

**THE CONTINUED THREAT OF CORRUPTION TO  
U.S. BORDER LAW ENFORCEMENT AGENCIES**

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**HEARING**

BEFORE THE

**SENATE CAUCUS ON INTERNATIONAL  
NARCOTICS CONTROL**

**UNITED STATES SENATE**

**ONE HUNDRED SIXTH CONGRESS**

**FIRST SESSION**

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APRIL 21, 1999  
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SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

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**THE CONTINUED THREAT OF CORRUPTION  
TO U.S. BORDER LAW ENFORCEMENT AGEN-  
CIES**

**WEDNESDAY, APRIL 21, 1999**

U.S. SENATE,  
CAUCUS ON INTERNATIONAL NARCOTICS CONTROL,  
*Washington, DC.*

The caucus met, pursuant to notice, at 2:03 p.m., in room H-216, Hart Senate Office Building, Hon. Charles E. Grassley (chairman of the caucus) presiding.

Present: Senators Grassley, Graham, Feinstein, and Sessions.

**STATEMENT OF SENATOR CHARLES E. GRASSLEY, SENATE  
CAUCUS ON INTERNATIONAL NARCOTICS CONTROL**

Senator GRASSLEY. Good afternoon, everybody. I will call the hearing to order. I am Senator Chuck Grassley. I am chairman of the Caucus on International Narcotics Control, and I welcome everybody, particularly, I think our witnesses who have taken time out of their busy schedule to be with us.

Today's hearing is an oversight hearing to examine the Southwest Border operations of the U.S. Customs Service and also the Immigration and Naturalization Service. We will hear testimony from the General Accounting Office and from the commissioners, respectfully, of the U.S. Customs and the Immigration and Naturalization Service.

This hearing will focus on the findings and also on the recommendations of a GAO report on these agencies. The report is a followup study based on a hearing that this caucus held in May 1997 with these very same agencies. I appreciate the job that these agencies do on the front lines. It is difficult to comprehend the mind-numbing volume of business that these agencies must handle every year.

On average, almost one and a half times the population of the United States crosses our border annually. That is close to 400 million people. Each of these entrants, whether citizens or legal aliens must be greeted and their relevant travel documents inspected and those documents processed, and this must be done obviously expeditiously. It must be done with courtesy, but it must also be thorough. In addition, over 10 million containers enter our ports annually and almost twice that in commercial vehicles of all sorts.

In the last several years alone, the volume of commercial vehicles crossing the Southwest Border has grown by almost 150 percent. While most of the trade and passenger travel is legitimate, a small percentage is not. Hidden in this volume of passengers and cargo is an illegal trade that takes aim at the well-being of the people

of this country. Terrorists, drug traffickers and smugglers take advantage of legitimate business and travel to pursue their own criminal agendas. It is the men and women of the Customs Service and the Immigration and Naturalization Service that act as our front-line defense against this threat.

The conditions under which many of these fine people work are not always the best, but we always expect the best of these public servants. Happily, as the General Accounting Office report makes clear, our expectation is generally met in an exemplary fashion. There is, today, not a problem of systemic corruption of these agencies, but neither are they immune to individual instances of corruption or the potential for greater harm in the future.

It is to examine this potential and to explore preventive measures that this hearing is meant to address so these individual instances don't become systemic corruption. Here in this area of individual, the picture is less reassuring. As we will hear today, both of these agencies have a variety of internal shortcomings that need immediate and ongoing continuing attention. The integrity of these services must be one of our most important missions.

We must ensure that the potential for corruption is minimized, we must vigorously punish instances of corruption when we find them, and we must provide the investigate tools to make this possible. We must reward whistle blowers and not punish them. We must make integrity priority No. 1, and we must hold individuals and agencies accountable.

It is important to recognize that the environment on the Southwest Border is a very dangerous one. In many respects, the situation is deteriorating. Many of our citizens along the border feel threatened. It is clear that drug traffickers are using violence and the threat of violence to intimidate residents on our borders and along them. These same drug thugs are also using bribes and threats to corrupt Mexican officials in a very concerted way.

Drug lords in the Mexican State of Baja, CA, operate with what appears to be complete immunity. Local authorities are either unable to confront them or they actually work for them. When Mexican Federal authorities appear to be effective, they are murdered, and their murderers remain unpunished and at large. In this area and in others, lawlessness prevails, and it is a problem that does not stop at the frontier.

While we must work with Mexico to reverse this problem, we also must recognize that our own agents along the border are at risk not only from violence but also from corruption.

In the May 1997 hearing previously referred to, we heard from a former U.S. Federal officer on how he was suborned. He was corrupted, and it was no accident. Drug traffickers targeted him for corruption and worked on him for months, then slowly drew him into a web of corruption that led him to betray his duty and his trust. Knowing this, knowing this potential, we cannot be complacent in our response. We must ensure that such cases remain singular. We must ensure a proactive and vigorous response to prevent such instances from multiplying, and it is incumbent upon us to provide the tools and the means to do this.

Today, we will examine the problems. In the future, we will work to build solutions based upon the findings that we have.

Our first panel testifying today comes from the General Accounting Office. By the way, if my colleagues come and any of them—I am saying this to their staff—if any of my colleagues come and for some reason cannot stay for a long period of time and desire to have an opening statement, I would be glad to break into the testimony and questioning of others to do that.

I say, once again, good afternoon, and I welcome all of you, as I have said in my opening comment. Our first panel testifying today comes from the General Accounting Office. Their March report entitled, “INS and Customs Can Do More to Prevent Drug-Related Employee Corruption,” is the reason why we are here today.

Richard Stana is the associate director in the Administration of Justice Issues, and he handles these issues for the General Accounting Office. So, Mr. Stana, would you please come, and we will listen to your testimony and then we will have questions.

Would you please introduce people that are with you.

**STATEMENT OF RICHARD STANA, ASSOCIATE DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY WELDON McPHAIL, ASSISTANT DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, AND JAY JENNINGS, EVALUATOR, ADMINISTRATION OF JUSTICE ISSUES**

Mr. STANA. Thank you, Mr. Chairman. At my right is Weldon McPhail. He is an assistant director in the Administration of Justice Issue area and on my left is Jay Jennings who is the evaluator in charge of this particular assignment.

Mr. Chairman and members of the Senate caucus, I am pleased to be here today to discuss the results of our review of INS's and Customs' effort to address employee corruption on the Southwest Border. Some INS and Customs employees have engaged in a variety of illegal drug-related activities, including waving drug lords through ports of entry, coordinating the movement of drugs across the border, transporting drugs past Border Patrol checkpoints, selling drugs and disclosing drug intelligence information.

The integrity policies and procedures adopted by INS and Customs are supposed to ensure that their employees, especially those in positions that could affect smuggling of illegal drugs into the country are of acceptable integrity and, failing that, to detect corruption as quickly as possible.

Our report and prepared statement discuss in detail the nature of the agencies' integrity programs, the manner in which they have been implemented and the facts and circumstances surrounding the conviction of 28 INS and Customs employees for drug-related corruption that occurred on the Southwest Border from 1992 to 1997. These 28 cases do not include instances where the drug-related count was dropped or the employee pled guilty to a lesser charge or the employee became a fugitive or overdosed before conviction or former employees were convicted after they resigned and obviously where employee corruption was not detected.

In my oral statement, I would like to focus on three main points. First, neither INS or Customs is taking full advantage of its policies and procedures to address the threat of corruption. Second, the Justice IG, Customs and the FBI have not identified internal con-

trol weaknesses that surface from past corruption episodes so that they could be corrected. And, third, neither INS or Customs has completed an evaluation of their policies and procedures to determine what works and how well. As a result, neither agency can be sure that adequate internal controls are in place to detect and prevent employee corruption.

With respect to the first point on Agency policies and procedures, both agencies rely mainly on mandatory background investigations for new staff and reinvestigations of employees at 5-year intervals, as well as basic integrity training.

While the agencies generally completed background investigations for new hires by the end of their first year on the job, as required, reinvestigations were typically overdue, in some instances by as many as 3 years. As of March 1998, for the samples we reviewed, over three quarters of the required reinvestigations were not completed when due, and 42 percent of the required INS reinvestigations and 54 percent of the required Customs reinvestigations were still not done.

As for training, both agencies provided 7 or 8 hours of integrity training interspersed with other topics during basic training. However, while INS and Customs advocate integrity training beyond basic training, it was not required, and for the samples we reviewed, 60 percent of Immigration inspectors, 79 percent of Border Patrol agents and 24 percent of Customs inspectors received no advanced integrity training during the 2½-year period we examined.

My second point involves the missed opportunities to identify and correct internal control weaknesses that surfaced during past corruption episodes. Neither the Justice OIG nor the Customs Office of Internal Affairs documented that they used closed drug-related corruption cases to identify internal control weaknesses. In addition, the FBI did not identify and report internal control weaknesses in the cases it investigated because it was not required to do so.

Our review of closed drug-related corruption cases identified internal control weaknesses that allowed drug smugglers to choose their inspection lanes at the port of entry, law enforcement officers and their vehicles to pass uninspected through ports of entry on Border Patrol checkpoints and Immigration inspectors, Border Patrol agents and Customs inspectors to inspect individuals with whom they had close personal relationships.

Our report contains many examples where existing internal controls were breached by corrupt officials. In several examples, random assignment of inspectors and shifting of inspectors from one booth to another did not prevent corrupt INS and Customs officials from allowing drug-laden vehicles to enter the United States. In some cases, the inspectors communicated their lane assignment and the time they would be on duty to the drug smuggler. In other cases, the drug smuggler used a spotter to identify the booth where the corrupt inspector was working and directed the drug-laden vehicle to that lane. These schemes succeeded because the drivers of the drug-laden vehicles could choose the lane they wanted to use for inspection purposes.

In other examples, drug smugglers believed that coworkers, relatives and friends of INS or Customs officials or law enforcement

officials would not be inspected or would be given preferential treatment in the inspection process. In one case, the inspector agreed to allow her boyfriend to smuggle drugs across the border. In another case, two INS detention officers used INS detention buses and vans to transport drugs psychiatrist a Border Patrol checkpoint, believing that they would not be inspected out of professional courtesy.

INS and Customs did not have written recusal policies concerning the performance of inspections on friends and relatives nor did they have written policies on the inspection of law enforcement personnel or vehicles.

My third main point is that INS and Customs have not evaluated the effectiveness of their integrity assurance procedures to see what is effective and what needs to be improved. One way to evaluate the procedures would be to use drug-related investigative case information. For example, the objective background investigations or reinvestigations is to determine an individual's suitability for employment, including whether he or she has the required integrity.

All 28 of the INS and Customs employees who were convicted for drug-related crimes received background investigations or reinvestigations that determined they were suitable. Our review of the 28 cases also showed that 26 of the 28 were offered or received payment for their illegal acts and that two were substantially indebted and four were living beyond their means. And yet this vulnerability was not detected due to inadequate financial reporting requirements or the lack of analysis of available information.

For its part, INS requires its employees to provide only limited financial information, mostly on debts. Without more complete information on liabilities and assets, a thorough assessment cannot be made. For example, one convicted Immigration inspector said he became involved with a drug smuggler because he had substantial credit card debt and was on the verge of bankruptcy. Given the limited financial information Immigration inspectors are required to provide, he might not have been identified as a potential risk.

In another case, a mid-level Border Patrol agent owned a house valued at about \$200,000, an olympic-size swimming pool in its own building, a 5-car garage, 5 automobiles, 1 van, 2 boats, about 100 weapons, \$45,000 in Treasury bills, 40 acres of land, and he had no debt. Given the current background investigation or reinvestigation financial reporting requirements for Border Patrol agents, this agent would have had nothing to report, since he was not required to report his assets, and he had no debts to report.

In comparison, Customs requires its employees to report information on both financial assets and liabilities. However, our review showed that Customs does not fully use all of the financial information. Rather, it mostly compares reported liabilities with debts listed on a credit report to determine if all debts were reported. Thus, Customs current use of financial information would not have helped identify employees living beyond their means or whose debts were excessive.

Our report contained 11 recommendations that addressed the need to evaluate integrity training and background investigations, to complete reinvestigations when due, to strengthen internal con-



trols at the Southwest Border crossings, to upgrade the requirements for and the use of employee financial information and to require investigative agencies to review closed cases to identify internal control weaknesses.

Mr. Chairman, the corruption of some INS and Customs employees by persons involved in the drug trade is a serious and continuing threat, particularly given the enormous sums of money being generated by drug trafficking. INS and Customs need to reduce their vulnerability to corruption through continuous vigilance and oversight of the program activities that placed their employees on the front line of the Nation's drug interdiction efforts.

This concludes my oral statement. Our team would be happy to answer any questions you may have.

[The prepared statement of Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA, ASSOCIATE DIRECTOR,  
ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT DIVISION

INS AND CUSTOMS CAN DO MORE TO PREVENT DRUG-RELATED EMPLOYEE CORRUPTION

Some Immigration and Naturalization Service (INS) and U.S. Customs Service employees on the Southwest Border have engaged in a variety of illegal drug-related activities, including waving drug loads through ports of entry, coordinating the movement of drugs across the Southwest Border, transporting drugs past Border Patrol checkpoints, selling drugs, and disclosing drug intelligence information.

Both INS and Customs have policies and procedures designed to help ensure the integrity of their employees. However, neither agency is taking full advantage of its policies, procedures, and the lessons to be learned from closed corruption cases to fully address the increased threat of employee corruption on the Southwest Border. These policies and procedures consist mainly of mandatory background investigations for new staff and 5-year reinvestigations of employees, as well as basic integrity training. While the agencies generally completed required background investigations for new hires by the end of their first year on the job, reinvestigations were typically overdue, in some instances, by as many as 3 years. Both INS and Customs provided integrity training to new employees during basic training, but advanced integrity training was not required.

The Departments of Justice and the Treasury have different organizational structures but similar policies and procedures for handling allegations of drug-related misconduct by INS and Customs employees. At Justice, the Office of the Inspector General (OIG) is generally responsible for investigating criminal allegations against INS employees. GAO found that the Justice OIG generally complied with its policies and procedures for handling allegations of drug-related misconduct. At the Treasury, Customs' Office of Internal Affairs is generally responsible for investigating both criminal and noncriminal allegations against Customs employees. Customs' automated case management system and its investigative case files did not provide the necessary information to assess compliance with investigative procedures.

INS and Customs have missed opportunities to learn lessons and change their policies and procedures for preventing the drug-related corruption of their employees. The Justice OIG and Customs' Office of Internal Affairs are required to formally report internal control weaknesses identified from closed corruption cases, but have not done so. GAO's review of 28 cases involving INS and Customs employees assigned to the Southwest Border, who were convicted of drug-related crimes in fiscal years 1992 through 1997, revealed internal control weaknesses that were not formally reported and/or corrected. These weaknesses included instances where (1) drug smugglers chose the inspection lane at a port of entry, (2) INS and Customs employees did not reuse themselves from inspecting individuals with whom they had close personal relationships, and (3) law enforcement personnel were allowed to cross the Southwest Border or pass Border Patrol checkpoints without inspection. Also, INS and Customs had not formally evaluated their integrity procedures to determine their effectiveness. GAO made recommendations in response to these weaknesses.

Mr. Chairman and Members of the Caucus: I am pleased to be here today to discuss the serious and continuing threat of corruption to Immigration and Naturalization Service (INS) and U.S. Customs Service employees along the Southwest Border by persons involved in the illegal drug trade. The enormous sums of money being

generated by drug trafficking have increased the threat for bribery. It is a challenge that INS, Customs, and other law enforcement agencies must overcome at the border.

My testimony focuses on (1) the extent to which INS and Customs have and comply with policies and procedures for ensuring employee integrity; (2) an identification and comparison of the Departments of Justice's and the Treasury's organizational structures, policies, and procedures for handling allegations of drug-related employee misconduct and whether the policies and procedures are followed; (3) an identification of the types of illegal drug-related activities in which INS and Customs employees on the Southwest Border have been convicted;<sup>1</sup> and (4) the extent to which lessons learned from corruption cases closed in fiscal years 1992 through 1997 have led to changes in policies and procedures for preventing the drug-related corruption of INS and Customs employees.

This statement is based on our March 30, 1999, report<sup>2</sup> on drug-related employee corruption. Our statement makes the following points:

- INS' and Customs' compliance with their integrity procedures varied.
- Justice's Office of the Inspector General (OIG) and INS generally complied with investigative procedures, but Customs' compliance was uncertain.
- Opportunities to learn lessons from closed corruption cases have been missed.

#### BACKGROUND

Stretching 1,962 miles from Brownsville, TX, to Imperial Beach, CA, the Southwest Border has been a long-standing transit area for illegal drugs entering the United States. According to the Department of State, the Southwest Border is the principal transit route for cocaine, marijuana, and methamphetamine entering the United States. INS and Customs are principally responsible for stopping and seizing illegal drug shipments across the Southwest Border. At the ports of entry, about 1,300 INS and 2,000 Customs inspectors are to check incoming traffic to identify both persons and contraband that are not allowed to enter the country. Between the ports of entry and along thoroughfares in border areas, about 6,300 INS Border Patrol agents are to detect and prevent the illegal entry of persons and contraband.

The corruption of INS or Customs employees is not a new phenomenon, and the 1990s have seen congressional emphasis on ensuring employee integrity and preventing corruption. A corrupt INS or Customs employee at or between the ports of entry can help facilitate the safe passage of illegal drug shipments. The integrity policies and procedures adopted by INS and Customs are designed to ensure that their employees, especially those in positions that could affect the smuggling of illegal drugs into the United States, are of acceptable integrity and, failing that, to detect any corruption as quickly as possible.

#### INS AND CUSTOMS GENERALLY COMPLETED BACKGROUND INVESTIGATIONS, BUT NOT REINVESTIGATIONS, WHEN DUE

INS and Customs follow Office of Personnel Management (OPM) regulations, which require background investigations to be completed for new hires by the end of their first year on the job. Generally, the background investigations included a credit check, criminal record check, contact with prior employers and personal references, and an interview with the employee. Our review found that background investigations for over 99 percent of the immigration inspectors, Border Patrol agents, and Customs inspectors hired during the first half of fiscal year 1997 were completed by the end of their first year on the job.<sup>3</sup>

OPM also requires immigration inspectors, Border Patrol agents, and Customs inspectors to be reinvestigated at 5 year intervals from the date they enter on duty. The objective of these reinvestigations is to ensure these employees' continuing suitability for their positions. As with background investigations, contractors did the reinvestigations and INS and Customs were responsible for making the final determinations on suitability. However, INS and Customs did not complete reinvestigations within the required 5 year time frame for over three-fourths of the selected

<sup>1</sup>In this report, if employees entered guilty pleas, we considered them to have been convicted of the crime.

<sup>2</sup>Drug Control: INS and Customs Can Do More To Prevent Drug-Related Employee Corruption (GAO/GGD-99-31, Mar. 30, 1999).

<sup>3</sup>We restricted our analysis of immigration inspectors and Border Patrol agents hired in fiscal year 1997 to those hired by March 8, 1997, and of Customs inspectors hired in fiscal year 1997 to those hired by March 25, 1997. This is because we received personnel data current as of March 1998, the 1-year anniversaries of those dates, and because OPM allows agencies to employ individuals in a "subject to investigation" status for up to 1 year. A background investigation should be completed during that time.

Southwest Border personnel scheduled for reinvestigations in fiscal years 1995 through 1997. In some instances, reinvestigations were as many as 3 years overdue.

To the extent that a reinvestigation constitutes an important periodic check on an employee's continuing suitability for employment in a position where he or she may be exposed to bribery or other types of corruption, the continuing reinvestigation backlogs at both agencies leave them more vulnerable to potential employee corruption. As of March 1998, INS had not yet completed 513 overdue reinvestigations of immigration inspectors and Border Patrol agents. Customs had a backlog of 421 overdue reinvestigations.

#### BASIC INTEGRITY TRAINING WAS REQUIRED AND ADVANCED TRAINING WAS NOT

Newly hired immigration inspectors, Border Patrol agents, and Customs inspectors are required to attend basic training. As part of their basic training, new employees are to receive training courses on integrity concepts and expected behavior, including ethical concepts and values, ethical dilemmas and decisionmaking, and employee conduct expectations. This integrity training provides the only required integrity training for all immigration inspectors, Border Patrol agents, and Customs inspectors. For Border Patrol agents, 7 of 744 basic training hours are to be devoted to integrity training. For Customs inspectors, 8 of 440 basic training hours are to be devoted to integrity training. INS immigration inspectors are to receive integrity training as part of their basic training, but it is interspersed with other training rather than provided as a separate course. Therefore, we could not determine how many hours are to be devoted specifically to integrity training.

We selected random samples of 100 immigration inspectors, 101 Border Patrol agents, and 100 Customs inspectors to determine whether they received integrity training as part of their basic training. Agency records we reviewed showed that 95 of 100 immigration inspectors, all 101 Border Patrol agents, and 88 of 100 Customs inspectors had received basic training. According to INS and Customs officials, the remaining employees likely received basic training, but it was not documented in their records.

Justice OIG, INS, and Customs officials advocated advanced integrity training for their employees to reinforce the integrity concepts presented during basic training.<sup>4</sup> The Justice OIG, INS' Office of Internal Audit, and Customs provide advanced integrity training for INS and Customs employees.

While this advanced training has been available to immigration inspectors, Border Patrol agents, and Customs inspectors, they were not required to take it or any additional integrity training beyond what they received in basic training. Consequently, some immigration inspectors, Border Patrol agents, and Customs inspectors assigned to the Southwest Border had not received any advanced integrity training in over 2 years.

Based on a survey of random samples of immigration inspectors, Border Patrol agents, and Customs inspectors assigned to the Southwest Border, we found that during fiscal years 1995 through 1997, 60 of 100 immigration inspectors agents received no advanced integrity training. In addition, 60 of 76 Border Patrol agents received no advanced integrity training during the almost 2½-year period we examined.<sup>5</sup> The Customs survey indicated that 24 of 100 Customs inspectors received no advanced integrity training during this period.

#### JUSTICE OIG AND INS GENERALLY COMPLIED WITH INVESTIGATIVE PROCEDURES, BUT CUSTOMS' COMPLIANCE WAS UNCERTAIN

The Departments of Justice and the Treasury have established procedures for handling allegations of employee misconduct. Misconduct allegations arise from numerous sources, including confidential informants, cooperating witnesses, anonymous tipsters, and whistle-blowers. For example, whistle-blowers can report alleged misconduct through the agencies' procedures for reporting any suspected wrongdoing. INS and Customs have policies that require employees to report suspected wrongdoing.

We selected five Justice OIG procedures to evaluate compliance with the processing of employee misconduct allegations. In a majority of the cases we reviewed, the Justice OIG complied with its procedures for receiving, investigating, and resolving drug-related employee misconduct allegations. For example, monthly interim reports were prepared as required in 28 of 39 opened cases we reviewed. In the re-

<sup>4</sup>Advanced integrity training is any nonmanagerial integrity training provided to employees following completion of basic training.

<sup>5</sup>INS did not provide us with requested training data for 25 of the 101 Border Patrol agents in our sample.

maining 11 cases, either some information was missing in interim reports or there were no interim reports in the case file.

INS' Office of Internal Audit complied with its procedures for receiving and resolving employee misconduct allegations in all of its cases.

Because Customs' Office of Internal Affairs' automated case management system did not track adherence to Customs' processing requirements, we could not readily determine if the Office of Internal Affairs staff complied with their investigative procedures.

Customs' automated system is the official investigative record. It tracks and categorizes misconduct allegations and resulting investigations and disciplinary action. The investigative case files are to support the automated system in tracking criminal investigative activity and contain such information as printed records from the automated system, copies of subpoenas and arrest warrants, and a chronology of investigative events. Based on these content criteria and our file reviews, the investigative case files are not intended to and generally do not document the adherence to processing procedures.

#### OPPORTUNITIES TO LEARN LESSONS FROM CLOSED CORRUPTION CASES HAVE BEEN MISSED

Our analysis of the 28 closed cases revealed that drug-related corruption in these cases was not restricted to any one type, location, agency, or job. Corruption occurred in many locations and under various circumstances and times, underscoring the need for comprehensive integrity procedures that are effective. The cases also represented an opportunity to identify internal control weaknesses.

The 28 INS and Customs employees engaged in one or more drug-related criminal activities, including

- waving drug-laden vehicles through ports of entry,
- coordinating the movement of drugs across the Southwest Border,
- transporting drugs past Border Patrol checkpoints,
- selling drugs, and
- disclosing drug intelligence information.

The 28 convicted employees (19 INS employees and 9 Customs employees) were stationed at various locations on the Southwest Border. Six each were stationed in El Paso, TX, and Calexico, CA; four were stationed in Douglas, AZ; three were stationed in San Ysidro, CA; two each were stationed in Hidalgo, TX, and Los Fresnos, TX; and one each was stationed in Naco, AZ, Chula Vista, CA, Bayview, TX, Harlingen, TX, and Falfurrias, TX.

The 28 INS and Customs employees who were convicted for drug-related crimes included 10 immigration inspectors, 7 Customs inspectors, 6 Border Patrol agents, 3 INS Detention Enforcement Officers (DEO), 1 Customs canine enforcement officer, and 1 Customs operational analysis specialist. All but the three had anti-drug smuggling responsibilities. Twenty-six of the convicted employees were men; 2 were women. The employment histories of the convicted employees varied substantially.

In 19 cases, the employees acted alone, that is, no other INS or Customs employees were involved in the drug-related criminal activity. In the remaining nine cases, two or more INS and/or Customs employees acted together. Of the 28 cases, 23 originated from information provided by confidential informants or cooperating witnesses, and 5 cases originated from information provided by agency whistle-blowers. Prison sentences for the convicted employees ranged from 30 days, for disclosure of confidential information, to life imprisonment for drug conspiracy, money laundering, and bribery. The average sentence was about 10 years.<sup>6</sup>

#### *Drug-Related Corruption Cases Were Not Used to Learn Lessons*

Both the Justice OIG and Customs procedures require them to formally report internal control weaknesses identified during investigations, including drug-related corruption investigations involving INS and Customs employees. Generally, the Justice OIG and Customs' Office of Internal Affairs, respectively, have lead responsibility for investigating criminal allegations involving INS and Customs employees. Reports of internal control weaknesses are to identify any lessons to be learned that can be used to prevent further employee corruption. The reports are to be forwarded to agency officials who are responsible for taking corrective action. Reports are not required if no internal control weaknesses are identified.

In the 28 cases involving INS or Customs employees who were convicted for drug-related crimes in fiscal years 1992 through 1997, no reports were prepared. We con-

<sup>6</sup>The average prison sentence calculation does not include two former employees sentenced to life imprisonment, and one former employee who fled the country prior to sentencing. Information is provided only on the imprisonment portion of the sentences.

cluded from this that either (1) there were no internal control weaknesses revealed by, or lessons to be learned from, these corruption cases or (2) opportunities to identify and correct internal control weaknesses have been missed, and thus INS' and Customs' vulnerability to employee corruption has not been reduced.

Justice's OIG investigated 13 of the 28 cases. The investigative files did not document whether procedures were reviewed to identify internal control weaknesses. Further, there were no reports identifying internal control weaknesses. According to a Justice OIG official, no reports are required if no weaknesses are identified, and he could not determine why reports were not prepared in these cases.

Customs' Office of Internal Affairs' Internal Affairs Handbook provides for the preparation of a procedural deficiency report in those internal investigations where there was a significant failure that resulted from (1) failure to follow an established procedure, (2) lack of an established procedure, or (3) conflicting or obsolete procedures. The report is to detail the causal factors and scope of the deficiency.

We identified eight cases involving Customs employees investigated by Customs' Office of Internal Affairs. No procedural deficiency reports were prepared in these cases. Further, the investigative files did not document whether internal control weaknesses were identified. A Customs official said the reports are generally not prepared.

Although the Justice OIG and Customs' Office of Internal Affairs have lead responsibility for investigating allegations involving INS and Customs employees, the FBI is authorized to investigate INS or Customs employees. Of the 28 cases, the FBI investigated 7, involving 6 INS employees and 1 Customs employee. Under current procedures, the FBI is not required to provide the Justice OIG or Customs' Office of Internal Affairs with case information that would allow them to identify internal control weaknesses, where the FBI investigation involves an INS or Customs employee. In addition, while Attorney General memorandums require the FBI to identify and report any internal control weaknesses identified during white-collar or health care fraud investigations, a Justice Department official told us that these reporting requirements do not apply to drug-related corruption cases. According to FBI officials, no reports were prepared in the seven cases because they were not required.

*Our Review of Closed Corruption Cases Revealed Internal Control Weaknesses on the Southwest Border*

The Justice OIG and Customs did not identify and report any internal control weaknesses involving the procedures that were followed at the ports of entry and at Border Patrol checkpoints along the Southwest Border. Our review of the same cases identified several weaknesses.

We identified 14 cases in which INS or Customs inspectors knowingly passed drug-laden vehicles through ports of entry. Traditionally, INS and Customs have relied on internal controls to minimize this type of corruption. These have included the random assignment and shifting of inspectors from one lane to another and the unannounced inspection of a group of vehicles. However, in the cases we reviewed, these internal controls did not prevent corrupt INS and Customs personnel from allowing drug-laden vehicles to enter the United States. In some cases, the inspectors communicated their lane assignment and the time they would be on duty to the drug smuggler and in other cases they did not. In one case, for example an inspector used a cellular telephone to send a prearranged code to a drug smuggler's beeper to tell him which lane to use and what time to use it. In contrast, another inspector did not notify the drug smuggler concerning his lane assignment or the times he would be on duty. In that case, the drug smuggler used an individual, referred to as a spotter, to conduct surveillance of the port of entry. The spotter used a cellular telephone to contact the driver of the drug-laden vehicle to tell him which lane to drive through.

The drug smugglers schemes succeeded in these cases because the drivers of the drug-laden vehicles could choose the lane they wanted to use for inspection purposes. These cases support the implementation of one or more methods to deprive drivers of their choice of inspection lanes at ports of entry. At the time of our review, Customs was testing a method to assign drivers to inspection lanes at ports of entry.

In 10 of 28 cases drug smugglers relied on friendships, personal relationships, or symbols of law enforcement authority to move drug loads through a port of entry or past a Border Patrol checkpoint. In these 10 cases drug smugglers believed that coworkers relatives and friends of Customs or immigration inspectors, or law enforcement officials would not be inspected or would be given preferential treatment in the inspection process. For example a Border Patrol agent relied on his friendships with his coworkers to avoid inspection at a Border Patrol checkpoint where

he was stationed. In another case an inspector agreed to allow her boyfriend to smuggle drugs through a port of entry. The boyfriend used his personal and intimate relationship with the inspector to solicit drug shipments from drug dealers. Two DEOs working together used INS detention buses and vans to transport drugs past a Border Patrol checkpoint. In two separate cases, former INS employees relied on friendships they had developed during their tenure with the Agency to smuggle drugs through ports of entry and past Border Patrol checkpoints.

INS and Customs do not have written recusal policies concerning the performance of inspections where the relationship of immigration or Customs inspectors and Border Patrol agents to the person being inspected is such that they may not objectively perform the inspection. Nor do they have a written inspection policy for law enforcement officers or their vehicles. For example, our review of the cases determined that, on numerous occasions, INS DEOs drove INS vehicles with drug loads past Border Patrol checkpoints without being inspected.

*INS and Customs Have Not Evaluated Their Integrity Procedures*

INS and Customs have not evaluated the effectiveness of their integrity assurance procedures to identify areas that could be improved. According to Justice OIG, INS, and Customs officials, agency integrity procedures have not been evaluated to determine if they are effective. The Acting Deputy Commissioner of Customs said that there were no evaluations of the effectiveness of Customs integrity procedures. Similarly, officials in INS' Offices of Internal Audit and Personnel Security said that there were no evaluations of the effectiveness of INS' integrity procedures. According to the Justice Inspector General, virtually no work had been done to review closed corruption cases or interview convicted employees to identify areas of vulnerability.

Based on our review, one way to evaluate the effectiveness of agency integrity procedures would be to use drug-related investigative case information. For example, the objective of background investigations or reinvestigations is to determine an individual's suitability for employment, including whether he or she has the required integrity. All 28 of the INS and Customs employees who were convicted for drug-related crimes received background investigations or reinvestigations that determined they were suitable. According to INS and Customs security officials, financial information, required to be provided by employees as part of their background investigations or reinvestigations, is to be used to determine whether they appear to be living beyond their means, or have unsatisfied debts. If either of these issues arises, it must be satisfactorily resolved before INS or Customs can determine that the employee is suitable. In addition, Justice policy provides for the temporary removal of immigration inspectors and Border Patrol agents if they are unable and/or unwilling to satisfy their debts.<sup>7</sup>

Our review of background investigation and reinvestigation files for convicted INS employees showed that immigration inspectors and Border Patrol agents were required to provide limited financial information on liabilities, including bankruptcies, wage garnishment, property repossession, and liens for taxes or other debts or judgements that have not been paid.<sup>8</sup> They were not required to provide information on their assets. In comparison, Customs inspectors and canine enforcement officers were required to provide information on both their assets and liabilities, including financial information for themselves and their immediate families on their bank accounts, automobiles, real estate, securities, safe deposit boxes, business investments, art, boats, antiques, inheritance, mortgage, and debts and obligations exceeding \$200.<sup>9</sup>

Our review of the 28 cases involving convicted INS and Customs employees disclosed that 26 of 28 employees were offered or received financial remuneration for their illegal acts. At least two were substantially indebted, and at least four were shown to be living beyond their means. For example, one of the closed cases we reviewed involved an immigration inspector who said he became involved with a drug smuggler because he had substantial credit card debt and was on the verge of bankruptcy. Given the limited financial information immigration inspectors are required to provide, this inspector might not have been identified as a potential risk. In another case, a mid-level Border Patrol agent owned a house valued at approximately \$200,000, an Olympic-sized swimming pool in its own separate building, a 5-car ga-

<sup>7</sup>Justice Department policy defines debt as "lawful financial obligations that are just debts that are past due."

<sup>8</sup>Immigration inspectors and Border Patrol agents are to complete a Questionnaire for National Security Positions as part of their background investigation and reinvestigation.

<sup>9</sup>Customs inspectors and canine enforcement officers are to complete a Questionnaire for Public Trust Positions and a Financial Statement on Customs Form 257 as part of their background investigation and reinvestigation.

rage, 5 automobiles, 1 van, 2 boats, approximately 100 weapons, \$45,000 in treasury bills, 40 acres of land, and had no debt. Given the current background investigation or reinvestigation financial reporting requirements for Border Patrol agents, this agent would not have had anything to report, since he was not required to report his assets, and he had no debts to report.

Our review of Customs files for eight of the nine convicted Customs employees showed that the Customs inspectors and canine enforcement officers had completed financial disclosure statements that included their assets and liabilities as part of their employee background investigations and reinvestigations. However, based on our case file review, Customs does not fully use all of the financial information. For example, according to a Customs official, reported liabilities are to be compared with debts listed on a credit report to determine if all debts were reported. Thus, their current use of the reported financial information would not have helped to identify an employee who was living well beyond his means or whose debts were excessive.

Another source of evaluative information for INS and Customs could be the experiences of other Federal agencies with integrity prevention and detection policies and procedures. For example, while INS' and Customs' procedures were similar to those used by other Federal law enforcement agencies, several differences exist. According to agency officials, INS and Customs did not require advanced integrity training, polygraph examinations, or panel interviews before hiring, while the FBI, DEA, and Secret Service did have these requirements. Among the five agencies, only DEA required new employees to be assigned to a mentor to reinforce agency values and procedures. Since these policies and procedures are used by other agencies, they may be applicable to INS and Customs.

During our review, the Justice OIG, INS, the Treasury OIG, and Customs began to review their anticorruption efforts. These efforts have not been completed, and it is too early to determine what their outcomes will be.

#### RECOMMENDATIONS

Given the enormous sums of money being generated by drug trafficking and the corruption of some INS and Customs employees along the Southwest Border, both INS and Customs are vulnerable to the threat of corruption. Accordingly, we recommended that the Attorney General:

- direct the Commissioner of INS to evaluate the effectiveness of integrity assurance efforts, such as training, background investigations, and reinvestigations;
- require the Commissioner of INS to comply with policies that require employment reinvestigations to be completed when they are due;
- direct the Commissioner of INS to strengthen internal controls at Southwest Border ports of entry and at Border Patrol checkpoints by establishing (1) one or more methods to deprive drivers of their choice of inspection lanes at ports of entry; (2) a policy for the inspection of law enforcement officers or their vehicles at ports of entry and Border Patrol checkpoints; and (3) a recusal policy concerning the performance of inspections by immigration inspectors and Border Patrol agents where their objectivity may be in question;
- direct the Commissioner of INS to require Border Patrol agents and immigration inspectors to file financial disclosure statements, including a listing of their assets and liabilities, as part of the background investigation or reinvestigation process, as well as fully review this information to identify financial issues, such as employees who appear to be living beyond their means;
- require the Justice OIG to document that policies and procedures were reviewed to identify internal control weaknesses in cases where an INS employee is determined to have engaged in drug-related criminal activities; and
- require the Director of the FBI to develop a procedure to provide information from closed FBI cases, involving INS or Customs employees, to the Justice OIG or Customs' Office of Internal Affairs so they can identify and report internal control weaknesses to the responsible agency official. The procedure should apply in those cases where (1) the Justice OIG or Customs' Office of Internal Affairs was not involved in the investigation, (2) the subject of the investigation was an INS or Customs employee, and (3) the employee was convicted of a drug-related crime.

We also recommended that the Secretary of the Treasury

- direct the Commissioner of Customs to evaluate the effectiveness of integrity assurance efforts, including training, background investigations, and reinvestigations;
- require the Commissioner of Customs to comply with policies that require employment reinvestigations to be completed when they are due;
- require the Commissioner of Customs to document that policies and procedures were reviewed to identify internal control weaknesses, in cases where a Customs employee is determined to have engaged drug related criminal activities;

- require the Commissioner of Customs to comply with the policies that require employment reinvestigations to be completed when they are due;
- require the Commissioner of Customs to document that policies and procedures were reviewed to identify internal control weaknesses in cases where a Customs employee is determined to have engaged in drug-related criminal activities;
- direct the Commissioner of Customs to strengthen internal controls at Southwest Border ports of entry by establishing (1) one or more methods to deprive drivers of their choice of inspection lanes; (2) a policy for inspection of law enforcement officers and their vehicles; and (3) a recusal policy concerning the performance of inspections by Customs inspectors where their objectivity may be in question; and
- require that Customs fully review financial disclosure statements, which employees are required to provide as part of the background investigation or reinvestigation process, to identify financial issues, such as employees who appear to be living beyond their means.

#### AGENCIES' COMMENTS ON OUR REPORT

The Department of Justice generally agreed with the substance of the report and recognized the importance of taking all possible actions to reduce the potential for corruption. However, Justice expressed reservations about implementing two of the six recommendations addressed to the Attorney General.

First, Justice expressed reservations about implementing our recommendation that Border Patrol agents and immigration inspectors file financial disclosure statements as part of their background investigations or reinvestigations. Specifically, it noted that implementing financial disclosure "has obstacles to be met and at present the DOJ has limited data to suggest that they would provide better data or greater assurance of a person's integrity."

We recognized that implementation of this recommendation will require some administrative actions by INS. However, these actions are consistent with the routine management practices associated with making policy changes within the Agency. Therefore, the obstacles do not appear to be inordinate or insurmountable. Concerning the limited data about the benefits of financial reporting, according to OPM officials and the adjudication manual for background investigations and reinvestigations, financial information can have a direct bearing and impact on determining an individual's integrity. The circumstances described in our case studies suggest that financial reporting could have raised issues for followup during a background investigation or reinvestigation. We recognize that there may be questions on the effectiveness of this procedure; therefore, this report contains a recommendation for an overall evaluation of INS' integrity assurance efforts.

Secondly, Justice expressed reservations about implementing our recommendation that the FBI develop a procedure to provide information to the Justice OIG or Customs' Office of Internal Affairs on internal control weaknesses. Therefore, we clarified our recommendation to indicate that the procedure should only apply in those cases where (1) the Justice OIG or Customs' Office of Internal Affairs was not involved in the investigation, (2) the subject of the investigation was an INS or Customs employee, and (3) the employee was convicted of a drug-related crime. If internal control weaknesses in INS or Customs are known to the FBI and not disclosed to those agencies, then the agencies are not in the best position to correct the abuses.

The Department of the Treasury provided comments from Customs that generally concurred with our recommendations and indicated that it is taking steps to implement them. However, Customs requested that we reconsider our recommendation that Customs fully review financial disclosure statements that are provided as part of the background and reinvestigation process. Our recommendation expected Customs to make a more thorough examination of the financial information it collects to determine if employees appear to be living beyond their means. We leave it to Customs' discretion to determine the type of examination to be performed.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or other Members of the Caucus may have.

Senator GRASSLEY. Now, let me make another administrative point for both this panel and the succeeding panel. For members who are here or especially if no one comes, but even for those who will be here, there will probably be some questions given to each panelist to answer in writing, and we would like to have those returned by 2 weeks from the time that they were sent.

Thank you very much.



Do either one of your colleagues want to speak?

Mr. STANA. No.

Senator GRASSLEY. One of the items noted in the report is the failure of both the INS and Customs to complete reinvestigations when they are due. Was this failure the result of lack of resources?

Mr. STANA. Well, apparently so. The fact that these reinvestigations were not done on time would indicate that there were not enough resources applied to this issue. It may also, I might add, indicate that the resources devoted to this task may not have worked as efficiently as possible.

Senator GRASSLEY. Is there any indication that there has been any preference or special interest in those who were investigated as opposed to those who have not been investigated?

Mr. STANA. In our review of the 28 cases, we did not see any instances where special attention was paid to any of the individuals and, thus, we recommended—we did point out that all 28 passed their background checks or reinvestigations, and that is really the crux of our recommendation to really take a look at these things to see how well they are designed to catch this kind of wrongdoing.

Senator GRASSLEY. And the Justice Department expressed some reservations about implementing the GAO recommendations that there be a financial disclosure reporting requirement for investigative and reinvestigative purposes. Do you have any additional objections to this recommendation?

Mr. STANA. No. We think these are good recommendations, and we stand by them. We think that, when implemented, they will go a long way toward reducing the threat of corruption.

I might add that the Justice recommendation seemed to center around just a few items. One was whether it would be difficult to get an OMB form or a form through the OMB for approval. And it appears that Customs has a very similar form that the Justice Department may go to school on, if you will, to reduce that difficulty.

Another was possible union objection. But the union officials told us that they would not object to financial disclosure information from folks in sensitive issues or sensitive areas. And there was also some concern of what to do with the financial information once it was collected, and that might require some thinking about how best to analyze it.

Senator GRASSLEY. What else could be done to discover employees whose financial situation makes them vulnerable to corruption?

Mr. STANA. Well, I think having the financial disclosure information is a big first step and analyzing that properly. We are not saying that anyone who has large unexplained assets or liabilities is a person who is partaking in corruption, but it does give you an idea of who is vulnerable and just asking another question about where they got the money or how they came upon the asset or liability would be useful. For example, the individual I had in my statement who owned a \$200,000 and the in-ground swimming pool on a mid-level salary, it might be useful to understand how he came upon that money; an inheritance, a lottery winning it could be or it could be through illegal means.

Senator GRASSLEY. On whose financial records discloses a significant mismatch between income and lifestyle?

Mr. STANA. Well, if you are suggesting that maybe someone who is partaking in illegal acts may not truthfully complete a financial disclosure statement, that is a fair enough point. But what we have seen is that people do tend to fill them out correctly. They are reviewed by their superiors. And as I mentioned before, this is a good first step to better understand somebody's financial dealings and whether they are vulnerable to corruption.

Senator GRASSLEY. Based on your review that reveals shortcomings in Customs and Internal Affairs investigations, do you believe that past IA investigations were compromised?

Mr. STANA. What we did is we reviewed past IA investigations to see if the investigations were done in accordance with internal direction, and what we found is we could not find the documentation that all of the steps were performed. That is not to say that all of the steps were not performed. We could not find the documentation. But if the commissioner or the current head of the IA unit over there does another review of these cases and finds that maybe the quality of investigation that they did really was not up to par, and they feel that a reinvestigation is called for, then we certainly think that that is what should be done.

Senator GRASSLEY. And does a lack of thoroughness suggest a need to reopen and reexamine some cases?

Mr. STANA. If these are found not to be thorough, then I would suspect that they may want to either have another look at that individual or try to get a better idea of some of the methods that that individual might have used if they suspect a person may have been corrupted.

Senator GRASSLEY. Senator Graham.

Senator GRAHAM. Thank you very much, Mr. Chairman. I have an opening statement that I would like to submit for the record.

Senator GRASSLEY. It will be, without objection, received.

[The prepared statement of Senator Graham follows:]

STATEMENT OF SENATOR BOB GRAHAM, SENATE CAUCUS ON INTERNATIONAL  
NARCOTICS CONTROL

THE CONTINUED THREAT OF CORRUPTION TO U.S. BORDER LAW  
ENFORCEMENT AGENCIES

Mr. Chairman, I want to thank you for holding this hearing on the continued threat that internal corruption poses to our law enforcement agencies responsible for securing our international borders. Recognizing and effectively dealing with this threat is essential to our anti-drug efforts. As long as drug traffickers and the lure of money can easily compromise the ethics and integrity of even one of our border law enforcement officers, cocaine, marijuana, heroin and other illegal drugs will find their way through our seaports and airports and across our land borders.

I have reviewed the reports prepared by the General Accounting Office and Treasury's Office of Professional Responsibility. The findings are encouraging, and indicate there is no endemic corruption problem at the Customs Service and the Immigration and Naturalization Service. We must continue to pursue a policy of zero tolerance with regard to all types of internal corruption, as well as professional and personal misconduct. Our federal law enforcement officers must be beyond reproach.

Customs and INS are two of our most visible federal law enforcement agencies. Each day, hundreds of thousands of people come into contact with our Customs and INS personnel as they enter and depart the United States. To maintain the credibility of the agencies, Customs and INS must develop and deploy effective policies to investigate allegations of employee misconduct. Additionally, these agencies must ensure that when allegations of criminal behavior or misconduct are substantiated, the application and administration of discipline is swift, efficient, and effective.

Both Treasury OPR and GAO point out that the backlog of background reinvestigations of current Customs and INS employees leaves both agencies more vulnerable to potential employee corruption. Customs and INS must vigorously pursue a plan to complete the pending reinvestigations and to prevent the development of another backlog in the future. Neither agency can adequately address corruption and integrity concerns when the backgrounds of personnel occupying sensitive law enforcement positions are not examined on a regular basis.

Unfortunately, Customs has suffered from several damaging articles that have appeared in both the local and national media. A number of these stories have originated within my home state of Florida. I am extremely concerned that these articles reflect a culture at Customs that can best be described as alarming. It is essential that Customs get its house in order, striving to establish a more professional image within the national law enforcement community.

Customs must also reestablish an enhanced level of trust and respect within the international trade community and with the public. To his credit, Commissioner Kelly has made several key appointments and changes within the agency to begin this process, and I applaud his efforts. However, change at Customs must survive the tenure of any one Commissioner and become an integral part of the organizational culture at Customs.

I know both our witnesses feel strongly that corruption is one of the most pressing threats to our border security and are actively working to ensure their respective agencies are corruption-free. I look forward to hearing their testimony regarding the findings and the changes underway at both Customs and INS.

Senator GRAHAM. After the unfortunate Aldrich Ames situation with the CIA, there was a great deal of concern expressed about what the CIA had or had not done relative to proper oversight of its sensitive employees. A particular concern was, once a person had been in the employ of the Agency for some time, was there sufficient ongoing periodic reinvestigation and monitoring of lifestyle changes, such as you just described.

If you are familiar with what the CIA has done as a result of that unfortunate incident, do you think there are any lessons that could be learned from their new procedures that might be applicable to Customs and the INS?

Mr. STANA. Well, I cannot comment on what the CIA did or did not do because we really did not do a thorough investigation or a thorough look at how good those new procedures are. But I can tell you this, one of the things that we discovered by looking at the 28 cases was is that, as in the Aldrich Ames case, it is often the mid-level people who have been around a while who weigh the risk of going down that road and feel that the money is worth the risk because they feel they can breach these controls. They feel really comfortable in their ability to defeat them. And these are the folks that I think you have to be particularly careful to do the proper reinvestigations, do the proper financial checks and so on.

Of the 28 cases, the average tenure in the agencies was about 10 years. It ranged from 2 to roughly 20, if I recall correctly. And so it is those mid-level folks who, once they get comfortable with the Agency, comfortable with what they are doing, comfortable with the integrity procedures and comfortable that the risk-reward trade-off is in their benefit, those are the ones that are most vulnerable.

Senator GRAHAM. Is there an agency with which you are familiar that you think is a role model of effective ongoing monitoring of middle-aged, middle-position of responsibility personnel in sensitive positions? They each take a different tack to this sort of thing. Did you run across any that you would like to comment on?

Mr. JENNINGS. Senator, we looked at five law enforcement agencies, and one of the things we found is that there is really no data to support any of the procedures that are being followed. There was nothing that said that polygraphing or relocation or financial disclosure or any other procedure was or was not effective. That is the underlying reason for our recommendation, that INS and Customs evaluate their procedures in order to find out what works and what does not.

Senator GRAHAM. That is surprising. This is not a unique situation. Unfortunately, every organization that has sensitive responsibilities with large amounts of monetary gain by illicit activities faces this potential. Is there some place within the Federal Government that should have the ongoing responsibility of evaluating, (A) the effectiveness of the methods and procedures that the Agency is using and, (B) the degree to which the Agency is faithfully implementing those methods and procedures?

Mr. STANA. Each agency has an Inspector General's Office that covers those kinds of things, and I think that is a good place to start there. I might just add, again, it may not be one item or there really is no silver bullet that polygraphing is the answer or integrity training every year is the answer or having all of those background reinvestigations is the answer. It is the combination of these measures that gives the staff, the agents or whomever they are, the feeling that it is not worth it because I am going to get caught, and when I get caught, I am going to do some serious jail time. Once they get a little too comfortable that they can defeat these procedures, that is when trouble begins.

Senator GRASSLEY. Are there any areas of the law, such as privacy law restrictions, that create an unacceptable barrier to evaluation of activities of ongoing personnel; for instance, access to the financial records of personnel to determine whether that \$200,000 house they just bought was purchased by lottery winnings or from unexplained suspect sources?

Mr. STANA. Yes. In fact, the Treasury raised that as one possible objective to very deep analysis of the financial disclosure reports. We have pointed out that the Computer Matching Act really would not apply to the types of analysis we were suggesting for financial disclosure documents.

So I do not think for financial disclosure documents that would be a problem in most cases unless they may be doing something with them I cannot think of right now.

Senator GRAHAM. Do you mean getting access to the information which underlies the financial disclosure?

Mr. STANA. Well, the information that—let me back up a second. I think what we would expect in financial disclosure reporting is a form on which the agent would put their assets or liabilities, the stock they own, similar to the ones that we fill out as Government employees. Now, whether the Government has the right to go behind that to contact Paine Webber or Merrill Lynch or whomever to see exactly how much stock is owned or whether they have the right to go in your bank account, I am not sure that is what we are suggesting. I also do not know if there would be a privacy problem with that.

What we would envision is you take these reports of assets, and if something is not explained, sit down with the individual who filled it out and try to get an explanation. If an explanation is not forthcoming, then take the next step to verify the assets.

Senator GRAHAM. Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you, Senator Graham.

Senator FEINSTEIN.

**STATEMENT OF SENATOR DIANNE FEINSTEIN, SENATE  
CAUCUS ON INTERNATIONAL NARCOTICS CONTROL**

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I would like to use my time to make a brief statement and ask a few questions.

Senator GRASSLEY. Yes.

Senator FEINSTEIN. With the huge volumes of drug money that flow across our border, obviously the temptations for border agency corruption are real and tangible. In a recent incident, an INS inspector, making \$35,000 a year, was alleged to have been paid \$800,000 to allow 20 tons of drugs of cocaine to slip across the border. The street value of the 20 tons, just to show you how big it is, was \$1.6 billion.

According to a recent *San Jose Mercury News* article, drug corruption cases are on the increase, and you have documented that with your survey, I think, of the 28 people. It has increased from 79 in 1997 to 157 last year.

After reviewing your report, I must tell you I am still looking for answers. I would like to commend you for your findings regarding the delay in completing background checks, the insufficient financial disclosure by employees and the adequacy of internal controls.

Some of the cases highlighted, Mr. Chairman, by the GAO are very disturbing. In one case, a Customs inspector in El Paso used a cellular telephone to send a prearranged code to a drug smuggler's beeper telling him which lane to use at a border crossing and when to use it. And as the head of the Customs agency knows, we visited together the sites, and we know the problems of spotters all along our border at these port points.

In another case, an Immigration official in Calexico agreed to let her boyfriend, a member of a drug-smuggling family, drive a vehicle loaded with marijuana through a lane without inspection.

My concern really goes back beyond one study. As far back as March 1996, I asked the GAO to investigate the continuing influx of drugs entering our country, and they produced four reports; one in April 1998, July 1998 and August 1998. These problems they dealt with were the internal control weaknesses in a program known as Line Release, which was intended to identify and separate low-risk shipments from those with an apparently higher risk. And they pointed out difficulties with a three-tier target concept, another enforcement initiative implemented in 1992, designed to identify high- and low-risk shipments.

I think it is vital that we develop tighter controls. I am really worried about the spread of corruption north of the border. And so, Mr. Chairman, I am going to ask for an update on each of the three reports that I asked for earlier; internal control weaknesses over deletion of certain law enforcement records, internal control weak-

nesses and other concerns with low-risk cargo entry programs and the process for estimating and allocating inspectional personnel. I will put that in writing and send it out. If either one of you would like to join with me, I would be very, very happy to have you join.

Senator GRASSLEY. I will join you.

Senator GRAHAM. And I will likewise.

Senator FEINSTEIN. Thank you. Thank you very much.

So I think if we keep at this, at least we will get some updated information.

Now, let me, just for a moment, ask and see if these gentlemen can perhaps respond to some of these questions. I wanted to ask a couple of questions about the Line Release program and whether GAO has some new information that would indicate the current status of Line Release and whether Customs has taken any action to address the weaknesses you identified back in 1998.

Mr. STANA. Yes, some actions were taken, but let me just put them in context. If you recall from that report, we found weaknesses in how the determinations were made that a certain importer could be on the Line Release program. There is very little recordkeeping. Some of the determinations seem to be made almost viscerally, as opposed to having some set criteria.

Since that time, some criteria were established primarily on the number of shipments brought across the border within a certain amount of time. What the guidance still lacks, in our view, is a further discussion on what kind of background checks are expected, who should be consulted to verify the shipper's law enforcement status—there may not be a Dun & Bradstreet over on the Mexican side like there is here—and what kind of checklists and documentation should there be to assure that these kinds of checks were made and that these rechecks were made when due. We are still concerned about that.

Senator FEINSTEIN. Thank you very much, and I know that both the INS head and the Customs head are here, and I will ask them those questions when they come up. Hopefully, they will re-review this excellent report of yours.

What action has Customs taken—well, let me ask this a different way.

Has Customs instituted adequate management control systems to prevent the deletion of records from their systems which renders the text information potentially unreliable?

Mr. STANA. Following our report, we believe that Customs did take action on that. They instituted a system whereby a person who has deletion authority would be very few at a certain port, and any time a record was to be deleted, the owner of that record had to be consulted, and the deleting party's name would be listed on the record. So there would be full disclosure as to who was deleting the record and for what reason, and the person who originated the record would be aware of that.

Senator FEINSTEIN. And you feel that that is adequate?

Mr. STANA. Well, this is what they told us is being done, and we have seen some instances where that was being done. We have not done a full review to make sure that it is followed in every case, but that is the new—

Senator FEINSTEIN. In our letter we will ask you to do that.

Mr. STANA. That is the new procedure. Yes. OK, Senator.

Senator FEINSTEIN. Now, the GAO also found problems with the processes for estimating and allocating inspection personnel at the ports. For example, under the current Customs employees' union contracts, inspectors can only be moved to new sites if they volunteer.

The GAO also found that inconsistent practices in the Agency's personnel decision-making processes, could prevent Customs from accurately estimating the need for inspector personnel and allocating them to ports, preventing the quick allocation of resources to where they are most needed.

Could you comment on the efforts Customs has made to address these personnel problems which impact directly on its ability to stop the flow of drugs across the border.

Mr. STANA. Yes. Since our report was issued, I believe that Customs has come up with a model or a process to determine how best to allocate their resources. We have not examined that process or that model yet, but I would be looking at two things if I were to redo that study. One thing is, is how good are the numbers of agents in a certain port and how good are the numbers in the cargo through-puts, how good are the numbers on the traffic through the ports and so on. So I would want to look at the numbers.

The second thing I would want to look at is the threat assessments that the models are based on. If the threat assessments are not good, then the whole model is not going to be good either.

Senator FEINSTEIN. So perhaps the best thing for us to do then is simply to ask you to update these reports from 1998 and to make any specific comments that you might care to make on weaknesses, as well as improvements.

Mr. STANA. Yes. We would be happy to meet with your staff and talk about the scope of that study.

Senator FEINSTEIN. All right, excellent. Thank you very, very much.

Thanks, Mr. Chairman.

Senator GRASSLEY. Thank you, Senator Feinstein. Except for the questions you might be getting in writing, this—well, here comes Senator Sessions. Would you like to ask questions of this panel because you are right on time if you want to.

Senator SESSIONS. I am familiar with the report. I think, Mr. Chairman, I will not have any questions.

Senator GRASSLEY. As I started to say, you could get some questions in writing from all of us or people that are not here.

Mr. STANA. We would be happy to answer.

Senator GRASSLEY. Thank you very much, Mr. McPhail, Mr. Jennings, and Mr. Stana.

Now, I have an opportunity to invite Commissioner Kelly and Commissioner Meissner to our witness table. The panel that is coming represents the heads of the two law enforcement agencies that we just heard the General Accounting Office report on, who have to fight the continued threat of corruption on our borders.

Commissioner Kelly, of the U.S. Customs Service, will lead off this panel. He is well-known in the law enforcement community for his leadership as police commissioner of the New York City police department. Before his appointment to Customs, he served as the

under secretary for Enforcement of the Treasury Department, and that was since 1996. Mr. Kelly brings to the position more than 30 years of experience and commitment to public service.

Our second panel member, Commissioner Meissner, head of the Immigration and Naturalization Service, is responsible for a rapidly growing border agency comprised of Border Patrol agents and Immigration inspectors. The INS has almost doubled in size since 1993. We welcome you to this hearing, and we will hear your statements at this point, starting with Mr. Kelly.

**STATEMENT OF RAYMOND W. KELLY, COMMISSIONER,  
U.S. CUSTOMS SERVICE, DEPARTMENT OF TREASURY**

Mr. KELLY. Thank you, Mr. Chairman. Chairman Grassley, and members of the caucus, thank you for this opportunity to testify today on the vulnerability of law enforcement agencies to corruption along the Southwest Border.

I have provided the caucus with detailed written testimony on the subject, and I ask that the testimony be entered into the hearing record. Rather than read my full statement, I would like to provide the caucus with some brief remarks on Customs' effort to fight corruption.

As someone who has spent a long career in law enforcement, I know there is nothing more important to the functioning of a law enforcement agency than integrity. Without integrity, law enforcement is a contradiction in terms. Customs, working on the front line in America's war on drugs, remains ever vigilant in our effort to identify and eliminate the threat of corruption posed by drug traffickers. And in this regard, I have made integrity the No. 1 priority at the Customs Service.

This afternoon, I will briefly describe to you what Customs is doing to address integrity-related concerns raised in the GAO report discussed here today. I will also provide the caucus with a brief overview of changes Customs has made in the last several months to shore up our Internal Affairs operations.

These changes go directly to our ability to combat corruption. In their report entitled, "Drug Control: INS and Customs Can Do More to Prevent Drug-Related Employee Corruption," GAO made five recommendations that it believes would enhance Customs' integrity programs. In short, the GAO recommendations can be grouped into two categories.

The first category pertains to background investigations of Customs employees, specifically, the frequency with which we conduct them and the level of detail we go into when we conduct them. As pointed out by the GAO, Customs has a significant backlog of periodic reinvestigations or PRIs. A plan has already been implemented to address this problem. We have reprogrammed funds to hire contractors to conduct a large portion of the backlogged PRIs. With this assistance, we will be able to eliminate the PRI backlog over a 2-year period without impacting other personnel security requirements within the Agency.

Furthermore, we have requested funds in the Customs fiscal year 2000 budget specifically for this purpose, and we are grateful for the provisions in 689 as well. We are going to fix it and make sure that it does not happen again.



GAO has also suggested that Customs include financial disclosure statements as part of the background review process. In fact, we already do that. Financial disclosures are scrutinized during both the initial background screening and the periodic reinvestigation of Customs employees.

The second category of GAO recommendations could be summed in one phrase, follow-through. The GAO raised valid concerns as to what Customs is doing to assure that existing integrity programs and initiatives are properly and consistently implemented.

Prior to the release of the GAO report, we took two steps that I believe respond directly to these recommendations. First, a new assistant commissioner for Internal Affairs was brought on board at the Agency. Assistant Commissioner William Keefer is a former acting U.S. attorney and deputy chief of the Department of Justice's Office of Public Integrity. He brings to his new position the experience and leadership necessary to ensure that Customs' Internal Affairs will be the best in the business.

Also, we have implemented a new internal inspection policy requiring each Customs office to be reviewed every 18 to 24 months. In the past, offices were only inspected every 4 to 6 years. This new inspection program will give us the ability to effectively monitor how integrity initiatives are implemented in the field and will allow us to make sure that managers at all levels follow through with Customs policies and procedures already in place.

I want to describe a number of other steps we are taking at Customs to prevent corruption. Under the leadership of Assistant Commissioner Keefer, the Customs Office of Internal Affairs has begun a significant reorganization. This will include the immediate rotation of roughly 80 Office of Investigations and Internal Affairs agents. The intent of the rotation is to infuse Internal Affairs with savvy agents experienced in proactive investigations. These agents, dispersed throughout the country, will make up the core of an Internal Affairs operation focusing on criminal investigations rather than administrative violations.

Two outside consultants will be brought in to review our Internal Affairs operations and structure; former FBI Assistant Director James Kallstrom and former Justice Department Office of Professional Responsibility Counsel Michael Shaheen.

Our Quality Recruitment program is also a significant component of our integrity efforts. This initiative is a centralized, systematic approach designed to gauge the integrity and ability of potential new Customs inspectors and K-9 enforcement officers before they are brought on board. The idea behind the program is to recruit and hire the best people available, thereby minimizing the possibility for corruption before it occurs.

Training is also extremely important to ensure a professional, corruption-free workforce. We are in the process of bringing on board an assistant commissioner for training. The person who holds this newly-created position will be responsible for coordinating in-service training for all Customs employees. Uniform, professional development programs, including specific integrity training, are critical for Customs to perform at the highest levels.

Customs has also just implemented the new 1-800 telephone number for whistleblowers. This number will be monitored by staff

in the Office of the Commissioner, my office, and will provide appropriate outside agency contacts to whistle blowers, allowing them to report their concerns and seek any necessary legal protections.

As the members of the caucus are well aware, whistle blowers are often a valuable resource in the effort to ferret out corruption in our Government and Customs will make sure that their rights are not violated.

Mr. Chairman, every review of Customs to date, including the GAO report discussed here today, has concluded that no systemic corruption exists at the Agency. Still, as the GAO rightly pointed out, there are some things we can do better. We are addressing the recommendations of the report. As you can see, we are going beyond them as we bolster our effort to eliminate even a hint of corruption in the Customs Service. In this effort, we appreciate the interest and support of the caucus.

I would be happy to answer any questions you may have, Sir.

[The prepared statement of Mr. Kelly follows:]

PREPARED STATEMENT OF RAYMOND W. KELLY, COMMISSIONER OF THE U.S.  
CUSTOMS SERVICE

Chairman Grassley, Senator Biden, and other Members of the Caucus.

Thank you for providing me with the opportunity to testify today on the corruption vulnerabilities of U.S. border law enforcement agencies. This is a matter that is of critical importance to the U.S. Customs Service.

Having been a career law enforcement professional, I know there is nothing more important to the functioning of law enforcement than integrity.

Mr. Chairman, there is no doubt that the mission of our agency, and the placement of our employees in positions on the front lines of the Nation's borders, opens our personnel to the vulnerability of corruption from narcotics traffickers. We are very cognizant of this and have undertaken significant safeguards that we believe will better prevent corruption.

It is important to note that every review of Customs to date has concluded that no systemic corruption exists within the Agency. But, we are committed to bolstering the U.S. Customs Service's corruption fighting ability to eliminate whatever weaknesses might exist and making Customs integrity efforts second to none.

The focus of today's hearing is on the recent GAO report, entitled, "Drug Control: INS and Customs Can Do More to Prevent Drug-Related Employee Corruption". I plan to address all of the findings made by GAO with respect to Customs. However, I also would like to take this opportunity to explain other integrity reforms that we have underway that were not mentioned in the GAO report.

I will start with the deficiencies identified by GAO and the recommendations made to the Secretary of the Treasury.

GAO Recommendation No. 1. Direct the Commissioner of Customs to evaluate the effectiveness of the integrity assurance efforts including, training, background investigations and reinvestigations.

*Customs Response:* We have completed a comprehensive review of our integrity assurance efforts. We are aggressively implementing annual integrity training for all employees and have developed a plan to ensure that all periodic reinvestigations are conducted in a timely manner. The principle external evaluation of the Office of Internal Affairs by the Treasury Department's Office of Professional Responsibility has been completed. Actions on those recommendations are underway. Furthermore, an evaluation of Customs' Office of Internal Affairs by former FBI Associate Director James Kallstrom and former Justice Department Office of Professional Responsibility Counsel Michael Shaheen will commence this month.

GAO Recommendation No. 2: Require the Commissioner of Customs to comply with policies that require employment reinvestigations to be completed when they are due.

*Customs Response:* I have requested funds in the Customs fiscal year 2000 budget for addressing the backlog of PRIs that we are facing right now. Personnel security specialists who otherwise would be able to process these investigations have been preoccupied with processing background checks for our new hires. The funds I have requested will permit the outsourcing of the PRIs, thereby relieving the backlog. For the short term, I have reprogrammed funds to hire contractors to assist in the back-

ground investigation process. These enhancements will allow for the timely completion of PRIs, and not impact other personnel security activities through the draining of existing PRI dedicated resources. The plan we have in place will eliminate the PRI backlog over a 2 year period.

GAO Recommendation No. 3: Require the Commissioner of Customs to document that policies and procedures were reviewed to identify internal control weaknesses in cases where a Customs employee is determined to have engaged in drug-related criminal activities.

*Customs Response:* Internal control issues will be addressed during the forthcoming agency-wide self-inspection process. This all-encompassing assessment will begin May 1999. In those instances "where a Customs employee is determined to have engaged in drug-related criminal activities," procedures and policies are currently in place for IA to conduct procedural deficiency investigations in addition to full integrity investigations. Such investigations and inspections are designed to determine if the internal controls in place at the time of the criminal act were compromised or inadequate to prevent the commission of the crime.

GAO Recommendation No. 4: Direct the Commissioner of Customs to strengthen internal controls at SW Border ports of entry by establishing (1) one or more methods to deprive drivers of their choice of inspection lanes; (2) a policy for inspection of law enforcement officers and their vehicles; and (3) a recusal policy concerning the performance of inspections by Customs inspectors where their objectivity may be in question.

*Customs Response:* We have issued a new policy which prohibits inspectors from conducting official business with family members and close associates, except in unusual cases such as one-man ports. In cases of one-man ports, Customs inspectors will be required to report to their supervisors that they have cleared family members or friends and include such information in an automated reporting system so that it may be tracked and analyzed. In addition, Customs continues to utilize the implementation of lane denial whereby inspectors direct vehicles to specific lanes for primary inspection. We are also utilizing the COMPEX system to generate random secondary examinations of passengers and vehicles.

GAO Recommendation No. 5: require that Customs fully review financial disclosure statements, which employees are required to provide as part of the background investigation or reinvestigation process, to identify financial issues such as employees who appear to be living beyond their means.

*Customs Response:* Background investigators have been and are currently reviewing Customs employees' financial disclosure statements. They perform a line-by-line review of the financial disclosure form with the employee during the background interview. Apparent anomalies are highlighted during the interview and the background investigator will seek a satisfactory explanation for the matter prior to continuing the interview. Depending upon the nature of the anomaly, additional documentation will be obtained by the investigator, including commercial credit histories of employees.

#### OTHER REFORMS

Mr. Chairman, as you know, leadership is a key issue in any internal affairs operation. I have replaced the head of internal affairs, and recruited a career prosecutor for the post who will fight corruption. I elevated his authority, and have him reporting directly to me. William A. Keefer, who is here with me today, has impeccable credentials in public integrity matters. He has served as a former Acting United States Attorney and Deputy Chief of the Department of Justice's Office of Public Integrity.

In addition to changes at the top, I have instituted a full review of the Office of Internal Affairs and will be directing reassignments when and where appropriate. These reassignments will be accompanied by movement of senior personnel in the Office of Investigations into the Office of Internal Affairs, both to take advantage of investigative experience and to better prepare them for future leadership responsibilities in Customs. In addition, we're working to make service in Internal Affairs a requirement for agents on promotion tracks. With this, we are stressing to our agents the importance of internal affairs to our organization.

We are working on a new computerized system of tracking complaints and follow-up investigations to make certain that appropriate action is taken. In addition, time limits have been developed governing the stages of a follow-up investigation. Absent extenuating circumstances, managers will be held accountable for failure to adhere to these deadlines.

We're reminding all employees that they have a duty to report suspected corruption, and face punishment if they fail to do so.

We've established a stronger whistle blower program staffed in the Office of the Commissioner. The office will provide employees at all levels with information on their rights and responsibilities regarding whistle blowing.

Recruitment and training are essential elements in any integrity program. The best defense against corruption is recruitment of the very best candidates to begin with. The integrity of our workforce becomes, de facto, the sum of the character of the men and women wearing the Customs badge. Customs has developed and implemented a Quality Recruitment program to attract the best and brightest into our entry-level Customs Inspector and canine Enforcement Officer positions. Quality Recruitment is a centralized, systematic approach to gauge the integrity and ability of potential new employees. The program includes:

- Written tests to assess reasoning skills, writing skills, and the likelihood of counterproductive behavior;
- Structured interviews to assess judgement, maturity, and decision-making abilities
- Mandatory reference checks
- Extensive background checks and
- Drug screening

We are also taking the same approach with our Customs agents and pilots. We've centralized recruiting for inspectors and canine officers so that we can pick and choose from a more competitive national, as opposed to local, pool of candidates. We're counting on national recruitment to help Customs both replenish our ranks with the high caliber workforce we need for our increasingly complex duties as well as select only those individuals who show strong character and signs of uncompromising professionalism.

Training goes hand-in-hand with recruitment. In 1992, the Customs Service became the first Treasury bureau to institute annual integrity reinforcement training for every employee. The Service continues to dedicate more formal training time to integrity at the Customs Academy, located at the Federal Law Enforcement Training Center. I have directed that annual integrity reinforcement training be funded and deployed this fiscal year, and continue on an annual basis.

In addition, we've created a new Office of Training that will be lead by an Assistant Commissioner, who we have just recently selected. This Office will provide uniformity throughout Customs of the training all employees receive.

We are also seeking authority to use polygraphs to screen Special Agents as part of pre-employment processing. A proposal is being developed to do the same for Inspectors, Canine Enforcement Officers, Pilots, Marine Enforcement Officers, Customs Patrol Officers, Aviation Enforcement Officers, and Intelligence Research Specialists. The use of polygraph testing is a valuable tool for helping us screen out undesirable or unstable candidates.

We are also seeking the guidance and opinions of experts outside Customs on ways to improve our internal affairs capabilities. As I mentioned earlier, we have asked a highly respected former Assistant Director of the Federal Bureau of Investigation, James Kallstrom, and Michael Shaheen, the former Director of the Office of Professional Responsibility at the Department of Justice, to give the Customs Service an outside, objective assessment of the effectiveness of our corruption-fighting reforms. Their task will be to review the organizational structure, resources, and function of the Office of Internal Affairs.

I believe it is also beneficial to recognize employees who demonstrate the highest levels of integrity. Last year, I initiated the "Commissioner's Integrity Award" to reward anti-corruption efforts. I presented a \$10,000 cash award to a U.S. Customs inspector who did everything right. Rather than simply accept or ignore a bribery offer he had received, he worked aggressively with Internal Affairs agents under cover to arrest the perpetrators on Federal bribery charges. I intend to make "The Commissioner's Integrity Award" an annual recognition.

I want to ensure the Caucus members that as long as I am Commissioner of the Customs Service, integrity will remain the highest priority.

That concludes my statement, Mr. Chairman. I'll be happy to answer any questions.

Senator GRASSLEY. Commissioner Kelly, we will wait until Commissioner Meissner is done for questioning.

Would you please proceed, Ms. Meissner.

**STATEMENT OF DORIS M. MEISSNER, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE**

Ms. MEISSNER. Thank you. Mr. Chairman and members of the caucus, I, too, am very pleased to have this opportunity to discuss the INS' efforts to prevent drug-related corruption along the Southwest Border.

INS shares the concern about the devastating impact that drug trafficking has on the health and safety of our communities, and I am proud of the role that INS personnel play in combatting this scourge. Last year, Border Patrol agents and Immigration inspectors, working along the 2,000-mile frontier with Mexico, seized more than one million pounds of drugs destined for American streets.

Those serving on the front line in the fight against drugs face enormous pressures, including the ever-present threat of corruption. The lure of huge profits generated by drug trafficking is undeniably strong, especially for people of modest means who could earn a year's pay in one afternoon simply by looking the other way. Thus, INS is fully committed to taking all possible action to prevent corrupt behavior, to investigate allegations of corruption promptly and thoroughly and to punish those who violate the public's trust.

We hold our employees to the highest standards of professional and personal integrity, and we take seriously our responsibility to reduce the opportunity for an employee to commit a crime and increase the risk of that employee being caught.

We believe our integrity assurance measures are effective. A recent GAO study of the Southwest Border, where currently more than 8,800 Border Patrol agents and Immigration inspectors are stationed, found that 19 INS employees were convicted of drug-related crimes from 1992 through 1997. Agencywide, an average of 17 INS employees were arrested or indicted on Federal corruption charges per year related to their official duties over the past 3 years.

These statistics speak well of the integrity and professionalism of the great majority of Agency personnel. At the same time, even a single instance of corruption is too many. At INS, we do have a zero tolerance policy. We recognize that the primary responsibility for combatting corruption rests with the Agency itself. To be successful, we have to have a value system within INS that clearly communicates both the parameters of acceptable behavior and the penalties for acting outside those parameters. Where we begin is with the recruitment and the training of new personnel.

Over the past several years, INS has experienced unprecedented growth. With 7,350 Border Patrol agents currently on duty, we have more than doubled Border Patrol agent staffing along the Southwest Border since 1993, and by the end of this year we expect to have 2,423 inspectors at our land border ports. That is 98 percent more than in 1993.

In the face of this growth, we have built a recruitment process whose goals include identifying and not hiring persons susceptible to corrupt behavior. Through a series of preemployment interviews and tests, we make an initial determination of an applicant's suit-

ability to be an INS officer. Once selected for employment, all Border Patrol agents and Immigration inspectors undergo rigorous training that include courses on integrity, expected behavior, and ethical dilemmas and decision-making.

At the time of entry on duty, all officers are subject to a single-scope background investigation. This is the most comprehensive background check the Office of Personnel Management conducts, and it exceeds the requirements established for officer core positions by both OPM and the Department of Justice.

Our standards for reinvestigating all officers every 5 years also exceed OPM and Justice Department requirements. This periodic check is well-known as one of the best internal corruption prevention mechanisms. In 1992, we instituted an aggressive program to eliminate a longstanding reinvestigation backlog. As a result of that backlog reduction effort, INS is now current and will remain current in the initiation of these investigations, including the adjudication of problem cases that arise from them.

In addition to being subject to regular reinvestigations once they are on the job, INS officers also receive advanced integrity training from both Justice's Office of Inspector General and our own Office of Internal Audit. Since 1995, our Office of Internal Audit has provided advanced training to more than 3,000 INS employees on the Southwest Border.

We also combat corruption through the policies and procedures that govern our work assignments. For example, just 2 months ago, we issued new guidance for inspectors that further reduces the potential for predictable inspection assignments. Additionally, our Office of Internal Audit conducts regular, comprehensive reviews of operations in every INS field office focusing on areas that are vulnerable to fraud, corruption or other abuses.

Because no amount of precautions can entirely eliminate corruption, we must also be prepared to effectively handle allegations of corruption whenever they do arise. Both the Inspector General and our Internal Audit Office have established procedures that ensure that such allegations involving INS personnel are investigated thoroughly and pursued to an appropriate prosecutorial or administrative end. In addition, we recognize that every closed case is an opportunity to learn lessons on how to strengthen our policies and procedures, and we have begun to review past cases to that end.

I appreciate your support to maintain our vigilance and to expand our anti-corruption efforts. We owe it to the tens of thousands of INS employees who carry out their duties vigorously, and honorably and to the people they serve.

Thank you, Mr. Chairman, and I am happy to answer questions.  
[The prepared statement of Ms. Meissner follows:]

PREPARED STATEMENT OF DORIS M. MEISSNER, COMMISSIONER IMMIGRATION AND  
NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE

#### INTRODUCTION

The Immigration and Naturalization Service (INS) believes that its employees must be held to the highest standards of professional and personal integrity, and takes very seriously its responsibility to ensure that employee support systems and an objective, thorough and fair internal investigation process are in place. My commitment to a strong internal integrity program has been clearly communicated to employees of all levels.

Corrupt behavior, by its very nature, is secretive and hidden. When it is uncovered, the Agency is inevitably in the position of having to react, which the INS does by taking every step to ensure that a matter is immediately and fully investigated, and that appropriate judicial and administrative actions are taken. During 1996 through 1998, an average of 17 INS employees were arrested or indicted on Federal corruption charges related to their official duties. A single such instance cannot be and is not tolerated.

Rather than simply being in the position of reacting when an employee faces corruption charges, however, the INS is committed to utilizing proactive measures to prevent its employees from becoming involved in corrupt behavior. People are human, and the temptations, particularly the willingness of drug dealers to pay large sums of money to Federal employees to facilitate smuggling, are great. Realizing that the primary responsibility for combating and preventing corruption remains with the Agency itself, our goal over the past several years has been to strengthen and enhance our processes for (1) recruiting and screening potential and existing employees, (2) training, and (3) internal affairs and audits. Our efforts on these fronts have been with the ultimate goal of establishing a value system within the Agency, which clearly communicates the parameters of acceptable and non-acceptable behavior.

#### RECRUITMENT AND SCREENING OF OFFICERS

Over the past several years, the Border Patrol has undergone unprecedented growth nationwide. We have increased the number of agents from 3,965 in 1993 to 7,982 by the end of Fiscal Year 1998, and have received funding for 1,000 additional Border Patrol Agents in Fiscal Year 1999. Once fully staffed, this will represent a 126 percent increase in Border Patrol Agents since the end of Fiscal Year 1993.

Likewise, our Immigration Inspector Officer corps has increased from 3,297 inspectors in Fiscal Year 1993 to 4,853 inspectors in Fiscal Year 1999, an increase of 32 percent.

Border Patrol Agents and Immigration Inspectors often represent the "first line" in this country's drug interdiction efforts. Our Border Patrol Agents make over 1.5 million apprehensions per year. In 1998, Border Patrol Agents made 6,665 drug seizures along the northern and southern U.S. borders. They seized a total of 871,417 pounds of marijuana, 22,675 pounds of cocaine, and 501 ounces of heroin.

Our Immigration Inspectors at our Ports-of-Entry (POEs) conduct almost 500 million inspections per year. In excess of 400 million of these inspections are conducted along the land borders with Mexico and Canada. In 1998, Immigration Inspectors were responsible for almost 2,300 drug seizures and over 2,000 drug-related arrests. Close to 160,000 pounds of controlled substances, including marijuana, cocaine and heroin and valued at more than \$240 million were interdicted by our officers.

In light of their duties, our officers are at risk of outside attempts to compensate them to "look the other way." As part of our commitment to integrity, we have continually improved the recruitment, selection and training of the expanded Border Patrol Agent and Immigration Inspector officer corps. We seek out professionals and strive to best equip them to perform their duties with pride.

#### *Recruitment and Screening*

To begin with, the INS utilizes a systematic recruitment and selection process to identify and to preclude the hiring of persons susceptible to misusing their position for personal gain, or who may be receptive to approaches from those seeking to evade or break the law. Recruitment and selection for an INS officer position is a very extensive and lengthy process. Applicants must undergo a myriad of screening tests before they are offered a position.

Applicants begin the process by calling a Telephone Application Processing System (TAPS) and apply for either a Border Patrol Agent or an Immigration Inspector position. They are asked a series of questions from a 16-page script and based upon their answers, we determine whether the applicant qualifies to be scheduled for entrance testing. Border Patrol applicants may also apply via the Internet. Potential candidates for Inspector positions can also apply through the Veterans' Readjustment Act or the Outstanding Scholar Program, which waives the written test requirement.

Several of the questions asked focus on suitability for employment as an officer. Applicants are asked if they have ever been convicted of a misdemeanor crime of domestic violence. If they answer "yes," they are advised that the INS cannot hire them. This question has been asked since November 1996. For Fiscal Year 1998, 1,534 applicants have been disqualified as a result of a "yes" answer. Other misdemeanor crimes of violence are also disqualifying unless they have been expunged, set aside, or for which civil rights have been restored. Since January 1996, appli-

cants are also asked if they have ever been convicted of, or have forfeited collateral as a result of, a felony violation. Again, if the applicant answers in the affirmative, they are advised they cannot be hired. For Fiscal Year 1998, this question screened out 336 applicants.

Once an applicant makes it to the testing phase, the INS uses state-of-the-science written instruments to screen out applicants who are likely to exhibit questionable behavior once on the job. Applicants for Immigration Inspector positions must take a Test of Reasoning Skills and Verbal Ability and an Applicant Assessment Test, which assesses the extent to which individuals are prone to such counterproductive behaviors as the misuse of their official position or use of excessive force.

Applicants who take the Border Patrol Agent exam undergo a four-and-one-half hour assessment battery that is divided into three parts: (1) Test of Reasoning Skills and Verbal Ability; (2) either the Spanish-Language Proficiency Test if they can speak Spanish, or the Artificial Language Test if they cannot speak Spanish; and (3) an Applicant Assessment Test. Applicants are ranked on their scores in the Test of Reasoning and Verbal Ability. The other two assessments are administered on a pass/fail basis.

Applicants who score 70 points or above are then referred to a Border Patrol Oral Board panel. The oral boards are formally structured interviews administered by a panel composed of three senior Border Patrol Agents. The oral boards assess the following competencies: judgement and decision making, emotional maturity, interpersonal and cooperation skills, and sensitivity to the needs of others. Border Patrol applicants who pass the oral boards receive a tentative offer of employment subject to their passing the remaining pre-employment review processes.

Both Border Patrol Agents and Immigration Inspectors must pass a pre-employment medical exam, as well as a drug screening before being hired. A full background investigation is conducted at the time of entry on duty and is updated every 5 years. Border Patrol Agents and Immigration Inspectors serve a one-year probationary period after being hired.

#### *Background Investigations and Reinvestigations*

For current employees, the INS complies with Office of Personnel Management (OPM) and Department of Justice (DOJ) policies requiring employment reinvestigations to be completed every 5 years. Prior to Fiscal Year 1992, INS had a backlog of overdue background reinvestigations. Realizing that one of the best internal corruption prevention mechanisms we can employ is to periodically re-check the backgrounds of our existing employees, we began a concerted effort to address this backlog. At the end of Fiscal Year 1997, we had requested background reinvestigations on all INS employees who were due or overdue for a reinvestigation. The INS maintained currency for reinvestigation requests during Fiscal Year 1998 and expects to remain current in Fiscal Year 1999.

The five-year reinvestigations, or Periodic Reinvestigation (SSBI-PR), are conducted on all Border Patrol Agents, Immigration Inspectors and other employees with security clearances. The SSBI-PR is the most comprehensive reinvestigation offered by OPM, and exceeds the DOJ investigative scope requirements.

For new hires, the INS requires that all applicants for Border Patrol Agent and Immigration Inspector Officer Corps positions undergo a 35-day Single Scope Background Investigation (SSBI) processed by the OPM at the time of selection. The OPM utilizes the United States Investigative Service (USIS), a private contractor, to conduct these investigations. The SSBI is the most comprehensive in-depth investigation OPM conducts and well exceeds DOJ requirements for these Critical-Sensitive level positions.

In order to expedite the entry on duty of applicants, an initial screening called a Preliminary Background Investigation (PBI) is conducted as part of the SSBI. In most cases, however, the full Background Investigation is completed prior to the employee's entry on duty. The PBI screening process includes a review of the applicant's completed security questionnaire, a subject interview, national agency checks including FBI criminal history checks, credit checks, Bureau of Vital Statistics checks, and prior employment checks. The applicant is allowed to enter on duty only if no actionable suitability issues surface in the initial screening process.

The initial SSBI as well as the reinvestigations that are conducted for Border Patrol Agent and Immigration Inspector positions are extremely comprehensive and exceed the DOJ requirements. The resulting investigative products provide INS with an in-depth view of an applicant or a current employee's background. With these measures in place, INS is assured of a quality screening process that identifies and eliminates unsuitable candidates.

The reinvestigation process also pinpoints existing employees who may be living beyond their means, or who have exhibited changes in behavior such as involvement



with local authorities or possible substance abuse undetected in the workplace. The INS Office of Security and the Office of Internal Audit have in place a system to ensure that issues raised in a background reinvestigation are referred for consideration of a criminal or administrative investigation as appropriate.

#### TRAINING

The INS has made significant progress over the past 4 years to ensure that our law enforcement officers are trained to be professionals who are proud of their mission.

We require that INS officers meet basic qualification requirements in education and/or prior work experience, receive extensive technical training in their area of specialty, and are thoroughly grounded in ethics and standards of conduct for law enforcement officers. To remain in an officer position, an INS employee must demonstrate exceptional knowledge and skill in all of the technical aspects of the job, as well as practice the ethical requirements of the profession.

The Border Patrol and Immigration Officer Basic Training Programs are residential courses of study conducted by INS training officers at the Federal Law Enforcement Training Center in Brunswick, Georgia and Charleston, South Carolina.

The programs use a task-validated curriculum and emphasize personal discipline, integrity, professionalism, and employment of sound judgement and technical skills.

Throughout the basic training programs, emphasis is placed on courtesy and interpersonal skills. All classes emphasize proper conduct toward and respect for all persons with whom they come into contact, both on and off duty. A set of core values has been established as the basis for ethics and integrity training. Specific courses address the issues of human and civil rights and give the trainee careful instruction in the manner in which he or she is expected to carry out assigned duties. Training in technical subjects stresses sound judgement and judicious use of force and enforcement authority.

#### *Post Academy Training for Officers*

After successfully completing the Border Patrol Academy or Immigration Officers Basic Training course, trainee agents and inspectors return to their duty station to continue their training and to complete their probationary year. Training in the field is a combination of classroom instruction and on-the job training wherein new Agents and Inspectors continue the learning process by working closely with experienced officers.

Examinations in law and Spanish are given to agents upon completion of six and one half and then 10 months of service. Those agents who successfully complete the post academy training are retained while those who fail either examination are terminated. After these examinations are successfully completed, a panel of high-level supervisors reviews each agent's progress and work performance. Supervisory assessment of the performance and judgement of new agents is another factor in the completion of the probationary year.

#### *Supervisory Training*

The unprecedented growth of the INS in the past several years has led to many promotion opportunities for our employees. Recognizing the swell in our management corps, in March 1996, the INS opened its Leadership Development Center (LDC) in Dallas, Texas, to address the needs of our first line supervisors and managers. It is imperative that we provide our supervisors and managers with the skills necessary to manage day-to-day operations, and to be proactive in identifying and addressing potentially problematic behavior.

The core curriculum of the LDC consists of six progressive courses in supervision, management, and leadership, which are available throughout the year. These courses are designed for attendees to explore together best management practices and emphasize teamwork, empowerment, recognition of diversity, preventing sexual harassment, communication and listening, and giving and receiving feedback. Each of these courses has a specific section dedicated to discussions of integrity, values, ethics, and the role of the supervisor or manager in communicating these expectations.

Since Fiscal Year 1996, 4,297 INS managers and supervisors have attended training at the LDC.

The LDC has added to its available courses Employment Issues for Executives, which covers misconduct issues and the disciplinary process, and Dealing With Difficult Employees, which focuses on communication, negotiation and how to deal with people to achieve a positive outcome.

*Support, Supervision and Monitoring of Officers*

*Assimilation*

As greater numbers of new employees are assigned to their duty posts, the INS supports, supervises and monitors their activities to ensure effective performance and professional standards of conduct, as well as to identify and investigate problem behavior. We realize that employees who become vested in the mission of the agency and feel that they are supported in their career path are those least likely to engage in misconduct. They are also those most likely to remain loyal to the agency. Accordingly, we implemented an employee Sustainment Plan designed to support and retain employees.

As part of the Sustainment Plan, the INS has implemented employee and family support systems not unlike those provided by the United States military and other Federal agencies. In May 1997, I reported the initial activities and expectations of our INS CARES program. I am happy to report to you today that the program has enjoyed considerable success in its initial trial implementation in three Districts and three Sectors along the Southwest border. We are at the threshold of expanding the program throughout the Service.

Assimilation is one of the major Sustainment Plan components. INS CARES incorporates a variety of supportive activities designed to help employees and their families adapt to new communities as well as to the working environment. A comprehensive orientation plan is being used in the six pilot field jurisdictions and at INS Headquarters. Informational videos and printed materials describing the INS, and what new employees can expect, are in daily use as part of the program.

INS CARES provides employees who move to a new location with a variety of informative welcoming communications, including orientation briefings for spouses and families. Extensive community-specific information related to local schools, services, and activities are provided to employees in workshops and seminars. These activities provide employees with information from local and State Chambers of Commerce, other public and private sources, and the Internet.

INS is well aware that first-line supervisors are the key to effective assimilation of new employees. Many of our supervisors are relatively new to the job. To this end, INS CARES, in conjunction with our Leadership Development Center, is providing advanced training for supervisors to sensitize them to the needs of new employees. INS CARES and the Training Division have developed, tested and deployed a multi-media course, "Assimilation Training for Supervisors," which builds on the concepts taught in the Basic Supervision Course. This advanced course is designed to teach supervisors how to identify potential problems in adjusting to new locations or duties, and how to prevent major infractions. The unique aspect of this course is that it is a field-administered course using interactive technology such as case studies contained on CD-ROM disks.

*Initial Assignments and Supervision*

Currently, we do not assign new Border Patrol Agents to locations where they grew up. Additionally, in their first year, new agents are teamed with journeymen level employees, and are closely supervised on any independent assignments.

At land POEs, the INS has set forth guidance establishing a uniform national integrity policy for primary land border inspections. Under this policy, each POE must utilize one or more selected options regarding vehicle and pedestrian lane scheduling, and implement it at a minimum of once per shift. The scheduling options are:

1. Agency "pushes," in which a Supervisory Immigration Inspector randomly instructs officers to shift lanes.
2. COMPEX/INTEX "hits" are random inspections performed by both Customs and INS. Customs' selects an individual to undergo a thorough inspection prior to any primary inspection. INS selects an individual after primary inspection to ensure people are being properly processed. Any time there is a "hit", there is an automatic lane assignment shift.
3. Traffic managers initiation of random lane flops for primary lane changes of both INS and Customs Service staff.
4. Computer-generated random lane assignments and shifts.

To enhance the integrity of the inspection process, the policy also requires that an automatic lane push or flip-flop will occur when inspecting officers encounter a relative. Additionally, the POEs have been reminded to continue the standing requirement to inspect all law enforcement personnel.

*Border Coordination Initiative*

On August 12, 1998, the Commissioner of the United States Customs Service and I forwarded a memorandum to the Attorney General outlining our proposal for a Border Coordination Initiative (BCI). Since that original plan, we have identified

eight core initiatives, with the goal of creating a seamless process at and between land border POEs by building a comprehensive, integrated border management system to effectively accomplish the mission of each agency.

Those initiatives are underway and include: implementation of a successful, proven Port Management Model at all major land POEs; expansion of intelligence sharing; making joint improvements in policies, procedures, and training; adoption of a unified investigative approach for contraband seizures; performance measurements; development and deployment of enhanced technology systems; promotion of a communications system to support INS, Customs, and the Border Patrol; and coordination of air and marine interdiction capability.

Our shared vision in the BCI is to enhance port leadership, community support, traffic management and enforcement efforts, and to ensure the duties of both Services are carried out with efficiency, professionalism, and integrity.

#### INTERNAL AFFAIRS AND AUDIT

From the historical perspective, I note that in 1989 more than 130 employees of the INS Office of Professional Responsibility, who were responsible for conducting both criminal and administrative investigations into allegations of employee misconduct, as well as field inspections, were transferred to the Office of Inspector General upon the creation of that office. In 1992, the Office of Internal Audit (OIA) was established within INS to manage both the internal investigation and internal review programs in the Agency. Our efforts have established an effective internal affairs program, and have begun to move us to the point of preventing fraud, waste, abuse, and mismanagement, rather than merely reacting to individual incidents.

##### *Internal Investigations*

The OIA plays a pivotal role in the Department's processes for handling misconduct complaints against INS employees. It not only investigates a large number of complaints itself, but it also monitors the progress of investigations tasked to other entities. It ensures that substantiated cases, which are not prosecuted, are complete for the purposes of initiating and sustaining disciplinary action when warranted. It also engages in a variety of innovative activities and programs aimed at preventing misconduct from occurring in the first place. The OIA continuously strives to instill within the Agency a culture in which employees can predict that when they make a complaint, or when a complaint is made about them, there will be a swift, impartial resolution of the matter.

INS managers and supervisors play a fundamental role, in concert with the OIA, in preventing corruption. Most often, the arrest or indictment of an employee on corruption charges represents the end of a history of progressively serious misconduct. We are always striving to identify and deal immediately with all conduct problems, particularly lower-level misconduct. The OIA has established excellent communication with field managers to assist them in identifying possibly escalating behavior and to deal with it quickly, effectively and fairly.

Our own OIA has ultimate responsibility for resolving the vast majority of misconduct matters within the agency. In 1998, the OIA received 3,718 allegations of misconduct, and had primary responsibility for resolving 3,377, or 91 percent, of those allegations. In 1998, the OIG opened 323 investigations related to INS employees. The OIA opened 598 investigations that same year.

Potential criminal violations are reviewed by the OIA upon receipt and forwarded to the OIG or the Department of Justice's Civil Rights Division as appropriate, for investigative consideration, or are reviewed initially by investigators and prosecutors outside the INS. While investigations being conducted by outside entities are in progress, the OIA effectively tracks, monitors and follows up with the organization conducting the investigation.

When the OIA refers a matter to the OIG, the OIG may initiate an investigation, refer the matter back to OIA for investigation and require a report of findings, or refer it to the OIA for information.

When the OIA receives a matter, it either investigates itself or refers the case to the appropriate field manager for a management inquiry and report of findings. In cases referred for a management inquiry, the OIA oversees the process to ensure that the inquiries are thorough, unbiased and timely. The OIA has issued a Management Inquiry Handbook throughout the Service, which provides clear guidance as to the process for resolving lower level allegations of misconduct. It also has implemented a highly regarded management inquiry training program which to date has been presented to over 300 field managers. That program, in addition to providing guidance on conducting inquiries, also stresses proactive management via identification and resolution of lower level instances of potential misconduct.

If the OIA does not determine that an inquiry is warranted in a matter, it refers the case to local management for information. Even in those cases, the OIA provides local management the option of conducting a management inquiry under OIA oversight.

On receipt of a report of investigation or inquiry—be it an investigative report by one of its own staff, a report of a management inquiry, or an OIG or FBI report of investigation—the OIA conducts a review to ensure that the allegations at issue have been addressed, that the necessary evidence has been obtained and properly weighed; and that systemic problems have been identified and addressed. Where a report of inquiry or investigation is found to be insufficient for the purpose of allowing the appropriate official to make a determination regarding corrective action, the OIA directs or conducts additional investigation as appropriate. These procedures ensure that all cases of alleged misconduct by INS employees are fully and fairly examined, first as potential bases for criminal prosecution, then as potential bases of disciplinary action.

The OIA also recognizes that investigations, which do not identify specific misconduct, may identify systemic vulnerabilities or internal control weaknesses which facilitate or contribute to misconduct or fraud, waste and abuse. The OIA has in place a process for communicating systemic findings, and their policy or training implications, to the appropriate senior level managers, and recommending those issues be addressed to prevent future incidents.

The OIA has implemented and manages several proactive programs designed to reduce and prevent misconduct and strengthen communication within the Agency. The OIA is currently working with field managers and our bargaining units to design and establish an Early Intervention System for the entire workforce. The EIS will identify employees who may be experiencing stress or other influences that may cause them to be at risk for being named in misconduct complaints. The EIS will provide a non-punitive intervention strategy for employees to address and resolve concerns before behavior escalates into more serious misconduct. Such intervention measures have been proven at—other law enforcement agencies nationwide to reduce actual number of complaints received, to improve morale, and to increase the professionalism of the organization.

The OIA is also designing and providing training programs aimed at supporting effective, proactive management and communication. In addition to its management inquiry-training program, the OIA continues to present its eight-hour “Integrity and Ethical Decision Making” professional development seminars. Over 1,000 employees attended the seminars in 1998, bringing the total number of employees receiving this training to over 3,000. The target audience, initially supervisors, has been broadened to all employees. Seminar discussions focus on values important to the class, and factors that cause people to make decisions that have negative consequences. Methods for weighing alternatives for judging consequences before making decisions are provided as tools for everyday use. Attendees welcome the interactive nature of the course and the positive way in which the information is presented. Although the course has mainly been given at locations along the Southwest border, it will be provided in a wide variety of locations in 1999. The Director of the OIA and the Director of the INS Leadership Development Center are discussing inclusion in the Center’s offerings of a two-day seminar on this topic.

The OIA also has a program in place for conducting followup reviews of circumstances leading to the arrest or indictment of employees on drug-related or corruption charges. The purpose of these reviews is to ascertain what, if any, warning signs or other indicators of personal problems were present prior to the judicial action. Co-workers, supervisors, and personal associates are interviewed to obtain their observations. Where possible, the employees themselves are questioned to determine if they ever sought assistance for personal problems or if a supervisory or other employee demonstrated concerns about their behavior or work performance. The findings of these reviews are shared with senior agency managers with an eye to strengthening procedures, training, and level of communication.

#### *INSpect*

In June 1995, recognizing the need for an independent assessment of field operations, the Director of OIA, gained approval to reestablish the field inspections function. In September 1996, I approved full-scale implementation of the program: the INS Program for Excellence and Comprehensive Tracking (INSpect).

To date, the OIA has conducted 39 INSpect reviews. Of the 39 reviews, 16 included reviews of INS Border Patrol Sectors. Nine of the 16 are located in the Southwest region that encompasses 90 percent of INS’ total Border Patrol force. By assessing management effectiveness, determining compliance with applicable laws, regulations, and procedures, and especially by focusing on areas in INS functions

that are highly vulnerable to fraud, waste, abuse, or mismanagement, INSpect represents a very valuable anti-corruption tool. INSpect will review each INS field office every two to three years.

The OIA has also analyzed the findings and recommendations made in the INSpect reports, and has issued a publication known as INSpect Alert to INS Management. An INSpect Alert covers a particular function, and identifies patterns of weaknesses, solutions, strengths, and noteworthy program ideas that may have Servicewide application. It lets management know about the problems repeatedly found in INSpect reviews. The OIA has issued INSpect Alerts in 12 program areas.

Additionally, the OIA has employed a followup team to track corrective actions on recommendations made in the INSpect reports. The OIA has completed 10 followup reviews, and will continue to follow up with the responsible parties to ensure management accountability and to verify the consistent implementation of required corrective actions.

#### CONCLUSION

In summary, INS' uniformed officer corps, the Border Patrol, and Inspections Division have experienced unprecedented growth in the last several years. This is due to Congressional support for the expansion of the officer corps with increased funding for recruitment and training as well as more supervisors, and the independent monitoring of Service personnel and activities. Over that past 3 years, we have hired more than 4,000 new Border Patrol Agents and Immigration Inspectors. At the same time, we have increased the effectiveness of our screening and training mechanisms. We realize that the men and women who do these jobs are faced with ever-present attempts to get them to look the other way by drug smugglers.

We remain committed to continuously reviewing and improving our efforts to reduce to a minimum the likelihood that individuals susceptible to corruption will be selected or kept within our officer corps. The combination of our screening process, along with Academy and post-Academy training, plus a strong internal affairs and review program, helps to keep our officers in a constant state of readiness to deal with enticements to become corrupt.

We expect that our efforts will continue to further reduce the potential for corruption, which remains as isolated instances within the Service.

We appreciate the attention of this caucus to the challenges we face and, again, thank the Congress for its support.

This concludes my written testimony. I will now answer any questions you may have.

Senator GRASSLEY. Before I start to ask questions, is it going to cause any problems for my colleagues if we have 10-minute rounds for each person instead of 5 and then come back for a second round?

So put the light on, will you, please. Before I ask Commissioner Kelly, I want to thank Commissioner Meissner for helping us get some more investigation officers in the State of Iowa for the INS. Thank you very much for responding to Senator Harkin and our request.

Commissioner Kelly, there appears to be no coherent response to existing corruption problems. It is my understanding that there is no consistency in how investigations are conducted by Internal Affairs. So does Customs have a point of responding to this? And if so, how do you propose to remedy the situation?

Mr. KELLY. Mr. Chairman, we have major changes that we have initiated and are in the process of initiating in our internal investigative system. I think the most important one was the appointment of Mr. Keefer that I mentioned in my remarks. He has great experience in this regard, and I have a lot of confidence in him.

We are also involved in a rotation, as I mentioned, getting new blood, new investigators into Internal Affairs. We are embarking on training programs going outside the Agency to get training for our internal investigators. We have put in place a new system where all allegations of wrongdoing, of corruption of any sort, are going

to one central location. It is administered by the Internal Affairs Bureau. And an analysis of all complaints that come in, in a 24-hour period, are done that morning by senior Internal Affairs people, and then they are properly distributed.

We put in place a system that will enable us to do strictly administrative investigations, using managers in the field, but using fact finders to help them gather information. There has been also a lot of work on our computerized system. Right now the system that Internal Affairs has, well, it was not properly utilized, quite frankly in the past. We are utilizing it. We are also developing a plan, which will take some money, to mesh it with our human resources information system. The two have not been speaking to each other.

I think we are well on the way to making the Internal Affairs operation extremely professional and certainly one of the best in Government. It is going to take some more time, no question about it. We have got to identify the right people. We have got to get some very specific training for the investigators that I think they have been lacking, but I think we have identified the problems, and we are addressing them.

Senator GRASSLEY. Commissioner Kelly, earlier we heard the General Accounting Office comment on some of the difficulties encountered with financial disclosure requirements currently required in the background investigations. Do you believe the information gathered from such disclosures are valuable in determining the integrity of Customs employees?

Mr. KELLY. Yes, I do.

Senator GRASSLEY. How essential do you see this disclosure in assuring the effectiveness of Customs' integrity program?

Mr. KELLY. Well, I think it plays a role. It is not the total answer. As was stated before, people can lie filling out these forms, but I think it is a basis for investigation. It is something that we should use and do use in prehire investigations and also in the periodic reinvestigations. I think we have to look at just how well we do use it. But we are using it.

Senator GRASSLEY. Commissioner Meissner, based upon what you just heard Commissioner Kelly say, what are your thoughts on including financial disclosure as part of the background checks for INS employees?

Ms. MEISSNER. We have not used a financial disclosure statement as part of our background checks. It is the only thing in the GAO report with which we have had a difference of view.

Our feeling has been that we are extremely interested in financial information, and we seek and review financial information through a variety of means. We have felt that it is more effective in looking at the issue of whether people live beyond their means to do that through the interviewing of neighbors, colleagues, others who know the people, which is routinely done as part of the background investigation and the reinvestigation. In addition to that, we make extensive use of credit checks and other financial checks and have felt that that meets the need.

Senator GRASSLEY. Commissioner Kelly, it is alleged that inspectors have told drug dealers which lanes to take. Senator Feinstein has referred to that. Is Customs doing anything to address the fact that drivers of vehicles entering the United States on the South-

west Border can themselves choose which officers conduct their primary examination? And if so, what would you do to stop that or what have you done to stop that?

Mr. KELLY. There is a program in place called Primary Lane Denial, where Customs inspectors and INS inspectors, as well, I believe, are involved in directing traffic to randomly go to different lanes. However, I think the answer to this issue lies in automation.

In El Paso, we are developing and will soon be put up and running an automated redirection of traffic; in other words, telling the driver what lane to go to. However, it cannot be used at every port of entry because you need a certain amount of space to be able to redirect the traffic. Example, in Nogales, AZ, the border comes right up to the booth, to the inspection booths. Whereas, in El Paso, you have a certain distance. In San Ysidro, there is a distance between the border, what we call a preprimary area that is between the border and the booth where the inspectors are.

So I believe that it is a valid comment, and we are doing it now manually. We are doing it with people. Ideally, we should be doing that with some automated system, and we are developing that system.

Senator GRASSLEY. Commissioner Meissner, recently the Office of Special Counsel urged the reinstatement of a veteran Immigration and Naturalization Service agent who was considered a whistleblower. Any time a whistleblower is retaliated against by an agency, I think that it creates an atmosphere that may inhibit others from speaking out. So I would like to ask if you have any comments on that case.

Ms. MEISSNER. I do not have any comments on that case. In general, I would say that we want our employees to come forward with information that is important. One of the things that has been particularly gratifying in the area of anti-corruption efforts in our building of our own integrity measures within INS is the fact that we are seeing more and more of the information on allegations being brought to us by our own employees. That tells us that they do trust the systems that are in place and do trust management, increasingly, to follow up on allegations of misuse of authority.

So we would continue and work very hard to cultivate that kind of behavior on the part of our employees.

Senator GRASSLEY. Do you have any plans for dealing with that particular case?

Ms. MEISSNER. Well, in that particular case, I would obviously, if it is an Office of Special Counsel case and issue, we go through whatever the procedures would be, and there will be an—I do not know what the appeal issues are and so forth. I would be happy to follow up, if—

Senator GRASSLEY. So in other words, your reason for not being able to answer my question is just not briefed on it right at this moment; is that right?

Ms. MEISSNER. I am not fully familiar with the case. That is correct.

Senator GRASSLEY. Could I ask you, then, to get briefed on it and to tell me how you will respond to it?

Ms. MEISSNER. I would be happy to do that.

Senator GRASSLEY. I would like you to do that.

Could I also then follow up with what policies does the INS have in place to protect or encourage other employees to speak out when they believe there is mismanagement or corruption within an organization—well, in this case, the INS?

Ms. MEISSNER. Sure. Part of the training of our officers and the ongoing responsibility of supervisors is to be certain that all employees are aware how to report allegations of improper behavior. In addition to that, we assure confidentiality. When those allegations come forward, we give employee awards through our award program for information that is important to the successful conclusion of a case and a variety of positive encourage techniques along those lines.

Senator GRASSLEY. Can I suggest that it is important that there probably be some guidelines in place so that an employee knows, with some certainty, about these procedures and protections.

This will have to be my last question. Are you indicating that there is no such guidelines in place?

Ms. MEISSNER. There are guidelines in place for how to do reporting.

Senator GRASSLEY. There are guidelines in place.

Ms. MEISSNER. Very clear guidelines.

Senator GRASSLEY. I will now turn to Senator Graham. Thank you.

Senator GRAHAM. Thank you, Mr. Chairman.

I would like to start with the answer to a question that I asked the GAO folks, and that is the effectiveness of various procedures relative to employee corruption, whether they are financial statements, efforts to follow lifestyle subsequent to employment, efforts to establish a baseline of lifestyle before employment. And the answer was that there had been insufficient evaluation of the effectiveness of any of those techniques to evaluate whether they were effective in accomplishing the purpose of identifying employees who had a high vulnerability to inappropriate activities.

What is your level of confidence and what is the basis of that level of confidence in the procedures that you are currently using?

Ms. MEISSNER. Let me begin. I would agree with the GAO statement that there are a combination of approaches that are required. There is no one, single approach that is the answer here. It is a variety of things taken together.

I think that—

Senator GRAHAM. Well, now, excuse me, but I understood them to say something different, which was that they did not know what worked, whether what individual procedures or what procedures collectively had proven to be an effective barrier against corrupt behavior. Did I correctly state your answer to my question?

So I guess do you, from your own experience, disagree with that evaluation of the absence of effective evaluation of procedures? And if you agree with it, then upon what do you base your level of confidence that what you are doing is effective?

Ms. MEISSNER. Well, I think it is the case that we have not done formal evaluations of the various types of techniques that we use. We do, however, look to other agencies and other examples. We, for instance, in the case of the Immigration Service, I convened a Citizens Advisory Panel, over the course of the last several years, to



look at our complaint procedures, to look at integrity measures in other law enforcement agencies, not simply at the Federal level, but State and local level, drew upon experts in the field.

So while we do not have formal evaluations of these measures, we are very much in a constant-improvement, continuous-improvement stance on these issues. We are, for instance, right at the present time, developing a new early intervention system whereby we can try to identify employees before they become truly corrupt based on warning signs, working out ways with our managers to do those additional kinds of programs. We want to do more advanced integrity training than we are able to do. There are resource constraints, but we have been very aggressive where that is concerned.

So I think looking to examples across the community of agencies, across not only the Federal Government, but State and local government is also a very good barometer, and that is something that we have relied on.

Mr. KELLY. To a certain extent, Senator, of course, you have to look at the number of cases, corruption cases, that you have. Based on my experience, the number for an agency the size of Customs and the mission of Customs is relatively low. But I am not comfortable that we have been proactive enough, that we have searched out corruption enough on our own. The vast majority of these cases are coming from people who are arrested or are being some sort of informant or anonymous letter. I think one of the criteria may very well be how many cases do we find on our own, and that number is low, no question about it.

We intend to be much more proactive, to do a much more effective job of debriefing people who are arrested, debriefing people who have been sentenced to prison, to get indicators concerning the potential for Customs corruption. So it is difficult to determine what works and what does not work. And, again, if you look just at the sheer numbers, there is not a major problem. But, again, I think we have to be much more active in ferreting it out on our own.

Senator GRAHAM. In that regard, I would like to ask about a couple of situations in my State of Florida. In the port of Tampa, there had been a number of complaints on issues of official misconduct, including sexual harassment. Customs failed to take action addressing these complaints for 14 months, and during that period it was alleged that the same patterns of misconduct continued to occur.

In cases where Customs personnel make official complaints alleging on-the-job official misconduct, what is your normal time period for an investigation and response to those complaints?

Mr. KELLY. Well, it certainly should be much more shorter than that case. That case was not properly investigated, in my opinion. It went 14 months. The individual involved was ultimately demoted and transferred from its specific assignment. But the case took much too long. We have much shorter timeframes now that we have instituted. That happened a year or so ago. But we are acutely aware of that particular case and the inordinate amount of time that it took, and it will not happen again.

Senator GRAHAM. There have been a number of stories about professional and ethical conduct of Customs personnel. Many of these had, as their origin, Florida seaports or airports. These reports have included allegations of racial intolerance, sexual harassment, the use of racial profiles in selecting international passengers for personnel searches, mismanagement, association of Customs managers and field-level employees with known drug smugglers.

Of even greater concern is the Customs' response to these allegations. It appears that the Customs' response has been inadequate investigation, excessive time delay in response, reassignment or promotion of offending individuals often to a position of increased responsibility and an attack on the whistleblower whose career is adversely impacted by bringing the information to public view.

What actions have the Customs taken to refute or substantiate the allegations that have been made, and where the allegations have been substantiated, what actions have been taken?

Mr. KELLY. Well, that is a complex question, Senator. There are a lot of issues there.

A lot of these issues surfaced in a Miami Herald article in December 1998. I think we took those issues head on. We put a working group together right away in the organization. We looked at all of those allegations. Some of them definitely deserve reopening of investigations, which we did do. Some were too old to do anything about and some simply were not true.

But as I say, we have taken them head on. The investigations are going forward. There has been disciplinary action that has been brought as a result of at least two of those open investigations. Some of the allegations were I think 14 years old, 12-14 years old. Some of these things we simply could do nothing about.

However, what we have done is put in place I think the means to address a lot of those concerns in a systemic way. We put in an agencywide Discipline Review Board, something that never existed before. We were getting widely disparate decisions as far as discipline is concerned. You could commit the same offense in San Diego and get a grossly different penalty than you could in, say, Miami. We now have in place, and we have done a lot of training with this, an agencywide Discipline Review Board that will make discipline fairer and more consistent.

Another issue is the vetting of employees prior to promotion or reassignment. It simply was not being done. We have put in place that process to vet, to examine individuals' backgrounds. What happened, quite frankly, is records were kept on a local basis. So you could move from one port to another, and your personnel record just simply did not follow you. We have addressed that.

As far as the allegation of racial bias and passenger processing is concerned, it is something that concerns myself and certainly the executive staff of Customs greatly. We have done a lot to address that issue, but we are open to recommendations and suggestions. We put in place 2½ weeks ago a panel of distinguished Government employees to look at this issue. We have given them unfettered access to the Customs Service to look at our practices and procedures to determine if there is, in fact, bias in our procedures. There are certainly none in our policies.

We, at airports, have put up signs that, in essence, tell people that there is a possibility that they may be searched. We brought technology to bear. We put body scanning/imaging equipment at Miami International Airport and JFK to avoid the possibility that someone may have to be patted down, at least give them the option. We brought in Booz-Allen consultants to take a look at our processes. They have made recommendations. We are implementing those recommendations, but we are simply not going to tolerate bias as far as passenger processing is concerned.

This committee, actually meeting this evening, we will be meeting with them, has been given unfettered access, as I said. They can look wherever they want in the Agency and speak to whomever they want to speak to, to bring this issue to a head and address it as they see fit.

Senator GRAHAM. Thank you, Mr. Chairman.

Senator GRASSLEY. Senator Sessions.

Senator SESSIONS. Nothing at this time.

Senator GRASSLEY. Senator Feinstein.

Senator FEINSTEIN. First of all, Mr. Chairman, I very greatly respect both these people in front of me. I have wanted a law enforcement person to head Customs ever since I have been in the Senate and finally got one. So now I am going to give him a bad time.

[Laughter.]

Senator FEINSTEIN. But let me begin with Commissioner Meissner, first, in my bad time.

I really question the judgment not to have financial disclosures from anyone working the border in any capacity whatsoever from the top of the agencies involved to the bottom. Let me give you one quote from the Orange County Register that I think gives the reason for this.

In one case, the INS did not question a Border Patrol agent who owned a house with a five-car garage, an olympic-size swimming pool housed in its own building. The agent also had 6 vehicles, 2 boats, 100 weapons, \$45,000 in Treasury bills and 40 acres of land.

Now, I do not know if that is true or not. That is really not the issue. The issue is we all know corruption is going on. I believe it is the single biggest national security threat facing this Government. And to have officials working the border, whether it is the head of the Agency to the lowest secretary, that does not file a financial disclosure statement under penalty of perjury is something I cannot understand.

So if it is not remedied, it is going to be my intention to write legislation to require one every 3 years and do so under penalty of perjury because I think the money that comes out of the cartels is just too big for many people to withstand, and I think at least if you have a financial disclosure system, somebody does come into the Agency, has considerable assets, that is fine. You know it in the beginning. But if suddenly, 3 or 6 years into a tour of duty, all of these accoutrements emerge, then you can question. So that is really not a question. It is a statement, and this Senator feels very strongly about it.

Now, let me just turn to Customs, if I might. Customs has issued some new proposed guidelines for inspectors which if approved, would require inspectors to obtain a supervisors approval before he

can do a pat-down or a search of a person for contraband. Presently, an inspector uses his own discretion and can do a pat-down without a supervisor's approval.

Why is a supervisor's judgment any better than the inspector's? Inspectors now do pat-downs all day long and many are seasoned veterans. This would be a significant change, having to get a supervisor's approval, and in the opinion of some of your inspectors, would diminish the Agency's enforcement.

Mr. KELLY. Senator, I think we are attempting to address the allegations of bias in our passenger processing procedures. We are being sued in 12 locations throughout the country. And I think it is prudent to have another opinion, and that is why we want a supervisor to be involved. I do not believe it slows down the process. Indeed, we are trying to use, as I say, technology to give people the option of not being patted down because this technology right now only looks through clothing. It does not look through the body.

We have embarked on a major training initiative for our inspectors involved in personal search; increased sensitivity training, cultural awareness training, and perhaps if that training is deemed to be effective, and it is done on a regular basis, then maybe we do not need supervisors to be involved in that process.

Right now, I think, at this critical and sensitive time in the Customs Service history, I think it is prudent to have supervisors involved.

Senator FEINSTEIN. Wow. I mean, I see that very much reducing the pat-downs. I mean, if a supervisor is taking a rest break, if he is having lunch, if he is not available, all of this is going to stop.

Let me go on to the next question. What are the results of an investigation which was reported underway last year about why the names of three U.S. counterdrug agents, including a Customs Service agent, were listed in the notebook of a suspected Mexican drug trafficker? Also named, according to an October 2, 1998, *Washington Post* story, were an FBI agent and a DEA agent. According to the *Post*, the names were found in a raid last June in the home of a suspected trafficker in Cancun, as you know, in the State of Quintana Roo, and contain the names and phone numbers of 15 elite Mexican anti-drug agents, as well as other information relating to the agents.

Now, the article last October reported that U.S. officials said there was no evidence the three were involved in corruption, but the appearance of their names in the notebook seemed to indicate they were being watched by the traffickers.

My question is what did the Department of Justice turn up? Were U.S. agents linked to involvement with drug traffickers?

Mr. KELLY. I believe the investigation is still ongoing. I will have to get you more specific information. I certainly remember the allegations. I do not recall it being closed. So I will just have to get back to you, Senator, on that.

Senator FEINSTEIN. Thank you very much. I would appreciate it if you would, and we will follow up with you in writing with this.

Next question. How many corruption investigations are underway of Customs and INS personnel assigned to the Southwest Border and how does this compare with the number in 1998? If I could get that answer from each of you, I would appreciate it.

Ms. MEISSNER. I do not have the information with me of how many are underway, so we will have to provide it.

Senator FEINSTEIN. May I ask that you provide that.

Ms. MEISSNER. I would be happy to do so.

Mr. KELLY. Yes, ma'am. I will do the same.

Senator FEINSTEIN. Thank you very much.

Senator SESSIONS. Senator Feinstein, would you extend that at several years when they do their response? Because it is a question I was—

Senator FEINSTEIN. All right. How many years would you like?

Senator SESSIONS. I think 3 or 4 years might be good.

Senator FEINSTEIN. Perhaps we can track that then for 3 or 4 years and see what it shows.

What is being done to lessen the temptation of Customs and INS personnel to become involved in corrupt activities? Does the policy of allowing Customs inspectors to remain at the same duty station for long periods, in many cases their entire career, contribute to susceptibility of some to corruption? Would it not help if inspectors and other personnel were subject to transfers after a specified number of years in one location?

Mr. KELLY. I do not think there is any hard evidence that indicates that rotation would be particularly helpful in addressing corruption. I think our focus should be on some of the things I have mentioned, training, a much-improved internal investigative capability, but also quality recruitment and quality hires. We now have embarked on national hiring, national recruiting and national hiring. No longer are we doing local hiring. People are given a choice of duty station, but there is no guarantee that they get that choice and all hiring is done at the national level rather than, as it has been, on the local level.

Now, I think, in the long-term, that that will be much more beneficial in addressing some of these issues, where people may get too comfortable in a particular location. I have come from a career in law enforcement, and there are certainly two schools of thought in that regard as to whether people learn their job and learn their community better, and they stay there, and thereby provide a better service or you should rotate them out regularly.

Senator FEINSTEIN. Well, you are right, there are two schools of thought. I mean, I come from a police department that rotates, for a lot of reasons, so that you do not develop a lot of contacts that can be difficult as well as productive. But I appreciate your answer.

Commissioner Meissner.

Ms. MEISSNER. In our case, what we are concentrating on is increasing our advance training. We think that our entry-level training—

Senator FEINSTEIN. So you do not rotate either.

Ms. MEISSNER. We do not—we rotate to some extent, but we do not rotate as a matter of policy across-the-board for a variety of reasons. First, it is extremely expensive. Second, we do not have, as Commissioner Kelly says, any evidence that it, in fact, improves the situation where corruption is concerned.

We do think that if you focus on enormous amounts of training, and we need to do more advance training, your supervision has to be very effective, and your techniques for managing the ports of

entry, as, again, Commissioner Kelly mentioned, are extremely critical here. We are now jointly, Customs and the INS, working together on port management techniques that are much, much more effective, and there is a real consensus between the two agencies on how to run these ports as an entity that cuts down the possibility of these kinds of improper practices.

There are, in addition to that, intervention strategies that you can put into place that are proactive. We now have all of our allegations of corruption and cases that are under review automated. So we will be in a position where we can start to see patterns of complaints brought against employees, even if those complaints are not borne out. We are working on being able to evaluate certain kinds of complaints if we see them over and over again. We are working out systems with our managers for identifying those employees and working on any range of steps to forestall the possibility that more serious problems might develop.

Those are the major initiatives that we are focusing on at the present time.

Senator FEINSTEIN. Thank you. I would just point out I do not know how GAO selected these 28 cases, but 18 of them are within the jurisdiction of your Department.

Ms. MEISSNER. Are INS cases.

Senator FEINSTEIN. So, I mean, I think that is—actually, 19 of them. So I would be concerned about that.

Now, Commissioner Kelly, my favorite question. Okay Mesa spotters, what are you doing about it?

Mr. KELLY. We have a major initiative in our problem-solving approach that we use that I would like to perhaps brief you off-line on. But I think we are making some headway as far as the spotters that you and I saw.

Senator FEINSTEIN. Excellent. How about tomorrow?

Mr. KELLY. Yes, ma'am.

Senator FEINSTEIN. Thank you very much.

Thanks, Mr. Chairman.

Senator GRASSLEY. Yes. Before Senator Sessions goes, I would like to associate myself—as I did with a question I asked the panel about the financial disclosure—with what Senator Feinstein said concerning improved background checks. For my part, at least for those people who work along the border—I do not know whether Senator Feinstein would be broader than that—but at least people along the border, I support better reporting so that there is a benchmark.

And I would like to have you consider, you know, it is your judgment because you have to enforce the law, but obviously you must have the legislative authority to do it, that you do that. And if you do not want to do it, tell us, so that we know whether or not we need to pursue legislation. Because there is no point, if you are thinking that it is legitimate, even though you have not done it yet, that it ought to be done, and you are going to do it quickly, cause Senator Feinstein, and I will help her, to introduce a bill or an amendment to do that when you can do it?

And if you decide you do not want to do it, then just be frank with us and tell us that, and you do not need to comment—

Ms. MEISSNER. I will take a look.

Senator GRASSLEY. Well, go ahead.

Ms. MEISSNER. I will take a look at it.

Senator GRASSLEY. Would you, Commissioner Kelly, as well?

Mr. KELLY. Yes, Sir. We use financial disclosure forms now, but we will look at it. I think we can use it more.

Senator FEINSTEIN. Periodically.

Senator GRASSLEY. Let me check—

Senator FEINSTEIN. Like every 3 years?

Mr. KELLY. For the 5-year reinvestigation, but we are way behind in our reinvestigations. That is one of the issues. But we do use them.

Senator FEINSTEIN. That is a 421 on financial disclosures?

Mr. KELLY. Yes.

Senator FEINSTEIN. A 421 backlog is—

Mr. KELLY. There is a standard—I am sorry. 421?

Senator FEINSTEIN. It is not my turn.

Senator GRASSLEY. I think the point is that maybe, OK, so you do it every 5 years. Take a look as if that is often enough.

Mr. KELLY. OK.

Senator GRASSLEY. Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman, and thank you for this hearing. It is, indeed, very critical that we have our best people in these critical assignments that are often in areas where they are not supervised. Their honesty is no better than their own personal integrity, and most of our agents of both of your departments are of highest possible caliber. I have no doubt of that.

And I worked with many of them over the years as a Federal prosecutor, and I just have great respect for them. Although I must say that in certain circumstances there are great temptations and large sums of money. And you are hiring large numbers of people, and so the odds are that you are going to have some that succumb to the temptation.

And I do believe that it is essential that you establish a very clear commitment to absolute integrity, and discipline. And if you say you are going to do reinvestigations, they ought to be done on time. If people are required to file financial statements, they ought to be required to be file and expected to be honest.

Sometimes I think agencies get lax about that, and it sends more of an adverse signal than you might imagine.

Senator Feinstein asked about the pat-downs. Commissioner Kelly, does that apply to border situations, too? Is that your policy in both the border and nonborder situations?

Mr. KELLY. Actually, we focus primarily on airport situations. That is where most of our complaints are. But as far as pat-downs on the border, we have not directed that to be done. It is really our airport ports of entry.

Senator SESSIONS. Well, to me, you probably should do more, not less. It really frustrates me that departments of Government, and I have seen this over the years, change good policies because some fear of a lawsuit or some complaint or bad newspaper article. I think you have got to ensure that your pat-down search policy is objective and fair, but I do not think you should allow huge reductions, and I would suggest do occur, in productivity if you have to have a supervisor's review before you can do a pat-down.

Mr. KELLY. That is certainly not our intent.

Senator SESSIONS. How long do you expect this policy to continue?

Mr. KELLY. Well, at least until we adequately train all of the inspectors, particularly those in airport ports of entry.

Senator SESSIONS. So how many supervisors are there per inspector in these airports?

Mr. KELLY. It varies from span of control of 1 to 5 to 1 to 10 or 15, depending on the shift.

Senator SESSIONS. When you say "airport," is this at the magnetometer or is this at the point of entry?

Mr. KELLY. Magnetometer is coming into the airport. We are talking about people who have arrived in the United States and are coming into what we call a secondary area. For whatever reason, they have been deemed appropriate for an inspector to speak to. They talk to this individual, a certain level of suspicion develops, and then they pat down the individual.

In New York and in Miami, as I say, we give people the option of going before this body-scanning device.

Senator SESSIONS. Is it a rational thing, in your opinion, to consider the country from which they are coming in as to whether or not a search is necessary? In other words, if your empirical data shows that an extraordinary amount of heroin is being carried on the body of persons from Country X, would you consider that a legitimate basis to perhaps pat down a larger percentage of those people than others?

Mr. KELLY. Right. That is one factor. We have high-risk flights, we have high-risk countries, and they clearly get more attention from the Customs Service, no question about that.

Senator SESSIONS. So you are able to use those kind of rational factors in determining who you pat down.

Mr. KELLY. Yes, Sir. And we have databases that we run people's names against, and we also use the expertise of what we call rovers, people who are in the area and make certain observations. Inspectors that perhaps may be in civilian clothes or in uniform and make certain observations that, based on their experience, would require at least speaking to an individual.

Senator SESSIONS. Sometimes I think we miss the importance of apprehending a single drug courier. Under the Federal Sentencing Guidelines, oftentimes they are facing large sentences, and they will actually confess and tell who they were taking the drugs to, and where they got them, and maybe this is the hundredth time the person has done that.

So sometimes people will say, "Well, this is just a small case. It is only six ounces of heroin or a pound of cocaine." But that is a large amount in itself, No. 1. No. 2, that might be the fiftieth time that person has done it. And, No. 3, they may be able to give information that could eliminate a whole drug organization. So I just really believe that you need to continue as aggressive a policy as possible to identify as many of these couriers as you can.

And I think the pat-down policy, I hope that you do not allow newspaper articles and lawsuits to intimidate the Agency from conducting rational, defensible search policies.



Mr. KELLY. No, Sir. I think what it does require, though, is increased attention on our part. The percentage, the success percentage of searches has gone down significantly over the years. I think we have to take a look at the factors that we use in 1999 and beyond. Are they realistic? Are they helping inspectors do their job? And that is what we are doing.

Senator SESSIONS. Well, I think you should do that.

Commissioner Meissner, do you use drug testing at any stage of the employment process?

Ms. MEISSNER. Absolutely. Drug testing is a requirement for all of our entry-level hiring of law enforcement agents, and we also do random drug testing with people on the job.

Senator SESSIONS. Precisely how is the random drug testing done after the hire?

Ms. MEISSNER. I would have to give you more detailed information as a followup on how we actually do that. One of the things that we are working with right now in the random drug testing is when a supervisor or someone else suspects that random drug testing should be applied to a particular officer, and that comes about as a result of closed cases review. That is an issue that has surfaced earlier in this hearing and was part of GAO's findings, closed cases.

We have begun to review closed cases for the purposes of learning lessons, and one of the things that has come up is in the random drug-testing area. We are reworking our guidelines on reasonable suspicion by which supervisors might refer people for testing once on the job. So it is an active issue.

Senator SESSIONS. I would ask you to strongly consider this. I remember the captain of an aircraft carrier made a speech to a luncheon club, and he said 2 years before—this was in the early eighties—60 percent of the members of his crew, in his opinion, had used an illegal drug. They had started drug testing in the Navy, and he said it was less than 5 percent then. There was a massive, a virtual elimination of drugs from the military. Many police departments have achieved the same. I know Departments of Corrections have had tremendous success with drug testing correction officers who are getting drugs in the prison.

What you described to me is not really a random test.

Ms. MEISSNER. No, no. I am saying that in addition, in addition to random testing.

Senator SESSIONS. In addition. So you do some random testing. I think that is critical.

Ms. MEISSNER. Yes, we do. We absolutely do random testing.

Senator SESSIONS. If somebody is using drugs, they are compromisable, if not already compromised. They need money to buy the drugs with, and maybe they need friendship with drug dealers to get drugs, and they have got many things to offer, so it is a very—

What about Customs?

Mr. KELLY. We do random drug testing as well.

Senator SESSIONS. At hiring?

Mr. KELLY. We do it prehiring, and we do it in-service.

Senator SESSIONS. How often would an average employee be tested?

Mr. KELLY. I do not know. I do not know. I will have to get back to you, Senator.

Senator SESSIONS. Do you know the percentage of positives you have gotten on those tests?

Mr. KELLY. The percentage of positives, once you put out the policy that you are doing random testing, it really is a significant deterrent. I know that is my experience in the New York City police department. So the percentage is low, I know that.

Senator SESSIONS. I think it does work. And if you care about your employees, you do not want them using drugs, and if drug testing keeps them intimidated from using drugs, it is a win-win for everybody, and I think that is a good way to avoid corruption.

My time is out, Mr. Chairman.

Senator GRASSLEY. We could not end this hearing at a better time because we just had a 15-minute rollcall vote start.

I thank each of you very much for your kind attention to our questions. And I would ask that we have, as I indicated, a timely response to questions that will be provided in writing. I do not want to embarrass anybody, but one of your agencies present at the table took 17 months to respond to three questions that I had submitted in writing at the last hearing.

I thank you all very much, and adjourn the meeting.

[Whereupon, at 3:43 p.m., the caucus was adjourned.]

## ADDITIONAL QUESTIONS FOR PANEL I

U.S. GENERAL ACCOUNTING OFFICE,  
Washington, DC., May 18, 1999.

Hon. CHARLES E. GRASSLEY, *Chairman,*  
*Caucus on International Narcotics Control,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The following are responses to follow up questions submitted by you and Senator DeWine based on our report *Drug Control: INS and Customs Can Do More To Prevent Drug-Related Employee Corruption* and our recent testimony before the Senate Caucus on International Narcotics Control.

- *Question 1.* (Chairman Grassley) I would like some further explanation on what may be a discrepancy in this report. On pages 6 and 7 of the report, you mention that in 1989 and 1992 the National Treasury Employees Union (NTEU) challenged the Customs Service about their background reinvestigation procedure, including the need for some medical, financial, or drug-related information. This litigation was serious enough to cause Customs to suspend their reinvestigations. On pages 22 and 23 of this same report, the Department of Justice cited, to quote the report, "Customs experience with financial reporting and litigation involving the use of the financial disclosure reports" as a reservation for implementing your recommendation that Border Patrol agents and immigration inspectors file financial disclosure statements as part of their background reinvestigations. Given the earlier comment, can you explain why you report that, according to Customs officials and the President and Deputy General Counsel of NTEU, financial reporting has never been an issue of litigation?

Response. On pages 6 and 7 of our report, we list some of the reasons why Customs experienced a backlog of reinvestigations as of March 1998. Part of Customs' explanation addressed a challenge by the NTEU of Customs' need for financial and other information from certain categories of employees. These included attorneys, advisors, auditors, commodity team aids, computer specialists, Customs aids, Customs liquidators, import specialists, paralegal specialists, and other employees in positions with the same or similar duties and functions. The list did not include Customs inspectors and canine enforcement officers, who were the focus of our review. The NTEU filed suit and on December 1, 1993, a court order required Customs not to question employees in the listed positions on their finances, alcohol use, or mental health. However, Customs remained unclear on the applicability of the court order for at least 1½ years. Rather than risk noncompliance with the court order, Customs did not initiate reinvestigations for *any* positions during this period of uncertainty. Customs reported that the legal challenge contributed to the backlog of reinvestigations. Our mention of financial data on pages 6 and 7 does not specifically relate to a Customs problem in requesting such data from Customs inspectors, but helps explain why Customs developed a backlog of reinvestigations. As stated on page 23 of our report, both Customs and NTEU officials stated that financial reporting by Customs inspectors and canine enforcement officers has never been an issue in litigation.

- *Question 2.* (Chairman Grassley) One of your recommendations is that both Customs and INS work to eliminate a driver's choice of lanes at entry ports. Do you have any recommendations on how this could be done? As part of your examination, did you look at Customs efforts with Operation Brass Ring to do exactly this in a number of Southwest Border ports, including Laredo, Tucson, Nogales, Sall Luis, and Douglas. Were they effective, or what changes would you recommend?

Response. During our review, we observed port operations in Calexico, Douglas, and El Paso. While Customs reported that it was experimenting with primary lane denial at selected sites on the Southwest Border, we did not observe any efforts to deny drivers their choice of inspection lanes. Since primary lane denial was not in operation during the time of our port visits, we cannot comment on its effectiveness.

Clearly, we support the idea of not giving drivers their choice of inspection lanes at ports of entry and have been told that Customs is experimenting with at least two different methods of primary lane denial. We believe Customs should implement a program tailored to the needs and circumstances of each port.

- *Question 3.* (Chairman Grassley) In their response, Justice Office of Inspector General (OIG) states they have provided INS with detailed reports of closed investigations in the past, but because of personnel restrictions have been unable to provide any recommendations based on these reports. In the course of your investigation, did you determine what INS did with these reports? From your perspective, how is turning over reports on closed cases from OIG different from the information the FBI could provide on closed cases, as recommended by GAO? Who is in a better

position to examine these closed cases to make recommendations on identified weaknesses, the investigating office or the Agency?

Response. During our review, we did not see any indication that INS was reviewing closed corruption cases investigated by the Justice OIG. A procedure whereby OIG provided information on closed cases to INS would not appear to be different from our recommendation that the FBI provide information on closed cases to INS and Customs. The goal of our recommendations is to ensure that closed corruption cases are reviewed to identify and correct weaknesses that may be exploited by corrupt employees. We believe that the agencies should collaborate to determine the most effective way to complete the reviews of closed corruption cases.

- *Question 4.* (Senator DeWine) It is disturbing that “All 28 of the INS and Customs employees who were convicted for drug-related crimes received background investigations that determined they were suitable.” Have you reviewed the special background investigation procedures employed by the Central Intelligence Agency and the National Security Agency? In your opinion, would these procedures have ferreted out these 28 individuals? Does it make sense to incorporate any of the CIA/NSA investigative procedures into those of Customs?

Response. We did not review the background investigation procedures employed by the Central Intelligence Agency or the National Security Agency. Therefore, we are not in a position to comment on their suitability or effectiveness for INS and Customs employees.

- *Question 5.* (Senator DeWine) Is there any evidence that Customs employees are being coerced (via threats to individuals or family members) into cooperating with drug smugglers?

Response. While we did not focus on coercion of employees, our review of 28 closed cases involving INS and Customs employees convicted of drug-related crimes from fiscal year 1992 through 1997 did not find evidence of INS or Customs employees being coerced into cooperating with drug smugglers. To the contrary, our review of case files showed most INS and Customs employees willingly participated in their corrupt activities for financial gain.

Sincerely yours,

RICHARD M. STANA,  
*Associate Director, Administration of Justice Issues.*

## ADDITIONAL QUESTIONS FOR PANEL II

THE COMMISSIONER OF CUSTOMS,  
Washington, DC, June 25, 1999.

Hon. CHARLES E. GRASSLEY, *Chairman,*  
*Caucus on International Narcotics Control,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of May 4, 1999, in which you provided additional questions from Members of the Caucus as a followup to the April 21, 1999, hearing on "The Continued Threat of Corruption to U.S. Border Law Enforcement Agencies." Responses to those questions are attached.

As always, I look forward to working with you and the other Members of the Narcotics Caucus. If you have any future questions, please do not hesitate to contact me.

Yours truly,

RAYMOND W. KELLY,  
*Commissioner.*

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ATTACHMENT.—FOLLOWUP QUESTIONS TO THE APRIL 21, 1999 HEARING ON "THE CONTINUED THREAT OF CORRUPTION TO U.S. BORDER LAW ENFORCEMENT AGENCIES."

*Question 1.* According to the GAO report, Customs agents do not receive enough integrity training. Newly hired Customs inspectors are required to spend 8 of 440 basic training hours devoted to integrity training, and although advanced integrity training is provided to reinforce these principles learned in basic training, inspectors are not required to take it. In the Assessment report provided by the Department of Treasury, the integrity issue is addressed. It too found integrity training inadequate and recommended "the new Office of Training, in cooperation with the Federal Law Enforcement Training Center (FLETC), increase the number of hours of basic training for Customs inspectors/agents . . . Integrity training must become a major priority, not only during basic training, but also throughout an employee's career."

- Are there plans to require any mandatory integrity training for mid-career personnel?

- Has any consideration been given to developing a specific plan to reintroduce integrity training into an employee's career?

Answer. Mid-career mandatory integrity training for senior inspectors has been a component of the Senior Inspector class for several years. In addition, the present curriculum for newly promoted managers attending the Customs Supervisory Seminar also includes integrity reinforcement training. Mandatory recurrent training required by the Office of Government Ethics is annually conducted for agency employees whose responsibilities include management and procurement, as well as those required to complete annual financial disclosure forms—approximately 1,200 employees. Also, between 1995 and 1997, approximately 6,000 employees were provided with integrity reinforcement training in all of our "Hard Line" posts of duty along the Southwest Border, south Florida, Puerto Rico, and the Caribbean. Finally, the Customs Service is reintroducing annual all-hands integrity reinforcement training sessions during which a uniform curriculum of contemporary concerns and issues will be presented to all employees. The curriculum and delivery system are under development for deployment this calendar year.

*Question 2.* There has been some discussion in recent years about establishing a rotation policy for Customs inspectors and agents. What kind of consideration has been given to this proposal? What would it cost to implement an effective rotation policy? Outside of the cost, are there any other detriments to implementing this policy?

Answer. Customs has considered several proposals concerning the rotation of our enforcement personnel. In large part our consideration was driven by the premise that such a policy might serve as a deterrent to possible corruption by minimizing the potential for full assimilation into the local community and provide greater flexibility in staffing less desirable locations. However, Customs has identified no linkage between the few occurrences of corrupt employees and the absence of a mandatory rotation policy.

A major issue with a mandatory rotation policy is the cost. Considering that the current on-board numbers for Customs Inspectors, Canine Enforcement Officers, and Special Agents total approximately 10,500 and relocation costs average \$70,000, it would cost the Service an additional \$183.75 million to rotate a fourth (2,625) of

the enforcement personnel. A comparable amount would be needed to rotate in their replacements, for a total annual cost of about \$367.5 million. If a 5-year rotation policy were implemented, the additional relocation costs would be about \$294 million each year.

Additional detriments to implementing such a policy include:

- Possible logistical problems due to insufficient funds or slots
- Additional costs or requirements as a result of union negotiations for bargaining unit positions
- Potential adverse impact on employee morale and/or quality of life issues
- Rotation of employees when it is not in the best interests of the Service
- Possible external pressure from our trade customers because of facility expertise and longer processing times

A different rotation policy, involving special agent exchanges between the Offices of Internal Affairs (IA) and Investigations (OI) is considered beneficial and has been implemented. This rotation action involves moves between the two offices, but not necessarily relocation. The intent of this rotation is to allow IA agents to apply their integrity awareness strengths in the enforcement environment, while OI agents rotated into IA offices would apply their specific investigative knowledge and skills to directly combat corruption. The recent rotation between IA and OI involved 93 agents, at a cost of \$1.2 million.

Customs is also looking at other avenues to achieve some of the same objectives. Our Quality Recruitment program screens for integrity through a multi-hurdle process to enhance Customs ability to hire employees whose integrity will not be compromised. The national recruitment strategy serves to mitigate local hiring as candidates are recruited nationwide and asked to select three preferences for placement. Further, many of these location preferences are broad geographical areas with several possible duty locations, which would help limit local hires. Finally, selection authority for Quality Recruitment positions is centralized and reserved to the Assistant Commissioner, to improve objectivity.

*Question 3.* It seems that a successful method in conducting investigations, especially in the area of corruption, is to be pro-active. In the past, it is my understanding that most internal affairs cases have been in reaction to accusations, instead of working pro-actively to prevent cases.

Does Customs' policy on conducting Internal Affairs investigations reflect a proactive or a re-active approach?

Answer. Internal Affairs investigations are both reactive and proactive. By the nature of the allegation referral process, Internal Affairs must react to allegations received. IA has control over the number, nature or frequency of allegations received, and thus must work reactively to assess and investigate such allegations.

Conversely, the 1997 IA Annual Report states ". . . the vision (of IA field offices) is to increase tactical intelligence, source recruitment, and source penetrations to conduct significant proactive employee integrity investigations of suspect corrupt activity . . ." When applicable, IA utilizes proactive measures as an investigative approach of the first choice. Proactive measures, reinforced by directive, training, and field practice, recognize that source penetrations, undercover operations, and electronic surveillances are invaluable evidence-gathering techniques in the covert stage of an employee corruption investigation. Federal prosecutors universally endorse such techniques, Federal law enforcement agencies in joint anticorruption task forces employ these techniques, and IA has successfully used these techniques in many proactive undercover operations, including a 1997 undercover investigation of a group of three Customs Inspectors and three local South Florida police officers.

In 1997, IA initiated Operation FIDELITY. This initiative was designed to provide policy and procedural guidance regarding the conduct of IA proactive investigations. FIDELITY was the vehicle to create opportunities to assess the integrity level of employees suspected of job related misconduct. Several proactive FIDELITY operations are currently in progress and program effectiveness is strengthened by the requirement for prosecutorial and Headquarters approval. The success of the program is reflected in the authorization to hire designated FIDELITY agents for each of our major IA field offices.

Following the proactive mandate, IA has modernized our inventory of special purpose, electronically equipped surveillance vehicles. IA hired both Physical Security Specialists and Investigative Intelligence Specialists in each of our major field offices in support of proactive initiatives. We are creating a Special Investigations Unit in Headquarters to work on the most complex internal investigations, including proactive cases. We have initiated these actions because we know that corruption must be ferreted out, not waited out. We know the keys to success in this area are initiative, resources, and commitment. We believe that the policy and the archi-

ture is now in place for IA to build upon the successful proactive initiatives of the recent past.

*Question 4.* During the April 21 hearing, Commissioner Kelly testified that Customs requires the disclosure of financial information as part of the preemployment background investigation and the in-service reinvestigation of its law enforcement personnel.

Has the use for financial information as part of the background investigative process been useful to Customs in identifying employees who may be susceptible to, or actively involved in, acts of corruption? Has the collection of this information adversely impacted the Customs background investigation process? Has personal financial information been collected and utilized consistently to establish a baseline against which a suspect Customs employee's unexplained wealth may be compared?

*Answer.* Both the financial information provided by the subject and the credit checks completed by the Agency are useful in identifying individuals who may be potentially susceptible to corruption. We have not had instances whereby the financial information has identified employees who are actively involved in acts of corruption.

The collection of background information has not adversely impacted the background investigation process. The collection/adjudication of this information is required pursuant to investigative requirements for employment/continued employment with Customs.

Personal financial information which is collected on all new employees and during periodic reinvestigations is currently being analyzed on a limited basis to determine whether employees are living beyond their means and whether their net worth falls above or below the norm for other employees in similar situations.

*Question 5.* Does Customs utilize polygraph examinations as part of the pre-employment and in-service background investigation process? If not, is the use of polygraph examinations in the pre-employment or in-service background investigation process being considered? Under what circumstances are polygraph examinations utilized at Customs? Are the results of these examinations considered generally reliable?

*Answer.* Customs does not currently utilize polygraph examinations during the pre-employment or in-service background investigation process.

However, on March 19, 1999, the Assistant Secretary for Management and Chief Financial Officer, Treasury Department, forwarded a request to the Office of Personnel Management (OPM) asking that the Department's authority with respect to polygraphs be expanded to permit Customs to use polygraphs to screen competitive service applicants for Criminal Investigator positions in the 1811 series. We anticipate OPM's approval in the near future.

For over 20 years, Customs has utilized polygraph examinations as an investigative tool to gather evidence in internal administrative and/or security matters and criminal investigations. For example, the polygraph technique has been used in cases where employees faced allegations of sexual/racial harassment or making false statements under oath. Polygraph examinations are used more frequently in criminal investigations as an investigative tool to gather evidence regarding the guilt or innocence of a subject in conjunction with all other available information.

Research studies published in "Polygraph" professional journal indicate high reliability (consistency) and validity (accuracy in detecting deception and identifying truthful subjects). However, results of individual polygraph examinations depend heavily upon the skill level of the person administering the exam.

*Question 6.* Customs has established anti-corruption initiatives that include training or issues related to sexual harassment, cultural diversity and sensitivity, and integrity. What validation measures have been established to ensure that the anti-corruption efforts at Customs are effective in achieving the desired goals and objectives?

*Answer.* Self-inspection initiatives have begun within the Management Inspection Division, which will be a primary vehicle in validating the effectiveness of training received in such areas as sexual harassment and cultural diversity. This concept ties in to quality recruitment initiatives along with continued in-service integrity training throughout the career of an employee. Furthermore, the Internal Affairs Training Staff is currently researching anticorruption validation standards for field implementation. With regard to testing at the Customs Academy, of those employees attending the programs at the Academy, only the special agents attending the Customs Basic Enforcement School are formally tested on ethics issues in the Customs Service via a written exam. Initiatives are also underway to include test questions in examinations taken by students represented by the National Treasury Employees Union (NTEU), with NTEU concurrence.

*Question 7.* Despite numerous complaints from Customs personnel regarding gross sexual harassment and official misconduct at the Port of Tampa, Customs failed to take action addressing the complaints for 14 months. During this 14-month period, as the Customs internal investigation continued, acts of sexual harassment and official misconduct continued to occur.

In cases where Customs personnel make official complaints alleging on-the-job sexual harassment and official misconduct, do you believe a 14-month delay in investigating complaints of sexual harassment and official misconduct is appropriate? Now that the Customs investigation regarding sexual harassment and mismanagement at the Port of Tampa has been completed, will you make the documents compiled as part of the investigative record available to Committee staff?

*Answer.* In 1997, there was one allegation of sexual harassment at the Port of Tampa. An investigation was opened by the Office of Internal Affairs on the Chief Inspector.

A specialized IA investigative team was dispatched, the Tampa CMC Director was notified, and a Cease and Desist order was issued to the Chief Inspector to ensure there was no continuing misconduct. IA took 20 statements from developed complainants and reluctant witnesses (employees and former employees) over a 10-month period (October-August). Additional investigations were initiated during this timeframe regarding racial statements by the Port Director and allegations of failure to take action by the Port Directors' supervisor, in addition to alleged retaliation against those who were supporting the allegations of misconduct. Although not typical, the complexity of this particular case necessitated the time required to complete the investigation.

The sexual harassment allegations were ultimately substantiated against the Chief Inspector, and disciplinary action was taken (Removal from the Chief Inspector management position; downgrade from a GS-13 to a GS-12). The Area Port Director was found not to have engaged in retaliation. The allegations that the Area Port Director failed to take appropriate action when informed of the misconduct is being addressed with additional interviews being conducted at this time.

*Question 8a.* A February 1999 report prepared by the Office of Professional Responsibility (OPR) indicates current Customs integrity training is inadequate for deterring corruption. Customs special agents and inspectors receive training regarding sexual harassment and diversity, ethical conduct, and equal employment opportunity during their initial training at the Federal Law Enforcement Training Center and Customs Academy; however, there are no specific courses specifically designed as "anti-corruption" training. In light of this finding, what actions are being taken to develop a course of instruction for Customs personnel specifically designed to address anti-corruption issues?

*Answer.* In addition to ethics, sexual harassment, and diversity training conducted by the FLETC staff, the Internal Affairs training staff assigned to the Customs Academy presents a course entitled "Corruption Prevention." The course presentations include: ethical concepts and values; recognition of the ethical dilemmas faced on the job, at home, and in their lives; decision-making tools for ethical challenges; recognizing the statutory basis for and application of the U.S. Customs Service Code of Conduct as delineated in the Government-wide Standards of Ethical Conduct for Employees of the Executive Branch, the Supplemental standards of Ethical Conduct for Employees of the Treasury Department, and other laws and regulations; recognizing the authority and functions of the Office of Internal Affairs (IA); recognizing the elements of a bribe offer and how to respond to and report such an offer to IA and the employee's role in any ensuing bribery investigation; and an in-depth discussion of the personal and professional consequences of misplaced loyalty, peer pressure, and "entitlement" rationalizations. This training includes real case scenarios and ethical decision making exercises.

*Question 8b.* The OPR report also indicates the hours of integrity training delivered to Customs law enforcement personnel are significantly less than the hours of integrity training provided to law enforcement personnel of the Drug Enforcement Administration and the New York City Police Department. What actions are underway to increase the number of hours of anti-corruption and integrity training delivered to Customs personnel?

*Answer.* The Office of Internal Affairs training staff is aware of and continually reviews and compares its programs with our law enforcement agency counterparts. The following summarizes the present state of instruction:

DEA.—DEA has recently reduced the integrity reinforcement instructional time they dedicate to special agents from 25 to 20 hours. Of these, 10 hours are dedicated to "ethics" training. The remainder is dedicated to their Standards of Conduct and an introduction to the role of OPR.



ATF.—The Bureau of Alcohol, Tobacco and Firearms does not dedicate any formal instruction time to the subjects of ethics and integrity training at their Academy. New hires receive a two-hour block given to all new hires prior to reporting.

Secret Service.—The Secret Service conducts 8 hours of ethics training in its basic training program.

IRS.—The Internal Revenue Service intermingles ethics training with other courses. It has no stand-alone curriculum in this area.

Border Patrol.—The Border Patrol dedicates 3 hours to “Officer Integrity” and 1 hour to an overview of the Department of Justice OIG.

FBI.—The IA Training Staff has conducted multiple interviews with FBI Academy personnel responsible for developing their integrity curriculum. Their special agents currently receive 16 hours of integrity training in a curriculum which very nearly mirrors what Customs accomplishes in 8 hours. They also add course content in the ethical basis of the Constitution and ethics standards for officers with judicial responsibilities.

The FBI course also includes theoretical academic treatment of the Declaration of Independence, the Preamble to the Constitution, the Origins of Modern Republics, and the Origins of the U.S. Constitution, Human Equality, Life and Liberty, Ideal Utilitarianism, and the philosophical teachings of Emanuel Kant and John Locke.

All Customs personnel (special agents, pilots, AIO’s, seized property custodians, auditors and inspectors) currently receive 8 hours of corruption-prevention training (ethics and integrity reinforcement). In addition to this training provided by IA, Customs special agents receive an additional 7 hours from the FLETC staff in subjects including integrity, cultural diversity, EEO, civil rights, and constitutional law—subjects which mirror the additional formal time dedicated to this area at the FBI Academy. In comparison, the time dedicated to formal ethics training of special agents at the Customs Academy is very nearly the same as that given to FBI special agents.

Treasury OPR cited the IACP Ad Hoc Committee on Police Image and Ethics, which concluded that law enforcement organizations do not spend enough time on integrity training (70.5 percent reported they provide 4 hours or less of integrity training and 16.8 percent of respondents indicated they provide 8 hours of integrity/ethics training). While it is possible, although unverified, that Customs might profit by adding more anticorruption training, the 8 hours received in the Customs special agent curriculum, combined with the seven taught by the FLETC instructional cadre, places the Customs Service well above the top police departments in the Nation in training time expended on ethics training.

The Office of Internal Affairs is entering into a training agreement with the New York City Police Department on corruption investigation techniques and methods. This cross training effort will support the investigative effectiveness of IA.

Further review of all Customs training initiatives, course curricula, and methods of instruction will be reviewed and assessed by the newly appointed Assistant Commissioner for Training and Development.

*Question 9.* During our May 14, 1997 hearing, questions were raised regarding the exclusive use of Customs Internal Affairs personnel to deliver integrity training. During September 1997, then-Acting Commissioner Banks said that Customs, as part of Operation Hard Line, had developed a team approach to the delivery of ethics and integrity training, utilizing Customs instructors from offices other than Internal Affairs.

In the effective delivery of ethics and integrity training, the instructor’s personal credibility is a critical factor. If a Customs instructor has a reputation among the students as having had his or her own ethical lapses or concerns, the desired effect of the training may be doomed from the start. In light of this concern, has Customs considered utilizing qualified instructors from the private sector or other Federal, state or local law enforcement agencies to develop its anticorruption and integrity program and to deliver the related training?

Answer. Customs provides employees with integrity training throughout their careers. All new employees in inspector, entry, import specialist and agent positions receive an 8-hour lesson on ethics and integrity as part of their mandatory basic training program. New supervisors receive an 8-hour lesson which includes ethics, integrity and the application of these principles to their jobs and employees. Additionally, other employees have received refresher integrity training (e.g., 3,600 inspectors and agents, mostly on the Southwest Border, as part of Operation Hardline). The newly appointed Assistant Commissioner for Training and Development will also work to integrate integrity training across the Service and into employees’ career path training.

Currently, the Customs Service is actively exploring a team approach to developing and deploying recurrent integrity reinforcement training in the field. IA con-

tributes expert assistance in the areas which appear to be most challenging to employee integrity, as well as corporate knowledge of the best available means for defeating threats to the Service's integrity. However, integrity is by no means the exclusive province or responsibility of the Office of Internal Affairs. Integrity is a critical value to all employees.

Customs has supplemented the delivery of training by employing well-known consultants to deliver components of our ethics and integrity training. Currently, the consulting firm of Gilmartin, Harris & Associates, recognized experts in the anticorruption and integrity field, is delivering a component of the ethics and integrity training to all new supervisors in the Customs Supervisory Seminar. This team has also been hired by many Customs field offices throughout the Agency to facilitate similar refresher training.

In addition, training provided through the Customs Training Academy is delivered by a highly credible cadre of instructors: some resident at the Academy; others experienced Service supervisors, who have been nominated by their Assistant Commissioners; and other subject matter experts.

*Question 10a.* It is disturbing that "all 28 of the INS and Customs employees who were convicted for drug-related crimes received background investigations or re-investigations that determined they were suitable." Have you reviewed the special background investigation procedures employed by the Central Intelligence Agency (CIA) and the National Security Agency (NSA)?

Answer. The special background investigation procedures employed by the CIA and NSA are contained in Executive Order 12968, Access to Classified Information. With the exception of pre-employment polygraph examinations, the Customs Service complies with the investigative standards contained in E.O. 12968 for all positions that are designated National Security (e.g., Special Agents, Pilots, etc.).

*Question 10b.* In your opinion, would these procedures have ferreted out these 28 individuals?

Answer. In that the Agency conducts more than the OPM minimum investigative coverage, perhaps the polygraph tool itself may have uncovered deception on the part of these individuals.

*Question 10c.* Does it make sense to incorporate any of the CIA/NSA investigative procedures into those of Customs?

Answer. Yes, polygraphs. Customs follows the same procedures as the CIA and the NSA, contained in Executive Order 12968, with the exception of preemployment polygraph examinations.

*Question 11.* Is there any evidence that Customs employees are being coerced (via threats to individuals or family members) into cooperating with drug smugglers?

Answer. The Security Management Branch, Internal Affairs, is not aware of any evidence that a Customs employee was successfully coerced (via threats to individuals or family members) into cooperating with drug smugglers. The Security Management Branch could identify two instances where a Customs employee was threatened in an attempt to coerce the employee to cooperate, but the attempted coercion was apparently unsuccessful.

In one instance, an inmate at the Arizona Department of Corrections sent threatening letters to a Customs Inspector in an effort to obtain an early release from prison. The Inspector previously encountered the subject after he (the subject) was arrested for attempting to smuggle 33 pounds of marijuana into the United States. The Inspector acted as an interpreter for the Spanish speaking subject during an interview with an English speaking Customs Special Agent. After the receipt of threatening letters by the Inspector, the inmate was interviewed by Special Agents from Customs Office of Internal Affairs and Office of Investigations. The attempted coercion was stifled.

The second coercion attempt involved a threat to a Customs employee's life, and actually occurred in Mexico. After a Customs Inspector escorted his fiancée to a family gathering of hers (the fiancée's) in Mexico, the Inspector was introduced to a Spanish male that told him "I know you." According to the Inspector, later that day he accompanied the individual to the store. During that trip, the individual pulled the vehicle he was driving to the side of the road, and they were joined by four other individuals (the Inspector believed that they were armed). The subject told the Inspector that "the organization he worked for paid \$10,000 per car load of cocaine," and if the Inspector did not cooperate, the organization knew how to get hold of him, and he "knew what to expect." The Inspector was temporarily relocated by the Customs Service.

*Question 12.* Please provide a thorough description of your drug testing procedures, including but not limited to your random testing program. How often are random drug tests conducted? What is the percentage of positive tests over the past few years? What is the procedure for an employee who tests positive?

Answer. Employees who occupy “testing designated positions” are subject to random drug testing. The criteria for position coverage are:

- authorization to carry a firearm;
- direct involvement with drug interdiction and enforcement of related laws;
- activities/duties affecting public health or safety;
- access to classified information;
- access to enforcement systems and the Cargo Selectivity module of the Automated Commercial System (ACS);
- Presidential appointees.

Currently, 18,586 employees (91 percent of the Customs workforce) meet the criteria for random drug testing. Approximately 10 percent of the employees who occupy “testing designated positions” are tested each year.

The random drug testing program is operated at Headquarters. It is unannounced and employees are given no more than 2 hours to report to the collection site. The majority (over 99 percent) of random drug tests are conducted at the Customs work site.

A computer program makes random drug testing selections. Employees have approximately a 1 percent chance of being selected for testing each month. Since employees are selected randomly for testing, actual frequency is not based on a regular, predictable schedule. Our goal is to test 10 percent of the employees subject to random testing each year. On average, we conduct random tests at 2–3 locations per month.

The random drug testing program appears to be a deterrent. Since the beginning of fiscal year 1995, we have had a total of only 44 employees test positive for illegal drugs. Forty two of these 44 were identified via random drug testing. The percentage who tested positive compared to all who were tested is 0.54 percent.

Customs contracts for specimen collection and analysis. The testing laboratory is certified by the Department of Health and Human Services (HHS). Employees are tested for: marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates. Test results are sent to a Medical Review Officer (contracted licensed physician) for review prior to reporting the results to Customs.

In addition to random drug testing, Customs drug testing program includes the following types of testing:

- pre-employment;
- reasonable suspicion;
- injury, illness, unsafe or unhealthful practice;
- follow up;
- voluntary.

If an employee tests positive for drugs, the specimen is retested by sending a portion to an independent laboratory (certified by HHS) for reconfirmation. Meanwhile, Human Resources Management (HRM) is notified of a positive test result. HRM notifies the employee’s manager, Internal Affairs (IA), and Labor and Employee Relations (LER). The employee is either assigned to administrative duties or placed on administrative leave. Authority to carry firearms is suspended, and government issued weapons are retrieved by the supervisor or IA. Access to sensitive automated systems is suspended. The security clearance is suspended.

The Customs Service does not tolerate drug use. Generally, employees testing positively for drug use are removed from the Service. Of course, all actions are based on the circumstances of the case and taken in accordance with laws and regulations.

*Question 13a.* Please provide a complete description and/or update of your procedures for physical searches of individuals.

Answer. Customs inspectors at commercial airports can select passengers for an enforcement exam either in advance, or on-the-spot.

Advance targeting is accomplished by the passenger analysis unit (PAU) using Advance Passenger Information (API) and other data. An electronic lookout is placed in the Interagency Border Inspection System (IBIS), which is used by the INS inspector in the primary inspection process.

On-the-spot referrals can come from a rover or control point inspector, or from a canine alert.

The rover will initially identify passengers who may appear suspicious, based on a number of factors, such as suspicious activity (avoiding canines or scoping out inspectors).

Once an initial contact is made with the passenger, the rover or control point inspector will use a brief interview, review of travel documents, and observation of nonverbal cues to make a determination as to whether a secondary exam is warranted.

In the secondary inspection process, an inspector will follow-up with a more in-depth interview, review of travel documents, and observation of nonverbal cues. The passenger can then be released or detained for a baggage exam.

The baggage exam may alleviate suspicions or add factors that may lead to a personal search.

Courts have held that the "routine" Customs exam includes a patdown personal search. No suspicion is needed up to this point, merely nexus with the border. Customs policy requires that some or mere suspicion is needed for the patdown (one or more factors).

The personal search progresses from the least intrusive to the most intrusive, based on suspicion factors developed during the entire secondary inspection process. Each increase in intrusiveness, however, requires additional suspicion factors.

The hierarchy of personal searches is: (1) patdown, (2) partial strip, (3) x-ray, (4) body cavity, and (5) monitored bowel movement (MBM).

Current policy requires supervisory approval for any personal search beyond the patdown. A patdown precedes all other personal searches.

Once a patdown is conducted, additional suspicion factors may warrant a partial strip search, such as something suspicious felt beneath the clothing. Only the suspicious area of the body may be subject to a partial strip and not the entire body (per court ruling).

The partial strip may result in additional factors that may warrant a body cavity search (such as an object protruding from vaginal cavity). Initial suspicion factors may also indicate an x-ray and/or MBM is warranted (such as items found in luggage, etc.)

Customs uses consent as a basis for a body cavity or x-ray search, and all women undergo a pregnancy test before an x-ray. If consent is not provided, Customs can require an involuntary body cavity search (removing object from the vaginal cavity) or will move to an MBM for a suspected swallower of narcotics. (However, the Ninth Circuit on the West Coast requires a court order for involuntary searches.)

An MBM will require enough "clear, complete" bowel movements to ensure that the alimentary canal does not contain contraband. Use of emetics or laxatives (*i.e.*, "Go Lately") is only at the direction of a doctor and is administered by medical staff, not Customs inspectors.

Customs is in the process of revising its personal search policy to add additional supervisory approval requirements, to add management oversight responsibilities, and to ensure that the policy is written in straightforward language that will prevent misinterpretation. The revised policy, which will be out shortly, provides for notification of an individual of the subject's choosing if the search takes more than 2 hours.

*Question 13b.* Could you provide an update on the litigation that has arisen as a result of incidents in Chicago?

Answer. In the Northern District of Illinois, *Anderson v. Cornejo*, Case No. 97 C 7556 is a potential class action lawsuit brought by 46 African-American women against a number of named and unnamed Customs and Immigration "agents, inspectors and supervisors." The complaint is based on the patdown searches, strip searches, or body cavity searches of the plaintiffs. Besides the Fourth Amendment claim based on the allegedly unreasonable searches, the complaint also contains Equal Protection, due process, and "privacy" claims (this last based on maintaining in Customs files the incident reports regarding the searches of plaintiffs.)

The government filed a motion to dismiss and for a more definite statement in November 1998; in January, the judge dismissed the privacy claim and the procedural due process claim; denied class certification (without prejudice); and granted the motion for a more definite statement. At last count the most recent Complaint, the Fourth Amended Complaint, listed 46 plaintiffs, two of which have since been dismissed as untimely.

*Question 13c.* Please explain how consulting with a supervisor will delay and/or discourage this practice [personal searches].

Answer. A patdown precedes all other personal searches. Current national policy requires supervisory approval for any personal search beyond the patdown. Port directors may require that the patdown also be approved by a supervisor. A future change to Customs policy will require that all personal searches be approved by a supervisor.

Supervisors are on-site or immediately available nearby at most Customs facilities. Contact can usually be made by radio and/or telephone for supervisors not actually onsite. Any delay in the search procedure, to contact a supervisor, will be minimal.

A supervisor's review and approval allows for a more experienced, third party evaluation of the circumstances surrounding the enforcement exam and need for a

personal search. The supervisor is responsible for ensuring that current policy is being followed and that enough suspicion exists to believe that contraband may be hidden on or in the body of the passenger.

The supervisor is also responsible for follow-up with the passenger and inspector after the completion of any personal search that does not lead to an arrest and/or seizure. The supervisor addresses the questions of the passenger, and assists them to continue their travels. The supervisor reviews the enforcement actions with the inspector to ensure that each event becomes a learning experience.

*Question 13d.* What is the timeframe for widespread deployment of the nonintrusive search systems (new x-ray type mechanisms)?

Answer. Customs has purchased two body scan imaging systems and has had them in operation at JFK and Miami Airports since February 1999.

During the last quarter of Fiscal Year 1999, Customs expects to purchase 3–4 additional systems and deploy them to Chicago, Atlanta, and Los Angeles.

During Fiscal Year 2000, Customs will establish a procurement vehicle to obtain additional systems for deployment to major airports such as San Francisco, JFK (additional terminals), Miami (additional terminals), Los Angeles (additional terminals), Washington Dulles, San Juan, and Newark.

By the end of Fiscal Year 2000, Customs plans to have established body scan imaging systems at the top 15 major United States airports.

*Question 14.* What are the results of an investigation which was reported under-way last year about why the names of three U.S. counter drug agents, including a Customs Service agent, were listed in the notebook of a suspected Mexican drug trafficker? What did the Department of Justice turn up? Were U.S. agents linked to involvement with drug traffickers?

Answer. The Washington Post printed an article alleging that the names and phone numbers of three U.S. drug agents had been found in the notebook of a Mexican narcotics smuggler. One of the agents listed in the book was the former Senior Customs Representative in Merida, Mexico. Follow-up interviews with the Mexican authorities who had seized the notebook determined that no other evidence existed indicating the three agents were involved in corrupt activities, and the authorities had not uncovered any information that would corroborate allegations of corruption. Due to the lack of additional substantiating information, no evidence exists linking the three named agents to involvement with drug traffickers.

*Question 15.* How many corruption investigations are underway of Customs personnel assigned to the Southwest Border, and how does this compare to the numbers in 1998 and the last 4 years?

Answer.

Corruption Cases on the Southwest Border

FY	Total cases
1996 .....	60
1997 .....	63
1998 .....	63
1999* .....	35

\* Number of cases based on six-month data

*Question 16.* What is your opinion on having legislation drafted that would require agents to file financial disclosure statements every 3–5 years.

Answer. Provisions contained in E.O. 12968 permit agencies to initiate reinvestigations (which include financial reviews) at any time following their last investigation. Customs conducts reinvestigations of its agents every 5 years. Legislation should be drafted to require all public trust positions that are considered to be law enforcement (Customs Inspectors, Canine Enforcement Officers, etc.) to file financial disclosure statements.

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, DC, July 28, 1999.

Hon. CHARLES E. GRASSLEY, *Chairman,*  
*Caucus on International Narcotics Control,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed are responses to questions you posed to Commissioner Meissner of the Immigration and Naturalization Service following her appearance before your Caucus on April 21, 1999. We regret the delay in responding.

We hope that this information is useful to you. Please do not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

JON P. JENNINGS,  
*Acting Assistant Attorney General.*

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QUESTIONS FROM SENATOR CHARLES GRASSLEY

*Question 1a.* Recently the Office of Special Counsel urged the reinstatement of a veteran Immigration and Naturalization Service agent who was considered a whistleblower. Anytime a whistle blower is retaliated against by an agency, I think that it creates an atmosphere that may inhibit others from speaking out. I would like your comments on the case.

Do you have any plans for dealing with this particular case?

Answer. INS initiated discipline against that particular employee. INS expects that supervisors will give careful deliberation in all discipline cases, but particularly where the employee claims or might be described as a whistleblower. I insist that INS managers ensure that such discipline is warranted without regard to the whistleblower status, exactly as the law provides. In this case, the INS determined that even if the employee is a whistleblower, the acts of misconduct he committed merited discipline.

*Question 1b.* What policies does the INS have in place to protect or encourage other employees to speak out when they believe there is mismanagement or corruption within INS?

Answer. INS has in place, in Operating Instruction 287.10, a formal reporting requirement for even minor instances of wrongdoing. This procedure is intended to bring independent and timely investigation to bear on reported wrongdoing.

*Question 1c.* What guidance does INS have established for how to deal with whistle blowers?

Answer. We are committed to follow that law and regulations in Title 5 of the Code of Federal Regulations. In short, we are not to, and do not, influence action affecting such an employee.

*Question 1d.* What are the incentives in INS for whistle blowers?

Answer. We do encourage the reporting of waste, fraud, and abuse. It is the employee's choice whether to make that report to INS under O.I. 287.10 or to the Office of Special Counsel under Title 5 of the U.S. Code.

*Question 2.* What is INS doing to eliminate backlogs in background checks? What is being done to prevent future backlogs?

Answer. For current employees, the INS complies with the U.S. Office of Personnel Management (OPM) and Department of Justice (DOJ) policies requiring employment reinvestigations to be completed every 5 years. Prior to Fiscal Year (FY) 1992, INS had a backlog of overdue background reinvestigations. INS began a concerted effort to address this problem in fiscal year 1992. At the end of fiscal year 1997, INS achieved currency in requesting overdue reinvestigations. By the end of fiscal year 1997, INS had requested background investigations on all INS employees who were due or overdue for a reinvestigation. INS has provided sufficient funding for the reinvestigation program. In June 1998, INS implemented a plan to eliminate the backlog in adjudication of background investigations. The backlog was eliminated in March 1999 and the case inventory is current. INS will ensure that funding is allocated to remain current in the background investigation and reinvestigation programs.

*Question 3.* How does INS intend to ensure the quality of background checks in an environment in which there is pressure to hire a lot of new people quickly, while trying to expedite the clearance of the backlog?

Answer. INS acquires its background investigations and reinvestigations from OPM, which has Government-wide responsibility for conducting these investigations on applicants and employees in the competitive civil service. INS has implemented

requirements for initial background investigations and reinvestigations that exceed OPM and DOJ requirements for INS Officer Corps positions. Specifically, INS requires its Officers, such as Border Patrol Agents and Immigration Inspectors to undergo a Single Scope Background Investigation (SSBI) at the time of hire. The SSBI is the most comprehensive background investigation OPM conducts. It exceeds OPM and DOJ requirements for these positions. In addition, INS requests expanded background reinvestigations that also exceed OPM and DOJ requirements for these positions. The INS operates its personnel security program under delegated authority from the DOJ, and is subject to periodic reviews and evaluation by the DOJ, as well as OPM and other outside agencies, including GAO.

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QUESTIONS FROM SENATOR BOB GRAHAM

During the April 21, 1999 Drug Caucus hearing, Commissioner Kelly testified that Customs requires the disclosure of financial information as part of the pre-employment background investigation and the in-service re-investigation process of its law enforcement personnel. Commissioner Meissner testified that financial disclosures are not utilized in background investigations at INS.

*Question 1.* How can INS justify the omission of this important information from their pre-employment and in service background investigation processes?

Answer. The INS obtains considerable financial information on its applicants and employees during initial background investigations and reinvestigations, and requires resolution of financial issues raised in the course of background investigations. The INS does not believe that implementing a separate financial reporting system will achieve the perceived benefits.

It is highly unlikely that individuals engaged in corrupt activities would disclose their illegally obtained assets by responding truthfully to a financial disclosure form, thereby subjecting themselves to agency scrutiny and possible detection of their criminal conduct. During the course of the GAO review, the INS was not presented, nor did it discover, any empirical data or evidence showing that completion and review of a financial disclosure report deters corruption. Since the early 1970s, the U.S. Customs (USCS) has required its employees to complete a financial disclosure report. The USCS has used assets and liabilities information provided on the form to support employment decisions based on falsification of the form, but it has no evidence that the financial disclosure has deterred corruption.

*Question 2.* Does the INS utilize polygraph examinations as part of the pre-employment and in-service background investigation process? If not, are the use of polygraph examinations in the pre-employment or in-service background investigation process being considered? Under what circumstances are polygraph examinations utilized at INS? Are the results of these examinations considered generally reliable?

Answer. The INS does not utilize polygraph examinations as part of the pre-employment and in-service background investigation process at the present time. INS would have to get authority from OPM to use polygraph testing based on the fact that the Border Patrol and Immigration Inspectors jobs are competitive service positions governed by OPM regulations on competitive service appointments. In addition, INS would have to be designated an agency with "highly sensitive intelligence or counterintelligence mission directly affecting the national security." Both CIA and FBI are "excepted" service agencies and have been designated as agencies with highly sensitive intelligence and counterintelligence missions. INS has made a determination not to use polygraph examinations in the pre-employment or in-service background investigation process.

The hiring process applies the "whole person" aspect of the individual and helps to screen out potential problem applicants very early in the process. This process includes drug testing, aptitude testing (ability to learn the job), applicant assessment (identify potential for counterproductive behavior), structured oral interviews for Border Patrol Agent candidates (reactions to job-related situations), and a full medical examination. The applicant also undergoes Pre-employment Security checks that include FBI fingerprint/criminal checks, a credit check, preliminary employment verification and subject interviews with OPM Contract Investigators. INS conducts NCIC checks on all Border Patrol Agent applicants. The OPM Investigator verifies the information listed in the security questionnaire completed by the applicant and gathers any additional information needed from the applicant during the subject interview. The background investigation is conducted to establish the applicant's trustworthiness, reliability, character, conduct and loyalty to the U.S. All of this information is analyzed to determine the applicant's suitability to become an INS law enforcement officer.

*Question 3.* INS has established anti-corruption initiatives that include training on issues related to sexual harassment, cultural diversity and sensitivity, and integrity. What validation measures have been established to ensure that the anti-corruption efforts at INS are effective in achieving the desired goals and objectives?

Answer. The INS training is evaluated by a three-tiered approach. The INS develops and monitors Level 1 (Reaction) and Level 2 (Performance) instruments, and conducts the Level 3 (Field Operational Feedback) evaluation system. Level 3 uses survey research to query recent graduates of INS training programs in order to determine if the training (1) trained them to perform the job tasks they are required to perform and (2) trained them effectively. In order to accomplish this goal, a sample of graduates who received the training not more than 6 months and not less than 3 months previously are surveyed. Each graduate's immediate supervisor is also queried. A scaled questionnaire asks the survey respondents to rate how effective the training was in enabling them to perform their job tasks. The respondents are also asked to supply information about additional training that is needed and about superfluous training that was given (if any), and suggestions for improvements to the training program.

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QUESTION FROM SENATOR MIKE DEWINE

It is disturbing that "all 28 of the INS and Customs employees who were convicted for drug-related crimes received background investigations or re-investigations that determined they were suitable."

*Question 1.* Have you reviewed the special background investigation procedures employed by the Central Intelligence Agency and the National Security Agency? In your opinion, would these procedures have ferreted out these 28 individuals? Does it make sense to incorporate any of the CIA/NSA investigative procedures into those of Customs?

Answer. INS has reviewed the special background investigation procedures employed by CIA and NSA. Based on the following information, it is believed that their procedures would not have ferreted out all of the INS employees in question. The CIA/NSA investigative screening procedures are comparable to INS with regards to the background investigation. The requirements for the conduct for ALL background investigations on applicants for Federal employment in Executive Branch agencies are the same. The CIA and NSA have the additional requirements of polygraph examinations as well as psychological testing and medical evaluations of all applicants. INS does not conduct polygraph examinations on applicants. INS has reviewed the U.S. Office of Personnel Management (OPM) requirements for polygraph testing and determined that the vast majority of INS law enforcement positions do not fit into the OPM category of "highly sensitive intelligence or counterintelligence mission directly the national security (e.g., a mission approaching the sensitivity of that of the Central Intelligence Agency)."<sup>5</sup> Most of the INS law enforcement officers do not have access to classified information. The need for national security information access at INS is not the same universal requirement as the CIA and NSA.

The hiring process addresses the "whole person" aspect of the applicant and enhances the ability to screen out potential problem applicants very early in the process. This process includes drug testing, aptitude testing (ability to learn the job), applicant assessment (identify potential for counterproductive behavior), structured oral interviews for Border Patrol applicants (reactions to job-related situations), and a full medical examination. The applicant also undergoes Pre-employment Security checks that include FBI fingerprint/criminal checks, a credit check, preliminary employment verification, and Subject interviews with OPM Contract Investigators. INS conducts NCIC checks on all Border Patrol Agent applicants.

The OPM Investigator verifies the information listed in the security questionnaire completed by the applicant and gathers any additional information needed from the applicant during the interview. The background investigation is conducted to establish the applicant's trustworthiness, reliability, character, conduct and loyalty to the U.S. All of this information is analyzed to determine the applicant's suitability to become an INS law enforcement officer.

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QUESTIONS FROM SENATOR JEFF SESSIONS

*Question 1.* Please provide a thorough description of your drug testing procedures, including but not limited to your random testing program. How often do you do the random tests? What is the percentage of positive tests over the last few years? What is the procedure for an employee who tests positive?



Answer. Under Executive Order 12564, dated September 15, 1986, the INS conducts the following drug testing programs:

(1) Applicant Testing.—All outside applicants who are tentatively selected for positions within INS are tested for illegal drug use. An INS employee who is tentatively selected for a position which is a testing designated position (TDP) for random testing, and who has not, immediately prior to the selection, been subject to random testing is tested for illegal drug use.

(2) Random Testing.—Employees who are in TDP's are subject to random testing. TDP's include INS Officer Corps positions (e.g., Border Patrol agent, special agents, etc.), detention enforcement officers, positions in intelligence, top level management officials, positions requiring a national security clearance of secret or higher, positions in the Employee Assistance Program, attorney positions involved with drug or terrorism prosecution, computer and communication positions having access to classified or law enforcement information, operators and maintainers of vehicles who carry passengers or security information, aircraft pilots, mechanics, nurses, and firefighters. Our TDP's have been court tested, confirm to Office of National Drug Control Policy's "Guidance For Selection Of Testing Designated Positions," and have been approved by the Executive Committee of the Interagency Coordinating Group.

Individuals are selected for testing using a computer program, which identified social security numbers of individual's in TDP's, and randomly selects them. Because testing is random, testing may occur at any time, at any location, and an individual may be selected more than once.

Random test lists are generated at least once a month. There is a list for each Region and Headquarters. We test 5 percent of the TDP population yearly. Testing is intended to be a continuous process.

Over the last few years, the percentage of positive random tests have been less than 1 percent.

(3) Reasonable Suspicion Testing.—This is testing based upon a reasonable suspicion that an employee may be using illegal drugs. Reasonable suspicion testing may be required of any employee in a TDP where there is a reasonable suspicion that the employee is using illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of an employee in any position when there is reasonable suspicion of on-duty drug use or drug impaired work performance. However, an employee who is not in a TDP cannot be tested for off duty drug use.

(4) Accident or Unsafe Proactive Testing.—This type of testing may be required under the following conditions:

The accident results in a death or personal injury requiring intermediate hospitalization; or

The accident results in damage to government or private property estimated to be in excess of \$10,000.00.

(5) Follow-up Testing.—Employees who are found to be illegal drug users, but are not terminated from INS, are subject to follow up testing for 1 year following successful completion of a rehabilitation program.

(6) Voluntary Testing.—Employees who are not in a TDP may volunteer for random testing whereby their name will be included in the random test pool.

The INS Drug-Free Workplace Plan requires a set of actions upon a finding of drug use by an employee. These actions include:

Referral to the Employee Assistance Program. Removal from a sensitive position as appropriate. The initiation of corrective/disciplinary action. Follow-up testing for those who are rehabilitated and remain employed.

#### QUESTIONS FROM SENATOR DIANNE FEINSTEIN

*Question 1.* What is your opinion on having legislation drafted that would require INS agents to file financial disclosure statements every 3–5 years?

Answer. The INS is currently researching the ability to use expanded versions of existing authorities to accommodate the requirement of Border Patrol Agents and Immigration Inspectors to complete a financial disclosure report. As noted in the response to Senator Graham's first question, the INS does not believe that implementing a separate financial disclosure system would achieve the perceived benefits.

*Question 2.* How many corruption investigations are currently underway of INS personnel assigned to the Southwest Border? How does this compare with the number in 1998, and the last 4 years?

Answer. The Office of the Inspector General (OIG), Department of Justice, is primarily responsible for corruption investigations concerning INS operations. That office informs us it had open 98 corruption cases involving INS Southwest border operations as of May 13, 1999. That figure includes a small number of cases that have

been substantially completed but cannot be officially closed until judicial action is concluded. As of that date in 1998, 1997, 1996, and 1995, the OIG had open 90, 87, 85, and 80 such corruption cases, respectively. Please note the following points regarding these figures:

The cases comprise fraud, bribery, and drug cases.

Included are cases involving attempts to corrupt INS employees, whether or not INS employees were investigative subjects. For example, in some cases employees are offered bribes but rather than accept them, report the offers to the appropriate authorities. In those cases, the bribe offerors are subjects but the employees are not.

