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KEEPING A STRONG FEDERAL LAW ENFORCEMENT WORK FORCE

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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KEEPING A STRONG FEDERAL LAW ENFORCEMENT WORK FORCE

WEDNESDAY, OCTOBER 17, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1 p.m., in room 2247, Rayburn House Office Building, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representative Souder.

Staff present: Chris Donesa, staff director; Nick Coleman, professional staff member; Conn Carroll, clerk; Tony Haywood, minority counsel; and Earley Green, minority assistant clerk.

Mr. SOUDER. Good afternoon, and thank you all for coming. Today our subcommittee will explore the extent to which growth, staffing issues and management are likely to impact the ability of Federal law enforcement agencies to carry out their missions in response to recently increased demands. We invited three of the most important Federal law enforcement agencies, the U.S. Customs Service, the U.S. Marshals Service and the Immigration and Naturalization Service, which also administers the U.S. Border Patrol, to testify here today. And we thank Commissioner James Ziglar of the INS, Assistant Commissioner Robert Smith of Customs, and Assistant Director Gary Mead of the Marshals Service for being here today.

The subcommittee is vitally interested in ensuring the welfare of these agencies. We will continue to explore these issues and related ones with respect to other Federal law enforcement agencies.

Even before the events of September 11, 2001, the subcommittee was exploring ways to assist these key agencies in their efforts to protect our Nation's borders, to thwart narcotics and other smuggling, to prevent illegal immigration, to track down fugitives from justice and to provide security for our courts and other Federal installations. The recent terrorist attacks have made very clear how important all of these missions are. Border security is vital if we are to prevent international terrorist organizations from carrying out further attacks on our people. Preventing narcotics smuggling is vital not simply to keep these poisons out of the hands of our young people, but also to cutoff funds for the future terrorist networks. And heightened security at Federal Government buildings is essential in this new environment.

This hearing will consider how much each of these agencies will need to grow to effectively carry out their missions, obstacles and challenges to growth, and to what extent new emphasis on preventing terrorism affects the ability of these agencies to carry out other vital missions. There is a broad consensus in the Congress for expanding the number of Border Patrol agents, INS inspectors and Customs inspectors at our borders and ports of entry, particularly along the northern border. Indeed antiterrorist legislation passed just last week would permit the tripling of the number of agents along the Canadian border.

I think every member of this subcommittee would agree that expanding the Federal law enforcement work force is essential if we are to meet the new challenges; however, rapid expansion of the number of agents is often easier said than done. For example, in 1996, Congress passed legislation requiring that the Attorney General increase the number of Border Patrol agents by 1,000 agents per year, every fiscal year through 2001. Although INS was able to achieve this result at the start, hiring dropped off significantly thereafter. INS reported that it was unable to recruit enough qualified applicants and retain them through the hiring process. In part this was due to the very tight labor market that existed at the time, in part due to deficiencies in pay and benefits. In 2000, INS proposed improving the pay and benefits of Border Patrol agents, proposals that have not yet been implemented. Expansion of these agencies may therefore require significant improvements in the pay scale of Federal officers. Moreover, rapid expansion will be less effective if these agencies are unable to retain experienced officers they already have since new recruits will require significant supervision.

I believe we should also consider other ways to assist these law enforcement agencies, including improving the infrastructure at our border crossings, making new technologies available to the agencies, and expanding the use of existing technologies. As I was talking to Congressman Farr last night, one of the things he strongly suggests is that whenever we can use technology, as opposed to people, we ought to do that, even if the short-term cost is more expensive because of a lot of these concerns on hiring.

These issues are all extremely important and extremely urgent, and I look forward to hearing from our witnesses today about ways to address them. When Mr. Cummings arrives, we will take his opening statement, and I think we will go ahead with the proceedings.

Before proceeding, I would like to take care of a couple of procedural matters. First I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record, and that any answers to written questions provided by the witnesses also be included in the record. Without objection, it is so ordered.

Second, I ask unanimous consent that all exhibits, documents and other materials referred to by Members and the witnesses may be included in the hearing record, and that all Members be permitted to revise and extend their remarks. Without objection, it is so ordered.

And I would also like the record to show that Mr. Cummings and I have really no difference in approach, nor does our subcommittee, in tackling a lot of these issues. As I mentioned in my opening statement, we are looking at having a series of border hearings, and at times we may only have myself present, or, when possible, we are having the Members on each of the borders at that place present who may not be members of the committee. But we are unanimous in trying to get as much detail as we can get on what the need of your agencies are and how to keep the commerce flowing as well, and we are going to proceed ahead with the whole series of things yet this fall and looking forward to working with each one of you.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement
Chairman Mark Souder

"Keeping a Strong Federal Law Enforcement Workforce"

Subcommittee on Criminal Justice, Drug Policy,
and Human Resources
Committee on Government Reform

October 17, 2001

Good afternoon and thank you all for coming. Today our Subcommittee will explore the extent to which growth, staffing issues and management are likely to impact the ability of federal law enforcement agencies to carry out their missions in response to recently increased demands. We have invited three of the most important federal law enforcement agencies, the U.S. Customs Service, the U.S. Marshals Service, and the Immigration and Naturalization Service, which also administers the U.S. Border Patrol, to testify here today, and we thank Commissioner James Ziglar of the INS, Assistant Commissioner Robert Smith of Customs, and Assistant Director Gary Mead of the Marshals Service, for being here today. The Subcommittee is vitally interested in ensuring the welfare of these agencies. We will continue to explore these issues and related ones with respect to other federal law enforcement agencies.

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However, rapid expansion of the number of agents is often easier said than done. For example, in 1996, Congress passed legislation requiring that the Attorney General increase the number of Border Patrol agents by 1,000 agents per year every fiscal year through 2001. Although INS was able to achieve this result at the start, hiring dropped off significantly thereafter. INS reported that it was unable to recruit enough qualified applicants and retain them through the hiring process. In part this was due to the very tight labor market that existed at that time, in part due to deficiencies in pay and benefits. In 2000, INS proposed improving the pay and benefits of Border Patrol agents, proposals that have not yet been implemented. Expansion of these agencies may therefore require significant improvements in the pay scale of federal officers. Moreover, rapid expansion will be less effective if these agencies are unable to retain the experienced officers they already have, since new recruits will require significant supervision.

I believe we should also consider other ways to assist these law enforcement agencies, including improving the infrastructure at our border crossings, making new technologies available to the agencies, and expanding the use of existing technologies. These issues are all extremely important and extremely urgent, and I look forward to hearing from our witnesses today about ways to address them.

Mr. SOUDER. With that, would each of the witnesses please rise, raise your right hands, and I will administer the oath. As an oversight committee, it is our standard practice to ask all witnesses to testify under oath.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that each of the witnesses have answered the question in the affirmative.

The witnesses will now be recognized for opening statements, and I would like to say for the record that the statement from Customs has not been cleared by OMB, and I wanted to show that for the record, and I also just want to say that I am understanding that we are in a very delicate area. We are trying to work through the budget questions. I have, in fact, asked the agency and pushed the agency, as our other Members of Congress, to give us information. We all understand the difficulties. Mitch Daniels is a close friend of mine, being fellow Hoosiers.

At the same time, right now we need to find out what the needs are, and the legislative branch needs to have the input from the professionals in the field, too. And we will continue to work with OMB, with each of your agencies to try to figure out in the end how to resolve these. I am sure Senator Byrd will have a few opinions here and there, as will Chairman Young. But as an oversight committee, the job of our committee is to identify needs that can then go through the authorizing and appropriating, and we can't do that if we can't hear what the pressures are in the system. So I appreciate each of you coming here today.

Mr. Ziglar, would you begin?

STATEMENT OF JAMES ZIGLAR, COMMISSIONER, U.S. IMMIGRATION AND NATURALIZATION SERVICE

Mr. ZIGLAR. Thank you, Mr. Chairman, for this opportunity to testify today about the challenges that we face at the INS in successfully recruiting and retaining high-quality people, particularly with respect to the Border Patrol agents and immigration inspectors who are the front lines of the country's border control.

I would ask that my full statement be included in the record.

Mr. SOUDER. So ordered.

Mr. ZIGLAR. Mr. Chairman, I realize that the committee expected someone from our human resources department to testify today; however, I regard the issues before you as so important to our ability to do our job that I wanted to appear here personally.

As you know, my background includes management, substantial management, in the private sector. The one lesson I have learned from my experience is that people make the organization, not technology, not anything else. Only people make the organization. If we don't treat our people with dignity, respect and generosity that they deserve, then our efforts are going to fail. And I am here to make that point just as strongly as I possibly can.

Mr. Chairman, the tragic events of September 11th have focused a great deal of our attention in our country on our immigration policies and our practices. The people of this Nation and Members of Congress are very concerned about the security of our borders. INS definitely shares your concern. Within hours of the attacks, the INS was working closely with the FBI to help determine who

perpetrated these crimes and to bring these people to justice. Within 24 hours of the attacks, INS launched something we call Operation Safe Passage and deployed several hundred Border Patrol agents to different airports, eight different airports in major cities around the country, along with the U.S. Marshals and working with the Customs Service, to increase the security at the airports to help prevent terrorist attacks, and otherwise to restore a sense of security to our citizens who are in the traveling public.

INS has dedicated, since September 11th, 1,000 of its 1,977 special agents to the terrorism investigation, and we have developed over 1,500 significant leads ourselves. At America's ports of entry, INS inspectors continue to work tirelessly to screen arriving visitors while encouraging the flow of legitimate commerce and travel. And, Mr. Chairman, you pointed that out in your opening statement, and I can tell you that is of great concern to us. It is of particular concern to me that, coming out of the business world and off of Wall Street, that we not destroy our economy by overreaching. What we need to do is we need to figure out how we facilitate low-risk travel, pay attention to high-risk travel, but not impede the flow of commerce.

I am very proud of the INS's response to this tragedy, and I am proud of all of the INS employees who have selflessly worked many, many hours to serve their country in this time of crisis. Mr. Chairman, there is a great deal expected of the INS today, and we are going to rise to that challenge, but just as a general wouldn't ride into battle without troops and supplies and that sort of thing, the INS can't possibly secure our borders without having the personnel and the facilities and the infrastructure to do that. We must evaluate how we staff the Nation's 6,000 miles of land border and over 300 ports of entry.

Hiring law enforcement personnel is one of the most sensitive and important functions of a law enforcement agency. Our ability to serve and protect our country is only as good as the people we hire. Therefore, we take extraordinary care at the INS to ensure that the men and women who are securing our borders are the best and the brightest. This year, based solely on anticipated action on the President's fiscal year 2000 budget request, plus attrition, we will have to hire and train approximately 3,500 new Border Patrol agents and immigration inspectors.

Today I would like to discuss three challenges that we face in the effective recruiting and retention of these people: one, hiring procedures; two, pay structure; and three, job classifications.

To maintain and ensure the integrity and professionalism of our officers as well as the safety and security of our country, the INS pre-employment screening process for law enforcement positions is rigorous. Depending on the occupation, applicants must pass a written exam, oral boards and a drug test. They must meet medical and physical qualifications, and they must undergo an extensive security background investigation. Most of our officer core positions, including Border Patrol agents and immigration inspectors, also require a proficiency in or an ability to learn conversational Spanish. I can assure you I would not meet the qualification.

INS has made great strides in meeting these recruitment and hiring demands through our streamlined and aggressive recruit-

ment program, including the use of uniformed agents and inspectors for recruiting. In fact, on a full-time equivalent basis, we use about 60 of our Border Patrol agents, to recruit, and that has been a very effective method of doing that. INS has developed a state-of-the-art recruitment effort encompassing extensive use of media and other things. We have increased our presence on college and university campuses, expanded our participation in professional organizations and increased recruitment of military servicemen and women.

You might be interested to know, Mr. Chairman, that approximately 37 percent of our recruits have been out of the military. So that is a rich source for us. I think about 30 percent out of other law enforcement, local law enforcement agencies. On occasion we have offered recruitment bonuses to new candidates. In fiscal year 1996, we received 23,000 applications, for example. In fiscal year 2000, we received 90,000. In short, we have worked diligently to improve, and I think we have built the image of the INS as an employer of choice.

In spite of these efforts, though, the number of candidates that make it through this rigorous pre-employment requirements process is pretty small. In 1999, to fill 2,000 Border Patrol agent positions, the INS had to attract 75,000 candidates. To fill 1,000 immigration inspectors, it needed to attract 16,000 candidates. In addition, INS competes with other Federal agencies—including some of the folks here at the table—State and local governments, and the military for high-quality candidates who can meet our requirements.

With respect to pay structure, as you know, the Federal Government has a number of pay structures for Federal law enforcement agents. For the INS, the journey grade level that a Border Patrol agent or an immigration inspector can currently attain without being a supervisor is generally a GS–9. Many Border Patrol agents and inspectors spend their entire careers topped out at a GS–9. Because our Border Patrol agents and inspectors are well trained, they are routinely recruited by other Federal law enforcement agencies, most of which have higher level journey positions. Therefore, we are working with the administration to address this problem.

I personally strongly support increasing the journey level for our inspectors and for the Border Patrol to a GS–11. Many of our law enforcement officers are working long hours in response to the events of September 11th. Many are not being paid for these overtime hours because of a 2-week cap, and all are dangerously close to reaching the calendar year overtime earning limit of $30,000.

I appreciate that Congress is addressing the short-term problem for 2001 in both the House and Senate versions of the antiterrorism legislation. In the long term, Mr. Chairman, the Commissioner of INS needs the same flexibility accorded the Commissioner of the Customs Service, and that is the authority to waive the overtime cap administratively. Our immigration inspectors are authorized by statute to, "enforce the immigration laws and regulations of the United States, and any other laws or regulations designated by the Attorney General, and in the performance of these duties, is empowered to conduct investigations; carry fire-

arms; effect warrantless arrests; or execute and serve any order, warrant of arrest or search, subpoena summons, or other process issued under the authority of the United States." That is from the statute.

In the course of their normal duties, inspectors routinely encounter, arrest and interrogate persons who violate both the criminal laws and immigration laws of the United States. Let me give you some statistics that make this point. In the year 2000, immigration inspectors intercepted 123,548 fraudulent documents and persons carrying them. We encountered 155,830 lookout intercepts from the IBIS systems. We stopped 3,764 aliens for narcotic smuggling. We intercepted 34,473 individuals being smuggled through human smuggling rings. We intercepted 790 stowaways. We stopped 10,627 criminal aliens with offenses involving controlled substances and trafficking. And we initiated over 636 criminal prosecutions under the Federal laws.

Mr. Chairman, you can see why we are working with the administration to ascertain the appropriate job classification for our immigration inspectors. I personally believe that it is absolutely necessary to accord our inspectors 6C Federal law enforcement status.

Another factor that affects our ability to carry out our law enforcement mission is adequate infrastructure. Any increase to INS personnel should also include necessary facilities and other infrastructure. While Congress has provided funding to expand the infrastructure, it has not kept pace with the growth in agents and workload, resulting in overcrowded conditions and many older outdated facilities. Many facilities that we have have potentially serious safety and health deficiencies caused mainly by age and overcrowding. In fact, as we stand today, without regard to any additional personnel or any additional activities or missions that we have, we are at this moment 33 percent behind the curve in terms of having our facilities match our personnel and support our personnel. The cost of providing these facilities is high, but it is important to INS's ability to fulfill its mission.

In conclusion, there is no doubt that we face immense challenges, but I can assure you that the dedicated and talented men and women of this agency are up to the challenge.

Mr. Chairman, I appreciate this opportunity to appear before you and I look forward to answering your questions. Thank you.

Mr. SOUDER. Thank you very much for your testimony.

[The prepared statement of Mr. Ziglar follows:]

STATEMENT

OF

JAMES W. ZIGLAR
COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

REGARDING

RECRUITMENT AND RETENTION CHALLENGES

OCTOBER 17, 2001

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I want to thank you for the opportunity to testify today on the recruitment and retention challenges facing the Immigration and Naturalization Service (INS). I will address the extent to which manpower, work hours, agent compensation, infrastructure, and other factors contribute to carrying out our law enforcement mission.

The tragic events of September 11 have clearly pushed border management and border security onto center stage. There is a great deal expected of the INS today and we will rise to the challenge. During my short time as INS Commissioner I have been very impressed with the quality and dedication of INS employees. There is no doubt that in the wake of the September 11 attacks that INS needs to evaluate its current capacity and strategies for effectively monitoring the 6,000 miles of border. This includes reviewing whether we have enough Inspectors to staff adequately over 300 ports-of-entry in order to provide both necessary security and facilitation of legitimate travelers. Our enforcement challenges, however, reach beyond the immediate border into the interior and include a critical need not only to reevaluate enforcement strategies, but also to improve intelligence-sharing and

information technology. It will not simply be a staffing issue, but also an issue of effective deployment and improvement of our enforcement tools.

Mr. Chairman I would like to emphasize two points. First, you would not want to send a General into battle without enough troops and supplies, nor would you want to manage a business with far fewer employees than you know you need to be successful. Second, today is not the time to be penny-wise and pound-foolish. This is why the President's FY 2002 budget request includes additional resources for INS and why we are working with the Administration regarding resource needs in the context of the anti-terrorism supplemental.

The INS has faced hiring and retention challenges over the last several years as it has been increasing its enforcement personnel. This year alone, based on anticipated congressional action on the President's FY 2002 budget request, plus attrition, the INS will hire and train between 3,000 and 3,500 new Border Patrol Agents and Immigration Inspectors.

To maintain and ensure the integrity and professionalism of our officers, as well as the safety and security of our country, the INS' pre-employment screening process for law enforcement positions is rigorous. Depending on the occupation, applicants must pass a written examination, oral board, and drug test; meet medical and physical qualifications; and undergo an extensive

security background investigation. Most of our Officer Corps positions, including Border Patrol Agents and Immigration Inspectors, also require facility in or an ability to learn conversational Spanish.

The number of candidates that make it through these rigorous pre-employment requirements is small. For example, candidates must be able to pass the written examination, security, medical, and drug test requirements. In 1999, to fill 2,000 Border Patrol Agent positions, the INS had to attract 75,000 candidates. Additionally, to fill 1,000 Immigration Inspector positions it needed to attract 16,000 candidates. In addition, the remote location of many of our positions on the Southwest border discourages some applicants. In some locations along the Southwest border, medical, educational, cultural, and other amenities are scarce. In addition, INS competes with other federal agencies, state and local governments, and the military for high-quality candidates who possess the above requirements.

INS has made great strides in meeting these recruitment and hiring demands through our streamlined and aggressive recruitment program. However, we continue to refine our interview processes and update our test instruments to ensure candidates have the required level of maturity, quick thinking skills, and professionalism to deal with individuals from diverse

backgrounds. We will continue to monitor all aspects of the hiring process to decrease the time pre-employment processes take. And we will do so without compromising our standards and security considerations.

To respond to our hiring demands, the INS has reduced pre-employment paperwork and processing times and has developed a state-of-the-art recruitment effort encompassing extensive use of media. We have increased our presence on college and university campuses, expanded our participation in professional organizations, and increased recruitment of previous and exiting military service men and women. We have worked diligently to improve and build the image of INS as an employer of choice. In spite of this, when compared to the Federal Bureau of Investigation, the Drug Enforcement Administration and other law enforcement agencies, the INS is not well known outside the Southwest. This is particularly problematic when we are trying to compete with other federal agencies to "market" INS as an employer to qualified candidates.

The two human capital issues that we are evaluating are one, the pay structure for our key law enforcement occupations and two, the job classification of our enforcement personnel, including our Immigration

Inspectors. We are working with the Administration to develop recommendations for comprehensive pay reform.

Pay Structure

As you know, the Federal government has a number of pay structures for Federal law enforcement agents. For the INS, the journey level for Border Patrol Agents and Immigration Inspectors is a GS-9. Our Border Patrol Agents are covered by the Fair Labor Standards Act and also receive Administratively Uncontrollable Overtime (AUO). Currently, the average journeyman GS-9 Border Patrol Agent is paid $58,600, which includes $39,300 in base pay and $19,300 in overtime and other compensation. The average journeyman GS-9 Immigration Inspector is currently paid $57,200, which includes $39,000 in base pay and $18,200 in overtime and other compensation. Other compensation includes night differential, holiday pay, and Sunday pay. Because our Border Patrol agents are well trained they are routinely recruited by other federal law enforcement agencies -- some of which have higher journey level positions. Therefore, INS and the Administration are currently evaluating whether there is a need for comprehensive pay reform.

As I stated previously, we have made significant progress in the past years increasing the recruitment of Border Patrol Agents. In FY 1996, we received 23,000 applications; in FY 2000, we received 90,000. A similar effort is under way for Immigration Inspectors.

Recruitment Bonuses

An effective tool that is available for our use in recruitment of new candidates is a recruitment bonus. In calendar year 2000, we offered recruitment bonuses of $2,000 to all new Border Patrol Agents who entered on duty by September 30. This offer, coupled with stepped up advertising and an infusion of Border Patrol recruiters, resulted in an increase of applicants from 50,000 to 90,000. We are currently offering a bonus of $5,000 to all new Immigration Inspectors who enter on duty in our San Francisco District office. Since offering the bonus, we have attracted 2,500 candidates - 3 times more than what we had prior to offering the bonus.

Law Enforcement Status

Immigration Inspectors are authorized to "enforce the immigration laws and regulations of the United States, and any other laws or regulations

designated by the Attorney General, and in the performance of those duties is empowered to conduct investigations; carry firearms; effect warrantless arrests; or execute and serve any order, warrant of arrest or search, subpoena summons, or other process issued under the authority of the United States." In the course of their normal duties, Inspectors routinely encounter, arrest, and interrogate persons who violate both the criminal laws (Title 18) and immigration laws of the United States. Therefore, we are working with the Administration to ascertain the appropriate job classification for our Immigration Inspectors.

Relief from Earnings Limitation Caps

Mr. Chairman, many of our law enforcement officers are working long hours in response to the events of September 11. Within hours of the attacks, the INS was working closely with the FBI to help determine who perpetrated these crimes and to bring those people to justice. Within 24 hours, under "Operation Safe Passage," INS deployed several hundred Border Patrol agents to eight major U.S. airports to increase security, prevent further terrorist incidents and restore a sense of trust to the traveling public. At the peak of Operation Safe Passage, INS contributed more law enforcement personnel to this operation, than any other federal agency. INS has dedicated 1,000 of its

1,977 Special Agents to the terrorism investigation who have developed over 1,500 leads. At America's ports-of-entry, INS Inspectors continue to work tirelessly to screen arriving visitors, while encouraging the flow of legitimate commerce and tourism. While employees are working large amounts of overtime, many are not being paid for the hours and all are quickly reaching the annual limit on overtime that INS may legally pay these employees. Many of our officers are dangerously close to reaching the calendar year overtime earnings cap of $30,000. Provisions of both the House and Senate versions of the anti-terrorism legislation address the $30,000 overtime earnings cap for 2001.

Training Resources

In addition to the 3,000 Border Patrol Agents and Immigration Inspectors that we must hire and train, we anticipate training approximately 2,180 new employees for other Officer Corps positions. These positions include Adjudicators, Asylum Officers, Detention Enforcement Officers, and Immigration Information Officers, among others. In total, our Border Patrol Academy and Immigration Officer Academy will train approximately 5,180 new hires in the next fiscal year.

Infrastructure

Any increase to INS personnel should also include necessary support staff, facilities, infrastructure and vehicles.

In terms of human resources personnel, additional specialized staff is required to perform vital recruitment functions of Inspectors who have been returned to full-time line duties, as well as for staff to support the additional officer corps positions.

In February 2000, a survey was conducted to gather baseline data regarding the conditions of and extent of employee overcrowding at INS facilities. The survey results indicated that the majority of INS facilities have potentially serious safety and health deficiencies caused mainly by age, overcrowding, and the lack of funds needed to maintain, replace and expand these facilities. In August 2000, the INS completed a contractor analysis of the space needed to adequately support the current and projected INS workforce. The results of this study compared the amount of space required with the current space inventory.

This problem has grown over the past 7 years as Congress continues to generously provide increased staffing. While Congress has provided funding to expand the infrastructure, it has not kept pace with the growth in agents and workload, causing overcrowded conditions in many older facilities.

Conclusion

In conclusion, in the wake of the tragic events of September 11 there is no doubt that we face immense challenges. But, I can assure you, that with only two months as INS Commissioner, I already know that the dedicated and talented men and women of this agency are up to the challenge.

Thank you for this opportunity to appear before you today, Mr. Chairman. I look forward to your questions.

Mr. SOUDER. Mr. Smith.

STATEMENT OF ROBERT M. SMITH, ASSISTANT COMMISSIONER, OFFICE OF HUMAN RESOURCES MANAGEMENT, U.S. CUSTOMS SERVICE

Mr. SMITH. Chairman Souder, I am pleased to have this chance to appear before the subcommittee today. I was just informed that my statement is now cleared and can be made entered for the record.

Mr. SOUDER. Oh, good.

Mr. SMITH. From a human resource perspective, the U.S. Customs Service has a number of unique characteristics that present challenges to recruitment, hiring and retention. Flexibility is the key to our hiring and staffing needs. We deploy personnel at over 300 ports of entry across the country, including border crossings, seaports and international airports. Many of these ports operate on a 24-hour-per-day, 7-day-per-week schedule. We also station employees at U.S. Embassies and consulates throughout the world.

Customs' frontline employees must be willing to work a variety of schedules under adverse and changing conditions, both physical and geographic. They are required to carry weapons and frequently find themselves in dangerous situations. Our pilots find themselves on missions that take them away from home for extended periods of time, working with the Southern Command overseas. They fly state-of-the-art aircraft, including the P–3 interdiction planes.

This past year the Customs Service recruited, examined, hired and trained over 550 inspectors and canine officers, 38 pilots, and additionally, we hired over 400 special agents, which was twice as many that we have hired in a 1-year period in almost a decade. Much of our hiring was achieved through the competitive staffing process that imposes various hiring requirements. Other hiring was accomplished through excepted appointments, which gives us some flexibility, but not totally.

Customs Service has over 2,000 frontline Customs officers serving and protecting the American public. Our officers are experienced, with an average length of service of nearly 12 years on the job. Many Custom employees serve in remote locations where there are limited, if any, medical facilities, roads, housing, schools, and even stores. We need to be able to retain these employees and provide them with the benefits that entice them to stay with the Customs Service.

Customs also has a prominent role to play in counterterrorism. During the millennium alert it was a Customs inspector who apprehended a suspected terrorist during a routine border stop in Port Angeles, WA. Now, in the wake of the horrific terrorist attacks of September 11th, the Customs Service has been called upon to lend staff resources to many different areas. We are providing staff to serve as sky marshals. We have increased our presence through the temporary deployment of personnel to many border ports and airport locations. And we are now also in the planning stages to assist in providing security to the Salt Lake City Olympics later next year.

In order for us to be able to respond to these situations, we need changes to laws and regulations that provide us with greater flexi-

bility. The current personnel laws and regulations promulgated by the Office of Personnel Management do not provide that flexibility and inhibit us from staffing in a way to meet these demands. The administration's Managerial Flexibility Act proposal would assist us with regard to retention and recruitment in some areas.

For the upcoming fiscal year the Customs Service is anticipating the need to hire 2,500 new employees in our frontline occupations. We already have 500 applicants ready to come on board and another thousand going through our pre-employment processes now, but we still need to screen between 15,000 and 20,000 applicants in order to meet our hiring needs. With your assistance in obtaining the right tools to meet our personnel needs, we feel we certainly will succeed in meeting our mission.

Thank you for the opportunity to address you today, Mr. Chairman, and I, too, look forward to your questions.

Mr. SOUDER. Thank you very much.

[The prepared statement of Mr. Smith follows:]

STATEMENT OF ROBERT M. SMITH
ASSISTANT COMMISSIONER
UNITED STATES CUSTOMS SERVICE
OFFICE OF HUMAN RESOURCES MANAGEMENT
BEFORE THE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES
OCTOBER 17, 2001

Chairman Souder, members of the subcommittee, I am pleased to have the chance to appear before the subcommittee today.

From a Human Resources perspective, the U.S. Customs Service has a number of unique characteristics that present challenges to recruitment, hiring, and retention. Flexibility is key to our hiring and staffing needs. We deploy personnel at over 300 Ports of Entry across the country, including border crossings, seaports and international airports. Many of these ports operate on a 24-hour per day, 7 day per week schedule. We also station employees at U.S. embassies and consulates throughout the world.

Customs' frontline employees must be willing to work a variety of schedules under adverse and changing conditions, both physical and geographic. They are required to carry weapons and frequently find themselves in dangerous situations. Our pilots find themselves on missions that take them away from home for extended periods of time, working with the Southern Command overseas. They fly state of the art aircraft, including P-3 interdiction planes.

This past fiscal year, the Customs Service recruited, examined, hired and trained over 550 Customs Inspectors and Canine Enforcement Officers, as well

as 38 Pilots. Additionally, we hired and trained over 400 Special Agents, almost twice as many as we have hired in a one-year period in over a decade. Much of our hiring was achieved through the competitive staffing process that imposes various hiring requirements. Other hiring has been accomplished through excepted appointments, which allows some, but not total flexibility.

Additionally, the Customs Service employs over 12,000 frontline Customs Officers serving and protecting the American public. Our officers are experienced, with an average length of service of nearly 12 years on the job. Many Customs employees serve in remote locations where there are limited, if any, medical facilities, roads, housing, schools, or stores. We need to be able to retain these employees and provide them with benefits that entice them to stay with the Customs Service.

Customs also has a prominent role to play in counter-terrorism. During the millennium alert, it was a Customs Inspector who apprehended a suspected terrorist during a routine border stop in Port Angeles, Washington. Now, in the wake of the horrific terrorist attacks of September 11th, the Customs Service has been called upon to lend staff resources in many different areas. We are providing staff to serve as Sky Marshals; we have increased our presence through the temporary deployment of personnel to many border and airport locations. We are also in the planning stages to assist in providing security for the Salt Lake City Olympics next year.

In order for us to be able to respond to emergency situations, we need changes to laws and regulations that provide us with greater flexibility. The

current personnel laws and regulations promulgated by the Office of Personnel Management do not provide that flexibility and inhibit us from staffing in a way the meet the demands of the public.

The Administration's Managerial Flexibility Act proposal would assist us with regard to retention and recruitment in some areas.

For the upcoming Fiscal Year, the Customs Service is anticipating the need to hire 2,500 new employees into our frontline occupations. We already have 500 applicants ready to come on board and another 1,000 going through the process. We will need to screen between 15,000 to 20,000 applicants in order to meet our hiring needs.

With your assistance in obtaining the right tools to meet our personnel needs, we will certainly succeed in meeting our mission. Thank you for the opportunity to address you today.

Mr. SOUDER. Mr. Mead.

STATEMENT OF GARY E. MEAD, ASSISTANT DIRECTOR, BUSINESS SERVICES, U.S. MARSHALS SERVICE

Mr. MEAD. Thank you, Mr. Chairman. Not knowing exactly where we would be heading today, I also brought with me our Assistant Director for Human Resources, Miss Susan Smith, and our EEO officer, Lisa Dickinson.

On behalf of the U.S. Marshal Service, thank you for the opportunity to appear here today. In 1789, President Washington began appointing the first U.S. Marshals; 212 years later, the tragic events of September 11th put to the test the Founding Fathers' vision of the Marshals Service. This vision was a Federal law enforcement agency capable of performing a wide variety of key law enforcement missions anywhere in the United States.

Immediately following the terrorist attacks, deputy U.S. Marshals were called upon to provide assistance with the search and rescue efforts at the Pentagon and the World Trade Center. Within 48 hours the Marshals Service was involved in almost every aspect of our Nation's response. We coordinated and were an integral part of the Federal law enforcement presence at 18 of our largest airports. Our Joint Prisoner and Alien Transportation System aircraft transported hundreds of Federal agents to assignments across the Nation. Deputy U.S. marshals assisted the FBI to locate and apprehend potential suspects. Our Electronic Surveillance Unit used sophisticated technology to locate possible survivors and the aircraft black boxes buried in the rubble of the World Trade Center. Deputy U.S. marshals also provided personnel security for the Director of FEMA and other Federal officials, and we were involved in other special activities of a classified nature.

In addition to these missions, we continue to perform the Service's core responsibilities, specifically the security of the Federal judiciary. Security at all Federal courthouses was significantly increased. Within 3 days of the attack, our Nation's court operations had returned to normal except in the Southern and Eastern Districts of New York.

The versatility demonstrated by the U.S. Marshals Service since September 11th is what the President and the Attorney General have come to expect and what the American people deserve. We were able to meet all challenges as a result of the Service's multiskilled, highly trained criminal investigators, who comprise the majority of our deputy U.S. marshal work force. However, this hearing could not be more timely. Although we are proud of our recent accomplishments, we are concerned about our future capabilities to respond as directed in this new war on terrorism.

Approximately 2 years ago, the former administration of the Marshals Service suspended the hiring of new criminal investigators. Through attrition the number of criminal investigators was to be reduced by approximately 75 percent. They would be replaced by officers who would perform judicial security duties within the Federal courthouses. Fortunately, we had lost very few criminal investigators through attrition prior to September 11th. Consequently, we still had sufficient numbers of criminal investigators to complete the complex missions we were assigned.

Whether it is the protection of judges, witnesses or Federal officials from terrorist threats, the apprehension of terrorist fugitives, the location and seizure of terrorist assets or the custody of prisoners accused of terrorist acts, the Marshals Service will become more involved with national security matters and classified missions than ever before.

The apprehension of fugitives is a time-critical business. Fugitives know they are being hunted and are therefore constantly on the move. Terrorist fugitives will face an even greater urgency to move often and quickly. Any delay on the part of the Marshals Service to apprehend them will be the potential difference between a quick arrest and a terrorist remaining at large in the community. It is essential that we have adequate numbers of versatile criminal investigators to perform these complex missions.

In closing, I want the subcommittee to know that the Marshals Service is very proud to serve this Nation and to be involved in the war on terrorism. Be assured we will continue to do everything within our power to help achieve victory. Thank you for the opportunity to appear before you today, and I would be happy to answer any questions you might have.

[The prepared statement of Mr. Mead follows:]

Written Statement of
Gary E. Mead
Assistant Director, Business Services
United States Marshals Service
before the
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
October 17, 2001

Chairman Souder, Congressman Cummings, and Members of the Subcommittee, on behalf of the United States Marshals Service, thank you for the opportunity to appear here today.

In 1789, President Washington began appointing the first U.S. Marshals. Two hundred and twelve years later, the tragic events of September 11th put to the test the Founding Fathers' vision for the Marshals Service. This vision was of a federal law enforcement agency capable of performing a wide variety of key law enforcement missions anywhere in the United States.

Immediately following the terrorist attacks, Deputy U.S. Marshals were called upon to provide assistance with the search and rescue efforts at the Pentagon and the World Trade Center. Within 48 hours, the Marshals Service was involved in almost every aspect of our nation's response. They coordinated and were an integral part of the federal law enforcement presence at 18 of our largest airports. Our Joint Prisoner and Alien Transportation System (JPATS) aircraft transported hundreds of federal agents to assignments across the nation. Deputy U.S. Marshals assisted the FBI to locate and apprehend potential suspects.
Our Electronic Surveillance Unit used sophisticated technology to locate possible survivors and

the aircraft "black boxes" buried in the rubble of the World Trade Center. Deputy U.S. Marshals also provided personal security for the Director of FEMA and other federal officials. And, we were involved in other special activities of a classified nature.

In addition to these missions, we continued to perform the Service's core responsibilities, specifically the security of the federal judiciary. Security at all federal courthouses was significantly increased. Within three days of the attack, our nation's court operations had returned to normal, except in the Southern and Eastern Districts of New York.

The versatility demonstrated by the U.S. Marshals Service since September 11th is what the President and the Attorney General have come to expect; and, what the American people deserve. We were able to meet all challenges as a result of the Service's multi-skilled, highly trained Criminal Investigators who comprise the majority of our Deputy U.S. Marshal workforce. However, this hearing could not be more timely. Although proud of our recent accomplishments, we are concerned about our future mission capabilities in this new war on terrorism.

There are legislative initiatives that can enhance our ability to apprehend terrorist fugitives, protect the federal judiciary and witnesses from terrorist threats, provide for the personal security of federal officials, and perform a variety of potential security missions. I want to briefly highlight the areas where the Subcommittee's support can reinforce our ability to fight the war on terrorism.

Approximately two years ago, the former administration of the Marshals Service suspended the hiring of new Criminal Investigators. Through attrition, the number of Criminal Investigators was to be reduced by approximately 75 percent. They would be replaced by a lower-graded, and less broadly-trained officer who would perform, almost exclusively, routine judicial security duties within the federal courthouses. He or she would not be trained or assigned to perform complex fugitive investigations, witness protection duties, personal security missions, or to locate the assets of criminals.

Fortunately, we had lost very few criminal investigators through attrition prior to September 11th. Consequently, we still had sufficient numbers of criminal investigators to complete the complex missions we were assigned. Had the attacks occurred sometime in the future, this may not have been the case. Given how the world of federal law enforcement changed on September 11th, the Marshals Service believes it must resume hiring Criminal Investigators.

However, since the Marshals Service has not hired a Criminal Investigator in almost two years, we no longer have a viable mechanism in place to do so. The only logical short-term solution is to obtain excepted service hiring authority. Without this authority, it will be years before the necessary hiring procedures can be put in place. In addition, it is quite likely that our workload will assume a decidedly counter-terrorist focus.

Whether it's the protection of judges, witnesses, or federal officials from terrorist threats,

the apprehension of terrorist fugitives, the location and seizure of terrorist assets, or the custody of prisoners accused of terrorist acts, the Marshals Service will become more involved with national security matters and classified missions than ever before. In this future environment, we believe it is time to consider whether the entire Marshals Service should be in the excepted service. Excepted service status will allow us to develop necessary human resource programs to handle increased demands for integrity and internal security.

The apprehension of fugitives is a time critical business. Fugitives know they are being hunted and are therefore constantly on the move. Terrorist fugitives will face an even greater urgency to move often and quickly. Any delay on the part of the Marshals Service to apprehend them will potentially be the difference between a quick arrest and a terrorist remaining at large in the community. Presently, the Marshals Service does not have the authority to issue administrative subpoenas. We must seek the assistance of other agencies that enjoy this authority. These requests for assistance take time, a luxury we can little afford when it comes to the timely apprehension of terrorists. Legislation providing the Marshals Service with the authority to issue administrative subpoenas would be a great help.

Also, administrative subpoena authority would greatly increase our ability to assist in the location and seizure of terrorist assets. The speed with which financial assets can be electronically-transferred around the world makes an already difficult job almost impossible without this administrative subpoena authority.

Finally, the last area which the Subcommittee can help us is in supporting legislation to eliminate the cap on the

bi-weekly earnings of our Deputies. When responding to a crisis, our Deputies frequently work more than 12-hour days, seven days a week, and for weeks at a time. When this occurs, they reach the maximum earning limitation and are not paid for hours they have actually worked. We believe this inequity must be resolved.

In closing, I want the Subcommittee to know that the Marshals Service is very proud to serve this nation and to be involved in the war on terrorism. Be assured, we will continue to do everything within our power to help achieve victory.

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

Mr. SOUDER. Thank you all very much for your testimony. And let me say first, as a matter of empathy, as I was explaining earlier, I was a staffer on the House side for 6 years and the Senate for 4½. A measure of empathy as to how many committees and jurisdictions on both sides you will be testifying in front of, and whenever there is an issue this critical, everybody's going to focus on it.

Let me outline a little bit what we are trying to do through this subcommittee, and I look forward to working with each of your agencies in focusing on this, and how we are going to work, which gives me the opportunity to kind of lay this out here.

Some of the questions that you have addressed today and some of my questions clearly lie also with the Civil Service Subcommittee, both in authorizing an oversight in this committee. Now, interestingly, Congressman Weldon is on this subcommittee, who chairs Civil Service. His ranking member is Danny Davis, who is on this subcommittee, and Mr. Cummings and I are also both on Civil Service. So, fortunately, we can kind of cross-communicate inside that as we address these questions.

In 1989, when I was with Senator Coates and back when the No. 1 issue was drugs, and the No. 2 issue was drugs, and the No. 3 issue was drugs, and we had our periodic big crusade on the drug war, it became evident to us early on that if we were going to do that, we were going to have some changes in the hiring, pay grade and other things, which we did in that period. And we did a number of pieces of legislation with it. It becomes a component of an outgrowth of when you focus on something to be able to get the type of people you need to do that. But it will overlap with a number of committees. What we are going to try to do here, for example, I have a number of senior Members, as you have looked at the list, like Mr. Gilman, and Mr. Mica is having a hearing simultaneous with this one on airports over in Transportation, which they also were trying to get him to cancel, so he may be sitting there alone also. But it is important we get these things in the record. And clearly, while we are going to focus here on border, we probably won't focus as much on air unless we get synchronized with Mr. Mica.

I have talked to Congressman Shays who actually has antiterrorism jurisdiction in Government Reform. This committee was designed and our uniqueness is we were the only committee that could deal holistically with the antidrug question, and because of that they put the Justice Department here; in addition, anything in drugs. All of a sudden we had Justice. What we have learned in South America and Central America in particular, when you talk about narcotics, you talk about immigration. Well, Mr. Mica, when he chaired this, also had Commerce moved in because you can't talk about immigration and drugs and Customs without talking about Commerce. So we're probably the only committee in Congress that can cross a number of these jurisdictions and try to get into that.

Even that said—and one other thing I want to say as a predicate. I have been active in the U.S.-Canada Exchange Group; a little less active, but supportive of the U.S.-Mexico group. But in the context of doing this series of border hearings which are starting at the end

of this month in Vermont and Champlain, NY and Highgate Springs, VT, then we are going to do it in Mexico, in the McAllen region, Laredo and McAllen and Brownsville—we probably won't do a hearing, but visit there—and then some of the smaller posts, and then up in Washington State at Blaine.

We have been working with the Canadian-U.S. group with Amo Houghton about this; and John LaFalce on the Canadian group; and George Nethercutt, who heads the Northern Border Caucus; with Jim Kolbe and Cass Ballenger on the U.S.-Mexico Caucus; with Henry Bonilla, who represents Laredo; with Congressman Hinojosa, who represents McAllen; with Congressman McHugh, who represents Champlain; with Congressman Sanders, who is on this subcommittee, who represents Highgate Springs; as well as I was just talking to Congressman Wolf again, who has part of the appropriations; and Congressman Istook, who are—in our understanding we are trying to make sure that we are a little on the same page here because your nightmare is you have got every committee of Congress coming up. And after Mr. Ziglar's briefing to a large group of Members proceeded to panic a lot of us on how we are going to deal with the borders and the number of staffing and how—which this hearing is partly an outgrowth of, and Congressman Wolf and I started talking on the floor about what we could do in the appropriations bill. We wound up with Congressman Weldon in it, and that led us into the whole question of the whole Civil Service, and there is some concern from OMB is if we bump some of the law enforcement agencies, what's going to happen to other Federal employees who are kind of off market, and these are broad questions.

But I wanted to make you aware that we are trying to network; that this is going to be very hard, as you well know, being called up to the Hill constantly. But as we focus in this committee on the more narrow concerns, then our goal is to try to get to the authorizing and appropriating in a much more synchronized fashion than we have had before. Some of this may be yet this fall. Some may be in February when we come back at the beginning of the year if we have an emergency. Some may be the next cycle. And in sorting through in the questions, not everything will become apparent short term.

I am very concerned, as are an increasing number of Members, that we are going to overreact, do some things that aren't necessarily wise for long-term planning. For example, if we don't have a vision, and 37 percent of the people who we hire as Border Patrol agents come from military, and 30 percent come from local law enforcement, and we double your size, what does that do to those other agencies if we haven't thought this out in a plan of attack?

So let me start with a series of questions here that—and just go through them. First let me look at the recruitment questions. You each had, to differing degrees, parts of that. And we all know that—let me ask you this question right up front: Do you believe that with the existing size of your Department, you can meet the increasing terrorism demands and still do what you are required to do or we have asked you to do in the past in each of your areas on immigration, on narcotics, and Customs questions?

Mr. ZIGLAR. Absolutely not, Mr. Chairman. We need more people. It is not a question—if I could make one point. On the military, we are not going in and recruiting people out the military. These are people that are retiring early, or they are leaving the military. We are not actively doing that. And the local law enforcement, they are people who are coming to us to apply because they see that as a career that they are interested in.

I was also concerned, Mr. Chairman, that you said that I panicked the Members when I briefed you. I didn't mean to panic you. I meant to show you the dimensions of what we needed, and I was trying to get you to open your pocketbooks to us.

Mr. SOUDER. Yes. And I understand. And "panicked" may be an overstatement. But let's say you got their attention in ways that previously the attention was lacking in the sense of immediately everybody's concerned; oh, we have got to seal off our borders, we don't want terrorists coming in. And then they learn, oh, you mean we have vacancies in the Border Patrol? What do you mean? I think you had made a statement that five people had retired the day before. You know, here we are trying to figure out how to hire people, and we can't fill, and we are losing people. If we can't retain those we have and fill the vacancies we have, how are we supposed to meet this need? And in that sense there was a sense of urgency that there hasn't been before.

Mr. ZIGLAR. Actually, Mr. Chairman, you make a very good point that I would like to mention. What I had said about the five people was that five people the day before had gone to work for the sky marshals, and that emphasizes a point I was making in my opening statement, and that is that because of this disparity in the pay grades between our Border Patrol people and inspectors, and, for example, what the sky marshals will have as a journeyman level, there is really no reason for our people not to go and apply for those jobs, because they are to have better working conditions, and they are going to have higher pay. And these are people that we have trained very carefully, selected very carefully, so they are perfect targets. I come from the private sector—they are perfect target for our competitors, the sky marshals and the Customs Service, to go and try to recruit from us.

It's our job to make our people like their jobs and to feel respected and treated with dignity, but if I don't have something to put on the table that lets them feed their family better, then they're going to go work someplace else, even if this is a more pleasant place for them to work.

Mr. SOUDER. I want to make sure for the record, for Mr. Smith and Mr. Mead, do you believe that you can—if indeed we are at a minimum of 2 to 5 years of the intense pressures and the antiterrorism, that you can meet your increased demands without additional staff?

Mr. SMITH. No. Customs Service would need many more employees. We have our inspectors currently working 16 hours a day or more. So in order to facilitate trade, perform our enforcement functions, drug interdiction, and now our new mission, antiterrorism, we do need many more people.

Mr. SOUDER. Mr. Mead.

Mr. MEAD. Mr. Chairman, we also have another complication in terms of answering some of these questions. We don't have a permanent Director just yet. Our Director is awaiting Senate confirmation, which could happen any day, and we know that this is one of the issues that he will address as soon as he gets on board.

With that being said, we have got about 2,500 deputy marshals nationwide. That's our total law enforcement work force. When we were at our peak in terms of response to the terrorist attacks, we had between 500 and 600 of them, or more than 20 percent of our daily work force, devoted to extra special missions that had nothing do with our basic assignments. And obviously, if those type of missions became permanent, we could not sustain that level of, you know, extra support in other areas.

And the other issue that faces us is if we were to acquire those type of complex missions, we would need to have the ability of these criminal investigators to perform them. And so we need our new Director to help us work through the issue or the decision of the prior administration to draw down the number of generalist criminal investigators and go with these more specialized employees who probably would not be suitable to do protection of dignitaries, complex criminal investigations and the like.

So the short answer is if we continue those missions, yes, we probably would need more resources.

Mr. SOUDER. Would each of you provide for the record—and maybe you can talk with the staff to figure what the logical trend line is, whether it is a 5-year trend line or a 10-year trend line of—and let's work through with staff what the best measures are—budget, number of agents, and then where you've had a bump-up, if there was a specific mission attached to that or a piece of legislation.

For example, as we put new restrictions on immigration, or as we said this is an antidrug effort or an antiterrorism effort, because the fundamental question we have, and I've talked with DEA about this, too, is each agency is enthusiastically responding to any requests on antiterrorism and the new pressures. The question nobody really wants to answer is either you are being diverted from things that were also important to the United States, or you had excess capacity. And I believe that the data will show that we have been already squeezing most of the agencies given the mission. But the danger of each agency saying, look, we're doing this to respond to terrorism is the American people are not aware of what are we giving up as we go to that if we don't add. And I want to be able to illustrate that in the record and highlight that as we go through the debate.

Clearly this committee with primary oversight over narcotics is very concerned that in chasing potential antiterrorist acts, that, as Congressman Cummings has said, the main chemical attacks on the United States right now are coming through illegal narcotics. The Taliban uses that as a funding source, and we don't want to see their heroin come into the United States, particularly if we put pressure on Colombian heroin eradication, and we need to have that. Also mentioned counterfeit goods and other things that come in through Customs. Immigration questions that lack of criminal investigators as this type of thing goes. But we need some kind of

a baseline trend line, which I'm sure we will—if you don't have will serve well in the other debates.

Let me first, a couple of general things that I—just quick things that popped into my head off of some of the testimony. Mr. Ziglar, in your testimony you said that many of the Border Patrol agents had to be bilingual. Is that generally on the Mexican border at this point?

Mr. ZIGLAR. One of the requirements is that they either be proficient in Spanish, or that they have the ability to learn Spanish. So we give them some kind of test to understand. That prompted my comments that I'd never pass that test because I am linguistically impaired.

Mr. SOUDER. The Vermont and Maine borders, is there French in the mix of that? Is that——

Mr. ZIGLAR. You know, that's a good question. I don't know the answer to that question. We require Spanish for all of our officers. The way it works is that a rookie officer comes into the Border Patrol and goes to the Southwest border first. We tend to put our more mature, our older and more experienced officers up on the northern border because it's a different kind of mix up there. So they come in needing Spanish. But we don't have a requirement for French.

Mr. SOUDER. I am going to ask a similar question, Mr. Smith and Mr. Mead, in just a second. Obviously we are not going to put somebody who can speak Farsi at every border. Do you foresee that you're going to have personnel who can field language questions that if somebody at a border has an emergency that they need to contact in to somebody to check, that you will be looking at that as a potential language requirement?

Mr. ZIGLAR. That is an issue that we face every day. Of course, at our points of entry, people come in that don't speak English, and we have a variety of different ways that we, you know—bigger places we have lots of people that can speak different languages. They also can use a—telephonically they can get some assistance if they have to. But you definitely put your finger on an issue that we have to address, and that is more language skills at the point of contact with people.

Mr. SOUDER. Can I ask the same question of Mr. Smith and Mr. Mead? Do you see this as a pressing need? Do you have the skills? Obviously every person isn't going to be able to speak 5 to 10 languages, but the ability to respond if there is an emergency at the border, they are having trouble with communications. There are some questions. Is there electronic ability to get with somebody, or——

Mr. SMITH. Well, we do target recruitment of people with special language skills. Admittedly most of our officers have Spanish as their second language, if you will. There is one point, for Federal law enforcement officers, according to regulation, they are entitled to a foreign language bonus, but that is only for law enforcement officers. There is no bonus paid for non-law enforcement officers who speak languages that we would require.

Mr. SOUDER. Could you explain in your agency who would be classified in law enforcement in that sense? Inspectors would not be.

Mr. SMITH. Or special agents, obviously, are included. And by special legislation our inspectors and canine officers are also included.

Mr. SOUDER. So who in that system might have critical information at a point of contact who wouldn't be available for a language bonus?

Mr. SMITH. Import specialists, administrative people, entry.

Mr. SOUDER. OK. So the data sources for the law enforcement personnel basically.

Mr. SMITH. Correct.

Mr. ZIGLAR. Mr. Chairman, that makes a very important point that I made in my testimony in that our inspectors are not treated as Federal law enforcement agents, even though they carry guns and they have arrest powers and all of that sort of thing. They are not 6C Federal law enforcement agents, so we have that same—we have that problem with respect to our inspectors.

Mr. SOUDER. So that's true of the entire INS, you can't get a language bonus?

Mr. ZIGLAR. Inspectors. Border Patrol folks and investigators, intelligence officers are Federal law enforcement officers.

Mr. SOUDER. So Border Patrol can, but the inspectors can't.

Mr. ZIGLAR. The inspectors cannot.

Mr. SOUDER. The foreign language bonus sounds like a very important thing to pursue. I guess it's only going to become more intense of a question rather than less intense.

Mr. Mead.

Mr. MEAD. Yes, we actively recruit Spanish-speaking individuals to become deputies. We don't have enough deputies that are fluent, particularly along the Southwest border. We do provide some basic law enforcement Spanish training to as many of our employees as we can. It is not nearly as comprehensive as what the Border Patrol does. But we are concerned about the need for Middle Eastern languages because in addition to apprehending terrorist fugitives where that would be useful, we also contemplate that we are going to be getting people in the witness protection program that probably don't speak English and don't speak Spanish either, so we are going to need some different languages there. Just prisoners in our custody as a result of terrorist arrests may not speak English, or, you know, we would have the need to converse with them in another language. There's just a lot of areas where we are going to need a whole new skill set of languages that we have never even contemplated, so we are going to have to come up with some way of doing that.

Mr. SOUDER. Let me ask you in another—the custody and witness protection is really interesting because what that presupposes, which I would assume each of you have had to work with, too, is that intelligence may come in. The person—in other words, it isn't just that the people who are, quote, bad guys are going to necessarily have in the current context of the Middle East a language question. The people who are the good guys, are giving us the tips, are also likely to be Middle Easterners who have seen the infiltration, and will we have the ability to handle those tips?

We have so focused on the Mexico border and Spanish in this country that this is a phenomenon that is throwing us off a little

bit, that the stuff that—the leak, if you look at the border, the leaks are on the Canadian border. Also the catches have been on the Canadian border. But the potential vulnerability there, it's—the country has pivoted in how they're thinking about it because we've always seen—looked south for the problem, not north. And the diversity of the country and the terrorist groups, right now it's Middle Eastern and al Qaeda, but, I mean—and the FARC would be more likely to be a Spanish language base. But if it's Hezbollah or Hamas or an Indonesian group, now that we have copycat terrorists, our language challenges and your challenges and immigration questions and custody questions and intelligence questions are immense compared to when we were predominantly focused on the Spanish language.

Any other comments on——

Mr. SMITH. You're very correct, sir. You reminded me that the Customs Service employs several hundred intelligence research specialists, and they—a foreign language bonus pay for them to enable them to listen to the radio, read the newspapers, etc., would be very helpful.

Mr. SOUDER. I also wondered, Mr. Smith, if you are able to elaborate at all when you said current personnel laws and regulations promulgated by OPM do not provide the flexibility.

Mr. SMITH. I have seen the parts of the administration's Managerial Flexibility Act, I haven't read it all, but there seems to be some things in there that will help us. The rule of three that they are proposing change is very important to us and gets away from rankings. The rule of three, just interestingly, I don't know if you are aware, that was enacted for the government in 1888, and hopefully now we will be able to change that law to give us a lot of flexibility there.

Mr. SOUDER. Well, I am pretty concerned about—1888 is a long time ago without changing the law.

Let me ask you a couple or three questions that you don't need to necessarily answer here, but if you could give me—I will give them to you for written.

But, for example, how many new officers and inspectors would each of you need to meet the challenges you are being asked to face? That can be specific or approximate. And we will continue to produce that, because, quite frankly, every 30 days we make new demands and expectations because it is a—kind of a moving target, so to speak.

Could you address a little bit—each of you alluded to experience and training—how rapidly new officers and inspectors in your agencies can be added?

Realistically are we looking at a—I think one of you said that you had 1,000 in the pipeline, and you had just hired at Customs. Border Patrol was seeking out more. I think, Mr. Ziglar, in your testimony, the written that you had, it takes—you had a phenomenal number of people who—16,000 candidates to get 1,000.

Mr. ZIGLAR. 75,000 to get 2,000 Border Patrol.

Mr. SOUDER. 75,000 to get 2,000.

Could you give me a rough idea of, is your retirement—is the length of service declining at a rapid rate, or has that stayed relatively constant, or are you seeing that accelerate? Are people tak-

ing early retirement? You mentioned the five for the sky marshals. Has there been an accelerating pattern on that have you seen for a period of time?

Mr. ZIGLAR. I don't know the answer to that question, but let me make one point. One of the problems about the 6C is that you have a 57-year—you have to be 57 years old, you are required to retire. That may have been a good policy at some point in the past, but being someone who is about to be 57 soon, I—I don't think it is such a good idea anymore.

But all of the joking aside about it, we have lots of Border Patrol agents, for example, that are reaching that age limit that are in great health. They do a good job. They are grown-ups. They know how to act, and we are forcing them out the door by virtue of that law.

I think we ought to change the statute to allow for maybe a little bit later entry. If you—57 you are out, then you can be hired if you are older than 37, and yet, there are situations where military folks retire maybe at 41, 42. They are perfect for us. So we need to change that system, and that, I think, would slow down the retirement of the good people that we have, experienced people, in the system.

One thing that Mr. Smith did not mention, that I will, because I think it is probably a slightly sensitive subject, and that is the notion of going to an excepted service format for hiring and promoting people. That is a much more flexible way of managing your business, and we certainly would like to have excepted service at the INS rather than going through the typical Civil Service so-called competitive process, which I don't find to be very competitive. That would give us better selection of people, hire them and promote people who really are performing well.

I know it is a somewhat controversial subject, you know, that OPM hates it because it would put them out of a job, but I think it is something that we need to do to run this government much more like a business.

Mr. SOUDER. I know you are trying to make a meeting, so I will let you go here. We are going to give you some written questions, and one of the things that I will promise to each of you is to get some placemarker legislation so that we can at least debate some of those subjects, and we will work with your legislative offices to do that. That will help force a debate. Maybe we can get it done this year, some may take longer, and some will get blocked, but at least we will force a discussion.

But I have some additional questions.

Mr. ZIGLAR. I just got a note that my hearing—my meeting on the Senate side has been canceled or rescheduled, so I am at your disposal.

Mr. SOUDER. I will go another 10 or 15 minutes to try to get an idea of the type of things we are looking at.

What is apparent is each of you have in the different posts in your agencies substantially different training periods, phase-in periods for different positions. But roughly what kind of training periods are we talking about in getting people into your agencies?

Mr. SMITH. New special agents go to school for 26 weeks, inspectors about 12 weeks, and K–9 officers, it is about 13 or 14 weeks.

Mr. MEAD. Our criminal investigators go to school for approximately 16 weeks, and our more specialized law enforcement people go 10 weeks.

Mr. SOUDER. And if I could ask each of you, Mr. Ziglar said—and this is what we want to try to do is not rob Peter to pay Paul. As we boost things, obviously the temptation becomes greater to go to one agency or another which is at least in law enforcement. There needs to be more equalization. But let me ask also in Customs and U.S. Marshals, where do your recruits generally come from?

Mr. SMITH. In the Customs Service they come from all over the country. We have a very aggressive recruitment strategy.

Mr. SOUDER. How many of them come from local law enforcement would you say?

Mr. SMITH. This would be a guesstimate: 25 percent.

Mr. SOUDER. What about retired military, people who have left the military?

Mr. SMITH. A lot of military. I would guess 30, 40 percent, not necessarily retired military, but veterans.

Mr. SOUDER. Mr. Mead.

Mr. MEAD. We also get a fairly substantial number of people with prior law enforcement experience, and we do actively recruit at military separation centers. And laid on top of that, we periodically give a national exam that anyone can take, and even there we see sort of repeat applicants who have law enforcement and military experience.

Mr. SOUDER. Mr. Ziglar, does this include—do you pick up people in Guard and Reserve? Did you include that in the military?

Mr. ZIGLAR. You know, I don't know if that is inclusive.

It is.

Mr. SOUDER. Do you pick up people from private security as well? Private security operation, is that considered any valuable training?

Mr. SMITH. Customs Service does not target those people for hiring.

Mr. MEAD. A basic security post wouldn't qualify them to be deputy marshals.

Mr. ZIGLAR. I mean, we will take applications from anyone. Obviously the weeding-out process is very aggressive. The percentage that would come from private security, I don't know, but I can get that number for you.

Mr. SOUDER. I am partly curious because, for example, we look at the airport question. If we would Federalize all of that, which is predominately done by private security, I assume that we are going to have a lot of cross-rating, not to mention at the State and local law enforcement, depending on the logical ramp-up procedures. And I hope each of you will have the courage to tell House and Senate appropriators—everybody gets enthusiastic. It is kind of like if you don't take the budget opportunity in the year it is offered, you never get it.

On the other hand, we have to have a logical ramp-up procedure here, or all we are going to be playing is musical chairs in our system, and part of this is a risk assessment strategy of where we need to have it.

We have some more technical questions on the pay things. We have covered a lot of that. You have mentioned language bonuses, overtime. Do the Customs and the Marshals Services have overtime pressures on them right now like the Border Patrol is having?

Mr. SMITH. Overtime pressures? Congress several years ago enacted what we call our COBRA legislation, which is kind of our processing fees for passengers on conveyances, because our workload is so great now, we are spending more than we are taking in, and that is a big concern to us. Additionally, that COBRA law sunsets, I believe, next year. It also pays for almost 1,100 of our inspectors right now.

Mr. SOUDER. So you aren't capped on whether you can pay overtime? You are capped because of the revenue that pays for it?

Mr. SMITH. Well, we, too, have a $30,000 cap.

Mr. SOUDER. Are you near that?

Mr. SMITH. It can be waived for certain individuals for justifiable reasons.

Mr. SOUDER. Do you have a waiver clause?

Mr. ZIGLAR. No, sir, it is statutory. I have no authority to waive it.

Mr. SOUDER. That is what you were referring to.

Mr. MEAD. We don't have a cap on overtime per se, but we are subject to the biweekly earning limitation that I think the Commissioner is talking about. When our people work 12-hour shifts, for example, 7 days a week, for more than, you know, a few weeks, they will exceed that maximum earning limitation for the pay period, and then they just don't get paid for hours that they have actually worked, and we do not have any authority to waive that.

I can tell you that is a very serious morale issue, particularly in times of crisis where you have got people working very long hours, very long periods of time, gone away from their families. You add on the fact that they are not being paid, that is a morale issue. We don't have a way to deal with that presently.

Mr. SOUDER. What do you mean they are not going to be paid? Because they are salary; therefore, they are not?

Mr. MEAD. There is a biweekly computation made, and if you were earning in that 2-week period what you would be allowed to earn when prorated out annually, you don't get paid for those hours that you worked in that pay period. Instead of being computed on an annual basis, so at the end of your time you would know where you stood, they actually compute it every 2 weeks and prorate it as if you were going to work that amount.

Mr. SOUDER. So because this is—I am getting into very technical Civil Service areas, which we will work through. But it is a morale question, potentially a retention question, not necessarily a recruitment pressure, because people wouldn't have been exposed to it yet.

Do you have other methods—classification in law enforcement is one. Do you have other methods, or could other methods be done that wouldn't necessarily threaten a Civil Service structure in our agencies that could be done, for example, emergency bonuses, if we were declared in a state of emergency in law enforcement, that you could have an energy bonus, or does FEMA——

Mr. ZIGLAR. I am not aware of an emergency bonus.

Mr. SOUDER. I am not saying necessarily that there is one. Are there other things that we could look at that might relieve some of the pressure short term as a category that would give you management flexibility?

Mr. ZIGLAR. I think, frankly, there are really two overtime cap issues. One is that the 2-week cycle cap, which is really causing a lot of our people to not be paid for work that they do, and never be paid for the work that they do, that is beyond a—that is a fairness issue. I mean, in the private sector the laws wouldn't allow the private sector to decide how much overtime they were going to pay, so why should we cap the Federal employees?

And the basis for that cap is based on level 4—Executive level 4 pay. In other words, I am an Executive level 4. So someone could not make, on an annualized basis, more than—in a 2-week period than I could make, even though they worked a whole lot more than I did. That is just fundamentally unfair.

The other part is the $30,000 annual cap, which is—I mean, people just stop work when they reach that cap. That is one option. But that is, in a sense, their option, not our option. That is not so good to us, particularly in an emergency when we need those people to be there working, and yet we are not able to pay them. It is truly a fundamental fairness issue as well as a good management issue, and I think the Congress ought to try to deal with this 2-week cap as well as the other one.

And Congress needs to trust managers to make good decisions about how they allocate the overtime and they manage that overtime. You know, if you wanted to give us these jobs and have us come do it, you have got to give us some flexibility to run the business, and to run it in a way that serves the taxpayers in a fiscally sound way and also serves the country from a security and a policy perspective.

Mr. SOUDER. Also I am trying to think outside of the box a little bit. For example, I doubt if there is any provision in current law that if an agency is, say, 5 to 10 percent short in filing the current vacancies, that they are allowed to make some sort of a change or have—you had a recruitment supplement. Is there something that could be for a shortage supplement? Is there something that could be—if the ramp-up is—if we ask you to add a certain number of people in a short period of time that puts pressures on the system, could there—once again, maybe a variation of recruitment, but an emergency provision that says, given the fact that this emergency classification, that—I am trying to think if there is another way that we can differentiate this; for example, from an extension office in the Agriculture Department.

Because what I sense is that some of the resistance is coming because it is perceived as long-term potential pressure on the entire system because we have a short-term law enforcement pressure that could be from 2 to 5 years. But the fact is that Congress is going to put this pressure on because the American people are demanding to be safe, and, therefore, in demanding to be safe, we are running into ways—is there a way to address the particular type of crisis in front of us other than, in effect, diverting resources?

Mr. MEAD. Mr. Chairman, in general, I don't think, at least from the Marshals Service perspective, we have a shortage of applicants.

The Federal law enforcement positions are very desirable jobs. Obviously we could be robbing State and local government, but I don't think that it is attracting the initial attention of applicants. Some of the things that the Commissioner and Mr. Smith have mentioned in terms of the process, how long it takes to get them through the process, are probably greater impediments to being able to ramp up quickly than getting the initial interest.

We just announced our new test, and it was only open to the public, I think, for about 2½ to 3 weeks, only over the Internet, and no real aggressiveness out there promoting it. And we had almost 20,000 applicants. So, you know, it is not the initial interest, it is how long it takes you to run that.

Mr. SOUDER. You are probably each going to have differences within, but you are also going to have qualified versus the relative qualifications, and also, depending what the economy is going to make, another——

Mr. ZIGLAR. I have to say, and that is—we can get people, we can attract people to it, but the process is so burdened down with the bureaucratic rules. That is why I mentioned the excepted service as an alternative, as an alternative to select and bring them on quick and then promote them based upon how well they do their jobs.

Mr. SOUDER. I will start to wind this up here. Let me ask you another question. This grows out of that. I and others are somewhat concerned about, particularly if you have worked in this area for some time, another danger of ramping up fast. Given the fact that there are pressures that slow us down and the pressures in adding lots of new agents in addition to qualified, I happen to believe, and many do, that the only way that we are going to have much impact on terrorism, on narcotics, on other types of targeted smuggling is you need tips, you need intelligence. Otherwise you are looking at a needle in a haystack.

That is somewhat of a deterrence, looking for the needle in the haystack, but the truth is most of our busts come from a tip; that as we put more pressure on intelligence, as we look at the border, the fast pass or others, a screen to see whether there is any checking, whether it is at airports or Coast Guard or wherever it is, obviously it is dependent on the people inside being clean.

Given the current pressures, are you taking any additional efforts, or what things do we need to do in the applicants that are coming in that—and the urgency to bring people on that we can have thorough background checks and studies to make sure our intelligence stays clean?

This is like a layman's type of fear. I am afraid we are going to put these steel doors on the airplanes so we can't get to the pilot and then find out that the pilot is bad, and we can't get to him anymore.

Mr. ZIGLAR. Mr. Chairman, the old adage that an ounce of prevention is worth a pound of cure is one I believe in. Certainly from our perspective, we are not about to lower our standards in terms of the people we take or not do the investigations.

An example of what can happen is when the Metropolitan Police Department here in Washington a few years ago was in bad need of officers, just bad need of officers, they went out and they re-

cruited people, and they didn't do the background checks, they didn't train them well, because they needed people on the street. As a result of that, we saw what happened for a period of time until they weeded out people who shouldn't have been in the force in the first place, and then it created a very bad situation for the Metropolitan Police, which is a fine police department.

We are not going to let that happen at the INS, Border Patrol or any part of our enforcement operation. And I guarantee you, knowing the Customs and the Marshals, they can speak for themselves, I guarantee you they wouldn't let that happen either.

Mr. SMITH. Very correct, Commissioner. Those numbers of applicants that we have said we needed thousands, actually it is—for every 1 position we fill, we need to recruit or have applicants for about 20 to 25 to fill 1 position. They do go through extensive testing, extensive background investigations, the drug screening, medical exams, physical exams, and actually the processes that INS utilizes are virtually identical to Customs.

Mr. SOUDER. I have been very rattled in the narcotics area about the compromising of intelligence after what happened in Mexico with their drug czar actually living in the apartment of somebody who was one of the cartel members, and we had shared our intelligence with him, and all of a sudden your entire network of information suppliers is gone.

And the whole question that we are going to be dealing with in an upcoming hearing of RIS and EPIC, and as we broaden where the intelligence goes, there is more risk of intelligence being compromised.

And I just want to make sure, and you all in your points of responsibility, that in our pressures to, say, hire a bunch of people, that you actually are even more rigid than you have been before in checking their status and background checks, because the worst thing is if people get inside the system, it will be in worse shape than we are now.

Mr. Mead, did you want to——

Mr. MEAD. Yes. We think that we have a very good record in terms of ensuring the integrity of our work force, and there is no reason to change that. There is no reason to change the portions of the hiring process that deal with integrity, the background investigation, drug tests, credit checks, all of those things.

They can be done in a reasonable period of time. It is some of the—frankly, more administrative requirements that we impose on ourselves as being part of the Civil Service that take the extensive amount of time. And regardless of what the hiring procedures are, we will not sacrifice the integrity portions of the process.

Mr. SOUDER. Well, let me just close with this, and we will send you some additional questions. But one of the—and we may come back and revisit this again after we have actually been out to a number of the borders—I have been to San Ysidro a number of times, as well as Nogales and El Paso and crossed many times at the Canadian border—that we are not going out on these border hearings to do anything but try to figure out how to tackle the problem, going with no preconceived notion other than it is going to take more money.

But my assumption is we are going to see different things at the different borders and the pressures that are needed from the different services. The type of things that we are going to be looking at are what types of technology are needed as supplements at the big border crossings, what at the smaller border crossings, what kind of personnel differences are there in—if you look at—because we have just been looking at this I–87, the Montreal corridor. I–87 is clearly going to need a little bit different than 89 going through Vermont, but in between there is another little border station, and there is a couple more.

It is not clear that if you put—and if we put more pressure on the border crossing, that they aren't going to go 500 yards east through the woods. How exactly is this going to work? Yet there is no question that we have been pulling our resources back toward the borders, that the quickest way to get people is to find them when they are coming in and trying to penetrate into the communities. So there is going to be tremendous pressure on this, and we are going to concentrate resources on it, but my sense is it is going to be different pressures in different places.

Furthermore, not only do you have at Champlain on I–87 and at Highgate Springs on I–89 and a border crossing between, you have Lake Champlain coming up at two points in between where a person in a canoe or a small boat can come through. We need to be looking at this in a holistic way.

We need to be looking at it from a trucking standpoint. Obviously at the Mexican border you can see the prescription drugs being—in addition to other illegal narcotics, being carried across and pharmacies lined up, that the challenges are immense. The responses are going to need to be diverse. And we look forward to plunging into that, and where we can do it with technology, where we might be able to do other things along the border in between the sites that, instead of an invisible border, are there going to be other technology ways that we can watch that and tap that in, because if we squeeze one place, just like narcotics, it is going to move elsewhere. Terrorism, illegal immigration and everything else is going to be similar.

Any comments, Mr. Ziglar, that you want to make here?

Mr. ZIGLAR. Mr. Chairman, you are absolutely right, that this is not an issue that can be solved by more people alone. We are going to have to start overseas, where we are granting visas to the consular stations. They need to have more information at their disposal so that they can identify people and not give them visas where the people are coming into this country under the visa waiver programs. The airlines need to start providing us information in advance of their boarding so that we can identify people who may be coming. The INS needs, the Department of State needs, the Customs Service needs, we need access to all of the intelligence information or at least some kind of signal that the person that we have got in front of us is a problem.

That is one of the problems that we have had in this government is that agencies don't share information with each other, and so we may have someone in front of us that somebody has got some information about that we don't have.

That is one issue. Another issue is use of technology as part of the web of protection. We can't have soldiers on the northern border arm to arm. We don't have enough people to do that. There are places that people can come over. We have to identify those potential corridors. We have got to beef up our security there. We have got to use remote surveillance, sensing, all of those sorts of things on the border so that at least we have some early warning system.

We need to work with our neighbors to the north and to the south so that we, in effect, have a perimeter security approach to things, because if they are coming across our borders, they are coming through some other country, land borders. If we can work with our neighbors to keep people out of their country, they will not get to our country, and they will not create problems for them either.

It is truly a holistic approach that is needed to deal with this, yet at the same time understanding that millions and millions and hundreds of millions of people that come to this country every year are not coming here to do us harm. They are coming here to visit the United States. They are coming here to spend money in this country. They are coming to visit family. They are an enormous number of low-risk travelers that we can identify and we can bring in this country on an expedited or facilitated basis.

Commerce going across our borders is not commerce that is designed to do damage to us, it is designed to support our economy and their economy, and we have to develop good ways of identifying those things that need to be facilitated, and those things that are high risk to our country, identifying those and dealing with them.

But it is truly a holistic issue, and to say that we can close our borders and that will fix it is not an answer. It will kill our economy, it will kill our freedom, and it will kill everything else in sight. So we have to be rational, and we have to do this in a studied approach, realizing that we need to get on with it, because the American people do feel a sense of insecurity.

But I endorse what you said; that is, that we need to look at this in a very dispassionate, calm way, because if we do things that make us feel good but don't work, we are worse off than as if we did nothing.

Mr. SOUDER. Before I close, I forgot there was one line of questioning I wanted to raise. This is not a primary function of this hearing, which was to focus just on the work force. But, particularly Mr. Ziglar and Mr. Smith, if you can, I know they are doing this at San Ysidro, what has historically kind of happened is that when we know someone at the border is looking for drugs, there is some movement of the people who are moving illegal immigrants, even in the lanes—to some degree the similar thing is if you are looking for immigrants, if there is a Customs person, because—and this is leading to a broader question, but at San Ysidro some of the agents are being cross-trained so that traditional people and Customs can do some immigration things. People who are trained to be the drug specialists can also look for other things. This has become huge in the antiterrorism question.

My concern there on the narcotics committee is that we are going to be so busy looking for terrorists that we forget to look for the

other things. If you can give us some information of which borders the cross-training is occurring, where we could accelerate those processes, because the No. 1 thing that is getting a head of steam among Members—and I would like to also get—if you want to give it for the record, or written, that—your opinion on this—there is talk about, well, we need one superagency to do this south border, we need one superagency for the north border, this jurisdictional question doesn't work. But the problem is your missions are different once they go away from the border.

We have looked at this for many years. There may need to be a supervisor, but if we just get another homeland terrorism czar, drug czar, border czar, all of the additional agencies, we are getting so much bureaucracy. I am interested in your reaction to that, and can that, in effect, be headed off by more cross-training at the border where your agents, even if you are from diverse agencies, can help cover the other agencies' questions.

Mr. ZIGLAR. That is a perfect question. I can tell you that based upon my extensive 2 months' experience in this job, that the Customs Service and the INS work together very cooperatively at the borders. We share jurisdiction at the ports of entry, and we cross-train our people, because there are times when Customs people are doing an INS function and vice versa. So we do cross-train our people, and they work together very well. In fact, many of the regulations at the ports of entry are—for example, on threat levels, those are the guidelines that the Customs Service has that we work with them on when we change a threat level.

So it is a very cooperative relationship. Sometimes it is competitive when they want to hire our folks, but it is a very cooperative relationship, and we understand what we are trying to do there. What we need together are more resources so that we can really do that job and do that job effectively.

Mr. SOUDER. Thank you.

Mr. SMITH. I can only second Commissioner Ziglar's response.

Mr. SOUDER. Well, thank you, each of you, for coming today. I appreciate Mr. Ziglar taking his busy time to come. As Commissioner, we know this is very important. There is a lot of immigration pressures and a lot of different ways, and we appreciate you, now with the terrorism angle and the narcotics. And, Mr. Smith, we have worked with the Customs on lots of different issues, and sometimes the U.S. Marshals Service doesn't get included in these, and we try to do that wherever possible, because the other parts can't be executed if the Marshals Service isn't providing their critical support to that.

I thank each of you for coming. I ask that Mr. Cummings's statement be inserted into the record, and we will look forward to hearing responses to our written questions as well as future hearings.

With that the hearing stands adjourned.

[Whereupon, at 2:40 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings follows:]

Opening Statement
Congressman Elijah E. Cummings, Ranking Member
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives

Hearing on "Keeping a Strong Federal Law Enforcement Workforce"

October 17, 2001

1 Mr. Chairman,

2

3 First of all, I want to applaud each of the agencies represented here
4 today for the valiant efforts of their employees in responding to the
5 September 11 attacks on the World Trade Center and the Pentagon. INS,
6 Customs and the U.S. Marshal's Service are all to be commended for their
7 responsiveness in the immediate wake of the attacks and for their subsequent
8 ongoing efforts.

9

10 Mr. Chairman, no organization can be expected to fulfill its mission
11 without first being able to recruit and retain qualified, motivated personnel.
12 Some missions are more critical than others, of course; and none is more
13 important than the one that our federal law enforcement agencies are charged
14 with performing everyday. Especially now, in the post-September 11th era.

15

16 The persistent, pernicious problems of illicit drug-smuggling, illegal

immigration, and, in recent years, international terrorism, have posed a constant challenge to our federal law enforcement agencies; and limitations on resources, including the funds available for hiring, provide a check on agency effectiveness.

In recent years, Congress has acted to boost the hiring budgets for federal agencies charged with protecting our nation's security against threats that originate outside our borders. Experience suggests, however, that the workforce issues confronting these agencies require more than a purely budgetary solution.

Congress, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, mandated that the Attorney General increase the number of Border Patrol agents by no less than 1,000 agents per year during each of fiscal years 1997 through 2001. Although INS was able to meet this goal in fiscal years 1997 and 1998, it failed in each of the following three years. INS has identified two major obstacles to meeting its hiring goals: (1) difficulty in attracting qualified recruits and (2) a sudden imbalance in the ratio of inexperienced to experienced agents.

Geographic allocation of personnel within agencies has also emerged as an issue. The assignment of a disproportionate number of new Border

Patrol agents to the U.S.-Mexico border, for example, has resulted in a stark imbalance in the allocation of personnel between the southern and northern borders. The type of training employees receive once on the job, and the ability of agencies to implement new technologies, also bears on the effectiveness of agencies in performing their missions.

In the wake of September 11th, the likelihood that additional terrorist attacks will be attempted against targets within the United States makes it especially critical that Congress move quickly to address these issues. Although both the House and Senate have already passed anti-terrorism legislation authorizing a three-fold increase in the number of Border Patrol agents, INS inspectors, and Customs inspectors along the northern border, for example, it appears that the recipient agencies may be ill-equipped at present to meet these new hiring goals and to manage the integration of large numbers of new employees. The burden of shifting priorities to reflect an increased emphasis on anti-terrorism activities only amplifies the challenge.

I look forward to hearing the testimony of our witnesses today as we consider what steps must be taken to insure that federal law enforcement agencies are adequately and properly equipped to meet the challenges posed by America's "new war."

Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources
"Keeping a Strong Federal Law Enforcement Work Force"

RECRUITMENT

Question: How many new officers and inspectors will the U.S. Customs Service need to meet the challenges presented by narcotics smuggling, smuggling of other contraband, and foreign terrorism?

Answer: Customs is adding 258 inspectors and 10 canine enforcement officer positions for the northern border and an additional 626 National Guard positions nationally, contingent on Department of Defense signing the memorandum of understanding. With these additions, it is believed that Customs will be able to manage the ports of entry more effectively. In the long term, additional positions will be needed to: (1) manage wait times in commercial traffic at high volume ports/crossings, (2) relieve inspectors temporarily assigned to these locations, (3) help manage extraordinary overtime expenditures, and (4) operate the additional Non-Intrusive Inspection (NII) Technology systems that are scheduled to be deployed on the northern border.

Infrastructure and technology alone cannot provide adequate security at ports of entry and enable Customs to process an ever-increasing volume of commercial and passenger traffic. There must be an adequate number of Customs inspectors assigned to ports of entry, not only to operate any additional deployed technology, but to question commercial shippers and vehicle passengers, maintain a safe work environment, and conduct physical inspections, among other things. Each large-scale NII system being deployed requires 3 inspectors per shift per system.

Question: How rapidly should new officers and inspectors be added? Is slow growth better, to ensure adequate training and supervision? If the growth is more rapid, how much will performance suffer? Are there certain positions for which rapid growth is less of a problem?

Answer: New positions should be added using a consistent, steady flow. Using this method will allow Customs to maximize training efficiency and capabilities at both the Federal Law Enforcement Training Center (FLETC) and in the field. Because appointees must successfully complete formalized training prior to permanent appointment and FLETC can only accommodate a limited number of students at any given time, too rapid growth could cause serious training logjams. There are no positions for which rapid growth is less of a problem.

Question: Do you believe that it will be possible to add enough new agents to meet these needs? In other words, do you believe that you can attract enough new recruits? Can you maintain a high level of quality among the recruits?

Answer: Customs has had no problem in attracting high quality recruits for our agent positions. Through our quality recruitment program, candidates are subjected to a rigorous hiring process; e.g., testing, structured interviews, background investigations, etc. We currently have 2,500 agent applicants working their way through this process. Applicants who complete this process are held in a "pipeline" so they are available to meet the hiring needs of the Customs Service. Approximately 75 agent applicants have already completed all steps of the process.

Question: If you are unable to hire as many agents as you would like, how will you deploy the ones you have? How many will be assigned to deal with terrorism, and how many to deal with other problems such as narcotics smuggling and illegal immigration?

Answer: If we were unable to hire this additional staffing for some reason, we would be forced to redeploy our special agents to antiterrorism activities. Such redeployments will be both permanent and temporary. However, the degree of redeployment will depend upon the threat level and the definition of Customs role in the protection of our Nation's borders.

The demands on Customs to assist in antiterrorism efforts have been great. Currently, there are approximately 115 Customs special agents on loan to the Federal Aviation Administration's Air Marshal program for a 12 to 18 month period. Further, Customs has refocused the agency's financial investigative expertise toward tracking the funding sources used by terrorist organizations. The overall effect of such redeployments is unknown.

While Customs role in the war against terrorism may increase, the agency simply cannot decrease its efforts in the other priority areas in which it plays an integral and important role.

Question: During the hearing, we discussed where the Customs Service typically finds new recruits. For the record, please provide us with data concerning the prior occupations of new recruits at your agency, including the percentages of new recruits who come from other federal law enforcement agencies, from state and local law enforcement agencies, and from the military.

Answer: Customs draws applicants for its positions from the same pool of candidates as other law enforcement agencies. We have a very active recruitment program for filling our entry-level positions and regularly recruit from colleges and universities, military organizations, job fairs, conferences, etc. We have been able to attract veterans, and for inspectors, have attracted applicants who have retired from the military. Approximately 7 percent (26 of 361) of the agents hired in the last 2 years were from other agencies.

Question: Do you have any information concerning what impact, if any, such hiring is having on these other law enforcement agencies and/or the military? If so, please provide it to the Subcommittee.

Answer: Although we tap other law enforcement organizations for higher graded positions, we do not believe there has been a serious impact on the losing organizations

Question: What, if any, increases in pay or benefits will be required to improve recruitment at the Customs Service? How much will those increases cost? Are you seeking the "law enforcement retirement" plan for your agents and inspectors?

Answer: While we generally have no problem in attracting candidates to most locations, we would like to provide for "remote duty" or "hardship" allowances for employees required to work in remote locations. Under this allowance, we would propose up to 30 percent above base pay, to be paid only while an employee is in a remote duty location. This would assist in retaining employees in these locations. Currently, there are no Office of Personnel Management (OPM) regulations that cover this type of situation.

Foreign language bonus pay (up to 5 percent of basic pay) is a flexibility allowable to Customs law enforcement personnel. However, there are other employees along our borders who must speak a foreign language in order to perform their jobs, but are not classified as law enforcement. We are not able to compensate these employees. This inequity should be corrected so that we can retain employees in these duty locations.

The circumstances in which recruitment and retention bonuses can be used should be expanded. These bonuses allow for payment of up to 25 percent of base pay. We can offer a non-federal applicant a recruitment bonus to go to a hard-to-fill location, but we cannot offer a recruitment bonus to an experienced Customs employee to go to that same location. Oftentimes, a remote location is exactly where we need to place a "seasoned" employee, rather than a new recruit. Conversely, retention bonuses are permitted if a current employee is leaving the federal service. If a current employee is leaving Customs for another agency, a bonus is not permitted. We believe that we should be able to try to retain our employees.

We would not anticipate that costs for the above incentives would be prohibitive. For example, a 10 percent recruitment bonus for a GS-5 inspector would be approximately $2,200. A 10 percent retention bonus for a GS-9 inspector would be approximately $3,300. These incentives would be used only in situations where we experience difficulty in filling a job with a highly qualified candidate or would have difficulty in retaining a highly qualified employee. At this time, we are evaluating the need for the use of these incentives, and if our assessment

supports the need for expanded use of the bonuses, we will use them as necessary to support recruitment objectives. If there were significant new legislative hiring initiatives, the likelihood of using recruitment bonuses would increase.

Current regulations allow agencies to reemploy military/federal retirees without reduction of pay or annuity in exceptional circumstances if approved by OPM. We would like to see these regulations changed to allow agencies to reemploy retirees in remote and small duty locations without OPM approval.

Customs agents meet the definition of Law Enforcement Officer (LEO) under 5 U.S.C. Section 8336(c), referred to as "6(c)", and are covered under the LEO retirement provisions. There are many obstacles to overcome toward achieving 6 (c) retirement for inspectors. While Customs inspectors carry firearms, have arrest authority, work in dangerous/hazardous conditions, detain individuals, and have been killed in the line of duty, the Merit Systems Protection Board has repeatedly ruled that they are not covered by 5 U.S.C. Section 8336(c).

Question: What resources do you currently have to provide incentives for recruitment? Can you detail what steps you currently can take, in the form of bonuses or other incentives, to increase recruitment or retention? How have you been using those resources? Do you plan to use them in the near future?

Answer: Refer to the response in question 7 above regarding currently available and recommended incentives. In addition, 5 CFR provides for other hiring incentives, i.e., payment of travel or transportation costs to interview candidates under consideration for a particular job, payment of travel and transportation costs to relocate a new or current federal employee, offer any step of the appropriate grade to meet salary requirements of a superior candidate, and advance a new hire up to two paychecks so that the individual can meet living and other expenses.

We have utilized recruitment, retention, and foreign language bonuses. However, since we have generally been successful in attracting a large applicant pool for our vacancies, we have not used these incentives extensively. If the regulatory changes we propose in our answer to your question above were adopted, our use of the incentives would expand.

Question: Are you planning to hire agents with special skills to deal with the new threats?

Answer: The Customs Service actively recruits and hires high quality applicants to fill special agent positions. As such, all new hires are immediately capable of contributing to any facet of the Customs mission. Customs is constantly recruiting applicants with unique or special skills to fill needs that are created by evolving enforcement priorities to ensure a ready work force.

The Customs Service has a special agent recruitment program that is active in all Special Agent in Charge or Resident Agent in Charge offices. The recruitment program seeks and recruits high quality applicants, particularly those with special experience or skills to fulfill the needs of the Office of Investigations.

Question: Is the Customs Service seeking "excepted service" status for purposes of hiring? If so, could you explain in further detail exactly how that would help in recruitment?

Answer: Customs is seeking a modification of our excepted authorities to assist in our recruitment efforts. Excepted authorities do not have a public notice requirement. This provides the flexibility to target recruitment for both specialized skills and diversity and by location. The selection process gives weight to veterans' preference, but allows more flexibility in rating and ranking candidates. In contrast, the competitive process requires managers to select from among the top three candidates available, commonly called the "rule of three." Established over 100 years ago, we believe the competitive process needs overhauling as it no longer fits our need to target recruitment and to streamline the ranking and selection of candidates.

Customs has been working with OPM for several years concerning the need for flexibility in filling certain critical law enforcement positions. Customs currently has a Schedule A excepted authority and a Schedule B excepted authority for agent positions. The Schedule A excepted authority does not contain a specific provision permitting noncompetitive conversion to the competitive service after a period of successful performance. The lack of a conversion authority negatively affects morale and retention. Excepted hiring authorities are beneficial to agencies only if they allow for conversion to the competitive service and provide employees the rights and benefits that accrue with a competitive appointment.

Question: Increasing the number of agents assigned to the Northern border will probably require assigning personnel to some very remote areas. What steps will need to be taken to attract and retain agents assigned to these areas?

Answer: Customs will take the necessary steps to recruit and retain special agents to help guard our Nation's northern border. If necessary, rotation programs and other incentives will be considered to assure that the right number of agents are in the places they need to be to keep the border secure.

INFRASTRUCTURE, EQUIPMENT AND TECHNOLOGY

Question: In addition to new personnel at our nation's border crossings, to what extent will new infrastructure be required? Do you see the need to expand the physical plant at those crossings, by increasing the number of car and truck lanes, expanding bridges, or building new warehouses?

Answer: Customs has conducted a comprehensive study of its current infrastructure/facilities. Many of the northern border facilities are aging and inadequate, requiring remodeling or replacement. Bridges need to be renovated to meet the demands and requirements of anticipated growth. Numerous port authorities are expanding their international airport facilities and operations. Customs is continually working with other federal agencies to identify infrastructure needs. The General Services Administration (GSA) is the lead agency in defining the priority and extent of infrastructure improvements.

Question: Will new fencing and lighting be required along both the Southern and the northern borders?

Answer: Yes. Customs is in the process of adding fencing and lighting along northern border ports. In addition, gates and bollards are being added to numerous northern border ports to enhance security. Customs is currently re-evaluating the lighting and fencing needs along the southern border.

Question: Will new housing for agents be required, particularly for those assigned to more remote parts of the Northern border?

Answer: Yes. As the number of officers' increases, the housing requirements will increase. The lack of housing is already a problem. This problem will only be exacerbated with an increase of staffing.

Question: What new equipment will be required? Do we need more vehicles? Do we need to modernize the vehicles or other equipment for your agencies?

Answer: Customs has developed a 5-year plan for the deployment of Non-Intrusive Inspection (NII) technology (mobile and relocatable x-ray and gamma ray technology) that is capable of detecting anomalies in commercial shipments. Under this plan, most of this technology is scheduled for deployment to address the narcotics smuggling threat we face at high-risk air, sea and Southwest Border ports of entry. Customs could benefit from the deployment of these large-scale systems to northern border locations to aid in the examination and screening of commercial conveyances entering the United States from Canada. In addition to large-scale NII equipment, Customs could also utilize portable NII technologies that will allow for the detection of anomalies and radiological material, etc. These devices include particle detectors, personal

radiation detectors, isotope identifiers, contraband detection kits, and smaller x-ray imaging devices.

Customs allocates vehicles consistent with the agency's standard employee to vehicle ratio. When new positions are allocated to the field, standard ratios are applied and additional vehicles are provided to the locations that are receiving new staff. Moreover, Customs schedules vehicles for replacements that exceed the agency prescribed high mileage mark. These replacement buys are done on an annual basis, but have been averaging more than five years.

Question: Are there new technologies which are available to your agencies which you believe should be acquired? Would introducing face recognition technology at the border and at our airports be a viable step?

Answer: Yes. There are new technologies that we believe may have value to Customs, and we are exploring a number of them. In the passenger environment, these include a walk-through vapor and particle detection system to rapidly examine individuals for concealed contraband in a non-intrusive manner. Once in the system, vapors and particles from the person are collected from the natural flow of air generated by the individual's body heat.

For the cargo environment, another system is a device developed by a national laboratory that uses ultrasonic sound waves to detect and identify contraband (both drug and weapons of mass destruction) in sealed containers such as drums, barrels, and tankers. In addition, several companies presently offer radiation detection equipment capable of detecting certain types of radioactive material secreted in vehicles and trucks, as well as radiation isotope identifiers that would enable our inspectors to identify radiation that has caused their Personal Radiation Detectors (Pagers) to alarm. Other federal agencies have acquired such technology for use or testing. Customs is currently preparing to purchase and test, in our unique operating environment, six units from three different manufacturers. If testing proves successful, this equipment could prove to be an invaluable tool in our efforts to combat the terrorism threat at our Nation's borders.

The systems could be deployed at all U.S. ports of entry, but require varying amounts of space for efficient deployment. Some ports will require redesign and facility enhancements. Northern border ports will require protective structures to house the equipment because of inclement weather.

Introducing biometrics technologies, including facial recognition technology, at the border and at our airports is also being considered and explored. Facial recognition is being used in various countries overseas to assist foreign governments in identifying known violators that may attempt entry into the U.S.

Question: Are there any improvements that could be made to the systems available to Customs, in particular the Advanced Passenger Information System (APIS)? Could something like this be used at land border crossings?

Answer: Improvements in the APIS system are planned. Recently passed legislation will allow Customs to require complete APIS information on all arriving air passengers and crew; this was not possible with the voluntary APIS program that was in place until now. We are also planning on making major programming changes to our APIS system in the future. In the future air APIS will be changed from a batch manifest transmitted by the air carrier after take off to an interactive "name-by-name" transmission of data by the carrier at the time of passenger check-in. With this new system it will be possible to respond to the carrier with a "board/don't board" message, or send an alert message to security officials before the passenger ever leaves the check-in counter. We believe this will enhance aviation safety and national security. We will also be working to incorporate biometrics checks, such as facial recognition technology, into APIS in the future.

The APIS could also be used on the land border to provide advance information on passengers crossing on commercial conveyances, such as buses or trains. There is no legislative requirement, however, for bus and train operators to provide APIS information.

Similarly, Customs continues to pursue legislation to build upon the above referenced provision, that would add a mandatory requirement for advanced cargo information and to expand both the passenger and cargo provisions to include outbound.

Question: Are there improvements that could be made to the Passenger Analytical Units (PAUs) system used by Customs to identify potential risks in incoming flights? Could PAUs, or something like them, be used at land border crossings?

Answer: The PAUs primary tool is the Automated Targeting System – Passenger (ATS/P). The ATS/P system will become a more effective tool for the PAUs once all airlines begin transmitting Advance Passenger Information System (APIS) data and providing access to reservation data as mandated through recent legislation. However, the imminent availability of this data will require several modifications to the ATS/P system in order to process this information in an efficient manner.

The first step is to make all necessary modifications for enhanced utilization of the new reservation data for analysis by inspectors.

The next step would be the inclusion of software dedicated to name variation identification. This would alert the PAUs to potentially high-risk passengers through different variations of the name they are utilizing for travel.

Finally, the system would be enhanced by the expanded incorporation of the Department of State's immigrant and non-immigrant visa data. Of particular importance is the availability of this data through imagery. This information will facilitate the PAUs identification of targeted high-risk passengers. Also, the imagery could be used to detect fraud by confirming the identity of the traveler with the imagery of the visa applicant.

Although the PAUs use of these tools has proven successful in the interdiction of high-risk passengers, this concept would not be as productive in a land border environment. The PAUs primary mission is the *advanced* identification and dissemination of actionable intelligence on high-risk travelers. The land border does not have the capability to access information in advance of arrival.

However, we do have the Intelligence Collection and Analysis Teams (ICATs). An ICAT is a multiagency group that serves to collect and disseminate actionable intelligence along both borders for terrorists, narcotics and alien smuggling. The ICAT is similar to a PAU except they do not have access to information on the travelers in advance of their arrival for real-time targeting. They primarily act on collective intelligence derived from seizure analysis, investigations and other agency information.

Question: Please provide the Subcommittee with an update on the development, deployment and use of the Automated Commercial System ("ACE").

Answer: On September 28, 2001, Customs awarded three task orders to our systems integration contractor, the e-Customs Partnership — Task 1 (Program Management), 2 (Enterprise Architecture and Engineering) and 3 (Requirements Definition and Planning).

Customs is progressing well with the first pieces of the ACE framework:

- With the start of Task 3, Customs entered the definition phase of ACE and is obtaining input from Customs operations and technical staff, along with members of the trade community, to identify user requirements for ACE Increment 1.

- Trade involvement is critical to the effort. There has been superb representation in the Trade Support Network and the Trade User Requirements Integration Committee. The next plenary meeting of the TSN will be held January 23-24, 2002, in Arlington, Virginia.

- The President signed the Customs Appropriations Bill on November 12, 2001, providing Customs $300 million for modernization in FY 2002.

- In keeping with our antiterrorism priorities, Customs is collaborating with the e-Customs Partnership to speed the delivery of ACE functionality. This is reflected in the Expenditure Plan now being prepared for Administration and Congressional review, which requests a funding release of $206 million. This includes $104 million for the design, development, test and deployment of ACE Increment 1, Release 1.0, and $11.2 million for detailed requirements and planning efforts for ACE Increment 2.

We anticipate beginning development of ACE Increment 1, Release 1.0, in February 2002 and expect implementation to begin in early 2003.

ACE Increment 1, Release 1.0 will deliver early, high-priority business needs with minimal disruption, solidify trade support by providing account management capability (a high priority), and provide flexible infrastructure readily leveraged for enforcement and antiterrorism initiatives.

This early functionality will enable visibility to Customs, trade, and participating government agencies through access and analysis of near real-time information that provides monitoring of:

- Trade Activity – Near real-time availability of trade data for analysis
- Trends – Ability to analyze trade activities
- Targeting and Decision Support – Analysis of data to suggest targeting priorities for inspection, while minimizing inconvenience to reliable shippers

Deployment of Release 1.0 functionality is planned for the three ports currently piloting the National Customs Automation Program (NCAP): Detroit, Michigan, Port Huron, Michigan, and Laredo, Texas. No other deployment decisions have been made at this point.

In order to keep the program on track, Customs will need a funding level of between $350 million and $400 million over the next 3 years. This is critical to mitigating program risk, keeping stakeholder involvement, and to meet the demands of Customs core mission.

Question: It is our understanding that on the northern border, only rail carriers are using the Automated Manifest System component of ACE. How successful has it been? Could this program be improved? Could it be expanded for use by trucking companies?

Answer: Customs and the rail carriers consider the Automated Manifest System (AMS) to be highly successful. The Rail AMS has enabled Customs to target and process the ever-increasing rail volume on the northern border. Customs receives manifest information on rail shipments destined for the United States at a minimum of 1 hour in advance of the train's arrival. Improvements to Rail AMS require legislative changes that would mandate carriers to submit additional manifest information. An example of this would be additional information on containers transferred to the rail carriers from a vessel. Rail AMS was not created to accommodate the requirements of the trucking industry. The trucking industry has much shorter turnaround times and providing advanced manifest information in AMS could cause delays. Additionally, trucks carry a greater variety of small shipments than do rail. Substantial modifications would have to be made to Rail AMS to accommodate trucks.

Question: How many importers use customs brokers that participate in the Automated Broker Interface component of ACE? How successful has it been? Could this program be expanded or improved?

Answer: Customs currently has 491,835 separately identified entities that import merchandise into the United States. The vast majority of these entities use the services of 1,788 licensed Customs brokers to electronically file their import data with Customs via the Automated Broker Interface within the Automated Commercial System (ACS). Very large importers, or importers who handle very limited or specialized merchandise may also use the Automated Broker Interface and may opt to file their electronic data directly with Customs, bypassing the use of a Customs broker. There are currently 475 importers with this capability. Of the import entries that are filed in the Automated Commercial System, 99.4 percent originate through the use of the Automated Broker Interface. Customs and the trade community not only consider the Automated Broker Interface a success, but a critical link in conducting international trade efficiently and effectively.

The continued use of this manner of automated information exchange capability is a fundamental cornerstone of Customs development of the Automated Commercial Environment (ACE). The Customs brokerage community as well as importers and carriers are helping to guide development of ACE through their participation in Customs Trade Support Network.

Question: What percentage of importers uses Customs Forms 3461 and/or 3461-ALT, which allow for immediate release at the border? How successful have these forms been in reducing delays at the Northern and Southern Borders? Could use of these forms be expanded or improved?

Answer: Except for shipments released using the Border Release Advanced Screening & Selectivity (BRASS) or Pre-Arrival Processing Systems, Customs uses the Customs Form 3461-ALT as the primary release document on our

northern and southern land borders. The fact that it has fewer data elements than the Customs Form 3461 and it is bar coded helps expedite the processing of this form.

Question: Please provide the Subcommittee with an update on the development, deployment and use of the "BRASS" system of selective.

Answer: The BRASS program was formerly known as the Line Release program. The BRASS is an automated cargo release system designed to expedite the processing of highly compliant, repetitively shipped products. The BRASS is a voluntary program that requires the entry filer to submit an application for participation to Customs identifying required information. Shipper/manufacturers, importers, entry filers and products, in combination, must be approved to participate in BRASS. Approved participants will be assigned a unique identifying code for use in BRASS transactions. The BRASS program is only available at designated land border locations approved by Customs. Some of these locations require further participation in additional enforcement and compliance programs.

Applications for BRASS are processed at one of the two designated BRASS Processing Centers (BPC). The Customs Service Port of St. Albans, Vermont, serves all northern border BRASS sites and the Port of Otay Mesa, California, serves southern border BRASS sites. The BPC's review all applications for BRASS privileges and designate the required C-4 bar code for participation.

The key to BRASS is the bar code that contains the information necessary to uniquely identify a routine import transaction. This bar code contains four elements: a shipper/manufacturer's code, an importer code, entry filer code and the product code. This assembly of identifiers is referred to as the Common Commodity Classification Code or C-4 code.

The BRASS National Server will electronically link all of the BRASS ports together to streamline application processing and data sharing. Currently, each port has stand-alone BRASS computers that cannot communicate with other BRASS computers outside of the port. The National Server will close this communication gap, allowing for better data management and sharing of information for enforcement purposes. It will also allow for Customs to easily retrieve statistical data outside of ACS.

Question: Could you use so-called "Intelligent Transportation Systems" to speed up truck traffic (such as the weighing of trucks in motion, or the use of transponders to automatically deduct fees or even file manifests as trucks pass by)?

Answer: Certainly Intelligent Transportation Systems would help expedite shipments across our Northern and Southern land borders to the extent that

information and intelligence is available for those shipments. Today, however, there is little advance information pertaining to the shipments moving across the borders. To be effective, it is necessary to have an effective verification component to any system (to include sufficient staffing with proper facilities and equipment), so that there are mechanisms to stop dangerous merchandise that is about to enter or exit the United States.

Question: Would you consider implementing the pilot Pre-Arrival Processing System, now in use at the Ambassador Bridge, on a nationwide scale?

Answer: Yes. In fact, the Customs Trade Compliance Board of Directors has approved the use of the Pre-Arrival Processing System (PAPS) pilot at any port where the Port Director feels the system would help ease congestion and wait time issues. However, the successful implementation of PAPS requires the cooperation of the carrier, the shipper, and the broker, without which the system will not provide benefit.

Question: Would you consider implementing the pilot Commercial Vehicle Processing Center (CVPC), now in use at Ft. Erie, Ontario, on a nationwide scale?

Answer: Yes. However, the CVPC's are set up in Canada, with the cooperation of the Canadian or provincial authorities and private industry. U.S. Customs has no authority to set up or operate such facilities unilaterally.

Question: Please provide the Subcommittee with an update on the development, deployment and use of Dedicated Commuter Lanes.

Answer: In an effort to expedite movement of low-risk travelers across our northern and southern borders, the Customs Service has worked with the Immigration and Naturalization Service (INS), as well as officials from Mexico and Canada, to pilot several joint Dedicated Commuter Lane (DCL) programs. The two most successful programs are the Secured Electronic Network for Traveler's Rapid Inspection (SENTRI) and Nexus.

The SENTRI is currently operational at Otay Mesa and San Ysidro, California, and El Paso, Texas. There are over 6,000 participants for these locations. Two additional DCLs that use SENTRI technology are operational in Detroit, Michigan, and Buffalo, New York. U.S. Customs and INS officers screen SENTRI applicants for violations. Members are issued a transponder, and a windshield decal for each registered vehicle. The inspecting officer reviews the participant's picture and personal information upon arrival for positive identification.

Nexus is operational at the Port Huron/Sarnia Port of Entry. Both U.S. and Canadian Customs and Immigration agencies participate in this pilot program.

There are currently 4,418 Nexus participants. U.S. and Canadian Customs and Immigration officers screen applicants for violations. Members are issued photo-identification cards, a proximity card, and a windshield decal for each registered vehicle. The inspecting officer also displays the participant's picture and personal information upon arrival for positive identification.

As of September 11, 2001, all Nexus and SENTRI enrollment centers were shut down in order to reallocate personnel to assist with border inspections. Although SENTRI and Nexus lanes are open, travelers are subject to increased inspections as with all other vehicle lanes along the northern and southern border commensurate with the threat Level 1 alert.

The consulting firm of Klynveld, Peat, Marwick, and Goerdeler (KPMG) was hired to conduct a comparison study of the various Dedicated Commuter Lane programs. The KPMG will have a preliminary report completed by December 31, 2001. Future expansion of DCLs should be determined, in part, by the results of this study.

Question: Would you support consolidating, on a nationwide basis, the "fastpass" systems used by Canada and the U.S. into a single system, such as has been tested at the Sarnia/Port Huron border crossing (the so-called "NEXUS" pilot program)?

Answer: Yes. We would support the development of one consolidated "fastpass" system, or, more specifically, a Dedicated Commuter Lane similar to the Nexus pilot program. The results of the Evaluation Working Group (EWG) comparison study of Dedicated Commuter Lane programs (including Nexus) should be used, in part, to determine future expansion of this nationwide system. The EWG is comprised of individuals from U.S. and Canadian Customs and Immigration agencies.

BALANCING ANTI-TERRORISM WITH OTHER MISSIONS

Question: As the Customs Service has responded to the heightened threat of terrorism, what impact has this had on your ability to deal with other threats? For example, has the diversion of attention to intercepting terrorists reduced your ability to deal with narcotics trafficking or the smuggling of other contraband?

Answer: As a result of the tragedies that occurred on September 11, the U.S. Customs Service went to Alert Level 1. This alert level requires Customs to operate at a sustained, intensive, operational level due to a specific and actionable threat. Considering that the fight against terrorism is the President's first priority, the Customs Service has appropriately responded and dedicated important resources to combat the threat of terrorism in the United States. Customs officers are focusing their efforts on antiterrorism activities while at the same time continuing to perform other activities in support of the Customs mission. Customs remains fully committed to protecting our Nation's borders from drug smuggling and other illicit conduct.

Question: What is the solution to these problems? Is it simply a matter of adding more agents?

Answer: Increased Customs inspectional resources on the northern border would enhance our ability to maintain Alert Level 1 operations, help manage border wait times for commercial traffic at high volume ports/crossings, and help manage extraordinary overtime expenditures while performing anti-narcotics and antiterrorism enforcement operations.

However, additional personnel alone will not completely address this threat; technology, advance information and additional training will further enhance Customs antiterrorism enforcement capabilities. The use of various forms of Non-Intrusive Inspection (NII) technology substantially enhances inspectional efforts at our borders. This NII technology includes large-scale truck and rail car x-ray machines and Mobile Vehicle and Cargo Inspection Systems (VACIS). These large-scale systems are used in conjunction with smaller scale detection equipment, which include personal radiation detection equipment, isotope identifiers, explosive detection equipment, etc.

Additionally, Customs could also benefit by mandating that all carriers provide advance cargo and passenger manifests as well as Shipper's Export Declarations in an electronic format. This would allow Customs to facilitate lower-risk passengers and cargo while at the same time focusing our efforts on passengers and cargo that pose greater threats.

Finally, increased training to aid officers in the identification and special requirements associated with implements of terrorism will enhance our ability to target, intercept, and apprehend terrorists and implements of terrorism.

OTHER QUESTIONS

Question: Does the Customs Service have administrative subpoena authority already? If not, does it seek it? If so, please explain how this authority would increase your ability to conduct investigations. What, if any, agency currently obtains subpoenas for you when they are needed?

Answer: Customs is empowered with several authorities through which it can administratively summons or subpoena records. For example, Title 19 of the United States Code provides the Customs Service with the authority to examine and summons records related to the importation of goods into the United States. Summons authority is routinely utilized in the investigation of the criminal and administrative violations that Customs enforces.

Additionally, Title 50 of the United States Code (Appended) provides Customs with similar authority relating to exports. As such, Customs utilizes the Export Enforcement Subpoena to obtain records relating to export violations.

Finally, Customs derives Controlled Substance Act subpoena authority pursuant to Title 21 through a memorandum of understanding with the Drug Enforcement Administration. However, the authority may only be utilized in the investigation of offenses related to Title 18, United States Code, Section 545 (Smuggling) and cannot be used otherwise.

Question: Our Subcommittee's staff has visited a number of border crossings and ports of entry, and spoken with Customs Service inspectors. One concern, which was raised during those conversations, was that Customs inspectors are required to wear uniforms even when they are observing baggage claim areas at airports. Apparently this makes it more difficult for the inspectors to catch potential smugglers, because the uniforms are an instant tip-off; moreover, passengers seeking information, which disrupts their surveillance activities, subject the uniformed officers to a lot of questions. Would the Customs Service consider allowing certain key operations to be carried out by inspectors in street clothes?

Answer: The PERT inspectors (Rovers) are one of the two components of the Passenger Analysis Team (PAT) concept used extensively in the airport environment. The PERT inspectors are a specialized, mobile team that covers all Federal Inspection Service areas including sterile corridors, jet-ways, baggage carousels, secondary inspection areas, and ramp areas, with a primary mission to increase the number of narcotics seizures while facilitating passenger traffic flow. Since September 11, PERT inspectors have expanded their role to include targeting travelers selected by the Analytical Unit as possible terrorists. The PERT inspectors use observational techniques, behavioral analysis, and good interviewing methods to select a few high-risk passengers for further examination.

In October 1999, for uniformity, all PERT inspectors were required to be in uniform unless exempted by the Port Director for a specific reason.
As part of an agency professionalism program, all inspectors who have direct contact with arriving travelers are required to be in full uniform and immediately identifiable as a Customs Inspector. This reestablishes the professional appearance of PERT inspectors who were making contact with the traveling public. The use of a nameplate worn on the uniform was also instituted at that time.

By national negotiation in March 1999, the National Treasury Employees Union and Customs agreed to the circumstance regarding when and why a uniformed officer should be afforded an exemption from wearing a uniform. The limited use of plain clothes as a method to blend into arriving passengers may still be authorized by the Port Director for special operations on a case-by-case basis. The Headquarters Executive Director, Operations, must be notified when the Port Director grants this authority.

When a PERT inspector makes contact with a traveler, he/she is immediately identifiable as a Customs employee who is both authorized and accountable for the inspection that is being conducted. The standards regarding professional appearance and the wearing of proper uniforms are established. There is the visible presence of uniformed inspectors, which makes many travelers feel more secure. Being uniformed also provides for immediate use of team members when personnel resources are limited. Although this may not be directly contributed to the wearing of a uniform, PERT Team statistics at both JFK and Miami have increased in FY 2001. There is no specific example that being in plain clothes has resulted in a seizure that would not have been initiated by a uniformed inspector.

Customs Office of Field Operations recommends PERT inspectors' standard work attire be the authorized Customs uniform. Air and Sea Port Directors retain the authority to assign inspectors on the PERT Team to wear plain clothes on a case-by-case basis.

All inspectors at Land Border Ports of Entry should always be in full uniform. During pre-primary inspections and while working with Canine Enforcement Officers, there is no need for covert activity in the primary queue. The wearing of uniforms is equally important for both identification and safety.

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW
Washington, DC 20536

JUL 29 2002

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JUL 16 2002

The Honorable Mark Souder
Chairman
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter dated November 5, 2001, in which you present follow-up questions concerning my testimony before the House Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy and Human Resources on October 17, 2001. I apologize for the delay in responding. Since your letter contained numerous questions, please allow me to address each one separately.

A. RECRUITMENT

1. How many new Officers and Inspectors will the INS need and the Border Patrol need to meet the challenges presented by illegal immigration, narcotics smuggling, and foreign terrorism?

Let me be clear that both our Inspections Unit and the Border Patrol are uniformed branches of the Immigration Naturalization Service (INS) that deal with border enforcement. While INS Inspectors generally work at ports-of-entry, the Border Patrol's responsibility lies primarily between ports-of-entry.

I will also point out that INS' primary mission is to enforce our Nation's immigration laws. In the course of carrying out their duties, INS officers do seize narcotics and apprehend criminals, including possible terrorists. But the full challenges of narcotics smuggling and terrorism will be met by many law enforcement and intelligence agencies.

Regarding INS staffing, there is, unfortunately, no "magic number" for how many people our country needs at any given time. Proper staffing of INS must coincide with dynamic migration, tourist travel, and commercial traffic flows, as well as be responsive to changing threat levels. What is clear is that the INS is currently understaffed. Estimates of INS staffing needs during normal operations suggested almost doubling of certain INS officer ranks--at increased threat levels that number is higher. A proportionate number of support positions is also required in order to adequately provide support services.

2. How rapidly should new Officers and Inspectors be added? Is slow growth better to ensure adequate training and supervision? If growth is more rapid, how much will performance suffer? Are there certain positions for which rapid growth is less of a problem?

The mission of the INS is too important to sacrifice quality or performance for the sake of expediency in recruiting, hiring, training, and deploying any new officer corps staff. We will make every attempt to hire only the best qualified of individuals, and monitor performance levels as new staff is brought on board. We can mitigate some of these issues through personnel actions, such as focusing on recruiting "transitioning military personnel." These are military personnel who have indicated to their transition office their desire to leave military service, and who already have considerable enforcement training. At the same time, personnel tools such as an excepted service personnel system, pay upgrades, hiring bonuses, and other tools to make it easier to hire and promote, and retain quality staff without sacrificing quality will be evaluated and implemented as resources allow.

3. Do you believe it will be possible to add enough new agents to meet these needs? In other words, do you believe that you can attract enough new recruits? Can you maintain the high level of quality among the recruits?

It will be possible to meet realistically established goals. The INS will make every effort to continue to aggressively recruit and fill positions. The number of new hires that can be placed in positions is driven by resources and early deployment approvals by the Congress. If deployment is approved and resources allow new hires to be placed into positions early in the fiscal year, the INS will be able to meet its hiring goals. We are currently accepting applications for new Border Patrol Agents (BPAs), Immigration Inspectors (IIs), and Detention Enforcement Officers (DEOs). To date, INS has received over 51,000 applications for BPAs. The INS extended the "open period" until May 2002 and is likely to re-open it again in September 2002. The DEO "open period" closed at the end of January 2002 and resulted in over 16,000 applications for DEOs--almost double that of our previous open period. Our current "open period" for II applications has generated over 54,000 applications since it began in November 2001. Concerning your question about the quality of our recruits, the INS has an excellent track record for recruiting, hiring, and training, only the best individuals for our officer corps. As previously stated, the mission of the INS is too important to sacrifice quality or performance for the sake of expediency in hiring new staff.

4. If you are unable to hire as many agents as you would like, how will you deploy the ones you have? How many will be assigned to deal with terrorism, and how many will be assigned to deal with other problems, such as narcotics smuggling and illegal immigration?

In 1996, the INS developed a border control strategy, which focuses resources on the areas of greatest need first. In keeping with our strategy, local staffing shortages will be met by either moving resources permanently or through temporary details. While INS' primary mission is immigration-related, INS officers are authorized to carry out searches, seize narcotics and contraband, and apprehend criminals, including possible terrorists. In that sense, all INS law enforcement officers are ready to deal with narcotics smuggling and terrorism. The INS also participates in a number of interagency intelligence sharing efforts and other coordinated efforts with law enforcement agencies.

5. During the hearing, we discussed where the INS and the Border Patrol typically find new recruits. For the record, please provide us with data concerning the prior occupations of new recruits at these agencies, including the percentages of new recruits who come from other federal law enforcement agencies, from state and local law enforcement agencies, and from the military.

The INS does not collect information exactly as the question is asked. Our data does show, however, that for the Border Patrol, 30 percent of our new hires for BPA positions have some previous law enforcement experience, and 37 percent have previous military experience.

6. Do you have any information concerning what impact, if any, such hiring is having on these other law enforcement agencies and/or the military? If so, please provide it to the Subcommittee.

Given the entry grade levels of our positions, we are not generally recruiting from other federal law enforcement agencies. Furthermore, we do not collect information on the impact our recruitment is having on state and local law enforcement agencies. However, because of the security offered by a federal job, our positions may be attractive to certain state and local law enforcement personnel. Regarding the military, we only recruit "transitioning military personnel." These are military personnel who have indicated to their transition office their desire to leave military service.

7. What, if any, increases in pay or benefits will be required to improve recruitment at the INS and the Border Patrol? How much will those increases cost? Are you seeking the "law enforcement retirement plan" for your agents?

There are several suggestions that may prove to be useful in improving recruitment and retention. These include:

- Upgrades for Journeyman BPAs and IIs from GS-9 to GS-11. The current-year estimated costs for these upgrades are: $37 million for BPAs and $21 million for IIs, for a total of $58 million.

- The INS is currently offering a recruitment bonus of $5,000 to new IIs in the San Francisco District because of localized recruitment difficulties there.

- Funding and authority to offer retention allowances to INS employees, even though they would be leaving the INS for employment in another federal agency. Current Office of Personnel Management (OPM) regulations prohibit payment of retention allowances if an employee is seeking employment in another federal agency.

- Funding and authority to offer student loan repayments. The INS is currently writing and coordinating procedures to be used in repaying certain student loans in accordance with Department of Justice guidelines. At this time, the INS has not estimated the overall cost of this option, other than to note that repayment per employee may not exceed $6,000 per year. As with other bonus programs, the INS will require additional funds to take advantage of this management tool.

With regard to law enforcement retirement, BPAs and other occupations within the INS currently are covered under the law enforcement retirement system. However, only a very few of our IIs are currently covered by law enforcement retirement. The INS has proposed in the past that all IIs be covered, and we continue to strongly support law enforcement retirement coverage for our IIs. At the same time, we are aware of the potentially significant operational and financial costs of implementing such a policy, and will work with the Administration and the Congress to develop a workable solution to this issue.

8. What resources do you currently have to provide incentives for recruitment? Can you detail what steps you currently can take, in the form of bonuses or other incentives, to increase recruitment or retention? How have you been using those resources? Do you plan to use them in the near future?

We currently have authority to offer recruitment and relocation bonuses and limited retention allowances to alleviate recruitment and retention difficulties. Resources to pay these bonuses

and allowances must come from current appropriated operating funds. Additional funding would help the INS to utilize these tools more often, thereby making the INS more competitive in hiring high quality employees in this competitive market.

We do not have the authority (it is prohibited through OPM regulations) to offer retention allowances to our employees who are leaving employment in the INS for employment in another federal agency. The OPM proposed paying retention allowances to employees going to other federal agencies in January 2001, but did not make this provision permanent. The INS would support finalizing such provisions in order to make use of this valuable tool. For example, if we determine that the special pay authorities used by the Federal Aviation Administration to compensate Sky Marshals reduce our ranks of BPAs, it will be critical that we have the authority and funding to offer retention allowances to our employees.

A "group" recruitment bonus of $2,000 was authorized for BPAs hired during the period January 10 through September 30, 2000, for which Congress appropriated $1.5 million in Fiscal Year 2000. This bonus is no longer in effect, although a bonus of $5,000 is being offered to IIs in the San Francisco District because of localized recruitment difficulties there. We continue to monitor occupation-specific and location-specific recruitment issues to determine if additional bonuses or allowances would be appropriate.

9. Are you planning to hire agents with new skills to deal with special threats?

Although the primary mission of the INS officer corps is the enforcement of our Nation's immigration laws, our Investigation's Division staff is actively supporting terrorism investigations. All INS officers are highly trained and work closely with other law enforcement and security agencies to intercept criminals--including terrorists. The skills of our officers complement ongoing interagency efforts to combat terrorism. To face emerging threats, it is important that agencies have the flexibility to address needs in the hiring process. Use of the excepted service personnel system may prove valuable in providing that flexibility.

10. During the hearing, you expressed your belief that the INS and the Border Patrol should have "excepted service" status for purposes of hiring. Could you explain in further detail exactly how that would help in recruitment?

The INS must now use competitive service hiring processes. The regulations pertaining to competitive service are very prescriptive. Excepted service regulations provide more agency flexibility in hiring and other employment processes. Most importantly, hiring processes can be streamlined and developed by the agency to meet agency-specific needs while preserving established merit principles and labor management agreements. Additional important points on the excepted service issue are:

- Under excepted service, applicants will still have the protection of veteran's preference.

- Procedures for filling positions require less time and resources, while still producing high-quality candidates.
- Time-in-grade does not apply to excepted service positions. This gives agencies authority to promote fast trackers without the restrictions imposed by competitive service.
- Agencies are granted authority in determining the qualifications required for excepted service positions. This is different from the competitive system that requires the use of OPM qualification standards or OPM approval of agency standards. It allows quick response to changes in qualification requirements, tailoring of qualification standards to meet changing INS-specific needs, and quick response to labor-market conditions. It also allows establishment of new occupational standards, as needed.
- Excepted service also provides for more flexibility in establishing promotion and reassignment procedures under an excepted service system.

11. In its budget for fiscal year 2001, the previous Administration made several proposals to improve pay and benefits for Border Patrol Agents. These proposals included raising the so-called "journeyman" pay level from GS-9 to GS-11; changing the overtime system to Law Enforcement Availability Pay (or LEAP); and implementing Special Salary Rates (SSR) for GS-5 to GS-11 agents.

a. It is our understanding that the current limitations on the GS pay scale, as well as other overtime and salary restrictions, are administratively imposed by the Office of Personnel Management (OPM). Is this correct? What is OPM's current position concerning these requests?

The increase in the BPA and II grade levels is a classification authority that currently resides at the INS level. I will not speak to another agency's position on any given issue. However, the INS has made OPM aware that the INS seeks to upgrade the BPA and II occupations. The key issue in the upgrades is the current and out-year cost of doing so. Statutorily, the payment of LEAP is restricted to Criminal Investigators at the INS and most other federal agencies. Authorization of LEAP for occupations other than Criminal Investigators would require legislative action. However, authorization of Special Salary Rates is within the administrative authority of OPM. This authority has not been delegated to agencies.

b. Does INS currently support making these changes?

The INS fully supports the upgrades from GS-9 to GS-11 for BPAs and IIs and is actively working to resolve the funding issues for these upgrades. The previous INS Commissioner and Administration had considered implementing LEAP and special salary rates to replace

administratively uncontrollable overtime (AUO). Because of the impending restructuring of the INS and the concerns created by any reorganization effort of this size, we have not proposed any new pay reforms at this time, other than the proposed upgrades of Border Patrol Agents and Immigration Inspectors

c. How much will these improvements cost?

The upgrades are currently estimated to cost $58 million, although the cost for future fiscal years will increase as numbers of employees in these categories rise, annual salary increases are authorized, and employees receive within-grade step increases and promotions.

12. Increasing the number of agents assigned to the Northern Border will probably require assigning personnel to some very remote areas. What steps will need to be taken to attract and retain agents assigned to these areas?

Though we will be assigning additional agents to the Northern Border in remote areas, we do not anticipate significant problems filling these positions. A majority of the positions will be filled internally by INS employees who apply for the specific location through our Merit Promotion and Reassignment Plan. We will also review remote locations to see if they meet criteria to be designated as hardship locations. Upon completion of a 2-year tour-of-duty in an officially designated hardship location, employees are eligible for a non-competitive rotation, depending on the availability of an appropriate position. In addition to posting opportunities for current service members, we will use paid advertisements in newspapers, magazines, and other venues; job fairs, career days at universities and colleges; Internet advertising; and public service television and radio advertising. We will also deploy recruiters to support our aggressive advertising campaigns. Lastly, we will continue to monitor our success rates in recruitment and retention of employees in these areas, and will consider further use of recruitment or relocation bonuses and/or retention allowances as appropriate.

B. INFRASTRUCTURE, EQUIPMENT AND TECHNOLOGY

1. In addition to new personnel at our nation's border crossings, to what extent will new infrastructure be required? Do you see the need to expand the physical plant at those crossings, by increasing the number of car and truck lanes, expanding bridges, or building new warehouses?

Many ports-of-entry have had long standing needs of replacement or substantial repairs and alterations documented by overcrowded conditions, inadequate waiting areas and hold rooms, a lack of interview rooms, and a port backlog estimated at nearly $500 million.

In Fiscal Year 2002, INS will make investments in port planning and improvements. As requested in the conference report for the counter-terrorism supplemental, INS will submit a proposed distribution of resources prior to obligation.

In Fiscal Year 2003, the President requests $22.5 million for port renovation in Porthill, Indiana; Fort Fairfield, Maine; and Portal, North Dakota.

Additionally, a key element in developing an entry-exit system will be adequate facilities to accommodate INS staff, the border crossers, and the new technology solutions created for the system. Funding to begin addressing the port infrastructure will be allocated from the $380 million requested in Fiscal Year 2003 for the entry-exit system.

2. Will new fencing and lighting be required along both the Southern and the Northern borders?

While it is certain that additional fencing, roads, and lights (tactical infrastructure) are needed to control the southern border, it is as yet unclear as to how much and what combination of these are needed along the northern border. Certain tactical infrastructure components (i.e., lights and fencing) are typically required in urban enforcement scenarios. Rural settings typically require a different combination of infrastructure components (i.e., roads, vehicle barriers). The southern and northern borders differ tremendously in the enforcement challenges they present. (Many urban areas along the southern border--both in the United States and in Mexico--create infrastructure demands that are significantly different than the infrastructure demands of the sparsely populated northern border.) Infrastructure must be tailored to the topography and characteristics of the area to be secured.

3. Will new housing for agents be required, particularly for those assigned to more remote parts of the Northern Border?

In addition to port-of-entry expansion and improvements, housing will also be required to accommodate additional personnel. There are 49 work locations (ports-of-entry and/or Border Patrol stations) in extremely remote areas along the northern and southern border where housing for inspectors and agents is not available within the private sector that meets mission-traveling parameters. In these locations, the deployment of additional Inspectors and Agents may not be accomplished without additional housing units being provided.

4. What new equipment will be required? Do we need more vehicles, particularly for the Border Patrol? Do we need to modernize the vehicles or other equipment for your agencies?

The INS has a need for new types of vehicles, as well as specialty equipment, such as all-terrain vehicles (ATVs), motorcycles, and road maintenance equipment. Typically, the INS is not funded to purchase specialty equipment; however, the purchase and use of ATVs and

motorcycles would allow agents access to remote areas that sport utility vehicles (SUVs) and pickup trucks cannot reach. In addition, the purchase and/or lease of road maintenance equipment to maintain remote roads along the border would help to extend the life of service vehicles. Currently SUVs and pickup trucks make up the majority of the service vehicle fleet. In remote areas of the southwest and northern borders these vehicles are inadequate and do not stand up to the rugged terrain. The INS Fleet Management program has worked with private contractors to develop a severe-use off-road vehicle that will meet the needs of the INS.

Vehicle quantities are determined by the modular cost table established by the INS for each program: Border Patrol is two vehicles per three agents; Investigations is one vehicle per agent; Detention and Removal is one vehicle per two officers, and Inspections is one vehicle per seven immigration inspectors. Although the current vehicle to officer ratio is adequate, the INS cannot continue to survive on enhancement vehicles because of inadequate replacement funding. The INS goal is to replace 25 percent of the fleet annually; however, we have fallen far short of that goal. Currently more than half of the INS fleet meets or exceeds the replacement criteria found in the Federal Property Management Regulations. Adequate and continuous vehicle replacement funding would ensure a more modern, secure fleet that would better meet the needs of the INS.

5. **Are there new technologies which are available to your agencies, which you believe should be acquired? Would introducing face recognition technology at the border and at our airports be a viable step?**

Yes, the available new technologies should be tested to determine their potential use for our agency's law enforcement mission. Considering the advancements in various technologies, the INS is proceeding with a concept paper and business case on the future of the INS Passenger Accelerated Service System (INSPASS) and the feasibility of using face (facial) recognition in a redesign of INSPASS.

Additionally, we are looking into the feasibility of using fingerprint-matching software, or facial recognition software, to match the biometrics in the Border Crossing Card database, or in the card, to the cardholders being inspected for admission to the United States.

6. **Since 1995, INS has been expanding the use of the IDENT automated biometric identification system, which records apprehended alien's fingerprints, photos, and biographical data, along the southwest border. Could this system be usefully deployed along the northern border and at our Nation's airports? Is more money needed to expand its deployment along the southwest border?**

The INS automated biometric identification system, commonly referred to as IDENT, is currently deployed to most of the southwest border locations, some northern border locations, and some airport locations. Using existing funding, the INS has embarked on a comprehensive deployment and training effort to make IDENT available to every INS law enforcement agent at

every INS law enforcement location. Our goal is to complete this effort by the beginning of Fiscal Year 2003.

Furthermore, Congress has directed the Department of Justice to integrate IDENT with the Federal Bureau of Investigation (FBI's) Integrated Automated Fingerprint Identification System (IAFIS). Under the Department's direction, we have proceeded toward that objective. The full integration of IDENT and IAFIS is expected to be a multi-year effort. A well-planned, phased deployment plan will be necessary to measure the potential operational impact on INS and other agencies before full implementation occurs.

In the near term, the INS has added approximately 100,000 records to IDENT for persons who are wanted by federal, state and local law enforcement. This initiative is showing tremendous success in recent months. Since August 2001, over 800 persons in INS custody who otherwise may not have been detected were identified as wanted, and referred to other agencies for prosecution.

7. Please provide the Subcommittee with an update on the development, deployment, and use of the INSPASS card.

No further deployment of INSPASS will occur until we complete the development of an overall Inspections strategy as well as the re-evaluation of the business concept for INSPASS. After a careful review of the analysis of the INSPASS card, the INS decided to continue operation and maintenance of the INSPASS at the nine existing sites while exploring ways, including facial recognition technology, to provide a more robust and secure replacement system for the current INSPASS.

8. Please provide the Subcommittee with an update on the development, deployment and use of Dedicated Commuter Lanes (DCL).

The INS has developed and deployed DCLs to three southern border ports, and five northern border ports. The southern border ports of El Paso, Texas; and Otay Mesa, and San Diego, California use the automated Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) system which is based on vehicle-mounted radio frequency transponders. The ports of Buffalo, New York and Detroit, Michigan use a similar transponder-based system. The Port Huron port-of-entry is the most recent addition to the DCL network and has successfully explored the use of proximity card technology. This new generation of DCL technology is referred to as NEXUS. The ports of Port Roberts and Blaine, Washington, prior to September 11, used a Letter of Authorization and vehicle sticker to identify those enrolled in their DCL program. All DCLs along the Northern border were closed in light of the September 11 attacks. On a limited basis, we have now begun to re-open and expand the NEXUS system from its test site in Port Huron to the Port Roberts, Pacific Highway, and Peach Arch ports-of-entry in Washington State. The INS opened an enrollment center for these locations this summer and the NEXUS lanes at these locations are now in operation.

9. Does the INS support consolidating the "fastpass" systems used by Canada and the United States into a single system, such as has been tested at the Sarnia/Port Huron border crossing (the so-called "NEXUS" pilot program)?

Yes, the INS, in conjunction with the U.S. Customs Service, Canada Immigration and the Canada Customs Revenue Agency retained the consultant firm of KPMG to conduct an evaluation of the two countries' DCL systems, including the piloted NEXUS program. The evaluation was completed in January 2002. The NEXUS pilot program has successfully demonstrated that the two countries and the four agencies can launch and operate a harmonized pilot DCL program. Our goal is to continue deployment of NEXUS.

C. BALANCING ANTI-TERRORISM WITH OTHER MISSIONS

1. As the INS and the Border Patrol have responded to the heightened threat of terrorism, what impact has this had on your ability to deal with other threats? For example, has the diversion of attention to intercepting terrorists reduced your ability to deal with narcotics trafficking or to prevent illegal immigration?

Let me note that the increased focus on the terrorist threat has not changed the overall mission of the INS--that is, to enforce our Nation's immigration laws. The post-September 11 procedures put into place at ports-of-entry have strengthened the enforcement posture of the Inspections Division; they contribute directly to improved border security. The INS Inspections Division has focused all its resources on meeting the Threat Level One commitments since September 11, 2001, including: staffing all small and remote locations 24 hours a day, 7 days a week, the elimination of progressive inspection procedures insuring all flights will be inspected at their first port-of-entry, more complete records checks of those seeking admission, and a more complete check of vehicles as they cross the land borders. While our mission has not changed, these actions have forced the Inspections Division to limit certain other activities, such as enrollment of new applicants for the various alternative inspection processes developed to facilitate border crossings for low-risk travelers.

Within 36 hours of September 11, 2001, the Border Patrol deployed 318 Border Patrol Agents to 8 major airports around the country. These Border Patrol Agents augmented existing security operations and helped to restore a sense of security to the traveling public. On October 22, 2001, 160 Border Patrol Agents were deployed to 43 ports-of-entry along the northern border in order to assist with security, traffic management, and to maintain Threat Level One commitments.

The Border Patrol Agents deployed in support of these two enforcement initiatives were from southwest border sectors. Careful consideration was given as to where they would be drawn from in order to minimize the impact on southwest order enforcement operations. In addition,

overtime was used to compensate for their absence as well as leave restrictions in some locations. No significant reduction in enforcement capabilities resulted from this temporary shift of resources.

Although the INS Investigations Division continues to be engaged in many investigations into anti-smuggling efforts, the identification and arrest of criminal aliens, and other violations of immigration law, the INS' support of the investigation into the terrorist attacks of September 11, 2001, is the highest priority. In addition, INS Investigations has shifted its overall resources and priorities in support of counterterrorism efforts. As a result of this reprioritization, other unrelated interior enforcement actions have temporarily received less attention.

2. What is the solution to the problem? Is it simply a matter of adding more agents?

These have been short-term solutions to address pressing operational needs during this time of heightened alert. The long-term solution will be to increase permanent staffing levels. Additional resources would enable the INS to ease the burden on Inspectors, Border Patrol Agents, and Special Agents.

The solution to this challenge is a three-tiered approach--response, investment, and sustainment. The immediate response was to focus the existing assets to meet the threat. The next tier requires the investment in acquiring the additional personnel, both operational and support, required to accomplish the mission. This must be followed by a commitment of the budget resources to sustain that investment. This final tier is too often ignored. There is an initial surge in resources that are not followed by the necessary budgets to sustain that initial investment. This eventually reduces our ability to conduct the mission adequately.

D. OTHER QUESTIONS

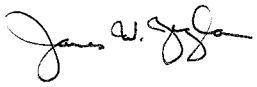
1. Do the INS and the Border Patrol have administrative subpoena authority already? If not, do they seek it? If so, please explain how this authority would increase your ability to conduct investigations. What, if any, agency currently obtains subpoenas for you when they are needed?

Yes, the INS (including the Border Patrol) has administrative subpoena authority. Section 35(d)(4)(A) of the Immigration and Nationality Act, 8 U.S.C. 1225(d)(4)(A), states that the "Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, re-enter, reside in, or pass

through the United States or concerning any matter which is material and relevant to the enforcement of [the Immigration and Nationality Act] and the administration of the Service, and to that end may invoke the aid of any court of the United States." The INS regulations at 8 C.F.R. 287.4 identify which INS officers are authorized to issue subpoenas, and provide procedures for issuing, serving, and enforcing subpoenas.

I hope you find this information useful. If you have any remaining questions, please do not hesitate to contact me.

Sincerely,



James W. Ziglar
Commissioner

Response to
Mark E. Souder, Chairman
Subcommittee on Criminal Justice,
Drug Policy and Human Resources

A. RECRUITMENT

1. How many new officers and inspectors will the U.S. Marshals Service need to meet the challenges presented by narcotics smuggling, smuggling of other contraband, and foreign terrorism?

Additional prosecutions in the areas of terrorism and smuggling, including narcotics violations, would increase the U.S. Marshals Service (USMS) workload, assuming prosecutions in other areas increase or remain constant. At this point it is impossible to predict the impact that these activities may have on the USMS.

The USMS also anticipates additional workload associated with potential increases in the number of protection details for federal judges assigned terrorist trials, counter-terrorism task force investigations, expanded warrant workload, pre-seizure planning associated with terrorist assets, additional participants in the Witness Security Program associated with terrorist organizations, and intelligence support for all aspects of the USMS counter-terrorism missions. The FY 2003 Budget Request addresses many of these needs.

Historically, the USMS workload has increased with each new federal law enforcement initiative. For example, INS initiatives along the southwest border (SWB) over the past 5 years, including the hiring of an additional 3,500 Border Patrol agents, increased the number of SWB prisoners received by the USMS offices by more than 20,000. Of the prisoners received in FY 2001, over 19 percent are concentrated in the five SWB districts, where on any given day there are over 11,100 prisoners in custody. In FY 2003 the USMS has requested an additional 136 positions to perform the additional workload generated by the SWB initiatives.

Finally, P.L. 166-544, "The Presidential Protection Act of 2000," authorizes the USMS to establish permanent task forces to apprehend federal, state and local fugitives. This authority will enable the USMS to consolidate the numerous fugitive operations throughout the United States, freeing up agents in other federal law enforcement agencies to focus on counter-narcotics and counter-terrorism missions. The USMS received funding for major participation in task forces in 2002.

2. How rapidly should new officers and inspectors be added? Is slow growth better, to ensure adequate training and supervision? If the growth is more rapid, how much will performance suffer? Are there certain positions for which rapid growth is less of a problem?

The USMS hiring process for law enforcement positions is extremely selective. It is designed to identify highly qualified applicants who have a demonstrated record of impeccable honesty, integrity and responsible, lawful behavior. Every applicant must first pass an exam; those who score highest on the exam must then undergo and pass a structured oral interview; federal, state, and local criminal records check; personal credit history; drug test; full-field background investigation; medical examination; physical fitness test; and a final comprehensive review of all pre-employment information by a panel of senior USMS law enforcement managers.

The USMS would never compromise its employment standards for the sake of rapid growth. Staffing levels have decreased the number of Deputy U.S. Marshals (DUSMs) and Criminal Investigators.

3. Do you believe that it will be possible to add enough new agents to meet these needs? In other words, do you believe that you can attract enough new recruits? Can you maintain a high level of quality among recruits?

Historically, the USMS has had no shortage of qualified applicants. Currently, the USMS law enforcement workforce is composed of three separate series: Criminal Investigators (GS-1811); Deputy U.S. Marshals (GS-082); and Detention Enforcement Officers (GS-1802). However, we are reviewing the composition of our operational workforce. In some districts, the three separate series has resulted in a less-than optimum compartmentalization of job duties. Therefore, our evaluation will examine the following: the need for versatile, law enforcement generalists in our small- and medium-sized districts; an adverse impact on our ability to hire and maintain a diverse workforce; an increased number of work assignment grievances; and potential morale problems.

The USMS will work with both the Department of Justice (DOJ) and Office of Management and Budget (OMB) to review the outcome of our evaluation and determine the best course of action; the USMS will notify Congress if we expect a significant change in the makeup of our operational workforce.

4. If you are unable to hire as many agents as you would like, how will you deploy the ones you have? How many will be assigned to deal with terrorism, and how many to deal with other problems such as narcotics smuggling and illegal immigration?

With our current law enforcement positions, individuals holding the criminal investigator series (GS-1811) can be sent where needed, on a temporary duty basis. For example, within hours of the September 11th attacks, the USMS was called upon to assign approximately 500 criminal investigators to the Nation's emergency law enforcement response. Fortunately, the USMS had enough criminal investigators on board to perform these sophisticated missions on a short-term basis and continue our primary duty, which is the protection of the federal court system. Our criminal investigators were assigned to such duties as: airport security; search and rescue at the World Trade

Center (WTC) and the Pentagon; perimeter security at the WTC, personal protection for the FEMA Director and the Deputy Attorney General; assisting the FBI locate suspected terrorists, assisting with the search for the aircraft "black boxes" at the WTC site, and a classified security mission.

Thus, at the pinnacle of the response to the September 11th attacks, the USMS had approximately 500 enforcement personnel on temporary assignments related to the terrorist attacks. A more realistic number for on-going temporary assignments is 200 investigators. Maintaining 200 criminal investigators on temporary duty assignments-- related to terrorist activities or high threat drug trials--would come at high cost, depending upon the location of the assignments.

5. During the hearing, we discussed where the Marshals Service typically finds new recruits. For the records, please provide us with data concerning the prior occupations of new recruits at your agency, including the percentages of new recruits who come from other federal law enforcement agencies, from state and local law enforcement agencies, and from the military.

The USMS develops its applicant pool from a wide variety of sources including: separating military personnel, college graduates who participated in cooperative education programs, and persons with prior law enforcement experience. Since October, 2000, seventy-one percent of our new recruits have entered from the military. The other twenty-nine percent have come from co-operative education students and USMS internal merit promotion candidates. Less than one percent have come from other federal law enforcement agencies and none from state and local law enforcement agencies.

6. Do you have any information concerning what impact, if any, such hiring is having on these other law enforcement agencies and/or the military? If so, please provide it to the Subcommittee.

Given the relatively small number of law enforcement vacancies typically filled each year by the USMS (150 to 250), we have not received any complaints from state or local law enforcement agencies. The military has welcomed the USMS efforts to hire separating military personnel. Should the USMS be appropriated funds to allow a significant increase in personnel, we would monitor our recruitment efforts to ensure they would not adversely impact any particular federal, state or local law enforcement agency.

7. What, if any, increases in pay or benefits will be required to improve recruitment at the Marshals Service? How much will those increases costs? Are you seeking the "law enforcement retirement" plan for your agents and inspectors?

Law enforcement positions in the USMS are already covered by the "law enforcement retirement" plan. One area where the USMS could use additional benefits is to provide recruitment bonuses for increasingly difficult to fill non-continental United States (non-CONUS) duty stations, including Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. Given the high cost of filling vacancies at these duty stations we believe, retention bonuses would also help reduce staff turnover.

8. What resources do you currently have to provide incentives for recruitment? Can you detail what steps you currently can take, in the form of bonuses or other incentives, to increase recruitment or retention? How have you been using these resources? Do you plan to use them in the near future?

The USMS does not have available funding to provide incentives for either recruitment or retention.

9. Are you planning to hire agents with special skills to deal with the new threats?

The only special skill the USMS anticipates needing to deal with terrorist threats and additional drug cases is an increase in the number of law enforcement personnel who possess language skills; as well as an increase in the variety of languages. The USMS will make every effort to recruit personnel with necessary language skills. If we are unable to do so, we may need to provide advanced language training to existing personnel.

10. For the record, is the Marshals Service seeking, "excepted service" status for purposes of hiring? If so, could you explain in further detail exactly how that would help in recruitment?

The USMS ceased hiring criminal investigators (GS-1811) about two years ago to focus on hiring lower graded, more specialized Deputy U.S. Marhals (GS-082). Although we have a large number of applicants eligible for appointment as Deputy U.S. Marshals, it is not uncommon for the hiring process to take 9 - 12 months. This is due to the time and labor intensive nature of our hiring process as described in our answer to question number two. Delays such as written objections to pass over unqualified candidates and adjudication of adverse background information would take the same amount of time under either a competitive hiring process or an excepted hiring process. Therefore, no, the USMS would not seek excepted service authority.

B. INFRASTRUCTURE, EQUIPMENT, and TECHNOLOGY

1. What new equipment, if any, does the Marshals Service need? Does it need more vehicles? Does it need to modernize vehicles or other?

The USMS vehicle fleet should be reassessed. The average USMS law enforcement vehicle has been driven 70,000 miles. Three hundred fifty-one vehicles have more than 100,000 miles and 256 vehicles have more than 120,000 miles. In addition, 38 percent of the USMS vehicle fleet consists of seized and excess vehicles, that are not incorporated into a replacement schedule. In a typical year, the USMS is able to purchase approximately 90-100 new vehicles. This amounts to replacing about 4 percent of the vehicle fleet.

2. Are there new technologies which are available to your agency which you believe should be acquired?

Most of the work done in support of our law enforcement missions, such as research and analysis, is done either manually or with manual systems that have been "automated." The USMS is aware of new technologies that would enable it to increase productivity by reducing the amount of time it takes to complete administrative support functions. This increased proficiency would allow our staff to spend more hours on direct law enforcement functions such as the apprehension of additional fugitives.

The USMS is required to collect and maintain a large volume and scope of information on every person charged with a federal crime from the time they are arrested to the time they are either acquitted or convicted and arrive at a Bureau of Prisons facility to serve their sentence. Unfortunately, this information cannot be easily shared with other DOJ and non-DOJ law enforcement agencies due to a failure to integrate information technology system among federal law enforcement partners. The unfortunate consequence of this failure to communicate is that this reservoir of valuable information goes largely untapped. The USMS is working with the DOJ to upgrade network circuits and "JCON" desktop hardware.

C. BALANCING ANTI-TERRORISM WITH OTHER MISSIONS

1. As the Marshals Service has responded to the heightened threat of terrorism, what impact has this had on your ability to deal with other threats?

Immediately after the September 11th attacks, the USMS suspended selected activities to assist with the unified counter-terrorism response: investigation of non-terrorist fugitive cases, jail inspections, asset forfeiture activities, and most collateral (non-mission critical) duties. There was also a period of time immediately after the attacks where court proceedings were suspended nationwide, allowing the USMS to immediately reassign deputies to counter-terrorism duties. The Southern District of New York, for example, suspended court proceedings for several weeks, enabling deputies from that district to respond to the attack for a significantly longer period of time without affecting mission-critical responsibilities.

2. What is the solution to these problems? Is it simply a matter of adding more agents?

The solution to the complex and sophisticated problem of countering terrorism cannot be solved by simply adding more agents. This new mission mandates that we re-evaluate the make up of our operational workforce to determine the best way to meet these new mission requirements. The USMS can make a significant contribution to the war on terrorism. However, our ability to apprehend fugitives suspected of terrorist acts, protect judges and prosecutors assigned to terrorist cases, seize assets of suspected terrorist, and respond to emergencies may well require additional law enforcement personnel.

D. OTHER QUESTIONS

1. For the record, please explain how obtaining administrative subpoena authority would increase your ability to conduct investigations.

The apprehension of fugitives is a time-critical business. Fugitives know they are being hunted; many constantly move to avoid apprehension. Any delay on the part of the USMS could mean the difference between capture and escape.

Currently, the USMS does not have the authority to issue administrative subpoenas to obtain telephone records and other documents critical to investigations. These records are valuable investigative tools, and when they are needed, the USMS must seek the assistance of other agencies who have administrative subpoena authority, or petition the court for the production of relevant records. Those steps -- turning to another agency for help or petitioning the court -- take time. In addition, the speed with which financial assets can be electronically transferred around the world makes it imperative to locate assets in a timely manner.

Legislation providing the USMS administrative subpoena authority could greatly increase our ability to both locate and seize terrorist assets and hasten the capture of fugitives.

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