

**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2012**

THURSDAY, MARCH 10, 2011

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

The subcommittee met at 11:04 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Lautenberg, Nelson, Pryor, Brown, Hutchison, and Murkowski.

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

STATEMENT OF HON. ERIC H. HOLDER, JR., ATTORNEY GENERAL

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, everybody. The Commerce, Justice, Science, and Related Agencies Subcommittee of the United States Senate Committee on Appropriations will come to order.

This is our first hearing on the fiscal year 2012 of the agencies within the portfolio of this subcommittee.

Today, we welcome the Attorney General of the United States. And Mr. Attorney General, we are just so glad to see you.

Before we turn to you, first of all, the subcommittee would like to note, because of our responsibility for the National Aeronautics and Space Administration (NASA), the joy that we feel on the safe return of the *Discovery*. It has been on its final journey, and sometimes I feel this appropriations subcommittee is there as well. But we were so glad that they returned safely, and we salute them.

On a more melancholy note, on behalf of this Committee, this subcommittee, and, I believe, the Senate, we would like to express our condolences to the United States Marshals Service (USMS) and to the families of those who—particularly of the deputy who was killed in a shootout with the fugitive. We also understand another marshal has been, indeed, gravely wounded. We express our condolences and our sympathies there.

We also want to note that this is the third Federal agent killed in the line of duty in recent weeks. And we want to acknowledge that our Federal law enforcement is in harm's way every single day protecting this Nation.

When we talk about numbers and statistics and cuts and shut-downs and showdowns, we need to know that there are consequences to this, and that there are people every single day out there, putting themselves in harm's way not only to protect us overseas—and we salute those troops there—but we have boots on the ground in the United States of America. And they are in our streets and our neighborhoods.

This man died serving a warrant. We know that we ask people to serve warrants every single day under the Adam Walsh Act, going after the despicable, reprehensible sexual predators.

We also note that in local law enforcement—well, eight Federal law enforcement agents died last year in the line of duty—eight. Also we were told through the National Law Enforcement Officers Memorial Fund that 160 police officers died nationwide. That is a 40 percent jump in our thin blue line from what it was in other years. Forty percent more police officers have died.

We are a Nation at risk, and our law enforcement is at risk. Now, there will be appropriate memorial services, which we salute. But we have to protect those who protect us. And that means adequate pay—first of all, let us start with respect. Let us realize that there are many people who are called to defend and protect the United States, and many are in our Federal law enforcement.

So I am going to be asking you questions today about what is going to happen in terms of what you see in 2012 and the consequences to the continuing resolution.

I also want to note that my new ranking member, Senator Kay Bailey Hutchison, will be joining us shortly. She is at a Commerce Committee hearing for which she is the ranking member. She has significant responsibility. She will be joining us. She will have her own statement, and we will interrupt any proceedings so that she can move to the head of the line.

I want to thank you for all that you are doing. And I am mindful that we are in a tough spot. I am mindful that we haven't finished our appropriations on 2011.

You were here last year. You very clearly, specifically, and aptly and ably outlined the needs of the Department of Justice of the United States of America. We tried to give you the right stuff so that they could do the right job.

Now, we are facing a continuing resolution where I don't know where we stand. I don't know where we are going, and I don't know what to tell you, what we are going to do. But I sure would like to hear from you about where you are in terms of managing the Department of Justice.

I want you to know that I am absolutely on your side. In terms of community security, I want to make sure that our streets and neighborhoods and the people who live in them are safe.

I want to be clear that our national security is protected. And what the Department of Justice is doing there, not only through the able work of the Federal Bureau of Investigation (FBI), but what they do—I read the article about you being a nighthawk, staying up and getting those 3 a.m. calls, standing sentry over the predators that threaten the safety and well-being of the American people.

Well, if you stay up all night, I think we ought to stay up all night to make sure you get funded. And in terms of oversight and accountability, yes, there are some yellow flashing lights, and you and I are going to talk about it. But I believe we need to put our Federal checkbook where our values are. We are a Nation of a rule of law. Therefore, we need to support an independent judiciary. And we need to support a Department of Justice, both to enforce our laws and also to prosecute those who break our laws.

My priorities—and I know your highlights—will be in protecting our Southwest Border, which will have an additional \$2 billion; funding for State and local law enforcement, something all of us enthusiastically support, for \$3 billion; fighting mortgage fraud and white-collar crime, close to \$1 billion; tackling civil rights and discrimination; and also strengthening our national security and counterterrorism efforts for \$5.4 billion.

I am very concerned that for those that want to cut law enforcement, it will have a draconian effect. This subcommittee and the current Justice Department have locked arms and committed to re-investing resources for the State and local areas. We want to make sure violent crime rates drop.

This is the time that we know we must be frugal, but we think we also need to make these public investments that keep our Nation straight. You can't have a strong economy if you are worried about break-ins, whether it is through cyber crime or people on the street.

The Justice Department requests \$3 billion for State and local tribal partners supporting grant programs. But we will also—I understand you are going to consolidate 35 programs.

We know that you have got your hands full tackling fraud cases, and that you are teaming up with the FBI agents, U.S. Attorneys, and legal divisions to really go after the Ponzi schemes, mortgage and healthcare fraud. We wonder why more of those who broke the law aren't in orange jumpsuits and either paying restitution or paying with time in jail. We know that you have requested close to—through the President—\$978 million to go after financial fraud.

We hear from families everywhere that they want their children to be protected. This is why we so strongly support the Adam Walsh Act. We are concerned that it received no additional funding in 2011, but yet the list of sexual predators grows. And we ask that our marshals enforce them. We want to be sure that this year, we invest \$370 million in going after the sexual predators.

I know that Senator Hutchison will talk about our Southwest Border effort. She and I have had extensive conversations about it. She and I will be joined together in our effort to protect our Southwest Border. Because if our Southwest Border is at risk, the entire United States of America is at risk.

And the Southwest Border should not be a gateway for drug cartels, illegal guns, and a variety of other despicable activity. So we want to be able to support the \$2 billion request to target and dismantle drug cartels. I know Senator Hutchison will speak more to that, but I want you to know I regard this as a bipartisan effort to protect our borders.

Something that is very specific in my interest is in the area of cybersecurity. I believe, Mr. Attorney General, we have four wars.

We have Iraq. We have Afghanistan. We have the war at our very own border, the Southwest Border war. And I believe we have an enduring war in cybersecurity.

As we speak, the United States of America is under attack. Today, at the end of the day, there will be 2,000 attacks on the Pentagon from sovereign states and organized crime.

Also, we now know that even something as important to our economy as NASDAQ had a cybersecurity intrusion. Thanks to the collaborative work of our own Government and the outstanding work of the FBI, we thwarted the bring-down of NASDAQ. Well, it could happen again, and you need a very sophisticated workforce to deal with this.

We are going to discuss a variety of issues with you, but I am going to turn to Senator Hutchison. Senator, we welcome you, and then hear from you. But we need to know, how is the Department of Justice protecting the Nation, what does fiscal year 2012 mean, and how do you see the consequences of this really foggy “never-neverland” of the continuing resolution affecting your ability to protect the Nation?

Senator Hutchison, I am going to turn to you for your opening statement. And I would like to say, I really, with warmth and enthusiasm, welcome you as my ranking member.

We have worked together on so many issues, from the space program to women’s health, and now we look forward to working with you here. And again, a very cordial and collegial welcome, and with that, we turn to you for such remarks that you choose to make.

STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Senator HUTCHISON. Well, thank you, Madam Chairman.

And let me say that I can’t think of anyone with whom I would rather work on a bipartisan basis than you, because we have worked together on so many issues of mutual concern, and I know that you are a straight shooter. And I know that you want to do the things that are right for our country, and I look forward to us pursuing those things together. And we do have a lot of mutual interests, in space, as well as certainly in the Justice Department.

I do want to welcome you, Mr. Attorney General. You have a very tough job, and I understand that. And I have looked at the beginnings of the budget request that you have made.

I will just make a few points. And I will say I am late because I am the ranking member on the Commerce Committee, and we had nomination hearings this morning at 10 a.m., and it ran over. So I do apologize.

Let me just make some of the points, because Senator Mikulski was talking as I came in about the war on our border, and it is true. It is there. Just yesterday, I was meeting with the people from Laredo—actually, the day before yesterday. The police chief was here, the mayor, the council. And when I go to El Paso or Laredo or Brownsville or many of our border cities, I see what they are dealing with at a local level.

And I will tell you what every one of them says to me, and that is the most valuable thing that they have is the interagency information cooperation. And they believe that is working pretty well, and that is very important to them because their local police on the

streets need to know if we have drug cartel information or drug gang information. And there is no question in my mind that we have got to have a firm stand on the border to completely stop the corruption from coming across.

And there is drug activity connected with the Mexican cartels in our major cities and in our border communities. And there are efforts to recruit 12-year-olds and 13-year-olds by the cartels. They are poor kids. They have never had money, and they are offered enormous sums of money to do terrible things. So we have a problem and we must use the resources that we have.

Your budget does have support for State and local law enforcement. One of the things that I am very concerned that you have cut is the State Criminal Alien Assistance Program (SCAAP) funding. That is the funding for the local people to house illegal alien criminals. People who have committed crimes, they have to go to a jail, and the jails are overrun. These are county jails and city jails, and they are overrun.

SCAAP funding helps offset the expenses of housing criminals who are also illegal aliens, and your budget cuts that by \$194 million. And I am very concerned about that, I will tell you, because we need to support those local law enforcement officials throughout the Arizona and California borders as well. Senator Feinstein, Senator Kyl, and I have worked on this, and I hope that we can use that priority.

I think that the Community Oriented Policing Services (COPS) hiring funding, in my opinion—and according to The Washington Post, your Department didn't put that forward as a request in your budget, but OMB did. And so, it is in your request. I don't—I think that it is important to have police on the streets everywhere. But is it the priority use of your funding? I don't think so.

And I think perhaps you didn't think so since you didn't ask for it. But that is an area where, if I were going to do it at all, it would be on the border to help local law enforcement officers deal with issues that are beyond just their purview, but are because of people coming across the border and these terrible drug fights.

Number two, Mr. Attorney General, Guantánamo—I know we are in disagreement about Guantánamo. I welcomed the President, even though he was critical of the Congress, in his statement that we would not be able to pursue trials of these terrorists on American soil. He was not happy about it, but I am glad that we are not going to be bringing those people from Guantánamo, where there has yet to be an escape, into our 49—well, 48 States anyway, certainly. And I don't want it to be in Hawaii or Alaska either. But I don't think it is in the security interests of U.S. citizens to have these people on our soil where there could be attacks to try to free them or other issues.

So I think that many in the Congress hope that you will not be pursuing that further. But I think there will be efforts to keep there from being money in your budget to pursue trying these people on American soil with all the rights of American citizens in our court system.

I have been to Guantánamo Bay, and I think that it is the right place for these people to be held. And I think that I will just quote one of our intelligence community followers to just give some statis-

tics that assess how many of the people who have actually been released from Guantánamo have been confirmed or suspected of re-engaging in terrorist or insurgent activities after their transfer out. Thirteen percent are confirmed and 69 percent—or 13 percent are confirmed and 11 percent more are suspected of re-engaging where they are now in terrorist and insurgent activities. In addition to that, 13 are dead, 54 are in custody again, and 18 remain—83 remain at large.

So we have got information that says that there is a high recidivism rate for people who have been in Guantánamo and released. So I just hope that we will be a little more protective of our American soil than to talk about bringing them home.

The Immigration and Customs Enforcement (ICE) agent shooting in Mexico—there are disturbing reports. First of all, let me say, I appreciate that you have established an investigation that encompasses the organizations that could contribute to this. I give you the credit for doing that.

I want to add to your area of investigation that there are disturbing reports that the weapons that have been used in the killing of a Border Patrol agent in Arizona and the ICE agent from Texas in Mexico City, that the guns used were smuggled in from America. And the reports are that perhaps Bureau of Alcohol, Tobacco, and Firearms and Explosives (ATF) agents knew of that smuggling.

I would like to ask you—and I will, in my question period—if you will add that to your area of investigation.

So I will stop there. I will just say one last thing, and that is, the Southwest Border efforts that you are making and are in your budget I do appreciate. I think the increase in the Drug Enforcement Administration (DEA) intelligence center in El Paso is very important. And I think that Project Gunrunner is something that I support, but I do want to make sure that the ATF agents are also supporting that. And so, we can talk more about that.

But thank you, Madam Chairman, for having this hearing and giving us this opportunity to talk to the Attorney General, and I thank you for giving us the time.

Senator MIKULSKI. Thank you, Senator Hutchison.

Colleagues, I want to note that we started our hearing at an unusual time to accommodate Senator Hutchison, which we were delighted to do. But the Attorney General has to leave at 12:30 p.m.

So instead of asking for your opening statements, why don't we get right into the testimony? If any of you have to leave, if you could tell me, because I want to protect your rights as well.

Mr. Attorney General, why don't you go right ahead with your testimony, and let us get into it.

SUMMARY STATEMENT OF ERIC H. HOLDER, JR.

Attorney General HOLDER. Thank you.

Well, good morning, Chairwoman Mikulski, Ranking Member Hutchison, and other distinguished members of the subcommittee.

I want to thank you for this opportunity to discuss the President's fiscal year 2012 budget for the Department of Justice.

And on behalf of my colleagues, the more than 117,000 dedicated men and women who serve our Nation's Justice Department in po-

sitions and in offices all around the world, I want to thank you for your support of the Department's critical work.

Now, as I have said often, no aspect of our work is more important or more urgent than protecting the safety of the American people and strengthening our national security. As Attorney General, this is my paramount obligation. And at every level of the Justice Department, this is our primary focus.

In recent years, we have confronted some of the most significant terrorist threats to the homeland since the September 11 attacks, and the Justice Department has played a vital role in combating these threats.

Just yesterday, outside of Spokane, Washington, we arrested a United States citizen on charges of attempted use of a weapon of mass destruction. We allege that in January, this individual placed a bomb along the route of a Martin Luther King Jr. Day unity march.

Now, had it been successful, this alleged bomb plot could have been extremely deadly. But thanks to the help of alert citizens and the outstanding work of FBI agents and their Federal, State, and local law enforcement partners, it was foiled. And this morning, that individual is in custody.

On Tuesday of this week, United States citizen Jamie Paulin-Ramirez pleaded guilty in Federal court in Philadelphia to conspiracy to provide material support to terrorists and admitted to traveling overseas with the intention of participating in violent jihad.

And 2 weeks ago, Zachary Chesser, a resident of northern Virginia and, again, a United States citizen, was sentenced to 25 years in prison for attempting to provide material support to the terrorist organization Al-Shabaab, communicating threats against Americans and encouraging violent jihadists to impede and to obstruct law enforcement activities.

Now despite the many forms of national security threats that we have faced, I am proud to report that over the last 2 years, the Justice Department has charged more defendants in Federal court with the most serious terror-related offenses than at any other time since 9/11.

Now beyond our essential national security work, the Department has made extraordinary progress in fulfilling the pledge that I made before this subcommittee nearly 2 years ago: that under my leadership, every decision made and every policy implemented would be based on the facts, the law, and the best interests of the American people, regardless of political pressures or consequences.

Now I am proud of the work that has been done to honor this promise and to advance the Department's other critical priorities. In the last 2 years, we have taken meaningful steps to safeguard civil rights and to utilize the new tools and authorities that the Congress provided to combat hate crimes.

We have worked to protect our environment and to respond to the largest oil spill in United States history by seeking justice for victims and working to make certain that American taxpayers don't foot the bill for restoring the gulf coast region.

We have launched historic efforts to expand access to legal services, to strengthen our corrections system, and to combat child ex-

ploitation, human trafficking, prescription drug abuse, and gun, gang, and drug-fueled violence.

The Department has collaborated with governments worldwide not only to combat international crime networks, but also to identify and to disrupt drug cartel operations, intellectual property thefts, and a broad range of cyber crimes.

We have strengthened relationships with colleagues across Federal, State, local, and tribal governments as well. And we have focused in particular on finding innovative, effective ways to protect the safety of our law enforcement partners.

From our bulletproof vest initiative to cutting-edge training programs and information-sharing platforms, we will continue to do everything we can to ensure officer safety and to reduce the rising tide of gun violence against law enforcement that has devastated too many families and communities in recent months.

I also want to note that we have brought our Nation's fight against financial and healthcare fraud to a new level. In fact, in the last year, the Department has announced the largest financial and healthcare fraud takedowns on record. And in fiscal year 2010, the Department's Civil Division secured the highest level of healthcare fraud recoveries in history, \$2.5 billion, as well as the second-largest annual recovery of civil fraud claims.

Our Criminal Division has seen similar success in fiscal year 2010. The Criminal Division participated in efforts, including joint enforcement actions with our U.S. Attorneys' offices throughout the country, that secured more than \$3 billion in judgments and in settlements.

Now, in addition to our work to secure these recoveries, we have made strategic investments and taken unprecedented actions to serve as sound stewards of precious taxpayer dollars.

The President's fiscal year 2012 budget for the Department of Justice reflects our ongoing commitment to identifying savings and efficiencies. It also reflects a willingness to make difficult, but necessary choices, such as program reductions, in order to focus resources on our highest-priority programs and to respond to current fiscal realities.

Although the current cost of operations and staffing is considerably higher than it was last year, the fiscal year 2012 budget request represents an increase of less than 2 percent more than the fiscal year 2011 continuing resolution. Without question, the continuing resolution has presented significant budget challenges for the Department and resulted in financial restrictions, including a temporary hiring freeze and the curtailing of nonessential spending.

I have had to make some tough choices, and I have asked my colleagues to do more with less. They have risen to the occasion, and they are working harder and more collaboratively than ever before.

PREPARED STATEMENT

It is on their behalf and on behalf of the American people that we are privileged to serve that I submit to you the Department's fiscal year 2012 budget request.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF ERIC H. HOLDER, JR.

Good morning Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee. Thank you for this opportunity to meet with you today to discuss the President's fiscal year 2012 budget request for the Department of Justice (DOJ) and to provide an update on the Department's progress, key priorities, and future plans. I appreciate your recognition of the Department's critical mission, and I thank you, in particular, for your support of the fiscal year 2010 Supplemental Emergency Border Security Act and the fiscal year 2010 Supplemental Disaster Relief and Summer Jobs Act. These measures provided essential resources for our law enforcement and litigation operations. I look forward to your continued partnership and support.

When I appeared before this subcommittee last May, I testified that the Department had made historic progress in meeting its strategic goals under this administration:

- to protect our national security;
- to reinvigorate the Department's traditional missions and to restore integrity; and
- have transparency at every level of the Department's work.

I also pledged that, under my leadership, all decisions and policies would be based on the facts, the law and the best interests of the American people, regardless of political pressures or political consequences.

Almost 1 year later, I am pleased to report that—even at a time of financial challenge—we continue to make progress in meeting these ambitious goals. We remain dedicated to protecting the American people through the use of every lawful instrument to ensure that terrorists are brought to justice, held accountable for their actions, and can no longer threaten American lives. Over the past year, we also continued to defend the safety and best interests of both consumers and the United States. We sought to ensure the strength and integrity of our most essential healthcare programs through enforcement actions that helped control healthcare costs and reduce fraud. We worked to safeguard the public against threats foreign and domestic. We collaborated with local law enforcement to investigate January's tragic shootings in Tucson, Arizona, and we continue to utilize every resource necessary to deliver justice for those killed and injured. We also led Federal efforts to prevent and control crime by taking aggressive steps to combat the serious proliferation of violence along the Southwest Border and to combat the nationwide epidemics of gang- and drug-fueled violence, human trafficking, hate crimes, and child exploitation.

Today, I affirm these commitments—and pledge also to act as a sound steward of taxpayer funds. The Department will continue to explore ways to assess the effectiveness of our investigations and prosecutions; to reduce duplication of efforts and realign investigative resources; and to promote effective, fiscally sound alternatives to incarceration consistent with public safety. I will continue to make targeted investments that render communities safer for all Americans and to work with our many partners to strengthen critical State, local- and, tribal-assistance initiatives.

As you are aware, the fiscal year 2011 continuing resolution presents significant budget challenges for the Department, as the current cost of operations and staffing is considerably higher than it was last year. Given the size of our Department—and the scope of its many responsibilities—I have announced financial restrictions that are difficult but, under these circumstances, necessary. One of the measures that I recently announced was a temporary freeze on hiring. I have also directed components to immediately curtail nonpersonnel spending unless it is necessary for essential operations. These actions—and others—are designed to increase overall efficiency and to keep the Department solvent and operating effectively. We take these steps now in order to avoid more severe measures in the future, such as staff furloughs.

But even with these directives in place, it is critical to our national security—and to our law enforcement work—that the Department obtains adequate funding in fiscal year 2011 and that this subcommittee, and the 112th Congress, approves the President's fiscal year 2012 budget request.

The President's fiscal year 2012 budget request for the DOJ totals \$28.2 billion, which represents a 1.7 percent increase in gross discretionary budget authority compared to the fiscal year 2011 continuing resolution level. This budget reflects our key priorities of strengthening national security, preserving the Department's traditional missions, maintaining safe prison and detention facilities, assisting our State, local and tribal law enforcement partners, and identifying savings and efficiencies that promote fiscal responsibility. In addition to addressing my key priorities, the budget enhances the Department's ability to focus on recovering assets obtained

through financial fraud, drug trafficking, and other criminal activity. In fiscal year 2010, the Department's Asset Forfeiture program obtained more than \$1.6 billion in forfeited assets and distributed more than \$674 million to victims of financial crimes and our State and local law enforcement partners. The Department also collected and disbursed more than \$4.7 billion related to civil debt collection in fiscal year 2010. Of this amount, \$3.7 billion was returned to Federal agencies; \$494.5 million was returned to the Treasury; \$391.2 million was paid to non-Federal recipients; and \$101.8 million was retained for debt collection efforts within the Department. This budget continues our emphasis on fiscal accountability and oversight.

STRENGTHEN NATIONAL SECURITY

Preventing, disrupting, and defeating terrorist acts before they occur remain the Department's highest priority. National security threats are constantly evolving, requiring additional resources to address new critical areas. The increase in global access to technological advancements has only compounded this problem, resulting in new vulnerabilities that must be addressed.

The President's budget request demonstrates this administration's steadfast dedication to protecting our national security and a commitment to using every instrument within our power to fight terrorism and keep America safe. The Department plays a critical role in the Government's national security and intelligence efforts, and it is essential that the Department's budget maintain the capabilities we have developed even in these difficult fiscal times. Moreover, the budget requests \$128.6 million in program increases and 170 additional positions to strengthen national security and counter the threat of terrorism. The requested increases would provide the essential technological and human capital to detect, disrupt, and deter threats to our national security.

More specifically, the administration supports critical national security programs within the Department, including \$122.5 million in program increases for the Federal Bureau of Investigation (FBI) and \$729,000 in program increases for the National Security Division. This figure includes resources that will enable the FBI to enhance national security related surveillance capabilities and enhance its Data Integration and Visualization System; expand the Operational Enablers program and Weapons of Mass Destruction/Render Safe capabilities to strengthen our ability to diffuse, disrupt, or destroy weapons of mass destruction; and expand the Computer Intrusion initiative to increase our capabilities to detect and counter cyber intrusions.

To address the growing technological gap between law enforcement's electronic surveillance and the number and variety of communications devices available to the public, the request also includes \$17 million in program increases to improve the Department's lawful Electronic Surveillance Capabilities for the FBI, Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms and Explosives, and the U.S. Marshals Service.

PRESERVE TRADITIONAL MISSIONS

At the Department, we continue America's greatest tradition of protecting the promise of justice and helping bring justice to those in need. Enforcing the law and ensuring the fair and impartial administration of justice for all requires resources to both investigate and litigate on behalf of the American people. The request provides \$57.4 million in program increases to expand the Department's enforcement litigation capacity and its ability to protect vulnerable populations.

These resources will enable the Department to continue to fulfill its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the marketplace, while responding to new and unprecedented challenges such as the Deepwater Horizon oil spill. And they will support continued robust efforts to crack down on financial fraud, which have already resulted in charges for fraud schemes that have cost victims more than \$8 billion in estimated losses nationwide. The budget also includes funding to continue the implementation of the Hate Crimes Prevention Act of 2009, which helps communities prevent and respond to violent hate crimes committed on the basis of gender, gender identity, sexual orientation, religion, and disability in addition to race, color, and national origin.

To respond to mounting demands, we have also requested \$15 million for the Executive Office of Immigration Review, including funds for 21 new immigration judge teams, additional attorneys for the Board of Immigration Appeals and funds to expand our Legal Orientation program.

MAINTAIN SAFE PRISON AND DETENTION FACILITIES

It is important for the Department to maintain the appropriate balance of resources within core Departmental functions. Successful investigations lead to arrests, prosecutions, and convictions. They also lead to a greater need for prison and detention capacity. More than 5,000 new Federal inmates and 6,000 detainees are projected to be in custody in 2012, which means adequate funding for prison and detention operations is critical. The budget requests a total of \$8.4 billion to maintain basic prison and detention operations.

The budget request includes \$224 million in prison and detention resources to maintain secure, controlled detention facilities and \$461.4 million for program increases to ensure the growing numbers of offenders are confined in secure facilities. The Department is committed to strengthening current efforts to improve inmate re-entry and recidivism rates, and the proposed budget includes \$22 million for second chance initiatives that would allow for enhanced inmate re-entry programs, specifically vocational training, education, and drug treatment programs.

In addition, the budget addresses the Federal prison population through sentencing reform. Such reform is anticipated to help stabilize the growth of the prison population and ensure fundamental fairness in our sentencing laws, policy, and practice. One outcome of these changes would be to address associated long-term costs.

We are also continuing our efforts to combat sexual abuse in correctional settings. Simply put, sexual abuse is a crime, not a punishment for a crime. Last month, we published a proposed rule pursuant to the Prison Rape Elimination Act (PREA) that contains national standards aimed at combating sexual abuse in adult prisons and jails, juvenile facilities, lockups, and community confinement facilities. In addition to preparing the rule, the Department has been working to ensure that, once promulgated, the national standards are successful. The Department is uniquely positioned to serve as a force multiplier, enabling best practices to gain recognition and enabling correctional systems to benefit from the PREA efforts of other jurisdictions. The Bureau of Justice Assistance has entered into a 3-year cooperative agreement for the development and operation of a Resource Center for the Elimination of Prison Rape. The Resource Center, which was established with fiscal year 2010 funding, will provide additional training and technical assistance to States and localities to assist in the identification and promulgation of best practices and promising practices. The Department's request will supplement our efforts by enabling the Bureau of Justice Statistics to continue its work conducting surveys examining the incidence and consequences of sexual abuse in confinement settings.

ASSIST STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT PARTNERS

The President's budget also requests a total of \$3 billion for State, local, and tribal law enforcement assistance. These funds will allow the Department to continue support to State, local, and tribal law enforcement agencies that fight violent crime, combat violence against women, and support victim programs.

The Department recognizes that many tribal law enforcement agencies face unique obstacles to effectively promote and sustain community policing. Unlike municipal police agencies, many tribes still lack basic technology to modernize their departments, such as laptops installed in police vehicles. The budget requests \$424.4 million in total resources for public safety initiatives in Indian country.

In addition, the Department continues to build and maintain key partnerships with State, local, and tribal law enforcement officials as well as community members. These partnerships include Community Oriented Policing Services hiring program, which enables State, local, and tribal police agencies to increase the number of officers available for targeted patrol and other proven strategies designed to prevent and reduce crime. In addition, the Office on Violence Against Women (OVW) supports numerous grant initiatives that provide communities with resources to combat sexual assault and other forms of violence against women. These include the Legal Assistance for Victims program, Sexual Assault Services program, and the new OVW Consolidated Youth Oriented Grants program.

The budget request includes resources for new programs for the Office of Justice programs, including the Race-to-the-Top style Juvenile Justice System Incentive Grant program and the Byrne Criminal Justice Innovation program. And it includes funding to continue implementation of the Adam Walsh Act of 2006 to protect children from exploitation; assist children exposed to violence; and implement a smart policing initiative. These programs—and our relationships with State, local, and tribal law enforcement agencies—will maximize the Federal Government's ability to fight crime and to promote justice throughout the United States.

In that spirit, although violent crime has decreased nationwide, the Department remains committed to tackling a disturbing countertrend: the number of law enforcement officers killed in the line of duty has surged. Last year, 162 law enforcement officers were lost—61 of them were killed by gun-violence—an increase of nearly 40 percent from the previous year, and the highest level of gun-related officer deaths in nearly two decades. So far in 2011, the number of officers killed by gunfire is 60 percent higher than last year's level at this time.

To combat this unacceptable trend, the Department hopes to be able to continue our critical investments to expand our bulletproof vest initiative and our cutting-edge officer safety training programs and information-sharing platforms. This much we owe to those who put themselves in harm's way, day after day, to protect their fellow citizens.

SAVINGS AND EFFICIENCIES

The President's fiscal year 2012 budget request represents a fiscally responsible approach to funding the Department's critical missions. The budget proposal also places a premium on achieving savings and efficiencies. It includes broad savings to be gained from improved IT project management, smarter travel policies, better space utilization, and other cost-saving measures. We have also made hard choices in program reductions in order to focus our resources on our highest-priority programs. These are just a few of numerous proposed efforts to respond to the fiscal realities that we face today—and to act as sound stewards of taxpayer dollars.

As we move forward with the tough choices necessary to reduce our national deficit and put the country on a sustainable fiscal path, we must never compromise our core mission—to protect the American people—and to ensure justice for all.

CONCLUSION

Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee, thank you again for this opportunity to discuss the Department's priorities and detail new investments sought for fiscal year 2012.

Today, I have highlighted critical areas that require attention and resources so that the Department can continue to enforce the Nation's laws and protect our national security. I hope that you will support the Department in the execution of these worthy efforts. In this age of limited budgets and growing demands, the Department's leadership has already made many tough choices in preparing this budget, significantly reducing funds requested in certain areas in order to focus our resources on national security and core law enforcement and litigation responsibilities. I urge you to support these priorities.

In this time of unprecedented challenges, new threats, and ongoing war, such support will remain critical in enabling the DOJ to meet its goals and obligations. As we move forward, I look forward to working with you and your colleagues.

I am now happy to answer any questions you may have.
Thank you.

Senator MIKULSKI. Thank you very much, Mr. Attorney General.

We are going to follow pretty closely the 5-minute rule and go in the order of arrival.

I am going to use my first 5 minutes and then, if you are still able to stay, focus also on 2012. But I am very deeply concerned about the consequences of the continuing resolution on the safety and functioning of the United States of America.

We know that Homeland Security and the Department of Defense are off the table. But I would like to know, what are the consequences of the continuing resolution to you—not to you, but to the Department of Justice?

We have already cut—or at least the Senate was willing—many in the Senate were willing to cut up to \$50 billion. Now we are going to be asked to cut another—go another 2 weeks and cut another \$4 billion, and then maybe another 2 weeks and another \$4 billion while we keep doing this.

As the CEO of DOJ, what could you tell us about the consequences on the functionality of DOJ? And also, I know that you are going to pay the FBI and make sure they are on the job. But

I would presume you have to recycle, reprogram, and move money around.

Could you tell us what this means in terms of the safety and security of the people who work for us, and then also the consequence to local communities? And what does this also mean to morale? I am not hearing good things in Maryland about morale and this continuing resolution.

EFFECTS OF FISCAL YEAR 2011 CONTINUING RESOLUTION—MORALE

Attorney General HOLDER. Yes. I will go in reverse order. But I would start with morale, and that is not an insignificant concern. And I think you are right, that the uncertainty that this process has entailed has had a negative impact on morale throughout the Department.

As I have visited, up to now, about 38 U.S. Attorneys' offices, as I talk to the people who are in the components here in Washington, DC, the lack of certainty with regard to the amounts of money that we are going to have, the ability to do the programs that we want to do, the question of whether or not they are going to continue to have their jobs, be furloughed, pay cuts, all of these things have had a negative impact on morale.

People are fighting through those morale concerns and still doing a good job. But it is, nevertheless, a concern that I have.

If we look at the funding levels under the current continuing resolution, I know that certain accounts, such as prisons, detention, some of our legal divisions, will ultimately be deficient without further funding. And I am greatly concerned about that. This has a negative impact on our ability to do the job that the American people expect from the Department of Justice.

If you look at the possibilities that exist here, I am very concerned that, too often, our funding is considered discretionary. Well, there is nothing discretionary about protecting the national security, protecting the lives of the American people, making sure that we adhere to the rule of law.

EFFECTS OF FISCAL YEAR 2011 CONTINUING RESOLUTION—FURLOUGHES

Senator MIKULSKI. Would you anticipate furloughs?

Attorney General HOLDER. I don't think so. I think that with the hiring freeze that we have in place, we are going to be okay. But I have to say that if we continue with these 2-week cycles or 3-, 4-week cycles, we are ultimately going to reach a position where we are going to have to consider that.

That is not something that people in the Department of Justice are going to want to hear, and it is something that I would certainly like to avoid. But I am very concerned that unless we have additional funding, that might be something that we will have to consider.

EFFECTS OF FISCAL YEAR 2011 CONTINUING RESOLUTION—PRISON FUNDING

Senator MIKULSKI. And these cuts, is it possible that you will run out of money in certain key areas at certain times in the year?

Attorney General HOLDER. Yes. If you look at the level of funding that we are getting with regard to the prisons, we are taking in prisoners all the time. We have about 200,000 now. We expect to take in about another 11,000 this year.

We need additional funds beyond that which we have in order to do the work of keeping prisoners and keeping them off the streets. We will potentially run out of money in that regard.

Senator MIKULSKI. What would that also mean in terms of your ability to—for example, in terms of the way we reimburse on detention? Does that mean we could no longer provide funds to State and local governments to hold prisoners that we have asked them to hold, and that would fall on local people?

Attorney General HOLDER. We have made tough decisions in the budget, cognizant of the fact that we are not going to have as much money as we would like, and we have had to cut the SCAAP program. As this budgetary process goes through and we look for cuts that we have to make, I think that is one of the things that would have to be on the table.

It is not something I would want to do, but as I am trying to restrict my focus on what I consider core functions of the Department of Justice, that is something that I think would potentially be at risk.

EFFECTS OF FISCAL YEAR 2011 CONTINUING RESOLUTION—FUNDING

Senator MIKULSKI. So this is pretty serious. And am I correct, from our conversation before the hearing, that a cut at this stage of the year has almost a—it has a different consequence than if you could spread it out over the year? How would you see that?

Because, first of all, know that I don't want to cut more. I believe in a more frugal Government. I believe we will have to look to other sources, like oil and gas subsidies, the \$30 billion farm subsidy, et cetera—that we can't do all this on discretionary spending.

I worry about if this subcommittee has to take more, we would have to go to the Justice Department, the space program, important economic development initiatives in the Department of Commerce. Can you take more?

Attorney General HOLDER. I don't think that we can. I think that we, in the very, very short term, can come up with creative ways in which we can deal with this. That is why I have instituted this hiring freeze, stopped all kinds of what we call "nonessential" spending, but we are pretty close to the bone. And—

Senator MIKULSKI. So you have already taken those steps at where we are now?

Attorney General HOLDER. Yes, those steps have been in place.

Senator MIKULSKI. I am going to stick to the 5-minute rule. I am going to stop and want to pursue 2012.

Senator HUTCHISON.

PROJECT GUNRUNNER

Senator HUTCHISON. Yes, thank you, Madam Chairman. I will try to—I will stick to the 5-minute rule.

Let me ask you about the ATF issue that I mentioned in my opening statement, that there are reports that there was actually knowledge by ATF of the sales that were going on of the arms out

of America, illegally out of America into Mexico, purportedly, I think, to be able to trace them, but after the shooting of the agent in Mexico, traced to those arms and also the shooting of the agent in Arizona.

What is your view now on that particular program? And I know that you have asked for an Inspector General study of it, but tell me if you think that program should be continued. Is it the correct use of the Project Gunrunner subprogram, I guess? Because, of course, it is a great concern.

Attorney General HOLDER. First, I would say that the mission of the ATF and the mission to which they are dedicated is to stop the flow of guns into Mexico and to people who shouldn't have guns here in the United States. And that is the focus of the ATF, that it is why the ATF agents serve bravely in Mexico and in this country, and, I think, do a great job.

It is true that there have been concerns expressed by ATF agents about the way in which this operation was conducted. And on that, I took those allegations, those concerns very seriously and asked the Inspector General to try to get to the bottom of it. An investigation—an inquiry is now underway.

I have also made clear to people in the Department that letting guns walk is not something that is acceptable. Guns are different than drug cases or cases where we are trying to follow where money goes.

We cannot have a situation where guns are allowed to walk, and I have made that clear to the United States Attorneys, as well as the agents in charge in the various ATF offices.

Senator HUTCHISON. Thank you.

GUANTÁNAMO BAY TRIALS

On Guantánamo Bay trials, in the President's budget, there is a \$72.8 million request for the Department's anticipated increases in security and prosecutorial costs associated with high-security trials. And it is a variety of things that you would need if you are going to bring known and reputed terrorists to trial in the United States.

Mr. Attorney General, do you think that is the right priority for the expenditure of your very scarce and important dollars for FBI, ATF, the many areas of law enforcement that you are responsible for? Do you really—I mean, I will say, is it still going to be the policy that you will continue to pursue having trials on American soil, even in spite of the protests that you have heard from Members of Congress?

Attorney General HOLDER. First, in this fight, we have to use all the tools that we have. The use of Article III courts and our Federal courts has proven to be extremely effective over the years. Hundreds of people have been convicted of terrorist offenses in these cases.

We have shown that the Bureau of Prisons is capable of handling them, holding onto them. There is not one report—one report—of anybody ever escaping from a maximum-level Federal penitentiary who has been convicted of a terrorist offense. I think we can handle these cases. We have done so in the past.

There is, with regard to the budget that we have submitted in 2012, no trial money with regard to these Guantánamo detainees.

I think that the restrictions that the Congress has placed on our use of funds in that regard, as I indicated in a letter that I sent to Majority Leader Reid, as well as to Speaker Boehner, are unwise.

The President indicated in his signing statement when he signed the Defense authorization bill that he thought this was not a wise thing to do as well. And we both indicated that we will try to unravel or unwork the restrictions that have been placed on us because I think it hampers us and our ability to handle the terrorism problem by taking a tool away from us that has proven to be very useful in the past.

Senator HUTCHISON. Well, my time is up, and I will adhere to the 5-minute rule.

Thank you, Madam Chairman.

Senator MIKULSKI. Senator Nelson.

Senator NELSON. Thank you, Madam Chairman.

Attorney General Holder, it is good to have you here. First of all, I want to thank you and all those who work within your agencies for the fine work on behalf of the security and justice for all Americans, and we appreciate those efforts so much.

FISCAL YEAR 2012 BUDGET CUTS

This is the time to have a candid conversation, of course, about budgets and the expenditure of taxpayers' dollars, and it is not something new for me. As Governor, I had to make the tough decisions about tough times when revenues didn't necessarily match the need for the outflow of expenditures to take care of the needs of the people.

So I am hoping that we can work cooperatively in this effort, and I know we can. Cuts are coming, and what I would like to know is as you look at your budget, it requests a 1.7 percent increase in new budget authority. And the increase in parts of your budget, outside of State and local grants, which, I think, have been reduced by 16 percent, the budget actually, outside of those cuts, goes up 4.4 percent.

I am hopeful that you will be able to take a look at that budget in light of where we are today, recognizing that we have to do more with less. And I know that is easy to say and hard to do, but it is essential that you could take a look to see where you could begin to trend down the expenditures in the 2012 budget.

I understand the challenge you have with the continuing resolution—continuing resolutions, I guess; we just keep doing it—for 2011. I understand that challenge. But in 2012, we are looking at a 12-month period, not cutting in the middle of programs, but at the beginning.

If you would, tell me where you could look to cut 1, 2, or 3 percent, or some area of reduction. We are expecting that from the Department of Defense. I am on the Armed Services Committee. And so, if you would, give me your thoughts.

Attorney General HOLDER. We are mindful of the financial situation that our Nation confronts, and we have submitted a budget for 2012 that I think walks that fine line between understanding the financial situation that we are in and making sure that we are still

capable of doing what the American people expect of the Department of Justice.

As I look at the places that we have made cuts—everything from dealing with ballistics tracing, radios, and technology—we have made very substantial cuts. We have looked at what we call DOJ-wide cross-cutting efficiencies and cut about \$57 million there.

We have looked at a whole variety of things that, frankly, have been really difficult to identify and difficult to implement. I have pushed people to make sure that we are not doing things for financial purposes that will have a negative impact on our ability to do our jobs, and we have come up, as I said, with a variety of things that are reflected in the budget that I think take into account those dual responsibilities: The financial situation and our obligation to keep the American people safe.

Senator NELSON. To distinguish myself from those who have been running around with percentages looking for plans for cuts, the reason that I am focused on this is Admiral Mullen, Chairman of the Joint Chiefs, when asked the question, “What is the biggest threat to America?” It wasn’t Iran. It wasn’t North Korea. It wasn’t even the border. Although those are important challenges that we face, it was the national debt.

So if that is the biggest threat to our country, then we must, in fact, find ways to trend down spending, increase prosperity to both cut and grow our way out of the situation we are in, and that means that everybody has to do more with less. We can’t do—we can’t ignore that reality. And so, that is why I hope we can work cooperatively to try to find a way to make those reductions.

It is a categorical imperative that we are facing right now, based on the threat that debt and the growing deficit is to our future. Not just our future, but to future generations as well.

Attorney General HOLDER. No, I agree with you, Senator. We have to find a way in which we deal with that debt problem that is, in fact, a threat to the welfare of our Nation, while at the same time coming up with ways in which we do the things that are expected of the Department.

You know, we are not the biggest agency. We have a proposed budget of about \$28 billion. But the responsibilities that we have are fairly enormous with regard to everything from protecting the American people from outside threats to dealing with the crime situation that we find within the United States.

And we have tried in this budget to allow us the ability, the tools so that we can make sure that we keep the American people safe, that we promote civil rights, that we protect the environment, all of the things that are our responsibility, while being mindful, as you correctly say, of the crisis that we face on the budget side.

Senator NELSON. Well, I appreciate it, and I know that we can work together. And I look forward to that as we move forward with this new budget. Obviously, the continuing resolution saga is going to plague us, but we are going to have to find ways to make that work as well and find some spirit of consensus to get it moving forward so we are not doing it every 2 weeks.

Thank you very much.

Thank you Madam Chairman.

Senator MIKULSKI. Thank you, Senator Nelson.

I am going to turn to Senator Murkowski and then Senator Pryor.

Before you go, I found what you said about Admiral Mullen very interesting. When did he say that?

Senator NELSON. Within the last 6 months.

I will get you the quote.

Senator MIKULSKI. Well, I would like to hear the quote because then if he feels that—did he also say that he was willing to give at the office and that Department of Defense should—

Senator NELSON. Oh, absolutely.

Senator MIKULSKI [continuing]. Now be on the table?
[The information follows:]

Admiral MULLEN. "I think the biggest threat we have to our national security is our debt."

Senator NELSON. What I can say is that Secretary Gates has begun the process out there of trying to cut back and look for duplication and reduce the growth in their budget as well. So they are on board. They are on board.

Senator MIKULSKI. And that is why we need to go not for the 2 weeks, but we need to put all things on the table and come to a rational, orderly way to do this, because it is not good for anyone with boots on the ground.

Senator NELSON. Absolutely.

Senator MIKULSKI. Senator Murkowski.

Senator MURKOWSKI. Thank you, Madam Chairman.

And Attorney General Holder, welcome.

Attorney General HOLDER. Good morning.

Senator MURKOWSKI. Thank you for your leadership. Good morning.

BILL ALLEN ALASKA CASE

I am going to change the subject a little bit here. I would like to bring up with you the issue of Mr. Bill Allen, a name that I am sure you are familiar with from Alaska.

For the benefit of my colleagues, Mr. Allen pled guilty in 2007 to multiple Federal offenses, including bribery and extortion. He subsequently became a key witness for the Justice Department in the trials of the late Senator Ted Stevens and several Alaskan legislators. Mr. Allen is presently serving time at the Federal Corrections Institute in California.

Back in 2008, the Anchorage Police Department received information that Allen had paid a young Alaska Native woman for sex. She was 15 years old at the time. The young woman then later moved to Seattle, and he sought to continue that relationship. We learned—the law enforcement folks learned that Allen had transported this young woman between Seattle and Anchorage with the intent to engage in prostitution on multiple occasions.

The Anchorage Police Department brought in the FBI. The case was presented to the Child Exploitation and Obscenity section for prosecution. We understand that there were multiple trips with the trial attorney from Washington, DC, to Alaska to work with our law enforcement. We later learned that the trial attorney, as well as the section chief, had recommended that the case be presented

to the grand jury, and yet Mr. Allen has never been charged with these crimes.

It was reported that the charges were never presented to the grand jury, and it appears that the Justice Department simply declined prosecution.

I wrote you expressing my concerns back in August, and I received a reply from your Assistant Attorney General, Mr. Welch, back in October. I think you knew that I was not satisfied with Mr. Welch's response to my concern, and Alaskans were certainly not satisfied with the response.

I have indicated to Alaskans that I would follow up directly with you. So, at this time, I would ask you, Mr. Attorney General, if you can explain, as specifically as you can, why the Justice Department did not pursue an indictment against Mr. Allen on these charges. And if you could, specifically address the proposition that the Justice Department did not prosecute him on the sex abuse charge on account of his cooperation in other cases.

Attorney General HOLDER. With regard to the exploitation matter, I would say that the Department certainly has a very good record of vigorously investigating and trying these kinds of matters. I was just looking at the numbers here. We have about 4,000 of these offenders who, within the last 3 years, we have investigated.

Our caseload in that regard is up more than 1,000 percent since fiscal year 2001. So we are vigorous in our prosecution of those cases.

In making the determination as to what happens in any particular case, we are guided by the principles of Federal prosecution, and we take into consideration a number of factors, among them being the age of the case, the reliability of the witnesses, the ability to say that we have a better than 50 percent chance of winning a case.

Decisions to decline prosecutions or not go forward with cases are made strictly on that basis, not with regard to political persuasion or the role somebody has played. If a case could be made, a case would be brought. The basis for the declination would be rooted only in that which is governed or set out in the principles of Federal prosecution.

Senator MURKOWSKI. Given the circumstances of this particular matter and, again, this proposition that the failure to prosecute was based on cooperation, and that has been repeated and repeated, do you think I would be out of line if I were to ask the Office of the Inspector General and the Office of Professional Responsibility to examine the Department's handling in the Bill Allen case?

Attorney General HOLDER. Well, that certainly would be within your discretion to do that. I don't think that is necessarily warranted on the basis of the decision here. I am confident that the decision was made, or all of these decisions were made, on the basis of the appropriate guidelines.

We can certainly say that with regard to the case that I have not shown an unwillingness to do things that might have been a little controversial, maybe even unpopular, with regard to matters in Alaska, you know, the Stevens dismissal.

Senator MURKOWSKI. And I appreciate that.

Attorney General HOLDER. And the decision here, as I said, I am confident follows the rules that always apply.

Senator MURKOWSKI. Well, Mr. Attorney General, I appreciate your comments, and I certainly appreciate your actions with the Ted Stevens matter. This is something that has so troubled Alaskans to the core, that you have an extremely high-profile political figure, extraordinarily wealthy, truly abusing in a very terrible way a 15-year-old girl over a period of years. The assumption is just that, you know, the wealthy politician or the wealthy guy with the political connections is able to get away with a level of criminality that simply would not be accepted elsewhere.

I will tell you that we are not done attempting to resolve this issue, and I will be asking for your support as we try to pursue this.

Attorney General HOLDER. Okay. I just want to assure you, Senator Murkowski, I have great respect for you—we have always had, I think, good interactions—and the people of Alaska, that you might not agree with the decisions that have been made in connection with cases that have come before the Department of Justice, but the decisions had nothing to do with political connections, whether somebody has cooperated in a case, or anything like that.

The decisions were made only on the basis of the facts, the law, and the principles that we have to apply. And nothing beyond that entered into any decisions that we have made.

But I understand the concerns that you have expressed and that people in Alaska have. I can't get into much detail with regard to why particular decisions are made in particular cases, but I really do want to assure you and the people of your State that the extraneous things that you mentioned did not factor into that decision-making.

Senator MURKOWSKI. Well, we will keep working with you on this.

Thank you, Madam Chairman.

Senator MIKULSKI. Senator Pryor, thank you for your patience.

Senator PRYOR. Thank you, Madam Chair.

General Holder, it is always good to see you, and thank you for being here today.

DEFENSE OF MARRIAGE ACT (DOMA)

I want to start with a question about your responsibilities as Attorney General. And I know you have a lot of responsibilities. You have to balance a lot of things. I had a little taste of that when I was my State's Attorney General a few years ago.

But one of the things we were very committed to in my office was always trying to follow the law. And with that said, I am curious about your decision recently with regard to the DOMA. My view would be that even if you have concerns about the constitutionality, et cetera, the Congress has passed it. It is the law until the court—in this case, maybe the U.S. Supreme Court—tells you it is not.

I am curious about your legal rationale. And again, I don't really want to get into the details of DOMA, the policy. I happen to support it, but I am not even really talking about DOMA itself. I am talking about the process that you all went through to come to a

decision to basically stop defending one of the laws that we have on the books.

Attorney General HOLDER. Sure. As a general principle, this Department of Justice takes seriously its responsibility to defend acts of the Congress where reasonable arguments can be made with regard to their constitutionality, and we have done that. There come rare circumstances where a decision is made within the Department when that cannot be done, and that was the case with regard to DOMA.

We were faced with a situation that was, in some ways, different. We had defended DOMA in those circuits where the rational basis standard was the standard. We were faced in the Second Circuit with a circuit where no determination had been made as to what was the appropriate standard to judge the constitutionality of the statute.

We looked at the facts. Given the history of discrimination that gays and lesbians have experienced in this country, it was our belief the President accepted the recommendation that I made to him—that a heightened level of scrutiny was appropriate.

Under that heightened level of scrutiny, the determination that we made was that the statute was unconstitutional. And as a result, we made the determination that we would not defend the constitutionality of the statute. But we will continue to enforce the statute until it is either repealed by the Congress, or the Supreme Court makes the determination that it is, in fact, unconstitutional.

Senator PRYOR. You mentioned that this is a rare decision by the Justice Department. What are the other recent instances where your administration or previous Justice Departments have made a decision to not defend a Federal statute?

Attorney General HOLDER. Yes, I have in front of me a 4-page document that has 10 to 15 cases in which that has occurred. I know that Chief Justice Roberts, when he was the acting Solicitor General in the Metro Media case, made a determination not to defend the constitutionality of a statute.

There are other instances that I would be more than glad to share with you and provide you with this document. It is, as I said, something that is rare. It has happened during the course of this administration probably about eight or nine times or so, more often than not for technical reasons that we decide not to defend a statute.

What we did with regard to DOMA was extremely unique and not indicative of any desire or lack of desire on the part of the Department to do what it traditionally has done, which is defend the constitutionality of statutes.

Senator PRYOR. I would like to look at those because I have the concern about future Presidents that may disagree with some act of the Congress and just decide, “Hey, you know, we are not comfortable with this, and so we are not going to defend it.” And I think that part of the checks and balances is that the Justice Department and the administration should defend the laws that the Congress puts on the books, regardless of what their personal views may be on those.

BUREAU OF PRISONS CONSTRUCTION FUNDING

Let me go to my next question, if you will. I noticed that in one of the accounts that you have for building of prisons, for the Bureau of Prisons, my understanding is that there is some money to build prisons. But I am concerned that there may not be enough there to build the adequate bed space that you need. Do you have any comments on that?

Attorney General HOLDER. Yes. That is something I am very concerned about. We have really gotten as low as we possibly can get. We have the need for additional bed space. It is a question of safety not only for the prisoners, but for also the guards who work in these facilities.

With overcrowding comes insecure conditions, and we want to build new prisons to the extent that we can. We want to acquire the Thompson facility, for instance, in Illinois, that would be used to house high-security prisoners, where we have a particular problem.

We want to expand the facility that we have in Arkansas. We think we have had a good experience there, and there is a high-security facility that we would like to put there. But we would need the support of the Congress not only this year, but in subsequent years so that we can, in fact, construct these facilities, which I think are very much needed. Because the reality is that as we are successful in doing our jobs, there are increasing numbers of prisoners who come into the system.

Senator PRYOR. Right. Yes, I think the Federal prison system is fairly overcrowded at this point. So we need more bed space.

Madam Chair, thank you. Thank you.

Senator MIKULSKI. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

Mr. Holder, good to see you. We both spent time at Columbia University. I don't remember seeing you around the campus, but—

Attorney General HOLDER. I was there.

Senator LAUTENBERG. Yes. Maybe it was before I was there.

You didn't have President Eisenhower give you your diploma, did you? I did.

Attorney General HOLDER. No, I did not. I did not.

EFFECT OF CUTS TO THE COPS PROGRAM

Senator LAUTENBERG. You have had a lot of experience in all kinds of criminal prosecutions and white collar prosecutions. And I know how arduous you are, how you want to catch them. But you know, the one thing we know is, that you can't try criminals or offenders if you don't first arrest them. And you can't arrest them if we don't have the police on the streets and in the communities.

And we see the cuts in the COPS program. It is such a good program, and they wanted to decimate it, the Republican side. And there was an amendment offered to restore some of the funding.

But I want to tell you, I am pleased that the President's budget included a substantial increase in funding for the COPS program. But then the House Republicans stepped in and eliminated the program altogether.

In the city of Camden, New Jersey, poor city, cops can't even answer burglary calls. They have to put them on a list. They can't answer car thefts. They don't have enough manpower. Laying off more than 100 policemen, city of Newark, I mean, we have to do the things in those cities that can make them safer than they presently are.

Now what is the effect of a combination of layoffs and eliminations that the COPS program has on safety in the streets?

Attorney General HOLDER. I think that you are exactly right, Senator. I have great concern about proposed levels of funding with regard to the COPS program.

Our budget asks for \$600 million. That is an increase of \$302 million from that which had previously been put in the COPS program. That is a vital tool for not only the State and local forces that benefit from the money, but also from us in the Federal Government.

We are only as effective as the partnerships that we try to construct with our State and local counterparts. I am greatly concerned by the situation, certainly, in Camden, that has been widely reported. But I am also concerned about the inability of other departments to do all the things that we expect them to do.

And it is beyond that which people traditionally think about our State and local partners. They are our eyes and ears. They are also the people who feed to us information that helps us on the national security front when it comes to terrorist threats. They are frequently the people who first see things that are reported to us on the Federal side.

So I think that if we want to keep the American people safe, we have to fund COPS at the level that we have suggested, and also support the \$3 billion that is in our budget for aid more generally to our State and local counterparts.

Senator LAUTENBERG. Thanks.

I want to get to a couple things, if you can give me a quick answer.

HIGH-CAPACITY AMMUNITION MAGAZINES

The Tucson shooter's high-capacity ammunition clip that killed 6 people and wounded 13 others: the clips were banned until 2004 as part of the assault weapons ban. And even former Vice President Dick Cheney, who strongly supports gun availability, has suggested it may be appropriate to reinstate the ban of that kind of thing.

Is it time to once again ban high-capacity ammunition magazines?

Attorney General HOLDER. I think that given what we saw in Tucson and the impact that these kinds of magazines can have, I think we should examine whether or not we want to go back to the ban that we had on them previously. So that is something that I think we should be looking at and working with the Congress in trying to determine if, in fact, the reinstatement of that ban is appropriate.

Senator LAUTENBERG. Do I take it that you are saying yes?

Attorney General HOLDER. I think that we should certainly look at this and make sure that we are doing all that we can to protect the American people.

GUN SHOW LOOPHOLE

Senator LAUTENBERG. I hope we can. Nearly 12 years ago, the Senate passed my legislation to close the gun show loophole. It went to the House, and it died there.

And at the time, you were a Deputy Attorney General and urged the House to follow the Senate's lead and close this loophole. Recent polls found that 69 percent of NRA gun owners and 89 percent of all Americans support closing the gun show loophole.

I think everybody knows what that loophole is. It permits people to buy guns without identifying themselves. It could be Osama bin Laden. You don't ask the questions about where, do you live, what is your name? Put the money on the table, you get the bullets. Or you get the guns.

Don't you think it is time for the Congress to close the gun show loophole, once and for all?

Attorney General HOLDER. Again, I think we need to look at the existing laws that we have and the situation that we face. I am very concerned, as the chair was saying, in terms of the numbers of law enforcement officers who have been gunned down over the last 2 years. And I think we have to come up with meaningful, effective ways to protect their lives, as well as the American people.

And so, we are looking in the administration now at ways in which we can make sure that we respect the second amendment rights that people have, but come up with effective measures that will protect our law enforcement colleagues and, as I said, the American people. This is a process that is ongoing within the administration.

Senator LAUTENBERG. Well, I would hope we can get it solved, and I would hope that we could get a permanent ATF Director. The post has been open since 2006, and I think we ought to try to take care of that.

Madam Chairman, thank you.

Senator MIKULSKI. You have been a staunch champion on these issues.

Senator LAUTENBERG. Thank you very much.

Senator MIKULSKI. And we have noted the crisis that New Jersey is in.

So, Senator Brown, one of our newest members—

Senator BROWN. Thank you, my first subcommittee hearing.

Senator MIKULSKI. So we want to say hi.

Senator BROWN. Thank you, Madam Chair.

And Mr. Attorney General, thank you. And I would have been here at the beginning, but I presided today. So Mr. Attorney General, thanks for your service, and thank you for what you are doing.

Attorney General HOLDER. Good morning.

FUGITIVE SAFE SURRENDER (FSS) PROGRAM

Senator BROWN. An announcement came out of USMS earlier this week, late last week that they were terminating the FSS program, which I know you are familiar with. FSS started in Ohio. It is a pioneering program that has made a huge difference in encouraging mostly those who have committed misdemeanors—and it is

10 percent or so felons, that committed felonies—to get them to voluntarily surrender.

They meet in a church for 2 or 3 days. Judges, prosecutors, and police officers are there. Those people with outstanding warrants voluntarily come and turn themselves in and are generally—their warrants and all are generally disposed of. It is a prime example of how law enforcement officials work together with the local community to create a safer environment for everyone.

I understand the importance of prioritizing limited budgets, but FSS is a program with relatively little expense that has made a huge difference. Nationally, some 35,000 individuals have voluntarily surrendered. It makes police officers' jobs a lot safer because they are not arresting someone for a traffic violation and that person panics and injures or kills a police officer.

Seven thousand people in Cleveland alone in 2010 turned themselves in. I was there one of those days. I had been there earlier in the program at another church. It has made such a difference.

I have written to Director Stacia Hylton and asked that you continue to work with us to restore the program. Can we expect—what can we expect?

Attorney General HOLDER. I agree that the program has a clear record of benefit to the courts, to law enforcement, and to the communities in which it has operated. There are thousands of people who have surrendered across the country without violence, without danger to officers.

There are decisions that we have to make with regard to how we can support a program that I think has worked well. I actually think this is more a State and local responsibility. It is best a State and local program versus a Federal responsibility.

On the other hand, I do think that we should try to find ways in which we can support the program. And so, I would like to work with you to see if there are grant-making opportunities, things that we might be able to do that will support a program that has proven to be beneficial.

Senator BROWN. Okay. Thank you.

I understand it is mostly local and State. And I mean, there are judges, prosecutors, all State, county, city officials there. I think the beauty of it, in part, is where after Cleveland began it, it began in Arizona. It was done other places.

And you know, just the imprimatur of the U.S. Justice Department with USMS can encourage local communities to do this with minimal, relatively minimal Federal assistance and involvement and resources and encouraging local governments to do that.

PRESCRIPTION DRUG ABUSE PROGRAMS

Let me talk about one other issue or, actually, two other issues, both the pill mills and what has happened around the country. Ohio has seen huge increases and larger than the rest of the country, or larger than many places in the rest of the country, abuse of, particularly, morphine-based drugs—OxyContin, Oxycodone, Percocet, Vicodin, a whole bunch of drugs.

We have, working with the Medicaid director in Ohio, established a lock-in program for high-risk individuals. My understanding is that there are currently—but, you know, we need law enforcement

help in this, obviously, as we are doing in the State, too. There are currently 37 operational tactical diversion squads nationwide, not one of them based in Ohio, the seventh-largest State in the country.

Can we work together with local law enforcement to perhaps create that in Ohio so that we can join much of the rest of the country in that kind of assistance?

Attorney General HOLDER. Sure. I would be glad to work with you about how we have deployed our resources. That is something that we have devoted a great deal of attention to and have come up with ways in which we are fighting a problem that exists in a great many States.

But I would be glad to sit down and talk to you about ways in which we might help you deal with the problem, the issue in Ohio.

METH LABS

Senator BROWN. Okay. And last point, Madam Chair.

On meth labs, DOJ nationally has stopped State funding for meth lab cleanups. Is that a permanent decision, or is that something you are looking at again?

Attorney General HOLDER. That was one of those tough ones. As we looked at the budget situation and had to make the decision about what we are going to do with regard to the cleanup of these meth labs when it comes to State and local operations, and it is something that we have cut in our budget request for 2012.

All I can say is that it is just one of those tough decisions that we had to make, given the monies that are available to us. It is not something that I particularly like doing, but it is something that I think we have to do if we are going to try to deal with the financial situation that we find ourselves in.

Senator BROWN. Okay. Thank you, Madam Chair. Thanks.

Senator MIKULSKI. Thank you, Senator Brown, for those excellent questions.

Mr. Attorney General, we will have additional questions that we will submit to the record.

We want to assure you this subcommittee will be working on a bipartisan basis with you. We also want to assure you we hope to go to a quick resolution of this gray area with the continuing resolution.

I think we have to come to closure on this, and I think the 2-week uncertainty and the death by a thousand cuts every 2 weeks is just terrible. And it is terrible in terms of the morale. You cannot, as the chief executive officer, appropriately plan. The FBI doesn't know if it can bring on people along with our Federal law enforcement. So we want to move to resolving this.

We will be turning to you for additional information, and we will welcome a muscular approach by the President to help us with this.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions this morning, all Senators may submit additional questions for the subcommittee's official record. We request that DOJ respond within 30 days.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI
CONSEQUENCES OF FISCAL YEAR 2011 CONTINUING RESOLUTION

Question. The House-passed continuing resolution for wrapping up 2011 cuts the Justice Department (DOJ) \$2.6 billion below the President's request and \$833 million below 2010 levels. The Senate alternative cuts DOJ \$2.4 billion below the President's request and \$656 million below 2010 levels. We're in a holding pattern and the House Republicans want us to cut \$4 billion every 2 weeks. Currently, we are under a 3-week continuing resolution that cuts \$470 million below fiscal year 2010 levels in funding that would have helped State and local communities combat violent crime and improve criminal justice.

What would the cuts proposed in the House-passed continuing resolution and the Senate alternative mean for DOJ? What are the consequences? Is there anything else that DOJ can cut?

Answer. DOJ was very concerned about funding levels proposed in the House-passed and Senate alternative continuing resolutions for fiscal year 2011. At a minimum, certain accounts, such as prisons, detention, and some of our legal divisions, would have faced possible deficiency. While considered "discretionary" in appropriations parlance, much of DOJ's work is not discretionary and is impacted by factors outside our control. There is nothing discretionary about protecting the American public against terrorism and criminal threats, defending civil rights and liberties, and upholding the rule of law.

DOJ's fiscal year 2011 enacted budget (Public Law 112-10) is \$26.9 billion, which is \$806.2 million less than the fiscal year 2010 enacted budget. Under these levels, DOJ will sustain its core national security and law enforcement functions, but must reduce critical funding to State and local grants, juvenile justice programs, litigating components, and technology programs.

Some programs, such as the Integrated Wireless Network, DOJ's strategic initiative for upgrading DOJ law enforcement tactical mobile communications, received significant and unanticipated cuts, which will be difficult to plan for and execute in the remaining 6 months of the fiscal year. In addition, funding requested for new positions just appropriated in fiscal years 2009 and 2010 for DOJ's core mission areas, as well as for the continuation of financial fraud and Southwest Border enforcement activities, is not provided in the fiscal year 2011 budget. DOJ will need to closely examine existing operations and continue to implement savings and efficiencies to ensure that we can absorb the increased and unfunded costs of maintaining our current program efforts in fiscal year 2011.

DOJ understands the need to promote fiscal restraint and pursue savings and efficiencies. To keep DOJ operating effectively within constrained funding levels, we instituted a temporary hiring freeze in January 2011 and suspended all nonessential travel, training, and conferences. In addition, all expenditures across the board, including vehicles, employee moves, information technology (IT) process, equipment, supplies, and contracts, are being held to essential needs.

Wherever possible, DOJ has implemented management and administrative efficiencies to generate savings, which help to support existing priority programs and maintain current efforts. DOJ has generated creative ideas to achieve efficiencies, which have been included in the fiscal year 2011 and fiscal year 2012 President's budgets. But we cannot afford additional substantial cuts while preserving DOJ's ability to fulfill its core law enforcement.

Question. How is this affecting morale?

Answer. As I stated during the Senate Appropriations Committee hearing, employee morale associated with a long-term continuing resolution is a significant concern. The uncertainty of the fiscal year 2011 budget process has had a negative impact on morale throughout DOJ. In conversations I have had with personnel in the field and with staff here in Washington, DC, uncertainty exists with regard to the amount of funding enacted for the fiscal year, the ability of DOJ to conduct the programs we want to implement, and the question of whether or not employees will continue to have their jobs or face furloughs or pay cuts. These have all had negative impacts on morale.

Despite these morale concerns, the dedicated staff at DOJ continue to do a good job for the American people. Some of their concerns have been mitigated with the enactment of the full-year appropriation; however, employee morale will suffer again

if we are required to operate under long-term continuing resolutions in future fiscal years.

Question. What difficulties does DOJ face when it has to operate on short-term continuing resolutions like the five we have had to pass since October 1, 2010? Particularly the continuing resolutions that cover only 2 or 3 weeks at a time?

Answer. In addition to the morale concerns created by the uncertainty of repeated, short-term continuing resolutions, this method of funding also creates significant operational challenges. The way in which continuing resolutions affect DOJ often depends on the specific language in the continuing resolution and the way “current rate” is calculated. If, for example, we are limited to funding provided in the previous fiscal year (the “current rate”) and we are required to fund pay raises during the continuing resolution period, components will be strapped for operational funds until further appropriations, if any, are enacted. This results in a need for limiting hiring and restricting operational spending. In the absence of a full-year appropriation, DOJ exercises particular caution in the execution of resources and closely monitors the status of funds through various reporting mechanisms. In some instances where solvency becomes a concern during the continuing resolution period, DOJ takes immediate action to remedy the situation through transfers, reprogrammings or the deferral of costs until a full-year appropriation has been enacted.

Overall, the activities most affected by continuing resolutions include contracting practices, hiring, training, and procurement of IT and other major purchases. For example, a continuing resolution creates significant uncertainty at every step of the procurement process, from budgeting through contractor performance and invoicing. Because continuing resolutions limit the funding available to a specified period of time, annual contracts must be carefully scrutinized by program and procurement officials. Depending on the type, some contracts must be fully obligated upon award. These include fixed price contracts and subscriptions. The need to obligate a large contract up front, at the beginning of the year, can result in funding shortfalls for other needs such as payroll and operations. Other contracts, such as labor hour contracts, can be segmented. In such cases, the contract’s period of performance is limited to the portion of the year that is funded. When the continuing resolution is extended or a full-year appropriation is enacted, these contracts must be modified. This can be a huge workload burden for program and procurement staffs, as well as the contractors, with no value-added.

Question. How would public safety be impacted by these proposed cuts at each of the Federal, State, and local law enforcement levels?

Answer. At the fiscal year 2011 enacted level, DOJ will sustain its core national security and law enforcement functions, but must reduce critical funding to State and local grants, juvenile justice programs, litigating components, and technology programs. With the exception of the Federal Bureau of Investigation (FBI), which received an increase above the fiscal year 2010 enacted level, all law enforcement components are funded at fiscal year 2010 levels. The Bureau of Prisons and Office of the Federal Detention Trustee also received increases above the fiscal year 2010 level. However, even though the budget is essentially held flat for our law enforcement agencies, the cost of doing business-as-usual is higher this year as a result of requirements to support increased health insurance premiums, retirement contributions, rent and move expenses, and second-year costs associated with new staff appropriated in last year’s budget. Funding to support these “mandatory” expenses will have to come from management and administrative efficiencies, and possibly scaled-back operations. DOJ will do all it can, however, to ensure minimal disruption to core law enforcement and public safety initiatives.

Both the House-passed continuing resolution and the Senate alternative included significant cuts to our State, local and tribal assistance programs, and the enacted budget includes a 25 percent reduction to these programs. Although DOJ certainly appreciates the gravity of the strain on State, local and tribal budgets, we will need to implement the difficult decisions reflected in the final funding levels for our State, local, and tribal partners. We will continue to award grant funding so that innovative and effective law enforcement solutions are realized and will provide whatever technical assistance possible, but our focus must also be on ensuring the availability of sufficient resources to successfully execute Federal law enforcement programs and responsibilities.

Question. How will these cuts impact DOJ in 2012?

Answer. The cuts enacted in the fiscal year 2011 appropriation will have a significant adverse impact on DOJ in fiscal year 2012. For example, I implemented a Department-wide hiring freeze in January 2011, which means components are unable to replace staff leaving through attrition. The funding levels provided in the fiscal year 2011 appropriation, which are in most cases less than the fiscal year 2010

level, are not sufficient for components to afford to “buy back” those lost positions. As a result, DOJ is directing components to eliminate these “hollow” or unfunded positions from their authorized position levels. DOJ’s workforce will be smaller in fiscal year 2012 than it is in fiscal year 2011, although the workload is likely to stay the same or increase. In addition to staffing efficiencies, DOJ is also implementing management and administrative cost savings measures, such as reductions to travel and training. DOJ’s workforce will be required to do more with less. Given the current fiscal outlook for fiscal year 2012, this trend will likely continue for some time.

Further, some program reductions proposed in the fiscal year 2012 President’s budget were enacted in fiscal year 2011. For example, both the National Drug Intelligence Center and the Integrated Wireless Network program saw considerable cuts in the fiscal year 2011 appropriation, which will be difficult to plan for and execute in the remaining 6 months of the fiscal year.

Overall, most components will need to closely re-evaluate their allocation of resources to support continued base requirements, such as increased health insurance premiums, retirement contributions, rent and move expenses, and second-year costs associated with new staff appropriated in last year’s budget. This re-evaluation may mean that operational funding previously available for law enforcement or litigation activities will be adversely impacted.

COPS AND BYRNE GRANT FUNDING REDUCTIONS

Question. The 2011 House continuing resolution proposes drastic cuts in funding for programs like Community Oriented Policing Services (COPS) and Byrne grants, which will result in fewer police officers to protect our communities, help victims recover, and combat crimes like violence against women. State and local agencies would be hamstrung as partners of Federal law enforcement, but also increasingly turn to Federal agencies to meet needs they no longer have the capabilities to address themselves.

What concerns do you have about what these cuts will do to State and local law enforcement agencies around the country?

Answer. DOJ understands that it is operating in an age of austerity, and that tough choices are necessary to rein in the Federal deficit and put the country on a sustainable fiscal path. However, these cuts threaten the hard-won historic crime reductions achieved by State and local law enforcement over the past decade. They also add another measure of difficulty for those agencies that support State and local law enforcement, several of which have suffered from nearly 3 years of budget cuts.

State, local, and tribal public safety agencies across the country face significant budget-related challenges that threaten their ability to deliver core services and maintain public safety. According to a December 2010 report released by the Police Executive Research Forum, more than one-half of the 608 law enforcement agencies surveyed experienced budget reductions in 2009 and 2010. Six out of 10 of these agencies have experienced additional reductions in 2011. Many of these agencies serve areas—both urban and rural—that face persistent problems with gangs, guns, and drugs.

Numerous law enforcement agencies have been forced to lay off sworn and civilian personnel, while others are disbanding specialized units, reducing or eliminating training, forgoing important technology acquisitions, and limiting on-scene responses to various categories of service calls. One of the most severe cases is Flint, Michigan. Despite a murder rate higher than Newark, St. Louis, New Orleans, or Flint has been forced to lay off two-thirds of its force over the past 3 years.

After years of increasingly progressive policing that contributed to record crime reductions, many agencies are forced to retreat to the 1970s, allocating the bulk of their resources and personnel to answer calls for service. When departments run from call to call, the gains attributed to community policing, improved analysis, and data-driven crime prevention efforts are jeopardized.

Instilling trust in crime-prone neighborhoods takes time and patience. Maintaining safe and nurturing schools often involves a stable law enforcement presence. Preventing retaliatory violence requires substantial law enforcement resources and attention. These activities, whether framed as community policing, quality of life enforcement or broken windows theory, play an important part in protecting the individual rights and liberties guaranteed by the Constitution. Despite their importance to neighborhoods across America, these programs are less tangible, produce less hard data and are very difficult to defend during a budget crisis.

The Office of Justice Programs (OJP) provides training on effective responses to such emerging and long-standing threats. OJP develops and shares knowledge about

“what works” in preventing and controlling crime, funds important innovations, and provides cost effective and supportive training and technical assistance. OJP also funds technology and equipment acquisitions that can help agencies struggling with reduced budgets to operate more efficiently.

Considering the tremendous need for DOJ’s leadership and resources among its State, local, and tribal partners in the current economic climate, the President’s fiscal year 2012 request reflects an earnest effort to maximize Federal resources, achieve efficiencies, and make the difficult decisions necessary to respond to current fiscal realities. These programs and our relationships with State, local, and tribal law enforcement agencies maximize the Federal Government’s ability to fight crime and promote justice throughout the United States.

DOJ shared your concerns over the proposed cuts to the COPS office programs, but we were pleased to see that the final fiscal year 2011 budget included these much needed resources for our partners in State, local, and tribal law enforcement. While the hiring program and other COPS office grant programs were cut to ensure a budget could be passed, they were manageable reductions and we’re looking forward to opening the hiring solicitation later this spring.

Question. When police departments cannot afford to put officers on the beat to prevent and combat violent crime, what impact does this have on families and communities?

Answer. In every corner of this country, State, local, and tribal police departments are laying off officers and civilian staff, or modifying their operations as a result of budget cuts. Police departments are now required to do more with less in this economy, especially when there are reductions in much needed Federal resources. The practice of policing has become more automated with technology filling in the gaps left by fewer cops on the beat. Law enforcement agencies have learned to better combine resources and create regional multi-agency partnerships to better address public safety issues. Recognizing these partnerships is a priority for COPS and DOJ’s grant making agencies, as they too must do more with less. The challenge will be balancing the public’s expectations and demands on police with a department’s fiscal capacity to perform its core mission.

The impact on families and communities is being felt in cities and counties across the country as government executives are cutting policing services to fill budget gaps. There are reports each week of cut backs including a city in the mid-west that is looking to cut municipal services to more than 20 percent of its 139 square mile jurisdiction. Other cities have resorted to laying off sworn police officers, which has a direct impact on the ability to patrol neighborhoods and respond to service calls. The ripple effect of shrinking budgets is being felt nationwide.

Question. If State and local agencies are forced to reduce their numbers because of this funding reduction, do you anticipate a greater burden placed on Federal law enforcement agencies to fill gaps in policing?

Answer. The economic crisis has taken a heavy toll on State and local budgets, and public safety agencies are suffering. Last summer, the city of Oakland, California laid off 80 police officers, representing 10 percent of its force. In January, more than 160 officers in Camden, New Jersey—one-half of the police department—were forced to turn in their badges. In Cincinnati, Ohio, officers are facing massive lay-offs and demotions. These are just a few of the historically high-crime cities that have seen critical public safety jobs sacrificed to shrinking municipal budgets. While OJP does not have evaluations available through its National Institute of Justice to measure the impact of these challenges, it seems inevitable that in this environment there will be increased calls for assistance to Federal law enforcement from State and local law enforcement agencies.

It is difficult to predict the impact on Federal law enforcement agencies at this stage. What we do know is that there is an ever-increasing demand for scarce Federal funding to supplement public safety initiatives. For example, when the COPS office opened the solicitation for the COPS Hiring Recovery program in 2009, which was part of the American Recovery and Reinvestment Act, the demand far outweighed the funding available with more than \$8 billion in requests for the \$1 billion that was appropriated. This demonstrates that the States’ need for financial assistance outstrips what the Federal Government can provide.

Question. Which Federal law enforcement agencies would State and local police turn to and would those agencies have the capabilities to help?

Answer. Based on historical experience with DOJ programs, the Drug Enforcement Administration (DEA), the United States Marshals Service (USMS), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the FBI all have ongoing and cooperative relationships with State and local law enforcement. These agencies would be most likely to receive increased calls for assistance from State, local, or tribal agencies.

The FBI actively provides assistance to Law Enforcement Agencies (LEAs) through a variety of programs such as SSTFs, JTTFs, the National Academy, etc. To the extent possible, the FBI provides assistance to LEAs on an ad hoc basis through its field offices and the local relationships it has established.

While ATF and DEA will continue to work with State, local, and tribal law enforcement the anticipated fiscal year 2012 funding levels will result in reduced funding to support investigative and other activities. ATF, for example, may be forced to reduce funding to program areas like the National Integrated Ballistics Imaging Network, the National Tracing Center, as well as State and local training. Under level funding DEA will be forced to manage hiring, including Special Agent hiring, and will likely be unable to backfill positions at the rate of attrition.

Question. Are Federal LEAs set to receive any additional resources to deal with additional demand from State and local partners?

Answer. With the exception of the FBI, which received an increase above the fiscal year 2010 enacted level to sustain its current services, all DOJ law enforcement components are funded at fiscal year 2010 levels. DOJ will need to find additional management and administrative efficiencies and possibly re-prioritize operations in order to maintain core national security and law enforcement functions, while absorbing increases in “mandatory” expenses such as health insurance premiums, retirement contributions, and rent. DOJ appreciates the gravity of the strain on State, local and tribal budgets, and we will need to implement the difficult decisions reflected in the final funding levels for our State, local, and tribal partners. We will continue to award grant funding so that innovative and effective law enforcement solutions are realized, and we will continue to provide necessary and appropriate technical assistance.

STOPPING CHILD PREDATORS

Question. The National Center for Missing and Exploited Children (NCMEC) there are more than 100,000 noncompliant sex offenders at-large in the United States. The Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248) gives the USMS the authority to treat convicted sex offenders as fugitives if they fail to register, as well as to assist jurisdictions to locate and apprehend these individuals.

USMS estimates it needs a dedicated force of 500 deputies to fully implement the Adam Walsh Act. Currently, there are 177 deputy marshals on board. No additional funds have been requested for Adam Walsh Act implementation and enforcement in fiscal year 2012.

If USMS estimate they need 500 deputies to fully enforce the Adam Walsh Act and keep our children safe, why has DOJ failed to request additional resources in fiscal year 2012 for USMS to hire more deputies to meet this need?

Answer. The Adam Walsh Child Protection and Safety Act is a landmark piece of legislation that considerably enhances the ability of DOJ to respond to crimes against children and vulnerable adults and prevent sex offenders who have been released back into the community from victimizing other people. DOJ and USMS fully support the mandates of the Adam Walsh Act. The fiscal year 2012 President’s budget for USMS requests \$57 million for Adam Walsh Act related activities, an increase of \$9 million (19 percent).

Question. If more resources cannot be devoted to enforcing this act, what other measures could the Congress adopt which would improve the effectiveness of the investigators? Specifically, would DOJ support documentary administrative subpoena power for the USMS in its investigative capacity?

Answer. Additional tools, such as the ability of the USMS to secure its own documentary administrative subpoena authority, would help make sex offender investigations more robust. DOJ supports a grant of such authority. DOJ will consider and inform the subcommittee if there are other nonmonetary measures that would enhance DOJ investigations.

FINANCIAL FRAUD—PREDATORY LENDING

Question. Predatory lenders across the United States continue destroying families and communities, and undermine faith in our financial systems. DOJ’s financial fraud workload continues increasing as more predatory lenders are exposed. Last year, the Congress gave you an estimated \$865 million, including resources to hire 54 new agents, 165 new attorneys, and 142 new professional support staff dedicated to investigating financial fraud. This brings the total number working on this problem to more than 4,700 Federal personnel.

When provided the resources to hire and equip full task force teams of agents, forensic accountants, analysts, and attorneys to work on the financial fraud case workload, what exactly does this mean DOJ is able to do?

Answer. These resources allow DOJ to prosecute financial fraud aggressively. Many of the financial fraud crimes that DOJ investigates are increasingly sophisticated and involve complex schemes, numerous asset transfers, and tens of thousands, if not millions, of pages of documents. Investment frauds can involve a significant money laundering component as well, and victim funds are often secreted away in numerous accounts. In order to successfully prosecute these crimes and to obtain recovery of the assets for victims, prosecutors and agents are often required to sort through voluminous bank records and other documents, and to trace fund flows into and out of bank accounts, including overseas accounts.

Similarly, many financial fraud crimes involve the use of sophisticated accounting gimmicks, joint partnerships, fraudulent accounts, and corporate shell entities. In order to pierce these schemes, investigators are required to analyze numerous records and understand accounting rules. Forensic accountants and analysts may be asked to apply their expertise in reviewing accounting records, sales agreements, third-party transactions, partnership and corporate records, and bank records.

Question. The phrase “economic fraud” covers a broad range of financial crimes. What types of economic fraud investigations and prosecutions are DOJ’s teams of FBI agents, U.S. Attorneys, legal divisions, and the inspector general (OIG) tackling? With each type of fraud case, give examples using successfully prosecuted convictions and recoveries.

Answer. DOJ investigates and prosecutes a wide range of crimes that could be characterized as economic fraud. For example, DOJ’s economic crime prosecutions include investment fraud, bank fraud, mail fraud, wire fraud, securities fraud, and mortgage fraud. These schemes can bring economic devastation to their victims.

One case in particular serves as an example of DOJ’s efforts to prosecute each of these types of fraud cases: the April 19, 2011, conviction of Lee Bentley Farkas, the former chairman of a private mortgage lending company, Taylor, Bean & Whitaker (TBW). In that case, in connection with a \$2.9 billion fraud scheme, a Federal jury in Alexandria, Virginia, convicted Farkas of one count of conspiracy to commit bank, wire, and securities fraud; six counts of bank fraud; four counts of wire fraud; and three counts of securities fraud. Farkas and his co-conspirators engaged in a scheme that misappropriated more than \$1.4 billion from Colonial Bank’s Mortgage Warehouse Lending Division in Orlando, Florida, and approximately \$1.5 billion from Ocala Funding, a mortgage lending facility. The scheme led to the collapse of TBW, one of the largest private mortgage lending companies in the United States, and Colonial Bank, 1 of the country’s 25 largest banks in 2009.

DOJ’s prosecution of two brothers, Matthew and Lance La Madrid, is another recent example of its efforts to prosecute mortgage-related fraud. On January 3, 2011, both defendants pleaded guilty in the southern district of California to mail fraud charges pertaining to a \$30 million mortgage fraud and investment fraud scheme. As part of the scheme, the brothers used false borrower information to obtain millions of dollars in mortgages, which they then used to fund a real estate investment fraud scheme.

DOJ has prosecuted numerous other economic fraud cases that involve investment, bank, and securities fraud. For example:

- On March 12, 2009, Bernard Madoff pleaded guilty to 11 felony counts, including counts for securities fraud and investment adviser fraud, in connection with perhaps the largest investment fraud scheme in history. On June 29, 2009, Madoff was sentenced to 150 years’ imprisonment;
- On January 27, 2010, Scott Rothstein, the former managing partner of a Florida law firm, pleaded guilty to orchestrating a \$1.2 billion fraud scheme. On June 9, 2010, Rothstein was sentenced to 50 years imprisonment;
- On December 2, 2009, Thomas Petters was convicted after trial for masterminding a \$3.7 billion investment fraud scheme that defrauded thousands of investors. On April 8, 2010, Petters was sentenced to 50 years imprisonment; and
- On May 11, 2009, Marc Dreier—the founder of Dreier LLP, a law firm with more than 250 employees—pleaded guilty to a securities fraud scheme which caused approximately \$400 million in losses. On July 13, 2009, Dreier was sentenced to 20 years imprisonment.

Recoveries from these cases have been substantial. In December 2010, for example, DOJ announced that the estate of Jeffrey Picower, a Madoff investor, had agreed to forfeit to the United States more than \$7 billion, representing all the profits that Picower had withdrawn from Madoff’s fraudulent investment advisory business.

Question. Since DOJ ramped up its crackdown on economic fraud, how many cases has the Justice Department successfully prosecuted? How many convictions have resulted? What did those schemes cost victims and how much in losses have been recovered?

Answer. DOJ has aggressively prosecuted cases involving economic fraud. According to DOJ statistics, in fiscal year 2009, the 94 U.S. Attorney's Offices (USAOs) charged at least 4,704 defendants with crimes concerning financial fraud, and obtained at least 4,091 guilty convictions against individual defendants in such cases. In fiscal year 2010, those numbers increased: the USAOs charged at least 5,459 defendants with crimes concerning financial fraud, and obtained at least 4,423 guilty convictions against individual defendants in such cases. These frauds have cost victims, and resulted in losses of, billions of dollars.

At the same time, through both criminal and civil enforcement efforts, we have sought to recover billions of dollars. DOJ estimates that in fiscal year 2010, \$4.8 billion in losses were recovered in criminal financial fraud related cases. According to the United States Sentencing Commission, in fiscal year 2010, courts ordered \$6.6 billion in restitution to victims of Federal fraud related crimes. DOJ also seeks to forfeit funds where appropriate. In December 2010, as just one example, we announced that the estate of Jeffrey Picower, a Bernard Madoff investor, had agreed to forfeit more than \$7 billion to the United States, representing all the profits that Picower withdrew from Madoff's fraudulent investment advisory business.

Question. How much does it cost DOJ to successfully prosecute an economic fraud case, ranging from the lowest of recoveries to the highest? Describe the resources—including personnel, time, and other tools—required to successfully prosecute this range of crimes.

Answer. It is difficult to quantify how much any particular financial fraud case costs DOJ to prosecute successfully. We investigate thousands of fraud cases every year, and individual prosecutors and agents work on multiple cases at any given time. Nevertheless, the component costs are identifiable as:

- personnel, including attorneys, paralegals, agents, and support staff;
- IT resources;
- electronic document collection, storage, management, and review tools; and
- litigation support for trial.

The expenses vary depending upon the size and complexity of a case. Many cases are prosecuted by one prosecutor and one agent, working with minimal administrative support. These prosecutors and agents are also working on other cases. The larger the fraud scheme, however, the more likely the case is to involve large numbers of documents, bank records, and witnesses, and therefore to require additional prosecutors, agents and litigation support resources.

Complex fraud cases, including large-scale investment fraud schemes and corporate fraud cases such as the Farkas, Petters, and other cases discussed in response to question 14, are extremely resource-intensive and cannot be successfully prosecuted and investigated without a substantial resource commitment by DOJ. These cases typically involve tens of thousands, if not millions, of pages of documents to review; numerous company and third-party witnesses, including accountants and analysts; and substantial travel.

Question. Neither the Senate nor the House 2011 continuing resolution provides additional funds in 2011 for FBI, U.S. Attorneys, and DOJ's litigation divisions. How will this impact DOJ's ability both this year and in 2012 to conduct fraud investigations?

Answer. DOJ is committed to investigating and prosecuting all forms of financial fraud aggressively, and we will continue to do so with existing resources. To the extent that the Congress appropriates additional funds for the Justice DOJ to use in prosecuting financial fraud cases, we will use those resources to bolster our already vigorous efforts in this critical area.

Question. How can DOJ better help State and local officials investigate predatory lenders?

Answer. DOJ currently works closely with its State and local law enforcement partners on financial fraud cases in numerous ways, including through regional mortgage fraud task forces and working groups; through the coordinated efforts of the Financial Fraud Enforcement Task Force, which includes many State and local enforcement officials; and through the National Association of Attorneys General and the National District Attorneys Association. DOJ will continue to use these and other avenues to work with its State and local partners in the future.

CYBER SECURITY

Question. Cyber intrusions are increasing and threaten the U.S. economy and security. Foreign firms are hacking into our corporate networks, stealing trade secrets, and reducing our competitiveness. Terrorists and foreign nations with advanced cyber intrusion abilities could shut down power grids and financial systems, and steal U.S. counterterrorism information, like IED jammer technology.

DOJ requests \$167 million to combat computer intrusions, including \$129 million for FBI's Comprehensive National Cybersecurity initiative and \$38 million for digital forensics in fiscal year 2012, an increase of \$18.6 million compared to current services and equal to the fiscal year 2010 enacted level. FBI, in particular, has unique authorities to collect domestic intelligence and investigate foreign intrusions to Government and private networks.

Describe the Justice Department's efforts—particularly those of the FBI—to protect cyberspace.

Answer. FBI maintains a comprehensive cyber program to pursue cyber threats. This program is driven by investigative and intelligence goals, focusing on the actors and organizations behind computer intrusions. FBI has had several well-publicized arrests of criminal cyber threat actors, including extraditions and foreign government arrests of actors operating abroad. FBI's cyber program also provides insight into the tactics, techniques, capabilities, and targets of cyber threat actors, allowing FBI to share timely and actionable information to net-defenders who might otherwise be unaware of the network vulnerabilities discovered by our adversaries.

FBI is also responsible for operating the National Cyber Investigative Joint Task Force (NCIJTF), a multi-agency national focal point for coordinating, integrating, and sharing pertinent information related to cyber threat investigations. NCIJTF is the day-to-day workplace for 18 member organizations that collectively identify and prioritize cyber threat actors. NCIJTF participants work in concert to design and implement operations that mitigate the threat through any of their combined counterterrorism, counterintelligence, intelligence, and law enforcement authorities. NCIJTF focuses primarily on national security and significant criminal threats, helping to coordinate domestic operations among members and integrate these operations with intelligence activities conducted outside the United States. NCIJTF has demonstrated numerous positive outcomes in the areas of attribution and advance indications and warnings that help targeted victims mitigate the consequences of cyber exploitation or avoid attack altogether.

Other DOJ components, including the Criminal Division, National Security Division, and the 94 USAOs, through the national Computer Hacking and Intellectual Property coordinator program, collaborate with the FBI in securing lawful authority to obtain electronic evidence to assist in the investigation and prosecution of cybercrime, cooperate internationally on evidence collection and extradition, and, when appropriate, lead prosecutions against those who have used computer networks to commit crimes. DOJ also engages regularly with partner agencies, including the Departments of Defense (DOD), Homeland Security, and State, to ensure that the Department's response mission is appropriately coordinated with the protection, warning, and defense missions of other agencies.

Question. How will the 2011 continuing resolution impact DOJ's ability to protect U.S. information and technology networks from cyber attacks?

Answer. The fiscal year 2011 President's budget request included \$45.9 million in enhancements to combat cyber attacks against the U.S. information infrastructure. The fiscal year 2011 full year appropriation does not fund this request, thus limiting FBI's ability to evolve its cyber program, enhance personnel efforts against emerging cyber terrorist and critical infrastructure threats, and resource NCIJTF facilities and technology requirements.

Question. Although the 2012 budget request to detect and combat computer intrusions is \$18.6 million more than current services, it is actually a request equal to the fiscal year 2010 enacted budget for this purpose. Given that President Obama has identified cybersecurity as an imperative of national security, and DOJ and FBI are recognized as the leaders in cybersecurity among civilian agencies, why were no increases above fiscal year 2010 enacted levels requested in the fiscal year 2012 budget? Are you seeking the necessary resources in the fiscal year 2012 budget for this?

Answer. DOJ requests program increases for computer intrusions in its fiscal year 2012 budget to:

- provide increased coverage of terrorists seeking to use cyber as a means of attack;
- enable the National Cyber Investigative Joint Task Force (NCIJTF) to have 24/7 operations; and

—add capacity to FBI-wide electronic surveillance and digital forensics programs. The fiscal year 2012 budget requests an 8 percent increase in agents assigned to the FBI's CNCI program. The request level in dollars is the same as fiscal year 2010 enacted because of some changes in resource mapping in the financial system; however, the program will be enhanced by the resources requested.

Question. How can Justice and FBI possibly expand their cyber security capabilities in future years when faced with 2011 continuing resolution impacts?

Answer. Unfortunately, the fiscal year 2011 full-year appropriation fails to fund \$46 million in important improvements to FBI's CNCI program. As a result, strategic development is stalled and the program will be forced to delay making long-term investments, as limited fiscal year 2011 funds will be reprioritized for existing infrastructure, technical contract services, or other core items as needed. The capacity to expand the program will remain constrained while funding levels remain constant.

UNCOLLECTED COURT-ORDERED FINES

Question. In the last decade, Federal courts have ordered roughly \$65 billion in fines and restitution from schemers and scammers who prey on hard working, U.S. middle class families. But the Federal Government has collected only 2 cents for every \$1 owed, totaling an estimated \$3.5 billion collected to date. These fines are mainly supposed to compensate crime victims.

Who at DOJ is responsible for collecting court-ordered compensation?

Answer. Pursuant to 28 C.F.R. § 0.171, each USAO is required to have a Financial Litigation Unit (FLU) to enforce and collect civil and criminal debts owed to the United States and victims of crime. There are 93 FLUs (Guam and the Mariana Islands are combined). The FLU is responsible for handling civil claims and "activities related to the satisfaction, collection, or recovery of fines, special assessments, penalties, interest, bail bond forfeitures, restitution, and court costs arising from the prosecution of criminal cases . . . by the United States Attorneys." 28 C.F.R. § 0.171(a).

Question. How many agents, prosecutors, and support staff collect owed fines and restitution?

Answer. Approximately 350 positions in USAOs are dedicated to the collection of debts owed the United States and victims of crime.

Question. What are the obstacles standing in the way of collecting these fines? What can we do to fix those problems? What tools does DOJ need to ensure that it can aggressively collect the fines and restitutions criminals owe?

Answer. There are a number of obstacles to collecting court ordered fines and restitution:

- Under current law, there are no statutory provisions that require a defendant charged with an offense for which restitution is likely to be ordered to preserve their assets for restitution. In other words, under current law, we cannot start collecting or even ensure that any money that the defendant does have is preserved for victims until after the defendant is sentenced and restitution has been ordered. White collar fraud activity may take years before being discovered, investigated, and successfully prosecuted. In a January 2005 report (GAO-05-80), GAO found that in the cases they reviewed, anywhere from 5 to 13 years had passed since the time of the criminal activity before an order of restitution was entered, leaving a significant period of time for defendants to dissipate their assets.
- The orders of restitution many times tie the Government's hands. That is, courts are ordering the full amount of restitution; however, they are then adding a very small payment schedule governing the payment of the restitution by the defendant. For example, the court will order \$1 million in restitution and then go on to say that the defendant shall pay the restitution at \$100/month. Additionally, courts often fail to order payment immediately. For example, the court will order that payment is not due until after the period of incarceration.
- Under The Mandatory Victims Restitution Act (MVRA), not only must restitution be ordered for the full amount of the loss, but judges cannot take into consideration the defendant's ability to pay. As a result, financial penalties are imposed on individuals with no resources, no incomes, or have limited incomes while incarcerated, and thus this population does not effectively have a means to pay the imposed debts.
- Under MVRA, courts must impose restitution for the full amount of the victims' losses. However, this often has no correlation to the actual benefit to the defendant. In other words, restitution is not based on how much the defendant made on the fraud, (it is not a disgorgement of the defendant's gain), but rather

on the loss to the victims. This disparity can especially be seen in security fraud cases. As a result, even if the Government recovered the full amount of the defendant's gain (and took every asset the defendant possessed), we would still not recover an amount close to satisfying the restitution order.

—In a July 2001 report (GAO-01-664), GAO indicated that a lack of asset investigators, as well as the limited number of collection staff (in relation to the number of criminal debt collection cases), presents an obstacle for the USAOs in the effective collection of criminal debt. MVRA mandated that the U.S. Attorneys collect restitution on behalf of non-Federal victims of crime. While the Congress recognized the importance of ensuring that these non-Federal victims be compensated, no additional resources were given to the USAOs to carry out this mandate.

Question. If more court fees were recovered, would DOJ receive a portion of those collections?

Answer. No. While the total outstanding criminal balance is approximately \$65 billion, the amount of criminal debt collected over the past decade is approximately \$15 billion. Criminal debt is made up of several components:

- special assessments (\$100 for every count of conviction);
- fines; and
- restitution (Federal and non-Federal).

With limited exceptions, collections of both special assessments and fines are deposited into the Crime Victims Fund. These monies are subsequently disbursed by OJP to the States to fund State-run victim assistance and compensation programs. Restitution collections are disbursed directly to the victims of the crime for which the restitution was ordered. Victims can be either the United States or, for the most part, non-Federal individuals or entities. An increase in collections would not result in additional monies coming to DOJ for law enforcement purposes. In order for DOJ to retain a portion of criminal collections, there would need to be legislation authorizing the Department to do so.

TASK FORCES—STATE AND LOCAL LAW ENFORCEMENT

Question. Joint Terrorism Task Forces (JTTFs) are Federal, State, and local police and intelligence agencies that work together to identify and respond to terrorist threats at the local level. There are now more than 100 task forces led by FBI, with 4,400 participants.

These teams have been front and center in recent failed bombing attempts on a military recruiting station in my own home State of Maryland, former President Bush's home in Texas, and a holiday tree-lighting ceremony in Oregon. Their efforts have prevented what could have been deadly attacks on Americans.

How beneficial are the Task Forces in responding to terrorist threats? What unique role do they play in terrorism investigations?

Answer. JTTFs are highly beneficial and play an essential role in responding to terrorist threats and protecting the United States from attack:

- they enhance communication, coordination, and cooperation among the Federal, State, local, and tribal agencies (by sharing information regarding suspected terrorist activities and/or subjects on a regular basis and providing access to other investigative databases to ensure timely and efficient vetting of leads);
- they provide a force multiplier in the fight against terrorism; and
- they enhance FBI's understanding of the threat level in the United States.

Currently, FBI leads 104 JTTFs:

- One in each of the 56 field office headquarter cities; and
- Forty-eight in various FBI resident agencies.

In addition to the FBI, 688 State, local, and tribal agencies, and 49 Federal agencies have representatives assigned to JTTFs. FBI is the lead Federal agency with jurisdiction to investigate terrorism matters, and JTTFs are the FBI's mechanism to investigate terrorism matters and protect the United States from terrorist attack.

Question. Why have the number of Task Force participants been declining since 2009? What does it mean for DOJ when the number of Federal, State, and local participants decreases? What does it mean for your State and local partners?

Answer. Overall, JTTF participation has declined since 2009 from 4,597 to 4,506 members. Since 2009, State and local JTTF participation has declined by 60 full-time and 26 part-time members. During this same time period, FBI increased assigned personnel to JTTFs, and participation by other Federal agencies has increased by 20 full-time members and declined by 97 part-time members.

JTTF membership decline can be attributed to current Federal, State, and local budgetary constraints that have created manpower issues for agencies and caused them to pull back personnel from JTTFs. Federal, State, and local agency full-time

and part-time JTTF participation comes at a great manpower staffing cost to participating agencies and it will likely become increasingly difficult for agency executives to detail personnel to JTTFs due to budgetary constraints. FBI will continue to support the ability of its State and local law enforcement partners to participate in JTTFs, including by paying for overtime of State and local task force officers with funding provided by the Assets Forfeiture Fund.

It is important to ensure the overall decline in Federal, State, and local JTTF participation does not negatively impact interagency coordination, cooperation, and information sharing at all levels. Defeating terrorism cannot be achieved by a single organization. It requires collaboration with Federal, State, local, and tribal partners to identify suspicious activity and address it. Given the persistent and growing threat posed by terrorists, JTTFs require an enhanced presence of other law enforcement and intelligence entities on task forces. JTTFs cover thousands of leads in response to calls regarding counterterrorism-related issues. These leads address potential threats to national security and require a significant amount of coordination and resources.

Question. Do you anticipate expanding Task Forces in the future if funds are available? Or would you recommend that funding go to another priority area?

Answer. As noted in the response to question 27, JTTFs are extremely effective in investigating terrorism matters and protecting the United States from terrorist attacks. JTTFs enhance communication, coordination, and cooperation amongst the Federal, State, local, and tribal agencies, and provide a force multiplier in the fight against terrorism. Additional resources would help FBI and other Federal, State, local, and tribal agencies increase participation on the JTTFs, and thus assist in combating terrorism.

Question. What additional resources would you need to expand the program?

Answer. In order to expand JTTFs, funding for personnel (FBI and task force officers), overtime, space, equipment, and other items would be necessary.

VIOLENCE IN FUGITIVE APPREHENSION

Question. Over the past few months, there has been an alarming increase in the number of deputy marshals and State and local law enforcement officers who assist USMS task forces critically injured or killed while pursuing dangerous fugitives. Just days before this subcommittee's hearing with the Attorney General, a deputy marshal was shot and killed, and another deputy marshal and a task force officer were shot, as they attempted to catch a violent fugitive.

These recent acts of violence against law enforcement officers, including deputy marshals, serve as a reminder that law enforcement personnel put their lives on the line every day to keep our communities safe. Fugitive apprehension is always dangerous, as these individuals are often known to be violent and make concentrated efforts to avoid capture. When faced with the prospect of answering for their crimes, some lash out. The brave work of our deputy marshals and their partners in State and local law enforcement is vital to bringing criminals to justice. They are on the front lines of keeping us safe, so we must arm them with resources to apprehend these fugitives as safely as possible.

Recent tragedies in Missouri, West Virginia, Florida and Washington, DC, involving injuries and deaths of deputy marshals and task force officers suggest an increase in violence shown by fugitives. Why have we seen this rise in violence?

Answer. The National Law Enforcement Officers Memorial Fund reports that as of April 19, 2011, 29 officers have been killed in the line of duty as a result of gunfire, compared to 17 through the same date in 2010. Two of the slain officers were Deputy U.S. Marshals and another six were USMS task force officers. These statistics are sobering, but also somewhat perplexing, as a review of the FBI's Uniform Crime Reports indicates that violent crime has actually decreased in recent years. Although the violent crime rate fell 6.2 percent between 2009 and 2010, law enforcement firearm fatalities increased by 24 percent over this same time period.

Many factors potentially contribute to the increase in violence shown by fugitives. Although there is no specific explanation for the rise in violence against law enforcement personnel, one factor may be that USMS has been confronting an increasing number of violent fugitives over the past decade with the expansion of Violent Offender Task Forces (VOTF). In fiscal year 2001, VOTFs were responsible for clearing approximately 21,000 felony State and local warrants. In fiscal year 2010, more than 118,000 violent fugitives were arrested by VOTFs. It stands to reason that as encounters with violent fugitives increase, the chances of violence and risk to law enforcement personnel also increase. It is the very nature of law enforcement operations that officers are placed in the arena of violence.

However, DOJ and USMS continue to make every effort possible to mitigate the risk our officers face when arresting these individuals. Risk mitigation takes place in many forms—before, during, and after the arrest—and is responsible for the many hundreds of safe apprehensions that take place every day. In fact, in response to the recent tragic events, the USMS Director assembled a team of senior law enforcement officials—known as the Fugitive Apprehension Risk Management Assessment Team (FARMAT)—to review current training and operations procedures in an effort to reduce the serious risks inherent in performing fugitive apprehension mission. This group reports directly to the USMS Director. While the tragedies suffered in Missouri, West Virginia, Florida, and Washington, DC, have brought increased attention to violence against law enforcement in recent months, it is important to note that Federal, State, and local agents and officers arrest tens of thousands of violent felons each month without incident.

Question. What can DOJ, as well as the Congress, do to help our law enforcement officers stay safe and apprehend these dangerous criminals?

Answer. In response to this increase in law enforcement officer fatalities, DOJ launched a law enforcement officer safety initiative, directing every U.S. Attorney to meet with Federal, State, and local law enforcement officials in their districts to ensure the Department's resources are made available to help stem officer deaths. In addition, DOJ convened a meeting of law enforcement officers in Washington, DC, to solicit input for further action to improve officer safety. DOJ's Officer Safety initiative's focus is three-pronged:

- Communicate with local prosecutors to ensure that cases involving the “worst of the worst”, repeat offenders who cycle in and out of local jails and State prisons, are evaluated to determine whether the offender may instead be prosecuted under Federal law for offenses that often carry stiffer penalties.
- Ensure that State and local law enforcement partners are fully informed about the resources available to help protect officers.
- Ensure that all Federal task forces make effective use of deconfliction systems. DOJ believes risk mitigation is one of the most effective methods of keeping law enforcement officers safe. Law enforcement officials can identify gaps, make the appropriate adjustments, as well as highlight effective techniques or tools by assessing their agency's policies, procedures, training, and tactics. Most risk mitigation assessments will point to improvements in training and equipment.
- Tactical training is an integral element of DOJ component operations and is performed on a recurring basis within budgeted levels. Training helps ensure that disparate agency personnel serving in Task Forces are familiar with the lead agency's procedures, and helps reinforce critical elements that promote officer safety: preparation and planning, standard operating procedures, best practices, and team cohesiveness.
- Additionally, equipment such as for electronic surveillance can be a critical factor in reducing violence towards law enforcement officers serving arrest warrants. Electronic surveillance increases and enhances the investigator's ability to pick and choose when and where a fugitive will be contacted for arrest (many of this year's fatal shootings occurred as law enforcement officers approached locations in an attempt to contact residents while looking for a wanted suspect). A proactive electronic surveillance posture also minimizes the officer's “time on target,” which reduces an investigator's exposure to hostile threats and gun fire. Leveraging technical surveillance resources exponentially increases the odds for a safe, successful arrest.

The Bureau of Justice Assistance's (BJA) Officer Safety Training and Technical Assistance program also has specific grant programs designed to address officer safety. They include the programs listed below.

International Association of Chiefs of Police (IACP) Center for the Prevention of Violence Against the Police.—In response to the need for critical information on violence against the police, a BJA grant was awarded in fiscal year 2010 to IACP to launch the Center for the Prevention of Violence Against the Police. The Center is designed to reduce the frequency and severity of felony assaults on law enforcement officers by providing data collection on the key variables that are present when a felony assault on an officer occurs; analysis of why the felonious incidents occur; and a translation of the data and analysis into guidance on the steps officers can take to avoid injury or death. This data analysis and research will also be used to inform Federal, State, local, and tribal law enforcement policies and training that will prevent or mitigate officer injuries. Designed as a multiyear effort, the Center is anticipated to reduce the number of felony assaults on officers, reduce costs to governments, and increase community safety.

Bulletproof Vest Partnership (BVP) Program.—This program provides funds that enable law enforcement agencies to acquire bullet-resistant body armor for their personnel. Following 2 years of declining law enforcement officer line-of-duty deaths, the country saw a dramatic 37 percent increase in officer deaths in 2010. Fifty-nine of the 160 officers killed in 2010 were shot during violent encounters; a 20 percent increase more than 2009 numbers. Due to this increase and our renewed efforts to improve officer safety jurisdictions must certify during the application process that all law enforcement agencies benefiting from the BVP program have a written “mandatory wear” policy in effect for uniformed officers.

Question. With deep cuts facing State and local and budgets, will USMS be able to maintain robust task forces?

Answer. Maintaining robust task forces requires both Federal and State and local participation. While USMS hopes that State and local participation will continue at current levels, there is no guarantee that it will given current funding constraints. That being said, USMS is vested in maintaining robust task forces. USMS will support State and local participation where it can, including paying for overtime of State and local task force officers with the limited funding made available through the Asset Forfeiture Fund. Like State and local budgets, USMS budget is also constrained. The fiscal year 2011 USMS appropriation is \$12 million less than the fiscal year 2010 enacted level, which means that mandatory expenses, such as health insurance premiums, retirement contributions, and rent, must be absorbed.

FUNDING FOR TERRORIST TRIALS

Question. Continuing to loom over the Commerce, Justice, Science, and Related Agencies (CJS) spending bill this year is the debate over the transfer of Guantánamo Bay detainees to stand trial in U.S. civilian courts. In November 2009, Attorney General Holder announced DOJ’s intentions to bring five 9/11 terrorist suspects to New York City for trial, but that plan is now in limbo. However, the Ike Skelton National Defense Authorization Act for fiscal year 2011 (Public Law 111–383) included language to restrict Guantánamo Bay detainees from coming into the United States, even for prosecution. The House-passed 2011 continuing resolution reiterates that language.

DOJ does not request funds in 2012 for security costs civilian trials. But DOJ has said that if trials become necessary, they will “identify funding” for trials.

What authority would allow DOJ to “identify funding” for something that is arguably a new purpose and prohibited under current law?

Answer. DOJ executes critical law enforcement and national security missions every day that are vital to the Nation’s health and economic well-being. DOJ does not consider prosecuting terrorism cases a new mission. During the 24-month period from 2009 through 2010, more defendants were charged in Federal court with serious terrorism violations—offenses directly related to international terrorism—than in any similar period since 2001. More than 120 defendants were charged with such violations in 2009 and 2010. That is more than double the number charged with such offenses in 2001 (post-9/11) and 2002. Since 9/11, hundreds of defendants have been convicted of terrorism or terrorism-related violations in Federal court.

Although DOJ has a well-established record of successfully prosecuting hardened terrorists in Federal court, the Department is not currently pursuing prosecutions against the September 11 conspirators in U.S. civilian courts. On April 4, 2011, the Attorney General announced that the cases involving Kahlid Sheikh Mohammed and the four other Guantánamo Bay detainees accused of conspiring to commit the September 11 terror attacks had been referred to DOD to proceed in military commissions and that the Federal indictment against these detainees—which had been returned under seal by a grand jury in the southern district of New York on December 14, 2009—had been unsealed and dismissed.

The fiscal year 2012 budget does not request additional funds for increased security and prosecutorial costs typically associated with high-threat terrorist trials. However, the administration proposes to delete division B, title V, § 532 of the Consolidated Appropriations Act, 2010 (Public Law 111–117), which, by its terms, limits the President’s discretion regarding the disposition of detainees at Guantánamo Bay Naval Base. Further, the administration proposes to continue § 505 of the act. This general provision would allow agencies, including DOJ, to reprogram funds for obligation or expenditure upon advance notification to the Congress.

Question. Even if funds were identified, wouldn’t current law be an obstacle for DOJ to pursue such controversial, high-threat trials on U.S. soil?

Answer. The administration proposes to delete division B, title V, § 532 of the Consolidated Appropriations Act, 2010 (Public Law 111–117), regarding the disposi-

tion of detainees at Guantánamo Bay Naval Base because the language seeks to limit the President's discretion in this national security matter.

Question. What unique costs are associated with these trials compared to other trials held in Federal courts? What costs has DOJ estimated for all years the trials would take? What is the range of costs depending on location?

Answer. As explained earlier, DOJ has referred the September 11 conspirators to the DOD to proceed in military commissions, and the Department is not currently pursuing prosecutions against the September 11 conspirators in U.S. civilian courts.

The categories of costs for the 9/11 trials or trials of other Guantánamo detainees would be similar to those for other trials held in Federal courts. These categories include transportation and prisoner production, prisoner housing, security, and litigation costs. However, the security requirements associated with trying these suspects would likely have been higher than the requirements associated with most other trials.

The \$73 million requested for DOJ in the fiscal year 2011 President's budget reflected the estimated additional assets (human capital and infrastructure) needed to manage the risks associated with trying the September 11 conspirators. Specifically, the funding would have been used to harden cell blocks, housing facilities, and courthouse facilities; to increase electronic surveillance capability; and to provide increased protection for judges and prosecutors. The additional security requirements took into consideration the safety of the communities in which the trials would have occurred.

DOJ anticipated the costs for future years would have been similar to the fiscal year 2011 request, with adjustments for pay raises and other annualization costs. In developing the estimate, DOJ made certain assumptions, including the location of the trials. The location can have a significant impact on the scale and type of assets currently available and the subsequent need for additional assets. Therefore, location was an important determinant underlying the development of the planning estimates. The allocation of costs among the various functions (transportation, housing, security, litigation, etc.) may also have changed depending on location.

Question. Under what circumstances would DOJ be able to conduct Article III court trials at the Guantánamo Bay detention facility?

Answer. Under current law, we do not believe Article III trials could be conducted at the Guantánamo Bay detention facility.

PROJECT GUNRUNNER—ATF

Question. ATF's Project Gunrunner combats illegal gun trafficking and violence along the Southwest Border. Since 2005, Gunrunner teams have seized 10,000 illegal firearms and 1 million rounds of ammunition destined for Mexico. Yet violence continues spreading out and away from the Southwest Border and into the United States and Mexico.

ATF's gun tracing intelligence is critical to target and dismantle the infrastructure supplying guns to Mexican drug cartels. That is why I am troubled by reports that the ATF allowed assault rifles to be sold to suspected straw buyers who transported them into Mexico. Two of those weapons turned up at the scene of a fatal shooting of a U.S. Border Patrol agent in December 2010, although it is unclear if either of those guns was used to kill the agent. When an Immigration and Customs Enforcement agent was killed last month, ballistics tests and a partial serial number traced the weapon used in the shooting to a north Texas smuggling ring that was under ATF observation.

How is DOJ responding to these allegations?

Answer. I take these allegations seriously and have referred them to the acting inspector general of DOJ for investigation. I have also made it clear to our law enforcement personnel and prosecutors working on the Southwest Border that the Department should never knowingly permit illegally trafficked firearms to cross the border.

Question. What safeguards do you have in place to ensure that the ATF is not letting assault weapons slip across the Southwest Border and into the hands of drug cartels?

Answer. Since 2006, Project Gunrunner has been ATF's comprehensive strategy to combat firearms-related violence by the cartels along the Southwest Border. It includes special agents dedicated to investigating firearms trafficking on a full-time basis and industry operations investigators responsible for conducting regulatory inspections of FFLs along the Southwest Border. Since 2006, ATF's Project Gunrunner and other investigative efforts along the Southwest Border have resulted in the seizure of thousands of firearms and more than 1 million rounds of ammunition destined for Mexico.

I have made it clear to DOJ's law enforcement agencies and prosecutors working along the Southwest Border that the Department should never knowingly permit firearms to illegally cross the border. I have also asked DOJ's Acting Inspector General to investigate the allegations concerning ATF's actions in the firearms trafficking investigation known as Operation Fast and Furious.

Question. ATF's 2012 budget request includes \$19 million to make Project Gunrunner's nine teams permanent. In the face of these allegations that ATF may not be implementing Project Gunrunner most effectively, what assurances can you give the Congress that more aggressive oversight of and safeguards for Project Gunrunner operations will be done to continue ensuring this funding is merited?

Answer. Project Gunrunner remains an important investigative strategy to combat the flow of guns to Mexican drug cartels. However, I take these allegations seriously and have made it clear to our law enforcement personnel and prosecutors working on the Southwest Border that DOJ should never knowingly permit illegally trafficked firearms to cross the border. I will determine what additional oversight actions are needed once the Acting Inspector General has completed her investigation.

ATF DIRECTOR

Question. I am concerned by reports on allegations by whistleblowers that ATF allowed known straw purchasers to buy guns from United States dealers and then transported those firearms across the border to Mexico. A thorough investigation is necessary to address these serious allegations, and Attorney General Holder moved quickly to request that OIG conduct a thorough investigation of these alleged ATF activities.

It also seems to me that this is another indication that ATF is in serious need of real leadership. ATF has not had a confirmed Director for over 5 years, which hamstringing the Bureau's ability to seek appropriate funding levels and ensure proper oversight of these complex investigations.

Do you agree that it is crucial for the Senate to hold a hearing soon on Andrew Traver, to keep the process moving on his nomination?

Answer. I urge prompt Senate consideration of all DOJ nominations, including the nomination of Andrew Traver to be Director of the ATF.

Question. Why do you believe it is important to have a confirmed Director leading the ATF? How does it impact the ATF when there is only an Acting Director?

Answer. In the 5 years since the Congress enacted legislation designating the ATF Director as subject to confirmation, the Senate has never confirmed a nominee to serve in this position. The confirmation of a Director would strengthen the agency's ability to carry out the tasks the Congress has assigned to it.

ATF LONG GUNS REPORTING

Question. In December 2010, ATF proposed a new rule to issue "demand letters" to require gun dealers located in States along the Southwest Border—specifically California, Arizona, New Mexico, and Texas—to report multiple sales of certain "long guns" favored by Mexican drug cartels. This rule is meant to help the ATF stem the flow of guns over border and into Mexico. ATF already collects these multiple sales reports for handguns. In 2008, they generated 300 criminal investigations connected to 25,000 illegal firearms.

What value do these multiple sale reports provide to law enforcement in pursuit of cartel gun traffickers? How would this data collection help in preventing gun trafficking?

Answer. The goal of the current proposal is to ensure that ATF receives multiple sale reports on a narrowly defined specific category of long guns favored by drug-trafficking organizations (DTOs) in Mexico and along the Southwest Border. These reports will help law enforcement agencies detect and disrupt firearms trafficking before the firearms are used in a violent crime, whether in the United States or in Mexico.

Multiple sales reporting for the specified rifles will help us identify those conspiring with the DTOs by trafficking firearms to Mexico. While investigating violence in Mexico, Mexican law enforcement officials have recovered thousands of certain types of rifles with regularity, suggesting that violent criminals, including drug traffickers, favor these rifles. As part of our partnership with Mexico in the fight against cartel violence, ATF has traced a significant portion of the recovered firearms. This has yielded significant intelligence, which multiple sales reporting will enable ATF to develop more fully and proactively.

The trace results have shown a short time between the first individual retail purchase and recovery, and a preponderance of first retail sales in the Southwest Bor-

der States. Thus, ATF believes that firearms traffickers who bring rifles to Mexico are targeting FFLs in the Southwest Border States as their preferred source of the rifles. ATF will use multiple sale reports of the rifles to discern patterns in the purchases of the specified rifles, which will in turn enable us to narrow the field of FFLs that the DTOs are targeting. Moreover, with the identity of the purchasers known, we can conduct investigations to determine whether the purchasers are associated with DTOs or other criminal activity and develop further investigative leads.

Multiple sale reports are entered into the ATF Firearms Tracing System (FTS) and are available to all ATF field divisions via ATF's eTrace system. Investigators review the reports daily in conjunction with firearms trace data, analyzing the data for repeat purchasers and recoveries in crimes, as well as other information that may disclose trafficking patterns. This routine practice of evaluating multiple sale reports and the leads that they generate frequently results in initiation of criminal investigations, disruption of illegal firearms trafficking, and convictions. If multiple sale reports generate no investigative leads, they will be purged after 2 years.

Question. Does ATF already have the authority to issue "demand letters" seeking information without requiring any further action by the Congress?

Answer. Yes. ATF has authority under 18 U.S.C. §923(d)(5) to issue demand letters to licensees requiring them to submit "on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify." ATF has used this "demand letter" authority to require FFLs to submit to ATF certain information in their required records that they otherwise are not expressly required to provide, including firearm purchase information. The nature and scope of this authority has been examined in litigation and, on each occasion, upheld in court decisions. See, e.g., *RSM v. Buckles*, 254 F.3d 61 (4th Cir. 2001); *Blaustein & Reich v. Buckles*, 365 F.3d 281 (4th Cir. 2004); *J&G Sales v. Truscott*, 473 F.3d 1043 (9th Cir. 2007).

To address the problem of illegal gun trafficking into Mexico, ATF will send a letter requesting multiple sales reports for certain rifles to FFLs in the four Southwest Border States:

- Arizona;
- California;
- New Mexico; and
- Texas.

The notice relating to multiple sales reporting for rifles is posted on the Federal Register Web site: <http://www.ofr.gov/inspection.aspx?AspxAutoDetectCookieSupport=1>. The information request will be tailored to address the threat along the Southwest Border. It only applies to firearms dealers in the four border States, because those States have a significant number of crime guns traced back to them from Mexico. The prospective reporting requirements apply only if a firearms dealer sells within 5 business days to a single individual two or more long guns having all of the following characteristics:

- semi-automatic action;
- a caliber greater than .22 (including .223/5.56 caliber); and
- the ability to accept a detachable magazine.

Question. Where is the White House's Office of Management and Budget (OMB) in its review process of this information collection request regarding long guns?

Answer. As required under the Paperwork Reduction Act, ATF published the second notice for the information collection request in the Federal Register on April 29, 2011. The purpose of this notice is to allow for an additional 30 days for public comment—during the 30 days following publication, any interested person may comment on the proposed collection of information. This proposed information collection was previously published in the Federal Register Volume 75, Number 242, page 79021 on December 17, 2010, allowing for a 60-day comment period. ATF received 12,680 comments from this collection (8,928 commenters supported the collection, and 3,752 commenters opposed the collection).

The 30-day public comment period ended on May 28. OMB is reviewing the public comments received and will determine whether the collection of information should be approved in accordance with the law.

FEDERAL COURTHOUSE AND JUDICIAL SECURITY

Question. DOJ's fiscal year 2012 budget would cut the USMS courthouse account by \$11 million. These funds make security improvements (x ray machines, prisoner movement hallways, and secured prisoner elevators) to aging infrastructure, as well as handle a growing prisoner population in Federal courthouses. The current back-

log is 150 courthouse projects costing \$120 million. Old and dated infrastructure in Federal court facilities has dangerous effects on judicial security. These problems grow worse with time as courthouses age and more facilities need immediate attention.

Judicial security is a major concern, yet the 2012 budget request designates only \$3 million to Federal courthouse security improvements. Does DOJ really believe this funding is adequate to provide security for the judiciary?

Answer. Fiscal realities dictate that difficult decisions must be made. The Full-Year Continuing Appropriations Act, 2011 (Public Law 112–10) includes a \$10 million reduction to the amount enacted in fiscal year 2010 for the USMS construction appropriation, which funds Federal courthouse security improvements. So \$10 million of the \$11 million reduction for USMS construction proposed in the fiscal year 2012 President’s budget has already been cut. USMS will continue to improve its security for the judiciary by researching and implementing new technologies and equipment, continuing our training programs with the judiciary, and providing timely information on security awareness issues.

Question. Are more resources needed to ensure the safety of all employees of the Federal judiciary and U.S. Attorneys? What gaps in security measures are still present?

Answer. Additional resources requested in the fiscal year 2012 President’s budget will enhance DOJ’s ability to ensure the safety of the Federal judiciary and U.S. Attorneys. The fiscal year 2012 President’s budget requests nearly \$482 million for judicial and courthouse security in the USMS’ salaries and expenses account, which is an increase of \$32 million, or 7 percent, more than the fiscal year 2010 enacted level. These resources will support USMS base operations. USMS strives to enhance the level of security for the Federal judiciary and U.S. Attorneys by researching new technologies and equipment and deploying those new technologies and equipment across the country as funding allows. USMS’s Technical Operations Group (TOG) also provides direct support to Federal courthouses and enhances judicial security by providing technical assistance (e.g., maintaining technical integrity and “sweeping” for devices). USMS constantly reviews its equipment, personnel requirements, and training procedures to stay ahead of any potential gaps in judicial and courthouse security, such as those previously identified by OIG. USMS is working within its current resources to implement and resolve OIG recommendations to the extent possible.

Question. Given this already substantial—and growing—backlog, why did DOJ’s request decrease funding for the USMS aimed at addressing this issue of securing Federal courthouses?

Answer. Fiscal realities dictate that difficult decisions must be made. The Full-Year Continuing Appropriations Act, 2011 (Public Law 112–10) includes a \$10 million reduction to the amount enacted in fiscal year 2010 for Federal courthouse security improvements. So \$10 million of the \$11 million reduction proposed in the fiscal year 2012 President’s budget for USMS construction has already been cut. USMS will continue to improve its security for the Judiciary by researching and implementing new technologies and equipment, continuing our training programs with the judiciary, and providing timely information on security awareness issues.

Question. DOJ’s inspector general issued a December 2009 report on protection of the judiciary and U.S. Attorneys that found that Federal judges, U.S. Attorneys, and Assistant U.S. Attorneys (AUSAs) were inconsistently reporting threats on a timely basis to the USMS and, more troubling, not reporting threats at all in some instances. Does DOJ continue to have concerns that the Federal judiciary and USAOs may fail to participate in security and threat training? What can be done to improve communications between USMS and their protectees to clarify the categories of security threats and coordination to ensure that reporting and response processes are in place?

Answer. USMS has improved the training materials provided to the judiciary and U.S. Attorneys to better emphasize the importance of quickly reporting threats and inappropriate communications, as well as the ramifications of not doing so. Increasing awareness and disseminating this information to the Judiciary and U.S. Attorneys has lessened concerns that they may fail to participate in security and threat training. Also, the Executive Office for United States Attorneys has provided explicit instructions to every employee in the U.S. Attorney community on how to report threats and why it is important to do so, even if the employee does not believe the threat is serious.

Over the last 12 months, USMS has increased its efforts to provide training at U.S. Attorneys’ Conferences and Judicial Conferences regarding security threats. In addition, a Memorandum of Understanding (MOU) between USMS and the Execu-

tive Office for U.S. Attorneys has been completed. This MOU delineates the responsibilities for each agency regarding the reporting of threats and threat awareness.

SOUTHWEST BORDER VIOLENCE

Question. I continue to be concerned that DOJ lacks sufficient resources to combat violence related to drug and gun trafficking on the Southwest Border. If the current wave of violence isn't contained, cartel-related crime will most likely expand to major metropolitan areas, including areas like Atlanta, Chicago, and even Baltimore.

Violence is caused by large, sophisticated, and vicious criminal organizations—not by isolated, individual drug traffickers. DOJ's 2012 request includes \$2 billion to support investigations and prosecutions relating to border violence.

How will DOJ deal with increased violence along the Southwest Border both this year and in 2012 when no additional funds are provided in the 2011 continuing resolution for the DEA, ATF, FBI, USMS, and their Federal, State, and local law enforcement partners to expand investigations and prosecutions?

Answer. Because the enacted fiscal year 2011 appropriation funded all DOJ components, except for the FBI, BOP, and Office of the Federal Detention Trustee, at the fiscal year 2010 level or below, new funding that was requested to increase and sustain our ability to address violence along the Southwest Border will not be available to us. However, DOJ will still have base resources of approximately \$1.86 billion in fiscal year 2011 to continue law enforcement, prosecutorial, and detention functions on the Southwest Border. Additionally, DOJ will continue to expand its efforts to address violence along the Southwest Border in fiscal year 2011 with funds from the border security supplemental that was enacted in August 2010, which provided \$196 million to DOJ for Southwest Border enforcement activities.

The President's fiscal year 2012 budget includes \$134.7 million to annualize the border security and other prior-year Southwest Border supplementals, including funding to sustain more than 400 positions. Program enhancements to increase the OCDETF program's Southwest Border prosecutorial activities and to provide additional capacity at DEA's El Paso Intelligence Center (EPIC) have also been requested. This funding will be an important component of DOJ's ability to continue to address the challenges posed by the Mexican drug cartels and violence along the Southwest Border.

Question. How concerned should communities along the border—and throughout the United States as a whole—be about cartel-related violence?

Answer. Other than isolated incidents, "cross-over" cartel violence from Mexico into the United States is minimal. The reason for this is two-fold. First, the United States has not witnessed the same turf battles over supply and distribution routes that are occurring in Mexico. In fact, local crime reports submitted by DEA offices located along the Southwest Border show most categories of crime decreasing from 2009 to 2010.

Second, the cartels already have enormous influence in the U.S. drug trade and control the vast majority of wholesale markets, as well as many retail markets, for drugs in the United States. To engage in violence on the U.S. side of the border would be detrimental to the cartels' business because it would invite additional scrutiny at the border and increased law enforcement attention within the United States. This does not negate the fact that cities and communities in the United States should remain vigilant against the threat of violent cartel-related crime.

Question. How is DOJ working with the Mexican Government to dismantle these violent cartels?

Answer. DOJ has engaged the Government of Mexico in a variety of ways, as discussed below, in an effort to combat drug trafficking and its associated violence—and will continue to do so. DOJ recognizes that the drug-related violence along the Southwest Border and in Mexico remains significant and the Department will need to both continue its current efforts, as well as respond to emerging drug-trafficking threats to combat these problems. Considering this, DOJ will continue to partner with the Government of Mexico and Mexican law enforcement partners in efforts to dismantle DTOs and curb drug trafficking-related violence in the hopes of achieving long-term success against the violence perpetrated by DTOs and Transnational Criminal Organizations (TCOs). In spite of ongoing challenges, DOJ is optimistic that its efforts will ultimately result in reducing violence related to drug trafficking.

The progress made against the cartels in Mexico by the Calderón administration is admirable. President Felipe Calderón has taken a strong, proactive stance against drug traffickers and the associated violence and he has shown an extraordinary commitment to address the problems of the drug cartels and police corruption. Under his leadership, DOJ's bilateral inter-agency cooperation with the Government

of Mexico has also continued to develop in a positive manner. Under the Calderón administration, DOJ has experienced unprecedented levels of cooperation and solidarity with Mexico in combating DTOs.

DOJ personnel in Mexico work closely with our counterparts in the Mexican Government and together we have made significant progress in disrupting and dismantling the cartels. The noteworthy achievements by the Government of Mexico in recent years were supported, in many cases, by the information sharing and assistance of the DEA. One example was the dismantlement of the Arturo Beltran-Leyva (ABL) cartel, which took place on December 16, 2009. Information shared between DEA, the Mexican Federal Police, and the Mexican Naval Secretariat (SEMAR) facilitated the Government of Mexico's efforts in this investigation and resulted in the apprehension of 23 individuals and four deaths, including Consolidated Priority Organization Target (CPOT) Beltran-Leyva. Subsequently, DEA's Special Operations Division (SOD), in coordination with the USMS, provided information regarding ABL second-in-command Edgar Valdez Villareal, aka "La Barbie", to DEA's Mexico City country office. This information was shared with the Government of Mexico and resulted in the arrest of La Barbie on August 30, 2010 in Mexico City. Another example of the cooperation between DEA personnel and SEMAR was an enforcement operation on November 5, 2010, which resulted in the death of CPOT Antonio Ezequiel Cardenas Guillen, aka "Tony Tormenta", in Matamoros, Tamaulipas.

The most recent example of cooperation between DOJ and the Mexican authorities was the arrest of Julian Zapata Espinoza, aka "Piolin", and three other criminal associates on February 23, 2011. Piolin has been detained by the Mexican authorities and is being investigated in connection with the murder of Immigration and Customs Enforcement (ICE) Special Agent Jaime Zapata. These are but a few examples of the outstanding coordination and cooperation being carried out between DOJ and the Government of Mexico on a daily basis.

DOJ's close relationship with the Government of Mexico is also exemplified by our joint effort to restructure the Mexican Sensitive Investigative Unit (SIU) program, led by DEA with crucial support from DOJ's Criminal Division. The SIU is composed of individuals from Mexico's Ministry for Public Security (SSP) and Office of the Attorney General (PGR). Every member has been vetted and trained by DEA and assigned to autonomous groups that are tasked with pursuing a specific Mexican cartel. The Mexican SIU plays an important role in Western Hemisphere drug enforcement efforts and they are working to increase collaboration with counterparts in Colombia through an exchange of SIU personnel.

DEA has also applied many of the lessons learned in Colombia to our efforts in Mexico, including areas such as judicial wire intercepts, extradition programs, methamphetamine trafficking, and joint targets. Additionally, DEA has participated in several joint meetings with the leadership of Colombian and Mexican law enforcement and security forces to examine the best practices which could assist the Government of Mexico in combating drug cartels. These efforts have focused on conducting complex narcotics and financial investigations, which have enhanced information-sharing protocols. Since 2007, DEA has sponsored eight Tripartite meetings between Colombia, Mexico, and the United States. These meetings have included the Mexican PGR and SSP, the Colombian National Police, the Minister of Defense of Colombia, and DEA Principals. The ninth Tripartite Meeting is tentatively scheduled for October 2011.

A key component of DOJ's efforts to address violent cartels along the Southwest Border is EPIC. EPIC is a national tactical intelligence center that supports law enforcement efforts throughout the Western Hemisphere and it is DEA's long-standing and most important intelligence sharing organization focusing on the Southwest Border. Through its 24-hour watch function, EPIC provides immediate access to participating agencies' databases to law enforcement agents, investigators, and analysts at all levels of government throughout the United States and with some foreign nations. Much of EPIC's success can be attributed to the strong partnerships forged among the more than 20 agencies represented at the Center, including representatives from foreign police organizations in Mexico and Colombia.

The Government of Mexico has three representatives permanently assigned to EPIC as Liaison Officers. The first representatives from Mexico's federal investigative organizations, SSP and PGR, were assigned to EPIC in 2007 and 2008 respectively. A third representative from the Mexican Military (SEDENA) joined EPIC in 2010. While not permitted unescorted access to the entire center, the representatives have extensive access to EPIC staff and tailored database access that permits the exchange of information and intelligence on a daily basis. The presence of the Government of Mexico representatives at EPIC has enhanced the center's capabilities to develop intelligence on criminal activities, both along the border and in Mexico, using resources of both the United States and Mexico.

Additionally, ATF has cooperated with Mexico in a variety of practical ways to combat the threat posed by the cartels. Consistent with ATF and DOJ strategies, ATF has expanded our presence in the U.S. Embassy and consulates in Mexico to assist and work side-by-side with Mexican law enforcement; expanded the use of eTrace throughout Mexico, including training more than 130 Mexican officials (as of May 6, 2011) in the use of this technology; begun the expansion of ballistic technology to increase information sharing between our governments; and developed specialized teams with Mexico addressing firearms and explosives investigations. ATF works every day with our Federal law enforcement and Mexican partners to cooperate in investigations and share information and intelligence to target the cartels responsible for drug and firearms trafficking that is at the roots of the violence.

Finally, the United States and Mexico both benefit from an excellent extradition partnership. In 2009, Mexican authorities extradited 107 individuals to the United States, including several high-ranking cartel members. This was a record number for the eighth consecutive year. In 2010, 94 individuals were extradited from Mexico to the United States. This includes the extradition of a CPOT, a lieutenant in the Sinaloa Cartel, and a former Mexican state governor.

DANGER PAY FOR DEA AND USMS IN MEXICO

Question. Violence in Mexico, targeted at law enforcement personnel, has intensified in recent years. The very real and present danger faced by United States personnel working in Mexico is evident in recent deaths of consulate employees and ICE agents in Mexico. DEA and FBI receive danger pay for their personnel in Mexico due to prior authorizations, but the USMS and ATF lack the same authorization even though they face the same risks as their DEA and FBI counterparts in Mexico.

Why does the President's budget not provide for danger pay increases to USMS and ATF personnel working in Mexico?

Answer. Increases associated with danger pay allowances are traditionally absorbed by a component's existing base resources. Due to the potentially fluid nature of danger pay authorities, which are established by the Secretary of State, permanent resources for danger pay authority in Mexico were not requested for USMS or the ATF in the fiscal year 2012 President's budget.

Question. Given the rise in violence due to the Mexican drug wars, targeted attacks against United States law enforcement, and the fact FBI and DEA have danger pay in Mexico, shouldn't the USMS and ATF receive the same sort of compensation?

Answer. The authority to initiate and terminate danger pay allowances rests with the Secretary of State in accordance with title 5, U.S. Code (5 U.S.C.), § 5928. The Department of State regulation implementing this authority states that "a danger pay allowance is established by the Secretary of State when, and only when, civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well being of a majority of employees officially stationed or detailed at a post or country/area in a foreign area."

The Secretary of State's authority with regard to danger pay allowances was modified through several public laws related to DEA and FBI. These modifications do not permit the Secretary of State to deny a request by DEA or FBI to authorize a danger pay allowance for any employee of either DOJ component. Consequently, DEA and FBI employees may receive danger pay allowances in posts that are not designated danger posts by the Secretary of State. Other similarly-situated employees, particularly DOJ employees in USMS and ATF, do not receive danger pay allowances unless the Secretary of State has approved the post for such allowances.

As of March 14, 2010, the Department of State has extended equal danger pay allowances to all U.S. Government personnel serving in certain posts in Mexico, which currently mitigates the pay disparity that had previously existed between the FBI and DEA employees in those posts, and similarly situated employees from other agencies, including other DOJ components. Mexican posts for which danger pay allowances were announced on March 14, 2010, include:

- Ciudad Juarez;
- Matamoros;
- Monterrey;
- Nogales; and
- Nuevo Laredo.

However, at this time, a pay disparity still exists for DOJ personnel stationed in Mexico City and Mérida; in Mexico City, FBI and DEA employees are authorized danger pay, while ATF, the USMS and other United States Government personnel are not eligible. In Mérida, DEA employees are authorized danger pay while ATF employees and other United States Government personnel are not eligible. The De-

partment of State has not extended danger pay allowances equivalent to those authorized by the FBI and DEA to these posts in Mexico.

DOJ considers danger pay disparity to be a core compensation inequity. That is, United States Government employees serving our national interests in the same overseas locations, many times working side-by-side on critical criminal investigations and law enforcement issues, should be compensated similarly.

Question. When can we expect to see proposed legislation to remedy this issue from DOJ?

Answer. On April 13, 2011, the Border Security Enforcement Act of 2011 (S. 803) was introduced, which contains a provision authorizing danger pay for the USMS and ATF law enforcement personnel working in Mexico. This legislation would remedy this disparity.

AFGHANISTAN—FIGHTING NARCO-TERRORISM—DEA

Question. DEA plays a critical role in combating narco-terrorism by helping the Afghan Government establish drug enforcement institutions and capabilities to enforce the rule of law. This means successfully identifying, disrupting, and dismantling major DTOs that fuel the insurgency and profit from the narco-economy. Were DEA to expand its operations in Afghanistan, the focus will be on high-value targets, including members of the Taliban, who use the heroin trade to fund insurgents' attacks on U.S. military forces.

What is DEA's current role in Afghanistan? Do you expect those operations to be expanded in the future and, if so, how?

Answer. DEA supports the U.S. Ambassador's Counternarcotics (CN) Strategy in Afghanistan through close partnership with the Department of State and DOD. DEA is helping Afghanistan by training, mentoring Afghan law enforcement partners and units, as well as building a sustainable capacity within those entities to investigate, disrupt, and dismantle DTOs fueling the insurgency. DEA is also working to help establish drug enforcement institutions and capabilities to enforce the rule of law. This means working bilaterally with host nation counterparts to identify, investigate, and bring to justice the most significant drug traffickers in Afghanistan and the region. These operations disrupt and deny the insurgents' ability to derive revenue from opiate production and distribution.

In fiscal year 2010, DEA completed a significant expansion effort in Afghanistan. DEA now has 82 permanent positions assigned to Afghanistan for 2-year tours of duty, including 62 agents and 7 intelligence analysts. In addition to these positions, the Kabul Country Office (KCO) is augmented by the Foreign-Deployed Advisory and Support Teams (FASTs), which provide intensive training for the Afghans and operational support to KCO. Furthermore, the KCO is supported by three temporary duty (TDY) Special Agent pilots.

A FAST deploys to Afghanistan every 120 days. Each FAST team consists of a Group Supervisor, eight Special Agents, and one Intelligence Research Specialist. DEA's FAST teams advise, train, and mentor their Afghan Minister of Interior (MOI) counterparts in the National Interdiction Unit (NIU) of the Counter Narcotics Police—Afghanistan (CNP-A). The NIU, which currently has 538 officers, is a tactical unit capable of conducting raids, seizures, and serving Afghan search and arrest warrants in a high-threat environment, much like a U.S. Special Weapons and Tactics (SWAT) team. Furthermore, FAST teams are the enforcement arm of DEA's Drug Flow Attack Strategy and Campaign Plan in Southern Afghanistan.

In addition, DEA Special Agents advise, train, and mentor their Afghan CNP-A counterparts in the Sensitive Investigative Unit (SIU) and the Technical Investigative Unit (TIU). DEA's Afghan SIU is comprised of 85 vetted and DEA-trained officers who conduct complex drug conspiracy and high-value target (HVT) investigations. These bilateral investigations focus on national and international level DTOs. TIU includes 9 officers selected from the SIU and 200 vetted Afghan civilian polyglot translators who conduct court ordered judicial telephonic intercepts pursuant to Afghan law.

DEA's Regional Training Team (RTT) has conducted effective training of Afghan law enforcement officers in hundreds of courses. RTT has also developed a highly skilled Afghan training cadre capable of carrying out not only their own organic training programs, but also of developing their own trainers. To ensure Afghan and regional stability, effective Afghan law enforcement institutions must be in place. DEA's training programs and bilateral initiatives in Afghanistan are specifically designed to accomplish this goal.

DEA, in conjunction with other United States Government agencies and the Afghan MOI, has also developed the only Afghan MOI judicially authorized wire intercept program (JWIP) in Afghanistan, which allows the use of intercepts as evidence

in court. Afghan law enforcement counterparts are able to lawfully intercept the criminal communications of not only narcotics traffickers, but also terrorists, insurgents, kidnappers, criminal financiers, and corrupt officials. Since its inception in December 2008, the JWIP has lawfully intercepted more than 15 million telephone conversations. As of December 31, 2010, 2,135 wiretaps have been performed and used to develop bilateral investigations.

DEA is also the lead agency in the Afghan Threat Finance Cell (ATFC), which is intended to identify, disrupt, and interdict the sources of funding for insurgent and terrorist organizations operating in Afghanistan. The Department of the Treasury and DOD act as co-deputies for the cell. The ATFC Director from DEA oversees all investigative, intelligence, and administrative activities of the ATFC, while the Treasury deputy coordinates intelligence matters and the DOD co-deputy coordinates operational matters. In addition to these agencies, ATFC is comprised of U.S. and coalition partner law enforcement and military officials and conducts its investigations and initiatives jointly with Afghan law enforcement, banking, and regulatory officials. ATFC also works closely with the SIU and other Afghan vetted units to conduct these complex financial investigations.

DEA's Special Operations Division (SOD) also plays a significant role in DEA's efforts in Afghanistan. SOD has the unique capability to identify investigative links between individuals and organizations involved in criminal/insurgent activity via domestic intercepts in support of bilateral Afghan-led investigations. Information obtained through these intercepts routinely has direct implications on force protection, anti-corruption efforts, and support for Afghan rule of law, as well as disrupting the material support of the insurgency fueled by drug and weapons trafficking and money laundering activities. With the assistance of SOD, DEA Special Agents in Afghanistan and their Afghan counterparts conduct enforcement efforts against identified High Value Targets (HVTs). These HVTs provide support to the Taliban and other insurgent groups that threaten the coalition and Afghan efforts to provide the citizens of Afghanistan with a strong central government.

Currently, DEA has no plans to further expand operations in Afghanistan.

Question. Are there any limits on DEA operations and capabilities—funding, policy or otherwise—that may hinder DEA's ability to carry out its mission in Afghanistan?

Answer. DEA has approximately \$19.2 million in direct base resources for ongoing DEA efforts in Afghanistan. This funding supports 13 positions and associated operating costs, three DEA FAST teams, and three TDY pilots. The rest of DEA's permanent presence in Afghanistan, including funding for 69 positions and associated operating costs, is funded through transfers from the State Department as part of a State Department-led civilian staffing uplift in Afghanistan. Currently, the State Department has committed to providing \$50.8 million in resources for DEA's Afghanistan activities for fiscal year 2011.

DEA's success depends on the commitment, willpower, and tenacity of the Afghan Government. DEA personnel operate in conjunction with and largely under the authorities of Afghan law enforcement. In terms of policy, although there is not a formal bilateral extradition relationship between the United States and Afghanistan, DEA has successfully brought a number of significant Afghan traffickers to the United States to stand trial before U.S. courts. This was accomplished by lawful means, including extradition by Afghanistan under the 1988 U.N. Drug convention, extradition from third countries, expulsion, and voluntary travel to the United States. Working in consultation with the Department of State, we are continuing our efforts with Afghanistan to regularize our use of existing legal authorities for the return of defendants for trial in the United States.

Question. How are DEA's activities coordinated with those of the United States and Afghan military, as well as other United States agencies operating in Afghanistan? Is what DEA can dedicate in direct resources to Afghanistan sufficient to cover its personnel, operations, and other mission responsibilities there? Are the resources transferred to DEA from other United States Federal partners in Afghanistan sufficient to cover its personnel, operations and other mission responsibilities there? What is the impact if insufficient resources are not transferred to DEA from other agencies?

Answer. DEA's KCO has built successful relationships with DOD, the Central Intelligence Agency (CIA), the National Security Agency (NSA), North Atlantic Treaty Organization/International Security Assistance Force (NATO/ISAF), the State Department, DOJ, Department of Homeland Security (DHS), Office of National Drug Control Policy (ONDCP), and U.S. military, to include the 101st Airborne Division, 82nd Airborne Division, First Marine Expeditionary Force, and Combined Joint Special Operations Task Force (C-JIATF). These enhanced relationships have led to successful operations through battle space deconfliction; utilization of unmanned

aerial vehicles, quick reaction forces, close air support, and medical evacuation; development of concepts of operation; provision of logistical life support to DEA. DEA's FAST units also regularly conduct operational missions along with the U.S. military and their Afghan host country counterparts.

Question. Is what DEA can dedicate in direct resources to Afghanistan sufficient to cover its personnel, operations, and other mission responsibilities there?

Answer. DEA's base salaries and expenses budget includes approximately \$19.2 million for ongoing DEA efforts in Afghanistan. This funding supports 13 positions and their associated operating costs, three DEA FAST teams, and three pilots. The rest of DEA's expanded presence in Afghanistan, including funding for 69 positions and their associated operating costs, has been funded through transfers from the State Department as part of a State Department-led civilian staffing uplift in Afghanistan. In addition to transfer funding received from the State Department, DOD has provided significant financial, logistical and operational support for DEA's counter-narcotics mission in Afghanistan. DOD has provided training, equipment, infrastructure, and airlift to the Afghans supporting the counter-narcotics mission. Operational support provided by DOD, including air mobility support, troop support, and interagency intelligence sharing and targeting, has led to several successful investigations against identified High Value Targets. Such support from DOD has been and continues to be vital for DEA's expanded mission in Afghanistan.

Question. Are the resources transferred to DEA from other United States Federal partners in Afghanistan sufficient to cover its personnel, operations and other mission responsibilities there? What is the impact if insufficient resources are not transferred to DEA from other agencies?

Answer. DEA, as well as other DOJ entities participating in the State Department-led civilian staffing uplift in Afghanistan, do not have base funding to cover the cost of the expanded presence and mission in Afghanistan. Sufficient support for personnel and operations connected to the civilian staffing uplift must be provided by the State Department. The appropriate level of support required will vary depending upon the level of staffing required and the operational needs determined to be in support of the U.S. Afghan Strategy. In fiscal year 2010, the State Department transferred \$58.6 million to DEA for activities in Afghanistan. The State Department has committed to provide \$50.8 million to DEA in fiscal year 2011.

Question. DEA plays the lead role in investigating and alerting U.S. military about High Value Targets (HVT) and has identified 13 such individuals who are Taliban members or have close ties. Does DEA have the resources it needs to continue to track down these high-value targets?

Answer. As of April 2011, DEA had identified 17 High Value Targets (HVTs), all of whom have ties to, or are members of, the Taliban. The HVT list is constantly reviewed and updated by DEA in coordination with other U.S. Government and Coalition elements. Additionally, DEA has identified more than 30 Priority Targeted Organizations (PTOs), almost all of which have ties to the insurgency. Through focused mentoring of elite Afghan counternarcotics forces and an operational presence that works in tandem with Afghan partners, DEA's Afghanistan expansion, which was completed in fiscal year 2010 as part of the State Department-led civilian staffing uplift in Afghanistan, has been focused on the support of major investigations directed at HVTs, including members of the Taliban involved in the drug trade, and those traffickers supporting the Taliban and other insurgents. DEA's base salaries and expenses budget includes approximately \$19.2 million for ongoing DEA efforts in Afghanistan. The State Department provides resources to cover the cost of DEA's expanded presence and mission in Afghanistan. In fiscal year 2010, the State Department transferred \$58.6 million to DEA for activities in Afghanistan. The State Department has committed to provide \$50.8 million to DEA in fiscal year 2011.

HEALTHCARE FRAUD

Question. Now that the historic healthcare reform legislation is law, we must do more to combat healthcare and insurance fraud that cost U.S. citizens more than \$60 billion annually. We need to make sure law enforcement has the resources it needs to investigate these crimes and prosecute the scammers.

What role does DOJ play in healthcare fraud investigations and prosecutions?

Answer. DOJ has committed to fighting healthcare fraud as a Cabinet-level priority, both at DOJ itself and in cooperation with the Department of Health and Human Services. Through the creation of the Health Care Fraud Prevention and Enforcement Action Team (HEAT), a senior-level joint task force, we are marshaling the combined resources of both agencies in new ways to combat all facets of the problem. Our Medicare Fraud Strike Force prosecutors and agents are using billing data to target a range of fraudulent healthcare schemes, deploying appro-

appropriate criminal and civil enforcement tools in hot spots around the country. In fiscal year 2010, DOJ charged 931 defendants with criminal healthcare fraud. This was a record—an approximately 16 percent increase more than fiscal year 2009. We also convicted more than 725 healthcare fraud defendants—another record and a nearly 25 percent increase more than fiscal year 2009.

DOJ has also brought successful civil enforcement actions to protect taxpayer dollars and the integrity of government programs from fraud. In fiscal year 2010, we obtained record recoveries of more than \$2.5 billion in healthcare fraud matters pursued under the False Claims Act. In the 2-year period beginning in January 2009, DOJ has won or negotiated healthcare fraud recoveries in False Claims Act matters totaling nearly \$5.4 billion. During that same period, DOJ won or negotiated restitution, fines, forfeitures and penalties in Food, Drug & Cosmetic Act matters that exceed \$3.3 billion.

Question. How is DOJ carrying out new responsibilities placed on it by the Patient Protection and Affordable Care Act in terms of healthcare fraud?

Answer. The Patient Protection and Affordable Care Act of 2010 provides several additional statutory tools that will enhance Federal law enforcement's ability to combat healthcare fraud. Among the most significant for criminal enforcement is the directive to the U.S. Sentencing Commission to amend the Sentencing Guidelines with respect to calculating loss in healthcare fraud cases and increase the guideline ranges for healthcare fraud schemes involving losses of \$1 million or more. DOJ has worked closely with the commission to develop guideline amendments to:

- provide for tiered sentence enhancements beginning at loss amounts of \$1 million or more; and
- provide that the aggregate dollar amount of fraudulent bills submitted to the Government healthcare program constitutes prima facie evidence of the defendant's intended loss.

The commission promulgated the amendments on April 6, and the Congress has 180 days to review them. The amendments have a designated effective date of November 1, 2011, unless the Congress acts affirmatively to modify or disapprove them. On the civil side, the act made several amendments to section 3730(e)(4) of the False Claims Act (commonly known as the public disclosure bar), including authorizing the Government to "oppose" a defendant's motion to dismiss a qui tam action under this provision. The Supreme Court has held that these changes to the public disclosure bar are not retroactive, and thus DOJ has not yet had an occasion to exercise its authority to oppose a defendant's public disclosure motion.

The Affordable Care Act also makes other changes. Among other things, the act:

- Clarifies that use of the term "willfully" in the healthcare fraud and anti-kickback statutes does not require proof that the defendant knew of the existence of, or intended to violate, those specific statutes.
- Amends the anti-kickback statute to provide that a claim that includes services or items resulting from a violation of the statute would constitute a false or fraudulent claim for purposes of the False Claims Act. The act also adds the anti-kickback statute to the definition of "Federal health care offense" in 18 U.S.C. 24.
- Clarifies that the obstruction of justice statute, 18 U.S.C. 1510(b), applies to healthcare fraud subpoenas issued pursuant to 18 U.S.C. 3486.
- Confers new subpoena power on the Attorney General to demand records and access to institutions when investigating claims under the Civil Rights of Institutionalized Persons Act.
- Makes several significant changes to the law governing employee group health benefit plans subject to title I of the Employee Retirement Income Security Act of 1974 (ERISA) and multiple employer welfare arrangements (MEWAs) regulated by ERISA by prohibiting false statements in the sale or marketing of employee health benefits by MEWAs and adding certain ERISA offenses concerning the sale and marketing of employee group health benefit plans to the definition of "Federal health care offense", 18 U.S.C. 24.

DOJ has distributed guidance to our agents and prosecutors about these statutory revisions and we expect they will assist many current investigations and case development efforts.

Question. How is the role DOJ plays in the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative evolving and do you expect an expansion of the HEAT initiative in coming years?

Answer. DOJ has expanded the number of Strike Force locations from two to nine cities since announcing our HEAT initiative in May 2009. In February, we announced the two newest locations, Chicago and Dallas. Since HEAT's inception, the Medicare Fraud Strike Force has charged more than 660 defendants with seeking to defraud Medicare of more than \$1.3 billion taxpayer dollars. In fiscal year 2010,

the Strike Force secured 240 criminal convictions—217 guilty pleas and 23 defendants convicted at trial—the most since the Strike Force was created in 2007, and both numbers almost double those from the prior fiscal year.¹ In the 4 years since launching the Strike Force in May 2007, prosecutors from DOJ Fraud Section and USAOs have filed criminal charges against more than 1,000 defendants for a variety of healthcare fraud offenses that collectively exceed \$2.3 billion in fraudulent billings to Medicare.

We will continue to expand to additional cities to the extent additional funding becomes available. In fiscal year 2011, DOJ's discretionary funding, which is used to support HEAT expansion, was funded at the fiscal year 2010 level, thus hampering the Department's ability to expand to additional Strike Force locations, or expand HEAT's civil fraud enforcement. The fiscal year 2012 budget contains a \$63 million increase in funding for HEAT, which would allow for expansion of DOJ's criminal and civil healthcare fraud efforts.

Question. DOJ's efforts to combat healthcare fraud are funded by the Health Care Fraud and Abuse Control account, administered by HHS. The fiscal year 2012 request has \$300 million for these activities. How does DOJ use these funds to stop fraud in Medicare, Medicaid, and other healthcare benefits programs?

Answer. In fiscal year 2012, DOJ is requesting a total of \$283.4 million to investigate and prosecute healthcare fraud. This funding request includes both mandatory and discretionary Health Care Fraud Abuse and Control (HCFAC) account funding, as well as mandatory funding provided to FBI through the Health Insurance Portability and Accountability Act. This request represents a \$63.5 million increase more than the fiscal year 2011 enacted funding level of \$219.9 million.

The fiscal year 2012 requested funding increase will allow DOJ to expand the number of Medicare Fraud Strike Force locations beyond the current nine locations. The Strike Forces are an essential tool for DOJ in addressing criminal fraud in locations where fraudulent billing is rampant. In addition to supporting an expansion of criminal enforcement efforts, the fiscal year 2012 increase will support additional civil enforcement efforts, such as addressing pharmaceutical fraud, off-label marketing, and other fraud schemes.

The requested resources will support additional attorneys, support staff, and special agents, which are essential for expanding DOJ's efforts in addressing fraud in the Medicare program. The increase in HCFAC discretionary resources has allowed for the expansion of DOJ's healthcare fraud enforcement efforts, and the additional resources requested in fiscal year 2012 will allow us to continue to expand our efforts.

EARMARKS BAN—CONGRESSIONAL COMMUNICATIONS

Question. Pursuant to Executive Order 13457, "Protecting American Taxpayers from Government Spending on Wasteful Earmarks," issued on January 29, 2008, DOJ took steps to postcongressional communications recommending that funds be committed, obligated or expended for an earmark. DOJ has on its Web site a page where such communications is supposed to be posted. The most recent communication posted on that Web page from a Member of Congress regarding earmarks is dated May 11, 2010.

Since the earmark moratorium was put in place—first by the House on November 18, 2010, and then by the Senate on February 1, 2011, how many communications has DOJ received from Federal lawmakers who appeal to the Department to fund their earmarks with available funds? Please provide the subcommittee with a list of those lawmakers along with the accompanying communication or request, whether it be via post, email, telephone, or other means of communication.

Answer. Since the earmark moratorium was fully put in place by the Congress, we are aware of only one communication from a Federal lawmaker regarding earmarks. As you know, Executive Order 13457 provides guidance on how agencies should interpret and execute earmarks, and requires agencies to make public within 30 days of receipt any congressional communications from Federal lawmakers or their staffs regarding earmarks. Since DOJ began implementing Executive Order 13457 in 2009, there have been a total of 23 communications from Federal lawmakers regarding earmarks; this is current as of May 9, 2011. The majority of these communications seek to clarify the intent of an earmark included in a previously enacted appropriations bill or to make technical changes, such as updating the name of the grant recipient. These communications are related to earmarks already

¹The Strike Force conviction statistics are included among the overall number of defendants convicted during fiscal year 2010 cited in response to the healthcare fraud question posed earlier by Chairwoman Mikulski.

included in enacted appropriations bills, and do not request DOJ to fund or augment earmarks with other resources.

The complete and up-to-date list of congressional communications related to earmarks can be found at <http://www.justice.gov/jmd/ccre/>. This site contains the requesting Member of Congress or office, the date of the communication and a link to the communication received.

Question. A March 16, 2011, New York Times piece titled, “Lawmakers Find a Path Around an Earmarks Ban”, detailed that—under the earmark ban—not only have lawmakers been appealing directly to Federal agencies to push them to direct available funds to their preferred projects, but also agency officials may be responding positively to those requests, despite the Executive Order 13457. Has DOJ received requests of this type to fund Member’s pet projects and how does the Department respond to such pressure?

Answer. Since the earmark moratorium was implemented, we are only aware of one communication from a Federal lawmaker appealing for DOJ to direct available resources to a preferred project not otherwise funded. DOJ adheres to the principles outlined in Executive Order 13457, and executes resources only for earmarks written in the appropriations bill language. However, DOJ often works with the committees on appropriations and individual Member offices to ensure that appropriately designated earmarks are executed per the intent of the requesting member.

Question. Who at DOJ is responsible for updating the congressional communications Web page? Why has DOJ’s congressional correspondence Web page not been updated since May 11, 2010? In a time when the President, the Congress and the American public are calling for more oversight and accountability in how and where taxpayer dollars are spent, don’t you believe DOJ should do a better job keeping this Web page up-to-date in order to help transparency?

Answer. The process of keeping the congressional correspondence Web page updated involves several components and offices in DOJ. The recipient of a congressional correspondence regarding earmarks—typically one of the Department’s grant components, i.e., OJP, the Office of Community Oriented Policing Services or the Office on Violence Against Women (OVW)—forwards any correspondence they believe is subject to Executive Order 13457 to the Justice Management Division’s (JMD) budget staff. The budget staff works with JMD’s Office of General Counsel and the Assistant Attorney General for Administration to determine whether the correspondence meets the criteria established in Executive Order 13457 and gain approval to post it. If it is determined that a piece of correspondence should be posted pursuant to Executive Order 13457, budget staff removes all personally identifiable information, or PII, as appropriate and provides the redacted correspondence to the Office of the Chief Information Officer’s e-Government staff to post to DOJ’s Congressional Communications Web site. Last, JMD makes efforts to notify the recipient component and the Committees on Appropriations staffs at least 24 hours prior to the cleared correspondence going “live” on the Web site (<http://www.justice.gov/jmd/ccre/>).

DOJ understands the subcommittee’s desire for transparency and timely reporting, and we work very hard to make these types of communications public as soon as possible. Only three communications have been submitted after the May 11, 2010, correspondence was posted. We will continue to ensure that all stakeholders in this process are aware of the requirement to postcongressional communications regarding earmarks and that we are efficient in our processing and posting of such information.

Question. Would DOJ support a new Executive order—similar to Executive Order 13457, with the goal of seeking transparency—that would require Federal agencies to post on their Web sites a list of any meetings with registered lobbyists, a synopsis of what was solicited by those lobbyists, and the Department’s response to those lobbyists?

Answer. DOJ appreciates the subcommittee’s interest in increased transparency and accountability, and we always strive to uphold the tenets espoused in recent efforts to increase transparency and accountability. We defer to the administration, however, on predecisional matters regarding possible new Executive orders.

CURBING LAVISH SPENDING

Question. The previous administration exercised lavish spending at DOJ. There was one instance when the Department spent \$1.4 million to host a single conference, and another report of spending \$4 on Swedish meatballs. In the wake of such extravagant spending, I required the Justice Department to create uniform, internal guidelines on conference spending to avoid irresponsible spending.

What steps has DOJ already taken and continues taking to ensure that it is following requirements to avoid lavish spending and cost overruns so that the American people's tax dollars are not being squandered?

Answer. The Justice Management Division issued policy guidance in April 2008 on Conference Planning, Conference Cost Reporting, and Approvals to Use Non-Federal Facilities. This guidance outlines a uniform policy for all components within DOJ to follow, and sets limits on the amount that may be spent on meals and refreshments. It also provides guidance for selecting appropriate venues, appropriately handling non-Federal attendees, and reporting costs in a timely manner.

Since that guidance was written, the Assistant Attorney General for Administration issued a memorandum to DOJ's component heads in June 2008, and the Deputy Attorney General issued a similar memo in May 2009, highlighting the importance of fiscal responsibility with respect to conferences sponsored by the Department. In January 2011, the Attorney General issued a memorandum to DOJ's Component Heads that re-emphasized the need for fiscal responsibility particularly with respect to conferences and training. The following summarizes the relevant parts of these memoranda:

- Conference locations are to be selected based on business need and minimization of travel and other costs.
- Lavish or resort-type locations and accommodations should be avoided. Component heads are required to approve in writing if the facility gives the appearance of being lavish or is a resort location, and this Component Head approval cannot be delegated.
- Components must restrict the number of people traveling to conferences to the minimum necessary to accomplish the official purpose.
- Components must ensure the selected lodging location is within per diem rates.
- Meals should be provided on an infrequent basis and only as a working meal when necessary to accomplish the purpose of the event. Refreshments should be kept to an absolute minimum. Grantmaking organizations should instruct grant recipients that DOJ grant funding is not be used for lavish food, refreshments, or entertainment purposes.
- Components must ensure that travelers are aware of their responsibility to reduce per diem when meals are provided at the conference.
- Components must ensure that reporting of costs for all non-Federal facility events and conferences are submitted by Component Heads no later than 45 days following the close of each fiscal quarter.

In addition, my office submits to the inspector general a report of conferences held by DOJ. The report is submitted on a quarterly basis. OIG is concluding an audit of DOJ's fiscal year 2008 and 2009 conference reports. DOJ will address any areas of weakness identified by this internal review.

By establishing a uniform policy across DOJ, regularly reminding senior management and staff of the importance of fiscal prudence, and reviewing past performance, the Department is able to assure the American people that their money is being well spent.

Question. American families are tightening their belts in this tough economy. What are other ways that DOJ can tighten its belt and clean up waste, fraud, and abuse?

Answer. Within DOJ, we regularly examine opportunities for savings and efficiencies as part of our day-to-day operations. In addition, DOJ instituted a formal review of savings and efficiencies in fiscal year 2010. On July 22, 2010, the Attorney General established a Department Advisory Council for Savings and Efficiencies (SAVE Council). The SAVE Council develops and reviews Department-wide savings and efficiency initiatives and monitors component progress to ensure positive results for cost savings, cost avoidance, and efficiencies. In addition, the SAVE Council has provided a framework to identify and implement best practices for saving taxpayer dollars, realizing efficiencies, and monitoring our savings progress. The SAVE Council institutionalizes DOJ's pilot savings efforts that began in June 2009. Through fiscal year 2010 the SAVE Council has directed more than \$39 million in savings throughout DOJ in areas ranging from double-sided printing to consolidated procurements which have leveraged the Department's buying power.

The fiscal year 2012 budget funds DOJ's critical missions in a fiscally responsible manner. Resources requests for the Department's highest-priority programs have been offset by administrative and programmatic savings. In total, \$1.9 billion in program and management offsets and rescissions were identified so as to lower our bottom line without impacting mission or capability.

These offsets include administrative efficiencies and savings, task force and space consolidations, a reduction of DOJ's physical footprint, component-specific program savings, IT project management efficiencies, relocation efficiencies, reductions to less

effective grant programs, elimination of earmarks, and rescissions of prior year balances.

Beyond DOJ internal operations, the Attorney General chairs the Financial Fraud Enforcement Task Force, an interagency task force established by Executive order of the President to combat financial crime and fraud. It is the broadest coalition ever brought to bear in confronting fraud. The mission of the Task Force is to improve efforts across the Government and with State and local partners to investigate and prosecute financial fraud, recover proceeds for victims, and address discrimination in the lending and financial markets.

DOJ will use all of the enforcement tools at our disposal to combat financial crime and fraud in all its forms, including mortgage fraud, securities and investment fraud, and procurement fraud, and to stop fraudsters who would attempt to take advantage of our efforts at economic recovery.

The Congress' financial support of our criminal and civil enforcement is critical to protecting the American taxpayer's hard earned money. Moreover, the amount of taxpayer money restored to the United States Treasury through our criminal and civil enforcement efforts far exceeds what we spend to recover that money.

PRISONS—THOMPSON PRISON FACILITY

Question. The 2012 budget request has \$67 million for the Federal Prison System to get up and running the Thomson Correctional Center in Illinois, which assumes that the Congress will be able to provide \$170 million this year to buy the facility. Under the continuing resolution, buying Thomson is in jeopardy due to the rapidly dwindling availability of funds.

I support our Federal investigators and prosecutors who are so very successful. But this means Federal prison inmate population grows exponentially. In fact, growth in that population has far outpaced growth in prison capacity and reached grave proportions.

What are DOJ's plans for the immediate future—to relieve dangerous overcrowding now—not only this year but beyond?

Answer. At the same time, DOJ has proposed sentencing reforms that will slow the rate of Federal inmate prison population growth in the long-term. The legislative proposals continue to provide inmates with incentives for good behavior as well as to participate in programming proven to reduce the likelihood of recidivism. The proposed sentencing reforms include an increase in the amount of credit an inmate can earn for good behavior and a new sentence reduction credit, which inmates can earn for participation in education and vocational programming.

Question. How would purchasing the Thomson facility—or any other prison facility—address BOP crowding?

Answer. In general, increasing capacity—either by acquiring and renovating existing structures, expanding existing facilities where infrastructure permits, or constructing new prison facilities—reduces crowding. In particular, the Thomson acquisition will allow BOP to add high-security administrative bed space expeditiously and at a lower cost than construction of a new administrative/high-security facility.

Acquisition and full activation of the Thomson facility by fiscal year 2012 would reduce inmate crowding in BOP high-security institutions from the current 51 percent to 38 percent over rated capacity. Without the acquisition, crowding in BOP high-security institutions would increase to 63 percent over rated capacity. The Thomson facility is unique and suitable for the BOP's needs since it was built specifically to house maximum security inmates. The number of Administrative Maximum (ADX) beds available in BOP facilities has not increased since ADX Florence was activated in 1994, when the total inmate population was 95,000. Thus, in addition to housing general population high-security inmates, USP Thomson would also be used by the BOP to house a number of inmates with ADX custody, other inmates who have proven to be difficult to manage and inmates who are designated for Special Management Units (SMUs). Conditions of confinement for SMU inmates are more restrictive than for general population inmates. The Thomson facility would provide the physical structure and security to appropriately house inmates who are designated for SMU placement. The Thomson facility has 1,600 cells, of which the BOP anticipates using 400 for ADX type inmates (400 single-bunked beds). The remaining cells would yield 1,500 beds at high-security rated capacity. However, the actual number of SMU inmates housed there would probably be much higher given the current and projected crowding levels.

Question. The fiscal year 2011 budget request had \$170 million to purchase Thomson, but now I'm told the facility could cost upwards of \$220 million, simply to buy. What is the actual cost to buy the Thomson facility and on what is this cost based? What factors have contributed to the cost difference between what DOJ estimated

in the fiscal year 2010 budget request to purchase the Thomson facility and what subsequent appraisals done by both the State of Illinois and the Federal Government now estimate the cost to be? Will the increase in cost to buy the facility increase the amount needed to make the necessary renovations and outfitting for it to meet Federal requirements for an ADX USP?

Answer. The cost to buy the Thomson Correctional Center has been negotiated by DOJ and State of Illinois representatives; \$165 million has been agreed upon. The negotiated cost is based on current professional appraisals ordered by the U.S. Government.

The main factor contributing to the cost difference is that the fiscal year 2011 budget request was an estimate based on previous construction cost rather than current professional appraisals of the actual value of the Thomson facility, which were not available at the time the budget was developed.

No, the cost identified in the fiscal year 2011 budget included the estimated cost to purchase Thomson, an estimate of the amount necessary to renovate it and also an estimate to begin activation of the facility. An increase in the purchase price will not cause the cost of renovations or the activation to increase or decrease. However, the length of time that Thomson remains inactive may impact renovation costs. We note that BOP has a critical need for penitentiary prison capacity and this is an extremely cost advantageous means of acquiring that critical bedspace.

PRISONS—OVERCROWDING

Question. I understand that DOJ would house at the Thomson facility—once purchased, renovated, and outfitted as an ADX USP—high-security inmates, some Supermax inmates, and inmates designated for Special Management Units (SMU). I am also concerned about the current crowding rate at high-security institutions. By the end of 2012, DOJ expects 227,000 inmates incarcerated in BOP institutions nationwide.

What is the current crowding rate in Federal prisons?

Answer. As of April 21, 2011, BOP institutions are operating at 37 percent over rated capacity system-wide and at the following rates by security level:

- High security, 51 percent over rated capacity;
- Medium security, 42 percent over rated capacity;
- Low security, 39 percent over rated capacity; and
- Secure female, 47 percent over rated capacity.

Question. What does it mean for staff and inmate safety?

Answer. BOP faces continued challenges as the inmate population continues to grow. BOP facilities are operating at 37 percent above rated capacity system-wide. More than 174,000 Federal inmates (81.5 percent of the total inmate population) are imprisoned in BOP-operated facilities intended to house about 127,000 inmates. The remainder, more than 39,500 inmates (18.5 percent), are in contract care, including privately operated secure facilities, facilities managed by State and local governments, residential re-entry centers, or home confinement.

A 2006 BOP study found that an increase in prison crowding (the percentage of inmates above rated capacity) could lead to increases in serious assaults. The study concluded that an increase of one inmate in a Federal prison's inmate-to-custody staff ratio increases the prison's annual serious assault rate, by 4.5 per 5,000 inmates. The fiscal year 2012 President's budget supports both system capacity expansion and staffing increases, which are important tools in addressing crowding and providing safer environments for both staff and inmates.

Further, it is critical to acquire high-security bed space, such as that potentially provided by Thomson, to alleviate crowding at the upper security levels (42 percent and 51 percent over rated capacity at medium- and high-security facilities, respectively). The combined inmate population confined in medium- and high-security facilities represents nearly 40 percent of the entire inmate population. At the higher-security levels, more than 70 percent of the inmates are drug offenders, weapons offenders, or robbers, another 10 percent have been convicted of murder, aggravated assault, or kidnapping, and one-half of the inmates in this population have sentences in excess of 12 years. Furthermore, nearly 70 percent of high-security inmates have been sanctioned for violating prison rules, and more than 90 percent have a history of violence. One out of every six inmates at high-security institutions are gang affiliated. There are much higher incidences of serious assaults by inmates on staff at medium- and high-security institutions than at the lower-security level facilities.

Question. Can you help the subcommittee understand the impact that would be made on this problem by having the additional bed space at Thomson or other prisons you have ready for activation or may want to purchase?

Answer. Currently, more than 174,000 Federal inmates are in facilities operated by BOP, and these facilities have a rated capacity of only about 127,000 beds. Acquiring an existing higher-security institution would be the quickest and most economical means to add bed space. The Thomson facility would add 1,600 cells for SMU and ADX inmates, thereby freeing up high-security bed space that is now being used at existing institutions for these type inmates. Acquisition and full activation of the Thomson facility by fiscal year 2012 is expected to reduce inmate crowding in BOP high-security institutions from the current 51 percent to 38 percent over rated capacity.

There are no other high-security facilities under construction. However, BOP has three prisons (Federal Correctional Institution [FCI] Mendota, California; FCI Berlin, New Hampshire; and Secure Female FCI Aliceville, Alabama) for which construction has already been completed or will be completed in fiscal year 2012. Construction is complete at FCI Mendota and FCI Berlin, and construction at the Secure Female FCI Aliceville is scheduled for completion in November 2011. FCI Mendota and FCI Berlin facilities will each add 1,152 male medium-security and 128 minimum-security work camp beds to capacity. These facilities currently remain unopened because funds are needed to begin or continue the activation process. When operational funding is received, the Secure Female FCI Aliceville will add 1,792 beds for female inmates. Together, these three newly constructed prisons total more than 4,350 additional prison beds which could be utilized to ease high levels of inmate overcrowding in BOP institutions if activation funding is provided as requested in the fiscal year 2012 President's budget.

Question. Why does DOJ's budget request include no additional funding for new prison construction projects or to purchase existing prison facilities in fiscal year 2012? Does DOJ anticipate including such funding in its requests for fiscal year 2013 and beyond? What level of prisons do you anticipate will be shovel ready come 2012 and beyond, how long will it take to build and get those facilities online, and how will those facilities alleviate prison overcrowding?

Answer. While the fiscal year 2012 President's budget does not include new construction funds for BOP, nearly \$185 million is requested to continue or begin five new prison activations. In total, these prisons will add more than 7,500 prison beds to the Federal Prison System from fiscal year 2010 through fiscal year 2012. Further, the administration proposed legislative changes to increase the amount of sentence-reducing credits that inmates can earn for good behavior. This is the right thing to do. It will also help address prison population growth and potentially alleviate crowding in the long term.

For fiscal year 2013 and beyond, DOJ will continue to review, analyze and make recommendations on BOP's budget requirements.

BOP has seven partially funded projects in the site and planning phase that require additional funding to move forward to award a construction contract. Two of the proposed projects are to construct medium security FCIs and five are to construct high-security USPs. Exhibit O, Status of Construction, in the fiscal year 2012 President's budget request for buildings and facilities gives additional information on these projects.

By the end of fiscal year 2018, when all of these planned institutions could be fully activated, pending future funding availability, inmate crowding is projected to be 55 percent at medium-security and 14 percent at high-security levels (this estimate includes the proposed capacity for Thomson). However, without Thomson and the five USPs above, the BOP estimates high-security crowding would increase to 61 percent over rated capacity.

PRISONS—UNDERSTAFFING

Question. Understaffing of prisons puts prison guards and inmates at great risk. The number of correctional guards who work in Federal prisons, however, is failing to keep pace with this tremendous growth in the prison inmate population.

The Federal Prison System is currently staffed at an 89 percent level, as opposed to 95 percent staff levels in the mid-1990s. BOP says the minimum staffing level for maintaining safety and security should not be less than 90 percent. The current BOP inmate-to-staff ratio is 4.8 inmates to 1 staff member, versus the 1997 inmate-to-staff ratio of 3.6 to 1.

The President's 2012 request for BOP provides funding to hire an additional 1,800 correctional staff, including 823 correctional officers, in BOP facilities. Will this address the shortfall in staffing?

Answer. The fiscal year 2012 President's request supports a critical need to increase 1,200 staff at existing Federal prisons and requests additional positions for

the activation of three new prisons. If the fiscal year 2012 President's request is enacted, BOP estimates it would provide staffing at 90 percent of the authorized level.

Question. If the Congress fully funds the President's request so that BOP may hire new correctional staff, would this conflict with the Attorney General's DOJ-wide hiring freeze? Or would the Attorney General have to implement an exception for BOP to hire new correctional staff?

Answer. DOJ has not yet determined if the fiscal year 2011 hiring freeze will be extended to fiscal year 2012. However, if the fiscal year 2012 President's request were fully funded for BOP and a DOJ-wide hiring freeze was in place, then BOP would seek an exception from the Attorney General to hire new correctional staff.

Question. There have been numerous assaults on prison guards, including an incident at a BOP facility when an inmate stabbed an officer seven times. What steps are you taking to protect officers in BOP facilities?

Answer. BOP employs many management techniques to prevent and suppress inmate violence. BOP has enhanced its population management strategies in a variety of areas, including an improved inmate classification/designation system, more targeted training of staff, intelligence gathering, gang management, controlled movements, pre-emptive lockdowns, and proactive interventions to prevent violence and other serious misconduct.

Beginning in fiscal year 2008, BOP began operating SMUs, targeting inmates who have proven to be violent or confrontational, resistant to authority, and disrespectful of institution rules. Designation to a SMU is considered when an inmate's behavior poses a threat to the safe and secure operation of BOP facilities.

Improvements have also been made in the architectural design of new facilities, and a variety of security technologies (e.g., enhanced video cameras, improved body alarms, stab-resistant vests, more sophisticated perimeter detection systems, etc.) are now available. All of these changes and new technologies have helped staff to monitor and supervise the growing number of inmates. Further, recent President's budgets, including the fiscal year 2011 and fiscal year 2012 requests, have supported staffing increases at existing institutions. Increasing staff in Federal prisons improves the inmate-to-staff ratio, which results in better supervision and enhanced prison security.

STATE AND LOCAL GRANTS MANAGEMENT

Question. DOJ awards billions of dollars in State and local law enforcement grants each year. This year, we expect it to administer up to \$3 billion in grants alone. We must make sure OJP, the COPS office, and OVW have tools to get grants out the door and monitor how those funds are spent.

Now that the Congress has a moratorium on earmarks and States and communities are facing budget cuts, do you expect dramatic increases in grant applications for State and local programs?

Answer. DOJ has already experienced a significant increase in inquiries, visits, and other requests for information from organizations that have traditionally received earmarks. It is expected that this increased interest will be reflected in the number of grant applications received.

Question. What is DOJ doing to improve accountability of taxpayer dollars when processing and awarding grants?

Answer. Proper grants management is one of DOJ's highest priorities, and we are fully committed to ensuring that the grants process is transparent, fair, and managed in a manner that avoids waste, fraud, and abuse.

Accounting for taxpayer dollars and overall grants management have been greatly enhanced through the establishment of DOJ-wide Grants Management Challenges Workgroup. This workgroup, created in February 2010, is an interagency initiative established by the Office of the Associate Attorney General. Led by the Deputy Associate Attorney General and consisting of representatives from COPS, OJP, and OVW, the workgroup meets every 2 weeks to share information and develop consistent practices and procedures in a wide variety of grant administration and management areas, including application review and award procedures, monitoring guidelines, high-risk grantee criteria, and the expeditious handling of OIG grantee audits. Additionally, the three components are sharing monitoring plans that will better position each component to target those grantees who pose the greatest compliance risk. In recent testimony, the OIG praised the efforts of this workgroup in improving numerous areas of grant management, and thus improving the accountability of taxpayer dollars.

During the last 2 years, OJP, OVW, and COPS have also:

—Developed and provided DOJ-wide training, including ongoing training, to all American Recovery and Reinvestment Act recipients. Issued our tribal grants

under a single Coordinated Tribal Assistance Solicitation in 2010 and 2011, and coordinated the application review and award process. Developed joint training and technical assistance programs for tribal grantees. Developed and implemented procedures for managing a DOJ-wide high-risk grantee designation program to ensure that all high-risk grantees are treated consistently across DOJ. Developed a DOJ-coordinated monitoring plan to allow for maximum joint on-site monitoring visits by DOJ grant program offices and OJP's Office of the Chief Financial Officer.

We also continue to seek ways to collaboratively develop tools for effective grants management. For example, we are currently developing a DOJ-wide, online financial training tool for DOJ grantees. We also have, in draft form, a guide for grantees that outlines OJP's expectations for how grantees are to report on their accomplishments that are funded by Federal dollars.

Question. Will you need additional resources to administer grants and ensure no waste, fraud, or abuse in your grantmaking?

Answer. Yes. DOJ requires additional resources to fulfill its commitment to perform quality and complete grant monitoring across its grant programs to detect and prevent waste, fraud, or abuse.

For OVW, the fiscal year 2012 President's budget request includes an additional \$7 million and 32 positions. The funding requested is needed to properly administer OVW's grants workload and to transfer certain costs previously distributed to grant programs to management and administration.

For COPS, the fiscal year 2012 President's budget request includes an additional \$2.9 million and 22 positions. The funding requested will allow the COPS office to have the staff and the systems in place to handle additional hiring grant awards and to continue to efficiently monitor, maintain, and close grants awarded in previous fiscal years.

For OJP, the fiscal year 2012 President's budget request includes \$39.8 million and 28 additional positions to meet responsibilities for OJP's programs. Some of the newly requested staff will support the implementation of the Adam Walsh Act, while others are essential to fulfill OJP's stewardship obligations. Just more than \$8 million of OJP's S&E request would go to strengthen OJP's Grants Management System (GMS). GMS—through which practitioners file grants with OJP—is the backbone of the OJP's grants delivery system; but it is aging, and needless hours are spent compensating for the inefficiencies of this system.

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

EXTRADITIONS FROM MEXICO (DRUG CAUCUS)

Question. As Chairman of the Senate Caucus on International Narcotics Control, I am convinced that there is no greater threat to Mexican drug traffickers than extradition to the United States.

Ninety-four drug trafficking organization leaders were extradited from Mexico to the United States in 2010 and 107 were extradited in 2009. This is up from a mere 12 in 2000. Defendants who have been extradited to the United States often receive significant sentences.

Over the past year, the Mexican Government has been particularly successful in arresting high-profile drug traffickers. Fourteen top kingpins were arrested or killed in 2010 and a total of 28,216 Mexican nationals and 342 foreigners were arrested in the country on drug-related charges.

As the Mexican Government increases its enforcement efforts, what is the Department of Justice (DOJ) doing to ensure that extraditions continue to expeditiously take place?

Answer. DOJ shares your assessment that extradition is an important and powerful means of bringing drug traffickers and other criminals to justice, particularly as Mexico undergoes the reform of its own criminal justice system. To ensure that extraditions continue to take place expeditiously, this point is reiterated at every meeting with our counterparts at every level of the Mexican Government. Extradition is a vital piece of our comprehensive strategy to dismantle drug trafficking organizations.

The Criminal Division's Office of International Affairs (OIA) and its Attaché's Office in Mexico City have primary responsibility for submitting requests for extradition to Mexico and tracking the progress of extraditions of fugitives that are wanted for prosecution at both the State and Federal levels. With funding from the 2010 Border Security appropriations bill, DOJ increased OIA's Mexico/Central American team to 16 trial attorneys and eight paralegals and added another attaché to the

United States Embassy in Mexico—the only post to which two OIA attorneys are assigned—to support our increasing law enforcement cooperation with Mexico.

Moreover, Mexican officials, working closely with the U.S. Marshals Service (USMS) and the Federal Bureau of Investigation (FBI), have used their authority under their immigration laws to remove hundreds of U.S. citizen fugitives who can be repatriated more expeditiously through deportation, as opposed to extradition.

In addition, USMS, Drug Enforcement Administration (DEA), and FBI have increased their efforts to assist Mexico in locating fugitives wanted in Mexico. In 2003, USMS established an office in Mexico City, which has been expanded from 2 to 5 inspectors; and added 10 additional positions at our Embassy and consulates, which are being staffed now. Moreover, the work of our permanent USMS staff assigned to Mexico is frequently supplemented by temporary duty officers and the 50-person USMS Mexico Investigative Liaison program, which focuses on fugitives cases with Mexico and along our Southwest Border.

In light of our increased successes and the increased volume of our work, the U.S.-Mexico Fugitive Working Group meets twice yearly to review pending cases, address systemic problems, and work toward improved procedures and practices. This working group is comprised of representatives from OIA, USMS, FBI, the Department of State, and their Mexican counterparts.

The results of this increasing cooperation have been significant. As you note, Mexico extradited 94 fugitives in 2010 (of these 94, 42 were wanted for drug trafficking offenses, while the remaining fugitives were wanted mostly for violent or sexual assault offenses, such as murder, rape, and physical or sexual child abuse), compared to only 12 in 2000. As of April 2011, the number of extraditions from Mexico for 2011 is on track to meet or exceed that number.

Question. Are extraditions keeping up with the pace of high-profile arrests in Mexico?

Answer. Extraditions from Mexico to the United States have improved significantly over the last few years. In the past 2 years, Mexico has extradited 201 fugitives to the United States, making Mexico one of the United States' most active extradition partners. Among those extradited are several high-value fugitives, including some associated with notorious Mexican drug trafficking organizations, such as the gulf, Arellano Felix, and Sinaloa cartels. Some of the most notable since the beginning of 2009 include:

- February 2009 extradition of Miguel Angel Caro-Quintero, who led the family drug organization after the arrest of his brother Rafael Caro-Quintero (who was complicit in the kidnapping, torture, and murder of DEA Special Agent Enrique Camarena);
- January 2010 extradition of Jesus Navarro Montes, charged with the 2008 murder of Customs and Border Protection Agent Luis Aguillar and with drug conspiracy;
- February 2010 extradition of Sinaloa cartel leader and DEA fugitive Vicente Zambada-Niebla (son of Ismael Zambada-Garcia);
- March 2010 extradition of Oscar Arriola Marquez, a designated Foreign Narcotics Kingpin;
- April 2010 extradition of Juan Jose Quintero Payan, former head of the Juarez cartel, who had been in Mexican custody since 1999;
- May 2010 extradition of Mario Villanueva Madrid, former Governor of Quintana Roo and alleged abettor of the Juarez cartel, on drug, money laundering, and bribery charges;
- June 2010 extradition of Pedro Bermudez Suaza, a.k.a. “El Arquitecto”, who orchestrated the smuggling of cocaine from Medellin, Colombia, to Mexico;
- January 2011 extradition of Sinaloa Cartel leader and DEA fugitive and Consolidated Priority Organization Target (CPOT) Oscar Nava Valencia, a.k.a. “El Lobo”; and
- March 2011 extradition of CPOT Esteban Rodriguez Olivera.

Extradition of high-profile fugitives, however, depends significantly on the ability of Mexican authorities to first locate and arrest them. (In the extradition context, those initial arrests are referred to as “provisional arrests” pending extradition.) The location and arrest of high-profile fugitives can be very challenging and dangerous. USMS, FBI, and other U.S. law enforcement agencies provide critical intelligence and technical support to their Mexican counterparts in these efforts by developing and sharing information on fugitives' whereabouts.

However, once fugitives are arrested, we find that the extradition process in Mexico can be lengthy, litigious, and often formalistic. In some cases, it can take several years before a fugitive exhausts all of his or her appellate rights and is extradited to the United States. In other cases, extradition principles akin to our double jeopardy restrictions can limit or complicate Mexico's ability to extradite major figures

who are also charged in Mexico. Thus, we expect that continuing to pursue the extradition of significant cartel targets from Mexico will be a resource-intensive endeavor for our staff in OIA and the Federal prosecutors with whom they work. At the same time, DOJ will continue its work—at both leadership and staff levels—to work with our Mexican counterparts to expedite and streamline the extradition process when possible.

QUESTION SUBMITTED BY SENATOR BEN NELSON

CUTS TO STATE AND LOCAL ASSISTANCE

Question. As I mentioned during the March 10, 2011 hearing, I believe we need to work together to exercise serious spending restraint in the current fiscal climate. We all know we have to cut back. In reviewing the Department of Justice's (DOJ) fiscal year 2012 budget request, State, local, and tribal assistance programs seem to take a particularly significant cut while other areas of your budget see increases. Specifically, these cuts impact programs such as Regional Information Sharing Systems, a multi-state, multi-jurisdictional program responsible for many law enforcement successes in Nebraska and across the country. As the fiscal year 2012 budget and appropriations process proceeds I hope to work with your Department to identify meaningful cuts while prioritizing those programs that are most relevant to DOJ's core missions.

It appears there will be a serious discussion this year to cut total domestic discretionary funding back to fiscal year 2008 levels. Perhaps that will not happen in fiscal year 2012, but rather fiscal year 2013, as suggested by the President's fiscal commission. As you know, that would mean a nearly 15 percent cut to DOJ.

My question is, if you had to get back to 2008 levels, where would you cut specifically? And what practical effect would those cuts have on DOJ and your mission?

Answer. At the fiscal year 2008 funding level, DOJ would be cut to a level that would have serious consequences for the American public. For 2011, DOJ's discretionary budget is \$26.9 billion. In 2008, the discretionary budget was \$23 billion. DOJ would need to cut \$3.9 billion from the 2011 full-year continuing resolution level if funding is reduced to 2008 levels.

This shortfall is further intensified when compared to DOJ's true operational requirements for 2012, which reflect compulsory cost increases associated with maintaining the prisons and detention systems and safeguarding resources to perform our national security responsibilities. DOJ would be forced to cover mandatory prison and detention costs at the expense of other critical law enforcement and prosecutorial priorities.

Currently, there are approximately 63,000 detainees in Federal custody awaiting sentencing, which is 11 percent higher than the 2008 population. Without the additional resources provided to the Office of the Federal Detention Trustee since 2008, DOJ would be unable to pay for mandatory detention costs and would be forced to turn away additional detainees remanded to Federal custody.

Because DOJ's total budget is nearly 60 percent salaries and benefits, with the other portion largely consumed by "mandatory" prison and detention costs, as well as fixed costs such as rent and utilities, the Department will lose staff if funded at the 2008 levels. This would impact national security, and traditional law enforcement and litigating missions. DOJ's ability to respond to continuously evolving threats and emergencies—such as the Deepwater Horizon oil spill and the Tucson, Arizona shootings—would be severely threatened.

Reductions to the national security workforce could leave our Nation vulnerable to attacks in a time when we are experiencing a spike in national security incidents. New intelligence analysts would be eliminated, hindering domain management, collection management, HUMINT collection, tactical intelligence, and intelligence production and dissemination capabilities.

Funding reductions would also result in the elimination of hundreds of counterintelligence and counterterrorism agents.

Simply put, fewer agents mean fewer investigations of national security threats, drug trafficking, cyber intrusions, child pornography, human trafficking, financial scams, and a host of other crimes under the jurisdiction of the Federal Government. Fewer attorneys mean fewer prosecutions for criminal offenses. Finally, DOJ would be forced to reduce grants to our State, local, and tribal law enforcement partners. For example, the COPS hiring program, which places more cops on the beat in local jurisdictions to tackle violent crime, would be reduced and fewer officers would be funded. This would impact the ability of many law enforcement agencies in Congressional Districts across the country to provide safe streets and communities.

QUESTIONS SUBMITTED BY SENATOR MARK PRYOR

PROBLEM SOLVING COURTS

Question. Can you describe your commitment to ensuring that problem solving courts remain strong and effective?

Answer. The Office of Justice Programs (OJP) has funded drug courts since 1995. The President's fiscal year 2012 budget proposes to consolidate the Mentally Ill Offender Act and Drug Court programs into a new Problem Solving Courts program that will provide greater flexibility in using these funds. The fiscal year 2012 budget request for the consolidated program equals the fiscal year 2010 enacted level for the two separate programs.

OJP has made a total of 2,609 drug court awards to 1,853 different drug court programs. In the last 2 fiscal years, OJP has been able to fund more than 50 percent of all eligible applicants, which represents a very high funding rate. Of the drug court programs funded under OJP, 95 percent are still operational today.

In fiscal year 2010, OJP placed a priority on building the capacity of existing drug courts to increase participation rates. The statutory provisions of the JAG formula allow State, local, and tribal jurisdictions to support drug courts. The Problem Solving Courts program will allow State, local, and tribal grantees increased flexibility to fund evidence-based strategies that address unique local needs and expand collaboration among drug courts, mental health, and substance abuse providers. Programs funded under the new Problem Solving Courts initiative may serve as models to other courts nationwide.

Question. Are the limited resources that are available for problem solving courts adequate for handling the huge case loads these courts have?

Answer. The priorities of the Problem Solving Courts program are to:

- support States, tribes, and localities by funding evidence-based grants generated around best practices;
- merge funding streams with funding from other Federal agencies to maximize resources;
- target problem solving court resources for offenders and practices, which research has shown to most improve public safety and reduce recidivism; and
- explore how to bring problem solving principles to scale in general jurisdiction courts.

The recently completed Multi Adult Drug Court Evaluation overseen by the National Institute of Justice has provided insight regarding how offenders benefit from the program. In fiscal year 2011, resources are targeted to those drug courts that aim to serve offenders with both high criminogenic risks and substance abuse treatment needs.

In fiscal year 2010, OJP began collaborating with the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment to administer the Enhancing Adult Drug Court Services, Coordination, and Treatment grant program. The purpose of this streamlined funding program is to enhance drug court capacity by inviting jurisdictions to submit one application to fund a comprehensive strategy to address both criminal justice and substance abuse treatment services. This interagency funding partnership maximizes Federal resources at the State, local, and tribal levels.

The proposed Problem Solving Court program would provide even greater flexibility in meeting jurisdictional needs based on their own resource gaps and will assist OJP in exploring with jurisdictions innovative ways to bring problem solving principles to work in general jurisdiction courts. While this program, with limited funding, will not be able to fully meet the needs of the jurisdictions, it can help court systems determine how to address these challenges in a systematic fashion.

Question. It's my understanding that in fiscal year 2010, the Methamphetamine Enforcement and Cleanup program received \$40.3 million through the Community Oriented Policing Services (COPS) program. Of this \$40.3 million, \$10 million was transferred to the Drug Enforcement Administration (DEA) to administer these meth cleanup funds. The \$10 million has been spent and no funds are currently available through this program to assist with the cleanup of meth sites. The President's fiscal year 2012 budget request zeros out methamphetamine enforcement and cleanup.

I am concerned that without this dedicated funding from the DEA that local law enforcement agencies will not be able to bear the cost of cleanup. This could result in openly contaminated meth labs not being cleaned up.

Can you provide additional details about how this program has worked in the past and why the choice was made to cut funding that would support the cleanup of these meth sites?

Answer. For a number of years, DEA received funding through the COPS program to administer various contracts across the country that provide specialists to remove the hazardous waste and chemicals found at illegal drug laboratories. The contractors that perform the actual cleanup services have been properly trained and licensed and are required to submit background security applications to determine their suitability to conduct this type of sensitive work.

The entire Federal Government is being asked to tighten its belt and make tough decisions on programs that can be consolidated, reduced, or eliminated. The elimination of the funding for the COPS methamphetamine enforcement and cleanup program represents just one of the difficult decisions DOJ had to make in the formulation of the 2012 budget.

DEA will continue to clean up the labs it investigates with funding from the Assets Forfeiture Fund. In addition, State and local agencies have a few options for dealing with these labs. One option is for them to use Byrne Justice Assistance Grant funding from the Bureau of Justice Assistance for lab cleanup. Also, several States (Alabama, Kentucky, Illinois, Indiana, and Oklahoma) already have container programs set up that allow State and local law enforcement officers to expedite the removal of seized chemicals from clandestine laboratory sites to temporary secure containers pending removal by a contractor. These programs lower the cost of clean-up. DEA is willing to provide technical assistance to any other States that want to implement the container program.

Question. Do you have concerns that a lack of funding for local law enforcement agencies could lead to an increase in the number of openly contaminated meth labs that are not cleaned up?

Answer. DOJ understands it will be a challenge for the States to address this new responsibility, and we will provide all of the assistance we can. DEA has a clandestine lab training facility at its Academy in Quantico, Virginia. At this facility, DEA trains Federal, State, local, and foreign law enforcement officials on the latest techniques in clandestine laboratory detection, enforcement, and safety. In fiscal year 2010, the Clandestine Laboratory Training Unit conducted training for a total of 1,306 State and local law enforcement officers.

In addition, State and local agencies have a few options for dealing with these labs. One option is for them to use Byrne Justice Assistance Grant funding from the Bureau of Justice Assistance for lab cleanup. Also, several States (Alabama, Kentucky, Illinois, Indiana, and Oklahoma) already have container programs set up that allow State and local law enforcement officers to expedite the removal of seized chemicals from clandestine laboratory sites to temporary secure containers pending removal by a contractor. These programs lower the cost of clean-up. DEA is willing to provide technical assistance to any other States that want to implement the container program.

Question. How will DOJ work with local law enforcement agencies in the future to ensure that our citizens are properly protected from such dangers?

Answer. DEA continues to work collaboratively with State and local law enforcement agencies to protect citizens from drug threats. Further, State and local agencies have a few options for dealing with clandestine lab cleanup. One option is for them to use Byrne Justice Assistance Grant funding from the Bureau of Justice Assistance. Also, several States (Alabama, Kentucky, Illinois, Indiana, and Oklahoma) already have container programs set up that allow State and local law enforcement officers to expedite the removal of seized chemicals from clandestine laboratory sites to temporary secure containers pending removal by a contractor. These programs lower the cost of clean-up. DEA is willing to provide technical assistance to any other State that wants to implement the container program.

DEA also has a clandestine laboratory training facility at the DEA Academy in Quantico, Virginia. At this facility, DEA trains Federal, State, local, and foreign law enforcement officials on the latest techniques in clandestine laboratory detection, enforcement, and safety. In fiscal year 2010, the Clandestine Laboratory Training Unit conducted training for a total of 1,306 State and local law enforcement officers. DEA will continue some State and local lab training during fiscal year 2011 with funding available from COPS. In addition to the clandestine lab training facility at Quantico, DEA has two Tactical schools and one Site Safety School scheduled in 2011. Tactical training is designed for officers involved in clandestine laboratory raids but who have limited training and experience, and Site Safety School is designed to certify attendees as Clandestine Laboratory Site Safety Officers. Advanced assessment and investigative techniques are also taught at this school.

QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

THE PRESIDENT'S ANNOUNCEMENT ON GUANTÁNAMO DETAINEE TRIALS

Question. Attorney General Holder, in July 2009, the Guantánamo Task Force established a system for the evaluation and referral of detainees for prosecution. In November 2009, you announced that the 9/11 hijackers were going to be tried in civilian courts, while the U.S.S. *Cole* suspect was going to be tried via military commission. Monday's announcement expressly referred to a military commission trial for the U.S.S. *Cole* bomber.

What change does this really signal other than an end to the delay, if the person who was slated for military commission trial 18 months ago is merely going to be tried via military commission?

Answer. The administration, working on a bipartisan basis with Members of Congress, successfully enacted key reforms to the military commission process in the Military Commissions Act of 2009. These reforms included a ban on the use of statements obtained as a result of cruel, inhuman or degrading treatment, and a better system for handling classified information, among others. As a result of these reforms, the Department believes the military commissions can deliver fair trials and just verdicts and will meet constitutional standards. That said, it is essential that the government have the ability to use both military commissions and Federal courts as tools to keep this country safe.

Question. Second, does this mean the 9/11 conspirators, including Khalid Sheikh Mohammed, are going to be tried via military commission as the Bush administration was in the process of doing before the Obama administration reversed course and cancelled those proceedings in January 2009?

Answer. Since these questions were presented, and after the passage of the fiscal year 2011 National Defense Authorization Act, a final decision was made to try several alleged 9/11 conspirators, including Khalid Sheikh Mohammed, by military commission.

Question. Have any decisions been made regarding the 9/11 conspirators trial venue—for example, has a final decision been made that they will not be tried in a U.S. civilian court in New York or elsewhere?

Answer. Since these questions were presented, and after the passage of the fiscal year 2011 National Defense Authorization Act, a final decision was made to try several alleged 9/11 conspirators, including Khalid Sheikh Mohammed, by military commission.

Question. You told the House Appropriations Committee last spring that the Khalid Sheikh Mohammed decision was coming soon. We are now at more than a year later. How long will the families of the victims of 9/11 have to wait before you decide where to try these terrorists? This isn't a new question, and it wasn't a surprise when you took the job of Attorney General. It will be 10 years in September, so how long?

Answer. Since these questions were presented, and after the passage of the fiscal year 2011 National Defense Authorization Act, a final decision was made to try several alleged 9/11 conspirators, including Khalid Sheikh Mohammed, by military commission.

FORT HOOD SHOOTINGS

Question. The Senate Homeland Security and Government Affairs Committee issued a report on the events surrounding the shootings at Fort Hood that took place in November 2009. The report criticizes the Federal bureau of investigation (FBI), citing that FBI field offices failed to recognize warning signs that Nidal Malik Hasan was a threat. The report also concluded that FBI had sufficient information to detect that he was a "ticking time bomb" who had been radicalized to violent Islamist extremism, but failed to understand and act on it. FBI has been provided significant funding since 9/11 to bolster its intelligence program which includes the hiring and professionalizing its intelligence analyst workforce. According to the report, FBI failed to use its analysts in this situation.

Next month FBI Director Mueller will appear before this subcommittee and I plan to take this matter up with him, but I'm interested in hearing from you too.

What is your response to this report and what has DOJ, and FBI, done in response to the Fort Hood shootings?

Answer. During the internal FBI review undertaken immediately after the attack at Fort Hood, FBI identified several of the areas of concern outlined in the report and, as noted in the report, has implemented changes to its systems and processes to address them. FBI will review each of the report's recommendations and adopt them, as appropriate.

While concluding that FBI's transformation to an intelligence-driven organization remains a work in progress, the report recognizes FBI's substantial progress and many successes, led by Joint Terrorism Task Forces (JTTFs), in disrupting terrorist plots by homegrown extremists.

In addition, at the request of FBI Director Mueller, Judge William H. Webster is conducting an independent, outside review of FBI's actions with respect to Fort Hood. Judge Webster and his team are evaluating the corrective actions taken to determine whether they are sufficient and whether there are other policy or procedural steps FBI should consider to improve its ability to detect and prevent such threats in the future.

DOJ supports FBI in its efforts to evaluate the Fort Hood shooting and to take the appropriate actions in response to the findings of the reviews that have been conducted in its wake.

Question. What changes have you made to ensure this tragedy does not happen again?

Answer. Immediately after the tragedy, FBI Director Robert Mueller ordered a preliminary review of FBI's actions, as well as any relevant policies and procedures that may have guided FBI's actions before the shooting. In addition, the Director asked for recommendations as to what changes should be made as a result of that review.

On December 8, 2009, Director Mueller asked Judge William H. Webster to conduct a more comprehensive, independent review of FBI policies, practices, and actions. That review is currently underway. The goal of these reviews is to look at both the actions of individuals involved and the systems in place at the time of the tragic events at Fort Hood, and to ensure that investigators have the tools they need to effectively carry out their responsibilities in today's evolving threat environment. The paramount concern in this process is to make sure that the systems and policies that are in place support public safety and national security.

In addition, as a result of the internal review, FBI identified four areas for immediate adjustment and improvement.

Protocols With the Department of Defense (DOD)

Although information-sharing has dramatically improved since September 2001, there is still room for improvement in certain areas, especially given the changing nature of the terrorist threat, and the need to constantly recalibrate approaches and responses. Working with DOD, FBI has formalized a process for centrally notifying DOD of FBI investigations involving military personnel. This should streamline information-sharing and coordination between FBI and all components of DOD, where appropriate, and as permitted by law. Improved processes for exchanging information will help ensure that FBI task force officers, agents, and analysts have all available information to further their investigations.

Additional Levels of Review

FBI determined that intelligence collected in connection with certain threats—particularly those that affect multiple equities inside and outside the FBI—should have a supplemental layer of review at the headquarters level. This redundancy in the review process will limit the risk of human error by bringing a broader perspective to the review. In this way, FBI should have a better institutional understanding of such threats.

Technological Improvements

During the course of the internal review, FBI identified information technology improvements that should be made to its systems. Those improvements, which are being engineered, should strengthen FBI agents' and analysts' ability to sift through information by automatically showing certain connections that are critical to uncovering threats.

Training for Members of JTTFs

FBI increased training for members of JTTFs to better ensure JTTF members know how to maximize access to all available information and to best utilize existing tools to identify and link critical information. Specifically, JTTF Task Force Officer (TFO) training consists of three components:

- Orientation and operations training;
- Database training;
- and Computer-based training.

Training addressing legal restrictions that govern the retention and dissemination of information was also expanded and strengthened.

The JTTF TFO Orientation and Operations Course (JTOOC) was established prior to Fort Hood and has continued to evolve as training is evaluated to ensure the best

possible instruction is provided to TFOs. JTOOC is now a 5-day course designed to develop a basic familiarization with counterterrorism investigations for all TFOs assigned to JTTFs. JTOOC classes are designed around a notional counterterrorism case to facilitate discussion and participant interaction.

In fiscal year 2010, in response to the initial Fort Hood findings, the FBI Counterterrorism Division (CTD) mandated that JTTF members receive hands-on training on key FBI databases and systems. Database training is now required for all JTTF members including special agents, TFOs, Intelligence Analysts and other personnel assigned to JTTFs who have access to systems and conduct investigative work.

FBI provides computer-based training to its employees via the FBI Virtual Academy system. CTD has identified 12 specific Virtual Academy training modules as the baseline level of training for JTTF personnel. All personnel assigned to a JTTF or working counterterrorism matters are required to complete these baseline training modules.

ICE AGENT SHOOTING IN MEXICO

Question. General Holder, as stated earlier, on February 15, U.S. Immigration and Customs Enforcement (ICE) agent Jaime Zapata was murdered, and ICE agent Victor Avila was wounded in an attack in Northern Mexico. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) traced the murder weapon, where it was linked to a sale in Dallas and three men were arrested in connection with the sale of the weapon used in this incident.

In response to the shootings, DOJ created a joint task force to investigate the shootings where FBI is the lead agency.

What can you tell us about the investigative efforts of this task force since this tragic incident in Mexico?

Answer. Upon notification of the attack against the ICE agents, FBI immediately organized a multi-agency task force located in Washington, DC, with a multi-United States Federal agency Command Post (CP) at the United States Embassy in Mexico. The task force and CP communicate daily regarding all facets of the investigation. Additionally, numerous FBI field offices have organized multi-agency efforts to assist in the investigation (Dallas, Houston, Las Vegas, Miami, Phoenix, and San Antonio to name a few). Through their Mexican liaison contacts, CP members have gathered significant information and evidence regarding the perpetrators and accomplices of the ICE attack. Two of the alleged perpetrators have been transported to the United States; those two and two others (a total of four) have been indicted on multiple charges. The United States Government has presented the Government of Mexico with the necessary documentation to transport two other alleged perpetrators, including the leader of 1 of the 2 teams that attacked Agents Zapata and Avila. As of now, 5 of the 8 individuals identified as perpetrators are in custody, either in Mexico or the United States.

Mexican law enforcement officials are conducting a parallel investigation into this incident. The Mexican Government and its agencies have an "open door" for all United States requests for access to evidence, interviews, and support to our Embassy personnel in conducting this investigation. Members of the Embassy staff meet regularly with Mexican counterparts to ensure necessary information is shared.

Question. Are Mexican law enforcement authorities cooperating and/or assisting in this investigation?

Answer. Mexican law enforcement officials are conducting a parallel investigation into this incident. The Mexican Government and its agencies have an "open door" for all United States requests for access to evidence, interviews, and support to our Embassy personnel in conducting this investigation. Members of the Embassy staff meet regularly with Mexican counterparts to ensure necessary information is shared.

Question. Are discussions taking place to have the perpetrators extradited to the United States for prosecution of this crime?

Answer. Yes, such discussions are taking place. The DOJ prosecution team, consisting of two prosecutors from the U.S. Attorney's Office in the District of Columbia and two prosecutors from DOJ's Criminal Division, has been working virtually around the clock both here in Washington and on the ground in Mexico since the tragic murder of Agent Zapada. United States prosecutors are in close contact with the Mexican office of the Attorney General (PGR) to discuss progress in the case, and DOJ officials at the highest levels have reached out to the Mexican Attorney General and other PGR officials to discuss the need to have the perpetrators extradited to the United States for prosecution. Our goal is to bring all of those involved in the murder of Agent Zapada to justice in the United States.

ATF'S NATIONAL INTEGRATED BALLISTICS IMAGING NETWORK (NIBIN)

Question. ATF's budget cuts NIBIN (N-eye-bin) by nearly 50 percent, crippling State and local law enforcement efforts investigating violent gun crimes. NIBIN has received unequivocal support across multiple venues and national and international law enforcement organizations. The President's own national Southwest Border Counterdrug and Violence Strategy calls for upgrading and modernizing ballistics imaging technology. General Holder, you and President Obama have publicly stated support for upgrading NIBIN and committed to data sharing along the Southwest Border with Mexico.

Explain this proposed cut to a tool critical in solving violent gun crime and investigating violent crime along the Southwest Border and in Mexico?

Answer. The NIBIN program has supported DOJ's nationwide efforts to investigate and prosecute gun-related crime. However, the entire Federal Government is being asked to tighten its belt and make tough decisions on programs that can be consolidated, reduced, or eliminated. The reduction of funding for ATF's NIBIN program represents just one of the difficult decisions DOJ had to make in the formulation of the 2012 budget. ATF will work to minimize the impact to operations, both along the Southwest Border and throughout the United States, as ATF scales back the NIBIN program.

Question. State and local law enforcement have devoted significant time and effort in building up the NIBIN database and the program is a force multiplier for more than 200 NIBIN partners. Under this budget, more than 120 NIBIN sites will be shut down.

If 120 sites are shut down, how and where will these jurisdictions have access to the ballistics information they need to fight gun crime?

Isn't that creating a huge void in the system?

Answer. Where feasible, ATF will consider relocating equipment in a regional manner, so that State and local participants can still have access to NIBIN equipment and databases. If there is significant interest from State and local agencies to maintain the program, ATF may consider implementing a user fee or cost-sharing proposal to ensure widespread access is available. State and local agencies will also be able to submit evidence to an ATF laboratory for analysis and correlation, as capacity permits.

Question. How will this affect the day-to-day operations of law enforcement officer investigating a gun crime?

Answer. Minimizing the impact to day-to-day operations will be one of the foremost goals as ATF scales back the NIBIN program. Law enforcement officers without access to a NIBIN system can still submit ballistics evidence to ATF laboratories, as capacity permits. Additionally, through regionalization, the NIBIN program will concentrate its efforts in high crime and high gun trafficking areas. It is important to note that the ability of law enforcement officers to trace recovered firearms will not be affected by the cuts to the NIBIN program.

ATF'S NIBIN—HOUSTON

Question. In 2009 in my home State of Texas, the Houston Police Department Crime Lab Division used this technology to link firearms evidence in 12 different investigations involving members of the La Tercera Crips (LTC) gang over a 10-month period. The use of NIBIN and its underlying technology resulted in the arrest of eight gang members. To supplement a portion of the cut to NIBIN, the request proposes a "user fee". Details of the "fee" are not clear but it would clearly be a new cost to already cash-strapped State and local law enforcement agencies.

How would this user fee work?

Answer. The user fee or cost-sharing arrangement is still under development and is not currently available; however, DOJ is aware of the tight fiscal environment under which State and local partners are operating. Any user fee or cost sharing proposed will be developed based on factors that are fair and appropriate to the actual costs of operating the program and its use by partners. The proposal will also have to go through the traditional development process for regulations, including a public comment period.

Question. Would State and local law enforcement be required to pay for access to the NIBIN database?

Answer. If sufficient demand exists for the system and a fee or cost-sharing arrangement is implemented, then State and local law enforcement would be asked to pay for access. The cost sharing would be applied toward the maintenance and software upgrade costs that are needed for the technology currently in use.

Question. What is the rationale behind shutting down more than one-half of this program?

Answer. The entire Federal Government is being asked to tighten its belt and make tough decisions on programs that can be consolidated, reduced, or eliminated. The reduction of funding for ATF's NIBIN program represents just one of the difficult decisions DOJ had to make in the formulation of the 2012 budget. ATF will work to minimize the impact to operations, both along the Southwest Border and throughout the United States, as ATF scales back the NIBIN program. ATF will reduce underutilized sites and reorganize the remaining sites to focus on higher-impact locations (such as the Southwest Border), allowing a smaller NIBIN program to invest in newer technology while reducing existing maintenance costs for many of the sites that have older, costlier technology.

Question. The Washington Post reported on January 31 that the initial proposal from Office of Management and Budget (OMB) was to drastically cut the operations of ATF. I'm gratified to see that DOJ successfully argued to restore most of the cuts proposed by the White House, but I remain concerned about the cut to NIBIN. Reducing funding to this ballistics tracing program by \$10 million, almost cutting it in half, seems like a dangerous cut that will leave State and local law enforcement agencies without an important tool to catch violent criminals. We hear from DOJ and DHS about how critical the need is to stop gun crimes in the United States and the flow of guns to Mexico and other areas.

Will a new strategy for enforcing gun laws be proposed if this cut is enacted?

Answer. While the NIBIN system provides a useful tool in combating violent crime and enforcing the Nations firearms laws, ATF uses a variety of intelligence led enforcement initiatives to enforce firearms laws. The intelligence for these enforcement efforts comes from a number of sources, most notably crime gun trace data accessible through ATF's eTrace system. The eTrace system is separate from the NIBIN system and the proposed cut will not hamper ATF's ability to focus its enforcement efforts through the use of crime gun trace data. Regionalizing the NIBIN systems will help to ensure that the high crime and high gun trafficking areas will still have systems available for them to enter their evidence and test exhibits. The capability will still be available, if not locally then through the ATF laboratories (as capacity permits).

Question. Does the Mexican Government participate in NIBIN?

Answer. ATF is currently working with the Government of Mexico to implement a NIBIN system. The Government of Mexico has NIBIN equipment in their country and is currently working with ATF to establish an MOU in order to share ballistic data internationally. ATF and the United States Government have been working with the Government of Mexico to come to agreement on the sharing of ballistic data between the two countries.

LAW ENFORCEMENT WIRELESS COMMUNICATIONS (LEWC) 2

Question. The fiscal year 2012 request for the LEWC account is \$103 million, which keeps the older, legacy systems running. Last year, DOJ requested more than \$200 million, which would buy roughly \$100 million in new radios and network equipment. When we send agents from FBI, the Drug Enforcement Administration (DEA), ATF, and the U.S. Marshals Service (USMS) to catch violent criminals, we give them the tools they need to do their job, like a gun, vehicle, computer, and radio. Some agents believe the radio is the most important tool they have. There is a growing concern that Mexican drug cartels and sophisticated crime organizations have better communications equipment than the agents we send to track them down and bring them to justice.

Would you comment on why the request simply sustains this account instead of improving it?

Answer. For fiscal year 2012, DOJ's Integrated Wireless Network (IWN) will absorb a reduction of \$105 million in the President's budget. The fiscal year 2012 President's budget assumed a fiscal year 2011 level of more than \$200 million; however, less than \$100 million was enacted. This will require DOJ to re-evaluate our strategy going forward. During fiscal year 2011 and fiscal year 2012, the Department will focus most of its resources on advancing ongoing strategic deployments rather than on significant new deployments. This will allow sufficient time to further detail a re-plan of the program capitalizing on establishing baseline capabilities in an expedited manner that meet Federal security and radio spectrum usage mandates, using FBI's existing system as a platform for consolidation where possible. DOJ is currently working on re-evaluating best practices, including other cost-effective technology, to ensure a flexible deployment strategy that can take advantage of new technologies when they become available.

Question. Do you believe that law enforcement radios are an issue of agent safety?

Answer. Yes, law enforcement radios are an issue of agent safety. Within the DOJ's four law enforcement components—FBI, DEA, USMS, and ATF—tactical communications using radios are critical for coordination and performance of operations by teams involved in hostage rescue, high-risk arrests, investigations, surveillance, national events, incident response, and major disasters/incidents, to name just a few. More than 20,000 law enforcement officers operating in urban, rural, and suburban areas nationwide communicate with individuals within their respective groups, with other groups, and with on-scene and off-scene incident command and control.

The land mobile radio infrastructure is a vital communications link used by DOJ law enforcement officers to conduct mission-critical work, and it provides device-to-device, one-to-many instantaneous “off network” communications.

Question. What effect will this fiscal year 2012 request have on law enforcement?

Answer. For fiscal year 2012, DOJ's IWN will absorb a reduction of \$105 million in the President's budget. During fiscal year 2011 and fiscal year 2012, DOJ will focus most of its resources on advancing ongoing strategic deployments and upgrading legacy network capabilities rather than on significant new deployments. This will allow sufficient time to further detail a re-plan of the program capitalizing on establishing baseline capabilities in an expedited manner that meet Federal security and radio spectrum usage mandates, using FBI's existing system as a platform for consolidation where possible.

Question. How will it affect operations along the Southwest Border?

Answer. Fortunately, the Southwest Border is one of the geographic areas that are already underway and funded with prior year monies and, therefore, we do not expect the reduction to impact Southwest Border operations. Specifically, the infrastructure in some of the divisions along the Southwest Border is being upgraded to meet the narrow-banding and current security requirements, to refresh circuits/equipment where necessary, and to add capacity to the upgraded FBI system to allow the other components (DEA and ATF only as USMS is already using the FBI's system) to utilize the shared system and decommission their own individual systems, as appropriate. In addition, subscribers (radios) will be upgraded or replaced in order to ensure that they are capable of working on the upgraded infrastructure.

EFFECTS OF FISCAL YEAR 2010 LEVELS ON FBI

Question. Although this hearing is about the fiscal year 2012 budget request, this subcommittee is also currently negotiating the fiscal year 2011 budget. There has been much talk of not reducing DOD and Homeland Security budgets, but no mention of DOJ in these discussions. FBI, DEA, USMS, and ATF have protected us against more than any non-DOD agencies combined. This subcommittee is committed to protect national security. Specifically, we have heard that DEA could be on the verge of instituting furloughs and FBI will be facing deficits of more than \$200 million if left to operate at fiscal year 2010 funding levels.

Is this true, and how will this affect this country's national security?

Answer. We appreciate Senator Hutchison's recognition of the fact that DOJ's roles and responsibilities are varied and critical to the security and safety of our homeland and the American people. DOJ—including FBI, DEA, USMS, and ATF—not only performs a key role in preventing terrorism and promoting the Nation's security, but also has a central role in combating violent crime in the Nation and maintaining safe communities for Americans. The fiscal year 2011 enacted appropriation funded FBI's current services requirements and there is not a \$200 million shortfall. With the exception of FBI, all DOJ law enforcement components are funded at less than fiscal year 2010 levels, including DEA. While DEA does not plan to institute a furlough, it will need to find savings through attrition, nonpersonnel reductions, and administrative efficiencies. Overall, DOJ intends to sustain its core national security and law enforcement functions with the fiscal year 2011 appropriation. However, even though the budget is essentially held flat for our law enforcement agencies, the cost of doing business-as-usual is higher this year as a result of requirements to support increased health premiums, retirement contributions, rent and move expenses and second-year costs associated with new staff appropriated in last year's budget. Funding to support these “mandatory” expenses will have to come from management and administrative efficiencies and possibly scaled-back operations. DOJ will strive to ensure minimal disruption to core national security, law enforcement, and public safety initiatives.

Question. Can agents be furloughed or is there a prioritization of personnel in all of the enforcement agencies?

Answer. Agents can be furloughed. DOJ would take into account the safety of human life or protection of property when making decisions about furloughing staff. However, DOJ does not anticipate furloughing any staff in fiscal year 2011.

Question. How does this affect the fiscal year 2012 budget that we see before us today?

Answer. Because the fiscal year 2012 President's budget request was developed using the fiscal year 2011 current rate as the starting point, the fiscal year 2011 enacted budget has little impact on the fiscal year 2012 request. The fiscal year 2012 budget request includes mandatory increases and annualizations needed to maintain current investigative and litigating efforts.

COST OF GUANTÁNAMO BAY DETAINEE TRIALS

Question. On March 7, 2011, the President signed an Executive order allowing detainees held at Guantánamo Bay to again be tried via military commissions. In his statement, the President also referred that all aspects of the judicial system, including trial in Article III courts, would be used.

While DOJ did not include funding for Guantánamo detainee trials in the fiscal year 2012 budget, the fiscal year 2011 President's budget included a planning estimate of \$72.8 million for the Department's anticipated increases in security and prosecutorial costs associated with high-security threat trials.

The requested resources would finance a variety of standard functions, including transportation and prisoner production, prisoner housing, security, litigation, and other costs associated with high-threat trials. More than one-half of the request was anticipated for security and resources requirements related to USMS, including armored vehicles, communications and security equipment, personnel, training, funds for overtime and travel, and interpreters to communicate with the defendants.

The security requirements associated with trying these suspects are higher than most other trials, which increase the cost. For example, for these trials, DOJ anticipates needing additional funding to harden cell blocks, courthouse facilities, and housing facilities, to increase its electronic surveillance capability, and to provide increased protection for judges and prosecutors.

How many detainee trials do you anticipate holding in Article III courts? When will a decision be made?

Answer. As long as the restrictions passed by the Congress in early 2012 are in place, we will not be bringing any Guantánamo Bay detainees to the United States for trial in Federal court, so any detainees at Guantánamo who are to be prosecuted will be prosecuted in military commissions. Individuals tried by military commission must be afforded the full range of legal protections established by the Congress in the Military Commissions Act of 2009, including the right to counsel; the presumption of innocence; the right against self-incrimination; the right to present evidence, cross-examine the Government's witnesses, and compel the attendance of witnesses in their defense; the right to exculpatory evidence; the right to suppression of evidence that is not probative or that will result in unfair prejudice; protection against double jeopardy; the right to an appeal; and others.

Question. What is the estimated cost for 1 year to hold criminal trials of detainees? How much of that is needed for security?

Answer. The costs of conducting criminal trials are dependent on a range of factors (location, number of detainees, etc.). The Department's fiscal year 2011 budget request included a planning estimate of \$72.8 million for the anticipated increases in security and prosecutorial costs associated with high-security threat trials. Of the amount requested, \$22.8 million was related to security. The enacted fiscal year 2011 and fiscal year 2012 budgets do not include new resources for the Department to pursue or assist in trials associated with detainees currently held at Guantánamo Bay Naval Station. In addition, current law prohibits the Department of Defense (DOD) from using funds to transfer Guantánamo detainees to the United States and places unwise and unwarranted restrictions on the Department's ability to prosecute Guantánamo detainees in Article III courts.

Question. What steps are you taking to ensure that communities will be safe if these detainees are transferred to the United States?

Answer. As long as the restrictions passed by the Congress in early 2012 are in place, we will not be bringing any Guantánamo Bay detainees to the United States for trial in Federal court; thus any detainees at Guantánamo who are to be prosecuted will be prosecuted in military commissions. Individuals tried by military commission must be afforded the full range of legal protections established by the Congress in the Military Commissions Act of 2009, including the right to counsel; the presumption of innocence; the right against self-incrimination; the right to present evidence, cross-examine the government's witnesses, and compel the attend-

ance of witnesses in their defense; the right to exculpatory evidence; the right to suppression of evidence that is not probative or that will result in unfair prejudice; protection against double jeopardy; the right to an appeal; and others.

Question. USMS' fiscal year 2012 request includes a \$5 million offset in perimeter security and I understand this will be reduction to the Southern District of New York. Considering this administration planned to try Khalid Sheikh Mohammed and other 9/11 terrorists in New York, why would you suggest cutting courthouse security?

Answer. The fiscal year 2012 budget proposed a \$5 million offset to reduce perimeter security that USMS provides on a nonreimbursable basis for Federal complexes in the Southern District of New York. The proposed offset was not included in the fiscal year 2012 enacted budget. However, this offset would not have reduced security for the facilities, but would merely have transferred responsibility for perimeter security for the Southern District of New York complexes back to the Federal Protective Service (FPS). FPS charges Federal agencies fees to provide comprehensive coverage of Federal facilities and their occupants, including contract protective security officer and perimeter security services. The proposed offset amount funds non-personnel costs (i.e., contract guards and security equipment). This security cost adjustment would not have negatively affected USMS's ability to accomplish its strategic and performance goals as perimeter security for Federal buildings is not a core USMS mission. USMS does not use Deputy Marshals for perimeter security and there is no USMS payroll expended for this program.

Further, as long as the restrictions passed by the Congress in early 2012 are in place, we cannot bring any Guantánamo Bay detainee, including Khalid Sheikh Mohammed and the other alleged co-conspirators of the September 11, 2001 terrorist attacks, to the United States for trial in Federal court, and any detainees at Guantánamo who are to be prosecuted will be prosecuted in military commissions.

Question. Should this subcommittee expect to see a supplemental request for resources to hold criminal trials?

Answer. Because current law prohibits DOD from using funds to transfer Guantánamo detainees to the United States. I am not aware of any plan by the Administration to request supplemental resources to conduct criminal trials of the Guantánamo detainees in the United States.

LAW ENFORCEMENT WIRELESS (LEWC)—TECHNICAL

Question. One of the more interesting sections of DOJ's budget request is the suspension of the Law Enforcement Wireless program, with the exception of operational and maintenance funds to sustain it. It is my understanding, based on the most recent LEWC quarterly reports, this program is being run efficiently.

What has fundamentally changed between the last quarterly report and the fiscal year 2012 budget request to?

Answer. The LEWC program is being run efficiently and the budget reduction does not intend to reflect otherwise. As stated in the response to the question above, the reduction was the result of the austere budget environment—DOJ remains committed to the program and will continue to support it going forward. Budget permitting, we will continue to revamp our wireless strategy and explore new technologies and innovative solutions to cut near- and long-term costs. For instance, we are considering utilizing some State law enforcement systems while adding capacity, encryption, and narrow banding to our legacy systems.

Question. The administration continues to make public remarks about a Government-wide commitment to full and open competition and recently issued an OMB directive that agencies be technology neutral in their procurement. Yet, it is my understanding that the component agencies within DOJ have continued to sole-source numerous contracts for new radios in order to avoid competition. Further, any open contracts have included requirements for one vendor's proprietary technology.

What specific steps has DOJ and its law enforcement components taken to promote such competition with respect to its procurements related to the LEWC program and its communications upgrades?

Answer. DOJ's contract for systems integration in support of the IWN implementation was awarded to General Dynamics using full and open competitive procedures. General Dynamics then performed a competitive procurement for the infrastructure equipment for use within the National Capital Region and Harris Corporation was chosen as the supplier. Contracts to maintain legacy systems, narrowband legacy systems, and purchase radios have been awarded using other than full and open competitive procedures when justified in accordance with the Federal Acquisition Regulation (FAR).

DOJ's mission demands leave it no choice, but to purchase Motorola radios unless:

- State and local entities upgrade to narrowband, P25 compliant systems;
- DOJ has funding sufficient to compete a replacement of its legacy systems;
- Other suppliers of multi-band radios license the proprietary functionality from Motorola; or
- The P25 standard is complete across all required aspects of the land mobile radio (LMR) infrastructure.

In those cases where Motorola equipment is needed for mission-critical reasons, DOJ has based its requirements on information gathered during market research and publicized its intentions. In other words, DOJ has been open and up front regarding its needs, publicizing them as required by the FAR, and no vendor has protested DOJ's actions. DOJ's plan has been and will continue to utilize full and open competition based on P25 standards and in accordance with the administration's memo to be technology neutral. However, until such time as any of the above-identified circumstances become reality, DOJ must continue to rely on equipment compatible with legacy systems.

Question. Does that not contradict the administration's memo to be technology neutral?

Answer. DOJ's contract for systems integration in support of the IWN implementation was awarded to General Dynamics using full and open competitive procedures. General Dynamics then performed a competitive procurement for the infrastructure equipment for use within the National Capital Region and Harris Corporation was chosen as the supplier. Contracts to maintain legacy systems, narrowband legacy systems, and purchase radios have been awarded using other than full and open competitive procedures when justified in accordance with FAR.

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DOJ's plan has been and will continue to utilize full and open competition based on P25 standards and in accordance with the administration's memo to be technology neutral. However, until such time as any of the above-identified circumstances become reality, DOJ must continue to rely on equipment compatible with legacy systems.

Question. What steps will you take to ensure fair and open competition in component contracts that are technology neutral and to prevent sole sourcing in the future?

Answer. DOJ remains committed to pursuing full and open competition based on P25 standards, in accordance with the administration's memo to be technology neutral.

DANGER PAY FOR MEXICO

Question. Violence in Mexico, particularly toward law enforcement personnel, has steadily intensified over the past several years. The very real and present danger faced by United States personnel working in Mexico is evident in light of the recent deaths of United States consulate employees and an ICE agent in Mexico. While DEA and FBI receive danger pay for their personnel in Mexico due to prior authorizations passed in 1990 and 2002, USMS and ATF do not have this same authorization language. USMS and ATF personnel face the same risks as their DEA and FBI counterparts in Mexico and should be equally compensated.

Why does the President's budget not provide for danger pay increases to USMS and ATF law enforcement personnel working in Mexico?

Answer. Increases associated with danger pay allowances are traditionally absorbed by a component's existing base resources. Due to the potentially fluid nature of danger pay authorities, which are established by the Secretary of State, permanent resources for danger pay authority in Mexico were not requested for USMS or the ATF in the fiscal year 2012 President's budget.

Question. Given the rise in violence generally, the targeted attacks against U.S. law enforcement officers, and the fact FBI and DEA already provide danger pay for

their employees in Mexico, that USMS and ATF should receive the same sort of compensation.

When can we expect to see proposed legislation to remedy this issue from DOJ?

Answer. To address disparities as a result of the separate authorities afforded to DEA and FBI, DOJ has been planning to engage in ongoing policy-level discussions with the Department of State, OMB, and the Office of Personnel Management to pursue alternatives to resolve these pay disparities in an effective, lawful, fair and expeditious manner, and alleviate the concerns voiced by the committees on appropriations and others. DOJ considers this a pay disparity between FBI and DEA, and ATF and USMS. That is, United States Government employees serving our national interests in the same overseas locations, many times working side-by-side on critical criminal investigations and law enforcement issues, should be compensated equitably.

On April 13, 2011, the Border Security Enforcement Act of 2011 (S. 803) was introduced, which contains a provision authorizing danger pay for USMS and ATF law enforcement personnel working in Mexico. This legislation would remedy this disparity.

PROJECT GUNRUNNER

Question. National media reports now appear to support allegations that ATF has gun allowed dealers to proceed with suspicious firearms transactions, in hopes of tracking the movements of those guns and their buyers. Reportedly, field agents strongly protested the operation, especially after the guns started turning up in trace reports related to criminal activity. On March 3, ATF promised to convene "a multi-disciplinary panel of law enforcement professionals to review the bureau's current firearms trafficking strategies."

When does ATF expect the panel's review to be completed?

Answer. As I discussed during my testimony, I have asked the acting inspector general to review the matter. ATF is postponing the creation of a multi-disciplinary panel until the acting inspector general has completed her work, in part to avoid redundancies that simultaneous reviews of the same matter could create. After the acting inspector general's work is completed, ATF will revisit the option of convening a multi-disciplinary panel. Any such panel would then be able to consider the acting inspector general's conclusions and recommendations in conducting their review.

Question. Did ATF allow these transactions to proceed, as alleged in the media reports?

Answer. I take these allegations seriously and have referred them to the acting inspector general of DOJ for investigation. I have also made it clear to our law enforcement personnel and prosecutors working on the Southwest Border that the Department should never knowingly permit illegally trafficked firearms to cross the border.

Question. If so, did DOJ approve use of this technique? Is this an investigative technique ATF has used in the past? What were the results in past investigations?

Answer. Allegations that ATF knowingly allowed the sale of guns to straw purchasers in hopes of tracking the movements of those guns and their buyers are under investigation by the acting inspector general.

Question. Is the practice being continued during this review and investigation?

Answer. There is an ongoing investigation into the shooting death of Customs and Border Patrol (CBP) Agent Brian Terry. Accordingly, I cannot comment on that investigation at this time.

STATE AND LOCAL LAW ENFORCEMENT CUTS

Question. Attorney General Holder, 11 percent (\$3 billion) of DOJ's budget request is comprised of State and local law enforcement grants. Five years ago, DOJ was responsible for soliciting and administering approximately 72 grant programs. Today, more than 100 grant programs and solicitations exist. Even in these tough budget times, the number of grants continues to grow and no serious proposals for consolidation or elimination of narrow and duplicative programs exist. Effective broad-use programs supported by law enforcement, such as Byrne-JAG and SCAAP, have been cut or eliminated to make room for more narrowly focused programs with limited purpose areas.

What is DOJ doing to curtail the ballooning number of grant programs?

Answer. DOJ is looking both at consolidating the way some grant programs are administered and at reducing or consolidating the number of grant programs that we are requesting. One example of consolidation and increased coordination is our CTAS. During a number of tribal listening sessions and conference calls with tribal

leaders, concern was expressed regarding the need to improve DOJ's tribal grantmaking process. Beginning last year, we issued one, single CTAS that encompassed DOJ's available tribal government-specific grant programs. Under the fiscal year 2010 Coordinated Tribal Assistance Solicitation, DOJ asked each tribe to submit a single application for all available DOJ tribal government-specific grant programs, according to the tribe's needs. The advantage of this coordinated process is that, when DOJ reviewed a single application from a tribe, it had a better understanding of the tribe's overall public safety needs. The grantmaking components then coordinated in making award decisions to address these needs on a more comprehensive basis. DOJ continued with CTAS this year and made improvements where necessary to respond to tribal governments' needs and concerns.

Additionally, in the fiscal year 2012 President's budget, the Office on Violence Against Women (OVW) request includes \$14 million for a new Consolidated Youth-Oriented program. This grant program consolidates the purpose areas of four previously funded programs under one competitive program. The four programs in the consolidation include:

- Services to advocate for and respond to youth;
- Grants to assist children and youth exposed to violence;
- Engaging men and youth in preventing domestic violence; and
- Supporting teens through education.

This consolidation will allow OVW to leverage resources for maximum impact in communities by funding comprehensive projects that include both youth services and prevention components.

Question. How can DOJ be more proactive in providing flexibility to law enforcement agencies with broad purpose area grants when the number of narrow grants continues to grow?

Answer. This year's COPS hiring program grants will be much different than previous years. COPS established an initiative to enhance the integration of community policing into its grant programs, and to better align COPS grant programs with the advancement of community policing. This year, applicants will be asked to address how grant funding will assist them in building partnerships, solving problems, and sustaining organizational change. The application will allow applicants to identify specific community crime and disorder problems that they seek to address with COPS funding, and the specific community policing strategies and tactics they plan to employ against these problems. DOJ is also requesting funding for the Byrne Justice Assistance Grant program, which provides the States the maximum flexibility both in categories and in the number of years they have to spend the funding. Last, as part of an administration-wide effort, DOJ is looking at ways through internal regulations and guidelines or through changes we might propose to the Congress that would make grant programs more flexible for States and localities. As an example, the fiscal year 2012 President's budget proposes to set-aside 7 percent of OJP funds to create a flexible tribal grant program that will replace several individual tribal grant programs.

Question. Please explain how SCAAP was cut by \$194 million, DNA grants cut by \$51 million, and Coverdell grants were eliminated—yet narrowly focused COPS Hiring grants was increased by \$302 million to \$600 million?

Answer. Due to tight fiscal restraints, important trade-offs were necessary in the budget, including reductions to some State and local criminal justice assistance programs.

DOJ responds to State, local, and tribal law enforcement by developing programs and initiatives that provide flexibility for their public safety needs. The COPS hiring program advances community policing through partnerships, problem solving and organizational change. While the goal of the program may simply appear to be adding officers, the results show stronger relationships between communities and police, more efficient and effective policing practices and an overall commitment to better public safety.

The requested increase for the COPS hiring program pales in comparison to the demand and needs of the field. For example, when the COPS office opened the solicitation for its COPS hiring recovery program in 2009, which was part of ARRA, the demand far outweighed funding available with more than \$8 billion in requests for the \$1 billion that was appropriated.

ATF—GUNRUNNER ALLOWING FIREARMS TO BE TRAFFICKED

Gun Traced to Border Patrol Agent Shooting Death in Arizona

Question. Since its inception in 2006, ATF has had many successes with Project Gunrunner, seizing nearly 10,000 firearms and 1.1 million rounds of ammunition destined for Mexico. Yet, news reports have indicated that the ATF encouraged the

sale approximately 2,000 weapons to known traffickers in an operation called Fast and Furious, in order track them to cartels and larger crime organizations in Mexico. The reports also indicate that two weapons recovered at the scene of the December 14, 2010, murder of CBP Agent Brian Terry in Arizona, were connected to Operation Fast and Furious and allowed to be smuggled into Mexico by ATF.

Can you verify whether the weapons recovered at the scene of Agent Terry's death in Arizona were allowed by ATF to be sold to known traffickers and smuggled into Mexico?

Answer. There is an ongoing investigation into the shooting death of CBP Agent Brian Terry. Accordingly, I cannot comment on that investigation at this time.

Question. As I said in my statement, on February 15, ICE agent Jaime Zapata of Brownsville, Texas, was murdered in Mexico. The weapon used in Agent Zapata's murder was traced to a sale in Dallas, where three men suspected of weapons trafficking were arrested.

Are there any indications that the weapon used in Agent Zapata's death was knowingly allowed to be sold to the three Dallas gun smugglers?

Answer. There is no evidence that the weapon used in the death of Agent Zapata was knowingly allowed to be sold to the Dallas gun smuggler, nor is there evidence that it was allowed to be transported across the United States-Mexico border.

Question. Are you aware of any senior members of ATF or DOJ encouraging ATF agents to allow gun dealers to sell weapons to known gun traffickers?

Answer. Allegations that ATF knowingly allowed the sale of guns to straw purchasers in hopes of tracking the movements of those guns and their buyers are under investigation by the acting inspector general.

Question. I understand you have instructed the inspector general to investigate this matter. Have you been given any preliminary reports that you can share with us?

Answer. I have not received any preliminary reports.

QUESTIONS SUBMITTED BY SENATOR LINDSEY GRAHAM

Question. On March 14, 2011, the New York Times reported that Ahmed, who was convicted for his role in attacks upon American embassies, was assigned to the U.S. Penitentiary (USP) in Florence, Colorado, but not the Supermax. Four other Embassy bombing conspirators are imprisoned at the Supermax.

Please explain the decision to hold Ghailani in a prison other than the Supermax.

Answer. Inmate Ghailani received a life sentence for Conspiracy to Destroy Buildings and Property of the United States. On March 11, 2011, inmate Ghailani was designated to USP Florence, pending a due process hearing for Administrative-Maximum (ADX) placement. The ADX referral is based on his offense conduct and the imposition of Special Administrative Measures restrictions, as determined by the Attorney General.

Inmate Ghailani's initial designation to USP Florence is appropriate to begin the ADX referral process. Placement at the ADX is guided by the BOP's Program Statement 5100.08, Inmate Security Designation and Custody Classification. The referral process usually takes 6 to 10 weeks.

Please be assured that public safety is the highest priority for DOJ and BOP and is paramount in all decisions made regarding the housing of Federal inmates.

Question. Will Ghailani be held in the general population of the penitentiary at Florence?

Answer. Inmate Ghailani will not be placed in general population while at USP Florence.

SUBCOMMITTEE RECESS

Senator MIKULSKI. This subcommittee stands in recess until March 31, at which time we will take testimony from the Administrator of NASA.

[Whereupon, at 12:20 p.m., Thursday, March 10, the hearing was concluded, and the subcommittee recessed, to reconvene Thursday, March 31.]