappings, AFO, etc.) nationwide. Bank robberies continue to be prevalent and the 1990s showed a 23% increase over the 1980s (80,015 versus 61,989). Additionally, the number of robberies involving serial subjects is increasing. During FY 1999, 2552 of the solved bank robbery investigations involved serial or repeat offenders.

In 1999, the FBI initiated 585 investigations regarding assaults against federal employees. In 2000, the FBI initiated 529 such investigations. Since 1994, the FBI has initiated 4,477 investigations that involved a federal officer being assaulted, threatened or killed. Federal officers were killed in 26 of those cases. Each reported incident is aggressively pursued and referred to the Department of Justice for prosecutive consideration.

Another area of violent crime requiring the priority attention of FBI resources involves Kidnapping investigations. During FY 1999, the FBI initiated 295 Kidnapping investigations. In FY 2000, the FBI initiated 264 Kidnapping investigations. Each Kidnapping places intense strain on both the victims and their family and friends.

Millions of households have access to the Internet. The development and proliferation of the Internet has had profound implications on the law enforcement community. Over the last few years, the number of incidents involving the Internet to facilitate violent crimes has steadily increased and become more sophisticated. The Internet has become a versatile mechanism for extortionists who transmit their demands to and from a variety of locations making it difficult for local law enforcement to address the problem, in a timely manner.

#### **- CRIMES AGAINST CHILDREN:**

The criminal victimization of children impacts not only the victims but also their families, community and society at large. Children, because of their legal and social vulnerabilities, may be

victimized in a variety of ways involving physical and sexual abuse. Many of the individuals who prey on children are not first time offenders, but rather serial offenders who target children as a matter of preference and who may have traveled interstate during the commission of multiple criminal offenses. Because of these vulnerabilities and the potential long-term harm caused by this victimization, society demands that children receive appropriate protection. A rapid and effective response to CAC incidents could literally mean life or death for a victim. Primary areas of the FBI's investigation of CAC involve the following:

**Kidnapping and non-family child abductions** - In FY 1998, the FBI opened 115 child abduction cases; in FY 1999, 134 cases were opened, and in FY 2000, 106 child abduction cases. Studies reveal that of those abducted children who are killed, 74% are killed within three hours of the abduction. Although only a fraction of abducted children are murdered, the obvious vulnerability of children in general terms dictates that missing children should be reported immediately and law enforcement should commit appropriate investigative resources as quickly as possible in those cases in which foul play is suspected.

**Parental Kidnappings - Domestic and International** - In FY 2000, the FBI initiated 138 domestic parental kidnapping investigations under the UFAP process and 125 investigations under Title 18 §1203, the International Parental Kidnapping statute which confers primary investigative responsibility upon the FBI. Although victims of parental kidnappings are often not viewed as being at risk, recent research suggests that children endure adverse consequences when they are kidnapped by a parent. In addition to emotional turmoil, children may suffer from inadequate schooling, poor nutrition, unstable lifestyles and neglect.

**Sexual Exploitation of Children** - Although a variety of individuals sexually victimize children, preferential sex offenders are the primary sexual exploiters of children. They are serial offenders who prey on children through the operation of child sex rings and/or the collection, creation, or distribution of child pornography. The long-term and persistent behavior patterns of preferential sex offenders will often involve interstate aspects thereby violating Federal laws.

The scope of child pornography/child sexual exploitation (CP/CSE) facilitated by the use of online computers is unknown. The Internet has dramatically increased the preferential sex offender's access to victims as well as individuals who can validate the offenders's sexual preferences. Between 1996 and 2000, there was a 1264% increase in the number of FBI investigations emanating from the online victimization of children or distribution of CP (from 113 to 1541).

Online CP/CSE is the most prominent CAC crime problem confronting the FBI. The FBI's response to the crime problem is the Innocent Images National Initiative (IINI), a pro-active on-line undercover operation (UCO) designed to prevent CP/CSE committed via the Internet and online services; to identify and rescue witting and unwitting child victims; to identify and prosecute child sexual offenders; and to create an on-line environment in which would-be offenders are deterred because of the possibility of communicating with UC law enforcement agents. It is anticipated that the number of cases opened and the resources required to address this crime problem will continue to rise during the next several years.

**- INDIAN COUNTRY:**

There are 556 federally recognized Indian tribes in the United States. It is estimated that there are currently 1.4 million people living on or near Indian reservations. This number may increase over the next several years, as there are currently 160 additional tribes seeking federal recognition, rights, and protection. The sovereign status of federally recognized Indian tribes precludes most states from having criminal jurisdiction in IC over Indian persons. Jurisdiction resides with the tribes themselves on a limited basis (generally crimes less than a felony) or with the federal government. Responsibility for investigating federal violations in IC under the Assimilative Crimes Act or the Major Crimes Act is statutorily mandated to the FBI or the BIA, Office of Law Enforcement Services (OLES). It has been the practice of the majority of USAOs with significant IC jurisdiction to identify the FBI as the primary investigative agency over those IC matters which will be prosecuted in Federal Court.

Fourteen FBI field offices have significant IC or Native American membership that has exclusive federal criminal jurisdiction: Minneapolis, Salt Lake City, Phoenix, Albuquerque, Oklahoma City, Seattle, Denver, Las Vegas, Milwaukee, Charlotte, Omaha, Detroit, Portland and Jackson. The priority of FBI work in IC generally focuses on reactive crimes involving: 1) homicide, 2) crimes against children, 3) felony assaults, 4) fraud against government, 5) drugs, 6) gaming violations, 7) civil rights, and 8) property crimes. There are an additional eighteen field offices which have some degree of investigative responsibility in IC.

**- FUGITIVES:**

The FBI is the primary federal law enforcement agency with statutory authority to investigate fugitive matters wherein the fugitive is wanted on state charges and has fled interstate. The FBI's policy and objective in investigating fugitive matters is "to effect the swift location and apprehension of fugitives, particularly those wanted in connection with crimes of violence, substantial property loss or destruction and illicit drug trafficking. The FBI endeavors to assist state/local authorities, through measured and focused investigations that seek those fugitives who have committed serious felony offenses. Where appropriate, the FBI works with task forces to ensure that appropriate federal, state, and local resources are brought to bear on the most violent fugitives.

The FBI is increasingly being tasked to assist with coordinating apprehension efforts of U.S. fugitives abroad. Many of these cases are generated as a result of drug and violent crime violations under state jurisdiction. Rapidly emerging crimes of a transnational nature, including

those facilitated by the Internet, indicate that international fugitive investigations will increase. The recent expansion of the FBI's Legat program has increased the effectiveness of FBI field offices to coordinate these investigations.

The FBI is also increasingly tasked with identifying and locating foreign fugitives. These fugitives, who have fled foreign jurisdiction and are believed to be in the U.S., are wanted for

crimes of violence including murder, kidnapping and robbery. A recent survey reflected that 75% of these fugitives are in the United States illegally. Clearly, with no legal status, no means to gain lawful employment, and a propensity to commit violent crimes, these fugitives present a threat to U.S. communities.

**- SPECIAL JURISDICTION CRIME AND TRANSPORTATION CRIME:**

These matters generally involve the exclusive or primary FBI investigative responsibility for crime threats concerning government reservations and buildings, special U.S. territories and jurisdictions, and other special circumstances. These crime problems can involve Crime Aboard Aircraft, Destruction of Aircraft and Motor Vehicles, Federal Train Wrecks, Crime on the High Seas, Irregularities in Federal Penal Institutions, and other matters implicating federal exclusive jurisdiction. Crime threats impacting these areas may be incident driven and reactive in nature, and because of their exclusive federal jurisdiction can require the dedication of significant resources in the event of an occurrence. As such, their priority and the requirement for an effective FBI response capability varies from field office to field office, especially where significant government reservations, major airports, federal penal institutions, and other such venues exist.

**CONCLUSION:**

VCMOP investigations have focus on systemic, national/regional, complex violent crime problems and rely on partnerships with other federal, state and local law enforcement in order to multiply available resources and prosecution venues. The American people, long accustomed to, and comforted by, the FBI's leadership role in swiftly and effectively responding to many types of serious criminal acts, continue to expect the FBI to maintain a strong presence and reactive capacity in the violent crimes arena.

**VCMOP Accomplishments**

**VIOLENT GANGS:**

**CHICAGO:** This investigation targeted the hierarchy of the Manic Latin Disciples (MLD), a prominent, violent street gang operating in the Humboldt Park section of Chicago, Illinois. The MLD is viewed as one of the four "super gangs operating in Chicago. During 04/2001, ten members of the Manic Latin Disciples (MLD) were convicted of drug conspiracy and various individual charges, following an eight-week trial. Thereafter, the Chicago Division recorded 43 indictments, and the arrest of 40 MLD members and their associates, seven of whom face mandatory life sentences. Through the execution of search warrants, 50 weapons were seized, including assault rifles, semiautomatic handguns, a shotgun, \$120,000.00 in cash, three bulletproof vests, night-vision equipment, and drugs. A total of 36 subjects have previously pled guilty or been convicted at trial in this investigation. The MLDs and its leadership were targeted due to the drug trafficking, violence and neighborhood intimidation inflicted upon several neighborhoods in Chicago. As a result of this investigation, four homicides and several armed robberies were successfully resolved.

**CLEVELAND:** Responding to community complaints and outrage regarding drug trafficking and the associated violence and intimidation of neighborhood residents, the Cleveland Division initiated the WILD WILD WEST (WWW) investigation which targeted a local gang that controlled the Bellaire Projects, a public housing development located in the vicinity of West 130th Street and Bellaire Ave., Cleveland, Ohio. During 10/2000, the investigation utilized an array of sophisticated investigative techniques, which culminated in the federal indictment and arrest of 43 gang members and dismantled the organization.

**DENVER:** On 3/26/2001, three members of the Mexican Criminal Mafia (MCM) were convicted on 27 counts, to include distribution of cocaine and methamphetamine. The verdicts, returned by a federal jury in Denver, Colorado, were rendered after a five-week trial wherein numerous court ordered wiretap recordings were presented. To date, 35 members of the MCM have been indicted on charges issued out of the District of Colorado for violation of federal drug and firearms laws and operating a Continuing Criminal Enterprise (CCE). The MCM has been effectively dismantled, and the supplying drug organization has been shattered from Denver to the Mexican border.

**JACKSONVILLE:** On 04/17/2001, a federal jury in Tampa, Florida convicted the national and international president of the Outlaws Motorcycle Club (OMC) of various offenses arising out of his involvement in racketeering activities of the OMC. The jury found captioned subject, Harry J. Bowman, aka Taco, guilty of conspiracy to commit racketeering, racketeering, conspiracy to distribute and possess with intent to distribute controlled substances, the commission of violent crimes in aid of racketeering activity, the distribution of controlled substances, and the possession of a firearm having previously been convicted of felony offenses. Bowman faces life imprisonment on each of the racketeering and racketeering conspiracy offenses for which he was convicted. Sentencing has been scheduled for 07/27/2001.

**LOS ANGELES:** On 02/14/2001, Mariano Martinez, the highest ranking Mexican Mafia member in the Los Angeles area, was convicted in U.S. District Court, Los Angeles, California regarding his commission of three murders and the direction of eight other murders. The prosecution of Martinez represented the first time in 53 years that the death penalty was sought in a case heard before the United States District Court, Central District of California. The jury subsequently determined that Martinez receive life imprisonment. To date, the investigation has resulted in 127 federal indictments, 68 convictions, 12 life sentences, the seizure of over 110 firearms, the clearance of approximately 90 homicides, and the prevention of over 60 violent acts. The Los Angeles Division utilized a myriad of sophisticated techniques, to include over 30 pen registers and 12 Title III wiretaps. During the aforementioned wiretaps, over 1000 pertinent calls were intercepted.

**MILWAUKEE:** On 12/11/2000, following a federal jury trial in Milwaukee, Wisconsin, five members of the Almighty Latin King Nation, were convicted on all counts of a Federal RICO indictment. The racketeering activity included murder, attempted murder, and drug trafficking. The investigation was the culmination of a joint investigative effort by the Milwaukee Division of the FBI and the Milwaukee Police Department. This joint effort has resulted in the dismantling of the Kage! Latin Kings, who were the largest and most violent street gang in Milwaukee. The

investigation and trial were marked by violent retaliation and threats against witnesses by gang members.

**WASHINGTON, D.C.:** On 11/20/2000, a District of Columbia, Federal Grand Jury, in Washington D.C., returned a 158-count indictment which superseded a 76-count indictment that was previously announced during 05/2000. That indictment charged KEVIN GRAY, RODNEY MOORE, and 15 other defendants with 16 murders. This new indictment adds 15 murders, and other acts of violence, to include 10 instances of attempted murder, multi violations of drug trafficking and weapons offenses. GRAY has been charged with 22 of 31 homicides committed by this violent criminal street gang. GRAY and MOORE, alone, are charged with supervising a continuing criminal drug enterprise (CCE) dating back to 1988. The Washington Field Office Safe Streets Gang Task Force (SSGTF) which initiated this investigation is composed of members from the Federal Bureau of Investigation (FBI), and the Washington Metropolitan Police Department (MPD). The number of murder charges in this indictment is the most ever lodged against a District of Columbia street gang.

#### **MAJOR THEFT:**

**JEWELRY AND GEM THEFT:** In 01/2001, the Jewelers' Security Alliance, the leading industry security organization, reported a 47% reduction in the number of robberies of traveling jewelry salespersons from 1999 to 2000, attributing much of that success to the FBI's increased focus on the disruption and dismantlement of Major Theft criminal enterprises. This reduction in the frequency of these off-premises jewelry crimes corresponds to a reduction in monetary losses of \$76.5 million in 1999 to \$53.1 million in 2000.

**ART THEFT:** Illicit trafficking in stolen art and cultural property is a major category of international crime. The FBI's Art Theft Program, which manages the National Stolen Art File (NSAF), coordinates both domestic and international art theft investigations with U. S. and foreign police agencies. The NSAF is a computerized database of stolen art and cultural property as reported to the FBI by law enforcement agencies throughout the U. S. and internationally. The NSAF consists of images and physical descriptions of stolen and recovered objects, in addition to certain investigative case information. The primary goal of the NSAF is to serve as a tool to assist investigators in art and cultural artifact theft cases and to function as an analytical database providing law enforcement officials with information concerning art theft. Two recent investigations illustrating the FBI's involvement in international art theft involved the New York Division's recovery of 274 Greek artifacts stolen in 1990 from a museum in Ancient Corinth, which were returned to Greek authorities during January of this year, and the Milwaukee Division's recovery of four antique scientific instruments stolen in Rome, Italy, in 1984, soon to be returned to Italian authorities. Typically, these types of stolen cultural artifacts are valued in the millions and foreign governments are highly appreciative of the FBI's assistance provided through its Art Theft Program.

**DETROIT:** Group IUCO codename "CANCLONE" targeted an international vehicle theft ring operating between the United States and Canada. This investigation was worked jointly with Canadian law enforcement. The vehicle theft ring was responsible for stealing high value, late model, luxury and sport utility vehicles in Canada and subsequently retagging them and selling

them to unsuspecting buyers in the United States. Due to the successful introduction of the FBI undercover agent (UCA) the investigation resulted in the indictments and arrests of seven members of the vehicle theft ring which occurred on 04/05/2001. The Canadian portion of the investigation resulted in the arrests of approximately forty subjects.

**VIOLENT INCIDENT CRIMES:**

**ATLANTA:** During the morning hours of 2/9/99, four armed males entered a branch of the First Union Bank in Atlanta, Georgia and ordered all the occupants to the floor. The robbers fled the bank with over \$360,000 in cash and utilized a car taken in a carjacking as the getaway vehicle. Two weeks earlier this same group had robbed two other branches of the First Union Bank utilizing the same Modus Operandi (MO). The getaway vehicles utilized were also taken during earlier carjackings. Referred to by law enforcement as "The Morning Glory Bandits," investigation determined that the group had been involved in at least 21 bank robberies since 1994. The group never obtained less than \$20,000 in any robbery. The total losses suffered during these robberies was nearly three million dollars. Following another bank robbery on 01/02/2000, four subjects were identified, arrested and charged with 21 different robberies.

**LOS ANGELES:** On 03/20/2000, the San Marino, California Police Department contacted the FBI and advised that Ernest S. Chan, an Asian male, DOB 9/27/1996, had been abducted from his home in San Marino, California. The housekeeper at that location, Linda Liu, while dressing the victim after his bath, was confronted by two unidentified male subjects. Liu's eyes were covered and she was led up to the victim's bedroom, where her hands and feet were bound with an electrical cord and her head was covered with a blanket. The subjects then departed the home with the four-year-old victim. The abductors demanded \$1.5 million for the release of the child and contacted the parents telephonically with ransom instructions. The FBI initiated several sophisticated investigative techniques, including wire taps and trap and trace of relevant telephone lines, all of which resulted in the successful location of the child and the arrest of numerous subjects.

**CRIMES AGAINST CHILDREN:**

**ATLANTA:** In 12/1999, Legat Ottawa provided information from Canadian authorities that a subject was arrested in possession of child pornography which contained sexually oriented videotapes depicting children being brutally and viciously spanked which originated from the United States. After extensive investigation, which involved numerous Baltimore and Atlanta Under Cover Agent's on-line as part of the Innocent Images National Initiative, the subjects responsible for the production of these videos were found to reside within the FBI's Rossville Georgia Resident Agency territory. The subsequent arrest of these subjects identified a ring which has lead to the arrest of six subjects, in which three were school teachers. The investigation also resulted in the rescue of eight victimized children that have been removed from abusive and dangerous situations. Twelve spin-off investigations continue.

**HOUSTON, NEW ORLEANS, SAN ANTONIO:** On 03/04/2001, FBI San Antonio initiated a kidnaping investigation of 9 year old Nykema Augustine. Augustine was released six days after being held and sexually assaulted by her captor in a remote hunting cabin. On

04/16/2001, FBI New Orleans initiated a kidnaping investigation of 11 year old Lisa Bruno. Bruno was released thirteen days after being held and sexually assaulted by her captor in a remote hunting cabin. On 05/1/2001, FBI Houston initiated a kidnaping investigation of 11 year old Leah Henry. Based on the description of witnesses of the abductor and his vehicle, it was believed that the same subject was responsible for the three abductions. After an extensive multi-divisional investigation involving numerous state and local law enforcement officers, police discovered the subject's vehicle near a remote cabin in Kerrville, Texas. While under surveillance, officers observed the subject and Henry in the vehicle. When confronted, Henry ran safely to law enforcement while the subject, identified as Gary Dale Cox, removed a concealed handgun and fired one shot to his head, mortally wounding himself. Evidence seized confirmed Cox as the abductor of the three children and is suspected to be involved in others.

**MEMPHIS:** On 11/18/1999, a federal grand jury indicted Craig Allen Walker on bank fraud and money laundering charges. Walker, along with a female accomplice, participated in a scheme to defraud a Memphis bank. During the transaction, the female used the identity of Walker's wife to perpetrate the fraud. After receiving the money from the bank, Walker abducted his two children, ages 10 and 3, from their mother. An Unlawful Flight to Avoid Prosecution warrant along with the bank fraud and money laundering charges were filed. The extensive search for Walker involved over 45 field offices and several Legal Attaches. On 05/22/2001, a Brazilian citizen observed the children's photos along with the subject's photo on the FBI Internet Home Page. Legat Brazil along with Brazilian authorities located and arrested Walker. The children were found unharmed and safely returned to their mother.

#### **FUGITIVES:**

**DALLAS:** On 01/13/2000, seven violent convicted criminals executed a well-planned and coordinated escape from the Texas Department of Criminal Justice, Connally Unit, in Kenedy (Carnes County), Texas. During their escape, they obtained sixteen weapons, to include fourteen handguns, a semi-automatic rifle (AR-15), and a shotgun. The escapees later robbed a RADIO SHACK in Pearland, Texas, on 02/15/2000, and an OSHMAN'S SPORTING GOODS store in Irving, Texas on 12/24/2000. During the latter robbery, an Irving Texas Police Officer was fatally shot. On 01/22/2001, four of the seven convicts were arrested in Woodland, Colorado following an intense manhunt. A fifth inmate killed himself inside a motor home. The final two escapees were arrested a few days later in Colorado.

**LAS VEGAS:** Maghfoor Mansoor was charged in Las Vegas, Nevada with the sexual assault and kidnaping of a 17-year-old victim. On 01/02/2001, an arrest warrant was issued charging Mansoor with Unlawful Flight to Avoid Prosecution in violation of Title 18, United States Code, Section 1073. On 01/09/2001, Mansoor, using an Immigration and Naturalization Service (INS) card with the alias Francis Gabriel, was paying for an airline ticket at the New Orleans, Louisiana, airport when a Narcotics deputy approached him. When the deputy approached, Mansoor punched the deputy, dropped his suitcase, and ran out of the airport. Once outside, Mansoor conducted a carjacking and moments later struck and killed a highway worker. Mansoor was charged federally with Carjacking in that matter. On 05/05/2001, Mansoor was allegedly involved in an armed robbery of a casino in Atlantic City, New Jersey. After the armed robbery, he allegedly carjacked a taxicab at gunpoint. Mansoor was named as an FBI Ten Most

Wanted Fugitive on 05/8/2001. Following another armed robbery in Atlantic City, on 05/11/2001, an extensive manhunt located Monsoor in New York City. Monsoor was subsequently fatally shot by an FBI Agent as he (Monsoor) pulled out a handgun and pointed it at the arresting Agents.

**SPECIAL JURISDICTION AND TRANSPORTATION CRIMES:**

**LOS ANGELES:** On 01/27/1969, Byron Vaughn Booth and Clinton Robert Smith escaped from a California prison where they were imprisoned on robbery convictions. Two days later the men boarded a commercial flight in Los Angeles bound for New Orleans and Miami. They hijacked the flight to Cuba and two months later made their way to Algeria, where they allegedly began their association with Eldridge Cleaver and the Black Panther Party. It is believed Cleaver subsequently killed Smith in 1970 or 1971 over an affair with Cleaver's wife, apparently causing Booth to leave Algiers and settle in Nigeria. Charged in the Central District of California, Los Angeles, with Crime Aboard Aircraft - Piracy and Kidnapping, Booth remained a fugitive in Nigeria for some thirty years until the Los Angeles Division, Legat Lagos, Nigeria, and FBI Headquarters coordinated his arrest and extradition to the U. S. during 01/2001.

**NEW YORK:** In 09/2000, former physician Michael J. Swango, a serial poisoner suspected of having murdered as many as 25 people while employed at hospitals in New York, Ohio, South Dakota and Zimbabwe, was sentenced by the Eastern District of New York to life imprisonment without possibility of release for the murders of three patients under his care at a Long Island, New York, Veterans Administration hospital. This sentence culminated extensive FBI investigation in the United States and Zimbabwe, including considerable forensic and behavioral science support and Legal Attache liaison. Swango's criminal activities, and the resulting investigation coordinated by the New York Office of the FBI, generated significant national media attention.

**INDIAN COUNTRY:**

**MINNEAPOLIS:** On April 24, 2001, Daniel Irwin Great Walker plead guilty to 1st degree murder in U.S. District Court, Grand Forks, North Dakota, for the April 1, 2000 murder of Linus Walette at a residence on the Turtle Mountain Indian Reservation. Under the terms of the plea agreement, Great Walker received a 35 year prison term. In addition to Great Walker, 12 other subjects were charged in connection with the murder on charges ranging from obstruction of justice, mis-prison of a felony, perjury, and second degree murder. All subjects entered guilty pleas to the charges and received prison terms from 15 to 96 months. The joint investigation by the FBI and BIA resulted in the interview of over 223 witnesses and the collection of 3,360 pages of discoverable material.

**SALT LAKE CITY:** On February 21, 2001, the Federal Grand Jury in Billings, Montana indicted six individuals in a 31-count indictment for conspiring to distribute methamphetamine on Montana's Northern Cheyenne Indian Reservation. An FBI led drug task force initiated the investigation based on numerous complaints of drug trafficking from the Northern Cheyenne community at Lame Deer. On March 28, 2001, six subjects were arrested in connection with the drug conspiracy and a search warrant was executed upon the residence of Michael James Miller,

the main subject of the investigation. During the search, \$43,000 currency, \$8,400 of uncashed payroll checks, 6 ounces of methamphetamine, and indicia of larger drug sales were recovered.

**DETROIT:** The FBI initiated an investigation following the suspicious death of ten-week-old Dreama Dove Hugo at the Mid-Michigan Community Hospital in Mount Pleasant, Michigan. Hugo, a native American female from the Saginaw Chippewa Indian Reservation had been living with her parents on the reservation prior to her death. An autopsy revealed that Hugo died as a result of a large sub-dural hematoma. Also noted during the autopsy were two complex skull fractures, broken tibia and fibula in both legs, and a broken right femur. The pathologist stated that the injuries were consistent with the child being shaken, dropped, or banged against an object. Investigation determined that the child had been under the care of Adam Franklin Fuller, the 17 year old boyfriend of the child's mother during the time the injuries were believed to have been inflicted. In a statement to the FBI, Fuller admitted that he had intentionally dropped Hugo six or seven times on the head and smashed her head on the floor several times. Fuller had been abusing the child since it was born, apparently because he was angry that his girlfriend had the child due to a relationship with another man. Fuller was arrested and charged as an adult by Information in the Eastern District of Michigan. However, the presiding U.S. District Court Judge refused to allow Fuller to be charged as an adult. Fuller was subsequently charged as a juvenile with voluntary manslaughter. On May 18, 2001, Fuller entered a guilty plea to the charge and he is currently awaiting sentencing.

**5. Many argue that community outreach assists law enforcement with their prevention and investigative efforts.**

**a. Does the FBI have any type of community outreach program?**

Yes. Each of the FBI's 56 field divisions has a Community Outreach Specialist who actively participates in community outreach events. These Specialists serve on boards, councils, and community coalitions. They also work with other organizations and various community groups to create new community outreach initiatives. The FBI focuses its community outreach efforts on three areas: The community, the schools, and the workplace. The FBI has 165 school programs operating nationwide and 30 FBI Citizens' Academies. The purpose of the FBI Citizens' Academy is to afford business and community leaders an inside look at Federal law enforcement in general and the FBI in particular. Further, the FBI joins with other federal departments and agencies in supplementing traditional law enforcement efforts with long-term crime, drug, gang, and violence prevention efforts.

**b. If so, in what ways does the FBI believe that will assist it in accomplishing its mission?**

The mission of the FBI's Community Outreach Program (COP) is to provide a comprehensive effort that deals with multiple interrelated societal problems, including crime, drugs, gangs, and violence, in support of our investigative mission. The goal is to establish communication between the FBI and the community to educate the community about the overall mission of the FBI, and specifically, how the FBI supports the reduction of crime, drugs, gangs,

and violence in the community through investigative initiatives and its COP.

**6. Please describe the FBI's Internet Fraud Complaint Center, what it does, and how it operates.**

The IFCC is a joint operation with the Federal Bureau of Investigation and the National White Collar Crime Center (NW3C). A little over a year ago on May 8, 2000, the IFCC opened its doors to combat the growing problem of fraud over the Internet. The IFCC was necessary to adequately identify, track, and investigate new fraudulent schemes on the Internet on a national and international level. It serves as a clearinghouse for the receipt, analysis, and dissemination of complaints concerning frauds perpetrated over the Internet. IFCC personnel collect, analyze, evaluate, and disseminate Internet fraud complaints to the appropriate law enforcement agency. The IFCC provides a mechanism by which the most egregious schemes are identified and addressed through a criminal investigative effort. The IFCC partnership is mutually beneficial to both parties in that staffing responsibilities, administrative cost and technological expenses are shared. The FBI's vast investigative resources are also utilized to address this emerging crime problem.

The Internet is changing the world as we know it, and promises to change how we buy things, how we communicate, where we get entertainment, news, and weather, where we work, and much, much more while bringing enormous benefits to society. The growth and utilization of the Internet as a communications and commerce tool is unsurpassed in modern history. Current trends reflect this remarkable growth:

- Internet users in the U.S. reached 65 million in 1998, over 100 million in 1999, and is expected to exceed 200 million this year.<sup>1</sup>
- business-to-business e-commerce totaled over \$100 billion in 1999 (more than doubling from 1998) and is expected to grow to over one trillion dollars by 2003. Worldwide net commerce, both business-to-business and business-to-consumer, will hit an estimated \$6.8 trillion in 2004.<sup>2</sup>

The vast majority of communication and commerce conducted via the Internet is for lawful purposes. However, the Internet is increasingly utilized to foster fraudulent schemes. Just as prior technological advances have brought dramatic improvements for society, they have also created new opportunities for wrongdoing. As worldwide dependence on technology increases, high-tech crime is becoming an increasingly attractive source of revenue for organized crime groups, as well as an attractive option for them to make commercial and financial transactions that support criminal activity. Criminal activity in the cyber world presents a daunting challenge at all levels of law enforcement. In the past, a nation's border acted a barrier to the development of

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<sup>1</sup>New York Times, November 12, 1999

<sup>2</sup>Source: Forrester Research, Inc., <<http://www.Forrester.com>>

many criminal enterprises, organizations and conspiracies. Over the past five years, the advent of the Internet as a business and communication tool has eradicated these borders. Cyber criminals and organizations pose significant threats to global commerce and society.

The use of the Internet for criminal purposes is one of the most critical challenges facing the FBI and law enforcement in general. Understanding and using the Internet to combat Internet fraud is essential for law enforcement. The fraud being committed over the Internet is the same type of White Collar fraud the FBI has traditionally investigated but poses additional concerns and challenges because of the new environment in which it is located. Internet fraud is defined as any fraudulent scheme in which one or more components of the Internet, such as web sites, chat rooms, and e-mail, play a significant role in offering non-existent goods or services to consumers, communicating false or fraudulent representations about the schemes to consumers, or transmitting victims' funds, access devices, or other items of value to the control of the scheme's perpetrators. The accessibility of such an immense audience coupled with the anonymity of the subject, require a different approach. The Internet is a perfect vehicle to locate victims and provide the environment where the victims don't see or speak to the fraudsters. The Internet environment often creates a false sense of security among users leading them to check out opportunities found on the Internet less thoroughly than they might otherwise. Anyone in the privacy of their own home can create a very persuasive vehicle for fraud over the Internet. The expenses associated with the operation of a "home page" and the use of electronic mail (e-mail) are minimal. Con men do not require the capital to send out mailers, hire people to respond to the mailers, finance and operate toll free numbers. This technology has evolved exponentially over the past few years and will continue to evolve at a tremendous rate.

Internet fraud does not have traditional boundaries as seen in the traditional schemes. No one knows the full extent of the fraud being committed on the Internet. Not all victims report fraud, and those who do, do not report it to one central repository. For traditional fraud schemes the FBI has systems in place to identify and track fraud throughout the country. For example, a con man opens up shop in Chicago, finds a location, obtains phones, hires personnel, and begins to defraud people. When victims don't receive what they were promised and realized that they have been defrauded, they will contact their local FBI, and provide the complaint information, which will be forwarded to Chicago Office (where the fraud is occurring). The FBI in Chicago receives a number of these complaints and initiates an investigation. Fraud over the Internet does not need a physical location, nor personnel, nor telephones. Internet fraud is disjointed, and spread throughout the country. The traditional methods of detecting, reporting, and investigating fraud fail in this virtual environment. Victims of fraud have been unsure of how or where to report what they see or what they have experienced on the Internet. Law enforcement agencies have received complaints in a piecemeal fashion, most not reaching a level to advance the complaint to an investigation. Another problem is venue, without some technical investigatory steps it is difficult to identify the location of a website or the origin of an e-mail.

A critical problem associated with fraud being perpetrated over the Internet is the fact that the instances of fraud are disjointed, and spread throughout the country. The traditional methods of detecting, reporting, and investigating fraud fail in this environment. Victims of fraud are unsure of how or where to report what they see or what they have experienced on the Internet, which they believe should be brought to law enforcement's attention. Law enforcement agencies receive complaints in a piecemeal fashion, most not reaching a level to advance the complaint to

an investigation. Another problem is venue, complaints are often misdirected and lost due to the fact that the Internet is virtual as opposed to physical. Without some technical investigatory steps it is usually impossible to identify the origin of a website or the a particular E-mail. Therefore, many complaints are simply not addressed.

The explosive growth of electronic commerce has resulted in unanticipated and unprecedented complex investigative challenges as criminals exploit new technologies. To address this crime problem the FBI developed a proactive strategy to investigate Internet fraud through the establishment of the Internet Fraud Complaint Center. The IFCC is necessary to adequately identify, track, and investigate new fraudulent schemes on the Internet on a national and international level. IFCC personnel review, analyze, evaluate, and disseminate Internet fraud complaints to the appropriate law enforcement and or regulatory agency's weather that's local, state, or federal. The IFCC provides a mechanism by which the most egregious schemes are identified and addressed through joint multi-agency criminal investigative efforts. In addition, a valuable base of intelligence is developed regarding crimes facilitated over the Internet. This information is made available publicly through the IFCC website to citizens, businesses and law enforcement and regulatory agency's. The IFCC provides a central analytical repository for complaints regarding Internet fraud, and it acts as a resource for enforcement agencies at all levels of government to include all regulatory agencies. It provides analytical support, and aids in the development of training modules to address Internet fraud.

In effect, the IFCC operates as part of a cyber community watch in which the self policing efforts of honest and vigilant Internet users and Internet service providers result in potential fraudulent activity over the Internet being brought to the attention of law enforcement through the IFCC. The IFCC does much more than just collect complaint information. It ensures that the information, along with additional investigative information developed by IFCC personnel, is disseminated to the appropriate agencies, and that identified fraud schemes can be prevented or mitigated. The IFCC processes all complaints it receives regardless of the alleged dollar loss. Many of the complaints received do not allege losses which meet minimum dollar thresholds for federal prosecution, but they can often be successfully worked by local law enforcement agencies. At a minimum, they form part of a database which enables IFCC to potentially connect them with a widespread fraud scheme and/or organized criminal group. In this light, all complaints alleging fraud over the Internet are important. No victim should feel like any loss they suffered is too insignificant to report. It is only by victims and businesses reporting potentially fraudulent activity that law enforcement becomes aware of it and can take action.

**7. Please explain what the FBI is doing in the area of electronic mail interception, and what measures are being taken to protect privacy concerns while conducting its law enforcement investigations.**

The FBI performs interception of electronic communications, including electronic mail (E-mail) in accordance with federal statutory regimens pertaining to electronic surveillance. One is derived from (1) Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (commonly referred to as "Title III"), as amended; (2) portions of the Electronic Communications Privacy Act of 1986 (ECPA), as amended; and (3) portions of the Communications Assistance for Law

Enforcement Act (CALEA), enacted in 1994. The other is based upon the Foreign Intelligence Surveillance Act of 1978 (FISA), as amended. The statutory requirements, along with the procedures and guidelines for implementing them contain a number of privacy protection features.

First, the federal and state electronic surveillance laws must comply with the Fourth Amendment's dictates concerning reasonable searches and seizures, but they also include a number of provisions that are intended to ensure that this investigative technique is used judiciously and with deference to the privacy of intercepted subjects.

Also, unlike normal search warrants, Department of Justice (DOJ) guidelines require applications for interception of electronic communications (with the exception of digital display pagers<sup>3</sup>) to receive the authorization of a high-level DOJ official before the local United States Attorneys offices can file an application with the court. Interception orders must be filed with federal district court judges or before other courts of competent jurisdiction. Hence, unlike typical search warrants, federal magistrates are not authorized to approve such applications and orders.

Additionally, applications for electronic surveillance must demonstrate probable cause and state with particularity and specificity: the offense(s) being committed, the facility or place from which the subject's Communications are to be intercepted, a description of the types of conversations to be intercepted, and the identities of the persons committing the offenses and anticipated to be intercepted. Thus, criminal electronic surveillance laws focus on gathering hard evidence—not intelligence. Applications must indicate that other normal investigative techniques will not work or are too dangerous, and must include information concerning any prior electronic surveillance regarding the subject or facility in question. Court orders for criminal interception are limited to 30 days,<sup>4</sup> and interceptions must terminate sooner if the objectives are obtained. Judges may (and usually do) require periodic reports to the court (typically every 7-10 days) advising it of the progress of the interception effort. This circumstance thus assures close and on-going oversight of the electronic surveillance by the United States Attorney's office handling the case. Extensions of the order (consistent with requirements of the initial application) are permitted, if justified, for up to a period of 30 days.

All interception orders are required to include a provision mandating that the authorized interceptions are to be "executed as soon as practicable." Interceptions are required to be conducted in such a way as to "minimize the interception of communications not otherwise subject to interception" under the law, such as unrelated, irrelevant, and non-criminal communications of the subjects and of others not named in the application. Intercepted communications are required to be recorded, if possible, in such a way as will protect the recording from editing or

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<sup>3</sup>Title III specifies that the filing of an application before federal district court judge for an order to intercept electronic communications, such as for pager messaging, can be authorized by any attorney for the Government overseeing the case. 18 U.S.C. 2516(3).

<sup>4</sup>The FISA statutes permit an interception period running up to 90 days or one year depending upon the nature of the interception subject. 50 U.S.C. 1805(d).

other alterations. Immediately upon the expiration of the interception period, the recordings are required to be presented to the federal district court judge and sealed under his directions. The presence of the seal shall be a prerequisite for their use or disclosure, or for the introduction of evidence derived therefrom.

Within a reasonable period of time after the termination of the order (or extensions thereto), the judge shall ensure that the subject(s) of the interception order, and such other parties as are deemed appropriate, are furnished an inventory, providing notice of the order, the dates encompassed, and whether or not they were intercepted. Upon motion, the judge may also direct that such portions of the contents of the intercepted communication be made available for inspection.

The illegal (unauthorized) conduct of electronic surveillance is a federal felony, most instances of which are punishable by imprisonment for up to five years, a fine, or both.

The FBI conducts criminal interceptions of electronic communications only with a court order (or lawful consent) authorizing a particular type of interception or acquisition regarding a particular criminal subject user, user address, or account number. When an ISP can completely, properly, and securely comply with a court order on its own, the FBI does not need to deploy its

own equipment.<sup>5</sup> If a decision is made to use FBI equipment, the FBI never deploys it without the cooperation and technical assistance of the ISP technicians and/or engineers.

In the past three years, the FBI has worked to develop tools to address the requirement to effectively conduct interceptions of electronic communications in a manner that is consistent with the law (including the privacy provisions thereof). Because most ISPs cannot, on their own, comply fully with court orders, and because commercial equipment generally was not developed for the purpose of conducting lawful interceptions, it has been necessary for the FBI to develop its own tools. One such tool is the DCS1000 (formerly called "Carnivore").

The recent independent technical review of the FBI's electronic surveillance tool, then called "Carnivore," was performed by the IIT Research Institute, an independent research organization affiliated with the Illinois Institute of Technology (IIT), in conjunction with IIT's

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<sup>5</sup>In many instances, ISPs, particularly the larger ones, maintain certain technical capabilities which allow them to comply, or partially comply, with court orders. For example, certain ISPs have the capability to intercept or "clone" the E-mail transmitted to and from a particular criminal subject's account. In many instances, such capabilities are satisfactory and allow full compliance with a court order. However, in most cases, ISPs do not have such capabilities or cannot employ them in a secure manner. Also, most "off the shelf" sniffers or internal systems designed ad hoc to effect an electronic surveillance effort frequently lack the ability to properly discriminate between messages in a fashion that satisfies the court order. Further, many court orders go beyond E-mail, authorizing the acquisition of other messages or protocols, such as instant messaging. In these cases, obviously, a cloned mailbox would not be sufficient to comply with the order of the court.

Chicago-Kent College of Law (together, IITRI). This Report makes a number of recommendations for improvement of the tool, and the processes for employing it.

The Report recommended that the FBI continue to use Carnivore rather than less-precise, publicly available sniffer software, when precise collection is required and Carnivore can be configured to reflect the limitations of a court order. This recommendation reflects IITRI's conclusion that Carnivore protects privacy better than commercial software currently available.

The Report made a number of recommendations for technical improvements to the Carnivore system to deal with security, audits, data integrity, user interface, and the development process. The FBI has taken these technical improvements into consideration and, without exception, the recommended improvements are being incorporated into future versions of the system.

The FBI remains committed to using the best available tool to effectuate orders for the lawful interception of electronic communications in a manner that appropriately balances public safety and privacy concerns.

**8. It is my understanding that over one -third of the cocaine entering the U.S. comes through Puerto Rico and the U.S. Virgin Islands and that the former Attorney General named the FBI as the lead agency to fight this problem.**

**a. Is this correct?**

Yes. The FBI was assigned the lead in the Attorney General's Caribbean Initiative Implementation Plan and established Regional Enforcement Teams at three resident agencies which were opened during 1998. An additional drug squad was also established in San Juan during 1998.

**b. Is it true that the FBI is having difficulty retaining its agents in Puerto Rico?**

Yes. The FBI has been successful in attracting agents to Puerto Rico through the use of a relocation bonus amounting to the greater of \$15,000 or 25% of the agent's base salary. The FBI has been experiencing difficulty in retaining agents in Puerto Rico beyond three years. The average tour for agents in Puerto Rico is currently slightly less than three years. The San Juan Division has a staffing level of 172 agents. There are currently 162 onboard. Of the 162 agents, only 23 have been assigned in the division for five years or longer.

**c. If it is true, please explain what the problem is and the FBI's plans to resolve the problem.**

The problems associated with retention issues in Puerto Rico are numerous; difficulties in recruiting and retaining agents native to Puerto Rico, remote location, required language skills, infrastructure/cultural issues, family issues, etc. Most of the issues which make assignment to the San Juan Division difficult hinge on infrastructure/cultural issues and are beyond the federal government's control. The FBI has been very supportive of DOJ's efforts to obtain authority for

Extended Assignment Bonuses. Positive feedback has also been received concerning the authority to offer house-hunting trips in advance of transfer and the establishment of the Community Liaison Office which assists employees in the relocation effort.

9. **In 105th Congress, the Omnibus Appropriations bill included a provision offered by former representative Joseph McDade that requires federal prosecutors to follow state bar rules and be subject to state bar disciplines in each State where the attorney engages in the attorney's duties. Please describe and provide some examples of the impact the McDade legislation has had on FBI operations.**

Although 28 U.S.C. § 530B (sometimes referred to as the McDade statute) was opposed by most members of the Senate Judiciary Committee, it was enacted as part of the appropriations measure and went into effect on April 19, 1999. The issue of what ethical standards apply and who has the authority to set those standards has created much uncertainty in the federal prosecutor community. In essence, 50 state bar associations exert some control over how federal prosecutions and investigations are conducted.

While many examples of how this ambiguity has worked to the detriment of federal law enforcement, some of the most serious involve:

Government attorneys that were prohibited from authorizing or even supervising undercover investigations because they, by their nature, involved deception;

Contacting attorneys that are represented by counsel has also proved to be very problematic especially in the area of white collar crime as it relates to corporations and corporate counsel.

§ 530B should be completely repealed, or alternatively, amended to make federal prosecutors accountable to the federal courts for ethical and professional conduct issues.

There are significant investigative problems being experienced by the Portland Field Office as a result of § 530B and In re Gatti, a recent Oregon Supreme Court attorney ethics decision.

In Gatti, the court held that a private attorney violated two Oregon State Bar Disciplinary Rules and an Oregon statute by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation. The court found that the attorney violated: (1) Disciplinary rule 1-102(A)(3), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation; (2) disciplinary rule 7-102(A)(5), which prohibits knowingly making a false statement of law or fact; and (3) an Oregon statute, ORS 9.527(4), which prohibits willful deceit or misconduct in the legal profession.

The attorney, who represented a client who had filed a claim with an insurance company, believed that the insurance company was using a California company called Comprehensive Medical Review (CMR) to fraudulently generate medical reports which the insurer then used to wrongfully deny or limit claims. The attorney called CMR and falsely represented himself to be a chiropractor seeking employment with the company. The attorney was hoping to obtain

information from CMR which he could use in a subsequent lawsuit against CMR and the insurance company.

The Oregon Supreme Court upheld the State Bar's view that the attorney's conduct was unethical. Among other things, the court rejected the attorney's defense that his misrepresentations were justifiable because he was engaged in an investigation to seek evidence of fraud and other wrongful conduct.

In so doing, the court specifically ruled that there is no exception for prosecutors from the above-referenced ethical rules. The effect of this holding is that prosecutors in Oregon who concur or participate in undercover and other deceptive law enforcement techniques will be deemed to have violated the above-referenced disciplinary rules and statute. The U.S. Attorney's Office (USAO) is concerned that this will be the case even if the law enforcement technique at issue is lawful under federal law.

After the Oregon Supreme Court issued the Gatti decision, the Oregon State Bar House of Delegates voted by a substantial majority to amend the Oregon ethics rules to allow attorneys to supervise and provide legal advice about lawful undercover operations. This would have helped the FBI resume normal investigative operations. The Oregon Supreme Court, however, rejected the proposed amendment, leaving the rule of Gatti in full force and effect.

Gatti has had a swift and devastating effect on FBI operations in Oregon. Soon after the decision was announced, the USAO informed the Field Office that it would not concur or participate in the use of long-used and highly productive techniques, such as undercover operations (UCOs) and consensual monitoring of telephone calls, that could be deemed deceptive by the State Bar. Several important investigations were immediately terminated or severely impeded. Two of the more serious examples are:

1.) Innocent Images Investigation

Because of the Gatti decision, the USAO refused to certify the six-month renewal of Portland's Innocent Images undercover operation, which targets child pornography and exploitation. Portland sought and obtained permission to establish an Innocent Images operation after the work of another task force over the past two years revealed that child pornography and exploitation is a significant problem in Oregon. With that finally accomplished, and with the investigative infrastructure in place, the USAO refused to send the necessary concurring letter to FBIHQ for Portland's six-month franchise renewal. Since USAO concurrence was necessary for renewal of the UCO, Portland's Innocent Images operation was shut down.

2.) Drug Investigation

Gatti has also had an immediate and harmful impact on Portland's OC/Drug program. In the winter of 1999, Portland spearheaded a multi-agency, T-III investigation into the activities of an Oregon-based drug organization. The investigation produced numerous federal and state indictments. In late summer of last year, the post-T-III phase brought to the surface an unindicted subject who agreed to serve as a cooperating witness (CW). During the initial briefing, the CW told Agents that he not only had extensive contacts with the local meth trade, but had also

conducted business with other drug organizations in Oregon and another state. In an effort to widen the investigation, the case Agent sought AUSA concurrence in the CW's consensual use of electronic devices to record conversations with other traffickers. Citing the Gatti decision, the assigned AUSA refused to provide concurrence. Since AUSA concurrence was required for such consensual monitoring, Portland could not conduct the monitoring. Thus, a critical investigative opportunity was lost because of the interplay of Gatti and § 530B.

These are just two examples of how Gatti and § 530B are severely hampering federal law enforcement in Oregon.

In addition to Portland, other examples of investigative problems related to § 530B are:

Example 1:

A subject in a mortgage fraud matter retained counsel to represent him in regulatory and criminal investigations pending against him with regard to the fraud (he had not been indicted). The FBI then learned that he directed one of the few remaining employees of his company to deliver records and documentation to him to be destroyed. The FBI wanted to approach an employee and try to convert him to a cooperating witness (CW) and send him in wired to elicit incriminating statements from the subject related to the destruction of evidence. The assigned AUSA had no objection to approaching the employee, but would not authorize an approach to the subject on the ground that it would violate the represented party disciplinary rule.

Example 2:

A mortgage broker submitted false mortgage applications to a number of financial institutions. The financial institutions have agreed to cooperate with the FBI and record their conversations with the subject when she next visits such institutions to commit fraud. The subject became aware that law enforcement was investigating her mortgage applications and retained counsel. The USAO advised the Case Agent against consensually recording the conversations with the subject due to her retention of counsel. The case agent believes the subject is apparently still committing these crimes and yet the FBI is prevented from recording her incriminating conversations with bank employees.

Example 3:

The FBI was investigating a securities fraud case in which two of the subjects were previously interviewed as witnesses in a totally unrelated securities fraud investigation being worked by another FBI field office. The two were not subjects of the other investigation; they were interviewed because they traded in the stock being investigated. Both were interviewed with their attorneys present. When the case agent, in the new investigation, suggested to the AUSA that we attempt to make consensually recorded calls with the two, the AUSA advised that because the two were represented in the other investigation, Section 530B prohibits the consensual records or even attempts to interview them directly. The AUSA's position is that any contact with the two would have to be made through their attorneys.

Example 4:

A criminal subject was investigated for ordering computer products on credit, making small payments to receive the products, then shipping them overseas and ceasing all payments.

This caused excessive losses to companies, and forced at least one into bankruptcy. The subject also committed bankruptcy fraud and was sentenced to ten months. Prior to sentencing, another complaint was filed against the subject in which he again failed to complete payment to the vendor. The vendor offered to meet with the subject and record the conversation. The AUSA would not concur in the recording because the subject was represented.

Example 5:

The FBI was investigating a subject for art thefts and bankruptcy fraud. The subject had filed for bankruptcy and was represented in the bankruptcy action by an attorney. An AUSA refused to authorize consensually recorded conversations between the subject and an artist, whose paintings had been stolen by the subject, because she was represented by counsel. The subject later died during the investigation. If the recordings had been made, probable cause would have been established to execute a search warrant at her residence. This may have resulted in charges of art theft, bank fraud and bankruptcy fraud. After her death, the Case Agent went to the residence and located \$40,000 worth of art work belonging to various artists who had never been paid. The artwork became part of the subject's estate and was never returned to the artists.

Example 6:

Subjects solicited investors for various gambling-related investment opportunities. A CW indicated that money was not being used as represented and fraudulent representations about the investments had been made to potential investors. The subjects wanted the CW to find new investors. The CW was in a position to record his conversations with the subjects about the investment and introduce an undercover agent or someone else posing as a potential investor in order to record the investment "sales pitch." Apparently, potential investors were not told that prior investors had not been paid back as promised in the investment documents. The AUSA would not consent to any CW contact or consensual monitoring because one of the prior investors had initiated a civil suit against the company and its officers to recover investment monies. The AUSA believed this was a related matter and contact was thus prohibited under Section 530B.

Example 7:

In the fall of 1998, the FBI began to investigate a large investment fraud scheme. One or more of the victims that suffered a loss brought a civil suit against the subjects. The AUSA refused to authorize the consensual recording of conversations between the subjects and a victim who had not filed a lawsuit. The subjects went on to defraud more investors out of large sums of money.

In summary, § 530B has had a substantial and detrimental impact on FBI investigations. The statute subjects federal prosecutors to the State Bar rules and discipline of "each State where such attorney engages in the attorney's duties." As a result, the 50 State Bar associations now effectively exercise significant influence over how federal prosecutions and investigations are conducted. Federal prosecutors are becoming increasingly reluctant to participate in lawful investigations, and to concur in the use of long-standing and lawful investigative techniques, for fear of facing State Bar complaints. There are many recent examples of federal prosecutors refusing to concur in the consensual monitoring of conversations (that is, the monitoring and recording of conversations with the consent of one party but without the knowledge or consent of

the second party), or the use of undercover operations, even though these lawful techniques are sometimes the only way effectively to investigate certain types of crime (for example, organized crime international and large-scale drug trafficking, and sophisticated white collar crime). Because Attorney General Guidelines and Department of Justice and FBI policies require concurrence by the prosecutors in the use of these techniques, the prosecutors' refusal to participate means that investigations are severely impeded or, in some cases, terminated. The FBI would welcome an opportunity to work with the Committee to seek a satisfactory solution to this problem. The Department of Justice is reviewing this issue.

**10. What the FBI is doing with regard to dealing with encryption.**

As the Subcommittee is aware, the misuse of encryption technology and computer networks by terrorists and other dangerous criminals presents significant challenges to the FBI in the areas of electronic surveillance and the search and seizure of stored electronic information. Unless the FBI enhances its ability to gain access to the plaintext of encrypted evidence and its ability to gather and process computer data obtained through lawfully authorized electronic surveillance and/or the search and seizure of computer evidence, investigators and prosecutors will be denied timely access to valuable evidence that will prevent terrorist or other serious criminal acts and solve crimes. Since the early 1990's, the law enforcement community has been expressing its concerns about the serious public safety threat posed by the misuse of robust non-recoverable encryption products that do not allow for law enforcement access to the plaintext of encrypted evidence.

The FBI has been pursuing a voluntary approach with industry in an effort to try and address law enforcement's concerns regarding encryption products. The voluntary approach was chosen in lieu of seeking a legislative mandate to require that all commercially available encryption products incorporate some type of plaintext access feature as a means of addressing law enforcement's public safety concerns. At that time, industry was encouraged to develop and sell recoverable encryption products by engaging industry in "good faith dialogue" and by using existing export encryption controls to provide favorable treatment for the export of recoverable encryption products as a means of attempting to influence the U.S. domestic encryption market. The policy decision of seeking to use existing export controls as a means of influencing the U.S. domestic encryption market was ineffective and unsuccessful.

The FBI has always sought to work cooperatively and closely with industry, including Internet Service Providers, equipment manufacturers, software manufacturers, encryption product manufacturers and others, for the purpose of ensuring that law enforcement's requirements are known and, more importantly, to seek industry cooperation to ensure that public safety needs of law enforcement are addressed. The modern Information Technology (IT) environment is a highly complex and quickly-changing environment. It is incumbent on the FBI to continue to develop innovative technologies and policies to ensure its continued ability to lawfully gather and process computer data and electronic communications that are in furtherance of criminal activity.

Additionally, we have also been aggressively pursuing an industry outreach strategy to inform the IT industry of law enforcement's needs in the area of encryption, to encourage the development of recoverable encryption products that meet law enforcement's public safety needs and to seek industry's input regarding law enforcement's development of plaintext access "tools"

and capabilities when encryption products are encountered during the course of lawful investigations.

The FBI is attempting to meet investigative needs through the execution of a number of key strategies that are set forth below:

1. To address the serious public safety challenges posed by the misuse of these new and innovative technologies, the FBI, on behalf to the law enforcement community, continues to take the necessary steps to enhance its technical capabilities. This includes obtaining funding for the expansion the FBI's Engineering Research Facility to serve as a law enforcement Technical Support Center (TSC) to enhance law enforcement's technical capabilities to respond to the challenges posed by the increased use of encryption, new cyber technologies and computer-based communications networks by terrorist and criminals. The FBI's TSC has been proposed as a centralized law enforcement technical resource for use by all of law enforcement for the purpose of developing and deploying new capabilities and tools, both in the area of access to the computer based network communications and plaintext access to encrypted information, which is urgently needed to meet these investigative challenges. The TSC is envisioned as an expansion of the FBI's existing Engineering Research Facility to take advantage of the facility's institutional and technical expertise in this area. The TSC was authorized by Congress in 1995 as part of the Anti-terrorism and Effective Death Penalty Act. The concept enjoys the support of the law enforcement community, to include the International Association of Chiefs of Police (IACP), National Sheriff's Association, the National District Attorneys Association (NDAA) and many companies within the IT industry.

- **INDUSTRY OUTREACH EFFORTS** - In keeping with the voluntary approach to address the encryption problem, the FBI has been aggressively pursuing an industry outreach strategy to inform industry of law enforcement's needs and/or issues in the area of commercially-available encryption products and to seek industry's assistance regarding access to communications on computer based networks and the development of law enforcement plaintext access tools and capabilities when non-recoverable encryption products are encountered during the course of lawful investigations. We have been meeting with hardware and software encryption companies and Internet Service Providers in an effort to develop and maintain an effective and appropriate law enforcement/industry relationship. As part of this effort, an Information Technology Study Group (ITSG) was formed for the purpose of bringing together key companies within the IT industry and the law enforcement community to provide a forum conducive for frank and candid discussions as well as a better understanding of each entities' issues and concerns regarding commercially available encryption products. We plan to continue to pursue our industry outreach efforts, to include expanding industry's participation in the ITSG.
- **LEGISLATIVE PROPOSAL** - As part of the "New Approach to Encryption," the FBI worked with the Justice Department and the former Administration to propose the Cyberspace Electronic Security Act (CESA) which is intended to provide law enforcement with additional legal mechanisms to help maintain its current abilities to obtain usable evidence in light of the use of encryption by criminals and

terrorists. The purpose of CESA is to provide additional legal protections for confidential information related to law enforcement's sources and methods as well as corporate trade secrets provided to law enforcement to assist in obtaining the plaintext of encrypted evidence

To date, no funding has been appropriated for the FBI's TSC nor has any legislative action taken place regarding the CESA legislative proposal.

**11. Presidential Directive #75, commonly called CI-21, established a National Counterintelligence Board of Directors chaired by the FBI and composed of the Deputy Secretary of Defense, the Deputy Director of Central Intelligence, and a senior representative of the Department of Justice.**

**a. How will the Board and the newly appointed CI-21 Executive, Mr. Szady ensure the coordination and cooperation of these other agencies?**

The cooperation of agencies throughout the U.S. Government as well as of the private sector will be critical to the success of the National Counterintelligence Executive (NCIX) in meeting the objectives of Presidential Decision Directive-75 (PDD-75). With the support of the Board of Directors, NCIX David Szady and his staff plan to develop and implement an outreach strategy that will involve U.S. Government agencies and private sector entities in a position to play a role in identifying and protecting our nation's most critical assets. Involving the public and private sectors in this outreach program will be key to ensuring their cooperation in putting in place a new Counterintelligence (CI) system that is policy driven, predictive rather than reactive in nature, and operates on the basis of mutually agreed upon strategic objectives. Backed by the Board of Directors, the NCIX will have full authority to develop a comprehensive resource strategy for, initially, the Counterintelligence Programs in CIA, DOD, and the FBI to ensure they are well positioned to meet the operational challenges of supporting PDD-75. In the event of conflicting operational strategies, the NCIX also will have the authority to determine an approach that best meets the goals to be identified in the National CI Strategy.

**b. Will this new office provide Congress with a strategic plan on how it plans to accomplish its goals and performance plans outlining whether its goals have been met and which agencies are or are not cooperating?**

Mr. Szady and his staff are in the process of refining the mission for the National Counterintelligence Executive and outlining a structure for the new organization. Once the structure and associated personnel are in place, they will begin to implement the objectives outlined in the PDD-75, including the outreach program discussed above and the preparation of the annual National Threat Identification and Prioritization Assessment and the National Counterintelligence Strategy. Mr. Szady and his staff also will be developing a program evaluation system to measure progress in meeting the goals of the National CI Strategy. The evaluation system will give the NCIX insight into public and private sector policies, practices, and capabilities and provide the basis for NCIX recommendations designed to improve the nation's Counterintelligence posture. Given the sequence of tasks that need to be done before the first round of program evaluations can take place, the first results will not be complete for at least eighteen months. Mr. Szady and his staff are committed to keeping the Congress informed of

progress being made toward establishing the new organization and the status of activities undertaken to meet the strategic objectives outlined in PDD-75.

**12. What has the FBI done in response to the growing concerns over a terrorist attack in the United States?**

The FBI regards acts of terrorism as a preeminent threat to US national security interests and, consequently, the FBI counterterrorism program is one of the FBI's highest priorities. In recognition of the increasing importance of terrorism, the FBI radically restructured its approach to counterterrorism and to counterterrorism-related analysis and information sharing. In November 1999, the counterterrorism program—formerly located within the National Security Division—was elevated as its own division within the FBI.

The FBI has also developed and implemented a three-tiered system of prioritizing programs as part of its strategic planning process. FBI Executive Management has actively used the FBI Strategic Plan as a mechanism for focusing expertise and resources on the most serious problems facing the nation. Tier One Programs include foreign intelligence, terrorist, and criminal activities that directly threaten the national or economic security of the United States. These offenses fall almost exclusively within the jurisdiction of the FBI. Issues in this area are of such importance to US national security interests that they must receive priority attention.

Reflecting the increased terrorist threat and the importance of federal counterterrorism efforts, the FBI Counterterrorism Program has been officially designated a "Tier One Program." Through the strategic planning process, the FBI's Counterterrorism Division has developed and implemented a proactive, nationally directed program management strategy for countering terrorist threats.

**a. What is the National Infrastructure Protection Center and how is it used in these efforts?**

Background on the NIPC

The National Infrastructure Protection Center (NIPC) is an interagency Center located at the FBI. Created in 1998, the NIPC serves as the focal point for the government's efforts to warn of and respond to cyber intrusions. The NIPC has been directed to "serve as a national critical infrastructure threat assessment, warning, vulnerability, and law enforcement investigation and response entity." The mission of the NIPC (in priority order) is to detect, deter, assess, warn (users), respond to, and investigate unlawful acts involving computer and information technologies and unlawful physical and cyber acts that threaten or target our critical infrastructures.

The NIPC is at the core of the government's warning, investigation, and response system for threats to, or attacks on, the nation's critical infrastructures. The NIPC is the focal point for gathering information on threats to the infrastructures as well as "facilitating and coordinating the Federal Government's response to an incident." The NIPC includes elements responsible for warning, analysis, computer investigation, coordinating emergency response, training, outreach, and development and application of technical tools.

The NIPC has a vital role in collecting and disseminating information from all relevant sources. Pursuant to Presidential Decision Directive (PDD) 63, the NIPC has been directed to "sanitize law enforcement and intelligence information for inclusion into analyses and reports that it will provide, in appropriate form, to relevant federal, state, and local agencies; the relevant owners and operators of critical infrastructures; and to any private sector information sharing and analysis entity." The NIPC is also charged with issuing "attack warnings or alerts to increases in threat condition to any private sector information sharing and analysis entity and to the owners and operators."

In order to perform its role, the NIPC has established a network of relationships with a wide range of entities in both the government and the private sector. The directive establishing the Center, PDD 63, provided for this in several ways. First, it stated that the Center will "include representatives from the FBI, U.S. Secret Service, and other investigators experienced in computer crimes and infrastructure protection, as well as representatives detailed from the Department of Defense, Intelligence Community and Lead Agencies."<sup>6</sup> Second, it directed the NIPC to establish electronic links to the rest of the government in order to facilitate the sharing of information and the timely issuance of warnings. Third, all executive departments and agencies were directed to "share with the NIPC information about threats and warning of attacks and actual attacks on critical government and private sector infrastructures, to the extent permitted by law." By bringing other agencies directly into the Center and building direct communication linkages, the Center provides a means of coordinating the government's cyber expertise and ensuring full sharing of information, consistent with applicable laws and regulations.

To accomplish its goals under the PDD, the NIPC is organized into three sections:

The Computer Investigations and Operations Section (CIOS) is the operational and response arm of the Center. It program manages computer intrusion investigations conducted by FBI Field Offices throughout the country; provides subject matter experts, equipment, and technical support to cyber investigators in federal, state, and local government agencies involved in critical infrastructure protection; and provides a cyber emergency response capability to help resolve a cyber incident.

The Analysis and Warning Section (AWS) serves as the "indications and warning" arm of the NIPC. The AWS reviews numerous government and private sector databases, media, and other sources daily to disseminate information that is relevant to any aspect of NIPC's

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<sup>6</sup> The Lead Agencies are: Commerce for information and communications; Treasury for banking and finance; EPA for water supply; Transportation for aviation, highways, mass transit, pipelines, rail, and waterborne commerce; Justice/FBI for emergency law enforcement services; Federal Emergency Management Agency for emergency fire service and continuity of government; Health and Human Services for public health services. The Lead Agencies for special functions are: State for foreign affairs, CIA for intelligence, Defense for national defense, and Justice/FBI for law enforcement and internal security. The NIPC is performing the lead agency and special functions roles specified for "Justice/FBI" in the PDD.

mission, including the gathering of indications of a possible attack. It provides analytical support during computer intrusion investigations, performs analyses of infrastructure risks and threat trends, and produces current analytic products for the national security and law enforcement communities, the owners-operators of the critical infrastructures, and the computer network managers who protect their systems. It also distributes tactical warnings, alerts, and advisories to all the relevant partners, informing them of exploited vulnerabilities and threats.

The Training, Outreach and Strategy Section (TOSS) coordinates the training and continuing education of cyber investigators within the FBI Field Offices and other federal, state and local law enforcement agencies. It also coordinates our liaison with private sector companies, state and local governments, other government agencies, and the FBI's Field Offices. In addition, this section manages our collection and cataloguing of information concerning "key assets" -- i.e., critical individual components within each infrastructure sector, such as specific power grids, telecommunications switch nodes, or financial systems -- across the country.

To facilitate our ability to investigate and respond to attacks, the FBI has created the National Infrastructure Protection and Computer Intrusion (NIPCI) Program in the 56 FBI Field Offices across the country. The investigative program is currently handling over 1200 pending investigations. NIPC squads have been created in 16 FBI Field Offices: Washington D.C., New

York, San Francisco, Chicago, Dallas, Los Angeles, Atlanta, Charlotte, Boston, Seattle, Baltimore, Houston, Miami, Newark, New Orleans, and San Diego. Other FBI Field Offices have smaller teams of one to five agents dedicated to working NIPCI matters.

The NIPC represents a cutting-edge approach to dealing with the difficult problem of computer intrusions. While housed at the FBI, the NIPC is an interagency Center. It currently consists of detailees from the following U.S. government agencies: FBI, Army, Office of the Secretary of Defense (Navy), Air Force Office of Special Investigations, Defense Criminal Investigative Service, National Security Agency, General Services Administration, United States Postal Service, Department of Transportation/Federal Aviation Administration, Central Intelligence Agency, Department of Commerce/Critical Infrastructure Assurance Office, and a representative from the Department of Energy. Canada, the United Kingdom, and Australia also each have a detailee in the Center. In addition, the Center has had detailees from the Department of State, the National Aeronautics and Space Administration, and the U.S. Secret Service as well as state law enforcement officials detailed on a rotating basis from the Oregon State Police and the Tuscaloosa County (Alabama) Sheriff's Department.

The leadership of the Center is drawn from the law enforcement, defense, and intelligence communities. The Center is designed to combine and leverage the expertise of individuals throughout the government in an attempt to address this complex issue with the authorities granted to the FBI under the judicial oversight of the Department of Justice and with extremely

limited resources. Members of the interagency NIPC team have offices all over the United States and all around the world that are drawn upon to assist with cyber intrusion investigations.

#### Responding to Terrorism

The federal government needs to develop in several areas to be better prepared for potential cyber terrorist incidents: intelligence base, contingency planning, training, warning, and response. The NIPC has programs in each of these areas.

#### *Intelligence Base*

Analysis: The NIPC has two analysts assigned to monitor the cyber capabilities of known terrorist groups. They maintain regular contact with FBI field offices and the US Intelligence Community and contribute to assessments of terrorist cyber capabilities. Good analysis and warning (discussed below) is our best defense. The NIPC has a variety of products to inform the private sector and other domestic and foreign government agencies of the threat, including: alerts, advisories, and assessments; biweekly *CyberNotes*; monthly *Highlights*; and topical electronic reports. These products are designed for tiered distribution to both government and private sector entities consistent with applicable law and the need to protect intelligence sources and methods, and law enforcement investigations. For example, *Highlights* is a monthly publication for sharing analysis and information on critical infrastructure issues. It provides analytical insights into major trends and events affecting the nation's critical infrastructures. It is usually published in an unclassified format and reaches national security and civilian government agency officials as well as infrastructure owners. *CyberNotes* is another NIPC publication designed to provide security and information system professionals with timely information on cyber vulnerabilities, hacker exploit scripts, hacker trends, virus information, and other critical infrastructure-related best practices. It is published twice a month on our website ([www.nipc.gov](http://www.nipc.gov)) and disseminated in hardcopy to government and private sector audiences.

Data Warehouse System: The NIPC is undertaking the Data Warehouse System project. This warehousing project is designed to collect incident data from all sources into a single searchable architecture. It was started in summer 2000 and a prototype has been developed. This project will assist NIPC in the development of its intelligence base which assists in our defense against terrorism.

Key Asset Initiative: The objective of the Key Asset Initiative is to develop and maintain a database of information concerning "key assets" within each Field Office's jurisdiction as part of a broader effort to protect the critical infrastructures against both physical and cyber threats. To date, the NIPC has identified over 5,596 "key asset" entities. Knowing the location and importance of these assets may be critical in the event of a terrorist attack.

InfraGard : All 56 FBI field offices now have active InfraGard chapters. Nationally, InfraGard has over 1200 members. It is the most extensive government-private sector partnership for infrastructure protection in the country, and is a service the FBI provides

to InfraGard members free of charge for the American taxpayers. It particularly benefits small businesses which have no where else to turn for assistance. InfraGard expands direct contacts with the private sector infrastructure owners and operators and shares information about cyber intrusions and vulnerabilities through the formation of local InfraGard chapters within the jurisdiction of each of the 56 FBI Field Offices. The InfraGard program recently received the 2001 World Safe Internet Safety Award from the Safe America Foundation for its efforts. The success of the program is directly related to private industry's involvement in protecting its critical systems, since private industry owns almost all of the infrastructures. How has this worked in the real world? Last year an InfraGard member discovered a system compromise not only on its own machines, but on the machines of hundreds of other companies. While the vulnerability was well known, the victims did not know they had been compromised. The NIPC discretely contacted the victim companies and those companies were able to remove the exploit tool from their systems. Last month InfraGard issued a sanitized report from one of its members to the rest of the membership regarding a new cyber incident. In the event of a threat or attack, this private sector liaison will be vital for national response and reconstitution efforts.

#### *Contingency Planning*

- Emergency Law Enforcement Services Sector: The FBI is the U.S. Government lead agency for the Emergency Law Enforcement Services Sector. The FBI and the ELES "sector coordinator" have developed a plan to mitigate or eliminate vulnerabilities of state and local law enforcement that will lead to this vital sector being "hardened" against terrorist attack. Working with law enforcement agencies across the United States, the NIPC conducted a sector survey and used the results of this survey to draft a sector report. ELES was the first completed sector report under PDD-63 and was delivered to the White House on March 2, 2001. The ELES Plan and accompanying guide were presented by ELES Sector Coordinator Sheriff Patrick Sullivan of Colorado to the Partnership for Critical Infrastructure Security in Washington, D.C., in March, 2001. At that forum the plan was held up as a model for the other sectors. The NIPC also sponsored the formation of the Emergency Law Enforcement Services Sector forum, which meets quarterly to discuss issues relevant to sector security planning. Since local law enforcement is the backbone of the first responder community, this work contributes to national preparedness.

#### *Training*

- Training: Training is another strong point of the NIPC. From scratch, NIPC interagency personnel developed a training program for not only FBI personnel but also for federal, state, local, and foreign law enforcement and security service personnel. The NIPC training unit has five core courses that concentrate on computer and network investigations. In the past three years over 1000 federal, state, local, and foreign law enforcement and security personnel have been trained in the NIPC's core courses. NIPC training courses are offered at the FBI Academy at Quantico, Virginia, around the country at vendor facilities, and internationally at the International Law Enforcement Training Academies located in Budapest, Hungary, and Bangkok, Thailand. Over the past three years NIPC has provided training in its core and other courses for over 2,500 participants.

The NIPC's training program complements training offered by the FBI's Training Division as well as training offered by other agencies and the National Cybercrime Training Partnership. Trained investigators are essential to our successfully combating computer intrusions. This training is paying rich dividends in investigative cooperation. For example, some of the officers from the Philippines, who with FBI agents successfully investigated the IloveYou virus in May 2000, had attended NIPC-sponsored training in Bangkok, Thailand. Training of federal, state, and local personnel in cyber investigations increases our preparedness should a cyber incident be threatened or occur.

- **Exercises:** The NIPC regularly participates in exercises that aid in readiness for a cyber terrorist incident. In the past year the NIPC has participated in TOPOFF and has also worked with the electric power industry on response to attacks on that infrastructure sector.

#### Warning

**Warnings:** The NIPC regularly issues warning products and maintains a 24/7 watch center in the FBI SIOC. The NIPC has issued 93 warning products over the past three years. In the event of a cyber terrorist incident or threat, the NIPC would issue a warning message through its own dissemination channels and through the National Threat Warning System.

**Indications and Warning Architecture :** The NIPC is working to develop its indications and warning systems. One specific NIPC initiative is a pilot program developed with the North American Electrical Reliability Council (NERC). This program is intended to develop an Indications and Warning System for physical and cyber attacks. Under the pilot program, electric utility companies and other power entities transmit incident reports to the NIPC. These reports are analyzed and assessed to determine whether an NIPC alert, advisory, or assessment is warranted to the electric utility community. Electric power participants in the pilot program have stated that the information and analysis provided by the NIPC back to the power companies make this program especially worthwhile. NERC is expanding this initiative nationwide.

#### Response

**Investigations:** The NIPC has 1256 pending cases as of April 9, 2001. While none of these cases involves "cyberterrorism," these investigations contribute to the development of our intelligence base which lies at the heart of our prevention efforts.

**Crisis Response:** In the event of a national-level set of intrusions into significant systems, the NIPC has developed specific crisis response planning. Should a crisis occur, the NIPC will form a Cyber Crisis Action Team (C-CAT) to coordinate response activities using the facilities of the FBI's Strategic Information and Operations Center (SIOC). The team will have expert investigators, computer scientists, analysts, watch standers, and other U.S. government agency representatives. Part of the U.S. government team might be physically located at FBI Headquarters and part of the team may be electronically connected from anywhere in the world. The C-CAT will immediately contact FBI Field Offices and other

agencies responsible for the jurisdictions where the attacks are occurring and where the attacks may be originating. The C-CAT will continually assess the situation and support/coordinate investigative activities, issue updated warnings, as necessary, to all those affected by or responding to the crisis. The C-CAT will then coordinate the investigative effort to discern the scope of the attack, the technology being used, and the possible source and purpose of the attack. During the investigation, the C-CAT will monitor reconstitution activities.

Technical Analysis: The NIPC's Special Technologies and Applications Unit can analyze cyber threats and intrusions by reviewing logs and other technical data from an incident or victim system/network. The Unit also develops tools that could be used to investigate cyber terrorist incidents. For example, in December 1999 NIPC released a tool to allow users to find the presence of three specific denial of service tools on their systems. This is something never before done by the government for the user community and occurred over a month before the Distributed Denial of Service Attacks of February, 2000. These detection tools have been updated as we learned about modifications in the denial of service tools by the attackers. The NIPC's work with private companies has been so well received that the trade group Systems Administrators and Network Security Institute (SANS) awarded their 2000 Security Technology Leadership Award to members of the NIPC's Special Technologies Applications Unit. In the event of a cyber terrorist attack, the STAU would examine the victim networks for evidence vital to the attribution of the attack by investigators.

**b. What is the National Domestic Preparedness Office and how is it used in these efforts?**

The FBI recognizes that emergency responders on the state and local levels will likely be the first on-scene and bear the full brunt of responding to a weapons of mass destruction terrorist event. The National Domestic Preparedness Office (NDPO), an interagency initiative hosted by the FBI's Counterterrorism Division, exists specifically to assist state and local first responders in their efforts to combat terrorism. Its mission is to serve as the single interagency coordinating office for the planning and execution of federal terrorism assistance programs supporting state and local emergency responder communities in the area of weapons of mass destruction (WMD) related domestic preparedness planning, training, exercises, and equipment research and development. The NDPO also provides an information clearinghouse to ensure continuity of information, not only across levels of government, but across disciplines, thereby further enhancing state and local preparedness efforts.

By way of background, former Attorney General Reno held a "Stakeholders" Conference in August 1998, inviting over 200 leading members of the emergency response community to identify and discuss state and local issues and concerns regarding the Federal Government's role in WMD preparedness. Two overarching recommendations arose out of these discussion:

- Identify a single lead federal agency to serve as a clearinghouse and coordinate the distribution of federal programs and guidance to state and local communities.

- Identify a single program and policy office to integrate federal programs for terrorism-related assistance.

As a result of this meeting, in October 1998, reflecting the stakeholders' concerns and recommendations, and in consultation with the National Security Council, FEMA and the FBI, former Attorney General Reno announced the formation of the NDPO to be hosted by the FBI. To date, and consistent with state and local desires and concerns, the NDPO serves as a "one-stop shop" for state and local domestic preparedness support at the federal level.

To accomplish its mission, the NDPO is made up of personnel from a variety of federal, state and local sources, representing diverse experience, education, knowledge, skills, and concerns. Personnel from the FBI, FEMA, National Guard Bureau, Environmental Protection Agency, Department of Energy, Department of Justice/Office for Domestic Preparedness Support and National Institute of Justice, and the Department of Health and Human Services provide a federal perspective. Presently, a Fire Chief from the Prince George's County (Maryland) Fire Department represents state and local equities. This interagency organizational structure reflects strong interagency support for the NDPO and its mission. In keeping with the language in the NDPO Blueprint and the recent \$1.4 million in funding, additional state and local representatives will be selected to serve at the NDPO.

Each NDPO staff member has the operational experience and skill necessary to provide guidance to state and local authorities on domestic preparedness issues surrounding a WMD terrorist incident. These individuals provide a unique operational perspective unavailable elsewhere. For example, several members of the NDPO staff are HazMat-trained to enhance their understanding of WMD issues and increase their credibility with emergency responders. The NDPO also has a full-time bomb technician on staff from the FBI. To assist the health and medical community, the NDPO employs a full-time medical doctor who is a licensed psychiatrist and emergency medical specialist, a full-time registered nurse, and a Captain from the Department of Health and Human Services who is also a nurse practitioner.

In the next four months, in an effort to further enhance and diversify the depth of skills provided by its personnel, the NDPO will have on staff a US Army Medical Service Corps Officer, who is a specialist in medical planning, operations, and exercises; a Department of Energy Chemical Engineer and exercise specialist and a member of the National Emergency Response Team; and a member of the Coast Guard.

The NDPO also maintains an advisory group to ensure that NDPO programs and initiatives meet the domestic preparedness concerns and needs of state and local communities. The State and Local Advisory Group (SLAG), administered by the NDPO, is a federally registered advisory group under the provisions of the Federal Advisory Committee Act (FACA). The SLAG's sole purpose is to provide the Federal Government with state and local issues and concerns regarding WMD preparedness efforts. Group members represent the entire emergency response community, including fire, law enforcement, emergency medical services, public health, emergency management, National Guard, bomb technicians, and state and local governments.

The SLAG provides the federal interagency community with practical and general policy advice regarding program strategy and implementation to enhance the preparedness and response

capabilities of emergency responders for a WMD incident. Its services are essential and irreplaceable in ensuring that federal plans and programs meet the needs and concerns of state and local first responders and their communities.

The group's initial meeting took place in September 2000, and culminated with the identification of numerous structural and procedural concerns regarding federal preparedness strategies and the federal, state, and local relationship, including command integration problems, short-falls in the planning and response capabilities within the public health community, the lack of adequate strategic planning at all levels, the lack of a common communication architecture, and the lack of a curriculum review body to ensure consistency in WMD preparedness instruction. The NDPO is planning the next SLAG meeting tentatively for Summer 2001.

13. **The mission of the National Domestic Preparedness Office is to coordinate all federal preparedness efforts to assist State and local emergency responders with planning, training, equipment, exercise, and health and medical issues necessary to respond to a Weapon of Mass Destruction event. The NDPO is currently headed by the FBI. There have been proposals to move the operation or create a similar one to be overseen by FEMA or the White House.**

a. **What does NDPO do?**

As noted in the answer to Question 12(b), the NDPO serves as the focus for state and local WMD-related preparedness efforts. Its mission is to coordinate the planning and execution of federal terrorism assistance programs supporting state and local emergency responder communities in the area of WMD-related domestic preparedness planning, training, exercises, equipment research and development, and health and medical issues. The NDPO also provides a federal information clearinghouse.

The NDPO is organized into six program areas (Planning, Training, Exercises, Equipment, Information Sharing/Outreach, and Health and Medical), *as requested by the emergency response community*, designed to facilitate, coordinate, and share information related to federal domestic preparedness programs and to provide state and local agencies with a single point of contact for information assistance. In spite of past budgetary and resource limitations, the NDPO has engaged in numerous projects and realized considerable accomplishments.

*Program Areas, Initiatives, and Accomplishments*

*Planning* - Within the Planning Program area, the NDPO seeks to provide coordinated planning assistance to state and local governments, and ensure that those efforts are consistent with efforts on the federal level.

- The NDPO produced the *On-Scene Commander's Guide for Responding to Biological/Chemical Threats*, now in its third printing and also available for download onto Palm Pilots. This guide has been very well received by the emergency responder community.
- The Office is also in the process of developing a planning guide to assist state and local officials with the WMD preparedness planning process.

- A year ago, several members of the NDPO traveled to the National Fire Academy (NFA) in Emmitsburg, MD, to develop new command interoperability procedures to integrate the Incident Command System (ICS) with the federal Joint Operations Center (JOC) command methodology. These procedures are now being promulgated by the NFA and the FBI's Critical Incident Response Group (CIRG).
- Through its secure website on Law Enforcement Online (LEO), the NDPO provides an electronic clearinghouse of state, local, and federal plans and examples of "best practices" in WMD planning.
- Currently, the NDPO is coordinating the planning efforts for an implementation strategy intended to provide greater detail as to how federal agencies intend to meet their domestic preparedness objectives.

Training - Within the Training Program area, the NDPO acts as a clearinghouse for available federal, state, and local WMD training.

- The NDPO now maintains the *Compendium*, a catalogue of federally-produced WMD training courses which are available to state and local first responders. This resource, currently being revised and updated, is open and available to all on the NDPO's website.
- In its efforts to ensure the quality and uniformity of training provided to state and local responders by the Federal Partners, the Office is coordinating a curriculum review panel.
- The NDPO also provides electronic links to state, local, and federal WMD training efforts through its secure website.
- The NDPO is engaged in WMD distance learning initiatives. For example, the NDPO currently offers FEMA and the NFA's *Emergency Response to Terrorism* course through a link on its secure website. The NDPO continues to actively look for new distance training content.

Exercises - Within the Exercises Program area, the NDPO provides recommendations, guidance and technical support to federal, state or local agencies in planning WMD exercises.

- The NDPO maintains the Master Exercise List on its secure website, cataloguing major exercises on the federal level.
- The Office provides electronic links to state and local WMD exercises through its secure website.
- The NDPO is developing an Exercise Handbook for Emergency Responders, providing guidance in the planning and conducting of WMD exercises.
- The NDPO is also developing a standardized after action reporting mechanism for WMD exercises to help identify "best practices," as well as gaps and shortfalls.

Equipment - Through its equipment program, the NDPO coordinates efforts to provide the emergency response community with the equipment necessary to prepare for, and respond to, a WMD terrorist incident.

- The NDPO posts the Standardized Equipment List (SEL) on its website, detailing available equipment meeting accepted safety and performance standards.

- It coordinates equipment matters with the Interagency Board for Equipment Interoperability and Standardization and disseminates information to the emergency response community.
- The NDPO also published an Information Bulletin detailing the important questions procurement officials should ask when purchasing equipment.

Information Sharing/Outreach - The NDPO has established a robust information sharing program to collect and distribute information among the federal, state, and local emergency response community.

- The NDPO produces *The Beacon*, a monthly newsletter covering the WMD community with a circulation approaching 100,000 readers.
- The office also regularly produces Special Bulletins and Information Bulletins, intended to disseminate sanitized intelligence and other important information amongst the federal, state, and local emergency response community.
- The NDPO has created the Common Communications Link, a secure website hosted by Law Enforcement Online (LEO), to facilitate communication among members of the WMD preparedness community.
- The NDPO operates an electronic helpline, giving emergency responders an easy way to ask WMD preparedness questions, and get quick answers.
- The Office operates the NDPO Internet site, an "open-source" companion to the secure Common Communication Link.
- The Office operates the NDPO Speakers Bureau, providing organizations and communities a source for high-quality, authoritative speakers in the area of WMD preparedness.
- The NDPO engages in outreach activities to increase the WMD preparedness dialog between the Federal Government and professional associations representing emergency responders, federal agencies, and state and local authorities.

Health and Medical - The NDPO's Health and Medical Program facilitates interagency efforts to support the Department of Health and Human Services, as well as facilitates efforts to integrate health care planning into WMD response plans.

- The Office has compiled health and medical-related information on WMD planning, training, exercises, equipment, and information sharing. This information is available on the NDPO's secure website.
- Current NDPO efforts center on developing a "Biological Response Guide" for health care professionals.
- The NDPO is also working to establish a Mental Health Working Group to address the psychological impacts of a WMD incident on emergency responders.

**b. Please explain the difference between the FBI's role and FEMA's role in responding to such events.**

The short and oversimplified answer to this question is that the FBI manages functions related to mitigating the terrorist "crisis," and FEMA manages the "consequences" of the event.

That is, the FBI handles functions *before and during* the event, and, except for any subsequent criminal investigation, FEMA handles everything *after* the terrorist event.

Based on Presidential Decision Directive 39 (PDD-39), the Federal Response Plan, and the Federal Concept of Operations Plan (CONPLAN), the US Department of Justice, with the FBI as its executive agent, is the Lead Federal Agency for crisis management, and FEMA is the Lead Federal Agency for consequence management. By these documents, "crisis management" includes measures to *identify, acquire and plan* the use of resources needed to *anticipate, prevent, and/or resolve* a threat or act of terrorism. As such, overseeing and coordinating the national preparedness building effort is an essential function of the FBI's crisis management function. These activities include planning, training, and exercising with public safety officials, designed to anticipate, prevent, and investigate a terrorist situation. FEMA manages all aspects of consequence management, which is essentially the recovery, site clean-up, and sustainment of government services to the public that would occur after a terrorist incident.

**c. Should FEMA take the lead role in this coordination effort?**

No. Per PDD-39 and supporting documents, the FBI is the Lead Federal Agency for crisis management, and crisis management planning is the logical precursor to preparedness.

Crisis management necessarily includes measures to identify, acquire and plan the use of resources needed to anticipate, prevent, and/or resolve a threat or act of terrorism. In a terrorist incident, a crisis management response may include traditional law enforcement missions, such as intelligence, surveillance, tactical operations, negotiations, forensics, and investigations, as well as technical support missions, such as agent identification, search, render safe procedures, transfer and disposal, and limited decontamination. In addition to the traditional law enforcement missions, crisis management also includes assurance of public health and safety.

Consequence management includes measures to protect public health and safety, restore essential government services, and provide emergency relief to governments, businesses, and individuals affected by the consequences of terrorism. In an actual or potential terrorist incident, a consequence management response will be managed by FEMA using structures and resources of the Federal Response Plan (FRP). These efforts will include support missions as described in other Federal operations plans, such as predictive modeling, protective action recommendations, and mass decontamination.

**d. Should this office be housed somewhere else, such as at main Justice?**

No. It is important to keep the NDPO within the FBI's organizational structure because the two organizations provide each other with significant symbiotic advantages, unavailable elsewhere in the federal arena, that allow these organizations to best accomplish their missions. Within the FBI, the NDPO serves to support DOJ's interests. The NDPO furthers the DOJ and the FBI in their domestic preparedness responsibilities as mandated under PDD-39, which designates the DOJ, and the FBI specifically, as the lead agency for crisis management relating to terrorist activities in the United States. In fulfilling this mandate, the FBI's counterterrorism strategy is to identify, prevent, deter, and defeat terrorist operations before they occur, and in the event of an act of terrorism, to execute the FBI's statutory investigative responsibilities and

accomplish its role as the Lead Federal Agency for crisis response, functioning as the on-scene manager for the US Government. According to the Federal Response Plan (FRP) Terrorism Incident Annex, in this context crisis management refers to "measures to identify, acquire, and plan the use of resources needed to *anticipate, prevent, and/or resolve* a threat or act of terrorism [emphasis added]." The NDPO, by virtue of its domestic preparedness mission and its interaction with the emergency responder community, directly supports the DOJ/FBI's crisis management role, specifically the prevention aspect, through its planning, training, exercises, equipment and information sharing/outreach functional areas. The NDPO's programs bolster the Nation's domestic preparedness, thereby reducing the vulnerability of communities, and, consequently, reducing the attractiveness of the United States as a WMD terrorist target.

Further, because DOJ, with the FBI as its executive agent, occupies the lead role in crisis management, and since a WMD incident would be treated as a crime scene, both DOJ and the FBI must work very closely with state and local law enforcement prior to, as well as after, a terrorist event. In the course of protecting the integrity of potential terrorist investigations, DOJ and the FBI maintain a vested interest in the federal, state, and local domestic preparedness programs. The NDPO serves as a mechanism for DOJ and the FBI to impact and stay apprised of preparedness efforts.

The FBI, for its part, also provides the NDPO opportunities and advantages unavailable elsewhere. The FBI has a long history of serving the American people. The perception of the FBI in general, and its counterterrorism expertise specifically, remain positive in the minds of the public, the emergency response community, and among other federal agencies. By the FBI hosting the NDPO, the FBI imparts to the NDPO unique credibility, which is essential to its long term success.

Keeping the NDPO within the FBI gives it more than just credibility, however. Of the numerous federal agencies involved in domestic preparedness, the FBI maintains the most extensive, long established infrastructure in the United States, suggesting that, more than any of the other federal partners, the FBI has the ability to reach farther into the state and local communities--the very constituents the NDPO was chartered to serve. Currently, the FBI has 56 field offices and more than 400 resident agencies throughout the United States and its territories. As a result, FBI personnel live and work in the communities where they are coordinating domestic preparedness issues, and, therefore, remain familiar with state and local partners, issues, and concerns. Ultimately, when a terrorist event occurs, they are considered essential local emergency responders alongside their state and local counterparts. By contrast, other federal agencies operate on a 10 region concept, negatively impacting response time to a terrorist incident. This integration with state and local communities provides the NDPO with unparalleled access by which to accomplish its mission.

As part of its counterterrorism infrastructure the FBI maintains full-time WMD Coordinators in all 56 field offices. The role of the WMD Coordinator is to become the first responders point of contact for the field office; maintain contact with local authorities and the federal regional counterparts from FEMA, DoD, DOE, HHS, and EPA; identify and promulgate existing response plans and procedures into a specific set of guidelines for a jurisdictional response to a WMD incident; become familiar with the existing protocols of all organizations and be thoroughly knowledgeable about the capabilities and needs of the local response community;

and update counterparts within the field office territory with threat and other information as communicated through the NDPO. The WMD Coordinator also facilitates WMD working groups and task forces that include federal partners and state and local officials. These coordinators are able to efficiently communicate the NDPO mission and services directly to community members through these working groups, and are an essential resource for the NDPO. Placement of the NDPO within the FBI gives the NDPO the most uninhibited access to the WMD coordinators.

Along with the WMD coordinators, each Special Agent-in-Charge (SAC) is personally responsible for establishing liaison at the federal, state and local level as well as establishing or participating in appropriate working groups in his/her area of responsibility. Among the SAC liaison contacts are key federal, state and local elected officials, heads of critical state and local agencies to include police, fire, medical, emergency management, public works, and other key players. The SAC, as part of his/her outreach initiatives, or through their WMD Coordinator, assist in the implementation of NDPO programs to support state/local domestic preparedness activities. Examples include the development of state/local response plans which effectively integrate with the FRP and the planning and conduct of exercises to test plans and identify shortfalls.

FBI field office personnel, notably the WMD Coordinators also play a key role in the federally provided Domestic Preparedness Program training (*e.g.* Nunn, Lugar, Domenici training) as the point of contact for the emergency response community during the crisis management phase of the training and exercise programs. Their participation in the program demonstrates to the local response community the FBI's, and by association, the NDPO's, commitment to domestic preparedness and effective terrorism response. Significantly, the WMD Coordinator provides the NDPO with valuable feedback regarding planning, training, exercises, equipment, and health/medical issues in each locality. The NDPO shares this information with the federal interagency partners to effectively evaluate WMD programs.

Additionally, as an organization, the FBI maintains extensive ongoing and effective liaison with many of the key federal participants in the domestic preparedness arena, to include: DOD, HHS, DOE, EPA and DOJ/OJP. The combination of existing liaison at the Federal HQ level and continued liaison through the FBI field offices provide the NDPO with an exceptional mechanism to coordinate domestic preparedness matters.

Based on the foregoing, the FBI should continue to host the NDPO. Transferring the NDPO to a new government department would only create new and unneeded bureaucracies. This would risk undermining the verities that have made the NDPO a unique and effective medium for the planning and coordination of federal support to state and local WMD preparedness efforts. Moreover, moving the office out of the FBI risks dissipating the NDPO's current level of inertia and momentum, which, because of budgetary and resource limitations, the NDPO gained only after great effort. The net result will likely be diminished coordination of WMD programs, more fragmented delivery, and more frustration on the part of state and local first responders.

14. **The telemarketing unit of the FBI is currently attempting to fight telemarketing fraud conducted in Canada against seniors in the United States. Apparently about 80 percent of the telemarketing fund conducted in Canada is against U.S. citizens. This initiative is considered as part of the third tier in the FBI's budget. Does this mean this is a low priority and is the current funding enough to adequately address the problem?**

Concerning the priority which the FBI has placed on telemarketing fraud, the FBI has developed a Strategic Plan to apply limited financial and manpower resources in areas of greatest concern to the safety and economic well-being of the country. Under this plan, FBI investigative responsibilities are prioritized by threat assessment as determined by FBI management. **Tier I** threats focus on foreign intelligence, terrorism, and criminal activities that directly threaten the national or economic security of the United States. **Tier II** threats revolve around public safety and threats that undermine the integrity of American society. Examples of Tier II threats include organized crime, illegal drug organizations and public corruption. **Tier III** threats include crimes affecting individuals and property. Telemarketing fraud has been classified as a Tier III crime problem. This, however, does not mean that telemarketing fraud is a lower priority crime problem in all field offices of the FBI. The FBI's Strategic Plan requires that executive management, in each of the 56 field offices, focus sufficient resources to address Tier I threats first, followed by Tier II threats and, finally, Tier III threats. If a particular field office has determined it does not have any significant threats in Tier I, executive management of that office is free to allocate resources to Tier II and Tier III threats. This plan has been put in place because the FBI does not have the financial or manpower resources to address all threats all of the time. This system ensures that sufficient resources are available to address the most significant threats, as determined by the Director of the FBI.

Funding for this initiative has become a major issue. Due to budget constraints, the FBI is unable to fund this initiative directly. From its inception, Canadian Eagle was funded through the DOJ Asset Forfeiture fund until December 2000. In February 2001, the DOJ Office of Victims of Crime committed \$250,000 to fund this initiative. Additional funding is needed to adequately address this crime problem through expansion of this initiative and, as a source of funding for next fiscal year has yet to be identified, continued funding in future years.

#### **Background**

The FBI has been the lead law enforcement agency in the fight against telemarketing fraud since the 1940's. With a cadre of federal statutes at its disposal to address this persistent crime problem, including interstate wire fraud, mail fraud, money laundering, conspiracy and others, the FBI has been on the front line in the fight to disrupt and dismantle illegal telemarketing fraud operations around the country. Several FBI Undercover Operations and National Initiatives in the early and mid-1990's, such as Operation "Disconnect", Operation "Senior Sentinel" and Operation "Double Barrel", led to the arrest and prosecution of hundreds of telemarketers and the seizure of millions of dollars in assets obtained by the targets through illegal telemarketing fraud. With the assistance of the State Attorneys General, the U.S. Postal Inspection Service, and many other

state and local law enforcement agencies, the problem of illegal telemarketing in the United States had been brought under control by 1995.

Beginning in 1996, the FBI began to recognize a new twist to an old scheme. Illegal telemarketing operations began to emerge in Canada. Taking advantage of lax criminal statutes resulting in minimal risk of prosecution, telemarketers located in Canada and targeted U.S. citizens. This trend has increased each year since 1996 and telemarketing fraud complaints arising from telemarketing operations based in Canada are now the most frequently reported type of telemarketing fraud reported to the FBI. Statistics reported by the Royal Canadian Mounted Police advise that 80% of all complaints received in Canada concerning illegal telemarketing fraud are from U.S. citizens. The most disturbing fact concerning this situation is that these unscrupulous telemarketers are targeting the elderly in the United States. Older U.S. citizens are prime targets for these operations because they often have substantial savings accumulated over a lifetime of work; they are less likely to recognize that they have been victimized and/or less likely to report the crime; they are often poor witnesses due to failing memories; and, in many cases, have a difficult time "just saying no" to a telemarketer. Telemarketers will use any leverage available and exploit the fact that the victim may be lonely or ill or rely on the telemarketer for advice on what to do with savings.

The Department of Justice recognized the problem and, in 1997, added Canadian telemarketing fraud to the agenda of the annual U.S./Canadian Cross Border Crime Summit, which is chaired by the Attorney General of the United States and the Canadian Minister of Justice in alternating years. A report was requested and prepared by the Attorney General which identified the problems encountered by both countries in addressing this crime problem, as well as proposed solutions. However, progress on implementing the suggested solutions has been slow. The Canadians have since criminalized telemarketing fraud and also modified statutes to allow video conferenced testimony of U.S. citizens. The latter was designed to facilitate the testimony of elderly U.S. victims who prefer not to travel. However, the requirement in the treaty concerning the extradition of criminals from Canada to the U.S. remains one of the most stringent and time consuming of all extradition treaties. A U.S. prosecutor can expect to wait one year or longer before he is able to successfully extradite a telemarketing fraud subject to the U.S. for prosecution. In addition, sufficient Canadian investigative and prosecutive resources have not been applied to adequately address this burgeoning crime problem. As one might expect, limited Canadian tax dollars are being directed to address crime problems which more directly affect Canadian tax payers.

The most recent statistics concerning complaints received in the city of Montreal alone for the period January 2000 through December 2000 are as follows (as reported by the Canadians):

Complaints received (80% U.S.):	1,753
Reported losses (U.S. Complaints only):	_____ \$16,052,594 (USD)
Victim checks recovered and returned:	_____ \$2,983,574 (USD)

The complaints and dollar losses noted above are only those reported to the Canadian authorities and are only for victims of telemarketers located in the Montreal area. Additional

complaints are made every day to U.S. federal, state and local police agencies as well as Better Business Bureaus. Also, many elderly victims do not report the crime for fear that family members will deem them incapable of handling their own financial affairs. Therefore, actual losses are believed to be substantially higher than those reported above.

In May 1999, the FBI designed and implemented an international telemarketing fraud initiative called "Canadian Eagle." This initiative placed four FBI Special Agents in Canada to assist the Canadian authorities in identifying the most egregious offenders, facilitate the interviews of U.S. victims, and coordinate investigations for prosecution in the United States. This initiative has achieved success through liaison and coordination with Canadian law enforcement agencies resulting in three major take downs in February 2001 with the following results:

Jurisdiction	ARRESTS	INDICTMENTS	CONVICTIONS
Canadian	42	11	3
Local		10	
FBI	4	28	3
<b>TOTAL (AS OF 3/1/2001)</b>	<b>46</b>	<b>49</b>	<b>6</b>

Although insurance, financial institution, health care and government fraud matters may result in greater total dollar losses each year than illegal telemarketing operations, it is important to note that these "institutional" victims spread their losses over a large customer base, in the form of higher fees, premiums or taxes, to recoup losses. Victims of telemarketing fraud, however, are almost always individuals and the substantial losses they incur are losses they must recover from individually. In addition to financial losses, the elderly victim suffers a loss of self esteem; of confidence in his or her ability to manage their affairs; and the victimization can lead to depression which, in at least one confirmed case, has resulted in a suicide. The loss of life saving drives some elders to public assistance programs for the bare necessities of life.

In 1998, Congress recognized that child exploitation, facilitated by computers and the Internet, was exploding exponentially and provided a separate appropriation in the amount of \$10 million a year to the FBI to fund the "Innocent Images" Initiative. This initiative has achieved much success in the identification, investigation and prosecution of those who would exploit the most vulnerable segment of our society. The initiative is also tasked with training other law enforcement agencies in the investigation of Internet related child exploitation.

Elder fraud, through illegal telemarketing, is a crime which targets the second most vulnerable segment of society. Without additional resources to address this crime problem, the FBI will not be in a position to address this crime problem in a manner that will lead to a substantial reduction in the victimization of U.S. citizens in general, and the elderly in particular. Additional funding is required to: support Special Agent travel to Canada for investigative

purposes; travel funds for victims/witnesses to travel to tele-conferencing sites or to Canada to provide testimony; provide public education in the form of radio and televised Public Service Announcements as well as print media which would identify current scams and provide contact numbers to report complaints and seek assistance; provide victim intervention by FBI victim/witness coordinators to help break the cycle of victimization. This cycle often occurs when telemarketers circulate the names of known "mooches", or habitual victims, to other telemarketers who continue to siphon funds from the victim.

Historically, the FBI has been the best prepared law enforcement agency, in terms of jurisdiction, experience and technical ability, to investigate national and international illegal telemarketers. The FBI has been the lead agency in the fight against telemarketing fraud and other federal, state and local law enforcement agencies continue to look to the FBI to take a leadership role in the fight against this insidious and pervasive crime problem. However, without additional resources, the FBI will not be able to continue to accept this responsibility.

**15. What steps is the FBI taking to address the backlog of DNA samples waiting analysis at the FBI's lab?**

There currently are approximately 1,300 cases awaiting DNA examinations within the FBI Laboratory. There are a number of reasons for the backlog of DNA samples awaiting analysis at the FBI Laboratory:

Increased sensitivity and informativeness of DNA analysis now makes it possible to obtain DNA profiles from evidence previously discarded as meaningless such as hairs, skeletal remains, fingernail scrapings, cigarette butts, stamps, envelope flaps, ski masks, baseball caps, weapons, eyeglasses or toothbrushes. Because the DNA testing is highly informative, examiners within the FBI Laboratory performing nuclear DNA analysis are able to absolutely identify an individual as a source of a probative stain. This level of identification has been obtained in 95 percent of cases with nuclear DNA matches since the FBI Laboratory began identity testing. Identity testing makes nuclear DNA testing a powerful weapon in the forensic scientists' arsenal.

Requests for testing have increased and the FBI Laboratory is inundated with items of evidence awaiting examination. The FBI Laboratory has approximately 1,115 cases awaiting nuclear DNA testing and approximately 170 cases awaiting mitochondrial DNA (mtDNA) testing. DNA Examiners within the FBI Laboratory are carrying a caseload of approximately 124 cases per examination team for nuclear DNA testing and 34 cases per examination team for mtDNA testing. However, over 9,000 items were processed and greater than 800 cases were cleared in 2000 for nuclear DNA testing alone.

DNA testing is extremely useful and the testing process is a tedious, time consuming process. The DNA typing procedures require days to conduct to ensure that testing is done in accordance with the National DNA Quality Assurance Standards as well as requirements established by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD-LAB). Documentation of all aspects of DNA testing is critical to demonstrate compliance. Generation, compilation and maintenance of this documentation adds to turnaround time on DNA cases.

## DNA CASEWORK

### Nuclear DNA casework

The nuclear DNA examinations conducted by the FBI Laboratory include the identification of blood, semen, saliva and other body fluids utilizing traditional serological techniques. Once the stain is identified, DNA obtained from the stain is characterized by the polymerase chain reaction-based (PCR) technique. The results of these analyses are compared to results obtained from known blood and/or saliva samples submitted from the victims and/or suspects.

In an effort to address the backlog of nuclear DNA samples awaiting analysis at the FBI Laboratory, several actions have been taken:

The FBI Laboratory continually implements the most efficient and effective serological and DNA typing methods. The FBI Laboratory nuclear DNA caseworking unit works closely with the Forensic Science Research Unit of the FBI Laboratory to ensure that the methods used are as efficient and yet as informative as are possible. The most recently developed nuclear DNA examination methods are more costly and require personnel with greater skills and higher academic credentials than previously employed analysis methods. Since 1995, nuclear DNA testing within the FBI Laboratory has implemented five major analytical improvements. Also, to employ new analysis methods, the appropriate analytical equipment has been purchased, validated and applied to forensic casework. The FBI Laboratory has upgraded numerous pieces of analytical equipment to ensure personnel have sufficient access to the most efficient and effective instruments available.

The FBI Laboratory continuously trains and qualifies nuclear DNA examiners. In 1995 and 1996 the FBI Laboratory lost 9 qualified Special Agent nuclear DNA examiners due to support personnel transition, retirement or promotion. Since that time, the FBI Laboratory has qualified 10 support examiners to fill those vacancies. Currently the FBI Laboratory has 3 additional nuclear DNA examiners in training. The nuclear DNA examiner training program takes 16-24 months to complete. The FBI Laboratory, however, currently has seven open positions for scientists to perform nuclear DNA testing. Due to hiring freezes and budget shortfalls, the FBI Laboratory is unable to fill these positions. Also, overtime funds have been virtually eliminated due to budget shortfalls. Without adequate personnel and funding for overtime, it will be impossible to adequately address the backlog of nuclear DNA samples awaiting analysis at the FBI Laboratory.

In another effort to address the backlog of nuclear DNA samples waiting analysis at the FBI Laboratory, in 1995 the FBI tightened its case acceptance policy to accept cases only from those states which did not have access to nuclear DNA testing through a public testing facility. This reduced the number of cases from state and local contributors. However, the number of FBI evidence submissions requesting nuclear DNA analysis has increased. In March, 2001, the FBI Laboratory further tightened the case acceptance policy and now only accepts cases from FBI field offices and Washington, D.C. for nuclear DNA analysis.

#### Mitochondrial DNA casework

Mitochondrial DNA analysis is applied to evidentiary samples consisting of hairs, bones and teeth. The results of these analyses are compared to results obtained from known blood and/or saliva samples submitted from the victims and/or suspects. Mitochondrial DNA was first applied to forensic casework in 1996 and the FBI is currently the only public forensic laboratory in the United States that performs this service for law enforcement agencies free of charge.

In an effort to address the backlog of mtDNA samples awaiting analysis at the FBI Laboratory, several actions have been taken:

Mitochondrial DNA evidence analysis is the most tedious and labor-intensive DNA analysis method. The Forensic Science Research Unit of the FBI Laboratory has performed and continues to perform research on several projects in an effort to perform mtDNA analysis better, faster and cheaper. Also, mtDNA sequencing equipment which will decrease the time of analysis has recently been purchased by the FBI Laboratory. The decrease in analysis time will be due to the improved quality of the data output and will decrease the need for repeated analyses. It is anticipated, however, that there will be an increase in the number of cases which will achieve successful typing results, thus increasing data interpretation and technical review time (examiner functions).

In 1996, the FBI Laboratory mtDNA staff consisted of four individuals. Currently, fourteen scientists are responsible for performing mtDNA casework. Also, one additional examiner should be qualified for casework by the end of June 2001 and another examiner should be qualified for casework by May 2002 bringing the total mtDNA staffing level to sixteen scientists. The average training period for mtDNA examiners is approximately 14 months. The hiring freeze, however, has prevented additional scientists from being selected and trained to analyze mtDNA samples. Three positions for mtDNA biologists have been affected by the hiring freeze in a discipline where more scientists are needed to reduce the number of unworked mtDNA cases. Despite the hiring freeze, the mtDNA casework backlog has begun to decrease with the qualification of one additional examiner (for data interpretation and expert testimony purposes) and subsequent re-assignment of old cases to that examiner in FY2001.

The FBI Laboratory carefully screens incoming requests for mtDNA analysis to insure that unnecessary examinations are prevented. Cases requiring mtDNA analysis submitted by the FBI are accepted immediately. However, non-urgent cases requiring mtDNA analysis submitted by state and local law enforcement agencies are put on a waiting list for approximately six months. If the submitting law enforcement agency requests the mtDNA examination after the six month waiting period, the case is then submitted to the FBI Laboratory. The six month waiting period for state and local cases requiring mtDNA analysis eliminates the unnecessary requests for mtDNA examinations made by state and local law enforcement agencies.

In the past two years, the FBI Laboratory has taught two forensic mtDNA courses with the hope that local and state laboratories will start their own mtDNA laboratories, thus decreasing the number of incoming cases to the FBI Laboratory. The next mtDNA training class is scheduled for the end of July 2001.

**COMBINED DNA INDEXING SYSTEM (CODIS)**

Authorization and funds were recently obtained to begin acquiring and testing blood samples from qualifying federally convicted offenders for inclusion of their DNA profiles into the CODIS database. All of these samples will be tested by the FBI Laboratory. The first blood samples to be tested are expected in the FBI Laboratory in June 2001. In anticipation of the submission of numerous samples and the need for timely analysis, automation and robotics systems which will decrease the analysis time (batch analysis) have been purchased. However, the current hiring freeze has prevented additional personnel from being selected and trained to analyze these samples, interpret data and/or enter data into CODIS. Without additional personnel assigned to this process, the backlog of blood samples from federally convicted offenders awaiting DNA analysis for CODIS will surely begin to accumulate within the FBI Laboratory.

Recently, the FBI Laboratory has created the National Missing Persons DNA Database (NMPDD) within CODIS to address the backlog of DNA samples awaiting analysis from missing or unidentified individuals. The FBI Laboratory has dedicated four qualified scientists to analyze evidence pertaining to this database to assist in the effort to identify missing and unidentified individuals. By dedicating four scientists to the NMPDD, missing persons DNA casework will not be required to be performed by individuals who perform routine DNA analysis thereby addressing the backlog of DNA samples awaiting routine DNA analysis.

It is critical that the backlog of DNA samples awaiting analysis at the FBI Laboratory be reduced if the FBI Laboratory is to adequately fulfill its law enforcement mission. Without additional personnel dedicated to the FBI Laboratory DNA programs, the FBI Laboratory is severely limited in its effort to address the backlog of DNA samples at the FBI Laboratory.

**16. Just days before the scheduled execution of Timothy McVeigh for the April 19, 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, the FBI disclosed that it failed to turn over to McVeigh's lawyers some 3,135 investigation materials including interview reports and physical evidence such as photographs, letters and tapes.**

**a. In the press statement by the Special Agent in Charge, Danny Defenbaugh, he states that the FBI initiated procedures in December of 2000 to ensure that all OKBOMB investigative records were appropriately archived. Is this true?**

Yes. The Oklahoma City Division wanted to ensure that all OKBOMB investigative materials were maintained in excellent condition for future storage in the National Archives. They requested instruction from the FBI Archivist to determine the correct procedures to follow in order to preserve OKBOMB documents and evidence. On 12/20/2000, the FBI Archivist sent a communication to all FBI field offices providing guidance relative to archival procedures and instructed the field offices to send any original material to Oklahoma City. The direction and guidance provided by the Archivist caused confusion within some field offices. Therefore, in order to clarify the earlier communication, on 01/30/2001, Oklahoma City Division sent a

communication to all field offices requesting that all files in possession of the field offices be forwarded to Oklahoma City. Field offices which had no materials in their possession were to notify Oklahoma City advising that no OKBOMB files were retained in those divisions.

- b. The archiving procedures were apparently implemented in December 2000, and according to the Special Agent's statement "during the process, it was determined that some of the materials from various FBI field offices were not a part of the investigative database." Yet, the Special Agent in charge apparently did not notify Headquarters that the archiving process had turned up these materials until May 8, 2001.**

- i. Were all 3,135 documents discovered on the same day? If so, when and how?**

The 709 documents or 3,135 pages referred to above were not discovered on the same day. Beginning in late January, 2001, Oklahoma City Division began receiving boxes from various field offices containing various documents and evidence. From late February, 2001 until research was completed, Oklahoma City Field Office had several analysts researching the documents/materials received from field offices against all OKBOMB related databases. On 03/07/2001, Mr. Defenbaugh arrived in Oklahoma City Field Office to attend a conference. Mr. Defenbaugh was shown a half-filled box which contained documents described as having not been located within the OKBOMB files at that time. Mr. Defenbaugh did not review the materials at that time inasmuch as additional research was continuing to determine if those materials were not in the OKBOMB files. Mr. Defenbaugh directed an analyst to expeditiously conduct the additional research required and to keep him informed. On 03/15/2001, Oklahoma City sent a communication to all field offices to the attention of the Administrative Officer, all Legats and the Archivist advising a review of files thus far indicated some offices were still in possession of some evidentiary material. Sometime between April 30, 2001, and May 3, 2001, Mr. Defenbaugh telephonically spoke with the analyst and discovered the research was completed. He then directed copies of questionable items be immediately sent to his office in Dallas for personal review. Mr. Defenbaugh received the materials in his office on 05/07/2001. His personal initial review of the material revealed no items of exculpatory nature, but under the discovery agreement, he concluded that some items were identified which should have been provided to the prosecutors and defense counsel. On 05/08/2001, he contacted Special Prosecutor to the Attorney General (Assistant United States Attorney), Sean Connelly and notified him of the situation. Mr. Connelly promptly notified defense counsel for Timothy McVeigh. That same day, Mr. Defenbaugh also notified FBI Headquarters, Assistant Director Dale Watson, Counterterrorism Division.

- ii. If the 3,135 documents were not discovered on the same day, what was the date of the discovery on the first document? Where was this document discovered?**

On 01/29/2001, an analyst found an envelope containing an agent interview note contained in one of the boxes sent to Oklahoma City. However, it was determined the item would not have been required to be produced under the reciprocal discovery agreement reached

between the prosecutors and defense counsel. Thereafter, every document received by Oklahoma City was reviewed to ensure that each document was already contained within the files. As explained above, on 03/07/2001 Mr. Defenbaugh was informed that there may be documents found that were responsive to the discovery agreement and had not previously been forwarded to defense counsel, although he was also informed that further research needed to be conducted. He learned that the research had been completed between April 30th through May 3rd and confirmed through personal review on 05/07/2001 that certain items should have been provided to the prosecutors and defense counsel.

**iii. Please explain why the Special Agent in charge did not report this information to headquarters immediately.**

Mr. Defenbaugh's reasoning is as follows: 1) he relied on previous communications by Special Agents in Charge and Legal Attaches that all OKBOMB material had been provided to the task force; 2) the first items initially sent by field offices, as described to him, were not discoverable under the agreement; 3) as of February 1, 2001, it was his understanding that only three offices had responded and he had no notification that any material received was discoverable; 4) not all field offices had responded and not all items were in the possession of Oklahoma City until the middle of April, 2001; 5) until he was assured from his personal review that there existed items which should have been released to the defense, he did not want an unsubstantiated leak to occur; and 6) he wanted to be thorough, accurate, and as timely as possible.

**iv. Did he report it to anyone? If so, who?**

As described above, Mr. Defenbaugh reported the problem to AUSA Sean Connelly and Assistant Director Dale Watson on 05/08/2001.



U.S. Department of Justice  
Office of Legislative Affairs

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Washington, D.C. 20530

September 5, 2001

The Honorable Lamar S. Smith  
Chairman, Subcommittee on Crime  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents our responses to questions arising out of the Subcommittee's May 3, 2001, oversight hearing on the Bureau of Prisons.

1. **You testified that three quarters of the federal female inmates do not recommit crimes after being released from prison. You therefore concluded that this was due to the nature of the individuals incarcerated - suggesting that they would not commit other crimes even if they had never been incarcerated. (See page 59-60). This is a remarkable conclusion.**
  - a. **Upon what do you base this conclusion?**
  - b. **Why do you not conclude that such individuals, having been punished for their offense, learned their lesson as a result of that punishment and that their incarceration is responsible for their non-recidivism?**

The statement that most Federal female offenders are not likely to recidivate was inferred from data that predicts recidivism. The Bureau of Prisons employs a well-validated inmate classification system designed to predict inmate misconduct, and research has shown that prison misconduct is closely related to recidivating. This classification system is based on an inmate's current offense, criminal history including escapes, length of sentence, whether the judge freed him/her on bail during the pre-trial phase, and history of any violent behavior. More than 95 percent of Federal female inmates are classified as minimum security, thereby indicating that they pose minimal risk of engaging in disruptive or illicit activities while in prison.

Accordingly, we conclude that most female offenders are at minimal risk of recidivating based on characteristics that exist at the time they commence their sentence. Additionally, research on the United States Sentencing Commission criminal history score indicates a strong relationship between an offender's criminal history and the likelihood he/she will recidivate. Approximately 72 percent of Federal women offenders are in the lowest criminal history category (have a minimal criminal history) and are thus least likely to recidivate. This data further supports the conclusion drawn from our classification data.

**c. How much money does the President's budget include for Bureau of Prisons for rehabilitative programs in women's prison facilities?**

The FY 2002 budget includes approximately \$25 million for inmate programs in women's prison facilities. These programs include work assignments, parenting and values development programs, and programs for offenders who have histories of physical, emotional or sexual trauma. We do not specifically design programs to "rehabilitate" offenders. Rather, we provide inmates with opportunities for self-improvement to enhance their abilities to successfully reintegrate.

**d. If you have concluded that three quarters of the women incarcerated do not need rehabilitative programs (because they will not commit another crime in any event), please explain why Congress ought not cut the budget request for BOP women's prison rehabilitative programs by three quarters? It would appear to be a wasted expenditure.**

The testimony was intended to convey that many female offenders do not need long term incarceration in order to preclude them from committing additional crimes in the future. In the testimony last year before the Appropriation Committee's Subcommittee on Commerce, Justice, State and The Judiciary that was referred to by Congressman Conyers, the response was related to concerns about separating women from their children across long distances and for long periods of time. The testimony reflected that were it not for the lengthy sentences being served by many, their needs for education and skills development could be met in intermediate community based correctional programs (many could be provided as conditions of probation) that would

allow them to take responsibility for caring for their children.

Many inmates of both genders come to prison undereducated, with minimal work history and few skills. Research indicates that inmates who participate in various Bureau of Prisons programs are not only less likely to recidivate than those who do not, but also reap pro-social benefits such as increased likelihood of employment upon release. Programming for these inmates, regardless of their gender or likelihood of recidivism, is critical to assisting inmates to successfully transition to the community and in maintaining the safety and security of our institutions, which benefits the community, our staff, and the inmates. A recent study by the Washington State Institute for Public Policy suggests that, as a general matter, these programs are an efficient use of taxpayer dollars, because they reduce societal costs of supporting those with drug addictions and no marketable skills, as well as the costs of future criminality. Additionally, a majority of women inmates are parents and will return to child rearing upon release. Providing educational and vocational training not only makes released inmates more employable but also better role models for their children who are at an elevated level of risk of criminality given their parent's criminal history.

2. **You testified that twenty percent of federal inmates are "low level nonviolent offenders." (Page 60). How do you define "low level nonviolent offenders" to arrive at this figure?**

"Low level" or "low risk" is defined by no prior commitment, no history of violence, no detainer filed against them, no record of sophisticated criminal activity and no use of a firearm in the instant offense.
3. **You seem to suggest that only persons who commit violent crimes should be incarcerated in federal prison. (See Transcript. Page 61).**
  - a. **Is that correct?**
  - b. **Do you believe that persons convicted of federal fraud offenses should not be in federal prisons?**
  - c. **Do you believe that persons who, although not violent, violate the federal criminal civil rights laws, or persons who violate any other federal criminal statute**

**should not be incarcerated in federal prison upon conviction?**

The agreement with the comment made by Congressman Conyers was on the issue of the need to be cognizant of the continually rising cost of incarcerating increasing numbers of individuals, some of whom pose little risk to society. We do not suggest that only violent offenders should be incarcerated.

**4. How is the level of overcrowding determined for your institutions?**

Crowding is determined by dividing an institution's population by its rated capacity. Rated capacity represents the number of inmates that an institution is intended to house. Bureau's institutions are considered to be at 0 percent crowding with 25 percent double bunking at high security institutions, 50 percent double bunking at medium security Federal Correctional Institutions and 100 per cent double bunking at low and minimum security prisons. Accordingly, a high security institution that was designed for 900 inmates and houses 1300 inmates is deemed 44 percent crowded or at 144 percent capacity ( $1300 \div 900 \times 100$ ).

**a. What is the effect of the current level of overcrowding on safety and security in the prisons?**

High levels of crowding increase the stress experienced by staff and inmates and create other management problems. Once the inmate population exceeds rated capacity, additional bed space must be created to accommodate more inmates. In virtually all of the Bureau's secure facilities, this means triple and quadruple bunking, and sometimes can entail conversion of common areas such as day rooms or hallways into open sleeping areas. Such high density housing can contribute to heightened tension and ultimately violence. This problem is compounded by the fact that larger numbers of inmates are forced to share finite facilities and resources such as toilets, showers, classrooms, telephones, and library, commissary and recreation areas.

As crowding increases, each institution staff member assumes responsibility for managing a larger number of inmates. This higher inmate to staff ratio taxes staff and may contribute to increased staff turnover. Staff spend less time per inmate and lose the opportunity to gain valuable

intelligence information through professional contact with inmates. Finally, because the facility infrastructure systems (i.e., HVAC, sewage, utilities, food service and inmate program areas) service more inmates than the facility was originally designed for, these systems suffer premature deterioration and higher repair costs. Thus, while the Bureau believes safety and security of our inmates and staff have not yet been compromised despite very high levels of crowding, we must continue to work with the Department of Justice, Administration and Congress to address the serious crowding problems now facing us, especially in medium and high security institutions.

5. **All of the institutions that are currently planned or under construction are high security or medium security institutions. Given that many low security prisons are seriously overcrowded, why is the BOP not planning to construct any more of these institutions?**

To address crowding at the low security level, the Bureau plans to expand our use of privately operated prisons through contracts or intergovernmental agreements, particularly for criminal aliens. The Bureau is also expanding existing low security prisons where possible, and adding low security beds by enhancing security at minimum security camps. Finally, the Bureau has not ruled out constructing new low security institutions in the future.

6. **Many privately-owned or operated prison facilities stand empty or underused. Has the BOP considered using these facilities rather than constructing more Federally-owned facilities?**

The Bureau's use of private sources for secure bed space began in the mid-1980's and has grown significantly in the recent past. Currently, the Bureau has approximately 13,800 beds in secure adult facilities being provided by private corrections firms (second only to the State of Texas) through contracts or intergovernmental agreements with local governments. The Bureau is seeking contracts for up to an additional 6,000 beds from private firms and is projecting awards of these contracts by early Fiscal Year 2002.

The Bureau contracts for housing Federal offenders when that arrangement is cost-effective, complements its operations and programs, and provides some flexibility. The Bureau has had success in contracting with the private sector for the

confinement of minimum-security and low-security inmates, but has concerns with privatization for the confinement of inmates classified by the Bureau of Prisons as medium- and high-security. Over the years, the private sector has had significant problems with the incarceration and management of medium-security and high-security offenders.

The Bureau has pursued research on its own into the question of cost of at the Taft prison. This research has demonstrated that it is more costly to the taxpayer to have WCC operate the Taft prison compared to having the Bureau operate the prison. The cost per day to house an inmate at Taft in FY 1998 was \$39.79. Had the Taft facility been operated like FCI Elkton, a low-security prison with an almost identical physical design, then the cost would have been \$37.14. Replication of this analysis for FY 1999 found an even larger difference for Taft. The per diem cost for an inmate at Taft in 1999 was \$36.22 as compared to \$32.96 if the facility were staffed and operated like FCI Elkton. This constitutes \$1,190 in additional costs over the course of a year at Taft for every inmate held there, or \$2,653,477 using the average daily population at Taft during FY 1999 (2,230 inmates).

7. **How does the BOP's cost per inmate compare to the private sector's average charge?**

A recent Congressionally-mandated comparison between facilities for Federal offenders that are operated by the Bureau of Prisons and the private sector revealed that the Bureaus of Prisons' institutions were somewhat less costly than the private facility.

The Bureau has pursued research on its own into the question of cost of at the Taft prison. This research has demonstrated that it is more costly to the taxpayer to have WCC operate the Taft prison compared to having the Bureau operate the prison. The cost per day to house an inmate at Taft in FY 1998 was \$39.79. Had the Taft facility been operated like FCI Elkton, a low-security prison with an almost identical physical design, then the cost would have been \$37.14. Replication of this analysis for FY 1999 found an even larger difference for Taft. The per diem cost for an inmate at Taft in 1999 was \$36.22 as compared to \$32.96 if the facility were staffed and operated like FCI Elkton. This constitutes \$1,190 in additional costs over the course of a year at Taft for every inmate held there, or \$2,653,477

using the average daily population at Taft during FY 1999 (2,230 inmates).

8. **Several years ago, Congress required the BOP to privatize the operation of its Taft, California facility and compare the operating cost of that facility with BOP's cost to run similar institutions.**
  - a. **When can we expect that study to be completed?**
  - b. **Are there any preliminary findings you can share with us today?**

The Congress required that the Bureau operate the Taft, California facility as a demonstration of privatization (Conference Report to Accompany H.R. 3610, Making Omnibus Consolidated Appropriations for Fiscal Year 1997, P.L. 104-208, September 28, 1996). The Bureau understood this mandate to include a comparison of the Taft facility to similar Bureau facilities on both cost and quality dimensions.

The Bureau has pursued three separate, but related, paths to obtain information about the cost and quality at Taft as compared to other Bureau facilities. First, the Bureau has worked aggressively to insure public safety and protect the well-being of inmates by instituting and monitoring contract standards at the Taft facility. While performance by WCC has not always been satisfactory, the overall performance of WCC has most often met the standards set forth.

Second, the Bureau has pursued research on its own into the question of cost of at the Taft prison. This research has demonstrated that it is more costly to the taxpayer to have WCC operate the Taft prison compared to having the Bureau operate the prison. The cost per day to house an inmate at Taft in FY 1998 was \$39.79. Had the Taft facility been operated like FCI Elkton, a low-security prison with an almost identical physical design, then the cost would have been \$37.14. Replication of this analysis for FY 1999 found an even larger difference for Taft. The per diem cost for an inmate at Taft in 1999 was \$36.22 as compared to \$32.96 if the facility were staffed and operated like FCI Elkton. This constitutes \$1,190 in additional costs over the course of a year at Taft for every inmate held there, or \$2,653,477 using the average daily population at Taft during FY 1999 (2,230 inmates).

Finally, the Bureau transferred \$1,000,000 to the National Institute of Justice ("NIJ") in 1998 to allow NIJ to solicit and award a contract for an evaluation of Taft. Dr. Douglas McDonald of Abt Associates, Inc. was awarded a contract for nearly \$675,000 to conduct the study. A draft version of a one-year, preliminary report is being written and should soon be released. Following the first-year report, Dr. McDonald is obligated to produce a final report for the 40 month study period.

9. **Why has the BOP not yet complied with Congress' requirement that half of the District of Columbia's sentenced felons be housed in privately operated facilities?**

The District of Columbia Revitalization Act required that the Bureau house, in private contracts, at least 2,000 District of Columbia sentenced felons by December 31, 1999; and at least 50 percent of the District of Columbia sentenced felon population be placed in private contracts by September 30, 2003 (later amended to December 31, 2001, as part of the Taxpayer Relief Act of 1997).

To meet the first requirement, the Bureau initiated and awarded two contracts; a 1,000 bed contract was awarded to Cornell Corrections in April of 1999 for performance in Philipsburg, Pennsylvania and a second contract was awarded to Wackenhut Corporation in March of 2000 for 1,200 beds at Winton, North Carolina. The Philipsburg, Pennsylvania facility has been the subject of a legal challenge; the facility at Winton, North Carolina is now accepting inmates.

Regarding the second provision, approximately 70 percent of the District of Columbia sentenced felons are medium- or high- security inmates according to Bureau classification criteria, and thus they do not meet the Bureau's public safety criteria for placement in private facilities. The FY 2001 Appropriation Bill DOJ General Provision section 115 (P.L. 106-553) states: "Beginning in Fiscal Year 2001 and thereafter, funds appropriated to the Federal Prison System may be used to place in privately operated prisons only such persons sentenced to incarceration under the District of Columbia Code as the Director, Bureau of Prisons, may determine to be appropriate for such placement consistent with Federal classification standards, after consideration of all relevant factors, including the threat of danger to public safety." This provision superseded the original District of Columbia Revitalization Act requirements. Based on this provision we expect to house primarily low-security

male inmates from the District in private facilities, as well as female offenders and some youthful offenders.

**10. Do you believe that public safety and security would be compromised by housing these offenders in these facilities?**

The majority of District of Columbia sentenced felons are medium- and high-security according to Bureau classification criteria, and thus they do not meet the Bureau's public safety criteria for placement in private facilities. We remain concerned that the private sector has not established a satisfactory track record in housing such inmates.

The private sector's claim to effectively manage medium-security inmates and medium-security institutions does not speak to their ability to manage inmates classified by the Bureau as medium- or high-security. This is because many State inmates classified as medium-security and housed in corresponding medium-security State facilities would classify as low-security by Bureau standards. The Bureau believes it would present a significant risk to public safety if the higher security District of Columbia offenders were to be placed in privately operated prisons, and Congress, concerned about public safety, enacted DOJ General Provision Section 115 (P.L. 106-553) as discussed above.

**11. How important to your operations is the Federal Prison Industries program? What would be the effect on safety and security in your institution if this program were eliminated or curtailed?**

Federal Prison Industries ("FPI") is the Bureau's most important correctional program. Empirical research has demonstrated conclusively that FPI has a significant positive impact on reducing post-release recidivism and increasing post-release likelihood of employment. Participation in FPI is also associated with a reduction in prison misconduct.

The wages earned by inmates participating in FPI create an opportunity for inmates to successfully meet their court-ordered financial obligations. In Fiscal Year 2000, inmates working in FPI paid \$2.5 million for victim restitution, fines, and child support. FPI also creates an opportunity for inmates to provide financial support for themselves and their families, as well as an opportunity to save for their eventual release back into society. Finally, before they

can advance beyond the lowest pay grade in FPI, inmates are required to have a high school diploma or earn their GED. This educational requirement further increases employment opportunities upon release.

FPI provides almost eight hours per day of basic job skills programming in a structured work environment to inmates in secure Federal prisons. Without these job assignments, these inmates would be idle, leading to boredom and the violent activity that often accompanies it in prison settings. If the Bureau were to try to replace FPI with other programs intended to keep inmates constructively occupied, it would cost the taxpayers hundreds of millions of dollars; FPI operates off sales revenue at no expense to the taxpayer. This issue is of even greater concern given the future inmate population projections through FY 2007.

**12. The Administration's budget proposes that the BOP will operate four multi-faith based rehabilitation programs.**

**a. What will be the focus of these programs?**

The Administration has proposed four faith-based pre-release demonstration projects to combat recidivism and help Federal inmates re-adjust successfully into law-abiding society. This initiative will tackle a critical yet often overlooked aspect of criminal justice, the spiritual dimension, and empirically test the ability of faith-based pre-release programs to curb crime. In short, the initiative will consist of an intensive, multi-phase program that begins 24-60 months before release. Part of this program will include the development of positive, supportive relationships with members of the faith-based community at the inmate's release destination. Participants will continue their program for a year or more of post-release aftercare through these established community relationships. It will attempt to rebuild values and character through a curriculum of personal, social and moral development (e.g., general and vocational education, parenting and family responsibilities, victim-offender reconciliation) and by stressing core principles such as responsibility, service, and integrity. It will also involve reaffirming a strong values system through activities such as supervised community service. Finally, it will provide the linchpin: intensive one-on-one mentoring to help inmates re-adjust, repair relationships, navigate practical issues and avoid trouble by avoiding old habits and old friendships.

This experiment in criminal rehabilitation simply aims to target anti-social values and cut crime. When ex-offenders remain ex-offenders, everyone benefits: The inmates themselves, who want to escape the revolving door of recidivism and criminal activity; inmates' families who want their loved ones to return and stay home; communities that want to live free of violence and fear; all law-abiding citizens and taxpayers, who want to live and work in a safer nation.

This experiment will steer a course that rejects the views that we should either pour money into programs that are ineffective at treating the causes of criminal behavior, or abandon criminals as hopelessly irredeemable. The best crime-prevention programs change people's attitudes and strengthen their desire to lead a lawful life. They succeed by targeting core values and people's sense of right and wrong. Faith-based approaches have a legitimate place among the crime-fighting options offered by lawmakers and prison officials. The Bureau of Prisons welcomes the contributions of neighborhood-serving groups, whether sacred or secular, that achieve strong civic purposes.

Finally, we must subject this faith-based initiative (and others, too) to rigorous empirical scrutiny to gauge both quantitative and qualitative results. Through no-nonsense analyses, we will clearly measure success or failure and study what achieves maximum results.

**b. What faith groups will be represented in these programs?**

The demonstration pilots, located in diverse geographic areas, will be open to inmates of any faith -- Methodist, Muslim or Mormon -- or inmates of no faith at all. Exactly which faith groups will be represented depends ultimately on the inmates who volunteer for the program, but inmates should be free to participate in this novel initiative regardless of their personal faith, whether Protestant, Catholic, Muslim, Jewish, Hindu, Buddhist, or something else.

**13. The Administration's budget requests an additional \$3 million for 50 additional staff positions in order to expand the BOP's Residential Drug Abuse Treatment program.**

**a. How long is the waiting list for this program?**

On May 21, 2001, 6,231 offenders were on the waiting list for the Residential Drug Abuse Program ("RDAP"). However, the term "waiting list" in this context is somewhat misleading. All of these inmates will be treated prior to their release from custody, and the "wait" for admission to RDAP is by design. The Bureau's program design places inmates in residential treatment near the end of their sentence in contiguity with their transition back into the community following release. This approach to the timing of RDAP participation is based on extensive research by the drug treatment and criminal justice communities.

- b. Under Federal law, non-violent inmates who complete this program are eligible to receive up to one year of credit off of the time they have left to serve. On average, how much time to these inmates receive off their sentence? Why is this less than the one year?**

On average, eligible inmates who complete the program receive 8.7 months off their sentence. The amount of reduction is a function of the availability of treatment beds and our ability to provide treatment sufficiently in advance of release to permit the 9 month program participation in prison and then completion of a transitional services component while being housed in a Community Corrections Center.

- c. What determines the amount of time BOP credits to a particular individual after completing the programs?**

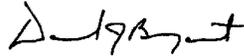
The Violent Crime Control and Law Enforcement Act ("VCCLEA") of 1994 contained two specific provisions regarding the Bureau of Prisons Residential Drug Abuse Treatment program. The first requires the Bureau to provide residential treatment to all "eligible" inmates. Eligible inmates are those inmates with diagnosable substance use disorders who volunteer for treatment. Therefore the Bureau's first consideration is to treat all inmates who are eligible and volunteer for residential drug abuse treatment before they leave Bureau custody. Currently, 34% of Federal inmates have diagnosable substance use disorders, and 92 percent of those with such disorders volunteer for treatment. The Bureau is working diligently to achieve a 100 percent volunteer rate.

The VCCLEA authorizes the Director of the Bureau to reduce, by up to one year, the amount of time served by nonviolent inmates who successfully complete the Residential Drug Abuse

Program. Inmates are selected for admission to the residential drug abuse program based upon their proximity to release. This procedure ensures all eligible inmates are able to participate in the residential drug abuse program before their release from custody, and whenever possible, receive a sentence reduction. Given the substantial number of individuals who require treatment, the average sentence reduction is now 8.7 months.

I trust that this information is helpful to you. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this report.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Bobby Scott  
Ranking Minority Member



U.S. Department of Justice  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

July 9, 2001

The Honorable Lamar Smith  
Chairman  
Subcommittee on Crime  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Attention: Veronica Eligan

Dear Mr. Chairman:

On June 1, 2001, you forwarded a series of questions to Mary Lou Leary, Acting Assistant Attorney General for the Department of Justice's Office of Justice Programs (OJP), as follow-up to her appearance as a witness before the Subcommittee on Crime's May 15, 2001 oversight hearing on the OJP's programs and activities. The responses to those questions are enclosed.

I hope that this information is helpful. If you or any other Subcommittee Members have questions or require additional information, please contact this office at (202)514-2141.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. Bryant".

Daniel J. Bryant  
Assistant Attorney General

Enclosure

**Office of Justice Programs  
Responses to Post-Hearing Questions  
Submitted to Acting Assistant Attorney General Mary Lou Leary**

**Question 1. State Criminal Alien Assistance Program**

**The State Criminal Alien Assistance Program (SCAAP) is a program that provides Federal assistance to States and localities for the costs of incarcerating criminal aliens who are being held as a result of State or local charges. DOJ is requesting that this program be cut by \$298 million which will cut payments to the four largest States almost in half while many others would qualify for no funding at all.**

**a. What is the justification for such a reduction in funding?**

**Answer:**

The State Criminal Alien Assistance Program (SCAAP) is a payment program designed to provide federal assistance to states and localities that incur costs for incarcerating certain criminal aliens who are being held as a result of state and/or local charges or convictions. States and localities with correctional facilities that incarcerate for 72 hours or longer persons accused or convicted of either a felony or two misdemeanors that occurred prior to or resulted in the current custody, are eligible to apply for SCAAP funding.

SCAAP payments are based on a relative formula that requires assessing all data from all applicants against all appropriated funds. Variables that affect the payment amounts include the number of eligible applicants in any given year, as well as the total appropriated funding available. Given the nature of the formula, no eligible applicant would be left without funding. And while the payment amounts available to each applicant would in all likelihood decrease, it is not possible to estimate the extent of the decrease without knowing the expected number of applicants.

In FY 2002, the Department, in making difficult decisions about competing priorities, requested a reduction in funding for SCAAP in order to fulfill its mission of supporting core federal law enforcement functions. Redirecting funds from SCAAP enhances DOJ's ability to meet its operational priorities, including expanding the detention and incarceration capacity of the Bureau of Prisons, and provide funding that will more directly target specific crime-fighting initiatives.

In FY 2002, \$265 million has been requested for SCAAP; thus eligible jurisdictions will still receive substantial resources through the program. SCAAP funds are unrestricted and recipient jurisdictions may use these funds for any lawful state or local purposes, not limited to correctional or even criminal justice purposes. Although the FY 2002 SCAAP request is less than the amount available in FY 2001, eligible jurisdictions will continue to receive substantial resources that they may chose to direct toward any state or local effort.

- b. Doesn't this cut unfairly penalize border States who have no direct control over the Federal border but are still responsible for the costs of incarcerating illegal immigrants who commit crimes after crossing that border?**

**Answer:**

Although the FY 2002 SCAAP request is less than the amount available in FY 2001, eligible jurisdictions will continue to receive substantial resources that they may choose to direct toward any state or local effort. In addition, DOJ is directing other resources to border states to help them with the costs of processing, detaining, and prosecuting drug cases referred from federal arrests through the proposed \$50 million Southwest Border Prosecution Initiative.

In recent years, the high volume of drug smuggling cases has stressed the resources of border county attorneys. Many of these cases are prosecuted at the local level because the quantity of drug seized is too small to meet the threshold set by local U.S. Attorneys for federal prosecution. DOJ plans to revise these seizure thresholds so more cases are prosecuted federally.

The FY 2002 budget proposes to expand the existing \$12 million program created by Congress in 2001 to assist district attorneys along the Southwest Border with the costs of processing, detaining, and prosecuting drug cases referred from federal arrests. The \$50 million requested in FY 2002 will provide financial assistance to county and municipal governments in Texas, New Mexico, Arizona, and California for the costs associated with the handling and processing of drug cases referred from federal arrests. These funds may be used for hiring and training more prosecutors, probation officers, and court officials, court costs, detention costs, courtroom technology, administrative expenses, and indigent expense costs. Grants will be awarded based on a number of factors, including Southwest Border county caseloads for processing, detaining, and prosecuting drug cases referred from federal arrests.

Finally, redirecting funds from SCAAP enhances DOJ's ability to meet its operational priorities, including expanding the detention and incarceration capacity of the Bureau of Prisons and increasing the enforcement capability of INS and the US Border Patrol. Increased funding for these activities will benefit border states and help soften the impact of reduced SCAAP funding.

**Question 2. Violent Offender Incarceration/Truth-in-Sentencing**

**The Violent Offender Incarceration/Truth-in-Sentencing prison grant program (VOI/TIS) was established to encourage States to adopt Truth-in-Sentencing Laws in return for Federal money for the construction and expansion of State prisons. DOJ is proposing to cut this program completely.**

**a. What is the reason for cutting this program completely?****Answer:**

The Violent Offender Incarceration/Truth in Sentencing Prison Grant Program was established in 1996 to encourage States to enact truth-in-sentencing laws that require violent criminals to serve at least 85% of the sentence imposed by the court. Federal grant resources were provided to build or expand correctional facilities to increase bed capacity for the confinement of violent offenders.

Since 1996, the Violent Offender Incarceration/Truth in Sentencing Prison Grant Program provided more than \$2.3 billion to the 50 states, the U.S. Territories and the District of Columbia. In 2000, nearly 24,800 new beds were constructed, exceeding the target of 15,000 new beds.

To date, 29 states and the District of Columbia have enacted the required truth-in-sentencing legislation. Five years have elapsed since the inception of the program, giving States ample time to consider the costs and benefits of this legislation, and no State has enacted such legislation since 1999. Consequently, OJP believes the program has accomplished its mission, and no funding is requested for this purpose in FY 2002.

**b. Isn't this unfair to States who passed laws relying on the Federal Government's promise of federal funding?****Answer:**

The Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Formula Grant Program provides funds to states, the District of Columbia, and territories to build or expand correctional facilities and jails to increase secure confinement space for violent offenders. Grantees are required to expend VOI/TIS grant funds by the end of the grant period, which is the year of the grant plus four years. The grant awards since 1996 have been supplements to the primary 1996 award and subsequently, the grantees have until 2006 to spend the award dollars.

The proposed elimination of the VOI/TIS Formula Grant Program would have a variety of effects on the jurisdictions that receive funding, depending on the jurisdiction's strategy for spending the grant funds and its own financial situation. Some jurisdictions accumulate VOI/TIS

grant funds over the years until they have an amount sufficient to fund a project in its entirety. In these cases, discontinuation of VOI/TIS funding may require the jurisdiction to scale back its facility plans or secure additional state funds to complete financing. Other jurisdictions have built their projects in stages, using the VOI/TIS funds as they became available to initiate the next portion of their project. In these cases, discontinuation of VOI/TIS funding would mean that subsequent project stages would have to be financed with state funding in order to complete the entire project. Finally, some jurisdictions may have received sufficient funding in any given year to build an entire proposed project, as defined by their strategic plans. Discontinuation of VOI/TIS funding would not affect those jurisdictions that built a proposed project in any given year.

- c. **Of the States which have passed these laws, how many still have outstanding needs for prison construction, in order to accommodate the higher resulting incarceration figures?**

**Answer:**

Of the 29 states and the District of Columbia, one could estimate that as many as 13 may still need additional beds and increased capacity, as indicated on the following chart. However, there is no evidence to suggest that a lack of VOI/TIS funding will severely curtail prison expansion in any of the states with the worst problems. In California, Illinois and New York, the states with over capacity problems, the VOI/TIS contribution will only provide a small number of the total number of beds needed. The chart shows the amount of excess capacity/overcrowding as of 1999, the estimates of the number of new beds coming on line and the current rate of change in the number of prisoners. The state prison population is stabilizing, having increased only 1.5% nationally between 1999 and 2000, and the number of TIS states is constant at 29 states and the District of Columbia since 1999, both relevant factors considered as difficult FY 2002 budget decisions were made.

VOI/TIS STATE	Prisoners held as a percentage of Present Capacity*	Number of Prisoners over capacity*	% change in prisoners held, 1999-2000**	Beds completed 2000 (VOI/TIS only)***	Beds under construction (VOI/TIS only)***
Arizona	101%	243	(+ 1.9%)	0	0
California	101-194%	1,544-75,456	(+0.9%)	464	569
Connecticut	NA	NA	(-0.1%)	0	0

Delaware	NA	NA	(+0.9%)	100	1,210
District of Columbia	85%	0	(-0.9%)	0	0
Florida	82-121%	0-10,973	(+2.4%)	0	5,961
Georgia	89%	0	(+3.6%)	960	1,715
Illinois	138%-162%	12,279-17,068	(+0.4%)	70	1,476
Iowa	116%	995	(+5.7%)	208	248
Kansas	97%	0	(+2.5%)	0	17
Louisiana	84%	0	(+2.6%)	80	380
Maine	100-112%	0-175	(-0.1%)	0	0
Michigan	98%	0	(+1.5%)	560	1,580
Minnesota	98-100%	0	(+4.2%)	0	0
Mississippi	102%	357	(+0.7%)	0	1,920
Missouri	95%	0	(+4.3%)	0	1,596
New Jersey	143%	7,431	(-1.3%)	0	550
New Mexico	93%	0	(+3.0%)	0	540
New York	108-133%	5,311-17,759	(-1.7%)	1,500	0
North Carolina	109%	2,443	(+0.0 %)	0	400
North Dakota	91-96%	0	(+6.5%)	0	0
Ohio	125%	9,311	(+0.0%)	500	0
Oregon	99%	0	(+4.6%)	0	0
Pennsylvania	113-145%	4,210-11,353	(+0.3%)	148	0
South Carolina	89-95%	0	(+0.7%)	105	979

Tennessee	96-98%	0	(+0.3%)	0	256
Utah	115-119%	688-839	(+0.4%)	710	108
Virginia	91%	0	(+0.3%)	0	0
Washington	119-161%	2,287-5,406	(+0.8%)	0	1,360
Wisconsin	139%	4,271	(1.9%)	0	314

\*- Data are estimates from year-end 1999 as included in the BJS Bulletin "**Prisoners 1999**" (August, 2000). \*\* - Data are taken from Estimates as of 6/30/2000 as published in the BJS Bulletin "**Prison and Jail Inmates at Midyear 2000**" (March, 2001). \*\*\*- OJP/CPO Estimate  
Prisons and Jails form one integrated system in Delaware and Connecticut and laws against defining capacity hamper data collection in those two states.

**Question 3. Local Law Enforcement Block Grant Program**

**DOJ is proposing to cut the Local Law Enforcement Block Grant Program by \$121 Million dollars.**

- a. Does DOJ plan to increase funding anywhere in the budget to make up for these cuts?**

**Answer:**

The FY 2001 LLEBG appropriation was \$521.8 million. The FY 2002 President's Budget requests \$400 million for LLEBG, which is an overall reduction of \$121.8 million. In FY 2002 the Department made many difficult internal funding decisions that resulted in the redirection of a portion of LLEBG funds.

State and local law enforcement agencies may direct LLEBG funding to one or more of seven program purpose areas: (1) hiring, training, and equipping law enforcement, (2) enhancing security measures in and around schools, (3) establishing or supporting drug courts, (4) enhancing the adjudication of violent offenders, (5) establishing multi-jurisdictional task forces, (6) establishing crime prevention programs, and (7) defraying the cost of indemnification insurance for law enforcement officers. To help maximize the funding available for state and local law enforcement agencies, the Department's budget request does not earmark any LLEBG funds for specific grant projects for non-federal organizations such as the Boys and Girls. This same principle was applied to other OJP grant programs, both competitive and formula-based.

State and local law enforcement and government officials may direct funds from a number of other OJP grant programs for the same purposes similar to or the same as LLEBG, including: Edward Byrne Formula Grant funds (\$500 million in the FY 2002 Request), Juvenile Accountability Incentive Block Grant program (\$249.45 million) and the Juvenile Justice Formula Grant program (\$88.8 million). In addition, states and local jurisdictions may apply for discretionary funding under OJP's Drug Courts Program (\$50 million in FY 2002), School Safety Initiatives (\$15 million), Violence Against Women Act programs (\$390.56 million, a \$102 million increase over FY 2001), and discretionary grants administered by OJP's Office of Juvenile Justice Delinquency and Prevention (\$50.14 million) to cover similar purposes.

- b. Where will this money be moved to and how will it be used?**

**Answer:**

There is not a dollar-for-dollar allocation to replace the amounts cut from LLEBG. The President's Budget requests funding for several new initiatives and makes reductions to many existing grant programs. In making difficult decisions about competing priorities the Department requested reductions in certain programs in order to fulfill its mission of supporting core law

enforcement functions.

In keeping with Administration priorities, the following OJP programs were among those increased in FY 2002: Violence Against Women Act programs (\$390.56 million, up \$102 million), the Weed and Seed program (\$58.93 million, up \$25 million), and Counterterrorism Programs (\$220.49 million, up \$68.49 million)

The funding provided for Violence Against Women Act programs will address the concerns stated by Congress in the Violence Against Women Act of 2000. The funding provided for Weed and Seed will be used to establish new sites and fund special emphasis programs. The funding provided for Counterterrorism will be used to provide state and local agencies with Counterterrorism equipment and training.

**Question 4: Byrne Discretionary Grant Program**

**DOJ is not requesting funding for the Byrne Discretionary Grant program which is a reduction in funding of more than \$78 million.**

**a. What is the reasoning behind this cut?**

**Answer:**

The mission of the Byrne Discretionary Grant Program is to develop and test innovative model programs for replication in jurisdictions across the country. Traditionally, it has served as the vehicle for Office of Justice Programs and Administration initiatives in the area of state and local criminal justice improvement. From 1997 through 1999, the Byrne Discretionary grant program funded demonstrations of innovative programs that addressed alcohol and crime, crime prevention among the elderly, improving access to criminal justice services in rural and tribal settings, mental health, police partnerships, local criminal justice planning, and innovations in offender supervision and reentry. The results of these demonstrations have been printed and distributed to the criminal justice community across the country. Ultimately, many jurisdictions have benefitted directly and indirectly from this program.

However, in FY 2000 and FY 2001, the amount of funds available for these discretionary grants was significantly curtailed. In FY 2000, 88% of the \$52 million enacted for the Byrne Discretionary program (or \$45.7 million) was earmarked for specific congressional projects and purposes. In FY 2001, this percentage rose even higher to 96% of the \$78.4 million appropriated, leaving only \$3 million for discretionary purposes. This level of Congressional earmarks severely limits the Department's ability to carry out the mission of this discretionary program, and as a result, no funding is requested for Byrne Discretionary grants in FY 2002.

**b. Will the Byrne Formula Grant program be affected in any way?**

In FY 2002, the Byrne Formula grant program is fully funded at \$500 million and states may choose to use these funds for the same purpose areas covered by the discretionary grant program.

**Question 5. National Institute of Justice Evaluation Efforts**

**One of the functions of the National Institute of Justice (NIJ) is to evaluate grant programs under the Office of Justice Programs.**

**a. Who determines which (OJP) grant programs will be evaluated?**

**Answer:**

Although the NIJ Director is ultimately responsible for decisions regarding which grant programs will be evaluated by NIJ, the input of the Assistant Attorney General for OJP, the OJP Bureau Heads, and other senior officials are considered in the process of decision-making. In some cases legislation or appropriations language requires an evaluation.

**b. How is that determination made?**

**Answer:**

In the absence of legislation, the determination of which particular program, or which aspect of a program to select for evaluation involves consultation between NIJ and the Program Office<sup>1</sup> managing the program, perhaps with input from other senior officials as noted above.

The determination and selection of programs for evaluation is highly dependent upon the level of NIJ's discretionary appropriations, the level of Program Office discretionary appropriations, and the level of funds truly available after accounting for Congressional earmarks. Program Offices often fund NIJ's evaluations through Intra-Agency Authorizations or Reimbursable Agreements.

**c. Who funds evaluations made by NIJ?**

**Answer:**

Evaluations are funded by: (1) NIJ discretionary funds, (2) NIJ funds designated by Congress for a specific evaluation, (3) Program Office funds, or (4) a combination of 1-3.

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<sup>1</sup>Examples of Program Offices are OJP's Corrections Program Office, OJP's Violence Against Women Office, and the Office of Community Oriented Policing Services (COPS).

**d. What criteria are used by NIJ in conducting program evaluations?**

**Answer:**

The selection of criteria to be used in an evaluation is usually the result of specifications developed by the Program Office in close consultation with NIJ. The Program Office will often request, or be required through statute, to have a particular aspect of a program evaluated. Criteria may, in part, also be determined based on the availability of funding to conduct an evaluation and the time frame for the evaluation.

Applications from prospective grantees to conduct evaluations also include proposed criteria involving measurements of the processes, outcomes and impacts of programs being evaluated. Applications are peer reviewed by independent panels that assess the quality and technical merit of proposals; an applicant's demonstrated awareness of existing research in the field; the soundness of the proposed methodology; degree of innovativeness and creativity; and feasibility and cost of the proposed project. Recommendations of peer panels are considered by NIJ staff, the relevant Deputy Director of NIJ, and the Director of NIJ in making final funding decisions. NIJ gives further consideration to the past performance of the applicant in conducting research with NIJ and the Office of Justice Programs.

After applications are funded through the above process, grants are monitored for performance and compliance with conditions stipulated in the application and in the grant award. With few exceptions, grantees are expected to make semi-annual progress reports and quarterly financial reports to OJP. As the evaluation reaches its conclusion, grantees are expected to produce a draft final report, which is then subject to another independent peer review. Grantees are then expected to address peer review suggestions and comments in providing a final report to NIJ.

**e. Do NIJ evaluations take into consideration the effect a particular grant program is actually having on the intended problem or does NIJ merely make sure that grantees are spending the money correctly?**

**Answer:**

As mentioned in responses above, the scope and design of program evaluations sponsored by NIJ may vary. In some cases, a process evaluation is needed to assist the Program Office in addressing and improving implementation of a particular program. In other cases, an outcome evaluation is required to assess the extent to which grant funds were used to provide services required by statute. Some evaluations focus on the impact the program has on the target population/problem. Finally, some evaluations address all three levels of process, outcome, and impact to answer questions related to the effects of programs.

In the process of soliciting proposals to conduct evaluations, applications are assessed by independent peer review panels on the extent to which proposed evaluations address the specifications of the solicitation for proposal, and whether the proposed evaluation research design can measure process, outcome and impact effects.

Monitoring program evaluation projects, including budgets and spending, is an important part of grant management. However, NIJ staff do not direct research or produce findings and conclusions resulting from program evaluation, the results are the independent intellectual product of the research team. Grantees are required to submit quarterly financial reports throughout the period of the grant for the purpose of monitoring the grantee's spending. NIJ staff work in cooperation with the Office of the Comptroller on monitoring the correct spending of these funds.

**f. How often does NIJ contract with outside entities, like RAND Corporation, to conduct program evaluations?**

**Answer:**

All of NIJ-sponsored program evaluations are conducted by outside entities. The vast majority of evaluation research sponsored by the NIJ is conducted through competitive grant awards. Cooperative agreements are sometimes used to provide an extra level of oversight. NIJ does not use contracts with outside entities to conduct program evaluations.

**g. Why is NIJ the primary entity within OJP to conduct evaluations of grant programs within other offices of OJP, such as the Bureau of Justice Statistics (BJS)?**

**Answer:**

NIJ's authorization statute [Omnibus Crime Control and Safe Streets Act of 1968 (Act) (42 USC Sec. 37210)] provides NIJ broad authority to evaluate a variety of programs, including programs and efforts under the Act (to include OJP and its component offices) that are undertaken to improve state and local justice systems. Under the Act, NIJ is created to serve as the Justice Department's principal research and evaluation agency to focus on state and local systems. NIJ evaluation efforts are undertaken at the direction of the Director of NIJ. Although the Act specifically tasks NIJ with responsibility to evaluate programs funded under the Byrne formula and discretionary programs (42 USC 3766 (a)(2)), which explains NIJ's close relationship with BJA, NIJ has broad latitude to work cooperatively with other OJP offices in the area of program evaluation.

By statute, NIJ is the primary research and evaluation agency within the OJP and the DOJ. NIJ's unique and historical position within the DOJ continues to provide the necessary staff expertise, the scientific rigor, and objectivity to provide quality evaluation research. As an independent research and evaluation agency, NIJ is in the best position to sponsor objective

evaluations of OJP programs because it is difficult for a Program Office managing a program to fully self-assess how well the program is doing.

**h. Does NIJ have unfettered authority to conduct an evaluation of a program administered in another component Office within OJP, such as BJA?**

**Answer:**

The Director of the National Institute of Justice, the Department of Justice's lead agency for research and evaluation, has broad authority to evaluate programs administered by components of the Office of Justice Programs. This statutory authority is stipulated in the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351).

At 42 USC 3722(c)(3), the NIJ Director is authorized to "evaluate the effectiveness of projects or programs carried out under [Omnibus.]" At 42 USC 3766(a)(2), NIJ shall "conduct a reasonable number of comprehensive evaluations of programs funded under [Byrne.]" Given its mission, NIJ works with the components, including the Bureau of Justice Assistance (BJA), to develop guidelines to assist state and local units of government to conduct program evaluations.

**i. Do the other component offices within OJP conduct program evaluation of program administered by those offices?**

The other OJP components support, sponsor, and fund a wide-range of evaluations of their programs. The Office of Juvenile Justice and Delinquency Prevention is currently sponsoring a number of program evaluations, including evaluations of the Safe Schools/Healthy Students Initiative, the Rural Youth Gang Initiative, the Juvenile Mentoring Program, the Combating Underage Drinking Program, and the Drug-Free Communities Support Program. The Violence Against Women Office has supported a number of evaluations of their programs, including the Rural Domestic Violence and Child Victimization Enforcement Program, the STOP Violence Against Indian Women Program, the STOP Violence Against Women Program, and the Grants to Encourage Arrest Policies Program. The Drug Court Program Office, in conjunction with the National Institute of Justice, supports evaluations of the drug court program. The Office for Victims of Violent Crime, along with the National Institute of Justice, is currently undertaking an evaluation of the victim assistance and compensation programs of the Victims of Crime Act.

**j. Does NIJ evaluate programs administered or funded by the Office of Juvenile Justice and Delinquency Prevention?**

**Answer:**

Although NIJ and OJJDP have the authority to work together to undertake evaluation of OJJDP programs, most of OJJDP's program evaluation efforts are retained within OJJDP, and administered by OJJDP's National Institute for Juvenile Justice and Delinquency Prevention.

Created under OJJDP's authorization statute [the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP A) (42 USC 5601)], the National Institute for Juvenile Justice and Delinquency Prevention (see 42 USC 5651) is authorized to conduct evaluations of juvenile justice programs, including those funded under the JJDP A. As such, NIJ activities regarding the evaluation of OJJDP programs is small.

Currently, NIJ is evaluating OJJDP's Juvenile Accountability Incentive Block Grant Program. This evaluation is being sponsored by NIJ with funds provided through an Intra-Agency Authorization from OJJDP. NIJ is also funding through an Interagency Authorization from OJJDP an evaluation of the State of Florida's program that allows for the transfer of the entire responsibility for child protective investigations to a law enforcement agency.

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U.S. Department of Justice

Office of Justice Programs

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Washington, D.C. 20531

JUN 05 2001

The Honorable Lamar S. Smith  
Chairman  
Subcommittee on Crime  
Committee on the Judiciary  
U. S. House of Representatives  
Washington, D.C. 20515-6223

Dear Mr. Chairman:

This letter responds to several questions raised by Members of the Subcommittee on Crime during the Subcommittee's May 15, 2001 hearing on the programs and activities of the U.S. Department of Justice's Office of Justice programs (OJP).

At that hearing, Acting Assistant Attorney General Mary Lou Leary testified on behalf of OJP. During the course of questioning by Subcommittee Members, several questions were asked for which Ms. Leary promised to respond to at a later date. These responses are enclosed.

I hope that the Subcommittee finds these materials helpful and responsive. If there is a need for additional information, or if there are additional questions, please contact me at (202) 514-6094.

Sincerely,

A handwritten signature in cursive script that reads "Harri J. Kramer".

Harri J. Kramer, Director  
Office of Congressional and Public Affairs

Enclosures

Question from Mr. Weiner

**Question:** Can you summarize the current state of the DNA backlog and OJP efforts to reduce the backlog?

**Answer:**

By the end of 1999<sup>1</sup>, the FBI estimated that nearly 750,000 convicted offender samples collected in 45 states remained unanalyzed. However, the actual DNA backlog is hard to calculate for several reasons. First, as states recognize the crime solving potential of DNA database technology, they continue to expand the scope of their convicted offender legislation. Second, due in part to expanding legislation, there are over a million uncollected and unanalyzed, or "owed" convicted offender DNA samples. Third, an equally important but more difficult backlog to quantify is that of unprocessed casework samples that contain biological evidence.

While the number of unanalyzed convicted offender samples was reduced in 2000 due, in large part, to OJP's Convicted Offender DNA Backlog Reduction Program, quantifying the current status of the convicted offender DNA backlog is difficult because states continue to expand the scope of their convicted offender DNA legislation. While all 50 states have passed DNA database legislation, many states are considering or have already passed legislation that requires non-violent convicted offenders to provide a DNA sample for inclusion in the Combined DNA Index System, or CODIS. This has not only increased the actual number of DNA samples requiring analysis, but it has also increased the number of samples requiring collection (owed samples). The commonly accepted number of uncollected DNA samples from convicted offenders in the United States is approximately 1 million.

Another difficulty in measuring the totality of the DNA backlog is the existence of the casework backlog. This refers to biological evidence in criminal cases which has not yet been tested for the presence of DNA. Unprocessed rape kits are a clear example of this kind of backlog. While we know that rape is an offense that will typically yield biological evidence, at least 180,000 rape kits currently sit on shelves across the country, unprocessed because no suspect has been identified. The DNA evidence from these and other criminal cases often is not analyzed and entered into the DNA database because forensic laboratories have to prioritize their work, and cases scheduled for trial take precedence over cases in which no suspect is known. In other words, non-suspect criminal cases that contain biological evidence are not being analyzed for DNA, entered into the database, and used in the investigative stage of the criminal case. In most jurisdictions, DNA from crime scenes is used to prosecute offenders, not to investigate crimes. The backlog and limited resources preclude state forensic laboratories from analyzing all biological evidence for DNA, which in turn, prevents us from being able to realize the full crime-solving potential of this evidence.

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<sup>1</sup>This is the latest data available. The FBI plans to release 2000 data in October 2001.

Recognizing that the effectiveness of the DNA database relies on the volume of data contained in the forensic index (crime scene samples) and the convicted offender index of CODIS, Congress passed legislation to allocate funding to address the backlogs. As a result, OJP is currently working to reduce the states' DNA backlogs through the Convicted Offender DNA Backlog Reduction and Crime Laboratory Improvement Programs. Administered by the National Institute of Justice, the Department of Justice's primary research and evaluation agency, these programs seek to increase state forensic laboratory's access to specialized forensic services and provide resources and assistance to state crime laboratories to eliminate their backlog of convicted offender DNA samples.

During FY 2000, OJP, through the National Institute of Justice (NIJ), provided over \$14 million to 21 state forensic laboratories to reduce the convicted offender DNA backlog. These funds allowed those states to analyze a total of 288,467 convicted offender DNA samples. Therefore, NIJ currently estimates that the convicted offender DNA backlog was reduced to approximately 461,533.<sup>2</sup> Once analyzed, samples are entered into states' DNA databases and subsequently uploaded into the national DNA database which allows for comparison with DNA that has been analyzed from unsolved crimes across all participating states.

**NIJ's DNA Backlog Reduction Program in FY 2000**

State	Number of Samples Analyzed (Reduction in Backlog)	Funding Provided by NIJ
Alaska	1,613	\$80,650
Arizona	4,025	\$201,250
Arkansas	1,110	\$55,500
California	30,000	\$1,500,000
Florida	8,000	\$400,000
Illinois	9,633	\$481,650
Kansas	7,398	\$369,900
Massachusetts	7,020	\$351,000
Michigan	14,358	\$717,900

<sup>2</sup>This is based on the number of analyses each state conducted with assistance from NIJ's FY 2000 DNA Backlog Reduction Program funding.

Minnesota	4,000	\$200,000
New Jersey	3,373	\$168,650
New Mexico	9,540	\$477,000
New York	28,948	\$1,447,400
North Carolina	14,000	\$700,000
Ohio	26,614	\$1,330,700
Oklahoma	5,000	\$250,000
Pennsylvania	13,062	\$653,100
Texas	34,911	\$1,745,000
Utah	3,000	\$150,000
Virginia	36,000	\$1,800,000
Washington	26,862	\$1,343,100

In FY 2001, the Convicted Offender DNA Backlog Reduction and Crime Laboratory Improvement Programs were appropriated \$29.2 million. This program was heavily earmarked, resulting in \$19.36 million of the total being set aside by Congress for specific purposes including:

- \$399,120 to the Southeast Missouri Crime Laboratory;
- \$449,010 to the Rhode Island State Crime Laboratory;
- \$648,570 to the Georgia State Crime Laboratory;
- \$947,910 to the Iowa Forensic Science Laboratory;
- \$2.49 million to the South Carolina Law Enforcement Division's forensics laboratory;
- \$1.99 million to the Marshall University Forensic Science program;
- \$3.99 million to the West Virginia University Forensic Identification program;
- \$498,900 to the Vermont Forensics Laboratory;

- \$2.49 million to the National Center for Forensic Science at the University of Central Florida;
- \$498,900 to the National Academy for Forensic Computing and Investigation;
- \$498,900 for Ohio forensic science laboratory improvements;
- \$149,670 to the Kansas Bureau of Investigations for a new latent fingerprint examination instrument;
- \$648,570 to the Bellevue, Washington Police Department's Forensic Services Unit;
- \$698,460 to the Arizona Department of Public Safety Southern Regional Crime Laboratory for forensic equipment; and
- \$2.59 million to the National Forensic Science Technology Center.

These funds will be used by the recipient states to improve the operations of their forensic laboratories and to a certain extent to reduce their DNA backlogs.

As in FY 2000, NIJ plans to issue a DNA Backlog Reduction solicitation in FY 2001. NIJ will also, because of Asset Forfeiture funding, provide approximately \$15 million in funding targeted to help states reduce their backlogs of non-suspect casework. NIJ plans to release the solicitation in July 2001 with a projected award date of February 2002.

In addition to the National Institute of Justice, states can use resources from their Byrne Formula Grant allocations to improve their forensic laboratories and address their DNA backlog. Administered by the Bureau of Justice Assistance (BJA), the Byrne Formula Grant program provides funds to states, for use by states and local units of government, to improve the functioning of the criminal justice system, with emphasis on violent crimes and serious offenders, and to enforce state and local laws that establish offenses similar to those in the Federal Controlled Substances Act.

Under the Byrne Formula Grant Program, BJA determines each state's annual grant entitlement by applying a modified population-based formula to the total amount of the appropriation. A base amount (0.25 percent of the total) is guaranteed to each state, with remaining funds distributed according to population. To receive Byrne funds, states must develop a strategic, multiyear violence prevention and drug control strategy to demonstrate that funds will be used in accordance with the purposes of the law. One of the 26 purpose areas for Byrne Formula funds is to develop or improve forensic laboratory capabilities to analyze DNA for identification purpose through the DNA Database Identification System or CODIS.

**Question from Mr. Delahunt**

**Question:** The President's proposed Fiscal Year 2002 budget requests \$390.565 million for VAWA funding. This represents an increase over the \$288.044 million provided in Fiscal Year 2001. How will the \$390.565 requested for FY 2002 be used?

**Answer:**

Funding for the Office of Justice Programs' (OJP) efforts to address issues relating to violence against women increased from \$288.044 million in Fiscal Year 2001 to \$390.565 million in the Fiscal Year 2002 President's budget request. This represents an overall increase of \$102.521 million. The following OJP initiatives account for the increase:

	FY 2001	FY 2002 President's Budget Request
STOP <sup>1</sup> Program (administered by VAWO <sup>2</sup> )	\$209.716 million	\$184.537 million
Legal Assistance for Victims (administered by VAWO)	[\$31.56 million] <sup>3</sup>	\$40 million
Campus Violence <sup>4</sup> (administered by VAWO)	[\$10.976 million] <sup>5</sup>	\$10 million
Research and Evaluation of VAW (administered by NIJ <sup>8</sup> )	[\$5.188 million] <sup>6</sup>	[\$5.2 million] <sup>7</sup>

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<sup>1</sup>Grants to Reduce Violent Crimes Against Women (STOP) (Services, Training, Officers, Prosecutors)

<sup>2</sup>Violence Against Women Office (VAWO)

<sup>3</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP)

<sup>4</sup>Grants to Reduce Violent Crimes Against Women on Campuses

<sup>5</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP)

<sup>6</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP)

<sup>7</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP) FY 2002 Budget Request (\$184.537 million)

<sup>8</sup>National Institute of Justice

Safe Start Program (administered by OJJDP <sup>9</sup> )	[\$10.976 million] <sup>10</sup>	[\$10 million] <sup>11</sup>
Family Violence Research (administered by NIJ)		[\$5 million] <sup>12</sup>
Data collection on domestic violence (administered by BJS <sup>13</sup> )		[\$1 million] <sup>14</sup>
Arrest Policies <sup>15</sup> (administered by VAWO)	\$33.925 million	\$64.925 million
Rural Domestic Violence <sup>16</sup> (administered by VAWO)	\$24.945 million	\$39.945 million
Supervised Visitation/Safe Havens for Children (to be administered by VAWO)	\$0	\$15 million
Elder Abuse Grant Program (to be administered by VAWO)	\$0	\$5 million
Education/Training for Disabled Female Victims (to be administered by VAWO)	\$0	\$7.5 million
Study on Effects of Parental Kidnaping (to be administered by OJJDP)	\$0	\$200,000
Study of Domestic Violence Forensic Exams (to be administered by NIJ)	\$0	\$200,000
Court Appointed Special Advocates (administered by OJJDP)	\$11.475 million	\$11.975 million
Child Abuse Training for Judicial Personnel (administered by OJJDP)	\$1.996 million	\$2.296 million
Training Programs to Assist Probation/Parole Officers (administered by CPO <sup>17</sup> )	\$4.989 million	\$4.989 million

<sup>9</sup>Office of Juvenile Justice and Delinquency Prevention

<sup>10</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP)

<sup>11</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP) FY 2002 Budget Request (\$184.537 million)

<sup>12</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP) FY 2002 Budget Request (\$184.537 million)

<sup>13</sup>Bureau of Justice Statistics

<sup>14</sup>Earmarked from Grants to Reduce Violent Crimes Against Women (STOP) FY 2002 Budget Request (\$184.537 million)

<sup>15</sup>Grants to Encourage Arrest Policies and the Enforcement of Protections Orders

<sup>16</sup>Rural Domestic Violence and Child Victimization Enforcement Assistance Grant Program

<sup>17</sup>Corrections Program Office

Closed-Circuit Televised Testimony (administered (by BJA <sup>18</sup> )	\$998,000	\$998,000
Stalking Database (administered by BJS)	\$0	\$3 million
<b>TOTAL</b>	<b>\$288.044 million</b>	<b>\$390.565 million</b>

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<sup>18</sup>Bureau of Justice Assistance

**Question from Mr. Delahunt**

**Question:** Have there been studies or evaluations of the results or long-term impacts of the Office of Justice Program's (OJP) Weed and Seed program?

**Answer:**

**Importance of Evaluation**

OJP's Executive Office for Weed and Seed (EOWS) administers the Weed and Seed program, which is a community-based law enforcement, crime prevention, and community revitalization initiative. The program now has over 250 officially recognized Weed and Seed sites across the country. Evaluation is a key component of the Weed and Seed program. The Executive Office for Weed and Seed encourages all officially recognized sites to conduct evaluations to determine whether selected activities and programs are effective.

The Executive Office for Weed and Seed Official Site Implementation Manual includes a chapter on evaluation and stresses its importance. All Weed and Seed grantees and officially recognized sites are required to budget for and attend the EOWS Accreditation Training, which includes discussions of program evaluation. Each FY 2001 Weed and Seed site application is required to budget \$7,500 in grant funds to travel to EOWS-provided training and technical assistance, including the accreditation training series.

**National Evaluation of the Weed and Seed Program**

In 1999, the National Institute of Justice (NIJ) supported a national impact evaluation of the Weed and Seed program (materials attached). Weed and Seed programs in eight cities were selected for the national evaluation of their implementation and measurable outcomes related to crime and public safety. These were:

- Akron, Ohio;
- Hartford, Connecticut;
- Las Vegas, Nevada;
- Manatee and Sarasota Counties, Florida;
- Pittsburgh, Pennsylvania;
- Salt Lake City, Utah;
- Seattle, Washington; and
- Shreveport, Louisiana

These cities were selected by DOJ as examples of different aspects of Weed and Seed. In each of them, the evaluation focused on one or two Weed and Seed target areas. While each site had its own distinctive crime problems, they all shared high rates of violent crime related to drug trafficking and drug use. Most sites had serious gang-related crime problems. The report examined the first two years of Weed and Seed implementation in each site, so the period covered includes 1995-1997.

Across the evaluation sites, crime patterns varied widely. Among the nine target areas for which available data allowed a comparison of the number of Part I crimes (homicide, rape, robbery, aggravated assault, burglary, larceny, and auto theft) in the year prior to program implementation to the second year of Weed and Seed, six Weed and Seed areas showed declines:

- Hartford (Stowe Village section) 46 percent
- Pittsburgh (Crawford-Roberts section) 24 percent
- North Manatee 18 percent
- Shreveport target area 11 percent
- Seattle (Central District) 10 percent
- West Las Vegas 6 percent.

During this same time period, Part I crime rates in six target areas declined more than in the rest of the city or county including:

- Hartford
- Pittsburgh (Crawford-Roberts section)
- North Manatee
- South Manatee
- Shreveport
- West Las Vegas

Also, Part I crime in the Salt Lake City target area and South Manatee decreased in 1997, the latest reporting period.

Changes in the drug arrest rates appear to follow the same general pattern as the changes in the Part I crime rate. For example, among those six target areas for which there are arrest data, the four with decreases in Part I crime from the year prior to Weed and Seed through the second year of implementation (i.e., Hartford, Pittsburgh, North Manatee, and Shreveport), all experienced initial high rates of drug arrests—suggesting an initial period of intense weeding activities—followed by declining drug arrest rates. Assuming that the level of enforcement as measured by police presence has remained somewhat constant, this trend reflects success in reducing drug activity. However, the Salt Lake City target area and South Manatee both experienced large increases in the number of drug arrests in 1997 compared to 1996, suggesting that perhaps these sites had not yet succeeded in reducing the level of drug activity in the target areas. In the case of Salt Lake City, an influx of gang activity is an important contextual factor, raising the question of whether the crime rate would have been even higher there without Weed and Seed.

#### **Local Evaluations of Weed and Seed Sites**

In addition to the national evaluation work done on the Weed and Seed program, there have been more than 25 local evaluations performed by individual sites. The Executive Office for Weed and Seed encourages sites to develop an arrangement with an academic or analytic partner to analyze its crime problems and/or evaluate the site's strategy and programs. Weed and Seed sites can request technical assistance and training to learn how to conduct and coordinate local evaluations.

In FY 2001, local evaluation has been included as a Special Emphasis Initiative funding option to provide sites with support for this important program function. Officially recognized Weed and Seed sites that have at least two years of funding can apply for up to \$50,000 to implement targeted program encompassing 14 special emphasis areas, including local evaluation.

The administration's FY 2002 budget request includes additional funding to support more local site evaluation efforts. In particular, the budget request includes a \$25 million increase for Weed and Seed, of which \$2 million will be used to enhance data collection and performance assessment capacity to improve strategies on a site by site basis.



**U.S. Department of Justice  
Office of Legislative Affairs**

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Office of the Assistant Attorney General

Washington, D.C. 20530

June 26, 2001

The Honorable Lamar Smith  
Chairman  
Subcommittee on Crime  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses and related materials to questions you and Ranking Minority Member Scott posed to the Office of Community Oriented Policing Services ("COPS") following the Subcommittee's hearing of May 15, 2001, regarding the activities of the COPS Office. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Bryant".

Daniel J. Bryant  
Assistant Attorney General

Enclosures

cc: The Honorable Bobby Scott  
Ranking Minority Member

**Post-Hearing Responses from the COPS Office**  
to  
**Chairman Lamar Smith**

*Oversight Hearing on the Reauthorization of the United States Department of Justice, Part II – Criminal Law Components*

**1. At the hearing, you were asked about the MORE program. Please clarify whether that program was eliminated or renamed and restructured.**

COPS offered the MORE program in fiscal years 1995, 1996, 1998, 2000, and 2001. Funding for the MORE program was derived by utilizing up to 20% of the total COPS hiring funds available in each of these years as well as 1997 and 1999. Funding awarded under the MORE program was contingent on applicant agencies demonstrating that the equipment or civilians requested would result in an increase in community policing officers on the street equal to or greater than that which would be achieved from a grant of the same amount for a police officer(s). This requirement is commonly referred to as the "redeployment requirement".

In FY 2002, the COPS Office will again offer technology funding, but under the COPS Infotech Program, which is requested at \$100 million. This program is not funded out of the hiring funding portion of the COPS budget and will fund the same types of technology awarded under the MORE program. It will not require that law enforcement agencies track redeployment of officers.

**2a. Does the COPS-in-Schools hiring program, for which you are seeking funding for this year, have the same three year limitation on Federal funds for the school reserve officers that are going to be hired?**

a. Yes, COPS in Schools funding is limited to three years.

**2b. Is there any effort on the part of COPS to help localities come up with a plan to retain these officers after three years?**

b. Every agency that applies to the Universal Hiring Program or COPS in Schools Program must submit a written retention plan, at the time of application, which demonstrates a plan to take over the cost of the officer(s) at the conclusion of the grant period. Agencies that can display severe fiscal distress can qualify for a waiver of the retention requirement.

In addition, the COPS Office provides guides on how to meet the retention requirement. COPS has put together Fact Sheets on the retention requirement and identifies possible sources of state or local funding. Also available to grantees is "Reports from the Field," examples of successful retention efforts by police departments around the country. Finally, there is written information in the form of "Frequently Asked Questions" to assist agencies with the requirement.

**3. To what extent are you actually putting new officers on the street as opposed to merely supplanting local funding of officers?**

The COPS Office works to ensure that agencies understand and abide by the nonsupplanting requirement, which applies to all COPS police hiring grantees throughout the three-year grant programs. The nonsupplanting requirement means that COPS funds may not be used to supplant, or replace, local funding that otherwise would have been spent on law enforcement purposes. Both the chief law enforcement executive and the local government executive are required to sign a Certification form at the time of application which clearly articulates this requirement.

The COPS Office has a Monitoring Division dedicated to ensuring that agencies are in fact in compliance with statutory requirements, including nonsupplanting, through on-site and other grant reviews. During the life of a grant, the COPS Office takes a number of additional steps to ensure that funding is being used in a manner consistent with the nonsupplanting requirement including Office of the Inspector General audits, Office of the Comptroller audits, monitoring news reports, and responding to citizen complaints. When potential instances of supplanting are identified, the COPS Legal Division takes the lead role in determining whether the grantee is in compliance with the nonsupplanting requirement. In instances where a supplanting violation is identified, COPS takes immediate steps to remedy the situation with the grantee through repayment of Federal funding, the hiring of new officers, or increased local funding contributions to offset the supplanted amounts.

In the experience of the COPS Office, however, the vast majority of potential supplanting compliance reviews have resulted in determining that grantees are actually adding new officers to the street that they would not have in the absence of the grant. In fact, the COPS Office investigated and closed approximately 100 cases where there was alleged supplanting since January 1, 2001, and found only 2 cases of grantee noncompliance. Consistent with the intent of the statute, new officers are actually being added to the street and are not merely replacing local funding for law enforcement.

**4a. What evidence do you have, if any, that the COPS program has resulted in a lower crime rate in the Nation?**

a. The COPS program has greatly expanded the practice of community policing and problem-solving throughout the nation. In addition, there is evidence that community policing is an effective crime reduction strategy. The growth in community policing can be seen in a recent report from the Bureau of Justice Statistics that indicates that the percentage of agencies reporting that they have community police officers has grown from 34% in 1997 to 64% in 1999. There is anecdotal evidence from across the country that shows the impact COPS grants have had in helping fight crime. For example, through COPS grants Salt Lake City developed its highly respected Community Action Teams (CATs). These teams bring together representatives from virtually all city services to work together in addressing crime and neighborhood disorder issues. Respected criminologists summarize their experience regarding the influence that the

COPS program has had on community policing in the following ways:

"The COPS Office has been a major catalyst in the effort to transform law enforcement agencies from being reactive to being proactive partners in problem-oriented policing." Professor Ronald Huff, Ph.D. President, American Society of Criminology

"A strong case can be made that the COPS Office is largely, if not entirely, responsible for creating the momentum for a dramatic and positive shift in the direction of public safety in this country." Professor Quint Thurman, Wichita State University

There is a great deal of evidence documenting the effect that such increases in community oriented policing have had on lowering crime rates. Braga et al. (1999) found that problem-oriented policing significantly reduced violent crime without displacement to surrounding neighborhoods. Researchers have also found that problem-oriented policing is effective in controlling property crimes (Eck and Spelman, 1987), street corner drug selling (Hope, 1994) and prostitution (Matthews, 1990). Increasing police presence generally has also been found to reduce homicide, robbery and burglary (Marvell and Moody, 1996).

Further, an examination of the FBI's Uniform Crime Reports statistics for the top ten (by population served) COPS grantee cities shows that between 1994 and 1999, index crimes dropped considerably in each. Though researchers and practitioners alike agree that it is difficult to point to any one factor that is responsible for the recent drop in crime, these figures support the argument that COPS funding may have had an impact on crime levels in those cities.

New York City	-43.50
Los Angeles, City of	-39.83
Portland Police Department	-36.90
San Diego, City of	-35.37
Boston Police Department	-33.91
D.C. Metropolitan Police Department	-33.74
San Francisco Police Department	-29.97
Honolulu Police Department	-29.84
San Jose, City of	-29.47
New Orleans Police Department	-28.25

**4b. What kind of monitoring and evaluation does the COPS program do to determine whether or not the grants are having a real effect on crime?**

b. A number of COPS programs have built in local or national-level evaluation components including the Youth Firearms Violence Initiative, Problem Solving Partnership Grants, School Based Partnerships Grants, the Anti-Gang Initiative Program, the COPS Methamphetamine Initiative, and the Justice Based After School Program and the Distressed Neighborhoods Grant Program. For example, included in the School Based Partnership Grant Program is a national evaluation that examines the overall impact of the program, and in addition, funding is provided for each agency to conduct a local level evaluation. The Justice Based After School program

also includes an overall evaluation component that is supplemented by local level evaluators.

NIJ also conducted a comprehensive evaluation of the COPS Youth Firearms Violence Initiative and examined its effect on rates of gun violence. For instance, in Inglewood, CA – the study found that efforts directed proactively at firearms possession and use significantly decreased firearm related crime.

**5. Does it make sense to be funding police officers in affluent parts of the U.S. with low crime rates when the money could be better used in areas with higher than average crime rates?**

The COPS Office does not award grants based on crime rates, but it has been our experience that cities with higher crime rates are more likely to apply for additional funding. Recent incidents of school and youth violence in rural and suburban communities demonstrate just how critical it is to address crime and violence in every community. For communities that are too small to report crime to national bureaus, the COPS Office is often the only resource for public safety funding. The COPS Office has found that in small and rural agencies, even one additional officer can make substantial difference crime and the fear of crime. Under a program that targets federal funds only where crime is highest, thousands of communities that still suffer from violence would never receive federal assistance.

**6. The Prosecution Assistance program will now be focused on providing grants to "State and Local Gun Prosecutors" and "Southwest Border Prosecution."**

a. Please describe these two programs and how the grants will be administered.

The following information was supplied by the Office of Justice Programs (OJP), which administers these programs.

The State and Local Gun Prosecutors Program was begun in FY 2001 and is known as the Community Gun Violence Prosecutor Program. This is a \$75 million discretionary grant program to allocate resources directly to chief prosecutors across the country, in order for them to assign assistant prosecutors who are dedicated to the prosecution of firearm-related violent crime and to improve the long-term ability of prosecution agencies to address more fully the issue of firearm-related violent crime within their jurisdictions. The program is, as noted above being administered by OJP. The program provides funds for hiring community prosecutors for up to 3 years and requires recipients to have a retention plan to retain hired prosecutors for at least one year after the grant period concludes.

In FY 2002, a new \$49.78 million prosecution assistance program will provide grants to encourage States to increase prosecutions of gun criminals. This is one element of the President's Safe Neighborhoods Initiative. While the details of the new program have not yet been finalized, the Gun Violence Reduction Program will encompass a broader range of gun violence reduction strategies that could include: (1) hiring and training more judges, prosecutors,

correctional officers, and probation officers; (2) providing training for Federal, State and local law enforcement officers and prosecutors on current laws and trends, including firearms identification, Federal and State search and seizure laws, crime scene and evidence management, and firearms trafficking and tracing; (3) implementing public awareness campaigns to advertise tough sentences for gun crimes and to foster community ownership of this initiative; (4) improving criminal history record information systems; and (5) developing information-sharing case management systems that ensure that all segments of the criminal justice system are contributing to and using the same case files for serious offenders.

In FY 2002, OJP resources will also be made available to eligible local jurisdictions to enable them to process substantially more arrest cases referred to them from Federal authorities. In the \$50 million Southwest Border Prosecution initiative, funds will be awarded on a discretionary basis to county and municipal governments in Texas, Arizona, New Mexico, and California for costs associated with the handling and processing of drug cases referred from Federal arrests. Individual awards will be based on a number of factors, including Southwest Border county caseloads for processing, detaining, and prosecuting drug cases referred from Federal arrests. Funds will be available for hiring and training more local prosecutors, probation officers, and court officials. Funds will also be available to help defray costs associated with court administration, detention, courtroom technology, administrative activities, and indigent defendants.

**Post-Hearing Responses from the COPS Office**

to

**Rep. Bobby Scott**

*Oversight Hearing on the Reauthorization of the United States Department of Justice,  
Part II – Criminal Law Components*

**Does the COPS-in-Schools hiring program, for which you are seeking funding for this year, have the same three year limitation on Federal funds for the school reserve officers that are going to be hired?**

Yes, COPS in Schools funding is limited to three years.

**Is there any effort on the part of COPS to help localities come up with a plan to retain these officers after three years?**

Every agency that applies to the Universal Hiring Program or COPS in Schools Program must submit a written retention plan, at the time of application, which demonstrates a plan to take over the cost of the officer(s) at the conclusion of the grant period.

Agencies that can display severe fiscal distress can qualify for a waiver of the retention requirement.

In addition, the COPS Office provides guides on how to meet the retention requirement. COPS has put together Fact Sheets on the retention requirement and identifies possible sources of state or local funding. Also available to grantees is "Reports from the Field," examples of successful retention efforts by police departments around the country. Finally, there is written information in the form of "Frequently Asked Questions" to assist agencies with the requirement.

**Question from Mr. Delahunt**

**Question:** Are there studies on the correlation between violence against women and other violent crime?

**Answer:**

Neither the Office of Justice Programs, nor its component offices, the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS), or the Violence Against Women Office (VAWO) are aware of any comprehensive studies examining the correlation between incidences of domestic violence and future acts of violence committed by its victims. Further, neither NIJ nor BJS has funded or commissioned such studies. There are, however, studies that have examined the long-term impact on children who have witnessed violence, including domestic violence. It is important to note that children are often present in a domestic violence situation, or victims of the same violent acts.

In November 2000, the Office of Juvenile Justice and Delinquency Prevention issued a report *Safe From the Start: Taking Action on Children Exposed to Violence* (copy attached), which describes a framework for understanding and addressing children's exposure to violence. This report is the result of a National Summit on Children Exposed to Violence, which was convened by the U.S. Departments of Justice and Health and Human Services in June 1999. Based on this report, the following can be said of children who are victims of, or witnesses to, violence:

- Children suffer serious and long-term consequences from experiencing violence. Children who are victims of, or witnesses to, violence are at an increased risk for development of behavioral, psychological, and physical problems. They are also more likely to engage in alcohol and drug use, delinquent acts, and later adult criminality. These children are often at risk of repeating the violence they have experienced, thus perpetuating a cycle of violence that can continue throughout future generations. National estimates based on a 1995 survey indicate that of the Nation's 22.3 million children between the ages of 12 and 17, approximately 1.8 million have been victims of a serious sexual assault, 3.9 million have been victims of a serious physical assault, and almost 9 million have witnessed serious violence.
- Children exposed to violence may be revictimized later in life, or they may become victimizers themselves, as studies indicate that children exposed to violence are at a greater risk of perpetrating violent acts. Being abused or neglected as a child increases the likelihood of arrest as a juvenile by 53 percent and of arrest for a violent crime as an adult by 38 percent. On average, abused and neglected children begin committing crimes at younger ages. They also commit nearly twice as many offenses as nonabused children and are arrested more frequently.
- The maltreatment of children and violence against women often go hand in hand. As many as half a million children may be encountered by police during domestic violence

arrests each year, and there is an overlap of 30 to 60 percent between violence against children and violence against women in the same families. Approximately 34 percent of rapes are estimated to occur in the victim's home, where children may be present to see or hear the sexual assault of their mothers or caretakers.

The Office of Justice Programs administers two grant programs that address reducing the effects of children's exposure to violence and breaking the cycle of violence:

The Safe Start Program

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) administers the Safe Start Program, which supports comprehensive efforts to reduce the effects of children's exposure to violence by increasing coordination among law enforcement, mental health and medical professionals, and child protective service providers. Child advocacy centers, home visitation programs, and domestic violence services for battered mothers whose children are at high risk of exposure to violence, are also included. Congress designated \$9.98 million, under the Violence Against Women Act program appropriation, for Safe Start in FY 2001, and the President's FY 2002 budget request includes \$10 million for the program.

The Safe Kids/Safe Streets Program

OJJDP administers the Safe Kids/Safe Streets program, which focuses on breaking the cycle of early childhood and adolescent victimization and later juvenile delinquency or adult criminality. Each of five demonstration communities is engaged in a range of cross-agency strategies to improve the way communities respond to child abuse and neglect. Approaches include case management, home visitation services, and coordination between domestic violence and child abuse interventions. The program is funded by a number of discretionary accounts in OJP. In FY 2001, up to \$2.7 million is available for continuation funding to the five demonstration sites. FY 2001 is the fourth year of a 5-year demonstration project.



**U.S. Department of Justice**  
**Office of Legislative Affairs**

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Office of the Assistant Attorney General

Washington, D.C. 20530

July 10, 2001

The Honorable Lamar Smith  
Chairman  
Subcommittee on Crime  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to post-hearing questions submitted to Mr. Michael Horowitz, Chief of Staff, Criminal Division, following a hearing before the Subcommittee on May 15, 2001, at which Mr. Horowitz testified. We hope that you will find the information helpful, and that you will not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. Bryant".

Daniel J. Bryant  
Assistant Attorney General

Enclosures

cc: The Honorable Bobby Scott  
Ranking Minority Member

**RESPONSES TO POST-HEARING QUESTIONS SUBMITTED TO MICHAEL HOROWITZ,  
CHIEF OF STAFF, CRIMINAL DIVISION, FOLLOWING A HEARING ON MAY 15, 2001**

1. **The Asset Forfeiture and Money Laundering Section is the primary Department component to coordinate and review litigation, legislation, policies and procedures in association with other agencies and governments in money laundering and forfeiture law enforcement.**
  - a. **Is it current policy to require review by this section of all proposed money laundering counts before an Assistant United States Attorney may present them as part of an indictment?**

No, it is not the Department's policy to require review by the Asset Forfeiture and Money Laundering Section (AFMLS) of all proposed money laundering counts before an Assistant United States Attorney may present them as part of an indictment. Such review is required only for a limited class of money laundering prosecutions as set forth in Chapter 9-105 of the United States Attorneys' Manual (USAM). Section 9-105.300 of the USAM requires prior approval from the Criminal or Tax Divisions of the Department of Justice in four categories of money laundering prosecutions (on average, about ten cases per year):

1. *Extraterritorial Jurisdiction.* Criminal Division approval is required before the commencement of any investigation where the jurisdiction to prosecute is based solely on the extraterritorial jurisdiction provisions of §§ 1956 and 1957.
2. *Tax Division Authorization.* Tax Division authorization is required prior to any prosecution under § 1956(a)(1)(A)(ii) where the sole or principal purpose of the financial transaction was to evade payment of taxes.
3. *Prosecutions of Attorneys.* Criminal Division approval is required for prosecutions of attorneys (under either § 1956 or § 1957) where the financial transaction is one involving attorneys' fees.
4. *Prosecution of a Financial Institution.* In any criminal case in which a financial institution, as defined in 18 U.S.C. § 20 and 31 C.F.R. § 103.11, would be named as a defendant, or in which a financial institution would be named as an unindicted co-conspirator, Criminal Division approval is required before any indictment or complaint is filed.

Section 9-105.300 states that the review and approval function for §§ 1956 and 1957 prosecutions requiring Criminal Division approval has been centralized within AFMLS. In addition to these four categories of cases requiring prior approval, prior consultation with AFMLS is required in four categories of cases as set forth in section 9-105.330 of the USAM:

*1. Forfeiture of Businesses.* In any case where forfeiture of a business is sought under the theory that the business facilitated the money laundering offenses, no forfeiture action, either criminal or civil, may be filed without prior consultation with AFMLS.

*2. Cases Filed under § 1956(b).* In any case where a civil money laundering action under § 1956(b) is going to be brought against a business entity, no complaint may be filed without prior consultation with AFMLS.

*3. Cases Involving Financial Crimes.* In any case in which the conduct to be charged as "specified unlawful activity" under §§ 1956 and 1957 consists primarily of one or more financial or fraud offenses, and in which the financial and money laundering offenses are so closely connected with each other that there is no clear delineation between the underlying financial crime and the money laundering offense, no indictment or complaint may be filed without prior consultation with AFMLS.

*4. Prosecutions in Receipt and Deposit Cases.* In any case when the conduct to be charged as money laundering under § 1956 or § 1957, or where the basis for a forfeiture action under § 981 consists of the deposit of proceeds of a specified unlawful activity into a domestic financial institution account that is clearly identifiable as belonging to the person who committed the specified unlawful activity, no indictment or complaint may be filed without prior consultation with AFMLS.

In sum, prior approval or consultation with AFMLS is not required in all money laundering prosecutions. The USAM only requires prior approval or consultation in certain categories of extremely sensitive or complex money laundering cases where, for policy reasons, Departmental oversight or coordination is warranted. In all other money laundering prosecutions, prior consultation with AFMLS is not required.

**b. Why does this policy continue, in as much as money laundering prosecutions are no longer novel or complicated?**

As indicated in the response to question 1(a), above, prior approval of money laundering charges is not required for most money laundering prosecutions. Prior approval is required only in a very small group of extremely sensitive money laundering prosecutions and forfeiture cases.

**c. Doesn't this review process deter U.S. Attorneys from actually seeking meritorious counts in indictments?**

As indicated in the responses to questions 1(a) and (b), prior approval of money laundering charges is not required for most money laundering prosecutions. On average, approximately ten cases per year, out of a total of approximately 2,000 money laundering prosecutions per year, require prior approval from the Criminal Division. We do not believe this small percentage of cases requiring prior approval deters U.S. Attorneys from charging money laundering offenses.

**d. Do Assistant United States Attorneys share this view?**

Prosecutors in the field do not find the approval and consultation requirements to be onerous. As stated above, approximately ten cases per year require prior Criminal Division approval. With respect to the categories of cases requiring prior consultation, the Criminal Division encourages Assistant U.S. Attorneys (AUSAs) to seek the advice of the attorneys in AFMLS when contemplating money laundering charges or forfeitures in order to benefit from their experience and expertise. Moreover, many Assistant U.S. Attorneys from around the country regularly consult with AFMLS attorneys prior to bringing money laundering charges, even when such consultation is not required. In fact, a number of U.S. Attorneys' Offices have implemented a requirement that AUSAs in their offices consult with AFMLS before proposing money laundering charges. Assistant U.S. Attorneys regularly express their appreciation to AFMLS attorneys for the legal advice and assistance they provide with respect to drafting indictments and providing assistance during litigation.

**2. The Public Integrity Section of the Criminal Division not only oversees the federal effort to combat abuses of the public trust by government officials in the U.S., it participates in international conferences and provides assistance for other countries.**

**a. Who decides, which countries receive this assistance?**

- b. Who pays for this assistance?**
- c. Who decides when this assistance is no longer needed?**
- d. How much resources does Public Integrity devote to these activities at a time when, according to a January 2001 report of the United States General Accounting Office (GAO-01-122) that Section has been dilatory in closing out pending matters concerning its primary mission?**

President Bush, in his written statement of May 28, 2001, to the opening session of the Second Global Forum on Fighting Corruption held at the Hague, Netherlands, stated that increasing accountability and transparency in government around the world "is an important foreign policy objective" for his Administration. The President further stated:

The United States is committed to bringing renewed energy to the global anti-corruption agenda, and to increasing the effectiveness of the American policies and programs that address this important issue.

Attorney General Ashcroft, in his personal address to the Forum on May 31, 2001, explicitly reaffirmed the President's commitment to the global anti-corruption agenda. The Attorney General stated that President Bush's statement "made clear his strong support for international efforts to combat corruption." In addition, in his address, the Attorney General:

- (i) emphasized the importance of mutual evaluation mechanisms to fight corruption;
- (ii) stated that "effective mutual evaluation entails on-site visits by expert evaluators;"
- (iii) specifically cited the importance of U.S. participation in mutual evaluation mechanisms related to corruption, including those conducted through the Council of Europe's Group of States Against Corruption, the Inter-American Convention Against Corruption, and the South Eastern Europe Stability Pact Anti-corruption Initiative;
- (iv) noted with approval the significant increase in the number of countries now participating in international anti-corruption efforts; and

(v) emphasized that his presence at the Second Global Forum signaled the US's "political will and commitment . . . to engage seriously in this fight, and to follow-up words with meaningful actions."

The Department of Justice's Criminal Division has embraced the U.S. commitment to the global anti-corruption agenda. In order to fulfill this commitment, there is an acute and growing need for the participation of public corruption experts to negotiate international instruments, to develop procedures relating to the scope and methods of effective evaluations, and to conduct on-site evaluations and trainings. The Public Integrity Section is uniquely qualified to support the Department's responsibilities in this emerging area, and has been called upon to do so. For example, the Section has been an active participant in a number of international anti-corruption treaties, is actively involved in mutual evaluations conducted pursuant to some of these treaties, and provides expertise and training to investigators prosecutors, and judges from other countries, both on-site and to international delegations visiting the U.S. The Section also was significantly involved in the preparation and final adoption at the First Global Forum, of a compendium of Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials, and was a participant in the Second Global Forum.

Most of the Public Integrity Section's involvement in international anti-corruption efforts is at the request of the Office of the Assistant Attorney General, Criminal Division and the Division's Office of Overseas Prosecutorial Development Assistance and Training (OPDAT). Funding for this work is covered primarily by the Section's budget and by OPDAT, and requests for the Section's assistance in this area have been increasing over the last few years. Although the Public Integrity Section does not quantify the amount of the Section's resources that are devoted to international anti-corruption efforts, five percent would be a rough estimate. While this work has put a strain on Section resources, we believe the Section has nonetheless been able to close out pending matters concerning its primary mission in a timely way.

**3. The Department seeks additional funding for the Office of International Affairs in the Criminal Division. What specifically is the basis for the funding request?**

*Multilateral Efforts, MLATs, and Extraditions*

The Criminal Division's Office of International Affairs (OIA) is integrally involved in U.S. multilateral and bilateral counterterrorism efforts and law enforcement agreement negotiations and implementations. An increasing number of countries are

seeking to enter regularly scheduled bilateral talks with the U.S. on counterterrorism issues, and as a result, the demand on OIA in relation to these talks continues to grow significantly. In addition, the international intelligence and law enforcement communities continue to increase their overall cooperative efforts, and as a result, OIA is experiencing a burgeoning increase in the demand for associated extradition and foreign legal assistance work.

The United States now has extradition treaties in force with over 110 countries. In addition, OIA has negotiated and signed 53 mutual legal assistance treaties (MLAT) – 39 of them since 1990 – and there are now approximately 40 MLATs in force. OIA's caseload of bilateral extradition and mutual legal assistance treaties and matters has increased significantly, and all indication suggest that it will continue to grow. Further, the negotiation efforts for these agreements require specialized knowledge and expertise and demand attendance by OIA attorneys at scheduled negotiation sessions at various locations both within the U.S. and abroad. Familiarity with the international entities involved in particular initiatives greatly increases the potential for success in advocating the U.S. point of view on particular issues and in negotiating specific treaty provisions. Further, each new extradition and legal assistance treaty requires the labor-intensive process of establishing law enforcement relationships with the United States' foreign counterparts, so each of these treaties is brought into force and implemented efficiently and thoroughly.

Overall, the Division is aggressively negotiating modern law enforcement agreements to expand international cooperation. The Criminal Division is requesting seven positions (three attorneys, three paralegal, and one secretary) to support the continuing demand to staff these multilateral and bilateral efforts.

4. **The Criminal Division has responsibility for seeking extradition of fugitives from foreign countries. Please explain how the extradition process works and who pays for the costs of extradition, including the various fees charged by extraditing countries. Specifically, does the U.S. Attorney's Office seeking extradition have to pay for it or does the Criminal Division pay for it? Does this payment issue deter legitimate extradition requests?**

The extradition process is governed by the applicable U.S. extradition treaty (there are over 110 such treaties in force) and the domestic law of the foreign country. A federal, state, or local prosecutor interested in obtaining the extradition of a fugitive located outside the United States contacts the Criminal Division's Office of International Affairs (OIA). OIA country experts provide the U.S. prosecutor with advice and assistance throughout the extradition process. The process entails obtaining the arrest of

the fugitive in the foreign country (arranged by OIA through the State Department and/or law enforcement channels), submission of the documents necessary to support extradition (done either at the time of arrest or within a short period provided by the applicable treaty after arrest), and completion of whatever judicial and/or executive proceedings and reviews are required under the law of the other country. Once the fugitive is ready for surrender, OIA makes arrangements, usually with the U.S. Marshal's Service, for the pick up and return of the fugitive.

Usually, foreign countries pay the legal and representation costs associated with U.S. requests for extradition at no expense to the United States. However, the U.S. must pay the costs of translation of the extradition documents, and the costs of travel for the escort agents and fugitive. In federal cases, the U.S. Marshal's Service pays the travel costs out of its own budget. However, the U.S. Attorney's Office seeking the return of the fugitive (not the Criminal Division) pays any other costs, such as the costs of document translation. If in a particular case a U.S. Attorney's Office requires assistance in meeting such costs, it is provided by the Executive Office for United States Attorneys.

While OIA provides the same expert advice and assistance to state and local prosecutors in international extradition cases as it does to federal prosecutors, there are no federal monies available to pay the translation and transportation costs associated with such cases. The state and local prosecutor's offices must agree to pay those expenses prior to seeking international extradition. Such costs can run into the hundreds, or even the thousands, of dollars.

5. **President Bush has repeatedly stated the need for government to be result oriented. The Organized Crime and Racketeering Section is supposed to coordinate the Department's program to combat organized crime and labor racketeering. In that section's performance measurement table, the performance goal is to keep America safe by enforcing Federal criminal laws. The performance objectives are (1) to reduce the threat, incidence and prevalence of violent crime, especially as it stems from organized criminal enterprises and drug and gang-related violence and (2) to reduce the threat and trafficking of illegal drugs by identifying, disrupting and dismantling drug trafficking organizations which are international, multi-jurisdictional or have an identified local impact. Your performance indicators to measure whether this section is meeting its goals are not result oriented, however.**
  - a. **For example, how does the number of cases pending indicate whether you are reducing the threat and trafficking of illegal drugs? Does an increase in cases indicate better law enforcement or more crime?**

**b. Why does the section not provide the number of trafficking organizations identified, disrupted and dismantled? What are the number of trafficking organizations identified, disrupted and dismantled?**

While the performance objectives of the Department's program against organized crime, gangs and drug trafficking organizations are straightforward, measuring the results of that program unfortunately is not. Especially with respect to organized crime groups, accurate measurements of the scope of their criminal activities, such as penetration of illegal businesses and labor unions, protection and vice rackets, drug trafficking and money laundering, and the commission or threat of acts of violence associated with those crimes, can often be achieved, if at all, only years after the event. The power of these groups lies in secrecy, and even within these groups very few members know the true scope of the groups' activities. Similarly, organized crime investigations are necessarily lengthier and often more complex than other criminal cases, and one large organized crime prosecution against high-ranking enterprise members will do much more to disrupt a group's activities than the raw statistics of defendants charged or indictments would indicate.

Accordingly, the Department seeks to measure the success of its efforts against these groups through the progress of its criminal investigations and prosecutions, and the performance plan attempts to list several indicators which, taken as a whole, give an accurate picture of our overall progress. While the number of pending cases, standing alone, does not directly measure the extent of the threat of trafficking in illegal drugs, it is a good indication of both the size of the problem and the tempo of the Department's enforcement activities against these groups. An increase in cases may indicate the presence of more crime, but the fact that more cases are being investigated and prosecuted also indicates that law enforcement is responding effectively to the problem.

The Department will add an additional performance indicator to those listed under FY 2002 Annual Performance Goal 1.1A to give a more complete picture of the results of the Department's program in this area. The "Number of Organized Crime Groups and Cells Disrupted Through Racketeering Prosecutions" records the number of racketeering and violent crimes in aid of racketeering indictments against domestic and international organized crime groups brought under the direct supervision and/or with the approval of the Organized Crime and Racketeering Section of the Criminal Division. Together with the performance indicator listed under FY 2002 Annual Performance Goal 1.2B "Nationally coordinated investigations that led to the disruption/dismantling of drug trafficking organization," this new indicator will help to gauge the success of the

Department's performance goals of disrupting organized crime and drug trafficking organizations.

	FY 99	FY 00	FY 01	FY 02
	Actual	Actual	Planned	Planned
Number of Organized Crime Groups and Cells Disrupted Through Racketeering Prosecutions	23	29	31	33

- 6. The Terrorism and Violent Crime Section's mission is to design, implement, and support law enforcement efforts, legislative initiatives, policies and strategies relating to international terrorism, domestic terrorism and domestic violent crime in coordination with other federal, state, and local law enforcement agencies. In addition, the section is involved with the training of appropriate investigative and prosecutorial components.**

- a. What are the responsibilities of the criminal division in protecting the Country against counter-terrorism?**

The responsibilities of the Criminal Division in regard to protecting the country against terrorism are centered in the Terrorism and Violent Crime Section. These responsibilities include: updating and monitoring government-wide progress on the Five-Year Inter-agency Counterterrorism and Technology Crime Plan; continued development of our national domestic preparedness strategy; crisis preparation and response relative to terrorist incidents both within the U.S. and against U.S. interests abroad involving a broad range of terrorist threats, including weapons of mass destruction; investigations and prosecutions pursuant to terrorism statutes; legislative initiatives to improve our statutory arsenal applicable to terrorists; training of Assistant U.S. Attorneys and Criminal Division attorneys in crisis response; enforcement efforts to undermine financial support of terrorists, including promoting such efforts in the international community; drafting of international anti-terrorism conventions and agreements; participating in inter-agency approaches to prevent and disrupt terrorist activity; and providing advice and guidance on the application of investigative guidelines and Department policies and procedures in the terrorism area.

**b. Does this section work with the National Domestic Preparedness Office (NDPO)?**

Yes, particularly in the on-going effort to further develop our national domestic preparedness strategy.

**c. Was this section consulted prior to the President's Statement of May 8, 2001, which seems to shift responsibility from the NDPO to Federal Emergency Management Agency which is an agency without international antiterrorism or law enforcement experience?**

The Terrorism and Violent Crime Section was aware of the President's statement. However, the shift of responsibility will pertain primarily to the area of domestic preparedness and efforts to work with state and local jurisdictions. There will not be any shift of responsibilities in regard to international terrorism, where the Department of State will remain in the lead, or in law enforcement, where the Department of Justice will be the lead agency.

**d. Was the Attorney General consulted prior to the President's Statement?**

The Department does not comment on the Attorney General's consultations with the President or the White House.

**e. Was the Director of the FBI consulted prior to the President's Statement?**

The Department does not comment on the Director's consultations with the President or the White House.

**f. What involvement did this section have in connection with the Oklahoma City bombing case?**

The Terrorism and Violent Crime Section was involved in the immediate crisis response to the bombing. The Section Chief and two senior attorneys were sent to Oklahoma City immediately after the bombing and assisted in the investigation through the indictment stage, including significant input concerning the drafting of the indictment. The Section contributed two attorneys to the trial team and was involved in discovery and other pre-trial issues, including issues related to the intelligence agencies.

Further, the Section provided information and guidance about the case to the Attorney General and other officials in the Department.

- g. Can you shed any light on how the Federal government failed to identify and turn over investigative materials to the prosecutors handling the case and to attorneys for Timothy McVeigh?**

The Attorney General has asked the Inspector General to investigate this matter.

[Note: There was no question numbered "7." Instead, two questions bear the number "9." Rather than renumber, our responses retain the original question numbers for ease of reference.]

- 8. The Department's policy during the 1980's and early 1990s as embodied in what was known as the "Thornburgh Memorandum" mandated that prosecutors require defendants to plead guilty to the most serious readily provable offense as part of any plea agreement. That policy was altered by Attorney General Reno in what was known as a "Blue Sheet" addressing the matter. What is the current policy of the Department with respect to entering into plea agreements and permitting defendants to plead guilty to offenses other than the most serious readily provable offense?**

**Please provide the Subcommittee with a copy of: (1) the "Thornburgh Memorandum" addressing this issue; the Reno "blue sheet" addressing this issue; and any subsequent policy directives concerning plea agreements.**

The current policy of the Department with respect to entering into plea agreements is set forth in the "Principles of Federal Prosecution," United States Attorneys' Manual, §9-27.000. However, the policy has not undergone a thorough review by the Department under the new Administration to determine if it should remain in effect as currently written. The policy is that prosecutors must charge "the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction." USAM 9-27.300. The policy also states that in making this determination, "it is appropriate that the attorney for the government consider, inter alia, such factors as the Sentencing Guideline range yielded by the charge, whether the penalty yielded by such sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant's conduct, and whether the charge achieves such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation." *Id.* These factors also apply to entering into plea agreements. *Id.* If, however, the prosecutor determines in good faith

after indictment that a charge is not readily provable or that an indictment exaggerates the seriousness of an offense, a plea bargain may reflect the prosecutor's reassessment. USAM 9-27.400. An exception applies where there is approval of the U.S. Attorney or a designated supervisory level official to drop a readily provable charge for reasons set forth in the file of the case. *Id.*

9. **Former President Bush directed the Department of Justice not to plea bargain drug-related gun counts under 18 United States Code, Section 924(c). That directive became the policy of the Department of Justice.**
- a. **What was the policy of the Department and practice in U.S. Attorney Office's during the last eight years?**
  - b. **What is the current policy of the Department with respect to plea bargaining violation of 18 United States Code, Section 924(c) (use or carry a firearm during and in connection with a drug trafficking crime or crime of violence)? Please provide the Subcommittee with a copy of all relevant policy directives.**

The current policy with respect to plea bargaining violations of 18 U.S.C. § 924(c) – and that has been in effect over the last eight years – is the same as that pertaining to plea bargaining generally, which is discussed in the response to question number 8. The United States Attorneys' Manual directs prosecutors that when a defendant commits an armed bank robbery or other crime of violence or drug trafficking crime, appropriate charges may include a violation of section 924(c). USAM 9-27.300. However, as indicated above, the policy has not undergone a thorough review by the Department under the new Administration to determine if it should remain in effect as currently written.

9. **At one point during your testimony you seemed to place federal drug arrest strategy in context by stating that federal drug enforcement “should not, at the federal level, be focusing on small-level cases *that don't have larger implications for the community.*” (Page 78, emphasis added). Elsewhere however, you seemed to suggest otherwise – “I don't believe that ... local federal prosecutors should be doing, as you indicated, smaller level drug cases.” (Page 58).**
- a. **Is it not correct that in order to identify and infiltrate large drug distribution networks it is often necessary to investigate and arrest what might be called “low-level” street dealers in order to elicit their**

**cooperation in identifying and prosecuting higher-ups within the larger distribution organizations?**

- b. Indeed, moving up the chain to higher-level operatives (utilizing the effectiveness of mandatory minimum sentences including sentence reduction opportunities for cooperating defendants testifying against higher-ups) has proven to be essential in shutting down large scale distribution networks, has it not?**
- c. What is the current policy of the Department (and its investigative components, the FBI and the DEA) in conducting drug trafficking investigations utilizing this proven and effective strategy?**

In enforcing the drug laws, federal law enforcement agencies focus their resources on trafficking organizations that deal in significant quantities of illicit drugs and engage in serious drug-related crimes. These larger syndicates often operate in multiple jurisdictions, maintain connections with suppliers in foreign countries, and violate multiple criminal statutes. As a result, investigations are often complex and involve the use of varied investigatory techniques, including the use of undercover operations, wiretap surveillance, and physical surveillance.

Once the investigation identifies potential co-conspirators or informants, prosecutors may also use a variety of legally-sanctioned methods to secure witness cooperation and testimony – including, but not limited to, plea agreements (with sentence reductions), the witness protection program, and immunity. Certainly, the offer of relief from a mandatory minimum sentence in exchange for truthful testimony and other forms of substantial assistance allows prosecutors to move up the chain of the drug supply, offering incentives against the lesser dealers in exchange for substantial assistance against the leaders. Substantial assistance agreements give prosecutors powerful evidence concerning a trafficking organization — the sworn truthful testimony or other assistance of someone on the inside of the organization.

Undeniably, the use of co-conspirators is often necessary in these complex organizations. Drug dealers take pains to ensure that their distribution takes place far from prying eyes of law enforcement, and the more sophisticated the drug dealer, the more cautious he is about dealing with anyone who might be a law enforcement officer. Thus, at some stage in an investigation, law enforcement officers may arrest a low-level member of the organization and seek cooperation in gathering evidence for prosecution. It must be emphasized, however, that cases do not normally begin with law enforcement officers targeting the low-level street dealer. In other words, federal law enforcement agencies do not target the small dealer as an end prosecution and then discover that the

small dealer can offer information. Rather, federal law enforcement often approach these dealers as a result of an investigation directed at a significant organization or based on information obtained by state and local law enforcement agencies.

10. **Please identify any person currently serving a sentence in federal prison on a drug trafficking offense pursuant to a mandatory minimum sentence who was not provided the opportunity to reduce his sentence by pleading guilty and cooperating in the investigation or prosecution of others pursuant to U.S. Sentencing Guideline Section 5K1.1 (Substantial Assistance to Authorities), and, or Federal Rules of Criminal Procedure, Rule 35(b).**

Neither the Criminal Division nor the Executive Office for United States Attorneys maintains statistics of this nature. However, the Department of Justice is always receptive to information that may be of substantial assistance in the investigation or prosecution of another person.

11. **Please identify the number of high-level drug dealers currently incarcerated who were successfully prosecuted as a result of substantial assistance rendered by lower level dealers or coconspirators who received reduced sentences for their cooperation.**

Neither the Criminal Division nor the Executive Office for United States Attorneys maintains statistics of this nature. However, there have numerous occasions where high-level drug traffickers were successfully prosecuted as a result of substantial assistance rendered by lower level traffickers or coconspirators who received reduced sentences for their cooperation. For example, recently, federal prosecutors used a cooperating, lower level defendant from one drug trafficking case (who, on motion from the government, received sentencing benefits for substantial assistance to the government) to target Sergio Sandoval, a high-level trafficker, and his organization. **United States v. Sergio Sandoval Rubalcava, et. al., 99CR1318-JM (S.D. Cal.)**. Sandoval was an associate of Ismael Higuera Guerrero (aka "El Mayel"), a senior member of the Arellano Felix Organization (aka, the Tijuana Cartel). As a result of the investigation, a 15-count indictment charged 16 defendants, including Sandoval, with various federal drug trafficking violations, including conspiracy to possess with the intent to distribute cocaine and marijuana and conspiracy to import cocaine and marijuana. Additionally, a forfeiture count alleged that various items of real and personal property were the subject of criminal forfeiture, including: Sandoval's house, two boats, three cars, and a Bell UH-1 Helicopter.

12. **Please identify the number of drug distribution networks which were shut down or significantly damaged as a result of substantial assistance rendered by lower level drug dealers or conspirators who received reduced sentences for their cooperation.**

Neither the Criminal Division nor the Executive Office for United States Attorneys maintains statistics of this nature. Also, see response to question 11.

13. **Please identify the number of incarcerated federal inmates convicted of drug trafficking offenses who provided substantial assistance to the government in the investigation or prosecution of others and on whose behalf the government filed motions to reduce their sentences below the guideline range or below the mandatory minimum sentence.**

Between FY 1995 and FY 1999, 24,506 drug trafficking offenders were sentenced to imprisonment and received downward sentencing departures for providing substantial assistance to the government.

The breakdown for each of these years is as follows:

in FY 1995, 4,133 defendants;  
in FY 1996, 4,442 defendants;  
in FY 1997, 4,983 defendants;  
in FY 1998, 5,311 defendants; and  
in FY 1999, 5,637 defendants.

The Department cannot, however, readily provide an accurate number of these defendants who are incarcerated at this time.



## Office of the Attorney General

Washington, D. C. 20530

March 13, 1989

MEMORANDUM

TO: Federal Prosecutors

FROM: *DT* Dick Thornburgh  
Attorney General

SUBJECT: Plea Bargaining Under The Sentencing Reform Act

In January, the Supreme Court decided Mistretta v. United States and upheld the sentencing guidelines promulgated by the Sentencing Commission pursuant to the Sentencing Reform Act of 1984. The Act was strongly supported by the Department of Justice, and the Department has defended the guidelines since they took effect on November 1, 1987. Under these guidelines, it is now possible for federal prosecutors to respond to three problems that plagued sentencing prior to their adoption: 1) sentencing disparity; 2) misleading sentences which were shorter than they appeared as a result of parole and unduly generous "good time" allowances; and 3) inadequate sentences in critical areas, such as crimes of violence, white collar crime, drug trafficking and environmental offenses. It is vitally important that federal prosecutors understand these guidelines and make them work. Prosecutors who do not understand the guidelines or who seek to circumvent them will undermine their deterrent and punitive force and will recreate the very problems that the guidelines are expected to solve.

This memorandum cannot convey all that federal prosecutors need or should want to know about how to use the guidelines, and it is not intended to invalidate more specific policies which are consistent with this statement of principles and may have been adopted by some litigating divisions to govern particular offenses. This memorandum does, however, set forth basic departmental policies to which all of you will be expected to adhere. The Department consistently articulated these policies during the drafting of the guidelines and the period in which their constitutionality was tested. Compliance with these policies is essential if federal criminal law is to be an effective deterrent and those who violate the law are to be justly punished.

Plea BargainingCharge Bargaining

Charge bargaining takes place in two settings, before and after indictment. Consistent with the Principles of Federal Prosecution in Chapter 27 of Title 9 of the United States Attorneys' Manual, a federal prosecutor should initially charge the most serious, readily provable offense or offenses consistent with the defendant's conduct. Charges should not be filed simply to exert leverage to induce a plea, nor should charges be abandoned in an effort to arrive at a bargain that fails to reflect the seriousness of the defendant's conduct.

Whether bargaining takes place before or after indictment, the Department policy is the same: any departure from the guidelines should be openly identified rather than hidden between the lines of a plea agreement. It is inevitable that in some cases it will be difficult for anyone other than the prosecutor and the defendant to know whether, prior to indictment, the prosecutor bargained in conformity with the Department's policy. The Department will monitor, together with the Sentencing Commission, plea bargaining, and the Department will expect plea bargains to support, not undermine, the guidelines.

Once prosecutors have indicted, they should find themselves bargaining about charges which they have determined are readily provable and reflect the seriousness of the defendant's conduct. Should a prosecutor determine in good faith after indictment that, as a result of a change in the evidence or for another reason (e.g., a need has arisen to protect the identity of a particular witness until he testifies against a more significant defendant), a charge is not readily provable or that an indictment exaggerates the seriousness of an offense or offenses, a plea bargain may reflect the prosecutor's reassessment. There should be a record, however, in a case in which charges originally brought are dropped.

Sentence Bargaining

There are only two types of sentence bargains. Both are permissible, but one is more complicated than the other. First, prosecutors may bargain for a sentence that is within the specified guideline range. This means that when a guideline range is 18-24 months, you have discretion to agree to recommend a sentence of 18 or 20 months rather than to argue for a sentence at the top of the range. Similarly, you may agree to recommend a downward adjustment of two levels for acceptance of responsibility if you conclude in good faith that the defendant is entitled to the adjustment.

Second, you may seek to depart from the guidelines. This type of sentence bargain always involves a departure and is more complicated than a bargain involving a sentence within a guideline range. Departures are discussed more generally below.

Department policy requires honesty in sentencing; federal prosecutors are expected to identify for U.S. District Courts departures when they agree to support them. For example, it would be improper for a prosecutor to agree that a departure is in order, but to conceal the agreement in a charge bargain that is presented to a court as a fait accompli so that there is neither a record of nor judicial review of the departure.

In sum, plea bargaining, both charge bargaining and sentence bargaining, is legitimate. But, such bargaining must honestly reflect the totality and seriousness of the defendant's conduct and any departure to which the prosecutor is agreeing, and must be accomplished through appropriate guideline provisions.

#### Readily Provable Charges

The basic policy is that charges are not to be bargained away or dropped, unless the prosecutor has a good faith doubt as to the government's ability readily to prove a charge for legal or evidentiary reasons. It would serve no purpose here to seek to further define "readily provable." The policy is to bring cases that the government should win if there were a trial. There are, however, two exceptions.

First, if the applicable guideline range from which a sentence may be imposed would be unaffected, readily provable charges may be dismissed or dropped as part of a plea bargain. It is important for you to know whether dropping a charge may affect a sentence. For example, the multiple offense rules in Part D of Chapter 3 of the guidelines and recent changes to the relevant conduct standard set forth in 1B1.3(a)(2) will mean that certain dropped charges will be counted for purposes of determining the sentence, subject to the statutory maximum for the offense or offenses of conviction. It is vital that federal prosecutors understand when conduct that is not charged in an indictment or conduct that is alleged in counts that are to be dismissed pursuant to a bargain may be counted for sentencing purposes and when it may not be. For example, in the case of a defendant who could be charged with five bank robberies, a decision to charge only one or to dismiss four counts pursuant to a bargain precludes any consideration of the four uncharged or dismissed robberies in determining a guideline range, unless the plea agreement included a stipulation as to the other robberies. In contrast, in the case of a defendant who could be charged with five counts of

fraud, the total amount of money involved in a fraudulent scheme will be considered in determining a guideline range even if the defendant pleads guilty to a single count and there is no stipulation as to the other counts.

Second, federal prosecutors may drop readily provable charges with the specific approval of the United States Attorney or designated supervisory level official for reasons set forth in the file of the case. This exception recognizes that the aims of the Sentencing Reform Act must be sought without ignoring other, critical aspects of the federal criminal justice system. For example, approval to drop charges in a particular case might be given because the United States Attorney's office is particularly overburdened, the case would be time-consuming to try, and proceeding to trial would significantly reduce the total number of cases disposed of by the office.

To make guidelines work, it is likely that the Department and the Sentencing Commission will monitor cases in which charges are dropped. It is important, therefore, that federal prosecutors keep records justifying their decisions not to go forward with readily provable offenses.

#### Departures Generally

In Chapter 5, Part K of the guidelines, the Commission has listed departures that may be considered by a court in imposing a sentence. Some depart upwards and others downwards. Moreover, 5K2.0 recognizes that a sentencing court may consider a departure that has not been adequately considered by the Commission. A departure requires approval by the court. It violates the spirit of the guidelines and Department policy for prosecutors to enter into a plea bargain which is based upon the prosecutor's and the defendant's agreement that a departure is warranted, but that does not reveal to the court the departure and afford an opportunity for the court to reject it.

The Commission has recognized those bases for departure that are commonly justified. Accordingly, before the government may seek a departure based on a factor other than one set forth in Chapter 5, Part K, approval of United States Attorneys or designated supervisory officials is required, after consultation with the concerned litigating Division. This approval is required whether or not a case is resolved through a negotiated plea.

#### Substantial Assistance

The most important departure is for substantial assistance by a defendant in the investigation or prosecution of another person. Section 5K1.1 provides that, upon motion by the government, a court may depart from the guidelines and may impose a non-guideline sentence. This

departure provides federal prosecutors with an enormous range of options in the course of plea negotiations. Although this departure, like all others, requires court approval, prosecutors who bargain in good faith and who state reasons for recommending a departure should find that judges are receptive to their recommendations.

#### Stipulations of Fact

The Department's policy is only to stipulate to facts that accurately represent the defendant's conduct. If a prosecutor wishes to support a departure from the guidelines, he or she should candidly do so and not stipulate to facts that are untrue. Stipulations to untrue facts are unethical. If a prosecutor has insufficient facts to contest a defendant's effort to seek a downward departure or to claim an adjustment, the prosecutor can say so. If the presentence report states facts that are inconsistent with a stipulation in which a prosecutor has joined, it is desirable for the prosecutor to object to the report or to add a statement explaining the prosecutor's understanding of the facts or the reason for the stipulation.

Recounting the true nature of the defendant's involvement in a case will not always lead to a higher sentence. Where a defendant agrees to cooperate with the government by providing information concerning unlawful activities of others and the government agrees that self-incriminating information so provided will not be used against the defendant, section 1B1.8 provides that the information shall not be used in determining the applicable guideline range, except to the extent provided in the agreement. The existence of an agreement not to use information should be clearly reflected in the case file, the applicability of section 1B1.8 should be documented, and the incriminating information must be disclosed to the court or the probation officer, even though it may not be used in determining a guideline sentence.

#### Written Plea Agreements

In most felony cases, plea agreements should be in writing. If they are not in writing, they always should be formally stated on the record. Written agreements will facilitate efforts by the Department and the Sentencing Commission to monitor compliance by federal prosecutors with Department policies and the guidelines. Such agreements also avoid misunderstandings as to the terms that the parties have accepted in particular cases.

Understanding the Options

A commitment to guideline sentencing in the context of plea bargaining may have the temporary effect of increasing the proportion of cases that go to trial, until defense counsel and defendants understand that the Department is committed to the statutory sentencing goals and procedures. Prosecutors should understand, and defense counsel will soon learn, that there is sufficient flexibility in the guidelines to permit effective plea bargaining which does not undermine the statutory scheme.

For example, when a prosecutor recommends a two level downward adjustment for acceptance of responsibility (e.g., from level 20 to level 18), judicial acceptance of this adjustment will reduce a sentence by approximately 25%. If a comparison is made between the top of one level (e.g., level 20) and the bottom of the relevant level following the reduction (e.g., level 18), it would show a difference of approximately 35%. At low levels, the reduction is greater. In short, a two level reduction does not mean two months. Moreover, the adjustment for acceptance of responsibility is substantial, and should be attractive to defendants against whom the government has strong cases. The prosecutor may also cooperate with the defendant by recommending a sentence at the low end of a guideline range, which will further reduce the sentence.

It is important for prosecutors to recognize while bargaining that they must be careful to make all appropriate Chapter Three adjustments -- e.g., victim related adjustments and adjustments for role in the offense.

Conclusion

With all available options in mind, and with full knowledge of the availability of a substantial assistance departure, federal prosecutors have the tools necessary to handle their caseloads and to arrive at appropriate dispositions in the process. Honest application of the guidelines will make sentences under the Sentencing Reform Act fair, honest, and appropriate.



Office of the Attorney General  
Washington, D. C. 20530

October 12, 1993

**MEMORANDUM**

**TO:** Holders of the United States Attorneys' Manual,  
Title 9

**FROM:** Office of the Attorney General  
Janet Reno  
Attorney General

**RE:** Principles of Federal Prosecution

**NOTE:** 1. This is issued pursuant to USAM 1-1.550  
2. Distribute to Holders of Title 9  
3. Insert in front of affected section

**AFFECTS:** 9-27.000

**PURPOSE:** The purpose of this bluesheet is to clarify the Department's policy concerning the principles that should guide federal prosecutors in their charging decisions and plea negotiations.

As first stated in the preface to the original 1980 edition of the Principles of Federal Prosecution, "they have been cast in general terms with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, to prevent unwarranted disparity without sacrificing flexibility."

It should be emphasized that charging decisions and plea agreements should reflect adherence to the Sentencing Guidelines. However, a faithful and honest application of the Sentencing Guidelines is not incompatible with selecting charges or entering into plea agreements on the basis of an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the federal criminal code,

and maximize the impact of federal resources on crime. Thus, for example, in determining "the most serious offense that is consistent with the nature of the defendant's conduct, that is likely to result in a sustainable conviction," [as set forth in 9-27.310], it is appropriate that the attorney for the government consider, *inter alia*, such factors as the sentencing guideline range yielded by the charge, whether the penalty yielded by such sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant's conduct, and whether the charge achieves such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation. Note that these factors may also be considered by the attorney for the government when entering into plea agreements [9-27.400].

To ensure consistency and accountability, charging and plea agreement decisions must be made at an appropriate level of responsibility and documented with an appropriate record of the factors applied.

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This bluesheet is intended to provide interpretative guidance with respect to 9-27.130; 9-27.140; 9-27.300; and 9-27.400, Principles of Federal Prosecution, dated January 14, 1993, in your United States Attorneys' Manual.



U.S. Department of Justice

Washington, D.C. 20530

APR - 7 1997

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS AND  
ALL FEDERAL PROSECUTORS

FROM: *JK* John C. Keeney  
Acting Assistant Attorney General  
Criminal Division

*D/S*  
*by JH* Donald K. Stern  
Chair, Attorney General's Advisory Committee  
of United States Attorneys

SUBJECT: Charging Decisions, Plea Agreements and  
Substantial Assistance Motions and Their  
Impact on the Sentencing Guidelines

CONTACT PERSONS: Jay P. McCloskey, United States Attorney,  
District of Maine, Chair of the Sentencing  
Guidelines Subcommittee of the Attorney  
General's Advisory Committee of United States  
Attorneys (207-945-0344); and Vicki Portney,  
Attorney, Office of Policy and Legislation,  
Criminal Division (202-514-4182)

In December 1995, the United States Sentencing Commission, in an oversight hearing before Congress, expressed concern that some federal prosecutors are exercising prosecutorial discretion to avoid mandatory statutory and guideline sentences by their use of charging decisions, plea bargain agreements, and substantial assistance motions. The Commission told Congress that the inconsistent use of prosecutorial discretion undermines the goals of the Sentencing Reform Act, and that it would be studying "this troubling aspect of guideline sentencing." Also in December 1995, the Probation Officers Advisory Group expressed concern to the Sentencing Commission that "plea agreements do not always represent the true facts of the case"; that this prevents the correct application of the sentencing guidelines; and that "in some instances, [prosecutors] accomplish this by withholding information from the probation officer."

It is difficult to respond to these claims or to determine whether they are legitimate without knowing the facts of each

individual case. However, it is important for prosecutors to be aware of these views and to be sure that their actions comply with Department policy.

The Principles of Federal Prosecution, found in the United States Attorneys' Manual section 9-27.000 et seq. (the "Principles"), and an October 12, 1993, bluesheet issued by Attorney General Reno (the "Bluesheet"), provide guidance to prosecutors regarding charging and plea agreement decisions. One of the primary purposes of the Principles is to assure that charging and plea bargaining decisions do not undermine the Sentencing Reform Act goal of reducing unwarranted sentencing disparity. The basic policy is that prosecutors must charge "the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction." USAM 9-27.310. Prosecutors similarly should seek a plea to the "the most serious readily provable offense charged." USAM 9-27.410. These rules are subject to limited exceptions set forth in the Principles and the Bluesheet.

As indicated above, the Principles seek to prevent circumvention of the sentencing guidelines through improper charging decisions and "charge agreements." In addition, the Principles seek to prevent "sentence agreements" that may undermine the sentencing guidelines. USAM 9-27.410.

As explained in the Principles, sentence agreements must provide either for a sentence that is within the specified guideline range or one that is based on an appropriate departure from the range. If the sentence is based on a departure, the court must find that "there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." 18 U.S.C. §3553(b). See also Guidelines Manual, §6B1.2(b) and (c) and Commentary. Thus, prosecutors are not free to recommend, or to agree to, a sentence that is outside the applicable guideline range but not based on an appropriate departure from the guidelines that is identified to the court. The Bluesheet did not alter this policy in any manner.

The Principles establish certain procedures to foster the goals set forth therein. The Principles and the Bluesheet provide that charging and plea agreement decisions be made at an appropriate level of responsibility and be documented with an appropriate record of the factors applied. Bluesheet & USAM 9-27.130. Each office must have a formal system for approval of negotiated pleas with approval authority vested in at least a supervisory criminal prosecutor, who has the responsibility of assessing the appropriateness of the plea agreement under the policies of the Department of Justice. Bluesheet & USAM 9-27.450(B). In the context of charging decisions and plea

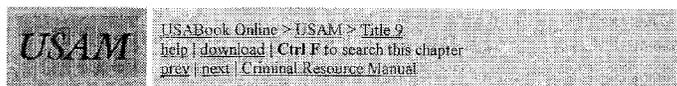
agreements, the Principles require appropriate supervisory approval and an appropriate written record with respect to:

- a decision not to file an enhancement under 21 U.S.C. § 851 or not to pursue readily provable charges under 18 U.S.C. § 924(c) (Bluesheet and USAM 9-27.310(B));
- a decision to drop readily provable charges (Bluesheet and USAM 9-27.410(B));
- a decision to seek a departure based on a factor other than one set forth in Chapter 5, Part K of the Sentencing Guidelines (USAM 9-27.410(b)); and
- a decision to seek a substantial assistance motion under § 5K1.1 of the Sentencing Guidelines or a motion pursuant to Rule 35(b) Fed. R. Crim. P. (USAM 9-27.410(b)).

Furthermore, the Principles state that the Department's policy "is only to stipulate to facts that accurately represent the defendant's conduct. If a prosecutor wishes to support a departure from the guidelines, he or she should candidly do so and not stipulate to facts that are untrue. Stipulations to untrue facts are unethical." USAM 9-27.430.

Finally, neither the Principles of Federal Prosecution nor Bluesheet authorizes prosecutors to hide relevant information from the court. Prosecutors should provide all reasonably relevant information to the United States Probation Office whenever possible so that an accurate and complete presentence report can be prepared. USAM 9-27.720.

In order to ensure that the goals of uniformity and adherence to the sentencing guidelines are met, prosecutors must take care to follow the procedural requirements set forth in the Principles. Prosecutors may exercise discretion in charging decisions, plea agreements, and substantial assistance motions, but only if: 1) the decision is consistent with the Principles, 2) required supervisory approval is obtained, and 3) an adequate written record supporting the discretionary decision is created. Both prosecutors and supervisors who are involved in reviewing indictments, plea agreements, and substantial assistance motions should continue to give careful attention to the applicable procedures and the need to ensure compliance with the Department's plea bargaining and sentencing policies.



## 9-27.000 PRINCIPLES OF FEDERAL PROSECUTION

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[9-27.745](#) Unwarranted Sentencing Departures By the Court  
[9-27.750](#) Disclosing Factual Material to Defense

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#### 9-27.001 Preface

These principles of Federal prosecution provide to Federal prosecutors a statement of sound prosecutorial policies and practices for particularly important areas of their work. As such, it should promote the reasoned exercise of prosecutorial authority and contribute to the fair, evenhanded administration of the Federal criminal laws.

The manner in which Federal prosecutors exercise their decision-making authority has far-reaching implications, both in terms of justice and effectiveness in law enforcement and in terms of the consequences for individual citizens. A determination to prosecute represents a policy judgment that the fundamental interests of society require the application of the criminal laws to a particular set of circumstances--recognizing both that serious violations of Federal law must be prosecuted, and that prosecution entails profound consequences for the accused and the family of the accused whether or not a conviction ultimately results. Other prosecutorial decisions can be equally significant. Decisions, for example, regarding the specific charges to be brought, or concerning plea dispositions, effectively determine the range of sanctions that may be imposed for criminal conduct. The rare decision to consent to pleas of nolo contendere may affect the success of related civil suits for recovery of damages. Also, the government's position during the sentencing process will help assure that the court imposes a sentence consistent with the Sentencing Reform Act.

These principles of Federal prosecution have been designed to assist in structuring the decision-making process of attorneys for the government. For the most part, they have been cast in general terms with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, to prevent unwarranted disparity without sacrificing necessary flexibility.

The availability of this statement of principles to Federal law enforcement officials and to the public serves two important purposes: ensuring the fair and effective exercise of prosecutorial responsibility by attorneys for the government, and promoting confidence on the part of the public and individual defendants that important prosecutorial decisions will be made rationally and objectively on the merits of each case. The Principles provide convenient reference points for the process of making prosecutorial decisions; they facilitate the task of training new attorneys in the proper discharge of their duties; they contribute to more effective management of the government's limited prosecutorial resources by promoting greater consistency among the prosecutorial activities of all United States Attorney's offices and between their activities and the Department's law enforcement priorities; they make possible better coordination of investigative and prosecutorial activity by enhancing the understanding of investigating departments and agencies of the considerations underlying prosecutorial decisions by the Department; and they inform the public of the careful process by which prosecutorial decisions are made.

Important though these principles are to the proper operation of our Federal prosecutorial system, the success of that system must rely ultimately on the character, integrity, sensitivity, and competence of those men and women who are selected to represent the public interest in the Federal criminal justice process. It is with their help that these principles have been prepared, and it is with their efforts that the purposes of these principles will be achieved.

These principles were originally promulgated by Attorney General Benjamin R. Civiletti on July 28, 1980. While they have since been updated to reflect changes in the law and current policy of the Department of Justice, the underlying message to Federal prosecutors remains unchanged.

#### 9-27.110 Purpose

A. The principles of Federal prosecution set forth herein are intended to promote the reasoned exercise of prosecutorial discretion by attorneys for the government with respect to:

1. Initiating and declining prosecution;
2. Selecting charges;
3. Entering into plea agreements;
4. Opposing offers to plead nolo contendere;
5. Entering into non-prosecution agreements in return for cooperation; and
6. Participating in sentencing.

B. Comment. Under the Federal criminal justice system, the prosecutor has wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of Federal criminal law. The prosecutor's broad discretion in such areas as initiating or foregoing prosecutions, selecting or recommending specific charges, and terminating prosecutions by accepting guilty pleas has been recognized on numerous occasions by the courts. *See, e.g., Oylar v. Boles*, 368 U.S. 448 (1962); *Newman v. United States*, 382 F.2d 479 (D.C. Cir. 1967); *Powell v. Ratzenbach*, 359 F.2d 234 (D.C. Cir. 1965), *cert. denied*, 384 U.S. 906 (1966). This discretion exists by virtue of his/her status as a member of the Executive Branch, which is charged under the Constitution with ensuring that the laws of the United States be "faithfully executed." U.S. Const. Art. § 3. *See Nader v. Saxbe*, 497 F.2d 676, 679 n. 18 (D.C. Cir. 1974).

Since Federal prosecutors have great latitude in making crucial decisions concerning enforcement of a nationwide system of criminal justice, it is desirable, in the interest of the fair and effective administration of justice in the Federal system, that all Federal prosecutors be guided by a general statement of principles that summarizes appropriate considerations to be weighed, and desirable practices to be followed, in discharging their prosecutorial responsibilities.

Although these principles deal with the specific situations indicated, they should be read in the broader context of the basic responsibilities of Federal attorneys: making certain that the general purposes of the criminal law--assurance of warranted punishment, deterrence of further criminal conduct, protection of the public from dangerous offenders, and rehabilitation of offenders--are adequately met, while making certain also that the rights of individuals are scrupulously protected.

#### 9-27.120 Application

A. In carrying out criminal law enforcement responsibilities, each Department of Justice attorney should be guided by the principles set forth herein, and each United States Attorney and each Assistant Attorney General should ensure that such principles are communicated to the attorneys

who exercise prosecutorial responsibility within his/her office or under his/her direction or supervision.

- B. Comment. It is expected that each Federal prosecutor will be guided by these principles in carrying out his/her criminal law enforcement responsibilities unless a modification of, or departure from, these principles has been authorized pursuant to [USAM 9-27.140](#). However, it is not intended that reference to these principles will require a particular prosecutorial decision in any given case. Rather, these principles are set forth solely for the purpose of assisting attorneys for the government in determining how best to exercise their authority in the performance of their duties.

#### **9-27.130 Implementation**

- A. Each United States Attorney (USA) and responsible Assistant Attorney General should establish internal office procedures to ensure:
1. That prosecutorial decisions are made at an appropriate level of responsibility, and are made consistent with these principles; and
  2. That serious, unjustified departures from the principles set forth herein are followed by such remedial action, including the imposition of disciplinary sanctions, when warranted, as are deemed appropriate.
- B. Comment. Each USA and each Assistant Attorney General responsible for the enforcement of Federal criminal law should supplement the guidance provided by the principles set forth herein by establishing appropriate internal procedures for his/her office. One purpose of such procedures should be to ensure consistency in the decisions within each office by regularizing the decision making process so that decisions are made at the appropriate level of responsibility. A second purpose, equally important, is to provide appropriate remedies for serious, unjustified departures from sound prosecutorial principles. The USA or Assistant Attorney General may also wish to establish internal procedures for appropriate review and documentation of decisions.

#### **9-27.140 Modifications or Departures**

- A. United States Attorneys (USA) may modify or depart from the principles set forth herein as necessary in the interests of fair and effective law enforcement within the district. Any significant modification or departure contemplated as a matter of policy or regular practice must be approved by the appropriate Assistant Attorney General and the Deputy Attorney General.
- B. Comment. Although these materials are designed to promote consistency in the application of Federal criminal laws, they are not intended to produce rigid uniformity among Federal prosecutors in all areas of the country at the expense of the fair administration of justice. Different offices face different conditions and have different requirements. In recognition of these realities, and in order to maintain the flexibility necessary to respond fairly and effectively to local conditions, each USA is specifically authorized to modify or depart from the principles set forth herein, as necessary in the interests of fair and effective law enforcement within the district. In situations in which a modification or departure is contemplated as a matter of policy or regular practice, the appropriate Assistant Attorney General and the Deputy Attorney General must approve the action before it is adopted.

#### **9-27.150 Non-Litigability**

- A. The principles set forth herein, and internal office procedures adopted pursuant hereto, are intended solely for the guidance of attorneys for the government. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States.
- B. Comment. This statement of principles has been developed purely as matter of internal Departmental policy and is being provided to Federal prosecutors solely for their own guidance in performing their duties. Neither this statement of principles nor any internal procedures adopted by individual offices pursuant hereto creates any rights or benefits. By setting forth this fact explicitly, [USAM 9-27.150](#) is intended to foreclose efforts to litigate the validity of prosecutorial actions alleged to be at variance with these principles or not in compliance with internal office procedures that may be adopted pursuant hereto. In the event that an attempt is made to litigate any aspect of these principles, or to litigate any internal office procedures adopted pursuant to these materials, or to litigate the applicability of such principles or procedures to a particular case, the United States Attorney concerned should oppose the attempt and should notify the Department immediately.

#### 9-27.200 Initiating and Declining Prosecution -- Probable Cause Requirement

- A. If the attorney for the government has probable cause to believe that a person has committed a Federal offense within his/her jurisdiction, he/she should consider whether to:
1. Request or conduct further investigation;
  2. Commence or recommend prosecution;
  3. Decline prosecution and refer the matter for prosecutorial consideration in another jurisdiction;
  4. Decline prosecution and initiate or recommend pretrial diversion or other non-criminal disposition; or
  5. Decline prosecution without taking other action.
- B. Comment. [USAM 9-27.220](#) sets forth the courses of action available to the attorney for the government once he/she has probable cause to believe that a person has committed a Federal offense within his/her jurisdiction. The probable cause standard is the same standard as that required for the issuance of an arrest warrant or a summons upon a complaint (*See Fed. R. Crim. P. 4(a)*), for a magistrate's decision to hold a defendant to answer in the district court (*See Fed. R. Crim. P. 5.1(a)*), and is the minimal requirement for indictment by a grand jury. *See Branzburg v. Hayes*, 408 U.S. 665, 686 (1972). This is, of course, a threshold consideration only. Merely because this requirement can be met in a given case does not automatically warrant prosecution; further investigation may be warranted, and the prosecutor should still take into account all relevant considerations, including those described in the following provisions, in deciding upon his/her course of action. On the other hand, failure to meet the minimal requirement of probable cause is an absolute bar to initiating a Federal prosecution, and in some circumstances may preclude reference to other prosecuting authorities or recourse to non-criminal sanctions as well.

#### 9-27.220 Grounds for Commencing or Declining Prosecution

- A. The attorney for the government should commence or recommend Federal prosecution if he/she believes that the person's conduct constitutes a Federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless, in his/her judgment, prosecution should be declined because:
1. No substantial Federal interest would be served by prosecution;
  2. The person is subject to effective prosecution in another jurisdiction; or
  3. There exists an adequate non-criminal alternative to prosecution.
- B. Comment. USAM 9-27.220 expresses the principle that, ordinarily, the attorney for the government should initiate or recommend Federal prosecution if he/she believes that the person's conduct constitutes a Federal offense and that the admissible evidence probably will be sufficient to obtain and sustain a conviction. Evidence sufficient to sustain a conviction is required under Rule 29(a), Fed. R. Crim. P., to avoid a judgment of acquittal. Moreover, both as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the government believes that the person probably will be found guilty by an unbiased trier of fact. In this connection, it should be noted that, when deciding whether to prosecute, the government attorney need not have in hand all the evidence upon which he/she intends to rely at trial: it is sufficient that he/she have a reasonable belief that such evidence will be available and admissible at the time of trial. Thus, for example, it would be proper to commence a prosecution though a key witness is out of the country, so long as the witness's presence at trial could be expected with reasonable certainty.

The potential that--despite the law and the facts that create a sound, prosecutable case--the factfinder is likely to acquit the defendant because of the unpopularity of some factor involved in the prosecution or because of the overwhelming popularity of the defendant or his/her cause, is not a factor prohibiting prosecution. For example, in a civil rights case or a case involving an extremely popular political figure, it might be clear that the evidence of guilt--viewed objectively by an unbiased factfinder--would be sufficient to obtain and sustain a conviction, yet the prosecutor might reasonably doubt whether the jury would convict. In such a case, despite his/her negative assessment of the likelihood of a guilty verdict (based on factors extraneous to an objective view of the law and the facts), the prosecutor may properly conclude that it is necessary and desirable to commence or recommend prosecution and allow the criminal process to operate in accordance with its principles.

Merely because the attorney for the government believes that a person's conduct constitutes a Federal offense and that the admissible evidence will be sufficient to obtain and sustain a conviction, does not mean that he/she necessarily should initiate or recommend prosecution: USAM 9-27.220 notes three situations in which the prosecutor may properly decline to take action nonetheless: when no substantial Federal interest would be served by prosecution; when the person is subject to effective prosecution in another jurisdiction; and when there exists an adequate non-criminal alternative to prosecution. It is left to the judgment of the attorney for the government whether such a situation exists. In exercising that judgment, the attorney for the government should consult USAM 9-27.230, 9-27.240, or 9-27.250, as appropriate.

#### **9-27.230 Initiating and Declining Charges -- Substantial Federal Interest**

- A. In determining whether prosecution should be declined because no substantial Federal interest

would be served by prosecution, the attorney for the government should weigh all relevant considerations, including:

1. Federal law enforcement priorities;
  2. The nature and seriousness of the offense;
  3. The deterrent effect of prosecution;
  4. The person's culpability in connection with the offense;
  5. The person's history with respect to criminal activity;
  6. The person's willingness to cooperate in the investigation or prosecution of others; and
  7. The probable sentence or other consequences if the person is convicted.
- B. Comment. USAM 9-27.230 lists factors that may be relevant in determining whether prosecution should be declined because no substantial Federal interest would be served by prosecution in a case in which the person is believed to have committed a Federal offense and the admissible evidence is expected to be sufficient to obtain and sustain a conviction. The list of relevant considerations is not intended to be all-inclusive. Obviously, not all of the factors will be applicable to every case, and in any particular case one factor may deserve more weight than it might in another case.

**1. Federal Law Enforcement Priorities.** Federal law enforcement resources and Federal judicial resources are not sufficient to permit prosecution of every alleged offense over which Federal jurisdiction exists. Accordingly, in the interest of allocating its limited resources so as to achieve an effective nationwide law enforcement program, from time to time the Department establishes national investigative and prosecutorial priorities. These priorities are designed to focus Federal law enforcement efforts on those matters within the Federal jurisdiction that are most deserving of Federal attention and are most likely to be handled effectively at the Federal level. In addition, individual United States Attorneys may establish their own priorities, within the national priorities, in order to concentrate their resources on problems of particular local or regional significance. In weighing the Federal interest in a particular prosecution, the attorney for the government should give careful consideration to the extent to which prosecution would accord with established priorities.

**2. Nature and Seriousness of Offense.** It is important that limited Federal resources not be wasted in prosecuting inconsequential cases or cases in which the violation is only technical. Thus, in determining whether a substantial Federal interest exists that requires prosecution, the attorney for the government should consider the nature and seriousness of the offense involved. A number of factors may be relevant. One factor that is obviously of primary importance is the actual or potential impact of the offense on the community and on the victim.

The impact of an offense on the community in which it is committed can be measured in several ways: in terms of economic harm done to community interests; in terms of physical danger to the citizens or damage to public property; and in terms of erosion of the inhabitants' peace of mind and sense of security. In assessing the seriousness of the offense in these terms, the prosecutor may properly weigh such questions as whether the violation is

technical or relatively inconsequential in nature and what the public attitude is toward prosecution under the circumstances of the case. The public may be indifferent, or even opposed, to enforcement of the controlling statute whether on substantive grounds, or because of a history of nonenforcement, or because the offense involves essentially a minor matter of private concern and the victim is not interested in having it pursued. On the other hand, the nature and circumstances of the offense, the identity of the offender or the victim, or the attendant publicity, may be such as to create strong public sentiment in favor of prosecution. While public interest, or lack thereof, deserves the prosecutor's careful attention, it should not be used to justify a decision to prosecute, or to take other action, that cannot be supported on other grounds. Public and professional responsibility sometimes will require the choosing of a particularly unpopular course.

Economic, physical, and psychological considerations are also important in assessing the impact of the offense on the victim. In this connection, it is appropriate for the prosecutor to take into account such matters as the victim's age or health, and whether full or partial restitution has been made. Care should be taken in weighing the matter of restitution, however, to ensure against contributing to an impression that an offender can escape prosecution merely by returning the spoils of his/her crime.

3. **Deterrent Effect of Prosecution.** Deterrence of criminal conduct, whether it be criminal activity generally or a specific type of criminal conduct, is one of the primary goals of the criminal law. This purpose should be kept in mind, particularly when deciding whether a prosecution is warranted for an offense that appears to be relatively minor; some offenses, although seemingly not of great importance by themselves, if commonly committed would have a substantial cumulative impact on the community.
4. **The Person's Culpability.** Although the prosecutor has sufficient evidence of guilt, it is nevertheless appropriate for him/her to give consideration to the degree of the person's culpability in connection with the offenses, both in the abstract and in comparison with any others involved in the offense. If for example, the person was a relatively minor participant in a criminal enterprise conducted by others, or his/her motive was worthy, and no other circumstances require prosecution, the prosecutor might reasonably conclude that some course other than prosecution would be appropriate.
5. **The Person's Criminal History.** If a person is known to have a prior conviction or is reasonably believed to have engaged in criminal activity at an earlier time, this should be considered in determining whether to initiate or recommend Federal prosecution. In this connection particular attention should be given to the nature of the person's prior criminal involvement, when it occurred, its relationship if any to the present offense, and whether he/she previously avoided prosecution as a result of an agreement not to prosecute in return for cooperation or as a result of an order compelling his/her testimony. By the same token, a person's lack of prior criminal involvement or his/her previous cooperation with the law enforcement officials should be given due consideration in appropriate cases.
6. **The Person's Willingness to Cooperate.** A person's willingness to cooperate in the investigation or prosecution of others is another appropriate consideration in the determination whether a Federal prosecution should be undertaken. Generally speaking, a willingness to cooperate should not by itself relieve a person of criminal liability. There may be some cases, however, in which the value of a person's cooperation clearly outweighs the Federal interest in prosecuting him/her. These matters are discussed more fully below, in

connection with plea agreements and non-prosecution agreements in return for cooperation.

7. **The Person's Personal Circumstances.** In some cases, the personal circumstances of an accused may be relevant in determining whether to prosecute or to take other action. Some circumstances peculiar to the accused, such as extreme youth, advanced age, or mental or physical impairment, may suggest that prosecution is not the most appropriate response to his/her offense; other circumstances, such as the fact that the accused occupied a position of trust or responsibility which he/she violated in committing the offense, might weigh in favor of prosecution.
8. **The Probable Sentence.** In assessing the strength of the Federal interest in prosecution, the attorney for the government should consider the sentence, or other consequence, that is likely to be imposed if prosecution is successful, and whether such a sentence or other consequence would justify the time and effort of prosecution. If the offender is already subject to a substantial sentence, or is already incarcerated, as a result of a conviction for another offense, the prosecutor should weigh the likelihood that another conviction will result in a meaningful addition to his/her sentence, might otherwise have a deterrent effect, or is necessary to ensure that the offender's record accurately reflects the extent of his/her criminal conduct. For example, it might be desirable to commence a bail-jumping prosecution against a person who already has been convicted of another offense so that law enforcement personnel and judicial officers who encounter him/her in the future will be aware of the risk of releasing him/her on bail. On the other hand, if the person is on probation or parole as a result of an earlier conviction, the prosecutor should consider whether the public interest might better be served by instituting a proceeding for violation of probation or revocation of parole, than by commencing a new prosecution. The prosecutor should also be alert to the desirability of instituting prosecution to prevent the running of the statute of limitations and to preserve the availability of a basis for an adequate sentence if there appears to be a chance that an offender's prior conviction may be reversed on appeal or collateral attack. Finally, if a person previously has been prosecuted in another jurisdiction for the same offense or a closely related offense, the attorney for the government should consult existing departmental policy statements on the subject of "successive prosecution" or "dual prosecution," depending on whether the earlier prosecution was Federal or nonfederal. *See* [USAM 9-2.031](#) (Petite Policy).

Just as there are factors that are appropriate to consider in determining whether a substantial Federal interest would be served by prosecution in a particular case, there are considerations that deserve no weight and should not influence the decision. These include the time and resources expended in Federal investigation of the case. No amount of investigative effort warrants commencing a Federal prosecution that is not fully justified on other grounds.

#### 9-27.240 Initiating and Declining Charges -- Prosecution in Another Jurisdiction

- A. In determining whether prosecution should be declined because the person is subject to effective prosecution in another jurisdiction, the attorney for the government should weigh all relevant considerations, including:
  1. The strength of the other jurisdiction's interest in prosecution;
  2. The other jurisdiction's ability and willingness to prosecute effectively; and

3. The probable sentence or other consequences if the person is convicted in the other jurisdiction.

B. **Comment.** In many instances, it may be possible to prosecute criminal conduct in more than one jurisdiction. Although there may be instances in which a Federal prosecutor may wish to consider deferring to prosecution in another Federal district, in most instances the choice will probably be between Federal prosecution and prosecution by state or local authorities. USAM 9-27.240 sets forth three general considerations to be taken into account in determining whether a person is likely to be prosecuted effectively in another jurisdiction: the strength of the jurisdiction's interest in prosecution; its ability and willingness to prosecute effectively; and the probable sentence or other consequences if the person is convicted. As indicated with respect to the considerations listed in paragraph 3, these factors are illustrative only, and the attorney for the government should also consider any others that appear relevant to his/her in a particular case.

1. **The Strength of the Jurisdiction's Interest.** The attorney for the government should consider the relative Federal and state characteristics of the criminal conduct involved. Some offenses, even though in violation of Federal law, are of particularly strong interest to the authorities of the state or local jurisdiction in which they occur, either because of the nature of the offense, the identity of the offender or victim, the fact that the investigation was conducted primarily by state or local investigators, or some other circumstance. Whatever the reason, when it appears that the Federal interest in prosecution is less substantial than the interest of state or local authorities, consideration should be given to referring the case to those authorities rather than commencing or recommending a Federal prosecution.
2. **Ability and Willingness to Prosecute Effectively.** In assessing the likelihood of effective prosecution in another jurisdiction, the attorney for the government should also consider the intent of the authorities in that jurisdiction and whether that jurisdiction has the prosecutorial and judicial resources necessary to undertake prosecution promptly and effectively. Other relevant factors might be legal or evidentiary problems that might attend prosecution in the other jurisdiction. In addition, the Federal prosecutor should be alert to any local conditions, attitudes, relationships, or other circumstances that might cast doubt on the likelihood of the state or local authorities conducting a thorough and successful prosecution.
3. **Probable Sentence Upon Conviction.** The ultimate measure of the potential for effective prosecution in another jurisdiction is the sentence, or other consequence, that is likely to be imposed if the person is convicted. In considering this factor, the attorney for the government should bear in mind not only the statutory penalties in the jurisdiction and sentencing patterns in similar cases, but also, the particular characteristics of the offense or, of the offender that might be relevant to sentencing. He/she should also be alert to the possibility that a conviction under state law may, in some cases result in collateral consequences for the defendant, such as disbarment, that might not follow upon a conviction under Federal law.

#### 9-27.250 Non-Criminal Alternatives to Prosecution

- A. In determining whether prosecution should be declined because there exists an adequate, non-criminal alternative to prosecution, the attorney for the government should consider all relevant factors, including:

1. The sanctions available under the alternative means of disposition;
2. The likelihood that an effective sanction will be imposed; and
3. The effect of non-criminal disposition on Federal law enforcement interests.

B. Comment. When a person has committed a Federal offense, it is important that the law respond promptly, fairly, and effectively. This does not mean, however, that a criminal prosecution must be initiated. In recognition of the fact that resort to the criminal process is not necessarily the only appropriate response to serious forms of antisocial activity, Congress and state legislatures have provided civil and administrative remedies for many types of conduct that may also be subject to criminal sanction. Examples of such non-criminal approaches include civil tax proceedings; civil actions under the securities, customs, antitrust, or other regulatory laws; and reference of complaints to licensing authorities or to professional organizations such as bar associations. Another potentially useful alternative to prosecution in some cases is pretrial diversion. See [USAM 9-22.000](#).

Attorneys for the government should familiarize themselves with these alternatives and should consider pursuing them if they are available in a particular case. Although on some occasions they should be pursued in addition to the criminal law procedures, on other occasions they can be expected to provide an effective substitute for criminal prosecution. In weighing the adequacy of such an alternative in a particular case, the prosecutor should consider the nature and severity of the sanctions that could be imposed, the likelihood that an adequate sanction would in fact be imposed, and the effect of such a non-criminal disposition on Federal law enforcement interests. It should be noted that referrals for non-criminal disposition may not include the transfer of grand jury material unless an order under Rule 6(e), Federal Rules of Criminal Procedure, has been obtained. See *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983).

#### 9-27.260 Initiating and Declining Charges – Impermissible Considerations

- A. In determining whether to commence or recommend prosecution or take other action against a person, the attorney for the government should not be influenced by:
1. The person's race, religion, sex, national origin, or political association, activities or beliefs;
  2. The attorney's own personal feelings concerning the person, the person's associates, or the victim; or
  3. The possible affect of the decision on the attorney's own professional or personal circumstances.
- B. Comment. [USAM 9-27.260](#) sets forth various matters that plainly should not influence the determination whether to initiate or recommend prosecution or take other action. They are listed here not because it is anticipated that any attorney for the government might allow them to affect his/her judgment, but in order to make clear that Federal prosecutors will not be influenced by such improper considerations. Of course, in a case in which a particular characteristic listed in subparagraph (1) is pertinent to the offense (for example, in an immigration case the fact that the offender is not a United States national, or in a civil rights case the fact that the victim and the offender are of different races), the provision would not prohibit the prosecutor from considering it for the purpose intended by the Congress.

**9-27.270 Records of Prosecutions Declined**

- A. Whenever the attorney for the government declines to commence or recommend Federal prosecution, he/she should ensure that his/her decision and the reasons therefore are communicated to the investigating agency involved and to any other interested agency, and are reflected in the office files.
- B. Comment. [USAM 9-27.270](#) is intended primarily to ensure an adequate record of disposition of matters that are brought to the attention of the government attorney for possible criminal prosecution, but that do not result in Federal prosecution. When prosecution is declined in serious cases on the understanding that action will be taken by other authorities, appropriate steps should be taken to ensure that the matter receives their attention and to ensure coordination or follow-up.

**9-27.300 Selecting Charges -- Charging Most Serious Offenses**

- A. Except as provided in [USAM 9-27.330](#), (precharge plea agreements), once the decision to prosecute has been made, the attorney for the government should charge, or should recommend that the grand jury charge, the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction. If mandatory minimum sentences are also involved, their effect must be considered, keeping in mind the fact that a mandatory minimum is statutory and generally overrules a guideline. The "most serious" offense is generally that which yields the highest range under the sentencing guidelines.

However, a faithful and honest application of the Sentencing Guidelines is not incompatible with selecting charges or entering into plea agreements on the basis of an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the Federal criminal code, and maximize the impact of Federal resources on crime. Thus, for example, in determining "the most serious offense that is consistent with the nature of the defendant's conduct that is likely to result in a sustainable conviction," it is appropriate that the attorney for the government consider, inter alia, such factors as the Sentencing Guideline range yielded by the charge, whether the penalty yielded by such sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant's conduct, and whether the charge achieves such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation. Note that these factors may also be considered by the attorney for the government when entering into plea agreements. [USAM 9-27.400](#).

To ensure consistency and accountability, charging and plea agreement decisions must be made at an appropriate level of responsibility and documented with an appropriate record of the factors applied.

- B. Comment. Once it has been determined to initiate prosecution, either by filing a complaint or an information, or by seeking an indictment from the grand jury, the attorney for the government must determine what charges to file or recommend. When the conduct in question consists of a single criminal act, or when there is only one applicable statute, this is not a difficult task. Typically, however, a defendant will have committed more than one criminal act and his/her conduct may be prosecuted under more than one statute. Moreover, selection of charges may be complicated further by the fact that different statutes have different proof requirements and provide substantially different penalties. In such cases, considerable care is required to ensure selection of the proper

charge or charges. In addition to reviewing the concerns that prompted the decision to prosecute in the first instance, particular attention should be given to the need to ensure that the prosecution will be both fair and effective.

At the outset, the attorney for the government should bear in mind that at trial he/she will have to produce admissible evidence sufficient to obtain and sustain a conviction or else the government will suffer a dismissal. For this reason, he/she should not include in an information or recommend in an indictment charges that he/she cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient evidence at trial.

In connection with the evidentiary basis for the charges selected, the prosecutor should also be particularly mindful of the different requirements of proof under different statutes covering similar conduct. For example, the bribe provisions of 18 U.S.C. § 201 require proof of "corrupt intent," while the "gratuity" provisions do not. Similarly, the "two witness" rule applies to perjury prosecutions under 18 U.S.C. § 1621 but not under 18 U.S.C. § 1623.

As stated, a Federal prosecutor should initially charge the most serious, readily provable offense or offenses consistent with the defendant's conduct. Charges should not be filed simply to exert leverage to induce a plea, nor should charges be abandoned in an effort to arrive at a bargain that fails to reflect the seriousness of the defendant's conduct.

USAM 9-27.300 expresses the principle that the defendant should be charged with the most serious offense that is encompassed by his/her conduct and that is readily provable. Ordinarily, as noted above this will be the offense for which the most severe penalty is provided by law and the guidelines. Where two crimes have the same statutory maximum and the same guideline range, but only one contains a mandatory minimum penalty, the one with the mandatory minimum is the more serious. This principle provides the framework for ensuring equal justice in the prosecution of Federal criminal offenders. It guarantees that every defendant will start from the same position, charged with the most serious criminal act he/she commits. Of course, he/she may also be charged with other criminal acts (as provided in USAM 9-27.320), if the proof and the government's legitimate law enforcement objectives warrant additional charges.

Current drug laws provide for increased maximum, and in some cases minimum, penalties for many offenses on the basis of a defendant's prior criminal convictions. See, e.g., 21 U.S.C. §§ 841(b)(1)(A),(B), and (C), 848(a), 960(b)(1), (2), and (3), and 962. However, a court may not impose such an increased penalty unless the United States Attorney has filed an information with the court, before trial or before entry of a plea of guilty, setting forth the previous convictions to be relied upon 21 U.S.C. § 851.

Every prosecutor should regard the filing of an information under 21 U.S.C. § 851 concerning prior convictions as equivalent to the filing of charges. Just as a prosecutor must file a readily provable charge, he or she must file an information under 21 U.S.C. § 851 regarding prior convictions that are readily provable and that are known to the prosecutor prior to the beginning of trial or entry of plea. The only exceptions to this requirement are where: (1) the failure to file or the dismissal of such pleadings would not affect the applicable guideline range from which the sentence may be imposed; or (2) in the context of a negotiated plea, the United States Attorney, the Chief Assistant United States Attorney, the senior supervisory Criminal Assistant United States Attorney or within the Department of Justice, a Section Chief or Office Director has approved the negotiated agreement. The reasons for such an agreement must be set forth in writing. Such a reason might include, for example, that the United States Attorney's office is particularly overburdened, the case

would be time-consuming to try, and proceeding to trial would significantly reduce the total number of cases disposed of by the office. The permissible agreements within this context include: (1) not filing an enhancement; (2) filing an enhancement which does not allege all relevant prior convictions, thereby only partially enhancing a defendant's potential sentence; and (3) dismissing a previously filed enhancement.

A negotiated plea which uses any of the options described in this section must be made known to the sentencing court. In addition, the sentence which can be imposed through the negotiated plea must adequately reflect the seriousness of the offense.

Prosecutors are reminded that when a defendant commits an armed bank robbery or other crime of violence or drug trafficking crime, appropriate charges include 18 U.S.C. § 924 (c).

#### 9-27.320 Additional Charges

- A. Except as hereafter provided, the attorney for the government should also charge, or recommend that the grand jury charge, other offenses only when, in his/her judgement, additional charges:
1. Are necessary to ensure that the information or indictment:
    - a. Adequately reflects the nature and extent of the criminal conduct involved; and
    - b. Provides the basis for an appropriate sentence under all the circumstances of the case; or
  2. Will significantly enhance the strength of the government's case against the defendant or a codefendant.
- B. Comment. It is important to the fair and efficient administration of justice in the Federal system that the government bring as few charges as are necessary to ensure that justice is done. The bringing of unnecessary charges not only complicates and prolongs trials, it constitutes an excessive--and potentially unfair--exercise of power. To ensure appropriately limited exercises of the charging power, USAM 9-27.320 outlines three general situations in which additional charges may be brought: (1) when necessary adequately to reflect the nature and extent of the criminal conduct involved; (2) when necessary to provide the basis for an appropriate sentence under all the circumstances of the case; and (3) when an additional charge or charges would significantly strengthen the case against the defendant or a codefendant.
1. **Nature and Extent of Criminal Conduct.** Apart from evidentiary considerations, the prosecutor's initial concern should be to select charges that adequately reflect the nature and extent of the criminal conduct involved. This means that the charges selected should fairly describe both the kind and scope of unlawful activity; should be legally sufficient; should provide notice to the public of the seriousness of the conduct involved; and should negate any impression that, after committing one offense, an offender can commit others with impunity.
  2. **Basis for Sentencing.** Proper charge selection also requires consideration of the end result of successful prosecution--the imposition of an appropriate sentence under all the circumstances of the case. In order to achieve this result, it ordinarily should not be necessary to charge a person with every offense for which he/she, may technically be liable

(indeed, charging every such offense may in some cases be perceived as an unfair attempt to induce a guilty plea). What is important is that the person be charged in such a manner that, if he/she is convicted, the court may impose an appropriate sentence. Under the sentencing guidelines, if the offense actually charged bears a true relationship with the defendant's conduct, an appropriate guideline sentence will follow. However, the prosecutor must take care to be sure that the charges brought allow the guidelines to operate properly. For instance, charging a significant participant in a major drug conspiracy only with using a communication facility would result in a sentence which, even if it were the maximum possible under the charged offense, would be artificially low given the defendant's actual conduct.

3. **Effect on the Government's Case.** When considering whether to include a particular charge in the indictment or information, the attorney for the government should bear in mind the possible effects of inclusion or exclusion of the charge on the government's case against the defendant or a codefendant. If the evidence is available, it is proper to consider the tactical advantages of bringing certain charges. For example, in a case in which a substantive offense was committed pursuant to an unlawful agreement, inclusion of a conspiracy count is permissible and may be desirable to ensure the introduction of all relevant evidence at trial. Similarly, it might be important to include a perjury or false statement count in an indictment charging other offenses, in order to give the jury a complete picture of the defendant's criminal conduct. Failure to include appropriate charges for which the proof is sufficient may not only result in the exclusion, of relevant evidence, but may impair the prosecutor's ability to prove a coherent case, and lead to jury confusion as well. In this connection, it is important to remember that, in multi-defendant cases, the presence or absence of a particular charge against one defendant may affect the strength of the case against another defendant. In short, when the evidence exists, the charges should be structured so as to permit proof of the strongest case possible without undue burden on the administration of justice.

#### 9-27.330 Pre-Charge Plea Agreements

Before filing or recommending charges pursuant to a precharge plea agreement, the attorney for the government should consult the plea agreement provisions of [USAM 9-27.430](#), thereof, relating to the selection of charges to which a defendant should be required to plead guilty.

#### 9-27.400 Plea Agreements Generally

- A. The attorney for the government may, in an appropriate case, enter into an agreement with a defendant that, upon the defendant's plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, he/she will move for dismissal of other charges, take a certain position with respect to the sentence to be imposed, or take other action. Plea agreements, and the role of the courts in such agreements, are addressed in Chapter Six of the Sentencing Guidelines. See also [USAM 9-27.300](#) which discusses the individualized assessment by prosecutors of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the Federal criminal code, and maximize the impact of Federal resources on crime.
- B. Comment. [USAM 9-27.400](#) permits, in appropriate cases, the disposition of Federal criminal charges pursuant to plea agreements between defendants and government attorneys. Such negotiated dispositions should be distinguished from situations in which a defendant pleads guilty or nolo contendere to fewer than all counts of an information or indictment in the absence of any agreement with the government. Only the former type of disposition is covered by the provisions of

USAM 9-27.400 et seq.

Negotiated plea dispositions are explicitly sanctioned by Rule 11(e)(1), Fed. R. Crim. P., which provides that:

The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

- A. Move for dismissal of other charges; or
- B. Make a recommendation, or agree not to oppose, the defendant's request for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or
- C. Agree that a specific sentence is the appropriate disposition of the case.

Three types of plea agreements are encompassed by the language of USAM 9-27.400, agreements whereby in return for the defendant's plea to a charged offense or to a lesser or related offense, other charges are dismissed ("charge agreements"); agreements pursuant to which the government takes a certain position regarding the sentence to be imposed ("sentence agreements"); and agreements that combine a plea with a dismissal of charges and an undertaking by the prosecutor concerning the government's position at sentencing ("mixed agreements").

Once prosecutors have indicted, they should find themselves bargaining about charges which they have determined are readily provable and reflect the seriousness of the defendant's conduct. Charge agreements envision dismissal of counts in exchange for a plea. As with the indictment decision, the prosecutor should seek a plea to the most serious readily provable offense charged. Should a prosecutor determine in good faith after indictment that, as a result of a change in the evidence or for another reason (e.g., a need has arisen to protect the identity of a particular witness until he or she testifies against a more significant defendant), a charge is not readily provable or that an indictment exaggerates the seriousness of an offense or offenses, a plea bargain may reflect the prosecutor's reassessment. There should be documentation, however, in a case in which charges originally brought are dropped.

The language of USAM 9-27.400 with respect to sentence agreements is intended to cover the entire range of positions that the government might wish to take at the time of sentencing. Among the options are: taking no position regarding the sentence; not opposing the defendant's request; requesting a specific type of sentence (e.g., a fine or probation), a specific fine or term of imprisonment, or not more than a specific fine or term of imprisonment; and requesting concurrent rather than consecutive sentences. Agreement to any such option must be consistent with the guidelines.

There are only two types of sentence bargains. Both are permissible, but one is more complicated than the other. First, prosecutors may bargain for a sentence that is within the specified United States Sentencing Commission's guideline range. This means that when a guideline range is 18 to 24 months, the prosecutor has discretion to agree to recommend a sentence of 18 to 20 months rather than to argue for a sentence at the top of the range. Such a plea does not require that the actual sentence range be determined in advance. The plea agreement may have wording to the effect that once the range is determined by the court, the United States will recommend a low point in that range. Similarly, the prosecutor may agree to recommend a downward adjustment for acceptance of responsibility if he or she

concludes in good faith that the defendant is entitled to the adjustment. Second, the prosecutor may seek to depart from the guidelines. This is more complicated than a bargain involving a sentence within a guideline range. Departures are discussed more generally below.

Department policy requires honesty in sentencing; Federal prosecutors are expected to identify for the court departures when they agree to support them. For example, it would be improper for a prosecutor to agree that a departure is in order, but to conceal the agreement in a charge bargain that is presented to a court as a fait accompli so that there is neither a record of nor judicial review of the departure.

Plea bargaining, both charge bargaining and sentence bargaining, must honestly reflect the totality and seriousness of the defendant's conduct and any departure to which the prosecutor is agreeing, and must be accomplished through appropriate guideline provisions.

The basic policy is that charges are not to be bargained away or dropped, unless the prosecutor has a good faith doubt as to the government's ability readily to prove a charge for legal or evidentiary reasons. There are, however, two exceptions.

First, if the applicable guideline range from which a sentence may be imposed would be unaffected, readily provable charges may be dismissed or dropped as part of a plea bargain. It is important to know whether dropping a charge may affect a sentence. For example, the multiple offense rules in Part D of Chapter 3 of the guidelines and the relevant conduct standard set forth in Sentencing Guideline 1B1.3(a)(2) will mean that certain dropped charges will be counted for purposes of determining the sentence, subject to the statutory maximum for the offense or offenses of conviction. It is vital that Federal prosecutors understand when conduct that is not charged in an indictment or conduct that is alleged in counts that are to be dismissed pursuant to a bargain may be counted for sentencing purposes and when it may not be. For example, in the case of a defendant who could be charged with five bank robberies, a decision to charge only one or to dismiss four counts pursuant to a bargain precludes any consideration of the four uncharged or dismissed robberies in determining a guideline range, unless the plea agreement included a stipulation as to the other robberies. In contrast, in the case of a defendant who could be charged with five counts of fraud, the total amount of money involved in a fraudulent scheme will be considered in determining a guideline range even if the defendant pleads guilty to a single count and there is no stipulation as to the other counts.

Second, Federal prosecutors may drop readily provable charges with the specific approval of the United States Attorney or designated supervisory level official for reasons set forth in the file of the case. This exception recognizes that the aims of the Sentencing Reform Act must be sought without ignoring other, critical aspects of the Federal criminal justice system. For example, approvals to drop charges in a particular case might be given because the United States Attorney's office is particularly over-burdened, the case would be time-consuming to try, and proceeding to trial would significantly reduce the total number of cases disposed of by the office.

In Chapter 5, Part K of the Sentencing Guidelines, the Commission has listed departures that may be considered by a court in imposing a sentence. Moreover, Guideline 5K2.0 recognizes that a sentencing court may consider a ground for departure that has not been adequately considered by the Commission. A departure requires approval by the court. It violates the spirit of the guidelines and Department policy for prosecutor to enter into a plea bargain which is based upon the prosecutor's and the defendant's agreement that a departure is warranted, but that does not reveal to the court the existence of the departure and thereby afford the court an opportunity to reject it.

The Commission has recognized those bases for departure that are commonly justified. Accordingly, before the government may seek a departure based on a factor other than one set forth in Chapter 5, Part X, approval of the United States Attorney or designated supervisory officials is required. This approval is required whether or not a case is resolved through a negotiated plea.

Section 5K1.1 of the Sentencing Guidelines allows the United States to file a pleading with the sentencing court which permits the court to depart below the indicated guideline, on the basis that the defendant provided substantial assistance in the investigation or prosecution of another. Authority to approve such pleadings is limited to the United States Attorney, the Chief Assistant United States Attorney, and supervisory criminal Assistant United States Attorneys, or a committee including at least one of these individuals. Similarly, for Department of Justice attorneys, approval authority should be vested in a Section Chief or Office Director, or such official's deputy, or in a committee which includes at least one of these individuals.

Every United States Attorney or Department of Justice Section Chief or Office Director shall maintain documentation of the facts behind and justification for each substantial assistance pleading. The repository or repositories of this documentation need not be the case file itself. Freedom of Information Act considerations may suggest that a separate form showing the final decision be maintained.

The procedures described above shall also apply to Motions filed pursuant to Rule 35(b), Federal Rules of Criminal Procedure, where the sentence of a cooperating defendant is reduced after sentencing on motion of the United States. Such a filing is deemed for sentencing purposes to be the equivalent of a substantial assistance pleading.

The concession required by the government as part of a plea agreement, whether it be a "charge agreement," a "sentence agreement," or a "mixed agreement," should be weighed by the responsible government attorney in the light of the probable advantages and disadvantages of the plea disposition proposed in the particular case. Particular care should be exercised in considering whether to enter into a plea agreement pursuant to which the defendant will enter a nolo contendere plea. As discussed in [USAM 9-27.500](#) and [USAM 9-16.000](#), there are serious objections to such pleas and they should be opposed unless the responsible Assistant Attorney General concluded that the circumstances are so unusual that acceptance of such a plea would be in the public interest.

#### **9-27.420 Plea Agreements -- Considerations to be Weighed**

- A. In determining whether it would be appropriate to enter into a plea agreement, the attorney for the government should weigh all relevant considerations, including:
1. The defendant's willingness to cooperate in the investigation or prosecution of others;
  2. The defendant's history with respect to criminal activity;
  3. The nature and seriousness of the offense or offenses charged;
  4. The defendant's remorse or contrition and his/her willingness to assume responsibility for his/her conduct;
  5. The desirability of prompt and certain disposition of the case;
  6. The likelihood of obtaining a conviction at trial;

7. The probable effect on witnesses;
8. The probable sentence or other consequences if the defendant is convicted;
9. The public interest in having the case tried rather than disposed of by a guilty plea;
10. The expense of trial and appeal;
11. The need to avoid delay in the disposition of other pending cases; and
12. The effect upon the victim's right to restitution.

B. Comment. USAM 9-27.420 sets forth some of the appropriate considerations to be weighed by the attorney for the government in deciding whether to enter into a plea agreement with a defendant pursuant to the provisions of Rule 11(e), Fed. R. Crim. P. The provision is not intended to suggest the desirability or lack of desirability of a plea agreement in any particular case or to be construed as a reflection on the merits of any plea agreement that actually may be reached; its purpose is solely to assist attorneys for the government in exercising their judgement as to whether some sort of plea agreement would be appropriate in a particular case. Government attorneys should consult the investigating agency involved and the victim, if appropriate or required by law, in any case in which it would be helpful to have their views concerning the relevance of particular factors or the weight they deserve.

1. **Defendant's Cooperation.** The defendant's willingness to provide timely and useful cooperation as part of his/her plea agreement should be given serious consideration. The weight it deserves will vary, of course, depending on the nature and value of the cooperation offered and whether the same benefit can be obtained without having to make the charge or sentence concession that would be involved in a plea agreement. In many situations, for example, all necessary cooperation in the form of testimony can be obtained through a compulsion order under 18 U.S.C. §§ 6001-6003. In such cases, that approach should be attempted unless, under the circumstances, it would seriously interfere with securing the person's conviction. If the defendant's cooperation is sufficiently substantial to justify the filing of a 5K1.1 Motion for a downward departure, the procedures set out in USAM 9-27.400 (B) shall be followed.
2. **Defendant's Criminal History.** One of the principal arguments against the practice of plea bargaining is that it results in leniency that reduces the deterrent impact of the law and leads to recidivism on the part of some offenders. Although this concern is probably most relevant in non-federal jurisdictions that must dispose of large volumes of routine cases with inadequate resources, nevertheless it should be kept in mind by Federal prosecutors, especially when dealing with repeat offenders or "career criminals." Particular care should be taken in the case of a defendant with a prior criminal record to ensure that society's need for protection is not sacrificed in the process of arriving at a plea disposition. In this connection, it is proper for the government attorney to consider not only the defendant's past, but also facts of other criminal involvement not resulting in conviction. By the same token, of course, it is also proper to consider a defendant's absence of past criminal involvement and his/her past cooperation with law enforcement officials. Note that 18 U.S.C. § 924(c), as well as Sentencing Guidelines 4B1.1 and 4B1.4 address "career criminals" and "armed career criminals." 18 U.S.C. § 3559(c) --the so-called "three strikes" statute--addresses serious

violent recidivist offenders. The application of these provisions to a particular case may affect the plea negotiation posture of the parties.

3. **Nature and Seriousness of Offense Charged.** Important considerations in determining whether to enter into a plea agreement may be the nature and seriousness of the offense or offenses charged. In weighing those factors, the attorney for the government should bear in mind the interests sought to be protected by the statute defining the offense (e.g., the national defense, constitutional rights, the governmental process, personal safety, public welfare, or property), as well as nature and degree of harm caused or threatened to those interests and any attendant circumstances that aggravate or mitigate the seriousness of the offense in the particular case.
4. **Defendant's Attitude.** A defendant may demonstrate apparently genuine remorse or contrition, and a willingness to take responsibility for his/her criminal conduct by, for example, efforts to compensate the victim for injury or loss, or otherwise to ameliorate the consequences of his/her acts. These are factors that bear upon the likelihood of his/her repetition of the conduct involved and that may properly be considered in deciding whether a plea agreement would be appropriate. Sentencing Guideline 3E1.1 allows for a downward adjustment upon acceptance of responsibility by the defendant. It is permissible for a prosecutor to enter a plea agreement which approves such an adjustment if the defendant otherwise meets the requirements of the section.

It is particularly important that the defendant not be permitted to enter a guilty plea under circumstances that will allow him/her later to proclaim lack of culpability or even complete innocence. Such consequences can be avoided only if the court and the public are adequately informed of the nature and scope of the illegal activity and of the defendant's complicity and culpability. To this end, the attorney for the government is strongly encouraged to enter into a plea agreement only with the defendant's assurance that he/she will admit, the facts of the offense and of his/her culpable participation therein. A plea agreement may be entered into in the absence of such an assurance, but only if the defendant is willing to accept without contest a statement by the government in open court of the facts it could prove to demonstrate his/her guilt beyond a reasonable doubt. Except as provided in USAM 9-27.440, the attorney for the government should not enter into a plea agreement with a defendant who admits his/her guilt but disputes an essential element of the government's case.

5. **Prompt Disposition.** In assessing the value of prompt disposition of a criminal case, the attorney for the government should consider the timing of a proffered plea. A plea offer by a defendant on the eve of trial after the case has been fully prepared is hardly as advantageous from the standpoint of reducing public expense as one offered months or weeks earlier. In addition, a last minute plea adds to the difficulty of scheduling cases efficiently and may even result in wasting the prosecutorial and Judicial time reserved for the aborted trial. For these reasons, governmental attorneys should make clear to defense counsel at an early stage in the proceedings that, if there are to be any plea discussions, they must be concluded prior to a certain date well in advance of the trial date. *See* USSG § 3E1.1(b)(1). However, avoidance of unnecessary trial preparation and scheduling disruptions are not the only benefits to be gained from prompt disposition of a case by means of a guilty plea. Such a disposition also saves the government and the court the time and expense of trial and appeal. In addition, a plea agreement facilitates prompt imposition of sentence, thereby promoting the overall goals of the criminal justice system. Thus, occasionally it may be appropriate to enter into a plea

agreement even after the usual time for making such agreements has passed.

- 6. Likelihood of Conviction.** The trial of a criminal case inevitably involves risks and uncertainties, both for the prosecution and for the defense. Many factors, not all of which can be anticipated, can affect the outcome. To the extent that these factors can be identified, they should be considered in deciding whether to accept a plea or go to trial. In this connection, the prosecutor should weigh the strength of the government's case relative to the anticipated defense case, bearing in mind legal and evidentiary problems that might be expected, as well as the importance of the credibility of witnesses. However, although it is proper to consider factors bearing upon the likelihood of conviction in deciding whether to enter into a plea agreement, it obviously is improper for the prosecutor to attempt to dispose of a case by means of a plea agreement if he/she is not satisfied that the legal standards for guilt are met.
- 7. Effect on Witnesses.** Attorneys for the government should bear in mind that it is often burdensome for witnesses to appear at trial and that sometimes to do so may cause them serious embarrassment or even place them in jeopardy of physical or economic retaliation. The possibility of such adverse consequences to witnesses should not be overlooked in determining whether to go to trial or attempt to reach a plea agreement. Another possibility that may have to be considered is revealing the identity of informants. When an informant testifies at trial, his/her identity and relationship to the government become matters of public record. As a result, in addition to possible adverse consequences to the informant, there is a strong likelihood that the informant's usefulness in other investigations will be seriously diminished or destroyed. These are considerations that should be discussed with the investigating agency involved, as well as with any other agencies known to have an interest in using the informant in their investigations.
- 8. Probable Sentence.** In determining whether to enter into a plea agreement, the attorney for the government may properly consider the probable outcome of the prosecution in terms of the sentence or other consequences for the defendant in the event that a plea agreement is reached. If the proposed agreement is a "sentence agreement" or a "mixed agreement," the prosecutor should realize that the position he/she agrees to take with respect to sentencing may have a significant effect on the sentence that is actually imposed. If the proposed agreement is a "charge agreement," the prosecutor should bear in mind the extent to which a plea to fewer or lesser offenses may reduce the sentence that otherwise could be imposed. In either event, it is important that the attorney for the government be aware of the need to preserve the basis for an appropriate sentence under all the circumstances of the case. Thorough knowledge of the Sentencing Guidelines, any applicable statutory minimum sentences, and any applicable sentence enhancements is clearly necessary to allow the prosecutor to accurately and adequately evaluate the effect of any plea agreement.
- 9. Trial Rather Than Plea.** There may be situations in which the public interest might better be served by having a case tried rather than by having it disposed of by means of a guilty plea. These include situations in which it is particularly important to permit a clear public understanding that "justice is done" through exposing the exact nature of the defendant's wrongdoing at trial, or in which a plea agreement might be misconstrued to the detriment of public confidence in the criminal justice system. For this reason, the prosecutor should be careful not to place undue emphasis on factors which favor disposition of a case pursuant to a plea agreement.

- 10. Expense of Trial and Appeal.** In assessing the expense of trial and appeal that would be saved by a plea disposition, the attorney for the government should consider not only such monetary costs as juror and witness fees, but also the time spent by judges, prosecutors, and law enforcement personnel who may be needed to testify or provide other assistance at trial. In this connection, the prosecutor should bear in mind the complexity of the case, the number of trial days and witnesses required, and any extraordinary expenses that might be incurred such as the cost of sequestering the jury.
- 11. Prompt Disposition of Other Cases.** A plea disposition in one case may facilitate the prompt disposition of other cases, including cases in which prosecution might otherwise be declined. This may occur simply because prosecutorial, judicial, or defense resources will become available for use in other cases, or because a plea by one of several defendants may have a "domino effect," leading to pleas by other defendants. In weighing the importance of these possible consequences, the attorney for the government should consider the state of the criminal docket and the speedy trial requirements in the district, the desirability of handling a larger volume of criminal cases, and the work loads of prosecutors, judges, and defense attorneys in the district.

#### 9-27.430 Selecting Plea Agreement Charges

- A. If a prosecution is to be concluded pursuant to a plea agreement, the defendant should be required to plead to a charge or charges:
1. That is the most serious readily provable charge consistent with the nature and extent of his/her criminal conduct;
  2. That has an adequate factual basis;
  3. That makes likely the imposition of an appropriate sentence and order of restitution, if appropriate, under all the circumstances of the case; and
  4. That does not adversely affect the investigation or prosecution of others.
- B. Comment. USAM 9-27.430 sets forth the considerations that should be taken into account in selecting the charge or charges to which a defendant should be required to plead guilty once it has been decided to dispose of the case pursuant to a plea agreement. The considerations are essentially the same as those governing the selection of charges to be included in the original indictment or information. See USAM 9-27.300.
- 1. Relationship to Criminal Conduct.** The charge or charges to which a defendant pleads guilty should be consistent with the defendant's criminal conduct, both in nature and in scope. Except in unusual circumstances, this charge will be the most serious one, as defined in USAM 9-27.300. This principle governs the number of counts to which a plea should be required in cases involving different offenses, or in cases involving a series of familiar offenses. Therefore the prosecutor must be familiar with the Sentencing Guideline rules applicable to grouping offenses (Guideline 3D) and to relevant conduct (USSG § 1B1.3) among others. In regard to the seriousness of the offense, the guilty plea should assure that the public record of conviction provides an adequate indication of the defendant's conduct. With respect to the number of counts, the prosecutor should take care to assure that no impression is given that multiple offenses are likely to result in no greater a potential penalty

than is a single offense. The requirement that a defendant plead to a charge, that is consistent with the nature and extent of his/her criminal conduct is not inflexible. Although cooperation is usually acknowledged through a Sentencing Guideline 5K1.1 filing, there may be situations involving cooperating defendants in which considerations such as those discussed in USAM 9-27-600, take precedence. Such situations should be approached cautiously, however. Unless the government has strong corroboration for the cooperating defendant's testimony, his/her credibility may be subject to successful impeachment if he/she is permitted to plead to an offense that appears unrelated in seriousness or scope to the charges against the defendants on trial. It is also doubly important in such situations for the prosecutor to ensure that the public record of the plea demonstrates, the full extent of the defendant's involvement in the criminal activity, giving rise to the prosecution.

2. **Factual Basis.** The attorney for the government should also bear in mind the legal requirement that there be a factual basis for the charge or charges to which a guilty plea is entered. This requirement is intended to assure against conviction after a guilty plea of a person who is not in fact guilty. Moreover, under Rule 11(f) of the Fed. R. Crim. P., a court may not enter a judgment upon a guilty plea "without making such inquiry as shall satisfy it that, there is a factual basis for the plea." For this reason, it is essential that the charge or charges selected as the subject of a plea agreement be such as could be prosecuted independently of the plea under these principles. However, as noted, in cases in which Alford or nolo contendere pleas are tendered, the attorney for the government may wish to make a stronger factual showing. In such cases there may remain some doubt as to the defendant's guilt even after the entry of his/her plea. Consequently, in order to avoid such a misleading impression, the government should ask leave of the court to make a proffer of the facts available to it that show the defendant's guilt beyond a reasonable doubt.

In addition, the Department's policy is only to stipulate to facts that accurately represent the defendant's conduct. If a prosecutor wishes to support a departure from the guidelines, he or she should candidly do so and not stipulate to facts that are untrue. Stipulations to untrue facts are unethical. If a prosecutor has insufficient facts to contest a defendant's effort to seek a downward departure or to claim an adjustment, the prosecutor can say so. If the presentence report states facts that are inconsistent with a stipulation in which a prosecutor has joined, the prosecutor should object to the report or add a statement explaining the prosecutor's understanding of the facts or the reason for the stipulation.

Recounting the true nature of the defendant's involvement in a case will not always lead to a higher sentence. Where a defendant agrees to cooperate with the government by providing information concerning unlawful activities of others and the government agrees that self-incriminating information so provided will not be used against the defendant, Sentencing Guideline 1B1.8 provides that the information shall not be used in determining the applicable guideline range, except to the extent provided in the agreement. The existence of an agreement not to use information should be clearly reflected in the case file, the applicability of Guideline 1B1.8 should be documented, and the incriminating information must be disclosed to the court or the probation officer, even though it may not be used in determining a guideline sentence. Note that such information may still be used by the court in determining whether to depart from the guidelines and the extent of the departure. See US SG § 1B1.8.

3. **Basis for Sentencing.** In order to guard against inappropriate restriction of the court's sentencing options, the plea agreement should provide adequate scope for sentencing under all the circumstances of the case. To the extent that the plea agreement requires the

government to take a position with respect to the sentence to be imposed, there should be little danger since the court will not be bound by the government's position. When a "charge agreement" is involved, however, the court will be limited to imposing the maximum term authorized by statute as well as the Sentencing Guideline range for the offense, to which the guilty plea is entered. Thus, as noted in USAM 9-27.320 above the prosecutor should take care to avoid a "charge agreement" that would unduly restrict the court's sentencing authority. In this connection, as in the initial selection of charges, the prosecutor should take into account the purposes of sentencing, the penalties provided in the applicable statutes (including mandatory minimum penalties), the gravity of the offense, any aggravating or mitigating factors, and any post conviction consequences to which the defendant may be subject. In addition, if restitution is appropriate under the circumstances of the case, the plea agreement should specify the amount of restitution. See 18 U.S.C. § 3663 *et seq.*; 18 U.S.C. §§ 2248, 2259, 2264 and 2327; *United States v. Arnold*, 947 F.2d 1236, 1237-38 (5th Cir. 1991); and USAM 9-16.320.

4. **Effect on Other Cases.** In a multiple-defendant case, care must be taken to ensure that the disposition of the charges against one defendant does not adversely affect the investigation or prosecution of co-defendants. Among the possible adverse consequences to be avoided are the negative jury appeal that may result when relatively less culpable defendants are tried in the absence of a more culpable defendant or when a principal prosecution witness appears to be equally culpable as the defendants but has been permitted to plead to a significantly less serious offense; the possibility that one defendant's absence from the case will render useful evidence inadmissible at the trial of co-defendants; and the giving of questionable exculpatory testimony on behalf of the other defendants by the defendant who has pled guilty.

#### 9-27.440 Plea Agreements When Defendant Denies Guilt

- A. The attorney for the government should not, except with the approval of the Assistant Attorney General with supervisory responsibility over the subject matter, enter into a plea agreement if the defendant maintains his/her innocence with respect to the charge or charges to which he/she offers to plead guilty. In a case in which the defendant tenders a plea of guilty but denies committing the offense to which he/she offers to plead guilty, the attorney for the government should make an offer of proof of all facts known to the government to support the conclusion that the defendant is in fact guilty. See also USAM 9-16.015.
- B. Comment. USAM 9-27.440 concerns plea agreements involving "Alford" pleas—guilty pleas entered by defendants who nevertheless claim to be innocent. In *North Carolina v. Alford*, 400 U.S. 25 (1970), the Supreme Court held that the Constitution does not prohibit a court from accepting a guilty plea from a defendant who simultaneously maintains his/her innocence, so long as the plea is entered voluntarily and intelligently and there is a strong factual basis for it. The Court reasoned that there is no material difference between a plea of *nolo contendere*, where the defendant does not expressly admit his/her guilt, and a plea of guilty by a defendant who affirmatively denies his/her guilt.

Despite the constitutional validity of Alford pleas, such pleas should be avoided except in the most unusual circumstances, even if no plea agreement is involved and the plea would cover all pending charges. Such pleas are particularly undesirable when entered as part of an agreement with the government. Involvement by attorneys for the government in the inducement of guilty pleas by defendants who protest their innocence may create an appearance of prosecutorial overreaching. As one

court put it, "the public might well not understand or accept the fact that a defendant who denied his guilt was nonetheless placed in a position of pleading guilty and going to jail." See *United States v. Bednarski*, 445 F.2d 364, 366 (1st Cir. 1971). Consequently, it is preferable to have a jury resolve the factual and legal dispute between the government and the defendant, rather than have government attorneys encourage defendants to plead guilty under circumstances that the public might regard as questionable or unfair. For this reason, government attorneys should not enter into Alford plea agreements, without the approval of the responsible Assistant Attorney General. Apart from refusing to enter into a plea agreement, however, the degree to which the Department can express its opposition to Alford pleas may be limited. Although a court may accept a proffered plea of nolo contendere "only after due consideration of the views of the parties and the interest of the public in the effective administration of justice" (Rule 11(b), Fed. R. Crim. P.), at least one court has concluded that it is abuse of discretion to refuse to accept a guilty plea "solely because the defendant does not admit the alleged facts of the crime." *United States v. Gaskins*, 485 F.2d 1046, 1048 (D.C. Cir. 1973); See *United States v. Bednarski*, *supra*; *United States v. Boscoe*, 518 F.2d 95 (1st Cir. 1975). Nevertheless, government attorneys can and should discourage Alford pleas by refusing to agree to terminate prosecutions where an Alford plea is proffered to fewer than all of the charges pending. As is the case with guilty pleas generally, if such a plea to fewer than all the charges is tendered and accepted over the government's objection, the attorney for the government should proceed to trial on any remaining charges not barred on double jeopardy grounds unless the United States Attorney or in cases handled by departmental attorneys, the responsible Assistant Attorney General, approves dismissal of those charges.

Government attorneys should also take full advantage of the opportunity afforded by Rule 11(f) of the Fed. R. Crim. P. in an Alford case to thwart the defendant's efforts to project a public image of innocence. Under Rule 11(f) of the Fed. R. Crim. P. the court must be satisfied that there is "a factual basis" for a guilty plea. However, the Rule does not require that the factual basis for the plea be provided only by the defendant. See *United States v. Navedo*, 516 F.2d 29 (2d Cir. 1975); *Iritzary v. United States*, 508 F.2d 960 (2d Cir. 1974); *United States v. Davis*, 516 F.2d 574 (7th Cir. 1975). Accordingly, attorneys for the government in Alford cases should endeavor to establish as strong a factual basis for the plea as possible not only to satisfy the requirement of Rule 11(f) Fed. R. Crim. P., but also to minimize the adverse effects of Alford pleas on public perceptions of the administration of justice.

#### 9-27.450 Records of Plea Agreements

- A. All negotiated plea agreements to felonies or to misdemeanors negotiated from felonies shall be in writing and filed with the court.
- B. Comment. USAM 9-27.450 is intended to facilitate compliance with Rule 11 of the Federal Rules of Criminal Procedure and to provide a safeguard against misunderstandings that might arise concerning the terms of a plea agreement. Rule 11(e) (2), Fed. R. Crim. P., requires that a plea agreement be disclosed in open court (except upon a showing of good cause in which case disclosure may be made in camera), while Rule 11(e)(3) Fed. R. Crim. P. requires that the disposition provided for in the agreement be embodied in the judgment and sentence. Compliance with these requirements will be facilitated if the agreement has been reduced to writing in advance, and the defendant will be precluded from successfully contesting the terms of the agreement at the time he/she pleads guilty, or at the time of sentencing, or at a later date. Any time a defendant enters into a negotiated plea, that fact and the conditions of the agreement should also be maintained in the office case file. Written agreements will facilitate efforts by the Department or the Sentencing Commission to monitor compliance by prosecutors with Department policies and the guidelines. Documentation may include a copy of the court transcript at the time the plea is taken in open court.

There shall be within each office a formal system for approval of negotiated pleas. The approval authority shall be vested in at least a supervisory criminal Assistant United States Attorney, or a supervisory attorney of a litigating division in the Department of Justice, who will have the responsibility of assessing the appropriateness of the plea agreement under the policies of the Department of Justice pertaining to pleas. Where certain predictable fact situations arise with great frequency and are given identical treatment, the approval requirement may be met by a written instruction from the appropriate supervisor which describes with particularity the standard plea procedure to be followed, so long as that procedure is otherwise within Departmental guidelines. An example would be a border district which routinely deals with a high volume of illegal alien cases daily.

The plea approval process will be part of the office evaluation procedure.

The United States Attorney in each district, or a supervisory representative, should, if feasible, meet regularly with a representative of the district's Probation Office for the purpose of discussing guideline cases.

#### **9-27.500 Offers to Plead Nolo Contendere -- Opposition Except in Unusual Circumstances**

- A. The attorney for the government should oppose the acceptance of a plea of nolo contendere unless the Assistant Attorney General with supervisory responsibility over the subject matter concludes that the circumstances of the case are so unusual that acceptance of such a plea would be in the public interest. See USAM 9-16.010.
- B. Comment. Rule 11(b) of the Federal Rules of Criminal Procedure, requires the court to consider "the views of the parties and the interest of the public in the effective administration of justice" before it accepts a plea of nolo contendere. Thus it is clear that a criminal defendant has no absolute right to enter a nolo contendere plea. The Department has long attempted to discourage the disposition of criminal cases by means of nolo pleas. The basic objections to nolo pleas were expressed by Attorney General Herbert Brownell, Jr. in a departmental directive in 1953.

One of the factors which has tended to breed contempt for Federal law enforcement in recent times has been the practice of permitting as a matter of course in many criminal indictments the plea of nolo contendere. While it may serve a legitimate purpose in a few extraordinary situations and where civil litigation is also pending, I can see no justification for it as an everyday practice, particularly where it is used to avoid certain indirect consequences of pleading guilty, such as loss of license or sentencing as a multiple offender. Uncontrolled use of the plea has led to shockingly low sentences and insignificant fines which are not deterrent to crime. As a practical matter it accomplished little that is useful even where the Government has civil litigation pending. Moreover, a person permitted to plead nolo contendere admits his guilt for the purpose of imposing punishment for his acts and yet, for all other purposes, and as far as the public is concerned, persists in the denial of wrongdoing. It is no wonder that the public regards consent to such a plea by the Government as an admission that it has only a technical case at most and that the whole proceeding was just a fiasco.

For these reasons, government attorneys have been instructed for many years not to consent to nolo pleas except in the most unusual circumstances, and to do so then only with departmental approval. Federal prosecutors should oppose the acceptance of a nolo plea, unless the responsible Assistant Attorney General concludes that the circumstances are so unusual that acceptance of the plea would be in the public interest. Such a determination might be made, for example, in an unusually complex antitrust

case if the only alternative to a protracted trial is acceptance of a nolo plea.

**9-27.520 Offers to Plead Nolo Contendere -- Offer of Proof**

- A. In any case in which a defendant seeks to enter a plea of nolo contendere, the attorney for the government should make an offer of proof of the facts known to the government to support the conclusion that the defendant has in fact committed the offense charged. *See also* [USAM 9-16.010](#).
- B. Comment. If a defendant seeks to avoid admitting guilt by offering to plead nolo contendere, the attorney for the government should make an offer of proof of the facts known to the government to support the conclusion that the defendant has in fact committed the offense charged. This should be done even in the rare case in which the government does not oppose the entry of a nolo plea. In addition, as is the case with respect to guilty pleas, the attorney for the government should urge the court to require the defendant to admit publicly the facts underlying the criminal charges. These precautions should minimize the effectiveness of any subsequent efforts by the defendant to portray himself/herself as technically liable perhaps, but not seriously culpable.

**9-27.530 Argument in Opposition of Nolo Conténdere Plea**

- A. If a plea of nolo contendere is offered over the government's objection, the attorney for the government should state for the record why acceptance of the plea would not be in the public interest; and should oppose the dismissal of any charges to which the defendant does not plead nolo contendere.
- B. Comment. When a plea of nolo contendere is offered over the government's objection, the prosecutor should take full advantage of Rule 11(b), Federal Rules of Criminal Procedure, to state for the record why acceptance of the plea would not be in the public interest. In addition to reciting the facts that could be proved to show the defendant's guilt, the prosecutor should bring to the court's attention whatever arguments exist for rejecting the plea. At the very least, such a forceful presentation should make it clear to the public that the government is unwilling to condone the entry of a special plea that may help the defendant avoid legitimate consequences of his/her guilt. If the nolo plea is offered to fewer than all charges, the prosecutor should also oppose the dismissal of the remaining charges.

**9-27.600 Entering into Non-prosecution Agreements in Return for Cooperation -- Generally**

- A. Except as hereafter provided, the attorney for the government may, with supervisory approval, enter into a non-prosecution agreement in exchange for a person's cooperation when, in his/her judgment, the person's timely cooperation appears to be necessary to the public interest and other means of obtaining the desired cooperation are unavailable or would not be effective.
- B. Comment.
  - 1. In many cases, it may be important to the success of an investigation or prosecution to obtain the testimonial or other cooperation of a person who is himself/herself implicated in the criminal conduct being investigated or prosecuted. However, because of his/her involvement, the person may refuse to cooperate on the basis of his/her Fifth Amendment privilege against compulsory self-incrimination. In this situation, there are several possible approaches the prosecutor can take to render the privilege inapplicable or to induce its waiver.

- a. First, if time permits, the person may be charged, tried, and convicted before his/her cooperation is sought in the investigation or prosecution of others. Having already been convicted himself/herself, the person ordinarily will no longer have a valid privilege to refuse to testify and will have a strong incentive to reveal the truth in order to induce the sentencing judge to impose a lesser sentence than that which otherwise might be found appropriate.
- b. Second, the person may be willing to cooperate if the charges or potential charge against him/her are reduced in number or degree in return for his/her cooperation and his/her entry of a guilty plea to the remaining charges. An agreement to file a motion pursuant to Sentencing Guideline 5K1.1 or Rule 35 of the Federal Rules of Criminal Procedure after the defendant gives full and complete cooperation is the preferred method for securing such cooperation. Usually such a concession by the government will be all that is necessary, or warranted, to secure the cooperation sought. Since it is certainly desirable as a matter of policy that an offender be required to incur at least some liability for his/her criminal conduct, government attorneys should attempt to secure this result in all appropriate cases, following the principles set forth in [USAM 9-27.430](#) to the extent practicable.
- c. The third method for securing the cooperation of a potential defendant is by means of a court order under 18 U.S.C. §§ 6001-6003. Those statutory provisions govern the conditions under which uncooperative witnesses may be compelled to testify or provide information notwithstanding their invocation of the privilege against compulsory self incrimination. In brief, under the so-called "use immunity" provisions of those statutes, the court may order the person to testify or provide other information, but neither his/her testimony nor the information he/she provides may be used against him/her, directly or indirectly, in any criminal case except a prosecution for perjury or other failure to comply with the order. Ordinarily, these "use immunity" provisions should be relied on in cases in which attorneys for the government need to obtain sworn testimony or the production of information before a grand jury or at trial, and in which there is reason to believe that the person will refuse to testify or provide the information on the basis of his/her privilege against compulsory self-incrimination. See [USAM 9-23.000](#). Offers of immunity and immunity agreements should be in writing. Consideration should be given to documenting the evidence available prior to the immunity offer.
- d. Finally, there may be cases in which it is impossible or impractical to employ the methods described above to secure the necessary information or other assistance, and in which the person is willing to cooperate only in return for an agreement that he/she will not be prosecuted at all for what he/she has done. The provisions set forth hereafter describe the conditions that should be met before such an agreement is made, as well as the procedures recommended for such cases.

It is important to note that these provisions apply only if the case involves an agreement with a person who might otherwise be prosecuted. If the person reasonably is viewed only as a potential witness rather than a potential defendant, and the person is willing to cooperate, there is no need to consult these provisions.

[USAM 9-27.600](#) describes three circumstances that should exist before government attorneys enter into non-prosecution agreements in return for cooperation: the unavailability

or ineffectiveness of other means of obtaining the desired cooperation; the apparent necessity of the cooperation to the public interest; and the approval of such a course of action by an appropriate supervisory official

- 2. Unavailability or Ineffectiveness of Other Means.** As indicated above, non-prosecution agreements are only one of several methods by which the prosecutor can obtain the cooperation of a person whose criminal involvement makes him/her a potential subject of prosecution. Each of the other methods--seeking cooperation after trial and conviction, bargaining for cooperation as part of a plea agreement, and compelling cooperation under a "use immunity" order--involves prosecuting the person or at least leaving open the possibility of prosecuting him/her on the basis of independently obtained evidence. Since these outcomes are clearly preferable to permitting an offender to avoid any liability for his/her conduct, the possible use of an alternative to a non-prosecution agreement should be given serious consideration in the first instance.

Another reason for using an alternative to a non-prosecution agreement to obtain cooperation concerns the practical advantage in terms of the person's credibility if he/she testifies at trial. If the person already has been convicted, either after trial or upon a guilty plea, for participating in the events about which he/she testifies, his/her testimony is apt to be far more credible than if it appears to the trier of fact that he/she is getting off "scot free." Similarly, if his/her testimony is compelled by a court order, he/she cannot properly be portrayed by the defense as a person who has made a "deal" with the government and whose testimony is, therefore, suspect; his/her testimony will have been forced from him/her, not bargained for.

In some cases, however, there may be no effective means of obtaining the person's timely cooperation short of entering into a non-prosecution agreement. The person may be unwilling to cooperate fully in return for a reduction of charges, the delay involved in bringing him/her to trial might prejudice the investigation or prosecution in connection with which his/her cooperation is sought and it may be impossible or impractical to rely on the statutory provisions for compulsion of testimony or production of evidence. One example of the latter situation is a case in which the cooperation needed does not consist of testimony under oath or the production of information before a grand jury or at trial. Other examples are cases in which time is critical, or where use of the procedures of 18 U.S.C. § 7-6003 would unreasonably disrupt the presentation of evidence to the grand jury or the expeditious development of an investigation, or where compliance with the statute of limitations or the Speedy Trial Act precludes timely application for a court order.

Only when it appears that the person's timely cooperation cannot be obtained by other means, or cannot be obtained effectively, should the attorney for the government consider entering into a non-prosecution agreement.

- 3. Public Interest.** If he/she concludes that a non-prosecution agreement would be the only effective method for obtaining cooperation, the attorney for the government should consider whether, balancing the cost of foregoing prosecution against the potential benefit of the person's cooperation, the cooperation sought appears necessary to the public interest. This "public interest" determination is one of the conditions precedent to an application under 18 U.S.C. § 6003 for a court order compelling testimony. Like a compulsion order, a non-prosecution agreement limits the government's ability to undertake a subsequent prosecution of the witness. Accordingly, the same "public interest" test should be applied in

this situation as well. Some of the considerations that may be relevant to the application of this test are set forth in [USAM 9-27.620](#).

4. **Supervisory Approval.** Finally, the prosecutor should secure supervisory approval before entering into a non-prosecution agreement. Prosecutors working under the direction of a United States Attorney must seek the approval of the United States Attorney or a supervisory Assistant United States Attorney. Departmental attorneys not supervised by a United States Attorney should obtain the approval of the appropriate Assistant Attorney General or his/her designee, and should notify the United States Attorney or Attorneys concerned. The requirement of approval by a superior is designed to provide review by an attorney experienced in such matters, and to ensure uniformity of policy and practice with respect to such agreements. This section should be read in conjunction with [USAM 9-27.640](#), concerning particular types of cases in which an Assistant Attorney General or his/her designee must concur in or approve an agreement not to prosecute in return for cooperation.

**9-27.620 Entering into Non-prosecution Agreements in Return for Cooperation -- Considerations to be Weighed**

- A. In determining whether, a person's cooperation may be necessary to the public interest, the attorney for the government, and those whose approval is necessary, should weigh all relevant considerations, including:
  1. The importance of the investigation or prosecution to an effective program of law enforcement;
  2. The value of the person's cooperation to the investigation or prosecution; and
  3. The person's relative culpability in connection with the offense or offenses being investigated or prosecuted and his/her history with respect to criminal activity.
- B. **Comment.** This paragraph is intended to assist Federal prosecutors, and those whose approval they must secure, in deciding whether a person's cooperation appears to be necessary to the public interest. The considerations listed here are not intended to be all-inclusive or to require a particular decision in a particular case. Rather they are meant to focus the decision-maker's attention on factors that probably will be controlling in the majority of cases.
  1. **Importance of Case.** Since the primary function of a Federal prosecutor is to enforce the criminal law, he/she should not routinely or indiscriminately enter into non-prosecution agreements, which are, in essence, agreements not to enforce the law under particular conditions. Rather, he/she should reserve the use of such agreements for cases in which the cooperation sought concerns the commission of a serious offense or in which successful prosecution is otherwise important in achieving effective enforcement of the criminal laws. The relative importance or unimportance of the contemplated case is therefore a significant threshold consideration.
  2. **Value of Cooperation.** An agreement not to prosecute in return for a person's cooperation binds the government to the extent that the person carries out his/her part of the bargain. See *Santobello v. New York* 404 U.S. 257 (1971); *Wade v. United States*, 112 S. Ct. 1840 (1992). Since such an agreement forecloses enforcement of the criminal law against a person

who otherwise may be liable to prosecution, it should not be entered into without a clear understanding of the nature of the quid pro quo and a careful assessment of its probable value to the government. In order to be in a position adequately to assess the potential value of a person's cooperation, the prosecutor should insist on an "offer of proof" or its equivalent from the person or his/her attorney. The prosecutor can then weigh the offer in terms of the investigation or prosecution in connection with which cooperation is sought. In doing so, he/she should consider such questions as whether the cooperation will in fact be forthcoming, whether the testimony or other information provided will be credible, whether it can be corroborated by other evidence, whether it will materially assist the investigation or prosecution, and whether substantially the same benefit can be obtained from someone else without an agreement not to prosecute. After assessing all of these factors, together with any others that may be relevant, the prosecutor can judge the strength of his/her case with and without the person's cooperation, and determine whether it may be in the public interest to agree to forego prosecution under the circumstances.

- 3. Relative Culpability and Criminal History.** In determining whether it may be necessary to the public interest to agree to forego prosecution of a person who may have violated the law in return for that person's cooperation, it is also important to consider the degree of his/her apparent culpability relative to others who are subjects of the investigation or prosecution as well as his/her history of criminal involvement. Of course, ordinarily it would not be in the public interest to forego prosecution of a high-ranking member of a criminal enterprise in exchange for his/her cooperation against one of his/her subordinates, nor would the public interest be served by bargaining away the opportunity to prosecute a person with a long history of serious criminal involvement in order to obtain the conviction of someone else on less serious charges. These are matters with regard to which the attorney for the government may find it helpful to consult with the investigating agency or with other prosecuting authorities who may have an interest in the person or his/her associates.

It is also important to consider whether the person has a background of cooperation with law enforcement officials, either as a witness or an informant, and whether he/she has previously been the subject of a compulsion order under 18 U.S.C. §7-6003 or has escaped prosecution by virtue of an agreement not to prosecute. The information regarding compulsion orders may be available by telephone from the Immunity Unit in the Office of Enforcement Operations of the Criminal Division.

**9-27.630 Entering into Non-prosecution Agreements in Return for Cooperation -- Limiting the Scope of Commitment**

- A. In entering into a non-prosecution agreement, the attorney for the government should, if practicable, explicitly limit the scope of the government's commitment to:
1. Non-prosecution based directly or indirectly on the testimony or other information provided; or
  2. Non-prosecution within his/her district with respect to a pending charge, or to a specific offense then known to have been committed by the person.
- B. Comment. The attorney for the government should exercise extreme caution to ensure that his/her non-prosecution agreement does not confer "blanket" immunity on the witness. To this end, he/she should, in the first instance, attempt to limit his/her agreement to non-prosecution based on the testimony or information provided. Such an "informal use immunity" agreement has two

advantages over an agreement not to prosecute the person in connection with a particular transaction: first, it preserves the prosecutor's option to prosecute on the basis of independently obtained evidence if it later appears that the person's criminal involvement was more serious than it originally appeared to be; and second, it encourages the witness to be as forthright as possible since the more he/she reveals the more protection he/she will have against a future prosecution. To further encourage full disclosure by the witness, it should be made clear in the agreement that the government's forbearance from prosecution is conditioned upon the witness's testimony or production of information being complete and truthful, and that failure to testify truthfully may result in a perjury prosecution.

Even if it is not practicable to obtain the desired cooperation pursuant to an "informal use immunity" agreement, the attorney for the government should attempt to limit the scope of the agreement in terms of the testimony and transactions covered, bearing in mind the possible effect of his/her agreement on prosecutions in other districts.

It is important that non-prosecution agreements be drawn in terms that will not bind other Federal prosecutors or agencies without their consent. Thus, if practicable, the attorney for the government should explicitly limit the scope of his/her agreement to non-prosecution within his/her district. If such a limitation is not practicable and it can reasonably be anticipated that the agreement may affect prosecution of the person in other districts, the attorney for the government contemplating such an agreement shall communicate the relevant facts to the Assistant Attorney General with supervisory responsibility for the subject matter. United States Attorneys may not make agreements which prejudice civil or tax liability without the express agreement of all affected Divisions and/or agencies. See also 9-16.000 et seq. for more information regarding plea agreements.

Finally, the attorney for the government should make it clear that his/her agreement relates only to non-prosecution and that he/she has no independent authority to promise that the witness will be admitted into the Department's Witness Security program or that the Marshal's Service will provide any benefits to the witness in exchange for his/her cooperation. This does not mean, of course, that the prosecutor should not cooperate in making arrangements with the Marshal's Service necessary for the protection of the witness in appropriate cases. The procedures to be followed in such cases are set forth in [USAM 9-21.000](#).

#### **9-27.640 Agreements Requiring Assistant Attorney General Approval**

- A. The attorney for the government should not enter into a non-prosecution agreement in exchange for a person's cooperation without first obtaining the approval of the Assistant Attorney General with supervisory responsibility over the subject matter, or his/her designee, when:
  1. Prior consultation or approval would be required by a statute or by Departmental policy for a declination of prosecution or dismissal of a charge with regard to which the agreement is to be made; or
  2. The person is:
    - a. A high-level Federal, state, or local official;
    - b. An official or agent of a Federal investigative or law enforcement agency; or
    - c. A person who otherwise is, or is likely to become of major public interest.

B. Comment. USAM 9-27.640 sets forth special cases that require approval of non-prosecution agreements by the responsible Assistant Attorney General or his/her designee. Subparagraph (1) covers cases in which existing statutory provisions and departmental policies require that, with respect to certain types of offenses, the Attorney General or an Assistant Attorney General be consulted or give his/her approval before prosecution is declined or charges are dismissed. For example, see USAM 6-4.245 (tax offenses); USAM 9-41.010 (bankruptcy frauds); USAM 9-90.020 (internal security offenses); (see USAM 9-2.400 for a complete listing of all prior approval and consultation requirements). An agreement not to prosecute resembles a declination of prosecution or the dismissal of a charge in that the end result in each case is similar: a person who has engaged in criminal activity is not prosecuted or is not prosecuted fully for his/her offense. Accordingly, attorneys for the government should obtain the approval of the appropriate Assistant Attorney General, or his/her designee, before agreeing not to prosecute in any case in which consultation or approval would be required for a declination of prosecution or dismissal of a charge.

Subparagraph (2) sets forth other situations in which the attorney for the government should obtain the approval of an Assistant Attorney General, or his/her designee, of a proposed agreement not to prosecute in exchange for cooperation. Generally speaking, the situations described will be cases of an exceptional or extremely sensitive nature, or cases involving individuals or matters of major public interest. In a case covered by this provision that appears to be of an especially sensitive nature, the Assistant Attorney General should, in turn, consider whether it would be appropriate to notify the Attorney General or the Deputy Attorney General.

#### **9-27.641 Multi-District (Global) Agreement Requests**

A. No district or division shall make any agreement, including any agreement not to prosecute, which purports to bind any other district(s) or division without the express written approval of the United States Attorney(s) in each affected district and/or the Assistant Attorney General of the Criminal Division.

The requesting district/division shall make known to each affected district/division the following information:

1. The specific crimes allegedly committed in the affected district(s) as disclosed by the defendant. (No agreement should be made as to any crime(s) not disclosed by the defendant.)
2. Identification of victims of crimes committed by the defendant in any affected district, insofar as possible.
3. The proposed agreement to be made with the defendant and the applicable Sentencing Guideline range.

See USAM 16.030 for a discussion of the requirement for consultation with investigative agencies and victims regarding pleas.

#### **9-27.650 Records of Non-Prosecution Agreements**

A. In a case in which a non-prosecution agreement is reached in return for a person's cooperation, the attorney for the government should ensure that the case file contains a memorandum or other

written record setting forth the terms of the agreement. The memorandum or record should be signed or initialed by the person with whom the agreement is made or his/her attorney.

- B. Comment. The provisions of this section are intended to serve two purposes. First, it is important to have a written record in the event that questions arise concerning the nature or scope of the agreement. Such questions are certain to arise during cross-examination of the witness, particularly if the existence of the agreement has been disclosed to defense counsel pursuant to the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). The exact terms of the agreement may also become relevant if the government attempts to prosecute the witness for some offense in the future. Second, such a record will facilitate identification by government attorneys (in the course of weighing future agreements not to prosecute, plea agreements, pre-trial diversion, and other discretionary actions) of persons whom the government has agreed not to prosecute.

The principal requirements of the written record are that it be sufficiently detailed that it leaves no doubt as to the obligations of the parties to the agreement, and that it be signed or initialed by the person with whom the agreement is made and his/her attorney, or at least by one of them.

#### **9-27.710 Participation in Sentencing -- Generally**

- A. During the sentencing phase of a Federal criminal case, the attorney for the government should assist the sentencing court by:
1. Attempting to ensure that the relevant facts are brought to the court's attention fully and accurately; and
  2. Making sentencing recommendations in appropriate cases.
- B. Comment. Sentencing in Federal criminal cases is primarily the function and responsibility of the court. This does not mean, however, that the prosecutor's responsibility in connection with a criminal case ceases upon the return of a guilty verdict or the entry of a guilty plea; to the contrary, the attorney for the government has a continuing obligation to assist the court in its determination of the sentence to be imposed. The prosecutor must be familiar with the guidelines generally and with the specific guideline provisions applicable to his or her case. In discharging these duties, the attorney for the government should, as provided in [USAM 9-27.720](#) and [9-27.750](#), endeavor to ensure the accuracy and completeness of the information upon which the sentencing decisions will be based. In addition, as provided in [USAM 9-27.730](#), in appropriate cases the prosecutor should offer recommendations with respect to the sentence to be imposed.

#### **9-27.720 Establishing Factual Basis for Sentence**

- A. In order to ensure that the relevant facts are brought to the attention of the sentencing court fully and accurately, the attorney for the government should:
1. Cooperate with the Probation Service in its preparation of the presentence investigation report;
  2. Review material in the presentence investigation report;
  3. Make a factual presentation to the court when:

- a. Sentence is imposed without a presentence investigation and report;
  - b. It is necessary to supplement or correct the presentence investigation report;
  - c. It is necessary in light of the defense presentation to the court; or
  - d. It is requested by the court; and
4. Be prepared to substantiate significant factual allegations disputed by the defense.

**B. Comment.**

- 1. Cooperation with Probation Service.** To begin with, if sentence is to be imposed following a presentence investigation and report, the prosecutor should cooperate with the Probation Service in its preparation of the presentence report for the court. Under Rule 32(b), Federal Rules of Criminal Procedure, the report should contain information about the history and characteristics of the defendant, including any prior criminal record, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant. While much of this information may be available to the Probation Service from sources other than the government, some of it may be obtainable only from prosecutorial or investigative files to which probation officers do not have access. For this reason, it is important that the attorney for the government respond promptly to Probation Service requests by providing the requested information whenever possible. The attorney for the government should also recognize the occasional desirability of volunteering information to the Probation Service especially in a district where the Probation Office is overburdened. Doing so may be the best way to ensure that important facts about the defendant come to its attention. In addition, the prosecutor should be particularly alert to the need to volunteer relevant information to the Probation Service in complex cases, since it cannot be expected that probation officers will obtain a full understanding of the facts of such cases simply by questioning the prosecutor or examining his/her files.

The relevant information can be communicated orally, or by making portions of the case file available to the probation officer, or by submitting a sentencing memorandum or other written presentation for inclusion in the presentence report. Whatever method he/she uses, however, the attorney for the government should bear in mind that since the report will be shown to the defendant and defense counsel, care should be taken to prevent disclosures that might be harmful to law enforcement interests.

- 2. Review of Presentence Report.** Before the sentencing hearing, the prosecutor should always review the presentence report, which is prepared pursuant to Rule 32, Federal Rules of Criminal Procedure. Not only must the prosecutor be satisfied that the report is factually accurate, he or she must also pay attention to the initial determination of the base offense level. Further, the prosecutor must also consider all adjustments reflected in the report, as well as any recommendations for departure made by the probation office. These adjustments and potential departures can have a profound effect on the defendant's sentence. As advocates for the United States, prosecutors should be prepared to argue concerning those adjustments (and, if necessary, departures allowed by the guidelines) in order to arrive at a final result which adequately and accurately describes the defendant's conduct of offense,

criminal history, and other factors related to sentencing.

3. **Factual Presentation to Court.** In addition to assisting the Probation Service with its presentence investigation, the attorney for the government may find it necessary in some cases to make a factual presentation directly to the court. Such a presentation is authorized by Rule 32(c), Federal Rules of Criminal Procedure, which requires the court to "afford counsel for the defendant and for the Government an opportunity to comment on the probation officer's determinations and on other matters relating to the appropriate sentence."

The need to address the court concerning the facts relevant to sentencing may arise in four situations: (a) when sentence is imposed without a presentence investigation and report; (b) when necessary to correct or supplement the presentence report; (c) when necessary in light of the defense presentation to the court; and (d) when requested by the court.

- a. **Furnishing Information in Absence of Presentence Report.** Rule 32(b), Federal Rules of Criminal Procedure, authorizes the imposition of sentence without a presentence investigation and report, if the court finds that the record contains sufficient information to permit the meaningful exercise of sentencing authority under 18 U.S.C. § 3553. Imposition of sentence pursuant to this provision usually occurs when the defendant has been found guilty by the court after a non-jury trial, when the case is relatively simple and straightforward, when the defendant has taken the stand and has been cross-examined, and when it is the court's intention not to impose a prison sentence. In such cases, and any others in which sentence is to be imposed without benefit of a presentence investigation and report (such as when a report on the defendant has recently been prepared in connection with another case), it may be particularly important that the attorney for the government take advantage of the opportunity afforded by Rule 32(c), Federal Rules of Criminal Procedure, to address the court, since there will be no later opportunity to correct or supplement the record. Moreover, even if government counsel is satisfied that all facts relevant to the sentencing decision are already before the court, he/she may wish to make a factual presentation for the record that makes clear the government's view of the defendant, the offense, or both.
- b. **Correcting or Supplementing Presentence Report.** The attorney for the government should bring any significant inaccuracies or omissions to the Court's attention at the sentencing hearing, together with the correct or complete information.
- c. **Responding to Defense Assertions.** Having read the presentence report before the sentencing hearing the defendant or his/her attorney may dispute specific factual statements made therein. More likely, without directly challenging the accuracy of the report, the defense presentation at the hearing may omit reference to the derogatory information in the report while stressing any favorable information and drawing all inferences beneficial to the defendant. Some degree of selectivity in the defense presentation is probably to be expected, and will be recognized by the court. There may be instances, however, in which the defense presentation, if not challenged, will leave the court with a view of the defendant or of the offense significantly different from that appearing in the presentence report. If this appears to be a possibility, the attorney for the government may respond by correcting factual errors in the defense presentation, pointing out facts and inferences ignored by the defense, and generally reinforcing the objective view of the defendant and his/her offense as expressed in the

presentence report.

**d. Responding to Court's Requests.** There may be occasions when the court will request specific information from government counsel at the sentencing hearing (as opposed to asking generally whether the government wishes to be heard). When this occurs, the attorney for the government should, of course, furnish the requested information if it is readily available and no prejudice to law enforcement interests is likely to result from its disclosure.

**4. Substantiation of Disputed Facts.** In addition to providing the court with relevant factual material at the sentencing hearing when necessary, the attorney for the government should be prepared to substantiate significant factual allegations disputed by the defense. This can be done by making the source of the information available for cross examination or if there is good cause for nondisclosure of his/her identity, by presenting the information as hearsay and providing other guarantees of its reliability, such as corroborating testimony by others. *See United States v. Faico*, 579 F.2d 707, 713 (2d Cir. 1978).

#### 9-27.730 Conditions for Making Sentencing Recommendations

- A. The attorney for the government should make a recommendation with respect to the sentence to be imposed when:
1. The terms of a plea agreement so require it;
  2. The public interest warrants an expression of the government's view concerning the appropriate sentence.

B. Comment. USAM 9-27.730 describes two situations in which an attorney for the government should make a recommendation with respect to the sentence to be imposed: when the terms of a plea agreement require it, and when the public interest warrants an expression of the government's view concerning the appropriate sentence. The phrase "make a recommendation with respect to the sentence to be imposed" is intended to cover tacit recommendations (i.e., agreeing to the defendant's request or not opposing the defendant's request) as well as explicit recommendations for a specific type of sentence (e.g., probation or a fine), for a specific condition of probation, a specific fine, or a specific term of imprisonment; and for concurrent or consecutive sentences.

The attorney for the government should be guided by the circumstances of the case and the wishes of the court concerning the manner and form in which sentencing recommendations are made. If the government's position with respect to the sentence to be imposed is related to a plea agreement with the defendant, that position must be made known to the court at the time the plea is entered. In other situations, the government's position might be conveyed to the probation officer, orally or in writing, during the presentence investigation; to the court in the form of a sentencing memorandum filed in advance of the sentencing hearing; or to the court orally at the time of the hearing.

**1. Recommendations Required by Plea Agreement.** Rule 11(e)(1), Federal Rules of Criminal Procedure, authorizing plea negotiations, implicitly permits the prosecutor, pursuant to a plea agreement, to make a sentence recommendation, agree not to oppose the defendant's request for a specific sentence, or agree that a specific sentence is the appropriate disposition of the case. If the prosecutor has entered into a plea agreement calling for the government to

take a certain position with respect to the sentence to be imposed, and the defendant has entered a guilty plea in accordance with the terms of the agreement, the prosecutor must perform his/her part of the bargain or risk having the plea invalidated. *Machibroda v. United States*, 368 U.S. 487, 493 (1962); *Santobello v. United States*, 404 U.S. 257, 262 (1971).

**2. Recommendations Reflecting Defendant's Cooperation.** Section 5K1.1 of the Sentencing Guidelines provides that, upon motion by the government, a court may depart below the guidelines to reflect a defendant's cooperation. Title 18 U.S.C. § 3553(e) permits the court to impose a sentence below an otherwise applicable statutory minimum sentence upon motion of the government based upon a defendant's cooperation in the investigation or prosecution of another. The Supreme Court held in *Melendez v. United States*, 116 S.Ct. 2057 (1996) that a district court may not reduce a sentence below the statutory mandatory minimum based on a motion pursuant to 5K1.1 unless the government specifically sought a reduction in the mandatory minimum. *See also* Fed. R. Crim. P. Rule 35(b).

**3. Recommendations Warranted by the Public Interest.** From time to time, unusual cases may arise in which the public interest warrants an expression of the government's view concerning the appropriate sentence, irrespective of the absence of a plea agreement. In some such cases, the court may invite or request a recommendation by the prosecutor, while in others the court may not wish to have a sentencing recommendation from the government. In either event, whether the public interest requires an expression of the government's view concerning the appropriate sentence in a particular case is a matter to be determined with care, preferably after consultation between the prosecutor handling the case and his/her supervisor—the United States Attorney or a Supervisory Assistant United States Attorney, or the responsible Assistant Attorney General or his/her designee.

The prosecutor should bear in mind the attitude of the court toward sentencing recommendations by the government, and should weigh the desirability of maintaining a clear separation of judicial and prosecutorial responsibilities against the likely consequences of making no recommendation. If the prosecutor has good reason to anticipate the imposition of a sanction that would be unfair to the defendant or inadequate in terms of society's needs, he/she may conclude that it would be in the public interest to attempt to avert such an outcome by offering a sentencing recommendation. For example, if the case is one in which the Sentencing Guidelines allow but do not require the imposition of a term of imprisonment, the imposition of a term of imprisonment plainly would be inappropriate, and the court has requested the government's view, the prosecutor should not hesitate to recommend or agree to the imposition of probation. On the other hand, if the responsible government attorney believes that a term of imprisonment is plainly warranted and that, under all the circumstances, the public interest would be served by making a recommendation to that effect, he/she should make such a recommendation even though the court has not invited it. Recognizing, however, that the primary responsibility for sentencing lies with the judiciary, government attorneys should avoid routinely taking positions with respect to sentencing, reserving their recommendations instead for those unusual cases in which the public interest warrants an expression of the government's view.

In connection with sentencing recommendations, the prosecutor should also bear in mind the potential value in some cases of the imposition of innovative conditions of probation if consistent with the Sentencing Guidelines. For example, in a case in which a sentencing recommendation would be appropriate and in which it can be anticipated that a term of probation will be imposed, the responsible government attorney may conclude that it would be appropriate to recommend, as a specific condition of probation, that the defendant participate in community service activities, or

that he/she desist from engaging in a particular type of business.

#### 9-27.740 Consideration to be Weighed in Determining Sentencing Recommendations

##### A. Consideration to be Weighed in Determining Sentencing

1. If the prosecutor makes a recommendation as to the sentence to be imposed within the applicable guideline range determined by the court, the prosecutor should consider the various purposes of sentencing, as noted below.
2. If the prosecutor makes a recommendation as to a sentence to be imposed after the court grants a motion for downward departure under Sentencing Guideline 5K1.1, the prosecutor should also consider the timeliness of the cooperation, the results of the cooperation, and the nature and extent of the cooperation when compared to other defendants in the same or similar cases in that district.

B. Comment. The Sentencing Reform Act was enacted to eliminate unwarranted disparity in sentencing. Both judicial discretion and the scope of prosecutorial recommendations have been limited, in those cases in which no departure is made from the applicable guideline range. The prosecutor, however, still has a significant role to play in making appropriate recommendations in cases involving either a sentence within the applicable range or a departure. In making a sentencing recommendation, the prosecutor should bear in mind that, by offering a recommendation, he/she shares with the court the responsibility for avoiding unwarranted sentence disparities among defendants with similar backgrounds who have been found guilty of similar conduct.

**Applicable Sentencing Purposes.** The attorney for the government should consider the seriousness of the defendant's conduct, and his/her background and personal circumstances, in light of the four purposes or objectives of the imposition of criminal sanctions:

1. To deter the defendant and others from committing crime;
2. To protect the public from further offenses by the defendant;
3. To assure just punishment for the defendant's conduct; and
4. To promote the correction and rehabilitation of the defendant.

The attorney for the government should recognize that not all of these objectives may be relevant in every case and that, for a particular offense committed by a particular offender, one of the purposes, or a combination of purposes, may be of overriding importance. For example, in the case of a young first offender who commits a minor, non-violent offense, the primary or sole purpose of sentencing might be rehabilitation. On the other hand, the primary purpose of sentencing a repeat violent offender might be to protect the public, and the perpetrator of a massive fraud might be sentenced primarily to deter others from engaging in similar conduct.

#### 9-27.745 Unwarranted Sentencing Departures by the Court

- A. If the court is considering a departure for a reason not allowed by the guidelines, the prosecutor should resist.

B. Comment. The prosecutor, with Departmental approval, may appeal a sentence which is unlawful or in violation of the Sentencing Guidelines. 18 U.S.C. § 3742(b). If such a sentence is imposed, the Appellate Section of the Criminal Division should be promptly notified so that an appeal can be considered.

#### 9-27.750 Disclosing Factual Material to Defense

A. The attorney for the government should disclose to defense counsel, reasonably in advance of the sentencing hearing, any factual material not reflected in the presentence investigation report that he/she intends to bring to the attention of the court.

B. Comment. Due process requires that the sentence in a criminal case be based on accurate information. *See, e.g., Moore v. United States*, 571 F.2d 179, 182-84 (3d Cir. 1978). Accordingly, the defense should have access to all material relied upon by the sentencing judge, including memoranda from the prosecution (to the extent that considerations of informant safety permit), as well as sufficient time to review such material and an opportunity to present any refutation that can be mustered. *See, e.g., United States v. Perri*, 513 F.2d 572, 575 (9th Cir. 1975); *United States v. Rosner*, 485 F.2d 1213, 1229-30 (2d Cir. 1973), *cert. denied*, 417 U.S. 950 (1974); *United States v. Robin*, 545 F.2d 775 (2d Cir. 1976). USAM 9-27.750 is intended to facilitate satisfaction of these requirements by providing the defendant with notice of information not contained in the presentence report that the government plans to bring to the attention of the sentencing court.

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[NOTE: Additional material submitted for the Hearing Record is not reprinted here but is on file with the House Judiciary Committee. The material referred to is listed below.]

U.S. Department of Justice, Office of Justice Programs—

Office of Juvenile Justice and Delinquency Prevention  
(OJJDP): *Safe From the Start, Taking Action on Children Exposed to Violence*

National Institute of Justice, *National Evaluation of Weed & Seed, Cross-Site Analysis, Research Report*

National Institute of Justice, *Research in Brief*

