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NOMINATIONS OF Q. TODD DICKINSON, TO BE COMMISSIONER OF PATENTS AND TRADEMARKS, DEPARTMENT OF COMMERCE; AND JOHN W. MARSHALL, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE, DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF Q. TODD DICKINSON, OF PENNSYLVANIA, TO BE COMMISSIONER OF PATENTS AND TRADEMARKS, DEPARTMENT OF COMMERCE, AND JOHN W. MARSHALL, OF VIRGINIA, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE, DEPARTMENT OF JUSTICE

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Hatch, Hon. Orrin G., U.S. Senator from the State of Utah	1
Kennedy, Hon. Edward M., U.S. Senator from the State of Massachusetts	6
Leahy, Hon. Patrick J., U.S. Senator from the State of Vermont	9

PRESENTERS

Statement of Hon. John Warner, U.S. Senator from the State of Virginia	5
Statement of Hon. Charles S. Robb, U.S. Senator from the State of Virginia	8

NOMINEES

Testimony of John W. Marshall, of Virginia, To Be Director of the U.S. Marshals Service	13
Testimony of Q. Todd Dickinson, of Pennsylvania, To Be Commissioner of Patents and Trademarks	14

ALPHABETICAL LIST AND MATERIALS SUBMITTED

Dickinson, Q. Todd:	
Testimony	14
Prepared statement	15
Questioning by Senators:	
Hatch	17
Sessions	22
Leahy	25
Marshall, John W.:	
Testimony	13
Questioning by Senators:	
Thurmond	3
Hatch	19
Sessions	21
Leahy	24

APPENDIX

QUESTIONS AND ANSWERS

Responses of Q. Todd Dickinson to questions from Senators:	
Thurmond	27
Grassley	29
Kennedy	32

NOMINATIONS OF Q. TODD DICKINSON, TO BE COMMISSIONER OF PATENTS AND TRADEMARKS, DEPARTMENT OF COMMERCE; AND JOHN W. MARSHALL, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE, DEPARTMENT OF JUSTICE

WEDNESDAY, SEPTEMBER 29, 1999

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:36 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Thurmond, Leahy, Sessions, and Kennedy.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Today, the Judiciary Committee will hear from two executive branch nominees, the President's nominees for Commissioner of Patents and Trademarks, and for Director of the U.S. Marshals Service. Each of these positions is of special importance because each of these entities faces challenges as we move into the 21st century.

Now, with regard to the Patent and Trademark Office, the committee looks forward to hearing from Todd Dickinson, to be Assistant Secretary of Commerce and Commissioner of Patents and Trademarks. Our Nation's patent system has been a driving force behind American innovation since our Nation's founding.

I am going to put the rest of my statement into the record so that the record will show how important I believe this nomination is.

With regard to the Marshals Service, we look forward to considering the nomination of John Marshall, or should I say Marshal Marshall, to be Director of the U.S. Marshals Service. The Marshals Service, which was created by the Federal Judiciary Act of 1789, is the oldest Federal law enforcement agency in America, and it is responsible for protecting the Federal judiciary and providing security in judicial facilities throughout the Nation, and many other tasks as well.

I will put the rest of my remarks into the record.

[The prepared statement of Senator Hatch follows:]

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Today the Judiciary Committee will hear from two Executive Branch nominees: the President's nominees for Commissioner of Patents and Trademarks and for Director of the U.S. Marshals Service. Each of these positions is of special importance because each of these entities faces tough challenges as we move into the Twenty-First Century.

THE PATENT AND TRADEMARK OFFICE

The Committee looks forward to hearing from Todd Dickinson to be Assistant Secretary of Commerce and Commissioner of Patents, and Trademarks.

Our nation's patent system has been a driving force behind American innovation since our nation's founding. Indeed, the Framers recognized the importance of protecting innovation when they included in Article I, Section 8 of our Constitution the power of "securing for limited Times to Authors and Inventors the exclusive. Right to their respective Writings and Discoveries." And pursuant to the 1790 patent act, Thomas Jefferson, as Secretary of State, was charged with receiving patent applications and issuing patents, in conjunction with the Attorney General and the Secretary of War. Much has changed since that time, but more than 200 years later the patent system continues to propel American ingenuity, economic growth, and our nation's status as world leaders in innovation and creativity.

The Patent and Trademark Office ("PTO"), as the administrator of our federal patent and trademark systems, plays a key role in maintaining America's competitive edge and innovative superiority. Mr. Dickinson's nomination comes at an important time. Because, as good as our patent and trademark systems are, the challenges posed by new and expanding global markets for American technology, foreign competition, and the transition from the industrial age to a new information-based economy are as daunting as the patent and trademark systems, or the PTO, have ever faced.

In short, if we are to meet these challenges, we must have a PTO that is equipped with a vision of patent and trademark policy that will take us into the next century. We must have leadership to attract and retain bright people to administer the functions of the PTO in an efficient manner that is responsive to the needs of the PTO's clients—American innovators and businesses. And, we must have the facilities and technology to maintain our patent and trademark systems on the cutting edge, even in the face of burgeoning workloads, limited resources, and increasing complexity of technology and administrative matters before. I look forward to Mr. Dickinson's testimony today and to hearing more of his vision for the PTO as we approach the new millennium.

THE MARSHALS SERVICE

The Committee also looks forward to considering the nomination of John Marshall to be Director of the United States Marshals Service.

The Marshals Service, which was created by the Federal Judiciary Act of 1789, is the oldest Federal law enforcement agency in America. The Marshals Service is responsible for protecting the Federal Judiciary and providing security in judicial facilities throughout the nation. Needless to say, protecting the Federal Judiciary is an extremely important task that is essential to maintaining an orderly justice system and, ultimately, the rule of law. In many nations around the world, judges are routinely subject to violence and literally perform their judicial duties in fear. In recent years, prominent judges have been murdered in Latin and South America. And in the United States, a federal judge on the Eleventh Circuit was murdered a few years ago.

In addition to protecting federal judges, the Marshals Service is also responsible for the custody and transportation of pretrial Federal prisoners and for the administration of the Witness Security Program that enables the federal government to solve numerous organized crime cases. The Marshals Service also apprehends thousands of federal fugitives each year.

With the growing threat of domestic and foreign terrorism directed at the federal government, the twenty-first century holds special challenges for the United States Marshals Service. Consequently, it is critical that the Marshals Service have leadership with hands on experience in protecting and facilitating the administration of justice. Accordingly, the Committee looks forward to hearing from John Marshall, the President's nominee, as to his views of the challenges facing the Marshals Service and how he plans to meet them.

The CHAIRMAN. I will say the committee looks forward to hearing from both of these nominees as to their views and the challenges that they will be facing. We are also very happy to have Senator Warner here, and I think before we call on the two nominees, let's call on Senator Warner first and then I am going to turn to Senator——

Senator WARNER. The chairman here might have a few remarks.

The CHAIRMAN. Senator Thurmond has some questions once we are through.

Senator WARNER. I see.

Senator THURMOND. I have got to open the Senate in a few minutes.

Senator WARNER. Why don't I just defer to our distinguished former chairman to let his questions be asked.

Senator THURMOND. Thank you very much.

The CHAIRMAN. Mr. Dickinson, why don't we have you come to the table as well so we can charge both of you at the same time?

Senator WARNER. Senator Thurmond never fails to open the Senate, as you well know, Mr. Chairman.

The CHAIRMAN. We have to get him over there on time because he takes that seriously, I will tell you.

Senator THURMOND. I like to be on time.

The CHAIRMAN. Well, you are.

QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Mr. Marshall, how has your experience in law enforcement and as U.S. Marshal for the Eastern District of Virginia prepared you for the position you are seeking today?

Mr. MARSHALL. Senator, each day across the country the Marshals Service interacts with other Federal law enforcement agencies, as well as State and local agencies. What I bring to the Service is 14 years of experience at the State level as a Virginia State Trooper and 5 years as U.S. Marshal of the Eastern District of Virginia.

In addition to overseeing the district, I have also been on several committees, which has given me very valuable experience in dealing with the Service on a nationwide basis and with our headquarters.

Senator THURMOND. Mr. Marshall, the Marshals Service needs strong leadership, which I believe, based on your experience, you will provide. One of the most important issues facing the Service today involves budget problems. In the past 3 years, auditors have issued a disclaimer of opinion regarding its books. Also, the Inspector General has reported control weaknesses with the Service's new financial management system, STARS. Further, news reports indicate that the Justice Department has had to transfer funds to the Service to keep it operating in this fiscal year.

What are your concerns regarding financial weaknesses at the Service, and how do you plan to address them?

Mr. MARSHALL. Senator, without a doubt, in light of our current budget shortfall and the associated hiring freeze that the agency has been under since January of this year, we need to make significant changes in the way we formulate and execute our budget. In particular, we need to develop a process which includes taking into

consideration long-term budget implications, particularly when we hire new positions and when we acrete existing positions.

Senator THURMOND. Mr. Marshall, as you know, the Marshals Service is responsible for providing personal security for the Director of the Office of National Drug Control Policy. The security the drug czar receives appears to be excessive compared to other Federal officials.

I understand the current Director of ONDCP requested and was provided a new armored Cadillac—I repeat, a new armored Cadillac—which cost the taxpayers $141,000. Do you believe that the routine duties of the drug czar warrant the use of an armored car, and if you are confirmed, will you review this matter and advise the committee of your findings?

Mr. MARSHALL. Senator, I understand your concerns. We have been tasked—the Marshals Service has been tasked with providing protection for the Director of the Office of National Drug Control Policy since 1989. If confirmed as Director, I will look into the current threat assessment on the Director and will certainly report back to you as far as the current status of the level of protection that we are providing to him.

Senator THURMOND. Thank you. Mr. Marshall, in addition to an armored car, it also appears that the Director of ONDCP has considerable more personal security guards than most other Federal officials, except those protected by the Secret Service.

If confirmed, will you evaluate the extent of security provided to the drug czar to determine whether it is excessive based on the threat level that he faces?

Mr. MARSHALL. Yes, sir, Senator, I will.

Senator THURMOND. Mr. Marshall, on another topic, I believe there are far too many criminals who are fugitives from justice roaming the streets of America today. According to some estimates, there are at least one-half million State and local felony fugitives, and about 45,000 Federal fugitives.

As you know, the Marshals Service has State–Federal task forces that help to apprehend these fugitives. I believe that there is a need to expand joint Federal–State fugitive task forces within the Marshals Service to help address this problem.

Will you review this situation and advise me of your findings?

Mr. MARSHALL. Yes, Senator, I will.

Senator THURMOND. Mr. Marshall, if the Marshals Service were provided administrative subpoena power regarding fugitives as the DEA currently has regarding drug cases, would that assist your agency in locating fugitives effectively and quickly, and explain why.

Mr. MARSHALL. Senator, administrative subpoena authority would be a tremendous investigative tool for the Marshals Service. We are very proud of our fugitive apprehension program, and to have that authority would certainly enable us to locate the fugitives that we are investigating without delay that we are currently going through to obtain subpoenas. It would be a tremendous asset to us.

Senator THURMOND. I am counting on big things from you. I have heard so many nice things about you, and don't you let us down.

Mr. MARSHALL. Thank you, Senator. I won't.

Senator THURMOND. I have got to go and open the Senate now. Thank you very much.

Mr. MARSHALL. Thank you very much, Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman, for your kindness.

The CHAIRMAN. You bet. Thank you.

You had better pay attention to him. We all do around here, I want you to know.

Mr. MARSHALL. Yes, sir, Mr. Chairman.

The CHAIRMAN. He is truly one of the greatest people I have ever known.

You get over there because we don't want the Senate to be open without you.

I think I will defer your opening statements until I call on Senator Warner, if it will be all right.

STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Mr. Chairman, I thank you very much. Indeed, I was greatly impressed with the manner in which the nominee answered some good, tough questions from the former chairman of this committee.

Chairman Hatch, Chairman Thurmond and other members of this committee, I am pleased to strongly support a longtime Virginia resident, John W. Marshall, to serve as Director of the U.S. Marshals Service.

As a former Federal prosecutor myself, I know the important role that the U.S. Marshals Service plays in our Federal Government. The U.S. Marshals Service has a long, distinguished history of protecting the Federal judiciary, arresting Federal fugitives, transporting Federal prisoners, protecting endangered Federal witnesses, and managing assets seized from criminal enterprises.

Mr. Chairman, in light of these important duties that the U.S. Marshals Service performs, it is absolutely imperative that the Marshals Service has a strong leader, one with extensive experience. John W. Marshall meets these criteria.

Since 1994, Mr. Marshall has served as the U.S. Marshal for the Eastern District of Virginia. During his time in this position, Mr. Marshall chaired the Marshals Service Leadership Council and has been a member of the Service's Asset Forfeiture Leadership Council.

In addition, in late 1995, Mr. Marshall served as an on-site commander for the U.S. Marshals' deployment of 150 operational personnel in the Virgin Islands in the aftermath of Hurricane Marilyn. Prior to working for the U.S. Marshals Service, Mr. Marshall served the Commonwealth of Virginia for 14 years in the Virginia State Police, a very proud, efficient, and well-recognized, not only in Virginia but beyond its borders, as a first-class law enforcement organization.

Starting his career with the Virginia State Police as a trooper in 1980, Mr. Marshall later worked as a special agent and earned the rank of sergeant. Mr. Marshall is obviously a very accomplished American who has dedicated his professional career to public service. He is well-qualified to serve as Director of the U.S. Marshals

Service, and I am certain that he will serve in this position with honor, integrity, and with distinction. Mr. Marshall would be a strong asset for our Nation's oldest—and I repeat oldest—law enforcement agency.

Again, I am pleased and honored to indicate my support for this outstanding individual. And what a privilege it was this morning also to meet his family, and indeed the widow of our distinguished late Justice. I had the opportunity to share a moment with Mrs. Marshall. I was a young law clerk on the Federal circuit court of appeals here when I went up and stood in the back of the courtroom when *Brown* v. *Board of Education* was argued by Thurgood Marshall and John W. Davis, a day I will not forget.

Good luck to you, sir.

Mr. MARSHALL. Thank you, Senator.

Senator WARNER. Thank you very much.

The CHAIRMAN. Well, thank you, Senator Warner. That is very high praise indeed. We appreciate you taking time out of a busy schedule to be here.

Senator WARNER. I am glad to do it. Thank you.

The CHAIRMAN. Let me turn to Senator Kennedy and see if he has any remarks.

Mr. Dickinson, why don't you take the other microphone there?

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you, Mr. Chairman. I think all of us are enormously appreciative of having these hearings this morning because I think all of us are very mindful of the long process that it is taking in getting the administration's nominees to consideration from our committee and also on the floor. So we welcome these particular meetings, and we look forward to action on the Sentencing Commission as well at the earliest possible time, since that has been basically immobile since the vacancies that have been created on it. That has been a mixed responsibility between getting nominees for the Sentencing Commission and also for the Judiciary Committee and the Senate as a whole, but we will look forward to action on those matters.

I am particularly delighted to welcome our two nominees, one in particular, Mr. John Marshall. I want to say, as Senator Warner has, about not only his very wide range of background and activities that he will bring to this job, but there is also an extraordinary ingredient steeply fixed in the soul of that family, and that is one of public service. This has really been an extraordinary legacy.

I have been fortunate to have met, obviously, the Justice, and knew him not closely, but one of his great admirers over a long period of time, and also Goody Marshall, who I had the fortune of being a legislative assistant to me for a number of years and just was one of the most able and gifted and talented young people that I have had good fortune to have, and now serves with great distinction in the White House.

So it is an extraordinary family, committed to public service, and I think it is a great tribute to the mother and the Justice and to the members of the family for this very keen kind of awareness and dedication. We are very lucky to have them.

As has been pointed out, he brings a wide range of very practical and intellectual assets to this position. It is a very important position, a very important position, and I am confident that he will do it with great distinction. And I look forward to supporting his nomination not only on this committee, but on the floor. I think the President has selected wisely, and we thank you, Mr. Chairman, for having this hearing.

I want to thank Todd Dickinson. I think we are fortunate to have someone of his ability and understanding of one of the most complex and difficult aspects of the law. I don't think many of us who came to this committee really ever thought we were ever going to be dealing much with trademarks and copyright. I think it was the 1976 Act that was really the first one that I had seen experienced, having been on the committee since 1963.

This is not an area of great expertise by this committee. We have been trying to learn over a period of time, but one thing that has happened is so much is involved in terms of copyright and trademark and intellectual property, and we need to have the skills developed by ourselves, but also by our staff, but also in this particular position. And Todd Dickinson has been a skilled and learned professional in this area, and I think has brought great enlightenment to these issues which are difficult and mundane, but have enormous implications in terms of people's interests. So we thank you very, very much for your willingness to serve.

I thank the Chair. I appreciate his indulgence.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

Mr. Chairman, I welcome today's hearing to consider these nominees. Over the past few months, many of us have expressed concern about the Senate's continuing delays in acting on President Clinton's nominees to important positions in the Administration and the federal courts. Over 100 positions, including important national security, defense, education, and judicial positions are unfilled.

The Republican leadership also continues to refuse to act on President Clinton's nomination of Bill Lann Lee to head the Department of Justice's Civil Rights Division—a critical law enforcement position.

The confirmation impasse is serious.

I welcome the two nominees appearing before us this morning. John Marshall has been nominated to be Director of the U.S. Marshals Service. He is the brother of Thurgood Marshall, Jr. who is a former member of my Judiciary Committee staff and who is currently serving the Clinton Administration with great distinction. The Marshall family has made extraordinary contributions to our country. John Marshall brings numerous years of outstanding law enforcement experience, having served 14 years as a Virginia State Trooper and five years as the U.S. Marshal for the Eastern District of Virginia. I have no doubt that John Marshall will serve ably in this new position.

Todd Dickinson is eminently qualified to serve as Assistant Secretary of Commerce and Commissioner of Patents and Trademarks. Over the years, he has developed a widely respected expertise in the field of intellectual property. He brings excellent credentials to this position and I commend him on his nomination.

Mr. Chairman,, I commend you for scheduling this hearing. I look forward to working with you in moving these nominees through the confirmation process as quickly as possible.

The CHAIRMAN. Well, thank you, Senator Kennedy.

We have Senator Robb here. Senator, we will take your statement at this time.

STATEMENT OF HON. CHARLES S. ROBB, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ROBB. Thank you, Mr. Chairman and Senator Kennedy, for the opportunity to say just a word on behalf of the President's nominee to be Director of the U.S. Marshals Service.

I have had the privilege of knowing the Marshall family for many years. As Senator Kennedy alluded to, this is a family that has been steeped in public service and commitment for literally generations at this point. And I had occasion to know John Marshall, now Marshal Marshall, when he was with the Virginia State Police for 14 distinguished years and to recommend his nomination to be the Marshal for the Eastern District of Virginia, and to concur and very enthusiastically support his nomination to be Director of the Marshals Service.

It is a Service that has an extraordinary range of duties that we come into contact with from day to day, but we sometimes forget just how important it is to the functioning of our entire legal and judicial system. But I think in John Marshall the President has selected someone who has clearly gained the respect of those with whom he has worked at each level of his government service.

And as Senator Kennedy has already observed, he has a brother who has performed yeoman service not only to the distinguished Senator from Massachusetts, but to the President and the Vice President of the United States. And I am very pleased that his mother, Mrs. Thurgood Marshall, Cissy Marshall, is with him yet again today. She has had quite a number of public appearances of late in support of two extraordinary sons who have followed their father into public service, and specifically in this case heading up the U.S. Marshals Service.

I might offer just one anecdotal note, if I may, Mr. Chairman, because it has meant a great deal to me. As it turned out, when Justice Thurgood Marshall passed away, the last letter that he signed happened to be a letter that he was sending to me wholeheartedly recommending John Marshall for appointment then to U.S. Marshal for the Eastern District of Virginia.

His secretary was kind enough to contact me even before I received the letter and say that, as fate would have it, that happened to be the last letter that Justice Marshall sent, and it remains one of my treasured possessions. And I was able to fulfill Justice Marshall's request, although it was seconded by many throughout the Eastern District of Virginia who knew and already admired the good work that John Marshall had already done for Virginia.

So I am very pleased today, Mr. Chairman and Senator Kennedy, to wholeheartedly endorse and recommend the nomination of the President of John Marshall to be Director of the Marshals Service.

And might I also say that Mr. John Richard Steere of Virginia, has been nominated for the U.S. Sentencing Commission. He is well-known to this committee, has served as an aide to Senator Thurmond and as General Counsel to the Sentencing Commission. So I wanted to put in a word for another highly qualified Virginian. But I am particularly pleased at this moment to stand four-square behind the nomination of John William Marshall to be Director of the U.S. Marshals Service.

Mr. Chairman and Senator Kennedy, I thank you for your attention.

The CHAIRMAN. Well, thank you, Senator Robb. We appreciate you taking time to be here, and it is certainly very good praise indeed.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. I have a statement of Senator Leahy, if it could be made a part of the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

This morning the Senate Judiciary Committee is considering two important Executive Branch nominations, one to head the U.S. Marshal Service and the other to serve as our Commissioner of Patents and Trademarks. Some of us on this Committee already know and have worked closely with both of these outstanding nominees, John W. Marshall, currently a U.S. Marshal in Virginia, and Q. Todd Dickinson, who has been our Assistant Commissioner of Patents and Trademarks. I thank the Chairman for moving ahead on these nominations.

We have pending before us more than 30 other Executive Branch nominations, as well. These include the seven nominees to the United States Sentencing Commission, four nominees to the United States Parole Commission, three members of the Board of Directors of the State Justice Institute, three Assistant Attorney General nominations, three United States Marshal nominations, eight United States Attorney nominations, and the nominee to head the Office for Victims of Crime at the United States Department of Justice. These are all important nominations. To be fair to the nominees and their families, to show respect for the offices to which they have been nominated and the responsibilities of those offices, and to fulfill our constitutional role in the confirmation process, I urge prompt and favorable action of these nominations by the Committee and by the Senate.

The Executive Branch nomination that has been held up the longest is that of Bill Lann Lee to be Assistant Attorney General for the Civil Rights Division at the United States Department of Justice. I marked the 2-year anniversary of this nomination with a Senate floor statement in July. I continue to urge this Committee to do the right thing, the honorable thing, and report this qualified nominee to the Senate so that the Senate may fulfill its constitutional duty under the advice and consent clause and vote on this nomination without further delay.

His is a critical position in the fight against hate crimes. If we are serious about opposing hate crimes, we ought to confirm Bill Lann Lee to help wage that battle with the full authority of a confirmed Assistant Attorney General for civil rights, rather than treat him as if the efforts he is leading against hate crimes were unimportant. Let the Senate vote on the confirmation of this good man.

We need Bill Lann Lee's proven problem-solving abilities in these difficult times with hate crimes on the rise across the country. He is spearheading federal efforts against hate crimes, against modem slavery and for equal justice for all Americans. He is doing an outstanding job.

When confirmed, Bill Lann Lee will be the first Asian Pacific American to be appointed to head the Civil Rights Division in its storied history and the highest ranking federal executive officer of Asian Pacific American heritage in our 200-year history. Senate confirmation of Bill Lann Lee is an important, concrete step that the Senate can take now to help in efforts against hate crimes and to protect the civil rights of all Americans.

I am deeply disappointed, as well, that some on the other side of the aisle are continuing to delay consideration and confirmation of the President's outstanding nominees to the United States Sentencing Commission. In his Year-End Report for 1997 the Chief Justice of the United States made a special plea for prompt action on nominees to the Sentencing Commission. It has taken some time for Senator Lott and Senator Hatch to be able to get together with the Senate Republican caucus on the panel of people who would be acceptable nominees. The President has been very patient in the course of his extended consultation with Senate Republican leaders on these nominations. Now that we have been able to move forward with the nomination of a strong and experienced bipartisan panel of judges and others to reinvigorate the Sentencing Commission, now that the President has sent us seven

qualified nominees, it is time for this Committee and the Senate to proceed. I look forward to working with the Chairman to ensure the prompt consideration and confirmation of the panel of nominees pending before us.

Finally, I regret that the Committee has not moved forward on the six qualified judicial nominee who had their confirmation hearing back on September 14 and hope that they will not be delayed much longer. Likewise, the Senate has before it ready for action the nominations of Judge Richard Paez, Raymond Fisher and Marsha Berzon to the Ninth Circuit, Justice Ronnie L. White to the District Court in Missouri, and other qualified nominees. For Judge Paez and Justice White, this is their second extended hold on the Senate calendar, having been favorably reported by the Committee both last year and earlier this year.

I urge the Senate Republican leadership to heed the words of Justice Rehnquist:

> Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. * * * The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.

At the time the Chief Justice issued that challenge, Judge Paez' nomination had already been pending for 24 months and Justice White's nomination for six months—that was almost two years ago.

I say that this is about fairness and about the Senate being fair to all nominees and to other Senators and to the American people. The Senate should be able to vote on the Paez nomination within 4 years and the Berzon nomination within 2 years. Anonymous Republican Senators are being unfair to the judicial nominees on the calendar. The Senate Republican leadership refuses to commit to a vote before the end of the session on these qualified nominees.

The Atlanta Constitution noted last Thursday:

> Two U.S. appellate court nominees, Richard Paez and Marsha Berzon, both of California, have been on hold for four years and 20 months respectively. When Democrats tried Tuesday to get their colleagues to vote on the pair at long last, the Republicans scuttled the maneuver. The Paez case seems especially egregious. * * * This partisan stalling, this refusal to vote up or down on nominees, is unconscionable. It is not fair, It is not right, It is no way to run the federal judiciary. Chief Justice William Rehnquist is hardly a fan of Clinton. Yet even he has been moved to decry Senate delaying tactics and the burdens that unfilled vacancies impose on the federal courts. Tuesday's deadlock bodes ill for judicial confirmations through the rest of Clinton's term. This ideological obstructionism is so fierce that it strains our justice system and sets a terrible partisan example for years to come.

It is against this backdrop that I, again, ask the Senate to be fair to these judicial nominees and all nominees. For the last few years the Senate has allowed one or two or three secret holds to stop judicial nominations from even getting a vote. That is wrong.

I am working with the Chairman to try to forge a way through the impasse on the Senate floor so that the Senate considers all of the judicial nominations that this Committee has reported. I have tried to work with the Chairman and with the Majority Leader on all these nominations. I would like to work with those whom the Majority Leader is protecting from having to vote on the Paez and Berzon nominations, but I do not know who there are.

In February of this year, the Majority Leader and the Democratic Leader sent a letter to all Senators to address this practice of "secret holds." They told us then that, "members wishing to place a hold on any * * * executive calendar business shall notify the committee of jurisdiction of their concerns." I am the Ranking Democrat on the committee of jurisdiction for these nominations and have not been shown that courtesy by a single Senator obstructing consideration of this nominations. The leaders' letter goes on to state: "Further, written notification should be provided to the respective Leader stating their intentions regarding the * * * nomination." I have checked with Senator Daschle and he has received no such notification. Thus, in spite of what was supposed to be a Senate policy that did away with anonymous holds, we remain in a situation where I do not even know who is objecting to proceeding to schedule a vote on the Paez and Berzon nominations, let alone why they are objecting. In this setting I have no ability to reason with them or address whatever their concerns are because I do not know their concerns. That is wrong and unfair to the nominees.

I do not deny to any Senator his or her prerogatives as a member of the Senate. I have great respect for this institutions and its traditions. Still, I must say that

this use of secret holds for extended periods that doom a nomination from ever being considered by the United States Senate is wrong and unfair and beneath us. Who is it that is afraid to vote on these nominations? Who is it that is hiding their opposition and obstruction of these nominees?

A Washington Post editorial last week characterized the conduct of the Republican majority as "simply baffling" and opined: "[T]he Constitution does not make the Senate's role in the confirmation process optional, and the Senate ends up abdicating responsibility when the majority leader denies nominees a timely vote. All the nominees awaiting floor votes, Mr. Stewart included, should receive them immediately."

It is September 29 and the Senate has acted on only 17 of the 68 judicial nominations the President has sent us this year. We have only 4 weeks in which the Senate is scheduled to be in session for the rest of the year. By this time last year the Committee had held 10 confirmation hearings for judicial nominees, and 43 judges had been confirmed. By comparison, this year there have been only four hearings and only 17 judges have been confirmed. Thus, the Senate is operating this year at less than half the productivity of last year. We remain miles behind our pace in 1994, when by this time we had held 21 hearings and the Senate had confirmed 73 judges.

The Florida Sun-Sentinel said last week:

> The "Big Stall" in the U.S. Senate continues, as senators work slower and slower each year in confirming badly needed federal judges. * * * This worsening process is inexcusable, bordering on malfeasance in office, especially given the urgent need to fill vacancies on a badly undermanned federal bench. * * * The stalling, in many cases, is nothing more than a partisan political dirty trick.

For the last several years I have been urging the Judiciary Committee and the Senate to proceed to consider and confirm judicial nominees more promptly and without the months of delay that now accompany so many nominations. Over the last couple of weeks independent studies have verified my complaints and concerns. According to the report released last Wednesday by the Task Force on Judicial Selection of Citizens for Independent Courts, the time it is taking for the Senate to consider nominees has grown significantly, from an average of 83 days in 1993 and 1994 during the 103rd Congress, to over 200 days for the years 1997 and 1998 during the last Congress, the 105th. In fact, if they were to look at the average number of days from confirmation to nomination on an annual basis, as I have, they would see that it broke records in each of the last three succeeding years 1996, 1997 and 1998. In 1998, the average time for confirmation was over 230 days.

The report also verifies that the time to confirm female nominees is now significantly longer than that to confirm male nominees—a difference that has defied logical explanation. They recommend that "the responsible officials address this matter to assure that candidates for judgeships are not treated differently based on their gender."

The report recommends that the Senate should eliminate the practice of allowing individual members to place holds on a nominee.

This summer Professor Sheldon Goldman and Elliot Slotnick published their most recent analysis of the confirmation process in President Clinton's second term in *Judicature* magazine. They note the "unprecedented delay at both the committee and floor stages of Senate consideration of Clinton judicial nominees" and conclude:

> It is impossible to escape the conclusion that the Republican leadership in the Senate is engaged in a protracted effort to delay decision making on judicial appointments whether or not the appointee was, ultimately, confirmable.

In spite of efforts last year in the aftermath of strong criticism from the Chief Justice of the United States, the vacancies facing the federal judiciary remain at 65 with 17 on the horizon and the vacancies gap is not being closed. We have more federal judicial vacancies extending longer and affecting more people. Judicial vacancies now stands at approximately 8 percent of the federal judiciary. If one considers the additional judges recommended by the judicial conference, the vacancies rate would be over 15 percent and total over 135.

Nominees deserve to be treated with dignity and dispatch—not delayed for two and three years. We are seeing outstanding nominees nitpicked and delayed to the point that good women and men are being deterred from seeking to serve as federal judges. Nominees practicing law see their work put on hold while they await the outcome of their nominations. Their families cannot plan.

Certainly no President has consulted more closely with Senators of the other party on judicial nominations, which has greatly expanded the time this Adminis-

tration has taken to make nominations. The Senate should get about the business of voting on the confirmation of the scores of judicial nominations that have been delayed without justification for too long.

Just last month, in his remarks to the American Bar Association, the President, again, urged us to action. He said: "We simply cannot afford to allow political considerations to keep our courts vacant and to keep justice waiting." We must redouble our efforts to work with the President to end the longstanding vacancies that plague the federal courts and disadvantage all Americans. That is our constitutional responsibility. I continue to urge the Senate and, in particular, the Republican leadership to attend to these nominations without obstruction and proceed to vote on them with dispatch.

I thank the Senators who have come to introduce these nominees to the Committee. I look forward to the Committee completing its consideration of all of the nominations included in today's hearing and pending before it and urge the Senate to vote without further delay on the nominations that the Committee has favorably reported.

Senator KENNEDY. And I just want to say to Mr. Marshall, we have a wonderful woman, Nancy McGillivary, who was one of the first three women appointed during the Clinton administration as a U.S. Marshal.

There were a lot of questions initially when she took over that responsibility, but I can just tell you she has won absolute plaudits for her professionalism and her service. So I just want to tuck that in the back of your mind.

Mr. MARSHALL. Yes, sir, Senator. I have worked with her on several committees and know her well.

Senator KENNEDY. Thank you.

The CHAIRMAN. We all know why Senator Kennedy is such an effective politician, don't we? [Laughter.]

He never misses an opportunity, let me tell you.

John, we are very proud of you. You and Goodie are going to control the country, I think, in the future. You are both very, very nice people, and very, very good people and accomplished. We are very proud that you are having this opportunity.

Mr. Dickinson, we are pleased with your record and what you are able to do in your chosen field and in this calling that you have received.

I have to say that the Marshall family certainly deserves a lot of accolades for what your family has been able to accomplish. And I join in Senator Kennedy's praise that this family is a family of public service, doing public service, and doing it in the highest way.

I knew your father pretty well, really, and I had great admiration for him. He was a pioneer in the days when it was really, really tough to do anything, and who risked his life and had a lot of guts, a lot of fortitude, a lot of courage to do what he did. And I just want you to know that you have a lot to live up to because your mom is even better.

Mr. MARSHALL. Thank you, Mr. Chairman.

The CHAIRMAN. So you are going to have to live up to this, and I am going to watch you everyday.

Mr. MARSHALL. Thank you very much, Senator.

The CHAIRMAN. We are glad to have you here.

Would either of you care to make a statement to the committee? You can if you want to.

Do you mind, Mr. Dickinson, if we go with Mr. Marshall first and then we will come to you?

Mr. DICKINSON. Fine.

The CHAIRMAN. OK.

TESTIMONY OF JOHN W. MARSHALL, OF VIRGINIA, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE

Mr. MARSHALL. Mr. Chairman, Senator Kennedy, I am honored to appear before you today. I would like to begin by introducing members of my family in attendance—my wife, Jean; our daughter, Melonie; and my mother, Mrs. Cecelia Marshall. Our other daughter, Cecelia, is attending her second week of classes at the Savannah College of Art and Design. My brother, Thurgood Marshall, Jr., was not able to attend today due to a scheduling conflict. The unwavering support, confidence, guidance and love of my family have brought me to where I am today.

To say that my appearance before you as President Clinton's choice to serve as the next Director of the U.S. Marshals Service is a truly humbling experience would be quite an understatement. If confirmed, it will be my honor and privilege to lead the Marshals Service into the 21st century.

The U.S. Marshals Service, which celebrated its 210th birthday last Friday, is the oldest Federal law enforcement agency. I have had the privilege of serving as U.S. Marshal for the Eastern District of Virginia since June 1994. In addition to overseeing the operation of the district, I have served on several committees which have given me valuable experience with the agency on a nationwide basis. As the Chairman of the Leadership Council, I have seen firsthand the fine work performed on a daily basis by the men and women of the Marshals Service, both in the field and in headquarters.

The Marshals Service, created by the Federal Judiciary Act of 1789, occupies a uniquely central position in the Federal judicial system. We take tremendous pride in having the responsibility of protecting the Federal judiciary and providing security in the 800 judicial facilities throughout the 50 States, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. This critically important task of safeguarding the Federal judicial system remains our most important mission.

Another major role in the judicial system for the Marshals Service is the custody and transportation of pre-trail and unsentenced Federal prisoners. The Marshals Service has approximately 32,700 detainees in custody on any given day. Annually, we arrest more Federal fugitives than all other Federal law enforcement agencies combined. In just the past 5 years since I have been a U.S. Marshal, the Service has arrested over 83,000 Federal fugitives.

The Witness Security Program established by Congress 28 years ago and given to the Marshals Service to manage continues to operate with a perfect record; that is to say that not one of the over 7,000 protected witnesses who has followed the established rules has ever been killed as a result of their testimony.

The Marshals Service is also responsible for the management and disposal of fees and forfeited properties acquired by criminals through illegal activities. We are proud to report that the General Accounting Office found no material weaknesses or deficiencies in their January 1999 audit of our program.

Earlier, I alluded to the professional women and men of the U.S. Marshals Service. We have all heard the old saying that actions speak louder than words. While our outstanding program achievements which I have noted certainly illustrate that we truly are an agency of actions rather than words, the tremendous pride and dedication of our operational and administrative employees is best illustrated when you take into account the hiring freeze we have been under since January of this year.

Through teamwork, personal sacrifice, and tremendous pride in our agency, we have been able to maintain our high performance level. My first priority, if confirmed, will be to take the necessary steps to remedy our budget shortfall so that our hiring freeze can be lifted.

In closing, President Lincoln once said, "I will prepare and someday my chance will come." During my 19 years in law enforcement, I feel that I have been preparing, and now I am hopeful that this committee will provide me with the chance to lead the finest Federal law enforcement agency into the next century.

I sincerely thank you for affording me the opportunity to appear before you today and I look forward to answering your questions.

The CHAIRMAN. Thank you very much.

Mr. Dickinson, do you care to make a statement?

TESTIMONY OF Q. TODD DICKINSON, OF PENNSYLVANIA, TO BE COMMISSIONER OF PATENTS AND TRADEMARKS

Mr. DICKINSON. Thank you, Mr. Chairman, members of the committee. Thank you for the opportunity to appear before you today. I would also like to take the opportunity to thank Secretary Daley for recommending me, and to the President for nominating me to this important post. I have been involved with intellectual property my entire career, and for me this is a tremendous honor and somewhat humbling experience to be considered for the opportunity to serve in this capacity.

Mr. Chairman, almost 2 years ago I left my hometown of Philadelphia, where I practiced in a law firm, and came to Washington, DC, to serve in this administration. Indeed, it was over a year ago—just over a year ago I was considered by this committee and later confirmed by the full Senate for the position of Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks, and I very much appreciate the courtesy and consideration you and your committee showed me at that time.

During my service as Deputy Commissioner of Patents and Trademarks, it has been a great pleasure and opportunity to work with you and the other members of the committee and your staff on a variety of critical issues. During that process, one of the things that I found particularly gratifying is the extent to which intellectual property issues are addressed on a nonpartisan basis. This is a tradition which I believe is in our Nation's best interest and one which I have tried to follow during my time in office.

I believe that no single issue is more important to shaping the future growth and development of the world economy than intellectual property. From biotechnology, to semiconductors, to the Internet, the people who make decisions about investment, research and development rely on strong intellectual property protection. With-

out a strong mechanism to incent and protect that investment, our Nation's economy would not be growing as fast as it is today.

Regarding the U.S. PTO, I strongly believe that managing the agency's growth, ensuring the high quality of our products and services, and maintaining America's position as an international leader in intellectual property are the key to this agency's and our Nation's success.

Several initiatives we have undertaken this year are moving us strongly in that direction. We, for example, have put our patent and trademark database up on the Internet, freely searchable. We have established an Office of Quality Management to reorganize and consolidate our quality management function, and we have established the Office of Independent Inventor Programs to deal with the unique needs of one of our most important constituencies.

I look forward to working with this committee to help ensure that the PTO is given the resources and flexibility it needs to meet all of our challenges, and I look forward to working with the committee and the intellectual property community on the many domestic and international intellectual property issues that are before this committee. I also want to thank friends and supporters that are here today to support me, and also thank many of the supporters in the intellectual property community for their support—the INTA, AIPLA, BIO, and others.

Again, Mr. Chairman, thank you for the opportunity to appear before you today and I am happy to answer any questions as well.

[The prepared statement of Mr. Dickinson follows:]

PREPARED STATEMENT OF Q. TODD DICKINSON

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: Thank you for this opportunity to appear before you today. I want to thank you, Senator Specter, for your introduction and support. I would also like to thank Secretary Daley for recommending my nomination as Assistant Secretary of Commerce and Commissioner of Patents and Trademarks and the President for nominating me to this important post.

Mr. Chairman, almost two years ago, I left an intellectual property practice at the law firm of Dechert, Price, and Rhoades, in Philadelphia and came to Washington, D.C. to serve in this Administration. Indeed, it was just over a year ago that I was considered by this Committee, and later confirmed by the full Senate, for the position of Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks. I very much appreciate the courtesy and consideration you gave my nomination at that time, Mr. Chairman.

During my service as Deputy Commissioner of Patents and Trademarks, it has been a great pleasure and opportunity for me to work with you, the other members of this Committee, and your staff on a variety of important issues. One of the things that I have found particularly gratifying is the extent to which intellectual property issues are addressed on a non-partisan basis. This is a tradition which I believe is clearly in our nation's best interest and one which I have tried to follow during my time in office.

Prior to joining the Commerce Department, I spent almost two decades working as an intellectual property practitioner, first in Pittsburgh, then in San Francisco, and most recently in Philadelphia. During that time, I worked in all aspects of intellectual property law and management, including patent prosecution, trademark and copyright protection, strategic development and counseling, brand management, licensing, technology transfer, and litigation.

I have also had the good fortune to represent the entire spectrum of intellectual property constituencies—from individual inventors and educational institutions to small businesses and corporation clients—in a wide range of disciplines, including biotechnology, refinery processing and chemical manufacture, environmental technologies, pharmaceuticals, health-care products, business and financial software and recreational equipment.

Throughout my career, I have also tried to devote myself to public service and to giving back to my community. Indeed, while working for Chevron in San Francisco, I was very proud to be given the opportunity to serve the public when Senator, then Mayor, Feinstein appointed me to serve as Chair of the San Francisco Parking Authority. Since that time, I have also served in a number of other public capacities.

It is, therefore, a distinct honor for me to be before you today as the nominee to head the Patent and Trademark Office, one of the oldest agencies in the federal government, and an agency with a Constitutionally mandated goal of "promot[ing] the progress of science and the useful arts, by securing for limited times to * * * inventors the exclusive right to their * * * discoveries."

I believe that no single issue is more important in shaping the future growth and development of the world economy than intellectual property. From biotechnology to semiconductors to the Internet, the people who make decisions about investment, research, and development rely on strong intellectual property protection. Without a strong mechanism to incent and protect investment, our nation would not be growing as fast as it is today. Accordingly, the PTO plays an active role in advising other Executive Branch agencies on domestic intellectual property laws and plays a leadership role in formulating international intellectual property policy.

I strongly believe that managing the agency's growth, ensuring the high-quality of our products and services, and maintaining America's position as the international leader in intellectual property are the keys to the agency's success. That is why since coming to the PTO I have focused my efforts in three key areas.

First, with respect to automation, this past March the agency added to its Web site 20 million pages of images to the searchable text of the 2 million patents granted since 1976. This electronic library of late 20th century science and technology is available free on PTO's Web page and was, in part, prompted by Senator Hatch and Senator Leahy's continued interest in making important technical information accessible to rural areas.

Today, all pending and registered trademarks are also available on line and we are well on our way toward making all 6 million plus patents and one million plus trademarks available free on the Internet by 2001. In addition, I am pleased to report that the PTO now accepts electronic Trademark applications and that we have received over 12,000 such applications in just the last nine months.

Second, I came to the PTO concerned about its relationship with independent inventors. Having represented independent inventors in private practice, I understand their concerns and am working hard to address them. That is why we established the Office of Independent Inventor Programs, an initiative aimed at meeting the special needs of an important PTO constituency—inventors working for themselves or for small business.

Third, to keep our patent system strong, we must invest in the management and efficiency of the PTO. As you know, Mr. Chairman, our nation's intellectual property system is more robust than ever before, and business is booming at the Patent and Trademark Office. Patent applications increased 25 percent in the last two years and trademark filings are up nearly 25 percent this year alone.

The PTO, unlike many government agencies, is very much a business. In order to meet the needs and demands of our customers, we need to ensure that we have highly-skilled staff who are equipped with the resources they need. I am pleased to report that we are successfully managing the agency's growth through strategic hiring of a diverse, well-educated workforce, as well as increased utilization of state-of-the-art automation technology.

To handle the explosive growth in patent and trademark filings, the PTO hired more than 700 new patent examiners last year and is on track to hire an additional 800 patent examiners this year. In the trademark arena, 230 new trademark attorneys have been hired since November 1997, nearly doubling the size of that workforce.

We are also making great strides in improving the efficiency of our work. For example, this year we have reduced pendency for first action on trademark applications from 7.9 months to 4.9 months. We are also well on our way to reducing cycle time for patent applications to 85 percent of all patents in 12 months by 2001 and all patents in 12 months by 2003.

Turning to the international arena, the PTO will continue to work on strengthening the international intellectual property system and ensuring that U.S. intellectual property holders—whether patents, copyrights, trademarks, or any of the other forms of intellectual property—enjoy sufficient legal protection around the world. In the next year, I anticipate that the PTO will be participating in the following developments:

First, we will be leading the United States' delegation at a WIPO Diplomatic Conference to develop a Patent Law Treaty which, we hope, will establish shared proce-

dural and application standards for patents around the world. After working for years on these standards, it is our hope that we will also be able to turn to the long-term question of converging substantive standards for patenting.

At the same time, we will also be working on simplification of the existing Patent Cooperation Treaty. I believe that streamlining and modernizing this treaty will help American industry preserve its ability to commercialize American ingenuity all over the world.

On the copyright front, the PTO will continue to lead the Administration's efforts in international discussions about audio-visual performers rights and protection for non-copyrighted databases—two issues left open after the 1996 Diplomatic Conference which established the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. On the issue of audiovisual performers rights, the United States is committed to working in WIPO to achieve a compromise on the protection of audiovisual performers rights that will further the goals of all relevant U.S. interest groups, performers as well as film producers.

Even with all these activities and achievements, Mr. Chairman, much work remains to ensure that the PTO can manage its growth and ensure high-quality products and services while maintaining our ability to be a strong advocate for our nation's intellectual property. We are blessed with the greatest intellectual property system in the world, and I am deeply committed to ensuring that we retain—and build upon—that status well into the next millennium.

I look forward to working with this Committee to help ensure that PTO is given the resources and flexibility it needs to do just that. And I also look forward to working with this Committee and the intellectual property community on the many domestic and international intellectual property issues that are before this Committee.

Again, Mr. Chairman, thank you for the opportunity to appear before you today. Now I would be happy to answer any questions you might have.

The CHAIRMAN. Thank you both. I want to swear you both in. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. DICKINSON. I do.

Mr. MARSHALL. I do.

QUESTIONING BY SENATOR HATCH

The CHAIRMAN. Thank you. Let me begin with questions for you, Mr. Dickinson.

In *Florida Prepaid Post-Secondary Education Expense Board* v. *College Savings Bank,* the Supreme Court found that Congress did not have the power to abrogate the State's 11th amendment immunity under the 14th amendment's due process clause. The United States intervened unsuccessfully to defend the law at risk; namely, the Plant Patent and Plant Variety Protection Remedy Clarification Act. Now, this appears to leave patent owners with no effective remedy against infringement of their rights by State institutions and may be the harbinger of exposure for other intellectual property rights as well.

Can you tell us what you believe the impact of this decision on the Supreme Court's companion cases will be and what sorts of remedies, if any, might be appropriate for Congress or the administration to pursue?

Mr. DICKINSON. Thank you, Mr. Chairman. Let me start off by saying I am not a constitutional lawyer, I am an intellectual property owner.

The CHAIRMAN. Sure.

Mr. DICKINSON. But let me also comment on the case a little bit. This is obviously, as you suggested, an extremely difficult issue. It is one which has caused great concern in the intellectual property community. Because if you follow the decision in its broadest terms

it would suggest that States are free to infringe the intellectual property rights of intellectual property owners across this country. And that obviously the potential for that is obviously very, very significant.

I think that the impact potentially is a great one, and I would hope that we could work with this committee to craft new legislation that would address minimizing that impact, hopefully reducing it down to nothing. And also we, I think, need to work with States who have also—the opinions, as I understand them, suggest that States obviously have the power to remedy this question, and perhaps we should also be working with States and State legislatures to deal with it.

The CHAIRMAN. As you know, Senator Leahy and I have championed patent reform legislation in the Senate for a number of years. This is an important part of which would reorganize the Patent and Trademark Office to enable it to better respond to the needs of its customers, which are American businesses and innovators.

The House of Representatives just recently passed its version of the Patent Reform legislation, H.R. 1907, which I understand is based upon the legislation this committee reported in 1997. Now, will the administration be seeking any additional changes to title VI of that bill—and that, of course, deals with patent and PTO reforms—or its Senate counterpart? And if so, what are they likely to be?

Mr. DICKINSON. Thank you, Mr. Chairman.

As you correctly, again, point out, the legislation which the House passed was very heavily influenced by the legislation which you and your committee worked on in the last session. And I think many of us in the intellectual property community are very interested in seeing this legislation move forward.

With specific regard to title VI, the administration has not taken a position formally yet on it, but we have been very heavily involved with the relevant House subcommittee and with your staff, in terms of dealing with a number of issues that are of a concern to us.

I think one of the challenges we face is whether, because this is a very carefully crafted compromise, we want to go in a particularly strong direction in making changes or whether we are comfortable with the way the legislation is currently crafted. I think in most of its provisions, we are currently comfortable. But we have engaged in discussions with your staff and Senator Leahy's staff about the possibility of some additional changes.

The CHAIRMAN. OK; well, we'd appreciate it if you would get a little more public about it. Because we'd like to pass that bill.

Now, I spent quite a lot of time trying to curb the practice of diverting PTO fee revenue in the appropriations process to fund unrelated Federal spending. Although we have had some success in rescinding the patent fee surcharge that was so often raided for this purpose, congressional appropriators now seem to have turned to a practice of carrying over, which is an increasingly—carrying over an increasingly larger amount of PTO user fees each year, which still prevents the PTO from spending this money that it collects when collected.

Now, I am told that Congress might increase the amount of carryover for fiscal year 2000 to as much as $272 million. What will be the impact on PTO and its operations if that scenario becomes a reality?

Mr. DICKINSON. Thank you, Mr. Chairman. As you can appreciate, that possibility—and it is a very real one because the House appropriations bill which is currently in conference with the Senate bill does indeed take another, or is proposed to take another $51 million from our fee revenue and put it into the carryover. That impact could be very significant on operations.

We have been embarking, for example, on a fairly substantial hiring program to meet what have been enormous increases in our workload. We have had a 25-percent increase in our workload on the trademark side this past year alone, we have got a 25-percent increase in our patent workload, patent application workload, in the last 2 years. These were unforeseen in many ways. And we need to bring the resources to bear to take care of that. And if there are significant cutbacks or changes in our request, that could very, very materially impact our work, the quality of our work and the pendency of our work, which are the two key measures.

The CHAIRMAN. Well, as you know, we are interested because the burdens have shifted 25 percent upward, and we are interested in what kind of approaches you are going to take to try and get approvals through as quickly as possible.

So, naturally, that is one of the charges I hope we can give to you here as we move ahead with your nomination because we would like to see that work a little bit better. And I kind of resent the games that are played with those monies. On the other hand, it is pretty tough, on the appropriations committees today, too, to find the monies that they need just to keep things going throughout the Government.

Let me turn to you, Mr. Marshall. After the bombing of the Federal building in Oklahoma City and the letter bomb that killed the 11th Circuit Federal Judge in Birmingham several years ago, what steps has the Marshal Service taken to increase the protection of Federal courthouses and Federal judges whenever they are not at the courthouse?

Mr. MARSHALL. We conducted a vulnerability assessment shortly after the bombing in Oklahoma City, which has resulted in several upgrades, enhancements in our courthouses throughout this country. We are still lacking in a majority of the courthouses, and we are pressing on to get the funding to make the additional security changes that we need to do.

As far as the judges when they are off-site, which is where they are the most vulnerable, when they have left the courthouse, recently our Judicial Security Division came out with a very detailed booklet for the judges giving them tips on their security, off-site security. So, in that regard, we have already addressed it, but we will continue to. And that is our primary mission, and we will do everything we can to enhance the security of the judiciary.

The CHAIRMAN. Thank you. Your service on the Deputy Candidate Review Panel, which reviewed applications for employment for the Marshal Service, in my opinion, was very important. Without trustworthy U.S. marshals, neither judges nor persons in the

witness security program would be safe. Given the increasing threat of domestic and foreign terrorism and or organized crime, the integrity and loyalty of employees of the U.S. Marshal Service is more important than ever.

Now, if you are confirmed as director, what steps will you take to ensure that the Marshal Service hires persons with the highest integrity and qualifications?

Mr. MARSHALL. Mr. Chairman, if confirmed, I would see to it that we continue our current Deputy Review Panel, which is made up of two U.S. marshals and an instructor from our academy at Glencoe. They are the final step before any deputy is hired. They look at the entire package, including the background. And over the years, since that process started in 1995, we have made significant improvements, beginning with the interviews, on through the process. So I would continue that process to make sure that we get the most qualified candidates.

The CHAIRMAN. As a former State trooper in the State of Virginia, you have a great deal of experience with State law enforcement. And as the U.S. marshal for the Eastern District of Virginia, you have had Federal law enforcement experience as well. Federal judges, especially circuit judges, often travel substantial distances to courthouses as part of their judicial duties.

Now, what types of protections do these Federal Circuit Court of Appeals judges have when they are on the road? And do you believe that increased cooperation with various State law enforcement agencies would provide better protection for these officials?

Mr. MARSHALL. Mr. Chairman, I do agree that coordination with the State and local officials would be of tremendous assistance to us. We do depend on our judges. If there is any information that we are not aware of which could be regarded as a threat, any inappropriate communication, that they let us know about that, and we do investigate it. And in the event that a judge is going to be traveling, we do do a threat assessment, and if necessary, we provide protection during that trip.

The CHAIRMAN. Administration of the Federal Asset Forfeiture System is one of the important duties for which the U.S. Marshal Service is responsible. In recent years, however, the Federal Forfeiture System has come under severe criticism. Now, your service on the Asset Forfeiture Leadership Council makes you especially qualified to oversee the operation of the Forfeiture System.

If you were confirmed as director, what improvements, if any, would you make or would you suggest and implement for the administration of the Forfeiture System?

Mr. MARSHALL. Mr. Chairman, as a member of the Asset Forfeiture Leadership Council, I work closely with the U.S. attorneys asset forfeiture group, also, and we jointly crafted a best-practices memorandum of understanding to be signed by each U.S. attorney and U.S. marshal, and they have been signed by the majority of the U.S. attorneys throughout the country.

Our primary role is in the preseizure planning, is where we have been lacking in the past, and I will work towards, if confirmed, to improving our role in preseizure planning.

The CHAIRMAN. Thank you.

Senator Sessions, we will turn to you.

QUESTIONING BY SENATOR SESSIONS

Senator SESSIONS. Thank you, Mr. Chairman.

Mr. Marshall, I think, as you know, the forfeiture questions are real serious now, and we have some legislation that I believe probably go too far, and other members, in curtailing the legitimate ability of the Marshal Service and the U.S. attorneys and other Federal agencies from seizing ill-gotten, illegally attained, illegally used assets that I see no basis for them to keep.

Why should a criminal be able to commit a criminal activity and be able to keep the profits of it even? And then we pay to put them in jail. It's really an illogical thing. I know there have been some concerns about the practice, that some horror stories have been told. From what I can see, most of those are in State court, not done by Federal court, but some have been done in Federal court. So I am working with a number of persons, including the—and with the Department of Justice to draft some legislation I think will curtail the abuses in that area and improve—curtail the abuses, but not gut the ability of the Department to act.

Let me ask you, are you aware of the statistical changes in asset forfeiture cases over the last, say, half-dozen years filed by the Marshal Service?

Mr. MARSHALL. As a whole, over the last few years, our work has gone done in the asset forfeiture area.

Senator SESSIONS. I do not know what is causing that. Do you have an opinion for why those cases have dropped off?

Mr. MARSHALL. I think possibly it is our increased role in preseizure planning, which we are able to provide information to the seizing agencies that they do not come up on in their investigation. So sometimes a property that may look like a good one to forfeit, actually, when we take a good look at it, is not one that we should proceed with.

Senator SESSIONS. I think that is a legitimate concern of the Marshal's Office. But I think is it not also true that the Federal Department of Justice policy has reduced the cooperative partnership, the adoptive forfeitures, in which a case may be made by the State system they could be forfeited in State or Federal, and the Federal Government is taking less of those cases?

Mr. MARSHALL. That could be possible, Senator.

Senator SESSIONS. I think that is part of it. I think there are a lot of advantages to a local law enforcement agency to bring cases in Federal court. It also melds the agencies more as partners, instead of competitors.

Mr. MARSHALL. Yes.

Senator SESSIONS. When you are working together to help a city police chief forfeit a complex amount of property from a criminal and that chief gets to benefit, at least to some degree, from the forfeited assets, you build a bond, do you not agree, that is important?

Mr. MARSHALL. I agree. Yes, sir, Senator.

Senator SESSIONS. So I just hope that your experience on this committee will lead you to be active in that.

And, also, I will ask you to look at the staff you have assigned to it. I remember probably in the eighties, late eighties, when marshals were given special rank or high pay-grade positions for for-

feiture specialist. And it troubles me that if we are having a decline, maybe we do not need high-paid forfeiture specialists if they are not carrying on a basic level of work. So just from a management point of view, I would hope that you would look at that and encourage and promote that.

Do you, personally—how do you feel about that? Do you, personally, feel that the Marshal Service should be active in partnering with State and local law enforcement in forfeiture of assets?

Mr. MARSHALL. Having spent 14 years with the Virginia State Police, yes, sir, Senator. I am very supportive of that. And it is one of the tasks that I enjoy doing, is when we have an equitable sharing check to be able to sign that check and take part in the presentation of it. Partnership is crucial in law enforcement throughout the country.

Senator SESSIONS. I think a lot of people start theorizing about forfeiture, and they do not understand the reality. These are ill-gotten gains that the criminal should not be able to keep, and it is a practical partnership, teamwork effort, State and Federal, and I can tell that you understand that.

Mr. MARSHALL. Thank you.

Senator SESSIONS. And I know you will do well at that.

On the question of patents, Mr. Dickinson, what is the status of the patent building that is being talked about?

Mr. DICKINSON. The building, Senator?

Senator SESSIONS. Yes, the new building.

Mr. DICKINSON. About 1½ months ago, the GSA announced that they have completed the process of evaluation of final bids. They have announced which of the final bids they were prepared to award the lease to. That is a company called Elcor, Inc., and the site which they proposed, which GSA proposed to build it on is in Alexandria, about 3 miles down the road from where we are now, the so-called Carlisle site right near the King Street Metro stop.

There is some ongoing litigation at the moment. Our landlord is concerned about us moving out of our current facility, as you can imagine, and he has brought several actions in Federal court to have the courts take a look at that. We have won one of those, and the other one is pending now in the District Court for the District of Columbia, and the judge has that under consideration now with regards obligations under NEPA.

Senator SESSIONS. What is the latest cost of this new building, projected cost?

Mr. DICKINSON. The developer and GSA, to my understanding, has not projected an actual cost for the building itself. We will be leasing the building, so there has not been a final cost estimate for the actual building itself. The committee that reviewed this from GSA reported back to me, and we were very pleased by this, that the winning bid will allow us to pay less in rent per square foot than we currently pay. So that's something that we're very pleased with. We are, hopefully, saving a few dollars.

Senator SESSIONS. Is that the total for the whole total cost?

Mr. DICKINSON. That is my understanding, yes.

Senator SESSIONS. Including the parking area and all of that?

Mr. DICKINSON. They charge us rent for all of the parking and all of the office space, yes, Senator.

Senator SESSIONS. Well, the numbers that I saw when I was on the Public Works Committee for the patent building were shocking, I thought, and I had serious doubts about whether we had to have a new one. I do not know where you are now in that process. But I was concerned about it.

Let me ask one thing, and, Mr. Chairman, I will finish. You said, I believe, in remarks on Tokyo, about—you said, in response to the first question,

> Most would state that there should be a global patent in 2010. All of us can list the probable benefits of a global patent system. I'm sure that we would all believe that such a system would reduce costs for inventors and make it dramatically simpler to obtain protection and would provide uniformity of protection in the world.

I think you mentioned that later in another address, maybe previously through the International Patent Society in September 1998 you say, "A global patent system is, in principle, a very worthy goal."

Is it your position we need a global patent system?

Mr. DICKINSON. I think that, yes, it is definitely my position that we need one. I think we need to move towards, particularly today, when the Internet and other—and the globalization of the economy leads to a situation where inventors, small and large, and particularly small inventors, independent inventors, are much more susceptible to infringement and much less likely to be able to have remedies because of the cost of the current system worldwide. I think it is very important that we move in that direction.

There is not a consensus yet in the world of how to do this. There are a number of suggestions. Do we have one patent organization that issues patents? Do we give full faith and credit to other's patents? Do we validate the work of other offices? There are a lot of suggestions that have been laid out, and we need to work towards finding an international consensus. But there is a consensus that we need to have broader international protection and move away from the cost associated, in particular, with having a series of national protections today.

Senator SESSIONS. Are you aware that there are perils in that, in that high-tech patent items you can lose control of them, that other nations who would have access to that could, in fact, cause a company to lose their patent protections that have been preserved pretty well in our current system? And is it not a fact that there are a number of nations who steadfastly like to counterfeit and compete in violation of American patents?

Mr. DICKINSON. Enforcement is one of the biggest challenges we face worldwide. I think that is also why having the TRIPS agreement in place as part of GATT is also extremely beneficial to this. This would require countries who want to be part of the WTO to have a minimal threshold level of intellectual property in their own country. And I think that is one of the key ways we can get at this enforcement problem worldwide. But you have definitely put your finger on one of the key issues.

Senator SESSIONS. There was, apparently, one article that we came in 1996, Mr. Lehman, who was serving at the time as U.S.

Commissioner of Patents, sought to give Beijing CD–ROM's containing the entire patent database of 160 years. Are you familiar with that?

Mr. DICKINSON. I am, indeed.

Senator SESSIONS. It came out in the Cox report.

Mr. DICKINSON. Indeed.

Senator SESSIONS. Do you agree that that was a wise thing?

Mr. DICKINSON. We are not—we at this time are not going to give those—the Congress has forbidden us from giving the CD's or the bulk tapes of our patent database to the Chinese government.

Senator SESSIONS. Do you think that was a wise idea for him to give away this information, database?

Mr. DICKINSON. Well, it is not my—it is probably not best for me to criticize or comment on my predecessor in that way. This is publicly available information. But I think that the Congress has expressed their concern about it, and we are following their direction.

Senator SESSIONS. It affects me a little bit in how I vote for a man in the Patent Office and how you react to that. To me, that was a very unwise thing. There may be other opportunities of areas in which the law is somewhat unclear, and I would like to know whether the extent to which you are so committed to an international patent procedure that you would consider that a wise act as a patent commissioner to give up this information.

Would you tell us how you would personally feel about it?

Mr. DICKINSON. Mr. Senator, that information is publicly available. If someone wanted to come to the office and buy hard copies of all of our patents, they could do that today. That is one of our goals, is to make the dissemination of our information as widely available as possible.

We understand the concerns with regard to the specific situation in China. I think one of our bigger opportunities is to work with the Chinese to get their own system developed and in place. They have a good patent system. They have a fairly difficult and a system we work with regularly of enforcement. It is not nearly as good as we would like in China, and we work with them on a regular basis.

Senator SESSIONS. Well, it is important.

Mr. Chairman, thank you. We do have a lot of counterfeiting of that kind of thing around the world. China has been named repeatedly as being involved in that, and I hope that we will develop a national policy which protects our legitimate interest.

The CHAIRMAN. Thank you, Senator Sessions.

Senator Leahy.

QUESTIONING BY SENATOR LEAHY

Senator LEAHY. Thank you very much, Mr. Chairman.

Mr. Marshall--I should say Marshal Marshall—you probably get tired of hearing that, but I am delighted to see you here, and Jean Marie and your daughter. And, of course, I am always delighted to see your mother, who is greatly admired by all of us here.

I enjoy looking back, as I did when you became a marshal, at your background, nearly 20 years in law enforcement, going through the ranks in the Virginia State Police, and then to become

a U.S. marshal. I think, frankly, the Marshals Service is fortunate to have you nominated as Director.

I only have one question and it is just more of a philosophical one, or actually a managerial one. The U.S. Marshals Service gets involved more and more in the pursuit and apprehension of Federal fugitives even up in my State, and I wonder, are we using local police enough for that. I mean, you can only stretch yourself so thin, and I just ask you, from your own experience as U.S. Marshal in Virginia, but also before that in the Virginia State Police, do you think the Marshals Service could use local authorities more in the pursuit of Federal fugitives?

Mr. MARSHALL. Definitely, Senator. I think the task force approach is the way to go. In Eastern Virginia, for the last 2 years, for 3-month periods we conducted a joint task force in the city of Richmond with terrific results. It is definitely—the task force approach as far as fugitive apprehension is the way to go, and certainly we depend on the State and the locals to help us in our investigations and we are more than happy to help them with theirs.

Senator LEAHY. Mr. Dickinson, we were talking about patents all being on CD–ROM's. Are those available for other people, the past—I mean, basically, the archives of the Patents and Trademarks, is that on CD–ROM now?

Mr. DICKINSON. Yes, it is.

Senator LEAHY. And who can have that? I mean, could Senator Hatch walk over and buy a copy of those, as Hatch Enterprises?

Mr. DICKINSON. If he had about $250,000, he could indeed walk over. The only—again, the only entity that we are prohibited from selling it to is the Chinese government.

Senator LEAHY. So if Singapore bought it and then transferred it to China, I mean they could buy it. Once they bought it, it could go to anybody?

Mr. DICKINSON. Patent data has traditionally been publicly available. That is part of the theory behind the system is to make the—that is actually the basis of the patent system, is to make the invention public so that others can build on it and improve it and move technology forward.

Senator LEAHY. Well, of course, that is the reason for my question. I mean, somebody could go over there with a pencil and paper—and, of course, it would take forever to do it, but could sit down there and literally just copy all these things that are in the public record. Is that correct?

Mr. DICKINSON. That is true.

Senator LEAHY. Whether they are from the Chinese embassy or from the University of Vermont?

Mr. DICKINSON. That is true.

Senator LEAHY. I just didn't want anybody to think that we are suddenly giving out some amazing thing that is not available to any Chinese scholar or British scholar or German scholar or anybody else who might come here.

What I do worry about is when other nations fail to protect the patents, trademarks, and copyrights of American owners. And I would ask you, if confirmed, that you be very, very aggressive in helping to protect us. Our intellectual property in this country is one of our most valuable assets. It is certainly one of our most val-

uable export assets. It helps us get the support for our schools, the educational system, everything, plus the millions of jobs it creates. If it is not respected in a world where international commerce is the rule of the day, then we lose all that. So I would urge you to be extremely aggressive in helping to protect that.

Mr. DICKINSON. I will.

Senator LEAHY. Mr. Chairman, I know all the questions have been asked. I think Mr. Dickinson is extremely well-qualified from having read his background. And, of course, John Marshall is somebody I have known and watched, and we have had the privilege of working with his brother in earlier days on this committee before he threw us overboard for another part of the Federal Government. I would hope that both of them would be confirmed quickly.

Thank you.

The CHAIRMAN. Well, thank you.

We appreciate both of you being here. With that, I think we will just end this hearing. I think you both have acquitted yourselves well, and we will look forward to trying to get you confirmed.

So, with that, we will adjourn until further notice. Thank you for being here.

[The questionnaires of Messrs. Marshall and Dickinson are retained in the Committee files.]

[Whereupon, at 10:36 a.m., the committee was adjourned.]

APPENDIX

QUESTIONS AND ANSWERS

RESPONSES OF Q. TODD DICKINSON TO QUESTIONS FROM SENATOR STROM THURMOND

Question 1. Mr. Dickinson, concerns have been raised for some time that it takes too long for the PTO to process patent applications. What concerns do you have in this regard, and do you have plans to try to speed the process for reviewing patent applications?

Answer 1. I agree that it takes too long to process patent applications and I am committed to reducing pendency time. As you know, we are inundated with work. Between 1990 and 1998, the number of annual utility patent applications increased 42 percent, 12 percent of which was in the last year. We projected that in 1999 the number of applications would increase 7.2 percent over the 1998 numbers, but in the year-to-date, we are seeing 11.5 percent growth. Furthermore, as a result of the Federal Circuit's decision in *State Street Bank,* which validated the fact that business methods are patentable, we expect to see many more applications claiming methods of doing business to be filed at the PTO.

Obviously, it is a challenge just to accommodate these large increases. To handle this growth, we're doing what any business would do: hire the best people and give them the best training and tools to do their jobs. Last year, we hired more than 700 new patent examiners and we are on track to hire 700 more this year, next year and the year after that. Of the new patent examiners we have hired, most are in computer and information processing technologies. Historically, the typical new hire examiner has had a bachelor's degree in engineering, chemistry, or physical sciences, but I'm pleased to tell you that one-third of all examiners hired last year in the computer technology area have a Masters or a Ph.D. in engineering, computer science, or mathematics. In light of the decision in *State Street Bank* we are also looking for, and finding, examiners with the appropriate scientific training that also have academic backgrounds or experience in the business arena.

The Examiner's we have now are highly skilled and highly educated; we have 450 Ph.D.'s and over 400 attorneys. However, we are also working hard to increase the amount of training these examiners receive—because that is key to increased productivity and higher quality of patent claims we allow and trademarks we register. In 1999, on the patent side, we will devote over 100,000 hours to training new examiners in PTO procedures. In addition to this training for new examiners, this year, we will provide our existing examiner corps with over 20,000 hours in legal training, over 30,000 hours in training in using our automated search systems, and over 5,000 hours in technical training. I have initiated a top to bottom review of our training by a Blue Ribbon panel of both internal and external experts, and we are actively considering even more substantial increases in training as we plan our 2001 budget.

Some of the on-duty training for examiners is directed at the new electronic research tools we are putting at their command. Today, from her desktop, a patent examiner can electronically access the full text of all U.S. patents going back to 1971 and the images of all U.S. patents since 1790. In addition, examiners can access English-language translations of abstracts of 3.5 million Japanese patents with images; English-language translations of abstracts of 2.2 million European patents with images; and over 5,200 non-patent literature journals available through commercial services and materials we load in-house. In August, we will add IBM technical disclosure bulletins to the desktop resources available to our examiners.

We has slashed the time it takes us to examine patents from over 18 months a year and a half ago, to 10.9 months and dropping. Our goal is 85 percent of patent

in 12 months by 2001 and all patents in 12 months or less by 2003. We are also reducing the time it takes to print patent applications but starting the printing process immediately after mailing the notice of allowance. This has already shaved almost three months off of the time it takes to issue a patent.

We will begin piloting the electronic filing of patent applications and the automated status check in the fall of 1999, allowing you to find out the status on-line. Electronic filing is much more complex because patent applications are not standardized, applications are complex and the examination process more complicated. Nonetheless, we are committed to the development and implementation of a complete electronic filing system for patents by 2003.

Question 2. Mr. Dickinson, the Administration has attempted to and sometimes has been successful in diverting patent fees to fund other government programs, which has raised many concerns. Please discuss this issue and why it is important for the PTO to maintain the fees that it generates.

Answer 2. I am very concerned about the diversion of our customers fees. The PTO is a fully fee funded agency. Our customers, both domestic and international, pay these fees in advance of receipt of the finished product or service and they expect their fees to be used only for the services we provide, much like a business. In the year 2000, for example, it is very likely that our customers will submit nearly 600,000 patent and trademark applicants to the PTO. That is a significant level of activity. The customer files his or her application in anticipation of a timely and high quality patent issue or trademark registration. When PTO fees are used for other purposes, timeliness and quality suffer. In addition, our plans to reengineer and automate our functions to prepare for a technologically dependent 21st century also suffer when fees are withheld. More importantly, delayed patent and trademark applications adversely effect our economy by slowing the sharing of new innovations and commercialization of new products and services.

In international intellectual property arenas, the US criticizes developing nations for using their patent fees as supplements to the national treasury. We have to ask ourselves if we are properly serving our customers when we use PTO fees for purposes other than those intended. I am concerned about future withholding of earned fees and intend to continue discussions within the Administration to formulate a strategy on PTO fees that addresses this issue, while keeping in mind the desires of both Congress and the Administration to balance the budget and reduce the national debt.

Question 3. Mr. Dickinson, what are the primary issues facing the PTO today that you plan to address if confirmed?

Answer 3. I believe that the Patent and Trademark Office needs to focus on three issues. First, we need to manage growth. That is, we need to meet the challenges created by the dramatic growth in the number of patent and trademark applications that we receive. We are aggressively moving to meet the many growth related challenges facing this agency. Second, we need to manage quality. That is, we need to change the way we look at "quality" in the Office and improve the quality of our products and services we offer. Finally, we need to manage the future. That is, we need to prepare our intellectual property systems—domestic and international—for the demands of the new global electronic marketplace.

As to managing quality, we are adding staff and improving our tools and that will certainly solve many of our quality related problems. But, these steps are insufficient unless they ultimately result in ensuring that the quality of our products and services remains high. When I arrived at the Office, I began to ask questions about the types of quality improvement efforts that the Office had in place. I found the patent and trademark quality review organizations and disparate efforts to improve the quality scattered around the organization. For example, the quality review organizations were only looking at the "end product" By the standards of the late 1960s or early 1970s, these were probably model programs. Today, however, most management experts agree that you cannot improve the quality of an organization and its products just by looking solely at the final product, particularly if you are trying to hold down costs. It was obvious that the Office needed an integrated quality management system. As a result, I reorganized and consolidated our quality efforts under one "Quality Czar," responsible for coordinating quality throughout the agency.

Managing the future is a complicated task. Today, goods and information can flow with unprecedented ease across borders. Effective protection for inventions, trademarks, works of authorship, and confidential business information must be available in all markets at a reasonable price. All of these forces are being driven by the fact that our economy is increasingly intertwined with the global economy. As to patents and trademark protection, our current model of essentially national and regional

systems does not meet the needs of today's inventors or businesses whether they are small or large because we are now operating in a global economy.

Increasingly, the international patent system—or lack thereof—is too cumbersome and expensive. Inventors cannot afford to obtain protection in all of the necessary markets around the world. Even big companies are now forced to forego protection for some markets or for some inventions and will have to forego more unless relief is provided. For smaller enterprises and individuals, the situation may be even worse. Protection for their inventions in critical markets may not be possible financially in the time frames dictated by law. At best, this situation will lead to decreased profitability for all and, at worst, extinction for smaller enterprises that traditionally supply significant technological advances. I am determined to seek to promote the strongest possible intellectual property protection for our citizens and businesses in the international marketplace.

RESPONSES OF Q. TODD DICKINSON TO QUESTIONS FROM SENATOR CHARLES E. GRASSLEY

Question 1. Mr. Dickinson, certain allegations of inappropriate behavior have been brought to my attention that I'd like you to address. I understand that, according to these allegations, employees of the Patent and Trademark Office, specifically members of Patent Professional Association, may have been inappropriately restrained from contacting members of Congress about concerns they had regarding PTO office move and how PTO is run. If true, these are serious charges. It is important that the employees of the PTO not be subject to intimidation, threats of coercion, and that they be able to exercise their rights under the law. First, could you respond to these allegations? Have these concerns been resolved?

Answer 1. I have never in any way restrained, threatened, intimidated or coerced any employee of the PTO, including members of the Patent Office Professionals Association (POPA), with respect to contacting Members of Congress to express their views on any subject whatsoever.

The specific allegations you reference appear to originate in a message (copy attached) sent anonymously to a Member of Congress voicing displeasure with the result of negotiations we conducted with POPA this past spring over the PTO space procurement. These negotiations resulted in an agreement between management and leadership of POPA which included POPA's commitment, as an organization, to not oppose the PTO space procurement. It is my understanding that this negotiated resolution was taken to the Executive Committee of POPA for their consideration, and that ultimately both the Executive Committee and the full membership of the union voted to approve the agreement. The settlement agreement with POPA simply indicates that POPA as an organization has agreed to remain publicly neutral on our space consolidation project. Nothing in that agreement in any way restrains employees at the PTO from contacting Members of Congress about concerns they have regarding the PTO space procurement or about how the PTO is run.

At some point after this vote, the attached e-mail was apparently sent anonymously to several Members of Congress voicing displeasure with the outcome and alleging inappropriate behavior on my part. I was contacted by those Members and promptly responded that there was no basis to the anonymous allegations. Those same Members referred the allegations to the General Accounting Office (GAO) to investigate and the GAO, after consultation with the Department of Commerce's Inspector General (10), responded by closing out the investigation (copy attached). Additionally, the IG advised the GAO that "many of the allegations either appeared too vague to indicate a problem or related to matters that did not merit investigation." Moreover, when the President of POPA heard of these allegations, he, on his own initiative, wrote a letter (copy attached) to those Members verifying that those allegations were indeed false.

I understand your concern about these allegations, and I take them very seriously. Let me reiterate that at no time have I caused any member of POPA or any employee of the USPTO to be restrained in any way from contacting Congress on any matter whatsoever. I agree that it is—important that employees of the PTO be able to exercise their rights, and I will ensure that their rights continue to be respected.

Question 2. Are you committed to ensuring that PTO employees will be free from an environment of intimidation and coercion, and that they will not be restrained from exercising their legal rights if you are confirmed as Commissioner of PTO?

Answer 2. Absolutely. If confirmed, I will continue to ensure that PTO employees are free from an environment of intimidation and coercion and that they will be able to exercise their legal rights.

Question 3. What have you done, to date, to accomplish this goal?

Answer 3. Since coming to the PTO, I have made a significant effort to forge a new, positive working relationship with all of our unions, including POPA, by taking a new approach to this agency's labor-management relations.

Specifically, I charged the Office of Human Resources with developing a proposal for consideration by our executive committee dealing with those issues. Since that time we have successfully engaged an expert Labor Relations Blue Ribbon Panel which included the Department of Commerce's Office of General Counsel. This team conducted an assessment of the labor environment, interviewing over 40 management and union officials within PTO, and conducted a best practice study of successful partnership councils looking specifically at National Partnership Award winners.

Armed with this information, we have begun implementing a labor-management relations initiative which has, among other goals, re-instituted our defunct Partnership Council, created a special group comprised of PTO managers and the three union presidents which meets biweekly, and increased staffing in our Human Resources Department. We held our first Partnership Council meeting on September 30, 1999, I believe that all of these steps have had a dramatic, positive, and permanent impact on our labor-management relations.

Q. TODD DICKINSON, ACTING PATENT COMMISSIONER OFFER TO THE PATENT OFFICE PROFESSIONAL ORGANIZATION (P.O.P.A.—UNION)

POPA is the union for the Patent Office examiners. They are engaged in a dispute over a new lavish patent office building which is $1.3 billion. The most expensive government building in history. The building is to be paid for by inventors, who will lease it for 20 years and at that time will then have the right to buy the building at the going market price.

The Union is also engaged in stopping "corporatization" of the patent office and their attendant loss of civil service status if the "corporatization" goes through Q. Todd Dickinson, the Acting Commissioner of Patents addressed these issues to the President of the Union, in a meeting on Monday, February 21 and Tuesday, February 22nd. Particulars of his offer to the examiners follows which was an ultimatum offer which Acting Commissioner Dickinson claimed that Secretary of Commerce, Richard Daley sanctioned to the examiners have no recourse.

1. The Union has a bank of 10,000 hours of work. The Acting Commissioner told them he would take away their bank and see how hard they would have to work to get it back in two years. (Note: If there is no bank of hours there is not a Union organization.)

2. The Union and it's members are prohibited from speaking to their Congressman.

3. The Acting Commissioner informed the Union executives that they would be supportive of Q. Todd Dickinson. After this meeting he has since gone to Congress and testified that all the Unions substantially support him.

4. The Union is to drop all litigation in disputes with the management of the patent office on behalf of the Union's members. The Union cannot represent its members under this edict.

5. There will be no more Congressman Istook (R–OK) stunts in Appropriations which took funding for moving from the current patent office.

The Acting Patent Commissioner on February 22 demanded a meeting of the union executive committee regarding the space for the proposed new patent building. At that meeting on March 1 the Union voted against the building. The Commissioner then demanded another meeting and met with union officials to discuss their obligations. The union vote was over thrown by three votes at the meeting demanded by the Acting Commissioner. As a result of the meeting he demanded, the Acting Commissioner was able to come to Congress and say all the unions substantially support him.

PATENT OFFICE PROFESSIONAL ASSOCIATION,
Arlington, VA, May 20, 1999.

Re: Patent and Trademark Office

The Hon. WILLIAM L. CLAY,
Committee on Education and the Workforce,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN CLAY: Recently, a letter from you to Mr. Q. Todd Dickinson, Acting Commissioner of Patents and Trademarks, has been circulated that pertains to allegations made by the National Patent Association about Mr. Dickinson's mistreatment of POPA and its members. Thank you for being concerned about our welfare. We are grateful that you are interested.

However, the allegations about Commissioner Dickinson's mistreatment of us are false. I am the President of POPA and I did not contact the National Patent Association about this matter. Nor has anyone else within POPA been authorized to contact that association about this matter.

POPA and the PTO have been working hard to establish an honorable working relationship. We have reached agreements on legal and technical training, transit subsidies, increased part-time slots, and office space while Commissioner Dickinson has been in charge. He has made a positive difference in labor-management relationships here at the PTO.

For approximately the last two years, POPA and the PTO have been engaged in negotiations concerning, among other things, the allocation of office space in a new consolidated office complex for the whole agency. The PTO is currently in the midst of the procurement process for that office complex. At the end of the negotiations, Commissioner Dickinson demanded that we stop our opposition to the procurement process in return for favorable provisions on office space. The majority of our Executive Committee, POPA's governing body, thought that this was an acceptable truce since one does not reach a settlement and then fight against the settlement. But some within our organization are very upset about our decision to remain silent on the procurement. I am afraid that their passionate disagreement has lead them to do things that are unwise.

Unfortunately, the information given to the National Patent Association is either a distortion created by what must have been multiple retellings of our space consolidation project negotiations, or deliberate disinformation. Either way, it is disturbing to have such false information circulated.

Again, we appreciate your support in investigating these charges. It is good to know that you are willing to act to ensure honorable treatment.

Sincerely,

RONALD J. STERN,
President, Patent Office Professional Association.

UNITED STATES GENERAL ACCOUNTING OFFICE,
OFFICE OF CONGRESSIONAL RELATIONS,
Washington, DC, September 9, 1999.

The Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce, House of Representatives.

DEAR MR. CHAIRMAN: This correspondence responds to your July 26, 1999, letter in which you presented various allegations involving the United States Patent and Trademark Office (USPTO). Generally, the allegations related to the implementation of new automated systems, procurement practices, the hiring and promotion of African-Americans, Illegal lobbying, and other issues. You stated that these allegations appeared to be very serious and warranted thorough review by our office.

In considering the allegations raised in your letter, we consulted with the Office of the Inspector General (OIG) at the Department of Commerce. We contacted the Commerce OIG because that office routinely investigates internal matters at USPTO, such as the allegations raised in your letter. Moreover, as we explained to your staff, our limited resources presently constrain us from giving your request immediate attention. It was our intent to gather insights on these allegations from representatives at the Commerce OIG and to identify any of their audits or investigations that might address them.

A representative of the OIG told us that the office had no efforts, either planned or ongoing, which directly related to the allegations. The OIG stated their interests in gaining a greater appreciation of the nature and severity of all the allegations in your letter. They welcome the opportunity to discuss them further with your office.

The OIG also told us that many of the allegations either appeared too vague to indicate a problem or related to matters that did not merit investigation. For example, for the allegation concerning the implementation of new automated systems, the OIG noted some difficulty in identifying that a problem existed because no specific computer system was named. The office stated its continual commitment to monitoring the implementation of new systems being brought on line, most recently those related to the forthcoming decennial census. Also, in the contracting area, OIG informed us that the office had recently conducted reviews and investigations in response to claims similar to those made in your letter and found no conflicts of interests.

The OIG also suggested that some allegations might be best addressed by other offices within the Commerce Department. Specifically, they recommended that issues relating to hiring and promoting African-Americans could be appropriately addressed by the department's Office of Civil Rights, and matters related to ethics in procurement and illegal lobbying might be referred to the Office of General Counsel.

We would also like to suggest an additional course of action for your consideration. You may wish to present these allegations to the newly appointed USPTO commissioner and ask that he consider examining the merits of these issues as part of his leadership transition.

We hope that our handling of this matter meets your satisfaction. As agreed with your staff, with this correspondence, GAO will close out your request that we probe into the allegations made concerning USPTO. As always, we thank you for your interest in our office. Please do not hesitate to contact us should you require assistance with other issues.

Sincerely yours,

GLENN G. DAVIS,
Legislative Advisor.

RESPONSES OF Q. TODD DICKINSON TO A QUESTION FROM SENATOR EDWARD M. KENNEDY

Question 1. It has been brought to our attention that there have been a number of employee problems with operations at the Patent Office. In fact, a number of unfair labor practice charges have been filed against the PTO. Specifically, the PTO spent approximately 1.5 billion over the last 15 years to develop and maintain automated data processing and search tools to support the business of examining and issuing patents. Over the next five fiscal years, the PTO plans to spend another 1.0 billion to deploy and maintain new systems which have less capability than the systems being replaced. The patent examiners of the PTO have publicly outlined the many inadequacies in the new system. In March 1999, patent examiners filed charges of unfair labor practices with the Federal Labor Relations Authority against the PTO for removing search systems without negotiating the impact of their removal and replacement. Additionally, in September 1999, patent examiners filed charges of unfair labor practices against the PTO for refusing to bargain over automated systems, which the PTO is developing and deploying. The Patent Office should be one of our most efficient agencies and legitimate employee concerns that affect the efficiency of the office should be addressed. Mr. Dickinson, what steps have you or will you take to address these employee concerns?

Answer 1. Your question touches on two very important issues facing us in the PTO: leveraging information technology and changing the culture of our labor relations. As set forth in our fiscal year 2000 Corporate Plan, we have established an ambitious agenda for transitioning the PTO into the next century. Automating our work processes is a key strategy to help us achieve PTO's performance goals. PTO also recognizes that labor and management must work collaboratively to successfully meet the demands of the PTO of the future.

To that end, I have initiated an assessment of our current labor-management relationships and conducted a best-practice study of successful labor-management partnerships found in both the public and private sectors. These efforts, along with my own numerous discussions and interactions with PTO employees, union representatives, and managers, have convinced me that, although we have had several success stories, we can and must improve our working relationships with all three unions.

The unfair labor practices referenced in your question are being reviewed for possible resolution. PTO has every intention of working with the unions to address all legitimate employee concerns, and we are reemphasizing our efforts to involve the unions in the process at the earliest possible point. While even one unfair labor

practice is one too many, I would note that we start the new fiscal year with 30 percent fewer active ULPs than we had at the beginning of fiscal year 1998. We are striving to improve upon this record in the coming fiscal year.

Last month, I convened a group of over 100 senior managers and union representatives to launch a program aimed at enhancing our labor relations within the PTO. During this meeting, I stressed the importance of demonstrating in our daily actions skills such as honesty, effective listening, willingness to share ideas and information, and openness to other viewpoints. By urging all of the attendees to renew their commitment to these behaviors and attitudes, and by continuing to encourage training and facilitated activities in areas such as alternate dispute resolution, we will certainly make some progress in this regard.

Additionally, I shared the need to link this relationship building with specific work related issues and opportunities. By having employees, union representatives, and management representatives jointly work as teams to solve problems, develop systems and programs, and meet new challenges, all parties are involved at the pre-decisional phase of the initiative, thereby further strengthening our relations. Just as importantly, by obtaining this pre-decisional input, the need for protracted and unproductive bargaining is greatly reduced. In fact, since June of this year, we have been following this concept in the development of our TEAM–XP project, a small-scale test of electronic patent examination and processing. On a regular basis, examiners, including union designees, system developers, and management officials have met and discussed the details of this important project at the ground phase.

While the changing of attitudes and approaches are certainly necessary, I have also recognized the need to provide a formal structure for forging a more effective labor management relationship. First, I am re-instating our PTO Partnership Council. My vision for the council is for labor and management to work collaboratively together to meet the demands of the PTO of the future. I have also added the Chief Information Officer to the Partnership Council as many of the issues facing the PTO address changes to the work environment brought about by automation and I have proposed that the following objectives of this Council be considered:

- Jointly defining an effective labor-management relationship and the key principles for achieving and maintaining such a relationship
- Benchmarking the best practices of other organizations
- Conducting joint training
- Developing a communications strategy
- Identifying and sponsoring joint projects
- Reviewing progress on a regular basis

Further, I will continue to initiate periodic meetings with the Assistant Commissioners for Patents and Trademarks, the Chief Financial Officer, the Chief Information Officer, the Director of Human Resources, and the three employee union presidents to address difficult areas and evaluate the success of our efforts towards creating a professional, cooperative and business-like labor-management environment. These efforts will build on, among other things, past experiences and successes in partnership which include more than forty midterm agreements and one term agreement reached through interest based and/or partnership techniques.

PTO decided to replace the patent text search software in 1994 because it did not have the functionality available in modem text search tools, was difficult and costly to operate and maintain, was limited to 200 concurrent users, and was not year 2000 compliant. Since January 1995, we have annually presented our complete plans for automation PTO-wide in our Strategic Information Technology Plan. The plan to replace the patent examiner text search software was first presented in the fiscal year 1995–fiscal year 2000 Strategic Information Technology Plan. Progress toward meeting that objective has been included in each annual update to the PTO Strategic Information Technology Plan. The plan has been electronically disseminated to all internal and external parties both on our internal web and on our external web site since 1997.

Historically, we have made several efforts to alert our examiners to the changes that they will be experiencing in the years to come. For example, in June 1998, all examiners were briefed on the upcoming changes to their work environment in a series of briefings in Crystal City. All of the projected changes, including the replacement of the core text search engine and desktop tools, were presented and discussed with time allowed for questions and answers, Further, all examiners were given non-production time to allow them to attend, and they were strongly encouraged to attend.

On the patent automation front, we have indeed been developing and maintaining automated search tools for the past fifteen years and we will continue to do so to

keep pace with the exponential growth of available information. In the early 1980's, the PTO launched one of its first systems, a tool to 'text' search a limited number of patents. Access was provided through shared custom-built workstations and an examiner had access to all US Patents subsequent to 1970. In the late 80's and early 90's, a limited number of examiners had access to both the text and images (drawings), again of all US Patents subsequent to 1970.

From examiner focus sessions held in March and April 1994, the number two ranked priority of patent examiners was to expand the content of and access to PTO's automated search data bases. The patent text search engine was a commercial product modified to meet the PTO's requirements and was expensive to maintain and difficult to learn and use. In addition, the search engine was limited to 200 concurrent users. The PTO provided seamless access to external databases in February 1997, greatly expanded the content of PTO databases in My 1998, and replaced the patent text search engine with a modem COTS product in March 1999. Working with representatives of the union, we will continue to enhance or replace those tools to assist our examiners in providing the highest quality patents.

Today, from a desktop computer, in addition to the full text of 2.5 million U.S. patents, examiners can search commercial databases, industry specific technical disclosure bulletins, English translations of 5.0 million Japanese patent abstracts and 3.0 million European patent abstracts, and 9.3 million foreign patent abstracts from the Derwent collection of patent documents. Additionally, examiners have desktop access to over 300,000 articles from scientific and technical journals published by Elsevier in the areas of chemistry, medicine, and biotechnology.

Patent examiners can also search millions of pages of all U.S. and foreign patent images. These image and text databases continue to grow as approximately 3,000 newly granted U.S. patents are added to the system on a weekly basis, and other documents are added as we receive them. With the deployment of the initial desktop capability, patent image search system use increased 48 percent in the first 6 months. Most importantly, the availability from the examiner's desktop workstation of this vast amount of patent documentation and other technical information has improved the quality of the examiner's search. The "Patent 1998 Customer Satisfaction Survey Report" indicated that PTO's customers showed an 11 percent increase in satisfaction with how examiners "conduct a thorough search during the patent examination process," up from their opinion in 1996.

Managing this tremendous growth has resulted in numerous challenges. Many of our current or past search tools have served the PTO well during their tenure. However, as the limits of technology continue to advance, new tools become available which provide an even greater access to information. For example, when the shared workstations were first used the number of examiners using the system were approximately 2,000. Today, the number of examiners using the desktop systems has grown to over 3,800, and their expectations concerning system capabilities have increased as technology has spread throughout our culture.

With the transition to a modem text search product, additional features requested by the examiners—not available from the previous search engine—are being deployed to assist the examiners search a broader universe of prior art. Some of the features requested for the new product are: query by example; relevance ranking of returned answers; British-American equivalent term substitutions; multiple on-line thesauri; automatically search abbreviations and the fall word(s) abbreviated; support for many more concurrent users; plus better system support for adding and indexing, and retrieving multiple information sources from a single search statement.

As the ranks of the Patent Business have grown, system infrastructures must be able to provide the necessary level of support and service required for the burgeoning population of patent examiners. Further, since many of our early development efforts were customized for the PTO and are not year 2000 compliant, maintenance of these systems has been costly and would be even more costly to upgrade. Inevitably, comparisons will be made between today's tools which examiners have grown accustomed to, and future tools which examiners may be reluctant to accept. However, to address these challenges, the PTO has and must continue to deploy new systems.

To mitigate the impacts of these changes, we have enlisted the support and considered the recommendations of numerous users in developing our new search tools. Through mechanisms such as examiner focus sessions, roundtable discussions, and an automated suggestion box, system developers have been provided valuable information on user preferences and requirements which have been integrated whenever possible. In addition, patent examiners participated in the "hands-on" evaluation of four text search software products and recommended to PTO's Chief Information Officer which software product best fit their needs. Through all of this, we are commit-

ted not only to fulfilling our legal obligations with respect to the unions, but also to strive to work together in the spirit of partnership.

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