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REAUTHORIZATION OF THE U.S. DEPARTMENT OF JUSTICE: EXECUTIVE OFFICE FOR U.S. ATTORNEYS, CIVIL DIVISION, ENVIRONMENT AND NATURAL RESOURCES DIVISION, EXECUTIVE OFFICE FOR U.S. TRUSTEES, AND OFFICE OF THE SOLICITOR GENERAL

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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REAUTHORIZATION OF THE U.S. DEPARTMENT OF JUSTICE: EXECUTIVE OFFICE FOR U.S. ATTORNEYS, CIVIL DIVISION, ENVIRONMENT AND NATURAL RESOURCES DIVISION, EXECUTIVE OFFICE FOR U.S. TRUSTEES, AND OFFICE OF THE SOLICITOR GENERAL

WEDNESDAY, APRIL 26, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:58 p.m., in Room 2141, Rayburn House Office Building, the Honorable Chris Cannon (Chairman of the Subcommittee) presiding.

Mr. CANNON. The Subcommittee will come to order.

We apologize. You know, the worst thing that can happen here is when you get a vote right before a hearing, and you guys have to sit here and wait. We apologize for that and thank you for being here and thank you for patience.

The Subcommittee on Commercial and Administrative Law is meeting this afternoon to receive testimony from five components of the Justice Department—at Department of Justice as part of the Subcommittee's continuing oversight efforts.

These components are the Executive Office for United States Attorneys, the Civil Division, the Environment and Natural Resources Division, the Executive Office for United States Trustees, and the Office of the Solicitor General, the latter of which has submitted written testimony for the record.

Our oversight responsibilities require us to examine the performance of these Justice Department components, evaluate how well they are positioned to achieved their goals, and determine both the adequacy of their funding levels and the need for any legislative changes to facilitate their mission.

I should state at the outset that this has not been and will not be the only encounter the Subcommittee has with the Justice Department components within our jurisdiction. It is our intention to continually monitor the activities of these components throughout the year, and I expect this endeavor to be undertaken in the spirit of cooperation by the Members of this Subcommittee.

I believe that effective oversight requires that we listen in order to learn so that we can intelligently question and suggest. The

Committee must make sure the Department performs competently and fairly because the Department is directly responsible for supporting the President in his duty to faithfully execute the laws of the United States.

It is imperative that the Department be conscious of the awesome power that has been entrusted to it and of its responsibility to ensure that this power is exercised in the interest of justice.

I wish to stress the significance of today's hearing for both the Justice Department and Subcommittee Members. The information we receive from witnesses today will be of immediate value in determining the adequacy of funding levels proposed by the President in his budget request for the Department of Justice. It will also influence whether the Subcommittee needs to craft legislation to implement the issues outlined.

It is interesting to note that the 5 Justice Department components represented at today's hearing account for more than 2 billion in taxpayer dollars. These monies fund comprehensive litigation, appellate litigation, and administrative responsibilities. The broad mission of these components underscores the central role that their performance can play in significantly improving the lives, safety, and well-being of every American.

In January, the President signed into law legislation reauthorizing the Department of Justice that included three provisions added at the insistence of our Subcommittee. These provisions included a mandate that the Attorney General designate a senior official in the Justice Department to assume primary responsibility for privacy policy.

Among this office's responsibilities is the requirement to file with the White House and Senate Judiciary Committees an annual report on the Department's activities that affect privacy, including a summary of complaints of privacy violations. In addition, the law requires any Justice Department training or meeting activity at a facility that requires payment to a private entity for use to be specifically authorized by the Attorney General.

Finally, the law requires the Executive Office of the United States Trustees to submit to Congress an annual report with respect to the program's efforts concerning bankruptcy crimes.

These are important provisions, and I look forward to working with the Department on their implementation.

[The prepared statement of Mr. Cannon follows:]

PREPARED STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND CHAIRMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

The Subcommittee will please come to order.

The Subcommittee on Commercial and Administrative Law is meeting this afternoon to receive testimony from five components of the Department of Justice as part of the Subcommittee's continuing oversight efforts. These components are: the Executive Office for United States Attorneys, the Civil Division, the Environment and Natural Resources Division, the Executive Office for United States Trustees, and the Office of the Solicitor General. The Solicitor General has submitted written testimony.

By the way of explanation, our oversight responsibilities require us to examine the performance of these Justice Department components, evaluate how well they are positioned to achieve their goals, and determine both the adequacy of their funding levels and the need for changes in legislation to facilitate their mission. I should state at the outset, this has not been and will not be the only encounter the Sub-

committee has with the Justice Department components within our jurisdiction. It is our intention to continually monitor the activities of these components throughout the year. I expect this endeavor to be undertaken in the spirit of cooperation by other Members of the Subcommittee.

I believe that effective oversight requires that we listen in order to learn so that we can intelligently question and suggest. We do not undertake this process, though, without expectations from the Justice Department-expectations that are shared not only by the American people but also, I am sure, by the agency itself. We expect the Department should have performed competently and fairly, and that it should continue to do so. The Department is directly responsible for supporting the President in his duty to take care that the laws of the United States are faithfully executed. It is imperative that the Department be conscious of the awesome power that has been entrusted to it and of its responsibility to ensure that this power is exercised in the interest of justice and for the common good. We will work with the components we hear from today and continue to critically study their activities and needs.

I wish to stress the significance of today's hearing for both the Justice Department and Subcommittee Members. The information we receive from the witnesses today will be of immediate value in determining the adequacy of funding levels proposed by the President in his budget request for the Department of Justice. It also greatly influences the crafting of necessary legislation in the future for the Department. An important part of the record on which the Committee will base future decisions will be the testimony at today's hearing.

It is interesting to note that the five Justice Department components represented at today's hearing account for more than $2 billion in taxpayer dollars. These monies fund comprehensive appellate litigation, support and administrative responsibilities. The broad mission of these components underscores the central role their performance can play in significantly improving the lives, safety and well-being of every American.

For example, in January of this year, the President signed into law legislation reauthorizing the Department of Justice that included three provisions added at the insistence of our Subcommittee. These provisions included a mandate that the Attorney General designate a senior official in the Justice Department to assume primary responsibility for privacy policy. Among this officer's responsibilities is the requirement to file with the House and Senate Judiciary Committees an annual report on the Department's activities that affect privacy, including a summary of complaints of privacy violations. In addition, the law requires any Justice Department training or meeting activity at a facility that requires payment to a private entity for use of such facility to be specifically authorized by the Attorney General. Finally, the law requires the Executive Office for United States Trustees to submit to Congress an annual report with respect to the Program's efforts concerning bankruptcy crimes.

Mr. CANNON. I now turn to my colleague Mr. Watt, the distinguished Ranking Member of my Subcommittee, and ask him if he has any opening remarks?

Mr. WATT. Thank you, Mr. Chairman.

I just want to briefly welcome the witnesses and indicate that this is the annual hearing process through which we learn about what the various divisions within the Justice Department over which we have jurisdiction have been doing over the past year and, importantly to them, learn what resources or additional resources they believe are needed to effectively meet their responsibilities.

In the interest of time, I will submit the balance of my opening statement for the record in hopes that we might be able to get through with their testimony before I have to leave at 3:30. So the more I can expedite that, the better off we are.

So I'll yield back.

Mr. CANNON. Without objection, the gentleman's entire statement will be placed in the record. Hearing no objection, so ordered.

[The prepared statement of Mr. Watt follows:]

PREPARED STATEMENT OF THE HONORABLE MELVIN L. WATT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, AND RANKING MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

OPENING STATEMENT OF REP. MELVIN L. WATT

Subcommittee on Commercial and Administrative Law
Oversight Hearing on
The Department of Justice: Executive Office for United States Attorneys,
Civil Division, Environment and Natural Resources Division,
Executive Office for United States Trustees, and Office of the Solicitor General

April 26, 2006

Thank you, Mr. Chairman. I just want to briefly welcome the witnesses. This is an annual hearing process through which we learn what the various divisions within the Justice Department over which we have jurisdiction have been doing over the past year, and learn what additional resources they believe are needed to effectively meet their responsibilities.

I hope and expect that the witnesses will address either in their opening remarks or during the question and answer period issues that I believe are of national import and relevant to the budget requests they have made. Specifically, I hope to hear from the EOUSA a justification for the requested significant increase of 48 additional attorneys to prosecute gang violence, and an update on the transition of Project Seahawk from DoJ to the Department of Homeland Security. Within the Civil Division, I am particularly interested in the division's current immigration docket, staffing and justification for 86 additional attorneys to assist in deportation proceedings.

Over the past two terms, we have given considerable focus in the ENRD division to the *Kobel* litigation. I am further interested in whether there is additional litigation by Native Americans against the federal government, and whether there is any pending litigation in which ENRD represents the interests of Native Americans. Finally, within the U.S. Trustees Program, I think the convergence of the effective date of what I believe to be onerous bankruptcy reforms with the tragic, natural disasters in the Gulf region give emphasis to the types of problems we tried to highlight during the debate on the bill. While I won't revisit the merits of those reforms here, suffice it to say that there are genuine tragedies that can devastate hard-working Americans who need and deserve a fresh start. I understand that the Trustees Program has implemented some procedures to deal with Hurricane Katrina and Rita survivors and I would like to hear about those and whether they have been effective in alleviating the unimaginable burdens borne by these displaced Americans.

With that Mr. Chairman, I want to thank you for holding this hearing, and thank the witnesses in advance for their testimony. I yield back.

Mr. CANNON. Without objection, all Members may place their statements in the record at this point. Without objection, so ordered.

Without objection, the Chair will be authorized to declare recesses of the hearing at any point. Hearing no objection, so ordered.

I ask unanimous consent that Members have 5 legislative days to submit written statements for inclusion in today's hearing record. Hearing no objection, so ordered.

I'm now pleased to introduce the witnesses for today's hearing.

Our first witness is Michael Battle, who is the Director of the Executive Office of the United States Attorneys. His office provides oversight, coordination, and support to 94 United States attorneys' offices across the Nation.

Mr. Battle began his service with the executive office in June of 2005. Prior to this—or prior to his work there, Mr. Battle served as the United States attorney for the Western District of New York from January 2002 to May 2005.

In June 1996, he was appointed by New York Governor Pataki to serve as a judge on the Erie County Family Court and was elected the following November to a full 10-year term.

Mr. Battle is a past president of the Minority Bar Association of Western New York, and has been a member of numerous other organizations. Mr. Battle received his undergraduate degree cum laude from Ithaca College in 1977 and earned his J.D. from the University of New York Buffalo School of Law in 1981.

Peter Keisler, our next witness, is the Assistant Attorney General for the Civil Division. Prior to his position, he served as Principal Deputy Associate Attorney General and Acting Associate Attorney General.

Before joining the Department of Justice, Mr. Keisler was a partner in the Washington, D.C., office of Sidley Austin Brown & Wood. He also served as associate counsel to the President during the Reagan administration and as a law clerk to Justice Anthony Kennedy and Judge Robert H. Bork of the United States Court of Appeals for the District of Columbia Circuit.

Mr. Keisler received his undergraduate degree magna cum laude from Yale College in 1981 and earned his law degree from Yale Law School in 1985.

Our third witness is Matthew J. McKeown. Or do you pronounce that McKeown?

Mr. MCKEOWN. Mr. Chairman, it's McKeown.

Mr. CANNON. McKeown. Okay. All right.

We have a congressman who spells their name quite a bit like that and pronounces it differently. McKeown.

He's the Principal Deputy Assistant Attorney General for the Environment and Natural Resources Division. Mr. McKeown is testifying in place of Assistant Attorney General Sue Ellen Wooldridge, who cannot be with us today because of family emergency.

Before joining the division in October 2005, Mr. McKeown served as the Deputy Solicitor for the United States Department of the Interior, where, as the second in command, he led a team of more than 400 lawyers and support staff. At the Interior Department, he also served as the associate solicitor for land and water and was the special assistant to the solicitor.

Mr. McKeown is a graduate of McGill University, and he obtained his law degree from the University of Oregon Law School.

Our final witness is Clifford White, who is the deputy director for the Executive Office for United States Trustees and currently is serving as its acting director. Mr. White has testified on several occasions over the years. Welcome back.

During the course of his 26 years of Federal service, Mr. White has served as an Assistant United States Trustee and a Deputy Assistant Attorney General within the Department of Justice and as Assistant General Counsel at the U.S. Office of Personnel Management.

He is an honors graduate of the George Washington University and the George Washington University Law School.

I extend to each of you my warm regards and appreciation for your willingness to participate in today's hearing. In light of the fact that your written statements will be included in the hearing, I request that you limit your remarks more or less to 5 minutes. So feel free to summarize and focus on the salient points of your testimony.

You will note that we have a lighting system in front of you. It turns green. After 4 minutes, it turns yellow, and then it turns red. The red indicates 5 minutes are up.

We actually are sort of interested in what you have to say, actually, here. So if you go beyond that, that's a little bit fine. But recognize that we have a lot of Members here today, don't we? Maybe we'll do two rounds of questioning. Who knows?

But if you could sort of focus on that 5-minute light, so that would be helpful. And if it gets a little long, I'll tap the gavel or something to encourage you. And then we'll have Members ask questions in the order they arrive, and they'll take 5 minutes each.

Pursuant to the directive of the Chairman of the Judiciary Committee, I ask the witnesses to please stand and raise your right hand to take the oath.

[Witnesses sworn.]

Mr. CANNON. The record should reflect that all of the witnesses indicated in the affirmative. You may be seated.

And Mr. Battle, would you—oh. Mr. Battle, would you please proceed with your testimony?

TESTIMONY OF MICHAEL A. BATTLE, DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. BATTLE. Thank you, Chairman Cannon, Ranking Member Watt, and Members of the Subcommittee.

It is my honor to be here today representing the outstanding men and women of the 94 United States attorneys' offices, and I thank you on their behalf for your continuing support of their efforts.

Let me start by asking that you support the President's proposed United States attorneys' fiscal year 2007 budget request. We are seeking a total budget of $1.664 billion to support in excess of 10,000 positions. The request includes $23.2 million in enhancements, which will support an increase in 149 positions.

The enhancements will fund such initiatives as national security and terrorism prosecutions, gang prosecutions, and child exploi-

tation and obscenity prosecutions, also additional positions to prosecute identity theft and increased criminal debt collection enforcement.

Preventing terrorism remains our top priority. On behalf of all the United States attorneys, I want to thank the Congress for renewing the USA PATRIOT Act. The PATRIOT Act strengthens our criminal laws against terrorism and continues to provide the legal authorities needed to detect and disrupt terrorist plans. Last year, we saw a significant success in terrorism prosecutions.

Apart from terrorism prosecutions, we are continuing the important work of sharing terrorism and counterterrorism information. Our Anti-Terrorism Advisory Councils, also known as ATACs, are chaired by the U.S. attorneys and ensure that critical information regarding terrorism is shared among Federal, State, and local enforcement agencies. We also conduct terrorism training for our prosecutors across the country.

The United States attorneys are also active in prosecuting gangs. Each United States attorney's office has an anti-gang coordinator, and last year, we trained the 93 coordinators at the National Advocacy Center to take on this fight.

On March 31, 2006, the Attorney General announced a comprehensive anti-gang initiative that devotes extensive resources to defeating some of the most violent gangs in our country. Each of six sites will receive funds to incorporate prevention and enforcement efforts and to assist released prisoners as they re-enter society. By integrating prevention, enforcement, and re-entry, this initiative aims to address gang activity at every stage.

Another program to keep our communities safe, Project Safe Neighborhoods, also known as PSN, continues to be one of the great success stories of the United States attorneys' offices in the Department of Justice. PSN is a multi-faceted approach to reducing gun crime, whereby each United States attorney tailors their prosecution strategy to fit the unique gun and violent crime problems in their district.

Under PSN, Federal firearms prosecutions have increased 73 percent since 2001. And more importantly, the rate of violent victimization by an offender armed with a firearm has declined by approximately ⅔ over the last decade. As such, thousands of Americans are being spared the tragic consequences of gun crime.

While on the topic of protecting our neighborhoods, I think it is important to report that we are continuing to investigate and prosecute major drug and money laundering organizations. The Organized Crime Drug Enforcement Task Force, also known as OCDETF, is a program the integral part of which is part of this effort. The OCDETF program combines the efforts of Federal, State, and local law enforcement agencies, along with the United States attorneys' offices.

We are also addressing the growing threat of methamphetamine, also known as "meth." In FY 2005, the United States attorneys' offices filed 5.5 percent more meth cases than the previous year and the highest total number ever. In the last 10 years, the number of meth cases filed and the number of defendants charged has quadrupled. Meth cases now have surpassed crack cocaine in frequency,

making it third behind powder cocaine and marijuana in Federal case filings.

We are also focused on providing support to victims of crime. In May 2005, with input from my office, the Attorney General issued guidelines for victim and witness assistance, explaining the new protections for victims set forth in the Crime Victims' Rights Act. We've also provided training to the United States attorneys' offices and the Department since passage of the Act. In January 2006, the Attorney General designated a Victims' Rights Ombudsman within our office at EOUSA to resolve complaints brought by crime victims.

This brings me to one of the most tragic forms of victimization in our society, one involving children. The United States attorneys are committed to prosecuting child sexual assault and child pornography cases. Statistics show that during FY 2005, United States attorneys collectively filed in excess of 1,400 child exploitation cases involving child pornography, coercion, and enticement offenses against in excess of 1,500 defendants.

To buttress our efforts against this scourge, the Attorney General announced in February 2006 the Project Safe Childhood initiative. Project Safe Childhood will bring together the United States attorneys, Internet Crimes Against Children Task Forces, and other Federal, State, and local enforcement officials to investigate and prosecute crimes against children that occur through the Internet and other electronic media.

The Internet also facilitates intellectual property and computer hacking related to crimes that threaten significant segments of our economy. Since fiscal year 2001, specialized prosecution units focused on computer hacking and intellectual property, known as CHIP units, have been formed at 18 United States attorneys' offices. Last fiscal year, 350 defendants were charged with intellectual property offenses, nearly double the number charged in 2004.

Another area involving our economy in which we are achieving great success is the area of corporate fraud. Since the creation of the Corporate Fraud Task Force in July 2002, over 970 corporate fraud convictions have been obtained through December 31, 2005. This includes more than 200 convictions of top managers, including CEOs and CFOs.

Moreover, health care fraud continues to be a significant problem, and United States attorneys' offices play the lead role in prosecuting those cases.

In civil cases, United States attorneys, working with the Civil Division, won or negotiated approximately 1.47 billion in judgments and settlements. Of that amount, more than 1.13 billion went to repay the Medicare Trust Fund.

As you can see by the examples that I've just given, the United States attorneys are committed to protecting and preserving the rights of Americans in many ways. This perhaps manifests itself most directly through the criminal civil rights prosecutions brought by the United States attorneys in coordination with the Department's Civil Rights Division. During fiscal year 2005, United States attorneys filed criminal civil rights cases against 131 defendants. This represents a 19 percent increase in defendants charged over the prior year.

Finally, the United States attorneys' offices continue to enforce the principle that no public official is above the law. In FY 2005, the United States attorneys' offices filed 441 public corruption cases against 673 defendants.

In closing, over the past several years, United States attorneys have taken on new responsibilities and initiatives. We have successfully carried out our mission in all of these areas, and we appreciate your continued support of our work. And I look forward to answering your questions today.

Thank you.

[The prepared statement of Mr. Battle follows:]

PREPARED STATEMENT OF MICHAEL A. BATTLE

STATEMENT
of
MICHAEL A. BATTLE
DIRECTOR OF THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
before the
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

April 26, 2006

Chairman Cannon, Ranking Member Watt, and Members of the Subcommittee, I am Michael A. Battle, the Director of the Executive Office for United States Attorneys (EOUSA). I am very pleased to appear before you today with my colleagues from the Department of Justice. It is my honor to be here representing the outstanding men and women of the 94 United States Attorneys' Offices, and I thank you on their behalf for your continuing support of their efforts.

EOUSA provides oversight and coordination to the 94 United States Attorneys' Offices, the nation's principal litigators and criminal prosecutors, which collectively employ over 5,500 Assistant United States Attorneys and over 5,000 support staff employees. EOUSA serves as a liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the Department's litigating divisions and other components. Additionally, my office works with the United States Attorneys' Offices to implement the President's and the Attorney General's priority initiatives, including efforts to combat terrorism, violent crime, cybercrime, drug trafficking, civil rights violations, and corporate and public corruption.

TERRORISM

Every day since 9/11, the Justice Department has continued to wage the war on terror with unrelenting focus and unprecedented cooperation. The investigation and prosecution of terrorism continues to be the number one priority for every United States Attorney. Across America, the United States Attorneys are aggressively pursuing criminal investigations to prosecute and prevent terrorist-related activity. On behalf of all of the United States Attorneys, I want to thank the Congress for renewing the USA PATRIOT Act. Passage of the renewed PATRIOT Act strengthens our criminal laws against terrorism and continues to provide the legal authorities needed to detect and disrupt terror.

Examples of some of the terrorism prosecutions handled by the United States Attorneys during Fiscal Year 2005 include the following:

- In the **Eastern District of Virginia**, a defendant was convicted on all 10 charges brought against him in connection with the "Virginia Jihad" case. The defendant, a spiritual leader at a mosque in Northern Virginia, encouraged other individuals at a meeting to go to Pakistan to receive military training from Lashkar-e-Taibi, a designated foreign terrorist group, in order to fight United States troops in

Afghanistan. The defendant was sentenced to life in prison.

- In the **Northern District of Georgia** and the **Northern District of Alabama**, a defendant pled guilty to charges related to deadly bombings in Birmingham, Alabama, and in the Atlanta area, including the bombing at the 1996 Olympics. He was sentenced to life in prison. The defendant provided the government with information concerning 250 pounds of explosives that he had hidden in the western part of North Carolina. As a result of the defendant's information, the Government was able to locate and safely detonate the explosives.

- In the **District of New Jersey**, a British national was convicted on charges of attempting to sell shoulder-fired missiles to what he thought was a terrorist group intent on shooting down United States airliners. The defendant was arrested following an undercover sting operation involving agents from several countries. The defendant was sentenced to 47 years in prison.

- In the **Eastern District of New York**, two defendants were convicted, one of whom was a Yemeni cleric, on charges of providing and conspiring to provide material support and resources to al-Qaeda and Hamas. The defendants were sentenced to 75 years in prison and 45 years in prison, respectively.

- In the **Northern District of New York**, a defendant was convicted on charges of participating in a conspiracy to unlawfully send money to Iraq, in violation of United States sanctions, and money laundering. The defendant was sentenced to 22 years in prison.

We are fighting the war against terror both at home and abroad using all the tools at our disposal. Shortly after September 11, 2001, each United States Attorney's Office formed an Anti-Terrorism Advisory Council (ATAC). Each ATAC is managed by an ATAC Coordinator in each U.S. Attorney's Office The ATACs continue to support the Department's three-pronged approach to protecting America from the threat of terrorism by (1) focusing on the prevention of terrorist acts, (2) investigating threats and incidents, and (3) prosecuting those accused of committing crimes by terrorist means. The ATACs remain a valuable addition to the law enforcement community and have made great strides in forging relationships with state and local law enforcement. The ATACs' primary responsibilities are to coordinate anti-terrorism initiatives, initiate training programs, and facilitate information sharing. The ATACs work in conjunction with the FBI's Joint Terrorism Task Forces (JTTFs), although the JTTFs retain primary operational responsibility for terrorism investigations.

In January 2005, the Deputy Attorney General provided guidance to assist in the effective coordination of terrorism cases by setting standards on when United States Attorneys' Offices should notify, consult, and obtain approvals from the Department in the investigation and prosecution of terrorism cases.

EOUSA's Office of Legal Education provided training for our ATAC Coordinators in February 2005 at our National Advocacy Center in Columbia, South Carolina (NAC), where federal prosecutors from

the U.S. Attorneys' Offices and the Department receive continuing legal education and training. The ATAC Coordinators received updated policy and guidance information on terrorism matters. Attorneys from the Criminal Division's Counterterrorism Section also participated in this training.

In February 2006, our Office of Legal Education provided additional training for our ATAC Coordinators on running the Anti-Terrorism Advisory Councils at the first ever ATAC Workshop. ATAC Coordinators were given practical guidance and an "Innovative Practices Report," which provides ideas and practices successfully used by their colleagues around the nation.

Also in February 2006, the Deputy Attorney General provided guidance to clearly set forth the roles of the United States Attorneys, the ATAC Coordinators, the Counterterrorism Section of the Criminal Division, and the Executive Office for United States Attorneys in the Department's counterterrorism mission. ATAC Coordinators serve as the primary point-of-contact for each district's anti-terrorism mission. The Counterterrorism Section has primary coordination responsibility with respect to terrorism cases and threats that are investigated and prosecuted by the United States Attorneys' Offices. The Counterterrorism Section also serves as the primary coordinator and manager of the ATAC program.

EOUSA has primary responsibility for administering the budget for ATAC activities in the districts, funding and facilitating training for anti-terrorism prosecutors through the Office of Legal Education, evaluating the ATAC programs, and providing personnel and facilities support for United States Attorneys' Offices.

In March 2006, for the first time, all anti-terrorism prosecutors across the country were invited to a national conference to receive training and updates on policy and procedures in terrorism investigations and prosecutions. Training had previously been limited to the ATAC Coordinators only.

In addition to terrorism and anti-terrorism cases, the United States Attorneys also continue to vigorously prosecute counter-intelligence or espionage cases. Some recent examples of successful prosecutions in this area include the following:

- In the **Southern District of Indiana,** a federal jury in January 2006 convicted a man of acting as an agent of a foreign government without notification to the Attorney General, as well as five other counts, including witness intimidation. Defendant Shaaban Hafiz Ahmad Ali Shaaban was found to communicated and conspired in 2002 and 2003 with known Iraqi Intelligence Service (IIS) officers assigned to the Iraqi Mission to the United Nations. The defendant attempted to sell U.S. national intelligence information to the former Government of Iraq (Saddam Faction), and to coordinate human shields to protect the Iraqi infrastructure when U.S. forces invaded. The defendant also had an Indiana commercial driver's license under a false name and obtained his citizenship using this false name and identity. Sentencing is scheduled for May 26, 2006.

- In the **Eastern District of Virginia** a man was sentenced in January 2006 to 151 months for conspiracy to communicate national defense information, unauthorized retention of classified information, and conspiracy to communicate classified information to an agent of a foreign

government. Defendant Lawrence Franklin, a Department of Defense employee and a United States Air Force Reserve Colonel assigned to the Defense Intelligence Agency, provided classified information to two employees of the American Israel Public Affairs Committee (AIPAC). The information concerned U.S. Middle Eastern policy and potential attacks upon U.S. forces in Iraq.

The United States Attorneys are also focused on border security and have been working hard to prosecute alien smuggling cases and other immigration related matters. U.S. Attorneys filed 18,147 immigration cases in FY 2005 against 19,497 defendants. Of the cases that were resolved in FY 2005, 17,757 defendants were convicted at a 95 percent conviction rate.

The vast majority of these cases were handled along the Southwest border. The Southwest border districts are the Southern District of Texas, the Western District of Texas, the District of New Mexico, the District of Arizona, and the Southern District of California. In FY 2005 these five districts alone filed 12,318 immigration cases against 13,149 defendants, and convicted a total of 11,744 defendants on immigration charges. This extraordinary effort represents fully two thirds of all the cases filed and defendants charged, as well as convictions obtained, by all 94 United States Attorneys' Offices that year.

Finally, the United States Attorneys' Offices have undertaken innovative prosecution strategies in the area of immigration. For example, the United States Attorney's Office for the Eastern District of Virginia recently formed the multi-agency Immigration and Visa Fraud Task Force, designed to investigate and prosecute document fraud and immigration benefit fraud, such as the misrepresentation of facts on an application to obtain a visa, political asylum, or citizenship. These efforts are intended to help prevent the entry of terrorists and criminals into the country. In early April, the Department of Justice and the Department of Homeland Security jointly announced the creation of similar task forces in 10 cities across the country, all modeled after the task force started in the Eastern District of Virginia.

VIOLENT CRIME

***GANG INITIATIVE*:**

It is easy to underestimate the grip that gangs have on some of our cities. But the sad reality is that their grip on urban life is lethal. According to the *2005 National Gang Threat Assessment*, there are an estimated 21,500 gangs and 731,500 gang members active in the United States. In one city alone, Chicago, there are estimated to be upwards of 70,000 gang members – compared with about 13,000 Chicago police officers.

As a result of gang problem in this country, last year on April 21, 2005, the Attorney General announced the Department's gang initiative, which created the Attorney General's Anti-Gang Coordination Committee. Two United States Attorneys and I are members of this committee, along with the Deputy Attorney General, the Directors or Administrators of the FBI, ATF, DEA, U.S. Marshals Service and the Bureau of Prisons, the Assistant Attorney General for the Criminal Division and others. The Attorney General also instructed each United States Attorney to designate a District Anti-Gang Coordinator and develop a district-wide strategy in consultation and coordination with state and local law enforcement

authorities and community and faith-based organizations.

EOUSA's role in this effort is not only to participate in the Anti-Gang Coordination Committee, but also to facilitate, coordinate, and assist the district's Anti-Gang coordinators and strategies. All the Anti-Gang coordinators were designated in May of 2005, and the district-wide strategies have been drafted and are now being implemented. EOUSA has also held a training conference for all 93 Anti-Gang Coordinators at the NAC. This conference was a great success: each district shared information, strategies, and best practices.

Recently, on March 31, 2006, the Attorney General announced six locations for a new $15 million Comprehensive Anti-Gang Initiative that devotes extensive resources to defeating some of the most violent and pervasive gangs in the country. The six target areas are Los Angeles, Tampa, Cleveland, the "222 Corridor" that stretches across southeastern Pennsylvania, near Philadelphia, the Dallas/Ft. Worth metroplex, and Milwaukee. United States Attorneys in the six locations are responsible for coordinating federal, state and local efforts under this initiative. Each site will receive $2.5 million in grant funds, enabling each location to incorporate prevention and enforcement efforts, as well as programs to assist released prisoners as they re-enter society. By integrating prevention, enforcement, and prisoner re-entry, this new initiative aims to address gang membership and gang violence at every stage.

PROJECT SAFE NEIGHBORHOODS:

Project Safe Neighborhoods (PSN) continues to be a top priority and one of the great success stories for the United States Attorneys' Offices and the Department of Justice as a whole. PSN is a multi-faceted approach to reducing gun crime whereby each United States Attorney tailors his or her prosecution strategy to fit the unique gun and violent crime problems in the district. The United States Attorneys, working through local PSN Task Forces comprised of state, local and federal law enforcement partners, have identified the most pressing gun crime problems in their communities and developed strategies to attack those problems through a comprehensive strategy of prevention, deterrence, and aggressive prosecution.

Under Project Safe Neighborhoods, federal firearms prosecutions have increased 73 percent since the program began in Fiscal Year (FY) 2001. In FY 2005, the Department filed 10,841 federal firearms cases. These cases represent only a portion of the work the United States Attorneys and their state and local partners have done to fight violent gun crime.

Even more meaningful than the prosecution numbers are the results that these efforts are having in our communities and districts. Across America, as we have increased the number of gun crime prosecutions, the number of actual gun crimes has fallen dramatically. The rate of violent victimization by an offender armed with a firearm has declined by approximately two-thirds over the last decade. Thus, hundreds of thousands of Americans have been spared the tragic consequences of gun crime.

Criminals convicted of violating gun laws in federal court continue to receive substantial punishment for their crimes. During FY 2005, over 91 percent of all defendants whose cases were closed were convicted. Of the convicted defendants, 94 percent were sentenced to prison. Of the defendants sentenced to prison for firearms and other offenses, 73 percent were sentenced to terms of three years or more in

prison, and 52 percent were sentenced to terms of five or more years in prison, including 112 life sentences. This is one indicator that the United States Attorneys and PSN Task Forces are appropriately prosecuting the most violent criminals.

The Attorney General has recognized these results and has expanded the Department's efforts to protect our neighborhoods. On February 16, 2006, the Attorney General announced an enhancement of the PSN initiative to include new and expanded anti-gang efforts. All United States Attorneys, in consultation with their federal, state and local, community and faith based partners, have assessed the gang problem in their district. United States Attorneys' Offices are now leading and coordinating the attack on gangs.

A few examples of successful firearms prosecutions handled by the United States Attorneys during FY 2005 include:

- In the **Eastern District of Pennsylvania**, the PSN Task Force in Philadelphia launched a multi-agency investigation that resulted in the prosecution and conviction of 37 defendants for their participation in the Courtney Carter organization. The Carter gang ran a violent drug trafficking enterprise and used firearms to facilitate their illegal activities. The defendants were sentenced to prison terms ranging from 24 years to life in prison.

- In the **Western District of Texas**, after being arrested for firing shots at his girlfriend, the defendant was discovered to have had 14 prior convictions on various charges including burglary, robbery, and arson. As a result of his conviction on the firearms charges stemming from the shooting incident, the defendant was sentenced to life in prison and fined $1,000 for being a convicted felon in possession of a firearm.

- In the **Southern District of Mississippi**, a police officer arrested a man on a misdemeanor warrant. After finding crystal methamphetamine in the defendant's hand and a pistol in his pocket, the Police Department referred the case to the United States Attorney's Office for federal prosecution. The defendant, who had a criminal history which qualified him as an "Armed Career Criminal" under the federal Sentencing Guidelines, pled guilty to being a felon in possession of a firearm and was sentenced to 16 years and three months in prison.

VICTIMS' RIGHTS

The United States Attorneys' Offices continue to make great strides in the area of victims' rights, including the implementation of the Crime Victims' Rights Act ("Act"), which Congress enacted on October 30, 2004. The Act establishes enhanced rights for victims in the criminal justice process, and provides victims with mechanisms to enforce their rights. The Executive Office for U.S. Attorneys has provided considerable training to United States Attorneys' Offices and the Department since passage of the Act. In May 2005, the Attorney General's Guidelines for Victim and Witness Assistance were issued, with substantial input from EOUSA, explaining the new protections set forth in the Act, and providing new and specific guidance on assisting child victims and victims of terrorist attacks, human trafficking, identity theft, and domestic violence. In November 2005, the Department published regulations implementing the directive of the Act to designate an administrative authority with the Department of Justice to receive and

investigate complaints regarding the violation of victims' rights. In January 2006, the Attorney General designated a Victims' Rights Ombudsman within EOUSA to resolve complaints brought by crime victims.

The increased focus on victims' issues has already made an impact on our prosecutions and on victims. The Department is identifying more victims in its cases than ever before. The number of identified victims in our federal criminal cases increased 90% in the first year after the Crime Victims' Rights Act passed. The number of victim notifications doubled in the year after the Act passed, to a total of almost six million notices sent by U.S. Attorneys' Offices in FY 2005. Victims are experiencing a greater role in the federal criminal justice process, attending proceedings, conferring with prosecutors, and, in many instances, exercising their right to personally address the court at sentencing hearings. The United States Attorneys are committed to ensuring not just that victims are accorded their rights, but that victim services at the federal level are the very best that they can be.

CYBERCRIME

CHILD EXPLOITATION AND OBSCENITY:

The internet has provided a new form of community for those criminals who prey on the most vulnerable of victims among us, children. Many of the federal prosecutions against pedophiles are based in some way on the defendants' use of a computer. Case statistics show that during FY 2005, the United States Attorneys collectively filed 1,447 child exploitation cases involving child pornography, coercion, and enticement offenses against 1,503 defendants.

To further the Department's efforts concerning child exploitation, the Attorney General announced in February 2006 the Project Safe Childhood initiative. Project Safe Childhood will be implemented through a partnership of United States Attorneys, Internet Crimes Against Children Task Forces, and other federal, state, and local law enforcement officials in each district to investigate and prosecute crimes against children facilitated through the Internet or other electronic media and communications devices. Working with these partners, United States Attorneys will develop district-specific strategic plans to coordinate the investigation and prosecution of child exploitation crimes; oversee efforts to identify and rescue victims; and provide local training, educational, and awareness programs.

Some examples of child exploitation prosecutions during FY 2005 include:

- In the **Eastern District of Washington**, a man pleaded guilty to two counts of Travel with the Intent to Engage in Illicit Sexual Conduct and received a 97 month prison sentence. The Defendant, Gilo Anthony Tunno, was arrested in Portland, Oregon, after ICE Special Agents served a search warrant there. The Defendant has admitted to traveling from Portland to Spokane, Washington, on two occasions in 2004 where he then sexually assaulted an 8 year-old boy. Tunno had originally corresponded on line with the victim's step-father, Timothy Oakes, who agreed that Tunno should travel to Spokane to engage in sexual acts with the child victim and Oakes. Oakes himself was arrested on child pornography charges and received a 20 year sentence. The investigation of Tunno continues, with evidence of his additional travel within the United States for the purpose of sexually assaulting children.

- In the **Western District of Pennsylvania,** a man was sentenced to 46 months imprisonment, followed by lifetime supervised release, for his conviction of traveling to Western Pennsylvania with the intent to engage in illicit sexual conduct with a minor he met on the internet. In 2002, the defendant, Derrick Kenrick, first communicated with the child, who was then 13, while she was playing virtual pool on the Internet. The child asked if anyone else believed in God. The defendant, using the name "Wings444" responded, claiming to be a 19-year-old name Dirk. For two years, the pair chatted online and over the telephone. The defendant then traveled to the girl's house in August 2004. He was 49-year-old man.

- In the **Western District of Michigan**, a defendant was sentenced to 60 months incarceration and three years of supervised release for distributing material involving the sexual exploitation of a minor. An FBI agent acting undercover began to exchange e-mail messages with the defendant regarding child pornography. Eventually the defendant transmitted to the agent a video, nearly 17 minutes in length, depicting an adult male wearing a ski mask engaged in various sexual acts with an eight-year old girl.

- In the **District of Columbia**, a man was charged with 11 child pornography charges. The defendant advertised, transported, received and possessed child pornography. He was operating his personal computer as a file server and advertised a collection of approximately 11,000 image and movie files of child pornography over a five month period.

- In the **District of Oregon**, a man pleaded guilty to a charge of producing child pornography. The defendant enticed a minor under the age of 12, and a citizen of Kenya, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct.

- In the **Southern District of Indiana**, a man was sentenced to 15 years in prison for a case involving the sharing and distribution of computer files containing images of child pornography. The defendant was operating his personal computer as a file server and advertised a collection of approximately 20,000 image and movie files of child pornography over a five year period.

The investigation and prosecution of obscenity is also a priority for the U.S. Attorneys' Offices. This work is furthered and assisted by the Obscenity Prosecution Task Force. The Task Force was started in 2005 and is dedicated exclusively to the investigation and prosecution of the producers of hard-core pornography meeting the test for obscenity, as defined by the United States Supreme Court. The Task Force's singular focus is on the prosecution of adult obscenity - primarily obscenity advertised, sold, and distributed via the Internet. There have been 47 obscenity convictions (persons/entities) Department-wide since 2001.

COMPUTER HACKING AND INTELLECTUAL PROPERTY CRIMES:

The United States Attorneys Offices have responded strongly to the rise of intellectual property and computer hacking related crimes. Since 1995, each United States Attorney's Office has had at least one prosecutor available to work on computer related crimes. Since that time, EOUSA has partnered with the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS) in providing high-tech legal training and support to these specialized prosecutors, today known as Computer Hacking and Intellectual Property (CHIP) Coordinators.

Beginning in 2001, the Justice Department augmented the existing number of computer crimes prosecutors by creating CHIP Units at ten different U.S. Attorneys' Offices. The program was expanded twice, once in 2002 and again in 2004. Currently there are CHIP Units at 18 United States Attorneys' Offices across the country. These specialized units have between two and eight prosecutors each. CHIP Coordinators, CHIP Unit Assistant U.S. Attorneys (AUSAs), and CCIPS attorneys, working with their international counterparts, together form a network of prosecutors poised to respond to the global threat of cybercrime and intellectual property theft.

The U.S. Attorneys' CHIP prosecutors focus on prosecuting intellectual property offenses such as trademark violations, copyright infringement, and thefts of trade secrets. In addition, they prosecute high-technology offenses including computer hacking, virus and worm proliferation, Internet fraud, and other attacks on computer systems. CHIPS prosecutors continue to dismantle and prosecute multi-district and international criminal organizations that commit intellectual property crimes.

The number of defendants we have prosecuted for intellectual property offenses has increased dramatically in recent years. In Fiscal Year 2001, we prosecuted 201 defendants in 152 cases. Last year, in FY 2005, 350 defendants were charged with intellectual property offenses in 169 cases. The 18 districts with CHIP Units charged 180 defendants in 80 cases, making these districts responsible for approximately half of all United States Attorneys' Offices intellectual property prosecutions in FY 2005.

Some additional examples of success by United States Attorneys' Offices include:

- The **Central District of California**, the **Northern District of Illinois**, the **Western District of North Carolina,** and CCIPS helped to coordinate an international takedown against members of over 22 major online software piracy groups in Operation Site Down in June 2005. Prosecutors have charged 53 defendants and obtained 23 convictions to date.

- In the **Northern District of California,** two men pled guilty in April 2006 and admitted their involvement in what the recording industry is calling the largest music manufacturing piracy seizure in the United States. An estimate of over 490,000 pirated CDs and DVDs, as well as more than 5,500 stampers, were seized.

- In the **Eastern District of Arkansas,** a defendant was sentenced in February 2006 to 96 months after being found guilty by a jury of 120 counts of unauthorized access of a protected computer. The defendant used sophisticated decryption software to steal over one billion

records containing personal information including names, physical and email addresses and telephone numbers.

DRUG TRAFFICKING

Illegal drugs poison lives and communities. The United States Attorneys' Offices continue to focus significant law enforcement efforts on reducing the availability of drugs by disrupting and dismantling the drug supply and related money laundering networks operating in the United States and abroad.

The Organized Crime Drug Enforcement Task Force (OCDETF) Program is an integral part of this effort. The OCDETF Program combines the efforts and expertise of federal, state, and local law enforcement agencies along with United States Attorneys' Offices across the country, to investigate and prosecute these major drug supply and money laundering organizations. The use of the Consolidated Priority Organization Target (CPOT) List, which represents the "most wanted" international drug and money laundering targets, and the Regional Priority Organization Target (RPOT) List, representing the most significant drug and money laundering organizations threatening the OCDETF Regions, forms the backbone of the OCDETF targeting matrix. As a key part of the OCDETF Program, the United States Attorneys also continue to emphasize investigations into drug traffickers' financial assets.

EOUSA's most recent data shows that, during Fiscal Year 2005, U.S. Attorneys' Offices filed 2,513 OCDETF narcotics cases against 8,128 major drug defendants. This represents a 9.5 percent increase in the number of OCDETF defendants charged when compared with the prior year. During that same year, 7,202 OCDETF defendants were convicted, a conviction rate of almost 94 percent. Of the convicted defendants, 91 percent were sentenced to prison.

In addition to OCDETF cases, the United States Attorneys also filed a total of 13,502 non-OCDETF drug cases against 21,900 defendants during Fiscal Year 2005. A total of 12,669 non-OCDETF cases against 19,900 defendants were closed during the year. Ninety-two percent of these defendants were convicted and sentenced to prison.

The growing threat of methamphetamine ("meth") also continues to be a primary focus of drug enforcement by the United States Attorneys' Offices. In FY 2005, the United States Attorneys' Offices filed 2,629 meth cases, a 5.5 percent increase from FY 2004 and the highest total number ever. This number also represents over 16% of all narcotics cases filed, the highest percentage ever for meth cases. Indeed, in the last 10 years, both the number of meth cases filed and the number of defendants charged have quadrupled. The number of methamphetamine cases filed has now surpassed "crack" cocaine in frequency, making it third behind only powder cocaine and marijuana in federal caseload numbers.

Our increased emphasis on the methamphetamine problem is also reflected in the formation by the Attorney General's Advisory Committee -- the group through which the U.S. Attorneys assist the Attorney General in formulating and implementing the Department's policies and programs -- of a Methamphetamine Working Group. The Methamphetamine Working Group is comprised of U.S. Attorneys from across the country, and meets to coordinate and implement strategies to better combat the meth problem. Meth is the only controlled substance to which a working group at this level is dedicated. Additionally, in FY 2006, the

NAC will be broadcasting ten training presentations pertaining to meth on the Justice Television Network, which is received in all United States Attorneys' Offices, as well as other Department components and other federal agencies. Also, the NAC will host a meth conference for prosecutors in July 2006.

The United States Attorneys have also formed an Internet Pharmacy Working Group, and a Demand Reduction Working Group, both of which will make recommendations on combating these problems to the Attorney General's Advisory Committee, which will share these recommendations with our offices across the country.

Just a few of the following FY 2005 OCDETF cases reflect the United States Attorneys' commitment to disrupting and dismantling high-level drug supply and money laundering organizations:

- In the **District of Maryland**, Operation "White Tiger," an investigation into an international, high-purity heroin trafficking organization, led to the conviction of seven individuals who were responsible for the distribution of hundreds of kilograms of heroin to the United States, Europe, Canada, and Africa. The two organization leaders, both from Pakistan, were sentenced to life in prison and 30 years in prison, respectively, on charges related to their family's international heroin trafficking organization. They were convicted after a four week trial of conspiracy to distribute and import one kilogram or more of heroin, three counts of distribution of heroin, and eight counts of using a communications facility (telephone or fax) to facilitate heroin offenses. In addition, another defendant pled guilty to money laundering in connection with the transmittal of funds to the organization and was sentenced to one year and eight months in prison.

- In the **District of Massachusetts**, Operation "Silent Victory" resulted in the dismantling of a Colombian cocaine trafficking organization and the successful prosecution of 17 federal defendants, ranging from street-level dealers and their mid-level supplier, to the Colombian-based leaders of the cocaine distribution and money laundering ring which had become the supplier's chief source of supply. Beginning in 1997, the investigation employed a number of investigative techniques which led to the indictment of 15 defendants in the district, the seizure of over 10 kilograms of cocaine, and the indictment and extradition of two leaders and suppliers from Colombia. The mid-level supplier, his associates, and his customers received sentences ranging from probation to 11 years and three months in prison. The extradited leaders of the organization each received sentences of 21 years and 10 months in prison.

- In the **Southern District of Texas,** Operation "Igloo," a four year multi-jurisdictional investigation co-sponsored by the Drug Enforcement Administration, Immigration and Customs Enforcement, and the Internal Revenue Service, targeted an organization involved in a conspiracy that spanned an eight year period. Two individuals were the heads of a drug and money laundering organization that was primarily based out of Laredo, Texas, and largely operated in the Atlanta, Georgia, area. The organization shipped in excess of 150 kilograms of cocaine and in excess of 30,000 kilograms of marijuana from Texas to Georgia, North Carolina and Tennessee, and laundered as much as $15 million. A total of 34 targets

were indicted resulting in 30 convictions, including the two organization heads who pled guilty and received 44 years and 45 years in prison, respectively. The investigation resulted in the seizure of over $2.3 million in drug proceeds and 10,000 pounds of marijuana.

CIVIL RIGHTS

The United States Attorneys are committed to protecting and preserving the rights of all Americans. Criminal civil rights prosecutions brought by the United States Attorneys' Offices are handled in consultation and coordination with the Department's Civil Rights Division. The Department's strategic goals are to uphold civil rights, reduce racial discrimination, and promote reconciliation through vigorous enforcement of civil rights laws. Among other civil rights violations, the United States Attorneys prosecute incidents of violence or threats against individuals perceived to be of Middle-Eastern origin, bias motivated crimes, trafficking in persons, police and other official misconduct, and violations of voting rights.

The United States Attorneys also enforce federal statutes prohibiting discrimination in housing, consumer credit, and public accommodations. In addition to these traditional areas, the Department is increasing its efforts in protecting the growing number of elderly Americans. The increasing number of older adults residing in long-term care facilities are often particularly vulnerable to inadequate care and treatment.

During FY 2005, the United States Attorneys filed 67 criminal civil rights cases against 131 defendants. This is a 19 % increase in the number of defendants charged as compared to last year. The United States Attorneys also resolved, generally through plea agreements or convictions after trial, closed a total of 66 cases against 87 defendants -- a 14 percent increase in the number of cases closed in the prior year. Eighty-five percent of the defendants whose cases were closed during the year were convicted, with 84 percent of the convicted defendants sentenced to prison.

The United States Attorneys are continuing their efforts to ensure that those who commit bias-motivated crimes in their districts are appropriately punished and that future civil rights violations are successfully deterred by prosecution. Some examples of bias-motivated crimes cases the United States Attorneys successfully prosecuted during FY 2005 include the following:

- In the **Eastern District of California,** a defendant was sentenced to three years and six months in prison for conspiring to violate civil rights and interference with housing rights after he burned a cross on the front lawn of the home of an African-American family. He admitted to burning the cross because of the victims' race and because they were occupying that particular home.

- In the **Southern District of Texas**, two defendants were convicted for the racially motivated beating of a Hispanic man. Each defendant had tattoos commonly associated with the "Skinheads," a white supremacist group. Prior to and during the assault, the defendants used derogatory terms to refer to the victim's ethnic origin. The defendants were sentenced to five years in prison and three years in prison, respectively, for the assault.

- In the **Western District of Texas**, a defendant was sentenced to 14 years and three months in prison for attempting to firebomb the Islamic Center of El Paso. At his plea hearing, the defendant admitted throwing a Molotov cocktail at the Islamic Center and to placing a second, similar device near a gas meter on the property.

- In the **Western District of Virginia**, two men were sentenced for their racially-motivated desecration of a historically African-American church. The defendants forcibly broke into the Mount Moriah Baptist Church, broke windows in the sanctuary, shattered light fixtures, threw hymnals through broken windows, discharged a fire extinguisher throughout the church, smashed items with a metal post, tore out sinks and toilets, and ripped photographs of congregants from the sanctuary and smashed them on the floor. The defendants were sentenced to two years and three months in prison, and one year and nine months in prison, respectively.

The United States Attorneys also prosecute human trafficking cases. Trafficking in persons is a modern-day form of slavery, and is a significant problem in the United States and abroad. Victims, found both internationally and from within this country, are lured with false promises of better economic opportunities and good jobs, and then are forced to work under inhumane conditions. Many trafficking victims are forced to work in the illegal sex industry, in labor settings involving domestic servitude, or in prison-like factories.

Just a few examples of human trafficking cases the United States Attorneys prosecuted during FY 2005 include the following:

- In the **District of Hawaii**, the former owner of an American Samoa garment factory was sentenced to 40 years in prison for his role in holding over 200 victims in forced servitude. The workers were recruited from China and state-owned labor export companies in Vietnam. They paid fees of approximately $5,000 to $8,000 to gain employment at the Daewoosa factory and risked retaliation and punishment at home if deported back to their native lands. The workers were subjected to poor conditions and minimal pay. After months of mistreatment, the workers complained about their plight and attempted to obtain food from local residents. The defendant retaliated, using arrests, deportations, food deprivation, and brutal beatings to force workers to operate the factory. In one episode, a woman lost an eye as a result of a beating.

- In the **Western District of New York**, four defendants pled guilty to human trafficking-related charges in connection with a scheme to recruit young Mexican men to work on farms in Western New York and hold them in conditions of forced labor. The defendants approached young, undocumented aliens near the Arizona border and recruited them to come to New York with false promises of good wages. They transported their victims to New York where they forced them to work in the fields for little or no pay and told them they were not free to leave until they paid off enormous debts. Eventually, the victims were able to escape from the defendants' control and seek help. The defendants were sentenced to

terms of three years and 10 months in prison, three years and one month in prison, one year and two months in prison, and one year probation, respectively.

- In the **Western District of Oklahoma**, two defendants were sentenced for sex trafficking of children. One defendant was sentenced to 12 years and six months in prison for transporting two 15-year-old girls from southern Kansas to Oklahoma for the purpose of engaging them in prostitution. The second defendant was sentenced to five years and 10 months in prison for transporting a 15-year-old girl from Wichita, Kansas, to Oklahoma City for the purpose of engaging her in prostitution.

PUBLIC AND CORPORATE CORRUPTION

CORPORATE FRAUD:

The prosecution of corporate fraud continues to be a high priority for the United States Attorneys. In FY 2005, United States Attorneys' Offices opened 123 corporate fraud matters and charged 197 defendants. Since the creation of the Corporate Fraud Task Force by President Bush in July 2002, over 970 corporate fraud convictions have been obtained through December 31, 2005. These convictions include 85 corporate presidents, 82 CEOs, 40 CFOs, 14 COOs, and 17 corporate counsel or attorneys, as well as 98 vice presidents and 19 Controllers. Additionally, in FY 2005, just under 70 percent of all convicted defendants were sentenced to prison. The number of significant corporate fraud matters undertaken by the United States Attorneys in the last two years has contributed substantially to restoring confidence in America's financial markets and reinvigorating corporate governance practices.

A few examples of corporate fraud cases successfully prosecuted by the United States Attorneys' Offices during FY 2005 include the following:

- In the **Eastern District of Virginia**, America Online, Inc. (AOL) entered into a Deferred Prosecution Agreement with the United States. The company was charged with aiding and abetting securities fraud. The Statement of Facts sets forth a revenue swap between AOL and a Las Vegas-based public company formerly known as PurchasePro.com. AOL admitted that as a result of the actions of its officers and employees, AOL aided and abetted PurchasePro's officers in reporting at least $10 million in false revenue in the fourth quarter of 2000 and at least $20 million in false revenue in the first quarter of 2001. Among other things, AOL agreed to pay a monetary penalty of $60 million and to pay $150 million into a settlement and compensation fund. In addition, six PurchasePro executives pled guilty, including the Chief Accounting Officer, Chief Operating Officer, Senior Vice President of Strategic Development, and Senior Vice President of Sales and Strategic Development. Four executives were sentenced to prison time.

- In the **District of Maryland**, the President and Chief Executive Officer of three Baltimore-based financial services companies pressured fund managers under his control to invest various funds in *e*Chapman stock in an attempt to ensure that the Initial Public Offering

would be fully subscribed by its opening date. These funds ultimately lost a total of almost $6 million as *e*Chapman's stock price eventually fell to mere pennies a share. The defendant also stole approximately $500,000 in cash out of his various companies. Following a nine week trial, the defendant was convicted on 23 charges of fraud and false statements and he was sentenced to seven years and six months in prison and was ordered to pay more than $5 million in restitution. In a separate case, the Senior Vice President was sentenced to one year and six months in prison on securities fraud charges.

HEALTH CARE FRAUD:

The United States Attorneys recognize how critical it is to protect public health, the integrity of the Medicare trust fund, and the viability of other federal health care programs and private health care payers. We continue to do everything we can to ensure that the public health system and our public and private health care payers are not exploited by corrupt health care providers or fraudulent medical equipment and pharmaceutical suppliers and manufacturers. United States Attorneys' Offices play the lead role in the prosecution of health care crimes. In FY 2005, United States Attorneys' Offices opened 935 new criminal health care fraud investigations involving 1,597 potential defendants. Last year, federal prosecutors had 1,689 health care fraud criminal investigations pending, involving 2,670 potential defendants, and filed criminal charges in 382 cases involving 652 defendants. A total of 523 defendants were convicted for health care fraud-related crimes during the year.

Also in FY 2005, the Department of Justice opened 778 new civil health care fraud investigations, and had 1,334 civil health care fraud investigations pending. In 2005, the Department of Justice filed complaints or intervened in 266 civil health care fraud cases in actions brought by whistleblowers under the *qui tam* provisions of the False Claims Act. During 2005, we won or negotiated approximately $1.47 billion in judgments and settlements, and assisted the Department of Health and Human Services in obtaining additional administrative impositions in health care fraud cases and proceedings. The Medicare Trust Fund recovered more than $1.13 billion during this period as a result of these efforts, as well as efforts in preceding years.

Every United States Attorney's Office has an AUSA designated as the Criminal Health Care Fraud Coordinator and a Civil Health Care Fraud Coordinator. The coordinators lead inter-agency health care fraud task forces that share information about trends in health care fraud, emerging investigative and prosecutorial techniques, and other information necessary to achieve the common goal of controlling health care fraud. Combating health care fraud continues to be a top priority for the United States Attorneys and is an integral part of the Department's efforts to address white collar crime. Currently, almost every United States Attorneys' Office in the country is pursuing criminal health care fraud investigations.

Some recent significant health care fraud cases include the following:

Pharmaceutical Fraud

- GlaxoSmithKline paid the United States $140 million to settle allegations of fraudulent drug pricing and marketing that resulted in the submission of inflated claims to Medicare, Medicaid, and other federally funded health care programs.

- AdvancePCS, a subsidiary of Caremark, Inc. in the pharmacy benefit management business, paid the United States $138.5 million to resolve allegations that AdvancePCS exacted, accepted, and paid kickbacks in its capacity as the pharmacy benefit manager for the health plans.

Durable Medical Equipment Fraud

- Polymedica Corporation of Woburn, Massachusetts, and two subsidiaries paid $35 million to settle allegations that they falsely claimed reimbursement from Medicare for various diabetic and nebulizer products.

- Apria Healthcare Group Inc., the nation's largest supplier of durable medical equipment, paid the United States $17.6 million to settle fraud allegations that, among other things, it submitted false documents and misrepresented the date or place equipment was delivered to patients.

Dialysis Fraud

- Gambro Healthcare paid $310 million to resolve allegations concerning the submission of false claims to Medicare and Medicaid in connection with dialysis services.

- The Hospital of St. Raphael in Connecticut agreed to pay $632,000 to resolve allegations that it improperly charged Medicare for treatment for kidney dialysis patients.

Hospital Fraud

- HealthSouth Corporation paid $327 million to settle allegations of fraud against Medicare and other federally insured health care programs. HealthSouth also entered into a corporate integrity agreement (CIA) with the HHS/OIG to prevent future misconduct.

- The Eisenhower Medical Center, a facility in the Central District of California, paid the United States $8 million to settle allegations that it fraudulently overbilled federal health insurance programs.

Medicaid Fraud

- A district court in the Northern District of Indiana sentenced a dentist to 57 months imprisonment and ordered the dentist to pay $2.4 million in restitution for a Medicaid fraud scheme relating to the provision of dental services for juveniles from the defendant's mobile office.

- A pharmacist was sentenced to 33 months imprisonment and ordered to pay over $2 million in restitution to the North Carolina Medicaid program for submitting fraudulent Medicaid claims for prescriptions that had not been refilled, delivered, or even requested.

PUBLIC CORRUPTION:

Whether serving at the local, state, or federal level, no government official is above the law. The United States Attorneys are committed to doing everything they can to enforce this principle and to prosecute those who betray the public trust, thereby helping to ensure that the general public retains confidence in its government. In FY 2005, the United States Attorneys' Offices filed 441 public corruption cases against 673 defendants. Of the 745 defendants whose cases were closed during FY 2005, 670 were convicted, reflecting a conviction rate of 90 percent.

Some examples of the success in public corruption cases the United States Attorneys' Offices have undertaken include the following:

- In the **Southern District of California,** former Congressman Randall "Duke" Cunningham, pled guilty on November 28, 2005, to conspiring to commit bribery, honest services fraud, and tax evasion, including tax evasion involving more than $1 million of unreported income. As part of his plea, former Congressman Cunningham admitted that he received at least $2.4 million in bribes. The bribes included checks totaling over $1 million, as well as rugs, antique furniture, yacht club fees, boat repairs, and vacation expenses. Cunningham was sentenced to serve 100 months in custody, followed by three years of supervised release.

- In the **District of Columbia,** Mitchell J. Wade pled guilty on February 24, 2006, to one count of conspiring to bribe former Representative Cunningham and to commit tax evasion, one count of use of interstate facilities to promote bribery, one count of conspiracy to deprive the Department of Defense of the honest services of its employees and one count of election fraud.

- In the **Eastern District of Virginia,** Brett Pfeffer pled guilty on January 11, 2006, to charges that he conspired to aid and abet the solicitation of bribes by a Member of Congress in exchange for the Member's performance of official acts designed to promote a Kentucky-based company's technology in Nigeria and Ghana.

FISCAL YEAR 2007 BUDGET REQUEST

To carry out our critical missions in FY 2007, we are requesting a budget of $1.664 billion to support 10,262 positions. As part of our request, we are seeking $23.2 million in enhancements, which will support an increase of 149 positions.

A major focus of our budget request is to support prosecution efforts in order to keep pace with the substantial growth in resources that have been received by federal investigative agencies. The President's FY 2007 Budget Request recognizes terrorism as a first priority, but also recognizes other high priority problems that must be addressed at the federal level. To this end, the request seeks additional resources necessary to support the following priority programs:

- **National Security and Terrorism Prosecutions**:

We are requesting $7.737 million for a National Security and Terrorism Prosecution Initiative. This will provide for a total of four positions (two FTE), which includes one attorney and three support positions. This initiative includes the following four areas:

  - *$3 million* for Anti-terrorism Advisory Councils (ATACs);
  - *$2.108 million* for litigation expenses for the extraordinary costs associated with prosecuting complex terrorism cases, such as the need for travel and translation costs;
  - *$1.381 million*, including one support position for secure communication links, and equipment required to be able to process and exchange information; and
  - *$1.248 million*, including three positions (one attorney and two support) for anti-terrorism training of federal, state, and local personnel at the NAC.

- **Physical Security**:

We are requesting $1.43 million for a Physical Security Initiative to provide for much-needed replacement and upgrade of basic physical security needs in United States Attorney Offices. Physical security needs of prosecutors is a growing concern as a result of the increased threats presented by criminals who wish to do harm to the United States Attorney community. EOUSA will be providing resources for the following two specific areas:

  - $1.055 million for Electronic Security Systems that will replace intrusion detection and access control systems at 10 local United States Attorney locations that have surpassed their life expectancy; and
  - $375,000 for Identification Badging Systems for electronic badging stations at all United States Attorneys' Offices. This will enhance security by providing digital photo badges and database information for visitors and contractors.

- **Gang Prosecutions:**

We are requesting $6.081 million for a Gang Prosecution Initiative that will provide for 48 attorneys and 13 support positions (31 Full Time Employee Equivalents or "FTE") to combat gang violence.

- **Child Exploitation & Obscenity Prosecutions**:

We are requesting $2.625 million for a Child Exploitation and Obscenity Initiative to provide for 21 attorneys and five support positions (13 FTE) to prosecute additional cases that will focus on child exploitation and obscenity/pornography on the Internet, and "traveling" offenses, which include child trafficking and traveling to abuse children.

- **Identity Theft Prosecutions:**

We are requesting $3.015 million for 24 attorneys and six support positions (15 FTE) to prosecute additional cases in an area that has emerged as an important white collar crime problem facing law enforcement authorities today. At least 10 million people each year in the United States are the victims of identity theft affecting both businesses and individuals. Identity theft costs businesses an estimated $48 billion in losses and consumers an additional $5 billion in out-of-pocket losses annually. The number of identity fraud cases filed by the United States Attorneys' Offices has grown by 320 percent over the FY 1995 through FY 2005 period, rising from 349 to 1,116 cases. The growth of the Internet and security breaches at major companies that have consumer databases has increased the identity theft problem. The United States Attorneys work closely with the FBI and other federal investigative agencies, as well as with state and local law enforcement authorities.

- **Criminal Debt Collection:**

We are requesting $2.317 million for 28 professional support positions (14 FTE) to provide for increased enforcement and criminal debt collection litigation. In FY 2005, approximately $10.5 billion of over $40 billion in outstanding criminal debt was collectible by United States Attorneys' Offices, but only $1.15 billion was actually collected. This initiative will provide much needed resources to enable asset investigators to better enforce monetary judgments imposed by the courts by aggressively using all available tools, including asset investigations and post-judgment litigation, to collect outstanding monetary debt.

CONCLUSION

We recognize that stewardship of appropriated funds is a serious responsibility. As the nation's principal prosecutors and litigators, the United States Attorneys are on the front lines to keep Americans safe from terrorists and other violent criminals, as well as to assert and protect the interests of the United States. The United States Attorneys have taken on many new responsibilities over the past several years and remain committed to sound financial management to conserve funds and develop efficiencies in order to maximize the results of our efforts. We believe that our FY 2007 budget request is a responsible one that is designed to address key priorities of the Administration.

Thank you for the opportunity to discuss the United States Attorneys' priorities with you. We appreciate your continued support of our important work. I look forward to answering any questions that you may have.

Mr. CANNON. Thank you, Mr. Battle.

Mr. Keisler, you're recognized for 5 minutes.

TESTIMONY OF PETER D. KEISLER, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. KEISLER. Thank you very much, Mr. Chairman and Congressman Watt.

It's a great privilege for me once again to appear before you at this oversight hearing to discuss the work of the Civil Division and to respond to any questions you might have.

The Civil Division, as you know, represents the United States in court in a wide variety of matters. We don't make policy, but we represent the people and the Departments and the Agencies that do.

Virtually every executive branch agency, as well as Members of Congress, are clients of ours at one time or another. The cases we handle, therefore, touch upon virtually every aspect of the operations of the Federal Government.

We represent the United States on a wide range of cases—contract disputes, tort suits, loan defaults, and immigration cases, among others. We defend the constitutionality of acts of Congress and the lawfulness of Government regulations in court.

We seek to recover monies lost to the Government through fraud, and we enforce important consumer protection statutes. We also help administer sensitive national compensation programs.

The division employs approximately 660 attorneys and roughly 300 support personnel to perform these functions, and they're very busy. While civil had about 31,000 cases in fiscal year 2002, it had more than 52,000 in fiscal year 2005, a 70 percent increase in 3 years.

Notwithstanding this rapid growth, I'm very pleased to report that we have had a very successful year. Working together, as Mike just noted, the Civil Division and the U.S. attorneys' offices recovered more than $1 billion in monies defrauded from the Government. Annual recoveries have exceeded that $1 billion mark for 5 of the past 6 years. The division is exceedingly proud of these accomplishments, which have resulted from its close partnership with Mike's U.S. attorneys' offices.

While our affirmative case work recovers billions for the United States Treasury, 86 percent of our litigation is defensive. These cases often affect significant budgetary and policy issues. As you know, the Government is the largest commercial actor in the world and the largest purchaser of goods and services.

We have successfully defended the Government from exaggerated or meritless claims in a wide range of commercial and tort cases. Our efforts saved the Government more than $10 billion in fiscal year 2005 alone.

We have also successfully defended congressional and executive authority against numerous challenges to laws, such as the No Child Left Behind Act and the "three strikes" provision of the Prison Litigation Reform Act. And in July 2005, the division successfully defended the Communications Decency Act's ban on know-

ingly transmitting obscenity via telecommunications devices to minors.

In addition to these matters, our attorneys are also involved on the civil side of a variety of terrorism cases. We are particularly proud of our work in the terrorist financing area, defending the Government's actions in court to help shut down the flow of money to international terrorist organizations. We take seriously the Attorney General's charge to address terrorism and other threats to our country with the utmost integrity.

The Civil Division has also administered sensitive national compensation programs established by Congress, such as the Vaccine Injury Compensation Program and the Radiation Exposure Compensation Act.

We very much appreciate the interest and the oversight of this Committee, both from a budget and a policy standpoint. My written testimony describes the area that we feel is most in need of additional resources in FY 2007, immigration litigation, where the caseload has risen from 6,200 in fiscal 2002 to more than 17,000 in fiscal 2005.

I would, of course, be happy to address this and other areas of interest further. I do want to thank you again, Mr. Chairman, Congressman Watt, for the opportunity to appear before you and to respond to your questions.

[The prepared statement of Mr. Keisler follows:]

PREPARED STATEMENT OF PETER D. KEISLER

Chairman Cannon, Congressman Watt, and Members of the Subcommittee:

I appreciate the opportunity to discuss the work of the Civil Division of the Department of Justice and our budget and resource needs for Fiscal Year 2007.

The Division represents the interests of the United States in a wide range of civil matters. Our cases encompass virtually every aspect of the Federal government—from defending the constitutionality of Federal statutes to recovering money defrauded from Government programs, to the administration of national compensation programs, to the representation of Federal agencies and Government employees in a host of matters that arise as part and parcel of Government operations—contract disputes, allegations of negligence and discrimination, loan defaults, and immigration matters. The Division employs 660 attorneys and 295 full and part time employees who provide essential paralegal, administrative, and clerical support.

In FY 2005, the Civil Division accomplished the following:

- Worked with the United States Attorneys to recover more than $1 billion dollars lost through fraud against Government programs;
- Protected the public fisc from billions of dollars in claims arising from the Government's commercial activities;
- Protected the public fisc from over $1 billion dollars in tort claims arising from the Government's past and current operational programs and activities;
- Defended against challenges to Congressional and Executive exercises of power;
- Played a major role in the administration of the Vaccine Injury Compensation Program, which was established by Congress;
- Represented individual Government employees sued in connection with their performance of official duties; and
- In the period since the September 11th attacks, defended the Federal government's coordinated response to those attacks and the Administration's policies designed to prevent future acts of terrorism.

NATIONAL SECURITY

Among the laws and policies of greatest importance to the Administration, the Congress, and the public are those intended to protect our nation's security. Our leadership has committed itself to devoting all resources necessary to disrupt, weak-

en, and eliminate terrorist networks; to prevent terrorist operations; and to bring to justice perpetrators of terrorist attacks. And we in the Civil Division are privileged to contribute to this mission through our representation of the United States in litigation that relates to the Federal government's efforts to protect against threats to our national security. In fulfilling our litigation responsibilities, we take seriously the Attorney General's charge to address terrorism and other threats to the United States with integrity and devotion to our nation's highest ideals.

Civil cases related to the war on terrorism often raise complex issues. And the consequences are large, as litigation losses in this area could undercut policies of crucial importance to the security of our citizens. By way of example, Civil Division attorneys have defended the Government in the following matters: challenges to the USA PATRIOT Act; decisions to freeze the assets of terrorist organizations; enforcement actions involving the detention and removal of suspected alien terrorists; and designations of Specially Designated Global Terrorists.

While national security cases are paramount, they nonetheless represent a small fraction of the cases and matters pending with the Civil Division in FY 2006. This vast and diverse workload is handled by our trial attorneys who spend their time on the front lines of litigation—preparing motions, taking depositions, negotiating settlements, conducting trials, and pursuing appeals.

WORKLOAD TRENDS

Over the past four years, the Civil Division's caseload has increased by more than 70 percent. In FY 2002, we handled about 31,000 cases and matters, but by FY 2005, our caseload exceeded 52,000. This increase is attributable to two main factors: (1) significant growth in the number of claims filed with the compensation programs; and (2) a dramatic rise in appellate cases resulting primarily from increased challenges to immigration enforcement actions.

IMMIGRATION LITIGATION

The Office of Immigration Litigation ("OIL") defends the Government's immigration laws and policies and handles challenges to immigration enforcement actions. At no time in history has this mission been so important, and never before has it consumed as many of the Department's resources as it does today.

Immigration attorneys defend the Government's efforts to detain and remove foreign-born terrorists and criminal aliens. Since 9/11, OIL has handled and assisted in hundreds of cases involving aliens of national security interest. On average, OIL defends the detention and removal of approximately 1,500 criminal aliens each year. Vigorous defense of these cases is critical to our national security and the safety of our communities. OIL also provides liaison and training to all of the Government's immigration agencies, enabling enforcement efforts at and within our borders to enjoy dependable support before the courts.

Immigration litigation has been the fastest growing component of the Civil Division's docket. The Division is responsible for handling or overseeing all Federal court challenges to decisions of the Board of Immigration Appeals ("BIA"), and the number of these challenges has grown significantly in recent years. OIL's docket of pending cases has nearly tripled in the past four years, growing from 6,200 cases in FY 2002 to over 17,000 cases in FY 2005.

This growth stems from several factors. In 2003, much of the growth was attributed to the Department's streamlining reforms, which increased the productivity of the BIA and thus helped clear a sizable backlog of cases. The backlog has since been cleared. Now, the growth stems primarily from heightened immigration enforcement activities pursued by the Department of Homeland Security and the rapid increase in the rate at which aliens appeal BIA decisions to the Federal courts, which has increased from 6 percent to 29 percent over the past four years. There is no reason to expect this rate to subside. Aliens now must turn to the courts to get the delay in removal that was once reliably provided simply by an administrative appeal to the BIA.

This enormous growth has driven OIL's caseload per attorney to over 155 in FY 2005, more than doubling the historic caseload of 60 cases per attorney. Favorable congressional action on the Division's FY 2007 request would play a large part in addressing OIL's rising caseload. Without additional resources in FY 2007, the attorney caseload is expected to remain at the untenable level of 155 cases per attorney. The Division and the Department have responded to this crisis, assigning immigration cases to other attorneys throughout the Department. These stopgap meas-

ures, which task attorneys who lack experience and efficiency in handling immigration matters, are not a permanent solution.

The Office of Immigration Litigation will continue to face an overwhelming workload in FY 2007. Therefore, the President requests in his FY 2007 budget a program increase of 114 positions (86 attorneys), 57 FTEs, and $9,566,000 for immigration litigation.

PROTECTING THE PUBLIC FISC

Our dockets are filled with cases that involve substantial monetary claims against the Government. The significance of these claims cannot be overstated.

Our responsibilities have included: (1) the 122 Winstar suits in which hundreds of financial institutions have sought tens of billions of dollars for alleged losses that occurred in the wake of banking reforms enacted in the 1980s; (2) the Cobell class action—perhaps the largest ever filed against the Government; and (3) numerous complex, sensitive, and challenging tort cases based on Federal programs and activities, including defense and national security programs, law enforcement activities, and other Government operations, in which the Civil Division has successfully protected the public fisc from approximately $1 billion in unmeritorious tort claims in the last fiscal year.

In thousands of other defensive monetary matters, our mission is to ensure that the will of Congress and the actions of the Executive branch are vigorously and fairly defended, and that meritless claims are not paid from the public fisc. Thus far, we have been largely successful. For example, seventy of the original 122 Winstar suits have been resolved without the Government paying any money whatsoever. And in 2005 alone, we defeated over $3.9 billion in groundless Winstar claims asserted against the United States.

RECOVERING FEDERAL FUNDS

In any given year, about 15 percent of our cases involve affirmative litigation on which we work with United States Attorneys to enforce Government regulations and policies, and to recover money owed the Government from commercial transactions, bankruptcy proceedings, and fraud. The bulk of affirmative monetary recoveries stem from fraud suits. As in the last several years, health care in FY2005 accounted for the lion's share of the Department's fraud settlements and judgments—more than $1.1 billion was recovered in that year alone. This number includes both whistleblower claims and those initiated by the United States in independent fraud investigations. Most of the recoveries in this area are returned to the Medicare and Medicaid programs, but substantial recoveries also are returned to the Federal Employees Health Benefits Program, the Department of Defense TRICARE program, the Department of Veterans Affairs, and the Railroad Retirement Board. The coming fiscal year promises to continue, if not exceed, this trend. Health care fraud recoveries in the first four months of this fiscal year already exceed $600 million. The following recent recoveries illustrate our efforts in this area:

We obtained $325 million from HealthSouth Corporation, the Nation's largest provider of rehabilitative medicine services. Allegations against HealthSouth included false claims for outpatient physical therapy services that were not properly supported by certified plans of care, administered by licensed physical therapists, or for one-on-one therapy as represented. Of similar magnitude was a recent settlement with Gambro Healthcare for $310 million to resolve allegations of false claims for Medicare and Medicaid in connection with dialysis services. Gambro Supply Corporation, the sham durable medical equipment company and a wholly owned subsidiary of Gambro Healthcare, paid a $25 million criminal fine and agreed to permanent exclusion from the Medicare program in a case handled collaboratively by our office and both the civil and criminal divisions in the Eastern District of Missouri.

One of the largest areas of the Department's health care fraud caseload are matters against pharmaceutical companies or other related entities, charging various kinds of fraud on the Medicare and Medicaid programs in the pricing or delivery of drugs. To date, there have been more than more than $4.7 billion in criminal fines and civil recoveries in these cases, much of it returned to the Medicare and Medicaid programs. Indeed, there now are more than 150 qui tam cases filed by whistleblowers under the False Claims Act that allege various schemes associated with government drug plans.

Just this past December, in a case jointly prosecuted with the United States Attorney's Office for the District of Massachusetts, Serono S.A., a Swiss biotechnical corporation, and its United States subsidiaries, entered into a global criminal, civil, and administrative settlement for $704 million, making it one of the largest health care fraud settlements the Department has reached. Serono Labs, one of the sub-

sidiaries, pled guilty to two counts of conspiracy: the first, conspiring to introduce and deliver for introduction into interstate commerce, with intent to defraud or mislead, adulterated medical devices; the second, conspiring to knowingly and willfully pay illegal remuneration to health care providers to induce them to refer patients to pharmacies for the furnishing of the drug Serostim, for which payments were made in whole or in part by the Medicaid program. Serono Labs paid a criminal fine of $136.9 million and reached a civil settlement of its False Claims Act liability of $567 million. This amount was paid to the United States and to State Medicaid programs (the Federal share of which was $305 million).

Finally, in the first settlement of its kind, the pharmacy benefit manager AdvancePCS agreed in 2005 to pay $137.5 million to resolve its civil liability in connection with soliciting and receiving kickbacks from pharmaceutical manufacturers and paying kickbacks to potential customers to induce them to contract with AdvancePCS. This investigation exposed the hidden financial relationships maintained by pharmacy benefits managers with drug manufacturers and health plans that ultimately influenced the nature and the brand of drugs prescribed to Medicare beneficiaries. We think the lessons learned in this case, which was handled with the United States Attorney's Office for the Eastern District of Pennsylvania, and its progeny will be particularly instructive as we monitor potential fraudulent conduct in the Medicare prescription drug program now coming on line.

The Division is making the best use of available resources. These cases are highly complex and resource intensive. Investigative work includes massive document collections, witness interviews, research, and interagency coordination. Millions of taxpayer dollars are lost each year to health care fraud, and any effective effort to contain the cost of Medicare and Medicaid must also incorporate strategies aimed at stopping such fraud.

ALTERNATIVES TO LITIGATION

In addition to its litigation work, the Civil Division also helps to administer alternatives to litigation. The Vaccine Injury CompensationProgram, for example, was created in 1986 by the National Childhood Vaccine Injury Act to encourage childhood vaccination by providing a streamlined system for compensation in rare instances where an injury results. The Vaccine Injury Compensation Trust Fund, from which compensation awards are paid to eligible claimants, derives its funding from an excise tax on vaccine manufacturers and provides reimbursement to the Departments of Justice and Health and Human Services, as well as to the Court of Federal Claims, for expenses related to the administration of the Program. To date, over 1,960 families or individuals have been paid $1.58 billion.

Similarly, Congress passed the Radiation Exposure Compensation Act ("RECA") in 1990 to offer an apology and compensation to individuals who suffered disease or death as a result of the Nation's nuclear weapons testing program during the Cold War Era. In July 2000, RECA Amendments were enacted which significantly expanded the scope of the Act. Major changes included new categories of beneficiaries, expansion of eligible diseases, and geographic areas. Annual capped mandatory appropriations did not keep pace with the increased number of new claim filings and resulted in shortfalls of funds for eligible claimants. However, I am pleased to report that the Trust Fund is currently solvent. In FY 2005, Congress ensured adequate long-term funding by requiring that payments to certain RECA claimants be made from the Energy Employees Occupational Illness Trust Fund. Additional legislation conferred mandatory and indefinite funding status for the remaining RECA claimants beginning in FY 2006. To date, over 15,200 claims have been approved, representing over $1 billion paid to eligible claimants or their surviving beneficiaries.

PERFORMANCE

By concentrating on the Civil Division's top priorities, this testimony provides little elaboration on the thousands of cases and matters that form the traditional core of our work.

The Civil Division has a longstanding commitment to maximizing the effectiveness of scarce Government resources. It is with pride that I can report that performance targets across the board were met or exceeded in FY 2005, as we succeeded in recovering substantial funds owed to the Government, defeating unmeritorious claims, and prevailing in the vast majority of cases involving challenges to the programs of some 200 client agencies.

PRESIDENT'S BUDGET REQUEST

The President's FY 2007 request seeks 1,208 positions (834 attorneys); 1,176 FTEs; and $213,286,000, which includes a program increase of 114 positions (86 attorneys) and $9,566,000 for immigration litigation. Also included in this request are the base resources required to maintain the superior legal representation services that have yielded such tremendous success, and additional funds to support the Office of Immigration Litigation's important mission.

At this time, Mr. Chairman, I would be happy to address any questions you or Members of the Subcommittee may have.

Mr. CANNON. Thank you, Mr. Keisler. I can assure you that we're going to revisit the issue of immigration and what's going on there. Thank you for your presentation.

Mr. McKeown, right? Mr. McKeown.

TESTIMONY OF MATTHEW J. McKEOWN, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC, ON BEHALF OF SUE ELLEN WOOLDRIDGE, ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. MCKEOWN. Thank you.

Mr. Chairman, Congressman Watt, Members of the Subcommittee, I would like to convey Assistant Attorney General Wooldridge's apologies for not being here today because of her family emergency. She apologizes that she couldn't be here today.

The division's mission is to enforce civil and criminal environmental laws to protect the health and environment of our citizens, to defend suits challenging environmental and conservation laws, and the 410 lawyers in the division currently are responsible for 6,800 cases in every judicial district.

The division is committed to ensuring that American taxpayers are getting their money's worth. Altogether, the division has secured civil penalties, criminal fines, and clean-up costs for the U.S. Treasury that far exceed the division's share of the Department's budget.

In the criminal enforcement context, the division continued to have great success with its initiatives to prevent shipping from illegal discharges in inland waterways as well as the initiative to protect workers from endangerment.

Over the years, the division has come to recognize the importance of developing partnerships with U.S. attorneys' offices, State attorneys general, and other State and local officials across the Nation. So it's a pleasure to be here with Mr. Battle today. In pursuing joint enforcement cases, we are able to leverage our resources and increase our effectiveness.

So I would stand for further questions that the Committee may have.

[The prepared statement of Ms. Wooldridge follows:]

PREPARED STATEMENT OF SUE ELLEN WOOLDRIDGE

INTRODUCTION

Chairman Cannon, Congressman Watt, and Members of the Subcommittee, I am pleased to be here today, along with my colleagues from the Department of Justice. I appreciate this opportunity to discuss the Environment and Natural Resources Di-

vision, one of the principal litigating Divisions within the Department, and to answer any questions that the Subcommittee may have about the Division.

I will first summarize the Division's work and outline the scope of our responsibilities, which are essential to the implementation of Congressional programs to protect the nation's environment and its natural resources, and to defend the programs and activities of federal agencies. The Division has a long and distinguished history, and our attorneys have built a record that demonstrates their commitment to legal excellence. I will then discuss the resources that the Administration is requesting for the Division as part of its fiscal year 2007 budget.

OVERVIEW OF THE ENVIRONMENT AND NATURAL RESOURCES DIVISION

The Environment and Natural Resources Division's mission is to enforce civil and criminal environmental laws to protect the health and environment of United States citizens, and to defend suits challenging environmental and conservation laws, programs and activities. We represent the United States in matters concerning the protection, use and development of the Nation's natural resources and public lands, wildlife protection, Indian rights and claims, and the acquisition of federal property. Our enforcement activities are a critical component of environmental protection and help ensure that our citizens breathe clean air, drink clean water, and will be able to enjoy the country's public lands, wildlife and other natural resources for generations to come. In addition, the Division defends a wide range of vital federal programs and interests in cases that involve such diverse and critical matters as military training programs, government cleanup actions, resource management programs and environmental regulations. We represent virtually every federal agency and currently are responsible for over 6,800 active cases in every judicial district in the nation, utilizing the efforts of approximately 410 lawyers. Our principal clients include the U.S. Environmental Protection Agency (EPA) and the Departments of Agriculture, Commerce, Defense, Energy, the Interior, Transportation and Homeland Security. The Division is committed to ensuring that American taxpayers are getting their money's worth. Altogether, the Division has secured civil penalties, criminal fines, and cleanup costs for the U.S. Treasury that far exceed the Division's share of the Department's budget. For instance, the last fiscal year was a record breaking year in the Division's efforts to secure commitments by polluters to take action to remedy their violations of the nation's environmental laws. Actions taken by the Division in federal courts resulted in nearly $9.6 billion in settlements and court-ordered injunctive relief directed specifically at obtaining corrective measures to protect the nation's health, welfare and environment. While this number will fluctuate each year depending on the nature of the cases being resolved, it is truly a superb result, more than doubling our previous record of approximately $4.4 billion in Fiscal Year 2004. Additionally, courts imposed nearly $137 million in civil penalties for violations in environmental cases. According to EPA statistics, the environmental benefits attributable to these enforcement efforts include the reduction or treatment of nearly 400,000 tons of pollutants from the environment. The Division has obtained benefits for human health and the environment that provide an impressive return on the taxpayer's dollar.

These results reflect, among other things, the Division's continuing successes in addressing Clean Air Act violations within the petroleum refining industry. In the last fiscal year, the Division secured important and valuable settlements with ConocoPhillips Co., Valero Energy Corp., Sunoco Refinery, Inc., Citgo Petroleum Corp., and Chevron USA, Inc. More recently, the United States—along with the States of Illinois, Louisiana, and Montana—entered a settlement with Exxon Mobil that requires the defendant to reduce air pollutant emissions by more than 51,000 tons per year, at a cost of approximately $537 million, and to pay nearly $15 million for both a civil penalty and environmentally beneficial projects.

Conserving the Superfund to ensure prompt cleanup of hazardous waste sites is also a top priority. In Fiscal Year 2005, the Division secured the commitment of responsible parties to clean up hazardous waste sites, at costs estimated at nearly $647 million. An additional $266 million in cost recovery to help finance future cleanup work was also secured. The Division continues to secure cleanups of unprecedented size and scope. Just this February, the Division reached a consent decree resolving our claims against Atlantic Richfield and NorthWestern Corporation in connection with the Milltown Reservoir Operable Unit, one of the numerous Superfund Sites within the Clark Fork River Basin in Montana. Under the terms of this decree, ARCO and NorthWestern will: remove the Milltown Dam and the millions of cubic yards of contaminated sediment accumulated behind it, at an estimated cost of $106 million; contribute toward the State's $12 million natural resource restoration plan; reimburse most of EPA's costs; and comply with various FERC require-

ments in connection with the decommissioning of the dam. The United States, on behalf of certain federal agencies, is also reimbursing $2.5 million of EPA's past costs. Other major Superfund cases that the Division resolved this past fiscal year require cleanup actions in Colorado, Illinois, New York, Pennsylvania and Washington.

The Division also continues its national enforcement program to protect the nation's water by ensuring the integrity of municipal wastewater treatment systems. For example, in *United States Washington Suburban Sanitary Commission (WSSC),* the United States entered into a Consent Decree with WSSC, the sewerage authority for Montgomery and Prince George's Counties in Maryland, under which WSSC will undertake injunctive measures including inspection, rehabilitation, and repair requirements and changes in the operation and maintenance of its collection system. WSSC will also perform four "supplemental environmental projects" to reduce pollution loadings to the Chesapeake Bay and will pay a $1.1 million civil penalty, which the United States and Maryland will split. Five citizens groups intervened.

In the criminal enforcement context, the Division continues to have great success with its enforcement initiative to prevent ships from illegally discharging pollutants into the oceans, coastal waters and inland waterways. Recent whistleblower awards to crew members should further aid detection and deterrence. In one recent case, *United States v. Wallenius Ship Management, Pte., Ltd.,* the defendant Singapore shipping company and the former chief engineer of a vessel it managed pleaded guilty to violations associated with the illegal dumping of oily wastes and the overboard dumping of plastics. After a tip by crew members, the Coast Guard inspected the ship and discovered a multi-piece bypass system hidden in various locations. The company will pay a $5 million fine with an additional $1.5 million payment devoted to community service projects and will serve a three-year term of probation and implement an environmental compliance plan. In another recent case, MSC Ship Management (Hong Kong) Ltd. pleaded guilty to having discharged approximately 40 tons of sludge through a bypass pipe manufactured on the ship and an even larger volume of oil-contaminated bilge waste. The company also made false statements to the Coast Guard, directed subordinates to lie to the Coast Guard, concealed evidence, falsified its oil record book and sought to cover up the falsification of records. The company was sentenced to pay a $10 million fine and will pay an additional $500,000 for community service projects.

The Division has also successfully prosecuted several companies owned by McWane, Inc., the largest manufacturer of cast iron piping in the United States, with one major case still pending. McWane and its divisions have been cited by the U.S. Occupational Health and Safety Administration (OSHA) hundreds of times since the mid-1990s. In *United States v. Union Foundry,* an Alabama division of McWane pled guilty to a willful violation of an OSHA regulation that led to an employee's death and to violation of the Resource Conservation and Recovery Act. The company was ordered to pay a $3.5 million criminal fine, perform community service valued at $750,000 and serve three years probation. In *United States v. Tyler Pipe,* a Texas McWane division pled guilty to presenting false statements and to violating the Clean Air Act. It was ordered to pay a $4.5 million criminal fine and serve a five-year probation term, during which it must perform specified upgrades at a cost of approximately $24 million. In *United States v. Pacific States,* McWane and a company executive pled guilty to Clean Air Act violations in connection with operation of an iron foundry division in Utah. McWane was ordered to pay a $3 million criminal fine and serve a three-year probation term. In *United States v. McWane, Inc.,* a jury convicted the corporation (acting through a Birmingham-based division) and three high-ranking company officials of crimes related to six years of Clean Water Act violations. A fourth defendant pled guilty. McWane was ordered to pay a criminal fine of $5 million and perform community service valued at $2.7 million.

Over the years, the Division has come to recognize the importance of developing partnerships with U.S. Attorneys' Offices, state Attorneys General and other state and local officials across the nation. In so doing, we are able to leverage our resources and increase our effectiveness. We have numerous successful examples of joint enforcement with the State Attorneys General. In one recent case involving the Clean Water Act's provisions governing discharge of storm water from large construction sites, the Division obtained a consent decree with Wal-Mart Stores, Inc.—the nation's largest retailer and one of its largest commercial developers—that resolved claims covering 24 locations in 9 states. The United States was joined in the settlement by the States of Tennessee and Utah. Wal-Mart will pay a civil penalty of $3.1 million, undertake a supplemental environmental project to protect sensitive wetlands or waterways, and implement a $62 million compliance program. This settlement is serving as a model in ongoing negotiations with other large commercial and residential developers.

Although the public is generally familiar with the Division's role in enforcing environmental laws, about half of our attorneys' time is actually spent on non-discretionary cases. Many of our cases involve defending the United States for alleged violations of the environmental laws, for example, in connection with federal highway construction, airport expansion, or military training. Effective representation by Division attorneys in these cases is critical to agency implementation of Congressionally mandated programs and protection of the public fisc. In one recent case, *Basel Action Network v. Maritime Administration,* the Division successfully defended the Maritime Administration's decision to export 13 obsolete shipping vessels to the United Kingdom for dismantling, recycling, and disposal. The presence of deteriorated ships in the fleet has been a point of controversy in the past, and the Administration has worked hard to remove obsolete vessels. The Division's successful work in this case allowed the agency to move forward with a critical disposal program. In *Air Pegasus of D.C. v. United States,* the Division represented the Federal Aviation Administration (FAA) with respect to the FAA's restriction of airspace near and over the Capitol in the wake of the September 11, 2001 attacks. In response, a company sued the United States for a Fifth Amendment taking because it could no longer operate a heliport near the U.S. Capitol. We successfully argued that the company did not have a compensable right to access public airspace. In *Center for Native Ecosystems v. Forest Service,* the Division represented the Forest Service in an Administrative Procedure Act claim challenging its livestock grazing authorizations in the Pole Unit of the Medicine Bow National Forest, near Laramie, Wyoming. Plaintiffs alleged violations of state water quality standards applicable at federal facilities under the Clean Water Act as well as claims under the Endangered Species Act. The court recently held for the Forest Service, determining that it had complied with the applicable water quality standards and Endangered Species Act requirements.

In the wildlife and natural resources context, we have in the past year successfully defended a variety of federal agencies. For example, in *Oceana v. Evans,* both environmental and industry groups challenged fishing regulations promulgated under the Magnuson-Stevens Fishery Conservation and Management Act by NOAA Fisheries. The environmental groups argued that the regulations did not sufficiently limit over-fishing and did not adequately analyze and protect essential fish habitat. Industry groups argued that the over-fishing restrictions were too stringent and exceeded the Secretary's authority. The Court ruled for NOAA on all important claims. In *Northwest Environmental Advocates v. NMFS,* we successfully defended the Army Corps of Engineers in a lawsuit that sought to enjoin it from proceeding with a channel deepening project in the Columbia River needed to provide for navigation to the Port of Portland. The plaintiffs challenged the Corps' actions under the Endangered Species Act as well as the National Environmental Policy Act. The Corps had worked hard to resolve difficult issues of sediment transport in the Columbia River and impacts on the salmon species, consulting with NOAA Fisheries, preparing a substantial environmental analysis, and even using outside peer reviewers to consider whether the Corps and NOAA had considered the best available scientific information. The Court ruled for the Corps on all counts, allowing the dredging to proceed.

We also have protected the taxpayer from invalid or overbroad monetary claims against the United States, claims that sometimes involve hundreds of millions of dollars. As part of our responsibility to protect the public fisc against unwarranted claims, the Division prevailed against claimants who sought to recover for the conversion of railroad rights-of-way to multipurpose trails on an untimely basis. The Federal Circuit adopted the Division's argument on when the statute of limitations begins to run in such cases in *Caldwell v. United States.* Following that precedent, the Division succeeded in having three such cases dismissed this past year. The Division also succeeded in clarifying the compensation rights of landowners served by the Bureau of Reclamation. In *Klamath Irrigation District v. United States,* the Klamath Irrigation District and numerous other irrigation and improvement districts, businesses and individuals sought approximately $100 million based on the Bureau of Reclamation's operation of the Klamath Project during a serious drought in 2001. The court granted summary judgment in favor of the United States as to plaintiffs' takings claims, finding that any interest in project water was contractual and not a property interest compensable under the Fifth Amendment.

The Division's docket also includes non-discretionary eminent domain litigation. This work, undertaken pursuant to Congressional direction or authority, involves acquiring land for important national projects. In one recent case, the Division represented the United States in litigation to acquire land needed for construction of a second fence and patrol zone along the San Diego-Tijuana border. Following a trial in which the landowner demanded just compensation of nearly $75 million, the jury

returned a verdict that just compensation for this taking was $1.2 million. The Division also exercised the federal government's power of eminent domain to acquire land to: expand the National Defense University and Fort McNair; establish a port facility in Florida for the Navy to use in shipping weapons around the globe; provide a security buffer for the U.S. Southern Command headquarters; expand the safety zone next to the Marine Corps Air Station in Yuma, Arizona; facilitate the Army's transformation of a light infantry division to a Stryker Brigade Combat Team; improve security at the Puget Sound Naval Shipyard in Washington; and expand a Nellis Air Force Base flight zone.

The protection of tribal resources has been among the duties of the Division from its earliest days. The United States holds title to 56 million acres of lands in trust for the benefit of Indian tribes and their members, and the Division initiates litigation and defends suits seeking to protect these lands and resources from incursion by third parties. The Division represents tribal and federal interests in water rights, land-into-trust, and land claims adjudications. Recently, the Division settled three complex major water rights adjudications in which the United States had asserted water rights claims for the benefit of tribes. In the *Snake River Basin Adjudication (Idaho),* the Division worked with the Interior Department, the State of Idaho, and the Nez Perce Tribe to craft an historic settlement, ratified by Congress in the Snake River Water Rights Act. The Division also worked with the Department of the Interior, the State of Arizona, the Gila River Indian Community, and private water users to settle the Gila Community's water claims in *In Re Gila River System and Source (Ariz.),* which Congress ratified in the Arizona Water Settlements Act. A settlement in *Arizona v. California* concluded a 54-year-long original action in the Supreme Court, which dealt with, among other things, the claims of the Quechan Indian Tribe to water rights in the Colorado River. As part of its work litigating to protect land held in trust for Tribes, the Division recently settled *Seneca Nation v. New York (Cuba Lake),* an action asserting an unlawful trespass on tribal lands. This 150-year-old dispute was resolved by a settlement among the United States, New York, and the Seneca Nation.

The Division's work also includes defense of the United States in some thirty-one tribal trust lawsuits brought by twenty-eight different Indian Tribes alleging that the U.S. has mismanaged tribal assets and failed to provide an "accounting" of the money collected, managed and disbursed by the U.S. on behalf of the Tribes. These cases concern the scope of the duty owed to Tribes for land that the government has held in trust since the late 1800s and that has been used, among other things, for grazing, logging, and oil and gas exploration. Some of these cases seek an order requiring the U.S. to perform a multi-million dollar, multi-year accounting, and others seek a money judgment for losses the Tribes claim they have suffered. New claims may be filed through December 31, 2006. Over 250 Tribes have potential trust accounting and trust mismanagement claims. In the thirty-one cases filed so far, the Tribes claim they are owed more than $220 billion. The Division recently reached a settlement with one Tribe and is in settlement discussions with a number of others.

ENRD'S BUDGET REQUEST FOR FISCAL YEAR 2007

The Division receives its annual appropriation from the General Legal Activities (GLA) portion of the Justice Department's appropriation. For fiscal year 2007, the President has requested $95,051,000 for the Division within the Justice Department's GLA appropriation. The increase of $2,277,000 over the FY 2006 appropriation is due to mandatory adjustments and allowances, including pay raises, other salary adjustments, and rent adjustments, which will allow the Division to maintain its current level of operations.

CONCLUSION

The Environment Division takes pride in an exceptional record of assuring that polluters are made to comply with the law, violators of criminal laws are punished appropriately, and responsible private parties are made to clean up Superfund sites rather than leaving the taxpayer on the hook. We are also justly proud of our efforts to defend the Executive branch agencies when their actions are challenged over matters which are within the Division's jurisdiction. Both our complex and challenging affirmative and defensive work is vitally important to the implementation of both Executive and Congressional programs and priorities regarding public health and the environment, to the protection of the public fisc, and to the advancement of the public interest generally.

I would be happy to answer, to the extent that I am able, any questions you might have about the Division and its work.

Mr. CANNON. Thank you. To the point. Appreciate that.

And Mr. White, you're recognized for 5 minutes.

TESTIMONY OF CLIFFORD J. WHITE, ACTING DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. WHITE. Thank you, Mr. Chairman, Mr. Watt.

I appreciate the opportunity to appear before you to discuss the U.S. Trustee Program's recent efforts to promote the integrity and efficiency of the bankruptcy system and our request for appropriations for fiscal year 2007.

Over the past year, we've continued to make progress in combating bankruptcy fraud and abuse. Last year, we took more than 50,000 civil enforcement actions in and out of court, yielding $594 million in debts not discharged, fines, penalties, and other monetary results. Over the past 3 years, we've taken about 165,000 actions, yielding more than $1.7 billion in monetary results.

We also continue to enhance our criminal enforcement capability. Led by a headquarters unit of 4 former career Federal prosecutors, plus an additional 25 program attorneys in the field who have been designated as special assistant U.S. attorneys, last year we increased the number of criminal referrals by 12 percent.

We successfully carried out numerous other duties, such as expediting business reorganizations and overseeing private trustees. For these and other efforts and for establishing performance-based management systems, the Office of Management and Budget rated the U.S. Trustee Program as "effective" and gave us a numerical score that's among the highest 15 percent in the executive branch.

Beginning on October 17th of last year, the U.S. Trustee Program assumed substantial new responsibilities to enforce and to implement many of the key provisions of the new bankruptcy reform law. As reported to you at a hearing last July, the program engaged in an extraordinary effort to develop comprehensive implementation plans so that we were prepared to carry out our duties on the general effective date of the new law.

Now, the magnitude of the challenge of implementing bankruptcy reform increased with the additional burden of administering more than 725,000 cases that were filed during the 4 weeks before the effective date. Despite the difficulties presented by the pre-bankruptcy reform filing surge, we believe we've made great progress in enforcing and implementing the new law. We're acquiring valuable information every day as we gain experience enforcing the statute.

In the area of means testing, we're timely processing chapter 7 cases and identifying cases that are presumed abusive under the new objective statutory standard. We're bringing motions to dismiss in more than 70 percent of the presumed abusive cases and are exercising our discretion not to file cases in which the debtor has special circumstances, such as expense adjustments caused by Hurricane Katrina.

In the area of credit counseling and debtor education, we've approved well over 350 providers covering all districts within our jurisdiction. We excepted four districts from the requirements because of the impact of Hurricane Katrina.

We are timely processing applications, and we have denied applicants on grounds such as failure to provide information in connection with ongoing IRS audits, for inappropriate relationships with third parties which may generate benefit for a private party, and for failure to make appropriate disclosures to clients about fees.

Now that the initial approval process is concluded and reapprovals are underway, we're working closely with the IRS and the Federal Trade Commission to refine the application and post-approval auditing process. We will shortly publish a slightly revised application as an interim rule and will publish a more comprehensive rule for public comment not long thereafter.

We're also carrying out numerous other responsibilities under bankruptcy reform, including in such areas as small business chapter 11 cases, debtor audits, and studies and data collection.

The Administration has requested FY '07 appropriations of $236.1 million. This represents an increase of 11.6 percent over FY '06. The request includes $11.2 million in mandatory adjustments and $12.7 million in program enhancements that would be devoted exclusively to bankruptcy reform.

These enhancements are $4.8 million to fund debtor audits required under the new law; and $7.9 million in enhancements requested but not appropriated last year, including 51 additional positions, related facilities expansion, information technology, and studies and reports due to Congress.

The U.S. Trustee Program is funded by bankruptcy fees. The FY '07 revenue projections submitted with our budget follow Congressional Budget Office filing projections that were made before the October spike in filings and before the subsequent decline in filings.

This is an unprecedented opportunity for the U.S. Trustee Program to make bankruptcy reform work for all stakeholders in the system—debtors, creditors, and the general public. The new law provides us with important new tools to enhance the integrity and efficiency of the system. Enforcement and implementation of the law has presented many daunting challenges, but we believe that we are now off to an excellent start.

I again thank you for the opportunity to appear here today and will be pleased to answer any questions from the Subcommittee.

[The prepared statement of Mr. White follows:]

PREPARED STATEMENT OF CLIFFORD J. WHITE, III

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you to discuss the United States Trustee Program's (USTP or Program) recent activities, including our implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). This past year has been extraordinarily busy for the Program and the bankruptcy system. I will update you today on achievements in our key areas of responsibility, as well as highlight our significant progress in making the new bankruptcy reform law work as intended by Congress for the benefit of debtors, creditors, and the public.

The United States Trustee Program is the component of the Department of Justice whose mission it is to promote the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws, appointing and overseeing private trustees, and carrying out important regulatory and administrative duties. In addition to our obligations under titles 11 and 28 of the United States Code, the Program has been given vast new responsibilities under the BAPCPA.

PROMOTING THE INTEGRITY AND EFFICIENCY OF THE BANKRUPTCY SYSTEM

The USTP continues to make significant progress in combating bankruptcy fraud and abuse and taking other important actions to promote the integrity and efficiency of the bankruptcy system.

Civil Enforcement

For the past five years, the centerpiece of the Program's anti-fraud and abuse efforts has been the National Civil Enforcement Initiative. The Initiative focuses on wrong-doing both by debtors and by those who exploit debtors. The Program combats debtor fraud and abuse primarily by seeking case dismissal if a debtor has an ability to repay debts and by seeking denial of discharge for the concealment of assets and other violations. The Program protects consumer debtors from wrongdoing by attorneys, bankruptcy petition preparers, creditors, and others by seeking a variety of remedies, including disgorgement of fees, fines, and injunctive relief.

Since FY 2003, more than 165,000 civil enforcement and related actions have been brought by the Program, yielding $1.75 billion in monetary results. In FY 2005, more than 50,700 actions were initiated that generated nearly $594 million in potential returns to creditors through debts not discharged and other remedies. USTP attorneys prevailed in over 96 percent of the actions resolved by judicial decision or consent in the fundamental areas of dismissal for substantial abuse (11 U.S.C. § 707(b)), denial of discharge (11 U.S.C. § 727), fines against bankruptcy petition preparers (11 U.S.C. § 110), and disgorgements of debtor attorneys' fees (11 U.S.C. § 329).

Following are illustrative examples of the variety of cases brought under the National Civil Enforcement Initiative.

- The Bankruptcy Court for the District of Oregon revoked the discharge of a debtor who tried to discharge $1,931,157 in unsecured debt. Discovery initiated by the U.S. Trustee's office in Portland suggested the debtor had transferred to his girlfriend more than $400,000 from a company he controlled, and then concealed the transfer. He also allegedly made false statements and false oaths in his bankruptcy case.
- In response to a motion by the U.S. Trustee's New York office seeking dismissal for substantial abuse, a debtor converted to chapter 11. The debtor, a financial consultant, earned almost $300,000 per year and listed $470,735 in unsecured debt. Although his wife did not work, the debtor scheduled the following monthly expenses relating to his four-year-old son: $1,650 for an apartment for an au pair, $516 for the au pair, $1,375 for a private school, and $560 for day care. Other scheduled monthly expenses included $6,307 for apartment rent and utilities, $3,600 for recreation, $1,600 for clothing, $1,121 for dry cleaning, $650 for transportation, $560 for maid service, and $450 for telephone. The debtor also maintained a condominium in Marseille, France.
- The Bankruptcy Court for the Central District of California granted a motion to dismiss by the U.S. Trustee's Los Angeles office, preventing the discharge of $316,571 in debt on 79 credit cards. The debtor, who lived with his parents, claimed no secured debt, no income, and no expenses. The U.S. Trustee sought dismissal for substantial abuse because the debtor incurred the credit card debt at a time when he earned less than $8,000 a year.
- On motion of the U.S. Trustee's Pittsburgh office, the Bankruptcy Court for the Western District of Pennsylvania barred an attorney from practice before the bankruptcy court after she misappropriated client funds. During a chapter 13 proceeding, the attorney attended the closing of a sale of her clients' real property. A check for approximately $104,000 was made payable to the chapter 13 trustee to pay off the mortgage. The attorney deposited the check into her own account instead of delivering it to the trustee. The sale proceeds were used, at least in part, to pay the attorney's federal tax debt and to pay other clients from whom she misappropriated funds.

The Program has also pursued instances of creditor abuse. One recent example involved conduct by the financing arm of a national consumer goods manufacturer that was unfairly pressuring unrepresented debtors to reaffirm debt on goods, even though the manufacturer had asserted no lien or security interest in the goods and the debtors did not need to enter into a reaffirmation agreement in order to retain the goods. A coordinated response resulted in the courts denying the creditor's attempts to have debtors reaffirm dischargeable debts.

Criminal Enforcement

Criminal enforcement is another key component of the Program's efforts to promote the integrity of the bankruptcy system. In 2003, the Criminal Enforcement Unit (CREU) was established to coordinate the criminal referral responsibilities carried out by our 95 field offices and to directly assist prosecutors in pursuing bankruptcy crimes. CREU has made a marked difference in the quality of our criminal program by providing extensive training, developing resource materials, and enhancing coordination for the benefit of USTP staff, federal prosecutors, and other law enforcement personnel.

In FY 2005, the Program made 744 criminal referrals, a 12 percent increase over FY 2004. In many cases, USTP lawyers directly prosecuted or assisted the prosecution team in cases initiated as a result of criminal referrals made by Program offices. Four veteran career prosecutors within CREU, plus approximately 25 attorneys in field offices across the country who have been designated as Special Assistant U.S. Attorneys, are available to try cases involving bankruptcy crimes. In addition, the majority of Program field offices participate in bankruptcy fraud workings groups which are headed by U.S. Attorneys' offices and often involve the FBI, USPIS, IRS-CI, and HUD-OIG. With the enactment of 18 U.S.C. § 158 as part of the BAPCPA, every United States Attorney office is required to designate a prosecutor and every FBI field office an agent who will assume primary responsibility for bankruptcy fraud cases. This provision will further strengthen existing working groups by formalizing points of contact and provide a foundation for establishing working groups where currently none exist.

Some recent examples of successful prosecutions that originated with criminal referrals from the USTP follow.

- A former commodities trader and investment firm executive was sentenced in the Northern District of Illinois to 190 years in prison and ordered to pay $1.4 million in restitution following his conviction on 18 counts of bankruptcy fraud, wire fraud, and money laundering, and one count of using a fire to commit wire fraud. The defendant intentionally set fire to his residence to obtain insurance money, making it appear as if the fire were set by his elderly mother, who died in the fire. After receiving the insurance proceeds, he secreted them in an offshore account in Curacao. He later filed bankruptcy and concealed the offshore account containing more than $300,000. The case was prosecuted by the Program's Regional Criminal Coordinator in Chicago, and an Assistant U.S. Trustee from Atlanta testified as an expert witness.
- A debtor in the Western District of Tennessee was sentenced to 46-months in prison for her use of two stolen Social Security numbers in two bankruptcy filings and her failure to disclose prior bankruptcy filings. The debtor was also ordered to pay restitution. The Memphis office referred the matter for investigation and a trial attorney from that office served as a Special Assistant U.S. Attorney.
- A bankruptcy attorney in the Southern District of Texas was sentenced to 30 months in prison and five years probation based on her guilty plea to wire fraud and bankruptcy fraud. The attorney defrauded her clients and their creditors by incurring unauthorized charges on her clients' credit cards and by taking possession of and using collateral her clients intended to surrender to creditors. The Program's Houston office referred the matter and assisted in the investigation and prosecution.

Chapter 11 Reorganizations

The Program carries out a wide array of responsibilities in chapter 11 reorganization cases. Our primary role is to ensure that cases proceed expeditiously and with transparency in accordance with law. By statute, our principal responsibilities include: the appointment of official committees of creditors and equity holders; objections to the retention and compensation of professionals; the review of disclosure statements, particularly in smaller cases; and the appointment of trustees or examiners when warranted. Chapter 11 cases often present the Program with highly complex issues of law and require time intensive financial reviews.

In FY 2005, the Program filed nearly 3,000 motions to convert or dismiss chapter 11 cases. The grounds for such motions, which are critical to the effective functioning of the reorganization provisions of the Bankruptcy Code, typically include failure to file financial reports or dissipation of estate assets without a reasonable likelihood of rehabilitation.

Provided below are some recent examples of important actions taken by the Program in larger chapter 11 cases:

- After much negotiation, the Program reached a stipulated agreement with the management services provider in the chapter 11 case of Enron Corporation to reduce by $12.5 million the success fee it requested for its work in the case. In reviewing the provider's motion for a $25 million success fee, the U.S. Trustee initiated an investigation that uncovered unacceptable billing practices and billing irregularities. The bankruptcy court held a hearing on the motion, but withheld its ruling pending the filing of a response by the U.S. Trustee. The stipulated agreement was approved by the bankruptcy court on March 24, 2006.
- The Tenth Circuit Court of Appeals in *Houlihan Lokey Howard & Zukin Capital v. Unsecured Creditors' Liquidating Trust (In re Commercial Financial Services, Inc.),* 427 F.3d 804 (10th Cir. 2005), affirmed a ruling by the Bankruptcy Appellate Panel for the Tenth Circuit, denying fees to the financial advisor for the committee of asset-based securities holders. Upon objection by the Tulsa office and the unsecured creditors' committee, the Bankruptcy Court for the Northern District of Oklahoma denied fees of more than $1.9 million sought by the financial advisor, which were determined according to a flat monthly rate. The bankruptcy court did, however, allow fees of $905,000 based on an hourly rate supported by contemporaneous time records. The Bankruptcy Appellate Panel affirmed this ruling and the financial advisor appealed. The Tenth Circuit Court of Appeals ruled that the bankruptcy court appropriately exercised its powers to require the financial advisor to report the number of hours it worked and to calculate a reasonable fee looking to rates charged by other financial advisors employed in the case.
- Based upon action brought by the Boston office, the Bankruptcy Court for the District of Massachusetts agreed that a chapter 11 trustee should be appointed in related cases filed barely 180 days after the debtors' reorganization plan was confirmed in a prior chapter 11 case. In addition to objecting to the debtors' request for financing, the U.S. Trustee noted potential conflicts of interest of various professionals and the debtors' failure to inform the court of the failed prior chapter 11 case or to produce current financial information. Within about six months after being appointed by the U.S. Trustee, the chapter 11 trustee negotiated sales of the debtors' assets, including the sale of a manufacturing facility for approximately $181 million, a sum sufficient to pay general unsecured claims in full and provide a substantial distribution to equity holders.

Private Trustee Oversight

One of the core functions of the United States Trustees is to appoint and supervise the private trustees who administer consumer bankruptcy estates and distribute dividends to creditors. The Program also trains trustees, evaluates their overall performance, reviews their financial accounting, and ensures their prompt administration of estate assets.

In FY 2005, over 1.6 million consumer and other non-business reorganization cases were filed under chapters 7, 12, and 13 of the Bankruptcy Code in the 88 judicial districts covered by the Program. The U.S. Trustees oversee the activities of the approximately 1,800 private trustees appointed by them to handle the day-to-day activities in these cases. With distributions by these trustees of about $5.3 billion last fiscal year, the Program's effectiveness in this area is critical. The Program has continued to strengthen its partnership with the private trustee organizations to address areas of mutual concern and enhance the operation of the bankruptcy system. In preparation for assuming new responsibilities under bankruptcy reform, the Program worked closely with the trustees and provided extensive training.

Two other ongoing efforts that have been undertaken to enhance consumer bankruptcy case administration are: the development of uniform trustee final reports which will improve access to case data and allow for greater analysis of the bankruptcy system; and coordination with the Internal Revenue Service on the use of a new protocol that enables trustees to obtain the federal tax refunds of debtors directly from the Service.

Management Accomplishments

In January 2006, the Office of Management and Budget (OMB) completed its review of USTP operations under the Program Assessment Rating Tool and awarded the USTP its highest rating of "effective." The Program's numerical score placed it among the top 15 percent of highly performing agencies in the Executive Branch. The OMB rating reflected the USTP's efforts over the past five years to adopt performance-based management systems, including better measurements of results achieved and tying programmatic success to budget formulation.

BANKRUPTCY REFORM

The United States Trustee Program has responsibility for carrying out many key features of the bankruptcy reform law. From enactment of the BAPCPA in April through the general effective date of October 17, 2005, the Program engaged in an extraordinary effort to develop comprehensive implementation plans and issue guidance necessary to accomplish our new and expanded responsibilities.

The magnitude of the challenge of implementing bankruptcy reform increased substantially with the additional burden of administering the unprecedented number of bankruptcy cases filed immediately prior to the October 17 effective date. In the four weeks leading up to that date, more than 726,500 cases were filed in the 88 judicial districts covered by the Program. By contrast, post-October 17 filings have decreased substantially, with only about 115,000 cases having been filed in the subsequent five months. The filing rate is increasing at a moderate pace.

Despite the difficulties presented by the pre-BAPCA filing surge, we have made great progress implementing and enforcing many of the new law's important provisions. Moreover, we are acquiring valuable information every day as we gain experience in enforcing statutory provisions and in carrying out wholly new responsibilities that were not previously part of our mission. We expect that we will be engaged in a significant amount of litigation as bankruptcy courts are called upon to interpret statutory provisions for the first time. Of important note is our coordination with the Justice Department's Civil Division in defending the early challenges to the constitutionality of the debt relief agency provisions of the BAPCPA.

The new law provided substantial additional responsibilities to the Program primarily, but not exclusively, in five major areas: means testing; credit counseling and debtor education; small business chapter 11s; debtor audits; and studies and data collection. This past year, we have dedicated significant resources to developing appropriate policies, procedures, and systems to ensure successful implementation. A critical part of our work has been outreach to the bench, the bar, other state and federal agencies, the private trustee organizations, and industry and consumer groups.

Means Testing

The means testing provisions of the BAPCPA provide an objective approach for assessing a debtor's eligibility for chapter 7 relief. Under the means test, debtors with income above their State median income will be presumed abusive if they have a certain level of disposable income after the deduction of expenses allowed under the statutory formula. Among other things, United States Trustees must file a statement within 10 days of conclusion of the section 341 meeting of creditors if the case is presumed abusive. Within 30 days thereafter, the UST must file a motion to dismiss the case or provide an explanation as to why such a motion is not warranted.

The Program has worked extensively with the Judicial Conference's Advisory Committee on Bankruptcy Rules in its development of the necessary official forms and accompanying rules to perform the means test. In addition, in the absence of a mandate by the Administrative Office of United States Courts to require data tagging software, the Program deployed its own partially automated system to expedite calculations of debtor information under the statutory means testing formula. Moreover, the Program made a major investment in training field personnel to perform the means test, including guidance to attorneys on the appropriate exercise of discretion in deciding whether to file a motion to dismiss a case under the presumed abuse standard. To that end, we issued a directive to ensure that our staff consider the adverse financial impact of Hurricane Katrina to generally constitute special circumstances that outweigh the presumed abuse criterion for dismissal.

As of March 31, 2006, of the cases where a review had been completed, the Program had filed 84 motions to dismiss under 11 U.S.C. § 707(b)(2) and 32 declination statements explaining why a motion to dismiss was not appropriate. The most common reasons for declination have been the debtor was a victim of Hurricane Katrina which supports an expense adjustment as a "special circumstance," or the debtor experienced a post-petition change in status that supports an income adjustment, such as seasonal employment or disability.

Credit Counseling and Debtor Education

The credit counseling and debtor education provisions of the reform law provide potentially salutary protections for consumer debtors by helping ensure that debtors enter bankruptcy with full knowledge of their options and exit with information to help them avoid future financial calamity.

The USTP is charged with responsibility to approve eligible providers of credit counseling and debtor education services. Individual debtors generally must seek counseling from these providers as a condition of filing and receiving a discharge

of debts. Although enforcement practices differ according to local court rules, USTP offices often are the primary agency ensuring debtor compliance.

The USTP has determined that there is adequate capacity to provide debtors with credit counseling and debtor education services in every district within our jurisdiction, except for the four districts impacted most significantly by Hurricane Katrina. In those four districts, the Program temporarily waived the statutory requirements for credit counseling and debtor education due to infrastructure impediments and the dislocation of a large numbers of residents. As of the end of March 2006, the Program had approved 142 credit counseling agencies covering 88 judicial districts for pre-bankruptcy counseling. In addition to offering Internet and telephonic access, there are 754 walk-in locations for credit counseling throughout 82 judicial districts. For post-bankruptcy debtor education, by the end of last month, the Program had approved 241 debtor education providers covering 88 judicial districts. In addition to debtor education providers offering Internet and telephonic access, there are 915 walk-in locations in 82 judicial districts.

Applications and reapplications from credit counseling agencies and debtor education providers are received and processed continuously. We are currently processing complete applications within 30 to 45 days of receipt, and work with applicants where there are deficiencies to collect additional information as needed so they can qualify for approval. Common reasons for the delay or denial of approval of credit counseling agencies are failure to demonstrate nonprofit status, failure to provide information in connection with on-going audit of an agency's activities by the Internal Revenue Service, failure to demonstrate independence of the board of directors, and inappropriate relationships with a third party which appear to generate private benefit to an individual or group. The delay or denial of debtor education provider applications generally relate to inadequate materials; failure to employ trained personnel; and fee disclosure issues.

The Program is working with the Internal Revenue Service and the Federal Trade Commission to refine the application and post-approval auditing process. In addition, we are proceeding with formal rule-making and, in the near term, expect to publish slightly revised applications as Interim Rules. Thereafter, we will publish in the Federal Register more comprehensive, proposed final rules for public notice and comment. This process will give the Program more latitude in developing standards that address the myriad issues that arise in the regulation of credit counseling agencies and debtor education providers.

Small Business Chapter 11 Cases

The small business provisions of the BAPCPA establish new deadlines and greater uniformity in financial reporting to ensure that cases move expeditiously through the chapter 11 process before assets are dissipated. They also provide important new enforcement tools to the United States Trustees. To implement the BAPCPA's oversight provisions, the Program developed a new Monthly Operating Report (MOR) form for small business chapter 11 cases to make financial reporting simpler and more uniform. A pilot of the MOR is being conducted and, at a recent meeting of the Judicial Conference's Advisory Committee on Bankruptcy Rules, the Program presented its initial analysis. While it is still early in the process, the Committee voted to recommend the MOR form, with a few modifications, to be published for public comment as a proposed Official Form which the BAPCPA requires be promulgated by the Judicial Conference. The Advisory Committee also sought input from the USTP on drafting a form small business plan and disclosure statement which will be issued for public comment as well.

Although it is too soon to measure the effect of the small business provisions in cases filed after October 17th, our field offices are tracking the new deadlines and routinely use the new initial debtor interview (IDI) provision to identify important issues early in the case. For example, the IDI process recently helped identify two cases as health care businesses that may require appointment of an ombudsman to protect patients. Other information yielded from the IDIs has included early disclosure of the failure of debtor businesses to file tax returns and the identification of financial irregularities requiring immediate corrective action or case dismissal.

Debtor Audits

Under BAPCPA, the USTP must contract for random and targeted audits to verify the financial information provided by debtors. This provision will help the Program identify fraud, deter the filing of false financial information, and potentially provide a baseline for measuring fraud, abuse, and errors in the bankruptcy system. The debtor audits mandated by the BAPCPA will commence on October 20, 2006—18 months after the law's April 20, 2005, enactment date. Independent auditors will conduct random audits of no fewer than 1 of every 250 cases in each judicial district.

They will also conduct targeted audits of cases filed by debtors with income and expenses higher than the norm of the district. An estimated 7,338 cases will be audited in the first year, with 6,338 random audits and 1,000 targeted audits. The Program expects to issue a Request for Proposals for contract auditors by the end of May.

Studies and Data Collection

The BAPCPA requires the EOUST to undertake several studies, including (1) consulting with experts in the field of debtor education to develop, test, and evaluate a financial management training curriculum and materials; (2) evaluating the impact of the use of the IRS standards for determining the current monthly expenses under 11 U.S.C. § 707(b) on debtors and bankruptcy courts; and (3) evaluating the impact of the new definition of "household goods" in section 313 of the BAPCPA.

Data collection and extraction will be important to the successful completion of these studies, particularly those of the IRS standards and household goods, and to the effective and efficient processing of cases. Last year, a Senate Appropriations Committee Report endorsed the idea of the Administrative Office of the U.S. Courts (AOUSC) working with the U.S. Trustee Program on the development of data tags to provide an automated approach to extracting essential data from bankruptcy forms for such purposes as analyzing the means test, selecting cases for targeted debtor audits, conducting the evaluation studies, reporting to Congress, and processing cases more efficiently. A document containing data tags is sometimes referred to as a "smart form" that is, a form that is data-enabled so that, when it is saved into the industry standard Portable Document Format (PDF), it contains searchable data. I am pleased to report that the Program, in conjunction with the AOUSC, developed a smart form standard that was released to the bankruptcy form software vendors. AOUSC is now considering whether to make smart forms mandatory.

FISCAL YEAR 2007 APPROPRIATIONS REQUEST

The Administration has requested FY 2007 appropriations of $236.1 million, including 1,519 positions and 1,486 workyears. This represents an increase of 11.6 percent over FY 2006. Included in the request is $11.2 million for mandatory adjustments to base necessary to meet pay and rent increases and to fund second year costs associated with the 270 new positions approved in FY 2006. The budget also requests program enhancements totaling $12.7 million. The program enhancements would be devoted exclusively to bankruptcy reform—$4.8 million to fund the new debtor audits required under the BAPCPA which will commence on October 20, 2006; and $7.9 million in enhancements requested, but not appropriated last year, including $5.1 million and 51 new positions for means testing and credit counseling, $2.3 million for related facilities expansion, $1 million for information technology, and $500,000 for statutorily mandated studies.

The USTP is funded entirely from bankruptcy filing fees and chapter 11 quarterly fees. As fees are collected, they are deposited into the U.S. Trustee System Fund and available to the Program as appropriated by the Congress. The FY 2007 revenue projections that accompany the USTP budget request follow Congressional Budget Office estimates for bankruptcy filings. These estimates were made prior to the pre-October 17 bulge in bankruptcy filings and without regard to the subsequent concomitant filing decrease.

This is a time of unprecedented opportunity for the United States Trustee Program to make bankruptcy reform work for all stakeholders in the bankruptcy system, including debtors, creditors, and the public. The new law provides many important tools that will assist the USTP in enhancing the integrity and efficiency of the bankruptcy system. Enforcement and implementation of the new law has created many daunting challenges, but we believe that we are off to an excellent start.

Thank you for the opportunity to testify on the recent activities of the United States Trustee Program. I am pleased to answer any questions from the Subcommittee.

Mr. CANNON. Thank you, Mr. White.

Mr. Watt has another engagement. So we're going to defer and recognize him for questioning.

Mr. Watt?

Mr. WATT. Thank you, Mr. Chairman.

And let me assure the witnesses that the fact that I have to be somewhere else doesn't indicate a lack of interest in—it just is I had my day kind of messed up when we got all off schedule here. So I apologize for having to rush out.

Mr. Battle, let me just ask you if you can give me a little bit more information about this gang violence initiative. What falls under the gang violence rubric, and what kinds of things your U.S. attorneys are going to be doing in terms of re-entry?

I asked this question of the Attorney General at a prior oversight hearing and didn't really get a clear understanding of what was being proposed. Maybe—maybe it would be better for you to submit something to me in writing, if you have something. But at least elucidate a little bit for me.

Mr. BATTLE. Thank you, Member Watt.

One of the things we learned about a year ago, after the Attorney General announced the gang initiative, we went out and we canvassed the U.S. attorneys' offices to find out what the gang problem looked, walked, and talked like in their various communities. We had, at that point, been involved with the Project Safe Neighborhoods program for a number of years.

And some of the feedback we were getting from U.S. attorneys was that some of the violence that was going on in the communities was being identified to them by the locals as perhaps being taken on as the involvement of some of the traditionally known gangs at that time, such as the Bloods and the Crips, but in other communities, different kinds of organizations. And one of the things that we've tried to do is identify exactly what that would be.

What we found out was that there was no real formula, no real similarity, but that each gang problem in each of the 90-plus districts was something that looked a little bit different, so that the U.S. attorneys were tailoring their response with their local partners based upon what exactly was going on in their community.

A somewhat definition of a gang would be, of course, an activity taken on by three or more persons that would be involved together for the purpose of carrying out a specific act of violence or an act of criminality.

We have since gained a little bit more focus and learned that no longer is it confined to the Crips and the Bloods, but there is a problem with MS-13 individuals being imported from parts of South and Central America, that these gangs are particularly violent.

We've also learned that there are gang—there's gang activity that sort of transcends free society into the prison system. And in both situations, there is an activity on the part of all law enforcement to gain and share intelligence.

So, to answer your question in some respects, it is a work in progress, but it is not something that is not being responded to. It's just being responded to on a case-by-case basis, peculiar to each particular district's needs as they identify their gang problem through their partnerships.

On the re-entry question, sir, again several districts applied for and have re-entry coordinators. This was done before the gang initiative. Six sites were announced by the Attorney General several weeks ago. The re-entry program is, in fact, a work in progress

and, again, does, I apologize, look a little bit different in each community.

But what they're looking to do is reach out, working with State and local partners as well as Federal prison officials, to try to reach individuals close to their release dates and try to tailor, learn from them what they are going to need when they're released and provide those things to catch them when they do meet their release date and find their way back into the community.

There's a faith-based component to it. There is a connection between the community and release officials for parole purposes and things of that nature. Probation departments are involved. There are educational components in situations where people need to get degrees or GEDs. And there's a component that would assist them or is being proposed to assist them in finding jobs.

Those are some of the things that I've heard being discussed by the various U.S. attorneys, and each community's response is different depending on their resources at the State and local level and what their needs are. We think that which has been proposed by the Attorney General will simply add to those resources.

Mr. WATT. Can you talk to me a little bit about the status of Project Seahawk and what plans have been made for transitioning it to the Department of Homeland Security?

Mr. BATTLE. Yes, sir. In fact, as we speak and, from what I recall, the President—since Homeland Security was not in existence when Seahawk first came into existence, what we have learned now, appropriately, is that because Homeland Security, dealing with port security, is best suited, with the resources that it has, to deal with that very issue.

It should be a seamless transition now to have responsibility and oversight for Seahawk to go to the Department of Homeland Security as opposed to the U.S. attorneys' offices. They have the resources and the expertise to do that.

And so, what we're really talking about is a program that's going to continue in its present form, but it's going to have oversight by an Agency that is best suited with the resources to do it because the people that work there have been doing it for a long time.

And the U.S. attorney of South Carolina will be a part of that. He will have a seat on the board, and he will certainly have a connection.

Mr. WATT. Mr. White, are we still ramping up the number of bankruptcy judges required to do the bankruptcy reform bill? Where are we on that? And what additional resources are needed there?

Mr. WHITE. Well, that's, of course, not directly within our jurisdiction. But, yes, I am aware that bankruptcy judges are being recruited in furtherance of the additional judgeships that were created in the bankruptcy reform law.

I don't have any more specific information on that. That's not part of our budget submission.

Mr. WATT. Okay. Mr. Keisler, I'm wondering whether the—your division has pursued any debt collection activities against corporate wrongdoers who have defrauded the Federal Government? Are you involved in those kinds of litigation? And give me kind of the extent of that effort and what's happening there.

Mr. KEISLER. It's a very vigorous and robust effort, sir. We have 77 attorneys within Washington, the Civil Division, who do nothing but work on fraud against the Government. And they work in partnership with attorneys in the different U.S. attorneys' offices, which also have been aggressively pursuing this.

In each of the last——

Mr. WATTS. Is that primarily against individuals, or is—is it part individuals, part corporate?

Mr. KEISLER. Part of each, but predominantly corporate. Certainly, if you look at the amount of money recovered, overwhelmingly the dollars come from corporate defendants. Sometimes there are individuals involved. Often, they are individuals who are corporate officers at the same corporations that we're also filing suit against.

The largest component by industry is the health care industry. You know, when the False Claims Act was first revitalized in 1986 with the qui tam provisions, the archetypal fraud defendant was a defense contractor. We still have defense contractors as significant fraud defendants. But over time, the health care industry has really become the lion's share of our fraud recoveries.

I think it's a combination of the enormous amount of money that goes out from the Federal Government, the complexity of the regulations which I think creates temptations to try to game the system. But we are very aggressively pursuing this, these issues against anyone we get information has dealt fraudulently with the United States taxpayer.

Mr. WATTS. Thank you, Mr. Chairman.

I appreciate your allowing me to go and still get to my meeting, and I'll yield back to the Chairman.

Thank you all.

Mr. CANNON. The gentleman yields back. I ask unanimous consent that all Members of the panel have 5 days to submit written questions for the panel. All Members of the Committee. Hearing no objection, so ordered.

Thank you, Mr. Watt.

Gee, where do we start here? Let's start with MS-13. This is a problem that goes beyond our cities here in America, where we've destabilized Honduras, probably also El Salvador. Are you working with those other countries to try and get a handle on this problem?

Mr. BATTLE. I'm sorry, Mr. Chairman. I didn't hear the first part of your question.

Mr. CANNON. I should have directed it to you, Mr. Battle.

Mr. BATTLE. Okay.

Mr. CANNON. But on MS-13, we now have a problem where we've got other countries destablized by our deportation of criminals. In fact, I believe that we have a treaty responsibility with Mexico and probably these other countries to inform them when we're sending—when we're deporting felons.

Are we working with these other countries to help crush this problem, which is destablizing at least Honduras and probably El Salvador?

Mr. BATTLE. From what I understand, the Assistant Attorney General for the Criminal Division just recently attended a conference in El Salvador, and we sent a member from EOUSA to be

there who's been working on the gang problems with us in the U.S. attorneys' offices.

From what I understand, and I was not present at that conference, there was much discussion with some of the member countries there that would fit within the categories that you've referred to, to talk about how to get their hands around this. And there seems to be a lot of enthusiasm amongst them to work together.

Mr. CANNON. We—if I just might note for the future, we're likely to do something this year or maybe later this year with immigration reform. That means we're going to focus on many, many criminals who are now hiding from the system. And those—the deportation of those criminals is going to be destabilizing to many countries.

So what we're doing here with MS-13 is like we're way beyond the power curve. I mean, this is just—what has happened in Latin America is just atrocious. What is now reverberating in our own communities is the backside of that atrociousness.

But it's a problem that's going to—going to surge in the next year or two or three as we focus on the criminal element here in America that is going to be dispossessed and probably ready to join a gang in some other country and then ready to bring their crimes back here because they're familiar with America.

So I'm hoping that there is some—some focus on that since you guys are going to be the first defense on that. This is not going to be a State problem so much as a Federal problem.

Mr. BATTLE. That's correct, Mr. Chairman. And again, the Assistant Attorney General reported to me or at a meeting that I attended that there seemed to be a level of cooperation that is moving in the direction of addressing that and many problems connected thereto.

The U.S. attorneys' offices are aware of the fact that some of the individuals who have come from those parts of the world entered the U.S. and at some point parked for a while, if you will, in the western part of the United States, most importantly, central California.

Well, they've now fanned out in different parts of the country. So we are watching the program.

Mr. CANNON. We've got these thugs here in northern Virginia and Maryland. This is a big problem.

Does your office have any coordinating activities with—with prosecutors, Federal or others, in Mexico or Central America?

Mr. BATTLE. From what I understand, we have been trying to work with Mexican authorities. I don't know the answer as to the others.

Mr. CANNON. Just this is a growing problem, and it's going to just burgeon here if we are successful passing a bill that focuses on these criminals who are now hiding among us and preying, to a large degree, on their own ethnic minorities. And as that—as they get shoved out, they're going to prey on other people and become better known and more difficult to deal with.

So we've talked about methamphetamine prosecutions are up 5.5 percent. With all due respect, and I'm not sure of the numbers, but it seems to me that the abuse of meth has probably increased at

a much more rapid rate than that Nation wide. Where are we going with this?

Are we busting—in fact, you may have some comment on the displacement of the FBI's role in meth enforcement with DEA and the lag there. How is that working?

Mr. BATTLE. From what I understand, there is a meth working group that's been stood up, and there's a conference to talk about those things in the next coming months. One of the things I've also learned, Mr. Chairman, is that methamphetamine, for some odd reasons, hasn't found its way to a lot of parts of the United States.

Mr. CANNON. Right.

Mr. BATTLE. And it seems that, again, it's one of those peculiarities that started out on the west coast and is starting to make its way very, very slowly east. In fact, I just recently attended a conference of—of drug court individuals in New York State during which most of them had not had any contact with methamphetamine coming through their court system.

We have our hands around it, and we've seen it develop from mom and pop organizations and people cooking in the backs of trailer parks and in basements in homes. And now there's intelligence indicating that it's being imported into the United States from Mexico.

The DEA is very much aware of that. They're on top of it. They've embarked upon a very aggressive educational program for schools and for parents, for young people. And we are—we are very much responding to the problem.

Perhaps those numbers don't tell the whole story, but I can tell you that our effort to target it is taking on a lot of the resources in the U.S. attorneys' offices. And drug prosecutions have gone up in that area because we've identified it as a problem in many of the offices.

Mr. CANNON. Again, this is a problem where we have mom and pops. And for odd reasons, Utah had a lot of mom and pops, but we're now seeing terrific inflows from Mexico. That has to stop. This is an incredibly destructive drug. I was just—ah, it's amazingly destructive.

We need to have—we'll talk next year about this. It's not in all parts of the country yet, but where it is, it is growing very rapidly, and it is massively destructive.

One other item you talked about, Mr. Battle, is child pornography and what you're doing there. This is a matter of grave concern. It seems to me that if we're going to get a handle on it, we need to not only work at a Federal level, but also empower States to be involved.

One of the problems with that is that the States have regularly been overridden by the Federal courts when it comes to defining obscenity. It may be that wizard White would have recognized obscenity when he saw it, but no Federal court has granted that dignity to a State court that I'm aware of.

And do you have any thoughts on that and what we can do there?

Mr. BATTLE. What I can tell you, Mr. Chairman, is that we are—like we do in a lot of other areas, most recently in dealing with

criminal activities—is partnering very closely with our State and local counterparts in dealing with these types of crimes.

We've found that that's absolutely necessary, and that was my experience in western New York because this is a game of intelligence. Because a lot of the involvement of people in this area takes place in private settings and places that are otherwise, in some respects, undetectable.

And so, with the announcement of the initiative most recently by the Attorney General, that came about based upon a recognition of the need for this because of information coming in from the U.S. attorneys' offices of what we were finding and how difficult it was to go about and ferret out this type of activity.

So we will—we will use some of the models that we have in the past in dealing with partnerships on that level with Project Safe Neighborhoods and others to get underneath and deal with this type of crime, and we will be very aggressive in doing so.

Mr. CANNON. Let me ask you a constitutional question. I recognize that that may not be your focus. But it seems to me that the idea that obscenity is protected by the first amendment really derives from the idea that obscenity is some kind of communication and that we find now with modern studies that the parts of the brain that deal with speech are not the same parts of the brain that deal with pornography and addiction to pornography.

Would it be helpful if the Federal Government jurisdiction or the Federal court jurisdiction on this subject was limited so that States could find obscenity and not be overturned by the Federal courts saying that obscenity was speech or that the particulars in any given case constituted speech and, therefore, could not be restrained?

Mr. BATTLE. Mr. Chairman, that's way over my head.

Mr. CANNON. Say "yes," so I could have a record because this has been one of my pet areas here, you know? [Laughter.]

You don't need to do that, of course.

Mr. BATTLE. I'll have to get back to you on that one.

Mr. CANNON. I think this is one of the problems of our time. My Attorney General in Utah tells me that of people that look at child pornography, 40 percent, according to some studies, are people who then go out and touch and hurt children.

If that is the case, and we're trying to figure that out, that is an epidemic. That is a problem that is way beyond anything we've ever thought of before and will require some different rethinking of that issue. And your office, in particular, is going to be on the cutting edge of that. So we will deal with that issue again in the future.

Mr. Keisler, we talked about immigration, and you're certainly aware of some of the criticism of what's going on there. For instance, Judge Posner was very critical.

He pointed out that "the panels of this court reversed the Board of Immigration Appeals in whole or part in a staggering 40 percent of 136 petitions." He goes on to say, "Our criticisms of the board and the immigration judges have frequently been severe."

I don't know that—and he's a very, very thoughtful judge. I don't know that you could be more harsh than he was in this case. And this is Benslimane against Gonzalez.

This raises a whole bunch of questions. You're asking for, I think, 86 new immigration judges. Or not judges, but rather attorneys to help prepare these cases. Are you familiar with this case and the criticism that's been levied?

Mr. KEISLER. I am, Mr. Chairman. And certainly, when any judge—and certainly as respected a judge as Judge Posner—uses language like that, we listen. We sit up and take notice.

The immigration judges and the Board of Immigration Appeals, as you know, are not themselves within the Civil Division. They're a separate component of justice.

Mr. CANNON. Right.

Mr. KEISLER. But, you know, the Attorney General, in response to the kinds of concerns that Judge Posner and, I must say, some others have expressed, has initiated a top to bottom review of the situation with immigration judges and the Board of Immigration Appeals. He's charged the Deputy Attorney General and the Associate Attorney General with examining that situation and deciding whether, both in terms of the quality of the decisions and the professionalism, we're doing all that we should be doing.

And what the Attorney General has said is that an alien appearing before the Board of Immigration Appeals or an immigration judge may or may not be entitled to the particular relief that he or she seeks, but they are certainly entitled to be treated with professionalism and respect, and it's very important to him that they are.

Certainly, from the perspective of my division, which litigates in defense of those decisions, the quality of those decisions is very important to our success in defending them before the Courts of Appeals. And language like Judge Posner's in an opinion generally precedes an order vacating the decision that we're trying to defend.

So I think it is absolutely a commitment of the Department, from the Attorney General on down, to make sure that we find out whether those kinds of criticisms are warranted and, to the extent that they are, the situation is corrected.

Mr. CANNON. Let me say it's very, very important to me that we treat people with respect. These people may end up here. We want them to love America and not hate the process, certainly not hate our great institutions.

Are we not seeing a self-fulfilling prophecy here. As you have failed arrests, record-making, presentations, decisions through that process, you're ending up—and then many—many decisions being overturned, are you not then encouraging more people to appeal their decisions? And is that what's causing this big sucking sound that we hear that it's going to require another 86 attorneys?

Mr. KEISLER. Well, you know, there is no single factor. I think—our judgment is that the reason for the increased workload is not so much that as it is two other things. One is that the Department of Homeland Security has stepped up enforcement efforts. And insofar as enforcement activity has increased, you're going to have more challenges in court to those actions that are taken.

The other thing is that the rate of appeal has gone up. It used to be in 2001 6 percent of board decisions were appealed. It's now 29 percent. Now some of that may be precisely——

Mr. CANNON. And in that 29 percent, you're getting a huge number of overturns——

Mr. KEISLER. Well, actually——

Mr. CANNON.—meaning that you're encouraging more people to appeal.

Mr. KEISLER. Right. We still actually have a pretty good success rate, Mr. Chairman, about 90 percent Nation wide. But certainly, in some circuits, like the 7th Circuit, it's going down.

And that does—you know, every loss sets a bad precedent, a precedent that someone can cite in a later case. Every loss is an encouragement to someone to say, "Maybe I should take it up. Maybe I can win like this other person did." So, certainly, there is a certain cycle to it, just like you said, in which defeats lead to more defeats.

The other thing that I think is happening is that it used to be there was an extraordinary backlog in the Board of Immigration Appeals, and it would take years—up to 6 years sometimes—to resolve a case there. When that backlog was reduced, which I think was in everybody's interest because, whether an alien is going to achieve lawful status through that process or be ordered removed, it should happen sooner rather than later, rather than be tied up in administrative process.

But it used to be somebody who maybe wanted to stay in the country for a few years could park themselves, so to speak, by filing an appeal of an immigration judge decision with the Board of Immigration Appeals, and it would just sit there. Now that the Board of Immigration Appeals is operating so much more efficiently, if you want to do that, you have to file a petition for review in the Court of Appeals. That's where you get the time to stay here.

So what that means to me is that since I don't see enforcement efforts from the Department of Homeland Security going down and since I don't see that phenomenon of our Board of Immigration Appeals being more efficient changing, this problem of increased litigation is one we're going to be living with for the foreseeable future, and that's—that's why we're hoping for some more resources.

Mr. CANNON. And if you get some kind of immigration reform, you're looking probably at the huge increase in throughput of appeals.

Mr. KEISLER. Well, it's—you know, each of—the situation is so much in flux, it's hard to know exactly which bill and which provision. There are some provisions in bills that have been discussed that would reduce the workload and some which would increase it.

For example, you know, one proposal has been that in certain situations an alien seeking to challenge a removal decision would have to get a certificate of reviewability from a single judge. And if the judge denied that, there would be no further appeal. If that were passed, I presume there would be a diminution in the workload.

There are other provisions which would create new judicial review opportunities, and those would presumably raise it up. So what the net effect will be of whatever bill is ultimately enacted, if one is, it's hard to tell. But it could go in either direction.

Mr. CANNON. It's hard to tell if one will be enacted, but I suspect one will be. It's impossible to guess what the details will be, but you're going to have a great deal more activity at some level.

Mr. KEISLER. I think that's right.

Mr. CANNON. And so, we need to be sort of focused on that. That could happen next cycle, the next budget cycle. So I'm deeply concerned.

Let me ask a little deeper question here. I have a terrific concern, having served, by the way, in the Interior office as an Associate Solicitor and been associated with Interior Board of Land Appeals and other ALJ systems. Is part of the problem you're having here the result of having ALJs that really aren't independent?

Mr. KEISLER. I don't think it's a question of independence because I don't think insofar as Judge Posner and others have identified problems with the immigration judges is that they have been subjected to undue influence in any way.

If there is a problem with the immigration court system, I think that's something that the review that the Attorney General has initiated will—will tell us. And not being part of that review, I wouldn't want to prejudge a diagnosis of that situation.

Mr. CANNON. Do you have a sense that—that, for instance, in the attempt to clear up the backlog, there's been a focus on judges, some pressure on judges to get things done? That—not having them pre-decide, but at least pushing them to make decisions?

Mr. KEISLER. I think it is certainly the case that immigration judges have had to work especially hard in the last several years. And while I haven't seen statistics on it, I would expect that many of the immigration judges are processing many more cases than they used to and, I'm sure, would feel they could do even a better job if they had fewer such cases.

One way the backlog in the Board of Immigration Appeals was dealt with was to say that in many cases, you know, single judges rather than three-judge panels would be deciding. So that doesn't necessarily mean each judge is deciding more cases. It might affect it in the other way.

But I certainly have the sense that immigration judges feel they could do a better and more thoughtful job if they didn't have so many cases.

Mr. CANNON. Do you get any sense that they react to pressure or respond to the direction of where they think the Attorney General may want them to go, as opposed to being independent?

Mr. KEISLER. I haven't seen that. I'm not in the best position to know. And as I said, the people who are really reviewing the immigration court system right now really will be in the best position to see how that job is being done. But I haven't had any sense that immigration judges or Board of Immigration Appeals judges are doing anything but calling them as they see it.

Mr. CANNON. You know, I—I'll just tell you this panel is very concerned about ALJs and their role and the fact that you've got an Administration writing regulations to become law, often creating regulations through enforcement that never go through a process, and then are appealed to and decided by judges who are appointed by or serve at the will of—of the Administration.

This is a major concern of mine. We're going to come back and look at the ALJ system, and we'll watch the BIA judges in particular on this issue. And so, we'll look forward to that report as it happens.

Let me ask one other question. I've heard reports that DOJ declined some FCA cases because of resource shortages. Is that the case? Are we leaving money on the table here because we don't have the lawyers to handle them?

Mr. KEISLER. I haven't found myself in a situation where I had what I thought was a really compelling case and I said, you know, let's decline it because I can't figure out how we would staff that.

Because it's not simply the 77 lawyers in the civil frauds unit. It's all of our U.S. attorneys' offices, many of which have extremely active offices. So, you know, while we don't give the reasons why we decline a case, I haven't in my tenure found a situation where there's a case I've really wanted to do that I felt I didn't have the manpower to take care of.

Mr. CANNON. The job is tough, and I would never sit up here and tell you how to do it. You did mention earlier, when you were talking about—about HHS payments, Medicare payments, that there are a lot of them and therefore—and there are also some rules that are confusing or in which somebody could hide.

There are rules that are really confusing and where doctors can't get direction. And we've had a couple of guys in my district who had gone through hell based on these kind of claims, and I'd just encourage a balance there. It's very hard to deal with. You've got to get the bad guys, but there ought to be a process. You need to be thinking about a process for deciding when a case is not meritorious and then dropping it.

Not your division, but the Criminal Division, you know, brought a case, a very famous case against our—the organizers of the Salt Lake Olympics, and the case was dismissed after the presentation of evidence. It was horribly humiliating, and there was 5 million bucks in it or so in attorneys' fees for the defendants.

We had another FTC case in Utah where there were a couple of million dollars spent in defense fees, and the case was dropped at the end of the—at the most humiliating presentation of evidence I've ever seen. It's a huge responsibility that I hope you—I'm sure you're concerned about. But I just throw it out because I worry a bit about the prosecutorial power, which is overwhelming.

Mr. McKeown, can you give us a bit of an update on Cobell. I actually haven't had a lot of complaints about it recently. So I suspect it's not in such a terrible state. But where are we there, and what do we need to worry about?

Mr. MCKEOWN. Mr. Chairman, if it's okay, I would like to defer to my colleague, who actually manages the Cobell litigation.

Mr. CANNON. That's right. That's right, it did—I was trying to get you off the hot seat here.

Mr. KEISLER. No, it's my pleasure. Mr. McKeown and I share Indian trust litigation because the Civil Division handles Cobell, which is the lawsuit brought by the class of individual account holders, and the Environment and Natural Resources Division handles the tribal trust cases, which are very similar in a lot of ways, but brought by the tribes.

You know, the litigation has been ongoing since 1997. It has been, you know, regrettably an unusually contentious piece of litigation, as you know, Mr. Chairman. And we have several matters right now pending or recently decided by the Court of Appeals, which I think will help shape the litigation going forward.

Most notably, in the fall, the Court of Appeals issued a decision vacating an injunction that would have defined in a particular way that kind of accounting the Department of the Interior would have to do that the Department of the Interior estimated would cost $10 billion to $14 billion to account for accounts that have at present about $400 million in them.

The Court of Appeals said that one of the things that has to be taken into account in deciding what kind of accounting to do is the cost because there's always going to be a tradeoff between what you do and how accurate you make sure it is and what it's going to cost. And that Interior Department is owed a certain degree of deference in making that tradeoff. So we thought that was a very positive decision.

We have issues before the Court of Appeals now. In particular, there's been a District Court order requiring the shutdown of Internet connectivity at several offices and bureaus within the Department of the Interior, and we've appealed that. And that was argued a couple of weeks ago. And we're awaiting a decision on that.

So there is certainly ongoing activity in the case.

Mr. CANNON. Perhaps one of you would know, this shutting down of Internet access is terrifically difficult for Interior or for users. Are there other things going on here in this case now that are disruptive to the Interior Department?

Mr. KEISLER. Well, yes, Your Honor. Or——

Mr. CANNON. I wish.

Mr. KEISLER. Yes, Mr. Chairman.

Mr. CANNON. No, actually, I like my job. [Laughter.]

Mr. KEISLER. It's an old habit. I'm used to the other forum. But, yes, there are.

For example, there was an order issued which has been stayed, but if it were to go into effect would require that the Department of the Interior include in every written communication it sends out that might reach any member of the class, regardless of what the subject matter is—education, health, whatever—a statement that all trust-related information may be unreliable.

So regardless of whether it's about something related to an interior school system that is run that goes to the parents or a benefit form for a particular program, it would be required to bear this legend, all trust-related information must—you know, may be unreliable.

We have appealed that. We sought a stay. The Court of Appeals has stayed it and heard argument on that issue, too.

There are also quite a few people who serve or have served at the Department of the Interior or the Department of Justice who are currently subject to orders to show cause why they should not be held in contempt. That's obviously a difficult personal situation, but I think, you know, there's nothing more I can say about that. Right now, those proceedings will run their course.

So, yes, there are other issues that are pending that have been difficult for the Department of the Interior.

Mr. CANNON. Is Judge Lamberth still the trial judge on this case?

Mr. KEISLER. Yes, sir.

Mr. CANNON. Have you made any motions to change judges?

Mr. KEISLER. We requested that the Court of Appeals—in one of our most recent appeals, we requested that when it remand the case, it direct that the case be reassigned to a different District Court judge, and that request is pending with the Court of Appeals.

Mr. CANNON. Thank you.

Mr. White, just one question. Could you give us a sense of what's going on with bankruptcy? We've had a couple of stories in my district about the plummeting number of filings. I suspect that's because many people filed early, and now we have a little bit of a dearth.

But are we into this long enough to have a sense of—any kind of sense what the effect is going to be?

Mr. WHITE. Well, I think the initial indications are positive, and I'll give a couple of examples. But you're quite right that the numbers of filings have gyrated quite a bit since just prior to October 17th. We had a bulge of almost three quarter of a million cases filed in the 4 weeks leading up to bankruptcy reform and only about 140,000 cases in the 5 months thereafter.

Obviously, it's still too early, with regard to passage of time and number of filings, to draw any firm conclusions, but we'd suggest that there have been two positive signs as we begin implementing and enforcing the provisions of bankruptcy reform that were given to us.

First, with regard to means testing. Of the cases, what we're finding is that in the means test, the subjective formula that the debtor's financial statements are put through, we're finding that about 10 percent of the chapter 7 cases that filed are found to be presumed abusive. So it's a helpful—it's a helpful indicator and identifier of abuse.

But the statute has given us flexibility, looking at special circumstances and other factors, that we don't have to file motions to dismiss in cases that we don't think merit it. So in 7 out of 10 of those cases that are presumed abusive that aren't voluntarily dismissed by debtors, we are filing motions.

Now, again, it's a small universe of cases at this point. But the numbers, the percentages, they seem to make sense. The system seems to be working. We have an up and running system. The true test will be when the filings go up.

Also in the area of credit counseling, which is a major innovation in the bankruptcy reform statute. In fact, it is potentially one of the most far-reaching and positive consumer protections in the statute. We have approved, as I say in the testimony, almost 400 credit counselor and debtor education providers.

So the capacity has been there with the small number of filings. We still need to do more to ensure that as filings go up that we are able—we able to solicit and approve applications from capable providers.

One of the concerns we had early on and that this Subcommittee expressed at the hearing last—last summer was also that unscrupulous providers, because it has been a troubled industry, not be approved. We think we've done a pretty good job with regard to screening out unscrupulous providers and, in fact, have gotten positive statements to that effect, even public statements from some of the consumer organizations.

So we think that the start of the process with credit counseling, and debtor education likewise, has some positive signs. Too early, but we do think we're off to an excellent start and there's an infrastructure there. The true test will come as filings go back up.

Mr. CANNON. Ten percent presumed abusive seems to be on the upper edge of what we were anticipating. Is that a temporary thing? Do you think that's going to go down? Or does that—I mean, obviously, this is an odd period, when you had so many pre-filings.

Mr. WHITE. Right. Yes.

Mr. CANNON. Do you think that number is going to hold, or is there reason to think it would change?

Mr. WHITE. It would be too—I don't think I could give an informed response to that question because the one thing we can probably guess about the filers that we have now is that it's an anomalous group because we had that bulge of 725,000 cases. So I wouldn't dare make projections from that number.

Mr. CANNON. Thank you. Are there any issues that have come up that have been difficult to implement that we need to maybe take a look at in adjusting the bill?

Mr. WHITE. Not at this point, Mr. Chairman. If, with the passage of time and more experience, we believe that there could be greater clarity or changes in the statute, then we would make those suggestions. But I have nothing to recommend at this time.

Mr. CANNON. Just one more question. Mr. McKeown, you mentioned that much of ENRD's caseload involves defending Federal agencies. Would you give a typical example of ENRD's involvement in defending Federal agencies?

Mr. MCKEOWN. Oh, I think the best example, Mr. Chairman, is the defensive litigation we've done with the President's Healthy Forest Initiative. In one project for the Biscuit fire in Oregon, we successfully defended nearly a dozen requests for preliminary injunctions in six different lawsuits. And as you well know, if you can bat that kind of an average defending against PI requests, that's something to be very proud of.

And since it's a presidential initiative, we're particularly proud that we were able to do that for our client.

Mr. CANNON. Thank you.

We have several written questions we will submit to you based upon their relevance. We appreciate your being here today, appreciate the job that you're doing, and thank you for coming.

And with that, this Committee will be adjourned.

[Whereupon, at 4:04 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF PAUL D. CLEMENT, SOLICITOR GENERAL OF THE UNITED STATES, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. Chairman and Members of the Subcommittee: Thank you for inviting me to submit testimony regarding the Office of the Solicitor General in connection with the Committee's hearing.

I. THE SOLICITOR GENERAL'S DUTIES

When Congress created the position of Solicitor General in 1870, it expressed high ambitions for the Office: the Solicitor General is the only officer of the United States required by statute to be "learned in the law," 28 U.S.C. Section 505. The Committee Report accompanying the 1870 Act stated: "We propose to have a man of sufficient learning, ability, and experience that he can be sent . . . into any court wherever the Government has an interest in litigation, and there present the case of the United States as it should be presented."

In modern times, the Solicitor General has exercised responsibility in three general areas.

1. The first, and perhaps best-known, function of the Solicitor General is his representation of the United States in the Supreme Court. The late former Solicitor General Erwin Griswold captured the nature of this responsibility in observing:

> The Solicitor General has a special obligation to aid the Court as well as serve his client. . . . In providing for the Solicitor General, subject to the direction of the Attorney General, to attend to the "interests of the United States" in litigation, the statutes have always been understood to mean the long-term interests of the United States, not simply in terms of its fisc, or its success in particular litigation, but as a government, as a people.

This responsibility, of course, includes defending federal statutes challenged as unconstitutional on grounds that do not implicate the executive branch's constitutional authority when a reasonable defense exists. The Solicitor General also defends regulations and decisions of Executive Branch departments and agencies, and is responsible for representing independent regulatory agencies before the Supreme Court.

The Supreme Court practice of the Solicitor General includes filing petitions for review on behalf of the United States. In this regard, as the Supreme Court has stated:

> This Court relies on the Solicitor General to exercise such independent judgment and to decline to authorize petitions for review in this Court in the majority of the cases the Government has lost in the courts of appeals.

The Solicitor General also responds to petitions filed by adverse parties who were unsuccessful in the lower federal courts in criminal prosecutions or civil litigation involving the government. Where review is granted in a case in which the United States is a party, the Solicitor General is responsible for filing a brief on the merits with the Court, and he or a member of the Office presents oral argument before the Court. The Solicitor General also files amicus curiae, or friend-of-the-court, briefs in cases involving other parties where he deems it in the best interest of the United States to do so. Although most amicus filings occur only after review has been granted, the Solicitor General also submits amicus briefs at the petition stage when invited by the Court to do so or, in rare instances, when Supreme Court resolution of the questions presented may affect the administration of federal programs or policies. The Supreme Court requested the Solicitor General to file an amicus

brief at the petition stage 14 times during the October Term 2004 and has done so 13 times during the current Term (2005). The Solicitor General generally seeks and receives permission to participate in oral argument in those cases in which the government has filed an amicus brief on the merits.

2. The second category of responsibilities discharged by the Solicitor General relates to government litigation in the federal courts of appeals, as well as in state appellate courts. With the exception of those government agencies granted independent litigation authority in the lower courts, authorization by the Solicitor General is required for all appeals to the courts of appeals from decisions adverse to the United States in federal district courts. The Solicitor General's approval is also required before government lawyers may seek *en banc,* or full appellate court, review of adverse decisions rendered by a circuit court panel. Additionally, government intervention or participation *amicus curiae* in federal appellate courts (as well as state appellate courts) must be approved by the Solicitor General. In addition, once a case involving the government is lodged in a court of appeals, any settlement of that controversy requires the Solicitor General's assent. In cases of particular importance to the government, lawyers from the Office of Solicitor General will directly handle litigation in the lower federal courts. Recent examples include the *Microsoft* antitrust appeal, important criminal sentencing issues when addressed by the courts of appeals en banc, and cases involving enemy combatants.

3. In the third category of responsibilities are decisions with respect to government intervention in cases where the constitutionality of an Act of Congress has been brought into question at any level within the federal judicial system. In such circumstances, 28 U.S.C. Section 2403 requires that the Solicitor General be notified by the court in which the constitutional challenge has arisen and be given an opportunity to intervene with the full rights of a party.

The various decisions discussed above for which the Solicitor is responsible are arrived at only on the basis of written recommendations and extensive consultation among the Office of the Solicitor General and affected offices of the Justice Department, Executive Branch departments and agencies, and independent agencies. Where differences of opinion exist among these components and agencies, or between them and the Solicitor General's staff, written views are exchanged and meetings are frequently held in an attempt to resolve or narrow differences and help the Solicitor General arrive at a final decision. Where consideration is given to an amicus curiae filing by the government in non-federal government litigation in the Supreme Court or lower federal appellate courts, it is not uncommon for the Solicitor or members of his staff to meet with counsel for the parties in an effort to understand their respective positions and interests of the United States that might warrant its participation.

II. ORGANIZATION OF THE SOLICITOR GENERAL'S OFFICE

The Office of the Solicitor General, when fully staffed, consists of 48 individuals, of whom 22 (including the Solicitor General) constitute its permanent legal staff and the remainder serve in managerial, technical, or clerical capacities. Of the 22 attorneys, four are Deputy Solicitors General, senior lawyers with responsibility for supervising matters in the Supreme Court and lower courts within their respective areas of expertise. Seventeen attorneys serve as Assistants to the Solicitor General. These lawyers are assigned a "docket" of cases presenting a wide spectrum of legal problems under the guidance and supervision of the Deputies. Additionally, OSG employs four lawyers who are recipients of the Bristow Fellowships, a one-year program open to highly qualified young attorneys, generally following a clerkship with a federal court of appeals' judge. Bristow Fellows assist the Deputies and Assistants in a variety of tasks related to the litigation responsibilities of the Office. All of the attorneys in the Office have outstanding professional credentials.

The authorized personnel levels and budget of the Office of the Solicitor General have remained relatively stable in recent years. The Fiscal Year 2007 funding request level is 49 workyears and $9,977,000.

Most of these funds are committed for nondiscretionary items. For example, only two items, personnel-related costs and GSA rent, consume over 85 percent of the budget. However, the Office is employing various strategies to offset the otherwise rising costs, such as re-engineering our brief preparation process, modifying service/maintenance contracts and reducing overtime costs.

III. OFFICE WORKLOAD

The following statistics may provide a helpful way of measuring the Office's heavy workload given the relatively small staff of attorneys. During the most recent completed Term of the Supreme Court, the October 2004 Term (July 1, 2004 to June 28, 2005), the Solicitor General's Office handled approximately 3,237 cases in the Supreme Court. We filed full merits briefs in 58 cases considered by the Court (and presented oral argument in 52 of those cases),[1] which represented 69% of the cases that the Supreme Court heard on the merits in that Term. The government prevailed in 73% of the cases in which it participated. We filed 22 petitions for a writ of certiorari or jurisdictional statements urging the Court to grant review in government cases, 911 briefs in response to petitions for certiorari filed by other parties, and waivers of the right to file a brief in response to an additional 2,230 petitions for certiorari. In response to invitations from the Supreme Court, we also filed 16 briefs as amicus curiae expressing the government's views on whether certiorari should be granted in cases in which the government was not a party. The above figures do not include the Office's work in cases filed under the Supreme Court's "original" docket (cases, often between States but involving the federal government, in which the Supreme Court sits as a trial court), and they also do not include the numerous motions, responses to motions, and reply briefs that we filed relating to matters pending before the Court.

During this same one-year period, the Office of the Solicitor General reviewed more than 2,455 cases in which the Solicitor General was called upon to decide whether to petition for certiorari; to take an appeal to one of the federal courts of appeals; to participate as an amicus in a federal court of appeals or the Supreme Court; or to intervene in any court. Thus, during this one-year period, the Office of the Solicitor General handled well over 5,722 substantive matters on subjects touching on virtually all aspects of the law and the federal government's operations.

IV. CONCLUSION

In carrying out the foregoing responsibilities, the other members of the Office and I have endeavored to adhere to the time-honored traditions of the Office of the Solicitor General—to be forceful and dedicated advocates for the government, as well as officers of the Court with a special duty of candor and fair dealing.

[1] Of the 58 merits briefs filed, some were consolidated resulting in 1 oral argument.

RESPONSE TO POST-HEARING QUESTIONS FROM MICHAEL A. BATTLE, DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 15, 2006

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Please find enclosed the Department of Justice's responses to questions directed to Michael Battle, Director of the Executive Office for United States Attorneys, following the Subcommittee's Oversight Hearing on the Reauthorization of the Department of Justice on April 26, 2006.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this proposal. Please do not hesitate to call upon us if we may be of additional assistance.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Melvin L. Watt
Ranking Minority Member

HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

"Oversight Hearing on the Reauthorization of the Department of Justice, Executive Office for United States Attorneys"

April 26, 2006

RESPONSES TO FOLLOW-UP QUESTIONS FOR THE WRITTEN RECORD
TO MICHAEL A. BATTLE
DIRECTOR,
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

1. **What efforts have the United States Attorneys taken to combat bankruptcy fraud? What more can be done to encourage the Department of Justice and United States Attorneys to target and prioritize this offense? While it is understandable that resources are limited, and terrorism is an obvious national priority, can we afford to place a lesser emphasis on a crime that leads to considerable economic loss and which, in large part, motivated the Congress to adopt strong Bankruptcy reforms? Would increasing penalties help focus the attention of prosecutors? Can criminal provisions be modified so that serious bankruptcy fraud is punished at a level commensurate to its harm on society, perhaps by considering amendment to the Racketeering Influenced and Corrupt Organizations Act?**

Answer: The United States Attorneys have taken significant and appropriate steps to combat bankruptcy fraud. These steps include the following:

1) Each United States Attorney's Office (USAO) has designated an Assistant United States Attorney (AUSA) as the point of contact for bankruptcy fraud cases pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). This will facilitate communication among investigative agencies, the Bankruptcy Trustees and the USAO regarding bankruptcy fraud issues and cases within each district.

2) Since October 17, 2005, BAPCPA's effective date, the Executive Office for United States Attorneys (EOUSA) has met with the Executive Office for United States Trustees (EOUST), the Department of Justice's Criminal Division, the Federal Bureau of Investigation (FBI),and the Inspectors General of several other Departments to facilitate greater communication among the Departmental components and with other investigative offices, and to promote the creation of additional and more effective local bankruptcy working groups.

3) In February 2006, EOUSA's Office of Legal Education conducted a three-day bankruptcy fraud seminar for AUSAs across the country. The seminar covered debtor, trustee and creditor fraud, as well as evidentiary issues, trial and sentencing strategy, interaction among various government agencies and the use of task forces. In December 2005, the same office held a three-day seminar on bankruptcy for support staff, covering basic bankruptcy issues.

4) EOUSA sends out a quarterly bankruptcy newsletter to the USAOs and to other Department of Justice components. The newsletter includes discussion of various bankruptcy issues, including bankruptcy fraud cases.

5) Bankruptcy fraud seminar training materials and updates are posted to EOUSA's intranet website on bankruptcy.

6) The National Bankruptcy Fraud Working Group, made up of AUSAs, Assistant United States Trustees, FBI agents, and representatives of other investigative agencies, has the goal of meeting annually to discuss issues and trends involving bankruptcy fraud.

7) The USAOs continue to prosecute bankruptcy fraud cases vigorously. In Fiscal Year 2005, for example, USAOs brought bankruptcy fraud charges against 139 defendants in 107 cases.[1]

In terms of what more can be done to prioritize bankruptcy fraud, we note that the Department of Justice will continue to have annual training for AUSAs and to share information with USAOs, as well as to work with EOUST, FBI, and the IRS. EOUSA is working with EOUST to assist with statistical reporting requirements and to identify priority matters. It should also be noted that bankruptcy fraud matters can generate investigations that result in charges well beyond the scope of the original bankruptcy fraud. We agree that bankruptcy fraud is an important issue; and given all the steps described above, we believe that it is being fairly addressed. Regarding penalties, we believe that current statutory penalties are generally appropriate and we do not believe that higher penalties would result in more prosecutions. Similarly, although modifications can always be made, we believe that current criminal bankruptcy provisions are adequate.

2. United States Attorneys play a key role in the development and success of Weed and Seed programs around the country. Has this program been successful and is it expanding to fit the desire and need of local communities?

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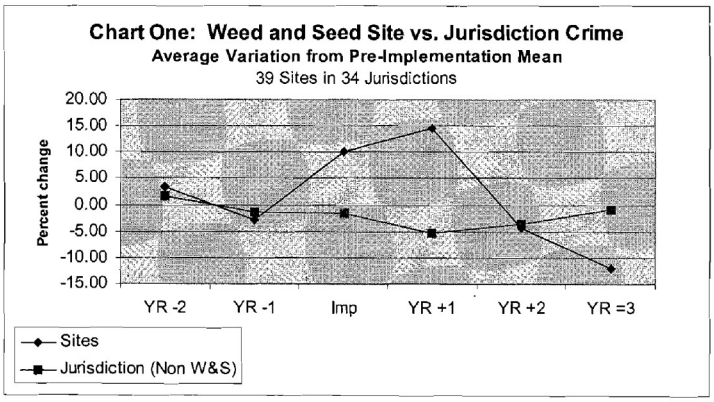
[1] This number includes cases where charges were brought under 18 U.S.C. §§ 152-157, 1341 and 1343 (mail and wire fraud), and 1962 (racketeer influenced and corrupt organization provisions), but not other types of charges that may be related to bankruptcy fraud, such as tax fraud.

Answer: United States Attorneys are central to the Weed and Seed strategy, serving both as main points of contact for Weed and Seed sites and as facilitators of community-based coalitions and cooperation. The United States Attorneys have been honored to facilitate this program, which is so important in their communities.

The Community Capacity Development Office (CCDO), part of the Office of Justice Programs, has tracked Weed and Seed's impact on crime. In the Spring of 2003, Weed and Seed grantees were asked to select the top three crime issues in their neighborhoods and to provide a series of data for each type of crime, including: (a) two years of crime statistics before the implementation of the Weed and Seed strategy; (b) crime statistics for the year that the Weed and Seed site actually started operations; and (c) up to three years of post-implementation crime statistics. This data was then compared to reported crime in surrounding neighborhoods and jurisdictions without Weed and Seed Programs.

The data show that, initially, crime statistics increased in the Weed and Sees sites immediately following Weed and Seed implementation. That is understandable due to greater police manpower, community policing programs and more arrests and prosecutions as a result of the Weed and Seed Program. Crime in Weed and Seed neighborhoods began to decrease, on average, late in the first year after Weed and Seed implementation, and continued to decrease in the second and third years thereafter, such that, by the third year after implementation, crime in Weed an Seed neighborhoods was well below the crime levels in the surrounding non-Weed an Seed areas. Further analysis shows that offense types for which reports are self-generated, either through police knowledge of incidents (*e.g.*, homicides) or by victims (*e.g.*, aggravated assaults), decline more quickly than crimes that are historically underreported (*e.g.*, burglary) or are typically discovered only after long-term investigative activity (*e.g.*, drug offenses or gang-related crimes).



Although tentative, this finding suggests that special police emphasis, community policing, and neighborhood cooperation with the police can have a positive impact, even in the toughest parts of town.

The entire Weed and Seed Crime Pattern Data Analysis report can be found at: http://www.jrsa.org/weedandseedinfo/studies_other/jrsa-crime-pattern.pdf

3. Weed and Seed was never intended as a perpetual federal program. It was intended to inject federal law enforcement and social support resources into a willing and participating locality. Are Weed and Seed localities becoming involved to the extent that when federal resources are reduced these localities aggressively assume the burden of bettering their own neighborhoods? What has happened when federal resources are no longer available?

Answer: CCDO encourages sites to view Weed and Seed funding as an important tool to help launch a collaborative effort to address a unified community vision. Weed and Seed sites are required to prepare a sustainability plan to ensure continued positive performance and a change in quality of life for residents in the community after funding ceases. Sustainability planning is linked with implementation of the local site strategy. It compels the Steering Committee to outline steps needed to continue the overall strategy beyond the Weed and Seed designation. Emphasis is on maintaining an effective operating structure, demonstrating community impact, and securing ongoing resources to support strategies. CCDO does not currently have a mechanism to track sustainability once site funds have been exhausted. In the future, CCDO will be able to monitor the post-funding progress of self-selected graduate sites. These sites will be able to retain certain benefits of participation in the Weed and Seed program, such as continued technical assistance and funding to attend Weed and Seed conferences. In exchange, the sites will certify the continued implementation of a Weed and Seed strategy as evidenced by the active Steering Committee members and a list of accomplishment in the four Weed and Seed elements: law enforcement, community policing, prevention/intervention and treatment, and neighborhood restoration.

4. There has been considerable discussion in the past about the deleterious effect of the so-called McDade law. This law provides that federal prosecutors are subject to state laws and rules, as well as federal court rules in each state where the prosecutor engages in his duties. The concern has been that subordinating federal prosecutors to state bar restrictions would

undercut the national law enforcement effort. How has the situation developed for federal prosecutors? If not well, can we expect the Department to seek modification of the statute?

Answer: Many USAOs continue to informally report frustration in investigating and prosecuting criminal cases as a result of the 1998 passage of 28 U.S.C. § 530B, which not only required prosecutors to abide by the professional ethics rules of the state where they carry out their prosecutorial duties, but also negated the Department's previous reliance on its own regulation concerning the permissible range of contacts with represented persons. This frustration seems to be more evident in the white collar and corporate fraud context. There, AUSAs and investigators appear to be hampered from talking to corporate whistle blowers and other corporate employees when, for example, the company retains counsel in the same or a similar matter. Similarly, in the context of civil investigations, state rules governing *ex parte* contacts are frequently invoked by defendants and tend to have a chilling effect on the Government's ability to investigate wrongdoing and fraud on the federal treasury. Although it is hard to quantify the extent to which USAOs continue to be impeded and hindered, USAOs continue to report their frustration with 28 U.S.C. § 530B.

5. **How many Assistant United States Attorneys have been detailed to or are utilized in assisting the work of the Office of Immigration Litigation (OIL)? What is the backlog of cases in that office and if it has increased why so? Could the Assistant Unite States Attorneys who are doing work for OIL be better utilized assigned to some of the areas in which you are seeking manpower increases?**

Answer: The precise number of AUSAs assigned to assist the work of OIL is not readily available. Except for USAOs along the Southwest Border, all USAOs have been tasked with preparing some of the responsive briefs for the immigration appeals normally handled by OIL and the USAO for the Southern District of New York (SDNY), which traditionally had handled immigration appeals arising in the Second Circuit. Collectively, USAOs are assigned an average of approximately 260 overflow briefs each month. Overflow briefs are allocated to each USAO based on the number of AUSAs employed by the USAO. United States Attorneys exercise discretion over the allocation of overflow immigration briefs among their respective AUSAs.

In terms of the backlog of cases, as of September 14, 2005, the Second Circuit had a backlog of immigration appeals of approximately 5,000 cases. The Second Circuit last fall implemented new procedures to deal with the backlog, which included placing all immigration cases involving an asylum claim on a non-argument calendar. The USAO for SDNY and OIL both distribute overflow immigration appeals to USAOs across the country.

Removal orders issued by the Executive Office for Immigration Review's Board of Immigration Appeals (Board) are defended in the federal courts by OIL (and in the Second Circuit by the USAO for SDNY). A removal order normally follows a hearing before a Department Immigration Judge, with an appeal to the Board by one of the parties. The Government is represented during the administrative process by attorneys from the Department of Homeland Security (DHS). Removal orders may be challenged in the United States Circuit Courts by aliens filing review petitions. At present, more than 11,000 review petitions are filed in the Circuit Courts annually.

The number of removal orders challenged in the federal courts has grown over 600% since 2001. This increase has been caused by the stepped-up enforcement efforts by the Department of Homeland Security and the rapid rise in the rate at which aliens have appealed Board decisions to the courts of appeals (from 6% in fiscal year 2001 to 29% in fiscal year 2005). The primary reason for the rise in immigration caseload is, in short, not a "backlog," but is instead a surge in federal immigration litigation that is likely to continue."

Finally, in terms of the utilization of AUSAs, in November 2004, then Deputy Attorney General James Comey asked all litigating components in the Department of Justice to assume some of the load of OIL cases. The Department's Fiscal Year 2007 budget reflects an increase in resources for OIL. Assuming the 2007 budget is approved and OIL receives the resources, the burden on USAOs to prepare immigration appeals will be diminished.

6. What efforts has the Department's Office of Overseas Prosecutorial Development Assistance and Training taken to shape the legal terrain of post-war Iraq through the conduct of workshops for those who might be future leaders of that country? I understand that this office is under the direction of the Criminal Division, and I also understand that it is probably above your pay-grade to make suggestions as to whether that office would be better located elsewhere in the Department. However, would not the Advocacy Institute, which already trains federal prosecutors (not to mention the personnel of other components of the Department), be more suited to such a task? Do you have any observations?

Answer: Thank you for this opportunity to discuss with you the work of the Justice Department's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) in post-war Iraq. This response will also explain why OPDAT is a necessary and integral component of the Department's Criminal Division.

OPDAT's mission is to assist foreign partners in developing justice sector institutions that will comply with international norms, standards, and best practices, and result in strong U.S. partner countries in the fight against terrorism and transnational crime. Since the mid-1990s, the Justice Department, through OPDAT, has developed in-house

capacity to provide justice sector developmental and programmatic assistance, including technical assistance and training, on a global basis to foreign partners. For example, OPDAT has assisted host countries in making fundamental criminal procedure reforms; establishing adversarial as opposed to inquisitorial criminal justice systems; advancing the judicial, prosecutorial, and investigative capacities of host countries; and creating national strategies to combat transnational crimes, such as terrorism and terrorism financing, money laundering, corruption, organized crime, trafficking in persons and narcotics, cyber crime, and intellectual property crime.

OPDAT's assistance programs are funded by the U.S. Department of State and the United States Agency for International Development (USAID), and are designed to address specific partner country needs. They are carried out in a variety of ways, including but not limited to in-country assignments of experienced U.S. prosecutors who work directly with host government officials on either a long-term (one year or more) basis as Resident Legal Advisors, or on a short-term basis as Intermittent Legal Advisors; in-country assessments by teams of U.S. experts; bi-lateral and multi-lateral conferences and workshops; assistance on legislative reform; and skills development programs.

In the post 9-11 era, it is critical that the criminal justice sector assistance to foreign governments provided by OPDAT and the Department of Justice be well coordinated, integrated, and strategically aligned with our national security and law enforcement interests. In order to draw upon the broad range of expertise within the Department and to ensure that the proper level of coordination is achieved for this important task, it is essential that OPDAT's functions be carried out from a central location within Criminal Division's central authority at the Departmental level in Washington, DC.

In Iraq, OPDAT's assistance program began in April 2003, when OPDAT RLAs helped reconstitute the Iraqi criminal justice system by providing assistance and training to the Iraqi judiciary.

Initially, OPDAT sent a team of judges, prosecutors, court administrators, and defense attorneys to assess the Iraqi court system and to assist in establishing a judicial review commission that evaluated the credentials of approximately 869 Iraqi judges. At the end of the process, 135 judges were removed due to Ba'athist Party affiliation and/or evidence of corruption. Since May 2003, OPDAT RLAs, who are federal prosecutors with significant trial experience and investigative skills, have been assigned to Baghdad to provide assistance to Iraqi judicial personnel on rule of law issues. Specifically, RLAs worked to establish the independence of the judiciary under the newly-formed Higher Juridical Council (HJC) and provided assistance on a daily basis at the Central Criminal Court of Iraq (CCCI) in Baghdad, building the CCCI's capacity to investigate and adjudicate insurgency, corruption, and serious felony cases. In addition, RLAs attended Rule of Law working group meetings at the mission, providing assistance and legal advice to the Embassy, MNF-I (Multi-National Force – Iraq) and other U.S. government agencies.

At this time, the OPDAT RLA program consists of seven RLAs. Two RLAs serve at the embassy in Baghdad, acting as liaisons with the Chief Judge of the HJC, providing assistance and training to judiciary assigned to the CCCI, and offering legal advice as needed to Embassy personnel, federal agents, and others regarding Iraqi criminal law and procedure. Four RLAs currently serve as Rule of Law Coordinators in Provincial Reconstruction Teams (PRTs) in Iraqi provinces. In this role, these RLAs work with the local judges and police officials to identify and address obstacles to transparent, efficient, and effective administration of justice. OPDAT's RLAs serve in Mosul, Kirkuk, Hilla, and Baghdad PRTs. Within the next three weeks an RLA will be assigned to Baquba PRT. Additional RLAs will be deployed in Fall 2006.

Since 2003, OPDAT RLAs in Iraq have provided and coordinated a host of training seminars and workshops. RLAs have geared training to specific needs of judges, police officers, public corruption investigators, coalition forces, and embassy personnel on topics as diverse as collection and custody of evidence (including forensics), Iraqi criminal procedure and penal code, crime scene investigations, and more. A complete list of training sessions coordinated or taught by OPDAT RLAs is attached.

As demonstrated by the description of OPDAT's work in Iraq, its programs are typically multi-dimensional and reflect the strategic priorities of DOJ and the Criminal Division. Further, OPDAT provides a bridge between the Department's law enforcement goals and that of the U.S. interagency community in Washington. Indeed, OPDAT coordinates and works daily with components of the Department of Justice, the federal law enforcement community, and the interagency community.

For example, to fulfill its mission, OPDAT relies heavily on such Department components as the Criminal Division, the Civil Rights Division, EOUSA, and the United States Attorneys' Offices, to staff the positions and training programs that OPDAT administers. Within the Criminal Division, OPDAT regularly works with the Counterterrorism, Asset Forfeiture and Money Laundering, Organized Crime and Racketeering, Domestic Security, Child Exploitation and Obscenity, Public Integrity, Fraud, and Computer Crime and Intellectual Property Sections, as well as the Office of International Affairs and the Office of Enforcement Operations, to provide substantive guidance to the personnel deployed overseas as well as expert presenters for conferences and workshops conducted abroad. In the recent six-month period from September 6, 2005 through March 6, 2006, a total of 138 Criminal Division attorneys participated in 78 OPDAT programs overseas. Further, the Criminal Division personnel on whom OPDAT relies to implement its programs are often the same individuals who represent the Department at international fora and who negotiate the international law enforcement instruments that serve as a common point of reference for international cooperation. Criminal Division attorney participation is an integral part of OPDAT's overseas programs.

Additionally, OPDAT works extensively with federal law enforcement agencies headquartered in Washington, D.C., including the Department's law enforcement components -- the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the U.S. Marshals Service – as well federal law enforcement agencies of the Departments of Treasury and Homeland Security, and the various Offices of Inspectors General within the U.S. executive branch. OPDAT also draws on substantive expertise provided by other executive branch agencies and offices, such as the Department of State, the Office of Government Ethics, and the Securities and Exchange Commission, and by the U.S. courts through the Federal Judicial Center and the Administrative Office of the U.S. Courts -- all of which are based in Washington.

Moreover, OPDAT is in frequent direct contact with its funders at the State Department and USAID. OPDAT regularly meets with State and AID officials to discuss program plans, funding availability, goals and objectives, and performance measures. These meetings are an extremely important piece of the funding process. Also located in Washington are various OPDAT grantees, including the American Bar Association/Central European and Eurasian Law Initiative, ABA/Asia and the American University TRACC (Transnational Crime and Corruption Center), with whom OPDAT headquarters staff meets regularly to discuss work being done in the field by the grantees.

OPDAT headquarters staff also participates in a number of Washington, DC-based interagency and planning working groups. These groups formulate recommendations to senior executive branch officials. The senior-level decisions taken and policies developed as a result of those recommendations are fully reflected in the training and technical assistance provided by OPDAT.

Further, OPDAT headquarters coordinates study tours to the U.S. by foreign justice sector officials. These study tours, which focus on criminal justice sector issues and best practices, typically begin or end in Washington, with meetings with DOJ experts. Additionally, OPDAT coordinates DOJ's participation in the State Department's International Visitors Program (IVP). OPDAT headquarters staff ensures that IVP participants, usually high-ranking foreign officials, meet with appropriate DOJ officials, who can help the IVP participants understand and learn about U.S. justice system procedures and practices. Both OPDAT-arranged study tours and the IVP program allow foreign and U.S. officials to exchange ideas and make connections for future contacts and coordination. In the six-month period from September 6, 2005 through March 6, 2006, OPDAT arranged meetings for 672 international visitors comprising 95 international delegations with 227 Criminal Division attorneys and officials, including appointments for the Indonesian Attorney General, the Indonesian Minister for Law and Human Rights, and the Bulgarian Minister of the Interior. In FY 2005, OPDAT coordinated appointments for 1,484 foreign visitors with 644 Department attorneys.

OPDAT is much more than an office that provides "training." As part of the Criminal Division, it is advantageously situated to provide critical international justice sector assistance that focuses on capacity building resulting in sustainable institutions. Through OPDAT-rendered programmatic assistance, the Justice Department builds strong partners with whom we can work to combat terrorism and other transnational crimes.

RESPONSE TO POST-HEARING QUESTIONS FROM PETER D. KEISLER, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 11, 2006

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Attached are the responses to follow-up questions submitted to Mr. Peter D. Keisler, Assistant Attorney General, Civil Division, U.S. Department of Justice, following the Subcommittee's April 26, 2006 oversight hearing on the "The Department of Justice: Executive Office for U.S. Attorneys, Civil Division, Environment and Natural Resources Division, Executive Office for U.S. Trustees, and the Office of the Solicitor General."

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of further assistance.

Sincerely,

William E. Moschella
Assistant Attorney General

Attachment

cc: The Honorable Melvin L. Watt
Ranking Member

WRITTEN RESPONSES OF
PETER D. KEISLER
ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING
BUDGET AND RESOURCE NEEDS
OF THE JUSTICE DEPARTMENT CIVIL DIVISION
FOR FISCAL YEAR 2007

RESPONSES TO WRITTEN QUESTIONS FROM CHAIRMAN CANNON

Office of Immigration Litigation

Regarding funding that the Department of Justice is requesting to support an additional 86 attorneys to be utilized in support of the Office of Immigration Litigation (OIL), rather than simply creating more attorneys to defend cases that federal courts for good reason seem to be more and more skeptical of, is there an ongoing effort to improve deficiencies in the administrative process that produces so many indefensible cases?

As the number of cases reaching the federal courts has continued to increase, government attorneys defending decisions of the Board of Immigration Appeals have had to face simultaneous or near simultaneous briefing deadlines in numerous cases. Attorneys in the Division's Office of Immigration Litigation (OIL) often have less than a week to review the administrative records in their cases and to develop the best possible responsive briefs. Even though these attorneys operate at a capacity far exceeding normal expectations, the Department has had to enlist all of its litigating divisions, as well as U.S. Attorney's Offices, to brief cases to avoid defaulting on large numbers of briefs.

Although this practice allows the government to keep pace with briefing deadlines, one consequence is that many cases are briefed by attorneys who are not experts in immigration law and who lack the background and experience necessary to spot problem cases that should not be defended in the federal courts. Moreover, OIL attorneys often have too little time to give the reasoned consideration that the cases deserve. An additional 86 attorneys will help alleviate this problem and improve the overall quality of the government's briefs, as well as the quality of the cases the government defends in the federal courts, because more time will be available to identify and deal with the problem cases.

In addition, the Department is addressing the issue of judicial skepticism of certain aspects of the administrative adjudicatory process. In January 2006, Attorney General Gonzales directed the Deputy Attorney General and the Associate Attorney General to conduct a comprehensive review of the Immigration Courts and the Board of Immigration Appeals. As part of this review, the Department will examine the quality of decision-making by the immigration court system. Moreover, the Department has met, and will continue to meet, with representatives of the federal circuit courts to listen to and address their concerns.

It should also be noted that the Administrative Office of the U.S. Courts reports that the federal circuit courts sustain roughly 86% of the decisions of the Board of Immigration Appeals in those cases that are appealed and resolved on the merits.

How will the addition of 86 new attorneys devoted to defending the kinds of cases cited by Judge Posner, which we discussed at the hearing, have a positive effect on stemming the tide of cases coming out of the immigration courts and the BIA?

The additional 86 attorneys for the Office of Immigration Litigation (OIL) will not reduce the numbers of cases being decided by immigration judges and by the Board of Immigration Appeals. As explained above, however, these additional attorneys will provide a critical boost in reducing the number of cases "outsourced" from OIL, and to allow those attorneys – who are the government's immigration litigation experts – more time to consider whether cases should be defended or briefed. More time will also allow these experts to more carefully articulate the government's litigating positions in their briefs, thereby better serving the judiciary.

False Claims Act

What are the monetary resources devoted by the Department of Justice for FCA matters? Specifically, for FY's 2004, 2005 and 2006, how much money for FCA enforcement was allocated to: the Civil Division, the U.S. Attorneys Office, and the FBI?

The United States Attorneys' Offices (USAOs) do not track their civil efforts or resources by statute such as the False Claims Act. Instead, civil cases are tracked by program type. The program that incorporates False Claims Act cases is Affirmative Civil Enforcement (ACE). Although a significant portion of the ACE casework conducted by the USAOs involves bringing actions under the False Claims Act, the ACE Program includes other important program areas including commercial litigation, civil rights, civil penalties, environmental, fraud, land/real property, and torts cases when the United States is not the defendant. All information below regarding the USAOs reflect efforts in ACE only.

The following chart shows the dedication of monetary resources to the above-listed components by year.

FCA Monetary Resources			
	FY 2004	**FY 2005**	**FY 2006**
Civil Division	$ 19, 829,000	$ 21,748,000	$ 22,777,000
U.S. Attorneys[1]	$ 58,432,229	$ 57,605,690	$ 57,337,910
Total	$ 78,261,229	$ 79,353,690	$ 80,114,910

The FBI's accounting system is not set up in a way that can track False Claims Act cases as the Civil Division and US Attorneys do. However, the FBI's efforts toward enforcement of the False Claims Act fall under its Government Fraud Program. The primary false claims areas are in defense contracting and health care fraud. The FBI has put in place a policy whereby it investigates government fraud cases when they meet one or more of the following conditions:

- there is a potential loss of over $1 million;
- the matter involves a public safety issue;
- addressing the crime problem will have a significant impact on the community;
- the potential exists for a terrorism nexus; or
- a federal agency requests assistance that is necessary and reasonable.

How much of the money that was allocated in FYs 2004, 2005 and 2006 for FCA cases originated from the: DOJ appropriation, HCFAC, and other (specify). How much money was allocated in FY's 2004, 2005 and 2006 for FCA cases to the Civil Division and the U.S. Attorneys offices for the FCA cases from: DOJ's Appropriation, HCFAC and other (specify)?

The following charts break out FCA monetary resources by source as well as by year and organization. "Three percent" refers to amounts credited to the Department's Working Capital Fund, which consists of up to 3 percent of all amounts collected pursuant to civil debt collection

[1] These figures represent the total amount of funds specifically allocated for, or otherwise expended by, the USAOs on ACE cases.

litigation activities, in accordance with Sec. 11013 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273.

FCA Monetary Resources			
	FY 2004	**FY 2005**	**FY 2006**
DOJ appropriation	$ 3,066,000	$ 3,780,000	$ 3,769,000
HCFAC	$ 6,637,000	$ 7,843,000	$ 11,829,000
Three Percent	$ 10,126,000	$ 10,125,000	$ 7,179,000
Civil Division - Total	$ 19,829,000	$ 21,748,000	$ 22,777,000

FCA Monetary Resources			
	FY 2004	**FY 2005**	**FY 2006**
DOJ appropriation[2]	$ 25,968,000	$ 25,303,690	$ 23,805,910
HCFAC[3]	$ 10,032,000	$ 10,032,000	$ 10,032,000
Three Percent	$ 22,432,229	$ 22,270,000	$ 23,500,000
U.S. Attorneys - Total	$ 58,432,229	$ 57,605,690	$ 57,337,910

How was the amount referenced in the above allocated to the different U.S. Attorneys offices? Also, how do the amounts allocated compare to the FCA workload in each office?

[2] This figure represents the amount of direct appropriation expended by USAOs on personnel costs for ACE over and above the USAOs' HCFAC and Three Percent Fund allocations. This figure does not include amounts expended from direct appropriations on litigation expenses and overhead over and above the HCFAC and Three Percent Fund allocations. These costs expended from direct appropriations are not separately tallied by program area.

[3] This figure represents 33 percent of the HCFAC allocation to USAOs, which was dedicated to civil health care fraud enforcement.

As stated above, the USAOs do not track the number of False Claims Act cases handled, so a comparison of FCA workload and the allocation of resources is not possible. ACE positions were allocated to the USAOs in FY 1995 and FY 1996. Health Care Fraud positions, which include civil health care fraud enforcement, were allocated in FY 1997. During each allocation a number of factors were taken into consideration including the number of agents in the district, district population, ACE allocations previously received, the past commitment by the USAO to ACE, expressed need by the USAO, and district size. Additionally, each USAO has the ability to dedicate additional resources towards ACE from its direct appropriations. Finally, when funding permits, a USAO that is faced with a case having significant litigation costs that would deplete its existing litigation budget may request additional one-time funding to support the costs of that case.

How many Civil Division staff attorneys, both in terms of number of attorneys and attorney work hours, were assigned to FCA matters for FY 2004, 2005 and 2006?

The attorneys in the Commercial Litigation Branch, Fraud Section, are assigned full-time to False Claims Act matters. Specifically, the numbers of those attorneys and their aggregate hours are as follows for fiscal years 2004, 2005, 2006:

FY 2004: 70 attorneys, 146,000 hours
FY 2005: 69 attorneys, 144,000 hours
FY 2006: 77 attorneys, 160,000 hours

What priority does the Department give to health fraud cases, including FCA cases?

One of the Attorney General's top law enforcement priorities is addressing fraud in connection with federally-funded health care programs. There has been a longstanding commitment to health care fraud enforcement and, like corporate fraud, it is a top priority in the Department's efforts to tackle white collar crime. This includes not only criminal prosecutions but also cases under the FCA, our primary civil enforcement statutory tool.

Our efforts in this area are vital to saving lives, stopping physical harm, and replenishing an increasingly strained health care payment system. We have provided extensive training to Department attorneys around the country at the National Advocacy Center and in Washington on health care fraud issues. I can assure you, as Deputy Attorney General Paul McNulty has assured the Congress, that the Department will continue to develop these cases, work proactively with our law enforcement partners to foreclose future fraud schemes, and diligently investigate allegations brought to us by qui tam relators as we proceed together in the fight against health care fraud. Our historical success in this area is readily demonstrated in the recoveries we have obtained under the FCA for health care fraud. From the start of FY 2003 through the end of FY 2005, we obtained over $3 billion, representing a third of the total $9.1 billion recovered for health care fraud since 1986. In addition, the Department has vigorously enforced the Federal Food, Drug, and Cosmetic Act with respect to health care fraud, and has obtained criminal and civil fines and forfeitures, through judgments and settlements, of more than $870 million from January 2001 to the present.

How many cases did DOJ have on its docket involving pharmaceutical companies in 2004, 2005 and 2006?

Because we do not track cases in this manner Division-wide or Department-wide, we cannot provide a number that encompasses the entire Civil Division or the entire Department. Nevertheless, we have identified over 180 matters involving fraud allegations against pharmaceutical manufacturers and other entities since we began tracking these matters in late 2004.

In addition, the Civil Division's Office of Consumer Litigation (OCL) handles investigations under the Federal Food, Drug, and Cosmetic Act and related statutes. Many of those investigations are separate from the FCA cases being handled by the Division's Commercial Litigation Branch. During Fiscal Year 2004, OCL used 5 ½ FTEs for pharmaceutical fraud cases. In FY 2005, OCL had 7 ½ FTEs working on those cases, and we estimate that OCL will expend 9 FTEs working on those cases in 2006.

Does the Department have a strategy for resolving these cases in a timely manner? If so, please explain.

The Department is firmly committed to investigating the pharmaceutical caseload as expeditiously as possible. To that end, the Civil Division has spearheaded an effort to coordinate investigations throughout the country, to assign attorneys within the Division to work with the U.S. Attorneys or monitor cases that are under investigation, to train Department attorneys and others on issues arising in the pharmaceutical caseload, and to monitor developments in state-and privately-initiated pharmaceutical litigation. We work with the affected federal agencies, the states, and criminal and civil Assistant United States Attorneys, and we have earmarked significant funding for pharmaceutical investigations and litigation.

Moreover, the Civil Division has hosted three conferences for its attorneys, Assistant United States Attorneys from around the country, FDA and other federal agency personnel, and state representatives to coordinate and move these cases along. To date the results have been impressive - over $4.5 billion recovered for all federal, state, criminal and civil claims. We are making every effort to insure that we make our decisions on litigation or resolution in a timely manner, consistent with the needs of any related criminal investigation as well as the complexities of the cases, the resources required to determine whether fraud has been committed, and, if so, the nature and extent of that fraud.

Would you consider the establishment of a new branch in the Civil Division for Affirmative Civil Enforcement, including the FCA?

Under its current structure, the Department and the Division have achieved success in its False Claims Act enforcement efforts. The Civil Division and the United States Attorney's offices, working with relators and their lawyers, have used the False Claims Act and its qui tam provisions to recover $15 billion since those laws were strengthened in 1986. In five of the past six fiscal years, we have recovered over a billion dollars. With the addition of eight new attorneys in the last

few months there are now 77 attorneys in Washington, D.C., and many more throughout the country, who are dedicated full-time or part-time to investigating and litigating False Claims Act cases.

The Civil Division's Commercial Litigation Branch, Fraud Section is led by a Senior Executive Service Branch Director and Deputy Branch Director, both of whom work on affirmative civil enforcement cases full-time. They work under the supervision of a Deputy Assistant Attorney General and the Assistant Attorney General, both of whom are closely involved in setting policy and making strategic decisions in significant cases. That office has devoted substantial time and energy into joint training and coordination between those personnel in Washington, D.C. and in the United States Attorneys' offices, whether at the National Advocacy Center in South Carolina or in Washington. The cooperation between and among the Civil Division and the U.S. Attorneys is excellent, and the results we have achieved in False Claims Act enforcement support this. Because of this excellent cooperation and success, we believe that the establishment of a new branch is not necessary at this time.

Decentralization

Following the Subcommittee's 2001 hearing, the Subcommittee questioned the Civil Division on how best to maximize Justice Department resources. In particular, the query was whether Assistant U.S. Attorneys should be transferred from Main Justice to U.S. Attorney offices in the field. The Civil Division responded that it "has and will continue to explore opportunities for decentralization."

What efforts has the Civil Division made to explore areas for potential decentralization since 2001? Has further decentralization occurred, and if so, please describe this process and the results achieved.

Civil litigation is highly decentralized within the Department of Justice. Each year, the Department receives roughly 100,000 new cases and matters. The vast majority of these are handled by the U.S. Attorney offices in the field; the Civil Division retains only a small portion of this work, approximately 5 percent of the cases at the trial level. Beginning in 2002, the Department conducted an extensive study of the allocation of attorney resources among the litigating divisions and the United States Attorneys. As a result of this study, the Department transferred six attorney positions from the Civil Division to the United States Attorneys. Since that time, our experience largely confirms that the Department has been allocating resources in a manner that maximizes its ability to handle the vast number of cases around the country, while still allowing the Department to handle particularized matters from Washington, D.C. when it is efficient to do so.

For example, the Department of Justice employs standards to guide the activities of the Civil Division and other litigating divisions to avoid redundancy and target cases toward the component best equipped to handle them. Generally speaking, the Civil Division handles cases that are in specialized courts, are multi-jurisdictional, require very specific substantive expertise, have

significant national policy implications, or require uniform treatment. This complements the Division's centralized, specialized design while recognizing that the United States Attorneys are the more appropriate litigators for other types of cases.

The Civil Division works closely and effectively with the United States Attorneys in many major cases. For example, in large scale litigation such as nationwide health care fraud cases where many districts are involved, the Civil Division often serves in a coordinating and advisory role while the United States Attorneys are at the front lines. Another example would be a case handled by a U.S. Attorney requiring a short-term need for special expertise or additional resources that the Civil Division can provide.

In the past, immigration litigation was handled mostly by the Civil Division's Office of Immigration Litigation, which has many years of expertise in this specialized area. However, the sharp increase in immigration litigation over the past five years has severely taxed the Division's attorney resources. In order to handle the large number of cases, the Civil Division has been delegating a much increased number of immigration cases to the United States Attorneys. While this arrangement has enabled the Department to handle the workload, it is less than ideal. Among other things, it reduces the ability of United States Attorneys to prosecute the criminal and civil cases they normally handle. The budget request pending before Congress, if approved, will enable the Civil Division to retain a large number of cases that it is now delegating to United States Attorneys.

RESPONSE TO POST-HEARING QUESTIONS FROM MATTHEW J. MCKEOWN, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 5, 2006

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Mr. Matthew McKeown, Principal Deputy Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, following Mr. McKeown's appearance before the Subcommittee on April 26, 2006.

Thank you for the opportunity to supplement Mr. McKeown's testimony. We hope that this information is helpful to you. The Office of Management and Budget has advised that there is no objection to the presentation of these responses from the standpoint of the Administration's program. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Melvin L. Watt
Ranking Minority Member

ANSWERS BY PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL MATT McKEOWN TO QUESTIONS FOR THE RECORD FROM HEARING ON "THE DEPARTMENT OF JUSTICE: EXECUTIVE OFFICE OF THE UNITED STATES ATTORNEYS, CIVIL DIVISION, ENVIRONMENT AND NATURAL RESOURCES DIVISION, EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES, AND OFFICE OF THE SOLICITOR GENERAL" SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW HOUSE COMMITTEE ON THE JUDICIARY APRIL 26, 2006

1) **Please provide an update on the Indian Trust cases. The statute of limitations for the filing of a suit on the Indian Trust cases is quickly approaching, at the end of this year, have you seen an increase in these types of cases? Are you expecting an increase as the deadline to file approaches?**

(A) I appreciate the opportunity to provide an update on these important cases. The Division represents the United States in thirty-two tribal trust lawsuits brought by some twenty-nine different Indian Tribes, which involve claims for more than $220 billion. These lawsuits allege that the United States has mismanaged tribal assets and failed to provide "historical accountings" of the monies collected, managed and disbursed by the United States on behalf of the Tribes. The Division has settled two tribal trust cases, as well as portions of another case, and is in settlement discussions with a number of other Tribes.

The statute of limitations to which you refer is the one under which tribes may bring suit based on the provision by the Department of the Interior of the results of the Tribal Trust Funds Reconciliation Project. That statute is currently scheduled to expire on December 31, 2006. Its previous expiration date was December 31, 2005. Ten tribes filed nine lawsuits in December, 2005, before the statute was extended. We believe it is reasonable to expect that additional Tribal trust cases will be filed by December 31, 2006. There are currently over 250 Tribes that have potential trust claims that have not yet filed suit.

2) **Our National Parks are places of great beauty, national pride, and recreation. Unfortunately, they have also been a place of increased criminality. Public lands, especially those which share a national border, have shown evidence of poaching of animals and timber, areas of access for illegal immigrants, are potential avenues for terrorist activity and perpetrators, and are used by manufacturers and traffickers of drugs. What resources within your Division are used for the purpose of prosecution of these criminal activities on Public Lands? Do you believe that there are sufficient amounts of law enforcement in these areas, or is more necessary?**

(A) This question raises serious issues about one of this nation's greatest natural resources – its public lands – and I appreciate the opportunity to address these issues. The Division's Environmental Crimes Section, in conjunction with United States Attorneys' Offices throughout the country, prosecutes environmental and natural resource crimes wherever

they occur, including on public lands. While the Division recognizes that the other types of criminal activity referenced in this question can, and do, occur on public lands, the Division's expertise and jurisdiction is based on subject matter rather than geography. Other types of criminal activity would be addressed by other Divisions in the Department of Justice. The question of whether there are adequate law enforcement resources to police the public lands is an important one, but one better addressed by the Department of the Interior, which has that law enforcement responsibility.

3) **How would you describe the differences in your Division's approach to Property Rights and Takings since the *Kelo* case?**

(A) The Supreme Court's recent decision in *Kelo v. City of New London, CT* raised crucial questions about the fundamental rights at issue in takings cases, and I appreciate the opportunity to address the impact of that decision. The *Kelo* case involved condemnation of private property for purposes of resale, pursuant to state and local authorization aimed at redevelopment of New London. The Supreme Court held that the city's disposition of the condemned property in *Kelo* was a public use within the meaning of the Takings Clause. *Kelo* is not directly relevant to our activities since the Congressional authorizations pursuant to which the Division acts do not authorize acquisitions for any uses similar to that authorized in *Kelo*; nor are such condemnations ever conducted for purely economic purposes. Rather, our current eminent domain caseload involves condemnation for such purposes as federal court houses, inclusion within the Everglades National Park, and international border stations and fences. In addition to direct condemnations, this Division also defends "inverse condemnation" claims brought by property owners who contend that some act of the United States has interfered with the use and enjoyment of their property. Although the attention the *Kelo* decision received has increased the awareness of property owners of the impact of governmental actions, we have not seen any appreciable change in the number of new inverse condemnation case filings. While the *Kelo* decision has not had a direct effect on how we approach our direct or inverse condemnation cases, it reminds us of the fundamental rights at issue in all such cases.

4) **The requested budget for your Division has an increase of only 2.2 percent this year. I understand that 45% of the Environment Division's cases are defensive and therefore nondiscretionary. Do you have sufficient resources for your civil and criminal enforcement efforts?**

(A) We are satisfied that the Administration's budget request will provide the Division with the necessary resources to perform the jobs we are asked to do in the coming fiscal year, both in the defensive and enforcement arenas.

5) **Would you provide an example of the type of case in which the Environment Division might partner with a state attorney general for a joint enforcement action? How would penalties or awards be split in this situation? Would the Division receive the bulk of any award?**

(A) I appreciate the opportunity to provide more information on the Division's practice of working with states to leverage our resources and increase our effectiveness through joint enforcement actions. One example of such a partnership is the recent settlement of claims against Wal-Mart Stores, Inc. – the nation's largest retailer and one of its largest commercial developers – concerning discharge of storm water from construction sites covering 24 locations in nine states. The Division was joined by the States of Tennessee and Utah in settling these claims. Wal-Mart will pay a civil penalty of $3.1 million, undertake a supplemental environmental project to protect sensitive wetlands or waterways, and implement a $62 million compliance program that includes requirements for construction planning, training, inspections, and record keeping. This settlement is serving as a model in ongoing negotiations with other large commercial and residential developers who regularly engage in substantial construction activities.

With respect to allocation of penalties and awards in joint enforcement actions, we divide the penalty to reflect the division of labor between the Division and the state enforcement agencies. This often means a 50-50 split, but that may change in any particular case depending on who takes the lead in the litigation.

6) You mentioned that one of ENRD's responsibilities is to protect the public fisc. Would you give an example of a case in which ENRD worked to protect taxpayer resources?

(A) Protecting the American taxpayer from invalid or overbroad monetary claims against the United States is one of the Division's most important responsibilities, and I am happy to provide an example of such a case. *U.S. v. 17.69 Acres of Land in San Diego County* concerned land condemned by the Border Patrol, via the Army Corps of Engineers, for construction of a second fence and patrol zone along the San Diego-Tijuana border. The landowner claimed just compensation between $48 and $72 million based on a claim that the best use of the land was for development as a NASCAR racetrack stadium. The United States' appraiser testified that the value of the property was $265,400 as holding for future industrial use. After a three-week trial, the jury returned a verdict that just compensation for the taking was just over $1.2 million.

RESPONSE TO POST-HEARING QUESTIONS FROM CLIFFORD, J. WHITE, ACTING DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 27, 2006

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Please find enclosed the Department of Justice's responses to questions directed to Clifford White, Director of the Executive Office for United States Trustees, following the Subcommittee's Oversight Hearing on the Reauthorization of the Department of Justice on April 26, 2006.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this proposal. Please do not hesitate to call upon us if we may be of additional assistance.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Melvin L. Watt
Ranking Minority Member

RESPONSES TO FOLLOW-UP QUESTIONS FOR THE WRITTEN RECORD TO CLIFFORD J. WHITE III, DIRECTOR OF THE EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES

HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

"Oversight Hearing on the Reauthorization of the Department of Justice, Executive Office for United States Trustees"

April 26, 2006

QUESTIONS SUBMITTED BY THE HONORABLE CHRIS CANNON

IN GENERAL

1. **Effective April 30, 2005, Lawrence Friedman resigned his position as Director of the Executive Office for United States Trustees. It is now more than one year later and this position has yet to be filled. Why has no one yet been named to be the permanent Director of the Program?**

The Attorney General appoints the Director of the Executive Office for U.S. Trustees. I became Acting Director of the Executive Office upon the departure of Lawrence Friedman on May 1, 2005, and exercise the full authority of the position. The Department cannot comment on specific personnel decisions .

2. **Historically, the Program was headed by a Director and a Deputy Director. It now appears that, in addition to these two positions, the Program is also headed by a "Principal Deputy Director."**

When was this position created?

The organization chart creating a Principal Deputy Director for the United States Trustee Program was approved by the Attorney General on May 14, 2002.

What is the difference between a "Principal Deputy Director" and a "Deputy Director"?

As noted in the reorganization proposal submitted to the Department on March 13, 2002, the Principal Deputy Director has responsibility for overseeing the activities of the 95 United States Trustee field offices, as well as the Program's administrative functions. The Deputy Director position has responsibility for overseeing the offices of the General Counsel, Review and Oversight, and Research and Planning in the Executive Office, as well as coordinating and

implementing the Program's high profile initiatives, facilitating the agency's ability to keep pace with the historically high caseload, and preparing for implementation of bankruptcy reform.

Why is the additional Deputy position necessary?

The second Deputy Director position was created in 2002 to permit the Principal Deputy Director to focus greater attention on the operations of the Program's 95 field offices. The reorganization occurred as the Program was shifting its focus to combating fraud and abuse in the bankruptcy system through its national civil enforcement initiative and developing local civil enforcement strategies. The reorganization permits the Principal Deputy Director to work more closely with the 21 United States Trustees by providing assistance in the development of regional management and enforcement plans; ensuring that the Program's major initiatives and policy direction are implemented locally; and assessing and evaluating field activities by the standards established under the Government Performance and Results Act.

What are the salaries respectively paid to the Director, Principal Deputy Director, and Deputy Director?

The Director, Principal Deputy Director, and Deputy Director positions at the Executive Office are classified as positions within the Senior Executive Service (SES). Effective January 2006, the rates of basic pay for members of the SES in agencies with a certified SES Performance Appraisal System range from a minimum of $109,808 to a maximum of $165,200.

3. **How many detailees within the Program were utilized in 2005? For what expenditures are detailees reimbursed when on detail? Please provide a breakdown of these expenditures.**

The Program utilizes detailees in a variety of ways to staff its offices and to perform critical functions. The length of time for a detail can vary from several days to several weeks or months.

- Detailees were utilized extensively in the implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) to develop policies and procedures, train field office staff, and review applications of credit counseling and debtor education providers. With just six months between the passage of the BAPCPA and the effective date of the majority of its provisions, time was of the essence and, absent immediate funding to staff the Program's new functions, detailees solved workload issues and enabled a seamless integration between the Program's regions and its headquarters in the area of policy development. Since the effective date of BAPCPA, detailees continue to be utilized to staff the Credit Counseling/Debtor Education Unit until permanent staff can be hired. Without the commitment of the staff detailed to that unit, the Program would not be able to carry out its new responsibilities.

- Because of the relatively small size of most Program offices and regions, details are often used to provide temporary expertise and assistance to individual regions and offices. For example, when Region 13 (Kansas City) had a large, difficult chapter 11 case filed in 2005, an Assistant U.S. Trustee with extensive experience in handling such cases was dispatched from Brooklyn to assist with important aspects of the case. When field offices have critical vacancies (*e.g.*, due to a resignation, a retirement, or an illness), the Executive Office coordinates detailees from other field offices to handle the staffing exigency.

- At the Executive Office, the Program has used details to fill vacant leadership and senior staff positions. Bringing talented field personnel to the Executive Office on a rotational basis and utilizing those talents to lead key offices, including the Office of General Counsel, the Office of Review and Oversight, and other senior management positions, brings a practical legal perspective to the Program's headquarters operations and provides leadership development opportunities for talented field personnel.

During FY 2005, the Executive Office coordinated 112 temporary duty travel (TDY) details for the purposes identified above, as well as three Extended TDY assignments in Washington, D.C. Detailees are reimbursed for their expenses in accordance with General Services Administration and Department of Justice travel regulations and policies. This includes reimbursement for transportation, lodging, and meals and incidental expenses (M&IE) at the applicable government rates. For those employees on Extended TDY assignments, the Program contracts for lodging and reimburses M&IE expenses at a reduced rate. Costs are limited to no more than 75 percent of the TDY government rate.

4. **What is the cost of publication of the Program's Annual Report of Significant Accomplishments? Do other Justice Department components publish similar reports? If so, please identify these components.**

The cost of publishing 6,000 copies of the FY 2004 Annual Report was $32,304.37. The Program's report was published through the Government Printing Office, which charged its standard rates for in-house design services and obtained publishing services through competitive bidding. The Program does not have information regarding the publications of other components of the Department of Justice.

5. **The FY 2006 budget request exceeded the prior year's request by $11.8 million. A substantial portion of that increase was for an item denominated "GSA Rent" in the amount of $6.411 million. The FY 2007 budget request with respect to GSA Rent reflects an increase of only $1.267 million. Please explain the difference between these two requests.**

The U.S. Trustee Program operates in 21 regions with 95 offices nationwide and an Executive Office in Washington, D.C. The GSA rent estimate includes the cost of the Program's office space, as well as costs associated with the rental of approximately 160 administrative

hearing rooms where section 341 statutorily-mandated meetings of debtors and creditors are held. In recent years, the Program has had to expand both the size and the number of administrative hearing rooms paid for through GSA rent, as bankruptcy filings have grown and the ability to find free space for section 341 meetings has declined.

The rent estimates included in the FY 2006 and FY 2007 budget requests were developed using the Department of Justice's FIRM system. In calculating the annual rent estimates, inflationary factors are applied to the various components of the rent, *e.g.*, office rent, leased parking, contract parking, basic security, building-specific security, and the National Capitol Region surcharge rate, which includes projected tax escalation costs that are borne by tenants. The annual rent estimates also factor in the number of anticipated lease expirations for both offices and administrative hearing rooms; projected required moves to federal buildings or courthouses; projected office expansions and the acquisition of new administrative hearing rooms, including the dates that such moves and expansions will occur; and the annualization costs for moves/expansions that occurred in the previous fiscal year. For FY 2006 and FY 2007, the Program estimated that lease expirations would generally increase the annual rent of a particular office property by approximately 30 percent and of a meeting room by approximately 15 percent. Because the rent estimates are dependent on all of the factors listed above, they vary from year to year.

The Program believes that the rent estimates included in its FY 2006 and FY 2007 budget requests may be overstated. This occurs because occupancy dates slip from the projections that are included in the initial budget presentation that is developed nearly two years in advance, the costs of new leases come in below the estimates, and general escalation factors are not applied consistently nationwide. The Program is working to refine its rent estimates. Based on updated data, the Program believes that more realistic rent estimates for FY 2006 and FY 2007 are $24,897,024 and $28,031,443, respectively. The Department has recently deployed a new rent system that will assist components in better estimating annual rent costs, and the Program's Facilities Management Staff and Budget Staff are working together to monitor actual rent increases to develop a more accurate method of projecting the costs of new rental properties.

6. What is the current annual rent for the Program's headquarters in Washington, DC? What is the rental rate based on the square footage of these premises? What was the annual rent for the Program's previous headquarters in Washington, DC, for the last year that it occupied those premises? What was the rental rate based on the square footage of the previous premises?

The FY 2006 annual rent for office space (45,300 rentable square feet) at the Program's headquarters building at 20 Massachusetts Avenue, N.W., in Washington, D.C., is projected to be $1,976,784, a rate of $37.41 per square foot. This annual projection is based on six months of actual billings from the General Services Administration. In addition to the square footage charges, the projection includes the National Capitol Region rate for tax escalation and operating expenses. It does not include parking charges. Since the enactment of the BAPCPA, the Program has also acquired office space at 1301 New York Avenue, N.W., to house its

information technology contractors and at 800 North Capitol Street, NW, for its facilities and administrative services staffs.

The annual rent for office space (30,354 rentable square feet) at the Program's previous headquarters at 901 E Street, NW, was $1,654,016 during FY 2002 (the last full year the space was occupied), including the National Capitol Region rate for tax escalation and operating expenses. The rent did not include parking charges. The Program paid $38.09 per square foot for the first two months of FY 2002 and $52.77 per square foot for the remaining 10 months of the fiscal year. The reason for the variation in the square footage rate was that the Program's lease expired in November 2001, and the Program was subject to new higher rates for the majority of the fiscal year.

The Program's relocation to 20 Massachusetts Avenue, NW, was part of a Department of Justice proposed consolidation of agencies that resulted in lower rent per square foot and a more secure environment for DOJ employees. The relocation proposal was submitted to and approved by the Appropriations Committees of the Congress in accordance with section 605 of the annual Appropriations Act.

FERRETING OUT FRAUD AND ABUSE

1. **Will the Program's refocused emphasis on dismissing chapter 7 cases for substantial abuse take resources away from other Program priorities, such as detecting criminal fraud and abuse?**

The detection and referral of criminal fraud and abuse remains a key component of the Program's efforts to promote the integrity of the bankruptcy system. In fact, in recent years, the Program's work in this regard has been steadily enhanced by the Criminal Enforcement Unit (CREU), which was established in 2003 to coordinate the criminal referral responsibilities carried out by our 95 field offices and to directly assist prosecutors in pursuing bankruptcy crimes. CREU comprises four veteran federal prosecutors and a long-standing Program attorney.

The unit has made a marked difference in the quality of our criminal program by providing extensive training, developing resource materials, and enhancing coordination between agencies. Over the past year, CREU has been involved in more than 50 training programs that have reached approximately 1,500 people, including Program personnel, private trustees, prosecutors, and federal law enforcement agents. In addition, there are approximately 25 Program lawyers presently serving as Special Assistant United States Attorneys, who are available to assist in the investigation and prosecution of bankruptcy fraud crimes. All of these criminal enforcement enhancements have occurred simultaneously with the Program's increased civil enforcement efforts.

2. **How many section 727 objections to discharge were filed last year? What were the outcomes of each objection?**

In FY 2005, the Program filed 1,301 complaints objecting to discharge. As of March 31, 2006, 1,014 had been decided by judicial resolution and the Program was successful in obtaining a denial of discharge in 99.4 percent of those cases. Of the remaining 287 complaints filed, 184 are pending and 103 were withdrawn. A withdrawal is appropriate when information received after the complaint is filed persuades the United States Trustee that the denial of the debtor's discharge should not be pursued.

3. **According to your written testimony, the Program made 744 criminal referrals during FY 2005. What was the outcome of those referrals? How many of those referrals were prosecuted? What were the outcomes of those prosecutions? For FY 2004, the Program "reported approximately 528 criminal referrals." What were the outcomes of those referrals? Why did the number of referrals made between FY 2004 and FY 2005 increase by more than 40 percent?**

The chart below is based upon Program records and provides the outcome data for the 744 bankruptcy-related criminal referrals made by the Program in FY 2005. As of May 2006, the data reflects that 53 referrals from FY 2005 have resulted in formal criminal charges being brought, 25 of which have not yet been resolved by plea, trial, or other disposition.

OUTCOME/DISPOSITION OF FY 2005 REFERRALS	NUMBER OF CASES
Prosecution Declined by U.S. Attorney's Office	251
Administratively Closed	3
With Investigative Agency	49
Under Review in U.S. Attorney's Office	388
Formal Charges Filed (Case Still Active)	25
Formal Charges Filed (Case Closed)	28 *
– *At least one guilty plea or conviction*	25
– *At least one pre-trial diversion*	2
– *At least one acquittal*	0
– *At least one dismissal*	2
* One case had more than one defendant and thus more than one outcome.	

Prior to FY 2005, the Program did not have a comprehensive database for collecting the full range of data related to its criminal referrals. Effective in FY 2005, however, all 95 USTP offices began reporting criminal referral information using a new Criminal Enforcement Tracking System (CETS). CETS provides comprehensive data and allows for the analysis of criminal referral activity, including disposition information, in a more reliable and accessible electronic format. With the implementation of CETS, criminal referrals reported for FY 2005 will serve as the benchmark for all subsequent reporting years.

As suggested above, the Program does not have complete and reliable information on criminal referrals and, in particular, their outcomes prior to FY 2005. Current FY 2004 data indicates that 660 referrals, not 528 as reported in the Program's budget document, were made. The difference in the number of referrals is attributable to a combination of data "scrubbed" as part of the Program's implementation of the CETS system and a review of other databases. Using the updated number, there was a 12 percent increase in referrals between FY 2004 and FY 2005, which indicates that the work the Criminal Enforcement Unit has been doing to improve the quality of our criminal program is providing dividends. Though not complete, available records indicate that convictions or guilty pleas have been obtained in at least 45 of the FY 2004 referrals, and there are at least 20 cases still pending with charges filed.

4. **Section 1519 of title 18 of the United States Code was enacted pursuant to the Sarbanes Oxley Act of 2002. This provision, as you know, prohibits the destruction or falsification of records in bankruptcy cases and federal investigations. Has the Program made any criminal referrals in connection with section 1519?**

Since the enactment of 18 U.S.C. § 1519 in July 2002, the Program has made approximately 34 criminal referrals containing allegations relating to section 1519.

CREDIT COUNSELING

1. **In light of concerns about the caliber of certain entities that provide credit counseling services, how has the Program ensured that only fully qualified providers will be approved by the Program?**

Given the troubled history of the credit counseling industry, the Program has taken very seriously its responsibility to ensure that only qualified agencies are approved to provide pre-bankruptcy credit counseling services. This new responsibility presented a unique challenge since credit counseling was an area in which the Program had no experience or expertise .

In consultation with other government agencies and interested parties, the Program developed an application designed to gather information necessary to ensure that applicants met statutory standards and to assist in the identification of potential problems areas. Applications and re-applications are carefully reviewed to exclude unscrupulous providers. For example, applications are reviewed to ensure that:

- Each organization displays elements of quality service, operates as a nonprofit, and has an independent board of directors.

- Counselors have appropriate credentials (*e.g.*, training, experience, certifications).

- Sessions are of adequate length; there is an opportunity for the consumer to interact with a counselor; and the counseling session script covers specific topics (*i.e.*, analysis of financial condition, repayment without re-amortization of debt, budgeting, and a discussion of alternatives to bankruptcy).

Further, information on corporate status, bonds, and service agreements is independently verified. As a result of our scrutiny, about 200 applications have been either denied for failure to meet minimum requirements or have been withdrawn after further inquiry. Denials have been based on reasons such as:

- Failure to produce documents in connection with an IRS audit.

- Lack of an independent board, *e.g.*, relatives and employees are a majority of the board.

- Inappropriate tie-ins between the agency and a profit-making enterprise (personal enrichment), *e.g.*, requiring debtors to obtain a credit report through a service owned by the principal of the agency; use of vendors controlled by principals; and referrals to a debt management plan controlled by a principal.

Monitoring of agencies continues after approval. Complaints received against an approved agency are investigated to ensure that consumers are treated properly and that agencies comply with statutory requirements. Further, the Program is in the final stages of development of a protocol for Quality of Service Reviews, in which approved agencies will undergo a review of their financial practices and the quality of their counseling sessions. That protocol has been developed in coordination with the Internal Revenue Service and the Federal Trade Commission, and they are also assisting in further refining the application process.

We are building knowledge to continue to improve our capabilities to perform these new responsibilities. We are pleased with our progress thus far, and have been commended by consumer groups for the care we have taken in not approving unscrupulous providers.

2. **Has the Program issued any guidelines to credit counseling agencies regarding whether their fees should be reduced or waived for an indigent debtor?**

The BAPCPA requires agencies to offer services regardless of an ability to pay. However, unlike the legislation's *in forma pauperis* provision on filing fees in bankruptcy cases, there are no specific criteria set forth for fee waivers by credit counseling agencies. The Program has advised agencies both by email and in a Frequently Asked Question posted on our

Internet site that they must disclose at the beginning of a counseling session that there is an opportunity for a waiver of fees for qualified individuals.

Fee schedules are reviewed as part of the Program's application approval process and may be an area of inquiry if they appear unreasonable. When complaints are received regarding an agency's refusal to waive a fee in an appropriate case, the Program investigates the matter. Agencies generally have cooperated in resolving these complaint investigations.

The Program is now collecting information from approved providers upon re-application with regard to how many sessions were provided free of charge or at a reduced fee. In addition, as part of the post-approval audit process, the practices of agencies with respect to fee waivers will be reviewed. Finally, this issue will be considered as we undertake APA rulemaking with notice and public comment later this year.

3. **Does the fee-waiver provision present the possibility that credit counseling agencies will be forced to render services below cost?**

Agencies assert that the fee waiver provisions are forcing them to render services below cost. The Program does not maintain data on an agency's actual cost of providing services.

4. **Is Internet counseling sufficiently adequate to educate consumers?**

The law clearly provides that an approved method of delivery for credit counseling may include a briefing conducted on the Internet. The Program has established special requirements an agency must meet to be approved to offer Internet counseling. These requirements include verification procedures to ensure that the proper individual is receiving counseling and a commitment from the agency that there will be some degree of direct interaction with the client, such as a follow up phone call, contemporaneous email, or instant messaging, to ensure the counseling was understood. The Program is also investigating the feasibility of conducting a study on the effectiveness of Internet counseling.

5. **Has the Program assessed the respective benefits and detriments of Internet, telephone, and in-person counseling?**

The Program has not assessed the relative merits of each of these methods of delivery of credit counseling services, although data is being collected as part of the re-application process on the number of sessions conducted in person, over the telephone, or on the Internet. The Program is proceeding with the Congressionally mandated study of debtor education, which will explore each method of delivery.

6. **Apparently, attorneys for debtors in certain instances pay the counseling fee on behalf of their clients directly to the credit counseling agencies. Does the Program view this as being problematic? What issues or concerns, if any, does this practice present? What guidance, if any, has the Program provided regarding this practice to credit counseling agencies?**

Unlike in 11 U.S.C. § 110 with regard to petition preparers and the collection of filing fees, the statute does not expressly prohibit such an arrangement between attorneys and credit counseling agencies. The Program has posted on its Internet site a Frequently Asked Question (FAQ) with respect to the issue of payment by third parties for counseling sessions. This FAQ states that the Program does not object to payments for credit counseling services being made by a person other than the consumer, so long as such payments are reasonable and comply with applicable laws, regulations, and ethical requirements. This position assumes that payments are fully disclosed, do not jeopardize the non-profit status of the credit counseling agency, and do not adversely affect the quality of the counseling services rendered.

The Program is, of course, concerned about any activity that may improperly influence a credit counseling session or an agency. Though we have received anecdotal information about debtors' counsel referring debtors to providers who issue certificates without providing adequate counseling on non-bankruptcy alternatives, no specific complaints that can be investigated have been received. We are attuned to the situation, however, and are taking steps to address this area of concern. First, the revised application for credit counseling agencies elicits information regarding whether a provider receives substantial referrals from a single source. We will also scrutinize such relationships in the post-approval audit process, and will thoroughly investigate specific allegations of inappropriate relationships between agencies and referring parties. Additionally, although there may be some question as to our authority to make a *per se* prohibition against referrals, we will consider this issue as we undertake APA rulemaking with notice and public comment later this year in an effort to glean information about conduct that should be prohibited to minimize the chance of abuse. For example, some have suggested prohibiting debtors from using their lawyer's computer terminal for Internet counseling.

DEBTOR EDUCATION

1. **Section 105 of the Bankruptcy Reform Act requires the Program to test the effectiveness of financial management training curriculum for an 18-month period beginning not later than 270 days after the Act's date of enactment. What is the status of this evaluation? What are the six districts that have been selected for the evaluation? Has the Program developed the required curriculum? As required by the Act, has the Program consulted with a wide range of experts in the field of debtor education?**

The Program contracted with Educational Development Center and convened a group of experts in 2005, including representatives from other government agencies, the credit counseling industry, educational advocacy groups, universities, the bankruptcy bench, and private trustee organizations, to assist in the development of a model debtor education curriculum. That curriculum, which includes a student workbook, a facilitator's guide, and two educational videos, was pilot tested from January to March 2006, and it is now being used and evaluated in six judicial districts. Those districts are the Eastern District of Virginia, Western District of Virginia, Northern District of Illinois, Northern District of Texas, Eastern District of Washington, and the District of New Jersey.

Abt Associates has been selected to conduct the independent evaluation of the model curriculum against two comparison curricula – one presented by the Trustees' Education Network (a non-profit organization of chapter 13 trustees) and one offered by a national non-profit personal financial management course provider. A standard student evaluation form has been developed and is being administered by Abt to debtors attending the three test programs offered in the six judicial districts. We anticipate that a large enough sample from each of these groups will be collected by the end of calendar year 2006 to be able to draw some conclusions as to effectiveness.

2. **What is your response to the following statement from the National Association of Chapter 13 Trustees?**

> **The National Association of Chapter 13 Trustees [sic] spent a long and arduous effort to develop a curriculum covering education for chapter 13 debtors. Establishing a non-profit organization, created by trustees to provide this education program was a mission of the trustees and led to the establishment of the Trustee's Education Network (TEN). With a permanent director, the EOUST was integral in incorporating trustee involvement in the development of the curriculum for this program and encouraging its use by trustees. No effort has been made by the EOUST to further this process.**

The Trustees' Education Network (TEN) is a non-profit corporation which develops and delivers financial education courses to chapter 13 debtors. TEN was formed by chapter 13 trustees in 1998, and a majority of its board consists of trustees appointed by the National Association of Chapter 13 Trustees (NACTT).

The Program has supported debtor education in chapter 13 for many years, and that support continues under the current Acting Director. With the passage of the new debtor education requirement, the Program has strongly encouraged chapter 13 trustees to apply for approval as providers of instructional courses in financial management. To date, all 76 chapter 13 trustees who have applied have been approved, and the majority of those trustees contract with TEN to provide the course. Additionally, the Program consulted with TEN on the development of our statutorily mandated debtor education curriculum, and it is one of the three courses included in the Program's evaluation of the effectiveness of consumer education programs.

The Program has an active liaison process with the NACTT and has closely collaborated on matters of mutual interest, including debtor education, for many years. The NACTT has not raised a concern with us about the Program's support of TEN.

CHAPTER 11 BUSINESS CASES

1. **With respect to chapter 11 cases, how many site visits were conducted last year? What were the outcomes of these visits?**

The Program does not collect data on the number of site visits in chapter 11 cases. While visits of debtors' businesses have been conducted by United States Trustees in the past, until the BAPCPA became effective on October 17, 2005, debtors had no obligation to permit such visits. Now, small business debtors must allow United States Trustees to inspect their business premises, books, and records. Furthermore, United States Trustees are expressly authorized to make such site visits in small business cases when they determine it is appropriate and advisable.

While bankruptcy case filings have generally been down since the effective date of the BAPCPA, we anticipate that as small business filings occur our offices will take appropriate advantage of their right to make site visits to aid in their oversight of such debtors. The United States Trustees conduct initial debtor interviews in all small business cases. At the interview, which is usually held at the office of the United States Trustee, debtors are required to produce tax returns and other books and records as requested by the United States Trustee. Failure by a debtor to cooperate during the initial debtor interview or to produce requested books and records, or any other conduct or information that raises the suspicion of the United States Trustee, may trigger a site visit.

2. **In 2002, the President issued an executive order creating the President's Corporate Fraud Task Force. What role, if any, does the Program play in connection with this Task Force?**

The Program works through the Office of the Deputy Attorney General on matters involving the Corporate Fraud Task Force. Among other things, the Program ensures that the Task Force is informed as appropriate on bankruptcy developments in cases involving criminal, securities, or other investigations under the purview of the Task Force.

3. **How does the Program interface with United States Attorneys in pursuing corporate fraud and criminal matters?**

The Program has extensive interaction with the various United States Attorneys' offices in combating bankruptcy fraud and abuse, including corporate fraud and other non-bankruptcy violations. In addition to the 744 criminal referrals made in FY 2005, the Program also assisted prosecutors and agents with over 300 bankruptcy-related investigations and prosecutions that were unconnected to our referrals.

The majority of Program field offices participate in bankruptcy fraud working groups that are headed by United States Attorneys' offices and typically have members from the Federal Bureau of Investigation, the U.S. Postal Inspection Service, the Internal Revenue Service's Criminal Investigation, the Department of Housing and Urban Development's Office of Inspector General, and other federal law enforcement agencies. Program personnel also work

with Assistant U.S. Attorneys as members of the National Bankruptcy Fraud Working Group sponsored by the Department of Justice, and are regularly involved in national and local training programs on fraud. Moreover, the Program has approximately 25 attorneys serving as Special Assistant U.S. Attorneys to assist in the investigation and prosecution of bankruptcy crimes.

To further solidify relationships with prosecutors and law enforcement, 18 U.S.C. § 158, which was enacted as part of the BAPCPA, requires every United States Attorney office to designate a prosecutor and every FBI field office an agent who will assume primary responsibility for bankruptcy fraud cases. This provision has been fully effectuated and should serve to strengthen existing working groups by formalizing points of contact and provide a foundation for establishing working groups where currently none exist.

QUESTIONS SUBMITTED BY THE HONORABLE JERROLD NADLER

CREDIT COUNSELING AND FINANCIAL MANAGEMENT TRAINING

Under the provisions of BAPCPA, all individual debtors must participate in crediting counseling before filing a petition, and in a personal financial management class before being eligible for a discharge. We have received reports from more than on district that debtors who are Limited English Language Proficient (LEP) have been unable to obtain language appropriate counseling. More troubling, we understand that the Program has maintained the position that a LEP debtor is required to complete credit counseling under 11 U.S.C. 109(h), even if language appropriate counseling is not available in the district. In at least one instance, we understand that the Program is contesting a bankruptcy court's waiver of the counseling requirement given because the court found that credit counseling was not available to a debtor who could not speak English. We understand that the Program has pursued this action against a Creole speaking debtor even though the Program refused a request to provide an interpreter for the debtor. *In re: Jean Raoul Petit-Louis* (S.D. FL.)(2006).

As you are no doubt aware, Congress specifically provided in BAPCPA that the required pre-petition counseling "shall not apply with respect to a debtor who resides in a district for which the United States trustee . . . determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies . . . ." 11 U.S.C. 109(h)(2)(A).

1. **What is the Program's policy with respect to the credit counseling and debtor education requirements as applied to LEP debtors?**

In general, all individuals who file for bankruptcy relief are required to obtain credit counseling from a United States Trustee-approved credit counseling agency prior to filing a petition, and all individual debtors filing under chapters 7 and 13 must participate in a debtor education course with an approved provider in order to receive a discharge of their debts in bankruptcy. There are narrowly-defined statutory exceptions to these requirements. Under 11

U.S.C. §§ 109(h)(2), 727(a)(11), and 1328(g)(2), the United States Trustee may determine that approved agencies are not reasonably able to provide adequate services to a district and may waive the credit counseling and debtor education requirements for all individuals who reside in that district. In addition, debtors who show that they are incapacitated, disabled, or on active military duty in a military combat zone may qualify under 11 U.S.C. § 109(h)(4) for a complete waiver of the credit counseling and debtor education requirements. Finally, debtors may qualify for a deferral of the credit counseling requirement of up to 45 days after the filing of the bankruptcy petition if they demonstrate that exigent circumstances prevented them from obtaining the counseling prior to filing and that an approved agency could not provide counseling within five days of the debtor's first request for counseling. 11 U.S.C. § 109(h)(3)(A).

In consideration of the importance of the credit counseling and debtor education requirements and the limited statutory exceptions to them, the Program has taken steps to expand the availability of counseling to prospective debtors, including individuals who have limited English proficiency (LEP). The Program has surveyed approved credit counseling agencies and debtor education providers to identify the types of language services that are available to LEP individuals, and this information is posted on the Program's Internet site. A number of the approved agencies and providers have taken steps to make their services available in languages other than English. The Program also encourages individuals to obtain interpreter assistance from relatives, friends, and community volunteers. The Program will continue to explore ways to expand the availability of non-English-speaking credit counseling agencies and debtor education providers.

2. **Is it the position of the Program that approved nonprofit budget and credit counseling agencies that are unable to provide language appropriate counseling are "reasonably able to provide adequate services to individuals who would otherwise seek credit counseling from such agencies . . ."?**

11 U.S.C. § 109(h)(2)(A) states that the credit counseling requirement of (h)(1) does not apply "with respect to a debtor who resides in a district for which the United States Trustee . . . determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services . . ." (emphases added). The Program has interpreted this section to mean that the United States Trustee may not waive credit counseling for particular individuals; a waiver may only be granted for an entire district if the credit counseling agencies are unable to provide adequate services to the district as a whole.

When making a determination under section 109(h)(2), the United States Trustee must look to the provisions in section 111 that set forth certain minimum qualifications that an agency must satisfy. These minimum qualifications do not include the capacity to offer services in any particular language.

3. **What steps has the program taken to ensure that these required services are available to LEP debtors?**

In order to facilitate matching consumers with approved providers that offer language services, the Program recently compiled data on additional languages offered by every credit counseling agency and posted the information on its Internet site. The Program also permits individuals with limited English proficiency to have relatives, friends, and community volunteers act as interpreters.

4. **How many budget and credit counseling agencies, currently approved by the Program, are able to provide the services required under 109(h)(1) in languages other than English? Please specify.**

Currently, 54 credit counseling agencies offer service in at least one of 30 different languages (other than English) in various judicial districts throughout the country. This includes two national providers who offer Spanish at 143 "in person" locations, as well as on the telephone. In addition, at least two other national providers will arrange for translation services in over 150 languages using a tele-interpreter service at no cost to the consumer.

5. **What steps has the Program taken to assist LEP debtors in locating and obtaining language appropriate budget and credit counseling?**

To facilitate matching consumers with approved agencies that provide language services, the Program recently compiled data on additional languages offered by every credit counseling agency, and this information is posted on our Internet site. The Program also assists individuals on a case-by-case basis in obtaining counseling services in their primary language. For example, upon learning of an Ohio debtor's request for a deferral of the pre-petition counseling requirement because he was unable to obtain counseling in Bosnian, the Program worked to match the debtor with an approved credit counseling agency in his district that could provide services in his native language. Furthermore, the Program encourages LEP individuals to have relatives, friends, and community volunteers act as interpreters.

6. **What steps has the Program taken to ensure compliance with Executive Order 13166?**

Executive Order 13166 provides that federally funded and federally assisted programs and activities shall take steps to improve access for persons who are limited in their English proficiency. Regardless of the application of the Executive Order to credit counseling agencies, the Program endeavors to ensure meaningful access to their services by LEP individuals.

To date, the Program has approved 151 credit counseling agencies and 263 debtor education providers that together provide services in approximately 30 different languages. This is in addition to two of the largest national credit counseling and debtor education providers that offer a tele-interpreter service in over 150 languages free of charge to their customers.

Customers may use the service to receive counseling over the phone via an interpreter who is able to translate counseling or education sessions in the individual's native language. The Program has surveyed all approved credit counseling agencies and debtor education providers regarding the various language services they provide, and this information is available on our Internet site to assist LEP individuals in finding services that meet their specific needs. The Program also permits individuals to use relatives, friends, and community volunteers as translators.

7. **What steps has the Program taken to ensure that debtors with disabilities are able to comply with the requirements of 109(h)(1)?**

In the applications for approval as a credit counseling agency and a debtor education provider, applicants are required to certify that they are in compliance with all State and federal laws. Further, 11 U.S.C. § 109(h)(4) allows a court to grant a permanent waiver from the credit counseling and debtor education requirements of section 109(h)(1) if the debtor can show that he or she is disabled. Program attorneys have informed debtors' counsel that this permanent waiver is available and, on occasion, have filed notices of no opposition in cases where it was evident that the debtor was disabled. For example, in a chapter 7 case in the District of Minnesota, husband and wife debtors filed a motion seeking waiver of the credit counseling requirement for the husband pursuant to 11 U.S.C. § 109(h)(4), claiming that, due to a stroke and symptoms caused by Parkinson's disease, he was incapable of obtaining the required credit counseling and debtor education. After reviewing the motions and supporting affidavits, the United States Trustee submitted a statement of no opposition. The court granted the debtors' request for a waiver without conducting a hearing.

8. **If no budget and credit counseling agencies are able to provide services in a manner that is accessible to debtors with disabilities, does the Program believe that such debtors are entitled to a waiver under 109(h)(2)(A)?**

As discussed in an earlier response above, 11 U.S.C. § 109(h)(2)(A) grants the United States Trustee authority to waive the credit counseling requirement only for an entire district; it does not grant authority to waive credit counseling for particular individuals. Debtors who are unable to obtain credit counseling because of a disability may seek a permanent waiver under section 109(h)(4).

MEANS TEST

There appears to be a discrepancy between the Allowable Living Expenses on the U.S. Trustee Program web-site and those available on the Internal Revenue service web-site. The U.S. Trustee web-site states, "The IRS expense figures posted on this Web site are for use in completing bankruptcy forms. They are not for us in computing taxes or for any other tax administration purposes. Expense information for tax purposes can be found on the IRS Web site." The allowed expenses listed on the U.S. Trustee web-site are generally much lower than those listed on the IRS site. For example, the housing allowances for Menominee County, WI, are:

	U.S.T. (non-mortgage/ mortgage)	I.R.S.
Family of two or fewer:	**$362/$399**	**$725**
Family of three:	**$384/$496**	**$1,030**
Family of four or more:	**$422/$539**	**$981**

Section 707(b)(2)(A)(ii)(I) states that "(t)he debtor's monthly expenses *shall be* the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for an area in which the debtor resides . . .." (Emphasis added).

1. Please explain this discrepancy.

The Program has found no discrepancy between the Allowable Living Expenses available on the Program's Internet site and the Allowable Living Expenses available on the Internal Revenue Service's Internet site. It appears that several of the numbers indicated in the question above have been transposed. Additionally, based upon the treatment of housing expenses under the means test, the allowed expenses for housing on the Program's Internet site are presented in a two-component format – one allowance for mortgage/rent expense and one allowance for non-mortgage expense. The sum of the two components for housing expense allowances on our Internet site is identical to the aggregate amount that appears on the IRS's site for the corresponding state and territory.

For your reference, attached as Exhibit 1 are the figures printed from the Program's Internet site for the housing allowances for Menominee County, Wisconsin, as well as the figures from the IRS's site for that county. When the Program's numbers are added together, they equal the amount posted on the IRS's Internet site.

2. **Please provide the Program's current guidance for dismissal under 11 U.S.C. 707(b)(2) and (3).**

The United States Trustee reviews the form prepared by a debtor to calculate the means test (Official Form B22A), along with the petition, schedules, statement, and other documentation, to make an independent determination regarding whether a presumption of abuse arises and whether there may be fraud or other abuse.

For cases where income is above the State median income, the United States Trustee will conduct a review of the Official Form B22A filed by the debtor, the schedules and Statement of Financial Affairs, and any other available material to determine whether there should be a presumption of abuse under § 707(b)(2) and whether there also exists separate grounds for dismissal under § 707(b)(3) for "bad faith" or under a "totality of the circumstances" analysis.

In every case where the United States Trustee determines that the presumption should arise, the United States Trustee files either a motion to dismiss or a statement indicating why filing a motion is not appropriate. The clearest examples of when a motion is not appropriate are a serious medical condition or active duty in the Armed Forces. Other examples are for victims of natural disasters, a situation that supports an expense adjustment as a "special circumstance," or for a debtor who has experienced a post-petition change in status that supports an income adjustment, such as seasonal employment or disability.

As in all enforcement areas, field personnel have been advised that they need to exercise sound judgment regarding section 707(b) issues and analyze such issues in the context of the relevant case facts and circumstances.

3. **Please provide a break-down of all motions the Program has brought under the new 707(b) by type, number, district, and disposition.**

Between October 17, 2005, and March 31, 2006, the Program filed 84 motions under the new 11 U.S.C. § 707(b). A summary listing of the motions, broken down by type and district with disposition information as of March 31, 2006, is attached as Exhibit 2.

TRAVEL

1. **Please provide travel records for the Director of the Executive Office for each of the last four years. Please document all expenses paid for by the government. Include payments, if any, for expenses incurred by, or for the benefit of, any person traveling with the Director who was not, at the time, an employee of the United States Government.**

Attached as Exhibit 3 are travel records for fiscal years 2003, 2004, 2005, and 2006 (through April), for the former Director and the current Acting Director of the Program which identify all expenses paid by the government. There were no payments for expenses incurred by,

or for the benefit of, any non-employee who may have traveled with the Director or Acting Director. The records have been compiled in reverse chronological order by fiscal year, and have been redacted to exclude Social Security numbers, home addresses, and credit card numbers.

Travel expenses of the former Director and the current Acting Director were reimbursed in accordance with General Services Administration and Department of Justice regulations and policies for temporary duty travel. Reimbursable travel expenses generally include: airfare; lodging and lodging tax where a facility does not accept a tax-exempt form; meals and incidental expenses; taxicabs and public transportation; parking; rental cars; gasoline; tolls; mileage for the use of a personal vehicle; telephone calls; and other business expenses such as faxes and copies.

Federal employees use contract airfares negotiated by the General Services Administration or, on occasion, non-contract carriers if there is a savings to the government, no contract fare exists, or the contract carrier is not available at times necessary to accomplish the purpose of the travel. Lodging is generally reimbursed at the GSA allowable per diem rate, although Department travel policy permits employees to seek reimbursement for actual subsistence expenses above the per diem when they are unable to obtain lodging within the allowance and certain criteria are satisfied.

EMERGENCIES AND NATURAL DISASTERS

Following Hurricane Katrina, your office notified the Chairman of the Judiciary Committee that it would not seek to enforce some of the more cumbersome sections of the BAPCPA against debtors affected by Hurricane Katrina.

1. **What is the current status of the policy?**

The Program's current policy remains in effect and has been applied to assist debtors affected by Hurricane Katrina. For instance, the United States Trustee will not file enforcement motions against debtors who cannot produce required documents due to this natural disaster, if they are otherwise eligible for bankruptcy relief; the United States Trustee will exercise flexibility and provide alternative means for a debtor to attend the mandatory meeting of creditors if the debtor cannot appear personally to testify under oath in the district where the case is filed; and the United States Trustee will not raise or support venue objections in cases in which the debtor was displaced, unless the filing constitutes a systemic abuse or presents extraordinary circumstances. Further, the United States Trustee will consider the loss of income, increases in expenses, and other adverse effects of Katrina to constitute "special circumstances" when determining whether to file an enforcement motion on grounds of presumed abuse when a debtor's initial completion of the means test indicates abuse.

For small businesses, the United States Trustee will refrain from filing enforcement motions when the failure to perform mandated duties is a result of the effects of Hurricane Katrina. Further, with regard to credit counseling and debtor education, the United States

Trustee has waived the requirements under 11 U.S.C. §§ 109(h)(2), 727(a)(11), 1141(d)(3)(C), and 1328(g)(2) for those districts which were most severely affected by Katrina, namely the Eastern, Middle, and Western Districts of Louisiana and the Southern District of Mississippi. These waivers will be reviewed by the Program this summer, pursuant to 11 U.S.C. §§ 109(h)(2)(B) and 1328(g)(3), to determine whether the requirements should continue to be waived.

2. **Please list all actions the Program has taken or declined to take as a result of this action.**

The United States Trustee for Region 5, pursuant to 11 U.S.C. §§ 109(h)(2), 727(a)(11), 1141(d)(3)(C), and 1328(g)(2), waived the credit counseling and debtor education requirements for the Eastern, Middle, and Western Districts of Louisiana and the Southern District of Mississippi. Program attorneys have not objected to a debtor's lack of documents and have not sought denials of discharge where a debtor's failure was due to a natural disaster. In addition, declination statements were filed pursuant to section 704(b)(2) in four cases where the United States Trustee determined that a motion to dismiss was not appropriate due to the effects of Hurricane Katrina upon the debtors' financial condition.

3. **Please provide the Committee with all written and oral communications from the Executive Office implementing this policy.**

Attached as Exhibit 4 are copies of policy statements issued by the Executive Office with regard to Hurricane Katrina and natural disasters. These documents are marked Limited Official Use and are provided for the sole and limited purpose of responding to this Congressional inquiry. These policies have been reinforced in various discussions, meetings, and internal guidance.

4. **Please provide the Committee with any information concerning any instances in which creditors have taken actions under the Code that the Program has declined to take as a result of this policy.**

The Program does not maintain information on actions taken by creditors.

5. **Please explain how the Program will implement this policy in the future with respect to debtors affected by Hurricane Katrina and by future natural disasters or emergencies.**

The Program will continue to implement this policy on an on-going basis for all natural disasters and, to the extent any information or experiences warrant, will modify the policy accordingly. With regard to its application to Hurricane Katrina, pursuant to 11 U.S.C. §§ 109(h)(2)(B) and 1328(g)(3), the policy will be reviewed this summer to determine whether the credit counseling and debtor education requirements of the BAPCPA should continue to be waived.

6. **Please provide the Committee with any lessons that may be derived from the Program's experience in dealing with the post-Katrina emergency.**

The Program discovered that its current policy of flexibility in the face of a natural disaster has been quite effective, and that flexibility has not compromised the Program's mission of promoting integrity and efficiency in the nation's bankruptcy system.

BENEFITS AND COMPENSATION

1. **What steps has the Program taken to protect the pension and benefit rights of employees in chapter 11 cases?**

Other than under 11 U.S.C. § 1114 of the Bankruptcy Code, which addresses the appointment of a committee of retired persons whenever a debtor seeks to modify or not pay the medical, accident, disability, or death benefits of retirees, the United States Trustees do not have an express statutory mandate with respect to the protection of pension and benefits rights of employees in chapter 11 cases. The United States Trustees' principal role with respect to employee benefits in chapter 11 cases is to facilitate the involvement of employees and their representatives as creditors and parties in interest. As a general matter, where there is significant creditor interest and activity in a case, the presence of competing interests serves to ensure that the significant issues in a case are raised and resolved by the parties themselves.

In support of this objective, the United States Trustee often appoints labor unions to sit on creditors' committees when it appears that labor and employment matters will be at issue in the case and will give rise to a significant claim. Similarly, when it appears that termination or transfer of a pension plan guaranteed by the Pension Benefit Guarantee Corporation (PBGC) may be an issue, the PBGC may be appointed to the creditors' committee.

Even in cases where the debtor does not have an employee pension plan or where employees do not belong to a labor union, the United States Trustee acts to protect employee benefits. Employees are usually creditors to the extent of their unpaid wages and benefits since the last payroll. Typically, in such cases, the United States Trustee supports the customary practice by which the debtor secures a court order for prompt payment of employee wages and benefits to the maximum priority amount provided under the Bankruptcy Code without waiting until a plan is confirmed. Recently, the United States Trustee made special efforts to accommodate a debtor attempting to pay its United States employees located overseas who would have otherwise been precluded payment.

In small cases especially, the United States Trustee pays close attention to whether the debtor is timely paying its employees the wages and benefits they earn post-petition. When a debtor fails to do so, the United States Trustee often moves to appoint a chapter 11 trustee or to convert the case to chapter 7.

The United States Trustee's most direct statutory mandate regarding pensions and employee benefits arises under section 1114 of the Bankruptcy Code. In the BAPCPA, Congress amended this section to require the United States Trustee to appoint, upon direction of the court, a committee of retired persons whenever a debtor seeks to modify or not pay the medical, accident, disability, or death benefits of retirees. Before the BAPCPA, the committee was appointed by the court, in some instances from a list provided by the United States Trustee.

The United States Trustee has not had occasion to appoint a section 1114 committee since enactment of the BAPCPA, but anticipates that when the need arises it will apply the same criteria as when selecting other committees. The United States Trustee seeks committee members with knowledge of the issues and process, who understand their fiduciary duties, who are able to devote the substantial time required to adequately perform their role, and whose claims, characteristics, and interests are representative of the various types of claims and interests represented by the committee.

Lastly, the United States Trustee will make referrals for criminal prosecution when it discovers evidence that management of debtors has misappropriated employee funds. For instance, the United States Trustee has made criminal referrals when pension funds and health insurance funds have been mishandled or dissipated.

2. **What steps has the Program taken to ensure that insiders and other top management do not receive inordinate or unwarranted compensation, bonuses, or other benefits either pre- or post-petition?**

Prior to the BAPCPA, the United States Trustees frequently opposed excessively generous severance packages, key employee retention plans, success bonuses, and similar arrangements for the benefit of insiders on the general ground that they were improper, non-ordinary course transfers unsupported by the debtor's business judgment.

The BAPCPA added to the Bankruptcy Code new provisions intended to curtail these types of compensation. For instance, the new 11 U.S.C. § 503(c)(1) prohibits retention payments that, among other criteria, exceed 10 times the mean retention payment given to non-insiders; new § 503(c)(2) prohibits severance payments that, among other criteria, exceed 10 times the mean severance payment to non-insiders; and new § 503(c)(3) prohibits payments not justified by the facts and circumstances of the case.

Examples of actions taken by the U.S. Trustee Program under new section 503(c) follow.

- In the face of the United States Trustee's opposition, a group of liquidating debtors (*In re FLYi, Inc., et al.*, 05-20011 (MFW), Bankr. Del.) abandoned their effort to pay a handful of insiders retention payments that exceeded the caps under section 503(c)(1).

- Notwithstanding the United States Trustee's opposition, one liquidating debtor (*In re Nobex Corporation*, 05-20050 (MFW), Bankr. Del.) prevailed after the court agreed with the debtor that bonuses payable to two insiders upon the sale of the business (which increased with the sale price) were not intended to induce the insiders to remain with the business until conclusion of a sale and, therefore, were not subject to the section 503(c)(1) cap. The court found that the payments were for performance and, therefore, akin to ordinary compensation evaluated under the equivalent of a business judgment standard.

- Notwithstanding the United States Trustee's opposition, a debtor *(In re Curative Health Services, Inc.*, 06-10552 (SMB), Bankr. S.D.N.Y.) effectively was able to make a post-petition retention payment to its CEO in excess of the section 503(c)(1) cap by obtaining, for the insider's benefit, a pre-petition letter of credit. The letter of credit was secured by assets of the debtor.

- The United States Trustee successfully urged the bankruptcy court to reject the efforts of a group of debtors to obtain approval as part of their first day motions of employee severance and retention plans that may have included insiders *(In re Silicon Graphics. Inc., et al.*, 06-10977 (ALG), Bankr. S.D.N.Y.).

3. **Do you believe that there have been instances in the last two years in which courts have approved inappropriate compensation, bonuses, or benefits of any kind for insiders or other top management in a chapter 11 case? Please specify.**

As noted above, the United States Trustee historically has opposed overly generous compensation for insiders that could not be justified under the business judgment rule. Similarly, the United States Trustee has opposed provisions of plans of reorganization that provide non-debtors with releases, exculpation, and indemnification. The Program does not maintain aggregate statistics regarding the total number of cases in which we filed objections to executive compensation and, therefore, cannot provide specifics.

4. **What changes to the Code do you believe would assist the Program in preventing such compensation or benefits packages from being approved?**

At this time, we have no specific proposals.

5. **What changes in the Code do you believe would assist the Program in protecting the pension and benefit rights of employees?**

At this time, we have no specific proposals.

BANKRUPTCY CRIMES

1. **Please provide the number, type, and disposition of all criminal referrals made by the Program in each of the last five years. Please provide this information by district.**

The chart below provides the number of criminal referrals made by the Program over the past five fiscal years. In addition to the 744 formal referrals made in FY 2005, the Program also assisted law enforcement and prosecutors in investigating and prosecuting an additional 300 bankruptcy-related matters separate from USTP referrals.

USTP BANKRUPTCY-RELATED CRIMINAL REFERRALS BY FISCAL YEAR				
FY 2001	**FY 2002**	**FY 2003**	**FY 2004**	**FY 2005**
1,059	939	817	660	744

Prior to FY 2005, the Program did not have a comprehensive database for collecting the full range of data related to its criminal referrals. Effective in FY 2005, however, all 95 USTP offices began reporting criminal referral information using a new Criminal Enforcement Tracking System (CETS). CETS provides comprehensive data and allows for the analysis of criminal referral activity, including case disposition information, in a more reliable and accessible electronic format. With the implementation of CETS, the criminal referrals reported for FY 2005 will serve as the benchmark for all subsequent reporting years.

The chart below is based upon Program records and provides the outcome data for the 744 criminal referrals made by the Program in FY 2005. As of May 2006, the data reflects that 53 referrals from FY 2005 have resulted in formal criminal charges being brought, 25 of which have not yet been resolved by plea, trial, or other disposition. As suggested above, the Program does not have complete and reliable outcome/disposition information on criminal referrals made prior to 2005. Thus, the chart below only shows outcome/disposition information for referrals made in 2005 that resulted from referrals made prior to 2005.

OUTCOME/DISPOSITION OF FY 2005 REFERRALS	NUMBER OF CASES
Prosecution Declined by U.S. Attorney's Office	251
Administratively Closed	3
With Investigative Agency	49
Under Review in U.S. Attorney's Office	388
Formal Charges Filed (Case Still Active)	25
Formal Charges Filed (Case Closed)	28 *
– *At least one guilty plea or conviction*	25
– *At least one pre-trial diversion*	2
– *At least one acquittal*	0
– *At least one dismissal*	2
* One case had more than one defendant and thus more than one outcome.	

The chart below reflects the types of allegations contained in the 744 criminal referrals made in FY 2005. It is possible that one referral may contain multiple allegations.

FY 2005 U.S. TRUSTEE PROGRAM CRIMINAL REFERRALS BY ALLEGATION

[NOTE: Each referral may contain multiple allegations.]

Type of Case	Number Reported	Percent of Total
Perjury/False Statement	418	56.2%
False Oaths/False Statements [18 U.S.C. §152 (2) & (3)]	392	52.7%
Concealment of Assets	347	46.6%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	313	42.1%
ID Theft/Use of False/Multiple SSNs	142	19.1%
Concealment/ Destruction/Withholding of Documents	104	14.0%

[18 U.S.C. § 152 (8) & (9)]		
Tax Fraud [26 U.S.C. § 7201, et seq.]	95	12.8%
Forged Documents	78	10.5%
Mortgage/Real Estate Fraud	61	8.2%
Serial Filer	57	7.7%
Embezzlement [18 U.S.C. § 153]	35	4.7%
Credit Card Fraud/Bust-Outs	34	4.6%
False Claim [18 U.S.C. § 152(4)]	30	4.0%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	28	3.8%
Corporate Fraud	19	2.6%
Sarbanes-Oxley [18 U.S.C. § 1519]	18	2.4%
Corporate Bust-Outs / Bleed-Outs	17	2.3%
Investor Fraud	15	2.0%
Professional Fraud	14	1.9%
Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 U.S.C. § 156]	3	.4%
Bribery [18 U.S.C. § 152 (6)]	2	.3%
Fee Agreement/Cases Under Title 11 [18 U.S.C. § 155]	2	.3%
Health Care Fraud	2	.3%
Other	171	23.0%

Attached as Exhibit 5 is a summary listing of the Program's FY 2005 criminal referrals, broken down by office and allegation. Exhibit 6 provides a summary of the outcomes of FY 2005 referrals by office. Data in our CETS system is maintained by office. Some offices cover multiple judicial districts and some districts are covered by more than one office.

ENFORCEMENT ACTIONS

1. **Please provide a list of all enforcement actions the Program has taken in each of the last five years: against illegal petition preparers, against creditors who have filed false or undocumented claims, against creditors who have filed fraudulent or baseless objections to discharge, or against creditors who have attempted illegally to coerce or enforce reaffirmation agreements.**

Attached as Exhibit 7 is a listing of the number of formal and informal actions taken by the Program in each of the last five fiscal years with respect to petition preparer misconduct and attorney misconduct. The exhibit also includes data in the area of creditor misconduct; however, since the Program did not begin tracking such actions until fiscal year 2006, only six months of data is reported. In addition to cases brought by the Program, private trustees may also initiate actions against bankruptcy petition preparers or creditors who violate the law. However, the Program does not track trustee actions.

EXHIBIT 1

Bankruptcy Allowable Living Expenses

(Cases Filed on or After February 13, 2006)

Local Housing and Utilities Standards*

[redacted]

	Family Size and Expense Type					
	1 or 2 Person		3 Person		4 or More Persons	
	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent	Non-Mortgage	Mortgage/ Rent
Adams County	$355	$476	$418	$559	$481	$643
Ashland County	$355	$417	$417	$491	$480	$564
Barron County	$351	$465	$413	$547	$474	$630
Bayfield County	$357	$422	$420	$496	$484	$569
Brown County	$306	$732	$431	$861	$495	$991
Buffalo County	$355	$504	$418	$593	$481	$681
Burnett County	$344	$474	$405	$558	$465	$642
Calumet County	$374	$714	$440	$840	$506	$967
Chippewa County	$360	$531	$424	$624	$487	$718
Clark County	$367	$386	$432	$468	$497	$538
Columbia County	$378	$897	$444	$821	$511	$943
Crawford County	$342	$446	$402	$525	$463	$605
Dane County	$431	$879	$507	$1034	$583	$1190
Dodge County	$408	$636	$480	$750	$552	$863
Door County	$372	$587	$438	$690	$503	$794
Douglas County	$337	$477	$397	$561	$456	$646
Dunn County	$415	$549	$488	$646	$561	$743
Eau Claire County	$375	$602	$441	$708	$507	$815
Florence County	$351	$472	$413	$555	$474	$640
Fond du Lac County	$376	$616	$442	$727	$508	$836
Forest County	$334	$377	$393	$443	$452	$510
Grant County	$350	$476	$411	$561	$473	$645
Green County	$403	$621	$474	$730	$545	$840
Green Lake County	$378	$535	$442	$630	$508	$725
Iowa County	$395	$587	$465	$690	$535	$793
Iron County	$344	$415	$405	$486	$465	$562
Jackson County	$375	$454	$441	$534	$507	$614
Jefferson County	$405	$744	$476	$876	$546	$1007
Juneau County	$355	$448	$418	$526	$481	$605
Kenosha County	$373	$797	$439	$938	$504	$1079
Kewaunee County	$374	$568	$440	$668	$506	$769
La Crosse County	$360	$641	$424	$754	$487	$868
Lafayette County	$382	$447	$449	$526	$516	$605
Langlade County	$345	$415	$406	$488	$467	$561
Lincoln County	$367	$542	$432	$636	$497	$733
Manitowoc County	$348	$577	$410	$679	$472	$780
Marathon County	$372	$608	$438	$715	$503	$823

Marinette County	$335	$480	$384	$565	$453	$850
Marquette County	$359	$516	$423	$607	$486	$898
Menominee County	$326	$399	$384	$468	$442	$599
Milwaukee County	$342	$712	$402	$838	$463	$963
Monroe County	$362	$499	$426	$587	$490	$875
Oconto County	$343	$578	$403	$678	$464	$779
Oneida County	$341	$552	$401	$649	$461	$747
Outagamie County	$375	$702	$441	$826	$507	$950
Ozaukee County	$432	$1008	$508	$1186	$585	$1364
Pepin County	$381	$460	$448	$541	$516	$622
Pierce County	$424	$739	$499	$869	$573	$1001
Polk County	$378	$575	$444	$675	$511	$776
Portage County	$353	$628	$415	$739	$477	$850
Price County	$365	$454	$430	$534	$494	$614
Racine County	$375	$718	$441	$845	$508	$971
Richland County	$369	$470	$434	$553	$499	$636
Rock County	$373	$638	$439	$751	$505	$864
Rusk County	$330	$381	$389	$449	$469	$516
Sauk County	$353	$633	$463	$745	$532	$857
Sawyer County	$334	$417	$393	$491	$452	$565
Shawano County	$346	$507	$407	$597	$468	$686
Sheboygan County	$362	$676	$426	$795	$490	$914
St. Croix County	$412	$822	$485	$967	$557	$1113
Taylor County	$390	$475	$459	$558	$528	$642
Trempealeau County	$360	$476	$424	$558	$487	$642
Vernon County	$368	$446	$433	$527	$498	$606
Vilas County	$339	$505	$399	$594	$459	$683
Walworth County	$392	$790	$462	$929	$531	$1069
Washburn County	$365	$451	$430	$530	$494	$610
Washington County	$385	$894	$450	$1052	$518	$1210
Waukesha County	$408	$981	$481	$1153	$553	$1326
Waupaca County	$352	$579	$414	$681	$476	$783
Waushara County	$354	$481	$416	$566	$478	$651
Winnebago County	$360	$660	$424	$776	$487	$893
Wood County	$341	$527	$401	$620	$461	$713

* **Note:** The IRS expense figures posted on this Web site are for use in completing bankruptcy forms. They are not for use in computing taxes or for any other tax administration purpose. Expense information for tax purposes can be found on the IRS Web site.

Last Update: ***Monday, January 23, 2006 12:00 PM***
U.S. Trustee Program/Department of Justice
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Wisconsin - Housing and Utilities Allowable Living Expenses

Disclaimer: *IRS Allowable Expenses are intended for use in calculating repayment of delinquent taxes. Expense information for use in bankruptcy calculations can be found on the website for the* U.S. Trustee Program.

Collection Financial Standards
Financial Analysis - Local Standards: Housing and Utilities (effective 2/1/2006)

Maximum Monthly Allowance

County	Family of 2 or less	Family of 3	Family of 4 or more
Adams County	831	977	1,124
Ashland County	772	908	1,044
Barron County	816	960	1,104
Bayfield County	779	916	1,053
Brown County	1,098	1,292	1,486
Buffalo County	859	1,011	1,162
Burnett County	818	963	1,107
Calumet County	1,088	1,280	1,473
Chippewa County	891	1,048	1,205
Clark County	765	900	1,035
Columbia County	1,075	1,265	1,454
Crawford County	788	927	1,066
Dane County	1,310	1,541	1,773
Dodge County	1,046	1,230	1,415
Door County	959	1,128	1,297
Douglas County	814	958	1,102
Dunn County	964	1,134	1,304
Eau Claire County	977	1,149	1,322
Florence County	823	968	1,114
Fond du Lac County	994	1,169	1,344
Forest County	711	836	962
Grant County	828	972	1,118
Green County	1,024	1,204	1,385
Green Lake County	911	1,072	1,233
Iowa County	982	1,155	1,328
Iron County	759	893	1,027
Jackson County	829	975	1,121
Jefferson County	1,149	1,352	1,555
Juneau County	803	944	1,086
Kenosha County	1,170	1,377	1,583
Kewaunee County	942	1,108	1,275
La Crosse County	1,001	1,178	1,355
Lafayette County	829	975	1,121
Langlade County	760	894	1,028
Lincoln County	909	1,070	1,230
Manitowoc County	926	1,089	1,252
Marathon County	980	1,153	1,326
Marinette County	815	959	1,103
Marquette County	875	1,030	1,184
Menominee County	725	853	981
Milwaukee County	1,054	1,240	1,428
Monroe County	861	1,013	1,165
Oconto County	919	1,081	1,243
Oneida County	893	1,050	1,208
Outagamie County	1,077	1,267	1,457
Ozaukee County	1,440	1,694	1,949

County	Family of 2 or less	Family of 3	Family of 4 or more
Pepin County	841	980	1,137
Pierce County	1,163	1,368	1,574
Polk County	951	1,119	1,287
Portage County	981	1,154	1,327
Price County	819	964	1,108
Racine County	1,093	1,286	1,479
Richland County	839	987	1,135
Rock County	1,012	1,190	1,369
Rusk County	720	848	975
Sauk County	1,026	1,208	1,389
Sawyer County	751	884	1,017
Shawano County	853	1,004	1,154
Sheboygan County	1,038	1,221	1,404
St. Croix County	1,234	1,452	1,670
Taylor County	865	1,017	1,170
Trempealeau County	835	982	1,129
Vernon County	818	960	1,104
Vilas County	844	993	1,142
Walworth County	1,182	1,391	1,600
Washburn County	816	960	1,104
Washington County	1,277	1,502	1,728
Waukesha County	1,389	1,634	1,879
Waupaca County	931	1,095	1,259
Waushara County	835	982	1,129
Winnebago County	1,020	1,200	1,380
Wood County	868	1,021	1,174

EXHIBIT 2

Motions Filed Under 707(b)(2)(A) and 707(b)(3) - 10/17/05 through 03/31/06
by District (with Outcome)

District	707(b)(2)(A) Presumed Abuse							707(b)(3) Bad Faith/Totality of Circumstances						
			OUTCOME							OUTCOME				
	Filed	Pending	Voluntarily Converted to Chapter 13	Voluntarily Dismissed	Dismissed by Court After Hearing	Withdrawn	Denied	Filed	Pending	Voluntarily Converted to Chapter 13	Voluntarily Dismissed	Dismissed by Court After Hearing	Withdrawn	Denied
Arizona	4	3		1				1	1					
Arkansas	1	1						1		1				
California Central	1		1											
Colorado	3	1	2											
Florida Middle	5		3	2										
Georgia Middle								1	1					
Georgia Northern	11	5	4	1			1							
Georgia Southern	1	1												
Illinois Northern	2	1			1									
Iowa Southern	6		1	1		4		3	2		1			
Kentucky Western	1	1						1	1					
Maine	1					1								
Michigan Eastern	4	2			1	1		6	4				2	
Michigan Western	2	1	1					1	1					
Minnesota	5		3	1		1								
Mississippi Northern	1	1						1		1				
Nebraska	1				1			1					1	
New York Western	1		1											
Ohio Northern	7	5	1		1			5	4		1			
Ohio Southern	4	4												
Oklahoma Northern	1	1						1	1					
Pennsylvania Middle	1	1						1		1				
Pennsylvania Western	1	1												
South Carolina	1		1											
South Dakota	1		1											
Tennessee Middle	4	1	3					1		1				
Tennessee Western								1				1		
Texas Eastern	2	1	1											
Texas Northern	3	1		2										
Texas Western	3	2			1									
Utah	2	2						1	1					
Virginia Western	1	1												
Washington Western								2	1				1	
West Virginia Northern	2	1	1											
Wisconsin Western	1	1												
Total	84	39	24	8	5	7	1	28	17	4	2	1	4	0

EXHIBIT 4

U.S. Department of Justice

Executive Office for United States Trustees

Office of the General Counsel

20 Massachusetts Avenue, NW, Suite 8100
Washington, D.C. 20530

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October 4, 2005

MEMORANDUM

TO: United States Trustees
Assistant United States Trustees

FROM: Roberta A. DeAngelis
Acting General Counsel

SUBJECT: Flexibility of Bankruptcy Deadlines and Other Requirements in Response to Natural Disasters

In response to questions that have arisen concerning the application of certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) to cases filed by victims of Hurricane Katrina and other natural disasters, the following guidance is provided.

1. Means Test

Under the means test, the chapter 7 filing of a debtor with above-median income will be presumed abusive if the debtor's current monthly income exceeds, by certain amounts, monthly expenses calculated in accordance with § 707(b)(2)(A). Under § 707(b)(2)(B), a debtor may rebut the presumption of abuse by demonstrating "special circumstances" that "justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative."

In deciding whether to file an enforcement motion based upon the means test, the United States Trustee should consider a major decline in anticipated income, a major increase in anticipated expenses, and other adverse impacts of a natural disaster to be special circumstances for purposes of rebutting the presumption. If the United States Trustee reasonably believes that a debtor likely would be able to rebut the presumption of abuse by establishing special circumstances arising from a natural disaster, then the United States Trustee should decline to file a § 707(b) motion and instead file a brief statement articulating why a motion to dismiss under § 707(b) is not appropriate under the circumstances.

2. Individual Debtor Document Filing Requirements

Most of a debtor's filing requirements are found in § 521 of the Code, and most of these requirements can be varied by the bankruptcy court. Section 521(a)(1)(B) generally requires the filing of schedules of assets and liabilities, current income and expenses, the statement of financial affairs, copies of pay stubs, and statements of monthly net income and anticipated changes in income and expenses. Because this subsection is prefaced with the words "unless the court orders otherwise," the court clearly has discretion to provide exceptions to these filing requirements.

The U.S. Trustee can and should refrain from filing motions to compel or to dismiss cases in which debtors show that, as a result of a natural disaster, they do not have the information necessary to complete schedules and do not have copies of the required documents. Section 521(i) states that an individual debtor's chapter 7 or chapter 13 case will *automatically* be dismissed if all information required under § 521(a)(1) is not filed within 45 days after the date of the filing of the petition. United States Trustees should, therefore, advise debtors' attorneys who are seeking relief from the filing requirements that this relief can be granted only by the bankruptcy court. If a debtor affected by a natural disaster seeks such relief, United States Trustees should not object, so long as it appears that the debtor and the debtor's attorney are making their best efforts to provide as much information to the court as is reasonable under the circumstances.

3. Chapter 11 "Small Business Case" Deadlines

Section 1121(e)(1) establishes a 180-day exclusivity period for small business debtors to file a plan. There are two exceptions to the 180-day rule. First, under § 1121(e)(1)(A), the period can be "extended as provided by this subsection, after notice and a hearing." This cross-references to § 1121(e)(3), which provides that the time period may be extended "only if the debtor . . . demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time." The order must establish a new deadline and must be signed before the expiration of the existing deadline.

If a small business debtor impacted by a natural disaster seeks relief from this deadline pursuant to § 1121(e)(3), the United States Trustee should not oppose the relief if the debtor needs additional time to file a disclosure statement and confirm a plan due to the impact of a natural disaster. Furthermore, United States Trustees generally should not object to requests seeking longer than usual extensions under these circumstances. United States Trustees should determine a "reasonable" time in light of the exigencies created by the natural disaster. Because § 1121(e)(3) also governs extensions under § 1129(e), the same rationale could be used to provide needed extensions of time for a small business affected by a natural disaster to obtain confirmation of its chapter 11 plan.

4. Small Business Cases – Duties of Debtors in Possession

Section 1116 establishes duties of debtors in possession in small business cases. Subsection (2) requires a small business debtor to attend an initial debtor interview, the § 341 meeting, and other meetings called by the United States Trustee. Subsection (3) requires a small business debtor to timely file all schedules and statements of financial affairs. Both of these subsections permit the court to vary the requirements upon a finding of "extraordinary and compelling circumstances." United States Trustees should consider the impact of a natural disaster in determining "extraordinary and compelling circumstances" and in deciding whether to file an enforcement motion.

Section 1112 governs conversion or dismissal. The BAPCPA changed the permissive "may" convert or dismiss in § 1112(b)(1) to a mandatory "shall" convert or dismiss. Subsection (b)(1) permits the court to refrain from converting or dismissing a case upon a finding of unusual circumstances specifically identified that establish that the requested conversion or dismissal is not in the best interest of creditors and the estate. The United States Trustee should not file a motion under § 1112 if the grounds for filing the motion are attributable to a natural disaster and there are reasonable prospects for reorganization.

5. Section 341 Meeting Attendance

If a natural disaster causes long-term dislocation, situations may arise where debtors will be unable personally to attend meetings of creditors under § 341 of the Code. The *Chapter 7 Trustee Handbook* has long provided alternative means for debtors to attend § 341 meetings in extenuating circumstances. United States Trustees should advise trustees to accept dislocation by a natural disaster as an extenuating circumstance. United States Trustees should be flexible and reasonable in making alternative appearance arrangements for a dislocated debtor by arranging for the § 341 meeting to take place at a local office of the United States Trustee near the debtor's temporary residence or by allowing the debtor to appear telephonically, for example. Care should be taken, however, to assure that debtors provide the personal identification information required by Interim Rule 4002(b)(1) to the person administering the oath.

Conclusion

Compliance with this guidance will be greatly appreciated. If any of these issues arise in a case in your district, please identify the issue and consult with the Office of the General Counsel before taking action.

Guidance on venue issues that may arise as a result of natural disasters is being provided separately. In addition, the credit counseling requirement for individual debtors for cases filed in the Eastern, Western, and Middle Districts of Louisiana and in the Southern District of Mississippi have been waived. Guidance on the applicability of the debtor education requirement to cases filed in those districts will be forthcoming at the appropriate time.

U.S. Department of Justice

Executive Office for United States Trustees

Office of the General Counsel

20 Massachusetts Avenue, NW, Suite 8100
Washington, D.C. 20530

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October 4, 2005

MEMORANDUM

TO: United States Trustees
Assistant United States Trustees

FROM: Roberta A. DeAngelis
Acting General Counsel

SUBJECT: Venue Issues Arising from Debtors Displaced by Hurricane Katrina

The effects of Hurricane Katrina impact the judicial system in numerous ways, one of which focuses on the issue of venue for bankruptcy cases filed by debtors who have been displaced. Some of those debtors evacuated to contiguous or nearby districts affected by the storm; others were evacuated to more remote locations. This memorandum provides guidance concerning cases filed by such displaced persons in an improper venue.

The United States Trustee generally has raised venue objections only in extraordinary cases evincing systemic abuse or in which parties are seeking to abuse the bankruptcy process. Accordingly, the United States Trustee should **not** file objections to venue selections by victims of Hurricane Katrina, except under extraordinary circumstances and upon express approval of the General Counsel. The following background and analysis of venue is provided for your further information and edification.

Venue for bankruptcy cases is derived from 28 U.S.C. § 1408 which provides, in relevant part, that:

> . . . a case under title 11 may be commenced in the district court for the district—
>
> (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located

> for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or . . .

The Supreme Court has held that venue is a personal privilege, the objection to which may be waived if not timely raised. *Leroy v. Great Western United Corp.*, 443 U.S. 173, 180 (1979); *Neirbo Co. v. Bethlehem Ship Builders Corp.*, 308 U.S. 165, 167-168 (1939). *See, Hunt v. Bankers Trust Co.*, 199 F.2d 1060, 1068 (5th Cir. 1986). We will continue to examine cases for instances of fraud and abuse as we meet our civil enforcement obligations, and we will object to instances of systemic abuse, such as cases filed in an improper venue for the convenience of debtor's counsel only.

Courts facing an objection to improper venue generally have followed one of two positions. The majority rule holds that a bankruptcy court may not retain a case filed in an improper venue, where venue has been challenged. The court must either dismiss or transfer the case to a proper venue pursuant to 28 U.S.C. § 1406(a).[1] For a representative view of cases following the majority view, see the following: *In re Sorrells*, 218 B.R. 580 (10th Cir. BAP 1998); In *re Micci*, 188 B.R. 697 (S.D. Fla. 1995); *In re Columbia Western, Inc.*, 183 B.R. 660 (Bankr. Mass. 1995); *In re Washington, Perito & Dubuc*, 154 B.R. 853 (Bankr. S.D.N.Y. 1993); *In re Great Lakes Hotel Associates*, 154 B.R. 667 (E.D. Va. 1992); *In re Petrie*, 142 B.R. 404 (Bankr. D. Nev. 1992); *In re Sporting Club*, 132 B.R. 792 (Bankr. S.D. 1989); *ICMR, Inc. v. Tri-City Foods, Inc.*, 100 B.R. 51 (D. Kan. 1989).

The minority view, in contrast, holds that a bankruptcy court may retain a case filed in an improper venue pursuant to 28 U.S.C § 1412 if such retention is "in the interest of justice or for the convenience of the parties."[2] Courts which have followed the minority view include the

---

[1] 28 U.S.C. § 1406(a) provides with respect to cure or waiver of defects that:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the best interest of justice, transfer such case to any district or division in which it could have been brought.

[2] 28 U.S.C. § 1412 provides with respect to change of venue that:

> A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

following: *In re Lazaro*, 128 B.R. 168 (Bankr. W.D. Tex. 1991); *In re Leonard*, 55 B.R. 106, 108-09 (Bankr. D.C. 1985); and *In re Boeckman*, 54 B.R. 110 (Bankr. S.D. 1985).

The United States Trustee Program follows the majority rule. During the past year, the Program successfully litigated the issue of whether a bankruptcy court has discretion to retain a case filed in an improperly venue, arguing against such retention. *See, e.g., In re Swinney v. Turner*, 309 B.R. 638 (M.D. Ga. 2004) (affirming decision of bankruptcy court that it was not authorized to retain a case filed in an improper venue). The Program also litigated similar cases in Memphis, Tennessee. *See, e.g., In re Brazzel*, 321 B.R. 893 (W.D. Tenn. 2004). These cases arose not because of any emergency on the part of the debtors, but rather because the attorney representing the debtors chose to file the petitions in a district where the attorney was located and licensed rather than in a proper venue. Such instances of abuse should continue to be pursued by our field offices and, in pursuing objections to improper venue, the majority view should be espoused.

By way of further information, I want to advise you that recently Congress passed and the President signed the "Federal Judiciary Emergency Special Sessions Act of 2005." The purpose of that legislation was to authorize Federal circuit, district, and bankruptcy courts to conduct special sessions outside their respective boundaries in times of emergency. The United States Bankruptcy Court for the Eastern District of Louisiana has commenced operations from the offices of the United States Bankruptcy Court for the Middle District of Louisiana. (http://www.laeb.uscourts.gov.) Further, the United States District Court for the Eastern District of Louisiana has issued an order that allows emergency filings in Baton Rouge (the Middle District) and in Lafayette (the Western District). (http://www.laed.uscourts.gov/). Documents filed in these alternate locations will be deemed filed in the Eastern District, thereby resulting in proper venue.

If you have any questions, please do not hesitate to contact me.

cc: EOUST Senior Staff

Press Release

U.S. Department of Justice

Executive Office for United States Trustees

PRESS RELEASE

For Immediate Release
October 5, 2005

U.S. TRUSTEE PROGRAM ANNOUNCES ENFORCEMENT GUIDELINES FOR BANKRUPTCY DEBTORS AFFECTED BY NATURAL DISASTERS

WASHINGTON, D.C.-The United States Trustee Program today announced it has issued bankruptcy enforcement guidelines that take into account the hardships experienced by victims of recent hurricanes in the Gulf Coast region.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which takes effect on October 17, 2005, contains various new requirements for parties to a bankruptcy proceeding. The Program announced it is taking the following steps to address the impact of current law and the BAPCPA upon victims of natural disaster.

Document Requirements -Under current law and the BAPCPA, debtors provide documents such as payment advices and statements of income. U.S. Trustees will not file enforcement motions against debtors who cannot produce documents due to natural disasters, if they are otherwise eligible for bankruptcy relief.

Means Test - Under the BAPCPA, individual debtors undergo a "means test" to determine whether they are eligible for Chapter 7 relief or whether Chapter 7 relief is presumed abusive. Generally speaking, the BAPCPA permits a debtor to rebut that presumption of abuse by showing "special circumstances." In determining whether to file an enforcement motion on grounds of presumed abuse, the Program will consider income loss, expense increase, and other adverse effects of a natural disaster to constitute "special circumstances."

Attendance at Creditors' Meetings - U.S. Trustees will exercise flexibility and provide alternative means for a debtor to attend the mandatory meeting of creditors if, due to the adverse effects of a natural disaster, the debtor cannot appear personally and testify under oath in the district where the case is filed.

Venue - U.S. Trustees will not raise or support venue objections in cases in which the debtor was displaced due to a natural disaster, unless the filing constitutes a systemic abuse or presents extraordinary circumstances.

Small Business Chapter 11 Bankruptcies -U.S. Trustees will not take enforcement actions against Chapter 11 small business debtors who, as a result of a natural disaster, cannot reasonably be expected to perform statutory duties such as attending an initial debtor interview and filing financial reports. U.S. Trustees will not seek conversion or dismissal of a small business Chapter 11 case if the grounds for filing the case are attributable to a natural disaster and there are reasonable prospects for reorganization. U.S. Trustees will not oppose reasonable and necessary extensions of time to file a disclosure statement and confirm a reorganization plan, if a small business debtor cannot comply with the deadlines because of a natural disaster.

The BAPCPA requires individual debtors to undergo credit counseling before filing for bankruptcy. The BAPCPA authorizes U.S. Trustees to approve credit counseling agencies according to criteria set forth in the law. On October 4, 2005, the Program announced a temporary waiver of the statutory requirements for credit counseling for bankruptcy filers in Louisiana and the Southern District of Mississippi due to the effects of Hurricane Katrina.

The U.S. Trustee Program is the component of the Justice Department that promotes integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence. The Program has 21 regions and 95 field offices. Under federal law, the Program is not responsible for overseeing bankruptcy cases filed in Alabama or North Carolina.

Press Contact: Jane Limpracht

Executive Office for U.S. Trustees

(202) 305-7411

[End]

Last Update: November 15, 2005 6:10 PM
U.S. Trustee Program/Department of Justice
usdoj/ust/smm

Press Release

U.S. Department of Justice

Executive Office for United States Trustees

PRESS RELEASE

For Immediate Release
October 4, 2005

U.S. TRUSTEE PROGRAM ANNOUNCES APPROVAL OF CREDIT COUNSELING AGENCIES FOR BANKRUPTCY FILERS AND WAIVER OF CREDIT COUNSELING REQUIREMENT IN AREAS AFFECTED BY HURRICANE KATRINA

WASHINGTON, D.C.-The United States Trustee Program today announced a temporary waiver of the statutory requirements for credit counseling for bankruptcy filers in Louisiana and the Southern District of Mississippi due to the effects of Hurricane Katrina. The Program also announced approval of 41 credit counseling agencies for bankruptcy filers. These are approved credit counseling agencies serving all federal judicial districts for which the United States Trustee Program is responsible.

The list of approved credit counseling agencies is posted on the Program's web site at www.usdoj.gov/ust. More credit counseling agencies will be added to the list as they are approved by United States Trustees.

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), individual debtors who file bankruptcy on or after October 17, 2005, must undergo credit counseling within six months before they file bankruptcy. The BAPCPA authorizes United States Trustees to approve credit counseling agencies according to criteria set forth in the law.

The BAPCPA permits United States Trustees to waive the credit counseling requirement within a judicial district where approved credit counseling agencies are not reasonably able to provide adequate services to bankruptcy filers. The United States Trustee for Region 5 made this determination with respect to the Eastern, Middle, and Western Districts of Louisiana, and the Southern District of Mississippi.

The U.S. Trustee Program is the component of the Justice Department that promotes integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence. The Program has 21 regions and 95 field offices. The Program is not responsible for overseeing bankruptcy cases filed in Alabama or North Carolina.

Press Contact: Jane Limprecht

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[End]

Last Update: November 15, 2005 6:09 PM
U.S. Trustee Program/Department of Justice
usdoj/ust/smm

Press Release

U.S. Department of Justice

Executive Office for United States Trustees

PRESS RELEASE

For Immediate Release
October 7, 2005

U.S. TRUSTEE PROGRAM ANNOUNCES APPROVAL OF

DEBTOR EDUCATION COURSE PROVIDERS FOR BANKRUPTCY FILERS

AND WAIVER OF DEBTOR EDUCATION REQUIREMENT

IN AREAS AFFECTED BY HURRICANE KATRINA

WASHINGTON, D.C.-The United States Trustee Program today announced a temporary waiver of the statutory requirement for an instructional course in personal financial management, often called "debtor education," for bankruptcy filers in Louisiana and the Southern District of Mississippi due to the effects of Hurricane Katrina. The Program also announced approval of 41 providers of debtor education courses for bankruptcy filers. There are approved debtor education course providers serving all federal judicial districts for which the United States Trustee Program is responsible.

The list of approved debtor education course providers is posted on the United States Trustee Program's website at www.usdoj.gov/ust. More debtor education course providers will be added to the list as they are approved by the United States Trustees.

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), in order to receive a discharge of debt, an individual debtor who files bankruptcy on or after October 17, 2005 must complete an instructional course in personal financial management after filing bankruptcy. The BAPCPA authorizes the United States Trustees to approve such course providers according to criteria set forth in the law.

The BAPCPA permits the United States Trustees to waive the debtor education requirement within a judicial district where approved debtor education courses are not adequate to serve bankruptcy filers. The United States Trustee for Region 5 made this determination with respect to the Eastern, Middle, and Western Districts of Louisiana, and the Southern District of Mississippi.

The U.S. Trustee Program is the component of the Justice Department that promotes integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence. The Program has 21 regions and 95 field offices. The Program is not responsible for overseeing bankruptcy cases filed in Alabama or North Carolina.

Press Contact: Jane Limprecht

Executive Office for U.S. Trustees

(202) 305-7411

[End]

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EXHIBIT 5

USTP FY 2005 Criminal Referrals by Office and Allegation

[NOTE: Each referral may identify one or multiple allegations.]

Region: 01 **City: Boston** **District(s): Massachusetts**

7 Number of Referrals

Allegations

- 5 Perjury/ False Statement
- 4 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 3 Concealment of Assets
- 4 Bankruptcy Fraud Scheme [18 USC 157]
- 1 ID Theft/Use of False/ Multiple SSNs
- 1 Tax Fraud [26 USC 7201, et seq.]
- 2 Credit Card Fraud/ Bust-Outs
- 2 Other

Region: 01 **City: Worcester** **District(s): Massachusetts**

8 Number of Referrals

Allegations

- 2 Perjury/ False Statement
- 1 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 3 Concealment of Assets
- 3 Bankruptcy Fraud Scheme [18 USC 157]
- 1 ID Theft/Use of False/ Multiple SSNs
- 1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 4 Forged Documents
- 2 Mortgage/Real Estate Fraud
- 1 Credit Card Fraud/ Bust-Outs
- 2 Corporate Fraud
- 2 Corporate Bust-Outs / Bleed-Outs
- 1 Bribery [18 USC 152 (6)]

Region: 01 **City: Manchester** **District(s): New Hampshire**

6 Number of Referrals

Allegations

- 1 Perjury/ False Statement
- 1 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 2 Concealment of Assets
- 3 Bankruptcy Fraud Scheme [18 USC 157]
- 1 ID Theft/Use of False/ Multiple SSNs
- 1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 1 Tax Fraud [26 USC 7201, et seq.]
- 2 Mortgage/Real Estate Fraud

Region: 01 **City: Providence** **District(s): Rhode Island**

2 Number of Referrals

Allegations

- 1 Perjury/ False Statement
- 1 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 1 Concealment of Assets
- 2 Bankruptcy Fraud Scheme [18 USC 157]
- 2 Other

Region: 02 **City: Albany** **District(s): Northern New York; Southern New York; Vermont**

2 **Number of Referrals**

Allegations

2 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]

Region: 02 **City: Rochester** **District(s): Western New York**

6 **Number of Referrals**

Allegations

2 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
3 Tax Fraud [26 USC 7201, et seq.]
1 Other

Region: 02 **City: New Haven** **District(s): Connecticut**

6 **Number of Referrals**

Allegations

6 Perjury/ False Statement
6 False Oaths/False Statements [18 USC 152 (2) & (3)]
6 Concealment of Assets
3 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Mortgage/Real Estate Fraud
1 Embezzlement [18 USC 153]

Region: 02 **City: Utica** **District(s): Northern New York**

2 **Number of Referrals**

Allegations

2 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
1 Credit Card Fraud/ Bust-Outs
1 False Claim [18 USC 152(4)]

Region: 02 **City: Brooklyn** **District(s): Eastern New York**

6 **Number of Referrals**

Allegations

3 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Bankruptcy Fraud Scheme [18 USC 157]
3 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
4 Serial Filer

Region: 03 **City: Newark** **District(s): New Jersey**

14 Number of Referrals

Allegations

2 Concealment of Assets
7 ID Theft/Use of False/ Multiple SSNs
2 Tax Fraud [26 USC 7201, et seq.]
2 Credit Card Fraud/ Bust-Outs
1 Corporate Fraud
1 Corporate Bust Outs / Bleed-Outs
1 Professional Fraud
1 Fee Agreement/Cases Under Title 11 [18 USC 155]
1 Other

Region: 03 **City: Philadelphia** **District(s): Eastern Pennsylvania**

18 Number of Referrals

Allegations

3 False Oaths/False Statements [18 USC 152 (2) & (3)]
7 Concealment of Assets
6 Bankruptcy Fraud Scheme [18 USC 157]
8 ID Theft/Use of False/ Multiple SSNs
3 Forged Documents
4 Serial Filer
1 Embezzlement [18 USC 153]
3 Other

Region: 03 **City: Harrisburg** **District(s): Middle Pennsylvania**

1 Number of Referrals

Allegations

1 Mortgage/Real Estate Fraud

Region: 03 **City: Pittsburgh** **District(s): Western Pennsylvania**

10 Number of Referrals

Allegations

5 Perjury/ False Statement
5 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
9 Bankruptcy Fraud Scheme [18 USC 157]
3 ID Theft/Use of False/ Multiple SSNs
1 Tax Fraud [26 USC 7201, et seq.]
1 Forged Documents
4 Serial Filer
3 Embezzlement [18 USC 153]
2 Other

Region: 03 **City: Wilmington** **District(s): Delaware**

11 Number of Referrals

Allegations

6 Perjury/ False Statement
3 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
2 Tax Fraud [26 USC 7201, et seq.]
2 Forged Documents
1 Embezzlement [18 USC 153]
1 Investor Fraud
2 Professional Fraud
2 Other

Region: 04 **City: Alexandria** **District(s): District of Columbia; Eastern Virginia**

5 Number of Referrals

Allegations

- 3 Perjury/ False Statement
- 2 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 1 Concealment of Assets
- 1 Bankruptcy Fraud Scheme [18 USC 157]
- 1 Forged Documents
- 1 Serial Filer
- 1 Professional Fraud
- 1 Other

Region: 04 **City: Norfolk** **District(s): Eastern Virginia**

4 Number of Referrals

Allegations

- 2 Perjury/ False Statement
- 3 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 2 Bankruptcy Fraud Scheme [18 USC 157]
- 1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 1 Serial Filer
- 1 Other

Region: 04 **City: Baltimore** **District(s): Maryland**

10 Number of Referrals

Allegations

- 5 Perjury/ False Statement
- 6 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 4 Concealment of Assets
- 6 Bankruptcy Fraud Scheme [18 USC 157]
- 1 Tax Fraud [26 USC 7201, et seq.]
- 3 Forged Documents
- 1 Mortgage/Real Estate Fraud
- 2 Serial Filer
- 1 Professional Fraud
- 1 Other

Region: 04 **City: Columbia** **District(s): South Carolina**

7 Number of Referrals

Allegations

- 4 Perjury/ False Statement
- 3 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 3 Concealment of Assets
- 5 Bankruptcy Fraud Scheme [18 USC 157]
- 1 ID Theft/Use of False/ Multiple SSNs
- 2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 1 Tax Fraud [26 USC 7201, et seq.]
- 2 Forged Documents
- 1 Serial Filer
- 1 Corporate Fraud
- 1 Sarbanes-Oxley [18 USC 1519]
- 1 Corporate Bust-Outs / Bleed-Outs
- 2 Other

Region: 04 **City:** Roanoke **District(s):** Western Virginia

1 **Number of Referrals**

Allegations

1 [No allegation specified]

Region: 04 **City:** Charleston **District(s):** Northern West Virginia; Southern West Virginia

2 **Number of Referrals**

Allegations

1 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]

Region: 04 **City:** Greenbelt **District(s):** Maryland

8 **Number of Referrals**

Allegations

6 Perjury/ False Statement
5 False Oaths/False Statements [18 USC 152 (2) & (3)]
4 Concealment of Assets
6 Bankruptcy Fraud Scheme [18 USC 157]
2 ID Theft/Use of False/ Multiple SSNs
1 Forged Documents
1 Serial Filer
1 Post-Petition Receipt of Property [18 USC 152 (5)]
5 Other

Region: 04 **City:** Richmond **District(s):** Eastern Virginia

5 **Number of Referrals**

Allegations

4 Perjury/ False Statement
5 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
4 Forged Documents
1 Mortgage/Real Estate Fraud
3 False Claim [18 USC 152(4)]
1 Investor Fraud

Region: 05 **City:** New Orleans **District(s):** Eastern Louisiana; Middle Louisiana

8 **Number of Referrals**

Allegations

5 Perjury/ False Statement
6 False Oaths/False Statements [18 USC 152 (2) & (3)]
6 Concealment of Assets
5 Bankruptcy Fraud Scheme [18 USC 157]
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
1 Forged Documents
1 False Claim [18 USC 152(4)]
3 Other

Region: 05 **City:** Shreveport **District(s):** Western Louisiana

3 **Number of Referrals**

Allegations

1 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Credit Card Fraud/ Bust-Outs
1 Post-Petition Receipt of Property [18 USC 152 (5)]

Region: 05 **City:** Jackson **District(s):** Northern Mississippi; Southern Mississippi

6 **Number of Referrals**

Allegations

3 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
2 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Embezzlement [18 USC 153]
1 Post-Petition Receipt of Property [18 USC 152 (5)]
2 Other

Region: 06 **City:** Dallas **District(s):** Northern Texas

9 **Number of Referrals**

Allegations

5 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
7 Bankruptcy Fraud Scheme [18 USC 157]
3 ID Theft/Use of False/ Multiple SSNs
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
2 Forged Documents
1 Mortgage/Real Estate Fraud
2 Serial Filer
1 Credit Card Fraud/ Bust-Outs
1 Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 USC 156]
2 Other

Region: 06 City: Tyler District(s): Eastern Texas

8 Number of Referrals

Allegations

5 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
6 Concealment of Assets
5 Bankruptcy Fraud Schemie [18 USC 157]
2 ID Theft/Use of False/ Multiple SSNs
5 Concealment / Destruction/ Withholding of Documents [18 USC 157 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
1 Forged Documents
2 Mortgage/Real Estate Fraud
1 Serial Filer
1 Credit Card Fraud/ Bust Outs
3 Post Petition Receipt of Property [18 USC 152 (5)]
1 Corporate Fraud
1 Investor Fraud
1 Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 USC 156]
3 Other

Region: 07 City: Houston District(s): Southern Texas

6 Number of Referrals

Allegations

2 Perjury/ False Statement
3 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
4 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
3 Forged Documents
1 Embezzlement [18 USC 153]
1 Fake Claim [18 USC 152(4)]
2 Post Petition Receipt of Property [18 USC 152 (5)]
1 Bribery [18 USC 152 (6)]
2 Other

Region: 07 City: San Antonio District(s): Western Texas

5 Number of Referrals

Allegations

3 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
2 Tax Fraud [26 USC 7201, et seq.]
1 Serial Filer
3 Embezzlement [18 USC 153]
1 Sarbanes-Oxley [18 USC 15 [9]
3 Other

Region: 07 **City:** Corpus Christi **District(s):** Southern Texas

6 **Number of Referrals**

Allegations

1 Perjury/ False Statement
1 Concealment of Assets
1 ID Theft/Use of False/ Multiple SSNs
5 Tax Fraud [26 USC 7201, et seq.]
1 Other

Region: 07 **City:** Austin **District(s):** Western Texas

5 **Number of Referrals**

Allegations

4 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Forged Documents
1 Serial Filer
2 Investor Fraud
1 Other

Region: 08 **City:** Memphis **District(s):** Western Tennessee

16 **Number of Referrals**

Allegations

6 Perjury/ False Statement
11 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
7 ID Theft/Use of False/ Multiple SSNs
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
2 Forged Documents
1 Mortgage/Real Estate Fraud
1 False Claim [18 USC 152(4)]
4 Other

Region: 08 **City:** Louisville **District(s):** Western Kentucky

6 **Number of Referrals**

Allegations

1 Perjury/ False Statement
3 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
1 Forged Documents
1 Serial Filer
1 Sarbanes-Oxley [18 USC 1519]
3 Other

Region: 08 City: Chattanooga District(s): Eastern Tennessee

6 Number of Referrals

Allegations

2 Perjury/ False Statement
3 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
2 ID Theft/Use of False/ Multiple SSNs
1 Other

Region: 08 City: Nashville District(s): Middle Tennessee

5 Number of Referrals

Allegations

2 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
2 Concealment / Destruction/ Withholding of Documents [18 USC 157 (8) & (9)]
1 Embezzlement [18 USC 153]
1 Investor Fraud
1 Professional Fraud
3 Other

Region: 08 City: Lexington District(s): Eastern Kentucky

2 Number of Referrals

Allegations

1 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Forged Documents
1 Health Care Fraud
1 Other

Region: 09 City: Cleveland District(s): Northern Ohio

16 Number of Referrals

Allegations

6 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
5 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
3 Tax Fraud [26 USC 7201, et seq.]
1 Embezzlement [18 USC 153]
3 Credit Card Fraud/ Bust-Outs
1 Post-Petition Receipt of Property [18 USC 152 (5)]
1 Sarbanes-Oxley [18 USC 1519]
1 Corporate Bust-Outs / Bleed-Outs
1 Health Care Fraud
4 Other

Region: 09 **City: Columbus** **District(s): Southern Ohio**

8 **Number of Referrals**

Allegations

- 8 Perjury/ False Statement
- 6 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 4 Concealment of Assets
- 8 Bankruptcy Fraud Scheme [18 USC 157]
- 1 ID Theft/Use of False/ Multiple SSNs
- 1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 2 Forged Documents
- 2 Mortgage/Real Estate Fraud
- 1 Serial Filer
- 1 Embezzlement [18 USC 153]
- 1 False Claim [18 USC 152(4)]
- 1 Professional Fraud
- 1 Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 USC 156]
- 1 Fee Agreement/Cases Under Title 11 [18 USC 155]
- 5 Other

Region: 09 **City: Detroit** **District(s): Eastern Michigan**

3 **Number of Referrals**

Allegations

- 2 Perjury/ False Statement
- 2 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 1 Concealment of Assets
- 1 ID Theft/Use of False/ Multiple SSNs
- 1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 2 Forged Documents
- 1 Other

Region: 09 **City: Grand Rapids** **District(s): Western Michigan**

8 **Number of Referrals**

Allegations

- 8 Perjury/ False Statement
- 8 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 6 Concealment of Assets
- 7 Bankruptcy Fraud Scheme [18 USC 157]
- 1 ID Theft/Use of False/ Multiple SSNs
- 1 Credit Card Fraud/ Bust-Outs
- 1 Other

Region: 09 **City: Cincinnati** **District(s): Southern Ohio**

3 **Number of Referrals**

Allegations

- 3 Perjury/ False Statement
- 2 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 3 Concealment of Assets
- 1 Bankruptcy Fraud Scheme [18 USC 157]
- 1 Mortgage/Real Estate Fraud

Region: 10 **City: Indianapolis** **District(s): Southern Indiana**

6 Number of Referrals

Allegations

5 Perjury/ False Statement
5 False Oaths/False Statements [18 USC 152 (2) & (3)]
4 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Tax Fraud [26 USC 7201, et seq.]
2 Serial Filer
1 Credit Card Fraud/ Bust-Outs
1 Post-Petition Receipt of Property [18 USC 152 (5)]

Region: 10 **City: Peoria** **District(s): Central Illinois; Southern Illinois**

20 Number of Referrals

Allegations

14 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
14 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
2 ID Theft/Use of False/ Multiple SSNs
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
2 Mortgage/Real Estate Fraud
1 Credit Card Fraud/ Bust-Outs
1 Corporate Bust-Outs / Bleed Outs
1 Other

Region: 10 **City: South Bend** **District(s): Northern Indiana**

5 Number of Referrals

Allegations

3 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Tax Fraud [26 USC 7201, et seq.]
2 Other

Region: 11 **City: Chicago** **District(s): Northern Illinois**

18 Number of Referrals

Allegations

9 Perjury/ False Statement
14 False Oaths/False Statements [18 USC 152 (2) & (3)]
16 Concealment of Assets
10 Bankruptcy Fraud Scheme [18 USC 157]
3 ID Theft/Use of False/ Multiple SSNs
3 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
8 Tax Fraud [26 USC 7201, et seq.]
6 Mortgage/Real Estate Fraud
3 Embezzlement [18 USC 153]
1 Credit Card Fraud/ Bust-Outs
1 Post-Petition Receipt of Property [18 USC 152 (5)]
4 Corporate Fraud
3 Sarbanes-Oxley [18 USC 1519]
6 Other

Region: 11 **City:** Milwaukee **District(s):** Eastern Wisconsin

4 **Number of Referrals**

Allegations

3 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
4 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Document [18 USC 152 (8) & (9)]
1 Forged Documents
1 Mortgage/Real Estate Fraud
1 False Claim [18 USC 152(4)]
1 Post Petition Receipt of Property [18 USC 152 (5)]
3 Other

Region: 11 **City:** Madison **District(s):** Northern Illinois; Western Wisconsin

7 **Number of Referrals**

Allegations

5 Perjury/ False Statement
5 False Oaths/False Statements [18 USC 152 (2) & (3)]
6 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Tax Fraud [26 USC 7201, et seq.]
1 Credit Card Fraud/ Bust-Outs
1 Investor Fraud
2 Other

Region: 12 **City:** Minneapolis **District(s):** Minnesota

4 **Number of Referrals**

Allegations

3 Bankruptcy Fraud Scheme [18 USC 157]
3 Credit Card Fraud/ Bust-Outs

Region: 12 **City:** Cedar Rapids **District(s):** Northern Iowa

4 **Number of Referrals**

Allegations

4 Perjury/ False Statement
3 False Oaths/False Statements [18 USC 152 (2) & (3)]
4 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]

Region: 12 **City:** Des Moines **District(s):** Southern Iowa

3 **Number of Referrals**

Allegations

1 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Forged Documents
1 False Claim [18 USC 152(4)]
1 Professional Fraud
1 Other

Region: 12 **City: Sioux Falls** **District(s): North Dakota; South Dakota**

1 Number of Referrals

Allegations

1 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
1 Concealment of Assets

Region: 13 **City: Kansas City** **District(s): Western Missouri**

6 Number of Referrals

Allegations

1 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
4 Other

Region: 13 **City: Little Rock** **District(s): Eastern Arkansas; Western Arkansas**

10 Number of Referrals

Allegations

1 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
8 Concealment of Assets
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
2 Tax Fraud [26 USC 7201, et seq.]
1 Corporate Fraud
2 Other

Region: 13 **City: St. Louis** **District(s): Eastern Missouri**

8 Number of Referrals

Allegations

7 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
5 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Corporate Fraud
1 Investor Fraud

Region: 13 **City: Omaha** **District(s): Nebraska**

8 Number of Referrals

Allegations

4 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
5 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
4 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
2 False Claim [18 USC 152(4)]
1 Post-Petition Receipt of Property [18 USC 152 (5)]
4 Other

Region: 14 **City: Phoenix** **District(s): Arizona**

9 Number of Referrals

Allegations

- 5 Perjury/ False Statement
- 6 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 4 Concealment of Assets
- 3 Bankruptcy Fraud Scheme [18 USC 157]
- 3 Tax Fraud [26 USC 7201, et seq.]
- 3 Forged Documents
- 1 Credit Card Fraud/ Bust-Outs
- 1 False Claim [18 USC 152(4)]
- 4 Other

Region: 15 **City: San Diego** **District(s): Southern California**

6 Number of Referrals

Allegations

- 4 Perjury/ False Statement
- 6 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 4 Concealment of Assets
- 4 Bankruptcy Fraud Scheme [18 USC 157]
- 2 ID Theft/Use of False/ Multiple SSNs
- 1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 1 Mortgage/Real Estate Fraud
- 1 Serial Filer
- 2 False Claim [18 USC 152(4)]
- 1 Other

Region: 16 **City: Los Angeles** **District(s): Central California**

66 Number of Referrals

Allegations

- 46 Perjury/ False Statement
- 41 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 27 Concealment of Assets
- 37 Bankruptcy Fraud Scheme [18 USC 157]
- 17 ID Theft/Use of False/ Multiple SSNs
- 4 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 7 Forged Documents
- 12 Mortgage/Real Estate Fraud
- 12 Serial Filer
- 1 False Claim [18 USC 152(4)]
- 1 Investor Fraud
- 1 Professional Fraud
- 13 Other

Region: 16 City: Santa Ana District(s): Central California

17 Number of Referrals

Allegations

16 Perjury/ False Statement
12 False Oaths/False Statements [18 USC 152 (2) & (3)]
5 Concealment of Assets
5 Bankruptcy Fraud Scheme [18 USC 157]
2 ID Theft/Use of False/ Multiple SSNs
1 Forged Documents
2 Mortgage/Real Estate Fraud
4 Serial Filer
1 Embezzlement [18 USC 153]
1 Professional Fraud
2 Other

Region: 16 City: Riverside District(s): Central California

5 Number of Referrals

Allegations

4 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Tax Fraud [26 USC 7201, et seq.]
1 Embezzlement [18 USC 153]
1 Corporate Fraud
2 Investor Fraud
3 Other

Region: 16 City: Woodland Hills District(s): Central California

9 Number of Referrals

Allegations

6 Perjury/ False Statement
6 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
5 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
5 Forged Documents
2 Mortgage/Real Estate Fraud
1 Credit Card Fraud/ Bust-Outs
1 Corporate Bust-Outs / Bleed-Outs
1 Other

Region: 17 City: San Francisco District(s): Northern California

4 Number of Referrals

Allegations

2 False Oaths/False Statements [18 USC 152 (2) & (3)]
4 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Post-Petition Receipt of Property [18 USC 152 (5)]

Region: 17 **City: Oakland** **District(s): Northern California**

8 **Number of Referrals**

Allegations

5 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
4 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Serial Filer
3 Other

Region: 17 **City: San Jose** **District(s): Northern California**

3 **Number of Referrals**

Allegations

2 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Other

Region: 17 **City: Fresno** **District(s): Eastern California**

11 **Number of Referrals**

Allegations

7 Perjury/ False Statement
7 False Oaths/False Statements [18 USC 152 (2) & (3)]
4 Concealment of Assets
7 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
5 Forged Documents
1 Mortgage/Real Estate Fraud
3 Serial Filer
1 False Claim [18 USC 152(4)]
2 Corporate Fraud
3 Sarbanes-Oxley [18 USC 1519]
1 Professional Fraud
2 Other

Region: 17 **City: Sacramento** **District(s): Eastern California**

4 **Number of Referrals**

Allegations

3 Perjury/ False Statement
3 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Mortgage/Real Estate Fraud
1 Serial Filer
1 Other

Region: 17 **City: Las Vegas** **District(s): Nevada**

7 Number of Referrals

Allegations

5 Perjury/ False Statement
4 False Oaths/False Statements [18 USC 152 (2) & (3)]
6 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
6 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
2 Post-Petition Receipt of Property [18 USC 152 (5)]
1 Corporate Bust-Outs / Bleed-Outs
1 Other

Region: 17 **City: Reno** **District(s): Nevada**

4 Number of Referrals

Allegations

4 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
1 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
2 Forged Documents
1 Post-Petition Receipt of Property [18 USC 152 (5)]

Region: 18 **City: Seattle** **District(s): Western Washington**

4 Number of Referrals

Allegations

4 Perjury/ False Statement
3 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Forged Documents
1 Mortgage/Real Estate Fraud
1 Serial Filer
1 Post-Petition Receipt of Property [18 USC 152 (5)]
1 Corporate Bust Outs / Bleed-Outs
2 Other

Region: 18 **City: Boise** **District(s): Idaho; Oregon**

8 Number of Referrals

Allegations

8 Perjury/ False Statement
8 False Oaths/False Statements [18 USC 152 (2) & (3)]
8 Concealment of Assets
8 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
2 Forged Documents
1 Credit Card Fraud/ Bust-Outs
1 Corporate Fraud
3 Other

Region: 18 **City:** Great Falls **District(s):** Montana

16 **Number of Referrals**

Allegations

15 Perjury/ False Statement
15 False Oaths/False Statements [18 USC 152 (2) & (3)]
14 Concealment of Assets
15 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
1 Other

Region: 18 **City:** Portland **District(s):** Oregon

2 **Number of Referrals**

Allegations

2 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
1 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Sarbanes Oxley [18 USC 1519]
1 Other

Region: 18 **City:** Eugene **District(s):** Oregon

7 **Number of Referrals**

Allegations

7 Perjury/ False Statement
7 False Oaths/False Statements [18 USC 152 (2) & (3)]
7 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]

Region: 18 **City:** Spokane **District(s):** Eastern Washington

1 **Number of Referrals**

Allegations

1 False Oaths/False Statements [18 USC 152 (2) & (3)]
1 Forged Documents
1 Other

Region: 19 **City:** Denver **District(s):** Colorado

2 **Number of Referrals**

Allegations

1 Perjury/ False Statement
1 False Oaths/False Statements [18 USC 152 (2) & (3)]
1 Bankruptcy Fraud Scheme [18 USC 157]
1 Serial Filer
2 Other

Region: 19 **City: Salt Lake City** **District(s): Utah**

14 Number of Referrals

Allegations

- 11 Perjury/ False Statement
- 4 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 3 Concealment of Assets
- 3 Bankruptcy Fraud Scheme [18 USC 157]
- 8 ID Theft/Use of False/ Multiple SSNs
- 1 Forged Documents
- 1 Mortgage/Real Estate Fraud
- 1 Serial Filer
- 1 Credit Card Fraud/ Bust-Outs
- 6 Sarbanes-Oxley [18 USC 1519]
- 7 Other

Region: 20 **City: Wichita** **District(s): Kansas**

14 Number of Referrals

Allegations

- 10 Perjury/ False Statement
- 11 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 4 Concealment of Assets
- 3 Bankruptcy Fraud Scheme [18 USC 157]
- 6 ID Theft/Use of False/ Multiple SSNs
- 2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 1 Forged Documents
- 1 Serial Filer
- 4 Credit Card Fraud/ Bust-Outs
- 1 Corporate Bust-Outs / Bleed Outs
- 6 Other

Region: 20 **City: Albuquerque** **District(s): New Mexico**

6 Number of Referrals

Allegations

- 3 Perjury/ False Statement
- 3 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 3 Concealment of Assets
- 2 ID Theft/Use of False/ Multiple SSNs
- 2 Tax Fraud [26 USC 7201, et seq.]
- 1 Other

Region: 20 **City: Tulsa** **District(s): Eastern Oklahoma; Northern Oklahoma**

5 Number of Referrals

Allegations

- 4 Perjury/ False Statement
- 4 False Oaths/False Statements [18 USC 152 (2) & (3)]
- 4 Concealment of Assets
- 3 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
- 2 Embezzlement [18 USC 153]
- 1 Post-Petition Receipt of Property [18 USC 152 (5)]

Region: 20 **City: Oklahoma City** **District(s): Western Oklahoma**

6 Number of Referrals

Allegations

4 Perjury/ False Statement
5 False Oaths/False Statements [18 USC 152 (2) & (3)]
3 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
1 ID Theft/Use of False/ Multiple SSNs
2 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Tax Fraud [26 USC 7201, et seq.]
1 Forged Documents
4 Other

Region: 21 **City: Atlanta** **District(s): Northern Georgia**

34 Number of Referrals

Allegations

12 Perjury/ False Statement
13 False Oaths/False Statements [18 USC 152 (2) & (3)]
8 Concealment of Assets
11 Bankruptcy Fraud Scheme [18 USC 157]
17 ID Theft/Use of False/ Multiple SSNs
4 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Forged Documents
3 Mortgage/Real Estate Fraud
3 Serial Filer
1 Embezzlement [18 USC 153]
1 Credit Card Fraud/ Bust-Outs
4 False Claim [18 USC 152(4)]
9 Other

Region: 21 **City: Tampa** **District(s): Middle Florida**

10 Number of Referrals

Allegations

7 Perjury/ False Statement
8 False Oaths/False Statements [18 USC 152 (2) & (3)]
5 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
4 ID Theft/Use of False/ Multiple SSNs
1 Tax Fraud [26 USC 7201, et seq.]
1 Forged Documents
1 Mortgage/Real Estate Fraud
1 False Claim [18 USC 152(4)]
1 Other

Region: 21 **City: Miami** **District(s): Southern Florida**

54 Number of Referrals

Allegations

14	Perjury/ False Statement
12	False Oaths/False Statements [18 USC 152 (2) & (3)]
14	Concealment of Assets
14	Bankruptcy Fraud Scheme [18 USC 157]
4	ID Theft/Use of False/ Multiple SSNs
10	Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
36	Tax Fraud [26 USC 7201, et seq.]
2	Forged Documents
2	Mortgage/Real Estate Fraud
5	Embezzlement [18 USC 153]
3	Credit Card Fraud/ Bust-Outs
3	False Claim [18 USC 152(4)]
4	Post-Petition Receipt of Property [18 USC 152 (5)]
3	Corporate Fraud
3	Corporate Bust-Outs / Bleed-Outs
2	Investor Fraud
2	Professional Fraud
7	Other

Region: 21 **City: Savannah** **District(s): Southern Georgia**

6 Number of Referrals

Allegations

3	Perjury/ False Statement
2	False Oaths/False Statements [18 USC 152 (2) & (3)]
3	Concealment of Assets
5	Bankruptcy Fraud Scheme [18 USC 157]
2	ID Theft/Use of False/ Multiple SSNs
1	Mortgage/Real Estate Fraud
1	Credit Card Fraud/ Bust-Outs
1	False Claim [18 USC 152(4)]
1	Other

Region: 21 **City: San Juan** **District(s): Puerto Rico**

19 Number of Referrals

Allegations

17	Perjury/ False Statement
15	False Oaths/False Statements [18 USC 152 (2) & (3)]
16	Concealment of Assets
18	Bankruptcy Fraud Scheme [18 USC 157]
1	ID Theft/Use of False/ Multiple SSNs
11	Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
3	Tax Fraud [26 USC 7201, et seq.]
3	Forged Documents
8	Mortgage/Real Estate Fraud
8	Embezzlement [18 USC 153]
1	Credit Card Fraud/ Bust-Outs
1	False Claim [18 USC 152(4)]
4	Post-Petition Receipt of Property [18 USC 152 (5)]
1	Corporate Fraud
1	Sarbanes-Oxley [18 USC 1519]
4	Corporate Bust-Outs / Bleed-Outs
2	Investor Fraud
1	Professional Fraud
2	Other

Region: 21 **City:** Macon **District(s):** Middle Georgia

2 **Number of Referrals**

Allegations

2 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
2 Bankruptcy Fraud Scheme [18 USC 157]
1 Concealment / Destruction/ Withholding of Documents [18 USC 152 (8) & (9)]
1 Mortgage/Real Estate Fraud
1 False Claim [18 USC 152(4)]
1 Post-Petition Receipt of Property [18 USC 152 (5)]

Region: 21 **City:** Tallahassee **District(s):** Northern Florida

4 **Number of Referrals**

Allegations

4 Perjury/ False Statement
3 False Oaths/False Statements [18 USC 152 (2) & (3)]
1 Bankruptcy Fraud Scheme [18 USC 157]
1 Tax Fraud [26 USC 7201, et seq.]
1 Other

Region: 21 **City:** Orlando **District(s):** Middle Florida

5 **Number of Referrals**

Allegations

2 Perjury/ False Statement
2 False Oaths/False Statements [18 USC 152 (2) & (3)]
2 Concealment of Assets
3 Bankruptcy Fraud Scheme [18 USC 157]
2 Tax Fraud [26 USC 7201, et seq.]
2 Forged Documents
1 Serial Filer
2 False Claim [18 USC 152(4)]
2 Other

EXHIBIT 6

FY 2005 Criminal Referrals by USTP Office

Region	Office	Total Number Referred	Prosecution Declined by U.S. Attorney's Office	Closed Administratively	With Investigative Agency	Under Review in U.S. Attorney's Office	Formal Charges Filed (Case Still Active)	Formal Charges Filed (Case Closed)*	Formal Charges (Case Closed) Breakdown		
									At Least One Guilty Plea or Conviction	At Least One Pre-trial Diversion	At Least One Dismissal
01	Boston	7	5		1	1					
01	Worcester	8	1		4	2		1	1		
01	Manchester	6	1		3	2					
01	Providence	2				1		1	1		
02	Albany	2				2					
02	Rochester	6	5		1						
02	New Haven	6	2			4					
02	Utica	2				2					
02	Brooklyn	5				5					
03	Newark	14		1	2	11					
03	Philadelphia	18	13			5					
03	Harrisburg	1			1						
03	Pittsburgh	10	1			7	1	1	1		
03	Wilmington	11	10					1	1		
04	Alexandria	5	2			3					
04	Norfolk	4				4					
04	Baltimore	10	7		1	2					
04	Columbia	7	3			4					
04	Roanoke	1				1					
04	Charleston	2				2					
04	Greenbelt	8	4			2	1	1	1		
04	Richmond	5				4		1	1		
05	New Orleans	8	3			5					
05	Shreveport	3	1			1	1				
05	Jackson	6				4	2				
06	Dallas	9	1			8					
06	Tyler	8	2			6					
07	Houston	6	1			5					
07	San Antonio	5		1		4					
07	Corpus Christi	8	4		3	1					
07	Austin	6			4	2					
08	Memphis	16	10		1	5					
08	Louisville	6				6					
08	Chattanooga	5		1	2	2					
08	Nashville	5	2			3					
08	Lexington	2	1				1				

Region	Office	Total Number Referred	Prosecution Declined by U.S. Attorney's Office	Closed Administratively	With Investigative Agency	Under Review in U.S. Attorney's Office	Formal Charges Filed (Case Still Active)	Formal Charges Filed (Case Closed)*	Formal Charges (Case Closed) Breakdown		
									At Least One Guilty Plea or Conviction	At Least One Pre-trial Diversion	At Least One Dismissal
09	Cleveland	16	3		6	7					
09	Columbus	8				6	2				
09	Detroit	3	1			1		1		1	
09	Grand Rapids	8				8					
09	Cincinnati	3	1				1	1	1		
10	Indianapolis	6	2			3	1				
10	Peoria	20	7		1	11		1	1		
10	South Bend	5	1		2	2					
11	Chicago	18	2			16					
11	Milwaukee	4	1			3					
11	Madison	7	1			5	1				
12	Minneapolis	4				4					
12	Cedar Rapids	4				1		3	2	1	
12	Des Moines	3				2		1	1		
12	Sioux Falls	1						1	1		
13	Kansas City	6	4			2					
13	Little Rock	10	2		3	4	1				
13	St. Louis	8	2			3	3				
13	Omaha	8	2			5	1				
14	Phoenix	9	6			2		1	1		
15	San Diego	6	1			5					
16	Los Angeles	65	5			60					
16	Santa Ana	17				16		1	1		
16	Riverside	5	1			3		1	1		
16	Woodland Hills	9				9					
17	San Francisco	4	4								
17	Oakland	6	5			1					
17	San Jose	3	3								
17	Fresno	11	1			8	1	1			1
17	Sacramento	4				3	1				
17	Las Vegas	7	2			4	1				
17	Reno	4	3			1					
18	Seattle	4				4					
18	Boise	8	3			5					
18	Great Falls	16	3			13					
18	Portland	2					1	1	1		
18	Eugene	7	6			1					
18	Spokane	1				1					

Region	Office	Total Number Referred	Prosecution Declined by U.S. Attorney's Office	Closed Administratively	With Investigative Agency	Under Review In U.S. Attorney's Office	Formal Charges Filed (Case Still Active)	Formal Charges Filed (Case Closed)*	Formal Charges (Case Closed) Breakdown		
									At Least One Guilty Plea or Conviction	At Least One Pre-trial Diversion	At Least One Dismissal
19	Denver	2	1			1					
19	Salt Lake City	14	4		2	1	2	5*	5		1
20	Wichita	14	2			8	1	3	3		
20	Albuquerque	6	1		2	3					
20	Tulsa	5	4			1					
20	Oklahoma City	6	4		1	1					
21	Atlanta	34	21		4	9					
21	Tampa	10	2			6	1	1	1		
21	Miami	54	42		1	11					
21	Savannah	6	3		2	1					
21	San Juan	19	15			3	1				
21	Macon	2				2					
21	Tallahassee	4	1			3					
21	Orlando	5			2	3					
		744	251	3	49	388	25	28*	25	2	2

*Note: Break-out totals 29 because one case had at least one guilty plea and one dismissal

EXHIBIT 7

Petition Preparer Misconduct

FY 2001 - FY 2006 (Thru 03/31/06)

	FY 2006	FY 2005	FY 2004	FY 2003	FY 2002
Motions/Complaints Filed	159	546	894	841	1157
Inquiries Made	588	1007	1360	2404	3245

Attorney Misconduct

FY 2001 - FY 2006 (Thru 03/31/06)

	FY 2006	FY 2005	FY 2004	FY 2003	FY 2002
Motions to Disgorge Under 329	286	418	707	898	653
Other Attorney Misconduct	121	166	211	214	243
Total Formal Actions	407	584	918	1112	896
Inquiries Made Under 329	381	776	751	1265	852
Other Inquiries for Attorney Misconduct	168	326	486	571	541
Total Informal Actions	549	1102	1237	1836	1393

Creditor Misconduct

FY 2006 (Thru 03/31/06)

	Formal Actions Filed	Inquiries Made
False/Inaccurate Claims	0	2
Discharge/Stay Violation Under Section 524	0	5
Abuse of Reaffirmation Procedures	7	2