

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR 1989**

**HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDREDTH CONGRESS  
SECOND SESSION**

**SUBCOMMITTEE ON THE DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED AGENCIES**

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JIM KOLBE, Arizona

JOHN G. OSTHAUS and GEORGE H. SCHAEFER, *Staff Assistants*

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**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED AGEN-  
CIES APPROPRIATIONS FOR 1989**

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**WEDNESDAY, MARCH 16, 1988.**

**COMMISSION ON THE BICENTENNIAL OF THE U.S.  
CONSTITUTION**

**WITNESSES**

**WARREN BURGER, CHAIRMAN, COMMISSION ON THE BICENTENNIAL OF  
THE U.S. CONSTITUTION**

**MARK CANNON, STAFF DIRECTOR, COMMISSION ON THE BICENTENNIAL  
OF THE U.S. CONSTITUTION**

Mr. EARLY [presiding]. The Committee will now hear testimony concerning the fiscal year 1989 budget request for the Commission on the Bicentennial of the United States Constitution.

The Commission has requested \$11,436,000 for fiscal year 1989. We will insert, at this point in the record, the budget justification prepared by the Commission.

[The justification follows:]

(1)

**COMMISSION ON THE BICENTENNIAL OF THE  
UNITED STATES CONSTITUTION**

**Summary**

**Salaries and Expenses**

In the President's Budget for Fiscal Year 1989, a total of \$3,936,000 is requested for the Commission for salaries and expenses, and \$7,500,000 is requested for grants. These amounts are to remain available until expended.

With the approval of this FY 89 requirement, total funds appropriated for the Commission since it was established will be \$58,193,000; total obligations are programmed at \$54,572,100. This will leave a carry-over into FY 90 of \$3,620,900. This amount is essential for lead-time for project planning .

TABLE 1. PROGRAM and FINANCE

Identification Code 76-0054-0-1-806	1987	1988	1989
<b>Program by activities:</b>			
10.00    Total Obligation	\$14,242,000	\$21,410,000	\$16,261,000

**Financing:**

21.40    Unobligated balance available, start of year.	9,898,000	8,856,000	8,446,000
24.40    Unobligated balance available, end of year	8,856,000	8,446,000	3,621,000
40.00 <u>Budget Authority (appropriation):</u>	13,200,000	21,000,000	11,436,000

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**Relation of obligations to outlays:**

71.00    Obligations incurred, net	14,242,000	21,410,000	16,261,000
72.40    Obligated balance, start of year	949,000	3,317,000	13,752,000
74.40    Obligated balance, end of year	3,317,000	13,752,000	23,013,000
90.00 <u>Outlays:</u>	11,874,000	10,975,000	7,000,000

**TABLE 2. SUMMARY OF BUDGET AUTHORITY AND OUTLAYS**

<b>Identification Code 76-0054-0-1-806</b>	<b>1987 actual</b>	<b>1988 estimated</b>	<b>1989 estimated</b>
<b><u>Enacted/Request:</u></b>			
Budget Authority	13,200,000	21,000,000	11,436,000
Outlays	11,874,000	10,975,000	7,000,000
<b><u>Reduction Pursuant to Pub. L. 99-177:</u></b>			
Budget Authority			
Outlays			
<b><u>Total:</u></b>			
Budget Authority	13,200,000	21,000,000	14,436,000
Outlays	11,874,000	10,975,000	7,000,000

TABLE 3. OBJECT CLASSIFICATION

Identification Code 76-0054-0-1-806		1987	1988	1989
<b>Personnel compensation</b>				
11.0	Full-time Permanent	2,874,000	3,130,000	3,130,000
12.0	Personnel benefits: Civilian	546,000	626,000	626,000
21.0	Travel and transportation persons	395,000	400,000	450,000
22.0	Transportation of things	191,000	175,000	175,000
23.0	Rents, Communications & utilities	1,019,000	1,177,000	1,272,000
24.0	Printing and reproduction	1,825,000	2,000,000	1,180,000
25.0	Other services	3,170,000	1,027,000	1,528,000
26.0	Supplies and materials	292,000	225,000	200,000
31.0	Equipment	230,000	150,000	200,000
41.0	Grants	3,700,000	12,500,000	7,500,000
99.9	<u>Total Obligations:</u>	14,242,000	21,410,000	16,261,000

TABLE 4. REDUCTION PURSUANT TO PUBLIC LAW 99-177\*

Identification Code 76-0054-6-1-806	1987	1988	1989
<u>Program by activities:</u>			
10.00      Total obligations	0	0	0
<u>Financing:</u>			
40.00      Budget Authority (appropriation):			

TABLE 5. PERSONNEL SUMMARY\*

<b>Identification Code 76-0054-0-1-806</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>
<b>Total number of full-time permanent positions</b>	<b>97</b>	<b>100</b>	<b>100</b>
<b>Total compensable workyears: Full-time equivalent employment</b>	<b>97</b>	<b>100</b>	<b>100</b>

\*For Detail of Permanent Positions, see following Table No.6.

STANDARD FORM 500  
 JULY 1960, Bureau of the Budget  
 Circular No. A-11, Revised  
 GSA-100

TABLE NO. 6

COMMISSION ON THE BICENTENNIAL OF THE  
UNITED STATES CONSTITUTION

## DETAIL OF PERMANENT POSITIONS

	IS 87 actual PY	IS 88 estimated CY	IS 89 estimated BY
Executive Level 1	1	1	1
Subtotal	1	1	1
GS-18	1	1	1
GS-16	2	3	3
GS-15	5	5	5
GS-14	3	5	5
GS-13	11	11	11
GS-12	12	10	10
GS-11	9	8	8
GS-10	9	8	8
GS-09	6	13	13
GS-08	5	6	6
GS-07	10	7	7
GS-06	6	5	5
GS-05	10	14	14
GS-04	2	3	3
Subtotal - GS	91	99	99
Total permanent positions	92	100	100
Unfilled positions, end of year	8	---	---
Total permanent employment, end of year	100	100	100
(Miss out: 16.8)	(Miss out: 4.8)	(Miss out: 4.8)	(Miss out: 4)

**SUMMARY - OBJECT CLASSIFICATIONS**

The following summary of budget authority and obligations from FY 85 through FY 89 is provided:

	Budget Authority	Obligations
FY 85	331,000	11,400
FY 86	12,226,000	2,647,700
FY 87	13,200,000	14,242,000
FY 88	21,000,000	21,410,000 est
FY 89	11,436,000	16,261,000 est
Totals	58,193,000	54,572,100
Carry-over to FY 90		3,620,900

Explanations of object classifications presented on Table No. 3 are attached.

## Summary - Object Classifications (continued)

Code      Personnel Compensation - Full time permanent

11.0

	<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
	2,874,000	3,130,000	3,130,000

This classification represents the compensation for salaries for a budget request of 100 full time permanent positions. These are employees paid with appropriated funds and hired under sections 5 (a) and (b) of P.L. 98-101 (97 Stat. 720), the statute creating the Commission. The budget amounts do not include compensation of employees detailed to the Commission from other Federal agencies or volunteers serving on the staff of the Commission without compensation. Total personnel costs of \$3,130,000 assumes a constant on-board strength of 100 authorized positions and equates to an average annual salary of \$31,300. Any hire lag will be offset by the employment of temporaries in order to meet peak project workloads. It is anticipated (and already experienced) that supplemental staffing through the use of detailees from other agencies will not be so readily available during 1988 and 1989. (During the last two months leading up to the September 1987 commemoration, a total staff of 155 was required; 34, of which, were detailees. The first year of the Republic will be commemorated during 1989. This is one of the most significant and historical bicentennial years. In preparation for the projects/commemorations programmed for 1988 and 1989, the staff has been realigned to provide for the maximum level of efficiency. There is no other alternative to paid staff since our legislation prevents the expenditure of funds for personal services contracts which would be our only other way of making even clerical assistance available.

**Summary - Object Classifications (continued)**

<b>Code</b>	<b>Personnel benefits: Civilian</b>		
<b>12.0</b>	<b>FISCAL 1987 (actual)</b>	<b>FISCAL 1988 (estimated)</b>	<b>FISCAL 1989 (estimated)</b>
	<b>546,000</b>	<b>626,000</b>	<b>626,000</b>

**Personnel benefits include a current FERS cost of 10.2% of the personnel compensation and other related costs are 9.8%.**

**Summary - Object Classifications (continued)**

<u>Code</u>	<u>Travel and Transportation of Persons</u>		
	<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
21.0	395,000	400,000	450,000

The above FY 89 travel estimate of \$450,000 represents approximately \$150,000 for essential, mission-related travel such as Commission meetings, committee meetings and hearings, program-related travel by Commission staff, invitational travel, local travel costs, and travel to Constitution-related events and programs, and to assist State and local Bicentennial Commissions. Much of this travel is performed by Commission members who serve without compensation but are authorized to be reimbursed for travel, subsistence, and other necessary expenses incurred by them in performance of their duties. The remaining \$300,000 is directly in support of Commission programs to include marketing, fund raising, and other promotional activities. Examples of the use of travel funds for projects are the National Conference of Bicentennial Leaders and the State and Local Regional Bicentennial Meetings. Even though FY 89 is a focus year of increased activity, which accounts for the projected increase of \$50,000, there will continue to be extremely rigid controls placed on travel and travel related expenses. Section 6 (b) (11), Public Law 98-101 (97 Stat. 722) directs the Commission, in planning and implementing appropriate activities to commemorate the bicentennial, to give "due consideration to the significance of the principles and institutions of the Constitution to other nations and their citizens." Since the Commission was formed in 1985, there has been only one trip abroad -taken by the Chairman and a senior staff member.

**Summary - Object Classifications (continued)****Code**      **Transportation of Things****22.0**

<b>Fiscal 1987 (actual)</b>	<b>Fiscal 1988 (estimate)</b>	<b>Fiscal 1989 (estimate)</b>
191,000	175,000	175,000

The increase in public awareness and the demand from all areas of Government and the private sector exceeded all expectations and grew so rapidly that the Executive Office of the President authorized the Commission to install a metering machine to handle the outgoing mail and to deal directly with the Post Office and UPS. Those actions allow for better control of this category of expense. FY 88 and 89 estimates include the continued advertising effect of requests for information and mailings. The \$175,000 estimate also includes the cost of transportation or movement of Commission exhibits, displays, meeting materials, parcel post, and express deliveries. There are numerous historical displays prepared and shipped throughout the country for use at State and local commemorative activities.

**Summary - Object Classifications (continued)**

<u>Code</u>	<u>Rents, Communications &amp; Utilities</u>		
	<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
23.0	1,019,000	1,177,000	1,272,000

This classification covers the cost and expenses for basic services supplied to or used by the Commission staff in the conduct of the mission. It includes such costs as: telephone services; telecommunications; temporary rental of equipment; and leased office, Information Center, and mailroom space in the Riggs National Bank Building. Please note that this space was donated to the Commission for a period of one year from December 1986 to December 1987. Utilization of this space will allow for the Commission to relinquish, back to the White House, the much sought-after townhouse at 736 Jackson Place until January 1, 1991. At that time, the Commission staff will be reduced to a number that can be housed in that one building.

**Summary - Object Classifications (continued)**

<u>Code</u>	<u>Printing and Reproduction</u>		
24.0	<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
	1,825,000	2,000,000	1,180,000

Printing and reproduction is a major budget item of expense. It covers the costs and expenses for the printing, publication, and reproduction activities which contribute to the promotion and coordination activities that commemorate the bicentennial of the Constitution, and to serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans. Many of the documents and materials produced are unique, creative in design and of commemorative quality. They include newsletters, brochures, posters, calendars, copies of the Constitution, booklets, pamphlets, plans, musical pieces, and other documentary materials that enhance the entire bicentennial commemoration period. Of the \$1,180,000 estimate for FY 89, approximately \$1,100,000 is for printing and reproduction of approved Commission projects - examples of which would be the annual historical calendar and the pocket-sized Constitutions.

**Summary - Object Classifications (continued)**

<u>Code</u>	<u>Other Services</u>		
25.0	<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
	3,170,000	1,027,000	1,528,000

This continues to be the single largest expense area exclusive of personnel costs. It includes the estimate of funds to cover the various projects and activities at the federal, state, and local levels to commemorate and increase citizen awareness of the United States Constitution, its history, and its importance and relevance to American today. The statutory objectives of the Commission will be largely funded through this other services category of expense. With the exception of grants, communications, utilities, and the fact that personnel costs are not charged by project, not less than 90% of all elements of expense are directly related to major projects approved by the Commission.

**Summary - Object Classifications (continued)**

<u>Code</u>	<u>Supplies and Materials</u>		
26.0	<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
	292,000	225,000	200,000

This classification covers expenses for the purchase of office supplies, automatic data processing supplies, and supplies for meetings and other Commission administrative needs. Since there are now minimal supply inventory levels, the above cost spread reflects a decrease in each of the fiscal years.

**Summary - Object Classifications (continued)**

<u>Code</u>	<u>Equipment</u>		
31.0	<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
	230,000	150,000	200,000

**Equipment purchased in FY 88 is being held to a bare minimum. There will be a need for replacement items in FY 89 and up-graded computer requirements to continue to respond to the increased demands and responsibilities placed on the Commission staff with no corresponding increase in full time permanent staff. The automation data base upgrade will require additional hardware and software to keep pace with the workload and changing programs.**

Code      Grants, Subsidies, and Contributions

41.0

<u>Fiscal 1987 (actual)</u>	<u>Fiscal 1988 (estimate)</u>	<u>Fiscal 1989 (estimate)</u>
3,700,000	12,500,000	7,500,000

The grant program requires a brief funding background in order to see the magnitude of this need. In FY 87, there were 222 applications from 46 states and U.S. territories seeking project funding totaling \$9,400,000; there was only \$1,000,000 available for these discretionary grants since \$2,700,000 was earmarked for the Center for Civic Education. The FY 88 amount of \$12,500,000 is for:

Center for Civic Education	2,850,000
Discretionary Grants	3,400,000
Reprogramming Authority	1,250,000
We The People 200	1,000,000
Montpelier Restoration	1,000,000
Law Centers (Loyola/Drake)	3,000,000

The Fiscal Year 1989 amount of \$7,500,000 comprises the first three grant categories listed above. The grants awarded by the Commission "teach the teacher". Programs include in-service training, conferences, institutes, video productions on the Constitution, and the development of instructional materials. The importance and impact of these educational grants has been recognized by Congress and the competition for project funding is ever expanding.

Mr. EARLY. The committee is delighted to welcome Chief Justice Warren Burger, the Chairman of the Commission, and his staff director, Mark Cannon.

Mr. Chief Justice, you may proceed with your statement.

#### GENERAL STATEMENT

Mr. BURGER. Thank you, Mr. Early. I will try not to detain you too long, and I have no formal prepared statement.

I will open by saying that, as I was thinking about this hearing, I realize what a different kind of a problem we have and that you have, as compared to the days when I used to come up here for the Department of Justice budget hearings, when Mr. John J. Rooney was in the chair. I hope I learned something from Mr. Rooney on what it is that you need to know.

There is an enormous difference between the kind of budget that we present, and there is a difference in your problem in dealing with it. The budget of the Department of Justice was for a fixed number of lawyers and we knew how much the salaries and benefits and travel would cost. We knew what the printing costs for briefs would be, and how much we had to spend for law books.

We are in quite a different kind of situation now. We have a general idea of what we are going to do and what we need. I will give you two illustrations that will make the point, I think, or help make it.

The Commission was about two years late in actually getting into operation, through no fault of anybody. I guess the focus of attention was on the Statue of Liberty so much that people were not thinking about this new problem.

#### MAGNA CARTA TRAILER

We were presented with a program of having a Magna Carta trailer which we called the "Freedom Trailer," the "Liberty Trailer." A group in New England, the U.S. Constitution Council of the Thirteen Original States, had developed the program but did not have the financial resources to support it. They developed the idea.

They came to us at a point and said we have x number of weeks to decide whether this program is going ahead because number one, there had to be a lease of the Magna Carta, one of the four original Magna Cartas that is still available. It was owned by the Lincolnshire Church in London and the lease was going to cost \$50,000.

We were between meetings of the Commission, so the executive committee made a decision to go ahead with the project. We did not know what it was going to cost. Ultimately, the program cost nearly \$3 million.

We underwrote it. We said go ahead, we will see that the money is somewhere. Then they could sign the lease, make the commitments. Then we went to work to get an outside sponsor. The outside sponsor was the American Express Company and you know about that 64-foot trailer. It went around the country in more than 100 cities. Hundreds of thousands of people went through it.

Sometimes people would say to us, "What does that prove?" I said the Magna Carta trailer did not really prove anything. What

it did was make hundreds of thousands of people in this country aware of something that they had not been thinking about very much, namely the Constitution of the United States.

It was not just the people who walked through that trailer. We had worked out an arrangement with the National Association of Broadcasters, with Eddie Fritts, the president of that group. In every city, when this trailer approached the town, there would not only be local police but a contingent of the state police and half a dozen television cameras. They would follow the trailer into the town. Meanwhile the American Express advance man and our advance people would see to it that the mayor and the governor and anybody else who wanted to could come down to greet it.

Here is the picture taken on the day we cut the ribbon, March 11, 1986. The trailer got on the road and it terminated on midnight the 16th of September, but it was in Philadelphia all day on the 17th. The lease terminated on the Magna Carta.

I repeat that American Express spent all together well over \$2 million and up to \$3 million. The trailer alone cost a great deal to put together. I drew on my then contact with the Smithsonian, where as Chief Justice I was chancellor. They were of great assistance in putting the trailer together for display purposes, because they are experts at that. We had weapons from the Revolutionary War, and uniforms and other colorful things for people to see, as well as the Magna Carta and replicas of the Mayflower Compact, the Constitution, Amendments, and the Northwest Ordinance.

Each state was permitted to put in its own organic document. I think the Connecticut Resolves stayed in the trailer all the time.

Literally millions of people saw it on television and the television cameras went inside and were permitted to take pictures. Of course, a guard stood over that Magna Carta all the time. I recall when I first talked to Jim Robinson, the president of American Express, he had a very pointed question. Where would they get insurance on the Magna Carta? And the answer seemed to be that nobody wants to insure something like that.

There were a staff of 15 people going around the country in five cars with the guards, tour guides and the electrical generator.

#### ESSAY CONTEST

Then, on the high school essay contest, we had to proceed without knowing what it would cost. After we committed ourselves to it, Al Neuharth of *USA Today* and Gannett undertook it. There, too, we do not know the actual expenditure, but it was well over \$2 million and a great deal of staff work on their part. They took it from beginning to end.

#### CONSTITUTIONAL CONVENTION

In the meantime, we had been approached to put on a re-enactment of the Constitutional Convention. We felt a great obligation to ensure that no special interest group would be staging a re-enactment of the Convention. That dilemma was solved when we had the 52 winners of the high school essay contest, out of more than 13,000 entrants. Each state had a winner, and they were to get \$1,000 each from *USA Today*.

We got the state Supreme Courts in each of the states to take over the judging, not only giving it prestige, but also a very good chance to do the judging.

Here we had 52 young people who reached that point on their own merits. So we decided to have a re-enactment of the Constitutional Convention and enlisted the College of William and Mary to help with it. They circulated to all these young people digests of Madison's notes and a lot of other raw material. So they came prepared to think about what happened at Philadelphia.

No adults undertook to tell them what to do. I was just telling Congressman Regula, one of the things they did that is not yet a matter of complete unanimity was to pass a line item veto. They re-enacted the original Convention but added a line item veto, a limit on the Federal debt, and something like ERA.

Mr. EARLY. Wait a minute, they passed a line item veto?

Mr. BURGER. They did.

Mr. ALEXANDER. Did they also eliminate one of the Houses of Congress?

Mr. BURGER. No, they did not. There was a lot of discussion about that. They did not eliminate you, though. I think they came through with a four year term, though. When I am asked about the changes in the Constitution, I say the only one that I think needs consideration is to have the House members elected for four years to relieve some of the burdens on you.

That is what we have tried to do. We made it our policy to get other people to do things. How many millions of dollars of benefit we got, how many millions of people were involved, we have no real way of measuring, but it was a great many.

We did get people's attention and our newspaper clipping service got so expensive that we had to stop it. We projected that if it continued on a curve that it was on, it would be running \$1,000 to \$1,500 a day. In one month last year, we received over 31,000 Bicentennial-related articles. We could not justify that kind of an expenditure so we cut it off.

Another measure of Bicentennial interest, and some days I wish it were not so, is that my mail has increased since September 17. We have a speakers' bureau arrangement of almost 400 people categorized by region. In addition, the Judicial Conference maintains a list of almost 500 judges available to address groups. If someone from Eau Claire wants a speaker, on the map we can find the three or four people Eau Claire, Wisconsin or Des Moines, Iowa, or whatever the case is. Then we try to get that person to go.

#### FIVE-YEAR PLAN

That is continuing. So the interest is still there.

Let me say this, at the outset we adopted what we call the "five-year plan." It seems that the five-year plans of the Soviet Union were far enough behind us so that there would not be any confusion. Our five-year plan designated 1987 for the historical background and the beginning of the ratification conventions. During 1988 and 1989 we would be focusing, as much as we could focus it, on Article I, the legislative function, and Article II, the executive

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branch. And then in 1990, the judicial function and in 1991, the Bill of Rights and all the amendments.

We are not trying to be rigid about it, but we want to have some focus.

The other factor was that the schools are the places we are going to concentrate on—the grade schools, the high schools and the colleges. We are reaching into an adult education program that, if you need any details about, we could give to you.

For example, in government, we are going to try to expand a program that we began in our own Commission staff, when we had over 100 people. We called it, for short, the "brown bag program." We asked people to bring their lunch into the conference room and we would have someone on the staff, who was qualified, talk about constitutional history or the convention.

We want to enlarge that throughout the whole government. We have had meetings with the head of OPM and several other groups. This program is in little more than the gestation period, but we think it will develop. What we hope to do, particularly in Washington, is to get members of Congress and members of the Congressional staff to these "brown bag" gatherings to talk about the program. We would let career employees of the various branches of government ask questions and develop the program.

#### PROPOSED PLANS

We are developing specific tools for our main focus on education. We brought up to you today this "time line." We try to have names for these so that we have a vocabulary within the Commission. That is our time line program.

My reaction was it is the best single piece of teaching material on the Constitution's history that I have seen, where in an hour or so you can get a new vista of the whole story.

It starts at 1492 but the real activity begins, of course, at the beginning of the country, the landing at Jamestown. The line of maps on top shows who was claiming to own this country at that time, that is France, Spain and England in different colors. You will see it goes from a complete white on the far left side to the United States as it now is on the far right.

I must say that I was in school in the days when they did teach a good deal of geography with history and yet I found things in this map, impressions, that I had never had before in any class, anywhere. The notations below help explain the illustrations.

There are 108,000 high schools and grade schools in the country, including private and parochial schools. The National Geographic Society has agreed to furnish us with 110,000 of these "time line's," which is no small cost. I would guess a minimum of \$100,000 is what we are getting for nothing.

Now, I did not know much about postage rates. The postage rate first class, to get those out, is \$237,000. We are debating now how we will get it out. There are certain risks with bulk rate. We do not know what we will do.

Here again, we are going to try to get somebody to sponsor it and pay for it. We will know within a week or ten days.

Another program for schools you will see over here. You cannot see it very well. We consider it a pictorial map contest. In my day in school, that was something just beginning in primary schools.

We had some discussion because we were not sure it would work. We found, by experience, that with all our programs, we try to do some market testing. One of the contributions made to the Commission was that IBM furnished, for a little over a year, one of their top marketing men, Terry Notari, who has now left because his year is up.

We learned about testing programs. So I think 48 Washington, D.C. schools were used for this testing of a pictorial map. I think we spent about \$10,000 on it with prizes. Instead of individuals doing it, the whole class designs the map beginning at the third grade and on up through high school.

This map is one of the winners. To say the teachers are enthused would be putting it mildly. We tried the program in 48 schools in four or five different school districts.

We had all of the participants gather about a week or two ago, the kids and the teachers, the winners, and presented them with prizes and had pictures taken of each group. Now we are going ahead on a national basis.

Tentatively we will have, and here we hope to get someone to sponsor this, someone prepare 200 to 300 thousand maps of the eastern wing of the country, as the 13 states were without going into the extensions, and then show the entire continent as it was in 1787, showing who was claiming this continent.

Doing that now, in 108,000 schools, I hardly need to describe the difficulty of the logistics.

We do not have a sponsor yet. Our thinking is that we will send out the bare map, which will probably be three-and-a-half or four feet high and 20 or 24 inches wide with the outline of the 13 states. We will let the classes and the children put the name of the states and then draw pictures that will illustrate the Boston Tea Party, the battle of Yorktown and the surrender of Cornwallis, Shay's Rebellion in Massachusetts, and so forth.

The teachers who have reported back to us have said that the enthusiasm, the sparks that this contest had brought about in the students, was just remarkable. One teacher told us that students that they had despaired of because of their indifference to what was going on, had become enthusiastic about getting into something like this.

Those two displays we will leave with you, and you and your staff might want to look at them.

Mr. SMITH. Before you leave that subject. I might mention, you said that map represents who claimed the United States at different periods. I was in the attorney general's office in Mexico a few years ago and the map on his wall shows that they still claim the part that is in white in 1830 and 1840.

Mr. BURGER. There was a little dispute over that. We remember from our history that John Adams did everything that he could when he was president to provoke Mexico into a war. He was even thinking of declaring war on them on some excuse in order to grab that territory away from them.

Mr. SMITH. They still claim it.

Mr. BURGER. Mexico then accommodated us by declaring war on us and then we took it over after that.

We do not have a budget on this map contest yet. That, I must emphasize, is our problem. We cannot tell you, as the Department of Justice or others can tell you, exactly what we are going to do. We are going to do everything that we can on educational programs with what is there, and that is why the no-year money is so important to us—that we can carry .t over.

I might say, too, that I was interested to find out that the coins that have been printed on the bicentennial have produced a revenue of nearly \$50 million now and will produce some additional money. We will not ask you to give us all of that money, but the whole Bicentennial program will be, to a large extent, self-liquidating.

I think it is fair to say that the more enthusiasm we can develop from the lower grades on up to adults, the more likely people are to buy these coins.

Perhaps this would be a good time to let you cross-examine me, sir.

Mr. EARLY. Excuse me, Chief Justice, how much did you say we made on the commemorative coin?

Mr. BURGER. The last figure I have been given, a firm one, is almost \$49 million.

Mr. EARLY. Where did that go?

Mr. BURGER. Into the treasury.

Mr. EARLY. The Chairman and Mr. Alexander want to question you, Mr. Chief Justice, and I also have several questions. But we know how valuable your time is, so we want to continue with the hearing while some Members go down to vote.

I was really pleased, Chief Justice, to hear you say you had a five year plan. The witness before you said they were going to do a quinquennial census, and I had to look it up in the dictionary to find out that it was a five year census.

Mr. BURGER. I learned something today, too.

Mr. EARLY. I really appreciate your approach, in as far as you did not read your statement. Your comments were extremely interesting.

I have several questions, but I am going to yield to the Chairman, and then I will be right back.

#### EDUCATIONAL GRANTS

Mr. SMITH. Tell me about the educational grants for which \$7.5 million was provided. Tell me about the individual grants, the subjects that were covered by those grants that would not have been covered otherwise.

Mr. BURGER. It is an oversimplification to describe it as I am about to, but the program of those grants is in essence seminars to teach the teachers. The truth of the matter is, an enormous percentage of the teachers, the younger element of teachers at grade and high school level are part of the generations where geography and history were being pushed aside in favor of social studies. And in some places it meant history and geography were dropped completely.

These grants are to try to make up for that, to bring these teachers in. And I must say, the most enthusiastic supporters of these programs are the teachers. They feel the need for this.

Last year grant requests totalled \$10 million, in round figures. We had \$1 million to give and I think we gave out \$944,000. This year, for 1988, we have a larger requested amount by quite a bit. We have only half of the requests in because it will be a later date when the deadline comes. They will range from as low as \$5,000 to \$40,000 or \$50,000, depending on the scope of the proposed program. Sometimes the teachers are brought in for two weeks, sometimes a week, sometimes a few days.

If I had to say we are going to drop all the programs except one, I would be inclined to say that this is the most important one.

I hardly need to tell you gentlemen that trying to pass on these grants is a very difficult business. We have enlisted the counsel and advice of the National Endowment for the Humanities because, as you know, Chairman Lynne Cheney is a member of this Commission and they have given us help. We have the experience of last year with the outsiders that we used, and our own staff has more experience. That will be the continuing program.

Mr. SMITH. Is it pretty well settled down to a routine where it is predictable from year to year that it will be the same?

Mr. BURGER. You mean the content or the amount?

Mr. SMITH. The content. Are you still experimenting?

Mr. BURGER. I think with respect to the content, each one of these groups are bound to have learned something by doing it the first time and will do it better the second time and even better the third time.

This is not an airtight program with which we can say exactly how it is going to work and what results it is going to produce, but the enthusiasm of the teachers is there. Really, these seminars are something like what Freedoms Foundation at Valley Forge does, but it is on a smaller scale, bringing teachers in for a better background in history.

Mr. SMITH. Under the assumed program, the Commission would phase out in 1991?

Mr. BURGER. 1991.

Mr. SMITH. Now what would happen to this program then?

Mr. BURGER. Unless there were some new program developed to continue it, it would stop at the end of 1991.

Mr. SMITH. Would you provide us a status report on the James Madison home, for which we provided \$1 million in FY 1988.

Mr. BURGER. Yes. I must say, although I did not express any opposition to it, my own feeling if I had been involved with it on the national preservation side would be that it should have been a public subscription program like the Statue of Liberty had, involving all kinds of people sending in \$5 or \$10 or \$1.

Now when I discussed that with someone, that person expressed some criticism of the Statue of Liberty. He said it cost Lee Iacocca too much to raise the money. The value of the programs that Mr. Iacocca and that group had was not just in the money they raised. The value was in the involvement of all these people.

I would like to see a popular program to renovate historic homes. As a matter of fact, I have told the people in Richmond with the

foundation on the John Marshall home, that as soon as I can get to it, I would like to help with a national popular subscription program to renovate Marshall's house in Richmond. It will not cost nearly as much as Montpelier. It is a more modest house.

We have been working on the flow-through program, both through the Madison house and the Madison fellowship program. I think Montpelier should certainly be renovated.

Mr. SMITH. What is the status of it though?

Mr. BURGER. I think the fund is ready to be delivered.

For the record, I have put the question now to Mark Cannon the Staff Director.

Mr. CANNON. All of the administrative processes have been gone through and the Department of Justice is just right now establishing the letter of credit which should be done in the next two or three days. And after that, they can draw down the money just as fast as they make the expenditures on it.

Mr. SMITH. I just have one or two other questions. I do not know exactly what all these last two questions mean, but a couple of other members have asked that I ask them.

Is the Commission planning to fund any publications, seminars or events to focus on the theme of Congress?

Mr. BURGER. Focused on?

Mr. SMITH. The theme of Congress. I understand that you have designated—

Mr. BURGER. We have a program which has not evolved yet fully. We hope to make grants to colleges or clusters of colleges during 1988, to have seminars on Article I, the function of Congress. Not what Congress is doing, going to the political issues, but what the process is. We will do the same thing, as I have said, on the executive branch in the next year, and on the judicial branch.

Now we are studying something that would have a more lasting impact—to create ultimately four subcommissions or task forces. We have not come to rest on the name yet. And have the Article I group go to work on a more long range level, study the functioning of Article I.

On such a group like we are thinking of, but it is still in the thinking stages, three or four former members of the House, perhaps two former members of the Senate, two or three former people of Cabinet level—former, again—and a historian, a political scientist, a journalist, would look at Article I as it has evolved over 200 years. And do the same thing with Article II, Article III and then ultimately on the Bill of Rights and all the Amendments, with a view to making a serious report on it.

Now we would not contemplate that these reports would be completed perhaps for two or three years. On the Article I group—we will not get started next week but within 90 days I think we might—we will ask them to target a report for perhaps two years. Then when that is done, there would be a permanent record.

Since members of Congress have enough to do besides sitting on bodies like this, se will invite former Members of Congress to join these task forces. They would ask and invite present members of Congress to come in and discuss particular subjects from time to time, as was done on the commission that studied the 25th Amendment on the disability of the President recently. That group has

worked with the Reed, Burkette, Miller group at the University of the Virginia.

Tentatively, I would think each of these four studies would be tied in with a nearby university, perhaps enlisting some member of the faculty at one of those universities as the rapporteur, coordinator and that sort of thing. We are prepared to have one full-time person on the staff of the Commission work on the organizational side, arranging meetings and that sort of thing.

Mr. SMITH. I am sure there are some former members of Congress that would love to do this and they could contribute a lot. In fact, I think that is a good idea rather than present members because they would not have the time.

Now would this be a history of Congress or rather a history of how it evolved?

Mr. BURGER. How it is working.

Mr. SMITH. How it is working?

Mr. BURGER. How it is working, yes. I have had lunch now with half a dozen people over the last couple of weeks. No secret about it, I had lunch with Walter Judd one day, and he has been out of Congress 20 years now. But he was in Congress for 20 years.

I had lunch with Mac Mathias and with Elmer Staats. I am going to see my old friend Jim Webb and talk with him about it. Four or five people of that kind of background have all said they think it is a very good kind of a program.

Mr. SMITH. Now would this be historical in nature?

Mr. BURGER. They would look at the history of Articles I, II, and III, as well as the Bill of Rights. They would look at the fact that you had 26 senators and 65 House members at that time and it was a part-time job. And all of the boys came down here—and they were all boys in those days—for weeks or months and then went back home to their farm or their law practice or whatever they were doing. Now we know that is not possible.

They would look at that transition. At least, I am now reflecting what has come out of these half dozen visits. They would look at the function of the Congress and then ask if there is any way we can make it work better? Again, the focus would not be on the merits of what Congress is doing, but only on the procedural aspect and how the function is being carried out.

The same would be done on the executive branch, and ultimately on the judicial branch. I am sure there are both senior judges, and active judges, and practicing lawyers, who would have a lot of ideas about how the process could be made to work better.

Mr. EARLY [presiding]. I yield to seniority first. Mr. Alexander?

Mr. ALEXANDER. Thank you very much, Mr. Chairman. Thank you, Mr. Chief Justice. I would add to the question that was asked by my colleague from Iowa on the subject of how to make Congress work better is predictably a continuing debate that might transcend present company and go on into the next century.

I applaud your work on the Commission. I have been very impressed with the response throughout the parts of the nation, that I have come in contact with, to the work of the Commission. I certainly agree that the awareness of the Constitution and some of its parts have been heightened by the work of the Commission in every way.

I am especially appreciative of the work of Dr. Smock here in Congress in satisfying all the little, trivial inquiries that I made during the year concerning various parts of the proceedings.

**Mr. BURGER.** We are working very closely with him, if I may interrupt you. We have invited him and his counterpart in the Senate to every one of our Commission meetings.

**Mr. ALEXANDER.** For example, I was interested in the first resolution ever passed by Congress. It turns out that it is probably a resolution that adopted the Constitution and sent it out for ratification. Now I have got a copy of that and one of these days I hope to have it reprinted and given around to all the Members of Congress. It might be a nice memento for some Members of Congress to have because it was the first resolution passed by the Congress.

I was wondering, Mr. Chief Justice, what your thoughts are concerning extending this awareness in an active way beyond the academic world possibly to the civic community. As a life member of the Rotary Club and one who sometimes visits that organization, I am aware of the preoccupation of most of our counterparts with making a living and such things there unto pertaining without the afforded luxury of extending their time and revisiting history.

It seems to me that a program cooked up for the civic club consumption would be useful. Have you thought about that?

**Mr. BURGER.** I have one page here with my own notes on that subject, but I will not even need the notes. Just yesterday at an executive staff meeting we renewed a discussion on this topic. We have communicated with the heads of all these private clubs in the past. For example, two years ago I met with the heads of the Scottish Rite of Freemasonry and the Knights of Columbus. I found interestingly enough that north and south leaders of the Masonic order had never met since the Civil War. But they met in my chambers one day and declared peace. They have issued books and they have a lot of programs going.

Now at yesterday's meeting, to come back to that, I asked our staff to identify the present president and the full-time heads of Rotary, Kiwanis, Exchange Club, Lions, Elks, Junior Chamber of Commerce, and American Legion and others. We would like to bring them into Washington together so that there would be the usual kind of stimulation you would get out of the exchanges. And we have two or three things we want to do with them.

We have six 30-minute movies that will begin to air on public television. When I say we, now we are co-sponsors with the Judicial Conference Committee, the Judicial Conference of the United States, to distribute these movies. These are movies that were made for 1976. They are excellent. Maybe some of you have seen them in the past.

They have now done a reworking to some extent of those 30-minute films. One is on Marbury against Madison. One, McCullough against Maryland; Gibbons against Ogden. And three of them are on the trial of Aaron Burr—the pre-trial and the trial.

The role of our Commission will be to get these video-cassettes out to schools, to colleges, to this group that we were just talking about, Rotary and other clubs. What we want to say to the head of Rotary is, will you buy—if we can get them to buy them—at \$7 or \$8 for each 30-minute film, if we can order enough of them. The

price right now is \$16, but we have got a figure for, I think, 500 of them at \$9.88. The price will go down as the volume goes up.

We would say to Rotary, "How many will you buy?" They know where the Rotary Clubs are and can see to it that the tapes are circulated. We will do the same with the Jaycees and the rest of the clubs. That is something that will continue over the next year or two.

These movies that were made 11 and 12 years ago, and the actual production by stations WQED in Pittsburgh was very well done. The colleges in particular should keep the tapes around and use them three or four or five years from now. We are showing the original version of them in the Lower Great Hall Museum at the Supreme Court to the tourists.

Speaking of books. Here is a book written and distributed by the Masonic group, and I do not know how many thousand of them they circulated. You may keep the one I handed you for the committee's file if you would like.

Mr. ALEXANDER. Knowing the American business community, I would suggest they would subscribe to the films on the Constitution as long as they are tax deductible. One other question, I, by chance, heard a sermon once by a bishop in the African Methodist Episcopal Church about the relevancy of that church in supporting the movement of the Constitution back 200 years ago and so on. Is there any similar effort to make contact with church organizations?

Mr. BURGER. We have contacted, in round figures, nearly 600 denominations. I did not know there were that many denominations until we got into this. We have a young man who was trained originally as a clergyman, Max Andrews. He has had broader experience than that. He has been dealing with churches.

To illustrate how we handled it within the last year, at several occasions we brought in the leaders of the major denominations. We had them for lunch and a couple of hours conference, but we were not telling them what to do. We were saying, we would like to cooperate to be sure that in every church in this country beginning on the Friday before the 17th of September and continuing for a period of about 10 days there would be sermons and homilies on the Constitution or related to it.

I have forgotten the names of all these people, but I know that the Cardinal we contacted sent one of the leading members of the Roman Catholic Church. We had the same contact with the Jewish faith, and with a wide range of others.

We then said, "Here are some books and some material on the table, and if you think it will be of any use, you are welcome to it." Every one of these people, well over 30 all together, received a copy of *Miracle at Philadelphia* by Catherine Drinker Bowen and a lot of other basic materials.

We never had any final count on how many sermons were given but I know I heard several of them myself including a splendid one when I attended the ecumenical service at St. Matthew's. The Archbishop of New Orleans came up to give the sermon that day.

So we are going to continue that. We are going to keep our line of communications with the churches open because there are a lot

of other problems and subjects to discuss that are proper material for the churches.

Mr. ALEXANDER. Thank you very much.

Mr. EARLY. Chief Justice, you had authority for \$7,500,000 for fiscal 1988 and you estimate that you will obligate a similar amount, \$7,500,000, for educational grants in 1989. Is this amount required for the same programs as those funded in fiscal 1988?

Mr. BURGER. To some extent they are the same but we are finding new programs. For example, these two map programs. I see we have another map contest winner over here. In that one the students put the illustrations to one side instead of on the map.

We expect that new suggestions are going to come from the teachers. I have made a priority this year, in terms of speaking engagements, that teachers' conventions will be given the first priority. I am leaving on Friday to spend the weekend in Williamsburg, Virginia on something sponsored by Shell Oil, with a couple of hundred student leaders from all over the country.

We will have new programs evolving as we go along.

Mr. EARLY. So there will be an expansion.

Are you confident that your fiscal year 1989 request, when combined with available unobligated balances, will be sufficient to fund the Commission's requirements?

Mr. BURGER. We hope so because we are finding that the private sector in this country is responding. There is a Bicentennial Foundation, as you probably know. Dwayne Andreas, the president of Archer Daniels Midland Co., is the chairman and John Meyers, the president of Time, Incorporated Magazine Group, is the president. We have a whole group of distinguished Americans on it. The President and Mrs. Reagan are honorary chairmen of the advisory committee to that group.

For example, the big party we had out in front of the Capitol on the 16th of September, National Citizenship Day, was financed by Nabisco and Xerox. We do not know precisely what they spent because a lot of it was in services. But it was a number of millions of dollars, including the television time.

We have found that people do not want to sit down and write a check and hand it to us even though, a few of them have. For the most part, we now develop a project and say, "Here is a program," as we did with American Express on the Freedom Trailer and with Al Neuharth on the High School Essay Contest. Then they pay all the bills.

For example, we were under such time pressure with the re-enactment of the Convention at Williamsburg, after we brought these students to Washington to receive their prizes from the Essay Contest, that we did not get a sponsor and we just paid for that out of general funds. That was about \$100,000 for three days and the transportation to bring these 52 students from Williamsburg to Washington.

By the way, when we brought these young people to Washington, we brought them all up here to the Hill and they met with the Congressional leaders—the Speaker and Senator Byrd and the Ranking Minority people were here. And the President received them and their parents or their adult traveling with them—some of them brought a teacher. They were received at the White House,

where the President handed out the certificates to the winners. Then I hosted a luncheon for them at the Supreme Court. We had 52 youngsters and the adults with them, 104 people, in the conference room at the Supreme Court.

The letters that came back indicated that this whole program had a great impact on these young people.

Mr. EARLY. Chief Justice, I have a few other questions but I will submit those for the record because we are going to have two votes very shortly.

From what you said American Express really did a service to the Commission.

Mr. BURGER. Tremendous.

Mr. EARLY. Also, on the high school essay contest, where you pick one high school from each State, they made a very wise selection in Massachusetts. They picked Millbury High School, which happens to be in my district, Chief Justice. So now they are coming down here for further competition and everyone is really delighted about that.

Mr. Chief Justice, on behalf of the whole committee, everyone is really delighted with the amount of time you are evidently putting into this Commission. The awareness you have brought to the Commission's activities is very obvious, particularly in the secondary schools. I think it is a tremendous investment.

Mr. BURGER. I will repeat what I said before, that the enthusiasm of the teachers as well as the students, and each stimulate the other, is one thing that I find very stimulating when I am out.

I was on a program with your colleague from Ohio and students from his district a week ago Saturday. I was on a telephone here in Washington and they were asking me questions from out in Ohio. I thought we had been on for about 15 minutes and the news clippings that he sent in said we were on for 45 minutes.

I asked him this morning, a few minutes ago, whether that was typical of journalistic exaggeration and he said no, it was 45 minutes that they were asking me questions.

Mr. EARLY. Your time, too, is extremely valuable. With regards to that poster you have printed, it will do us no good unless we get them delivered. We should really be concerned about that.

I recently was in a restaurant and the place mat featured the bicentennial. I noticed that everyone that came in to eat was really very interested in reading it. That is an excellent vehicle to deliver some of the history that you people are promoting.

Mr. Chief Justice, unless anyone has anymore—

Mr. ALEXANDER. Are you going to leave those up here for us to look at?

Mr. BURGER. We will leave it here as long as you would like. I hope you will find it as stimulating and interesting as I have, and informative. Things that were vague in my mind have now become more clear.

Mr. SMITH. That is a great teaching tool.

Mr. BURGER. If we can get a couple hundred thousand kids in this country in the map contest, and it would be a good many hundreds of thousands, with each class doing it, where one kid likes to draw pictures, another one likes to go to an encyclopedia, that is going to cost—we do not know—at least a half a million dollars.

We have got a couple of people in mind to call and say would you like your name on this program? For example, on that one, National Geographic does not need any commercial publicity. But if we can get somebody to handle the delivery for nothing, there will be a little ticket on the bottom of each time line saying map provided by National Geographic Society and our Commission, delivery provided by whoever is going to deliver it.

Let me add another thing. I am sure you have seen it because we sent a supply to you. I know it may seem an exaggeration but before we get through with this program, we will have 100 million, at least, copies of the Constitution, pocket copies, out.

This is our third or fourth edition. We print half a million at a time and we sent supplies up here. Some history faculty fellow wrote me a letter congratulating the Commission. This was the first Constitution ever published with a descriptive word index in the back.

I can tell you I was in some trouble a couple of weeks ago. I got a letter from a rather annoyed lady. She said she could not find "women" anywhere in the index. Well, of course, the word "women" is not in the Constitution. But in the next printing, there will be "women" and then "see persons."

[Laughter.]

Mr. EARLY. Mr. Chief Justice, we want to thank you again for your testimony.

Mr. BURGER. Thank you very much.



MONDAY, MARCH 21, 1988.

UNITED STATES SENTENCING COMMISSION  
WITNESSES

WILLIAM W. WILKINS, JR., CHAIRMAN

WINSTON S. MOORE, STAFF DIRECTOR

JOHN R. STEER, GENERAL COUNSEL

Mr. EARLY [presiding]. The committee will come to order.

The first witness today is Judge William W. Wilkins, Chairman of the United States Sentencing Commission, who will justify the fiscal year 1989 budget request for the Sentencing Commission.

The request is for \$5,350,000, which represents an increase of \$221,000 above the appropriated level of \$5,129,000 for fiscal year 1988.

At this point, we will insert the Commission's justification material in the record.

[The justification follows:]

(35)

THE JUDICIARY  
UNITED STATES SENTENCING COMMISSION

Summary of Requirements

Appropriation 1988 (enacted to date).....	\$5,129,000
1989 budget estimate.....	5,350,000
Proposed Increase.....	221,000

Appropriation Language.

UNITED STATES SENTENCING COMMISSION

SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the  
provisions of chapter 58 of title 28, United States Code,  
\$5,129,000

\$5,350,000

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UNITED STATES SENTENCING COMMISSION  
FISCAL YEAR 1989  
(Dollar amounts in thousands)

		1989 Request	
		Perm.	Pos.      Amount
	<u>Summary of changes:</u>		
	Appropriation 1988 (enacted to date).....	54	\$5,129
<u>Page No.</u>	<u>Adjustments to base and built-in changes:</u>		
11.8	1. Additional personnel.....	+15	+221
	Total appropriation requested, 1989.....	69	\$5,350

## UNITED STATES SENTENCING COMMISSION

Obligations by Activity  
(Dollar amounts in thousands)

Authorization: Permanent <u>Comparison by activities:</u>	1988 Appropriation		1988 Adjusted (Base for 1989)		1989 Request		Increase 1989 over 1988 as Adjusted	
	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Salaries and expenses	54	\$6,269	69	\$5,350	69	\$5,350	...	\$.....
Unobligated balance available, start of year	...	-1,140	...	...	...	...	...	.....
Unobligated balance available, end of year								
Budget Authority	54	\$5,129	69	\$5,350	69	\$5,350	...	\$.....

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Object Classification  
(In thousands of dollars)

	1988 Estimate	1989 Estimate	Difference (+) or (-)
11 Personnel compensation.....	\$2,495	\$3,016	\$+ 521
12 Personnel benefits.....	375	580	+ 205
21 Travel and transportation of persons.....	446	446	..
23 Rental payments to others.....	396	580	+ 184
26 Communications, utilities, and other rent.....	44	65	+ 21
24 Printing and reproduction.....	201	100	- 101
25 Other services.....	2,204	455	-1,749
26 Supplies and materials.....	38	38	..
31 Equipment.....	70	70	..
Total Obligations.....	\$6,269	\$5,350	\$- 919

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Relation of Obligations to Outlays  
(In thousands of dollars)

	1988 Estimate	1989 Estimate	Difference (+) or (-)
Obligations incurred, net.....	\$6,269	\$5,350	\$-919
Obligated balance, start of year.....	279	558	+279
Obligated balance, end of year.....	-558	-476	+82
Outlays.....	<u>\$5,990</u>	<u>\$5,432</u>	<u>\$-558</u>

Personnel Summary

	1988 Estimate	1989 Estimate	Difference (+) or (-)
Total number of full-time permanent positions.....	54	69	+15
Total compensable workyears:			
Full-time equivalent employment.....	54	69	+15

General Statement

This appropriation is for the salaries and operating expenses of the United States Sentencing Commission.

Chapter II of the Comprehensive Crime Control Act of 1984, Public Law 98-473, created the United States Sentencing Commission as an independent agency within the Judicial Branch. The purposes of the Commission are to establish sentencing guidelines, policies and practices for the Federal criminal justice system. The Commission is also charged with developing means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of Title 18, United States Code.

The first phase of the Commission's work was the development of an initial set of sentencing guidelines and policy statements. As required by statute, the initial guidelines were submitted to Congress by April 13, 1987, and after the requisite period of Congressional review, became effective November 1, 1987, as to offenses occurring on or after that date. Thus, this budget request is designed to meet the Commission's needs in the period approximately corresponding with the second full year of sentencing under the guidelines.

Major Commission Tasks and Continuing Responsibilities

As specified in the enabling legislation (see 28 U.S.C. 991-998), Congress enumerated a lengthy list of responsibilities for the Commission beyond the promulgation of an initial set of sentencing guidelines. Accordingly, Congress provided that the Commissioners would hold full-time positions during the first six years of sentencing under the guidelines and that the terms of members initially appointed to the Commission would not begin to run until the initial guidelines took effect (on November 1, 1987). Among the major, ongoing Commission responsibilities are those of monitoring the operation of the initial guidelines, promulgating necessary revisions and additions to the guidelines, and assessing the effectiveness of the guidelines in achieving the purposes of the

Sentencing Reform Act. The Commission has developed detailed programs to accomplish these and other related tasks -- plans which will involve cooperation with the Administrative Office of the United States Courts, the Federal Judicial Center, and other agencies as appropriate.

1. Prison Impact and Corrections Resources Studies. Pursuant to 28 U.S.C. 994(g)(1)(d) (q), the Commission will continue its cooperative effort with the Bureau of Prisons to assess the impact of the sentencing guidelines and other provisions of federal criminal law on federal prison populations. The Commission is required, under section 994(g), to make recommendations concerning any changes in prison facilities and services necessitated by the implementation of the sentencing guidelines. Additionally, section 994(q) requires the Commission and the Bureau to prepare a report for Congress "concerning maximum utilization of resources to deal effectively with the federal prison population." In connection with the development of the initial sentencing guidelines, the Commission, with the assistance of the Bureau of Prisons, undertook a prison impact study. The preliminary prison impact report was published in June 1987; however, the impact assessment and other required cooperative efforts with the Bureau of Prisons are ongoing. This work is expected to require a substantial commitment from the Commission's research staff and some assistance from Commission legal staff in fiscal year 1989.

2. Sentence Monitoring. Using information provided by the courts pursuant to section 994(w) in connection with each sentence imposed, and other relevant information collected by its research staff, the Commission is directed to monitor the operation of the sentencing guidelines. Section 995 of its enabling statute further directs the Commission to analyze and disseminate sentencing information, and to periodically report to Congress necessary changes in sentencing law and the sentencing guidelines. In order to carry out these and related responsibilities, the Commission has established a monitoring program and entered into a cooperative agreement with the Administrative Office of the United States Courts covering data collection and related

matters. These continuing tasks will necessitate a major commitment of Commission research staff and other resources which must be funded in its fiscal year 1989 budget.

**3. Evaluation and Other Research Responsibilities.** The Commission's enabling statute outlines a variety of research tasks for the Commission in addition to those directly related to the collection and analysis of sentence imposition data. Among the more important of these is the "four-year evaluation report" required by Section 236(a) of the Sentencing Reform Act of 1984, a project which the Commission, with its research and legal staffs, necessarily began prior to the guidelines taking effect and which will continue during fiscal year 1989 (approximately corresponding to the second year of the four-year period). This evaluation necessarily involves a complex research plan, focusing both on the process of guidelines implementation and the impact of their application. Among the factors which the Commission hopes to measure in this study are the degree to which the guidelines reduce unwarranted sentence disparity, changes in the relative severity of sentences as a result of the guidelines, and the efficiency of the guidelines in deterring crime.

**4. Periodic Guidelines Training.** The Commission is also directed to devise and conduct periodic training programs for judges, probation officers, and others involved in the sentencing process. The need for and cost of training during fiscal year 1989 is not expected to be as great as in fiscal year 1988 (which involved a major expenditure of funds for training in connection with initial implementation of the sentencing guidelines). Nevertheless, there is expected to be a need for periodic training updates for those new to the federal criminal justice system and to assist others in staying abreast of changes in the guidelines and related developments. As with the initial guideline training, the Commission expects to cooperate with the Federal Judicial Center in future training efforts for court personnel, with the Department of Justice in future periodic training for its personnel, and with private bar organizations as they may request assistance in future education programs for their members. The Commission also expects to continue

as long as necessary the Technical Assistance Service ("Sentencing Guidelines Hotline") it established to assist judges and probation officers in understanding and implementing the sentencing guidelines.

**5. Legal Assistance.** Although the Department of Justice routinely is responsible for representing the interests of the United States in criminal litigation involving the sentencing guidelines, the Commission, as an independent entity within the judicial branch, has a strong and sometimes differing interest in this litigation. Limited experience to date with litigation involving the initial guidelines indicates that the Commission sometimes may find it appropriate to take an active role in the conduct of a case (for example, in cases challenging the constitutionality of the Commission's guideline promulgation authority) in order to ensure that the Sentencing Reform Act and the guidelines are fully defended against legal attack. In other instances, it will be important that Commission legal staff stay abreast of litigation in order to inform the Commission of possible revisions to the guidelines which may be indicated by the judicial resolution of sentence appeals. Application of the sentencing guidelines also necessitates that Commission legal staff routinely advise the Commission, and those who contact the Commission for assistance in guidelines application, concerning legal issues relating to use of the guidelines. As is the case with any operating agency, the Commission also has need, from time-to-time, for assistance from its legal staff concerning matters that arise affecting Commission operations and concerning legislation affecting the Commission's authority or sentencing.

**6. Guideline Promulgation.** Congress correctly recognized that the task of developing a comprehensive system of sentencing guidelines for the federal courts would be an iterative, evolutionary process over a period of years (another reason why the Commission was created as a permanent agency with full-time Commissioners during the initial six years following the taking effect of the initial guidelines). While the initial guidelines are in place, the Commission, for some time yet, will be devoting substantial effort to the task of

promulgating additional guidelines, policy statements, and commentary. The Commission also anticipates that actual sentencing experience under the guidelines will indicate some continuing need for revisions in previously issued sentencing guidelines in order to carry out the sentencing policies established by Congress and the Commission. The initial guidelines promulgation task required the involvement of essentially all Commission staff and resources. Upon completion of that initial task, however, the diverse continuing responsibilities with which the Commission is charged have necessitated that the Commission establish and begin to staff a distinct guidelines drafting unit within its structure. This unit has specific responsibility for preparation of proposed guideline amendments for Commission consideration and tasks related to that effort.

#### Justification

The sum of \$5,350,000 is required for fiscal year 1989 to provide for personnel compensation and the operating expenses of the Commission. This represents an increase of \$221,000 over the amount appropriated for fiscal year 1988. The fiscal year 1989 request represents a decrease of \$919,000 in obligational authority from the total amount available in fiscal year 1988 which included \$1,140,000 in "no-year" funds carried forward from 1987. Due to the cost of the initial guideline training programs for judges and probation officers incurred in fiscal year 1988, the Commission expects to allocate substantially all of this unobligated balance for fiscal year 1988 needs. Therefore, the fiscal year 1989 budget does not anticipate the continued availability of any "no-year" funds.

The Commission's fiscal year 1989 budget request is designed to support an increase of 15 full-time, permanent staff positions, bringing the total authorized permanent positions for the Commission to 69 (including the seven voting Commissioners). The Commission projects that 5 additional staff positions are needed to support its research functions, 4 1/2 additional positions to staff its guidelines production unit, 3 1/2 additional positions to support its general counsel/legal unit, and 2 additional positions to

provide necessary general administrative and operational support for the Commission as a whole. The Commission's needs for these new positions are generally outlined above in the description of continuing Commission responsibilities.

The salary cost for these 15 new positions in fiscal year 1989 is estimated to be approximately \$580,000, with an additional \$145,000 for employee benefits. The salary and benefit costs for these new positions, plus other necessary increases in the Commission's budget, will be partially offset by expected reductions in spending for document printing and other contract services. As a result, the net increase in salaries and expenses which the Commission requests for its operations in fiscal year 1989 (vs. fiscal year 1988) is \$221,000.

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Mr. EARLY. I think this amount of money is really less than what you had last year, Judge Wilkins, with the carryover. I don't think we're being totally honest with this budget by suggesting you have more monies than you had last year, when you don't.

So we welcome you back, Judge Wilkins, and ask that you proceed with your statement in any manner you wish.

#### GENERAL STATEMENT

Mr. WILKINS. Thank you very much, Mr. Chairman.

To my right is John Steer, General Counsel, and Mr. Sid Moore who is our Staff Director. And they are, of course, here to assist in any questions that the chair may have.

Let me briefly run down the activities of the Sentencing Commission that we've been involved in and those that will carry into the new fiscal year.

#### SENTENCING GUIDELINES

As I'm sure you're aware, we met the congressional deadline and submitted sentencing guidelines to the Congress on April 13th of 1987. And then we participated in the Congressional review process during the next six months.

When it became evident that the guidelines were going to be acceptable to the Congress, sometime in October of last year, we began a very extensive training program throughout the Nation, for United States District Judges and probation officers. Now we're moving into a training phase for defense attorneys as well as prosecuting attorneys on the correct application of these guidelines.

In addition to doing that, between the time we submitted the guidelines to the Congress and their acceptance by the Congress in November, we conducted field testing in various districts throughout the United States on a trial basis. And we learned from that experience areas of the guidelines and commentary that we could amend and clarify to assist in the correct application of the guidelines. Accordingly, in October of last year, we issued supplemental commentary that explains the application of the guidelines and assists greatly in their implementation.

Congress also gave us the power to enact emergency guidelines. We have used that limited authority given by the Congress in January of this year, and promulgated a series of emergency guidelines which went into effect automatically.

We have established in the Commission a Technical Assistance Service which is available to all Federal Judges, all United States Magistrates, and all probation officers. This allows for these individuals to contact the Commission directly to ask a specific question about application of the guidelines, and hopefully receive the correct answer from our staff who man this technical service on a day-by-day basis. We think this is very important to assist in the initial application of the guidelines so that errors can be avoided in the initial sentencing phase. Additionally over the long haul, that will save a lot of judicial resources from handling these cases that otherwise might go up on appeal because of errors that were committed in the sentencing phase.

We have also developed an "expert system" as we call it. It's a computer system that we spent a great deal of time and resources over the last three or four months developing. And it's just about ready to go out to the field. We're going to distribute one such program to every district in the United States. It's not a computer approach to justice, but it is an effort by which a district judge or probation officer can be guided step by step through the application of the guidelines to any particular sentencing range that that individual may be faced with.

And we're also developing a good working relationship with the AO's office and the United States Judicial Conference. Just last week, the Administrative Office mailed out to all of the judges and probation officers the material necessary to gather the information that the Congress requires the Commission to gather in order for us to analyze the impact of the sentencing guidelines and to determine whether or not the guidelines are really working. And if they're not working, this information will give us the basis to make an informed decision on corrections that should be made so that we can meet the mandate of the Sentencing Reform Act.

As an aside, since the guidelines went into effect in November of last year, there have been about 230 defendants sentenced under the guidelines, and another thousand awaiting sentence. Thus it appears that there will be a gradual implementation of the guidelines involving crimes committed after November 1st of 1987. Certainly by the end of this year, there will be very few individual sentences that would not fall within the scope of the guidelines.

So far, 96 percent of the sentences being imposed on these 300 defendants have been within the guidelines, with a departure in 4 percent of the cases. I doubt that we will see that high of a compliance rate continue, but I think it is indicative that at least initially the guidelines are meeting the purpose of the statute to rationalize sentences, and they are being accepted in the field.

But that doesn't mean there's not a lot of controversy about them. Indeed, we are now defending some 75 different lawsuits that have been brought by individuals attacking the guidelines. These challenges typically claim that the statute passed by the Congress is a violation of the separation of powers and that it is constitutionally insufficient, with the result that the Commission and its guidelines, should be voided.

To date, five decisions have been unfavorable and five decisions have been favorable. The other 65 decisions are still out there. We are awaiting the decisions by the district judges.

The Commission unanimously voted and urged in correspondence with the Department of Justice that the Department seek by the best method available an expeditious review of this issue by the United States Supreme Court. Otherwise, we're going to continue with the uncertainty that exists in the field and, of course, the problems that will certainly come, once the issue is settled, of having to resentence a number of individuals, regardless of how the United States Supreme Court ultimately rules on this issue.

As far as the budget request is concerned, although the initial set of guidelines have been submitted to the Congress, much of the overall task of the Commission, as the statute requires, is now being phased in.

Congress provided that the Commission be full time during the first six years of operation. Over the past two years, we have drawn heavily on the resources of other institutions from the criminal justice system, including the Judicial Center, the AO's Office, the Bureau of Prisons, other parts of the Department of Justice and various other Government agencies.

I think as the time goes on—in fact, we already have indications we're going to be called upon to bear a much larger share of the expense of the work that Congress has delegated us to do.

The tasks ahead of us primarily are in four categories. We've got to monitor the sentences that are being imposed and analyze them to determine whether or not the mandate of the Congress is being met. We've got to develop and issue new sentencing guidelines, first as new laws are passed by the Congress and, secondly, as experience in the field tells us that we need to make changes.

We are continuing our work on sentencing research dealing with disparity, for example, and whether or not plea negotiations will undermine the rationale of the sentencing guidelines.

And finally, and most importantly, we must conduct continuing education for those in the justice family who are in charge of implementing the guidelines.

As you pointed out, we're seeking \$5,350,000, and this represents an increase of \$221,000, or approximately 4 percent from the actual FY 1988 appropriation level. But it is nearly \$1 million less than our available total funding for the current fiscal year. And that's, of course, largely because of the "no-year" monies remaining from the initial start-up appropriations.

About two-thirds of our 1989 request is allocated for projected personnel salaries and benefits. We see a need to increase the staff somewhat from 54 to 69 full-time positions (including the seven voting Commissioners). We need to hire several additional professionals in the area of research because of the monitoring process, which is going to be a mammoth task. We must monitor every sentence that's imposed in the field to determine the reasons why the sentence was imposed, whether it was in or outside of the guidelines, and if outside, why, and so forth. We also need to hire several attorneys to assist us in this massive litigation project that we're involved in. And with that goes the hiring, of course, of additional clerical support staff.

We've had to rent additional space in the building which we occupy to accommodate this research unit that is going to receive this mass of information from the field.

One of the reasons much of the budget appropriated last year was not expended is because the training and education phase of our work did not really begin until almost the end of the fiscal year. And so we did not spend money previously allotted for that task in that fiscal year. However, we are spending it and have spent it during this current year.

We request an appropriation of \$5,350,000, which is the best projection we can make as to the amount of funds that we'll need to carry out the congressional mandate.

As in the past, I would not doubt that we'll be returning some money to the Treasury at the end of the year. But we see the needs of the Commission increasing. It's not a growing bureaucracy.

We're very conservative in our spending but, nevertheless, really the phase of our work that's going to require attention to a wide range of projects now is coming into play. Therefore, we're going to have to hire a few more people, and I feel that this is a reasonable request based upon our limited past experience.

We are plowing new ground, and sometimes we have to make just the best projection we can regarding our funding needs.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wilkins follows:]

TESTIMONY OF WILLIAM W. WILKINS, JR., CHAIRMAN  
UNITED STATES SENTENCING COMMISSION  
HOUSE SUBCOMMITTEE ON APPROPRIATIONS FOR THE  
DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY  
AND RELATED AGENCIES

March 21, 1988

INTRODUCTION

Mr. Chairman, members of the Committee, I appreciate this opportunity to again appear before you on behalf of the United States Sentencing Commission. I have with me today the Staff Director for the Commission, Mr. Winston S. (Sid) Moore, and the Commission's General Counsel, Mr. John R. Steer.

At this time last year when I came before this Committee, the Commission was working diligently to finalize an initial set of sentencing guidelines for submission to Congress by April 13, 1987. Tomorrow, the Commission will hold a public hearing at the United States Courthouse here in the District for the purpose of considering proposed amendments to the initial guidelines. I say this simply to underscore that much has happened regarding the Sentencing Commission during the past 12 months. The Commission met its deadline for submission of the initial sentencing guidelines to Congress. After a 6-month period of Congressional review, the guidelines became effective November 1, 1987 (for crimes committed on or after that date). Currently, with the advent of guideline sentencing in the federal courts, the Commission is beginning to receive information regarding

sentences imposed under the Sentencing Reform Act and the guidelines. Additionally, the Commission is now considering, with a cautious but open mind, a number of possible amendments to the initial guidelines. This, then, is a brief overview of where things stand as Congress prepares to consider the Commission's FY 1989 budget request.

#### I. SENTENCING COMMISSION PROJECTS DURING FY 87-88

Since the Commission is still a relatively new federal agency, and one with an ongoing mission which continues past the issuance of its major report, the Committee may find useful a summary of the Commission's major activities during the past year. A number of these projects are expected to continue through the current fiscal year and into fiscal year 1989; therefore, they are relevant to consideration of the Commission's FY 1989 budget request.

##### 1. Promulgation of the Initial Sentencing Guidelines.

During the 18-month period following the swearing-in of Commissioners, the Commission held 13 public hearings, published two drafts of guidelines for comment, received and considered in excess of 1,000 written submissions from hundreds of individuals and groups, and submitted the initial sentencing guidelines and policy statements to Congress as scheduled on April 13, 1987. Thereafter, the Commission prepared and submitted to Congress a supplemental report further explaining the guidelines, providing

additional rationale for Commission decisions, and summarizing the projected impact of the guidelines on prison population. In that regard, the Commission estimated that the incremental effect of the guidelines on prison population will be a modest 2 to 7 percent, depending on the assumptions made and the time period involved. Should the Committee be interested in additional information regarding the effect of the guidelines on corrections resources, I have appended to my statement an article jointly authored by Commissioner Michael K. Block, who directed our prison impact study, and Dr. William M. Rhodes, the Commission's Research Director, who carried out the study in conjunction with the Bureau of Prisons.

2. Guidelines Training and Education.

Following submission of the guidelines to Congress in April 1987, the Commission focused its energies on training judges, probation officers, prosecutors, and defense attorneys in guideline application. These training and education efforts included field testing sessions, Federal Judicial Center/Sentencing Commission "Train-the-Trainer" seminars, in-district seminars for the courts, and training sessions for U.S. Attorneys, federal defenders, and members of the defense bar.

Commission field testing of the guidelines in 10 cities across the country from June through September served a dual

purpose: one, to identify ambiguities and difficulties in applying the guidelines to actual cases; and second, to develop a series of worksheets that probation officers could use as a primary aid in applying the guidelines. The 115 probation officers taking part in the testing sessions represented 44 of the 93 federal judicial districts that are responsible for well over 50 percent of the total federal caseload.

A series of three formal nationwide training sessions, referred to as "Train-the-Trainer" seminars, were co-sponsored by the Commission and the Federal Judicial Center. Approximately 64 federal judges and 140 probation officers attended the intensive 4-day sessions on guideline application held in October -1987 in Washington, D.C., Dallas, and Denver. The judges and probation officers attending the sessions returned to their respective districts as the local "guideline expert" to conduct training sessions in November and December for their districts using materials prepared by the Federal Judicial Center and the Commission.

The Commission also organized and presented a 2-day train-the-trainer seminar in Washington, D.C., for Assistant U.S. Attorneys representing each of the 93 judicial districts across the country. Additionally, Commission members and staff have to date participated in numerous federal defender and private bar guideline training sessions and will continue to provide support

to private bar associations and other interested groups when requested to the extent practicable.

3. Revisions to Guidelines Commentary.

Field testing and initial guideline application training exercises revealed a number of useful suggestions for clarifying the Commission's previously-published, official commentary accompanying the guidelines in order to minimize application problems and inconsistencies. In response, the Commission reorganized and expanded the official commentary. In October, the Commission distributed to the court system a new Guidelines Manual containing the guidelines as submitted to Congress, together with the reformatted and revised commentary. This new Manual formed the basis for the further training of probation officers, judges, and others in the guideline application process.

4. Emergency Guideline Amendments.

The Sentencing Act of 1987 provided the Commission with limited, temporary authority to amend previously issued guidelines for reasons determined by the Commission to be urgent and compelling. Under this authority, the Commission issued, effective January 15, 1988, a number of amendments to the guidelines and official commentary. These amendments corrected a number of technical problems in the guidelines and clarified other areas in which application problems had been brought to the

Commission's attention. Additionally, the Commission used its new authority to re-promulgate the October revisions in the official commentary, thereby obviating disputes as to whether any of those revisions arguably might have substantively changed the guidelines themselves. The Commission deliberately intended that all of these emergency amendments conform to previously articulated policy decisions, leaving to a later date, and the regular guideline amendment process, the task of making more substantive changes in the guidelines which experience indicates may be necessary or desirable.

5. Technical Assistance Service.

In an effort to complement initial guideline training programs and further assist probation officers and judges with the implementation of the guidelines, the Commission has established and staffed a telephone "hotline." As of mid-March, Commission staff have responded to approximately 400 calls from judges and probation officers concerning questions that have arisen in application of the guidelines. The Commission intends to continue this advisory information service as long as it is appears warranted.

6. Implementation Support Systems.

In conjunction with implementation of the guidelines on November 1, 1987, the Commission's research group has developed an "expert" computer system to help judges, probation officers,

and attorneys apply the new guidelines. In addition, a monitoring system is in place to provide feedback to the Commission on how the guidelines and other provisions of the Sentencing Reform legislation are functioning.

The expert system is, in essence, a computerized version of the Commission's guideline worksheets which are being used by probation officers across the country in preparing pre-sentence investigation reports for the sentencing court. By completing all relevant sections of the four worksheets, an officer calculates an individual's guideline sentencing range, fine range, and supervision requirements. The expert system enhances application of the guidelines by making available, at the touch of a button, entire sections of the guideline manual's commentary.

It is anticipated that the expert system will be distributed to every probation office in the nation. The Commission has taken the first step toward implementing the program in the field by purchasing and distributing a personal computer to each of the 93 district probation offices in late 1987 for use with the expert system. Interested judges, prosecutors, and federal public defenders will be provided copies of the expert computer software package on request.

In addition to aiding in applying the guidelines, the expert system will serve several other important functions. Because a detailed computer record of each case will be preserved, judges, probation officers, prosecutors and others will be able to easily track cases and use the information for management analysis and reports. This database, combined with additional information collected under the Commission's guidelines monitoring system, will provide the raw material for Commission research projects mandated under the Sentencing Reform Act.

7. Sentence Monitoring System.

The Commission is charged by statute with the responsibility of monitoring the application of the sentencing guidelines in individual criminal cases. Importantly, the purpose of that function is to obtain information necessary for assessing the effectiveness of the guidelines and the need for changes in them, rather than for the purpose of modifying or correcting any individual sentence (The latter responsibility is one which the statute leaves to the courts and in which the Commission plays no direct role).

In order to carry out this Congressional directive of sentence monitoring, the Commission has worked closely with the Administrative Office of the United States Courts and the United States Judicial Conference to identify and arrange to obtain essential information, while minimizing additional burdens on the

court system. As indicated, some necessary feedback will be provided to the Commission through the computerized system and, as more probation offices are equipped with computer hardware, more of the monitoring function can be accomplished in that fashion.

## II. STATUS OF SENTENCING UNDER GUIDELINES

For the benefit of the Committee, we have assembled some information concerning the status of sentencing under the guidelines.

Based on survey information we have just received from probation districts which accounted for approximately 87 percent of all defendants convicted and sentenced during the period July 1, 1986 through June 30, 1987, our research staff has projected a current "snapshot" of guideline sentencing nationwide. This snapshot emphasizes the effects of making the guidelines applicable only to crimes committed on or after November 1, 1987, a legal position that is probably constitutionally mandated and which was explicitly directed by Congress in the Sentencing Reform Act of 1987.

Since November 1, 1987, approximately 230 defendants have been sentenced under the Sentencing Reform Act and the guidelines, while approximately 9,400 have been sentenced under "old law."

Another 1,100 defendants currently awaiting sentencing will be subject to the guidelines.

Thus, it appears that there has been, and will continue to be, a gradual implementation of the guidelines as cases involving crimes committed after November 1 represent a larger share of total cases in the system. This phase-in process is consistent with our expectations, although the early incidence of guideline cases is lower than we had projected.

Significantly, the early results indicate that judges are imposing sentences within the guidelines in approximately 96 percent of the cases. We remain confident that the guidelines will be effective in achieving the purposes of the Sentencing Reform Act and that the emphasis on training will aid the quality of the guideline application process in these early stages.

One factor contributing to the reduced rate at which cases subject to the guidelines have been processed through the sentencing stage apparently has been the litigation at the district court level of expected constitutional challenges to the guidelines. To date, we are aware of constitutional challenges being filed in approximately 75 cases in some 33 districts. Decisions have been rendered by 10 district court judges to date, with 5 upholding the guidelines and 5 invalidating them.

These defendant challenges typically attack the guidelines and the Commission's authority on separation of powers grounds and as being an excessive delegation of Congress' legislative power. As I indicated, the occurrence of this litigation was anticipated by the Commission, which as an amicus is supporting the Department of Justice in the defense of the guidelines. Our response to the constitutional issues differs somewhat from the Department of Justice, however, in that we view the task of promulgating sentencing guidelines as in aid of the judicial function of sentencing, while the Department contends that it is an executive function. Regardless of the divergence in our respective approaches, both the Commission as amicus curiae and the Department argue that the guidelines are constitutional.

The mushrooming number of constitutional challenges, the expected continued divergence in court decisions, and the resulting problems and costs of resentencing proceedings which will inevitably be necessary in a large number of cases (once the challenges are finally resolved through the appellate process) all argue strongly for expediting an appeal to and decision from the United States Supreme Court. The Commission has unanimously voted to urge the Attorney General and the Solicitor General to pursue an expedited appellate procedure and schedule, and we will be prepared to support that effort in the courts.

### III. BUDGET REQUEST AND JUSTIFICATION

With this status report of the Commission's activities and the status of guideline sentencing as context, let me turn to the continuing Commission functions which form the basis for our FY 1989 appropriations request and the specifics of that request.

#### 1. Future Tasks

It is appropriate to emphasize that, although the initial sentencing guidelines have been issued, the Commission's work is far from being completed. Even a cursory review of the statutory mandate shows that Congress anticipated a number of important task for the Commission beyond the promulgation of the first set of sentencing guidelines. Accordingly, Congress provided for a full-time Commission during the first 6 years following the effective date of the guidelines. The focus of the Commission is now, in fact, necessarily broader than in the early stages of its work, when its efforts were concentrated almost exclusively on developing an initial set of sentencing guidelines and in which it drew heavily on the resources of other institutions in the criminal justice system. As the Commission's mission evolves, so also we expect that it may be called upon to shoulder a larger share of the expenses associated with its work.

The statement in support of the Commission's FY 1989 budget request, contained in the budget documents before the Committee, provides a detailed discussion of expected future Commission

projects and needs for funding. I will not repeat that discussion here, but will simply summarize by indicating that those future tasks and projects basically fall into one of four categories: (1) sentence monitoring and information analysis; (2) development and issuance of new sentencing guidelines and amendments to existing guidelines; (3) sentencing research; and (4) sentencing education.

The research mission of the Commission deserves further elaboration because of its growing importance. During the past year, the Commission's research group has designed and initiated research studies mandated by the Sentencing Reform Act of 1984, including evaluation of "the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration."

In particular, the Commission has initiated research projects to assess the impact of the guidelines on three areas:

- \* recidivism and incapacitation
- \* sentencing disparities
- \* the guilty plea process and prosecutorial discretion.

a. Recidivism and Incapacitation Study. The sentencing guidelines include an incapacitative element evidenced most prominently by the criminal history table. Under the guidelines, recidivists are treated more harshly

than first offenders both because they deserve more punishment under "just deserts" theory and because career criminals are more likely to commit crimes in the future and, therefore, are appropriate targets for incapacitative incarceration. Research will explore these issues to determine how well the guidelines perform incapacitative functions.

b. Disparity Study. Eliminating unwarranted disparity in sentencing was one of the primary reasons the Congress established the Sentencing Commission. Indeterminate sentencing had produced widely disparate sentences for similar offenders convicted of similar offenses. Guideline sentencing is designed to eliminate unfairness by structuring a judge's discretion into narrow sentencing ranges in which the maximum by law cannot exceed the minimum by more than 25 percent.

Using data developed under FPSSIS (Federal Probation Sentencing and Supervision Information System) and the guidelines monitoring system, Commission researchers will test the effect of the guidelines on average sentences imposed on similar offenders both before and after the guidelines.

c. Prosecutorial Discretion and Plea Negotiations.

Commission researchers will closely monitor prosecutorial discretion and the plea negotiation process under the guidelines using both quantitative and qualitative analysis. One of the research methods to be employed in this area is a survey which the Commission has developed to simulate the effects of plea negotiation on sentencing. Every assistant U.S. Attorney and federal defender in the nation has received a packet of four hypothetical cases, each with different evidentiary factors. Attorneys will be asked to describe the sentences that would be typical for those cases if they resulted in a conviction at trial and by plea. The survey will be repeated two years after implementation of the guidelines. Commission researchers will compare responses to help assess the effect of the guidelines on negotiated sentences.

Researchers will supplement their quantitative work by interviewing Assistant U.S. Attorneys and U.S. Probation Officers in 10 representative districts across the nation. The interviews will assist the Commission in interpreting the data on guilty pleas and will help paint a complete portrait of plea negotiations before and after the guideline sentencing.

d. Supporting Research. In addition to conducting research mandated by Congress and providing support for guidelines implementation, the Commission will continue and expand its research estimating future federal prison population and the guidelines' impact on penal resources. Researchers are also involved in modeling the effect of criminal and administrative sanctions on organizational offenders. This research will be evaluated by the Commission as it drafts guidelines for corporate and organizational offenses.

2. Funds Requested.

In terms of dollars, the Commission is seeking the same amount of new appropriations as it requested, and initially received from this Committee, for FY 1988; i.e., \$5,350,000. This represents a marginal increase of \$221,000 or approximately 4 percent from the actual FY 1988 appropriation level contained in the final budget compromise, but it is nearly \$1 million less than our available total funding for the current fiscal year. The Commission has available to it this fiscal year slightly in excess of \$1 million in "no-year" monies remaining from its start-up appropriations. Due largely to the initial guidelines training programs for federal probation officers and the judiciary, the cost of which has been borne almost entirely by the Commission out of funds available to it in the current fiscal

year, we do not project any further carryover of these "no-year" funds.

Approximately two-thirds of the FY 1989 request is allocated for projected personnel salaries and benefits. In that regard, the Commission foresees the need to increase, as soon as possible, the number of full-time permanent positions from 54 to 69 (including the 7 voting Commissioners). This increase will permit the Commission to hire several additional professionals to assist with its research programs, as well as several additional staff attorneys to assist the Commission with a variety of legal tasks, including appropriate participation in the ongoing constitutional litigation and guideline amendment drafting. In regard to the latter function, the Commission sees the need to assign a unit of its staff specifically to this drafting task, thereby freeing up other staff to concentrate on the variety of other responsibilities conferred on the Commission. The Commission also anticipates the need to hire a number of additional clerical staff to alleviate understaffing in these critical support functions.

The Commission has also found it necessary to lease additional space to accommodate its research unit. The cost of this office space is also reflected in our budget request.

Offsetting these cost increases for personnel and rent is a proposed reduction in the allocation for "other services." Funding in this budget category will be needed this fiscal year to pay for the cost of guidelines training and other contract services; however, future needs in this category should be substantially less.

Realizing this description of additional staffing needs may appear to some as a blueprint for bureaucracy building, let me emphasize that is not our intent. The plain fact of the matter is that Congress clearly gave this Commission a continuing, evolving mission and anticipated that it would become a permanent operating agency with the necessary internal structure and staff support. In the past, the Commission has borrowed staff from other federal and state agencies, and contracted with others in the private sector, to assist with guideline drafting and other specific projects. In the future, we expect that we will have to do more of our work internally with Commission staff, although we will continue to work cooperatively with the Administrative Office, the Federal Judicial Center, the Justice Department and others.

We further realize that the FY 1989 request is substantially greater than actual spending for FY 1987, in which the Commission returned to the Treasury almost one-half of its \$5.8 million appropriation. Realistically, however, we do not believe that

this past rate of spending is indicative of future Commission needs. For one thing, we have already increased permanent Commission staff somewhat from past levels and, as I have outlined, we anticipate the need for further staff hiring in a number of areas. Secondly, we had originally expected that a considerable portion of the cost of initial guidelines training programs would be covered in our FY 1987 budget; however, these initial training programs were necessarily pushed forward into FY 1988.

In sum, Mr. Chairman, the Commission requests that Congress appropriate \$5,350,000 for its necessary salaries and expenses in FY 1989. This represents a small increase over last year's appropriations, but a substantial decrease from total available funding in the current fiscal year.

Thank you, Mr. Chairman, and members of the Committee for your consideration in this matter. I will be pleased to respond at this time to any questions the Committee may have.

## EXHIBIT

**Research in action**

## The impact of the Federal sentencing guidelines

by Michael K. Block and  
William M. Rhodes

**A**s part of the Crime Control Act of 1984, Congress created the U.S. Sentencing Commission as an independent body in the judicial branch of government. The seven voting and two non-voting members were appointed by the President and confirmed by the Senate.

The Commission was charged with establishing sentencing policies and practices for the Federal criminal justice system that fulfill the purposes of sentencing—punishment, deterrence, incapacitation, and rehabilitation. Specifically, the Commission was directed to produce guidelines that would avoid unwarranted sentencing disparities while retaining enough flexibility to permit individualized sentencing when called for by mitigating or aggravating factors.

The Commission began its work in 1985 and submitted guidelines to Congress on April 11 of this year. The guidelines will automatically take effect November 1 unless Congress rejects them.

Part of Congress' charge to the Commission was to project the impact of the guidelines on the prison population. This is a new and possibly unique step in legislation of this kind. It represents an attempt to forecast policy implications—how changing sentencing practices will affect other parts of the system. This article summarizes the Commission's effort.

The guidelines will dramatically alter sentencing practices in the Federal criminal justice system. To determine the effect on actual sentences and prison population, we developed a sophisticated prison impact model. Sentencing

information was collected on more than 10,000 recent cases so that the impact of the guidelines could be more accurately forecast.

### Straight probation sentences will decrease

One of the effects of the guidelines will be to reduce straight probation—probation without any conditions of confinement. Under current practice, probation terms that require some confinement include probation with jail as a condition of probation, split sentences, and mixed sentences.

The guidelines create two new types of sentences similar in form to a split sentence. For minimum sentences of no more than 6 months, the defendant may receive a probation term that includes a period of intermittent or community confinement. For minimum sentences of no more than 10 months, the defendant's sentence may be "split" between incarceration and community confinement.

As Figure 1 indicates, 41.4 percent of all convicted defendants currently re-

cieve straight probation. After the guidelines are implemented, only 18.4 percent are projected to receive this sentence. Drug law violators offer a dramatic example. Straight probation sentences for convicted drug offenders are projected to fall to 10.1 percent.

For some especially serious crimes, probationary sentences in any form will decline greatly. Currently 41.4 percent of those convicted of crimes against persons receive some form of probation. This proportion is projected to decline to 25.4 percent after the guidelines are implemented. Probation and split sentences for robbers will decline from 26 percent to 5 percent (not specifically shown in Figure 1), and drug offenses from 33.5 percent to 13.5 percent.

### Average time served will increase somewhat

Time served will increase on average from 15.8 months to 29.3 months under the guidelines, with most of this increase concentrated in a few crimes. For most crimes, time served will remain relatively unchanged (see Figure 2).

### Summary of projected impact

- Straight probationary sentences (i.e., sentences that require no form of confinement) will be reduced significantly.
- For especially serious crimes, such as drug offenses and crimes against persons, probationary sentences will decline dramatically.
- For other crimes, like property offenses, the proportion of sentences involving some form of probation will not change appreciably, although probation with a condition of confinement may be substituted for straight probation.
- Average time served for violent offenses will increase substantially. For most property crimes, average time served will remain largely unchanged. Exceptions: burglary and income tax fraud, where average time served will drop.
- Federal prison populations will grow markedly by the end of this century, more as a result of the Anti-Drug Abuse Act of 1986 and the career offender provision of the Comprehensive Crime Control Act of 1984 than as a result of the guidelines.

Michael Block, Professor of Law and of Economics and Policy at the University of Arizona, is a member of the U.S. Sentencing Commission. William Rhodes is Research Director of the Commission.

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In estimating the impact of the guidelines on the average length of sentences, we attempted to isolate the effects of the Anti-Drug Abuse Act of 1986 and the career offender provision of the Comprehensive Crime Control Act of 1984. The 1986 drug law significantly increases the minimum and maximum prison terms for most drug offenses. Additionally, the 1984 Act required the Commission to adopt guidelines that would assure that certain repeat offenders — those 15 or older who are convicted of a violent crime or drug offense and who had been convicted of two or more such crimes previously — receive sentences at or near the maximum term authorized. In accordance with this provision, the Commission established for these offenders guideline sentences close to the statutory maximums.

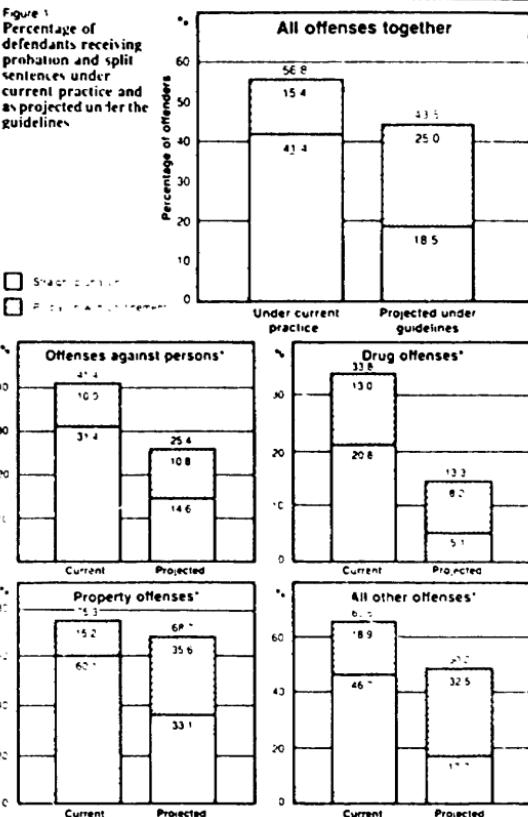
In most cases where neither the drug law nor the career offender provision are applicable, average sentence lengths are not altered radically. For these crimes (steals, fraud, property, and immigration) the projected reduction in straight probation will be the major impact of the guidelines. More defendants will be confined, but for shorter terms than at present. Their confinement will be community-based or other than security facilities.

The one tax evasion is the one crime not subject either the drug law or the career offender provision where the offenders themselves are projected to have a major impact on average sentence length. The average sentence is projected to double from a current level of less than 6 months to approximately 1 year. Not only will probation be reduced and hence the probability of confinement be increased, but the overall amount of confinement will also be increased. This increase in sentencing severity follows from treating income tax evasion like other frauds resulting in comparable dollar losses.

### The guidelines alone will not have a major impact on prison population

The precise effect of these changes on overall prison demand is not obvious. For example, a significant increase in the sentence for a crime rarely prosecuted will have little effect on prison

**Figure 3**  
Percentage of defendants receiving probation and split sentences under current practice and as projected under the guidelines

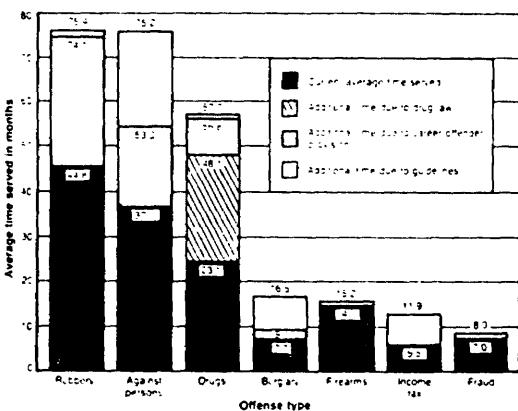


**Note:** In these charts, straight probation refers to probation without any period of confinement. Probation with confinement refers under current practice to probation with any form of incarceration (with jail as a condition, split sentences, and mixed sentences). Under the guidelines, probation with confinement also includes intermittent confinement or residence in a community treatment center.

\*Offenses against persons includes homicide, assault, rape, and kidnapping. Property offenses include embezzlement, forgery, larceny, property destruction, counterfeiting, and auto theft. All other offenses includes robbery, burglary, trespass, fraud, and income tax, firearms, and immigration offenses.

## The impact of the Federal sentencing guidelines

**Figure 2**  
Time served under current practice and projected impact of recent drug law, career offender provision, and guidelines



The average time served is reported for all offenders, including those not sentenced to prison who are counted as having 0 months of imprisonment. Imprisonment includes prison, jail, and community corrections confinement.

Note: The impact of the guidelines on two other offenses is expected to be negative. The average time served for property offenses is expected to go down to 6.5 months from the existing 6.8 months. For immigration offenses, the time served is likely to go down to 5.2 months from the current 5.7.

demand. By contrast, a small increase or decrease in the average sentence for a frequently prosecuted crime may have a substantial impact.

The Commission has projected prison demand for the years 1992, 1997, and 2002. The projections for 1992 are believed to be the most accurate because prosecution policies are unlikely to change significantly over this time period. This is especially true over the next 3 years, during which the present administration will continue to influence prosecution policies.

The 10-year projections merit somewhat less confidence. Nevertheless, they provide a general impression about prison demand over a longer time period. The

15-year projections are necessarily very speculative and are presented only so the long-term relative effects of the Anti-Drug Abuse Act, career offender provision, the Comprehensive Crime Control Act of 1984, and guidelines can be considered.

To estimate the impact on the Federal prison system of the guidelines, the Anti-Drug Abuse Act, and the career offender provision, we first had to establish as a baseline a projection of future prison demand in the absence of any change in current sentencing practices. Some assumptions necessarily had to be made about the future growth or decline in criminal prosecutions. This is difficult because criminal caseloads are deter-

mmed by the crime rate, by expenditures on investigative and prosecutorial resources, and by administrative policy as carried out by U.S. attorneys. To deal with these unknowns, two different scenarios were considered, one presumed "low growth" in the prosecution rate and the other presumed "high growth."

Figure 3 depicts 15-year prison population projections under low-growth and high-growth assumptions. Projections are given for both existing and future sentencing practices.

Even before considering the effect of these new statutes, prison population under the low-growth scenario is projected to increase 50 percent in the absence of any new statutes or change in sentencing practices.

The new drug law will cause a substantial increase in future prison populations—from 42,000 in 1987 to 85,000 in 1997. The number of inmates will double over the next decade even under a low-growth assumption and even if the Commission did not exist.

If we also take into account the career offender provision, the incremental effect of the guidelines is relatively modest only about 6 percent in 1992, 3 percent in 1997, and 2 percent in 2002.

Under the high-growth projections, if prosecutions actually grow at this high rate over the 15-year period, we could expect more than a doubling of the present prison population without any change in sentencing practices.

High-growth projections suggest that given current trends in prosecutions, future demands on the Federal prisons will exceed present prison capacity by significant proportions. While these projections as the upper limit of future prison demand, they are not beyond the range of experience. Over the last 15 years, the Federal prison population has more than doubled, from more than 20,000 to more than 40,000.

Under this high-growth scenario, the drug law is projected to have a substantial effect on future prison population. Because of the drug law, the prison population is projected to increase by over 17 percent in 1992, 39 percent in 1997, and 46 percent in 2002.

## The impact of the Federal sentencing guidelines

The effects of the guidelines are modest in comparison. Specifically, the additional effect attributable to the guidelines is 7 percent in 1992, 4 percent in 1997, and 4 percent in 2002. Although the impact of the guidelines is somewhat larger under this scenario, the underlying growth scenario is so slow that the impact of the guidelines on prison population is likely to be insignificant. The same could be said in the case of the new drug laws, for that matter. The latest projections from the Corrections Crime Center (April 1982)

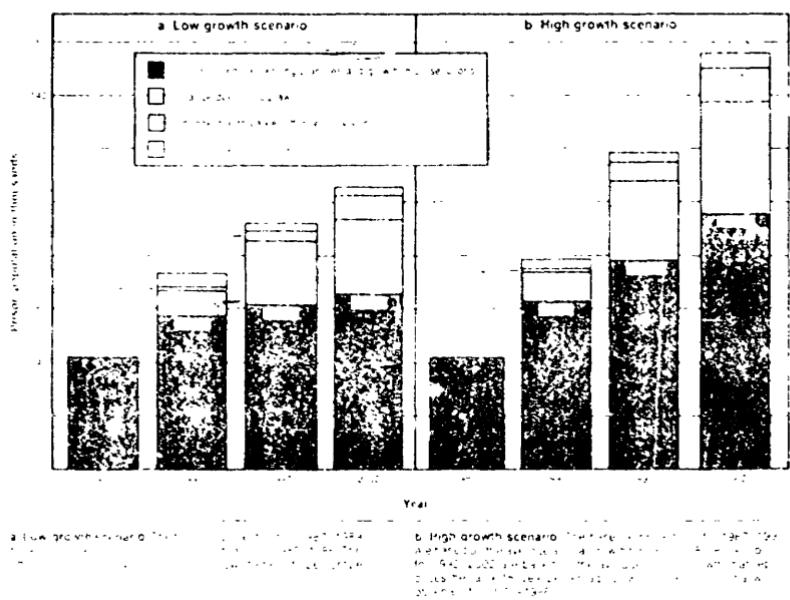
### Problems in projecting the guidelines' impact

One obvious factor that substantially influences any prison population forecast is the future level of crime. Except for short term projections, however, no reliable method exists for predicting future crime rates. Moreover, changes in the sentencing structure can be expected to affect crime through deterrence and incapacitation.

Incumbents on crime could be reduced with an adequate degree of accuracy, but it would indicate a weak

relationship between changes in the number of offenses of a given type and changes in the crime per capita level of Federal prosecutions. Such discrepancies result partly from the exercise of discretion by Federal prosecutors and partly from changing enforcement priorities. To the extent that priorities are set by the administration in effect, predicting future prison levels depends on the outcome of future elections and the policies successive administrations will pursue. These changes specify the direction of the guidelines' impact, especially in the long run.

Fig. 2  
Prison population projections



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There is also the question of how closely Federal judges will follow the guidelines. Judges may depart from guideline sentences for factors not adequately considered in the guidelines, provided they explain in writing their reasons for departure. While the Commission does not expect departures from the guidelines to occur with great frequency, it is not known how often they will occur, which direction they will take, and how large they will be. Thus, the discretion to depart from the guidelines, which is integral to the legislation that established the Commission, creates uncertainty about the ultimate impact of the guidelines on actual sentences.

Future plea negotiations are another problem that clouds prison projections. Plea negotiations are an integral part of Federal criminal justice administration. Recognizing the functional role of plea bargaining, the guidelines attempt to structure the bargaining process, not eliminate its practice. The plea bargaining environment must change under the guidelines, but the nature and extent of the changes are unknowable, creating additional uncertainty for projecting future sentencing practices.

Using sensitivity analysis, we adjusted impact projections to account for the uncertainty inherent in projecting future prison demands in the face of major policy innovations. All the results reported in this article are somewhat affected by alternative assumptions adopted for the sensitivity tests, but the major conclusions are substantively unaffected.

Against the backdrop of these various problems, one might nevertheless fear that any impact projections will be far too speculative to be trusted. But decisionmakers do not have the luxury of adopting this view. Failure to project the impact of the guidelines on sentences and on prison capacity as realistically as possible could convert an imprecise decisionmaking process into a wholly arbitrary one.

*Details of the model the Commission developed and of the data used for the projections may be found in the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements published by the Commission.*

Mr. EARLY Thank you, Judge Wilkins.

As I said at the outset, I want to work with you, and I think the committee wants to work with you. But I personally have a ton of reservations about where we're going. If there ever was an agency I thought wasn't ready to carry out their mission it's this one.

In your statement, on page 6, in connection with the implementation of the guidelines on November 1, you mention the Commission's research group has developed an expert computer system to help judges, probation officers, and attorneys apply the new guidelines.

Judge Wilkins, I really admire your statement. Last year you laid it on the table. I think we've got to try to help you. I think you need a whole lot of assistance to be able to accomplish what you're trying to do.

You mention this expert computer system, but there's no money in your budget for computers. You've got equipment budgeted at \$70,000. I mean if we don't computerize, we're not going to get anywhere. I mean how are you going to establish and retain any statistics? Some of the numbers that you use in your statement, I think are inaccurate. You know, we had the Appeals Court witnesses in here, and they told us that the courts, many districts, are sentencing under the old guidelines and under the new guidelines.

So if they're sentencing under both guidelines, you can say 90 percent are being sentenced under the new guidelines, when they're also being sentenced under the old ones. You say, we're not sure about the constitutionality of the new guidelines. I had heard there were three decisions for, and three decisions against. But in your statement, you say five for, five against. It's certainly a question that we don't know what side it's coming down on, do we, Your Honor?

Mr. WILKINS. No, we don't know what the Supreme Court will find. That's correct.

Mr. EARLY. So I really don't think we're going to get anywhere unless we computerize.

You mention this expert computer system. What do you mean by that, Judge Wilkins?

Mr. WILKINS. Mr. Chairman, last year, we purchased one computer set for every judicial district.

Mr. EARLY. That's in your statement, yes.

Mr. WILKINS. That's right. And that's in place.

The expert system is a software program that we're developing, and we are just going to mail it out to the field. What it does is it takes the probation officer through the guidelines, step by step, on a computer screen. The probation officer feeds in the facts of the various cases, and then it asks the probation officer the correct questions that need to be asked as you move through application of the guidelines, moving from offense characteristics to defendant characteristics to post-trial characteristics and so forth.

So it is a way to minimize errors that are potentially there in the application of the guidelines.

Mr. EARLY. That isn't really a computer system.

Mr. WILKINS. No.

Mr. EARLY. When I look at a computer system; at many agencies, such as INS, the Courts, FBI, or the State Department, I don't

think we're putting much on computers. We're having the same problems we get each year. And I can't see them getting any better unless we get with the electronic age.

I don't see anything in your budget, Your Honor, that's going to let you have a record coming in from the 50 States that identifies every single case, and it identifies what each sentence was. I mean that's the only way we're going to confirm what you want to do, isn't it?

Mr. WILKINS. That's correct. The information is coming in, and it will come in. And it's in response to the request mailed last week by the Administrative Office of the Courts in our behalf.

Mr. EARLY. It's coming in how?

Mr. WILKINS. It's going to come in in two ways.

One, we hope that the computer system hookup will be used to electronically transmit the information.

Mr. EARLY. Into what computer?

Mr. WILKINS. Into our system in our office.

Mr. EARLY. And how up-to-date is the system you have in your office? What computer system do you have in your office?

Mr. MOORE. We have an up-to-date micro computer system in our office.

Mr. EARLY. Are you satisfied it's got enough memory capacity to do everything that you're going to have to do?

Mr. MOORE. I asked exactly the same question when I arrived in the Sentencing Commission a few weeks ago. I've been assured by our computer people that it does.

Mr. EARLY. How much money did you spend on that?

Mr. MOORE. I think in the neighborhood of \$20,000 or \$30,000 is what they've spent so far.

Mr. EARLY. I would think that's nothing to set up the type of system we're talking about.

And, again, I'm just looking to cooperate with you. You know, you're in business now. I thought you should have been deferred. The courts, yourself, everyone all said you should have been deferred, but the Congress in its demagoguery said, oh, no, we want to be tough on criminals, do it now.

Your statement shows that the Commission is doing all it's supposed to, but you just won't be able to do all that the law tells you you have to do.

And I just think if we don't get more monies into a computer system, we're not going in the right direction.

Mr. WILKINS. Well, the issue really is should we buy computers to put in every individual probation office, in every individual district court throughout the country. And that's what we ultimately hope to have in place.

But, quite frankly, we started out with a modest program, putting out one per district, and hopefully we'll build upon that.

We've had a lot of discussions with the AO's Office about this, and it's a question of whether or not these extra computers that will be purchased will come under their budget or ours. It makes no difference to me, of course, but the computers we put there were a starting point for the Administrative Office to build upon—

Mr. EARLY. But, Judge Wilkins, as you said in your statement, the expert system is a computerized version of the Commission's guideline worksheets. That's all we're computerizing?

Mr. WILKINS. That's right.

Mr. EARLY. It doesn't seem to be very much to me. You say the Commission has taken the first step toward implementing the program in the field by purchasing and distributing 93 computers; I think that's a worthwhile thing. But I don't look at that as computerizing. You're coming in here because you want more staff, which you have to have, but if we don't take advantage of the electronic age, we're going to be in the same place we've been in with the court system.

Your Honor, on page 9 of your statement, you say, "Since November 1, 1987, approximately 230 defendants have been sentenced under the Sentencing Reform Act, while approximately 9,400 have been sentenced under the old law."

Let me ask you how and why?

Mr. WILKINS. Well, in part it is because each individual district judge is making that decision whether or not the Act is constitutional. However, your particular question is directed at the graduated phase-in of the new law and the guidelines. The statute applies prospectively only. Thus, when criminal conduct was committed before November 1, 1987, even though the case may not come to the sentencing phase until after November 1st, the old law still applies. The guidelines apply only to crimes committed after November 1st. Thus, many defendants are still being sentenced for conduct committed before the guidelines went into effect.

Mr. EARLY. So there's going to be a lot of appeals one way or the other if we ever get it to the Supreme Court and get a ruling?

Mr. WILKINS. Once the Supreme Court decides that the guidelines are constitutional, yes.

Mr. EARLY. All right. If they confirm that they're constitutional, that means everyone that's been sentenced under the old guidelines might have a case?

Mr. WILKINS. If the judge struck down the guidelines, then the Government might have a case to go back for resentencing, that's right. It's going to be a terrific burden, a logistical burden on the Marshals and the courts and everybody else. It's very unfortunate.

I don't know how we can avoid it, given the fact that the constitutional challenges did not come until the guidelines went into effect.

That's why we're urging, and I think the Department of Justice is receptive to trying to obtain, an expeditious resolution by the Supreme Court, rather than let it follow the normal appellate process which could take two or three years.

Mr. EARLY. Okay. This was brought up with Attorney General Meese the other day, Judge.

Can you tell us, how many people do you estimate will be in prison and sentenced under the old guidelines as of the sunset of the Parole Commission, which is in the fall of 1992?

Would you look and, for the record, give us some type of estimate because I don't know what we're going to do with them. Can you tell the committee what's going to happen with them?

As far as people sentenced under the old guidelines now.

Mr. WILKINS. You mean under the old law before the guidelines? Those that are eligible for parole?

Mr. EARLY. Yes.

Mr. WILKINS. I think there's going to have to be an amendment to the statute, probably to somehow continue the Parole Commission on a skeleton basis to deal with those individuals that are left in the system under the old law. I don't know how many it will be. I'm sure Mr. Quinlan and others here—

Mr. EARLY. I think it's going to be a whole lot.

[The information follows:]

Our research staff estimates that approximately 15,500 individuals will be in prison and eligible for parole as of November 1992. The number includes 5,800 individuals convicted prior to November 1, 1987, and 9,700 individuals convicted after November 1, 1987, for offenses committed prior to that date.

Mr. EARLY. Judge Wilkins, I was really pleased with your statement where you said you and the Commission are saying there's going to be a lot of amendments, as I interpret it. And I think, you know, there has to be a lot of amendments.

Since a great number of crimes are performed by repeat criminals, Judge, isn't it likely that increasing the prison terms and eliminating parole could actually reduce the number of crimes, and thus the number of arrests, prosecutions and incarcerations?

Mr. WILKINS. That is the premise on which we have emphasized deterrence and incapacitation as two of the key principles in our rationale for our sentencing guidelines.

As the statute requires, the guidelines identify the career offenders and call for incapacitating those individuals for substantial periods of time. And I think, after all is said and done, the data collected will show that this will assist in reduction of the number of criminal acts committed. This is because recidivists, a small minority of people, commit the majority of crimes.

Mr. EARLY. Judge Wilkins, you know, we all get hung up with stats. The recidivism rate of the old Federal prisoners, used to be, I think, about 22 percent. Now, in the last six years they have become more drug oriented. Because many of the prisoners are there for that reasons, wouldn't you think the recidivism rate is going to climb astronomically?

Mr. WILKINS. Overall, perhaps it will, with the influx of drug-related offenders.

The question is what would happen without the incapacitation of career criminals. We would have the increase of the drug-related offenders as well as the continued increase in the commission of crimes by career criminals.

We hope that, with the use of guidelines, and the certainty that career criminals will be incarcerated for a long period of time, it will have a positive effect. As you well recognize, it's not the salvation to all the problems.

Mr. EARLY. For sure. But hasn't the Federal prisoner in the past been a little different from the State and local prisoner, as far as there's many, many more one-time offenders in the Federal system, especially prior to the drug scourge?

Judge Wilkins, you provided the Congress in June of 1987 with projections of the impact of future prison populations as a result of the sentencing guidelines.

Have you made any more recent projections, and would you describe for the committee your latest projections for overall prisoner populations, and how much of that results from the sentencing guidelines?

Mr. WILKINS. Yes, sir. In the year 1992, our projections—and we have worked with the Bureau of Prisons in developing these—would indicate that the guidelines will increase prison population by around 7 percent.

Mr. EARLY. Seven?

Mr. WILKINS. Seven. There are two other factors that must be taken into account.

One is the career offender statute, which the guidelines are required to incorporate and which identifies recidivists who have prior drug offenses or crimes of violence, and commit a third one—

Mr. EARLY. Judge Wilkins, could I just interrupt you one time?

I have trouble with witnesses in Washington because they talk numbers and then talk percentages, they go back and forth, so we don't know where they are.

Could you keep it in numbers for us. That's 7 percent of what? I've heard projections that by 1990 we're going to have 70,000 inmates I want to know if that's 7 percent of the current population, which would be in the area of 40,000. So in 1992 you anticipate how many Federal prisoners?

Mr. WILKINS. Approximately 72,000.

Mr. EARLY. Seventy-two thousand, all right.

Mr. WILKINS. My general counsel. We have two projections using different—

Mr. EARLY. That's better than most agencies. They usually have five or six. Two ain't bad.

Mr. WILKINS. Between 72 to 79,000 prisoners in the year 1992.

Mr. EARLY. And, Judge Wilkins, do you have numbers for 1990 and 1991?

Mr. WILKINS. No, sir, I do not. I have them only in five-year increments, projections for each additional five years into the future.

I can get that information for you, Mr. Chairman. I just don't have it at hand.

Mr. EARLY. Well, we'll have the Bureau of Prisons next. I think your Commission is well intended, and I'm repeating that, but I just want to cooperate with you so we achieve what we want to.

When you were suggesting a percentage, you were saying a 7 percent increase. That was 7 percent of what?

Mr. WILKINS. Seven percent increase in the prison population beyond the level that would occur without the sentencing guidelines.

Mr. EARLY. But don't we have 40,000 today?

Mr. WILKINS. There's 42,000 approximate prisoners today without guidelines, without the career offender statute, and without the anti-drug abuse law passed by the Congress. The population, our projections would show, would be 57,000 in 1992 based on current growth trends.

The career offender would increase it by 6 percent more, and the anti-drug abuse law will increase it by an additional 17 percent.

Then, the sentencing guidelines themselves account for an additional increase of about 7 percent, maximum, making a total population of approximately 72,000 to 79,000 prisoners.

Mr. EARLY. Just to finish up before I yield to Mr. Rogers. With regards to the constitutionality of the guidelines, I was aware of three decisions, but in your statement, you say there's been five decisions on each side, with another 65 pending.

Do you have any indication as to when these cases will be elevated to the Appeals Court and the Supreme Court?

Mr. WILKINS. No, sir, I do not. That's in control of the district judge, as well as the Department of Justice and the defendants bringing the challenges as to how they will move.

You see, it is not only that some judges have ruled the sentencing guidelines are constitutional while others have said the opposite. The defendant must be sentenced before the case then is ripe for appeal. I understand we have one case in which it is very likely the court will rule tomorrow on the constitutional challenge and also sentence tomorrow. That case then will be in a posture for appeal to the appropriate Appellate Court and perhaps, if the losing side deems it appropriate, to seek direct certiorari to the United States Supreme Court, which we're hoping will occur.

Mr. EARLY. Judge, my final question before I yield to Mr. Rogers, you are requesting an additional 15 people over the number funded in 1988.

Why do you require additional personnel when you have completed the primary mission of the Commission, the formulation of the guidelines, and you have also completed the prison impact study?

How much of your request is for training and how does that compare to 1988?

Mr. WILKINS. Well, for the past two years, we have been focusing on one mission, and that is developing the guidelines. We could have used more staff along the line, but as a brand new agency, it's not wise to just take the first 50 people that walk in the door. So we've had to move very slowly in hiring permanent staff, but we feel we have hired a good capable staff.

But we focused initially on one mission, that is the writing and developing of these guidelines. And quite frankly we were able to do that with a relatively small number of qualified individuals.

But now the work is expanding considerably with monitoring of the sentences these judges are giving, the reasons why they gave the sentence, whether or not it was within or without the guidelines, and if outside, the reasons why. And, of course, we have a continuing role in correcting errors that are occurring in the field so that we can improve these guidelines. In other words, there's just a mammoth research responsibility which will necessitate additional staff, such that most of these additional 15 people will go into the research section and in data collection.

Now, we've got these lawsuits, as well as an expanded goal of training, which together may necessitate increasing our legal staff by a couple of attorneys. We have training programs going on almost every week somewhere in this country, and that's going to continue for at least the next couple of years, I'm sure, until every-

body can apply these guidelines with relative ease and a minimum amount of mistakes.

**Mr. EARLY.** Do you know how many of these 15 are for additional training?

**Mr. STEER.** I don't think, Mr. Chairman, we made a specific allocation decision, but rather we're figuring that some of the legal staff and some of the research staff would be called upon to do those duties.

We are more task-oriented rather than designating people for a particular function, in the sense of that's all they do.

**Mr. EARLY.** Provide for the record how many people are budgeted, what turnover you've had, and as specifically as you can, what reasons you've lost these people, whether it's been inadequate salaries or whatever.

[The information follows:]

The Commission's FY 1989 budget request is designed to support 69 full-time positions, including the 7 voting Commissioners. Approximately one-third of the staff positions are associated with the Commission's research and sentence monitoring functions; one-third with legal, guideline drafting, and training functions; and one-third with secretarial and administrative support. The Commission's present intention is that the requested increase of 15 positions from the presently authorized ceiling of 54 will be allocated in approximately the same manner.

At least eight staff persons are presently spending—and will for the foreseeable future spend—a substantial portion of their time in training judges, probation officers, and others in application of the sentencing guidelines. This number includes three staff persons who are presently assigned to the Commission's Technical Assistance Service ("Hotline") unit.

The Commission has experienced a significant staff turnover in the approximately two and one-half years of its existence, but salary constraints have not been the primary contributing factor. Since the Commission's creation, some 20 full-time staff persons have left the Commission for various reasons. About one-half of those departing can reasonably be said to have left for more lucrative employment opportunities. That number includes, for example, a former staff director who was appointed to a federal district judgeship, a researcher who accepted a teaching position at a major university, and several staff attorneys who have left the Commission for other positions offering greater responsibility and remuneration in the federal government or in the private sector.

A number of other former staff members left the Commission to continue their education; several others accepted lateral transfers within the government; and several departed for personal reasons. For the most part, the Commission has been able to offer salaries sufficient to attract and retain well-qualified staff, although the compensation ceiling has been an impediment at the highest staff levels. This is of particular significance at the Sentencing Commission where the salary cap is presently \$72,500, whereas other similarly situated agencies have a salary cap of \$77,500.

**Mr. EARLY.** I yield to Mr. Rogers. I will have several other questions.

**Mr. ROGERS.** Thank you, Mr. Chairman.

Following up on the constitutionality question, Judge, has there been a consistent reason that the courts have given for overturning the constitutionality?

**Mr. WILKINS.** The several decisions that have been rendered have given various reasons. If you want to get into more details, Mr. Steer, of course, who has been arguing some of the cases on behalf of the Commission, can answer the question in more detail.

But generally speaking, the courts have determined that the sentencing guidelines legislation violated the separation of powers by placing a function, such as writing sentencing guidelines, in the hands of an agency.

Another issue has been that judges are serving on this Commission, which is a violation of the separation of powers.

The Justice Department argues that we're an Executive Branch agency, but constitutional.

The Commission takes the position, as the statute reads, that we're a Judicial Branch agency, but constitutional.

John do you want to expand on that?

Mr. STEER. Mr. Rogers, I would say that the principal argument that seems to bother most of the judges thus far seems to be the statutory designation of a Commission with at least three judge members on it, and a feeling on the part of the judiciary that there is something wrong with such a Commission writing sentencing guidelines which are binding on other judges except for in specified instances.

So it's the judicial membership and the composition of the Commission that seems to have bothered most of those who have either ruled negatively or indicate that they might.

That, I might say, is a bit ironic in that the position of the Judicial Conference in the development of the legislation was to contend that there should be a very strong judicial presence on the Commission. And one of the last changes in the legislation was to increase from two to three the number of judges who would serve on the Commission.

Mr. ROGERS. Are some of the courts choosing not to go by the guidelines pending a constitutional test?

Mr. WILKINS. I don't know that they are doing that. Some have found the guidelines unconstitutional and thereby sentenced in accordance with the old procedures.

But of the 230 cases that have been sentenced, 96 percent of them are sentenced within the guidelines. The other 4 percent, the judge applied the guidelines but for one reason or another, departed below or above the guideline range in giving sentence.

Mr. ROGERS. I thought I heard you say, in response to another question earlier, that some of the courts were choosing not to follow the guidelines pending the constitutionality.

Mr. WILKINS. Well, I didn't mean to say that, Mr. Rogers. If I did, I'm not aware of that, other than those courts which have found the guidelines to be unconstitutional. Of course, these courts are not following them. But the others, of course, as I understand it, are applying the guidelines. And there are some 230 cases that have been sentenced to date.

Mr. ROGERS. You were asked about the impact of the guidelines on the population in the prisons. In addition to that, should we be worried about the gridlock of caseload, especially in the Appellate Courts?

Is that a substantial problem?

Mr. WILKINS. Yes. And I think the Appellate Courts are going to see that certainly as much, if not more, than the district courts, because the Appellate Courts will be the funnel where all of the cases will come. And as you can well imagine, the way the statute is written, any case can be appealed by the defendant even if the sentence is within the guidelines.

This is a problem, as I see it. But, nevertheless, that's the way the law reads. And, of course, if the sentence is above the guide-

lines, the defendant will likely appeal, so that—well, there's a potential for appeal in the great majority of cases even if the guidelines are correctly applied.

If they are correctly applied, I don't think the appeal will be successful. But, nevertheless, it will create the paperwork, the review by the higher courts, and a decision. So it's going to increase, I think, substantially the workload of Appellate Courts. Additionally, the district courts are going to have to spend more time in sentencing a defendant, because they now must articulate the reasons why the sentence is being invoked. And that's a desirable goal, and I think the time is well worth it to be spent in that fashion.

But, nevertheless, I think realistically it's going to increase the burden on both levels of our Federal judiciary.

Mr. ROGERS. And substantially.

Mr. WILKINS. Yes, sir.

Mr. ROGERS. It could be very substantial, couldn't it?

Mr. WILKINS. I think so.

Mr. ROGERS. The system is already overloaded and screaming for relief now.

Can you anticipate that there might even be a gridlock where you'd have a defendant waiting to be sentenced who wouldn't—the line would be too long to get in. And in the meantime, you have the Federal statutes on time that you've got to contend with.

What are we going to do about that?

Mr. WILKINS. Well, I think what we'll see is the civil docket being put aside.

Mr. ROGERS. That's already five years old.

Mr. WILKINS. Well, in some districts perhaps, but not in a good majority I guess. At least the ones I'm familiar with.

But I think we're going to see that even—I think we'll have to comply with the Speedy Trial Act and we'll have to comply with a reasonable sentencing procedure within the time permitted by the Act. I don't know what the courts will work out.

But the criminal docket has to come first, and that simply means the civil docket is going to get further and further behind even in the districts where it's current now. It'll get behind, and the districts you referred to will get further behind. And that's unfortunate, but I think that's what we'll see.

Mr. ROGERS. Well, the big time crunch is going to come isn't it, at the sentencing court level?

Mr. WILKINS. I think some sentencing proceedings are going to take more time than today. I don't think it's going to be quite as bad as spending several hours for every sentencing proceeding that comes down.

But we are going to have to spend more time prior to the sentence being invoked. I think it's a desirable goal, though. I know it's going to create a burden but, as I mentioned not long ago, we spend six months in investigation and three months by the Grand Jury and a month to try the case and then, all of a sudden, we're going to dispose of the sentence in 15 minutes. So I think the additional sentencing time is well worth it.

But whether it is or not is beside the point. The statute is going to require it. It's an inevitable fact of life. And it is going to impact substantially on the courts.

Mr. ROGERS. That's all I have, Mr. Chairman.

Mr. EARLY. Thank you.

Judge Wilkins, you know, on page 8 of your statement, Item 7, you touch upon that particular subject, and you say that "Importantly, the purpose of that function is to obtain information necessary for assessing the effectiveness of the guidelines and the need for changes in them, rather than for the purpose of modifying or correcting any individual sentence." And you say, in parentheses, "The latter responsibility is one which the statute leaves to the courts and in which the Commission plays no direct role."

Now, what Mr. Rogers just spoke about, won't this increase the burdens on the already overloaded court system?

Mr. WILKINS. Yes, sir.

Mr. EARLY. I mean judges come in hollering at us, saying that you keep giving us more responsibility and not the personnel to do it.

For the record, would you estimate in your professional opinion how much of an additional workload it's going to be on the judges? Just for the record.

Mr. WILKINS. Okay.

[The information follows:]

The Commission has no means of estimating with any acceptable degree of confidence, at this time, the workload increase on the judiciary as a result of the sentencing guidelines. There are simply too many variables, and it is too early in the guideline application process, to say what the respective impacts will be on probation officers, federal district court judges, the appellate courts, and other components in the federal criminal justice system.

With respect to the Probation service, although there are some offsetting considerations, it seems reasonable to expect that there will be a substantial impact and a resulting need for additional manpower. We have no reason to dispute at this time the projected impact and needs assessments provided by the Probation Division and support the increases which have been requested.

At the district court level, we believe that it is reasonable to expect that sentencing proceedings will consume some additional court time. However, we believe it is too early to predict the effect of the guidelines on the number of trials or how many additional district court judges, if any, will be needed as a result of the guidelines. As with any substantial change in the law and legal procedures, it is to be expected that the new system will be more burdensome in the initial application stages than after necessary adjustments are made and familiarity is gained. At the appellate court level, we expect that additional judicial resources eventually will be needed to cope with the volume of sentence appeals which can be expected under the new law. We are not in a position at this time to more fully describe the expected impact, except to say that the increase in appellate workload will be gradual over the next budget cycle.

Mr. EARLY. Also, on page 15 you say the Commission research will closely monitor prosecutorial discretion in the plea negotiation process under the guidelines, using both quantitative and qualitative analysis.

For the record I want to know, in your professional opinion, how much computer capacity you've got to store what you think you have to store, and what you actually need to be able to effectively do this over a long-range period, say six or 10 years. I don't think you've got the capacity.

Mr. MOORE. We'll be glad to do it.

[The information follows:]

Plea Negotiation Research. The purpose of this study is to describe the impact of the sentencing guidelines on charging and plea negotiation practices, as Section 236(a)(2) of the Sentencing Reform Act requires.

To determine the effect of the guidelines, Commission researchers will collect data describing plea negotiation and charging practices before the guidelines are fully implemented. Next, data will be gathered at about the time the law has first taken full effect (i.e., in autumn, 1989). Finally, a third phase of data collection will be conducted after the guidelines have been standard operating procedure for some time (i.e., in spring, 1991). In the before/during/after study, researchers will compare the data from each period and report significant changes that have occurred over time.

The qualitative component of this research uses personal interviews and content analysis of documents and policies. Researchers will interview Assistant U.S. Attorneys, the defense bar (both public and private), and probation officers in 10 representative federal districts. The interviews are structured so that identical questions will be asked in all three research waves.

The quantitative research uses statistics on guilty pleas and trials, sentencing hearings, plea agreements and factual disputes, and timing. These data will be drawn from Administrative Office of the U.S. Courts databases and from the Commission's own monitoring. These statistics will also be compared over time.

The first phase of research is underway now.

Computer System Capabilities. In enacting the Sentencing Reform Act of 1984, the Congress charged the Sentencing Commission with a twofold responsibility: 1) publishing a comprehensive set of mandatory guidelines for individual and organizational defendants; and 2) establishing a comprehensive research program not only to monitor compliance with the provisions of the guidelines but also to serve "as a clearing house and information center for the collection, preparation, and dissemination of information on federal sentencing practices." In coupling these responsibilities Congress obviously intended that the Commission have the power to "make the rules" and likewise have the data to tell the Congress and other interested parties how well the rules were working.

From the beginning of its efforts the Commission has placed a very high priority on the empirical data underlying its guidelines and policy decisions. For example, crucial to the formulation of the current guidelines was our extensive research into the sentencing practices of federal judges as documented in

data from the Administrative Office of the U.S. Courts, the Parole Commission, and other sources. Similarly, our analysis of the impact of the guidelines on prison populations was rooted in extensive data furnished by the Bureau of Prisons.

Now that the guidelines are in place, the Commission is expanding its research program to address the full scope of the data collection and dissemination mandated by Congress. Central to the success of that effort is an automated information management system which can respond to the wide variety of inquiries which the Commission will receive from Congress, the criminal justice community and other interested parties.

As we have with other tasks, the Commission is addressing its automation requirements in carefully planned phases. We are fully aware of the broad scope of the information management responsibilities entrusted to us, but we feel strongly that it is better--in terms of technology and fiscal prudence alike--to move deliberately in this area.

The Commission operates today using state of the art microcomputer technology for its word processing and information management functions. This technology is developing so rapidly that equipment sold today by a manufacturer is often replaced within the year with compatible products offering significant storage and processing enhancements. The cutting edge moves very fast, and by remaining with microcomputer technology we are able to move with it.

This microcomputer based system will serve as the heart of the first phase of our research program--the monitoring of how probation officers and courts apply the guidelines. With some modest enhancements, our present equipment is fully adequate to capture the full range of sentencing data from the date the guidelines became effective.

At the same time that we are collecting the raw data about sentencing practices under the new guidelines, we are planning to integrate this database into the already existing scheme of criminal justice information collected by the Department of Justice, the Courts, the Bureau of Prisons and others. The Commission has retained a computer systems expert to assist it in evaluating our present capacity and future system needs. This report will assist the Commission in evaluating our future needs for linkage to other systems. Those needs are likely to involve some planned expansion of the Commission's computer support systems.

We believe that our FY 1989 budget request is adequate for the Commission's own foreseeable computer system needs in the coming year. However, this request does not include funding for additional computer equipment in field probation offices beyond the single computer per district initially provided by the commission from funds in its FY 1987 budget. It is our

understanding that the Administrative Office of the U.S. Courts has put forward a supplemental request to cover additional computer equipment for probation officers. The Commission supports that request. The storage capacity of our current system substantially exceeds current demands and can be further augmented at a modest cost as informational storage demands grow. The Commission's research director is confident that this system is adequate to meet the Commission's needs for the next year or two. The expected report of the aforementioned systems consultant will assist the Commission in evaluating its needs beyond that point. It may be that the desired integration of the Commission's data gathering and analysis functions with similar functions in other units of the federal criminal justice system will necessitate increases in computer capabilities beyond those presently foreseen and planned for by the Commission's research staff.

Mr. EARLY. Judge Wilkins, in your discussions and deliberations, did you focus at all on the possible solutions to the problem of housing the prisoners? I mean, did you discuss any alternatives to incarceration?

Mr. WILKINS. Yes, sir, we did. And the guidelines provide for alternatives to incarceration under appropriate circumstances.

Probation, however, or the availability of probation under the guidelines has been reduced, I think significantly, from past practices. And we've tried to focus on short but certain sentences in many areas where probation—for example, in the white collar crime area—has been traditionally given.

This means that local community confinement centers will be utilized more by the Bureau of Prisons.

Mr. Quinlan is here, and we talked about it at lunch today. But we envision these community confinement centers as serving as a short shock treatment of incarceration. And he's the expert in this area. But I think common sense dictates that while this will increase the number who are "incarcerated," by using community confinement facilities, the cost will be much less than incarceration even in a medium-security prison.

I hope to see this. And I think this is going to be a motivating factor to expand the construction of community confinement facilities. And I think it's something for the future for our Federal courts to consider seriously.

Mr. EARLY. I am also going to ask Mr. Quinlan and Mr. Baer, Chairman of the Parole Commission, this question.

Have you done anything as far as the costs of a prisoner incarcerated versus a released prisoner under probation? Have your people done anything with regards to the costs of that particular prisoner?

Mr. STEER. We have, Mr. Chairman. I'd be glad to furnish those estimates for the record. I don't recall them offhand.

But that comes into play at one point in applying the guidelines. The sentencing court is required to impose a fine, which will cover that cost in the event the defendant is able to pay it. So we do have some estimates on that and I'd be glad to furnish them.

Mr. EARLY. Okay. Mr. Steer, you're doing an awful lot of research. I want to know the details on your computer operations.

[The information follows:]

The Bureau of Prisons and the Administrative Office of the U.S. Courts have provided to the Commission information indicating that the coverage cost of imprisonment per inmate is \$1,221 per month, the average cost of commitments to a halfway house is \$920 per month, and the average cost of probation supervision is \$83.33 per month.

Mr. WILKINS. I'm just encouraged, Mr. Chairman, by the comments you made, and I think this computer system is something that is going to be necessary for the correct application of these guidelines. We perhaps are moving too cautiously as we approach these appropriations. And I'm not sure whether the AO's Office is going to include this in an item in their budget or not, to put these computers in every district court.

But we'll certainly go back and reassess the position we've taken on that. We've got one in every district now. That's not sufficient, but it's just the foundation on which we can build for the future.

Mr. EARLY. Judge Wilkins, what's happened, and we've seen it every time you've had to absorb a pay cut or a pay raise, no matter what the agency, they absorb it through means other than personnel.

Tell me, that hotline that you put in, is that a toll free number?

Mr. WILKINS. No, sir.

Mr. EARLY. It is not. Why don't you speak a little bit about that for the record.

Mr. WILKINS. It is available, but it's not a toll free number. The various probation officers, of course, just call on their individual government phones in to us. It's a separate number which we have set aside for this purpose.

Perhaps the use of a toll free number may be more cost-efficient.

Mr. EARLY. Yes, because, you know that probation officer is going to absorb the cost of that.

Mr. WILKINS. Well, the individual probation office is paying the cost of that telephone call made by that probation officer, or the district court is paying for that judge to make that call.

Mr. EARLY. But they're not going to encourage them to do that, though, are they, if the auditor or comptroller is coming down on him for that particular cost?

Mr. WILKINS. You're right about that, yes, sir.

Mr. EARLY. So the overall cost of the service is nothing to you people?

Mr. WILKINS. Relatively very little. Other than maintaining the phones in our office and maintaining the staff to provide the answers.

Mr. EARLY. Judge Wilkins, thanks again, and we wish you well in a very difficult task.

Mr. WILKINS. Thank you very much, Mr. Chairman.

Mr. Rogers, thank you.



**WEDNESDAY, MARCH 23, 1988.**

**BOARD FOR INTERNATIONAL BROADCASTING**

**WITNESSES**

**MALCOLM FORBES, JR., CHAIRMAN, BOARD FOR INTERNATIONAL  
BROADCASTING**

**GENE PELL, PRESIDENT, RADIO FREE EUROPE/RADIO LIBERTY, INC.**

**BOARD FOR INTERNATIONAL BROADCASTING**

Mr. DWYER [presiding]. The first item we shall consider this afternoon is the budget request for the Board for International Broadcasting. The request is comprised of two items: an FY 1988 supplemental language request and the FY 1989 request which totals \$227,100,000 and is an increase of \$8,100,000 above the appropriations enacted for FY 1988.

At this point, we will insert the justification into the record that was submitted in support of this request.

[The budget justification follows:]

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## BOARD FOR INTERNATIONAL BROADCASTING

SUMMARY

(in thousands of dollars)

	FY 1987 Actual	FY 1988 Estimate	FY 1989 Estimate	FY 1989/88 Increase/ Decrease
<b>Board for International Broadcasting</b>				
Administrative expenses.....	1,166	1,237	1,305	+68
<b>Grants to RFE/RL, Inc.:</b>				
Operating expenses.....	120,487	158,778	162,387	+3,609
Transmitter Modernization	18,347	---	---	---
Foreign Currency Supplemental and Rate Adjustments.....	<u>33,195</u>	<u>24,985</u>	<u>28,408</u>	<u>+243</u>
<b>TOTAL</b>	<b>173,195</b>	<b>185,000</b>	<b>192,100</b>	<b>+7,100</b>
<b>Relay Station In Israel</b>	<b>---</b>	<b>34,000</b>	<b>35,000</b>	<b>+1,000</b>
<b>TOTAL AGENCY</b>	<b>173,195</b>	<b>219,000</b>	<b>227,100</b>	<b>+8,100</b>

The appropriation request for FY 1989 is to provide for the continued oversight activities of the Board for International Broadcasting; its grants to Radio Free Europe/Radio Liberty (RFE/RL, Inc.) for broadcasts to the Soviet Union, Poland, Romania, Czechoslovakia, Hungary, Bulgaria, the Baltic States and Afghanistan; and the initial construction costs of a new radio relay station in Israel.

The FY 1989 request is based on exchange rates of 1.64 West German Marks, 133.50 Portuguese escudos and 110.35 Spanish pesetas to one dollar. These compare with original FY 1988 budgetary exchange rates of 1.99 marks, 148.90 escudos, and 134.23 pesetas to the dollar. Actual rates in the first quarter of FY 1988 have been at or near the new rates set for FY 1989, causing a potential currency exchange loss in FY 1988 of over \$28 million. Only \$3.2 million remains in BIB's reserve to fund foreign currency losses. The remaining losses will be covered by

diverting \$20 million of funds already appropriated for modernization and \$4,985 million appropriated for ongoing operations. Proposed language for accomplishing this reprogramming is being submitted to the Congress by the Administration. This appears to be the only possible means to cover these losses without passing a new appropriation; if the losses are not covered, RFE/RL will run out of funds as early as August.

Increases in BIB's and RFE/RL operating expenses reflect adjustments for inflation in the United States and various European countries.

#### BOARD FOR INTERNATIONAL BROADCASTING

The Board for International Broadcasting was established by P.L. 93-129 (87 Stat. 456). As that statute was amended by P.L. 97-241 (96 Stat. 273), the Board consists of nine members appointed for staggered three-year terms by the President with the advice and consent of the Senate. The members of the Board, which is an independent Federal agency, also serve as directors of RFE/RL, Inc., which is a non-profit corporation, and appoint and fix the compensation of RFE/RL officers. The chief operating executive (president) of RFE/RL, Inc. serves as an ex officio member of the BIB.

The BIB is authorized to grant appropriated funds to RFE/RL, Inc.; assess the quality, effectiveness and professional integrity of its broadcasts "within the context of the broad foreign policy objectives of the United States"; encourage the most efficient utilization of available resources; procure supplies, services and other personal property, including specialized electronic equipment; and report annually to the President and the Congress. The Board's fourteenth annual report, submitted January 31, 1988, reviewed its own activities and evaluated the mission and operations of RFE/RL during FY 1987. The report contains the official audit of RFE/RL finances performed for the BIB by the independent public accounting firm of Arthur Andersen & Co.

## RADIO FREE EUROPE/RADIO LIBERTY

RFE RL broadcasts in 48 languages of the Soviet Union and Eastern Europe for an average of 1070 hours weekly from one medium-wave and 45 short-wave transmitters. RFE broadcasts to five East European nations and the Baltic States, while RL broadcasts to the U.S., S.R.L., and Afghanistan in Russian and 12 other languages. Broadcasts are news-oriented with analyses based on pro-American research. While neither ADA concentrates on projecting American society and institutions, RFE/RL broadcasts serve as substitutes for the uncensored domestic radio stations denied to the peoples of Eastern Europe and the Soviet Union. The RFE RL broadcast center is located in Munich, West Germany. Transmission facilities are located in Portugal, Spain, and at three sites in West Germany. News and program bureaus are located in Washington, New York, London, Paris, Brussels, Bonn, Rome, and Islamabad.

### Financial Highlights and Perspective Plan

Over seventy percent of RFE/RL's operating budget has been applied to personnel compensation, with power and other transmission costs accounting for 35 percent of the remainder. Pension funding and severance costs have become an increasingly significant budget factor; program staff was largely recruited in the 1950s, and half the key programmers are due to retire by 1991.

Approximately 75 percent of RFE/RL expenditures are in West German marks, an additional 10 percent in Portuguese escudos and Spanish pesetas.

The Administration estimates new budget authority and outlays for BIB and RFE/RL (excluding the relay station in Israel) as follows:<sup>\*</sup> 06

(in thousands of dollars)

<u>Budget Authority:</u>		<u>Outlays:</u>	
FY 1989	\$192,100	FY 1989	\$204,450
FY 1990	\$241,000	FY 1990	\$219,000
FY 1991	\$205,600	FY 1991	\$227,500
FY 1992	\$211,300	FY 1992	\$211,340

The increase in FY 1990 reflects completion of the program to refurbish RFE/RL's current transmitting equipment.

\*Based on exchange rates of 1.64 marks, 133.50 escudos and 110.35 pesetas to the dollar.

## BOARD FOR INTERNATIONAL BROADCASTING

FY 1989

Program and Financing  
(in thousands of dollars)

	<u>FY 1987 Actual</u>	<u>FY 1988 Estimate</u>	<u>FY 1989 Estimate</u>
<b>Program by activities:</b>			
1. Administrative expenses.....	1,166	1,237	1,305
2. Grants for private broadcasting activities, RFE/RL	<u>169,530</u>	<u>169,288</u>	<u>210,795</u>
<b>Total obligations.....</b>	<b>170,696</b>	<b>170,525</b>	<b>212,100</b>
<b>Financing:</b>			
Unobligated balance available, start of year.....	-3,026	-5,525	-20,000
Unobligated balance available, end of year.....	<u>5,525</u>	<u>20,000</u>	<u>---</u>
<b>Budget authority, appropriation.....</b>	<b>173,195</b>	<b>185,000</b>	<b>192,100</b>
<b>Relation of obligations to outlays:</b>			
Obligations incurred, net.....	170,696	170,525	212,100
Obligated balance, start of year.....	16,607	30,809	34
Obligated balance, end of year.....	-30,809	-34	-7,684
Adjustments in expired accounts.....	<u>-18</u>	<u>---</u>	<u>---</u>
<b>Outlays.....</b>	<b>156,477</b>	<b>201,300</b>	<b>204,450</b>

BOARD FOR INTERNATIONAL BROADCASTING

Under Public Law 93-129, as amended, the Board for International Broadcasting consists of nine members, appointed by the President, and with the advice and consent of the Senate for terms of three years; one ex officio member (the President of RFE/RL, Inc.) and a small professional staff appointed under the provisions of Title 5, United States Code. The Board is located at 1201 Connecticut Ave., N.W., Suite 400, Washington, D.C., 20036.

Under the law, the Board exercises oversight responsibility over two major aspects of RFE/RL operations: (1) broadcast quality and effectiveness (including the responsibility to ensure that broadcasts are consistent with broad U.S. foreign policy objectives); and (2) effective utilization of Federal funds.

The normal operating expenses of the Board include staff compensation and benefits; compensation to Board members for their time and travel costs to attend regular meetings and inspect RFE/RL facilities; rental services; office supplies and equipment; contract fees for the annual audit of RFE/RL finances by an independent public accounting firm; and fees to consultants, principally in the area of program evaluation, to assist the Board and staff in their oversight functions.

BIB operating expenses in FY 1987 were \$1,166,000; the FY 1988 appropriation for the BIB's expenses is \$1,237,000.

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BOARD FOR INTERNATIONAL BROADCASTING

Obligations by Object Class

(Exclusive of Grants)

(in thousands of dollars)

<u>Object Classification</u>	FY 87 FTE	Actual Amount	FY 88 FTE	Estimate Amount	FY 89 FTE	Estimate Amount	89/88 Increase or Decrease FTE	Amount
<b>Personnel Compensation:</b>								
11.1 Full-time permanent..	9	439	10	484	10	500	--	+16
11.3 Other than full-time permanent .....	1	79	1	110	1	137	--	+27
Total personnel compensation .....	10	518	11	594	11	637	--	+43
12.1 Personnel benefits:								
Civilian .....		64		76		77		+1
21.0 Travel and transportation of persons .....		77		79		80		+1
23.3 Communications, utilities and miscellaneous charges		72		84		101		+17
24.0 Printing and reproduction.....		15		15		18		+3
25.0 Other services .....		402		375		377		+2
26.0 Supplies and materials		18		14		15		+1
<b>TOTAL OBLIGATIONS .....</b>		<b>1166</b>		<b>1237</b>		<b>1305</b>		<b>+68</b>
<i>(Excluding Grants)</i>								

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BOARD FOR INTERNATIONAL BROADCASTING

Summary of Increases and Decreases  
(in thousands of dollars)

<u>Personnel compensation: Full-time permanent positions</u> .....	+1
Impact of the 1988 2% pay raise and increases due to within-grade promotions in accordance with OPM guidelines.	
<u>Personnel compensation: Positions other than full-time permanent</u> .....	+2
Reflects 2% pay raise and increases in intermittent hours for board members	
<u>Personnel benefits: Civilian</u> .....	+1
Reflects increased participation in Federal Employees Retirement System (FERS)	
<u>Travel and transportation of persons</u> .....	+1
Adjustment for inflationary impact on domestic and international airfares and per diem costs.	
<u>Printing</u> .....	+3
Inflationary increases in printing and binding, and requests for printed congressional materials.	
<u>Communications, utilities and other rent</u> .....	+17
Includes cost of FTS station lines, maintenance, on-going services, postage, and increase in lease.	
<u>Other services</u> .....	+2
Reflects increase in audit costs and contractual oversight functions.	
<u>Supplies and materials</u> .....	+1
Inflationary increase in costs of periodicals, books, and supplies.	
<b>TOTAL INCREASE.....</b>	<b>+68</b>

## BOARD FOR INTERNATIONAL BROADCASTING

## Personnel Summary

	FY 87 Actual	FY 88 Estimate	FY 89 Estimate
Total number of full-time permanent positions	9	10	10
Full-time equivalent of other positions.....	1	1	1
Total compensable workyears.....	10	11	11
Average ES salary .....	69,241	71,942	72,833
Average GS grade .....	10	10	10
Average GS salary .....	31,619	31,975	32,211

RADIO FREE EUROPE/RADIO LIBERTY: FY 1989 GRANT REQUEST

RFE/RL, Inc. is a non-profit corporation, chartered in the State of Delaware, with a broadcast center located in Munich, West Germany. Of its 1,745 employees (as of September 30, 1987), some 1,252 are based in Munich and other sites in the Federal Republic of Germany, 379 at the main transmitter sites in Portugal and Spain, 114 at offices in Washington and New York.

RFE/RL broadcast schedules range from 24 hours a day in Russian to less than one hour in some languages of Soviet Central Asia. Newscasts, reviews of the world press and news analyses based on RFE/RL's own area research comprise the majority of airtime. RFE/RL broadcasts to the U.S.S.R., the Baltic States, Czechoslovakia and Bulgaria have been "jammed" by local authorities since their inception (1950 for RFE, 1953 for RL). Jamming of broadcasts to Romania and Hungary ceased in 1963 and 1964 respectively. Broadcasts to Poland have been jammed intensively since 1981; jamming ceased in January 1988. As mandated by Congress, RFE/RL began broadcasting to Afghanistan in the Dari language on October 1, 1985. In 1987, broadcasts in Dari were expanded to seven days per week and in September 1987 Radio Free Afghanistan began daily broadcasts in the Pashtu language.

Despite jamming, audience research estimates that RFE/RL broadcasts are heard by some 50 million regular listeners in the course of a typical week. Since 1974 RFE/RL has been attempting to increase its audibility by improving its transmitting system; however, only limited funding has been available. Since 1985, nine 250-kW transmitters have been procured and are currently being installed, replacing outmoded, lower powered, ineffective transmitters. RFE/RL will complete this refurbishment program if funds are provided in FY 1990.

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Modernization Program

Modernization of RFE/RL facilities is essential for RFE/RL to deliver a stronger and more effective signal to its listening audiences through increased-Soviet jamming. RFE/RL has received appropriations of \$35.3 million to launch a \$77.3 million multi-year modernization program.

Within this program, RFE/RL will refurbish existing transmitting facilities of Gloria, Portugal; Biblis and Lampertheim, West Germany; replace a transmitter at the Pals, Spain site; and convert a receiving station to a transmitting site at Maxocheira, Portugal. Six 500-kW shortwave transmitters will be installed at the Maxocheira site. These transmitters will be used principally for penetrating RFE/RL jammed areas. This facility will be remotely controlled from Gloria in an effort to reduce operating staff needs.

A total of \$35,302,000 was appropriated during FY 1985 - FY 1987 for the refurbishment of existing facilities. Major technical equipment is being procured including transmitters and transmission equipment, switch matrices, antenna systems and control room equipment to be installed at the sites listed below.

The funding required is as follows:

	(in thousands of dollars)					
	FY 85/86	FY 1987	FY 1988	FY 1989	FY 1990	Total
Gloria	11,570	8,952	-	-	-	20,522
Maxocheira	-	-	-	-	41,948	41,948
Biblis	2,803	3,259	-	-	-	6,062
Lampertheim	458	6,136	-	-	-	6,594
Pals	2,124	-	-	-	-	2,124
Total	16,955	18,347	-	-	41,948	77,250

RFE/RL, INC.  
Expenses by Object Class  
FY 1989 Grant Request  
(in thousands of dollars)

							FY 89/88	
	FY 87	Actual	FY 88	Estimate	FY 89	Estimate	Increase or Decrease	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
<b>41.0 GRANTS, SUBSIDIES AND CONTRIBUTIONS</b>								
<b>Regular Operating Expenses:</b>								
<b>Personnel Compensation:</b>								
<b>Annual Salaries:</b>								
Permanent Employees .....	1,745	50,982	1,785	70,851	1,785	73,576	-	+ 2,725
Temporary Employees .....		1,243		2,044		2,118	+	74
Total - Annual Salaries .....		52,225		72,895		75,694	+	2,799
<b>Severance</b>								
3,145				4,500		4,500		-
<b>Employee Benefits:</b>								
Taxes .....		6,751		9,093		9,363	+	270
Pension Program .....		10,824		13,387		14,336	+	949
Fringe Benefits .....		10,154		12,999		13,236	+	237
Total - Benefits .....		27,729		35,479		36,935	+	1,456
<b>Total - Personnel Compensation and Employee Benefits .....</b>		83,099		112,874		117,129	+	4,255
<b>Administrative Costs:</b>								
<b>Misc. Fees/Professional Services ...</b>								
Misc. Fees/Professional Services ...		8,398		10,305		10,555	+	250
Travel .....		645		1,008		1,030	+	22
Rent and Utilities .....		2,212		2,810		2,987	+	177
Licenses, Royalties and Copyrights .....		1,480		1,867		1,888	+	21
Technical .....		10,672		14,284		15,992	+	1,708
News and Information .....		1,127		1,356		1,427	+	71
Representation .....		50		48		48		-
Conferences .....		67		388		91	-	297
General and Administrative Costs .....		5,487		8,554		8,907	+	353
<b>Total Administrative Costs .....</b>		30,138		40,620		42,925	+	2,305
<b>Capital - Regular:</b>								
<b>Total - Regular Operating Expenses .....</b>	(DM 2.53)	120,494	(DM 1.99)	158,778	(DM 1.99)	162,387	+	3,609
<b>Transmitter Site Modernization:</b>								
<b>TOTAL EXPENSES, RFE/RL, Inc.</b>		18,347		-		-		-
<b>(Grants, subsidies and contributions)</b>								
		138,841		158,778		162,387	+	3,609

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RFE/RL, INC.  
Grant Financing  
(in thousands of dollars)

<u>FINANCING</u>	<u>FY 87</u>	<u>Actual Amount</u>	<u>FY 88</u>	<u>Estimate Amount</u>	<u>FY 89</u>	<u>Estimate Amount</u>	<u>FY 89/88 Increase or Decrease</u>	<u>Amount</u>
U.S. Government Grant .....		138,832		158,778		162,387	+	3,609
Currency Devaluation Fund .....		128		-		-	-	-
Currency Supplemental.....		33,195		-		-	-	-
Projected Net Currency Loss Funding Req... Rate Adjustment.....		-		24,985		-	-	24,985
		-		-		28,408	+	28,408
T o t a l s		172,155		183,763		190,795	+	7,032

## RFE/RL, INC.

Summary of Increases and Decreases  
(in thousands of dollars)

<u>Regular Operating Expenses:</u>	<u>Amount</u>
<u>Personnel Compensation:</u>	
<u>Annual Salaries - Permanent Employees.....</u>	+ 2,725
General salary increase of 2.5 percent for employees in West Germany and the U.S., 10 % and 6 % for local employees in Portugal and Spain respectively.	+ 1,944
Within-grade increase in accordance with union contracts and company policy for employees below the top of their grades.	+ 674
Annualization of 10 positions - USSR Nationalities broadcasting.	+ 107
<u>Annual Salaries - Temporary Employees.....</u>	+ 74
General price increase.	
<u>Employee Benefits - Taxes.....</u>	+ 270
Increase in Social Security, unemployment insurance and other payroll taxes.	+ 257
Annualization of 10 positions - USSR Nationalities broadcasting.	+ 13
<u>Employee Benefits - Pension Program.....</u>	+ 949
Increased costs for U.S., German, Portuguese and Spanish plans, based on COL increases and premiums determined by actuaries/insurance companies.	
<u>Employee Benefits - Fringe Benefits.....</u>	+ 237
General inflationary increases for housing and utility costs, home leave travel, and employee health insurance costs.	+ 297
Annualization of benefit costs for 10 positions - USSR Nationalities broadcasting.	+ 21
Reduction for one-time costs for housing and transportation for 10 positions - USSR Nationalitites broadcasting.	- 81

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	<u>Amount</u>
<u>Administrative Costs:</u>	
<u>Miscellaneous Fees and Professional Services.....</u>	+ 250
General price increases for free-lance and outside professional services (e.g. actuarial, research, protective services, consultants, legal, computer software, etc.)	
<u>Travel.....</u>	+ 22
General increase in travel costs	
<u>Rent and Utilities.....</u>	+ 177
General increase in rents and utilities	+ 61
Annualization of costs for renewal of lease on Washington office space	+ 116
<u>Licenses, Royalties and Copyrights.....</u>	+ 21
General increase in licenses, royalties and copyright costs	
<u>Technical.....</u>	+ 1,708
General increase in costs for power, maintenance and repairs, communications and spare parts	+ 1,599
Power and spare parts cost increases in excess of the normal inflation rate at transmitter sites in Iberia and West Germany due to transmitter modernization.	+ 109
<u>News and Information.....</u>	+ 71
General increase in costs for news and information services.	
<u>Conferences.....</u>	- 297
General increase in conference costs	+ 3
Reduction for one-time costs for 1988 Olympic coverage.	- 300
<u>General and Administrative Costs.....</u>	+ 353
General price increases for postage, office supplies, telephones, general repairs, general insurance, building maintenance, equipment maintenance, teletype, books and publications, and equipment rentals.	+ 208
Increase in computer hardware/software maintenance requirements.	+ 145

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Amount

Capital Expenditures:

Capital Expenditures - Regular.....	- 2,951
Reduction for one-time costs for computer equipment.	- 1,815
Reduction for one-time costs for security equipment	- <u>1,136</u>
TOTAL INCREASE .....	+ 3,609

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RADIO RELAY STATION IN ISRAEL  
FOR THE JOINT USE OF  
BOARD FOR INTERNATIONAL BROADCASTING (RFE/RL) AND UNITED STATES INFORMATION AGENCY (VOA)

**HISTORY:** Negotiations toward establishment of a U.S. transmitter site in Israel began in March 1985 as a result of a letter from President Reagan to then Prime Minister Shimon Peres. Engineering studies had shown that a new relay station located in the Middle East would deliver a reliable signal into the USSR's Central Asian republics and Eastern Europe, despite jamming. Negotiations were concluded in the spring of 1987. The agreement was signed in a White House ceremony on June 18, 1987.

**LOCATION:** The BIB-VOA relay station will be located on a 2500 acre site in the Arava Valley, approximately 30 miles south of the Dead Sea.

**STRATEGIC ADVANTAGE OF SITE:** The close proximity of the Israel Radio Relay Station to the broadcast target areas is critical. Audiences currently served with poor reception will receive a reliable broadcast service, and U.S. ability to penetrate jamming will be significantly enhanced. In addition, millions of new listeners can be reached from this site with an audible signal. The Israel Station's location will enable RFE/RL and VOA to broadcast deep into Central Asian regions of the Soviet Union and significantly increase access to most parts of Eastern Europe, Southwest Asia, and the eastern half of sub-Saharan Africa.

**TERMS OF AGREEMENT:** The terms of the U.S./Israel agreement for a radio relay station in Israel call for the facility to be built by an Israeli contractor, chosen competitively, using American manufactured transmitting equipment and antenna equipment. It will be operated by a specially created Israeli Government entity (TOMER) according to BIB/VOA specifications. The agreement runs for 25 years from the date of the first operational broadcast and is renewable by mutual agreement.

**BIB-VOA COORDINATION:** A joint group called the U.S. Broadcasting Entity (USBE) has been formed to coordinate BIB and VOA requirements for the life of the agreement. This special project office has been established for the purpose of managing the project from design through construction and financial close-out of the project. During the design phase, USBE engineers will be principally stationed in Washington, D.C. for the purpose of working closely with the design firm. After the design is completed, a portion of the USBE engineering staff will move to Israel as to construction of the facility begins.

TECHNICAL INFORMATION: Current plans for the new relay site in Israel include the installation of sixteen 500 kW high-powered transmitters and 47 curtain antennas, accompanied by the necessary transmission line systems, satellite ground station, administrative facilities, power generation and distribution system. The station will transmit program materials as received from Munich (RFE/RL) and Washington (VOA) in 32 languages to the targeted regions utilizing some 40 - 50 frequencies (ranging from 3.9 to 26.1 mHz in each seasonal broadcast period). The station's broadcast schedules will be registered in accordance with the ITU Radio regulations. Frequency assignments will be made in accordance with Article 17 of the regulations for frequency registration.

BUDGET: The project will cost between \$265 - \$310 million over a five year period. Project cost estimates will be fixed after the design estimates are completed.

JOINT TRANSMITTER RELAY SITE IN ISRAEL

TRANSMITTERS - 16

	CURTAIN ANTENNAS	% INCREASE IN SIGNAL STRENGTH
BIB - ten 500 kW	BIB - 21	BIB - up to 300%
VOA - six 500 kW	VOA - 26	VOA - up to 300%
Total Station Power - 8,000 kW		

LANGUAGES - 32 TOTAL

RFE/RL - Russian, Kazakh, Tatar-Bashkir, Tajik, Kirghiz, Uzbek, Turkmen, Estonian, Latvian, Lithuanian, Dari, Pashtu

VOA - English, Russian, French, Polish, Ukrainian, Hungarian, Czech, Hindi, Urdu, Romanian, Bulgarian, Turkish, Greek, Serbo-Coatian, Azeri, Armenian, Georgian, Albanian, Slovene, Hausa

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MISSION

RFE/RL : To broadcast effective signals in a jammed environment to the Baltic States, European USSR and Soviet Central Asia in Russian and in other languages of those regions.

VOA : To broadcast simultaneous programs to southern and central USSR, Eastern Europe, East Africa and Southwest Asia in the language of their region and in English. Provide contingency coverage, as appropriate, to other relay stations.

ESTIMATED DATE OF COMPLETION - 1992

ISRAEL RADIO RELAY STATION  
PROJECT BUDGET  
(in thousands of dollars)

PROJECT COSTS:	FY 1988	FY 1989	FY 1990	TOTAL RANGE
Administrative Costs	1,450	2,530	9,920	13,900
Design and Preliminary Costs	27,598	7,970	----	35,568
Major Construction	----	24,500	170,080 to 215,080	194,580 to 239,580
TOMER Contract	4,952	----	----	4,952
<b>TOTAL</b>	<b>34,000</b>	<b>35,000</b>	<b>180,000 to 225,000</b>	<b>249,000 to 294,000</b>

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**ISRAEL RADIO RELAY STATION  
PROJECT OBLIGATIONS  
(in thousands of dollars)**

MAJOR CONTRACTS:	FY 1988	FY 1989	FY 1990	Total
	-----	-----	-----	-----
I. Facilities	-	16,900	-	16,900
Security Systems	-	1,030	-	1,030
Antenna Towers	-	5,570	18,700	24,270
II. Transmitters	-	-	48,000	48,000
Transmission Line	-	1,000	36,000	37,000
Antennas	-	-	86,000	86,000
Switchbay	-	-	19,500	19,500
Automated Control System	-	-	6,880	6,880
Subtotal	-	24,500	170,080 to 215,080	194,580 to 239,580
OTHER COSTS:				
A & E Design	10,500	-	-	10,500
HV Power Lines, Substation	5,400	-	-	5,400
Road, Gas Station Relocation	5,600	-	-	5,600
Water Supply	960	-	-	960
Flood Protection	2,738	520	-	3,258
Site Development	-	5,050	-	5,050
Contract Modifications	2,400	2,400	-	4,800
Subtotal	27,598	7,970	-	35,564
TOMER CONTRACT	4,952	-	-	4,952
ADMINISTRATIVE COSTS	1,450	2,530	9,920	13,900
<b>TOTAL APPROPRIATION</b>	<b>34,000</b>	<b>35,000</b>	<b>180,000 to 225,000</b>	<b>249,000 to 294,000</b>

NOTE: In addition to the amounts shown, the USIA is providing \$16 million to the Government of Israel, as required by the agreement, from its balances for VOA radio construction. The total project costs are estimated at between \$265 and \$310 million.

Mr. DWYER. We are pleased to welcome back to the committee the Chairman of the Board for International Broadcasting, Mr. Malcolm S. Forbes, Jr.

Mr. Forbes, we would be pleased to have your statement and you can proceed at your own pace.

#### GENERAL STATEMENT

Mr. FORBES. Thank you very much, Mr. Chairman.

The written statement with your permission we'd like to submit for the record and to save time, I would just like, with your permission, to emphasize two major points of our testimony.

#### CURRENCY LOSS CRISIS

The first is that Radio Free Europe and Radio Liberty are in trouble, and we are going to need your help. Without emergency legislation from Congress, Radio Free Europe and Radio Liberty will go off the air in August.

We literally face the prospect of bankruptcy; here's why: 85 percent of our budget now goes for foreign currency. With the decline of the dollar, we will literally run out of money in August.

The threat of bankruptcy is not figurative, it is literal. B.I.B. is a Federal agency, but Radio Free Europe/Radio Liberty is a private corporation. If we miss a payroll, under German law, Radio Free Europe/Radio Liberty will go under the jurisdiction of German courts under their bankruptcy proceedings. We'll go off the air. So the bankruptcy threat is real, and if we don't get this extra money to cover the currency losses, we'll be out of business before the end of the summer.

There's no way to cut money to make up those currency losses. Over 70 percent of our budget is for personnel, and under German labor law, any layoffs or furloughs would end up making either small savings or end up costing us money. The discretionary items are minimal, the major one is power, if we cut power, we go off the air.

In the past we've faced this crisis, in 1986 and 1987. In those two years the Administration made a request for a straight supplemental.

Here's what the Administration proposes to do this year. Because of the Budget Summit agreement late last year, the Administration feels that it cannot make a supplemental request. So the Administration is asking for a language change that would take the \$20 million that would have gone for European modernization, and which would come to us for spending in October, and put that money back in the current fiscal year and use it not for modernization but to cover part of our currency losses.

It's a complicated maneuver resulting from that budget summit, but from our point of view, whatever the method, whatever the means, we do need that money by August.

The political implications of our going off the air, of a collapse like that, would be awful. These radios are the most effective instruments the United States has in public diplomacy. We reach 55 million people, we are an instrument for change, we are the only effective instrument for undermining the Soviet and Eastern Bloc

monopoly of information. We can see the importance of these radios with daily headlines: first Solidarity, then Chernobyl, and most recently, Armenia.

Having Radio Free Europe/Radio Liberty go into bankruptcy would be the most significant public diplomacy victory of the Soviet Union in the past 40 years.

#### RADIO RELAY STATION IN ISRAEL

The second item, Mr. Chairman, concerns something a little happier, our Israeli transmitter project. It's a joint project with VOA, and will reach into Central Asia and the Caucasus, a region of the Soviet Union where our signal is almost nonexistent now, and which is the fastest growing part of the Soviet Union in terms of population. It's the Moslem part of their world, and we can see its importance with such areas as Afghanistan and the dispute now between Armenia and Azerbaijan. It's going to grow in more importance.

The Israeli project is a once-in-a lifetime opportunity. A happy confluence of events made this project possible. Last summer, an agreement was formally signed with B.I.B., U.S.I.A., and the Israeli government to make this relay station possible. It is a very complex project, but thanks to the help of your Committee, we did get an appropriation at the end of last year for this fiscal year to start this project. I am pleased to report that the initial progress has been impressive.

It's a very complex project, subject to many delays. At least so far, we're exactly on schedule. What gives us confidence about this project, is despite the enormous undertaking that it is, the fact that in our European rehabilitation of our obsolete facilities—on the parts we've been able to do with the appropriations we have been receiving from this Committee—we have done very well. It's been on time, it's been on budget despite the delayed appropriations. Even though the estimates were made in 1985 dollars, we have kept the costs to those 1985 estimates.

So we think we have the wherewithal, the capacity to keep this Israeli project on line. In a few weeks, we'll let a major contract for the architecture and design of this project.

In fiscal 1989, the proposed appropriation, \$35 million, is the absolute minimum necessary to keep this project on its five-year schedule. We will need a very sizeable appropriation in FY 1990 if this project is to be completed on time at anything resembling the cost estimates.

So, our most critical problem right now, Mr. Chairman, is getting emergency money to cover those currency losses. It is literally a life and death situation for us. Our great priority right now, aside from staying alive, is undertaking and completing the Israeli relay station. This is the most important project Radio Free Europe/Radio Liberty and the Voice of America have undertaken in the last 20 some years.

With that, Mr. Chairman, with your permission, I'd like to turn the floor over to the President of Radio Free Europe/Radio Liberty, Gene Pell. He spends most of his time at our headquarters in Munich. He has done a superb job in the two plus years he has

been in that post, in terms of improving the Radios' administration and programming. He would like, with your permission, to make a few remarks.

WORLD DIPLOMACY ROLE OF RFE/RL.

Mr. PELL. Thank you, Mr. Chairman, I would simply like to say a few words about our role and our mission, particularly in these significantly changing times.

You and your colleagues in Congress have, I think, long understood and long supported the mission of Radio Free Europe/Radio Liberty. Those of us who work for and at the Radios are certainly grateful for that.

Even more important, that support has earned the profound gratitude of millions of men and women in the Soviet Union and Eastern Europe for whom our broadcasts represent a real lifeline of information and inspiration.

The result of what we do everyday over the airwaves is eloquently capsulized in the words of Zbigniew Brzezinski, the National Security Advisor to former President Carter. In his most recently published book, Mr. Brzezinski wrote this: "The most important and perhaps least recognized service that America has rendered over the years in the preservation of a European identity in Eastern Europe has been its sponsorship since 1950 of Radio Free Europe. Though its broadcasts have been frequently jammed, RFE has almost single-handedly prevented Moscow from accomplishing a central objective, the isolation of Eastern Europe from the rest of Europe and the ideological indoctrination of its people."

Two Sundays ago, former President Richard Nixon echoed that theme in an article he wrote for the New York Times in which he stated, "One of the most effective foreign policy programs for the United States has been support of Radio Free Europe and Radio Liberty, which have prevented the complete indoctrination of the peoples of Eastern Europe and the Soviet Union. We should be telling people," said Mr. Nixon, "what their own governments refuse to tell them about their own countries."

There's no question Mr. Chairman, that the new leadership in the Soviet Union has been promoting significant change in the last two years by pursuing a policy of Glasnost, or openness. Glasnost should not be equated with freedom of the press. It is directed from above, it is limited and clearly defined, and there is still plenty that the governments of the U.S.S.R. and Eastern Europe are refusing to tell their own people about their own countries, or the rest of the world, for that matter.

The role and mission of Radio Free Europe and Radio Liberty are more important today than ever before. We are the only instrument of Western public diplomacy devoted to providing the peoples of the Soviet Union and Eastern Europe with accurate, objective, comprehensive accounts of events taking place within their own countries. We inform, we educate, we influence, we serve as a cultural memory bank that helps keep alive a sense of national identity, language, culture and tradition.

Winds of change are blowing across the U.S.S.R. and Eastern Europe, from Alma Ata to Armenia and Azerbaijani, from the

Baltic Republics to the streets of Warsaw and Budapest. People in these and other republics and cities rely on our broadcasts; they need our broadcasts; I believe they cherish our broadcasts.

So, Mr. Chairman, we ask for your continued support and that of your colleagues, so we may be able to continue providing this invaluable service to the people of the Soviet Union and Eastern Europe.

[The prepared statement of Mr. Forbes follows:]

**BOARD FOR INTERNATIONAL BROADCASTING**

United States of America

Suite 400  
1201 Connecticut Avenue, NW.  
Washington, DC 20036  
(202) 254-8040

STATEMENT OF MALCOLM S. FORBES, JR., CHAIRMAN

## BOARD FOR INTERNATIONAL BROADCASTING

BEFORE THE SUBCOMMITTEE ON THE DEPARTMENTS OF

COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED

AGENCIES, COMMITTEE ON APPROPRIATIONS,

U. S. HOUSE OF REPRESENTATIVES

FOR FISCAL YEAR 1989

Mr. Chairman, I appear before this subcommittee to support the Administration's funding request for the Board for International Broadcasting including grants to Radio Free Europe/Radio Liberty, Inc. for fiscal year 1989.

Once again we face a life-threatening crisis, one that if left unsolved, will force us out of business sometime in August. The precipitous decline in the value of the U.S. dollar has critically damaged the RFE/RL budget, over 80% of which is expended in foreign currencies on basic operations. This year we face a loss of over \$28 million.

If funds are not provided, RFE/RL will go off the air. This action would be a political disaster, a major embarrassing blow to the security, prestige, and international standing of the

United States. Radio Free Europe and Radio Liberty are powerful tools of U.S. public diplomacy in Eastern Europe and the Soviet Union. Never has their role been more important. While Gorbachev's policy of glasnost' has allowed for a freer discussion of certain domestic issues in the USSR and Eastern Europe, the media in these countries have remained under strict government control. The burgeoning nationalism in the Baltic republics, the economic problems and debates in Poland and Hungary, the recent unprecedented demonstrations in Armenia and Azerbaijan--these are subjects woefully covered in the Soviet and East European media. In contrast, Radio Free Europe and Radio Liberty devote extensive programming to these and other topics of interest to their audiences, providing listeners in the Soviet Union and Eastern Europe with a wealth of balanced, accurate, and comprehensive information.

Despite heavy jamming RFE/RL broadcasts reach a weekly audience of over 50 million people. The size and loyalty of the audience is the result of the unique mission of RFE/RL. The Radios are surrogate "home" media whose purpose is to provide in-depth news and analysis of internal events in the Soviet Union and Eastern Europe. Unlike VOA, BBC, Deutsche Welle, and other major international broadcasters, RFE/RL concentrates predominantly on domestic issues and relevant world events. The perspective and focus of its broadcasts are shaped by the interests and concerns of its listeners. Noted Soviet dissident Natan Scharansky, speaking to members of our distinguished, bipartisan Board last Friday, stressed RFE/RL's critical role in the human rights movement. "By broadcasting full texts of our statements," he said, "Radio Liberty told millions of people about human rights abuses in the Soviet Union. Without such broadcasts the small group of human rights activists could not have had the impact that they did."

The broadcasts of RFE/RL are balanced and objective. The BIB regularly commissions thorough independent evaluations of RFE/RL

programming. Noted scholars and journalists, fluent in the languages of our broadcasts, participate in the evaluations. Their reports indicate that RFE/RL programs are of high intellectual quality and journalistic accuracy. The evaluators stress that the role of RFE/RL will continue to be important. Through their unique programming, the Radios will be able to draw their listeners into a civilized, reasonable, and comprehensive discourse about developments in their own countries, irrespective of what the official line of the governments may be. In this way, RFE/RL has the opportunity to contribute to an independent public opinion in the Soviet Union and Eastern Europe.

The Fiscal Year 1989 BIB budget before you today -- \$192,100,000 -- is particularly austere. It includes the 1988 appropriated level for RFE/RL operations and only partial inflation coverage. Over \$28 million of this amount is required for foreign currency exchange adjustments. The 1989 request is the bare minimum amount that will enable RFE/RL to continue broadcasting its current schedule.

This request for FY 1989 funding does not reflect the legislative steps necessary to offset the disastrous currency losses which RFE/RL is suffering this year, in 1988. Under President Reagan's budget summit accord with the Congress, supplementals for FY 1988 are not being requested. As a result, over \$28 million is needed by the BIB to fund RFE/RL's serious currency losses without requesting a supplemental appropriation. The Administration has decided, therefore, to request the use of \$20 million appropriated in FY 1988 for modernization (plus \$4.9 million taken from funds appropriated for operations) to offset \$25 million in foreign currency losses. The additional \$3 million have come from the currency reserve which is now depleted. Without the ability to reprogram modernization funds for currency losses, RFE/RL would have to declare bankruptcy and go off the air.

We do not use the term "bankruptcy" in a figurative sense. While Federal agencies such as the BIB technically cannot go bankrupt, RFE/RL can. RFE/RL is a private corporation, incorporated in the State of Delaware, and subject to local laws wherever it operates. Under West German law, RFE/RL, Inc. must declare bankruptcy in a West German court if it cannot meet its payroll. West German labor law also has provisions for compensating laid-off workers that make it virtually impossible to avert such a disaster through RIFs or furloughs. In short, if currency losses are not funded, RFE/RL will go bankrupt, which would be a debacle for U.S. foreign policy.

In view of the critical currency problem, the \$77.25 million plan to refurbish RFE/RL's antiquated transmitting system, begun with FY 1985 funds, has been temporarily suspended. Even though \$20 million was appropriated for this purpose in FY 1988 (with delayed outlays), the Administration is now requesting that these funds be diverted to cover RFE/RL's serious currency losses. The necessary change in appropriation language -- removing the deferral of outlays until October 1, 1988 -- has been submitted by the President.

This request does not imply that the program to rehabilitate RFE/RL's existing transmitter sites is of low priority. In fact, maintaining audibility in the face of intense jamming will be impossible without completion of this modernization program. The importance of continuing the modernization program is superceded only by the possibility of RFE/RL's going off the air due to currency losses. BIB plans to request in 1990 the funds to complete the refurbishment program.

Also included in the BIB's FY 1989 request is \$35 million for second-year costs of the construction of the joint BIB-VOA transmitting station in Israel. This project is of critical importance. It is the first new transmitting facility for RFE/RL in over 30 years. It will allow RFE/RL to greatly enhance its

broadcasts into Eastern Europe, Afghanistan, and Soviet Central Asia. This facility will also provide RFE/RL with the capability of penetrating more effectively jammed environments. The completed project will cost between \$265 and \$310 million, the bulk of which will be requested in FY 1990.

Mr. Chairman, once again I urge your Subcommittee to support our budget request. It is imperative that the vital life-line of Radio Free Europe/Radio Liberty remain extended to the people of Eastern Europe and the Soviet Union.

March 23, 1988

Mr. DWYER. Thank you, Mr. Pell.

#### GLASNOST AND RADIO LISTENERSHIP

You mentioned Glasnost—have the number of listeners increased in the Soviet Union since the advent of Glasnost?

Mr. PELL. Our listenership has remained pretty much steady, and has been maintained in the absence of jamming of some other international broadcasters. In January 1987 for example, the Soviets ceased jamming the BBC Russian Service. Our audience research people have certainly detected a rise in the BBC audience, which is not unexpected.

In May of 1987, the jamming of the Voice of America was stopped; there has been a slight increase in their audience numbers. I'm happy to say we have not lost our audience during this same period, although our broadcasts were subjected to intense jamming throughout the U.S.S.R.

I think one of the consequences of Glasnost has been, perhaps not surprisingly, that access to information breeds a desire for more information. Certainly all of the focus groups we conduct and all the audience research we conduct suggest that there is a genuine and growing thirst for what we provide.

#### OPERATIONAL IMPACT OF CURRENCY LOSSES

Mr. DWYER. You mentioned the \$20 million that you're going to have supplemental language on so you can keep the Radios operating. We also understand that you will have to divert \$85,000 out of the FY 1988—from your on-going operations—in order to cover your currency losses. What impact is that going to have on your program operations?

Mr. FORBES. Well, it makes it very tight. It prevents us from doing things that we'd like to do. One of the damaging aspects of these continuing currency crises is that it makes it impossible for Mr. Pell and his managerial colleagues to plan effectively all year long until we get the extra money we hope in July. In the years past, we've had to conserve cash, and that throws planning into disarray. It means you can't do things that you normally would do. It means long term planning is impossible, so it puts a real crimp on what you can and cannot do even beyond the dollar constraints. You don't know whether you're going to be around, or how much you're going to have to conserve cash. It means you can't hire people, especially on the programming side and the administrative side. So it makes life very difficult.

#### PROPOSED FOREIGN EXCHANGE RATES

Mr. DWYER. The foreign exchange rates that you show in your presentation, are they realistic?

Mr. FORBES. I wish they were. Each time we think the dollar has bottomed out, it always seems to go lower. Last year for awhile the dollar showed a wee bit of strength, then in the beginning of the new fiscal year in early October, our Treasury Department was alleged to have signalled to the markets it wanted the dollar to go lower again. At least that's what the markets thought. The dollar collapsed, so did the stock market. One of the unpublicized casual-

the budget was in budget, because with the fall of the dollar, we were once again, for the third year in a row, faced with horrendous currency losses.

We're keeping our fingers crossed that the dollar can stay in the 100 DM to DM 170 area; it got as low as DM 158 late last year, so I hope it will at least do that until the election. I don't know if it would be good for the Republicans to have a weak dollar out there, so that gives us hope that it will stay stable at least to the end of the fiscal year.

[Laughter.]

After that, all bets are off.

Mr. PELL. How early in November is election day?

[Laughter.]

Mr. DWYER. Given the currency problem and given the fiscal problem we have here with our overall Federal budget, are you taking any steps at all to reduce your costs of operation?

#### OPERATIONAL COST REDUCTIONS

Mr. FORBES. Gene Pell will be glad to enumerate a number of steps he has taken, that have saved us on the administrative side.

Mr. PELL. We have faced this problem now three years running, so we've had some experience with it certainly, but there's been a very tight rein held on hiring, for example. We do have, I suspect, one of the lowest lapse rates anywhere of any agency although we're a private corporation of the government. We're authorized 1,785 positions, we have 1,745 people on board, but that is one area where we have kept a tight rein. We have reduced our free-lance costs, we've reduced our travel costs, we closed one of our news bureaus in Hong Kong earlier this year in a cost-saving measure, but as Mr. Forbes indicated, Mr. Chairman, over 70 percent of our costs go to personnel. Another 25 to 27 percent go to fixed costs, such as power, rent, et cetera. There's a very small area of discretionary money available for making the kinds of reductions that we have made. We have certainly made every effort to conserve cash and to keep our costs down because we're very mindful of what you just said about the overall budgetary situation.

Mr. FORBES. What Mr. Pell has achieved is remarkable when you consider that in the late 1970s the personnel of these two radios ended up being slashed 40 percent. It went from roughly 2,800 at a high down to 1,700. The devastation that caused on the administrative side was just beyond description.

So when he talks about now making savings, that's after a slash that really cut into the bone of these agencies, from which we have never really recovered. We're still suffering the scars from that and it can be seen in training. Mr. Pell's successor, when he or she comes on board, is going to face a horrendous problem in finding and training qualified people to replace people who will be retiring in the late 1980s and 1990s. We should have an adequate program in place, but we don't have a fully adequate program in place because of those cuts in earlier periods, and because of the tightness today.

Mr. DWYER. Do you have a merit bonus program for your management staff?

**BEST AVAILABLE COPY**

Mr. PELL. We're in the process of trying to get there, Mr. Chairman. We have for the last two years conducted intense negotiations on implementing any number of programs, all associated with recommendations that were made to the Radios by the Hay Consulting Group. It has taken a very long time to negotiate with the four unions in the organization. We have negotiated agreed-upon job descriptions, line by line in German and in English. We have completed that process, we are now discussing assigning points to the various job descriptions.

Our objective is to get to a unified compensation scale instead of the several we have at the moment. Merit pay for managers is one of those objectives we hope to achieve, but have not yet been able to accomplish.

Mr. DWYER. Does that include the BIB staff with the bonus program you're talking about, or the merit program?

Mr. PELL. No, I'm talking only about the Radios?

Mr. DWYER. Radios. Not the staff at all.

Mr. PELL. We have implemented a program of superior performance awards for rank and file employees and those nominations have been evaluated and recommendations approved for this year, and there have been some performance awards for middle-level management this year, but not for senior management.

Mr. DWYER. Given the currency exchange problem, was it wise to have that type of a program right now? Does it give you extra fits?

Mr. PELL. It's giving us some extra fits, yes, sir, but I think that a program that awards performance by everyone from carpenters to electricians to janitors to others is a very important morale factor.

Mr. DWYER. No executives in top management ranks of the radios have received any bonuses this year.

#### FY 1989 AUTHORIZATION NEEDS

Is your 1989 authorization sufficient to cover all of your appropriation requests, including the \$35 million requested for the Israeli radio relay station?

Mr. FORBES. Presuming we get the \$227 million requested, the \$35 million for Israel would be the absolute minimum necessary to keep this program going. The \$35 million was arrived at because part of this budget agreement was that there would be a 2 percent increase, so there's \$34 million for 1988, \$35 million in 1989, but it's the bare bones necessity.

On the operations side in terms of keeping operations going, the request, because of the budget tightness does not cover the full impact of inflation in Europe. We have operations in Portugal and Spain, as well as in Germany, and the inflation rates in two of those countries are much higher than we've had here. So this does not cover the full inflation.

#### 1989 AUTHORIZATION FOR ISRAEL PROJECT

Mr. DWYER. Well, I was asking about the authorization. You apparently have a new authorization for 1989. What's the status of that bill and is that authorization level going to be high enough to take care of your budget and the Israeli relay station?

Mr. FORBES. On the Israeli matter, it says we apparently don't have a requirement for authorization of an appropriation for Israel itself in 1989. When the Israeli agreement was signed last summer, it came past the authorization hearings that had been held in Congress. So we kept the authorizing committees fully informed about the agreement and about the project, and so they have been made fully aware of it and we have submitted draft legislation to OMB to cover the necessary authorizations.

Mr. DWYER. What's the current status of that? Is it still with OMB?

Mr. FORBES. Yes, as I understand it.

Mr. DWYER. In that draft legislation, is the amount adequate to do everything you want to do?

Mr. FORBES. The estimates for the whole cost of the project range from \$265 million to \$310 million. Once the engineering and architectural design plan, which is a very complicated, is completed, we will be able to come up with a very solid estimate from that information rather than the rough estimates that we have now. We hope to have that design plan under contract within a few weeks on the Israeli project.

#### RFE/FL MODERNIZATION PROGRAM

Mr. DWYER. What's the current status of Radio Free Europe and Radio Liberty modernization programs?

Mr. PELL. Well, the original program based on 1985 dollars, costing \$77 million was to rehabilitate existing facilities in Europe, with the exception of one of our facilities in Spain. \$35 million of that has been appropriated. With that money we have purchased and are in the process of installing—some are operational already—nine new 250-kilowatt transmitters. We have let contracts for other major engineering work to be done at relay stations in Portugal, and in West Germany and we have completed the building of a new studio complex in the Munich headquarters building. So with the money that has been appropriated, we have been able to accomplish a considerable amount of work.

As Mr. Forbes pointed out, we are not going to be able to get on with one of those modernization projects for some time, which was the construction of a new transmitting site in Portugal.

The \$20 million which he mentioned earlier was designed to go for the first step of doing that. But with what has been appropriated, we have done what could be done and the results are evident.

Mr. FORBES. One of the reasons that we gulp very hard in going along with the idea of taking that \$20 million from modernization to keep us alive—obviously, we have to stay alive is that this rehabilitation program is not so much a matter of enhancing us as it is of preventing a further deterioration of our broadcast signal. The intensive jamming and the antiquity of this equipment together make it harder and harder to get an effective signal across.

There's also another problem, and that is that with our existing facilities we are now experiencing the broadcast equivalent of gridlock. We have little or no flexibility in our broadcasting capabilities so when we get a crisis like Chernobyl, or the crisis in Armenia, normally, we would increase immediately the number of hours of

broadcast. If you're in the print business, you do the same thing. If a big story breaks, you throw more pages on it. In broadcast you throw more time at it. Right now, if a crisis breaks and we want to increase, say, Ukrainian broadcasting, the system is so gridlocked that we have to take broadcasting time from other services, cut them back immediately to increase the broadcast. So it's a very brittle system and it's a declining system in many respects. So, the longer that European rehabilitation is delayed, the worse off we are. It's a matter of halting deterioration, that's what it boils down to.

#### COSTS OF MODERNIZATION DELAYS

**Mr. DWYER.** Delay usually results in higher costs. Do you have any idea what the delay is going to cost down the line?

**Mr. FORBES.** It depends on how much it's delayed. I think it's a remarkable testimony to Gene and his staff of engineers that they have been able to carry out the modernization they have carried out on the budget they have, with the costs they have, particularly since, as Gene points out, those were 1985 dollars.

So if this delay continues, the costs eventually are going to go up. We try like the devil to keep within costs; I think we're very good at that, but at some point, it's going to break.

**Mr. PELL.** We have not raised the overall estimate of \$77 million which was originally presented, and as I say, we have accomplished a lot, and I think if we had the obligational authority for the balance between \$35 and \$77 million that we would come very close to the mark.

**Mr. DWYER.** Mr. Rogers?

#### CONSEQUENCES OF DELAYED MODERNIZATION

**Mr. ROGERS.** Thank you, Mr. Chairman.

You're submitting reprogramming requests, including transferring \$20 million from your modernization program to cover the currency losses.

What implication does this have for your refurbishment program?

**Mr. FORBES.** It means delay, it means postponement, it means that the deterioration of those facilities will continue. This, in an environment where jamming is very much a fact of life. The equipment should have been refurbished ten or fifteen years ago. We have a shop in Portugal that builds spare parts because the manufacturer doesn't make them any more, so we have to do it ourselves.

Moreover, without receiving funds for this rehabilitation program the gridlock in our system will get worse. The flexibility is almost nonexistent now. We're in a straitjacket; it prevents us from responding the way we should to changes in events, and the situation is just going to get worse.

#### JAMMING

**Mr. ROGERS.** In the meantime, what's going on with respect to jamming?

Mr. FORBES. The jamming in the Soviet Union has intensified. As you know, last year they stopped jamming the BBC and the Voice of America; many of those jammers were turned on Radio Liberty.

In Eastern Europe this year, we did get some good news on New Year's Day. Poland stopped jamming Radio Free Europe for the first time ever, and so that is a step in the right direction, but jamming is still the most intense it's ever been in the Soviet Union, it is still very intense in Bulgaria and Czechoslovakia.

Mr. PELL. Out of our 22 language services, 19 of them remain jammed. Poland, Hungary and Rumania are the only three now not jammed.

Mr. ROGERS. Well, what happened to Glasnost?

[Laughter.]

Mr. FORBES. It's been very selective.

[Laughter.]

#### GLASNOST AND ACCURACY OF REPORTING

Mr. ROGERS. Well, some of the most important areas affected by modernization are the Baltic States, Lithuania, Latvia and much of Eastern Europe, all of which have seen burgeoning nationalistically in recent months and days.

Under Glasnost, have the Russians been more open and accurate in reporting those types of developments?

Mr. PELL. Yes, they have. I think there have been some profound changes taking place in the Soviet media over the last two years. They are reporting events they've never reported before, they are reporting them with greater speed than ought to have been expected, but Glasnost means—should not be equated with freedom of the press, as we know it. There are still enormous gaps, there are still many taboos, there are still many subjects that are off limits and they range from the hierarchy of the party, to the military, to the KGB, to any number of things, but they have come some distance. They have improved their own radio and television; it's much more sophisticated than it was.

#### NEED FOR RFE/RL UNDER GLASNOST

Mr. ROGERS. There's still a need for your reporting of news?

Mr. PELL. We believe the need is greater than ever because among other things, research shows that Glasnost has bred a desire for more Glasnost, and we are still the only instrument of Western diplomacy which is dedicated and devoted to telling people what their own governments don't tell them about their own countries.

#### STATUS OF MODERNIZATION PLAN

Mr. ROGERS. Now, the funding we've already appropriated for modernization, how has that been utilized? And has it been able to be of help to you for modernization?

Mr. PELL. Out of the original request for \$77 million for modernization, we've had \$35 million appropriated. With that money or most of it, we've purchased nine new transmitters which are either installed and operational or in the process of being installed. We have let contracts for such technical items as new switching bays for all of our transmitter facilities to replace 30 year old equipment

and machinery, we have completed the building of a 30-studio state-of-the-art complex, in Munich. We have enhanced our antenna fields, and I think we've done all the things we could do within the confines of that obligational authority. What we are missing now is the final piece of that program, which was the construction of the new transmitting facility in Portugal.

#### IMPORTANCE OF RELAY STATION IN ISRAEL

**Mr. ROGERS.** Let me switch you to the subject of the Israel transmitter. You're requesting \$35 million for the joint BIB-USIA transmitter in Israel, the total cost of which would be between \$265 and \$300 million. What I'm interested in hearing from you is whether or not the benefits of that transmitter are such that it should take precedence over all the rest of the modernization efforts. Do you consider that it is more important than the others? And if so, why?

**Mr. FORBES.** I don't think there is any question in our mind that this is the most important undertaking of both Radio Free Europe/Radio Liberty and Voice of America in at least a generation. It gives Radio Free Europe and Radio Liberty the opportunity to broadcast into one of the most important regions of the Soviet Union—Soviet Central Asia, the Caucasus region—I think the importance of that region can be seen in the daily headlines, whether it's Afghanistan or the dispute in Azerbaijan and Armenia. The Moslem population is the fastest-growing part of the Soviet Union; it's 40-50 million people now, growing very rapidly. The percentage of recruits in the Soviet Army, for example, who are non-Russian, I think now is in a majority or certainly it will be soon.

The population trends show that within 10 or 15 years, the Russians will be a minority in the Soviet Union, so the need to reach that region is absolutely critical. We don't do it very well now. We were able to get an agreement with Israel to build this relay station. It was a moment that we don't think can be recreated. It just happened that they were in a position to say yes, we were in a position to ask for it. It came about after arduous negotiation, and we felt that if it had been delayed, as some suggested, the project would have fallen apart.

**Mr. ROGERS.** Well, they don't go away completely empty handed.

**Mr. FORBES.** When we asked Israel to do the project, they did it as a favor to us. About half of the monies that will be spent on it will end up with Israeli firms that are performing various parts of the contract. They're there and American firms are not, so they're going to get a piece of it. So there will be some economic benefit, but they didn't come to us for this. We had to ask them and there was a great deal of head scratching there as to whether they ought to go along with it. It poses a lot of problems in their eyes.

**Mr. ROGERS.** Like what?

**Mr. FORBES.** Well, just the whole idea of having a foreign entity using your soil for broadcasting. We see that in other areas of the world; they're no different. They did it as a favor to the United States because of our alliance.

Other countries had been approached in that part of the world and other parts of the world, VOA approached other countries in the world for similar relay sites. Almost invariably, the answer you

get is no. The Israelis were the ones who said yes, and we leapt at the chance.

#### PROCUREMENT FOR ISRAEL RELAY STATION

Mr. ROGERS. They will benefit quite a bit from the construction and procurement benefits. Have we made this type of arrangement with the other places where we—

Mr. FORBES. I can't speak for other modernization programs. VOA has had much more experience in that than we have had. Our building of sites in Europe was done, most of it, in the 1950's. These sites are what you might call off-the-shelf equipment. In Israel, not only do we have to put in the equipment, we've got to build a whole new facility. We have to provide roads, we have to provide power lines, utility lines, water. It's an enormous undertaking. So, it's very different to make it happen than any other project. It's hard to find a precedent, because there's been no other like it.

Mr. ROGERS. Are you currently reaching those populations you described inside the Soviet Union with any of your present transmitters?

Mr. FORBES. We do reach some, but I think the effectiveness in many of those services is nominal. The engineers tell us that what they call 50 percent effectiveness is very good, that means that jamming can be overcome and people can get a sense of what you're saying. In many of those areas today, it's 15 percent.

The Soviets spend, the BBC estimates, the equivalent of a billion dollars a year on jamming and are getting better and better at it. Our current relay broadcast facilities are at absolute maximum. As we indicated earlier, any time we want to increase the broadcasting signal or programming hours to a particular region, we've got to take it from someone else, so it's really a zero-sum game. Our ability to reach that particular critical area of the Soviet Union is small now; we're the only ones who make an attempt to reach it as much as we do, but it's going to become less and less effective. Construction of this relay station is a five-year undertaking, assuming we get the appropriations and can keep it on track. It'll come in time to make sure we can reach these people. If it's not done, eventually we're going to have no signal there. Right now it's a very weak one.

Mr. PELL. I'm not an engineer, Mr. Rogers, but engineers in short-wave broadcasting talk about "hops." The characteristics of HF broadcasting are such that you need to be somewhere around 1700 to 2000 miles away from your target area to put an effective signal into that area.

So our facility in Portugal, for example, is ideal for reaching parts of Eastern Europe and the western part of the Soviet Union, with what we call a one hop signal, which is the maximum effectiveness.

Now because of where our transmitters are located, we put a two and sometimes three-hop signal into Central Asia and Afghanistan, and you're getting more bounce off the ionosphere each time and each time that effectively weakens the signal's strength.

If you took a look at a map and decided where you wanted to put a short wave relay station for maximum effectiveness, in terms of Central Asia and that part of the world, there's a pretty small dot there. And as Mr. Forbes has indicated, a number of places that fall within that circle are not interested in allowing a facility like that on their soil. This makes Israel important not only because Israel agreed to access, but because its physical location is such that it is from there that we can pour very effective radiated power into the areas we most want to reach.

Mr. ROGERS. Well, I just wanted to be sure that we're not—providing pork barrel for Israel. This project is much too important for it to be pork barrel for Kentucky or New Jersey or Israel. I just want to be sure we're going after, objectively, the best place for the transmitter. And you're telling me that that is the best and only place for us to locate it.

Mr. FORBES. Sure.

Mr. PELL. Yes, sir.

#### EFFECTS OF STRETCHING OUT THE ISRAEL PROJECT

Mr. ROGERS. Has funding for this contract been stretched out in the past and what would be the effect of stretching it out even more?

Mr. FORBES. I think on Israel we have not stretched it out. It's a five-year project from the time of the first appropriation; the money that we receive for FY 1988 and the money that's been requested for FY 1989 is really the absolute minimum necessary to keep it on that five-year schedule. There will be a need for a major appropriation in FY 1990. If that appropriation does not come through, then this project will suffer some very serious delays and probably cost increases. Time is money especially on a job of this complexity and size, time.

#### IMPACT ON COSTS OF OPERATING IN GERMANY

Mr. ROGERS. Switching to Germany, for a long time, I understand, you've had serious problems in Germany, very restrictive German labor laws, which set tight limits on who can be RIFed, high severance pay, retirement requirements, and so forth. I even understand that if you attempt to fire more than 5 percent of the workforce, you've got to go through the courts there to achieve that type of a reduction and so forth and so on.

What kind of problems has that caused you in your ability to make management improvements, essential to, for instance, offsetting inflation and currency costs?

Mr. PELL. Well, there's no question that running a company under circumstances such as you have mentioned becomes more difficult. But I think that often times radio management itself has used that as an excuse for a lack of good management. I've been there two and a half years now, and I've got my frustrations with the unions and the Workers Council and the courts as well, but I believe we have made some significant progress, that we have improved the quality of management and administration, we have improved the programming, and we've run a very cost-effective operation while doing so.

Given the restraints of the budget, deficits, and given the enormous currency problem we've had to deal with now for three years running, we have still been able to maintain our number of broadcast hours, to complete some modernization projects, to bring some needed management tools into the building, such as a computerized ADP program which is finally helping us get out of the Stone Age in that area. That has been done I might add, with the cooperation of the unions.

I'm not discouraged. Sometimes the job is difficult, but if you've got the right people there to do the job, it can still be done, given those constraints.

Mr. FORBES. One of those things to keep in mind on the currency situation, is that over a period of time, these things usually even out. For example, between 1976 and 1986, a time of extreme volatility of the dollar, both from the downside and on the upside and on the downside again, at the end of that 10 or 11 year period, if you add up all the losses and all the gains, they're just about even. So, over time these things do flatten out, but unfortunately there's no mechanism right now, at least a capitalized mechanism, where you can draw down reserves in bad times and build up reserves when the dollar is strong. That makes for enormous management headaches and anxiety in trying to make sure you keep this operation going.

Mr. ROGERS. Well, there's nothing more important, I don't think, in this day and time, than your mission, especially now that we're seeing to some degree an opening of channels of communications inside the Soviet Union and the willingness apparently, of the Soviet people to listen and maybe have more of a say in their own lives. So, I congratulate you on work that you're carrying out well under severe budget constraints, and severe economic conditions.

As Archibald MacLeish said one time, "There are those who would say, of course, the liberation of man and mind is only a dream." He said, they're right: it's the American dream, and you're carrying out—hoping to carry out that dream, world liberation of mind, and I would hope, one of these days, liberation of man.

Mr. PELL. We'd like to think, Mr. Rogers, that we are, in fact, one of the principal architects of Glasnost because of what we have been doing for 40 years. And I agree with you that what we do is, I think, more important now perhaps, than it has been in the history of the radios. There is change taking place very rapidly on the other side, in the Soviet Union and in Eastern Europe.

We have a role to play there, a positive, constructive role to play in that, and I believe we are doing that to great effect.

Mr. FORBES. Dissidents such as Mr. Shcharansky and Mr. Bunkovsky and others have said that the progress that has been made under Glasnost would not have happened if it had not been for instruments like Radio Free Europe and Radio Liberty keeping the pressure on, keeping the light lit during some hard times.

Mr. ROGERS. Well, it makes sense to me in closing, Mr. Chairman, that Gorbachev and his expression of perestroika and Glasnost obviously wouldn't need to make these announcements unless there were some degree of pressure from below for those very policies. So I would have to believe that he's getting some degree of groundswell underneath him which he's trying to satisfy with

these policies. Obviously, what you're doing plays into that groundswell, and hopefully encourages it. Thank you very much.

Mr. FORBES. Thank you, Mr. Rogers.

#### TOMER

Mr. DWYER. Going back to the issue of radio relay stations, would you tell us something about TOMER, which apparently is the entity set up by the Israeli government to operate the relay station, is that it?

Mr. FORBES. That's right. It's called the Transmissions of Middle East Relay Project Management and was set up by the Israeli government. Its prime role is sort of a liaison between us and the appropriate Israeli authorities getting permission and all that sort of thing. They will eventually operate the relay station—physically operate it—when it's up and running. They obviously have nothing to do with the editorial content, just the physical management of it, and will probably involve 90 to 100 people. The cost will be split between us and VOA depending on the number of hours each of us uses the transmitters.

#### ALLOCATION OF TRANSMISSION HOURS BETWEEN RFE/RL AND VOA

Mr. DWYER. Who will determine who uses what hours and the number of hours?

Mr. FORBES. We have an agreement now with VOA already in existence that 16 transmitters will be built. Ten will be used for us, six will be used for them. We've also reached an agreement on roughly how the costs should be split, and near the completion of the project when we get a better fix on who's going to use how much, we'll come up with a more precise equation on splitting the costs, but the skeleton of that has already been negotiated, been agreed to.

#### THE U.S. BROADCASTING ENTITY (U.S.B.E.)

Mr. DWYER. That begs the question that—who was the U.S. broadcasting entity, which is mentioned on page 16?

Mr. FORBES. That's an entity we set up to make sure that the Israeli project office is a separate entity within RFE/RL. It was established so that the bookkeeping is separate, the personnel is separate, so it doesn't get mixed in with anything else. It is a management method to ride herd on this undertaking.

Mr. DWYER. Is there any additional costs because of this?

Mr. FORBES. No.

Mr. DWYER. No?

Mr. FORBES. No.

Mr. DWYER. I didn't think so. Will the Israeli—

Mr. FORBES. We think it will increase efficiencies. We hope.

#### ISRAELI USE OF TRANSMITTERS

Mr. DWYER. Will the Israeli government also use the facility?

Mr. FORBES. No.

Mr. DWYER. They will not?

Mr. FORBES. No, unless some hours become available later; in that case, Israeli use would be on a cost reimbursable basis.

## TERMS OF LEASE OF TRANSMITTER SITE

Mr. DWYER. And the term of the lease is 25 years from the date of completion?

Mr. FORBES. I believe so.

Mr. PELL. From the date of the first transmission.

Mr. DWYER. When will the completion of first transmission be?

Mr. FORBES. We hope it will be in 1992.

Mr. DWYER. 1992. Now, then, at the end of 25 years, if you decide that, say, Glasnost has really worked and does exist, and so on and so forth, and given the demographics that you've pointed to before, which is playing a very important part in Glasnost, with that birthrate down in the southeastern part of Russia—suppose there's no need for the station, what happens to the station?

Mr. FORBES. Probably my successor several times removed will probably negotiate a transfer of one sort or another. It would be a nice thing to do. It would mean the mission was accomplished, and we'd be delighted if the circumstances were right for that.

Mr. PELL. You know, Mr. Chairman, in line with that question, some of the other things that are happening in this short wave business might be of interest and instructive. We don't have in our inventory one single 500-kilowatt transmitter, just as an example. The Soviets are operating, that we know of, at least 37 of them, for Radio Moscow. Now the British have them, the French have them, the Germans have them. It recently came to our attention that Iran, through Radio Teheran, had ordered more than 20 500-kilowatt transmitters from a German manufacturer.

Short wave bands and the spectrum have become increasingly crowded over the last several years because more and more countries have gone into this business. Ambassador Marks who represented the United States at the last conference in Geneva, tried to reach some rational means of assigning frequencies in this field. It's an almost impossible task. They had a computer work on it for three years and nobody understood the results, so they went back to pen and pencil all over again.

But my point is that increasingly more and more people are getting into this business with greater and greater power and if we want to stay competitive and we have a message that's worth hearing, and we certainly do, and we want people to hear it, we've got to compete. And right now we're not competitive. And that's one of the things this project is designed to do, is to make us that way, and I submit that the need for that is going to be there for a very long time.

Mr. FORBES. Mr. Chairman, just to go back to your question: what happens after 25 years? Apparently, under some sort of standard operating procedure on these kind of negotiations these days, at the end of 25 years, it will revert to the host country unless we negotiate an extension to it.

Mr. DWYER. That's what I thought. That is why I asked the question. Gentlemen, thanks very kindly. We will have a few more questions that we will submit to you, you supply the answers for the record, and I am sure the Committee is going to try to be helpful. Thank you.

[The questions for the record and the answer thereto follow:]

## House Appropriations Sub-committee -

Questions for the Record - March 23, 1988

## Status of Modernization Program

QUESTION:

Are the transmitter sites in Germany to be remotely controlled as is planned for the Maxocheira site in Portugal? If not, is it possible to place them under remote control? If the answer is no, why is it possible for one location and not another?

ANSWER:

There is no plan to remotely control transmitter sites in West Germany. Existing transmitting equipment at these sites does not have remote control capability. New equipment planned to complete modernization of these sites must be compatible with existing equipment for spare parts and operational reasons. It is not practical, for technical reasons, to add remote control capability to existing transmitters in West Germany. This is primarily because all existing transmitters are manually or preset tuned and therefore require some operator adjustment at each frequency change. Some newer transmitters installed since 1980 could be remotely controlled if special and expensive modifications were made. However, the cost effectiveness of such a change is highly questionable since the older equipment still in use at each site would still require manual operator control.

The facility at Maxocheira, Portugal, on the other hand, will be completely new; equipped with the very latest, state-of-the-art equipment. There is no compatibility requirement, and the new transmitters can be fully tuned and supervised automatically from the nearby site at Gloria, Portugal (or other locations via data links.) They will require only minimum staff for site and equipment maintenance.

## BIB Operations

QUESTION:

On page 6 of your budget justification you show for the Board \$137,000 for Personnel Compensation for Other than Full-time. Why the substantial increase since 1987? Are Board members devoting more time to the operation of the RFE/RL? Does the RFE/RL budget include funds to compensate or reimburse Board members when they are performing corporate duties?

ANSWER:

It is anticipated that Board members will be reimbursed on a more regular basis for their time and expenses as they pursue their oversight role as Presidential appointees. The RFE/RL budget does not include funds to compensate Board members.

QUESTION:

Do you have a merit bonus program for your management staff? If so, what is the basis for awarding merit bonuses, and what are the sizes of the bonuses?

ANSWER:

The BIB as a Federal agency follows OPM guidelines for incentive awards and SES bonuses. The non-SES management staff is covered under an OPM-approved Performance Management System (PMS), which stipulates how Incentive Awards (Cash Awards, Quality Step Increases, Superior Accomplishment, Suggestions) may be paid to employees. The SES staff may be granted performance awards in accordance with OPM's regulations (5 CFR 534.403) on SES Performance Awards. The regulations provide that OPM shall issue guidance concerning the distribution of performance awards within an agency. Two methods of calculation that may be used are: "1) three percent of the aggregate career SES basic pay as of the end of the fiscal year prior to the fiscal year in which the award payments are made; 2) 15 percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year prior to the fiscal year in which award payments are made." For FY 1987, no SES bonus or superior performance award exceeded \$5,000.

QUESTION:

On page 11 of your budget justification, you show \$10,555,000 for Miscellaneous Fees/Professional Service. What exactly does this cover?

ANSWER:

The \$10,555,000 for Miscellaneous Fees/Professional Services covers: contract security services at the transmitter sites and Munich Headquarters offices in West Germany and the transmitter sites in Spain and Portugal; audience research and public opinion polling services; computer software programs and software development; professional actuarial, legal, engineering and administrative services; editorial training and professional development programs; and freelance contributions to Radio Free Europe and Radio Liberty broadcasts.

## RFE/RL Operations

**QUESTION:**

The budget justifications show a total requested increase of \$1,944,000 to cover general salary increases of 2.5 percent for employees in West Germany and the U.S. and 10 percent and six percent for local employees in Portugal and Spain, respectively. Why is the percentage increase that will be granted for employees in Portugal and Spain so much higher than the increase that will be granted for employees in West Germany and the U.S.?

**ANSWER:**

RFE/RL functions as a private firm in European countries. Like any such firm RFE/RL must deal with labor unions and negotiate cost-of-living increases based on the economic trends of the countries in which it operates. The following table shows the West German Industry Record for wage increases:

Concluded settlements in	1986	1987	1988*
Civil Service	3.5 %	3.4 %	2.4 % *
Bavarian Radio	3.5 %	3.4 %	**
Metal industry	4.4 %	3.7 %	**
Printing industry	4.5 %	3.7 %	**
Banks/insurances	4.2 %	3.8 %	**
Newspaper editors		3.7 %	**
Magazine editors		3.7 %	3.5 %

\* The Civil Service settlement was for 2.4% plus reductions in working hours.

\*\* Agreements for these areas have not been concluded. Wage increases ranging from 3 to 4% are expected.

RFE/RL has negotiated a 3.1 percent settlement with its German Unions for 1988. In accordance with trends in Germany it is anticipated that the 1989 increases in German industry will range from 3 to 4 percent. RFE/RL's FY 1989 budget provides for a 2.5 percent increase.

RFE/RL extends the COLAs granted to employees in West Germany to employees in the United States.

Annual salary increases in Spain and Portugal are called for in the provisions of licensing agreements for operating in those countries. The salary increases are based on official cost-of-living statistics for those countries. In accordance with increases granted October 1, 1987 we anticipate that cost-of-living increases will be ten percent and six percent

for Portugal and Spain respectively effective October 1, 1988.

QUESTION:

What would be the savings if the increases were kept across-the-board to two percent?

ANSWER:

RFE/RL in accordance with contractual obligations in Spain and Portugal cannot pay cost-of-living increases which are below the official COL statistics in those countries.

In West Germany RFE/RL must generally conform with local norms for salary increases in order to satisfy its collective bargaining responsibilities with four separate unions. The settlement negotiated for FY 88 compares very favorably with local norms, and is in fact below settlements reached in comparable industries.

QUESTION:

Are the 10 percent and six percent for local employees in Portugal and Spain, respectively, in line with what the Department of State is proposing for its Foreign Service nationals in those two countries? If not why is there a difference?

ANSWER:

The 10 percent and six percent estimates for wage increases for local employees in Portugal and Spain compare favorably with the State Department's estimates of its requirements for Foreign Service nationals in those two countries. Cost-of-living increases estimated by RFE/RL are based on official Portuguese and Spanish COL statistics.

QUESTION:

In the technical area you are requesting an increase of \$1,599,000 in costs for power, maintenance and repairs, communications and spare parts. How much of a percentage increase compared to your cost for these items during FY 1988 does this figure represent?

ANSWER:

The technical cost increase of \$1,599,000 represents an increase of 11.2 percent over the FY 1988 requirements. The increase basically provides for across-the-board inflationary increases of two percent in Germany and the United States, six percent in Spain and ten percent in Portugal. The cost for power in Spain is anticipated to increase by 10 percent over FY 1988. In Portugal the cost for power will increase by 30.8

percent overall - ten percent for inflation and the balance to cover annualization of power requirements for the 8 new 250 kW transmitters which will come on-line during FY 1988 as part of the ongoing modernization of the Radios.

Israel Radio Relay Station

QUESTION:

The budget justifications indicate that the total cost of this project will range from \$265,000,000 to \$310,000,000. When will the Board be able to provide the Congress with a firm estimate of the total cost of the project? What is the reason for the range in estimates?

ANSWER:

The Board will be able to provide a firm estimate of the total cost of the project within several months after the completion of the final, site specific design of the entire station. Several months are needed to obtain firm, fixed price estimates from US and Israeli industry for all the material, equipment and services that are needed to establish the station. Firm estimates should be available by the last quarter of FY 1989.

The reason for the range in estimates is that without a final set of procurement specifications, drawings and working level knowledge of exact site conditions which are required prior to actual construction, all project cost estimates must be given in terms of expected ranges. The indicated range limits are the best estimates possible based on currently available equipment, services and material costs extrapolated over the acquisition and construction period of five years. Other influences on the anticipated project costs include possible funding delays or construction acceleration which impact on duration of the effort and inflation factor contributions.

QUESTION:

What does VOA's \$16,000,000 payment to the Israeli Government cover?

ANSWER:

In accordance with Annex 6 of the Agreement between the U.S. Government and the Government of Israel for the "Establishment and Operation of the Radio Relay Station in Israel", the \$16,000,000 payment to GoI, for the duration of the agreement, will pay for all of the following:

- a. Land lease costs associated with the site.
- b. Payments to the communities in the site region (compensation for increased municipal service load and loss of agricultural land, etc., due to the

- presence of the station and its personnel).
- c. Land-use charges.
  - d. Municipal and regional taxes.
  - e. Security costs exclusive of on-site security during design and establishment phases of the project.

**QUESTION:**

Is the station devoted exclusively to RFE/RL and VOA broadcasts or will the Israeli Government also use the facility? Is the \$4,952,000 for the TOMER contract a one-time cost? Will future cost of TOMER be included in the administrative cost of the station, projected to be around \$9,920,000 in fiscal year 1990?

**ANSWER:**

RFE/RL and VOA will have first call on use of the station's broadcast facilities. If any broadcast facility availability develops, the Israelis may use the station but will be charged for this use on a mutually agreed upon basis.

The \$4,952,230 for TOMER is a one-time cost. This amount covers the initial five-year term of the Operations Contract (IA2185-C7233096) between USIA/BIB and TOMER. Thereafter, payment will be on a pro rata basis in accordance with staffing provisions of the contract and its attachments. Future costs of TOMER are not included in the \$9,920,00 for administrative costs.

**QUESTION:**

After years of resisting joint sharing of facilities by VOA and RFE/RL, why now the change? Is there opportunity for additional sharing of facilities and additional savings in other locations?

**ANSWER:**

Joint negotiations leading to shared VOA-RFE/RL facilities have been undertaken in more than one country in the last eight years because both radios need to modernize and savings through shared facilities has been a high priority. Israel is the only country that has agreed to accept a facility and is an ideal location for both VOA and RFE/RL. Since this is the only new site for which BIB is requesting funds, we do not believe at this time that other locations pose realistic opportunities for new shared sites.

RFE/RL Pension Fund

**QUESTION:**

What is the total value of RFE/RL's liability for the pension fund, and how much of this liability is "infunded"?

ANSWER:

RFE/RL has separate pension plans for its employees located in the United States and abroad. All U.S. citizens have the right to belong to the U.S. Pension Plan while the German Pension Plan covers substantially all other personnel.

RFE/RL's German Pension Plan has long-term assets of \$61,287,950 and long-term liabilities of \$97,609,308 as of September 30, 1987. The unfunded liability of \$35,221,358 is considered favorable compared with other plans in Germany as verified by pension and insurance actuaries. RFE/RL's U.S. Pension Plan conforms to ERISA requirements and the unfunded (past service) liability as of September 30, 1987 is \$5,449,515. This amount will be amortized over a period of 15 years. This is acceptable under ERISA requirements.

QUESTION:

I understand that a large number of RFE/RL staff will be coming eligible for retirement in the early 1990's. Are the reserves for the pension program sufficiently funded to meet the expected large retirement in the early 1990's? If not, what is the future funding need?

ANSWER:

The German Pension Plan funding has taken into consideration the planned retirements which will occur in the early 1990's. We have been assured by our pension and insurance actuaries that the current funding is adequate to meet these particular needs, and no special or additional funding for this specific purpose is required. There is no funding buildup required for the U.S. Pension Plan at this time to cover retirees in the 1990s. The valuation reports prepared by the U.S. actuary have called for sufficient funding for these anticipated retirements.

QUESTION:

On page 3 of your budget justification you state that by 1991 half of the key programmers in RFE/RL are due to retire. What plans are underway to prepare for the impact that this large retirement will have on programming operations.

ANSWER:

Given the fact that a great many of our broadcasters came to RFE/RL in the 1950s, we have anticipated a substantial number of retirements in the coming five years. In preparation for this situation, we have augmented our Personnel recruitment staff, hiring a professional recruitment specialist (for the first time) to lead our efforts. We have initiated active recruitment already, both in the United States and in other

countries to find qualified professionals for our various language services. We have also designed trainee and intern programs to teach persons with basic skills to become broadcast professionals. We see the recruitment of qualified replacements for our present staff to be a major challenge facing the Radios in the foreseeable future.

**WEDNESDAY, MARCH 23, 1988.**

**COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT**

**WITNESS**

**DIEGO ASENIO, CHAIRMAN, COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT**

**INTRODUCTION**

**Mr. DWYER [presiding]. This afternoon we will hear testimony from the Commission on International Migration and Cooperative Economic Development.**

The Commission requests funding of \$890,000 for fiscal year 1989, a \$20,000 increase over fiscal year 1988 appropriations of \$870,000.

We will insert in the record at this point the Commission's fiscal year 1989 budget justifications.

[The justifications follow:]

(137)

**COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION  
AND  
COOPERATIVE ECONOMIC DEVELOPMENT  
ANNUAL ESTIMATE OF APPROPRIATION  
FISCAL YEAR 1989**

**COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE  
THE JUDICIARY, AND RELATED AGENCIES**

**23 MARCH 1988**

**SALARIES AND EXPENSES**

**For necessary expenses of the Commission for the Study of International Migration and Cooperative Economic Development as authorized by Public Law 99-603 Section 601, \$890,000.**

## PROGRAM AND FINANCING (in thousands of dollars)

<u>Identification code 48-1400-0-1-153</u>	<u>1987 actual</u>	<u>1988 est</u>	<u>1989 est</u>
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Program by activities:

10.00	Total obligations.....	120	967	890
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Financing:

21.40	Unobligated balance, start of year...	-	-97	-
24.40	Unobligated balance, start of year...	97	-	-
40.00	Budget authority (appropriation).....	217	870	890

Relations of obligations to outlays:

71.00	Obligations incurred, net.....	120	967	890
72.40	Obligated balance, start of year.....	-	79	87
74.40	Obligated balance, end of year.....	-79	-87	-89
90.00	Outlays	41	959	888

**Salaries and Expenses**  
**OBJECT CLASSIFICATION (in thousands of dollars)**

<u>Identification code 48-1400-0-1-153</u>		<u>1987 actual</u>	<u>1988 est</u>	<u>1989 est</u>
<b><u>Personnel compensation:</u></b>				
11.1	Full-time permanent.....	38	191	198
11.3	Other than full-time permanent.....	30	101	81
11.8	Special personnel services payments..	-	76	95
11.9	Total personnel compensation....	68	368	374
12.1	Civilian personnel benefits.....	3	50	51
21.0	Travel and transportation of persons.	16	105	90
23.1	Rental payments to GSA.....	-	-	66
23.3	Communications, utilities, misc.....	4	58	50
24.0	Printing and reproduction.....	1	10	10
25.0	Other services.....	8	360	234
26.0	Supplies and materials.....	20	16	15
99.9	Total obligations.....	120	967	890

**Salaries and Expenses  
PERSONNEL SUMMARY**

<u>Identification code 48-1400-0-1-153</u>	<u>1987 actual</u>	<u>1988 est</u>	<u>1989 est</u>
Total number of full-time permanent positions.	7	7	7
Total compensable workyear: Full-time equivalent employment.....	2	7	7
Average GS grade.....	14.1	11.1	11.1
Average GS salary.....	\$45,763	\$38,200	\$39,600

**COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION****AND****COOPERATIVE ECONOMIC DEVELOPMENT****(DETAILED JUSTIFICATION)**

The bipartisan Commission for the Study of International Migration and Cooperative Economic Development was established by the Immigration Reform and Control Act of 1986 (IRCA -- Public Law 99-603, Section 601).

As defined in IRCA, "The Commission, in consultation with the governments of Mexico and other sending countries in the Western hemisphere, shall examine the conditions in Mexico and such other sending countries which contribute to unauthorized migration to the United States and (shall explore) mutually beneficial, reciprocal trade and investment programs to alleviate such conditions." "Sending country" means a foreign country a substantial number of whose nationals migrate to, or remain in, the United States without authorization.

The Commission's twelve members were appointed by the Congressional leadership and are to report to the President and the Congress by July 1990. An interim report to the new President and Congress is planned for early in 1989.

Commission activities focus primarily on Mexico and countries of the Caribbean Basin, from which most unauthorized Western Hemisphere migrants originate, and most of which will be visited during FY 1988 and 1989. The Commission is also holding a series of meetings and hearings in the United States to obtain suggestions for feasible trade and investment programs that might be recommended in the Commission's report.

The Commission is contracting for research on migration, economic development and the linkage between them, and conducting a series of symposia with experts in these disciplines. Finally, in addition to periodic Commission meetings, the Commission will meet on an ad hoc basis with members of public and private sector organizations to discuss migration and economic development issues.

#### SUMMARY OF MAJOR ACTIVITIES THROUGH FY 1988

The twelve Commissioners were appointed at the first Commission meeting on July 1, 1987, thereby establishing the due date for its report to the Congress and the President as July, 1990 (3 years after appointment of the Commission). The salaried Commission staffing was completed by the selection of an Executive Director and Research Director in September.

Geographic FocusMexico

The Commission has in effect completed its first hand study of Mexico. A highly successful visit during November 29- December 5, 1987, included a very productive meeting with President Miguel de la Madrid and his designation of a counterpart Mexican organization -- the National Population Council (CONAPO) to work with the Commission. Working groups met in Mexico City January 27-29, 1988, and agreed on a comprehensive research agenda. During March 13-18, 1988, the full Commission visited the California/Mexico border area, and met with government officials and private sector representatives in Tijuana, Mexicali, San Diego and Los Angeles. An additional visit to the Texas/Mexico border area is planned for later in the year.

The Caribbean

Time constraints and ethnic diversity mandate two Commission meetings in the Caribbean. The first, planned for May 15-22, will include Puerto Rico (to examine the impact of unauthorized immigration) and the Dominican Republic and Haiti -- both major

"sending countries". A second visit later in the year will cover Jamaica and the other English-speaking Caribbean island nations. The last area to be covered will be the north coasts of Colombia and Venezuela, the southernmost region of the Caribbean Basin. The research agenda for this area is already underway.

#### Central America

Because of the unique circumstances prevailing in this area, Central America will be visited last -- probably in early 1989. Development of a research strategy, however, will not await the visit and has already begun.

#### Hearings and Meetings in the United States

These will be interspersed between meetings overseas. Five Commission meetings have already taken place -- three in Washington, one in Mexico City and one in San Diego. The Commission's first formal hearing with testimony from expert witnesses is planned for May 13 on Capitol Hill. Subsequent hearings are contemplated in Chicago, Illinois; Dallas, Texas; and Miami, Florida. Additional less formal meetings are planned for New York City, Denver and San Francisco.

Cooperation with Governments of "Sending Countries."

The success of the Commission's first visit to Mexico was reflected in the establishment of a "prototype" relationship between the Commission and the appropriate of the Mexican government. We hope to repeat this in other countries to be visited, and are confident of success in the Dominican Republic, Haiti and elsewhere in the Caribbean. As in Mexico, the Commission will also establish linkages in those countries with key representatives of the academic communities, labor and the private sector. Input from all areas will be obtained for the Commission's recommendations for "reciprocal and mutually beneficial" trade and investment recommendations in its final report. The Commission intends that these recommendations be feasible of implementation -- both legislatively and politically. For this reason, testimony it takes from both foreign and domestic experts will focus heavily on the practicality of suggestions and initiatives brought to the Commission's attention. Due attention will be paid to domestic constraints on policy recommendations that might have to be overcome before implementation would be possible.

Research

The great bulk of the Commission's effort is, of course, directed towards the production of the Report to the President and the Congress due in mid-1990. To this end, all available resources are, and will continue to be, devoted to the independent research that will form the basis for the final Report.

The Commission's research agenda is fairly complete for Mexico, and it is now addressing Caribbean Basin and Central American issues as well. A three-pronged strategy seeks to capitalize on the experience of outstanding scholars and research institutions in both the U.S. and some of the "sending countries", e.g., Mexico. The strategy is being implemented

- a) through four university centers specializing in Latin America;
- b) professionals in academic, government and private enterprise, and
- c) cooperating bodies in other countries.

The four university research centers are at the University of Texas at Austin; the University of California at San Diego; Georgetown University in Washington, D.C.; and Florida International University in Miami. Conceptual papers exploring

the relationship between migration and development are being commissioned from some twenty recognized scholars. Three dozen other specific projects will be requested by the Commission directly. Care is being taken not to engage in repetitive research, but rather to build on prior research whenever possible. An effort has been made since the beginning to seek out and synthesize existing research in areas of interest and concern to the Commission, and to build on research now being carried out by diverse institutions. The Government of Mexico has designated its National Population Council (CONAPO) as the Commission's counterpart organization in that country. CONAPO studies now underway will form part of our joint effort. During the Commission's forthcoming Caribbean trip, efforts will be made to establish similarly productive relationships with appropriate government and academic entities.

#### STAFF

For FY 1989 the Commission requests a budget of \$198,000 for salaries for full-time permanent employees. This amount represents the projected actual cost of maintaining FY 1988 staffing levels. To carry out its mandate, the Commission needs a professional staff with substantial and in many cases unique educational and professional experience.

The Director is the principal point of contact between the Commission, Congress and staff. The Director of Research, with the assistance of the Deputy, coordinates all research activities including those carried on by the Library of Congress, academic institutions and other public/private sector organizations. In addition, the Director conducts in-house research from a number of published sources. The support staff includes an Administrative Coordinator responsible for all administrative functions including budget and fiscal, one Executive Assistant and one clerk who perform typing, filing, record keeping and other clerical functions.

The other budgeted personnel expense for FY 1989 is \$81,000 for the salary of the 12 Commissioners, \$75,000 for reimbursement of salary expenses of professional employees loaned by other agencies, and \$51,000 for employee benefits.

#### TRAVEL

A Travel budget of \$90,000 is requested for FY 1989. Commissioners and professional staff members are required to travel to meetings, onsite visits and hearings of the Commission which are often held outside of the District of Columbia.

Several major Commission meetings are projected for 1989. The Commission also has assigned a high priority to hearings in various cities nationwide to allow the interested parties to express their views directly to Commission members and staff. Staff members will be required to assist in arranging and conducting these hearings. Staff will also participate in various professional meetings and conferences during FY 1989.

RENTAL PAYMENT -- GSA and others

Presently, the Commission occupies space provided by the House Judiciary Committee in the Cannon House Office Building. However, as of December 1988, the Commission may be required to relocate to new office space which is budgeted at \$62,220.

COMMUNICATIONS, UTILITIES, AND MISCELLANEOUS CHARGES

The Commission's budget request includes an estimated \$50,000 for FY89. This estimate is based on real costs experienced during FY88. Commission operations required extensive use of telephones for both local and long-distance (including international) calling to maintain communications with Commission members, contractors, other agencies and embassies and foreign governments in sending countries.

Frequent mailings, including express, are made to Commissioners, contractors and other individuals/organizations nationwide. Occasionally, the Commission requires the use of delivery and messenger service to insure prompt and safe delivery of documents to other agencies/organizations in Washington, DC.

#### PRINTING AND REPRODUCTION

The Commission has budgeted \$10,000 in FY89 for printing costs. In 1989, these costs will include a) printing an interim report for the President and Congress b) printing a variety of research papers and c) Federal Registry notification and other informational materials as required.

#### OTHER SERVICES

Research Contracts, GSA Support, technical and professional support.

The Commission has budgeted \$234,000 to be used for contracting research studies and other professional and support services during FY89. A majority of the research contracts will be a result of previous studies. In order to develop detailed analysis of specific problems areas related to migration issues,

the Commission will find it necessary to work with experts in the field of migration and economic development. Due to the unique level of expertise required in order to obtain valid data in many of these areas, it is necessary to employ outside contractors and consultants to assist with these efforts.

The Commission is authorized by statute to contract for technical and administrative assistance, \$49,000 is budgeted for these services for FY89. The Commission believes that a GSA contract provides the most efficient and cost effective alternative in securing assistance in personnel matter, contracting, regulation development and overall conformity with Federal rules and practices, and internal policy development, as required of independent agencies such as the Commission. Such a contract is in force and will continue through the life of the Commission.

#### SUPPLIES

The Commission's budget includes \$15,000 for purchase of supplies during FY 1989. The amount anticipates supplies for mailing and copying, and ordinary office supplies such as paper, and pens and pencils.

Mr. DWYER. Testifying today on behalf of the Commission is Chairman Diego C. Asencio, and Mr. Asencio, you may proceed with your statement at your own pace.

#### GENERAL STATEMENT

Mr. ASENCIO. Very good, Mr. Chairman. I appreciate this opportunity to appear before this group, and to present our justification. I think I will leave my formal statement for the record and give you an informal precis of what we have in mind.

As you know, the Commission is charged with looking into the push factors that bring about illegal immigration in the hemisphere, and, more importantly, what to do about those push factors from the standpoint of economic policy. This is really a new field and one to which very little attention has been paid.

Even more importantly, the Commission is charged with consulting with the Governments of the hemisphere who send illegal immigrants to the United States. Our initial success in this regard has had an impact on our budgetary situation.

When our first budget estimates were made, they essentially were extrapolated from the original costs of the Select Commission on Immigration. This approach has turned out to be misleading because no one really expected that we would be as successful as we have been in developing a joint cooperative research program with the Government of Mexico.

The first Commission trip was to Mexico in early December 1987. We were received by Mexican President de la Madrid and we talked to a number of the members of his Cabinet. We proposed to the President that he create a counterpart commission to work with us, and to engage in joint and parallel research.

The Mexican Government previously had not been prepared to discuss immigration policy per se with the United States. Moreover, it had always been reluctant to discuss economic development policy. This time, however, they were receptive. They bought our approach and we subsequently sent staff down to work out the details of a joint research program. It was only then that we found out that because of the economic crisis that the Mexican Government was going through, they had frozen Federal expenditures. As a result, we have this comprehensive research program set up to go down there, and we have to figure out a way to fund it.

Obviously, the original premise of this particular commission, the premise on which the budget was originally prepared was, I would say, barely adequate to cover the research that we were going to do here, in the United States, to cover the travel of the commissioners and to cover staff costs.

With this development in Mexico, we are now in a bit of a quandary concerning our original budget estimates. I would suspect as we go on to other nations this concern is going to repeat and snowball, and I think we are going to be in serious difficulty in attempting to develop the type of research base needed to produce the results expected by Congress.

While it is a problem, it is also an opportunity. An opportunity in the sense that I think it is an ideal situation to carry out the mandate of this Commission, not only in terms of consulting with

the Governments of the hemisphere, but also, in working in the areas that send immigrants to the United States, working with indigenous scholars who know these areas very well, working with our own scholars also, and doing things in a joint and parallel way that I think would only redound to the benefit of the report that we will make.

We will present a report, on an interim basis, by January of 1989, so that the new Administration might have some idea of the direction we are going in, and essentially alert them to what our final report in July of 1990 will look like.

We are a three-year Commission. We have been in existence about eight months so we still have just under two and a half years to go.

We have 12 Commissioners. It is a bipartisan, non-ideological group, in the sense that there are no prescriptions in this area. No one really has any panacea that they can directly offer as a solution for these problems. It is more of a search for the answers.

We have essentially organized our research program based on four institutional bases. Because of the time lag between the arranging for and receiving the results of the contracted research, we have very little time to get the programs under way. We want to work with the University of California at San Diego, with the University of Texas in Austin, with Florida International University in Miami and with Georgetown University here. The California and Texas contingents would look primarily at the Mexican experience. The Florida contingent would look at the Caribbean experience and the Georgetown contingent would look at the Central American and the Northern Tier experience. We have a number of contract proposals in hand and will be doing, I think, some very original things.

The hardest nut to crack is the fact that most of the people in this field are either demographers, sociologists or anthropologists. To find economists and political scientists who have professional credentials or have done extensive work in this field is extremely difficult, but I think we have been successful in getting some. For instance, Professor Sidney Weintraub of the University of Texas is a noted scholar in the area of economic development and foreign trade. Wayne Cornelius, at the University of California, is a political scientist of renown. Tony Maingot at Florida National University is a well-known scholar in Caribbean matters, particularly the English-speaking side of the Caribbean, and then of course at Georgetown, Charles Keely is a noted demographer.

There are any numbers of paradoxes that have to be researched very carefully. For example, in talking to Mexican scholars and economic development experts, one of the theses that comes to mind, of course, is that you resolve illegal immigration pressures by measurably improving the economic status of everyone in sending countries. The problem with this particular thesis is that the economic development process itself tends to be destabilizing in the short-term and it tends to promote outward migration. To, in fact, recommend a program that in the short-term has exactly the opposite effect of that desired and publicized would be, as you know, suicidal for most politicians.

Another example of one of the things that we are looking at very carefully now is the so-called twin plant or maguiladora concept. It has grown rapidly over the past 20 years and has been quite controversial from the standpoint of our own labor sector. It has to be examined very carefully. Mexican scholars are arguing that if our recommendations were to be successfully implemented, the twin plant system that currently employs 350,000 people would be damaged. If our programs are successful—as we hope they would be—the first effect would be to make that particular industry non-competitive internationally by raising Mexican wages above those of other countries. So this is an area where one has to be extremely careful, has to be well-grounded, has to develop research that goes to the hearts of the problems, and do things in a very careful way.

We are intent on coming through with a report that is practical and to the point, and not theoretical or hypothetical; one that would have an impact on policy, that could be used as a sort of starting gate for particular policies of our government. We are not particularly interested in doing something that is only of value to scholars.

I think that, in summary, Mr. Chairman, gives you an idea of what we are about, and I think essentially what I would say here today—and obviously I am bound to support the Executive Branch's request for funds—but I think it is based on a premise that is lacking, at this particular point.

[The prepared statement of Mr. Asencio follows:]

**STATEMENT**

**OF**

**DIEGO C. ASENIO**

**CHAIRMAN**

**COMMISSION FOR THE STUDY OF INTERNATIONAL  
MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT**

**BEFORE THE**

**SUBCOMMITTEE ON APPROPRIATIONS**

**HOUSE OF REPRESENTATIVES**

**MARCH 23, 1988**

## Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before the subcommittee to present justifications for the FY1989 Appropriation request of the Commission for the Study of International Migration and Cooperative Economic Development.

The President's Budget requests \$890,000 to support the work of the Commission during FY 1989. This amount includes \$198,000 for full time staff members, \$81,000 for per diem salary payments to the twelve (12) Commissioners, \$95,000 for reimbursement of special personnel expenses, and \$51,000 for personnel benefits.

Mr. Chairman, this Commission is charged, "in consultation with the governments of Mexico and other sending countries in the Western Hemisphere," to study the conditions leading to unauthorized migration to the United States and the linkage between them and economic development. It is to report to the President and the Congress in mid-1990, recommending reciprocal trade and investment measures to help alleviate those conditions. An interim report to the new Administration and Congress is planned for early 1989. Therefore, the main focus of the Commission during FY 1989, as during its entire 3-year life span, is research. The budget requests \$234,000 for "other services", which will be used to fund the outside research effort in FY 1989.

Meetings of the Commission and fact finding travel related to our research effort will be funded by the \$90,000 requested for travel expenses. Projected standard-level-user-charges (SLUC) payments to GSA for space will require \$66,000; communications and miscellaneous charges will require \$50,000; printing and reproduction of an interim report and related materials will require \$15,000 for FY 1989.

This budget request will sustain the work of the Commission in FY 1989, and will allow it to capitalize on new priority opportunities for joint efforts towards fulfillment of its mandate with one of the major "sending" nations -- Mexico.

#### MEXICO

Since the twelve Commissioners were appointed by the Congressional leadership last July, we have held five full Commission meetings, made two field trips to Mexico, and devised an overall research strategy and a full research agenda for Mexico. We are now planning a full hearing in this building for mid-May, to be followed immediately by our third field trip, this time to the non-English speaking Caribbean.

Mr. Chairman, the Commission and I have just returned from a week in Southern California and the Mexican border cities of Tijuana and Mexicali. This was a follow-on to our highly successful visit to Mexico City in early December, when we

achieved a significant breakthrough. During our call on President de la Madrid, he praised the Congress' initiative in forming the Commission, and designated Mexico's National Population Council as our counterpart organization. This was the first time in many years that Mexico has agreed to discuss immigration issues formally with the United States. This development was publicly acknowledged by President Reagan in his toast at his luncheon meeting with President de la Madrid last February 13 in Mazatlan, Mexico.

Building on this agreement, Commission and Mexican working groups met in Mexico City in late January and worked out a joint research strategy and agenda. This is now being implemented.

#### The Caribbean Basin

We are now planning to undertake similar initiatives in the Caribbean Basin and Central America.

Time constraints and ethnic diversity mandate two Commission meetings in the Caribbean. The first, planned for May 15-22, will include Puerto Rico (to examine the impact of unauthorized immigration) and the Dominican Republic and Haiti -- both major "sending countries". A second visit later in the year will cover Jamaica and the other English-speaking Caribbean island nations. The last area to be covered will be the north coasts of Colombia and Venezuela, the southernmost region of the Caribbean Basin.

The research agenda for this area is already underway.

Central America

Because of the unique circumstances prevailing in this area, Central America will be visited last -- probably in early 1989. Development of a research strategy, however, will not await the visit and has already begun.

Cooperation with Governments of "Sending Countries."

The success of the Commission's first visit to Mexico was reflected in the establishment of a "prototype" relationship between the Commission and the appropriate organization of the Mexican government. We are confident that we will be able to repeat this in other countries to be visited. As in Mexico, the Commission will also seek to establish linkages in those countries with key representatives of the academic communities, labor and the private sector. Input from all areas will be obtained for the Commission's recommendations for "reciprocal and mutually beneficial" trade and investment recommendations in its final report. The Commission intends that these recommendations be feasible of implementation -- both legislatively and politically. For this reason, testimony it takes from both foreign and domestic experts will focus heavily on the practicality of suggestions and initiatives brought to the

Commission's attention. Due care will be paid to domestic constraints on policy recommendations that might have to be overcome before implementation would be possible.

Research.

The great bulk of the Commission's effort is, of course, directed towards the development of the Report to the President and the Congress due in mid-1990. To this end, all available resources are, and will continue to be, devoted to the independent research that will form the basis for the final Report. This request provides \$234,000 for "Other Services," which includes all outside research funds as well as other contractor support.

The Commission's research agenda is fairly complete for Mexico, and it is now addressing Caribbean Basin and Central American issues as well. A three-pronged strategy seeks to capitalize on the experience of outstanding scholars and research institutions in both the U.S. and some of the "sending countries", e.g., Mexico. The strategy is being implemented

- through four university centers specializing in Latin America;
- professionals in academic, government and private enterprise; and

-- cooperating bodies in other countries.

The four university research centers are at the University of Texas at Austin; the University of California at San Diego; Georgetown University in Washington, D.C.; and Florida International University in Miami. Conceptual papers exploring the relationship between migration and development are being commissioned from some twenty recognized scholars. Three dozen other specific projects will be requested by the Commission directly. Care is being taken not to repeat what has already been done. An effort has been made since the beginning to seek out and synthesize existing research in areas of interest and concern to the Commission, and to build on research now being carried out by diverse institutions. For instance, our counterpart Mexican organization has numerous studies underway that will form part of our joint effort. During the Commission's forthcoming Caribbean trips, we are confident that we will be able to establish similarly productive relationships with appropriate government and academic entities in Caribbean countries.

#### Conclusion

Summing up, in FY 1989 the Commission plans to hold hearings in New York City, Dallas and Miami. Less formal meetings are planned in Chicago, Denver and San Francisco. The Commission

plans full field trips to the english-speaking Caribbean and the north coast of South America. It will write and present an interim report to the new President and Congress. And it will conclude its research agenda, the completion of which will be the essential material from which its final report to the President and the Congress will be drawn for presentation in July 1990.

Mr. Chairman, this Commission in effect focuses on the "flip side" of the immigration issue. The Immigration Reform and Control Act of 1986, which gave birth to the Commission, was carefully crafted to deal with the "pull" factors encouraging unauthorized immigration to the United States. This Commission is charged with addressing the "push" factors. We look to the appropriations process to enable the Commission effectively to meet the high expectations set for it by the Congress.

This concludes my formal statement, Mr. Chairman. I will be happy to address any questions or concerns the subcommittee may have.

## REQUEST TO OMB

Mr. DWYER. What was your original request?

Mr. ASENCIO. \$890,000, sir.

Mr. DWYER. No, to OMB.

Mr. ASENCIO. 1.7 million dollars, sir. The higher amount would add over \$800,000 to our very thin research budget.

Mr. DWYER. \$1.7?

Mr. ASENCIO. Yes.

Mr. DWYER. So they—

Mr. ASENCIO. They cut it back.

Mr. DWYER. They cut you down to \$890 thousand. It is almost right in half.

Mr. ASENCIO. Yes, sir.

Mr. DWYER. It did not take much computation to do that, did it?

Mr. ASENCIO. No. Of course when you are dealing with such small sums, any dollar—

Mr. DWYER. It is easier to divide by two.

Mr. ASENCIO. Any dollar that is excised hurts.

## MEXICO

Mr. DWYER. Let's talk about Mexico. You say you are in a quandry. They apparently like your idea, but they lacked the funds—

Mr. ASENCIO. I would have to explain that I spent three years in the early 1980's as Assistant Secretary for Consular Affairs, trying to convince the Mexican Government to consult with us on immigration policy. Particularly at the time of the Simpson-Rodino Bill considerations, I thought it was important for them to have an input in what we were doing, and I failed miserably.

They started from the premise that in fact it was our problem. Any change could only worsen their particular situation. Their situation at that time might be seen as the best of all possible worlds. They were not really interested in dealing with us on this subject, perhaps because they felt that it would then become their problem, and they would then suffer pressures from us to police their side of the border.

So they were always, I would say, extremely competent in putting us off in this particular regard. This became the sort of conventional wisdom in this area, so that when the Commission for the Study of International Migration was set up, the smart money was saying that we would encounter that particular situation again. The fact that we did not, but were welcomed, I think might be a measure of the problems the Mexicans currently have, a measure of their appreciation that the bill is now passed, and they have to go to a different stage in doing something about the effects in Mexico.

But in any case, whatever it was, we went down there, we were received beautifully—which I expected in any case—but, more than that, from a substantive standpoint they bought the program. They were quite prepared to do whatever was needed so that the result would be an effective report.

Mr. DWYER. That is how you understood it the first time. Now you wind up with a quandry, or a puzzlement.

Mr. ASENCIO. Exactly.

Mr. DWYER. What is the puzzlement? What is the quandary?

Mr. ASENCIO. Essentially, they have an austerity program going. Their Federal budget is frozen. We have come up with a research program down there that has a price tag of about \$450,000, and now there is no Mexican money to put in it, and from our standpoint that would be an extremely valuable program.

Mr. DWYER. Well, are you suggesting that you want to fund the program?

Mr. ASENCIO. I would suggest that we fund at least part of it.

Mr. DWYER. You would have the authority to do that?

Mr. ASENCIO. Yes, sir.

Mr. DWYER. That's not very much money when you consider the importance of the study even to the Mexican Government.

Mr. ASENCIO. Well, this is our sentiment, exactly. I think that what we are dealing with here is an administrative dilemma.

Mr. DWYER. Yes. Was that particular item included in your request for \$1.7 million?

Mr. ASENCIO. It included a projection to the effect that we would be doing research in foreign countries, but not mentioning specifically the Mexican program.

Mr. DWYER. Would you anticipate other countries would develop the same posture?

Mr. ASENCIO. We certainly anticipate it now.

Mr. DWYER. Well, what would you capitalize that total to be?

Mr. ASENCIO. It is awfully hard for us to say. In effect we have started with Mexico. We have not yet gone to the Caribbean or Central America. However, from professional contacts I am aware that they are fully aware of our effort in Mexico, and are looking forward to seeing us.

And so I expect that we are going to get somewhat the same kind of approach. I am not necessarily suggesting that we should fund programs everywhere. In fact, I am also seeking from other areas funding for some of the research I am talking about.

Mr. DWYER. Well, maybe indeed we should expand the programs we are funding in this area.

Mr. ASENCIO. That certainly would enhance the research effort.

Mr. DWYER. Particularly if you are up against a 1990 deadline.

Mr. ASENCIO. Correct. This is our specific quandary, in a sense that it sounds like a long time, but since we are dealing in an area where we do not know the answer, it is tomorrow.

Mr. DWYER. Well, that is what I suspected the puzzlement was. That is why I asked the question.

Mr. ASENCIO. May I announce that we now have with us, Congressman Bryant.

Mr. BRYANT. I appreciate being allowed to come and speak, if this is the appropriate time.

Mr. DWYER. Say anything you want.

Mr. BRYANT. Well, I just want to make the observation that Ambassador Asencio is constrained to some extent by the not exactly clear, but possible, relationship between the OMB and his role in coming before this Committee. I am not so constrained, and want

I observe very frankly that even the amount of money that OMB has approved a request for, in my opinion, is not adequate relative to the very grave importance of this Commission.

It is the other side of the immigration bill, and I think it is very important not to lose sight of that. The whole philosophy behind the bill was that we would impose sanctions but that we would try to, at the same time, find out what the push factors were and eliminate those, and that is what this Commission is doing with very, very little money.

Obviously, it is my opinion that the amount of money the OMB has approved is far from adequate, and the original request to OMB would be the very least, I think, that would allow this Commission to go forward with its work.

Some very interesting things have developed. We have found that some of the assumptions that many of us had, entering this whole subject area, have not necessarily been valid ones. That is, assumptions about what causes people to migrate here illegally.

There has been some theory suggested that no one would have suspected. It may have some validity. The point is, nobody is doing original work in this area but this Commission, and I think—in terms of our relationship with Mexico, which is still concerned about us having passed a bill, and in terms of our own self-interest, in trying to prevent the long-term costs of illegal immigration, which far exceed the paltry sum being sought by this Commission—that it would be in our interest to stay the course with this half of the immigration bill.

**Mr. DWYER.** Suppose we cannot increase this amount of money because of the constraints that are placed on this Committee. In the budget resolution that we are all going to vote on in another hour or so, this particular function is held, to a freeze, plus 4 percent for inflation.

We do not have enough money to fund the FBI, the DEA, and INS that we are called upon to fund. We have a serious problem.

Supposing we cannot find the money, even though it is a small amount of money relative to the sums we deal with around here, would you be able to get out a meaningful report by 1990?

**Mr. BRYANT.** Well, I do not think it is possible to answer that question. I think we would be in jeopardy of not being able to get out a meaningful report—and I emphasize meaningful—a report that would give us the data we need to be sure we are able to pursue policy to prevent illegal immigration in the future.

**Mr. DWYER.** So that it is quite possible that you could not really get out a real meaningful report by 1990 unless you had your original appropriation?

**Mr. BRYANT.** Well, my opinion is it would be very difficult to, but we are lucky to have as Chairman of this Commission a man with as much background in foreign policy and international relations as Ambassador Diego Asencio, and I think he is far better qualified to answer than me.

**Mr. DWYER.** Let me get to some real money for just a moment. You have office space in the Cannon Building. Are you going to lose that space?

**Mr. ASENCIO.** That is entirely possible.

Mr. DWYER. But if you manage to keep this space, you have a budget, \$66,000.

Mr. ASENCIO. That is correct.

Mr. DWYER. I am sure you will find a place for that.

Mr. ASENCIO. Oh, absolutely.

Mr. DWYER. Can we exert any pressure to keep you in that space so that you might have the use of that \$66,000?

Mr. ASENCIO. I imagine there are a number of things that you could do in that sense, Mr. Chairman.

Mr. DWYER. Well, the Committee will take note of that. There is no need to ask any more questions. I am of the opinion that you probably need this money, if you are going to have a meaningful report, on time, but I do not know where we are going to get the money right now.

Mr. ASENCIO. I understand.

Mr. DWYER. But if you want to add any more testimony, why, you know, the record is still open.

Mr. ASENCIO. I would like to leave the Mexico report with you for the record, if I could, because it is a report of our conversations with the Government there, and I think it would be useful and give you an idea of how that came about.

Mr. DWYER. I appreciate that.

[The information follows:]

*Commission For The Study Of International Migration  
And Cooperative Economic Development*

**FIRST INTERNATIONAL CONSULTATIVE MISSION**

**MEXICO CITY- ZACATECAS**

**NOVEMBER 30- DECEMBER 4, 1987**

517 Cannon House Office Building, Washington, D.C. 20515 (202) 225-5300, 225-5301

**Chairman**

The Honorable Enriqu C. Arenas  
Former Assistant Secretary of State

**Commissioners**

The Honorable Donna M. Alvarado  
Director, ACTION  
The Honorable Tonny Arey  
Former Congressman  
New Mexico  
Eric H. Bodell, Jr., Esq.  
Attorney at Law

**The Honorable John Bryant**

Congressman  
5th District, Texas  
Carter J. Clegg, Esq.  
Attorney at Law  
Dale S. de Haan  
Former United Nations Deputy  
High Commissioner for Refugees  
The Reverend Timothy Herdy, S.J.  
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Georgetown University

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Alfred P. Sloan Foundation  
The Honorable Jim Torres  
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Esther Lee Yau, Ph.D.  
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EXECUTIVE SUMMARY

-- The Commission's first visit to Mexico was a useful beginning in addressing the serious problem of illegal Mexican migration to the United States. Mexico's declared willingness to discuss migration and economic development issues is a major step forward in bilateral relations and a sharp departure from previous positions. Mexican President de la Madrid agreed to designate a permanent Mexican counterpart under Secretary of Government Bartlett, to cooperate with the US Commission in studying the causes of illegal Mexican migration to the US and to consider cooperative measures to alleviate migratory flows.

-- The Mexican President stressed his own concerns about migratory problems, both toward the United States and within Mexico, and said Mexico would share with the Commission its studies of population growth, migratory movements, and their relationship to economic and social development. He outlined the difficult economic and demographic problems which Mexico faces, stressing that Mexico does not have sufficient investment resources to create employment for a growing population, and that the US could play a fundamental role in addressing this issue of paramount importance to both nations.

-- The Commission established valuable contacts with Mexican government, private sector and academic institutions involved in migration and economic development issues. Particularly useful were discussions with the Mexican Population Council (CONAPO), which has done extensive studies of Mexican population growth and migratory movements within Mexico and to the United States.

-- The Commission also held discussions with senior officials in the Foreign Relations Secretariat, and the Secretariats of Commerce and Industry, Programs and Budget, Labor, and Agriculture. Meetings were held with groups of Mexican Senators and Congressmen responsible for migration matters to discuss the Commission's objectives and US-Mexican relations. The Commission met with leading scholars at Mexico's most important research institute, the Colegio de Mexico, and with US and Mexican businessmen at the American Chamber of Commerce. Both groups agreed to cooperate with the Commission's work.

-- Finally, the Commission made an excellent start at examining the causes of illegal migration and possible solutions, including a visit to the Mexican State of Zacatecas, which has the highest percentage of illegal migration to the US of any Mexican State. Commissioners met with a representative group of Mexican agricultural workers, many of whom had worked in the US and/or had relatives working in the US. This provided a first hand

opportunity to see and hear the causes behind Mexican migration. The state's dynamic new Governor described the conditions that lead to migration and outlined efforts his government is making to create employment and development opportunities within the state, so that Mexicans will not have to seek work in the United States.

-- This first visit establishes an excellent framework for rapid progress in addressing the causes of illegal migration to the US, and for seeking cooperative solutions with Mexico. Mexico's warm reception to the visit reflects its positive response to the US initiative to form the Commission and to our willingness to engage in a dialogue on one of the most important issues in bilateral relations. The Commission plans to follow-up promptly on the Mexican agreement to designate a counterpart group to work with the Commission in studying the causes of illegal migration and possible cooperative, reciprocal trade and investment programs to alleviate these illegal flows.

-- It is clear, however, that there are no easy solutions to the migration issue. Mexico will have to create 13 million new jobs in the next ten years to maintain current employment levels and to absorb current unemployment and underemployment. A rapidly growing workforce will not only strain Mexican political and social institutions and its economic infrastructure, but it will also continue to look to the U. S. as a source of employment. The Commission will face a formidable task in seeking practical solutions to this problem.

-- The Commission's visit received highly favorable Mexican press and TV coverage.

#### HIGHLIGHTS

Following is a summary of the most important meetings and discussions which the Commission held during its visit.

President Miguel de la Madrid. At the end of the Mexico City portion of the visit, the entire Commission met with President de la Madrid and Government Secretary Bartlett. De la Madrid said he had followed the Commission's visit with great interest, supported its objectives, and said Mexico was prepared to cooperate with its efforts to seek solutions to the illegal migration problem. He stressed his view that the immigration issue was much more than a matter of police control or social stability. It reflected Mexico's serious economic problems and the disparity of incomes between Mexico and the United States. Both nations were undergoing profound structural changes which precluded easy solutions to the migration problem.

The US needs unskilled labor, and pays much higher wages than Mexico, the President said, and would need increasing numbers of migratory workers in the 1990s. Mexico's population is growing rapidly, but it cannot create enough jobs to employ an increasing population because of lack of investment resources. Moreover, Mexico had to deal with serious imbalances in the geographical distribution of its population, in its external economy, in regional development and between the rural and urban population.

During the five years of his administration, the President added, a great deal had been accomplished to deal with these imbalances. Mexico was making a major effort to restructure its economy to become more competitive in the international market place. It was trying to reduce the size of the public sector and reduce the public sector budget deficit. Efforts were underway to reduce internal population movements to Mexico City, Guadalajara and Monterrey by strengthening State and Municipal Governments and by supporting regional development. And the effort to reduce population growth was succeeding; population growth was down to 2 percent annually and the goal is one percent growth by the year 2000.

-- These efforts were hampered by Mexico's stagnant economy, the burden of servicing the external debt and developments in the international economy beyond Mexico's control, including protectionist actions by the industrial nations. Mexico was trying to resolve its debt problems through negotiation with its external creditors. It had joined the GATT because GATT offers a way to revitalize world trade, and it had reached two important agreements with the US, on trade subsidies, and a framework agreement on trade and investment to strengthen bilateral relations on these subjects.

-- But these efforts, and the resources to support them, are inadequate, he concluded. And US support would be fundamental to dealing with Mexico's development and migration problems. Consequently, the Congressional initiative in creating the Commission was welcomed, and it would be appropriate for Mexico to designate a group, under Secretary Bartlett, to work with the US Commission, and engage in a serious dialogue on migration and development. The National Council on Population (CONAPO), under Secretary Bartlett's chairmanship, already has the participation of relevant sectors - government, labor, agriculture, private business - and could work with the US Commission. He recognized there would be no easy solutions to this complex problem, but that a bilateral dialogue on its causes and possible solutions was long overdue, and Mexico welcomed this opportunity to participate.

Secretary of Government Bartlett and National Population Council  
Secretary General Martinez.

The Commission held two positive meetings with the Secretary of Government Manuel Bartlett and Secretary General of the National Population Council (CONAPO) Geronimo Martinez. CONAPO, an agency chaired by the Secretary of Government with 8 cabinet secretaries and representatives from the private sector, not only studies and establishes the government's population policy, but also designs economic, administrative and social development programs designed to ameliorate conditions. Bartlett welcomed establishment of the Commission to study the causes of migratory flows as a positive alternative to enforcement, and he was enthusiastic about the Commission's proposal to address the problem jointly. The entire phenomena of migration, he said, is full of myths and imprecise statistics, which have neither been truly understood, nor thoroughly examined. Moreover, it is a sensitive issue for both countries.

Mexico was aware of the magnitude of the migratory problem on the basis of studies already concluded by CONAPO. Mexico has addressed the issue of migratory flows through a population policy which will attempt to reduce the growth rate to 1 percent by the year 2000. It already has made substantial progress in this area by reducing the growth rate from 3.5 percent in 1950 to 2 percent today. - The problem as Bartlett states is not overpopulation itself, but the distribution of population, and the speed at which it is growing. Bartlett said the other part of the equation was to embark on regional development programs, which, together with policies to reduce population growth can help reduce migratory flows.

Secretary General Martinez asserted that the migration of undocumented workers would not change as long as economic and demographic conditions, such as wage differentials, uneven social conditions, and a porous border remain unchanged. A reduction in the number of workers going to the US would depend on the economic and social development of Mexican society. He recommended assigning international resources for regional economic development programs, and stressed Mexico has both the infrastructure and skills to administer such programs. On the other hand, if the economy is not stimulated, the number of illegal migrants could even increase.

Martinez emphasized the uneven pattern of economic development within Mexico and the fact that the country will have to create 13 million new jobs between now and the end of the century. CONAPO is committed to a program to reduce population growth, stimulate economic expansion, and to develop regional programs to distribute economic opportunities more equitably. Martinez was convinced that something positive and mutually beneficial will result from the Commission's activities, which

will not only contribute to better bilateral relations, but also eliminate misconceptions about the problem, and lead to appropriate and workable solutions.

#### VISIT TO THE STATE OF ZACATECAS

Following the meeting with President de la Madrid, the Commission visited the State of Zacatecas, whose 1,200,000 population has the highest illegal migration rate to the US of any Mexican state. Its dynamic new governor has launched studies of the migration problem and initiated development programs to improve the quality of life in the State so that its citizens will not have to seek employment in the US or elsewhere in Mexico. While in Zacatecas, the Commission visited a cooperative farm from which virtually all working age males and many females had worked legally or illegally in the US. Commission members were able to question farm workers on the conditions which motivated them to migrate temporarily or permanently to the US for work, their experiences, and about local employment opportunities. According to various sources, over \$1 million per week is remitted to families in Zacatecas by workers in the US.

Many persons, including the Governor of Zacatecas, stressed the importance of inadequate water supplies as a major constraint on agricultural production, thereby providing an incentive to seek temporary work in the US after the Mexican harvest. According to the Governor, the 10 percent of the agricultural area which is irrigated and therefore can support year around crops, has a low incidence of migration to the US, and he has initiated efforts to expand irrigated areas. He also has actively recruited US foreign investment for development projects in Zacatecas, especially for hotels and other tourist facilities, and small-scale industry. Some of this investment has come from Mexicans who have settled in the US. The possibility of utilizing Zacatecas as a research laboratory "sending state" was enthusiastically embraced and promoted by the Governor.

#### OTHER MEETINGS

-- Meetings with representatives of the Mexican Senate and Congress resulted in an exchange of views on economic and migratory issues. The Mexican delegation said the Commission's presence in Mexico was indicative of the interest both countries have in solving the problem and that the creation of the Commission will form a basis for discussing these issues. The legislators emphasized the state of the Mexican economy as one of the major factors in contributing to migratory flows, and said the economy was unduly burdened by protectionist trends in the US Congress which inhibit exports, the size of the foreign debt, the price of Mexican raw material exports, and the relatively small

transfer of technology from the US to Mexico. Mexico needs international financial support for development programs which will be beneficial to both countries.

-- At the Foreign Relations Secretariat, Undersecretary Rosenzweig-Diaz said the problem of alleviating migration was of mutual interest and that the establishment of a Mexican counterpart group was a positive step to ensure Mexican participation. This was a vital and broad departure from previous positions assumed by Foreign Relations on the issue of migration.

-- The breakfast meeting at the American Chamber of Commerce with both Mexican and US businessmen resulted in a fruitful discussion of commercial issues and their relationship to migration. The Chamber viewed the Commission's mandate positively and promised to cooperate fully with the Commission's work.

-- The meeting at the Secretariat of Program and Budget resulted in an exposition of the factors behind Mexico's stagnating economy. They said the primary reasons for this slow growth rate were overemphasis on a single product - oil, the magnitude of transfers to service foreign debt, an ever increasing work force, and inadequate investment resources. Attempts to stimulate the economy and create jobs will be affected by the state of the international economy. The US could help the Mexican economy by maintaining a fair trade policy, providing more investment, and assuring the US economic growth which would provide growing markets for Mexican exports.

-- At the Secretariat of Agriculture, they described a program to divert resources to rural agricultural development programs, but this program had to compete for limited resources with other agencies. The Mexican agricultural sector had a one billion dollar export surplus in 1986, and \$500 million in 1987. The agricultural export potential remained good, but the Mexicans feared both competition and protectionism. At the Secretariat of Labor, the Acting Deputy Secretary said they were trying to create a national employment service to identify job opportunities and needed skills in various regions of the country.

-- At the Colegio de Mexico, a prominent Mexican research institution, the Commission was briefed by several leading scholars both from El Colegio and other Mexican research institutions on the relationship between economic development and migration, and on the pessimistic outlook for Mexico's economic growth. They said the growth of the labor force from 27 million in 1987 to 40 million in the year 2000 could lead to greater migratory pressures and that job creation would be inadequate to stem migration without corresponding changes in social

conditions, economic opportunities and reduced differentials between US and Mexican wages. A leading economist, Saul Trejo Reyes, said the outlook for Mexico's economy was bleak. It took 6.5 percent of Mexican GNP to service its foreign debt, the investment rate was only 3 percent, inflation was likely to remain high, and investment opportunities were poor because of excess capacity in all sectors except tourism and manufacturing for export. Trejo said unless trade and monetary policy issues were linked, he saw little possibility for growth in the short term. Several of the researchers emphasized that the undocumented migration flow responds to a migration tradition and to the presence of social networks. They feel it will be difficult to weaken the strength of these determinants of undocumented migration.

-- Mexican Secretary of Trade and Industry Hernandez stressed to the Commission the importance of Mexico's efforts to shift development strategy from a high tariff, import substitution approach, to a liberal trade regime designed to improve Mexican competitiveness in international markets. He stressed the damage to Mexico's economic recovery efforts of increased US trade protectionism and referred to the recently signed Bilateral Framework Agreement on Trade and Investment as a mechanism which should lead to stronger commercial relations. Hernandez also highlighted the importance of the Uruguay round of GATT trade negotiations, including discussion of trade in services. While eschewing a free trade agreement along U.S.-Canadian lines, he did support a sector by sector approach to liberating trade.

#### CONCLUSION

The Commission's visit to Mexico was highly successful in establishing a sound basis for serious dialogue on the causes of Mexican illegal migration and the potential for cooperative efforts to alleviate these conditions. The Mexican agreement to designate a counterpart to cooperate with the Commission underscores Mexico's own serious concerns about migratory problems, the potential effect on Mexico of the Simpson-Rodino Immigration Reform and Control Act, and the growing importance of this issue to Mexican economic recovery and development and to bilateral relations. It also provides an institutional relationship which should carry over to the next Mexican administration. Their willingness to discuss migration and economic development is a major step forward in bilateral relations and a sharp departure from previous positions, which offers the opportunity for the United States to make progress on crucial and sensitive subjects not heretofore possible. The Commission plans to follow up the visit with a carefully designed program for cooperative research and consultation with Mexico on these subjects.

December 8, 1987

**Mr. ASENCIO.** And I have already shown this to Mr. Schafer, but we have just gotten a billet-doux from our most recent trip to San Diego. The "San Diego Union" has just written a very informative piece about the Commission and our meetings in San Diego.

**Mr. DWYER.** Do you want us to put that on the record, your billet-doux?

**Mr. ASENCIO.** Oh, I think so. I think that would be very good.  
[The information follows:]

[From the San Diego Union, Mar. 16, 1988]

#### MIGRATION PROBLEMS UNDER STUDY

(By Joe Gandelman)

A federal commission set up under the new immigration law to look for economic measures to ease illegal immigration used San Diego yesterday as a backdrop for its first hearing in the United States.

For the 12-member Commission for the Study of International Migration and Co-operative Development, it is the beginning of a road that will straddle the 2,000-mile U.S.-Mexico border. Set up by Congress in 1986, the commission includes lawyers, politicians and academics. Its mission: to present a written report to Congress and the President in 1990.

The law says the commission "shall examine the conditions in Mexico and such other sending countries which contribute to unauthorized migration to the United States and (shall explore) mutually beneficial, reciprocal trade and investment programs to alleviate such conditions."

According to commission chairman Diego Asencio, a former ambassador to Colombia, San Diego was chosen as kick-off point because of the special dynamics of the border in the area.

For instance, later this week the commission will travel to Tijuana and Mexicali. Last year, commission members met Mexican President Miguel de la Madrid, who agreed to set up a counterpart commission in Mexico.

Yesterday's four-hour briefing, setup by the city of San Diego's Department of Binational Affairs, featured a parade of business, city, county, academic and tourism officials who spoke mostly on the border economy. At one point, San Diego State University economist Norris Clement told the commissioners that the whole thrust of Mexico's economy lends itself to increased immigration.

"Mexico's development has been very lopsided in terms of industry and not enough in terms of agricultural development," and Clement who recounted conversations with farmers who dreamed of raising their children in the countryside and found they simply could not.

"Sometimes total villages have been depopulated. There was no water, no credits . . . So (they'd go) right over the border," he said.

Augie Baredo, head of the San Diego County Transborder Affairs Department, said the city and county had to become involved in binational affairs when "we shouldn't be in this business . . ." to "protest our quality of life." However, Asencio does not believe the involvement was a bad idea.

"The fact that a local entity is doing this, I find . . . very charming," Asencio said. "I see a lot of advantages . . . It could be very positive—without having some bureaucrat back in Washington second-guessing what you're doing."

**Mr. DWYER.** Thank you.

**Mr. ASENCIO.** Thank you very much. Appreciate it.

**Mr. DWYER.** The Committee will stand adjourned until 10:00 a.m. tomorrow morning.



THURSDAY, MARCH 24, 1988.

**SECURITIES AND EXCHANGE COMMISSION**

**WITNESSES**

**DAVID S. RUDER, CHAIRMAN**

**GEORGE G. KUNDahl, EXECUTIVE DIRECTOR**

**LAWRENCE H. HAYNES, COMPTROLLER**

**DANIEL L. GOELZER, GENERAL COUNSEL**

**ELISSE B. WALTER, DEPUTY DIRECTOR, DIVISION OF CORPORATION FINANCE**

**GARY LYNCH, DIRECTOR, DIVISION OF ENFORCEMENT**

**RICHARD KETCHUM, DIRECTOR, DIVISION OF MARKET REGULATION**

**KATHRYN McGRATH, DIRECTOR, DIVISION OF INVESTMENT MANAGEMENT**

**EDMUND COULSON, CHIEF ACCOUNTANT**

**KENNETH LEHN, CHIEF ECONOMIST, OFFICE OF ECONOMIC ANALYSIS**

**JOHN O. PENHOLLOW, DIRECTOR, OFFICE OF EDGAR MANAGEMENT**

Mr. SMITH. We have today the Chairman of the Securities and Exchange Commission with a budget request of \$160.9 million. This is an increase of \$25,704,000 above the FY 1988 appropriation. At this point, we will insert the justification material into the record that were submitted in support of this request.

[The justification material follows:]

(179)

U.S. SECURITIES AND EXCHANGE COMMISSION



**BUDGET ESTIMATE  
FISCAL 1989**

SECURITIES AND EXCHANGE COMMISSION  
SALARIES AND EXPENSES

1988 Annual spending level .....	\$135,221,000
Proposed change .....	+ 25,704,000
1989 Proposed appropriation .....	<u>\$160,925,000</u>

APPROPRIATION LANGUAGE  
SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission including services as authorized by 5 U.S.C. 3109, and not to exceed (\$9,000) \$3,000 for official reception and representation expenses, (\$135,221,000) \$160,925,000, of which not to exceed \$10,000 may be used toward funding a permanent secretariat for the International Association of Securities Commissioners.

60 Stat. 810; 5 U.S.C. 551-59, 601-12, 701-06, 1305, 3105, 3109, 3144, 5162, 7521; 11 U.S.C. 101-151326; 15 U.S.C. 77a-77bbbb, 78a-78kk, 78aaa-111, 79-79z-6, 80al-80a52, 80b1-80b21; 44 U.S.C. 3501-3520; Pub. L. No. 96-433; Pub. L. No. 96-477; Pub. L. No. 97-303; Pub. L. No. 97-444).

## STATUTORY AUTHORITY

The Securities and Exchange Commission was created by the Securities Exchange Act of 1934 as an independent, quasi-judicial agency. It administers a group of statutes in the area of securities and finance, which seek to protect the investing public by providing full disclosure, by regulating the nation's securities markets and by preventing and policing fraud and wrongdoing in the securities and financial markets. These statutes are, in addition to the 1934 Act, the Securities Act of 1933, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. By terms of Chapter 11 of the Bankruptcy Code, the Commission also participates in the federal courts in certain corporate reorganization proceedings in which there is a substantial public interest. The Securities Investor Protection Act of 1970 gives the Commission certain oversight and other responsibilities with respect to the Securities Investor Protection Corporation.

1. Securities Act of 1933 - The 1933 Act requires issuers of securities to provide investors with financial and other information concerning new issues of securities and outstanding issues which are offered for public sale by issuers, parties with a controlling interest in the issues, and others. The Act also prohibits misrepresentation, deceit, and other fraudulent acts and practices in the offer and sale of securities.

2. Securities Exchange Act of 1934 - The 1934 Act requires certain issuers of publicly-traded securities to file registration applications, proxy materials, and annual and other reports with national securities exchanges and with the Commission. Persons directly or indirectly acquiring the beneficial ownership of more than five percent of any registered class of equity security must furnish reports containing certain information. Persons initiating, supporting or opposing tender offers with respect to any registered class of equity security are also subject to the Act and to Commission rules and regulations. The Act details a regulatory and reporting pattern for securities transactions by directors, officers, and principal stockholders. Registration with the Commission is also required for self-regulatory organizations, including securities exchanges, national securities associations, and clearing agencies. Securities brokers and dealers engaged in interstate commerce are regulated by the Commission and by the self-regulatory organizations under the Act. The Securities Act Amendments of 1975 amended the Securities Exchange Act in substantial respects, and expanded the Commission's regulation and oversight of the securities industry:

(a) The amendments directed the Commission to facilitate the establishment of a national market system, linking all markets for qualified securities by modern data processing and communications facilities. To achieve that objective, the Commission was directed to help create a national market system and to regulate the activities of its participants. In addition, the amendments directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. The amendments also imposed registration and other regulatory requirements upon securities information processors and transfer agents. In addition, the Commission was directed to eliminate the physical transfer of stock certificates between parties.

(b) They strengthened the Commission's regulatory authority over self-regulatory bodies (e.g., securities exchanges and national securities association and their members). The Act now requires Commission approval of rules proposed by self-regulatory organizations and grants to the Commission the power to review denials of access or membership as well as disciplinary actions. Furthermore, brokers and dealers, as well as other entities, are obliged to report information on missing, lost and stolen securities, while officials of registrants and other personnel are subjected to fingerprinting requirements.

(c) They required institutional investment managers to file periodic reports, unless otherwise exempted, disclosing particular facts with respect to their holdings, and to make public reports on the management of accounts consisting of equity securities with substantial market value.

(d) They set forth a comprehensive pattern for the registration and regulation of bank and non-bank municipal securities dealers by the Commission. The Municipal Securities Rulemaking Board was established to prescribe rules in regard to designated areas of concern for the municipal securities industry and its professionals.

The Insider Trading Sanctions Act of 1984 ("ITSA") made additional significant amendments to the 1934 Act. ITSA authorizes the Commission to seek a civil penalty of up to three times the profit gained or loss avoided as a result of insider trading transactions. (Authority to obtain injunctive and other equitable relief against such conduct is not affected.) ITSA also increased the maximum fine for a criminal violation of the 1934 Act from \$10,000 (established in 1934) to \$100,000. In addition, the Criminal Fine Enforcement Act of 1984, increased the maximum fines for federal criminal offenses. The effect of the Act is to increase the criminal fines for insider trading and most other securities law violations to \$250,000 for individuals and \$500,000 for organizations, or twice the pecuniary gain to

the offender or loss to the victim, if that amount is higher. ITSA also: (1) prevents circumvention of existing prohibitions against insider trading by explicitly prohibiting unlawful conduct in derivative securities such as options; (2) adds commodities law violations as a basis for statutory disqualification under the 1934 Act; (3) extends the Commission's authority to bring administrative proceedings to remedy violations of Section 14 of the 1934 Act; and (4) amends Section 15(c)(4) of the 1934 Act to clarify the Commission's authority to proceed administratively against officers or directors or other individuals who cause a failure to comply with Sections 12, 13, 14, or 15(d) of that Act, as well as against the issuer.

The Government Securities Act of 1986, signed into law on October 28, 1986, requires previously unregistered government securities brokers and dealers to register with the Commission. Currently registered brokers and dealers and financial institutions are required to file a notice with their appropriate regulatory agencies. Under the Act, the Department of the Treasury has specific rulemaking authority with respect to certain aspects of the government securities market. The Commission has inspection and enforcement authority over government securities brokers and dealers except for those institutions reporting to their appropriate regulatory agencies.

3. Public Utility Holding Company Act of 1935 - This Act regulates holding companies controlling electric and gas utilities respecting: physical integration of public utility and related properties of holding company systems and simplification of financial and corporate structures of those systems; financing activities, acquisitions and dispositions of securities and properties, accounting practices, and servicing arrangements of holding company systems; and the rights of persons affiliated with a public utility to acquire securities of other public utilities.

4. Trust Indenture Act of 1939 - The rights and interests of purchasers of debt securities issued under mortgage indentures and sold publicly are safeguarded through the protective provisions of this Act. The Act also requires that the indenture trustee shall be "independent" and free of any interest which might conflict with the proper exercise of its duties.

5. Investment Company Act of 1940 - This Act requires investment companies to register with the Commission and subjects their activities to regulation by the Commission. This regulation includes oversight of the composition of boards of directors, capital structure, and transactions with affiliated persons. The Act was amended by the Investment Company Amendments Act of 1970 to provide additional protection for investors. One of the

principal amendments specifies that an investment adviser has a fiduciary duty with respect to the receipt of compensation from an investment company and provides that the Commission and shareholders may initiate legal action for court enforcement of this duty. The 1970 amendments also authorize the Commission, in conjunction with the National Association of Securities Dealers, to regulate charges levied in connection with sales of investment company shares. The Commission is empowered to promulgate rules dealing with problems such as insider trading in an investment company's portfolio securities, the establishment by investment companies of codes of ethics, and the plans developed by sponsors and other sellers to carry out their refund obligations. In addition, the 1970 amendments give the Commission new authority to institute administrative proceedings to bar persons who have violated the federal securities laws from the investment company business. The Small Business Investment Incentive Act, enacted in 1980, further amended this Act to remove certain inappropriate regulatory burdens on venture capital companies engaged in furnishing capital to small businesses.

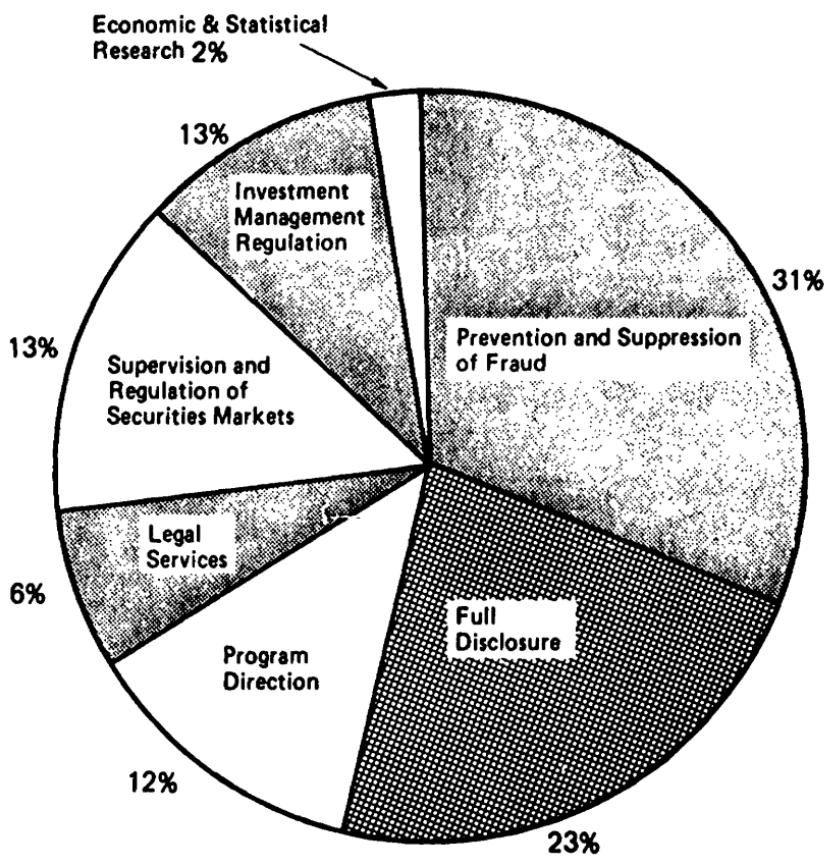
6. Investment Advisers Act of 1940 - Persons who engage in the business of advising others with respect to their security transactions must register with the Commission. This Act prohibits certain kinds of fee arrangements, prohibits fraud, and requires disclosure of any conflicts of interest the adviser may have in transactions executed for his clients. Amendments to this Act in 1960 expanded the authority of the Commission by empowering the Commission to require investment advisers to keep books and records, providing for regular and periodic inspections of registered investment advisers, expanding the power for denial or revocation of registration of investment advisers, and authorizing the Commission to issue rules and regulations which prohibit fraudulent, deceptive, and manipulative practices by investment advisers. Further amendments to this Act in 1970 removed exemptions for investment advisers whose only clients are investment companies registered under the Investment Company Act and with respect to contracts of investment companies with registered advisers. These amendments also strengthened disciplinary controls over investment advisers, making them similar to the provisions in the Securities Exchange Act of 1934 relating to disciplinary controls over broker-dealers.

7. Bankruptcy Code - Chapter 11 provides a comprehensive procedure for the rehabilitation of financially distressed companies. The Commission participates in selected bankruptcy cases to protect the interests of public investors.

8. The Securities Investor Protection Act of 1970 - The Securities Investor Protection Act of 1970 created the Securities Investor Protection Corporation ("SIPC"), which provides

protection for the funds of customers of broker-dealers in the event of liquidation. The Commission is required to review and approve proposed changes to the bylaws and rules of SIPC and may require SIPC to adopt, amend, or repeal any SIPC bylaw or rule. In addition, the Commission may make loans to SIPC in the event of a shortfall in the SIPC fund used to pay customer claims. The Commission may participate in any proceeding brought by SIPC for the protection of customers, and, in the event that SIPC refuses to commit funds or otherwise to act for the protection of customers, the Commission may seek a court order requiring SIPC to discharge its obligations. Finally, the Commission may examine SIPC, require SIPC to submit such reports and records as the Commission considers necessary, and submit comments to be transmitted with SIPC's annual report to the President and Congress.

## FY 1989 Positions by Major Program



U.S. SECURITIES AND EXCHANGE COMMISSION  
ACTUAL COSTS FOR 1987, PROGRAM FOR 1988, AND ESTIMATE FOR 1989

	1987 Actual		1988 Budget		1989 Estimate	
	Posi- tions	Aggregate of Salaries	Posi- tions	Aggregate of Salaries	Posi- tions	Aggregate of Salaries
<b>FULL DISCLOSURE</b>						
Corporation Finance	269	269	269	266	266	266
Applications and Reports Services	62	63	63	70	70	73
Chief Accountant	22	22	22	23	23	23
Consumer Affairs and Information						
Services	29	33	33	36	36	36
Electronic Filing	41	49	49	72	72	72
Regional Offices	60	63	63	67	67	67
Sub-Total	481	519	519	564	564	564
<b>PROMOTION AND SUPPRESSION - OF FONDS</b>						
Enforcement	241	264	264	267	267	267
Applications and Reports Services	10	11	11	11	11	11
Consumer Affairs and Information						
Services	12	15	15	15	15	15
Regional Offices	416	463	463	464	464	464
Sub-Total	679	752	752	757	757	757
<b>REGULATION OF SECURITIES MARKETS</b>						
Market Regulation	122	135	135	149	149	149
Applications and Reports Services	13	13	13	13	13	13
Regional Offices	115	127	127	142	142	142
Sub-Total	250	275	275	304	304	304
<b>INVESTMENT MANAGEMENT REGULATION</b>						
Investment Management	100	109	109	113	113	113
Public Utility	14	14	14	19	19	19
Applications and Reports Services	19	19	19	19	19	19
Regional Offices	98	111	111	141	141	141
Sub-Total	231	255	255	282	282	282
<b>LEGAL SERVICES</b>						
General Counsel	90	94	94	96	96	96
Opinions and Review	6	6	6	6	6	6
Administrative Law Judges	7	7	7	7	7	7
Regional Offices	23	23	23	23	23	23
Sub-Total	126	130	130	134	134	134
<b>ECONOMIC &amp; STATISTICAL RESEARCH</b>						
Economic Analysis	42	43	43	44	44	44
Sub-Total	42	43	43	44	44	44
<b>PROGRAM DIRECTOR</b>						
Executive Staff	39	39	39	39	39	39
Secretary	20	20	20	20	20	20
Executive Director	10	10	10	10	10	10
Controller	29	29	29	31	31	31
Personnel	29	32	32	32	32	32
Information Systems Management	26	26	26	26	26	26
Administrative Services	64	70	70	70	70	70
Public Affairs	7	7	7	8	8	8
Sub-Total	275	293	293	305	305	305
<b>HEADQUARTERS TOTAL</b>						
REGIONAL OFFICE TOTAL	1,374	1,479	1,479	1,563	1,563	1,563
GRAND TOTAL - AUTHORIZED	2,066	2,267	2,267	2,420	2,420	2,420
Permanent Annual Salary Acte	\$75,951,741	\$83,614,000	\$83,614,000	\$90,399,000	\$90,399,000	\$90,399,000
Less: Savings (Lapse)	(191) (\$5,764,401)	(201) (\$6,254,000)	(190) (\$5,204,000)			
Cost of Permanent Positions	1,895 \$70,997,221	2,066 \$77,964,000	2,222 \$85,191,000			
Cost of Temporary Positions	35 \$6,674,745	30 \$6,674,745	30 \$6,674,745			
Overtime and Holiday Pay	367,160	661,000	661,000	685,000	685,000	685,000
Other - Awards	750,293	750,000	750,000	914,000	914,000	914,000
TOTAL COST OF SALARIES AND STAFF - 1988	1,930 \$71,706,381	2,066 \$79,869,000	2,222 \$87,044,000			
OTHER EXPENSES:						
Personnel Benefits	\$10,357,126	\$14,223,000	\$14,223,000	14,744,000	14,744,000	14,744,000
Benefits to Former Employees	123,311	190,000	190,000	190,000	190,000	190,000
Travel and Transportation of Persons	3,365,467	3,742,000	3,742,000	4,214,000	4,214,000	4,214,000
Transportation of Things	69,044	101,000	101,000	101,000	101,000	101,000
Communication and Postal	12,527,324	16,451,000	16,451,000	18,857,000	18,857,000	18,857,000
Printing and Reproduction	1,126,643	1,116,000	1,116,000	1,116,000	1,116,000	1,116,000
Other Services	7,816,133	16,337,000	16,337,000	21,647,000	21,647,000	21,647,000
Supplies and Materials	1,007,371	2,233,000	2,233,000	3,120,000	3,120,000	3,120,000
Equipment	2,110,209	1,769,000	1,769,000	4,711,000	4,711,000	4,711,000
Claims and Indemnities	22,743	0	0	0	0	0
Sub-Total, OTHER EXPENSES	\$46,345,634	\$54,132,000	\$54,132,000	\$73,801,000	\$73,801,000	\$73,801,000
Total Expenses	\$111,931,713	\$135,321,000	\$135,321,000	\$160,925,000	\$160,925,000	\$160,925,000
Actual Savings	2,546,383	0	0	0	0	0
TOTAL APPROPRIATION OR DEFICITS	114,390,000	\$135,321,000	\$135,321,000	\$160,925,000	\$160,925,000	\$160,925,000

## SUMMARY OF CHANGES

The Commission's \$160,925,000 budget request for 1989, as approved by the President, provides for an increase of \$25,704,000 over the 1988 funding level of \$135,221,000. The following table lists the requested changes. A narrative explanation of each item follows.

	1989 Request		
	Posi-	Staff	
	tions	Years	\$(000)
<b>1988-Funding provided by P.L. 100-202</b>	<b>2,367</b>	<b>2,086</b>	<b>\$135,221</b>
<b>1989-Base increases-</b>			
1. Mandatory salary and related personnel benefits	--	--	\$ +3,216
2. Annualization of new FY-1988 positions	--	+45	+2,009
3. Rate and price increases	--	--	+1,830
<b>Total base increases</b>	<b>--</b>	<b>+45</b>	<b>\$ +7,055</b>
<b>Base decreases-</b>			
1. Two less work days	--	--	\$ -640
2. Computer processing unit acquired by lease in FY-1988	--	--	-180
<b>Total base decreases</b>	<b>--</b>	<b>--</b>	<b>\$ -820</b>
<b>Total base changes</b>	<b>--</b>	<b>+45</b>	<b>\$ +6,235</b>
<b>Program changes-</b>			
1. EDGAR	--	--	\$ +8,000
2. Program staff	+153	+111	+6,175
3. Automatic data processing support	--	--	+4,244
4. Program support	--	--	+1,050
<b>Total program changes</b>	<b>+153</b>	<b>+111</b>	<b>\$+19,469</b>
<b>Total changes</b>	<b>+153</b>	<b>+156</b>	<b>\$+25,704</b>
<b>1989-Appropriation request</b>	<b>2,420</b>	<b>2,242</b>	<b>\$160,925</b>

## NARRATIVE EXPLANATION OF CHANGES

base increases-

1. Mandatory salary and related personnel benefits- Includes \$1,818,000 to fund full fiscal year costs of the 1988 pay raise established by E.O. 12622 and \$1,398,000 for within-grade increases mandated by 5 U.S.C. 5335 and merit increases under the Performance Management and Recognition System as mandated by 5 U.S.C. 5404.

2. Annualization of new FY-1988 positions- In 1988 the Commission was appropriated 181 new positions for which it received funds for 136 staff years, the latter being the equivalent of 9 months per position. The unfunded balance, equivalent to 3 months per position, represented the time required to post, interview and select each applicant, time during which each new position was vacant. This request funds the additional 3 months.

3. Rate and price increases- This request funds unavoidable rate and/or price increases in a variety of non-personnel accounts. Increases related to items either controlled or regulated by the General Services Administration include \$534,000 for rental of space expenses, \$527,000 for long-distance telephone service over the Federal Telecommunications Service (FTS) network, and a portion of a \$236,000 need for increased employee relocation costs. The last item results from:

- \* the Commission's need to transfer greater numbers of highly qualified employees into vacant positions which require special knowledge, skill and ability;
- \* OPM implementing a new regulation pursuant to 5 U.S.C. 5723 which provides Federal agencies expanded authority to determine "shortage" categories of eligibles for specific positions and pay their moving costs; and,
- \* GSA implementing a new regulation requiring the payment of additional relocation income tax (RIT) allowances (see GSA Bulletin FPMR A-40, General Supplement 25, dated May 11, 1987).

Other base increases include \$450,000 for greater employer costs of health benefit insurance rates, renegotiated annually by the Office of Personnel Management pursuant to 5 U.S.C. 8902, and \$83,000 due to a scheduled rise in the Social Security wage base from \$45,000 in 1988 to \$46,500 in 1989.

## Base decreases-

1. Two less work days- Fiscal year 1989 contains 260 work days; FY-1988 is a leap year containing 262 work days.

2. Computer processing unit acquired by lease in FY-1988- A new central processing computer unit is being acquired by lease in the middle of FY-1988. One-time funding of \$500,000 for building alterations and software conversion services for installation of the unit was provided by Congress in the Commission's FY-1988 appropriation. The decrease of \$180,000 represents the net cost of these one-time expenses after adjusting for the additional expense needed to annualize the lease of the new CPU for a full year in 1989.

## Program changes-

1. EDGAR- Funding of this request will provide a total \$18 million for Edgar contract expenses in FY-1989, up from \$10 million in FY-1988. The \$8 million increase is needed to pay certain contract start-up expenses in FY-1989 which were previously identified by the Commission as being needed in FY-1988. This shift between fiscal years resulted from a necessary postponement in the award date of the EDGAR contract to permit interested parties more time to prepare competitive bids. The funds requested of Congress in FY-1988 for these expenses were used to partially offset a \$10 million difference between the agency's FY-1988 budget request and final appropriation, absorb \$5.3 million related to the FY-1988 pay raise and other non-discretionary expenses, and support the agency's full staffing request of 2,267 positions.

2. Program staff- The Commission is requesting an increase of 111 staff years (153 positions) to support the following programs:

Full Disclosure	34
Supervision and Regulation of Securities Markets	21
Investment Management Regulation	43
Legal Services	2
Economic and Statistical Research	1
Program Direction	10
Total	111

A substantive explanation of each program is contained within the body of this document.

3. Automatic data processing support- This request will enable the Commission to better meet its complex and growing program needs by uniting its diversified data processing services into integrated office automation and information management systems. These integrated systems will use Local Area Network (LAN) technology to permit a flow of data between stand-alone personal computers and centralized databases throughout the agency. The result will be a more effective and efficient use of existing and requested resources. The request includes \$2,723,000 for ADP equipment, \$824,000 for contract services and \$697,000 for software.

4. Program support- Many of the Commission's activities have placed significant demands on the agency's non-personnel resources-

- \* The Commission requires \$250,000 to meet increased travel demands imposed by its work to oversee growing numbers of regulated entities and continue its program of fostering international cooperation in securities regulation and enforcement cases.
- \* A \$300,000 increase in stenographic reporting services is needed to permit the Commission to respond to a growing number of highly significant and time-sensitive investigations and proceedings which require expedited access to transcripts.
- \* An increase of \$190,000 will enable the Commission to replace needed but outdated library references, maintain a permanent collection of texts up-to-date with the dynamic changes on-going in the securities market place, and provide improved source material for enforcement leads and investigations.
- \* Funding of \$164,000 will allow the Commission to award its General Schedule employees on the same relative basis as provided by law for its Senior Executive Service (5 U.S.C. 5384) and Performance Management Recognition System employees (5 U.S.C. 5406). This parity is in accordance with OPM guidelines found at 5 CFR 451.104.
- \* An increase of \$146,000 in contractual services is needed by the Commission to obtain necessary securities transaction data and perform statistical analyses in response to the October, 1987 market break and other program matters.

Full DisclosureProgram Summary

<u>Organizations</u>	1987		1988		1989	
	Actual Staff Years	Cost (000)	Estimate Staff Years	Cost (000)	Estimate Staff Years	Cost (000)
Corporation Finance	258		279		289	
Regional Offices	57		59		64	
Applications & Reports Services	59		57		62	
Consumer Affairs & Information Services	26		28		31	
Chief Accountant	19		20		21	
Electronic Filing (EDGAR)*	23		39		58	
Sub-Total	442		482		525	
Salaries and Benefits	\$18,656		\$21,162		\$23,886	
Non-Personnel Expenses	<u>8,321</u>		<u>15,905</u>		<u>25,678</u>	
Total Program Cost	\$26,977		\$37,067		\$49,564	

\*See following tab for program narrative.

This program provides investors with material information and inhibits fraud in the public offering, trading, voting, and tendering of securities. It operates in a market where, in 1987, securities registered under the Securities Act of 1933 exceeded \$535 billion, including over \$150 billion by issuers seeking public financing for the first time. The program is preparing for the transition to electronic filing under EDGAR, which should begin in 1989 with filers being phased in over a 36 to 48 month period.

In 1987, the staff reviewed 1,729 (16%) reporting issuers' financial statements and related disclosures through 1,669 full reviews and 60 full financial reviews. The staff worked on 33 rulemaking and other projects and responded to 87,476 telephone inquiries and 1,297 written requests for no-action and interpretive letters. The regional offices provided technical assistance to small businesses by responding to 24,416 telephone inquiries. The accounting policy staff participated in 150 enforcement investigations involving accounting and auditing issues.

In 1988, it is expected that the staff will review 3,113 (28%) reporting issuers' financial statements and related disclosures through 2,333 full reviews and 780 full financial reviews. The staff is expected to undertake 33 rulemaking and other projects and respond to 1,300 requests for no-action or interpretive letters. The staff will expedite collecting filing fees owed the Commission. It is expected that 19 staff accounting bulletins or rule amendments will be completed, providing guidance on compliance with the Commission's financial reporting policies.

Assuming the projected levels of filing activity in 1989, the staff expects to review 3,154 (28%) reporting issuers' financial statements and related disclosures through 2,224 full reviews and 930 full financial reviews. The Division of Corporation Finance is also expected to devote over 12 staff years to EDGAR training and coordination. It is projected that the staff will undertake 31 rulemaking and other projects, securing final adoption of several projects initiated in 1988. It is expected that 20 staff accounting bulletins or rule amendments will be completed.

**Full Disclosure****Mission**

The Full Disclosure Program mission is to provide investors with material information and to prevent fraud and misrepresentation in the public offering, trading, voting, and tendering of securities. The Commission's principal disclosure authority derives from two statutes: the Securities Act of 1933 (1933 Act), which requires issuers to make disclosures concerning their business and financial affairs when publicly distributing their securities; and the Securities Exchange Act of 1934 (1934 Act), which requires issuers to file periodic reports with the Commission and to provide certain disclosures in proxy solicitations, tender offers, and ownership reports.

The program accomplishes its mission through the following activities:

**Review of Filings:** The staff annually reviews the financial statements and related disclosure of a selected group of issuers filing in the continuous reporting system. These reviews are referred to as issuer reviews. An issuer review may be accomplished through the full review of (1) an entire transactional filing, such as a repeat issuer 1933 Act registration statement or merger proxy, or (2) an annual report, subsequent periodic reports, and proxy statements. An issuer review also may be accomplished through a full financial review, which encompasses an in-depth analysis of an issuer's financial statements and management's discussion and analysis (MD&A). The specific documents reviewed depend on the levels of different filings made. In addition, the staff reviews other filings, such as new issuer 1933 Act registration statements, 1934 Act registration statements, current reports, tender offers, and proxy soliciting materials, as warranted.

The staff reviews filings for compliance with disclosure requirements and, where appropriate, refers matters for enforcement action. The integrated disclosure system, which incorporates continuously reported 1934 Act information in 1933 Act registration statements, has maintained investor protection, improved the quality of periodic reporting, improved issuer access to the securities markets, fostered new methods of financing, and reduced reporting costs. To handle the volume of filings, the Division of Corporation Finance separates its workload into four categories: (1) full review of all aspects of the filing; (2) full financial review; (3) monitor of the filing (review only for one or more specific items); and (4) no review.

In full reviews, full financial reviews and certain monitors, the staff may issue comments to filers to elicit full disclosure in compliance with applicable requirements. Filers which amend identified deficiencies may avert the possibility of costly investor litigation or Commission enforcement action. The comment process helps ensure that investors receive, on a timely basis, the information needed to make informed investment decisions and thus facilitates an efficient capital formation process.

**Rulemaking and Interpretive Advice:** Rulemaking is undertaken to meet investor protection needs, improve and simplify disclosure, establish uniform requirements, and eliminate unnecessary regulation. The objective is to define regulatory requirements on a cost-effective basis. Interpretive advice is provided to filers

through no-action and interpretive letters applying the securities laws to specific situations, interpretive releases furnishing guidance on general interest matters, responses to telephone requests for information, and exemptive orders providing relief from specific legal requirements. The staff applies the Freedom of Information Act (FOIA), Privacy Act, and Government in the Sunshine Act to requests for Commission information. Requests come from private and professional investors, attorneys, brokers, accountants, parties in litigation, and the public.

Regional Office Disclosure: Regional offices foster compliance with disclosure requirements for small businesses by reviewing Form S-18 registration statements filed under the 1933 Act and Regulation A filings from small issuers seeking exemption from formal filing requirements. The regional staff provides technical assistance to small business filers through pre-filing conferences and comment letters. As necessary, the staff also refers appropriate matters for enforcement action. Two of the regional offices also have public reference rooms.

Document Receipt and Distribution: The staff receives and processes 1933 Act and 1934 Act filings, plus other documents, submitted to the Commission. Responsibilities include the preliminary examination of filings for acceptance or rejection and calculating the correct filing fees. In addition, data are extracted and entered into 9 different databases. Over 350,000 filings are received each year. The staff also prepares filings for microfilming by the Commission's dissemination contractor and transmits copies of time-sensitive filings, such as those under the Williams Act, hourly to the headquarters public reference facility.

Public Information: The public reference staff provides investors and the public access to filings made with the Commission. This includes: (1) organizing and maintaining the library of microfiche and paper of current and historical corporate filings, Commission releases, and other public documents; (2) orienting the public to the Commission's electronic recordkeeping system; (3) assisting in locating information in filings; and (4) responding to public requests for copies of filings (through the dissemination contractor), forms, and other documents published by the Commission.

The FOIA staff responds to requests from the public for access to information contained in Commission files. The staff applies provisions of the FOIA, Privacy Act, and Government in the Sunshine Act to these requests to determine what information may be released publicly. The staff also administers the Commission's confidential treatment rule for non-filed information and assists the Office of Legislative Affairs in responding to requests from members of Congress for public information.

Accounting Policy: The federal securities laws authorize the Commission to establish the accounting methods to be used by registrants and their auditors. Fair and accurate financial statements are critical to investment decisions. The Commission relies heavily on private sector organizations to establish accounting and auditing standards, subject to its oversight. The staff also monitors peer review, the quality control program of accounting firms practicing before the Commission, to increase public confidence in the work performed by public company auditors. In addition, the staff provides advice on complex accounting questions arising from reviews of filings as well as on enforcement investigations or proceedings.

Program Environment

The program operates in a securities market where, in 1987, the total value of securities registered under the 1933 Act exceeded \$535 billion, including over \$150 billion by issuers seeking public financing for the first time.

The level of financings and other activities depends on prevailing economic conditions. The current environment is highly uncertain in light of the October, 1987 market break. Projected workload for 1988 is based on the assumptions that the downtrend in new issuer 1933 Act registration statements and tender offers experienced early in 1988 will continue during the year, while other filings, such as repeat issuer 1933 Act registration statements and merger proxies, will reflect a modest increase. These uncertainties make projections extremely difficult and, for this reason, workload projections for 1989 generally have been held to the anticipated 1988 level.

Significant resources will be dedicated to the transition to electronic filing under EDGAR. The transition is expected to begin in 1989 and continue for a period of 36 to 48 months. The initial resources will be dedicated to such matters as staff training, rule writing, planning, and coordination.

The program's rulemaking activity will focus on modernizing the capital formation process to conform with developments in the securities markets and on modifying existing rules to implement and support electronic filing under EDGAR. In addition, the internationalization of the securities markets will require review of the regulations applicable to foreign capital markets and rulemaking efforts to accommodate cross-border and global offerings and trading. Rulemaking will proceed in the areas of takeovers and contests for corporate control, entailing extensive review of existing disclosure, dissemination, filing and other regulatory requirements. The Regulatory Flexibility Act and Paperwork Reduction Act will require the review of new and existing rules to avoid undue burden on small businesses and duplicative regulation.

Various rule changes implemented during 1987 increased the resources required for preliminary examination and classification of filings as well as more extensive computer update and quality assurance procedures. In addition, newly developed procedures necessary to ensure compliance with the Debt Collection Act and the Department of Treasury Cash Management Program will result in increased resources being dedicated to research, quality control, and fee collection.

The public information staff expects the number of FOIA and confidential treatment requests to increase 21% and 44%, respectively, between 1987 and 1989. New policies and procedures implemented as a result of the 1986 amendments to the FOIA will create additional processing burdens. Also, more time will be required for staff research of the developing case law and new administrative decisions, particularly regarding fee assessments and classifications of requestors. FOIA appeals are also likely to increase as requestors test the application of the new rules. The staff projects a 10% increase in the number of filings and visitors to the headquarters public reference facility between 1987 and 1989, requiring additional time to respond to questions and provide assistance in retrieving information. In addition, considerable staff time will be devoted to planning the transition to EDGAR-based methods of disseminating filings to public reference users.

In the accounting policy area, the staff expects a high level of private sector standard setting activity, due to the Financial Accounting Standards Board (FASB) undertaking complex major projects on financial instruments and consolidation, as well as a substantial number of peer reviews, both of which will necessitate Commission oversight. Moreover, the Commission will continue to devote substantial staff accounting resources to enforcement investigations involving auditing and financial reporting.

#### 1987 Program Evaluation

**Review of Filings:** During the year, the Division of Corporation Finance continued efforts to increase the percentage of accountants in the review process from 33% to at least 50%. The staff reviewed 1,729 (16%) reporting issuers' financial statements and related disclosures through 1,669 full reviews and 60 full financial reviews. The reporting issuers' full reviews were accomplished through the review of 1,117 (24%) repeat issuer 1933 Act registration statements, 1,389 (13%) annual reports, and 248 (76%) merger proxies. The staff also reviewed 1,114 (80%) new issuer 1933 Act registration statements and 3,046 (34%) annual proxies. The unexpected increase in reviews of annual proxies from projected levels was due, in large part, to a substantial number of issuers adopting new officer and director liability and indemnification provisions provided for under state law.

The review process produced substantial results. Various securities offerings priced at an aggregate of \$714 million did not proceed because the staff identified material business or financial disclosure deficiencies that were not corrected by filers. Amendments filed in response to staff comments also resulted in material changes to disclosure. For example:

- In contemplation of acquiring several soft drink bottling companies, an issuer obtained bridge financing until its subordinated notes could be sold in a public offering. The issuer intended to account for deferred loan fees associated with the bridge loan as a cost of the subordinated note financing and to amortize the fees over the 10 year life of the notes. In response to staff comments, the deferred loan fees were expensed as a cost of the bridge financing. This resulted in a 12% reduction of the issuer's pro-forma equity from \$22.7 million to \$20.1 million.
- A savings and loan holding company reflected new allowances for losses in junk bonds as a change in accounting principle with a cumulative effect on prior years. As a result of staff comments, the adjustments were reflected as a change in estimates and charged against current operations which reduced net income by \$1.3 million from \$19.5 to \$18.2 million.
- Shareholders of a company were to be asked to ratify the reimbursement of \$2.3 million in expenses incurred by insurgents who acquired control of the company. The preliminary proxy material noted that if the reimbursement was not ratified only \$600,000 was to be repaid to the company. The staff questioned the legal effect of the ratification. As a result, the material was revised to indicate that the insurgent group would repay the entire \$2.3 million to the company if reimbursement was not ratified.

Not all matters can be resolved by the comment process. During 1987, 74 matters were referred to the enforcement program. To date, 61 of the referrals have resulted in investigations being opened or other action being taken.

Rulemaking and Interpretive Advice: The staff worked on 33 rulemaking and other projects. Rulemaking activities were undertaken in seven principal areas. Among the most significant projects and accomplishments were the following:

- Proxy Program - (1) Adopted comprehensive rules to implement legislation that authorizes the Commission to regulate the proxy processing activities of banks with respect to nominee name shares and to facilitate corporate issuers' communications with beneficial owners whose securities are registered in banks' names. The new rules created an omnibus proxy system, set forth the direct communication and proxy processing obligations of banks, and deferred the application of processing requirements to employee benefit plans; (2) Proposed excluding, under certain circumstances, employee benefit plan participants from the shareholder communication rules; (3) Adopted revisions to refine and clarify the extension of the integrated disclosure system to proxy disclosure; (4) Proposed amendments to the shareholder proposal rule; and (5) Proposed eliminating the requirement to file preliminary proxy and information statements under certain circumstances.
- Registration and Prospectus Requirements - (1) Eliminated certain pricing amendments and revised prospectus filing procedures; (2) Proposed reducing the aftermarket prospectus delivery obligations of broker-dealers following a public offering; and (3) Proposed rule changes to permit delivery of a final prospectus after the confirmation of a sale in firm commitment offerings of securities for cash.
- Reporting Requirements - Issued a concept release requesting comments on the adequacy of current MD&A disclosure requirements and revisions to the requirements suggested by certain accounting firms.
- Tender Offers - (1) Proposed rules to govern certain acquisitions of securities and related activities undertaken during or shortly after a conventional tender offer for securities of the same class; and (2) Issued an interpretive release on the disclosure and dissemination of material changes in information previously furnished to security holders under the tender offer rules.
- Internationalization - (1) Participated in preparing a Commission report to Congress entitled "Internationalization of the Securities Markets"; and (2) Examined the application of distribution, disclosure, and accounting standards to international offerings.
- Small Business - (1) Proposed revising Regulation D under the 1933 Act to coordinate limited offering exemptions at federal and state levels and to assist small issuers in raising capital; (2) Proposed exempting offers and sales of securities pursuant to certain employee benefit plans from the 1933 Act registration requirements; (3) Hosted the annual Government-Business Forum on Small Business Capital Formation and the 4th annual NASAA/SEC Conference on Federal-State Securities Regulation; and (4) Coordinated a

university study to assist the Commission in future rulemaking involving the classification of issuers for reporting purposes.

- **Legislation** - Drafted for Commission consideration a legislative proposal to modernize the Trust Indenture Act of 1939.

The staff also responded to 87,476 telephone requests for legal and interpretive advice, 516 requests under the FOIA and the Privacy Act, 1,297 requests for no-action and interpretive letters, 15 requests for exemptive orders, and 1,524 items of miscellaneous correspondence.

**Regional Office Disclosure:** The regional offices reviewed 142 (100%) Regulation A filings, offering \$128 million of securities and 879 (99%) Form S-18s, registering \$3.3 billion of securities. Staff comments produced amendments to 809 Form S-18 filings offering \$2.7 billion in securities and amendments to 135 Regulation A filings covering \$115 million of securities. In one instance, staff comments resulted in an issuer reclassifying \$1.1 million of securities with put rights, which reduced stockholder equity by 34 percent. In another instance, staff comments resulted in writing off \$3 million of incorrectly capitalized research and development costs, which reduced the issuer's total assets by 30 percent. The staff also reviewed 321 post-effective amendments to Form S-18s containing new financial statements, representing 43% of the total post-effective amendments filed. The staff provided technical assistance to issuers and investors by responding to 24,416 telephone and 2,162 written inquiries.

**Document Receipt and Distribution:** Approximately 360,000 1933 Act and 1934 Act filings were received, indexed, and made available to the public and Commission staff. The most time-sensitive documents, particularly those dealing with takeovers or tender offers, were generally provided to the headquarters public reference facility within an hour of receipt. The staff responded to 27,053 requests for microfiche by reproducing 122,357 pieces of microfiche.

**Public Information:** The public reference staff responded to 141,528 telephone inquiries and 20,358 requests for copies of documents or publications. In addition, approximately 329,600 paper filings and 358,800 microfiche were added to the existing library of publicly available information, which must be maintained and constant usage. The FOIA staff handled 1,908 requests, a 13% increase over 1986. The initial response times to the FOIA requests complied with the statutory timeframes. However, the number of complex cases held in abeyance, after initial response, for processing under the first-in/first-out (FIFO) system continued to grow. The Commission's FOIA regulations were amended to comply with the Freedom of Information Reform Act of 1986 and subsequent policy guidance from the Office of Management and Budget and Department of Justice. The staff also handled 3,205 confidential treatment requests and coordinated 2,005 Congressional requests for Commission records.

**Accounting Policy:** The staff conducted rulemaking projects and provided interpretations on the issue of mandatory peer review of accountants as well as disclosure matters relating to: the adoption of the 1986 Tax Reform Act; foreign loans of bank holding companies; loan loss reserves; the effects of changing prices; and changes in accountants. Staff accounting bulletins were issued to provide guidance on compliance with the Commission's rules for financial reporting in various

areas, such as the appropriate income statement presentation of restructuring charges, foreign loan disclosures, accounting for increasing rate preferred stock, and the appropriate reporting of non-recourse debt collateralized by lease receivables. Substantial resources also were devoted toward monitoring private sector standard setting and other self-regulatory activities. In this connection, the staff participated in oversight of approximately 50 different accounting problems called to the attention of the Emerging Issues Task Force of the FASB. The staff also participated in 150 enforcement investigations involving accounting and auditing issues.

#### 1986 Appropriation

The workload projections for 1988 and 1989 reflect the economic uncertainties resulting from the October, 1987 market break. It is expected that the financial statements and related disclosure of approximately 28% of the issuers filing in the continuous reporting system will be reviewed during 1988 and 1989, in addition to other transactional filings warranting review. The actual documents reviewed during these periods will depend on the levels of different filings made, including new issuer 1933 Act registration statements. The following discussions of 1988 and 1989 activities do not take into consideration pending Congressional revisions to the 1933 Act that may subject registration statements for public offerings by savings and loans and banks to Commission review. The discussions also do not reflect potential amendments to the 1934 Act which would transfer to the Commission responsibility for the review of periodic reports, proxy statements, and tender offer material of over 900 financial institutions, or the effect of change of control legislation which may be enacted.

Review of Filings: The Division of Corporation Finance is continuing its efforts to increase the percentage of accountants in the review process to at least 50%. If hiring efforts are successful, it is expected that 3,113 (28%) reporting issuers' financial statements and related disclosures will be reviewed, compared to 1,729 (16%) in 1987. Approximately 2,333 full reviews and 780 full financial reviews will be conducted. The full reviews are expected to consist of reviews of 1,275 (26%) repeat issuer 1933 Act registration statements, 2,275 (21%) annual reports, and 300 (86%) merger proxies. The number of reviews of preliminary annual proxies will return to the levels of years prior to 1987, or 1,625 (41%) of those filed. An amendment to the rules adopted in 1988 should result in a significant number of annual proxies no longer being filed in preliminary form. As a result, the reduced number of preliminary proxies being reviewed during 1988 will comprise a greater percentage of the number filed. Approximately 955 (80%) and 200 (89%) new issuer 1933 Act and new issuer 1934 Act registration statements, respectively, also will be reviewed.

Rulmaking and Interpretive Advice: The staff will undertake 33 rulmaking and other projects. These projects include rulmaking for electronic filing under EDGAR, takeovers and contests for corporate control, modernization of the capital formation process, internationalization of the securities markets, small business initiatives, and reporting requirements of officers, directors and principal shareholders. A special MD&A project will be undertaken in response to comment letters on the 1987 concept release expressing concern that issuer disclosure under existing MD&A requirements needs improvement. Substantial resources will be devoted to the review of a number of MD&As by industry, with the goal of

providing further guidance to filers on expected MD&A disclosures. This will be accomplished, in part, through the issuance of an interpretive release outlining shortcomings in compliance with current disclosure requirements found as a result of the reviews.

A new procedure for responding to telephone calls has been instituted in the Office of Chief Counsel in the Division of Corporation Finance. Calls are now received through answering machines in order to facilitate their receipt and better coordinate responses. This procedure allows additional time for responding to inquiries, which have become increasingly complex. In view of the expanded rulemaking activities, particularly with respect to EDGAR, it is expected that the amount of time required to respond to individual inquiries will increase.

Regional Office Disclosure: The regional office staff expect to review 140 (100%) Regulation A filings and approximately 800 (99%) Form S-18 registration statements filed. All of the estimated 360 post-effective amendments to Form S-18 with new financial statements will be reviewed. Many of these amendments will include detailed descriptions of the properties or businesses acquired from the proceeds of blank check offerings. The amount of technical assistance provided to small issuers is anticipated to remain at approximately 1987 levels, and public reference rooms will continue to be maintained in two regions.

Document Receipt and Distribution: Greater resources are needed to support the review process and ensure timely processing of filings. Various rules implemented during 1987 will require more detailed classification of filings, additional preliminary examination, more extensive computer update, and quality assurance functions. Enhanced procedures will be implemented to comply more adequately with the Debt Collection Act and the Department of Treasury Cash Management Program.

Public Information: Public requests for information under the FOIA and Privacy Act are expected to increase 10% in 1988, requiring additional staff resources to review and extract materials and coordinate agency decisions within the statutory time requirements. Implementation of new procedures and monitoring of developments in case law and administrative decisions resulting from the 1986 amendments to the FOIA also will add to staff workload. In the headquarters public reference facility, additional staff is necessary to handle anticipated increases in telephone inquiries and the volume of paper documents and microfiche added to the library. With the added staff, service to the public will be maintained at 1987 levels.

Accounting Policy: The staff will complete rulemaking projects on mandatory peer review of accountants and disclosure about changing auditors. The staff will increase its use of staff accounting bulletins to provide guidance on compliance with the Commission's financial reporting policies in an effort to increase the effectiveness and efficiency of the registration and reporting process, particularly in view of the selective review program. As a result of major projects conducted by the FASB and the Auditing Standards Board, greater staff resources will be devoted to monitoring private sector standard setting activities. In response both to voluntary efforts to establish peer review organizations and the possible adoption of Commission rules to mandate peer review, additional

resources will be devoted to oversight of the quality control activities of accounting firms practicing before the Commission. Because of an increased focus on international matters, staff resources will be devoted to closely monitoring international accounting and reporting developments. Staff involvement in accounting and auditing investigations is expected to continue as financial fraud will remain a priority of the enforcement program. Finally, the staff will continue its involvement with the FASB's Emerging Issues Task Force.

#### 1989 Program Request

Review of Filings: Workload projections generally have been held to 1988 anticipated levels as a result of current uncertain economic conditions. Assuming the projected levels of filing activity, the staff will review 3,154 reporting issuers' financial statements and related disclosures, approximately the same level as 1988. This will consist of 2,224 full reviews and 930 full financial reviews. The staff will conduct full reviews of 1,275 (26%) repeat issuer 1933 Act registration statements, 2,095 (19%) annual reports and 300 (86%) merger proxies. The level of review of the preliminary annual proxies will increase to approximately 1,675 (41%), while the number of reviews of merger proxies, tender offers, going private proxies, and proxy contests will approximate 1988 levels. An estimated 955 (80%) and 200 (89%) new issuer 1933 Act and new issuer 1934 Act registration statements, respectively, also will be reviewed.

The Division of Corporation Finance will devote over 12 staff years to EDGAR activities. These resource amounts are attributable to a number of items, primarily staff training, planning, and coordination to support the commencement of the conversion to an electronic system, participation in the system design, and redesigning the workplace to accommodate the new equipment.

Rulemaking and Interpretive Advice: The staff expects to undertake 31 rulemaking and other projects, securing final adoption of several projects initiated in 1988. Expected rulemaking will focus on facilitating electronic filing and review under EDGAR, internationalization of the securities markets, small business initiatives, regulation of corporate takeovers and going private transactions, and reporting requirements of the officers, directors, and principal shareholders of companies reporting under the 1934 Act. The staff estimates issuing approximately 1,350 no-action and interpretive letters and responding to approximately 70,000 telephone inquiries.

Regional Office Disclosure: The staff will review 140 (100%) Regulation A filings and 805 (100%) Form S-18 registration statements filed in the regional offices. All of the estimated 370 post-effective amendments to Form S-18 with new financial statements will be reviewed. Many of these amendments will include detailed descriptions of the properties or businesses acquired from the proceeds of blank check offerings. Requests for technical assistance and pre-filing conferences will continue to increase as a result of the greater complexity of the regional filings. Additional staff will make it possible to respond promptly and more thoroughly to these requests. The increase in public reference room staff will ensure that microfiche and paper documents will be maintained properly, the public will be adequately assisted in retrieving information, and the expected increase in users of the public reference rooms will be handled efficiently and expeditiously.

Document Receipt and Distribution: The staff is projected to receive, index, and distribute approximately 385,000 documents and 426,000 microfiche. More emphasis will be placed on quality assurance with regard to both electronic and manual filings, timely delivery of documents to the review staff and public, and processing requests for documents from members of Congress and other government agencies.

Public Information: The additional personnel will enable the headquarters public reference staff to achieve acceptable processing times for responding to requests and for filing new materials. Needed improvements will be initiated to better serve the public such as upgrading the library filing system. In addition, the resources requested for the FOIA staff will improve response time under the FOIA and Privacy Act and slow the growth of cases pending in the FIFO system.

Accounting Policy: The staff will continue to dedicate resources to rulemaking projects, staff accounting bulletins, and private sector standard setting projects. In addition, the staff will continue contacts with registrants to resolve complex registrant matters. The staff will continue to maintain strong oversight of the quality control activities of accounting firms practicing before the Commission, particularly in the event of the adoption of Commission rules to mandate peer review. Staff involvement in accounting and auditing investigations is expected to continue. Staff resources will continue to be devoted to closely monitoring international accounting and reporting developments and activities of the FASB's Emerging Issues Task Force.

## Full Disclosure

## Workload Data

	1987 Actual	1988 Estimate	1989 Estimate
Number of Issuers Filing Annual Reports (Reporting Issuers):	10,870	11,055	11,230
Number of Issuers' Financial Statements and Related Disclosures Reviewed:			
Full Reviews	1,669	2,333	2,224
Full Financial Reviews	60	780	930
Total Issuer Reviews	1,729	3,113	3,154

Set forth below are the filings reviewed to accomplish these levels of issuer reviews. In addition, the staff reviews those transactional filings which it believes warrant examination, e.g., new issuer 1933 Act registration statements. The total number of filings by reporting issuers shown as reviewed in the workload tables which follow exceed the number set forth above, since a review of more than one major filing by an issuer may be completed in a single year.

<u>Activity</u>	1987		1988		1989	
	<u>Actual</u>	<u>Work- load</u>	<u>Estimate</u>	<u>Staff</u>	<u>Actual</u>	<u>Estimate</u>
Review of Filings (Division of Corporation Finance)						
Registration Statements						
<u>1933 Act New Issuers 1/</u>						
Filed	1,398		1,200		1,200	
Reviewed 2/	1,114	72.4	955	62.5	955	62.5
Not Reviewed 3/	284		245		245	
		72.4		62.5		62.5

1/ New Issuers: Issuers which are not required to file periodic reports with the Commission, primarily because they have not previously registered an issue of securities under the 1933 Act. Certain new issuer 1933 Act registration statements are not automatically reviewed. They include limited partnership offerings by a general partner who has had a similar 1933 Act filing declared effective; filings with respect to the conversion of a bank to a bank holding company where the bank has previously filed its reports with another federal agency; and currently registered issuers forming new corporate structures. While these are technically new issuer filings, in substance they are repeat filings.

2/ A review involves an in-depth examination of the accounting, financial, and legal aspects of a filing. The review process encompasses the examination of the initial filing and all amendments made prior to review completion. It also involves appropriate research, conferences with issuer's representatives, and examination of supplemental information.

3/ For most types of documents, filings are screened to determine whether the filing will be selected for review.

	1987		1988		1989	
	Actual	Work- load	Estimate	Work- load	Estimate	Work- load
		Staff Years		Staff Years		Staff Years
<u>Registration Statements</u>						
<u>1933 Act Repeat Issuers Including Post-Effective Amendments 4/</u>						
Filed	4,679		4,900		4,900	
Reviewed	1,117	43.6	1,275	52.9	1,275	52.9
Monitored 5/	1,033	2.9	1,100	2.5	1,100	2.5
Not Reviewed or Monitored	2,529		2,525		2,525	
		46.5		55.4		55.4
<u>1934 Act New Issuers</u>						
Filed	220		225		225	
Reviewed	187	7.2	200	7.8	200	7.8
Not Reviewed	33		25		25	
		7.2		7.8		7.8
<u>1934 Act Repeat Issuers</u>						
Filed	2,207		2,325		2,325	
Reviewed	94	0.9	100	1.0	100	1.0
Monitored	1,019	3.3	1,030	0.7	1,030	0.7
Not Reviewed or Monitored	1,094		1,195		1,195	
		4.2		1.7		1.7
<u>Proxy Material &amp; Periodic Reports Going Private Proxies</u>						
Filed	125		150		150	
Reviewed	125	3.0	150	3.4	150	3.4
Not Reviewed	0		0		0	
		3.0		3.4		3.4
<u>Annual Proxies</u>						
Filed 6/	9,007		4,000		4,100	
Reviewed	3,046	28.1	1,625	15.0	1,675	15.5
Monitored	640	2.0	0	0.0	0	0.0
Not Reviewed or Monitored	5,321		2,375		2,425	
		30.1		15.0		15.5
<u>Merger Proxies</u>						
Filed	328		350		350	
Reviewed	248	5.5	300	6.3	300	6.3
Not Reviewed	80		50		50	
		5.5		6.3		6.3
<u>Proxy Contests</u>						
Filed	65		75		75	
Reviewed	65	3.6	75	7.5	75	7.5
Not Reviewed	0		0		0	
		3.6		7.5		7.5

4/ The estimated number of documents to be reviewed includes post-effective amendments only if they contain new financial statements.

5/ Monitoring is a directed review for specified disclosure in a document. Monitoring can take place either before or after an effective date of a 1933 Act filing or the disposition date of a 1934 Act filing.

6/ Proxies projected to be filed during 1988 and 1989 reflect the impact of a rule adopted in the first quarter of 1988, which provides that proxy materials relating only to the election of directors and certain other limited matters no longer will be filed in preliminary form.

	1987		1988		1989	
	Actual	Staff load	Estimate	Work- load	Staff load	Estimate
	Years		Years	Years	Years	
<u>Annual Reports</u>						
Filed	10,870		11,055		11,230	
Reviewed	1,389	19.3	2,275	44.8	2,095	41.3
Full Financial Reviews 7/	60	0.6	780	7.8	930	9.3
Monitored	364	0.7	0	0.0	0	0.0
Not Reviewed or Monitored	9,057		8,000		8,205	
		20.6	--	52.6		50.6
<u>Quarterly &amp; Current Reports</u>						
Filed	45,033		45,545		46,070	
Reviewed	1,247	1.7	5,000	2.4	5,000	2.4
Monitored	9,395	1.6	5,000	0.7	5,000	0.7
Not Reviewed or Monitored	34,391		35,545		36,070	
		3.3	--	3.1		3.1
<u>1934 Act Schedules</u>						
Tender Offers						
Filed	593		550		550	
Reviewed	527	3.1	500	3.0	500	3.0
Monitored	10	0.1	0	0.0	0	0.0
Not Reviewed or Monitored 8/	56		50		50	
		3.2	--	3.0		3.0
<u>Going Private Schedules</u>						
Filed	209		175		175	
Reviewed	209	2.6	175	2.5	175	2.5
Not Reviewed or Monitored	0		0		0	
		2.6	--	2.5		2.5
<u>Acquisition Statements</u>						
Filed	6,342		8,000		8,100	
Reviewed 9/	67	0.2	250	0.6	250	0.8
Monitored	42	0.0	0	0.0	0	0.0
Not Reviewed or Monitored	6,233		7,750		7,850	
		0.2	--	0.6		0.8
Staff Years Sub-Total		202.4		221.4		220.1
<u>Review of Filings: Other Activities</u>						
EDGAR Training		0.0		0.0		7.8
EDGAR Planning and Coordination		0.5		1.2		4.5
Trust Indenture/Exemptive Issues		4.5		4.3		3.7
Staff Training		5.2		6.7		6.8
Securities Bar Relations		1.8		1.8		2.5
Quality Control		3.0		3.0		3.0
Total Other Activity Staff Years		15.0		17.0		28.3
Total Review of Filings Staff Years		217.4		238.4		248.4

7/ A full financial review involves an in-depth examination of an issuer's financial statements and management's discussion and analysis.

8/ The number of documents includes schedules filed for issuer tender offers which do not involve a possible change of control.

9/ These filings are primarily reviewed in connection with reviews of tender offers and proxy contests.

<u>Activity</u>	<u>1987</u>		<u>1988</u>		<u>1989</u>	
	<u>Actual</u>	<u>Work- load</u>	<u>Staff years</u>	<u>Estimate</u>	<u>Work- load</u>	<u>Staff years</u>
<b>Rulemaking &amp; Interpretive Advice (Division of Corporation Finance)</b>						
<b><u>Rulemaking &amp; Other Projects</u></b>						
Proxy Program		7		2		2
Registration and Prospectus Requirements		6		4		3
Reporting Requirements		4		4		5
Tender Offers		4		8		5
Internationalization		2		2		4
EDGAR		1		1		2
Small Business		5		7		5
Legislation/Other		4		5		5
<b>Sub-Total</b>	<b>33</b>	<b>20.1</b>		<b>33</b>	<b>20.1</b>	<b>31</b>
						<b>20.1</b>
<b><u>Legal and Interpretive Advice</u></b>						
<b><u>General Advice/Coordination</u></b>						
Telephone Calls	87,476		65,000		70,000	
FOIA, Confidential Treatment & Related Matters	516		500		500	
<b>Written Responses</b>						
No-Action/Interp Letters	1,297		1,300		1,350	
Exemptive Orders	15		20		20	
Correspondence	1,524		1,600		1,600	
<b>Sub-Total</b>		<b>20.5</b>		<b>20.5</b>		<b>20.5</b>
<b>Total Staff Years</b>		<b>40.6</b>		<b>40.6</b>		<b>40.6</b>

<u>Activity</u>	<u>1987</u>		<u>1988</u>		<u>1989</u>	
	<u>Actual</u>	<u>Work-load</u>	<u>Estimate</u>	<u>Work-load</u>	<u>Estimate</u>	<u>Work-load</u>
			<u>Staff years</u>		<u>Staff years</u>	
<b>Review of Filings (Regional Office Disclosure)</b>						
<b>Regulation A Offering Circulars</b>						
Filed	142		140		140	
Reviewed	142	4.0	140	4.0	140	4.0
<b>Post-Effective Amendments</b>						
Filed	34		30		30	
Reviewed	20	0.5	20	0.5	20	0.5
<b>Form S-18</b>						
<b>New Registration Statements</b>						
Filed	835		765		765	
Reviewed	835		765		765	
<b>Repeat Registration Statements</b>						
Filed	47		40		40	
Reviewed	44		35		40	
<b>Total Registration Statements</b>						
<b>Post-Effective Amendments</b>						
Filed	749		800		720	
Reviewed	321	6.1	360	7.1	370	8.3
<b>Other Filings &amp; Technical Assistance</b>						
	5.3		5.8		7.9	
<b>Public Reference &amp; Other Related Activities</b>						
	9.4		9.9		11.1	
<b>Total Staff Years</b>	<b>57.0</b>		<b>59.0</b>		<b>64.0</b>	

<u>Activity</u>	<u>1987</u>		<u>1988</u>		<u>1989</u>	
	<u>Actual</u>	<u>Work- load</u>	<u>Estimate</u>	<u>Work- load</u>	<u>Estimate</u>	<u>Work- load</u>
	<u>Staff years</u>		<u>Staff years</u>		<u>Staff years</u>	
<u>Document Receipt and Distribution</u>						
<u>1933 Act Filings*</u>						
Registration Statements	8,616		8,800		8,800	
Amendments to Registration Statements	12,738		13,200		13,900	
<u>1934 Act Filings</u>						
Registration Statements	2,531		2,700		2,700	
Registration Statement Amendments	889		850		900	
Preliminary Proxy Statements	11,274		8,500		9,200	
Annual Reports	12,014		12,200		12,400	
Amendments	2,547		3,000		3,200	
Quarterly Reports	32,668		33,300		33,900	
Amendments	1,699		1,700		1,800	
Current Reports	14,119		14,100		14,100	
Amendments	1,794		2,000		2,100	
Forms 3,4 and Amendments	129,472		134,300		140,700	
Form 144 and Amendments	33,299		35,700		37,400	
<u>1933 and 1934 Act - Miscellaneous Filings</u>						
Documents	78,982		82,900		87,000	
Amendments	16,385		17,200		18,100	
<u>Microfiche Processed</u>						
Received & Filed	394,762		420,000		426,000	
Requests Received & Processed	27,053		30,000		33,000	
Microfiche Reproduced	122,357		125,000		130,000	
<u>Staff Years by Function</u>						
<u>Function</u>						
Receipt & Distribution		12.6		12.1		13.3
Computer Update		15.2		14.2		14.2
Records Maintenance		14.1		13.1		14.9
Quality Assurance		5.3		5.8		7.8
Examination of Filings		11.8		11.8		11.8
Total Staff Years		59.0		57.0		62.0

\*Includes filings that become effective automatically.

<u>Activity</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
	<u>Actual</u>	<u>Estimate</u>	<u>Estimate</u>
	<u>Work- load</u>	<u>Staff years</u>	<u>Work- load</u>
<b>Public Information</b>			
<b>Public Reference</b>			
Documents received and filed	329,552	341,570	345,000
Microfiche received and filed	358,761	401,540	415,000
Visitors	45,464	47,740	50,000
Requests for documents	4,525	4,620	4,700
Requests for publications	15,833	16,150	16,470
Certifications	438	450	460
Telephone inquiries	141,528	155,680	169,830
	15.5	16.5	18.0
<b>FOIA</b>			
FOIA Requests	1,908	2,095	2,300
FOIA Appeals	62	75	80
Privacy Act Requests	10	15	18
Privacy Act Appeals	0	0	0
Government in the Sunshine Act Requests	82	95	105
Confidential Treatment Requests	3,205	3,940	4,615
Confidential Treatment Appeals	4	5	7
Congressional Requests	2,005	2,500	2,890
	<u>10.5</u>	<u>11.5</u>	<u>13.0</u>
<b>Total Staff Years</b>	<b>26.0</b>	<b>28.0</b>	<b>31.0</b>

<u>Activity</u>	<u>1987</u>		<u>1988</u>		<u>1989</u>	
	<u>Actual</u>	<u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u>	<u>Work- load</u>	<u>Staff Years</u>
<b>Accounting Policy</b>						
Rule amendments and Staff Accounting Bulletins		18		19		20
Registrant Contacts and Oversight of Private Sector Standards		655		655		655
Participation in Investigations		150		150		150
Total Staff Years		<u>19</u>		<u>20</u>		<u>21</u>
Total Program Staff Years		442		482		525

## Electronic Filing

Program Summary

Organizations	1987		1988		1989	
	Staff Years	Actual Cost (000)	Estimate Staff Years	Cost (000)	Estimate Staff Years	Cost (000)
Corporation Finance	15		10		8	
EDGAR Management	3		15		27	
Applications and Reports Services	3		12		21	
Information Systems Management	2		2		2	
Sub-Total	23		39		58	
Salaries and Benefits		\$1,009		\$ 1,731		\$ 2,579
Non-Personnel Expenses		<u>3,474</u>		<u>10,473</u>		<u>18,691</u>
Total Program Cost 1/		\$4,483 2/		\$12,204 2/		\$21,270 2/

The SEC's Electronic Data Gathering, Analysis and Retrieval system (EDGAR) is designed to automate the filing, processing, and dissemination of the SEC's filings, which totalled over 10 million pages in 1987. EDGAR will improve the speed and effectiveness of SEC processing and ensure timely dissemination of corporate and financial information to investors and the financial community.

From September 1984 through December 1987, nearly 30,000 filings from over 1,200 registered entities have been received and processed by the EDGAR pilot project. A reference filing capability was added in November, 1986 which has saved pilot participants from resubmitting over 125,700 pages of text as of December, 1987. The pilot mainframe computer was upgraded in January 1987, which nearly doubled processing capacity.

The Request for Proposal (RFP) for the operational EDGAR system has been amended and competition reopened. Responses are now due by March 31, 1988, with contract award anticipated in late summer 1988. Non-personnel funding of \$10.5 million will be used to continue the pilot and for the EDGAR operational contract. During 1988, the staff will continue working on the pilot project and providing filer support. Additional resources will be necessary to train SEC staff and evaluate RFP proposals.

During 1989, non-personnel funding of \$18.7 million is needed to develop, implement, and operate the operational EDGAR system. The contractor will maintain the EDGAR pilot until the pilot participants can be phased into the operational system. The Office of EDGAR Management will devote resources to technical systems administration, contract administration, support services, and internal staff training. The staff will develop tests to verify the thoroughness of the contractor's programs. Support staff will provide necessary technical assistance to filers and SEC staff to facilitate electronic filing using the operational system.

1/ This section accounts only for the Commission staff assigned exclusively to EDGAR. Additional resources allocated to the project are identified in the Full Disclosure, Investment Management Regulation, and Program Direction budget presentations.

2/ Amounts included in Full Disclosure program totals.

## Electronic Filing

Mission

The primary purpose of the Electronic Data Gathering, Analysis and Retrieval system (EDGAR) is to increase the efficiency and fairness of the securities markets for the benefit of investors, corporations, and the economy by accelerating the processing and dissemination of time-sensitive corporate information filed with the Commission. Under EDGAR, information filed electronically with the Commission will be accessible in minutes, instead of days and weeks.

The EDGAR pilot's primary objective has been to test the feasibility of electronic filing and processing. Since September 24, 1984, nearly 30,000 filings from over 1,200 companies have been received and processed electronically. The pilot was designed in three phases, with each phase expanding the capability of the system. Phase I provided for receipt of electronic filings and limited electronic processing. Phases II and III added significant enhancements to electronic processing and tested additional hardware and software. This phased approach permitted the Commission to address systematically a wide range of technical features contemplated for EDGAR.

The EDGAR system was designed to receive very large quantities of free-form textual information prepared and transmitted by companies across the country on their existing data processing equipment. One of the most difficult technical accomplishments, which has worked well in the pilot, was accommodating a wide variety of filer equipment and software. Filings have been accepted through three electronic media: (1) direct transmissions over telephone lines or public networks using a variety of communication protocols; (2) diskettes prepared on more than 85 types of word processors or personal computers; and (3) magnetic tapes.

The operational system will provide comprehensive automated capability to assist the Divisions of Corporation Finance and Investment Management's full disclosure staffs in reviewing electronic filings from over 15,000 filers and electronically disseminating these filings to the investing public. This will be accomplished through three subsystems: receipt, acceptance and review, and dissemination.

The SEC will share in the funding of EDGAR costs with the contractor by paying for the receipt and the acceptance and review subsystems. The contractor will pay the full cost of the dissemination subsystem in exchange for authority to sell electronically filed data according to Commission regulated rates. Previously, the SEC estimated that \$46.5 million would be needed over eight years to pay for the acceptance and review subsystem and a portion of the receipt subsystem. However, the General Accounting Office and Congress recommended, and the Commission agreed, that the entire receipt subsystem be paid for by the SEC. As a consequence of this decision, the total probable cost for both subsystems will be considerably higher than the earlier estimate of \$46.5 million. The estimated total cost is procurement sensitive and is not stated in this document.

The EDGAR system is a major priority for the Commission. The Office of EDGAR Management was created to coordinate and monitor the implementation of operational EDGAR to facilitate a smooth transition to electronic filing. This office and the

operating divisions will concentrate on providing filers with on-line assistance during the filing process. This on-line assistance will include test filings, help in formatting electronic submissions and connecting to the EDGAR system, instruction in the use of electronic message features, and other on-line consultation as necessary. The SEC staff will oversee contractor development of an EDGAR user manual and associated training material which will be distributed to the filing community. Also, the staff will encourage private sector training of filers through participation in privately sponsored seminars. In addition, SEC staff will be engaged in various aspects of policy, technical, and operational development.

#### Program Environment

The SEC now receives and processes an annual volume of over 10 million pages of information which are filed with the Commission as 280,000 forms and amendments of various types and lengths. About 80% of these are original submissions; the remainder are amendments. The timing mandated by SEC rules causes 43,000 of the 280,000 filings to occur at specific times during the year requiring intensive staff effort to process these peak loads without long delays. The average length of all documents is 41 pages. The longest filings are 1933 Act registration statements, which average 165 pages.

Most of these documents are now received by the SEC on paper. To make these documents available to the public, the SEC uses a private contractor to produce microfiche copies of the public filings. Copies of these filings are sold at rates regulated by the Commission. In addition, the SEC receives, at no charge, sets of the microfiche for its own use. While this system has worked well, computer technology will increase the speed and availability of this information to external and internal users.

The EDGAR project has government-wide, precedent-setting implications for the receipt and dissemination of information. Because of EDGAR's importance, it has been designated as a Presidential Priority System. There has also been intensive Congressional interest in the EDGAR system. As a result, the General Accounting Office (GAO) has conducted two audits of the pilot operations. Several GAO recommendations already have been implemented and others will be addressed during transition to the operational system.

#### 1987 Program Evaluation

During 1987, the EDGAR pilot achieved significant milestones as noted below.

- o The SEC accepted new pilot participants only if they were affiliates of existing pilot users, made initial public offerings, submitted filings under the Public Utility Holding Company Act, or submitted annual or semi-annual reports under the Investment Company Act on Form N-SAR. For example, 350 additional investment companies filed reports on Form N-SAR in 1987.
- o A reference filing capability was added in November, 1986. This capability gives investment company filers the option to submit a reference filing electronically and to include it in subsequent electronic filings by

designation rather than by resubmitting the text. Through December 31, 1987, the Commission had received 7,352 filings designating reference filings which saved filers from submitting over 125,700 pages of text.

- In January 1987, the pilot mainframe was upgraded from an IBM 4381-Model 2 to an IBM 4381-Model Q14. This nearly doubled processing capacity, improved internal response time, and added dual processing capabilities. At the end of fiscal year 1987, other enhancements were made to increase disk storage, tape backup, and the number of terminals available to SEC staff. These enhancements will accommodate the larger volume of filings resulting from the pilot program extension while still providing a means of testing procedural and system enhancements which may be incorporated in operational EDGAR.
- In March 1987, the Commission adopted temporary Rule 13f-2 and temporary Form 13F-E that permit institutional investment managers to file voluntarily Form 13F on magnetic tape. The rule benefits filers, the public, and the Commission because:
  - managers that maintain this information in a computer no longer need to produce and transmit paper copies of computer reports to the Commission;
  - information will be compiled and disseminated quicker as filers increase use of this form; and
  - receipt and acceptance procedures have been partially automated and streamlined.
- In April 1987, the Office of EDGAR Management was created to oversee and coordinate all management and administrative activities of the EDGAR project. Specifically, this office has overall responsibility for the procurement, implementation, and operation of the EDGAR system.

The EDGAR operational Request for Proposal (RFP) was released on May 7, 1986, with proposals initially due in September, 1986. The closing date was extended twice due to requests by potential offerors. On February 27, 1987, proposals were received. On July 22, 1987, prior to awarding the contract, the Commission announced its intention to reopen competition for the operational system for 90 days because of a proposed change in the level of federal funding for the contract. Prior to amendment, the RFP had limited federal funding of the contract to a maximum of \$46.5 million for the acceptance and review subsystem and a portion of the receipt subsystem. In response to a GAO recommendation and after discussions with Congressional staff, the Commission decided to request full funding for the cost of the receipt subsystem. This change required amending the RFP and reopening competition.

#### 1988 Appropriation

On October 23, 1987, the amended RFP reflecting the change in funding was issued with a closing date of January 22, 1988. However, partly because of requests

from potential offerors, on December 23, 1987, the closing date was extended to March 31, 1988. The October, 1987 amendment made the following major changes to the RFP. First, the SEC will fund the entire cost of the receipt and the acceptance and review subsystems. The contractor will fund the dissemination subsystem and recover costs through collection of SEC regulated subscription fees. Second, the first three years of the contract were changed from cost reimbursement to cost reimbursement plus a fixed fee on labor and overhead costs only. The last five years remain as a fixed-price contract. Third, the earlier RFP allowed offerors to propose that the subscription fee for access to SEC filings be waived, in whole or in part, for the contractor. The contractor is now required to pay this fee; however, the SEC may waive payment for any period upon a showing that the payment of the fee would place the contractor at a competitive disadvantage. Finally, the system development and filer phase-in period now may range from 36 to 48 months. The SEC may extend the phase-in period beyond 48 months to ensure sufficient time for system performance evaluation during filer phase-in.

An offerors' conference was held on November 20, 1987, to answer questions about the RFP. As a result of issues raised prior to and during the conference, the RFP was amended on January 15, 1988, to clarify certain sections and to update the data used by potential offerors to design the operational system. This amendment made the following major changes to the RFP. First, clauses were added to provide guidance to offerors with regard to the government's and the contractor's rights to data delivered under the contract. Second, the performance bond requirement was removed because the contractor is no longer funding a substantial part of the project. Third, the SEC clarified the process for evaluating offers. Finally, the SEC redefined the interface between its Federal Financial System, the Department of the Treasury designated depositories, and the EDGAR system. While the RFP previously provided that the EDGAR receipt subsystem had to be linked to the SEC's Treasury-designated depositories, it now requires the EDGAR contractor to provide a dial-up link with the depositories for backup.

The RFP was further amended on February 12, 1988, to reflect the results of ongoing discussions between the SEC and the state securities regulators and self-regulatory organizations. This amendment made the following major changes. First, the states and self-regulatory organizations will be provided a direct feed of designated SEC filings through features built into the operational EDGAR system. Second, the contractor will make available, at no cost to the states and self-regulatory organizations, software used or developed for the receipt and acceptance subsystem. However, the contractor will negotiate the costs, terms, and conditions for the delivery to and use by the states and the self-regulatory organizations for software in which the contractor or a third party has a proprietary interest. Finally, the contractor will offer a batch query function by which state reviewers and self-regulatory organizations can download SEC public filings that are on-line or archived. This will minimize data storage requirements for the states and self-regulatory organizations.

As a consequence of amending the EDGAR RFP and reopening competition, the pilot will be maintained through 1988. The 1988 budget of \$10.5 million contains \$5 million for the EDGAR operational contract and \$5.5 million for the EDGAR pilot project, special studies, and other EDGAR related expenses. The due date for receipt of offers is now March 31, 1988. The SEC anticipates awarding the EDGAR operational contract in late summer 1988.

During 1988, the staff will continue the pilot and provide filer support. Additional resources are necessary to train SEC staff and evaluate the RFP proposals. The Office of EDGAR Management will be staffed more slowly than previously planned because of the delay in contract award and the decision to make greater use of the private sector for filer training. An EDGAR newsletter is planned to keep the filer community informed on a continuous basis regarding the development, implementation, and operation of the EDGAR system. A cost-benefit study will be completed by Mitre Corporation before award of the operational contract. The objective of this study is to identify and quantify the major external costs and benefits of operational EDGAR.

#### 1989 Program Request

The EDGAR system is a major priority for the Commission. Therefore, the pilot will be maintained without disruption to filers and incorporated in the operational system. Additional staff will be necessary to successfully implement the operational EDGAR system. The EDGAR support staff will provide the necessary technical assistance to filers to facilitate electronic filing using the operational system. This assistance and informal instruction will be critical at all stages, but especially during the phase-in period which may require 36 to 48 months after contract award. Also, the staff will emphasize resolving filing problems, preventing filers' misunderstandings, and gaining insight into possible system enhancements.

The Office of EDGAR Management's resources will be devoted to technical systems administration, contract administration, and support services—including filer support and staff training. Contract administration will include analysis of contractor resource utilization, tracking contract deliverables, invoice accounting, and price regulation, plus, monitoring and evaluating the quality of contractor performance. In addition, the contracting officer will ensure that all hardware and software components are procured at the most competitive prices. The staff will develop system tests to verify the thoroughness of the contractor's programs. These tests will cover the operation of hardware and software, system integration, and operational effectiveness. The tests will be conducted by SEC staff or other independent groups.

The Commission has obtained a commitment for cutyear funding of the EDGAR system from the Office of Management and Budget. The estimated total cost of the EDGAR receipt and acceptance and review subsystems is procurement sensitive and not stated in this document. However, the SEC expects the costs to be significantly greater than the previous cap of \$46.5 million based upon a study by the General Services Administration Federal Computer Performance Evaluation and Simulation Center.

The 1989 budget request for non-personnel expenses is \$18.7 million for the development, implementation, and operation of the EDGAR system. These funds are for the EDGAR operational contract and various support contracts for audits, special studies, and facility and equipment rental. The successful contractor will assume responsibility for the pilot system while developing the operational system. Specifically, the contractor will design the operational system, purchase or develop the necessary hardware and software, and perform stress tests to ensure proper functioning of the system. The contractor will propose a schedule of payments that coincides closely with actual expenditures.

## Prevention and Suppression of Fraud

Program Summary

Organizations	1987		1988		1989	
	Actual Staff Years	Cost (000)	Estimate Staff Years	Cost (000)	Estimate Staff Years	Cost (000)
Enforcement	202		245		251	
Applications and Reports Services	9		9		9	
Consumer Affairs and Information Services	11		11		11	
Regional Offices	380		410		422	
Sub-Total	602		675		693	
Salaries and Benefits	\$27,023		\$31,185		\$33,147	
Non-Personnel Expenses	<u>10,391</u>		<u>12,602</u>		<u>14,575</u>	
Total Program Costs	\$37,414		\$43,787		\$47,722	

The Securities and Exchange Commission (SEC) is a law enforcement agency. Its Prevention and Suppression of Fraud Program ensures investor confidence in the nation's securities markets by preventing illegal distribution of securities, fraud and manipulation in the purchase and sale of securities, and other conduct illegal under the federal securities laws. Investor confidence is crucial to capital formation, a cornerstone of the nation's economy. Unprecedented growth and change in the securities industry accompanied by increases in the indications of potential fraud have placed tremendous demands upon this program, which accounts for approximately one-third of the agency's total resources.

During 1987, the SEC filed 157 civil injunctive proceedings naming 373 defendants, and instituted 146 administrative proceedings against 204 respondents. It also prosecuted nine civil and four criminal contempt proceedings. The SEC obtained court orders requiring defendants to return illicit profits amounting to approximately \$121 million, either as disgorgement or as restitution to defrauded investors. The agency also recovered \$62.6 million during 1987 in penalties under the Insider Trading Sanctions Act of 1984 ("ITSA"). In 1987, the Commission filed the largest insider trading case in its history against Ivan Boesky.

In 1988, the SEC will continue its aggressive enforcement efforts, including continuing investigations aimed at uncovering and preventing insider trading. The staff will continue to seek ways to address difficulties resulting from attempts to investigate persons and entities outside the United States. Increased market volatility and trading volume following the October 19, 1987 market break, along with a rise in investor complaints, can be anticipated to place further demands on the agency's enforcement program. The 1988 appropriation will provide funding for the SEC to open 370 investigations. The staff will initiate 155 administrative proceedings and 165 civil proceedings, and open 66 criminal proceedings.

In 1989, staff resources will continue to be devoted to complex and novel securities fraud cases. Insider trading cases and complex accounting cases involving misleading financial statements will continue to be areas of special attention. A substantial number of cases will be brought involving regulated entities and securities offerings. Market related cases will require increased enforcement attention and resources. Substantial resources will continue to be devoted to dealing with international aspects of investigations and to litigation of contested cases. Funding at the requested level will enable the staff to undertake 380 investigations. It will also enable the staff to open 160 administrative proceedings, 68 criminal proceedings, and 170 civil proceedings.

**Prevention and Suppression of Fraud****Mission**

The Securities and Exchange Commission (SEC) is a law enforcement agency. The Prevention and Suppression of Fraud Program protects the investing public by inhibiting the illegal distribution of securities, fraud and manipulation in the purchase and sale of securities, and other conduct that violates the federal securities laws. The program's law enforcement activity preserves the integrity of the securities markets and maintains the investor confidence that is necessary for capital formation.

The program's principal legislative mandates are the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. Each contains explicit authority for the Commission to conduct investigations and, where unlawful conduct or noncompliance is discovered, to bring enforcement actions in a federal court, institute administrative proceedings before the Commission, or refer the matter to the Attorney General for criminal prosecution. The mission is carried out in three phases: intelligence analysis, investigations, and proceedings.

**Intelligence Analysis:** The first phase of enforcement work consists of the evaluation of information that may indicate past or imminent violations of the federal securities laws. This information is acquired from diverse sources. For example, investigations pending at the close of fiscal 1987 were based on information from the following sources: 1/

Public Complaints	19%	Issuer Filings	8%
Informants	19%	Other SEC Investigations	7%
SEC Examination Program	15%	Other Federal Agencies	7%
News Media	12%	SEC Market Surveillance	6%
Self-Regulatory Organizations	11%	State/Local Agencies	4%
Other SEC Divisions	8%		

Market activity is monitored by special surveillance units at the stock exchanges and by Commission staff that make inquiries into unusual trading patterns flagged by computer surveillance systems. Public complaints, unusual market movements, and leads from other sources are evaluated to determine whether an inquiry should be initiated. If more data are necessary to decide whether an investigation should be made, a Matter Under Inquiry (MUI) may be opened. The staff may spend up to 80 hours on a MUI before a decision to investigate is made.

**Investigations:** The staff opens an investigation when a matter warrants further attention to determine whether a violation exists and what enforcement action is needed. Where witnesses and others are willing to cooperate on a voluntary basis, an informal investigation may be conducted. If it appears necessary to compel testimony and the production of documents, the Commission may order a formal investigation, authorizing the staff to employ subpoenas to obtain evidence.

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1/ Since a case may emanate from more than one source, the sum of the percentages exceeds 100%.

The scope and complexity of investigations vary tremendously. The number of investigations does not completely reflect qualitative aspects of the SEC's caseload. An investigation may consist of a routine inquiry into the conduct of a single person or regulated entity, or a detailed examination of a complex scheme involving a large number of entities and individuals. Moreover, investigations frequently involve novel and complex schemes, and difficult issues of fact or law. An analysis of investigations pending at the close of fiscal 1987 reveals the following percentages of cases in the most significant subject classifications: <sup>1/</sup>

Fraud in Offer/Sale/Purchase	63%	Investment Adviser/Company	17%
Failure to Disclose	44%	Violations	
False Filing	24%	Accounting Problems	16%
Broker-Dealer Violations	21%	Books and Records Problems	14%
Insider Trading	21%	of Regulated Entities	
Unregistered Offering	19%	Breach of Fiduciary Relationship	13%
Manipulation of Stock Price	18%	Management Fraud	11%

Proceedings: Depending on the results of an investigation, the Commission may: (1) authorize the staff to commence a civil injunctive action in a United States district court, (2) institute a proceeding before an administrative law judge, or (3), refer the matter to the Department of Justice for criminal prosecution. Matters may also be referred to state or local authorities or self-regulatory organizations.

Decisions regarding the particular enforcement action to take in a case are based on a number of considerations and legal judgments. Civil injunctive actions are undertaken to obtain court orders enjoining existing or imminent violations of the federal securities laws, and to obtain other forms of equitable relief to protect the investing public. Civil penalties may be assessed pursuant to the Insider Trading Sanctions Act of 1984 (ITSA). When appropriate, a freeze of assets or the appointment of a receiver or trustee is sought to conserve assets or funds in which investors have an interest.

The Commission institutes administrative proceedings against regulated entities to determine whether it is in the public interest to suspend or revoke the registration required to engage in business. The Commission may also institute administrative proceedings against persons associated with regulated entities. Remedies for misconduct by individuals include censure, limitations on activities, suspension for up to twelve months, or a bar from participation in the securities industry.

In many instances, material developed in Commission investigations is referred to the Department of Justice, and such referrals may result in indictments and criminal prosecutions. While authority for conducting criminal proceedings lies with the Department of Justice, the Commission's staff provides assistance to the Department in developing complex cases. A substantial number of staff hours each year are devoted to providing direct assistance to criminal authorities.

<sup>1/</sup> As a case may involve more than one violation classification, the sum of percentages exceeds 100%.

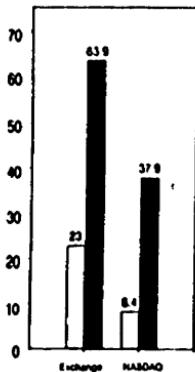
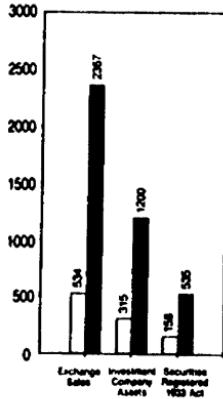
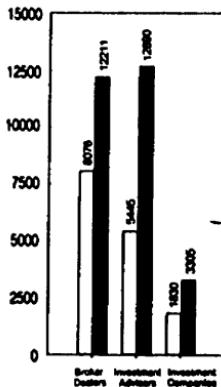
Program Environment

Recent increases and changes in market activity, volatility and volume of trading can be predicted to increase the already heavy demands on the Commission's enforcement program. As the internationalization of securities trading increases, and complex financial instruments continue to proliferate, the pursuit and deterrence of fraud becomes increasingly difficult. The graphs below illustrate some aspects of the recent growth of the securities industry and in the number of market participants subject to Commission regulation through fiscal 1987.

Change and growth in the securities industry requires continuing vigilance against new opportunities for potential fraud on investors. Investor complaints, which have increased significantly in recent years, increased further following the October 1987 market break. In fiscal 1987, the Commission received over 40,500 complaints and inquiries from investors. In addition, the National Association of Securities Dealers (NASD) received approximately 5,000. In fiscal 1986 complaints and inquiries received by the Commission totalled 36,055; in fiscal 1988 they are expected to exceed 46,000.

**SECURITIES INDUSTRY GROWTH**

1982 □ to 1987 ■

NUMBER OF SHARES TRADED  
(Billions)VALUE OF SECURITIES  
(Billions of Dollars)REGULATED ENTITIES  
(Number of Entities)

1987 Program Evaluation

The Commission conducted a vigorous enforcement program to prevent and redress violations of the federal securities laws. The Commission brought a total of 362 enforcement actions during 1987, including 157 civil injunctive proceedings against 373 defendants. In addition to injunctions prohibiting imminent or repeated violations, the Commission obtained court orders during 1987 requiring defendants to divest themselves of approximately \$121 million, over three times the amount ordered in 1986. The Commission initiated 146 administrative proceedings against a total of 204 respondents during fiscal 1987. The staff also prosecuted nine civil and four criminal contempt actions.

Individuals who purchase or sell securities while in possession of material, nonpublic information relating to such securities, in violation of a fiduciary duty or other relationship of trust and confidence, undermine the expectation of fairness and honesty that is the basis of investor confidence in the nation's securities markets. Although cases involving insider trading are only one component of the Commission's comprehensive enforcement program, the magnitude and gravity of the cases recently brought by the Commission and the criminal prosecutions initiated by the U.S. Attorney's Office for the Southern District of New York reflect the continuing importance of this issue. During fiscal 1987, the Commission brought 42 insider trading cases, and obtained court orders requiring defendants to pay approximately \$70.1 million as disgorgement (included in the \$121 million total disgorgement figure mentioned above). In addition, courts ordered approximately \$62.6 million in civil penalties under the Insider Trading Sanctions Act of 1984. These record amounts far exceed the insider trading disgorgement and ITSA penalty figures for 1986 (\$29.7 and \$3.7 million, respectively), which were records at that time.

During fiscal 1987, the Commission filed the largest insider trading case in its history against Ivan F. Boesky, an arbitrageur. As part of the settlement of that action, Boesky consented to a permanent injunction from future violations of the federal securities laws and to the entry of an administrative order barring him from further association with any broker or dealer. Boesky paid the equivalent of \$100 million in cash and assets and agreed to cooperate with the ongoing investigation. Fifty million dollars of that amount was in cash or cash equivalents and represents disgorgement of profits that Boesky allegedly obtained as a result of illegal insider trading, and \$50 million of that amount consisted of stock in a U.K. closed-end investment trust and a U.S. company, representing a civil penalty to be paid by Boesky to the U.S. Treasury. Boesky was subsequently convicted and sentenced to a three year jail term.

In related proceedings, investment banker Martin A. Siegel, who allegedly provided Boesky with inside information on certain mergers, tender offers, and other business combinations which resulted in profits to Boesky of over \$33 million, consented to be enjoined from further violations of the federal securities laws and to the entry of an administrative order barring him from further association with any broker or dealer. Siegel was ordered to disgorge \$4.2 million, his entire ownership interest in the securities of the broker-dealer firm that employed him, and his interest in partnerships sponsored by that firm. Kidder, Peabody & Co., which allegedly both benefited from and reciprocally disclosed inside information through Siegel, was also enjoined and ordered to disgorge \$25.3 million, including \$11.6 million in ITSA penalties.

The Commission maintains an active program to detect, investigate and pursue cases involving false and misleading financial disclosure and the issuance of false financial statements by public corporations. During fiscal 1987, the SEC brought 61 injunctive actions and administrative proceedings against issuers or employees involving financial disclosure issues, and 11 cases alleging misconduct on the part of accounting firms or their partners or employees. These cases emphasize the importance of auditor independence as a means of preventing fraud and other misconduct.

Typical financial disclosure cases involve the improper valuation of assets or liabilities; the improper recognition of revenue or income; the failure to establish sufficient provisions for bad debts or other contingencies; or the failure to provide adequate disclosure concerning the issuer's financial condition. Many cases also involve violations of the accounting provisions of the Foreign Corrupt Practices Act. Financial disclosure cases are often complex and require more resources than other types of cases, but their effective prosecution is essential to preserving the integrity of the disclosure system.

The largest number of enforcement cases in fiscal 1987 involved regulated entities such as broker-dealers, investment advisers, and investment companies. As the financial services industry continues to grow and change, it will remain vital to ensure the integrity and fairness of the participants in that industry. The Commission brought a total of 118 enforcement proceedings involving regulated entities. Of these cases, 75 were brought against broker-dealers or persons associated with broker-dealers. The majority of these cases involved violations of the net capital and customer protection provisions, books and records violations, and fraudulent sales practices.

Cases involving violations by issuers and other persons in connection with securities offerings also accounted for a large number of the Commission's enforcement proceedings. In fiscal 1987 the Commission brought 57 cases involving the failure to comply with registration requirements and, in many instances, violations of antifraud provisions. This past year, the Commission instituted a series of proceedings concerning so-called "blank-check" offerings, that is, registered offerings in which an issuer raises funds without identifying a specific business to which the proceeds of the offering will be applied. Such offerings have been the subject of abuse by promoters and entrepreneurs in various parts of the country, who have used them in connection with a variety of schemes.

Cooperation with and assistance to the Department of Justice, state and local authorities, and self-regulatory organizations in law enforcement efforts have become increasingly important. During fiscal 1987, an estimated 35,000 staff hours were committed to assisting other law enforcement agencies with criminal prosecutions. The Department of Justice and other criminal prosecutorial authorities were provided 149 grants of access to investigative files. There were 72 criminal indictments and 87 convictions obtained in Commission-related cases during fiscal 1987. The Commission also made 146 grants of access to other federal, state and local authorities, or to self-regulatory organizations to assist with non-criminal law enforcement efforts.

1988 Appropriation

In 1988, the Commission will continue its aggressive enforcement efforts. A significant amount of resources will be devoted to continuing investigations aimed at uncovering and preventing insider trading. Significant amounts of resources will also be required for investigations of accounting fraud by issuers, and for inadequate or unacceptable audits by accountants who examine the financial statements of issuers.

Investigations involving persons and entities abroad continue to pose particular difficulties. The Commission's investigative subpoena power is limited to the United States, and foreign secrecy and blocking laws may hinder investigations, not to mention the logistics of international communication and travel. To address these difficulties, the staff will continue to seek assistance agreements with other countries and to rely on those entered into with the United Kingdom, Switzerland, Japan, and, most recently, Canada.

The program will also continue to address manipulations of the market for newly issued securities; violations arising from increased trading of securities in the U.S. through foreign financial institutions; and violations occurring in changes of corporate control through tender offers and proxy contests. Cases involving regulated entities and securities offerings will continue to be the most numerous types of cases brought by the Commission. Increased market volatility and trading volume following the October 19, 1987 market break, along with a rise in investor complaints, can be anticipated to place further demands on the Commission's enforcement program. The staff expects to open an estimated 370 investigations and initiate 155 administrative proceedings and 165 civil actions, and open 66 criminal actions.

1989 Program Request

The Commission will meet the challenge of vigorously enforcing the securities laws and reinforcing the message that fraud and illegal activity will not be tolerated. This level of funding will maintain the flexibility and responsiveness of the enforcement program. Staff resources will continue to be devoted to complex and novel securities fraud cases. Insider trading cases and complex accounting cases involving misleading financial statements will continue to be areas of special attention. A substantial number of cases will be brought involving regulated entities and securities offerings. Market related cases may require increased enforcement attention and resources. Other areas of attention will include violations arising from increased trading of securities in the U.S. through foreign financial institutions, and violations relating to changes of corporate control through tender offers and proxy contests. The staff expects to open an estimated 380 investigations and bring approximately 400 enforcement actions in 1989.

The Commission will continue to seek severe sanctions against persons and entities who engage in serious violations of the securities laws, particularly repeat violators. Seeking stiffer sanctions will require the additional resources in this request. Litigation of both civil and administrative cases which fail to settle, and of contempt actions based on orders obtained, will require these increased resources. The demands on the investigative process of the continuing internationalization of the securities markets will continue.

The Commission will continue its assistance to the Department of Justice and U.S. Attorney's Offices in developing criminal cases. Emphasis will also be given to cooperation with state and local law enforcement authorities, and with self-regulatory organizations.

The program will continue to utilize a number of recent technological innovations to handle its growing workload, including the use of computers to flag possible insider trading on the stock exchanges, and to track the resolution of complaints and inquiries. The scope and depth of the analyses of complaints and inquiries will increase, thus improving the Commission's ability to utilize data and to allocate the investigative staff more efficiently. The staff year increase for 1989 reflects primarily the annualization of the major increase in positions provided this program in 1988. At this funding level the staff will address the projected increase in investor complaints and inquiries, opening 15% more Matters Under Inquiry than at 1987 levels. Enforcement actions in all categories will increase. The staff will initiate 160 administrative proceedings and 170 civil actions; 68 criminal actions will be opened.

## Prevention and Suppression of Fraud

Workload Data

It is difficult to draw conclusions and make comparisons using the workload data. The amount of resources necessary to conduct an investigation or enforcement action varies with the complexity of the facts, the underlying legal issues, the number of investors and defendants involved, the availability of needed evidence, the degree of cooperation provided by the subjects of the investigation, the willingness of defendants and respondents to enter into settlements that avoid protracted litigation, and many other factors. It is important to note that the principal benefit of the fraud program -- the deterrence of violative conduct -- cannot be quantified because there is no reliable basis for estimating the amount of violative conduct and the harm to investors that might have occurred but for the Commission's enforcement efforts.

<u>Activity</u>	<u>1987</u>		<u>1988</u>		<u>1989</u>	
	<u>Actual</u>	<u>Work- load</u>	<u>Estimate</u>	<u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u>
<u>Intelligence Analysis</u>						
Investor Complaints & Inquiries	40,562		46,500		51,000	
Matters Under Inquiry Opened	937		1,046		1,074	
		<u>133.1</u>		<u>149.2</u>		<u>153.2</u>
<u>Investigations</u>						
Pending at beginning of year	747		803		803	
Opened during year	333		370		380	
Closed during year	(272)		(370)		(380)	
Pending at end of year	803		803		803	
		<u>338.9</u>		<u>380.0</u>		<u>390.1</u>
<u>Proceedings</u>						
<u>Administrative</u>						
Pending at beginning of year	61		69		69	
Opened during year	146		155		160	
Closed during year	(138)		(155)		(160)	
Pending at end of year	69		69		69	
<u>Civil</u> <sup>1/</sup>						
Pending at beginning of year	183		241		241	
Opened during year	157		165		170	
Closed during year	(99)		(165)		(170)	
Pending at end of year	241		241		241	
<u>Criminal</u>						
Pending at beginning of year	76		97		97	
Opened during year	59		66		68	
Closed during year	(38)		(66)		(68)	
Pending at end of year	97		97		97	
	<u>130.0</u>		<u>145.8</u>		<u>149.7</u>	
<u>Total Program Staff Years</u>	<u>602.0</u>		<u>675.0</u>		<u>693.0</u>	

<sup>1/</sup> Includes civil injunctive actions and civil and criminal contempt proceedings.

## Supervision and Regulation of Securities Markets

Program Summary

Organizations	1987		1988		1989	
	Actual Staff Years	Cost (000)	Estimate Staff Years	Cost (000)	Estimate Staff Years	Cost (000)
Market Regulation	112		122		135	
Applications and Reports Services	12		12		12	
Regional Offices	115		123		137	
Sub-Total	239		257		284	
Salaries and Benefits		\$10,351		\$11,701		\$13,350
Non-Personnel Expenses		3,152		3,865		4,840
Total Program Cost		\$13,503		\$15,566		\$18,190

The program's mission is to establish and maintain trading standards and operations conducive to fair, orderly, and efficient markets. The SEC relies on and encourages securities industry regulation through self-regulatory organizations (SROs), subject to Commission oversight. The program workload is increasing due to continued sharp growth in trading volume and the number of registered broker-dealers, the proliferation of new, complex financial products, and the globalization of the trading markets. These pressures were heightened by the demands on program resources arising out of the unprecedented market declines and volatility of October, 1987.

In 1987 the staff completed 23 inspections of the regulatory and operational systems of the SROs and 452 oversight and 56 cause examinations of SRO members. Eighty-two percent of 357 SRO proposed rule changes and amendments were acted on within the 90-day statutory review period. The SEC completed an in-depth study of the internationalization of the markets, approved transnational market and clearing linkages, consulted with the Treasury Department on new regulations for government securities firms, and coordinated SRO development of solutions to the Expiration Friday phenomena related to program trading. The staff developed 39 rule proposals and interpretive releases emphasizing reduced regulatory burdens for securities professionals.

The 1988 funding level will allow the staff to complete its work on the October, 1987 market break and related issues and to begin follow-up actions. The staff will inspect 20 SRO operations and conduct 450 oversight and 90 cause examinations, emphasizing broker-dealer sales practices and other problems highlighted by the market break as well as compliance by newly-registered government securities firms. The staff will act on 440 SRO proposed rule changes and amendments and develop 47 rule proposals and interpretive releases. Work will continue on promoting orderly development of global markets and resolution of issues presented by the introduction of novel securities products and trading strategies, such as program trading.

Additional resources requested for 1989 will enable the staff to keep pace with growing, more complex markets, increased SRO responsibilities, and the aftermath of the October, 1987 market break. Specifically, the staff will deal with merger and acquisition activity and the widening internationalization of markets, without sacrificing ongoing program responsibilities. The staff will inspect 25 SRO operations and conduct 490 oversight and 100 cause examinations of SRO members. The staff will act on 450 SRO proposed rule changes and amendments and develop 48 rule proposals and interpretive releases.

## Supervision and Regulation of Securities Markets

Mission:

The Securities Exchange Act of 1934 (Exchange Act) and its later amendments provide the principal statutory mandates and authority for the SEC's securities market activities. The program's mission is to establish and maintain trading standards conducive to fair, orderly and efficient markets through the supervision and regulation of the major market participants--brokers and dealers, transfer agents, and securities information processors. As envisioned by the Exchange Act, the SEC relies on and encourages regulation of the securities industry through self-regulatory organizations (SROs) as the primary method of ensuring fair dealing and investor protection. These organizations currently consist of 9 active securities exchanges, the National Association of Securities Dealers (NASD), 11 clearing agencies, the Municipal Securities Rulemaking Board, and the Securities Investor Protection Corporation. The SEC supervises all facets of SRO operation and acts directly when required to fill regulatory gaps or to meet specific needs.

Market Oversight: The principal goals for market oversight are to ensure that (1) registered broker-dealers and transfer agents comply with operational and financial requirements, (2) all broker-dealers who have public customers comply with selling and trading practices standards, and (3) the SROs maintain effective programs to oversee their members in those areas. Market oversight involves maintaining daily contact with SROs, conducting on-site compliance inspections of SRO examination programs, completing cause and oversight examinations of SRO members, and conducting inspections of transfer agents. In this effort, SEC officials regularly consult with and assist state securities commissions, SROs, and federal bank regulatory agencies. The staff also conducts cause and periodic inspections of SRO clearance and market surveillance functions, and designs and implements strategies to monitor market activities. Finally, market oversight includes reviewing all SRO disciplinary actions, acting on exchange applications for unlisted trading privileges in, and delisting of, securities, and ruling on SRO proposals to readmit persons previously disqualified because of misconduct.

Rulemaking and Interpretation: The Commission reviews SRO proposed rule changes within 90 days as required by the Exchange Act and the Securities Investor Protection Act. The Commission adopts new regulations or modifies or eliminates existing rules governing the registration, sales and trading practices, and financial responsibility of market participants. This rulemaking activity is initiated primarily when standards established by the SROs cannot respond appropriately to regulatory needs or changing market conditions or, when necessary, to remove unwarranted regulatory burdens. As directed by the 1986 amendments to the Exchange Act, the Commission consults with the Department of the Treasury on financial responsibility and recordkeeping rules for government securities brokers and dealers. As required by the Commodity Exchange Act, the Commission reviews proposals to trade futures or options on futures contracts on broad-based securities indexes. The staff also processes requests from securities professionals and issuers for no-action or exemptive relief and provides interpretive advice with respect to applicable statutes and rules.

National Market and Clearance Systems: The Commission provides guidance and reviews securities industry proposals to link, on an evolutionary basis, the securities markets and their clearance and settlement facilities into national systems, as envisioned by the 1975 amendments to the Exchange Act.

Registration: As required by the Exchange Act, the staff examines the filings of broker-dealers, transfer agents, municipal securities dealers, and government securities brokers and dealers within statutory timeframes. Staff extract pertinent data from all registrations, amendments, withdrawals, and cancellations and update the SEC computer databases. In addition, the staff identify substantive securities violations which may prevent a registration from becoming effective. These registrations are referred to other Commission staff for appropriate action. Records must be kept current and made available to federal, state and local government authorities as well as SROs, Commission staff, and the public.

#### Program Environment

In the past several years, there has been an explosion in the level of risk taking undertaken by broker-dealers, marked growth in the size and diversity of the financial services industry, and the development of global trading markets for securities. This has placed a strain on both the SEC headquarters and regional office market regulation staffs. These pressures were exacerbated by unprecedented stock market declines and volatility experienced in October, 1987 and subsequent fluctuations. The Commission has been compelled to devote staff resources to monitor, analyze, and develop regulatory approaches to these market events resulting in a strain on resources to meet the existing workload requirements. Consequently, certain workload data contained in the President's budget package have been changed in this document to reflect more realistic goals for the staff in 1988 and 1989.

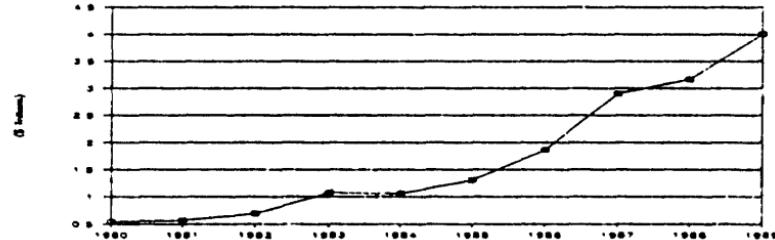
Market activity and complexity have increased during recent years and trading volume in all U.S. securities markets has climbed sharply. For example, between 1980 and 1987 annual exchange share volume increased from 15.5 billion to 63.9 billion, exchange option turnover grew from 96.8 million contracts to 305.1 million, and over-the-counter share volume in securities quoted on the National Association of Securities Dealers' automated quotations system (NASDAQ) increased from 6.7 billion to 37.9 billion. Moreover, the trend toward global securities markets continues to accelerate. Between 1980 and 1987, the value of foreign trading in U.S. stocks grew from \$75.2 billion to \$500 billion, a 565% increase, and U.S. trading in foreign stocks grew from \$17.9 billion to \$196 billion, a 995% increase.

During the 1980's, the size of the regulated population has also grown significantly. The number of registered broker-dealer firms, currently 11,200, increased by 66% since 1980. These firms have over 21,400 branch offices and nearly 460,000 registered representatives, amounting to increases of 191% and 134%, respectively, since 1980. The scope of the SEC's regulatory concerns has also broadened because many financial institutions, such as banks and savings and loan associations, have recently extended the range of their securities activities. Moreover, the 1986 amendments to the Exchange Act gave the Commission additional oversight responsibilities for approximately 70 government securities brokers and dealers and 3 clearing agencies that are registering with the Commission for the first time. In addition, markets for new and more complex products are rapidly emerging.

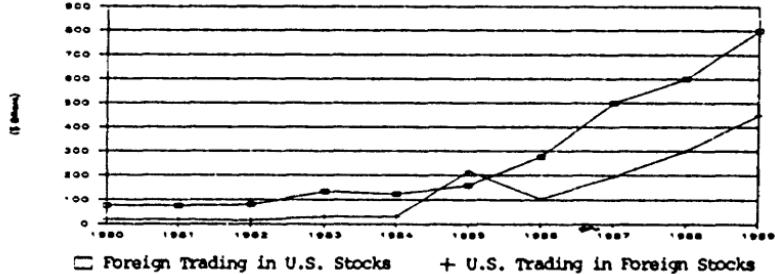
In the past four years, exchange trading was initiated for options contracts on a variety of debt instruments, market indexes, and foreign currencies. Trading in options on stock indexes already accounts for almost 50% of all options contracts volume.

Increased pressures on program resources have also emanated from the need to keep abreast of market developments such as the wave of corporate mergers and takeovers of the past several years. For example, significant staff time has been spent assessing and providing advice on trading practices regulations dealing with tender offers. The staff has devoted significant resources to studying and analyzing the growth of new types of trading strategies which affect the equity and options markets, particularly program trading and portfolio insurance. The staff also maintains close liaison with enforcement staff to curtail major abuses such as insider trading.

SALES ON U.S. SECURITIES MARKETS



GLOBAL SECURITIES MARKETS



1987 Program Evaluation

**Market Oversight:** The staff conducted 23 inspections of the trading market facilities, market surveillance, member compliance, and clearance programs of the SROs. The inspections focused on the efforts of the exchanges and the NASD to upgrade surveillance and investigatory procedures and handle SEC referrals of possible selling and trading practices violations. The staff evaluated SRO methods for examining members' internal control programs, including Chinese Walls, restricted lists, and other procedures for preventing violations by members' officers and employees. The staff also reviewed a major SRO system for arbitrating investor claims against members and associated persons. The review provided a basis for SEC recommendations to enhance the fairness and effectiveness of such systems and bolstered the Commission's capacity to oversee them.

The broker-dealer oversight program objectives were achieved and, in some respects, exceeded in fiscal 1987. While the 452 SRO member oversight examinations completed were 6% less than the record 481 in 1986, the decline was largely attributable to increased examination scope and coverage. The amount of time spent on each examination increased from an average of 19 to 21 staff days between 1986 and 1987. As a result, the staff examiners found a broad range of violations resulting in a 26% increase in enforcement referrals. In one instance, the examiners uncovered a firm's improper use of \$117 million of customers' securities. The oversight examination program also included the review of the headquarters and branch operations of three national firms, and continued the expanded review of broker-dealer compliance with the currency reporting provisions of the Bank Secrecy Act requiring all transactions of \$10,000 or more to be reported to the federal government. One such examination resulted in an action against a firm for failing to report the receipt of more than \$1 million. The number of broker-dealer cause examinations declined from 69 to 56 between 1986 and 1987 consistent with the Commission's policy to refer less serious matters to the SROs for investigation and enforcement. However, 66% of these cause examinations resulted in referrals for Commission or SRO enforcement consideration compared to only 54% in 1986. SEC examinations also resulted in adding \$56 million to the capital and reserve deposits of broker-dealers that were found in financial trouble, thus increasing protection of customer assets held by those firms. In addition, a broker-dealer profile software program was developed and made available to regional offices for use in selecting firms for examination.

**Rulemaking and Interpretation:** The SROs filed 323 proposed rule changes. Of these, 264 (82%) were acted upon within the Exchange Act's 90-day statutory period. The remaining 13% were extended by SRO waiver. The SEC proposed amending SRO rules regarding two issues of broad industry and public interest—one share, one vote and multiple trading of options. A public hearing was held on the one share, one vote proposal. The rulemaking proceedings raised questions of whether and how the infrequently used Commission authority to modify SROs rules should be employed to address these issues. In addition, the SEC reviewed and provided comments to the Commodity Futures Trading Commission (CFTC) on several proposals for the trading of index futures on foreign securities. The SEC approved a linkage between the American Stock Exchange and the European Options Exchange for trading the Major Market Index Option. The SEC also approved a pilot linkage between the International Securities Clearing Corporation and the London Stock Exchange to clear and settle transnational transactions in United Kingdom securities. Further,

the Commission hosted a public roundtable and submitted a staff report to Congress on issues concerning the internationalization of the securities markets. The staff also continued its studies of the market impacts of index arbitrage and related program trading. In conjunction with the SROs and the CFTC, the staff developed approaches tested by the markets to ameliorate the Expiration Friday phenomena--the four times during the year when options on individual stocks and stock indexes and futures on stock indexes expire simultaneously and appear to increase stock market volatility.

The staff developed 39 rule proposals and interpretive releases. Among the actions taken were adopting rule amendments to lessen trading restrictions on affiliates of broker-dealers distributing securities, proposing a rule restricting short sale activities during a public offering, and proposing amendments to clarify and simplify the Commission's broker-dealer registration forms. Furthermore, in consultation with the Department of Treasury, the SEC adopted rules to provide for notice and registration of government securities brokers and dealers, including clarification of the status of CFTC-registered firms under the 1986 amendments to the Exchange Act. Additionally, the Commission worked with the Department of Treasury on formulating its rules concerning financial responsibility, recordkeeping and reporting requirements for government securities firms. At the request of Congress, the staff also participated with the General Accounting Office (GAO), Federal Reserve Board, and the Department of Treasury, in a joint hearing on the secondary trading market for government securities and the need for enhanced public access to information concerning transactions and services in that market. The SEC also granted MBS Clearing Corporation temporary registration as a clearing agency for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association. Finally, the staff processed 1,083 requests for written interpretive assistance and no-action or exemptive relief under applicable Commission rules and statutory provisions. For example, to resolve a conflict between SEC and London Stock Exchange trading rules, the Commission granted an exemption permitting United Kingdom affiliates of U.S. dealers participating in a multinational offering to conduct passive market making during distribution.

National Market and Clearance Systems: The SEC acted on 34 SRO rule amendments and 13 linkage plan amendments to the national market and clearance systems. The staff continued monitoring the evolving national market and clearance systems and took a number of steps to promote greater market efficiency and competition. The Commission amended its rule establishing standards for designating securities included in the national market system (NMS) to encompass all listed and over-the-counter (OTC) securities for which there is real-time transaction reporting. The Commission also approved amendments to the NASD's transaction reporting plan establishing corporate governance standards. In addition, the SEC approved a NASD/Midwest Stock Exchange plan to consolidate transaction and quotation reports for 25 NMS/OTC stocks for which the Commission granted unlisted trading privileges. The Commission also continued to bring a broader range of participants and transactions into the national clearance and settlement system, where many millions of dollars can be saved in processing costs incurred by both industry and investors. For example, the Commission approved proposals by the Depository Trust Company to provide depository services for municipal notes, thereby extending service to a product that settles in same-day funds. The Commission also permitted the National Securities Clearing Corporation to expand its centralized processing

services for transactions in mutual fund securities, and continued to work with federal and industry representatives to develop a timetable for safe and effective conversion to a centralized depository for Government National Mortgage Association securities. The staff worked with representatives of the securities depositories and clearing corporations to ensure the safe termination of operations at the Pacific Securities Depository Trust Company and the Pacific Clearing Corporation. Also, the staff, working with representatives of the securities processing community and other regulators, developed voluntary guidelines to improve the processing of calls in municipal securities.

Registration: During 1987, the staff examined, within the statutory timeframe, 2,629 applications for broker-dealer registration, including municipal securities dealers and government securities firms, and 1,379 registration withdrawal notices. Some 8,485 amendments were filed and received limited review. The staff also updated the SEC computer databases with information contained on broker-dealer registrations and amendments.

#### 1988 Appropriation

Market Oversight: Special attention will continue in the examination and surveillance program to assist in following up on numerous findings and recommendations contained in the SEC's staff study of the October, 1987 market break. In addition, the staff expects to conduct 450 SRO member oversight examinations, equal to the 1987 level, and 90 broker-dealer cause examinations, representing a 61% increase over 1987. The number of cause examinations is being increased to cover sales practice matters more extensively, considering the investor complaints arising from the October, 1987 market break. Inspections of SRO operations will decline 13% during 1988 to approximately 20. Nevertheless, special emphasis will continue in the areas of internal controls, customer arbitration, and assessing SRO increased examination responsibility for newly-registered government securities brokers and dealers. The number of transfer agent inspections will remain level at about 110, but the scope and coverage will expand. Productivity benefits from the additional staff will not be fully achieved in 1988 due to the time needed to recruit and train qualified staff. However, the use of recently procured portable computers will permit the staff to readily identify approaches to improve examination quality and productivity, develop software applications, and provide examiner training.

Rulemaking and Interpretation: The main focus in 1988 will be implementing the recommendations contained in the SEC staff study on the dramatic October, 1987 market events. The SEC effort, which affects all major market regulation program elements, includes: a reconstruction of trading in the securities and index-related futures markets over several weeks in October; an in-depth, sophisticated analysis of program trading strategies such as index arbitrage and portfolio insurance; assessments of the adequacy of market maker performance, existing capital and financial responsibility requirements for securities professionals, order routing and execution systems, and clearing and settlement systems; and an evaluation of the effects of foreign market activity and domestic issuer stock repurchases on U.S. markets. A detailed report was released to the public in early February, 1988. In succeeding months, the Commission will initiate action, where appropriate, to implement the recommendations of this study as well as those of other, recent studies on the market break, such as the reports

by the Presidential Task Force on Market Mechanisms (the Brady Commission), the CFTC, SROs, and interested Congressional committees. The Commission will continue to address, in this context and more generally, the problems of international trading and the issues presented by the introduction of novel securities products and trading strategies, such as program trading.

The staff will act on about 405 SRO proposed rule changes, of which 304 (75%) will be reviewed within the 90-day statutory period. Reviews of more complex rules, such as SRO proposals to introduce new trading vehicles or more efficient methods for trading, clearing, and settling transactions, will extend beyond the statutory period with the consent of the SRO involved. The Commission will act on significant pending New York Stock Exchange proposals to amend its customer protection requirements and compliance procedures. Forty-seven SEC rule proposals and interpretive releases concerning regulation of securities professionals and the markets will be developed. The staff will respond to about 1,175 requests from the private sector for written interpretive advice and exemptive relief. In addition, the staff will prepare legislative proposals in several areas, including statutory amendments to regulate banks as broker-dealers, and will develop data and testimony to aid in pending Congressional consideration of such key matters as Glass-Steagall Act revisions and tender offer reform.

National Market and Clearance Systems: The staff will act upon approximately 35 SRO rule amendments relating to the establishment of national market and clearance systems. In addition, 16 amendments to plans for linking markets and clearing facilities will be reviewed. This represents an increase of 23% from 1987. The staff will encourage further expansion of automated processing of debt securities transactions. Assistance will continue in the SRO negotiations looking toward permanent joint trading and quotation facilities for national market system securities traded on exchanges pursuant to unlisted trading privileges.

Registration: About 3,000 applications for broker-dealer registration and 1,500 registration withdrawal notices will be reviewed, resulting in increases of 14% and 9%, respectively, over 1987. In addition, about 10,200 registration amendments will undergo limited review, representing an increase of 20% over 1987.

#### 1989 Program Request

The events of October, 1987 will have a long-lasting effect on the program's direction and staffing needs. Corrective actions initiated in 1988 to improve the market systems will be continued in 1989. In addition, the Commission has found that the number and rate at which registered entities are increasing, the growing complexity and diversity of the financial services industry, the increased level of trading activity, and the dramatic growth of international securities markets are all major determinants of the staffing levels required for the program.

The combination of a small increase in staff size, increases in productivity, and hard work (including donated staff time) has allowed the program to accommodate some, but not all industry growth. However, program resources have been stretched too thin due to the unprecedented market declines and volatility encountered in early fiscal 1988. An increase of at least 50%, or an additional 120 staff years, would be necessary to realign staff resources with merely the growth in the broker-dealer population over the past seven years. Although an increase

this large is not being requested, the program is understaffed and the increased resources requested below are critically needed.

**Market Oversight:** The staff will increase the scope, coverage, and frequency of its SRO inspections to permit the SEC's oversight program to keep pace with the expansion of SRO responsibilities--an expansion necessitated by the huge growth in trading volume, the number of new securities products, the size of the regulated population, and by the SROs' role in resolving many of the problems revealed in the October, 1987 market break. The rapid industry growth and the growing diversity and complexity of the markets required significant increases in staff to maintain an adequate oversight program. The staff will inspect 25 SRO operations and conduct 490 SRO member oversight examinations and 100 broker-dealer cause examinations. The increase in broker-dealer examinations is necessary to maintain an adequate ratio between such examinations, which test the effectiveness of the SROs' member inspections, and the projected size of SRO membership. Enhanced examination activity increases the likelihood that violations will be detected, thereby reducing the risk of investor losses and, in the long term, reducing the potential for costly private litigation or SEC enforcement action.

**Rulemaking and Interpretation:** Additional resources are critical to the staff's ability to cope with the aftermath of the October, 1987 market break and to keep up with sustained industry growth, new products, and international developments. Resources will be available to respond promptly to issues such as globalization of markets, new international and hybrid securities products, the entry of foreign broker-dealers into U.S. markets, and the need for increasing marketplace linkages. Also, the staff will continue to monitor and address the market effects of novel and complex trading strategies associated with market volatility. The staff will develop about 48 rule proposals and interpretive releases, and respond to approximately 1,270 interpretive and exemptive requests. The staff will review 410 SRO proposed rule changes of which 330 (80%) will be reviewed within the 90-day statutory period. Resources also will be available to act rapidly on significant SRO rule proposals such as those needed to introduce or modify new trading vehicles or implement more efficient methods for trading and clearing transactions.

**National Market and Clearance Systems:** The staff will act on 40 SRO rule amendments, process 18 amendments to linkage plans, and develop 6 SEC rules and interpretive releases. This will permit substantial completion of most pending projects to expand participation in and services provided by the national market and clearance systems. Additional staff will permit greater attention to problems of global securities clearance and settlement--a growing and key area in the international securities arena.

**Registration:** Staff will examine all of the 3,300 anticipated new applications, including 225 filings made by financial institutions dealing in government securities, and process 1,600 withdrawals and cancellations. In addition, the staff will update the SEC computer databases reflecting current filing status of registrants and other pertinent information, such as current addresses and names of principals. An estimated 11,200 amendments will be received and processed. The staff will perform limited review of these amendments to determine compliance with reporting obligations and to identify any pending or prior violations of securities laws.

## Supervision and Regulation of Securities Markets

<u>Activity</u>	<u>Workload Data</u>		<u>1988</u>		<u>1989</u>			
	<u>1987</u>	<u>Actual</u>	<u>Estimate</u>	<u>Work-load</u>	<u>Staff</u>	<u>Estimate</u>	<u>Work-load</u>	<u>Staff</u>
<u>Work-load</u>	<u>Staff</u>	<u>Years</u>	<u>Work-load</u>	<u>Staff</u>	<u>Years</u>	<u>Work-load</u>	<u>Staff</u>	<u>Years</u>
<u><b>Market Oversight</b></u>								
Inspections of SRO operations	23		20		25			
Oversight examinations of SRO members	452		450		490			
Transfer agent inspections	111		110		120			
Broker-dealer cause examinations	56		90		100			
Process re-entry applications	103	—	115	—	115	—		
Total Staff Years		155.3		166.8		185.5		
<u><b>Rulermaking and Interpretation</b></u>								
SRO proposed rule changes	323		405		410			
SEC rule proposals and interpretive releases	39		47		41			
Interpretive and exemptive request correspondence	1,083		1,175		1,270			
Analyses of registration statements referred by Corporation Finance	495		490		520			
Analyses of proposed enforcement actions	391		430		455			
Analyses and reports	132	—	145	—	165	—		
Total Staff Years		61.0		66.5		73.6		

<u>Activity</u>	1987		1988		1989	
	<u>Actual</u> <u>Work-load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work-load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work-load</u>	<u>Staff Years</u>
<u>National Market and Clearance Systems</u>						
Amendments to SRO rules	34		35		40	
Amendments to national market system plans	13		16		18	
SEC rules and interpretive releases	3		4		6	
Analyses and reports	35		35		35	
Congressional, intergovernmental, securities industry and public correspondence	55	—	60	—	65	—
Total Staff Years		10.7		11.7		12.9
<u>Registration</u>						
Registration applications received and fully reviewed <sup>1/</sup>	2,629		3,000		3,300	
Amendments filed	8,485		10,200		11,200	
Registrations withdrawn or cancelled	1,379	—	1,500	—	1,600	—
Total Staff Years		12.0		12.0		12.0
Total Program Staff Years		239.0		257.0		284.0

<sup>1/</sup> During 1987, 868 registration applications were returned for major deficiencies. Approximately 85% of the returned registration applications are corrected and resubmitted to the SEC for re-examination.

## Investment Management Regulation

## Program Summary

Organizations	1987		1988		1989	
	Actual Staff Years	Cost (\$000)	Estimate Staff Years	Cost (\$000)	Estimate Staff Years	Cost (\$000)
Investment Management (IM)	94	101	122			
Public Utility	16	16	19			
Applications and Reports Services	19	19	19			
Regional Offices	85	93	118			
Sub-Total	214	229	278			
Salaries and Benefits		\$ 9,295	\$10,540		\$13,133	
Non-Personnel Expenses		2,703	3,196		4,325	
Total Program Cost		\$11,998	\$13,736		\$17,458	

The Investment Management program seeks to minimize the risk of investor loss through the regulation, inspection, and review of disclosure by the investment company (IC) and investment adviser (IA) communities. The program also ensures that interstate public utility holding companies operate in the public interest and with sound financial structures. The program faces a number of challenges posed by the dramatic growth in the number of registered ICs and IAs, the growing diversity of financial products, and the increasing complexity of utility holding company transactions. ICs and IAs are not government insured, therefore investors rely on the Commission to protect their interests.

During 1987, the investment management industry continued growing with financial products becoming increasingly complex and diversified. The number of ICs alone increased by 13%, assets managed by ICs grew by almost 50%, and the number of shareholders grew by 13%. In the July 9, 1987 report on the SEC's authorization bill, the Senate Banking, Housing and Urban Affairs Committee stated concern that adequate resources be dedicated to the oversight of this industry. The Committee noted that ICs and IAs can now be categorized in the same league with banks, thrifts and life insurance companies.

In 1988, despite the October, 1987 market break, continued growth in the investment management industry is anticipated. The staff will continue basic program activities while assessing novel and complex legal issues pertaining to legislative activities and effects of the October market break on the investment management industry. In this regard, the staff will evaluate responses of the mutual fund industry to market volatility. Emphasis will be placed on inspection activities and ICs that invest primarily in foreign securities.

In 1989, increasing demands will be placed on the Investment Management program due to further blurring of distinctions within the financial industry through legislative changes, continued industry growth and new and complex securities products and transactions. Resulting from the October, 1987 market break, intricate mergers or liquidations are expected in the IC community. With increased staffing, personnel will expand registration statement and amendment review resulting in better prospectuses and less need for enforcement staff to remedy problems uncovered in the review process. Filers will receive faster responses on exemptive applications facilitating new investor product development. Greater emphasis on inspection activities will provide early detection and correction of violative conduct by registrants. These activities enhance investor protection and assist the industry in responding to securities laws. Additional public utility staff will improve processing speed for review of financial filings and enhance auditing and inspection activities saving consumers and investors about \$48 million in 1989 alone.

## Investment Management Regulation

Mission

The Investment Management Regulation Program minimizes the risk to investors of loss from fraud, mismanagement, self-dealing and misleading disclosure in the investment company (IC) and investment adviser (IA) segments of the financial services industry, without imposing unnecessary costs and burdens on regulated entities. An IC invests stockholder capital in accordance with policies described in a prospectus, and may be managed by an IA. Money market and common stock mutual funds are examples of the more popular forms of ICs. IAs provide advice to investors for a fee according to terms specified in registration material filed with the Commission. Examples of IAs include pension fund managers and other institutional money managers, insurance companies offering certain types of securities related products and some financial planners.

The Investment Management Program also ensures that financial transactions of public utility holding companies are both necessary and conducted in the most economic manner possible, and that costs are distributed equitably among consumers and investors. A public utility holding company is an entity that owns all or a majority of the stock of several operating electric or gas companies. Public utility activities ensure that registered interstate holding companies, engaged in the electric utility business or the retail distribution of gas, operate in the public interest and with sound financial structures. Additionally, the staff ensures that exempted intrastate utility holding companies do not engage in activities that are detrimental to the public interest or the interests of investors or consumers.

Disclosure: The review of disclosure documents filed by ICs and IAs protects investors by improving compliance with the Investment Company and the Investment Advisers Acts of 1940 (1940 Acts), the Securities Act of 1933 (1933 Act) and the Securities Exchange Act of 1934 (1934 Act). Disclosure documents include registration statements and their annual amendments, proxy statements, and periodic financial reports. The review process ensures that the entity's policies and procedures are presented clearly and that its proposed activities comply with the law.

IC registration forms provide essential information concerning its adviser, investment objectives and restrictions, past investment performance, and fees charged investors. Forms are reviewed to ensure that investors are provided the information needed to make informed decisions. Since most ICs sell their shares continuously, many registration statements must be updated annually by post-effective amendment. Generally, initial registration statements are reviewed by the staff, and necessary changes are obtained before they are declared effective. Some IC registration statements and most post-effective amendments are selectively reviewed. The staff receives but does not review reports of securities holdings filed by institutional investors.

Regulation: Regulatory activities include rulemaking, responding to requests for exemption from statutory requirements, and providing interpretive advice on the application of statutes and rules. These activities increase investor protection, reduce burdens and costs to the industry, and facilitate legitimate activities by

registrants. The 1940 Acts authorize rulemaking and require action on exemptive requests. Interpretive advice, while discretionary, is an important way of assisting registrants in applying statutes and rules to new financial instruments or methods of operation developed in response to changing markets.

**Inspections:** ICs and IAs are inspected to determine the accuracy of disclosure in registration statements and compliance with statutory provisions. Unannounced inspections deter abuses and minimize risk of loss to investors. Examiners analyze operating and control systems, review books and records, and discuss investment and operational activities with management. When appropriate, a letter identifying deficiencies and requesting corrective action is sent to the registrant or, in egregious cases, the inspection report is referred to the enforcement program for further consideration. Resolving problems through deficiency letters avoids costly private litigation or SEC enforcement action.

**Public Utility:** The Public Utility Holding Company Act of 1935 (1935 Act) requires Interstate holding companies to register with the SEC if they have subsidiaries engaged in generating, transmitting, or distributing electric energy or the retail distribution of gas. The 1935 Act requires that the Commission (1) implement rules to achieve the goals of the 1935 Act, (2) periodically examine holding company operations, and (3) unlike any other statute administered by the Commission, prohibits registered companies from engaging in certain financial transactions without prior Commission authorization. Although intrastate holding companies may obtain exemptions from registration, the Act requires that their activities be monitored to ensure that continuing exemption is warranted.

Review of significant financial transactions of holding company systems ensures that these transactions are necessary and accomplished in the most economic manner possible, appropriate for efficient operation, and that costs and revenues are distributed equitably among consumers and investors. Rulemaking removes unnecessary restrictions on the industry while maintaining investor and consumer protection. The staff also provides guidance on the 1935 Act and rules through interpretive and no-action advice. Records of subsidiary service companies are inspected, often in conjunction with the Federal Energy Regulatory Commission, to maximize efficiency and minimize disruption to the companies.

#### Program Environment

Today, over 3,300 ICs are registered under the Investment Company Act, representing approximately 12,000 separate portfolios. To reduce burdens and costs to the industry, the staff has permitted ICs to combine several separate portfolios or investment series in one 1940 Act registration. Some Unit Investment Trusts (UITs), for example, have more than 900 separate series, each with a separate 1933 Act registration statement covering the securities issued by the series, registered under one 1940 Act registration. The program must oversee each portfolio, effectively equating the workload to a registered population of 12,000.

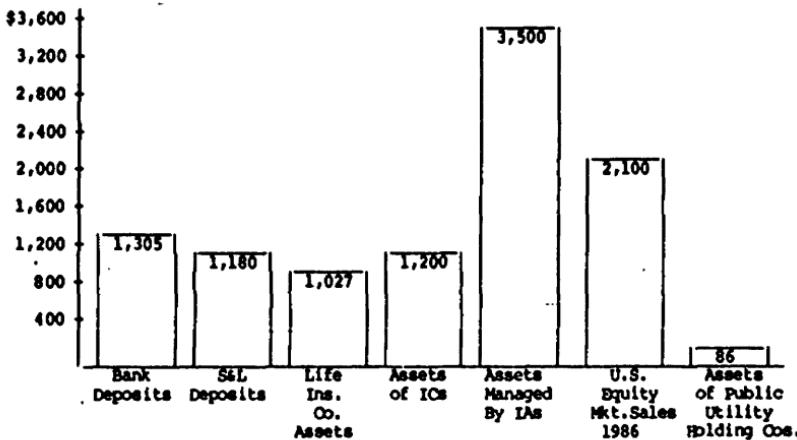
From early 1983 to date, the number of ICs registered under the Investment Company Act has grown by 80%. During 1987 alone, the number increased by almost 400 (not counting individual series) or 13%. There has been an even greater growth in IC assets. From 1983 to the end of 1987, IC assets increased 281%, from \$315 billion

to \$1.2 trillion. Most of the growth reflects new sales of shares. During this period, annual net new sales of ICs (excluding money funds) grew from \$16 billion to a record \$160 billion. The accumulated effect of rising stock and bond prices during the period also contributed to the growth.

The October 19, 1987 market break reduced the value of total IC assets by approximately \$100 billion. This reduction primarily reflects the drop in assets of equity funds to their value at the beginning of 1987. The net dollar outflow from mutual funds amounted to only around \$5 billion. Investors mainly shifted assets from equity and bond funds into less volatile money market funds. As a result of reduced interest in ICs investing in equity securities, some ICs may be forced to liquidate or merge into other funds. The staff must monitor closely these mergers and liquidations to ensure that investors are treated fairly.

The overall growth of assets held by ICs over the last several years means that the IC industry has become one of the nation's major financial intermediaries, along with banks, savings and loan associations, brokerage houses and insurance companies, as shown in the chart below. During the 1980's, portfolio investments of ICs have expanded beyond traditional stocks and corporate bonds. Investments such as foreign securities, foreign currency forward contracts, interest rate swaps, commodity hedges, stock index futures, options and futures, and municipal securities are commonplace. Because investments in ICs are not government-insured, investors rely on the Commission's disclosure, regulatory and inspection activities to protect their interests.

Monies Invested September 30, 1987  
(\$ Billions)



IAs, including financial planners, are another major segment of the financial services industry in which there has been rapid growth in both the number of registrants and the value of assets managed. At the beginning of 1983, there were about 5,400 IAs; at the end of 1987, there were close to 13,000, more than half of whom designate all or part of their services "financial planning." The \$3.5 trillion of assets under management by IAs is greater than the combined deposits of banks and savings and loans, amounting to about 25% of all financial assets owned by Americans. As with ICs, IAs are not government-insured. Providing an adequate level of protection has become increasingly difficult as the number of registrants has grown.

A possible alternative to direct federal regulation of IAs is to create a self-regulatory organization (SRO) that would assume primary jurisdiction for regulation and inspection of IAs with the SEC retaining an oversight role. During 1987, the National Association of Securities Dealers (NASD), which is an SRO for broker-dealers, undertook a pilot inspection program of 50 members that are also registered IAs. After conducting this pilot, the NASD said it would be willing to become an SRO for all its members that are also registered as or associated with an IA. However, necessary enabling legislation would have to be adopted before the NASD could assume jurisdiction. If the NASD were to assume such a role, 30% to 40% of IAs would become subject to its primary jurisdiction. The NASD will not conduct other IA pilot inspections until authorizing legislation is passed. Additionally, the NASD has not indicated a willingness to become the SRO for all IAs. Because of the length of time necessary to obtain enabling legislation and uncertainties surrounding this alternative, it is anticipated that no change to the present system will be effective before the end of 1989.

The need for increased federal resources to address growing numbers of registered entities is at a critical point. Continued growth in numbers of registrants and assets under management means that each staff year in the program is now responsible for 75 registrants and \$17 billion of assets--up sharply from 1983 when each staff year was responsible for 39 registrants and \$5 billion of assets.

In recent years there has been a large increase in the number of insurance companies' separate accounts that offer variable life insurance and variable annuities. The 1986 tax law changes left variable annuities and variable life insurance very few competitors for tax-free investment dollars, which helps account for the explosive growth in this sector of the market. New registration statements for insurance company products have increased 159% since 1985, while related exemptive applications have increased 86%.

Over the past five years, the Commission has implemented innovative procedures to increase staff productivity in dealing with the increasing number of registrants. These include: selective review of IC registration statements and post-effective amendments; rulemaking to codify routine transactions that otherwise would require exemptive applications; joint inspections with state securities commissions; and better targeting of IA inspection candidates to take into account the risk to investors inherent in an entity's operations. In addition, a systems examination approach to IC inspections has been adopted which focuses on key operating and internal control systems of IC complexes. The productivity benefits of these procedures have now been realized fully. If the staff is to continue

providing adequate levels of disclosure, regulatory, and inspection activities, the anticipated future growth in these regulated industries must be reflected in staff increases. Even if growth in these industries slackens because of uncertainties related to the October, 1987 market break, additional staff resources are needed to provide effective regulation of existing entities.

At the same time, in recent years the electric and gas utility industries have undergone fundamental changes in their operations. Currently there is movement toward more competition in these industries. For example, the Federal Energy Regulatory Commission and the Department of Energy are advocating more competition in the construction of generating plants and in the transmission and distribution of electric energy. Similarly, greater competition is favored in the production, development, and transportation of natural gas. The emphasis on increased competition has led to corporate restructurings and the involvement of traditionally non-utility companies in the construction of utility assets. The 1935 Act, in turn, is becoming an important focal point in shaping these utility industry developments.

While the number of registered holding company systems represents about 17% of the assets of all investor-owned electric and gas utilities, exempt holding companies account for a minimum of 35% of the assets. The assets of registered public utility holding companies represent about 18% and 12% of the assets of all investor-owned electric and gas utilities, respectively. These holding companies have operating revenues of approximately \$33 billion and assets of \$86 billion. Declining fuel costs have helped to increase profitability. However, companies which are nearing completion of plant construction begun in the 1970's may be affected by proposed accounting changes which could have a significant impact on revenue recognition in future years. Many holding companies continue to look towards diversification as a means of increasing profitability and investing cash surpluses. Reviewing and evaluating diversification proposals have become major staff activities. In addition, the staff currently monitors the activities of the 100 exempt public utility systems to ensure that their diversification efforts are not detrimental to the public interest or the interests of investors or consumers.

#### 1987 Program Evaluation

Disclosure: The number of IC registration statements and post-effective amendments that required review increased by 17% from 1986. Staff review of the 586 new IC registration statements found that 40% contained material deficiencies. About 1,159 post-effective amendments and 577 proxy statements were reviewed of the total 7,301 and 1,494 received, respectively. A pilot branch, organized for the purpose of testing electronic filing procedures, continued receiving and processing electronic filings of volunteer ICs. In addition, the capacity of the EDGAR system was expanded so that institutional money managers can file their quarterly reports on magnetic tape instead of on paper.

During 1987, 13,385 IA registrations and amendments were received. About 53% of the new registrations were returned because of material deficiencies such as faulty financial information, failure to disclose convictions and adverse administrative actions, and inaccurate descriptions of educational and work experience. Because of staffing limitations, IA registration documents with minor deficiencies

were accepted as filed and processed. Amendments were processed but not reviewed, even though they might contain material deficiencies. Additionally, 8,336 annual reports were received and processed without review.

Regulation: The staff processed 757 no-action letters and responded to 16,000 oral requests for interpretation of the acts, rules and forms. Timely and well-considered responses to interpretive and no-action requests promote compliance with the law without resorting to costly enforcement action or private litigation. The staff issued 376 orders exempting ICs and others from provisions of the securities laws. At the end of 1987, the backlog of unprocessed exemptive applications stood at 140.

Most new rules issued in 1987 create cost savings for both the Commission and the industry by simplifying filing procedures, eliminating reporting requirements, or obviating the need for registrants to seek exemptive orders before engaging in particular transactions. During 1987, the staff issued eight rule proposals while six new rules and amendments were adopted.

The adopted rules include provisions permitting foreign banks and their subsidiaries to issue debt securities and non-voting preferred stock in this country under certain conditions without having to register as ICs, and permitting investment companies to make additional distributions of long-term capital gains to avoid the imposition of an excise tax. Other rules included an amendment to the recordkeeping rule permitting ICs to store required records on electronic media, an amendment to rules requiring all investment companies to account uniformly for expenses incurred under Rule 12b-1 plans, and a new rule giving IAs guidance on certain disciplinary disclosure requirements.

Inspections: The staff completed inspections of 739 ICs, about 13% more than in 1986. This number covered 25% of all registered ICs, and represented \$274 billion or 34% of total IC assets. During 1987, 1,294 inspections of IAs were completed, covering 12% of advisers. The IAs inspected had assets under management of \$282 billion, or about 71% of the non-IC assets managed by IAs. The IA and IC inspections in 1987 resulted in the recovery of \$10.1 million for investors. As part of the IA inspection program, the staff conducted 100 special, more involved inspections of financial planners for a study requested by Congress. This comprehensive study of the financial planner industry collected information and statistics not previously available on the industry and will likely serve as a key document in the debate on the future course of financial planner regulation. In an effort to target inspections, the staff has developed criteria intended to identify IAs that present higher risks to clients. Using this systematic targeting approach, between 20% and 25% of high risk IAs were inspected. Staff productivity as measured by inspections completed per staff year decreased slightly from 24 to 23 combined inspections per staff year. The decrease can be explained by the conduct of the more time-consuming financial planner inspections for the study requested by Congress.

In order to increase coordination and effectiveness of IA inspection activities, program staff continued working with state securities personnel conducting joint inspections and exchanging inspection schedules and findings. Staff from the 20 states participating with the SEC completed about 30 inspections.

In 1986, 26% of all ICs and IAs were inspected; in 1987 the percentage dropped to about 25%. The rapidly growing number of IC and IA registrants and the increased complexity of their operations, coupled with a relatively static number of staff, resulted in this decreasing percentage. Further complicating the staffing/regis-trant ratio was the increasing difficulty of finding new qualified examiners and retaining experienced examiners at government salary levels.

Public Utility: The staff reviewed all of the 221 filings received and issued 446 notices and orders regarding financial transactions. The external financings of holding company systems approved by the Commission totaled \$7.1 billion. Approximately \$5.3 billion of this amount was long-term debt financing, while \$1.8 billion was for equity financing. In addition, the Commission approved over \$4.7 billion of short-term financings and \$543 million of pollution control financings. The Commission authorized \$505 million in capital outlays for fuel exploration and development. These authorizations permitted holding companies to acquire control over part of their fuel supply by creating subsidiaries or joint ventures to produce, transport, and finance supplies or reserves. Companies have been successfully encouraged to include several financing proposals in one application, thereby reducing paperwork and permitting the Commission to focus on the system's financing needs for the whole year. This efficiency has allowed the staff to provide greater technical assistance to state regulatory authorities that often rely on the Commission's analyses and inspections. In 1987, the Commission proposed an amendment to its rules to exempt from filing certain routine agreements whereby a parent company in a registered holding company system guarantees, assumes joint liability, or acts as surety or indemnitor for the obligations of its subsidiary companies. If adopted, the estimated annual savings to the twelve registered holding company systems may aggregate \$112,200.

#### 1988 Appropriation

Despite the October, 1987 market break, continued growth in the investment management industry is anticipated. Not only are the numbers of registered ICs and IAs increasing but the amount of assets invested and the number of shareholders are growing. Recent New York Stock Exchange surveys show individual investors increasingly investing indirectly in the securities markets through ICs rather than by direct purchases of common stock. According to the Investment Company Institute, shares of mutual funds, one of the most popular forms of ICs, are owned by 22.5 million American households, representing 25% of all households in the United States.

In 1988, increased staffing resources will allow the IM program to continue basic program activities while assessing novel issues pertaining to changes in the marketplace and impacts of the October, 1987 market break. The IM program will devote resources to develop new strategies to improve ICs' ability to handle market volatility and evaluate the response of the mutual fund industry to changing market conditions including the ability of funds to respond to increased redemption requests. Further blurring of financial distinctions through legislative changes, market internationalization, and new and complex securities products and transac-tions will increase the demands on the IM program. All of these factors describe growing demands on the IM program through increasing numbers of ICs and IAs coupled with new, complex financial developments.

**Disclosure:** The disclosure staff expects to review and comment on 645 of the 1,379 new IC registration statements and 1,386 of the 8,905 post-effective amendments received, including 164 initial registration statements from additional insurance companies entering the variable products market. About 5,300 IC semi-annual reports filed on Form N-SAR should be analyzed using a recently developed computerized screening program. It is expected that approximately one half of all ICs will be voluntarily filing Form N-SAR electronically during 1988, an increase of 50% over the number filing electronically in 1987. Using the N-SAR's filed electronically, a comprehensive database of IC information will be developed. Information from this database should facilitate screening and selective review of disclosure filings. Approximately 15,000 IA registrations and amendments will be received and processed. The staff will examine most new registrations and withdrawals. Because of staffing constraints, IA amendments will be accepted as filed. A projected 9,170 annual reports submitted by IAs will be processed without examination.

Four staff members will have responsibility for rule proposals to assist the industry in adapting to the electronic filing environment. Additional staff within the Division will be required, on an as needed basis, to support this effort. The electronic version of Form N-SAR may be revised to ensure flexibility and easier use including broadening the form to embrace filings by unit investment trusts. Three to four staff members will be involved in a project to harmonize federal and state disclosure filing requirements for ICs.

**Regulation:** Approximately 10 exemptive applications and 850 no-action requests will be processed. The number of routine exemptive applications processed may decrease due to recently adopted rules. However, a significant increase is expected in applications generated for new types of investment products, such as collateralized mortgage obligations. Further, it is anticipated that the applications received will be more complex, requiring increased time for analysis and lengthy written memoranda to the Commission. The number of exemptive applications backlog will likely approach 155, an 11% increase over 1987. The staff will be involved in at least two administrative hearings involving contested applications and will respond to about 17,000 oral requests regarding the applicability of the 1940 Act to proposed investment programs and financial instruments.

The program's commitment to remove unnecessary regulatory burdens through rule-making will continue in 1988. While at the same time, internationalization initiatives will continue focusing on the growing number of ICs that invest primarily in foreign securities. Ten new rule proposals will be issued, and final action will be taken on 11 others. Emphasis will be placed on (1) allowing exemptive relief for the new flexible premium variable life insurance product; (2) improving the regulatory and disclosure standards applicable to ICs that use investor assets to finance distribution; (3) permitting ICs to make exchange offers, subject to certain conditions; (4) amending IC foreign custody rules; (5) adopting simplified registration forms and rules for unit investment trusts; (6) adopting IC advertising rules; (7) proposing a simplified registration form for closed-end ICs; (8) proposing two exemptive rules for IAs; (9) amending the IA bookkeeping rule; (10) adopting a fee table for IC prospectuses; and (11) proposing a rule to permit broker-dealers to facilitate the dissemination of information about investment companies.

**Inspections:** Due to the 1987-1988 market volatility, greater emphases will be placed on inspections of both ICs and IAs during 1988. The combination of continued growth in the number of funds in complexes, and the systems inspection approach will allow the staff to complete inspections of about 800 ICs having \$350 billion of assets, covering 24% of the funds and about 32% of fund assets. The computerized database created from information contained in Form N-SAR, should enable the staff to target more precisely those ICs that are most in need of inspection. Inspections of 1,500 IAs managing at least \$375 billion of non-IC assets should be completed, covering 12% of advisers and about 17% of non-IC assets managed. Additionally, as recently acquired portable computers are integrated into inspection routines, the staff will identify ways to improve inspection program productivity.

**Public Utility:** The staff expects to review and analyze all of the 230 filings received. Orders will be issued and appropriate notices published within 90 days of receipt. All 1,433 annual and periodic reports received will be reviewed, and 85% of the estimated requests for interpretive and no-action letters will be answered within 90 days of receipt. Two inspections of service companies will be completed. On December 29, 1987, the Commission adopted a rule which exempts a parent holding company from the requirement of filing an application to get Commission authorization to guarantee certain routine agreements or act as surety for the obligations of its subsidiary companies. As a result, estimated savings of \$112,200 will accrue to the registered holding companies.

#### 1989 Program Request

During 1989, the Investment Management program will face a number of challenges. First, the IC and IA industries will continue their growth trend. Assets under management of the ICs and IAs are anticipated to climb from \$3.5 million in 1988 to just under \$4 trillion in 1989. The number of registered ICs and IAs will also continue to grow by about 2,800 additional registrants.

Second, the program will be challenged by the increasingly complex and diversified marketplace. The globalization of investment opportunities, growth of variable insurance products and diversification of financial institutions into the U.S. and world securities markets pose significant legal and financial issues. Additionally, fundamental changes in the public utility industry have expanded operations, resulting in restructuring of existing entities and new entrants into the utilities business. These developments all provide a changing and complex environment for regulation and oversight.

Finally, in response to the October, 1987 market break, the investment management staff will continue assisting SRO's and the industry to develop new strategies improving ICs' ability to handle market volatility. The staff will also monitor restructuring efforts of ICs that may, as a result of market volatility, be forced to liquidate or merge. Due to the significant percentage of American households invested in mutual funds, one of the most popular forms of ICs, the investment management program is responsible for one of the most important oversight challenges faced by the agency.

The Investment Management program is seeking increased staffing resources to respond to both growing complexities and numbers of ICs and IAs. From the beginning

of 1981 to the end of 1988, the number of ICs will increase from 1,461 to 3,750 (157%), the number of active IAs should increase from 3,670 to 15,000 (309%), and the assets managed by IAs are projected to multiply from \$440 billion to just under \$4 trillion. At the same time, the number of staff devoted to overseeing ICs and IAs will increase from 202 to 213, just 6%. The staff has been able to increase its average productivity by 76% between 1981 and 1988. The combination of the small increase in staff and a large increase in productivity has allowed the program to accommodate some but not all industry growth. An increase of about 50% or an additional 100 staff years would now be required to realign staff resources relative to the number of registrants (allowing for the realized staff productivity) in a ratio similar to what existed before the growth explosion started in 1981. Although an increase this large is not being requested, this comparison highlights the extent to which the program is understaffed and the urgent need for the increased resources requested.

Disclosure: The disclosure staff will review and comment on 796 or 53% of the new IC registration statements filed, 2,116 or 20% of the post-effective amendments and 855 or 42% of the proxy statements. The increased staffing level will result in 45% more reviews of amendments and proxy materials. Additionally, staff will have the resources to improve and expand the criteria used to target IC documents for review. Staff will review all of the approximately 4,092 IA registrations and process 10,087 annual reports with the information in these documents disseminated to the staff and the investing public on a more timely basis. Increased resources will allow the staff to initiate review of amendments to registration applications. Amendments have become increasingly important to overall IA disclosure in that amendment information is often more revealing than the registration. In 1989, out of 12,104 amendments received, 5,200 or 43% will be evaluated. The result will be better prospectuses and registrations from both new and current registrants, greater consistency in disclosure documents, and less need for enforcement staff to remedy problems not uncovered in the review process.

The increased staff level in the Office of Insurance Products may reduce the current sixty-day period needed to give first comments on registration statements to registrants, providing turnaround more comparable with the thirty-day period required for other types of investment company disclosures. Additional staffing will also shorten the time now needed to process exemptive applications and no-action letters. As a result, filers and investors benefit as new products can be brought to market more quickly. Additionally, this staffing level should enable the disclosure program to concentrate on formulating and proposing a new registration form for variable life insurance products. Currently an omnibus form is used not designed specifically for variable life insurance products.

Regulation: Staff will issue 425 exemptive orders, respond to 910 requests for no-action letters, and handle 18,000 oral requests for interpretive advice. This represents a 13% increase from 1987 in exemptive orders processed and an increase of 59% since 1981. With the increased personnel resources, staff will reduce the backlog of exemptive applications to about 135, a decrease of 13% from 1988.

More timely processing of exemptive applications will allow firms to undertake proposed transactions earlier, benefiting the industry and investors. In view of the dramatic changes occurring in and growth of the IC and IA industries, the

higher staffing level is also needed to maintain the current response time to no-action and interpretive requests and telephone inquiries. Industry and investors realize a commensurate increase in benefits, since timely responses promote compliance with the law, avoid costly enforcement action or private litigation and permit new products and methods of operation to be introduced on a more timely basis. The staff expects to issue 11 new rule proposals and take final action on 12 others. Increased staff will produce new and revised rules and amended registration forms more rapidly. The result will promote compliance by the industry, reduce regulatory constraint where appropriate, and lessen the need for exemptive applications.

**Inspections:** Since 1981, the inspection staff has more than doubled the number of examinations completed annually and has increased productivity about 100% through implementation of a new systems approach for ICs and better targeting and inspection techniques for IAs. These improvements have increased the percentages of registrants being inspected in each year through 1986. However, the growth in the industry has been so rapid and the complexities of new operating and investment techniques so great, that further increases in the number of inspections conducted annually cannot occur without additional staff. The inspection program is requesting 30 new examiners during 1989. With 30 additional staff, 150 additional IC examinations will be conducted over 1988 levels, a total of 950, bringing the percentage of the industry examined to 25%. An additional 200 IA inspections will also be completed, bringing the total to 1,700 and increasing the percentage of the industry covered to more than 11%. The N-SAR computerized database will be in place in 1989, enabling the staff to more closely monitor the IC industry and target more fruitful subjects for evaluation. More frequent examinations of problem ICs will provide early detection and correction of violative conduct by the registered entities. In 1987, an average of two material deficiencies were identified per inspection, an indication that an increased inspection presence is needed to facilitate correction of unfair or illegal practices within the IA and IC communities. Additionally, Commission records show that routine inspections are the source of most IA enforcement cases.

**Public Utilities:** Public utility holding companies and intrastate utility companies are becoming increasingly competitive. Utility companies are creating subsidiaries, specialised joint ventures, and novel financing arrangements. Diversification combined with both an increasing number and complexity of financing arrangements provide new challenges to the SBC public utility staff and to state regulatory authorities that often rely on the Commission's analyses and inspections. The Investment Management program will emphasize continued review of filings and reports, rulemaking, special projects responding to industry developments, and inspections of service companies. Overall, increased attention will be focused on improving the processing speed for financial filings, examination of annual and periodic reports, interpretive inquiries or letters and service company audits.

The staff will review and analyze all of the 245 filings received, and 450 orders and notices will be issued within 90 days of receipt. All 1,542 annual and periodic reports received will be reviewed, and each of the approximately 25 interpretive and no-action letters and inquiries will be answered within 90 days of receipt. Three inspections of service companies will be completed, and 4 rulemaking and special projects will be undertaken.

The requested additional personnel resources will be used mainly to respond to interpretive letters and inquiries, conduct service company inspections, expedite applications and declarations of registered and exempt holding companies, and increase the monitoring of exempt holding company systems. Staff will improve response time to interpretive letters and inquiries, permitting applicants to make business decisions more quickly. Additionally, the staff will increase service company inspections, thereby shortening the inspection cycle.

The requested staffing increase will provide resources necessary to enhance auditing of filings and reports, improve response time for interpretive inquiries and increase inspection activity. The public utility staff estimates, that through these improvements, a monetary savings to consumers and investors will be achieved of about \$48 million in 1989 alone. About \$45 million of the savings will be passed on to consumers by public utility companies through reallocation of fuel transportation costs and excess sales of oil and gas.

## Investment Management Regulation

Workload Data

Activity	1987		1988		1989	
	Actual Work- load	Staff Years	Estimate Work- load	Staff Years	Estimate Work- load	Staff Years
<u>Investment Company Disclosure</u>						
Investment Companies						
No. of companies <u>1/</u>	2,912		3,305		3,750	
Assets (\$ billions) <u>1/</u>	800		1,200		1,300	
Shareholders (Millions) <u>1/</u>	46		52		60	
Registration Statements						
Received/EDGAR	353		414		1,049	
Paper (non-Insurance Products)	764		801		272	
Paper (Ins. Prod.)	142		164		178	
Reviewed	586		645		796	
Post-effective Amendments						
Received/EDGAR	1,904		2,672		7,568	
Paper (non-Insurance Products)	4,819		5,509		2,364	
Paper (Ins. Prod.)	578		724		879	
Reviewed	1,159		1,386		2,116	
Proxy Statements						
Received/EDGAR	206		519		1,411	
Paper (non-Insurance Products)	1,130		1,023		387	
Paper (Ins. Prod.)	158		187		218	
Reviewed	577		670		855	
Annual & Periodic Reports						
Received/EDGAR	1,637		1,800		3,800	
Paper	2,863		4,200		3,000	
Reviewed manually <u>2/</u>	2,000		2,700		3,000	
Analyzed by computer <u>2/</u>	0		5,300		6,100	
Total Staff Years		44		44		55

1/ Number at the beginning of each fiscal year.

2/ Two N-SAR's are filed annually by investment companies. The second filing includes, as an attachment, an auditor's report on internal control which must be reviewed manually. All other data in N-SAR's except for those filed by unit investment trusts, are reviewed by computer.

<u>Activity</u>	1987		1988		1989	
	<u>Actual</u> <u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work- load</u>	<u>Staff Years</u>
<u>Investment Adviser Disclosure</u>						
Investment Advisers						
Total No. of advisers <u>1/</u>	11,000		12,690		15,000	
Assets under management (\$ bil.) <u>1/</u>	1,200		3,500		3,900	
No. of clients and subscribers (mil.)	5.0		7.0		9.0	
<u>Applications for Registration</u>						
Received/Processed	3,382		3,720		4,092	
Returned	1,798		1,978		2,176	
Becoming Effective	2,380		2,618		2,880	
<u>Amendments</u>						
Received/Processed	10,003		11,003		12,104	
Reviewed	0		0		5,200	
Annual Reports Processed	8,336	—	9,170	—	10,087	—
Total Staff Years		10		10		10

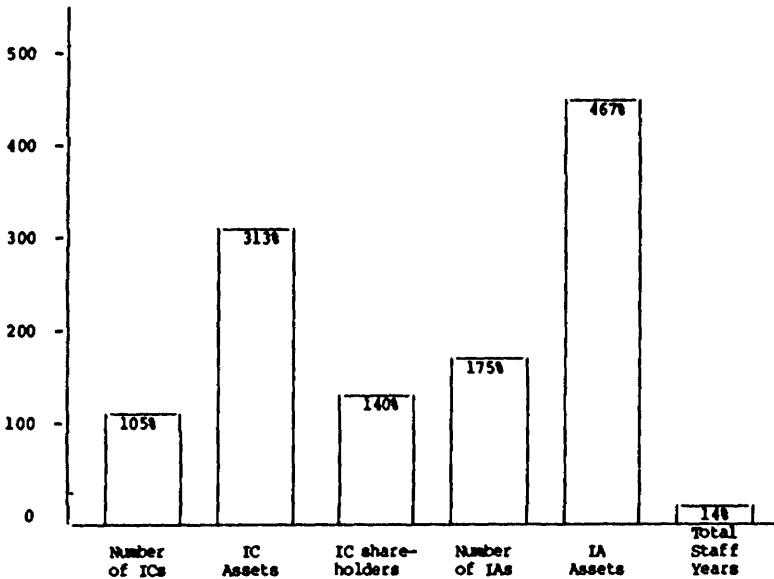
1/ Number at the beginning of each fiscal year.

<u>Activity</u>	1987		1988		1989	
	Actual Work- load	Staff Years	Estimate Work- load	Staff Years	Estimate Work- load	Staff Years
<u>Regulation</u>						
Interpretive and no-action letters	757		850		910	
Exemptive orders issued	376		410		425	
Administrative proceedings conducted	0		2		2	
Responses to shareholder letters	110		115		120	
Rule proposals issued	8		10		11	
Final action taken	6		11		12	
Responses to oral inquiries	16,000	—	17,000	—	18,000	—
Total Staff Years		55		58		65
<u>Inspection</u>						
Investment companies						
Inspections completed	739		800		950	
Deficiencies identified	1,848		2,000		2,250	
Referrals to Enforcement 1/	17		20		25	
Investment Advisers						
Inspections completed	1,294		1,500		1,700	
Deficiency letters sent	2,330		2,700		2,800	
Referrals to Enforcement 1/	52		55		66	
Shareholder servicing agent						
Inspections completed	5		5		7	
Deficiency letters sent	3		3		6	
Referrals to Enforcement	1		1		2	
Recovery for investors - both IC and IA (\$ millions)	10.1	—	4.0	—	4.5	—
Total Staff Years		89		98		129

1/ Because of resource limitations and the small size of the registrant, many inspections referred to enforcement are not pursued by enforcement units.

<u>Activity</u>	1987		1988		1989	
	Actual Work- load	Staff Years	Estimate Work- load	Staff Years	Estimate Work- load	Staff Years
<u>Public Utility</u>						
Filings received	221		230		245	
Filings processed	167		175		175	
Examination of annual and periodic reports	1,325		1,433		1,542	
Administrative hearings	0		2		2	
Interpretive inquiries	1,200		1,200		1,200	
Interpretive letters	12		25		25	
Notices and orders	446		450		450	
Rulemaking and special projects	1		2		4	
Service company inspections	—1	—	—2	—	—3	—
Total staff years		16		16		19

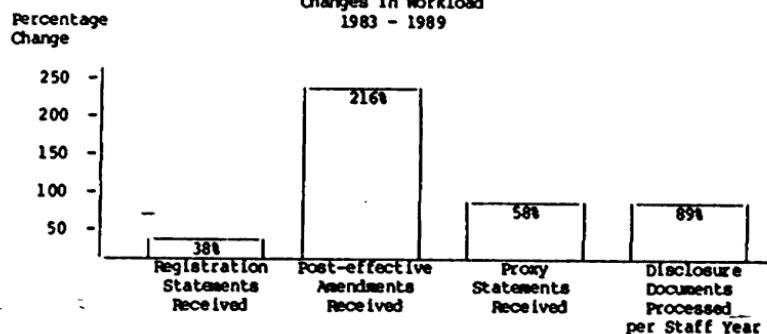
## Investment Management Regulation

Growth and Productivity TablesInvestment Company/Investment Adviser Industry Growth  
1983 - 1989 1/Percentage  
Change

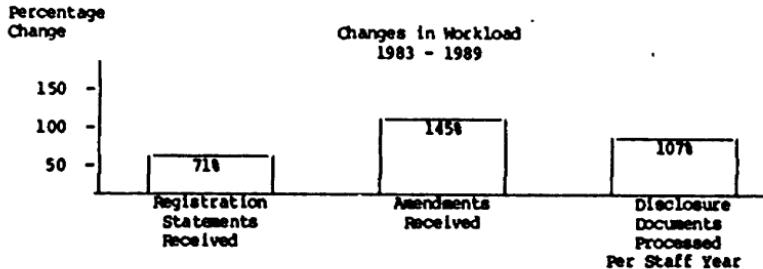
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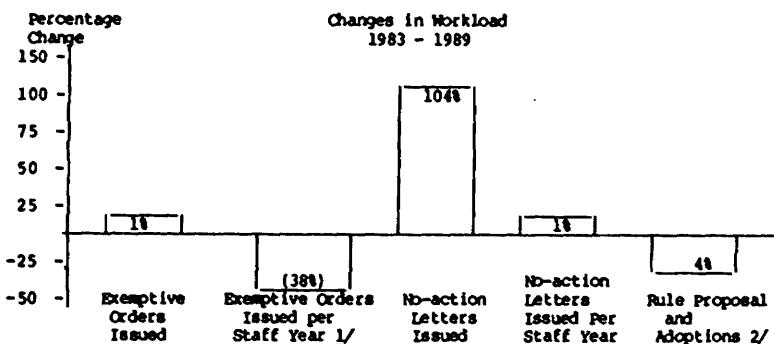
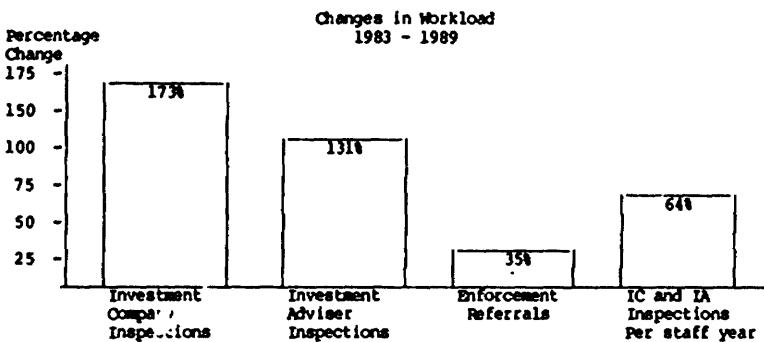
1/ these percentage changes are based on numbers at the beginning of each fiscal year.

## Investment Company Disclosure

Changes in Workload  
1983 - 1989

## Investment Adviser Disclosure

Changes in Workload  
1983 - 1989

RegulationInspection

- 1/ Many exemptive applications processed in 1988 will involve novel and complex matters which require extensive written memoranda to the Commission, unlike numerous applications processed in 1982 which concerned repetitive matters that could be processed quickly and by delegated authority. As a result, the number processed per staff year decreased during the period.
- 2/ Rule proposals and adoptions under consideration during 1989 will involve more complex issues than those considered during 1982; therefore, the number processed decreased during the period.

Legal ServicesProgram Summary

<u>Organizations</u>	1987		1988		1989	
	Actual Staff Years	Cost (000)	Estimate Staff Years	Cost (000)	Estimate Staff Years	Cost (000)
General Counsel	77		87		90	
Opinions and Review	6		6		6	
Administrative Law Judges	6		6		6	
Corporate Reorganization	18		20		20	
Sub-Total,	107		119		122	
Salaries and Benefits		\$5,214		\$5,968		\$6,318
Non-Personnel Expenses		1,533		1,892		2,263
Total Program Cost		\$6,747		\$7,860		\$8,581

The Legal Services Program provides legal and policy advice to the Commission and represents it in litigation, including all appellate matters in the federal courts, all actions in which the SEC or its members or employees are defendants, and certain administrative adjudications. It also participates in selected bankruptcy reorganization cases on issues that affect the interests of public investors. Program workload is heavier due to the high level of SEC enforcement activity, particularly in the insider trading, broker-dealer, and financial fraud areas; the growing volume and complexity of litigation against the Commission; legislative proposals concerning tender offer regulation and financial services regulation reform; and international issues regarding transnational trading and information exchange.

The litigation activities of the Office of the General Counsel produced notable results in 1987. The office successfully defended several actions seeking to thwart enforcement activities and presented a variety of amicus positions, often at the request of the courts or of the Justice Department, in civil and criminal cases. Staff also handled an increased volume of disciplinary actions authorized by Rule 2(e) against lawyers and accountants who practice before the Commission.

The Office of the General Counsel expects litigation volume to remain high in 1988. Increased SEC enforcement activity will generate a substantial caseload for the Legal Services Program. The number of cases raising questions of international jurisdiction and discovery will increase. Two other areas where the volume of litigation likely will increase are suits against the Commission and suits to enjoin investigations. In addition, continuing Congressional consideration of the dramatic market events of October, 1987 and related legislation will produce significant workload increases.

The funding requested for 1989 will allow for reasonably prompt litigation of Rule 2(e) disciplinary proceedings against professionals, including accountants and lawyers, who practice before the Commission. This funding level also will permit the advisory services staff to address the important policy issues, including Congressional initiatives related to a large number of structural and technical securities law matters, resulting from the October, 1987 market break.

**Legal Services****Mission**

The Legal Services Program has three components — General Counsel, Corporate Reorganization, and Administrative Proceedings (consisting of the Office of Administrative Law Judges, and the Office of Opinions and Review). The program furnishes legal and adjudicatory services to the Commission and its staff on a wide variety of matters. These services are provided by the General Counsel, Opinions and Review, Administrative Law Judges, and regional offices.

**General Counsel:** The Office of the General Counsel is active in three major areas — litigation, legislation, and advisory services.

Litigation activities consist primarily of four elements: defense of the Commission in civil actions; administration of all SEC appellate litigation; prosecution of administrative proceedings under Commission Rule 2(e) relating to the disqualification of professionals; and representing the Commission as amicus curiae in private litigation.

The General Counsel also is responsible for the substance of the Commission's legislative program. The office develops position papers, performs legal research, produces testimony and drafts bills, and works closely with Congressional staff.

The office provides advisory services to the Commission and the staff on regulatory and enforcement matters under the securities acts. This work ensures consistent legal and policy positions. The General Counsel also administers non-SEC statutes — i.e., the Freedom of Information Act (FOIA), Privacy Act, Right to Financial Privacy Act, Government in the Sunshine Act, and Ethics in Government Act — as well as the Commission's ethical conduct program. Finally, the office is responsible for a wide variety of special legal and policy projects initiated at the request of the Chairman or the Commissioners.

**Corporate Reorganization:** The Office of the General Counsel manages the Commission's bankruptcy program. Regional office staff participate in selected cases to protect the interests of public investors holding securities of corporations that have sought protection under the Bankruptcy Code. The Commission's bankruptcy case participation focuses principally on significant legal issues likely to affect public investors generally and issues relating to the Commission's other responsibilities, such as adequacy of disclosure, issuance and resale of securities, and law enforcement matters. The staff reviews disclosure statements that are used to inform investors of reorganization plans. These plans often include the issuance of large amounts of new securities to creditors and shareholders in exchange for their claims or interests in the debtor. The review is intended to ensure adequate disclosure in order to prevent fraud in the offer and sale of these securities.

**Administrative Proceedings:** The Office of Administrative Law Judges schedules hearings following the institution of administrative proceedings, and the judges make decisions on ultimate issues and interlocutory matters. The Office of Opinions and Review prepares draft opinions and orders for the Commission as a

result of appeals to the Commission from decisions of administrative law judges and self-regulatory organizations, such as the stock exchanges.

Program Environment

General Counsel: The activity levels of other programs (especially Prevention and Suppression of Fraud) largely control the General Counsel's litigation workload. It is anticipated that high levels of SEC enforcement activity, particularly in the insider trading, financial fraud, and broker-dealer regulation areas, will continue to generate a heavy caseload for the Legal Services Program. With the increased focus by the Division of Enforcement on financial fraud, the Commission has greatly increased the number of Rule 2(e) proceedings against accountants. These proceedings are litigated by the Office of the General Counsel and involve a substantial effort due to complex issues, intensive fact development, and the presentation of expert testimony.

Legislative proposals that would increase the Commission's work include: banking and tender offer legislation; insider trading legislation; and Congressional inquiries into the internationalization of the securities markets. Other Congressional action consists of proposals to regulate directly the accounting profession and amendments to the Racketeer Influenced and Corrupt Organizations Act and Foreign Corrupt Practices Act. In addition, continuing Congressional consideration of the dramatic market events of October, 1987 and related legislation will produce significant workload increases.

Commission testimony and legislative comments are prepared in response to Congressional requests for information concerning the impact of possible changes in the law on the Commission's activity. The advisory services provided to the Commission bring a broader perspective and greater consistency to enforcement and regulatory decisions.

Corporate Reorganization: The Commission is not active on a daily basis in reorganization proceedings where public investors are adequately represented by a committee or otherwise. Rather, the Commission limits its involvement to cases raising important legal questions that affect public investors generally. The Commission also acts in reorganization cases to protect other program areas by ensuring adequate disclosure of reorganization plans and compliance with Securities Act registration provisions by securities issued under a reorganization plan. Bankruptcy filings among public companies declined in 1987 to 103 from 130 in 1986. The number of open reorganization cases in which the Commission is involved is expected to remain constant throughout 1988 and 1989.

Administrative Proceedings: The workload of the Office of Opinions and Review has increased due to the larger number of administrative proceedings initiated over the past few years. Since the volume of administrative proceedings is highly dependent upon the level of activity in the Prevention and Suppression of Fraud Program, this trend should continue through 1989 and beyond.

1987 Program Evaluation

General Counsel: The litigation activities of the Office of the General Counsel produced notable results in 1987. The General Counsel filed briefs and/or presented oral arguments on critical issues including:

- the coverage of the antifraud provisions of the securities laws, including the materiality of preliminary merger negotiations and the scope of the prohibition against insider trading;
- the relationship between the Williams Act and state anti-takeover statutes;
- the definition of a security (the cornerstone of the Commission's jurisdiction);
- the constitutionality of the Commission's law enforcement authority;
- the enforceability of agreements to arbitrate securities law claims;
- the scope of liability in private actions seeking recovery for violations of the Securities Act;
- the effect of the Hague Evidence Convention on discovery of documents and information located abroad;
- the Commission's authority to proceed against accountants under Rule 2(e); and,
- the impact of the First Amendment on the right to obtain injunctive relief for violations of anti-touting provisions.

The office prepared briefs in several important Supreme Court cases. For example, the office drafted the securities law portion of the brief filed by the Government in the criminal case of Carpenter v. United States, arguing that the antifraud provisions are violated where a journalist trades securities while in possession of misappropriated nonpublic information concerning articles to be published in a financial column of a newspaper. The Supreme Court affirmed the antifraud conviction by an equally divided court without deciding the merits of the securities question. In Basic v. Levinson, the Commission filed an *amicus curiae* brief in the Supreme Court dealing with questions concerning the materiality of preliminary merger negotiations and the presumption of reliance in a fraud-on-the-market case. In Shearson v. McMahon, following the arguments made by the Commission in its *amicus curiae* brief, the Supreme Court held that pre-dispute arbitration agreements between customers and their brokers were enforceable where the Commission had oversight authority over the arbitration forum (i.e., the self-regulatory organizations). In CTS Corp. v. Dynamics Corporation, the Commission and the United States filed an *amicus curiae* brief arguing that the Indiana Control Share Acquisitions statute was unconstitutional under the Commerce Clause. However, the Supreme Court subsequently held that the Indiana law was neither pre-empted by the Williams Act nor an impermissible state regulation of interstate commerce. It appears that this decision will have a significant impact on takeover practice. The Office of the General Counsel also represented the SEC at the trial and appellate levels in numerous suits brought under federal administrative statutes, such as the Administrative Procedure Act and Freedom of Information Act. In addition, the office successfully defended several actions seeking to thwart SEC law enforcement activities and presented a variety of *amicus curiae* positions, often at the request of the courts. Finally, staff handled an increased volume of proceedings under Rule 2(e) against accountants who practice before the Commission.

The General Counsel's staff also developed positions on a large number of important legislative proposals, including a definition of insider trading, tender offer reform, bank securities activities, truth-in-savings proposals, financial guarantees, farm credit, accounting issues, government securities regulation, government loan sales, and the recommendations of the Vice President's Task Group on the Regulation of Financial Services. The office also was responsible for the preparation of testimony at oversight hearings on a wide variety of matters, including the Commission's authorization request, activities of the accounting profession, and financial institutions accounting.

The Office of the General Counsel's advisory services staff gave advice on matters submitted to the Commission, including enforcement and rulemaking proposals, to ensure that they were consistent with applicable court decisions and Commission legal and policy determinations. Other significant projects of the advisory staff included drafting the Commission's report on exemptions from registration for guaranteed securities; coordinating and editing the Commission's reports on internationalization of the securities markets; conducting analyses of Commission rulemaking authority; analyzing Commission authority over accountants and the accounting profession; providing opinions on the Commission's authority with respect to numerous significant issues; considering the ramifications of certain activities by exempt public utility holding companies; and responding to interpretive questions under the Insider Trading Sanctions Act.

Corporate Reorganization: The General Counsel directed regional staff participation in 32 new cases involving debtors with assets of \$23 billion and about 525,000 public investors of record (including \$18.3 billion of assets and 275,000 investors in the Texaco Chapter 11 case). Counting these new cases, the Commission was a party in a total of 133 Chapter 11 cases during the fiscal year. In these cases, the stated assets totaled about \$42 billion and almost one million public investors were involved. The Commission moved for or supported the appointment of committees to represent public investors in three cases. The staff commented on inadequate disclosure statements relating to reorganization plans in 108 cases and prevented the unlawful issuance of securities in one of these. In addition, the staff participated in judicial consideration of numerous issues of law that have a potentially significant impact upon the rights of public investors generally. For example, in an appeal to the Second Circuit in *In re Manville Corp.*, the Commission supported the right of shareholders to form an official committee to represent their interests in this Chapter 11 proceeding. Also, in appeals in the Seventh and Tenth Circuits in *In re American Reserve Corp.* and *In re Standard Metals, Inc.*, respectively, the Commission supported the right of allegedly defrauded creditors to pursue claims against the debtor estate on a class basis. And in the Standard Metals appeal the Commission successfully supported the right of unscheduled public bondholders to receive notice of the claim bar date.

Administrative Proceedings: During 1987, 145 proceedings were instituted before the Commission's administrative law judges. Hearings were scheduled within an average of 30 days, and initial decisions rendered within 30 days after service of the record upon the presiding judge. In one of these proceedings, a major accounting firm and two of its partners were alleged to have engaged in improper or unethical conduct with respect to the issuance of unqualified audit reports

on a manufacturer, with the result that corporate income was overstated. The administrative law judge has held 50 days of evidentiary hearings during this proceeding. The Office of Opinions and Review completed drafts of full opinions in 25 cases and 60 draft orders on motions and petitions.

1988 Appropriation

**General Counsel:** The Office of the General Counsel expects litigation volume to remain high in 1988. For example, as a result of enforcement recommendations, the number of disciplinary proceedings against attorneys and accountants is increasing. The number of cases raising questions of international jurisdiction and discovery is likely to increase. Two other areas where the volume of litigation likely will increase are suits against the Commission and suits to enjoin investigations. Additionally, the insider trading and broker-dealer enforcement programs are likely to continue to generate significant appellate litigation for the Commission. Also anticipated is litigation on the constitutionality of state anti-takeover statutes; the Commission may participate *amicus curiae* in these cases. In general, the Commission's emphasis on the enforcement program is likely to result in a rise in litigation handled by the Office of the General Counsel.

The office will devote considerable resources to legislative proposals regarding tender offer reform, insider trading definitions, efforts to increase effective disclosure relating to municipal securities, and proposals to alter the regulation of the financial services industry. Moreover, the Commission must monitor and react to rapidly evolving business practices and legislative initiatives. For example, the October, 1987 market break will result in initiatives related to a large number of structural and technical securities law matters, which will require substantial staff efforts. Finally, the Congress is focusing significant attention on the internationalization of the securities markets. These activities are expected to generate extensive Congressional testimony and correspondence.

The advisory services staff will continue to provide active assistance to the staff and the Commission on such issues as the business, regulatory, and litigation implications of functional regulation of financial services. The office also will assist the Commission in its reviews of the Investment Company Act, Investment Advisers Act, Public Utility Holding Company Act, the Trust Indenture Act, and the Commission's Rules of Practice. The staff will consider novel questions generated by the Commission's expanded authority to proceed administratively against proxy and tender offer violations. Finally, the advisory staff expects to spend considerable time analyzing issues raised by the increasing number of enforcement actions against accountants and attorneys and questions relating to changes in the regulation of the accounting profession.

**Corporate Reorganization:** Corporate reorganization will continue to focus on bankruptcy issues likely to have a significant effect on public investor interests or other key issues, such as shareholder rights, the adequacy of disclosure to shareholders, the issuance of securities, and law enforcement matters. The staff anticipates a leveling off of its caseload of public company bankruptcy filings. The 1988 appropriation will allow the staff to appear in 35 new cases, monitor another 60 cases, and close 95 cases. Some 110 disclosure statements would receive staff comment.

Administrative Proceedings: Approximately 175 new administrative proceedings are anticipated in 1988. The staff will dispose of 165 proceedings, expeditiously scheduling hearings and preparing initial decisions. The Office of Opinions and Review expects to review 198 more cases requiring full opinions than in 1987, due to the continuing high level of activity of the Prevention and Suppression of Fraud Program. The office will complete about 65 draft orders and 28 full opinions, which represent increases of 88 and 12%, respectively, over 1987.

1989 Program Request

General Counsel: The funding requested will enable the office to thoroughly perform its increased responsibilities. In response to an increase in enforcement activity, particularly in the insider trading area, the office will be able to advise the Commission promptly on these cases, and to meet the increased litigation caseload that should be produced. In addition, this funding will allow for reasonably prompt litigation of Rule 2(e) disciplinary proceedings against professionals, including accountants and lawyers, who practice before the Commission. Rule 2(e) proceedings against professionals strain the office's litigation resources, as these proceedings are complex and fact-intensive and typically involve multiple respondents and issues, expert witnesses, and computerization of a large number of documents. This level of funding also will permit the advisory services staff to address long-range or policy issues, particularly important as a result of the dramatic market events of October, 1987, as well as review the increased number of recommendations in enforcement actions to ensure consistency with Commission rules and policy. In the legislative area, the office will be better able to respond to Congressional requests for assistance on legislative drafting, constituent inquiries, special studies, and Commission testimony expected to result, among other items, from the October, 1987 market break.

Corporate Reorganization: The Commission will be able to appear in about 35 new cases and monitor about 60 others. Also, the staff will be able to review about 150 disclosure statements filed in the major cases in which the SEC is involved and comment upon about 110 of these disclosure statements. The staff's review of disclosure statements ensures that investors are provided material information, and acts to prevent fraud and misrepresentation in the offer and sale of bankruptcy securities.

Administrative Proceedings: The administrative law judges will maintain their objective of scheduling hearings within 30 days from the order for proceedings and rendering initial decisions within 30 days after service of the record upon the presiding judge. The prompt scheduling and completion of hearings and the timely issuance of initial opinions reduces costs for the parties involved in a proceeding and significantly enhances the deterrent effect of the enforcement program. The Office of Opinions and Review will submit draft opinions to the Commission in 70% of its cases within seven months after the record has been certified or the Commission has heard oral argument.

## Legal Services

Workload Data

<u>Activity</u>	1987		1988		1989	
	Actual Work- load	Staff Years	Estimate Work- load	Staff Years	Estimate Work- load	Staff Years
<u>General Counsel</u>						
<u>Litigation Case Inventory</u>						
Pending beginning of year	192		192		194	
Opened	112		122		132	
Closed	(112)		(120)		(125)	
Pending close of year	192		194		201	
<u>Legislation</u>						
Testimony	28		33		35	
Comments to Congress & Others	39		43		46	
Drafting & Technical Assistance	42		46		50	
Legislative Analysis	20		23		27	
Other	22		25		27	
	151		170		185	
<u>Advisory Services</u>						
<u>SEC Statutes</u>						
Calendar Memoranda 1/	11		16		18	
Assistance to Others	106		115		122	
Office Projects	110		123		127	
Interagency Projects	12		16		18	
	239		270		285	
<u>Non-SEC Statutes</u>						
FOIA - Internal Appeals	86		86		86	
Conduct Regulation Matters	48		45		45	
Privacy Act Matters	13		13		13	
Procurement Matters	24		27		27	
Other 2/	110		110		110	
	281	77	281	87	281	90

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- 1/ Does not include comments on matters calendared before the Commission that are part of the office's weekly synopsis, or comments included in memoranda submitted by other divisions as part of the advance review procedure.
- 2/ Includes matters involving internal investigations, EEO, Equal Access to Justice Act, Personnel, Federal Advisory Committee Act, Federal Records Act, Paperwork Reduction Act, and other areas not easily classified separately.

<u>Activity</u>	1987		1988		1989	
	<u>Actual</u> <u>Work-load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work-load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work-load</u>	<u>Staff Years</u>
<u>Corporate Reorganization</u>						
Petitions involving public investor interest	103		100		100	
Chapter 11 cases: appearances						
Pending beginning of year	101		98		98	
Filed	32		35		35	
Closed	(35)		(35)		(35)	
Pending end of year	98		98		98	
Chapter 11 cases: monitoring						
Pending beginning of year	155		147		147	
Filed	59		60		60	
Closed	(67)		(60)		(60)	
Pending end of year	147		147		147	
Disclosure statements reviewed (both appearances and monitored cases)	143		150		150	
Disclosure statements commented on (both appearances and monitored cases)	108	18	110	20	110	20
<u>Administrative Proceedings</u>						
<u>Office of Administrative Law Judges</u>						
Proceedings Pending Beg. of Year	36		21		31	
Proceedings Instituted	145		175		180	
Proceedings Disposed of	(160)		(165)		(170)	
Proceedings Pending End of Year	21		31		41	
<u>Office of Opinions and Review</u>						
Cases Pending Beginning of Year	19		15		12	
Cases Received	21		25		28	
Cases Completed	(25)		(28)		(28)	
Cases Pending End of Year	15		12		12	
Orders on Motions and Petitions	60		65		70	
Pre-Argument Memoranda	3		4		4	
Total Program Staff Years		107		119		122

## Economic and Statistical Research

Program Summary

<u>Organizations</u>	1987		1988		1989	
	Actual Staff Years	Cost (\$000)	Estimate Staff Years	Cost (\$000)	Estimate Staff Years	Cost (\$000)
Economic Analysis	41.0		41.0		42.0	
Sub-Total	41.0		41.0		42.0	
Salaries and Benefits		\$1,865		\$2,041		\$2,158
Non-Personnel Expenses		506		547		678
Total Program Cost		\$2,371		\$2,588		\$2,836

The Office of Economic Analysis (OEA) was created February 1, 1988, consolidating the Commission's economic activities in one office. The OEA provides the Commission and the operating divisions with an objective perspective and the technical support required to understand and evaluate the economic aspects of SEC regulation, and its impacts on the rapidly changing global marketplace. Four developments are increasing the demands placed on the program: the increasing economic integration of the world's securities markets; proposed changes to Glass-Steagall which could have far-reaching effects on the financial services industry; the October 1987 market break; and the development of new and increasingly complex securities transactions and related financing arrangements.

During 1987, the staff conducted 110 rule reviews, covering the full range of the Commission's regulatory programs, and responded to 360 requests for economic advice or technical assistance. The staff produced about 95 reports and prepared about 585 written responses to technical and data inquiries. The economics staff also reviewed 65 Regulatory Flexibility Act (RFA) analyses and certifications. Fifty databases were developed and maintained.

The 1988 appropriation will enable the economics staff to continue to perform its mission with a shift in emphasis from rule reviews to the analysis of the complex issues facing the Commission related to the October market break and proposed changes to Glass-Steagall. The staff will continue to analyse factors affecting the securities market such as computerization of stock trading, and trends involving takeovers and performance of closed-end investment companies.

The 1989 budget request will permit the economics staff to provide the Commission with the analysis and technical support necessary to evaluate recommended policy changes resulting from findings of the October 1987 market break study and potential regulatory revisions. The staff will continue to monitor the emerging international market in securities and expects to analyse an increasing array of both foreign and domestic policy initiatives, including the effects of proposed changes to Glass-Steagall and similar laws overseas. The staff expects to complete 110 rule reviews and respond to 380 requests for advice and technical assistance. The volume of economic reports and memoranda is expected to increase by 5% over the 1988 program.

## Economic and Statistical Research

Mission

The goal of the Economic and Statistical Research Program is to provide the SEC with an objective economic perspective and the technical support required to evaluate the economic impact of policy decisions pertinent to Commission regulation.

Liaison, Planning, and Review: In coordination with the operating divisions, the economic staff determines which regulatory issues, programs, or policies are suitable for economic analysis and plans for the collection of needed data. The office initiates contacts with economists outside the SEC, in government, industry and academia to gather information, plans and coordinates studies, and disseminate information regarding Commission policies. Staff reviews every rule proposal before it is submitted to the Commission to assess the effects on small entities, as required by the Regulatory Flexibility Act (RFA) and Section 502 of the Small Business Investment Incentive Act. Rule proposals are also reviewed for their impact on competition within the securities industry and among competing securities markets, as required by the 1975 amendments to the Securities Exchange Act of 1934. Additionally, the staff also attempts to identify the most cost-effective means of achieving the particular regulatory objective intended. Finally, where issues are particularly significant or effects uncertain, OEA will develop and implement a special monitoring program.

Data Collection and Analysis: OEA collects and maintains an array of data relating to the financial services industry and the economy. The creation and maintenance of accurate databases are essential to the integrity and quality of staff studies and analyses. Using the databases the staff employs empirical procedures to assess the impact of rules and policy decisions on the securities markets. The staff will also use the databases in conducting special research studies concerning economic and regulatory issues, such as those arising from the October market break.

Economic Advice, Reports, and Technical Assistance: OEA provides the Commission with economic analyses of factors affecting the capital markets, such as the internationalization of the world's securities markets and proposed changes to Glass-Steagall. The economics staff also provides advice on proposed rule changes, primarily intended to ensure that a rule's benefits exceed its costs. When the staff is uncertain of the benefits or potential adverse impacts of a proposed rule, it may write a report to the Commission recommending that a rule not be adopted, that a rule be delayed for further study, or that a modified rule be approved. Advice on policy is designed to address such issues as whether the policy accomplishes its objectives, what benefits it produces, and what costs accompany those benefits. Advice on capital market questions enables the SEC to assess more clearly how its role may influence the nation's financial markets. Upon request, the office provides professional advice and technical support to operating divisions. Furthermore, OEA disseminates data through press releases, the SEC Monthly Statistical Review, and other government publications. These data are used in the Commission's Annual Report to Congress and the Economic Report of the President.

Program Environment

To address a growing need for sophisticated and comprehensive economic analysis and research, the Commission consolidated the Office of the Chief Economist and the Directorate of Economic and Policy Analysis into one office, the Office of Economic Analysis. Several external and internal developments are increasing both the volume and complexity of the work of the Office of Economic Analysis. The most significant of these are the internationalization of the world's securities markets, proposed changes to Glass-Steagall and the October market break. The economics staff provides the objective data and technical expertise needed to evaluate such complex issues. The SEC is firmly committed to the goal of maintaining the fairness and integrity of the nation's markets, while reducing regulatory burdens on legitimate business activity and ensuring that any policies or rules adopted will reach their objective in a cost-effective manner. Achieving this goal requires, among other things, a careful and objective assessment of the economic consequences of proposed and existing rules.

The October market break has had the largest and most immediate effect on the Economic and Statistical Research Program of any event in recent memory. Since October 1987, about one-third of program resources have been devoted to the analyses of issues related to the market break. Such analyses are expected to occupy a significant portion of program resources for the foreseeable future.

Considerable program resources are also being devoted to the analyses of issues related to proposed changes to Glass-Steagall. The economics staff will provide data and analysis of economic concentration within the financial services industry, the extent of bank involvement in securities activities and the economic effects of repealing Glass-Steagall.

The world's securities markets are becoming more interdependent in response to economic, institutional, technological, and regulatory forces. At the same time, the securities markets have assumed a larger role in the international capital market as international bond issues grew from \$38 billion in 1980 to \$225 billion in 1986. Regulatory restructuring is now occurring in the capital markets of, among others, the United Kingdom, Canada, Japan, and France. There also has been a rapid maturation of foreign securities markets that have experienced faster growth rates compared to the U.S. market. The economics staff worked with the staffs of the General Counsel and operating divisions on the Commission's July 27, 1987 Report to Congress on the internationalization of the world's securities markets, and continues to provide economic advice and data to the Commission and other government officials on these issues.

Internationalization presents both challenges and opportunities for the U.S. securities markets and its regulators. It is a phenomenon that has already profoundly impacted securities markets. Further growth and integration of the international marketplace can be anticipated in the years ahead presenting numerous unique regulatory and economic issues. This integration and growth of the global markets will require the development of global regulatory framework that preserves the efficiencies associated with international capital mobility while maintaining the integrity and fairness of the U.S. market. This is one of the most important regulatory challenges facing the SEC in the years ahead.

The U.S. and Canadian securities markets have developed electronic trading links, and the London Stock Exchange now participates in the first transatlantic link with U.S. markets, exchanging quotation information in selected stocks. The National Association of Securities Dealers is also planning to begin the exchange of quotations with the Stock Exchange of Singapore. Additionally, the American Stock Exchange intends to enter into an agreement with the European Options Exchange that will allow investors to open an options position in one market and close it in another. U.S. clearing agencies have begun to develop links with clearing agencies from around the world. Yet, differences in clearance and settlement of transactions, disclosure requirements, surveillance, and other regulatory and business practices restrain and complicate the flow of capital. The Commission is trying through rulemaking and other means to promote market efficiency and facilitate capital mobility, without jeopardizing essential investor protections. A careful and objective assessment of the economic consequences of a broad array of policy alternatives is required to ensure that these goals are met.

#### 1987 Program Evaluation

The Economic and Statistical Research Program reviewed 110 rules, encompassing the full range of the Commission's regulatory program. In addition, the economics staff reviewed 65 RPA analyses and certifications, and provided advice, technical assistance, and empirical analyses of 360 issues of concern to the Commission and its operating divisions. Also, 12 monitoring programs were developed or maintained to study the implementation of major rules, new trading facilities or program changes instituted by self-regulatory organizations. The economics staff created or maintained about 50 computerized databases needed to analyze issues, prepared about 585 written responses to technical and data inquiries, and published the SEC Monthly Statistical Review.

In the securities markets area, the staff prepared a report to Congress, in conjunction with other divisions and offices, on the internationalization of securities markets. Specifically, the economics staff analyzed the extent and nature of international trading in securities, U.S. and foreign portfolio investment patterns, the growth of the international bond and equity market, major restructuring in overseas markets, and the emergence of various international funds as vehicles to facilitate international capital flows. The staff continued to monitor and analyze major developments impacting the U.S. domestic markets, including the effects of increased competition in the options markets. The staff published a major study on the effects of multiple trading in options based upon recent experience with options on over-the-counter (OTC) equities as well as on the traditional listed securities. The economics staff also provided technical advice and assistance to the operating divisions. For example, the economics staff helped develop a system to detect and analyze possible instances of market manipulation involving the use of options.

The staff prepared a report analyzing the use of repurchase agreements by broker-dealers and the risks which are involved in such transactions. The Commission used this study as a framework for considering several amendments to the broker-dealer financial responsibility and recordkeeping rules. Economic analysis in this area ensured the proposed amendments achieved the desired regulatory objectives without unnecessarily restricting the credit decisions of broker-dealers or

interfering with the monetary policy decisions of the Federal Reserve. This analysis was particularly important since the repurchase agreements are the principal mechanism for financing dealer inventories of U.S. Treasury securities and mortgage-backed securities, which in turn have a major role in financing the national debt and in providing capital for the housing market.

In the full disclosure area, the staff prepared an empirical analysis of the trading and returns behavior of initial public offerings to assist the Commission in determining the appropriate length of period needed for prospectus deliveries. The staff also updated an earlier analysis of Schedule 13D filings to aid the Commission in determining the need for revisions in beneficial ownership reporting. Studies completed in the corporate control area covered such topics as leveraged buyouts, returns to bidders, sources of tender offer financings, dual class recapitalizations, effects of defeating takeover attempts, and market anticipation of takeovers. Additionally, program personnel assisted the Division of Corporation Finance in examining alternative criteria for establishing the threshold parameters for including corporations in the mandatory disclosure system. The staff also prepared a study assessing the effects of Rule 415 (shelf registration) on the revenues of securities underwriters. Staff also analyzed the effects of an accounting ruling which upheld a book value ceiling test for oil and gas companies using full-cost accounting.

In the area of investment company regulation, the economics staff examined fund disclosure regarding the costs of buying, holding, and redeeming mutual fund shares to determine if it is meaningful and accessible enough to assist investors in making informed decisions. Other analyses examined the use of fund assets in the distribution of mutual fund shares and the results of this practice for investors, investment companies and the fund distribution system. Additionally, the staff examined problems that have developed in mutual fund advertising practices in portraying fund performance and evaluated the impact of potential regulatory solutions on the effectiveness of fund advertising and the ability of investors to make informed decisions.

#### 1988 Appropriation

In 1988, about 25% of program resources will be spent on analyses of issues related to the October 1987 market break. The staff will analyze factors affecting price volatility in the financial markets both domestically and internationally, and monitor closely the financial condition of securities firms. The staff also will provide analyses of issues pertinent to policy proposals formulated to address issues brought to light by the market break. The staff will prepare a report on the possible stock market effects of the proposed takeover tax and will produce a comparative analysis of liquidity in the equity, stock index options and stock index futures markets during the month of October 1987. In addition, the staff will provide analyses and data in response to proposed changes to Glass-Steagall and other topics having potential economic impacts on the securities markets, such as the regulation of short-selling during securities offerings, trading halts in the over-the-counter (OTC) market and restrictions on the multiple trading of options.

In the securities markets area, the staff will expand its analysis of factors affecting the securities markets, such as the computerization of stock trading

and the increasing internationalization of securities markets. The staff will study the performance of foreign market structures analyzing global trends with respect to the October stock market break and monitoring the potential impact of regulatory changes both in foreign securities markets on the U.S. capital market. The effect of volatility in global financial markets on stock market performance will be examined in order to more fully understand the interdependence of the world's capital markets.

In the full disclosure area, the staff will continue to monitor trends involving takeovers, including the effects of court decisions and state takeover legislation. The breadth of this monitoring will be expanded to cover open market purchase programs associated with takeovers. In response to Congressional and public concern, with respect to the October market break, the staff will examine the corporate repurchase programs that occurred during the break and their impact on the primary markets, especially on the market for initial public offerings. In addition, the staff plans to analyse the effects of Delaware's reincorporation statute, the impact of takeover activity on the financial performance of various industry groups, and the effects of limits imposed by certain states on the liability of corporate officers and directors. The staff also will study "blank check" offerings, scrutinizing corporate developments following their offerings with special attention given to mergers as "public shells" for private companies. The staff will publish a study analysing whether "bad" (overpaying) bidders tend to ultimately become targets of hostile takeovers themselves. Additionally, the staff will provide Congress an analysis of the termination of overfunded pension plans as a takeover defense. The staff is also planning analyses of the effect of tender offer financing, the impact of takeovers on firms' leverage, and the effect of leveraged buyouts and recapitalizations on stock and bond prices.

In the area of investment management regulation, the staff will examine shareholders' experience with fund redemptions during the October market break and the levels of cash reserves that funds were able to call upon during the break. The economics staff also will analyze the price performance of closed-end investment companies following their initial offering and the effects of anti-takeover amendments on the market price of closed-end companies relative to their net asset values. In addition, the staff will provide technical advice and assistance to the Division of Investment Management on issues such as cost disclosure, use of fund assets, and advertising practices. The staff also is providing the Division of Investment Management an analysis of the performance of closed-end funds before, during and after the market break.

Overall, the economics staff will produce about 100 reports and provide about 370 responses to requests for technical assistance and data. Twelve monitoring programs and 52 databases will be maintained to support these analyses. In addition, the staff will review about 100 rule proposals and 60 RPA analyses/certifications. Finally, the staff will continue to provide statistical information on broker-dealers, securities offerings, and trading activity on securities exchanges for the SEC's Monthly Statistical Review and Annual Report to Congress. The staff will respond to special requests for such information from Congress, other government agencies and the general public.

1989 Program Request

At the proposed level of funding, the Office of Economic Analysis will complete 110 rule reviews and respond to 380 requests for economic advice and technical assistance, a 38 increase over the current level. Fifty-four databases will be created and maintained and 325 data analyses will be completed, representing a 58 increase over 1988 levels. The volume of economic reports prepared also will rise 58.

Major studies on the structure of the securities markets and of the securities industry will be undertaken analyzing new economic and regulatory factors affecting the health of the industry and the liquidity of the markets. In conjunction with the Division of Market Regulation, the economics staff will work on the implementation of an improved financial reporting system for broker-dealers, an evaluation of the effects of any changes to Glass-Steagall and an assessment of new market structure initiatives to deal with problems brought to light by the October market break. The economics staff will also continue to monitor the emerging international market in securities which is evidenced by the securitization of international capital flows and the explosive growth in international portfolio investments. The staff also expects to analyze an increasing array of both Commission and foreign initiatives designed to facilitate international capital mobility, such as the development of an institutional secondary market for "restricted" securities of domestic and foreign issuers.

The staff will also examine whether the alleged social benefits of corporate takeovers based on share price evidence can also be supported by accounting data. Additionally, the effect of proxy contest rule changes on managerial incentives will be evaluated, and the relationship between corporate takeovers and research and development activity will be addressed.

The economics staff will undertake a statistical analysis pertaining to securities markets liquidity. In particular, the staff will develop statistical measures of liquidity for each of the securities markets enabling the SEC to examine how events such as the October, 1987 market break affected liquidity of the markets. As part of this analysis, the staff will evaluate how relative liquidity of the markets was affected during the October, 1987 market break by the disconnecting and reconnecting of the computer trading link to the floor of the New York Stock Exchange.

## Economic and Statistical Research

Workload Data

Activity	1987		1988		1989	
	Actual Work- load	Staff Years	Estimate Work- load	Staff Years	Estimate Work- load	Staff Years
<u>Liaison, Planning And Review</u>						
Rule reviews	110		100		110	
Economic advice and technical assistance	360		370		380	
RPA analyses/certifications	65		60		65	
Monitoring programs	12		12		12	
	12.0		11.6		12.2	
<u>Data Collection And Analysis</u>						
Databases (primary and subsidiary)	50		52		54	
Data compilations/analyses	300		310		325	
	14.8		15.0		15.2	
<u>Economic Advice, Reports And Technical Assistance</u>						
Commission memoranda, reports and publications	95		100		105	
Advisory Memoranda and data inquiries:						
Written responses	585		600		625	
Oral responses	1,950		2,000		2,100	
	14.2		14.4		14.6	
Total Program Staff Years	41.0		41.0		42.0	

Program DirectionProgram Summary

<u>Organizations</u>	1987		1988		1989	
	Actual Staff Years	Cost (000)	Estimate Staff Years	Cost (000)	Estimate Staff Years	Cost (000)
Executive Staff	35	35	35	35	35	35
Executive Director	14	15	15	15	15	15
Secretary	19	19	19	19	19	19
Public Affairs	6	7	7	8	8	8
Comptroller	26	27	27	29	29	29
Information Systems Management (ISM)	61	65	74	74	74	74
Personnel	27	28	28	29	29	29
Administrative Services	63	67	69	69	69	69
Sub-Total	251	263	278	278	278	278
Salaries and Benefits		\$ 9,785		\$10,914		\$11,995
Non-Personnel Expenses		3,157		3,703		4,579
Total Program Costs		\$12,942		\$14,617		\$16,574

Program Direction's mission is to formulate, articulate, and implement the Commission's policies and to manage its resources in the most effective manner. The program's operating environment is affected significantly by the growing size and complexity of the securities markets, recent market volatility, and internationalization of capital markets. The program is at the same time challenged to manage increased resources ensuring that the Commission's priorities are met.

In 1987, the Commission considered 555 rule proposals, enforcement actions, and other matters that significantly affect the stability of the markets and the nation's economy. The Executive Director's Office performed a series of management reviews, prepared the agency's authorization submission and provided the Commission direction on administrative and fiscal matters. The Comptroller's Office expanded its use of microcomputers expediting the preparation of management reports and increased by 10% the daily balance of cash in Treasury interest-bearing accounts. The Office of Information Systems Management provided program areas real-time access to specialized market information.

During 1988, the Commission will oversee actions on numerous matters, such as volatility of the markets stemming from the October, 1987 market break and enforcement proceedings. The Executive Director will lead a study assessing the feasibility of converting the SEC to self-funding status. The Executive Director's Office and its support offices will provide the management direction and administrative support to focus increasing resources on agency priorities. ISM will complete installation of the new mainframe computer, install additional microcomputers and develop systems supporting specific program areas. The Office of Public Affairs will respond to an increasing number of public inquiries.

In 1989, additional staffing resources are required to satisfy growing demands on virtually every segment of the agency's mission. The effective management of this growth will require creative planning and implementation by the Office of the Executive Director. Additional resources will be utilized to achieve an agency-wide integrated communications network and an office automation pilot system, process an increasing number of personnel actions and develop specialized training programs geared to newly hired employees, ensure timely processing of the growing invoice workload and respond to multiplying demands for enhanced space management, mail distribution and procurements. The public affairs staff will respond to 6,200 more public inquiries than in 1987. Finally, follow-up activities from the self-funding study will require the Executive Director's interaction with Congressional and executive branch representatives.

**Program Direction****Mission**

The goals of Program Direction are to formulate and communicate policy and to direct efficiently the agency's resources, enabling the Commission to fulfill its statutory responsibilities.

Program Direction achieves its goals by performing two major functions. The first, policy management, is performed by the Executive Staff, including Commission members and their staffs, the Office of Legislative Affairs, and the Office of Internal Audit; the Office of the Executive Director (which includes the Office of Equal Employment Opportunity); the Office of the Secretary; and the Office of Public Affairs. This function encompasses policy formulation, information dissemination, and management of agency resources. The second function, administrative support, is performed by the Offices of the Comptroller, Information Systems Management (ISM), Personnel, and Administrative Services. These offices supply the financial, data processing, staffing, and logistic services necessary to support the agency's mission.

**Policy Management:** The Executive Staff develops overall SEC policy and advises the Commission on the array of legal, financial and economic problems encountered in the administration of the federal securities laws. The Commissioners' legal assistants analyze and report on all rule proposals, enforcement actions and other matters submitted by the SEC's operating divisions and offices. Specific members of the Executive Staff are also responsible for the legislative liaison and internal audit functions.

The Executive Director's Office promotes the efficiency of SEC programs by enhancing internal management. The office also formulates budget-strategy, supervises the allocation of agency resources, oversees the development and use of the agency's computerized information systems, manages the administrative support offices, coordinates regional office operations, and directs the agency's equal employment opportunity program (EEO).

The Secretary's Office schedules Commission meetings, prepares and maintains minutes of Commission actions, and conducts research for Commissioners and their staffs. The office publishes official documents and releases of Commission actions in the Federal Register, formal Commission orders, the news digest, and litigation releases. The office also acts as the point of receipt for comments submitted on rule proposals, requests for hearings, materials submitted by filers under the Commission's confidential treatment procedures, and materials filed in Commission administrative proceedings. The Secretary also monitors compliance with the Regulatory Flexibility Act, administers the Government in the Sunshine Act, and operates the library.

The Office of Public Affairs communicates the Commission's policies and actions to the news media and the public, disseminates information regarding SEC activities, both internally and externally, and prepares educational materials for investors.

Administrative Support: The Comptroller's Office provides financial and budget control to ensure that funds are received, accounted for, and disbursed in conformance with SEC and broader federal guidelines. These services include payroll maintenance, cash management, accounting, voucher auditing, and budget formulation and execution.

The Office of Information Systems Management is responsible for all SEC data processing activities. This includes development of new information systems, operation and maintenance of computer and telecommunications hardware and software, and enhancement of existing systems.

The Personnel Office develops and implements programs for effective management of the SEC staff. These programs encompass recruiting, training, position classification, performance appraisals and recognition, labor relations, employee counseling and records maintenance.

The Office of Administrative Services provides a wide range of logistic and office support services including procurement, contract and lease administration, supply and space management, mail receipt and distribution, transportation, safety programs, emergency preparedness, security, and printing and graphic services.

#### Program Environment

Policy Management: The nation's financial markets are changing dramatically, confronting the Commission with an array of significant legal, financial, and economic issues. The markets which the Commission regulates have become international in scope. The Commission is further challenged in its exploration of the variable events surrounding the October, 1987 market break. There is increasing demand for restructuring federal regulation of the financial services industry, where longstanding distinctions between securities firms and depository institutions are disappearing. Critical developments in the financial markets, such as innovative strategies to effect and repel tender offers and trading in government securities, have called for immediate response from the financial regulators. There is growing Congressional interest in the internationalization of the markets, market volatility, restructuring of the financial services industry, and enforcement investigations and proceedings. These developments generate a significant workload for the Executive Staff, which provides legal and policy analysis to ensure that the Commissioners are advised of the impact of their decisions on investors and the industry.

At the same time, the SEC must manage efficiently increasing resources to meet the challenge of a growing workload compounded by novel financial and legal developments. To improve productivity, the staff continues a coordinated program of technological innovation and careful management oversight. The Executive Director's Office, together with its administrative support offices, leads this effort. Through the work of these offices, the Commission excels in adapting new technological processes to traditional management responsibilities. The Commission also continues to actively participate in government-wide initiatives designed to reduce waste, improve budgetary practices, and control administrative costs.

The Office of the Secretary has continued its traditional responsibilities of scheduling matters for Commission consideration, preparing documents for publication in the Federal Register and processing all orders issued by the Commission. The SEC's library is faced with growing numbers of more complex research requests from the staff, as well as an increasing number of publications to be sorted, catalogued and disseminated.

As a result of the Commission's expanding workload and higher productivity, the Office of Public Affairs is responding to an increasing number of public and media inquiries regarding SEC regulations and actions. New communication demands are created by an increasing number of enforcement actions, particularly actions against major Wall Street individuals and institutions; growing visibility of the Commission, both domestically and internationally; and ramifications of the October, 1987 market break. Through skillful dissemination of information, the public affairs staff supports the Commission's actions and improves public understanding of the Commission and its work. The complexity and sensitivity of Commission policy on highly charged issues, whether it be enforcement actions or initiatives to revise regulatory structures, requires greater understanding by the public affairs staff who are responsible for informing all interested individuals of these developments.

**Administrative Support:** In support of the Administration's Reform '88 initiative, the Comptroller's Office has continued to improve and integrate the Commission's diverse financial and accounting systems. The Comptroller's office strives to improve agency financial and accounting systems, recently acquiring a GAO tested accounting system to enhance financial activities. The automated host payroll and personnel system remains available to other small federal agencies. The office persists in developing new procedures improving agency cash management in response to the government-wide cash management initiatives promulgated by the Department of the Treasury.

The Commission continues to emphasize technology as a means of achieving greater efficiency and productivity. State-of-the-art computer technology has been introduced into virtually all program areas. The staff continues to identify new areas that could benefit from enhanced computer support. ISM develops software designed specifically to assist divisions and offices carry out their missions. The overall objective is to achieve a fully automated workplace to complement the operational Electronic Data Gathering, Analyses and Retrieval system (EDGAR).

The Office of Personnel's workload rises simultaneously with the Commission's staff and workload increases. The Personnel Office must recruit and train more employees, re-examine position classifications, identify innovative strategies to reward and recognize staff, and develop effective, practical regulations and policies in areas such as drug testing and AIDS. The personnel staff will continue to provide informed assistance to employees concerning workers compensation, health benefits, retirement and personal financial planning.

The Office of Administrative Services continues to develop programs to achieve space reductions, improve property management, and realize procurement savings. Additionally, the office is formulating management and contracting procedures to implement effectively new responsibilities under the GSA delegated lease management program. The delegated lease program transfers from GSA to the SEC certain

leasing and contracting responsibilities. For example, the SEC is assuming responsibility for office space leases in the Washington and regional offices.

#### 1987 Program Evaluation

**Policy Management:** In carrying out its mission, the Commission has made special efforts to solicit a wide range of viewpoints on issues affecting investors and the securities industry. The Chairman sponsored a roundtable discussion on internationalization of the securities markets and engaged in other forums with industry and investor representatives on issues relating to the effect of rumors upon securities prices, program trading, the role and responsibilities of independent auditors, and regulation of investment advisers and financial planners. The Executive Staff coordinated a congressionally mandated study and hearing on the feasibility of extending to certain insurance products the same registration exemptions available to securities products guaranteed by banks. As a result of these efforts, the Executive Staff recommended against expansion of existing exemptions. Additionally, the Executive Staff coordinated other activities including concept releases, rule proposals, and program initiatives. Finally, in 1987, the Commission held 115 meetings to consider 555 rule proposals, enforcement actions, and other matters that significantly affect the stability of the markets and the nation's economy.

Within the Executive Staff, the Office of Internal Audit provided the Commission independent assessments of Commission organizations, programs, activities and functions. The office coordinated the A-123, internal control, and A-127 financial management programs of the Commission. The management of Commission transcripts and internal accounting and financial support systems were the subjects of studies completed during the year.

Also within the Executive Staff, the Office of Legislative Affairs coordinated Commission testimony for 18 Congressional hearings on topics including tender offer regulation, insider trading, enforcement issues, self-regulation in the securities industry, program trading, and internationalization of the securities markets. Preparation for some of these hearings included extensive document requests coordinated by this office. Legislative Affairs coordinated technical drafting assistance for Congress and monitored Congressional hearings and legislation of interest to the Commission.

The Executive Director's Office maintained a comprehensive program of management oversight by initiating 22 major projects during the year. Among these projects were a series of management reviews on the agency's efforts to provide security for the SEC's databases and physical plant, a study of a regional office and several programs celebrating the Bicentennial of the United States Constitution. The office also developed the agency's Budget Authorization Request, enacted by the Congress for fiscal years 1988-89 in P.L. 100-181. The EDGAR pilot project remained a paramount undertaking. Key positions were advertised and filled for the Office of EDGAR Management (OEM), which assumed primary responsibility in October, 1987 for project management and coordination of the operational system. During 1987, the Executive Director's Office completed evaluating the operational contract proposals received in February, 1987. However, in July, the Commission decided to change the funding structure of the receipt subsystem. This major change required recompetition for the EDGAR operational system and delayed an

award of the operational contract. In addition, the office focused agency recognition of the contributions and achievements of women and minorities through special programs sponsored by the Office of Equal Employment Opportunity.

The Secretary's Office prepared 1,020 pages of minutes, recorded 555 matters discussed at Commission meetings, and 562 issues considered seriatim. The office processed 2,893 releases, finalized 25,000 orders, and prepared 1,464 documents for publication in the Federal Register. Under the Secretary's direction, the library staff acquired over 32,000 new items (e.g., journals, periodicals, serials, books, etc.), circulated 16,600 documents, shelved 101,082 volumes, and responded to 5,562 research requests.

The Office of Public Affairs responded to 66,500 telephonic, 1,000 written, and 2,000 in-person requests. The staff issued 89 press releases and conducted 45 press briefings. Each business day, Public Affairs published the SEC News Digest and a selection of news stories. The 1986 Annual Report to Congress was published on a timely basis. Publications designed to inform investors were updated. At the same time, the office continued its daily dissemination of information on Commission actions to regulated entities and the news media. Visits for over 100 foreign dignitaries were arranged with the assistance of this office. Also, a bi-monthly newsletter for Commission employees was published throughout the year.

Administrative Support: The Comptroller's Office expanded its use of microcomputers to expedite the preparation of management reports required by OMB and other executive oversight agencies. Most importantly, the office implemented the new Federal Employees Retirement System by programming it into the existing payroll and personnel systems. The Comptroller's staff also initiated procedures to reduce the value of outstanding travel advances by 10%, thereby, increasing the daily balance of cash in Treasury interest-bearing accounts. The office acquired a new off-the-shelf automated accounting system improving substantially the accounting and financial capabilities of the Commission. The staff continued improving cash management initiatives through expedited deposit of fee revenue into Treasury interest-bearing accounts, and expanded use of "electronic funds transfer" and Treasury-sponsored lockbox facilities. The Comptroller's staff prepared and distributed new accounting and payroll manuals updating the agency's accounting procedures. A series of on-site audits were conducted ensuring that distributed payroll, accounting, and budget functions were performed by suborganizations in strict compliance with agency guidelines.

In 1987, ISM provided dramatically increased services to agency employees through the User Support Information Center (USIC). USIC responded to over 4,000 requests for technical assistance and over 15,000 inquiries of a routine nature from microcomputer users. The increase is attributed to the large number of new microcomputer users and the introduction of improved microcomputer applications. In addition, ISM designed and implemented eight major computer systems that enhanced significantly the efficiency of Commission personnel. For example, security features were developed to protect Commission databases, an intermarket surveillance system was designed and the lockbox system was revised to improve interfaces with financial accounting systems and the EDGAR pilot. ISM also developed Federal Employees Retirement System software and a system for tracking public correspondence. The BRIDGE communications system was installed which

provides real-time access to market information. The office accomplished other system enhancements such as acquiring the federal financial management software, completing competitive procurement actions to replace the Commission's outdated mainframe and installing agency-wide telecommunications hardware and software in support of the Commission's overall mission and functions. The staff also assisted the technical evaluation of operational EDGAR contract proposals. In conjunction with the agency's emphasis on improving automation technology, the SEC entered into an agreement with the Federal Computer Performance Evaluation and Simulation Center (FEDCEN) to conduct an office automation requirements study that will provide recommendations and implementation strategies.

During 1987, the Office of Personnel implemented the initial stages of the new Federal Employees Retirement System (FERS). The office developed an extensive program to provide employees information necessary to make their retirement decisions. The office also revised its policies on within-grade and quality step increases, tying pay raises more closely to performance. Regulations were adopted which expedite resolution of employee grievances of performance evaluations. Additionally, the office amended merit promotion procedures, conducted extensive recruiting programs for accountants and securities compliance examiners, and issued internal smoking regulations. Overall, the Commission hired 540 persons during the year, conducted 10 formal disciplinary actions, and allowed eight staff members to resign in order to avoid disciplinary actions.

The Office of Administrative Services accomplished the relocations of the Boston Regional Office and the San Francisco Branch Office during 1987. Additional space was acquired in Washington, D.C., Miami, and Philadelphia, which required extensive alterations and numerous interoffice and intrabuilding moves. During 1987, the demand for mail services steadily rose to an aggregate 30% increase by year's end.

#### 1988 Appropriation

Policy Management: The Commission directed a comprehensive study of the October, 1987 market break. This study focuses on the role of futures-related index arbitrage and portfolio insurance in the market downturn; adequacy of dealer capital during times of high volatility and volume; operational capabilities with respect to order execution, order routing, clearance, and settlement; effect of foreign market trading and market movements on U.S. markets during this time; and response of the mutual fund industry to the market break, including the ability of mutual funds to respond to redemption requests. Additionally, the Executive Staff will continue to oversee actions on numerous other matters such as self-regulatory organization and Commission enforcement programs, the proposed repeal of Glass-Steagall, and internationalization of the marketplace enhancing linkage of these markets and international law enforcement. The Chairman has scheduled one roundtable discussion pertaining to broker-dealer sales practices and plans to continue this forum to ensure an open dialogue with the industry on important securities issues.

In addition to coordinating actions on numerous market matters, the Commission ordered two public hearings in 1988. The first will consider whether to authorize more than one exchange to trade in the same options product. The second will consider the adoption of a specific rule for all SRO's on differential voting rights

for listed securities. As a result of increasing complexity in the securities industry, it is anticipated that about 570 rule proposals, enforcement actions and other matters will be considered in the course of 120 Commission meetings throughout the year.

In 1988, the Office of Legislative Affairs will continue internal coordination of Commission testimony. The office will also monitor Congressional hearings, track legislation, and advise the Chairman and Commission staff of important developments. Additionally, the staff will coordinate responses to Congressional correspondence, document requests, and telephone inquiries.

Personnel in the Executive Director's Office will initiate and complete 24 major management projects, including evaluating library resources agency-wide, and examining information resources management. More importantly, the staff will direct and develop findings for the self-funding study requested by the Securities Subcommittee of the Senate Committee on Banking, Housing, and Urban Affairs. The study will examine the feasibility of converting the Commission to self-funding status. The Executive Director will formulate overall budget policy, direct regional and support offices, and coordinate responses to requests for information from the General Accounting Office, Office of Management and Budget, General Services Administration, and Office of Personnel Management. Staff will assist the Office of EDGAR Management in the evaluation of EDGAR operational proposals. The ERO Office will continue to provide training on preventing sexual harassment in the workplace and on managers' and supervisors' responsibilities under the Equal Employment Opportunity Act and the Commission's internal regulations and policies. Continued affirmative action will be made to increase the representation of Hispanics and Asian/Pacific Islanders on the Commission staff. The Commission will work toward processing discrimination complaints within the 180 day period specified by 29 CFR 1613 and the agency's internal EEO regulations.

In 1988, the Office of the Secretary anticipates growth in workload due to increased Commission consideration of major enforcement actions, significant rule-making efforts, and the October, 1987 market break findings. The office will prepare 1,071 pages for inclusion in the minute record and over 10,700 pages of releases for publication in the Federal Register. Over the course of fiscal 1988, the staff will process an estimated 3,037 releases and 22,050 orders. In addition, the library staff will respond to 5,850 reference and research inquiries, circulate over 17,400 articles, and shelve 104,000 volumes.

The Office of Public Affairs is facing a substantial increase in workload from the Commission's emphasis on enforcement activities, the volatile market period in October, 1987, and the Commission's increasing domestic and international visibility. The Office of Public Affairs anticipates it will respond to over 69,800 telephone inquiries, an increase of 3,300 calls over last year. The office will also respond to 1,100 in-person, and 1,050 written inquiries. The staff will issue 90 news releases, conduct 45 press briefings, and publish the Commission's Annual Report. In addition, the office will compile the SEC News Digest, publish the Employee News, and collect and distribute daily selections of important news items. The Public Affairs Office will continue serving as the focus of press relations, and update brochures and other materials that inform investors and others about the agency.

**Administrative Support:** In 1988, the Comptroller's Office will transition financial operations to the new automated accounting system acquired in 1987. In addition to performing all essential financial management and budget control functions, audits of agency organizations will be performed to measure compliance with payroll and budget regulations. Efforts will continue to achieve further reduction in the value of outstanding travel advances and to decrease the delay in employees submitting travel expense claims. Additional efforts will expedite SEC filing fees deposited into Treasury interest-bearing accounts and refine the Commission's lockbox system. In accordance with Reform '88, the Comptroller's staff will provide technical assistance and accommodate, if feasible, another federal agency request to use the Commission's payroll system.

As the new mainframe computer systems become responsive to processing needs, ISM will install additional microcomputers and focus on developing specialized systems for specific program areas. ISM will also complete the office automation study initiated in 1987 with FEDSIM. ISM staff will enhance administrative management systems by designing a new personnel system, a procurement tracking system, and software to track telephone calls made on the agency's telephone system. Continued technical assistance will be provided to the Office of EDGAR Management in support of the operational EDGAR pilot system including integration of other Commission systems, such as the name relationship search (NRS). Finally, in response to the agency's automation initiative, ISM will respond to a growing number of requests for technical and routine assistance.

The Office of Personnel will continue to provide a full range of personnel services to agency employees and management. In addition to these services, the office will enhance recruiting techniques targeted to attract applicants for accountant and securities compliance examiner vacancies; develop training programs to assist effective use of agency microcomputers and software; and ensure that performance standards are challenging, that managers receive supervisory training, and that increased staff resources are directed properly. In response to increasing personnel resources, the office will also provide enhanced services to employees on benefits and career development.

During 1988, the Office of Administrative Services will begin use of an automated system which will tie the purchasing and budget processes together. This system will improve coordination of the two processes and provide enhanced accountability for procurement-related financial transactions. During 1987 the volume of mail processed increased by 30%; in 1988, the office will devote additional staffing and develop improved procedures to handle an increasing volume of mail. The office will relocate the New York Regional Office and complete extensive alteration projects in Washington, D.C., Denver, Atlanta and Miami. The delegated lease program will become fully operational with the office completing action on new lease negotiations begun in 1987 and initiating action on two new leases.

#### 1989 Program Request

**Policy Management:** The Executive Staff will continue to provide analyses and coordinate a full agenda of issues for the Commission. The Executive Staff will also provide independent assessments of Commission programs and operations. The

staff anticipates continued involvement in issues significantly affecting the capital markets, including study findings pertaining to market volatility, legislative matters such as Glass-Steagall, internationalization of the marketplace, and major enforcement actions.

The Office of Legislative Affairs will coordinate with Congress significant issues such as Glass-Steagall legislation, securities enforcement provisions, possible tender offer reform, international securities matters, and amendments to the Trust Indenture Act of 1939. The staff will continue to coordinate responses to Congressional inquiries and track legislation.

The Executive Director's office will focus on managing the anticipated increase in Commission resources. The office will initiate studies aimed at improving operations in the Washington office and the regions. The Executive Director will follow-up with Congressional representatives on activities arising from the self-funding study. Staff will also maintain a systematic program of management reviews, prepare the agency's budget, direct the regional and support offices, and respond to numerous requests from other government agencies.

The Secretary's Office will continue responding to increasing Commission activities through preparing and maintaining 1,124 pages of minutes, while recording the Commission's consideration of 590 items in an estimated 126 meetings and an additional 600 matters considered in serial fashion. The staff will also expeditiously process an estimated 3,188 releases and 23,152 orders and prepare about 11,264 pages for publication in the Federal Register. The library will continue to provide a full range of support services to the staff and will respond to 6,000 reference and research requests, circulate over 18,000 articles and shelf in excess of 107,000 volumes.

Due to continuing publicity on major enforcement actions and recommendations stemming from the October, 1987 market break study, the public affairs staff will respond to over 6,200 more inquiries than in 1987. The staff will continue publicizing enforcement cases and other Commission actions nationally and regionally reaching a broader audience. Public assistance services will be maintained at a professional level. The Public Affairs Office will also issue 95 press releases, conduct 50 press briefings, and issue an estimated 84 news releases, all reflecting increases over 1987 and 1988 levels. Finally, the staff will publish the Annual Report to Congress, the SEC News Digest and a summary of news clippings on a daily basis, and the Employee News.

Administrative Support: In 1989, the Comptroller will continue to provide the necessary financial services supporting anticipated agency staff increases. For example, the staff will process an increasing number of personnel and payroll actions and travel vouchers. The staffing increase requested for the Office of the Comptroller will enable the staff to perform necessary support services while continuing to improve the Commission's financial systems. Additionally, the increase in staffing will ensure timely processing of the growing invoice workload, thereby ensuring continued compliance with the Prompt Payment Act. Penalties incurred under the Prompt Payment Act could easily exceed the cost of the additional requested staff. The Comptroller's staff will also conduct "cut-reach" activities improving agency staff knowledge of accounting and payroll processes. In addition, procedures will be developed to further improve the

ufficiency of depositing SEC filing fees into interest-earning accounts of the U.S. Treasury.

The requested funding level provides the Office of Information Systems Management with the resources necessary to proceed with the agency's long-term office automation development plan, providing enhancement to existing systems and development of new systems to meet priority program needs. ISM will aid the agency's transition to the EDGAR operational system, focusing on developing necessary interfaces with the existing agency systems that support SEC filers. The office will continue to maintain the established software operating base, while completing agency-wide linking, through a nation-wide commercial data communications network. The computer mainframe system installed in 1988 coupled with the nation-wide communications network will vastly improve accessibility and reliability of agency systems to SEC staff. The agency-wide office automation strategy developed through the PEOISIM study will be implemented through a pilot system. This strategy will provide improved efficiencies, while eliminating the necessity for multiple pieces of hardware and the expense of duplicative acquisition.

Additional resources are required for the Office of Personnel to support the 16% staffing increase requested for the agency. In addition to providing basic services to an expanding workforce, the office will continue to improve its recruiting and hiring programs, and intensify employee counseling services. The Personnel Office will monitor closely position management and ensure that resources are directed properly. In support of the agency automation initiative, new training activities will emphasize increased applications of automated systems. Accounting, financial analysis, and litigation support training will also receive a high priority in recognition of newly hired employees in the accounting and legal disciplines. Additionally, the staff will continue to ensure that employee performance standards are sufficiently challenging and that employee performance is measured fairly.

At the requested funding level, the Office of Administrative Services will meet all of the Commission's essential administrative, property, and contracting requirements. The increase in staffing Commission-wide will require comparable additions to space management, mail distribution, furniture procurements, and office equipment and supply activities. Lease management activities requiring renegotiation of leases and contract monitoring, through GSA's delegated lease management program, will increase during 1988. Similarly, the number of lease-related contracts under management will increase, covering services such as security, cleaning, repairs and alterations. Added responsibilities, pursuant to new GSA guidelines, will also increase the staff's workload by 160 contracts and purchase orders. The office will also enhance the automated property system to include leasehold improvements and leased property accountability.

## Program Direction

Workload Data

<u>Activity</u>	1987		1988		1989	
	<u>Actual Work-load</u>	<u>Staff Years</u>	<u>Estimate Work-load</u>	<u>Staff Years</u>	<u>Estimate Work-load</u>	<u>Staff Years</u>
<u>Executive Staff</u>						
Commission Meetings	115		120		126	
Calendar Items	555	—35	570	—35	590	—35
<u>Executive Director</u>						
Major Projects	22		24		26	
Other Projects	59	—14	61	—15	61	—15
<u>Secretary</u>						
Pages Of Minutes	1,020		1,071		1,124	
<u>Federal Register:</u>						
Documents	1,464		1,537		1,613	
Pages	10,219		10,730		11,264	
Releases:						
Documents Processed	2,893		3,037		3,188	
Official Orders	25,000		22,050		23,152	
Library:						
Materials Circulated	16,600		17,430		18,300	
Material Shelved	101,082		104,000		107,000	
Reference/Research Requests	5,562	—19	5,850	—19	6,000	—19
<u>Public Affairs</u>						
Telephone, Written and In-Person Inquiries	69,500		71,950		75,750	
Press Releases	89		90		95	
Press Briefings	45		45		50	
SBC News Digest Published	260		262		260	
Daily News Selections Compiled	260		262		260	
		—6		—7		—8

<u>Activity</u>	1987		1988		1989	
	<u>Actual</u> <u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work- load</u>	<u>Staff Years</u>
<b>Comptroller</b>						
Payroll Section:						
Personnel Actions	8,200	1/	6,600		7,100	
Payroll Actions	8,642		6,400		6,900	
Salaries and allotment payments						
Electronic Funds Transfer	51,490		58,200		85,000	
Checks	25,012		23,200		400	
<b>Accounts and Reports Section:</b>						
Number of Accounts Receivable letters sent:						
Host Paid Billings	415		500		550	
<b>Travel Agent - Tickets</b>						
Issued	7,050		7,500		8,000	
Electronic Fees Received	3,500		8,000		24,000	
Checks Deposited: Fees	47,064		42,000		26,000	
Travel Authorization Postings	24,609		26,200		28,000	
<b>Voucher Audit:</b>						
Number of Travel Vouchers						
On Hand	321		321		321	
Received	8,203		8,700		9,300	
Processed	8,203		8,700		9,300	
Backlog	321		321		321	
Number of Miscellaneous Invoices:						
On Hand	983		684		684	
Received	11,010		12,000		12,000	
Processed	11,309		12,000		12,200	
Backlog	684		684		484	

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1/ This number reflects a one-time only increase in personnel action forms due to the new tax law that requires every employee to file a W-4 form.

<u>Activity</u>	<u>1987</u>		<u>1988</u>		<u>1989</u>	
	<u>Actual</u> <u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work- load</u>	<u>Staff Years</u>	<u>Estimate</u> <u>Work- load</u>	<u>Staff Years</u>
<u>Information Systems Management</u>						
New Systems	8		7		8	
Systems Maintained and Updated	98		105		108	
FOIA and other Major Requests	4,000		4,250		4,500	
Routine Assistance Requests	15,000		15,500		16,000	
Hardware/Operating Systems Maintained and Improved	6	—61	6	—65	7	—74
<u>Personnel</u>						
Personnel Actions Processed	9,562		12,000		13,000	
Staff Members Trained	1,436		1,840		1,840	
Position Management Reviews	1,327		1,400		1,400	
Program Reviews	9	—27	15	—28	15	—29
<u>Administrative Services</u>						
Procurements (Contracts and Purchase Orders)	1,263		1,310		1,470	
Moves (pieces)	10,884		13,920		14,200	
Imprest Fund Transactions	2,708		2,780		2,915	
Print Plant Production (in millions of pages)	53		56		57	
Copy Services (in millions)	24		25		26	
Graphics Requests Met	990		1,035		1,150	
Lease Administrations	6	—63	8	—67	8	—69
Total Program Staff Years	251		263		278	

SUMMARY - OTHER EXPENSES

(\$000) -

<u>Item</u>	<u>1987 Actual</u>	<u>1988 Estimate</u>	<u>1989 Estimate</u>	<u>Change</u>
A. Personnel benefits	\$10,357	\$14,223	\$16,744	\$ 2,521
B. Benefits to former employees	123	198	198	0
C. Travel and transportation of persons	3,283	3,742	4,214	472
D. Transportation of things	69	61	61	0
E. Communications and rental	13,527	16,453	18,267	1,814
F. Printing and reproduction	1,125	1,116	1,116	0
G. Other services	7,819	16,337	25,447	9,110
H. Supplies and materials	1,807	2,233	3,120	887
I. Equipment	2,110	1,769	4,714	2,945
J. Claims and indemnities	23	0	0	0
<b>TOTALS</b>	<b>\$40,243</b>	<b>\$56,132</b>	<b>\$73,881</b>	<b>\$17,749</b>

**A. Personnel Benefits**  
(\$000)

Funds requested under this category are to cover the Commission's share of costs for life and health insurance, retirement, social security and medicare taxes. Also included in this report are relocation expenses related to permanent change of station.

Item	1987 Actual	1988 Estimate	1989 Estimate	Change
Life insurance contributions	\$ 114	\$ 125	\$ 140	\$ 15
Contributions to Civil Service				
Retirement Fund	3,852	3,292	3,394	102
FERS retirement	2,121	3,812	4,646	834
FERS thrift	352	1,540	1,696	156
Social Security taxes	1,468	2,182	2,746	564
Health benefits contributions	1,723	2,016	2,621	605
Medicare tax	638	658	667	9
Subsistence and temporary expenses	20	97	135	38
Real estate costs	51	335	467	132
Misc. moving expenses	3	16	22	6
Relocation income tax allowance	15	150	210	60
 <b>TOTALS</b>	 \$10,357	 \$14,223	 \$16,744	 \$2,521
	<hr/>	<hr/>	<hr/>	<hr/>

The \$15,000 change in life insurance contributions includes \$2,000 for mandatory within-grade and merit pay costs, \$3,000 each to annualize the 1988 pay raise and new 1988 positions, \$8,000 for the new 1989 positions and a reduction of \$1,000 for two less work days. Contributions to the Civil Service Retirement Fund will increase a net \$102,000 from related within-grade and merit pay costs of \$55,000, annualization costs of the 1988 pay raise totalling \$72,000 and a reduction due to two less days of \$25,000. The \$834,000 change in contributions to the FERS retirement plan includes \$60,000 for related within-grade and merit pay costs, \$79,000 to annualize the 1988 pay raise, \$207,000 to annualize the new 1988 positions, \$511,000 for the new 1989 positions and a reduction of \$23,000 for two less work days.

The FERS thrift plan change of \$156,000 includes \$24,000 for related within-grade and merit pay costs, \$32,000 each to annualize the 1988 pay increase and new 1988 positions, \$79,000 for the new 1989 positions and a reduction of \$11,000 for two less work days.

Social Security taxes will increase \$564,000 to accommodate \$83,000 in additional costs from a scheduled rise in the Social Security wage base from \$45,000 in 1988 to \$46,500 in 1989, \$32,000 for within-grade and merit pay increases, \$43,000 to annualize the 1988 pay increase, \$121,000 for the new 1988 positions, \$298,000 for the new 1989 positions and a reduction of \$13,000 for two less work days.

Health benefits will change by \$605,000 to accommodate increased costs of \$450,000 for greater employer costs of health plan insurance rates, renegotiated annually by the Office of Personnel Management; \$30,000 for within-grade and merit pay costs; \$40,000 to annualize the cost of the new 1988 positions; \$99,000 for the new 1989 positions; and a reduction of \$14,000 as a pro-rata share of two less work days.

The \$9,000 change in the Medicare tax includes \$5,000 related to within-grade and merit pay raises, \$6,000 to annualize the 1988 pay raise, less \$2,000 for two less work days.

The increases of \$38,000 for subsistence and temporary expenses, \$132,000 for real estate costs, \$6,000 in miscellaneous moving expenses and \$60,000 in relocation income tax allowances are required to fund additional employee relocations. The additional relocations result from the Office of Personnel Management's broadening of an agency's authority to determine "shortage" categories of eligibles and pay their moving costs and the Commission's need to transfer greater numbers of highly qualified employees into vacant positions requiring special knowledges, skills and abilities.

**B. Benefits to Former Employees  
(\$000)**

Funds requested in this category are to cover the Commission's costs for benefits and other payments made from the Employee's Compensation Fund to or on behalf of former Commission employees. Payment, based on invoice costs, is made to the Department of Labor as required by 5 U.S.C. 8147.

	1987 Actual	1988 Estimate	1989 Estimate	Change
Accident compensation	\$ 55	\$ 123	\$ 123	\$ 0
Unemployment compensation benefits	68	75	75	0
<b>Totals</b>	<b>\$ 123</b>	<b>\$ 198</b>	<b>\$ 198</b>	<b>\$ 0</b>

No change is requested in this account.

**C. Travel and Transportation of Persons  
(\$000)**

Funds requested under this category are to cover travel costs for employees in performance of their official duties, travel of an employee's family in the case of a change of duty station and travel to first duty station for new employees in selected occupational groups.

Item	1987 Actual	1988 Estimate	1989 Estimate	Change
Transportation of persons	\$ 1,179	\$ 1,396	\$ 1,639	\$ 243
Commercial rental of automobiles	139	139	139	0
Subsistence expenses	1,103	1,306	1,535	229
Incidental expenses	22	22	22	0
Mileage - use of private automobile	107	107	107	0
Compensation of witnesses	461	500	500	0
Government motor pool rentals	23	23	23	0
Taxis	248	248	248	0
Family Travel Expenses	1	1	1	0
 TOTALS	 \$3,283	 \$3,742	 \$4,214	 \$ 472

A change of \$243,000 in the transportation of persons is required to help staff meet the increased travel demands imposed by a growing number of agency-regulated entities and the expanding internationalization of the securities markets. The increased funds will enable Commission staff to perform more inspections and oversight examinations in the Commission's regulation programs, and consult with foreign officials to foster international cooperation in enforcement matters and other global securities market regulation issues.

The \$229,000 change in subsistence expenses is related to the travel costs described above.

**D. Transportation of Things**  
**( $\$000$ )**

Funds requested under this category are to cover costs of shipping household goods in selected instances of initial hiring or change of duty station, moving other freight, and renting trucks.

Item	1987 Actual	1988 Estimate	1989 Estimate	Change
Transportation of things	\$ 35	\$ 22	\$ 22	\$ 0
Rental of trucks	2	3	3	0
Transportation of household goods	32	36	36	0
<b>Totals</b>	<b>\$ 69</b>	<b>\$ 61</b>	<b>\$ 61</b>	<b>\$ 0</b>

No change is requested in this account.

E. Communications and Rental  
(\$000,

Funds requested under this category are to cover costs associated with rental of office space, telephone service, mail charges, teletype and telegraph services, and a variety of equipment rentals, including ADP equipment and software.

Item	1987 Actual	1988 Estimate	1989 Estimate	Change
Telegraph service	\$ 8	\$ 8	\$ 8	\$ 0
Telephone - local	1,037	1,034	1,034	0
Telephone - long distance	2,194	2,418	2,945	527
Teletype and ticker service	20	23	23	0
Postage	403	475	475	0
Rental of space	8,463	10,825	11,792	967
Rental of key punch equipment and computer components	1,124	1,300	1,620	320
Rental of other equipment	278	370	370	0
 Totals	 \$13,527	 \$16,453	 \$18,267	 \$1,814

The \$527,000 change in long distance telephone is required to offset a 25 percent increase in billed costs for service the Commission will receive over the Federal Telecommunications Service (FTS) network between 1988 and 1989. The General Services Administration, which manages the FTS network, notified the Commission of this increase by letter dated July 7, 1987.

Rental of space costs, also payable to the General Services Administration, are increasing by \$967,000. This change includes \$433,000 to house the requested additional staff and \$534,000 to offset other expenses imposed by GSA. The latter includes a 1.3 percent across-the-board price adjustment, increased space costs as a result of a forced move by GSA of the Commission's New York Regional Office to another location within the city, and improvements in office, storage, conference and training space in other regional locations.

The \$320,000 change in the rental of key punch equipment and other computer components is required to pay, for a full year in 1989, the cost of a new central processing unit acquired by lease in the middle of 1988.

F. Printing and Reproduction  
(\$000)

Funds requested under this category are to cover costs of all printing and reproduction work performed by the Government Printing Office or other outside sources.

<u>Item</u>	<u>1987 Actual</u>	<u>1988 Estimate</u>	<u>1989 Estimate</u>	<u>Change</u>
Printing and binding	\$1,005	\$1,012	\$1,012	\$ 0
Photo duplication and reproduction	120	104	104	0
 <b>Totals</b>	 <b>\$1,125</b>	 <b>\$1,116</b>	 <b>\$1,116</b>	 <b>\$ 0</b>

No change is requested in this account.

**G. Other Services  
(\$000)**

Funds for this category are to cover the cost of a variety of contractual services, as described in the following table.

Item	1987 Actual	1988 Estimate	1989 Estimate	Change
Equipment maintenance and repairs	\$ 846	\$ 986	\$ 986	\$ 0
Office alterations (110)	346	700	590	
Guard service	351	306	306	0
Air conditioning and heating	53	66	66	0
Miscellaneous expenses	164	99	99	0
Stenographic reporting contracts	953	1,130	1,430	300
Purchase of transcripts	265	277	277	0
Training expenses	252	300	300	0
Health unit expenses	121	125	125	0
Storage of household goods	7	7	7	0
Background investigations	43	50	50	0
Moving expenses	25	27	27	0
ADP and other contractual services	4,392	12,255	21,181	8,926
Reception and representation	1	9	3	(6)
 Totals	 \$7,819	 \$16,337	 \$25,447	 \$9,110
	<hr/>	<hr/>	<hr/>	<hr/>

The net reduction of \$110,000 in office alterations is comprised of an additional \$340,000 to accommodate the requested additional staff less \$450,000 in one-time costs incurred in 1988 to install the new computer central processing unit (CPU).

A stenographic reporting service increase of \$300,000 is required to permit the Commission to respond to a growing number of significant and time-sensitive investigations and proceedings in the Prevention and Suppression of Fraud Program.

A change of \$8,926,000 is required for ADP and other contractual services. The operational EDGAR contract will require an additional \$8,000,000 for start-up expenses in 1989. These EDGAR costs will be incurred in 1989 rather than 1988, as initially planned, due to a delay in award of the EDGAR contract deemed necessary to permit interested parties more time to prepare competitive bids. Other non-EDGAR contract changes include: \$830,000 to begin to unite the agency's diverse data processing services into integrated office automation and information management systems; \$146,000 to obtain necessary securities transaction data and perform statistical analyses in response to the October 1987 market break and other program matters; and, a reduction of \$50,000 related to one-time installation costs in 1988 of the new computer central processing unit.

The \$6,000 reduction in the reception and representation account covers costs incurred in 1988 to fund one-time meetings of international securities market representatives which occurred in Washington, D.C.

**H. Supplies and Materials**  
(\$000)

Funds requested in this category are to cover the costs of items which are ordinarily consumed or expended within one year after use, or which are needed to form a minor component of a piece of equipment or fixed property.

Item	1987 Actual	1988 Estimate	1989 Estimate	Change
Office and duplicating supplies	\$ 794	\$ 904	\$ 904	\$ --
Newspapers	15	18	18	--
Library materials	614	661	851	190
Microfiche services	4	13	13	--
Software purchases	380	637	1,334	697
 Totals	 \$1,807	 \$ 2,233	 \$ 3,120	 \$ 887

A change of \$190,000 is required in library materials to replace needed but outdated references, maintain a permanent collection of texts up-to-date with the securities market place, and provide improved source material for enforcement leads and investigations.

The \$697,000 change in software purchases will support the development of a Commission initiative to improve staff productivity and work quality through the development of integrated office automation and information management systems. This development is only possible through the acquisition of carefully selected software which provide needed automation services and is compatible with existing and planned computer hardware. Once in place, the new software will provide improved word processing, data networking and information handling services which are essential to enable Commission staff to keep pace with the agency's growing workload demands.

## I. Equipment

(\$000)

Funds requested are used to purchase equipment for Commission employees. These items are expected to have a period of service of one year or more after being put into use.

Item	1987 Actual	1988 Estimate	1989 Estimate	Change
Serially-numbered equipment and office furniture	\$ 2,110	\$ 1,769	\$ 4,714	\$ 2,945
<b>Totals</b>	<b>\$ 2,110</b>	<b>\$ 1,769</b>	<b>\$ 4,714</b>	<b>\$ 2,945</b>

The \$2,945,000 change includes \$222,000 to support the requested additional staff and \$2,723,000 to unite the Commission's diversified data processing services into integrated office automation and information management systems. Development of these systems will improve staff productivity and work quality by providing electronic access to needed program data which is currently maintained in stand-alone microcomputers and centralized databases. This development will also provide key Commission employees with fingertip access to electronic mail, work scheduling, and other management improvement services.

J. Claims and Indemnities  
(\$000)

Funds requested under this category are necessary to cover payments for losses and claims including those under the Equal Access to Justice Act (P.L. 96-481). The Act requires Federal agencies to award attorney's fees and other expenses under specified circumstances to individuals and certain small businesses that prevail as the parties in administrative proceedings and civil actions brought by or against Federal government.

<u>Item</u>	1987 <u>Actual</u>	1988 <u>Estimate</u>	1989 <u>Estimate</u>	<u>Change</u>
Claims and Indemnities	\$ 23	\$ 0	\$ 0	\$ 0
Totals	\$ 23	\$ 0	\$ 0	\$ 0

No change is requested in this account.

## SECURITIES AND EXCHANGE COMMISSION

Statement of Selected Revenue  
(\$000)

<u>Source of Fee Revenue</u>	1987 <u>Actual</u>	1988 <u>Estimate</u>	1989 <u>Estimate</u>
Registration of Securities Under the Securities Act of 1933	\$160,588	\$159,000	\$140,000
Securities Transactions Under the Securities Exchange Act of 1934	65,017	82,900	105,000
Other Filings and Reports	38,309	36,200	36,200
Total Fee Revenue	\$263,914	\$278,100	\$281,200
Fee revenue as a percentage of appropriation	<u>230%</u>	<u>206%</u>	<u>175%</u>
<u>Source of Other Revenue</u>			
Disgorgements from fraud actions payable to the U.S. Treasury	\$ 14,450	\$ <u>—</u>	\$ <u>—</u>

1/ There is no basis for future estimates of disgorgement collections.

Explanation of SEC Fees

In 1987 the SEC collected \$48,558,000 more in fee revenue than it collected in 1986. For the second consecutive year, fee collections more than double the agency's appropriation. All fee revenue is deposited into the General Fund of the Treasury and is unavailable to the SEC for expenditure.

In 1988 it is estimated that mutual fund purchases will decline to their pre-1986 growth rate. Related registration fees, however, bolstered by 1987 payment deferrals pursuant to Rule 24f-2, will continue at the 26.6 percent average increase observed during the past six years. Until more definitive information is available, the impact on fee revenue of the recent market volatility cannot be determined and is not included in this estimate.

In 1989, registration fees will be affected by the full impact of a return to a more normal growth curve of investments by mutual fund purchasers. Securities transactions are expected to continue at their six year average rate.

## DETAIL OF PERMANENT POSITIONS BY GRADE

	1987 Actual	1988 Estimate	1989 Estimate	Increase/ Decrease (1)
Executive Level III	1	1	1	-
Executive Level IV	4	4	4	-
<u>Subtotal</u>	5	5	5	-
ES-6	7	7	7	-
ES-5	8	8	8	-
ES-4	20	21	21	-
ES-3	8	9	9	-
ES-2	2	2	2	-
ES-1	7	7	7	-
<u>Subtotal</u>	52	54	54	-
GS-18	-	-	-	-
GS-17	1	1	1	-
GS-16	4	4	4	-
GS/GM-15	173	171	178	+ 7
GS/GM-14	290	300	323	+23
GS/GM-13	417	430	456	+26
GS-12	246	264	271	+ 7
GS-11	194	288	309	+21
GS-10	9	9	9	-
GS-9	73	88	100	+12
GS-8	27	27	27	-
GS-7	126	126	133	+ 7
GS-6	163	165	165	-
GS-5	142	158	185	+27
GS-4	86	96	121	+13
GS-3	31	34	41	+ 7
GS-2	18	18	21	+ 3
GS-1	0	1	1	-
<u>Subtotal</u>	2,000	2,179	2,332	+153
<u>Ungraded</u>	29	29	29	-
<u>Total permanent positions</u>	2,086	2,267	2,420	+153

Staff Composition by Job Category

	1987		1988		Net Change	1989	
	Actual	% of Number Total	Estimate	% of Number Total		Estimate	% of Number Total
Attorney	706	33.8	770	34.0	+ 41	811	33.5
Financial Analyst	77	3.7	86	3.8	+ 6	92	3.8
Accountant	145	6.9	152	6.7	+ 14	166	6.8
Investigator/ Securities Compliance Examiner	199	9.6	234	10.3	+ 14	248	10.3
Other Professional, Technical and Administrative	502	24.40	548	24.2	+ 45	593	24.5
Clerical	457	21.9	477	21.0	+ 33	510	21.1
<b>Totals</b>	<b>2,086</b>	<b>100.0</b>	<b>2,267</b>	<b>100.0</b>	<b>+153</b>	<b>2,420</b>	<b>100.0</b>
	<b>_____</b>	<b>_____</b>	<b>_____</b>	<b>_____</b>	<b>_____</b>	<b>_____</b>	<b>_____</b>

Average Grade and Salary Data

	1987 Actual	1988 Estimate	1989 Estimate
Average ES Salary	\$69,902	\$70,986	\$70,986
Average GS/GM Grade	10.62	10.58	10.51
Average GS/GM Salary	\$35,608	\$36,131	\$36,651

Mr. SMITH. Mr. Ruder, we are glad to have you. Do you have an opening statement?

#### GENERAL STATEMENT

Mr. RUDER. Chairman Smith and Members of the Subcommittee: I am pleased to appear today in support of the Securities and Exchange Commission's budget request of \$160.9 million for fiscal 1989. I request that my formal statement, previously submitted to the Subcommittee, be included in the record, together with a compilation of workload and staffing information for the period 1980-1989.

With me at the table are George Kundahl, the Executive Director of the Commission, and Lawrence Haynes, the Comptroller.

This budget has been constructed to support the complex agenda facing the Commission and recognizes the critical role the agency plays in domestic and foreign economic policy.

During the past eight years, and particularly in recent years, the responsibilities of the Commission have grown to a point where there is a wide imbalance between those responsibilities and the resources to carry them out. The budget before the Congress is an attempt to rectify that imbalance.

The 1989 budget will be used to discharge the Commission's existing responsibilities for investor protection, law enforcement, and the maintenance of fair and orderly markets. However, it represents the minimum staff required to meet the agency's current regulatory, oversight, and law enforcement requirements. Of course, additional resources will be required if new legislation or new initiatives impose additional requirements on the Commission.

During my confirmation, I committed to the Congress that during my tenure the SEC would maintain an aggressive law enforcement program. The 1989 request is consistent with that commitment. Nearly one-third of the agency's resources are devoted to the prevention and suppression of fraud. Through its enforcement program the Commission will continue its vigorous pursuit of securities laws violators, including those trading on inside information. Cooperative agreements which have been reached with foreign governments will increase the scope of effectiveness of SEC investigations.

I knew when I became Chairman that I was going to be overseeing an important period in the Commission's history. But I did not realize just how important the events would become. The October 1987 market break has created a set of variables which further complicate the issues facing the Commission and which we are only beginning to understand.

#### SEC ISSUES

At no time since the founding of the Commission in 1934 has the agency faced so many important issues.

First, the securities markets throughout the world are now inextricably linked. Market oversight, enforcement, and corporate disclosure activities are complicated by the transnational flow of capital and information.

Second, the securities markets are characterized by tremendous volume and volatility and an amazing array of complicated securities and securities-based products.

Third, the number and complexity of enforcement actions continue to challenge the Commission. Cases involving regulated entities and securities offerings are becoming more frequent and extremely complex. The efforts to combat insider trading and follow through with existing investigations continue to be a high priority.

Fourth, about 25 percent of all financial assets owned by Americans are managed by investment advisers. This industry will control nearly \$4 trillion by 1989. With so much money involved and so many small and large investors affected, the protection provided by the SEC's regulation and oversight of this industry is absolutely critical.

Fifth, in 1987, the total value of securities registered under the Securities Act of 1933 exceeded \$535 billion. Approximately 11,000 companies are required to file annual reports with the Commission. These filings as well as mergers, acquisitions, and takeovers require extensive review by the staff.

Sixth, the SEC's internal operations have not kept pace with advances in automation. The SEC must not only expend its use of computer technology, but must be able to coordinate with the industry's computer applications in automated trading, settlement, and record keeping in order to promulgate rules and conduct effective surveillance activities.

Seventh, the electronic filing system, EDGAR, completed its third full year of successful pilot operations on September 24, 1987. It has demonstrated clearly the feasibility of electronic filing and review procedures. The current schedule should result in the award of an operational contract by the end of this fiscal year.

The workload associated with any one of these areas require increased resources for the Commission. And the charts which are attached to my formal submission indicate the increases in those workloads during the period 1980 projected through 1989. In combination, these areas present a formidable challenge which more than justifies the Commission's budget request.

I want to assure the Subcommittee that the nation's securities markets are sound and that investors are being protected adequately at this time. However, there are many forces coming together that can have dramatic impacts on the markets and investors. The Commission needs the resources requested in the President's budget to meet developing problems head-on.

This completes my opening statement. I will be pleased to respond to any questions you may have.

[The prepared statement of Mr. Ruder follows:]

Statement of David S. Ruder  
Chairman of the Securities and Exchange Commission  
Before the Subcommittee on Commerce, Justice, and State  
The Judiciary and Related Agencies of the  
House Committee on Appropriations  
March 24, 1988

Chairman Smith and Members of the Subcommittee:

The Securities and Exchange Commission is pleased to present its budget request for fiscal 1989. This budget has been constructed to support the complex agenda facing the Commission and recognizes the critical role the agency plays in domestic and foreign economic policy.

In August, 1987, shortly after my confirmation as Chairman, one of my first actions was to review the agency's budget. At that time, I advised the Commission staff, as I had already committed to the Senate during my confirmation, that I planned to seek more resources for the agency. What was clear to me then has been dramatically confirmed. During the past eight years, and particularly in recent years, the responsibilities of the Commission have grown to the point where there is a wide imbalance between those responsibilities and the resources to carry them out. The budget before the Congress is an attempt to rectify that imbalance, and this testimony is in keeping with my personal commitment.

The 1989 budget will be used to discharge the Commission's existing responsibilities for investor protection, law enforcement, and the maintenance of fair and orderly markets. However, it represents the minimum staff required to meet the

agency's current regulatory, oversight, and law enforcement requirements. Of course, additional resources will be required if new legislation imposes additional requirements on the Commission such as supervision of bank securities activities or if new initiatives are implemented increasing the responsibilities over the domestic and international markets.

During my confirmation, I also committed to the Congress that during my tenure the SEC would maintain an aggressive law enforcement program. The 1989 request is consistent with that commitment. Nearly one-third of the agency's resources are devoted to the prevention and suppression of fraud. Under its enforcement program the Commission will continue its vigorous pursuit of securities laws violators, including those trading on insider information. Cooperative agreements which have been reached with foreign governments will increase the scope of effectiveness of SEC investigations.

I knew when I became Chairman that I was going to be overseeing an important period in the Commission's history. But I did not realize just how important the events would become. The October, 1987 market break has created a set of variables which will further complicate the issues facing the Commission and which we are only beginning to understand. The Commission's Staff Study, provided to the Subcommittee on February 3, 1988, is a thorough account and analysis of the market break and indicates the complexities of the problem facing the Commission.

The budget request for 1989 was prepared after the market break and therefore accommodates some of the needs for additional staff in the Divisions of Market Regulation and Investment Management. However, there are certain to be many aspects and long-term repercussions from the events in October which may require additional resources. For example, the level of investor complaints rose dramatically following the market break. At this point we cannot estimate the impact in the enforcement program that those complaints may create. If many new instances of fraud are uncovered, the SEC will need to add resources to its enforcement program.

At no time since the founding of the Commission in 1934 has the agency faced so many important issues. Set forth below are descriptions of the Commission's primary responsibilities and a corollary list of needs. Actual figures for the years 1980 - 1987 and estimates for the years 1988 and 1989 show a dramatic increase in workload at the Commission.

- o Internationalization - The securities markets throughout the world are now inextricably linked. Market oversight, enforcement, and corporate disclosure activities are complicated by the transnational flow of capital and information. In a sense, the market for United States equities can be viewed as including not only the domestic futures, options, and stock markets, but the major foreign markets as well. Trading in the U.S. markets clearly affects trading in foreign

markets, and vice-versa, although the U.S. more often leads than follows other stock markets. This interdependence of the world's markets reinforces the need to maintain the stability and fairness of U.S. markets in order to avoid the flight of capital from domestic markets to foreign markets. This issue requires the utilization of staff resources from all parts of the agency.

- o Supervision and Regulation of Securities Markets - The securities markets are characterized by tremendous volume and volatility and an amazing array of complicated securities and securities-based products. The numbers associated with market activity are staggering. During the period 1980 - 1989:
  - sales on U.S. securities exchanges will have increased more than 7 times, from \$542.5 billion to \$4.0 trillion;
  - foreign trading in U.S. stocks will have increased more than 10 times, from \$75.2 billion to \$800 billion;
  - U.S. trading in foreign stocks will have increased more than 25 times, from \$17.9 billion to \$450 billion;
  - the number of registered broker-dealer firms will have more than doubled, from 6,750 to 15,500;

- the number of NASD registered representatives will have more than doubled, from 196,000 to 480,000; and
  - the number of branch offices of NASD members will have almost tripled, from 7,370 to 22,000.
- During the same period the Commission staff years devoted to market activity will have increased only 6%, from 268 to 284.
- o Prevention and Suppression of Fraud - The number and complexity of enforcement actions continue to challenge the Commission. Cases involving regulated entities and securities offerings are becoming more frequent and extremely complex. Of course, the efforts to combat insider trading and follow through with existing investigations continue to be a high priority.

Although there is no way to measure the actual amount of violative activity, the indicators of potential fraud are significant. A dramatic increase in the enforcement workload will have taken place during the period 1980 - 1989:

- administrative proceedings opened will have more than doubled, from 70 to 160;
- civil proceedings opened will have increased 33%, from 128 to 170;

- matters under inquiry will have increased 46%, from 738 to 1,074; and,
- complaints and inquiries received will have more than doubled, from 9,639 to 22,189.

During the same period the Commission staff years devoted to the prevention and suppression of fraud will have increased only 2%, from 678 to 693.

- o Investment Management Regulation - About 25% of all financial assets owned by Americans are managed by investment advisers. This industry will control nearly \$4 trillion by 1989. Assets managed by investment companies and investment advisers are not government-insured. With so much money involved and so many small and large investors affected, the protection provided by the SEC's regulation and oversight of this industry is absolutely critical. During the period 1980 - 1989:
  - registered investment companies will have more than doubled, from 1,461 to 3,800;
  - registered investment advisers will have more than tripled, from 4,580 to 15,000;
  - investment company assets will have increased nearly 7 times, from \$235 billion to \$1.6 trillion;
  - investment adviser assets will have increased more than 10 times, from \$440 billion to \$4.5 trillion;

- investment company registration statements filed will have nearly quadrupled, from 378 to 1,499;
- investment adviser registration applications filed will have increased more than 10 times, from 400 to 4,092;
- investment company post-effective amendments filed will have more than quadrupled, from 2,476 to 10,811; and
- investment adviser post-effective amendments filed will have more than doubled, from 4,500 to 12,104.

During the same period the Commission staff years devoted to investment company and adviser activity will have increased only 33%, from 195 to 259 (excluding public utility staff).

- o Full Disclosure - In 1987, the total value of securities registered under the Securities Act of 1933 exceeded \$535 billion. Approximately 11,000 companies are required to file annual reports with the Commission. These filings, as well as mergers, acquisitions, and takeovers require extensive review by the staff. In addition to the workload of reviewing filings, Commission staff are asked to evaluate the Commission's legislative and rulemaking positions with respect to subjects such as takeovers and other contests for corporate control, existing disclosure

requirements, and the burden of Commission rules on small businesses.

As with the Commission's other major programs, the size and complexity of the full disclosure environment has experienced amazing growth. During the period 1980 - 1989:

- 1933 Act new registration statements will have nearly tripled, from 710 to 1,965;
- annual reports will have increased 35%, from 8,344 to 11,230; and

During the same period the Commission staff years devoted to full disclosure will have increased only 11%, from 420 to 467 (excluding the staff for electronic filing).

Two other areas of particular concern are automation and electronic filing.

- o Automation - The SEC's internal operations have not kept pace with the advances in automation. The SEC must not only expand its use of computer technology, but must be able to coordinate with the industry's computer applications in automated trading, settlement, and recordkeeping in order to promulgate rules and conduct effective surveillance activities.
- o The Electronic Data Gathering Analysis and Retrieval Project (EDGAR) - The EDGAR Pilot system completed its third full year of successful operations on September

24, 1987. It has demonstrated clearly the feasibility of electronic filing and review procedures. Nearly 30,000 electronic filings have been made since September 1984 from over 1,200 companies. The Commission has continued to move ahead with its plan to develop a fully operational EDGAR system. The Request for Proposals (RFP) was amended to reflect changes in EDGAR funding strategy and released on October 23, 1987. The current schedule ~~should~~ result in the award of an operational contract by the end of this fiscal year.

The workloads associated with any one of the areas that I have discussed requires increased resources for the Commission. In combination they present a formidable challenge which more than justifies the Commission's budget request.

I want to assure the Subcommittee that the nation's securities markets are not in chaos and that investors are being protected adequately at this time. However, there are many forces coming together that can have dramatic impacts on the markets and investors. The Commission needs the resources to meet developing problems head-on.

#### Commission Operations

In fiscal 1987, for the fifth consecutive year, revenues collected exceeded the agency's annual appropriation. In fiscal 1987, the Commission collected \$278.4 million for deposit into the general fund of the United States Treasury. Total

collections consisted of \$263.9 million in fee revenue and \$14.5 million in disgorgements received. In addition, \$62.6 million were assessed in civil penalties from fraud actions. Fee revenue is generated from four primary sources: (1) securities registered under the Securities Act of 1933 (61% of the total); (2) transactions on securities exchanges (24%); (3) tender offer and merger filings (12%); and (4) miscellaneous filings (3%). Estimates for fee revenue in 1988 and 1989 are \$278.1 million and \$281.2 million, respectively, amounts far exceeding the 1988 appropriation and the 1989 budget request.

#### The 1989 Budget

The 1989 budget request is for \$160,925,000. The 1989 budget amounts to a net increase of \$25.7 million over the 1988 appropriation. (Total increase of \$26.5 million offset by savings of \$.8 million from the 1988 base level). The budget increases will be allocated as follows:

- o \$8.0 million for EDGAR;
- o \$6.2 million for program staff increases;
- o \$4.2 million for an expansion of automated data processing capability throughout the agency;
- o \$3.2 million for mandatory pay and personnel benefit costs;
- o \$2.0 million to annualize the new positions added in 1988;
- o \$1.8 million for space rental and rate and price increases, and;

- o \$1.1 million for general program support.

The 1989 budget will support 2,420 positions, an increase of 7.5% over the 1988 level. The 153 position increase will be allocated to the SEC's programs as follows:

- o 57 for Investment Management Regulation;
- o 29 for Regulation of Securities Markets;
- o 45 for Full Disclosure and EDGAR Management;
- o 12 for Program Direction;
- o 5 for Prevention and Suppression of Fraud; and
- o 5 for Legal Services and Economic Research.

I must repeat, however, that these increases represent, in my judgment, the minimum staff levels necessary to carry out the statutory obligations given the Commission by the Congress. In fact, in establishing a budget authorization level for fiscal 1989, the Congress enacted a figure of \$172,200,000, or \$11.3 million more than the pending request.

#### Conclusion

This completes my prepared remarks. Attached to these remarks is a compilation of charts containing details on securities market growth and Commission resources available to address its workload.

**319**

**SECURITIES AND EXCHANGE COMMISSION**

**WORKLOAD AND STAFF DATA**

**1980 - 1989**

**March 24, 1988**

SEC STAFFING AND BUDGETGraph

- 1 Staff Years
- 2 SEC Budget and Fees

FULL DISCLOSUREGraph

- 3 1933 Act New Registrations Filed
- 4 Annual Reports Filed
- 5 Annual Meeting Proxies Filed
- 6 Staff Years

INVESTMENT MANAGEMENT REGULATIONGraph

- 7 Registered Investment Companies
- 8 Registered Investment Advisers
- 9 Investment Company Assets
- 10 Investment Adviser Assets
- 11 Investment Co. Registrations
- 12 Investment Advisers Registrations
- 13 IC Post-Effective Amendments
- 14 IA Post-Effective Amendments
- 15 Staff Years

LEGAL SERVICESGraph

- 16 ALJ Proceedings Instituted
- 17 Chapter 11 Petitions of Public Companies
- 18 Legislative Drafting and Technical Assistance
- 19 Staff Years

PREVENTION AND SUPPRESSION OF FRAUDGraph

- 20 Administrative Proceedings Opened
- 21 Civil Proceedings Opened
- 22 Matters Under Inquiry
- 23 Staff Years

SUPERVISION AND REGULATION OF SECURITIES MARKETGraph

- 24 Sales on U.S. Securities Exchanges
- 25 Global Securities Market
- 26 Registered Broker-Dealer Firms
- 27 NASD Registered Representatives
- 28 Branch Offices of NASD Members
- 29 Staff Years

OFFICE OF CONSUMER AFFAIRS AND  
INFORMATION SERVICESGraph

- 30 Complaints and Inquiries Received
- 31 FOIA/Privacy Act Requests Received
- 32 Public Reference Filing and Processing
- 33 Staff Years

SEC STAFFING AND BUDGET

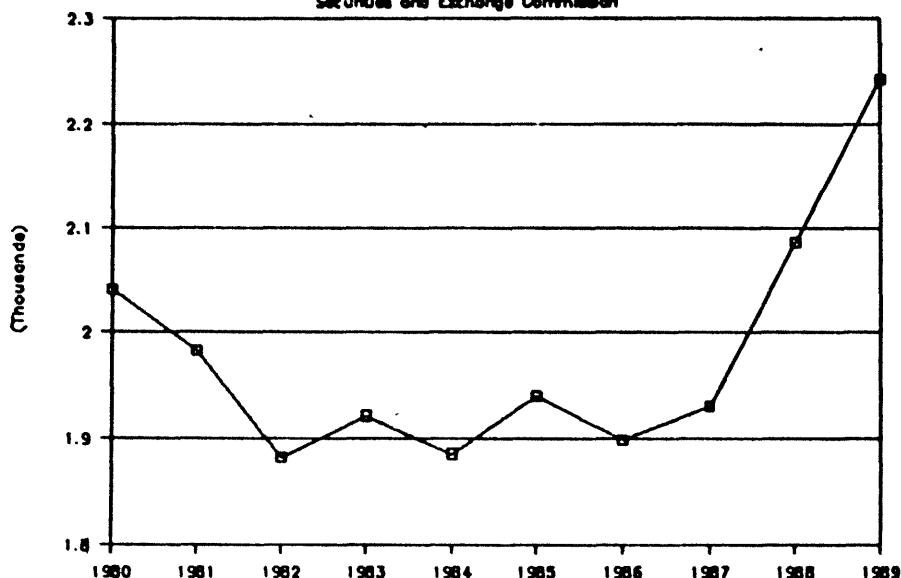
Percentage change in staffing, budget and fees collected from 1980 through 1989 (estimated) is as follows:

- 10% increase in total staff years from 2,041 to 2,242;
- 121% increase in the budget from \$72.7 million to \$160.9 million; and
- 473% increase in filing fees collected by the SEC from \$49.1 million to \$281.2 million.

Graph 1

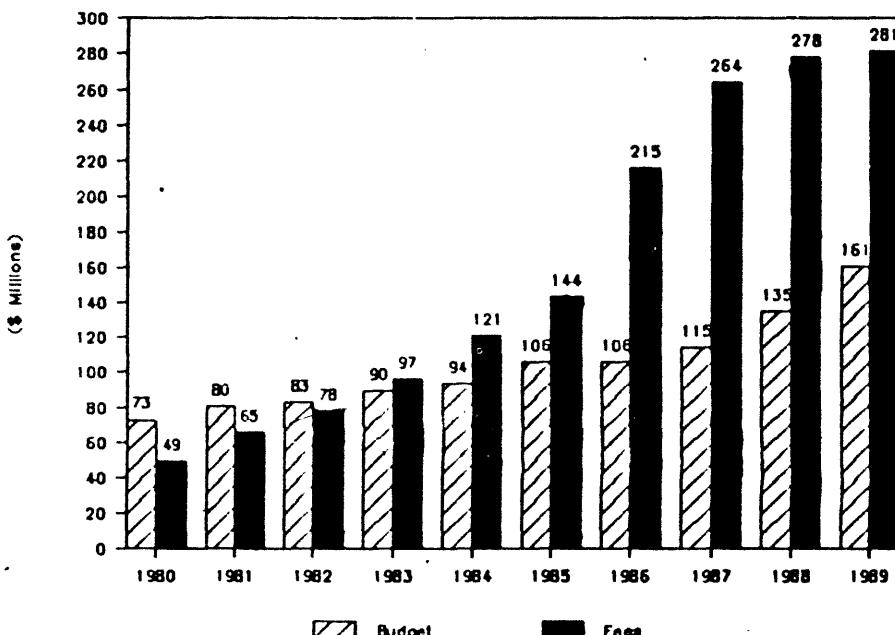
## TOTAL STAFF YEARS

Securities and Exchange Commission



Graph 2

## SEC BUDGET AND FEES 1/



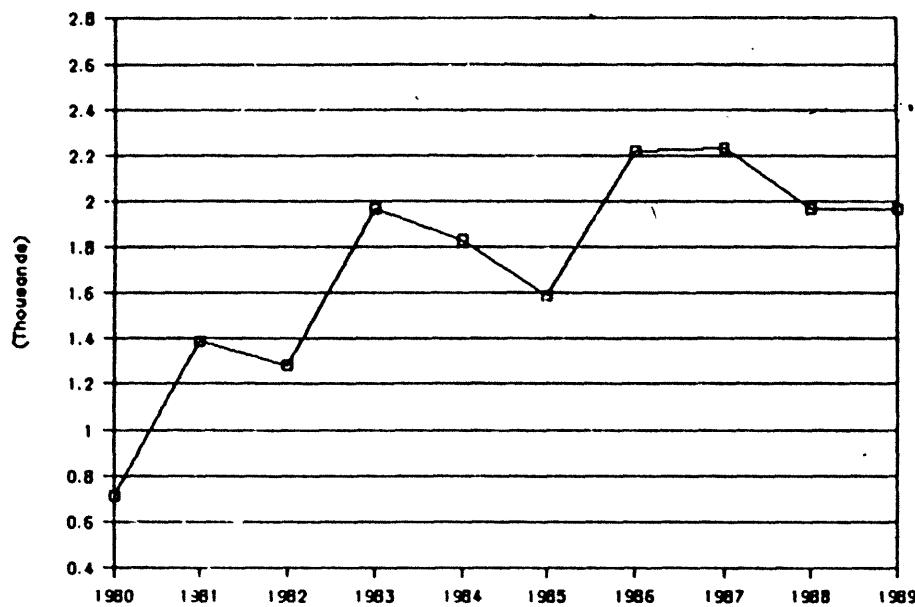
1/ Amounts rounded to nearest million. Amounts exclude disgorgements collected from fraud actions.

FULL DISCLOSURE

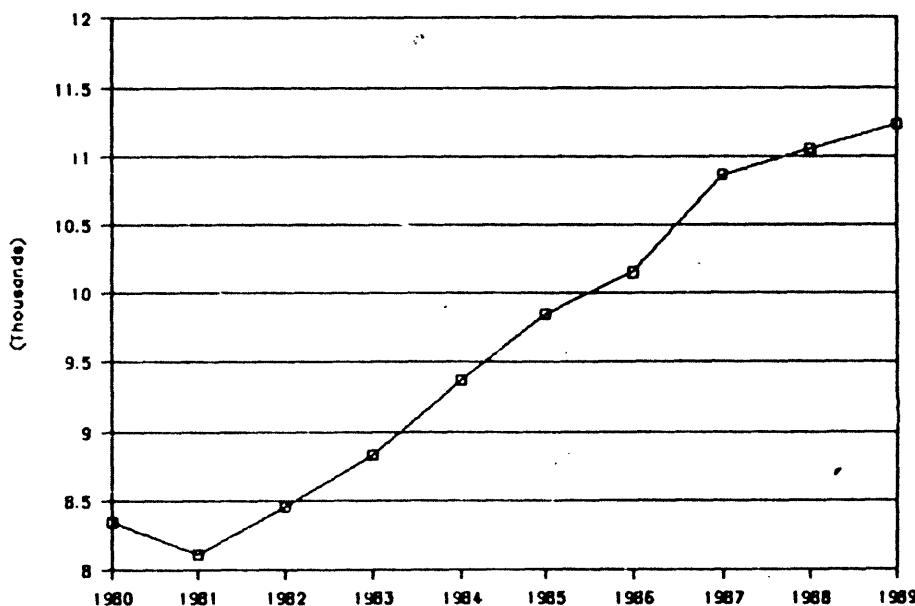
Percentage change in workload and staffing from 1980 through 1989 (estimated) is as follows:

- 177% increase in the number of 1933 Act new registration statements filed from 710 to 1,965;
- 35% increase in the number of annual reports filed from 8,344 to 11,230;
- 40% decrease in the number of annual meeting proxies filed from 6,740 to 4,100 (due to a new rule adopted in early fiscal 1988); and
- 11% increase in staff years from 420 to 467 (excluding the staff for electronic filing).

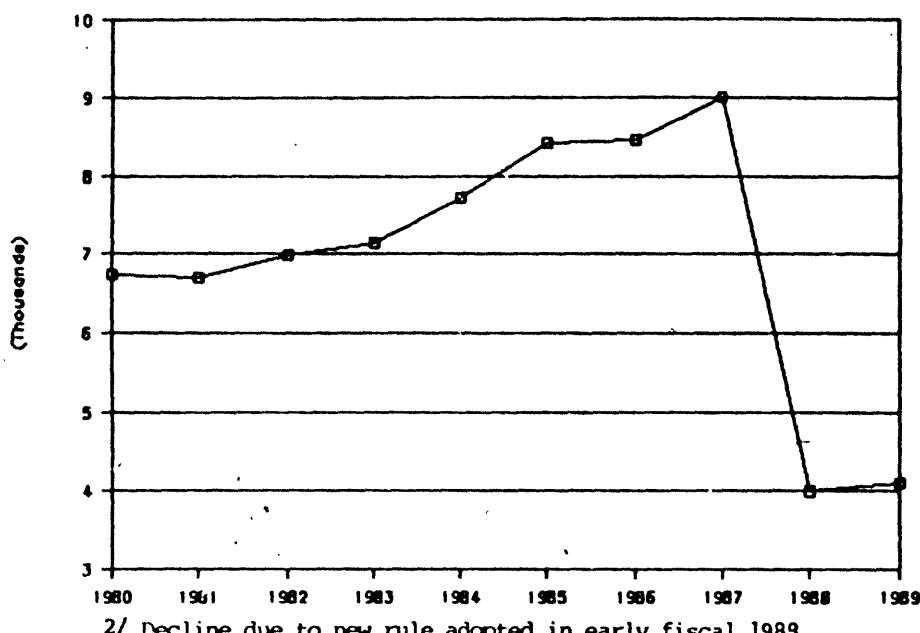
Graph 3  
1933 ACT NEW REGISTRATIONS FILED



Graph 4  
ANNUAL REPORTS FILED

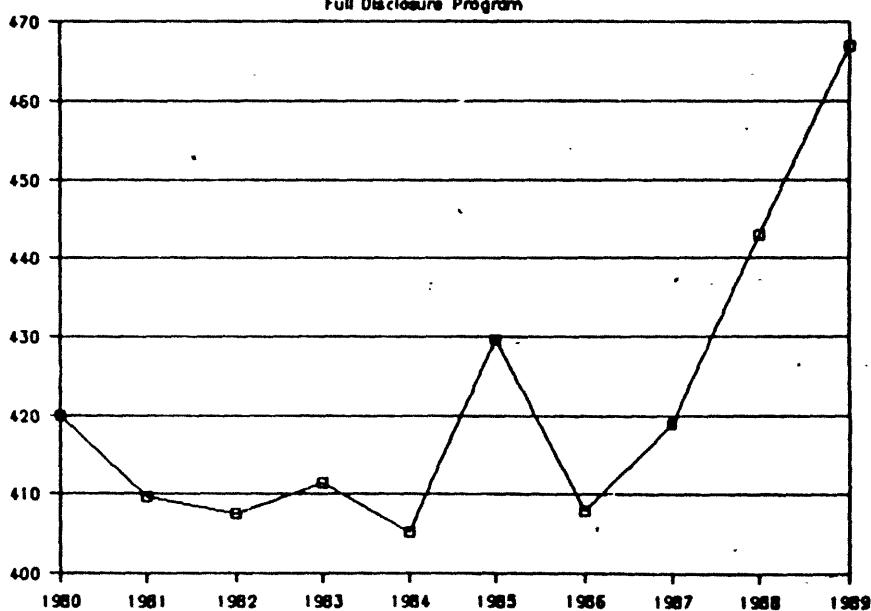


Graph 5  
ANNUAL MEETING PROXIES FILED 2/



2/ Decline due to new rule adopted in early fiscal 1988.

Graph 6  
• STAFF YEARS 3/  
Full Disclosure Program



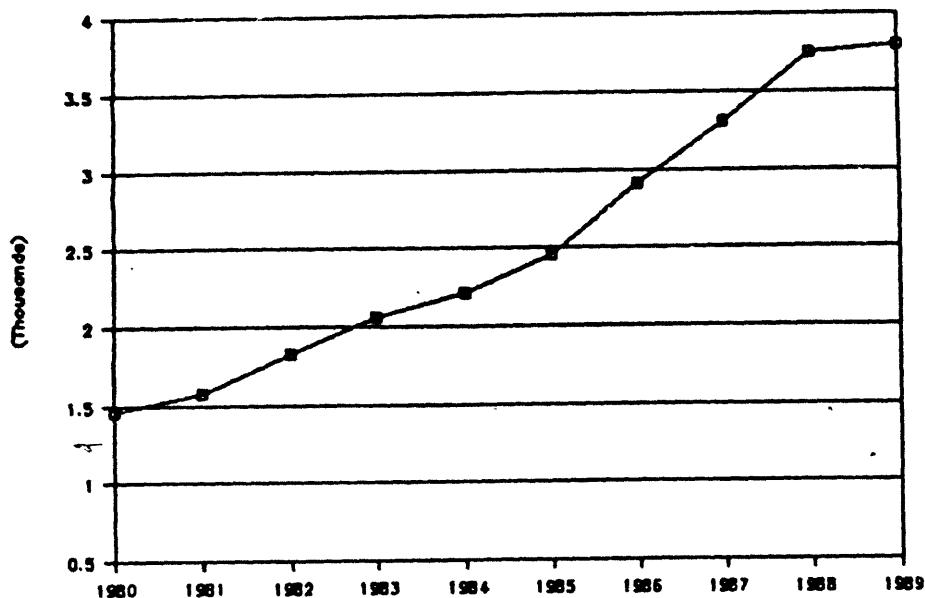
3/ Excludes staff for electronic filing.

INVESTMENT MANAGEMENT REGULATION

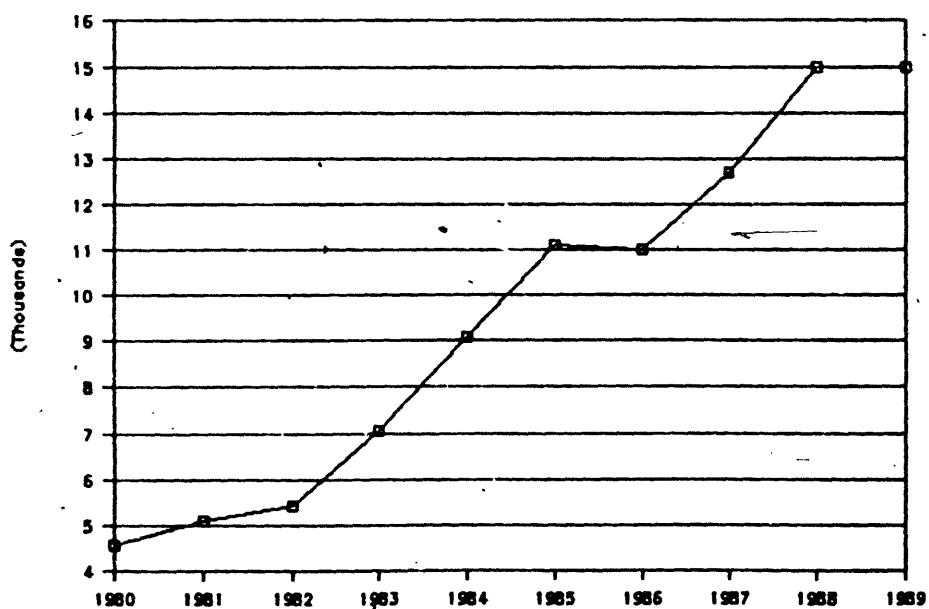
Percentage change in workload and staffing from 1980 through 1989 (estimated) is as follows:

- 160% increase in the number of registered investment companies from 1,461 to 3,800;
- 228% increase in the number of registered investment advisers from 4,580 to 15,000;
- 581% increase in investment company assets from \$235 billion to \$1.6 trillion;
- 923% increase in investment adviser assets from \$440 billion to \$4.5 trillion;
- 297% increase in investment company registration statements filed from 378 to 1,499;
- 923% increase in investment adviser registration applications filed from 400 to 4,092;
- 337% increase in investment company post-effective amendments filed from 2,476 to 10,811;
- 169% increase in investment adviser post-effective amendments filed from 4,500 to 12,104; and
- 33% increase in staff years from 195 to 259 (excluding public utility staff).

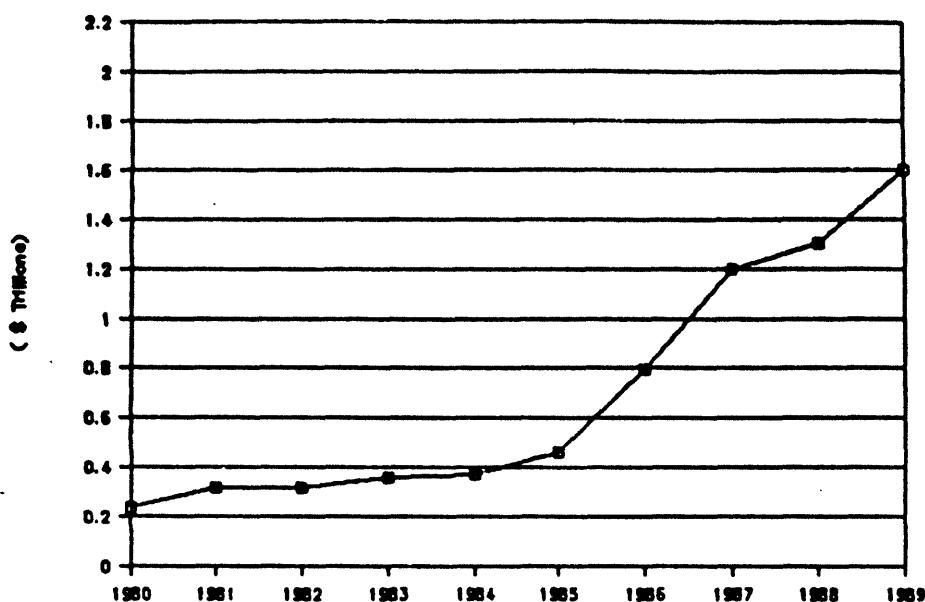
Graph 7  
REGISTERED INVESTMENT COMPANIES



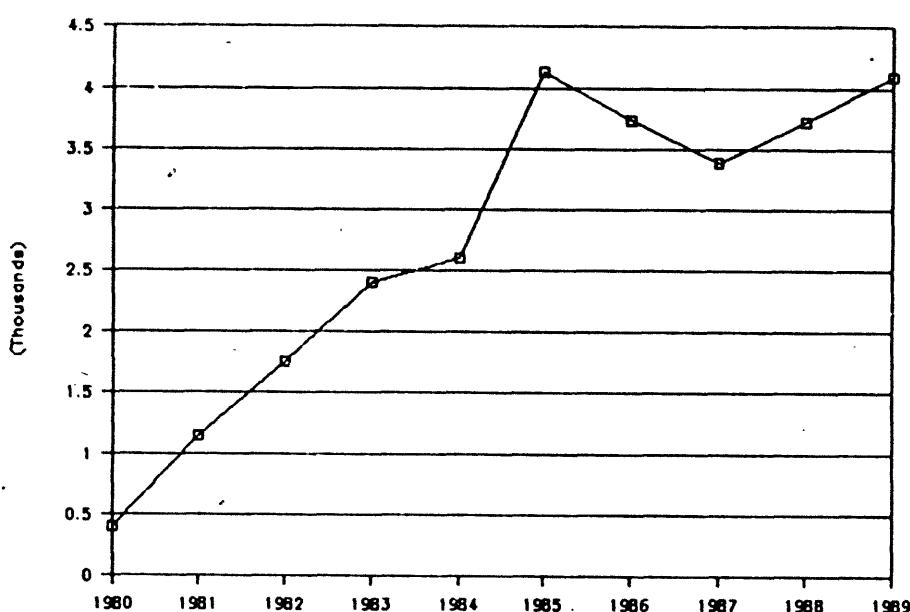
Graph 8  
REGISTERED INVESTMENT ADVISERS



**Graph 9**  
**INVESTMENT COMPANY ASSETS**

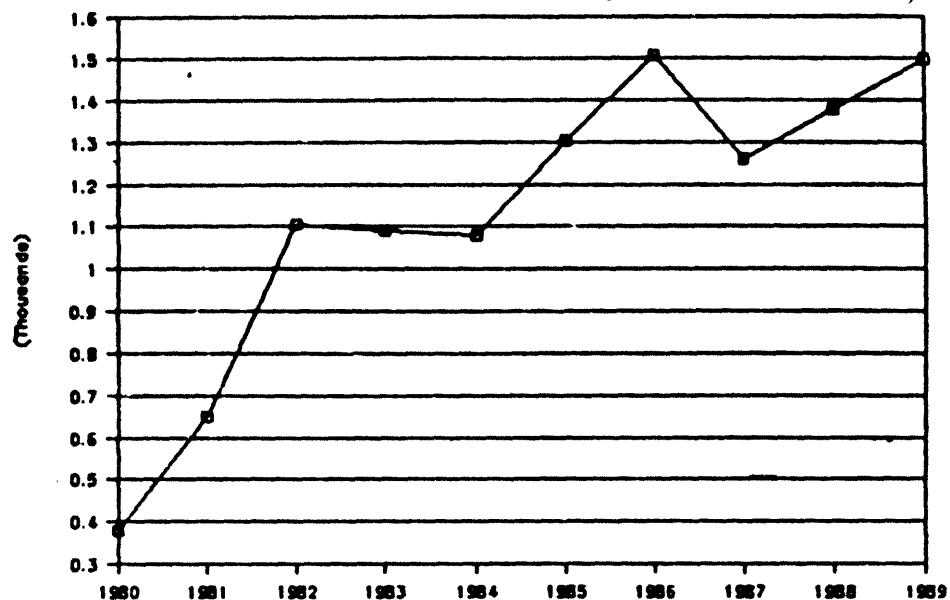


**Graph 10**  
**INVESTMENT ADVISERS REGISTRATIONS**



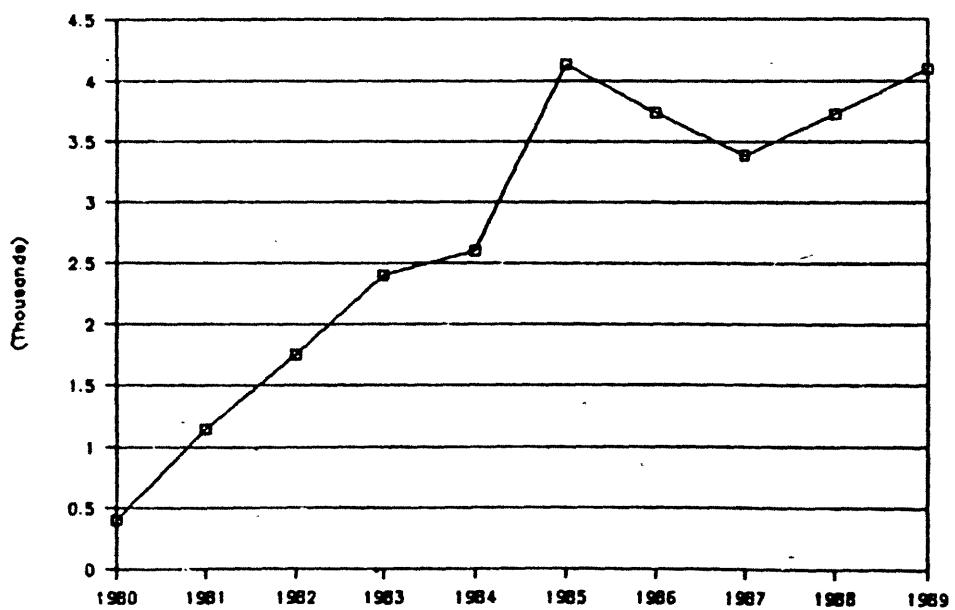
Graph 11

## INVESTMENT COMPANY REGISTRATIONS 4/



Graph 12

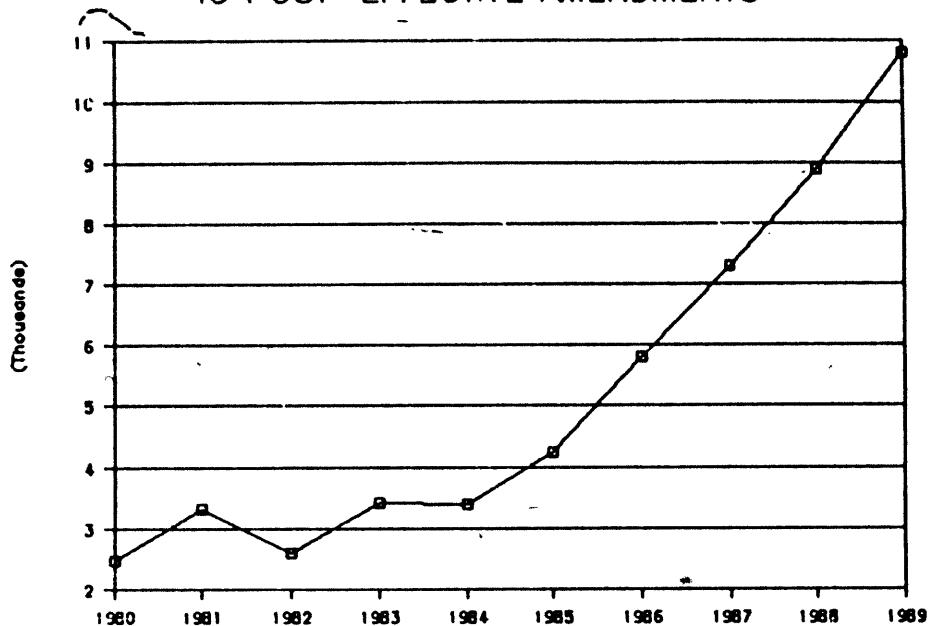
## INVESTMENT ADVISERS REGISTRATIONS 4/



4/ Includes only new registration statements filed each year.

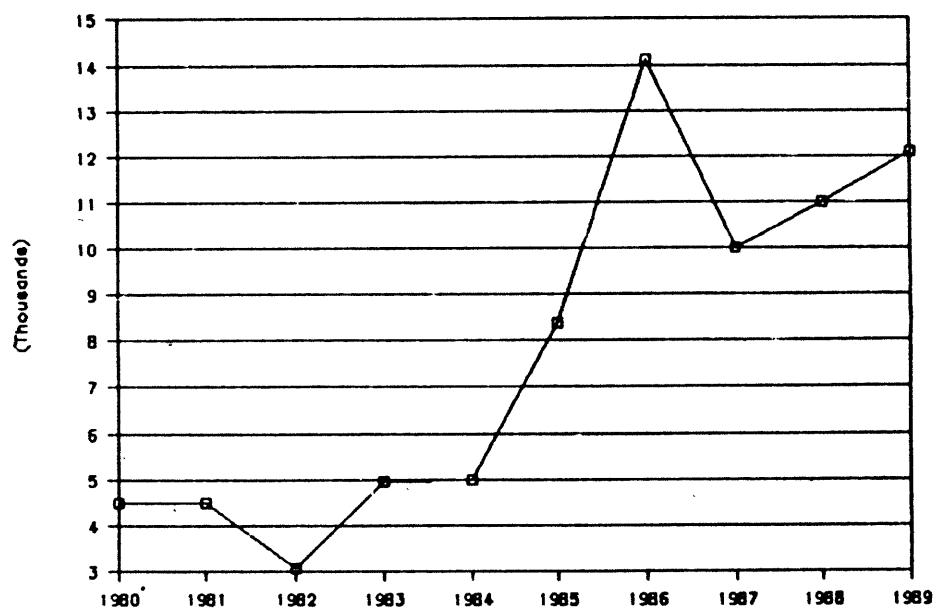
Graph 13

## IC POST-EFFECTIVE AMENDMENTS

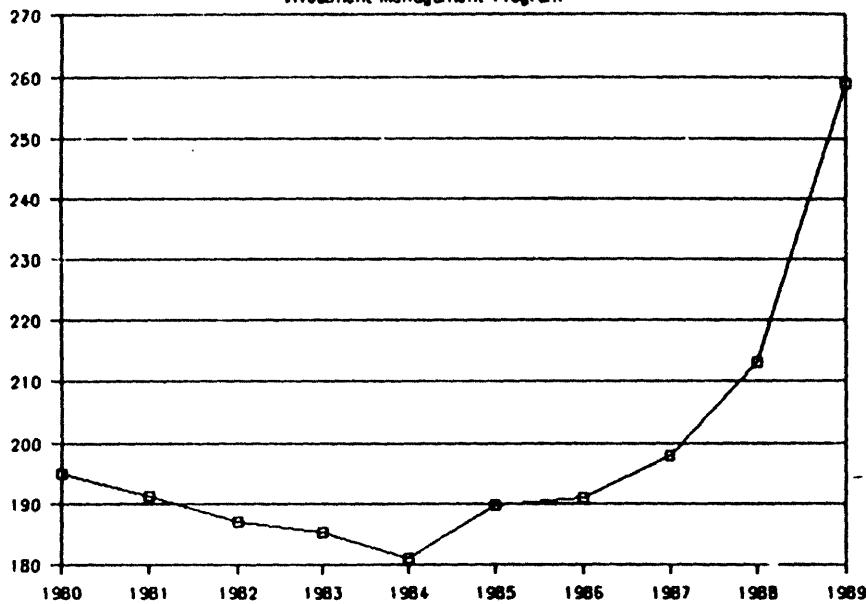


Graph 14

## IA POST-EFFECTIVE AMENDMENTS



Graph 15  
STAFF YEARS 5/  
Investment Management Program



5/ Excludes public utility staff.



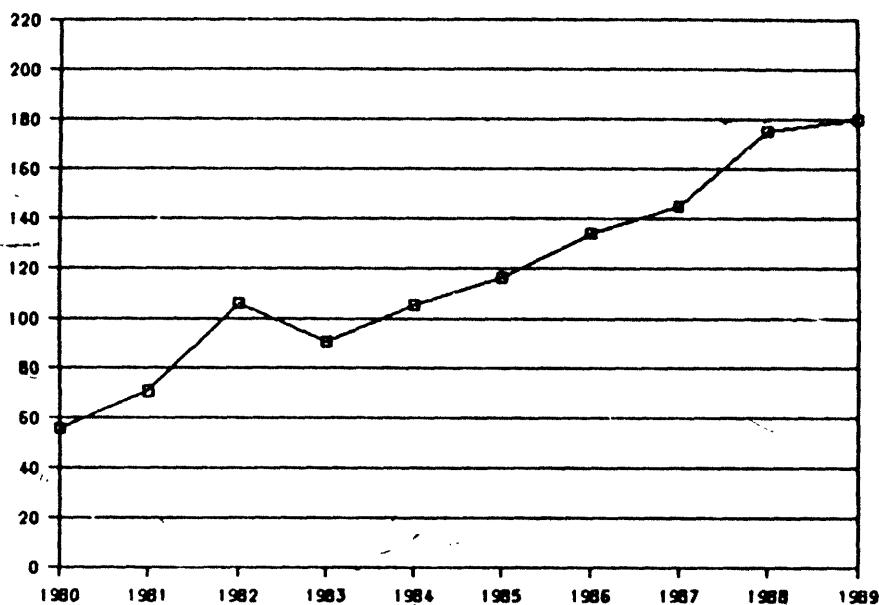
LEGAL SERVICES

Percentage change in workload and staffing from 1980\* through 1989 (estimated) is as follows:

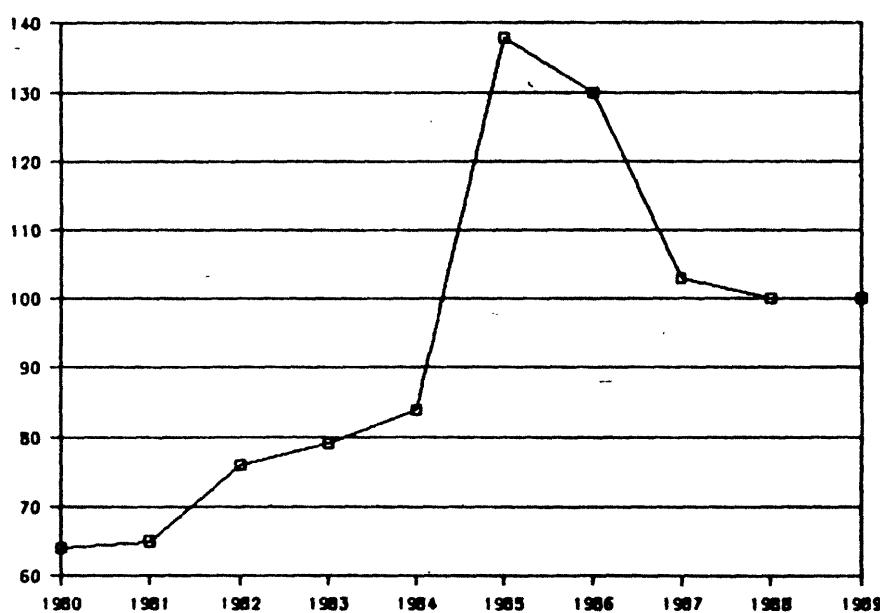
- 221% increase in the number of administrative proceedings instituted under the jurisdiction of the administrative law judges from 56 to 180;
- 56% increase in the number of Chapter 11 petitions of public companies;
- 317% increase in the number of legislative drafting and technical assistance provided from 12 to 50; and
- 16% decrease in the staff years from 146 to 126.

\* Legislative drafting and technical assistance not tracked separately until 1982.

Graph 16  
ALJ PROCEEDING INSTITUTED

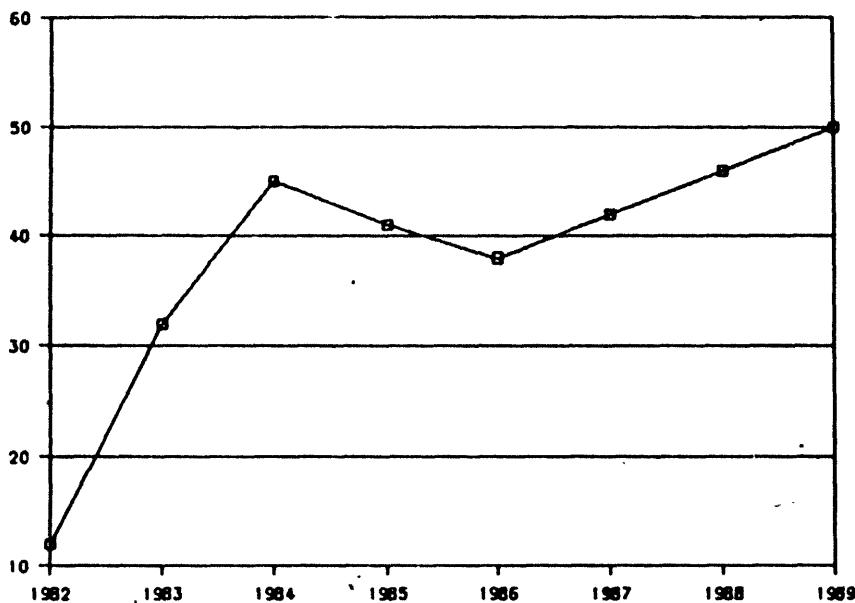


Graph 17  
CHAPTER 11 PETITIONS OF PUBLIC CO.



Graph 18

## LEG. DRAFTING &amp; TECHNICAL ASSISTANCE 5/

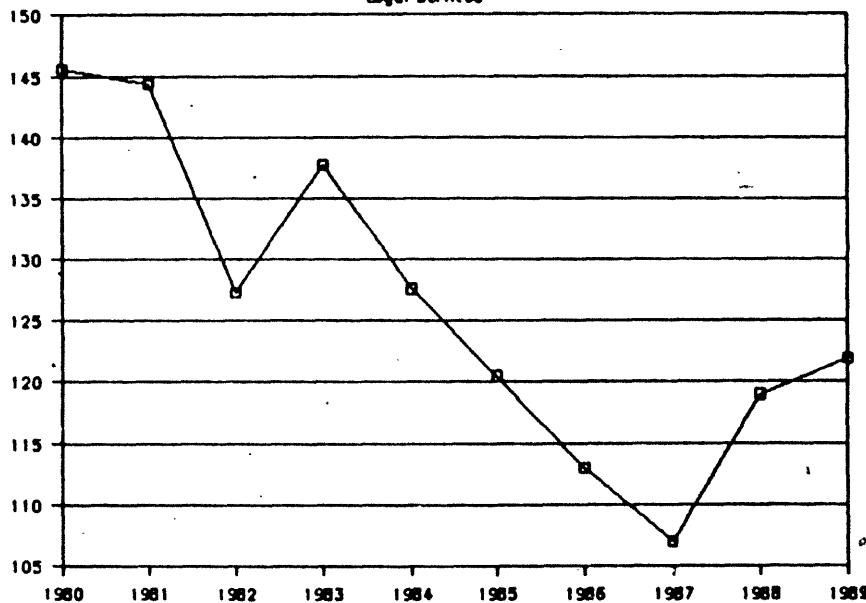


5/ Not tracked individually until 1982.

Graph 19

## STAFF YEARS

Legal Services



PREVENTION AND SUPPRESSION OF FRAUD

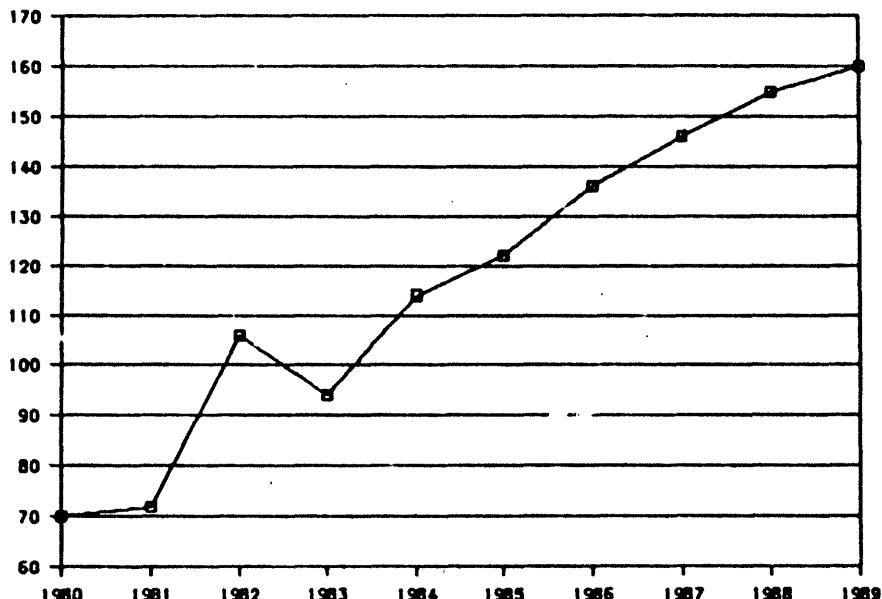
Percentage change in workload and staffing from 1980\* through 1989 (estimated) is as follows:

- 129% increase in the number of administrative proceedings opened from 70 to 160;
- 33% increase in the number of civil proceedings opened from 128 to 170;
- 46% increase in the number of matters under inquiry from 738 to 1,074; and
- 2% increase in the staff years from 678 to 693.

\* Matters under inquiry not tracked separately until 1981.

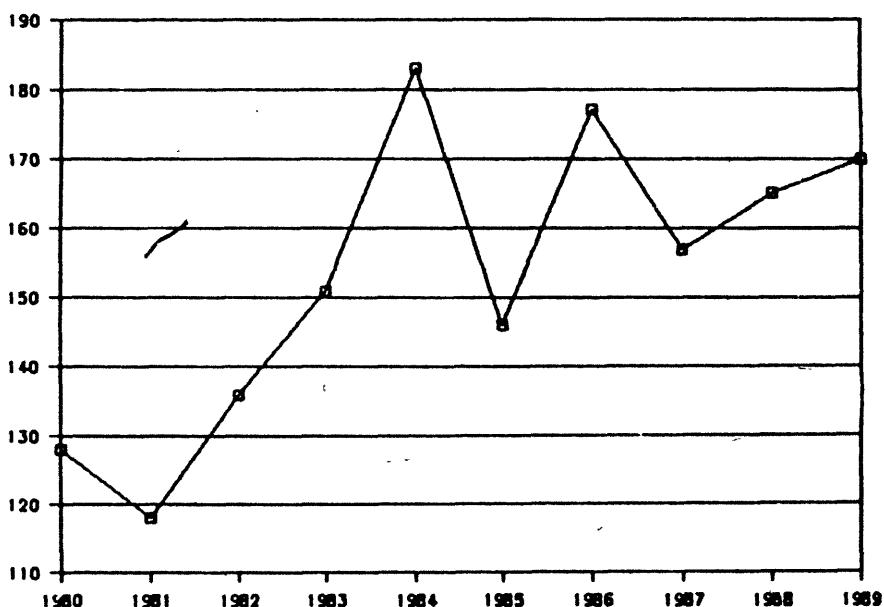
Graph 20

## ADMINISTRATIVE PROCEEDINGS OPENED



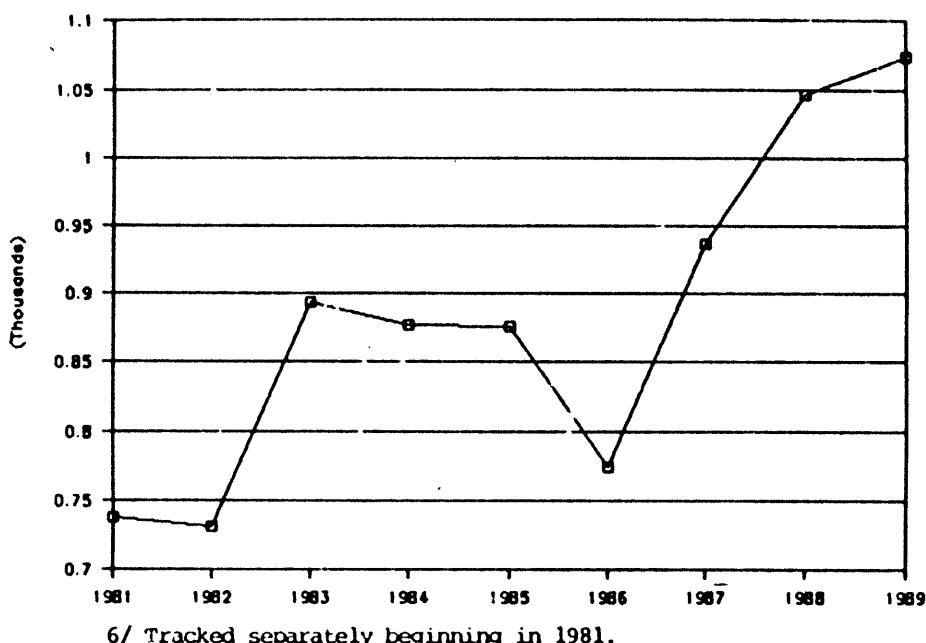
Graph 21

## CIVIL PROCEEDINGS OPENED



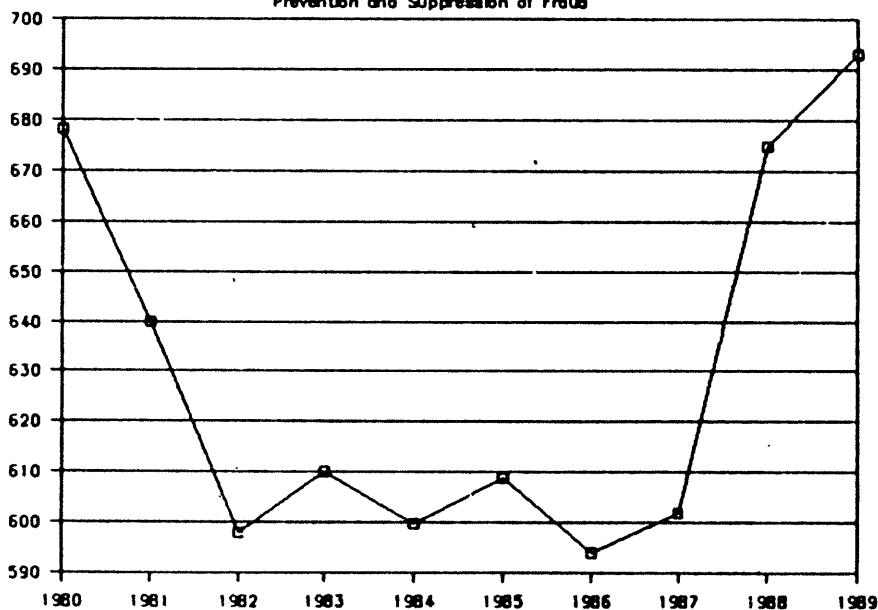
Graph 22

## MATTERS UNDER INQUIRY 6/



6/ Tracked separately beginning in 1981.

Graph 23

STAFF YEARS  
Prevention and Suppression of Fraud

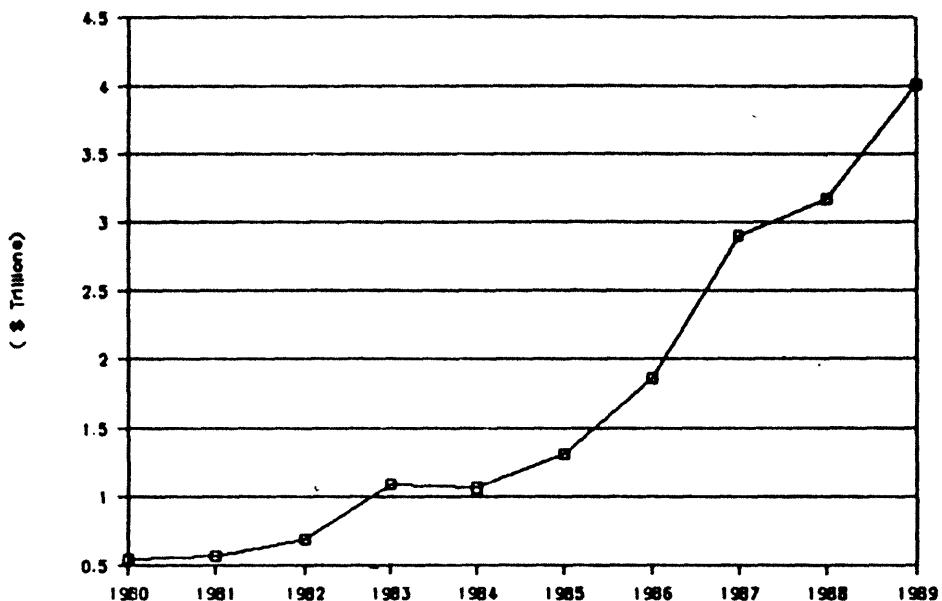
SUPERVISION AND REGULATION OF SECURITIES MARKETS

Percentage change in workload and staffing from 1980 through 1989 (estimated) is as follows:

- 638% increase in sales on U.S. securities exchanges from \$542.5 billion to \$4.0 trillion;
- 964% increase of foreign trading in U.S. stocks from \$75.2 billion to \$800 billion;
- 2,414% increase of U.S. trading in foreign stocks from \$17.9 billion to \$450 billion;
- 130% increase in the number of registered broker-dealer firms from 6,750 to 15,500;
- 145% increase in the number of NASD registered representatives from 196,000 to 480,000;
- 199% increase in the number of branch offices of NASD members from 7,370 to 22,000; and
- 6% increase in staff years from 268 to 284.

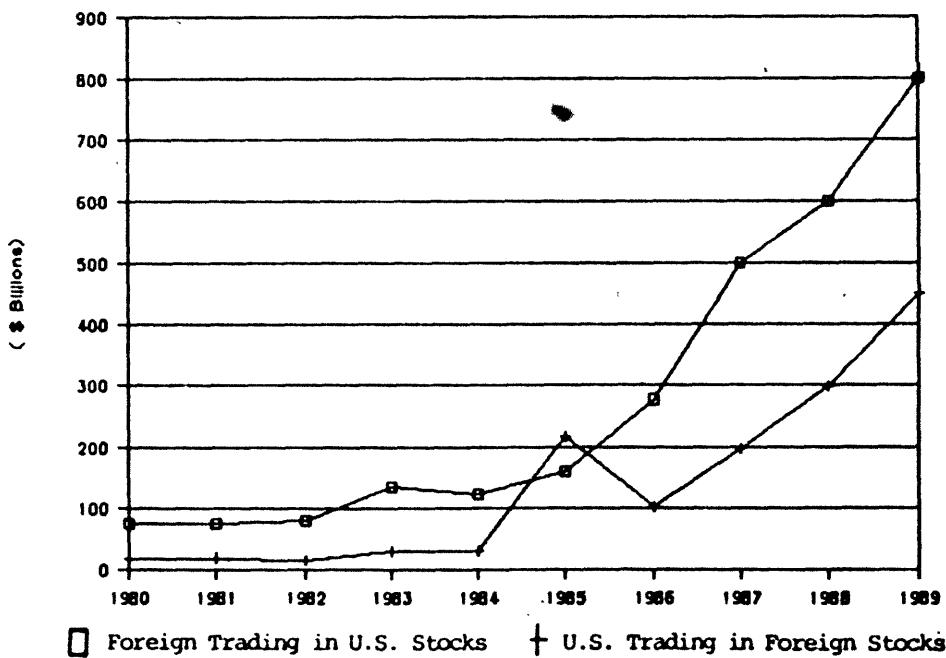
Graph 24

## SALES ON U.S. SECURITIES EXCHANGES

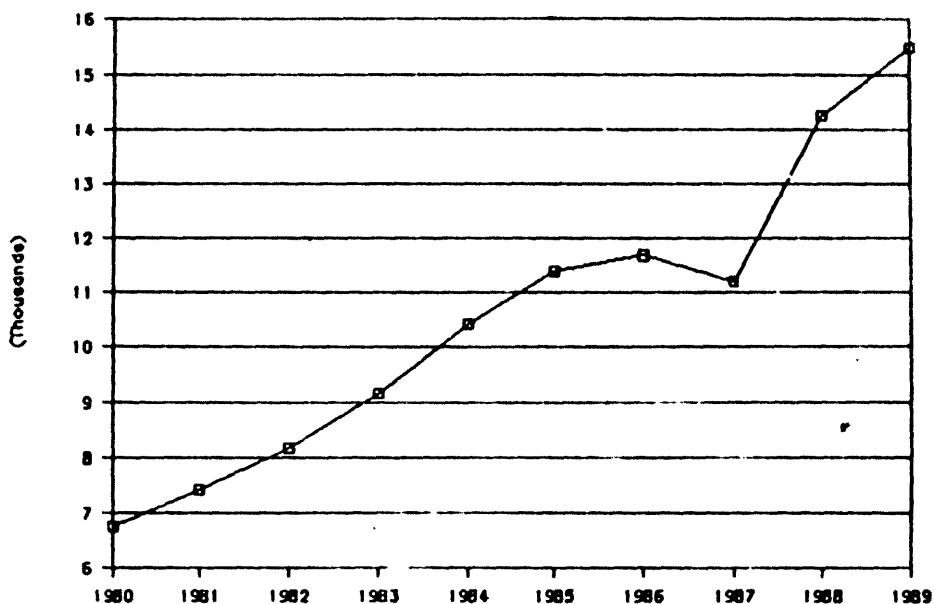


Graph 25

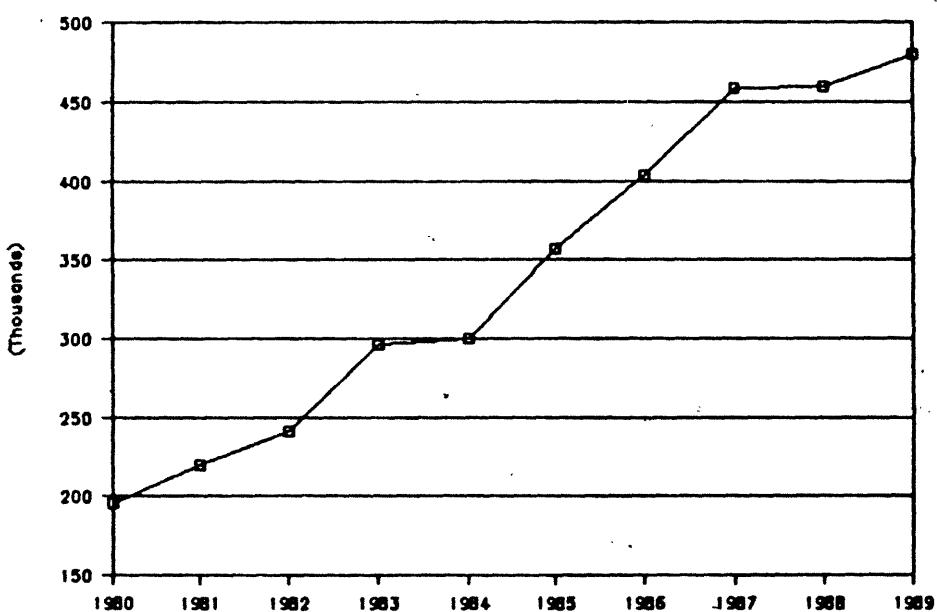
## GLOBAL SECURITIES MARKETS



Graph 26  
REGISTERED BROKER-DEALER FIRMS

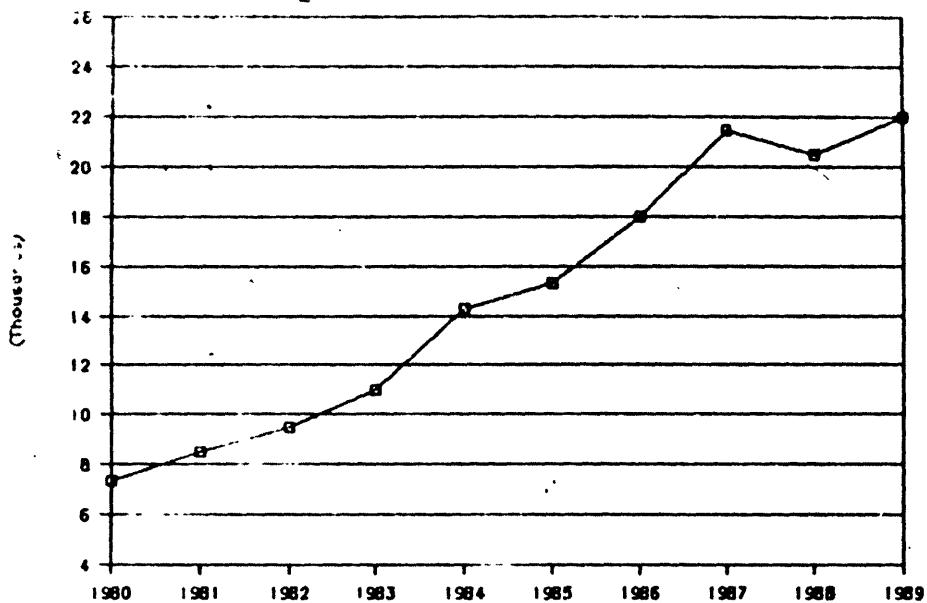


Graph 27  
NASD REGISTERED REPRESENTATIVES



Graph 28

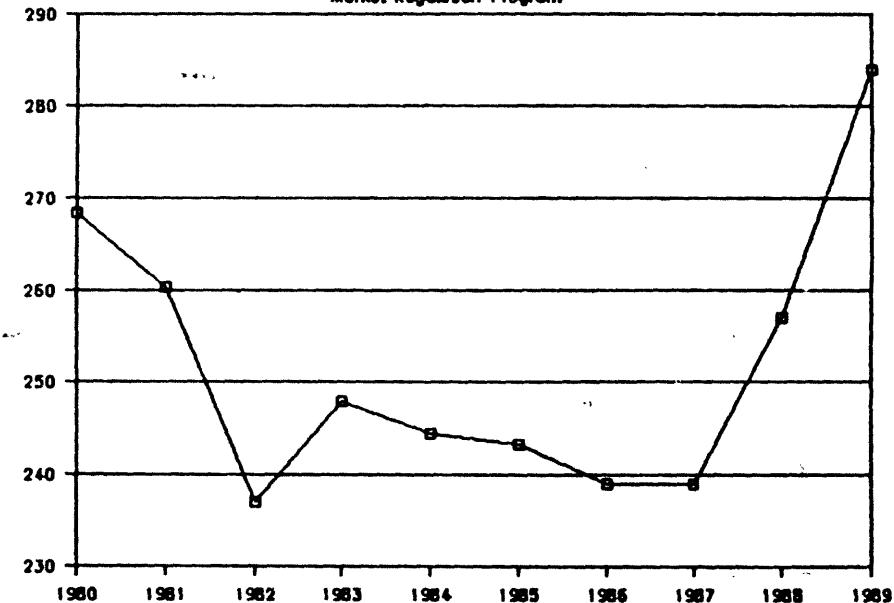
## BRANCH OFFICES OF NASD MEMBERS



Graph 29

## STAFF YEARS

Market Regulation Program

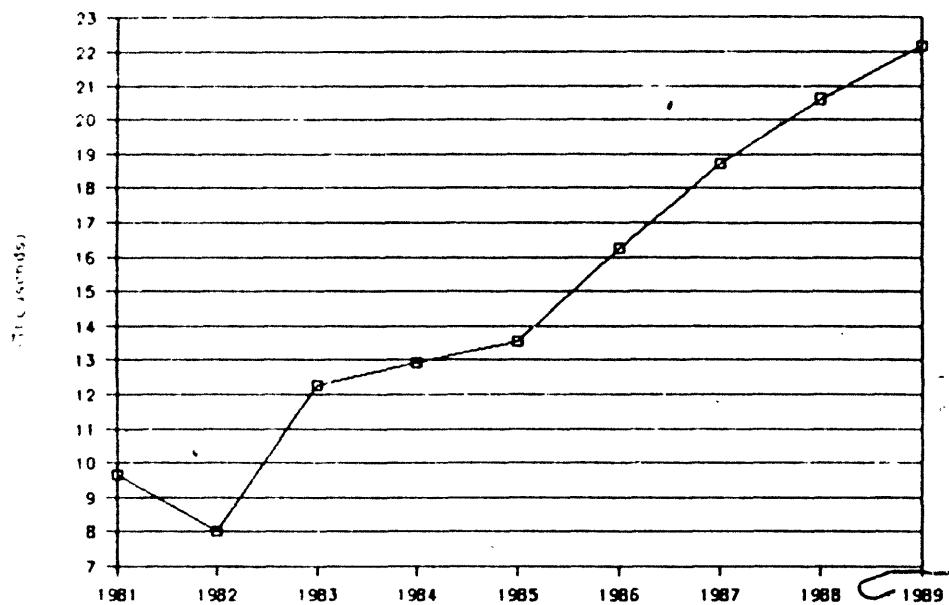


OFFICE OF CONSUMER AFFAIRS AND INFORMATION SERVICES

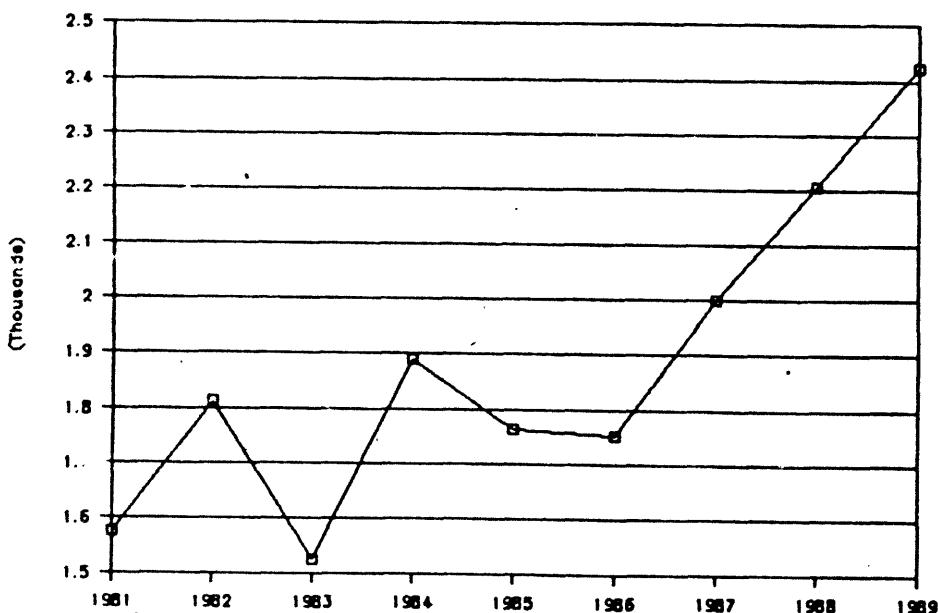
Percentage change in workload and staffing from 1981 through 1989 (estimated) is as follows:

- 130% increase in the number of complaints and inquiries received from 9,639 to 22,189;
- 544 increase in the number of FOIA/Privacy Act requests received from 1,575 to 2,423;
- 153% increase in the public reference room filing and processing activities from 396,319 to 1,001,460; and
- 14% increase in the headquarters staff years from 37 to 42.

Graph 30  
COMPLAINTS & INQUIRIES RECEIVED (Headquarters Only)

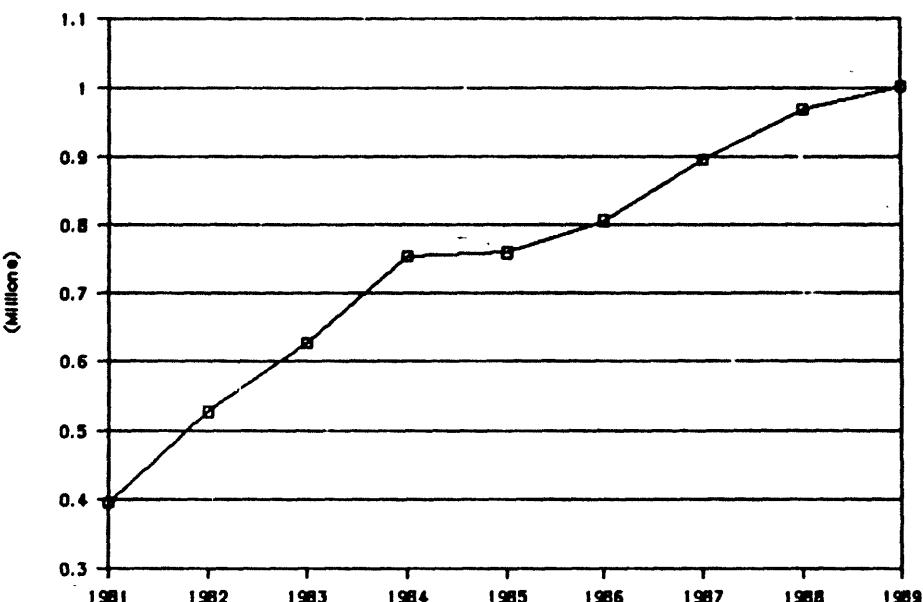


Graph 31  
FOIA/PRIVACY ACT REQUESTS RECEIVED



Graph 32

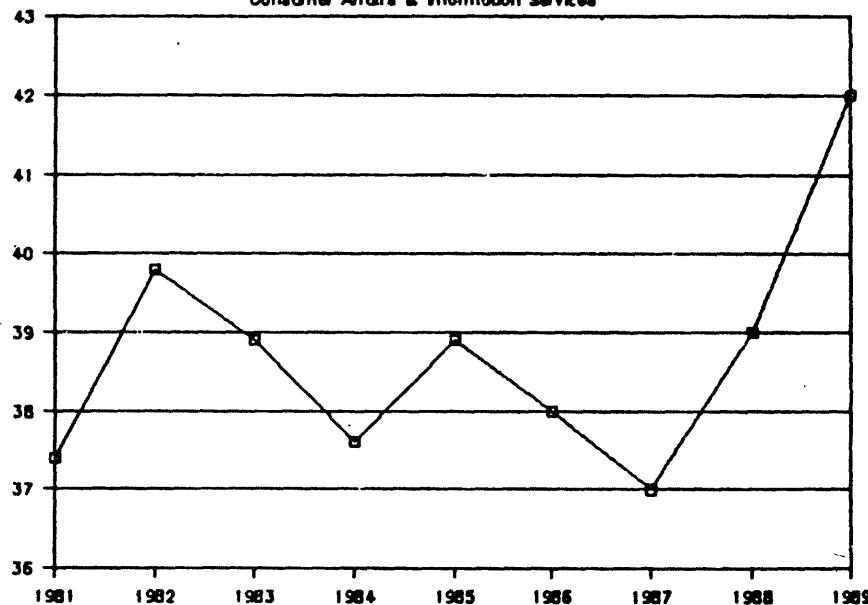
## PUBLIC REFERENCE FILING &amp; PROCESSING (Headquarters Only)



Graph 33

## STAFF YEARS

Consumer Affairs &amp; Information Services



**SEC AUTHORIZATION**

**Mr. SMITH.** Does your authorization cover the entire request?

**Mr. RUDER.** My authorization covers the entire request with approximately \$12 million not utilized.

**PENDING LEGISLATION**

**Mr. SMITH.** Do you have any legislation pending?

**Mr. RUDER.** Yes, sir, the Glass-Steagall reform bills may require an increase in our resources.

**Mr. SMITH.** What kind of increases are we talking about?

**Mr. RUDER.** We are talking roughly of a less than four percent increase in staff, primarily in the market regulation area, requiring us to inspect banking activities, securities activities in banks.

**Mr. SMITH.** Does that increase the fees?

**Mr. RUDER.** Pardon me?

**Mr. SMITH.** Does that increase fees also?

**Mr. RUDER.** It would increase registration fees to the extent that the banks were engaged in mutual fund activity.

**Mr. SMITH.** Can you make an estimate of what increase to expect?

**Mr. RUDER.** I have not.

**Mr. SMITH.** Would it be minimal in 1989?

**Mr. RUDER.** Yes, I think that is right. There would be some increase in fees to the extent we had the additional requirements.

**Mr. SMITH.** Put details in the record as to what impact you think the passage of that Act would have in 1989, or is it possible to project?

**Mr. RUDER.** We have those figures in general.

[The information follows:]

**IMPACT OF GLASS-STEAGALL REFORM LEGISLATION ON SEC FEE REVENUE**

If the 14,000 commercial banks operating in the United States are permitted under new Glass-Steagall legislation to engage in a broad range of securities activities, it is conceivable that as many as 1,900 new investment companies and 1,400 new investment advisers will be created. Each new investment company will be required to pay a one-time fee of \$1,000 to register under the Investment Company Act and a recurring fee of \$125 each time a semi-annual report is filed. Each investment adviser will be required to pay a one-time fee of \$150 to register under the Investment Advisers Act. Therefore, if the estimated numbers of new investment companies and investment advisers are correct, the SEC will receive \$2,110,000 in one-time revenue from the filing of related registration statements and \$475,000 each year in recurring revenue from the filing of related semi-annual reports. Each investment company will also have to pay a filing fee to register any shares they sell, but this amount is impossible to estimate at this time.

**FUNDS REQUESTED OF OMB**

**Mr. SMITH.** Your request is approximately \$161.9 million, which is a \$26 million increase. What did you request of OMB?

Mr. RUDER. Adjusted, we requested approximately \$170 million. There were some increases that OMB made because of inflation factors, salary increases, etc.

Mr. SMITH. There were some decreases you mean?

Mr. RUDER. There were some increases that we reached in an adjustment with OMB that we had not included in our initial budget request.

Mr. SMITH. So you were reduced \$9 million from your request.

Mr. RUDER. No, it is the other way around. The initial request was approximately \$164 million, but then there were some pay raises, basically pay raise figures which would have raised that to \$170.

Mr. SMITH. So the figure that corresponds to \$161.9 million would be \$170 million?

Mr. RUDER. \$170 million.

#### IMPACT OF OMB APPROVED STAFFING LEVEL

Mr. SMITH. Okay. What is represented in that \$9 million?

Mr. RUDER. The primary matter that is represented in that are staff increases in the full disclosure area, and in the prevention and suppression of fraud area.

Mr. SMITH. Detail that for the record

Mr. RUDER. Yes, sir; 144 positions which we did not receive, of which 67 were in full disclosure, 56 in prevention and suppression of fraud and 16 in investment regulation, which did receive a good increase, 4 in legal services and 1 in the supervision and regulation of securities markets.

I think I might amplify on the prevention and suppression of fraud area. There has been a significant increase in the division, which we call our Enforcement Division, over the past few years. The early part of that increase was achieved by transferring positions within the agency from other divisions to Enforcement. Nevertheless, we feel that, particularly in regard to the large fraud cases which we think are going to possibly come to litigation this coming year, there will be a need for increased staff.

Mr. SMITH. To support your cases in court?

Mr. RUDER. Yes. While I cannot detail it, sir, we think there is some possibility we will be in what we call large case litigation which will require very substantial resources. We may be devoting as much as 20 percent of our enforcement staff's work to these large cases if they should come.

#### BUDGET ALTERNATIVES

Mr. SMITH. Well, you are not the only agency we have problems with in this budget, but you are one. We have law enforcement in this same bill, the courts, both of which have been given substantially increased responsibilities and Congress is always willing to vote for those, but when it comes to providing the money, it is not there. There was a Budget Resolution passed yesterday with everybody congratulating each other on what a great resolution it was. It assumes a one percent cut in your budget instead of a \$26 million increase. Of course, it just does not make sense. They say they are under a gun because of some agreement to certain overall re-

ductions that they cannot get any other way. This is the problem we have trying to use a freeze level for all agencies across the Government. It does not work.

**Mr. RUDER.** I could respond to that by saying that Chairman John Shad did a remarkable job of bringing the Commission to a point where it was able to fulfill its responsibilities without much staff increase during his time.

**Mr. SMITH.** There was an increase of \$95 million.

**Mr. RUDER.** The staff stayed about the same, sir. I think when I came in what I found was that the staff at practically every level was severely strained and, as we begin to put more obligations on the staff—

**Mr. SMITH.** Well, your volume of business increased, including the volume of fees collected, very substantially. But the way we budget in the Federal Government, we do not get any credit for these fees.

My next question is what do you project to be the fees collected in 1988 and then in 1989?

#### FEE REVENUE

**Mr. RUDER.** Well, speaking roughly, our 1988 fees will be approximately \$278 million and our projections for 1989 are approximately \$281 million. That is to be compared to a budget request of \$135 million and \$161 million.

**Mr. SMITH.** Do you have the final figures for 1987?

**Mr. RUDER.** I would have to ask George Kundahl

**Mr. KUNDAHL.** The final 1987 number was \$263.9 million. On the 15th of March we received transaction fees reflecting 1987 trading activities. They came in at \$83.6 million versus an estimated \$82.9 million. So we were very close in what we estimated.

**Mr. SMITH.** It is not necessary, but do you have them for 1986?

**Mr. KUNDAHL.** Yes, we have figures on that.

**Mr. RUDER.** Our charts would show a budget of \$106 million and fees of \$215 million. The fees went up in 1986 dramatically from 1985.

**Mr. SMITH.** I would like to just lay out the problem for you. I do not know what we are going to do with it. We have the same problem in law enforcement and drugs. The so-called war on drugs is going to require additional funding. We will just have to do the best we can do.

#### KEY OMB INCREASES

**Mr. RUDER.** Well, I would like to say that the key increases agreed to by OMB in our negotiations were in the investment management and market regulation areas. These are areas which are being impacted by the market break. We have had a combination of problems, plus large increases in the number of people doing business. Those two divisions, I would say, are under severe strain in dealing with the combination of their regular duties and the market break.

## MARKET CRASH/CFTC ACCORD

Mr. SMITH. Has the crash caused you to revisit this matter of division of responsibilities between you and CFTC?

Mr. RUDER. Yes, it has.

Mr. SMITH. Are you revising your area of agreement?

Mr. RUDER. Well, this is, as you may know, a very contentious political matter. Our attitude has been that in the near term we should attempt to cooperate with the CFTC in order to reach regulatory agreement; that in the mid-term we think that we should have the tie-breaking authority; and in the long term it would make the greatest sense if we were to regulate the Index Futures Market. We are vigorously opposed by the CFTC on that, as I am sure you are aware. There is political fighting about that.

Mr. SMITH. You see, I was the author of the CFTC Act. I never did think they should be in financial futures. It was an inter-agency deal, so you do not have to wait if you cannot agree with them. Somebody in the Administration higher than either one of you could settle the matter. You do not have to wait on legislation.

Mr. RUDER. Well, the 1982 Accord would require legislative intervention.

Mr. SMITH. There have been a lot of new contracts since then.

Mr. RUDER. The Accord gives the CFTC responsibility for those contracts.

Mr. SMITH. They are approving every contract that is requested.

Mr. RUDER. We do have authority or responsibility to review new contracts with regard to several questions, one of which is the question whether the contract is manipulative. But, once we say the contract is approved, as far as we are concerned, our authority ceases. I think the significant point, from my point of view, is that in 1982, when that Accord was reached, the so-called derivative index products, and even the futures financial products, did not have the importance that they do now and I think if one were to go back and say what kind of result would you like, if you could look at that accord in today's world—

Mr. SMITH. It was always obvious approval of those contracts, they would be attractive to a lot of people as an alternative. So a new explosion is going to occur. CFTC has about a third of the personnel you have. They ought to be doing a better job.

Mr. RUDER. Interestingly enough, the number of contracts which are in the Derivative Index, across all Exchanges, is something like 10.

Mr. SMITH. Well, it is just that much more of a problem.

Mr. RUDER. It requires substantial surveillance.

## CLOSING

Mr. SMITH. I have a number of other questions which I think can be responded to in the record just as well as they can here, and I am going to read the record very carefully and we will do the best we can with the budget. I wanted you to know what our problem is. We tried last year to get some credit for these fees. After all, you collected a lot of money. We could not get anybody at OMB even interested in listening. We want you to have a budget over here, but if we could use some of these fees, it would help.

Mr. RUDER. You should know, sir, that we have been requested by the Senate Securities Subcommittee to engage in a study to look at the relationship between our fees and our appropriations. We will be submitting a report to them, and we will make sure one reaches you as well.

Mr. SMITH. Thank you very much.

[The questions for the record and the answers thereto, follow:]

QUESTIONS SUBMITTED BY CHAIRMAN SMITHFISCAL YEAR 1989 BUDGET REQUESTREPRESENTATION ALLOWANCEQUESTION:

You requested in a recent letter, that the SEC's FY 1989 request for a representation allowance be increased from \$3,000 to \$10,000. Why is this increase necessary?

ANSWER:

The Securities and Exchange Commission is, as you know, embarking on many new initiatives with significant international consequences. During the past several years enforcement and surveillance information sharing agreements with the Swiss, British, Canadian and Japanese securities agencies have greatly expanded the role the Commission plays in international affairs. In addition, members of the Commission are increasingly being called upon to both represent the interests of the United States abroad and host international contingents.

The October, 1987 market break together with ongoing transnational investigations of fraudulent activities have made it very clear that the markets are linked internationally. This linkage requires more understanding and cooperation among securities regulators and exchanges. In order to foster these international relationships, it also is critical that the SEC be able to host foreign representatives and sponsor events to develop positive working relations.

The increase from \$3,000 to \$10,000 will allow the Commission to foster cooperation and respond to the hospitality shown by foreign governments.

Budget IncreasesQUESTION:

There is a growing concern that, despite the large increase granted the SEC in 1988, the agency is falling behind in its

efforts to monitor the securities markets. Do you agree with this observation, and how does your FY 1989 budget request address this concern? Is the 1989 request sufficient to perform all of the functions that you believe are necessary to accomplish the agencies mission?

ANSWER:

While the Commission does not believe it is falling behind in monitoring the securities markets, it is necessary for both the Commission and the SROs to commit additional resources and enhance current monitoring capabilities to keep pace with evolving financial markets. The Commission's request for additional staff in the 1989 budget is designed to strengthen all facets of the market-monitoring function, from oversight of SRO rule proposals to the inspection program. In addition, the Commission is requesting the resources necessary to enhance the computer capabilities and, specifically, to upgrade access to market data from the securities, index futures, and foreign markets. These efforts, in conjunction with the significant commitments of the SROs to continue to improve their market monitoring programs, seek to ensure that a strong regulatory presence is maintained in the markets.

QUESTION:

The total FY 1989 budget request of almost \$161 million represents a \$25.7 million (19 percent) increase over the FY 1988 appropriation of \$135 million. When the FY 1989 request is compared to the FY 1987 appropriation, the increase is almost \$49 million (44 percent). What are the major areas of increase in the FY 1989 budget as compared to FY 1988, how would you rank those increases, and what are your reasons for such a ranking?

ANSWER:

The SEC's requested FY 1989 increase of \$25.7 million includes \$14.3 million in non-discretionary expenses and \$11.4 million in discretionary expenses.

The \$14.3 million consists of \$8 million for EDGAR contract expenses, \$4.6 for mandatory salary and related personnel benefit costs, and \$1.7 million in contractual commitments, rate and price increases. Since each of these costs must be covered, and the vast majority of the Commission's FY 1988 non-personnel expenses are tied up in fixed costs, the required absorption of

these increases would need to be achieved through an offsetting reduction in staff levels. Of course, any of the requested EDGAR funds which exceed the amount to be awarded in an operational contract would not need to be offset.

The \$11.4 million balance includes \$6.2 million for increased program staff, \$4.2 million for automated data processing support and \$1 million for staff support services. These increases are inextricably joined and, along with the resources provided the SEC in FY 1988, provide the agency with a minimum level of resources to support its complex regulatory agenda, growing workload demands and increasing important role in the making of domestic and foreign economic policy.

Edgar Procurement Project

QUESTION:

What is the status of EDGAR Procurement Project, when is an award expected, and why has the contractor's proposal been subject to delays?

ANSWER:

Following the release of RFP Amendment 14 on February 26, 1988, the SEC is awaiting the submission of proposals on Friday, April 29, 1988. Proposal evaluation will begin immediately. Contract award is not expected before September 1988.

The procurement process has been delayed as a result of various requests by Congress, OMB and potential offerors. EDGAR competition was suspended in July 1987 to amend the RFP to reflect full federal funding of the Receipt and the Acceptance & Review subsystems as agreed with Congress and the GAO. While that amendment was pending, the OMB conducted an executive review of the EDGAR procurement, including the revised funding, and approved the basic structure of the RFP. However, the SEC added a fixed fee to the initial three year cost reimbursement phase of the contract to make it more attractive to potential offerors and amended the RFP in October 1987.

The SEC has issued four subsequent amendments of the RFP to (1) extend the RFP deadline to allow potential offerors additional time to prepare proposals, (2) clarify several sections of the RFP as a result of questions raised before and after a November 20 pre-proposal conference, (3) reflect discussions with the states, represented by the North American Securities

Administrators Association, and the self-regulatory organizations concerning their interface with EDGAR, and (4) encourage competition by extending again the RFP deadline from March 31, to April 29, 1988 and to affirm that federal funds will be used to support public reference room and press room access to EDGAR public data.

QUESTION:

Will the States be able to use the EDGAR system? If so, what will be the additional cost, and how will the costs be allocated?

ANSWER:

Under Amendment 13 to the EDGAR Request for Proposals (RFP), all State-related EDGAR filings will be made available to the States via a computer facility to be established and maintained by the States' agent, the North American Securities Administrators Association (NASAA). This computer facility, (also referred to as the NSTAR system) is described by the NASAA EDGAR Committee discussion memorandum dated February 6, 1986.

Specifically, all State-related filings will be forwarded to the NASAA computer by direct communication or by overnight magnetic tape following SEC acceptance. NASAA will be responsible for distributing these filings in an appropriate format to the State regulators for review. The State regulators will be able to post filing acceptance notices on the EDGAR electronic bulletin board via the NASAA computer. They will also be able to submit batch queries to the EDGAR public database via the NASAA computer to facilitate their review process. The federal cost of this interface is not known but is estimated to be a small percentage of the EDGAR contract cost.

Amendment 13 provides for a similar interface with the self-regulatory organizations (SROs) in the interest of facilitating one-stop filing. The SROs would also be expected to establish and maintain EDGAR-compatible computer facilities to receive, store and process EDGAR filings.

To help offset the cost of these separate computer facilities, the SEC can require the EDGAR contractor to make available to NASAA and the SROs the software used or developed for the EDGAR Receipt and A&R subsystems. Specifically, the software developed solely at federal expense for the SEC can be made available at no cost. For software in which the contractor or a third party has a proprietary interest, the contractor or the third party can

negotiate directly with NASAA or the SROs concerning the costs, terms and conditions of its delivery and use.

NASAA and the SROs have indicated that they would prefer direct, on-line access to the EDGAR system in lieu of establishing EDGAR-compatible computer facilities. The SEC believes this approach has a number of disadvantages including a federal cost that would be several times greater than the cost of the Amendment 13 interface. The SEC has asked PEDSIM/MITRE to develop reliable cost estimates of both approaches prior to contract award in September.

**QUESTION:**

We understand that the awardee of the final EDGAR contract will not be required to use the pilot system. Is any developmental work being done on the pilot system, and if so, what is its cost?

**ANSWER:**

The awardee of the final EDGAR contract will be required to maintain the pilot system until the pilot participants are phased onto the operational EDGAR system --currently estimated to be approximately one year after contract award. This means the pilot will remain active at least through October 1989 and possibly longer. There are now over 1,200 registered pilot participants who expect the SEC to keep the pilot viable until the operational system is available.

The awardee will also be expected to incorporate in the operational design those functions and procedures that have been tested and proven useful in the pilot. Therefore, we are continuing to use the pilot to develop or enhance filing and processing procedures -- especially those that are deemed to be significant by the filers or users.

During FY 88, the pilot contractor is expected to devote about 30% of its total staff hours to development and testing activities. On a cost basis, this has been averaging about \$56,000/month

**QUESTION:**

Isn't there a risk that development of the pilot will be wasted effort if the awardee is not required to use the pilot system?

ANSWER:

As noted in the previous answer, the awardee will be required to use the pilot until operational EDGAR is ready. Furthermore, the awardee will be expected to incorporate successful pilot procedures and techniques in the design of the operational system. This will help ensure that the operational system meets the needs of both filers and users. The pilot has provided an excellent environment for testing electronic filing and processing enhancements such as reference filings and multi-registrant filings. We believe there are advantages to developing and testing such procedures on the pilot with 1,200 volunteer filers rather than on the operational system with several thousand mandated filers.

QUESTION:

Is the Commission doing any work in "data tagging" at this time, and if so, what is its cost?

ANSWER:

At the present time, 50 companies are voluntarily filing an experimental data tagging schedule on the pilot based on the disclosure requirements of Regulation S-X. The pilot extracts specific entries from the schedule, calculates designated ratios, and compares the results to pre-programmed parameters to facilitate financial analysis. Those filers participating in the experiment report that preparation and input of the separate data tagging schedule is not difficult, and the pilot examiners are pleased with the results. The cost of processing the schedule is very small.

No other work on data tagging is planned until after the operational contract is awarded.

October 1987 Stock Market CrashQUESTION:

The SEC produced a major report on the crash. What was the impact of this report on the SEC's budget in FY 1988 and FY 1989?

ANSWER:

The Commission has taken or proposed the following corrective actions.

- Ensured that the securities exchanges increased their capacity to handle volume surges.
- Participated in a number of meetings designed to enhance intermarket coordination and contingency planning.
- Received or approved a dozen SRO rule filings designed to address problems noted by the market break.
- Proposed legislation granting the SEC authority over stock index futures.
- Recommended that margins for stock index futures and options be increased to between 20¢ and 25¢ to reduce the excessive leverage accorded by the products.

QUESTION:

We understand that one problem in compiling the report involved the availability and accuracy of trading data supplied by the exchanges. What action is being taken to improve the quality of trading data?

ANSWER:

The Division's analysis of index-related trading during the October market break relied primarily on information submitted directly from firms detailing their trading activities. This information included specific data elements that are not routinely captured by surveillance or clearing records maintained at securities or futures exchanges, e.g., the type of strategy employed in the program and the corresponding transactions in another market (such as buying index futures contracts in an arbitrage program while selling the index's component stocks). Trading records from securities exchanges and position information from index futures exchanges were used, however, to cross-check the quality of the information supplied by the firms, particularly concerning the number of shares or futures contracts

bought or sold by each firm. While this exchange information was generally adequate for this cross-checking, the development of "large trader reports" for stock transactions (along the lines of those used in the futures markets) would have facilitated this review.

The Division's report on the market break recommended that the Commission consider the feasibility of: (1) developing some form of large trader report for equity securities; and (2) implementing cost-effective record keeping and reporting procedures at the firm level to routinely capture program specific information to facilitate future market reconstructions. The Division is working on possible formats for these program specific procedures.

**QUESTION:**

What corrective action, including regulatory and legislative changes has the Commission taken or proposed to prevent further market declines such as the record drop that occurred in October 1987?

**ANSWER:**

In response to the October market break, the Commission recommended that the stock exchanges, futures exchanges, and market regulators take steps to enhance capacity and contain volatility in the securities markets. The recommendation was made in light of the increasingly linked market formed by stock index futures, stock index options, and stocks. In this linked market, new institutional trading mechanisms and strategies can cause extraordinary peak volume and volatility. The Commission has recommended three broad approaches for reform of the market: 1) expanding capacities of the market, 2) increasing coordination among the markets and regulators, including global regulatory cooperation, and 3) retarding volatility and volume of trading during crisis periods. To effect the last recommendation, the Commission suggested, among other things, that margins for stock index options and futures be raised to a level harmonious to the margin for stocks. Aside from these three recommendations the Commission continues to explore the necessity and feasibility of other regulatory enhancements to address market structure deficiencies that the October market crash revealed.

A more specific explanation of these recommendations, as well as of other Commission initiatives related to the market break, and a progress report on their implementation are contained in the written testimony of Chairman Ruder before the Senate Committee on Banking, Housing, and Urban Affairs, dated March 31, 1988.

QUESTION:

What implications does the October market decline have for the capital formation process? Does the SEC anticipate a significant change in the number of public offerings, and what impact will this have on staff workload?

ANSWER:

The market break and the volatility that followed appear to have had a significant impact on the capital formation process. In the period after October 19, 1987, a substantial number of the pending registration statement offerings were withdrawn or delayed and, as the chart below indicates, new filings declined sharply from prior levels.

	Registration Statement Filings Per Week		Dollar Amount of Registration Statements Filed Per Month (in billions of \$)	
	Pre-Break	Post-Break	Pre-Break	Post-Break
New Issuers	52	26	\$13	\$ 7
Repeat Issuers	45	28	\$32	\$19

The composition of staff workload depends, in part, on the level of financing and filing activity, which, in turn, is a reflection of economic conditions. Because the current economic environment is highly uncertain in light of the market break, projections of the levels of transactional filings and estimates of workload composition are extremely difficult.

Projected 1988 workload assumes a decrease in the number of new issuer 1933 Act registration statements filed and reviewed, and a moderate increase in the number of repeat issuer 1933 Act registration statements filed and reviewed. These projections anticipate a normalization of the markets for offerings by seasoned issuers.

A decrease in the number of new issuer transactional filing reviews, permits the review of a greater number of annual reports. This is true because the review of transactional filings, of necessity, consumes more staff time than the review of annual reports. Transactional filings are more complicated documents. They include additional information about the transaction, and, where appropriate, disclosures regarding new types of securities, and pro forma financial statements for business combinations. More staff review time also is necessary because of frequent amendments to the filings which must be reviewed.

Because of the market uncertainties, workload projections for 1989 have generally been held to 1988 levels.

Sec Fees

QUESTION:

There is a significant difference between the FY 1988 and FY 1989 budget estimates in reporting total SEC fee revenues for FY 1987 and FY 1988 as follows:

	1987	1988
Reported in the 1988 Budget	\$223,000,000	\$232,000,000
Reported in the 1989 Budget	\$264,000,000	\$278,000,000

QUESTION:

Please explain this difference in the estimates.

ANSWER:

The Commission's fee estimates are based on historic growth trends and known securities market activities. For example, the Commission's estimate of 1988 fee revenue from securities transactions under the securities exchange Act of 1934 reflect a continuation of the 26.6 percent average increase observed during the past six years. This use of an average growth rate, while it tends to generally flatten the sharp growth rate in fee revenue experienced during the recent bull market, provides a more realistic estimate of fee revenue under "normal" market conditions.

QUESTION:

We note annual amounts exceeding \$35,000,000 for "Other filings and reports" in 1987 through 1989. Please provide a breakdown of this revenue by major component. How are the fees established for these categories?

ANSWER:

The revenue estimates for "other filings and reports" include \$7.2 million in each year for miscellaneous reports and \$31.1 million in 1987 and \$29 million in 1988 and 1989 for tender offer and merger filings. FY 1987 revenue reflects the actual collections for each category that were deposited into SEC deposit accounts in the U.S. Treasury. Revenues for FY's 1988 and 1989 were derived from program workload estimates provided for each category in the SEC's 1989 budget request. As stated on page I-3 of the SEC submission, "The current environment is highly uncertain in light of the October, 1987 market break. Projected workload for 1988 is based on the assumptions that the downtrend in new issuer 1933 Act registration statements and tender offers experienced in 1988 will continue during the year....workload projections for 1989 generally have been held to the anticipated 1988 level."

Full DisclosureQUESTION:

You are requesting an increase of 34 positions for the Full Disclosure category. In 1987, the Full Disclosure staff reviewed 16 percent of the reporting issuers' financial statements and related disclosures. In 1988 and 1989, your budget indicates that the SEC expects to review 28 % of these items. Why has this percentage increased so sharply?

ANSWER:

The number of issuer reviews accomplished in a given period reflects the mix of filings received and reviewed, and the level and composition of the review staff. The Commission projection of increased issuer reviews is based on an anticipated decline in

the number of new issuer 1933 Act registration statements received and reviewed, a moderate increase in repeat issuer transactional filings received and reviewed, a return of preliminary annual meeting proxy reviews to historical levels, and a significant increase in the number of accountants in the review process.

Issuer reviews are comprised of full reviews of repeat issuer transactional filings (repeat issuer 1933 Act registration statements and merger proxies) and annual reports, and the full financial review of an additional number of annual reports. A decrease in reviews of new issuer 1933 Act registration statements allows greater resources to be used to review annual reports, increasing the overall number of issuer reviews. This is true because the review of transactional filings, of necessity, consumes more staff time than the review of annual reports. Transactional filings are more complicated documents. They include additional information about the transaction including, where appropriate, disclosures regarding new types of securities and pro forma financial statements for business combinations. More staff review time also is necessary because of frequent amendments to the filings which must be reviewed.

In 1987, approximately 72 staff years were expended in the full review of new issuer 1933 Act registration statements. In the same year, 69 staff years were devoted to issuer reviews with 49.1 staff years expended in the review of reporting issuer transactional filings, 19.3 staff years in the full reviews of annual reports, and approximately one-half staff year in full financial reviews. These reviews were accomplished with approximately one-third of the review staff consisting of accountants.

It is projected that staff years devoted to issuer reviews during 1989 will increase from the approximately 69 staff years in 1987 to approximately 110 staff years. This increase of 41 staff years will be derived primarily from an overall increase of 18 staff years devoted to the review program, and a reallocation of 23 staff years, based on projected workload composition, from review of new issuer 1933 Act registration statements and preliminary annual meeting proxies. A major component of the projection of a 28% level of issuer reviews is the projected increase of approximately 9 staff years devoted to full financial review of annual reports.

Achieving the projected level of issuer reviews depends to a significant extent on the successful implementation of the Commission's program to increase the number of accountants in the review process to a level equal to one-half of review personnel. Recruitment of experienced accountants to accomplish this goal, a net increase of 36 accountants from 1987 staff levels, is a long-term process, complicated by active competition from the

private sector. In addition, temporary hiring freezes, as occurred in the first quarter of 1988, can interrupt this recruitment program. As a result, there is no assurance that the staff will reach its hiring goals by 1989.

Further, accomplishing the projected increase in issuer reviews also will depend on the accuracy of the estimates of financing and filing activity, which, in turn, depends on forecasts of future economic conditions. The current environment is highly uncertain in light of the October, 1987 market break. These uncertainties make projections extremely difficult, and the estimates of workload for 1989 more unpredictable. For this reason, workload projections in 1989 generally have been held to the anticipated 1988 level.

**QUESTION:**

In addition, your budget indicates that the number of "full financial reviews" is expected to increase from 60 in 1987 to 780 in 1988, and then to 930 in 1989. Why is there such a sharp increase in full financial reviews, and what are the relative costs and benefits of "full reviews" and "full financial reviews?"

**ANSWER:**

The principal type of review conducted by the staff is the full review, which involves an in-depth examination of the entire document and generally requires the time and staff necessary to perform a complete analysis of the accounting, business, and legal aspects of the filing. This type of review is necessary to permit review for compliance with all applicable disclosure requirements, and it is projected that approximately 70% of the issuer reviews performed during 1989 will be full reviews.

The audited financial statements and management's discussion and analysis represent the core of the continuous reporting requirements. In 1987, in recognition of this fact, and the fact that examination of this information generally can be performed totally by the accounting staff, the Commission instituted a program to increase the number of accountants from one-third to one-half of the review staff. This increase in the accounting staff will permit the Commission to increase its review presence on the most cost-efficient basis. The increase in the estimated number of full financial reviews during 1988 and 1989 reflects the Commission's projected completion of this accountant hiring program. It is estimated that a full financial review of an annual report can be completed in approximately one-half the time

required for a full review. Through full financial reviews, the Commission has projected that in 1988 and 1989 it will review the financial disclosure of approximately 7% and 8%, respectively, of the issuers subject to continuous reporting obligations, while continuing to maintain a satisfactory level of full reviews (approximately 21% of the reporting issuers in 1988 and 20% in 1989).

Of course, less than full implementation of the accountant hiring program would lessen the effectiveness of this program. Recruitment of experienced accountants, with the goal of a net increase of approximately 36 accountants from 1987 staff levels, is a long-term process, complicated by active competition from the private sector. In addition, temporary hiring freezes, as occurred in the first quarter of 1988, can interrupt this recruitment program. As a result, there are no assurances that the staff will reach its hiring goals by 1989.

QUESTION:

On page I-3, 8 you indicate that increased resources are being dedicated to ensure compliance with the Debt Collection Act and the Department Treasury Cash Management Program. To what extent, if any, is the SEC not now in full compliance, and what are your plans to correct the situation?

ANSWER:

The SEC is in compliance with currently required Debt Collection Act and the Department Treasury Cash Management Program. Beginning in FY 89 more stringent guidelines are applicable to interest charged on receivables and more timely deposit of fee collections. In order to be in compliance with the more stringent guidelines, the SEC is implementing the GAO approved Federal Financial System and is using electronic fund transfer technology through Treasury lockbox arrangements.

QUESTION:

How will the recent Supreme Court decision regarding disclosure requirements for public companies involved in preliminary merger negotiations affect the SEC's Full Disclosure Program?

ANSWER:

The Court upheld the position recommended by the Commission in a brief filed as amicus curiae in the Basic vs. Leavinson case. The Court held that merger negotiations can be material facts for shareholders prior to the execution of an agreement in principle. Therefore, any statement that falsely denies the existence of such negotiations would violate the antifraud provisions of the federal securities laws. The Commission believes that the administration of the full disclosure program will be assisted by the Court decision.

Supervision and Regulation of Securities MarketQUESTION:

You are requesting an increase of 21 positions for this activity which will permit the Commission to complete 490 SRO member oversight examinations. However, at this examination rate it would take more than 20 years to examine every broker/dealer only once. How can you be confident that this rate of examinations is adequate to protect the investing public, given the large increase in broker/dealers?

ANSWER:

It is not intended that the Commission's examiner resources be used to conduct routine cyclical broker-dealer examinations. The Commission performs only oversight and cause examinations. The self-regulatory organizations ("SROs"), such as the NYSE, NASD, AMEX and CBOE, conduct regular examinations of their members. The Commission's oversight examination program is designed to assess the examination operations and capabilities of the SROs. The Commission seeks to examine annually at least 6% of those firms doing a public business. Firms are carefully selected on the basis of such factors as the number of customers, monetary exposure, clearing operations, volume of trading, and types of products sold. Thus some firms are examined more frequently by the Commission than others, depending on those factors as well as on market trends and prior SRO examination findings.

QUESTION:

In your justifications you estimate that an increase of at least 50 percent, or an additional 120 staff years would be necessary to keep up with the growth in the broker/dealer population over the past seven years. How are you going to cope with this additional workload without this increase in staff?

ANSWER:

The statement referred to in this question was designed to help convey to the reader a more concrete idea as to the dimensions of the personnel shortage facing the market regulation program. As also noted in the budget justification, however, the Commission is not seeking a 50% staff increase in the program for fiscal 1989. The 1988 authorized staff increase and the requested increase for 1989, totaling 19% over the 1987 level, represent growth rates that the program can absorb practicably in those years. They should nevertheless substantially alleviate the staff shortage.

Moreover, while not sufficient without staff increases, other tools are available to help keep pace with industry growth. For example, in the broker-dealer examination program, the Commission will continue to cope with additional workload through better management of examiner resources, use of more efficient examination techniques and more focused examinations to address areas where problems are indicated and areas of crucial importance to investors and the marketplace, greater use of computers in the field, and greater reliance upon the SROs as their operations are upgraded.

Investment Management RegulationQUESTION:

In both 1987 and 1988 this Committee has heard the SEC express concern about the ever growing number of investment advisors and financial advisors. What is the Commission doing to monitor this portion of the industry?

ANSWER:

The Commission's 1989 budget request calls for an additional 30 investment company and investment adviser examiners. This will represent roughly a 30% increase in the number of examiners performing investment company and investment adviser examinations. With these additional inspections, the examination cycle for advisers should be shortened, thus resulting in a closer monitoring of the industry.

In addition to increasing the number of examinations the Commission performs, the Commission's staff is also working with the states encouraging an increased investment adviser examination effort. Last year, the Commission's staff conducted joint inspections with the 20 states participating with the SEC.

In addition to increasing the number of investment adviser examinations, the Commission is also, through the use of computer analysis of registrant data, improving its ability to target for examination registrant's who present increased risks to clients. Examinations of these higher risk registrants are more detailed than those not identified as high risks.

QUESTION:

During the period 1980-1989 estimates for the number of investment companies will have more than doubled and the number of registered investment advisers will have more than tripled. How have you been able to meet these workload growths with average staff increases of only two percent a year between 1980 and 1987, nine percent in 1988 and a requested 22 percent increase for FY 1989?

ANSWER:

Over the past eight years, the Commission has implemented various procedures to deal with the increasing number of registrants. These include: selective review of IC registration statements and post-effective amendments; rulemaking to codify routine transactions that otherwise would require exemptive applications; joint inspections with state securities commissioners; and better targeting of IA inspection candidates to take into account the risk to investors inherent in an entity's operations. In addition, a systems examination approach to IC inspections has been adopted which focuses on key operating and internal control systems of IC complexes. Use of

these procedures has enabled the staff to keep up with the growing workload. However, the benefits of these procedural changes have now been fully realized. The 1989 staffing request is the absolute minimum needed to keep up with the growth in numbers and complexity of the IC and IA industries.

**QUESTION:**

Do you believe that the FY 1989 proposed staffing level is adequate for this program, and if not, why have you not requested sufficient staff to review 100 percent of registration documents of investment advisers and new registrations of investment companies?

**ANSWER:**

The proposed FY 1989 staffing level for the Investment Management program is the minimum needed to perform an adequate level of review of investment company registration documents. Registration statements filed by new investment companies are subject to 100% review except for those parts of the documents that contain material that has been previously reviewed by the staff in an earlier filing by a related investment company. We believe that these procedures provide adequate protection to the investing public while making the most efficient use of staff resources.

The staff reviews all registration materials filed by new adviser registrants, to: (1) determine if the forms have been completed appropriately, (2) identify any disciplinary actions the adviser has disclosed and (3) determine if narrative describing how the new adviser registrant is planning to conduct its business may violate the law. In contrast, periodic amendments to initial registration statements filed by investment advisers are looked at while entering certain data from each form into a recently developed computerized system. The review of such amendments is very brief and covers only the objective portions of the form because of the large volume of amendments received (an estimated 12,000 during 1989). The purpose of this "review" is to determine if the changes reported by the registrant indicate any problems. However, because the narrative portions of amendments are not reviewed, disclosures made by an adviser that indicate ongoing violations of the securities laws may not be found until the next on-site inspection of the adviser. With a larger review staff, both initial registrations and amendments could be reviewed in greater depth and problems disclosed by this review could be handled by the Commission's regulation or enforcement staff at an earlier time.

QUESTION:

Does this apparently low coverage of both IAs and ICs represent an acceptable level of risk for the investing public?

ANSWER:

Innovative inspection procedures implemented by the Commission over the past several years have increased the efficiency and productivity of the inspection staff. The impact of these procedures is reflected in the large increase in the number of inspections completed during each of the last several years. These increases have offset to some extent the impact of the significant growth that has taken place in the investment company and investment advisory industries. These new procedures have also improved the methods used to select registrants for inspection and the techniques used to conduct inspections. Investment advisers that present higher risks to the investing public are identified and inspected more frequently (about once every 4 to 5 years) than registrants whose activities represent lower levels of risk. Inspections of such entities focus on those aspects of their operations that account for the higher risk. In addition, we inspect all investment companies that are part of a family at the same time which allows the staff to focus on operating and internal control systems that are important to these funds' continued operation in ways that promote investor protection and compliance with the securities laws.

The efficiencies achieved from these new inspection procedures have, however, been fully realized. The staff cannot increase further the number or scope of inspections completed annually without additional staff. Therefore, if the additional staff requested for the inspection program for 1989 is not approved, we will start falling significantly behind in our ability to inspect registrants, particularly investment companies, on a timely basis.

Prevention and Suppression of FraudQUESTION:

Last year Former Chairman Shad expressed an urgent need for a large increase in the Commission's enforcement staff. The FY

1989 request has little program increase requested for the Enforcement Program. Does this indicate a change in Commission priorities?

ANSWER:

The continued success of the Commission's enforcement program remains among its highest priorities. The enforcement program received large increases in 1987 and 1988 to address the major investigations underway at that time. The Commission is still in the process of absorbing the increases authorized beginning last year, and is continuing to devote major efforts to searching for qualified applicants.

QUESTION:

Do you believe the agency has "turned the corner" on enforcement abuses in the securities markets?

ANSWER:

The comparatively small estimated increase for this coming year does not reflect a belief that the agency has "turned the corner" on securities fraud. If the repercussions of the October market break point to new or increased violations of the securities laws, the Commission may need additional resources for this program.

QUESTION:

On page II-4 of your budget justification you report that \$50 million out of the \$100 million settlement paid by Mr. Ivan Boesky consisted of stock. Has this stock been liquidated, and if not, what is its current market value?

ANSWER:

The cash payment is currently held in certificates of deposit. Since the case was settled on November 14, 1986, the cash payment has earned \$3.6 million in interest, after payment of \$220,000 for fees for the Special Compliance Agent appointed by the Court

and the escrow agent. The Court has ordered that the Commission submit a proposed plan for the distribution of the cash payment by May 9, 1988.

Boesky placed 5,786,712 ordinary shares of Cambrian & General Securities plc ("Cambrain") and 8,482,371 capital shares of Cambrain, and 193,827 shares of the common stock of Northview Corporation in escrow, for the benefit of the United States, in satisfaction of the penalty imposed in SEC v. Boesky.

On August 20, 1987, the Commission announced that it had determined to direct the escrow agent who holds the Cambrian and Northview Corp. shares not to liquidate those shares at the present time. The Commission's decision was based upon the fact that the Commission and the United States Department of Justice are investigating events concerning Mr. Boesky and others during the period of time that he was Chairman of Cambrain and Northview. These investigations are ongoing and the Commission was not in a position to release the investigative information it has accumulated, nor was it able to state whether such information would have any direct or indirect effect on the value of Cambrain or Northview. As a result, the Commission concluded that it would be inappropriate for the escrow agent to dispose of these securities at that time.

QUESTION:

Are you considering developing a change in policy about the handling of substantial noncash fines and disgorgements in the future?

ANSWER:

The intent of the penalty provisions of the Insider Trading Sanctions Act is to deprive a violator of money or property. While it is easier to deal with cash fines and disgorgements, where circumstances require the Commission will seek non-cash penalties in order to meet the purpose of the Act. The Commission will continue to deal with settlements on a case by case basis and to seek fines and disgorgements consistent with intent of ITSA.

QUESTION:

In response to the apparent increase in insider trading cases in recent years, there has been considerable debate over a proper definition of insider trading. What is your view on this issue?

**ANSWER:**

The Commission's insider trading enforcement program has been very successful, and the Supreme Court's decisions in both the Carpenter case and in Levinson v. Basic have been positive developments. Legislation defining insider trading could nonetheless be beneficial in several important respects.

- o It would codify the misappropriation theory of liability. While the Supreme Court's divided decision in Carpenter preserved the Second Circuit's precedents establishing misappropriation as a basis for liability, that theory has not yet been endorsed by other circuits.
- o It would codify the Commission's position that the insider trading prohibition extends to all persons who trade while "in possession of" material nonpublic information, and not just persons who trade "on the basis of" such information.
- o It would eliminate the "personal benefits test" for tipper liability imposed by Dirks v. SEC. Tippers who wrongfully communicate information would be held liable for all reasonably foreseeable trades by their tippees.
- o It would establish express private rights of action for contemporaneous traders and other persons who could prove that they were harmed by insider trading violations.

**Employee Resources****QUESTION:**

There has been much public concern lately over a drain from Government service of qualified professionals in a variety of occupational fields. Stated reasons for this drain have included disillusionment with Federal service, coupled with poor pay comparability and personnel benefits. Has the SEC been affected by this drain, and if so, what affect has it had on the Commission's activities?

**ANSWER:**

The SEC has been effected adversely by considerable staff turnover in all positions. For example, during the past three years we have lost 35% of our senior executives. Further, in 1987 about 65% of the attorneys who left the staff had less than four years of SEC experience. Accountant, secretary, securities compliance examiner, and computer specialist positions also experience especially high turnover. Employees are offered salary increases of 20% and more by private sector employers. The Commission must spend considerable resources recruiting and developing new staff. In addition, it is becoming increasingly difficult to attract top-quality graduates at entry level positions and highly qualified private sector managers and executives for certain key positions.

At the request of the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, the SEC is conducting a study to determine whether the Commission should be converted from an appropriated to a self-funding agency with authority to set our own salary structure. The study will be completed in November.

QUESTIONS SUBMITTED BY MR. EARLY.  
FISCAL YEAR 1989 BUDGET REQUEST  
SALARIES AND EXPENSES

JANUARY PAY RAISE

QUESTION:

What is the cost of the January 1988 pay raise for the SEC? Since the Commission has not requested a supplemental, how do you plan to cover these costs? What program areas will be affected by the proposed absorption?

ANSWER:

The January 1988 pay increase will cost the Commission \$1.3 million for nine months costs in FY-1988 and \$1.9 million for a full years' cost in FY-1989. The SEC was not funded in FY-1988 for the pay increase. To the extent the FY-1988 pay raise costs cannot be absorbed within the agency's non-personnel expenses, staffing reductions below the 2,086 staff year request may be required. The President's budget for the SEC fully funds the 1989 costs of the 1988 pay increase.

FY 1988 CONTINUING RESOLUTION

QUESTION:

For FY 88, the SEC requested \$145 million, and this Committee recommended \$141.5 million and the Senate Committee, \$142 million. However, the FY 88 continuing resolution provided only \$135.221 million. What adjustments did the Commission have to make as a result of the lower funding levels? What impact is this having on the Commission's ability to carry out its duties?

ANSWER:

The SEC's 1989 Congressional budget request reflects the use in 1988 of a net \$12.7 million reduction in EDGAR and FERS related costs. In summary, the \$12.7 million reduction will be used to partially offset a \$15.1 million difference between the

Commission's adjusted 1988 funding need of \$150.3 million and its appropriation of \$135.2 million. The adjusted funding level of \$150.3 consists of the initial request of \$145 million and an additional need of \$5.3 for 1988 pay increase costs and a variety of subsequently mandated expenses. In detail, the use of unspent EDGAR and FERS monies will permit the Commission to: 1) fund the 2,267 position level requested by the President and sustained in House and Senate Appropriation Committee action; 2) respond to the impacts of the October market break; 3) enhance the agency's regulatory role in the expanding internationalization of the securities markets; and 4) permit existing staff in ongoing activities to maintain satisfactory levels of investor protection.

**QUESTION:**

Provide for the record a chart showing the allocation of funds and workyears under the FY 88 Budget Request and under the Continuing Resolution.

**ANSWER:**

FY 1988 PROGRAM ALLOCATION OF FUNDS AND WORKYEARS

PROGRAM	REQUEST		RESOLUTION	
	SY	(\$000)	SY	(\$000)
Full Disclosure	495	\$47,721	482	\$37,067
Prevention and Suppression of Fraud	684	43,825	675	43,787
Supervision and Regulation of Securities Markets	252	15,422	257	15,566
Investment Management Regulation	221	13,296	229	13,736
Legal Services	116	7,671	119	7,860
Economic and Statistical Research	41	2,827	41	2,588
Program Direction	257	14,156	263	14,617
AGENCY TOTAL	2,066	\$145,036	2,066	\$135,221

**QUESTION:**

Please provide for the record a breakdown of the FY 89 SEC submission to OMB by program areas, amount, positions and staff years.

**ANSWER:**

**SECURITIES AND EXCHANGE COMMISSION  
FY 89 REQUEST TO OMB**

<b>PROGRAM</b>	<b>POSI-TIONS</b>	<b>STAFF YEARS*</b>	<b>\$ (000)</b>
FULL DISCLOSURE	641	591	\$ 50,953
PREVENTION AND SUPPRESSION OF FRAUD	816	749	50,105
SUPERVISION AND REGULATION OF SECURITIES MARKETS	304	285	17,745
INVESTMENT MANAGEMENT REGULATION	342	294	17,220
LEGAL SERVICES	142	126	8,751
ECONOMIC AND STATISTICAL RESEARCH	44	42	2,790
PROGRAM DIRECTION	315	279	16,310
INITIAL AGENCY REQUEST	2,604	2,366	\$163,874
<b>IDENTIFIED AFTER INITIAL SUBMISSION-</b>			
1988 Pay raise	--	--	\$ 1,890
1989 Pay raise	--	--	1,800
Reduced lapse	--	60	2,500
TOTAL AGENCY REQUEST	2,604	2,426	\$170,064

\* Excludes 20 staff years for employees filling temporary positions which are assigned to programs on an "as needed" basis throughout the fiscal year.

QUESTION:

Do you anticipate any other shortfalls which would require you to reallocate resources?

ANSWER:

In addition to the funding reductions imposed on the SEC by the 1988 Continuing Resolution, the most significant impact on the SEC would be new statutory authorities such as those expected from the banking/securities legislation currently being considered in Congress. Unfortunately, the impact of the legislation will not be known until final language is agreed to and its effective date of enactment is known.

REQUEST TO OMBQUESTION:

What was the FY-89 SEC request to OMB?

ANSWER:

The Commission's 1989 request to OMB included 2,386 staff years and \$163,874,000. To the initial SEC request must be added the cost of the 1988 and 1989 pay raises, not included by the SEC but incorporated in the OMB passback. Furthermore, on appeal, the SEC requested an additional \$2.5 million to reduce the lapse (breakage) between authorized positions and funded staff years.

QUESTION:

What additional manpower resources did your agency managers request for FY 89?

ANSWER:

The 1989 budget request submitted to OMB provided each program manager with a least the level requested for the fiscal year.

The level for the supervision and regulation of securities markets was actually increased to anticipate some of the obvious resource needs created by the tremendous growth in the regulated population and market activity generally.

#### SHOPPING FOR OPINIONS

##### QUESTION:

Last year, when we discussed the Commission's project on increased disclosure about the practice of companies "Shopping for Opinions" from auditors, your predecessor indicated that the Commission staff was continuing to study possible amendments to SEC disclosure requirements. What is the status of this project?

##### ANSWER:

On June 18, 1987, the SEC published proposed rules (Release No. 33-6719) that would clarify the disclosure necessary where a company changed its auditors. The proposed rules would provide additional guidance on when reportable disagreements or other events had occurred, require disclosure of whether there were any limitations imposed on communications between the current and former auditors regarding the subject matter of a disagreement or reportable event, and require disclosure of the subject matter of any consultation with new auditors for two years prior to its engagement.

The SEC staff recently has submitted its recommendations for the adoption of final rules in this area to the Commission. The staff's recommendations currently are scheduled for consideration in an open Commission meeting on April 7, 1988. The staff also has submitted to the Commission a proposal for the reduction of the time period permitted for filing disclosures on Form 8-K. That proposal also is currently scheduled for consideration on April 7, 1988.

#### INSIDER TRADING

##### QUESTION:

What percent of the SEC's total caseload does insider trading represent?

5

ANSWER:

In fiscal 1987, insider trading allegations were included in almost 11% of the enforcement actions filed by the Commission (42 of a total of 303 cases). Approximately 21% of investigations pending at the end of the year involved possible insider trading violations.

GLOBAL TRADINGQUESTION:

Last year, after our committee hearing, I understand that the Commission completed a comprehensive study of global trading. Would you summarize the findings of this study and any recommendations it made?

ANSWER:

The Report of the Staff of the Securities and Exchange Commission on the Internationalization of the Securities Markets was transmitted to the House Committee on Energy and Commerce and the Senate Committee on Banking, Housing and Urban Affairs on July 27, 1987.

The Staff Report surveys a wide range of issues involved in internationalization. It finds that the accelerating internationalization of the securities markets has resulted in increased competition among markets in a number of countries. This competition has been fueled in part by the adoption by foreign markets of measures already in place in the United States (e.g., the deregulation of commission rates for securities transactions). Securities regulators, including the Commission, face the challenge of ensuring the protection of investors in these changing markets without stifling the ability of domestic markets to compete internationally.

In the area of international offerings of securities, the Commission has recognized the difficulties which arise from differing procedures and standards of disclosure. Two potential solutions are under consideration. One would involve the development by international agreement of a common prospectus which would be used in two or more countries to register securities for sale. Alternatively, agreements could be reached to permit the reciprocal recognition of a prospectus meeting certain requirements.

There have also been important advances in the creation of linkages between secondary trading markets in recent years. These have been facilitated by Commission initiatives that have permitted both trading and quotation sharing between U.S. and foreign markets while protecting U.S. investors. In the future it will be important to develop adequate mechanisms for clearance and settlement of international trades and to ensure the financial integrity of brokers and dealers operating in international markets.

Finally, the Staff Report notes that increased internationalization has presented new challenges to the Commission's ability to detect and prosecute securities law violations. The Commission has sought to improve its enforcement capabilities by entering into agreements with securities regulators in other countries to facilitate the exchange of information and cooperation in enforcement activities.

#### OVERSIGHT AND CORPORATE DISCLOSURE

##### QUESTION:

In your prepared statement, you note that "market oversight, enforcement, and corporate disclosure activities are complicated by the transnational flow of capital and information." While we've discussed enforcement problems in the past, would you discuss some of the major difficulties the SEC encounters in the area of oversight and corporate disclosure activities. Does this have any impact on the Commission's workload? What steps is the Commission taking to address some of these problems?

##### ANSWER:

The globalization of the securities markets has magnified the need for international cooperation among securities regulators and fostered the development of a dialogue to establish, improve and maintain transnational cooperation.

The principal problem which the SEC confronts in its efforts to police the internationalized U.S. securities markets is obtaining information that is located outside U.S. borders and thus is not subject directly to U.S. jurisdiction. While jurisdictional provisions of the federal securities statutes are intended to prevent fraudulent transactions from occurring within or being exported from the U.S., when information is located and controlled outside the U.S., the SEC often must defer to and work within the jurisdiction of another sovereign nation.

Initially, SEC efforts to obtain information from abroad were totally frustrated and the SEC resorted to the federal courts and unilateral action to compel the production of foreign based information. However, this unilateral approach was time consuming, expensive, and strained international relations. In part because of SEC success in U.S. Courts, it was able to begin a dialogue with foreign securities and other law enforcement authorities and develop informal case-by-case understandings which allowed the production of foreign based information. The ad hoc nature of this approach highlighted the need for more formal mechanisms which would guarantee cooperation.

#### FOREIGN TRADING

##### QUESTION:

You also state that foreign trading in U.S. stocks will have increased more than ten-fold (from \$75.2B to \$800B) during 1980-1989. What accounts for this tremendous growth? Does this complicate your job and, if so, how?

##### ANSWER:

The last decade has seen an enormous growth in international trading across-the-board. The increase in interest in U.S. stocks can be attributed, in part, to the comparative safety of investing in securities the primary market for which continues to be one of the fairest and most committed to investor protection.

Foreign trading in U.S. stocks complicates the Commission's oversight function when aberrational trading is noted or illegal activities are suspected. It is more difficult to obtain information regarding the underlying traders if foreign secrecy laws or blocking statutes exist. Another source of difficulty is that trading in U.S. issues in foreign markets may not be subject to the federal securities laws. For example, the London market provides a significant source of liquidity for a large number of U.S. issues. The trading that occurs in London in these issues, however, is beyond the direct regulatory control of the Commission. Thus, in response to these problems, the Commission has entered into information sharing and surveillance arrangements with U.K. regulators. The Commission has been very successful in negotiating memoranda of understanding with foreign regulatory bodies to overcome these handicaps.

BILATERAL OR MULTINATIONAL AGREEMENTSQUESTION:

Would you bring us up to date on the progress the SEC has made in negotiating either bilateral or multilateral agreements which improves the Commission's ability in the area of deterrence and enforcement?

ANSWER:

The 1982 Memorandum of Understanding ("MOU") between the U.S. and Switzerland, was the SEC's first formal effort to enhance its information gathering abilities. The SEC has since entered into three additional MOUs with the relevant authorities in Japan, the U.K. and three provinces in Canada and has had very positive experiences in utilizing the MOU mechanism. These agreements provide for the sharing of information and assurances of cooperation in SEC and foreign agency investigations and litigations. They formalize methods to request and provide information in connection with SEC and foreign agency efforts to administer and enforce their respective securities laws. These agreements are working effectively; additional MOUs are under negotiation.

The Canadian MOU, signed January 7, 1988, is the most comprehensive agreement entered into by the SEC to date. It broadens the scope of cooperation and the subject matter covered in the Swiss and U.K. MOUs. The Canadian MOU reflects the signatories' determination to foster mutual assistance, and as a "third generation" agreement, it has benefitted from the SEC's experience with earlier agreements.

In the past, enforcement efforts aimed at cross-border securities violations have required voluntary cooperation of witnesses or the initiation of costly and often time consuming litigation. The authorities have been unable to compel witnesses located in the territory of the other authority to testify or produce documents. Under the Canadian MOU, the securities regulators have agreed to investigate, using subpoena power where necessary, on behalf of one another to ensure that the necessary information is obtained.

At the current time, the SEC, does not have the express authority to conduct investigations on behalf of a foreign securities regulatory agency absent an independent violation of domestic law. This legislation is needed to fully implement the agreement reached with Canada and will foster similar agreements with other

countries. The SEC has undertaken to seek such legislative authority within the next year. The SEC staff is presently drafting proposed legislation that would empower the SEC to compel testimony and the production of evidence in investigations of violations of foreign securities laws when requested to do so by foreign securities authorities.

#### MULTINATIONAL TRADE NEGOTIATIONS

##### QUESTION:

The new round of multilateral trade negotiations (Uruguay Round) will include trade and the service industries, including the financial services industry. Will the Commission have any role? Do you anticipate being called on by either ITA or the USTR for advice or assistance?

##### ANSWER:

To date, neither the International Trade Administration of the Department of Commerce nor the United States Trade Representative has asked the Commission to participate in the Uruguay Round of multilateral trade negotiations by members of the General Agreement on Tariffs and Trade ("GATT"). In the past, the Commission has provided assistance to other federal agencies in connection with negotiations on international agreements concerning trade and other matters. For example, the Commission assisted the Department of the Treasury in drafting portions of the free trade agreement between the United States and Canada, which President Reagan and Canadian Prime Minister Brian Mulroney signed on January 2, 1988.

If the Commission is asked to assist in the GATT negotiations, it will do so. However, the Commission does not at this time anticipate being asked to provide assistance.

#### INTERNATIONALIZATION

##### QUESTION:

The budget justification indicates that the internationalization of the securities markets will require review of regulations applicable to foreign capital markets and rulemaking efforts to accommodate cross-border and global offerings and tradings. Would you outline the Commission's plans in these areas? What impact is this having on the Commission's workload?

ANSWER:

In 1988 and 1989, the Commission estimates that a total of approximately 6 staff years will be devoted to rulemaking projects relating to the internationalization of the securities markets. The staff is currently focusing its rulemaking efforts in several areas. It is not expected that the Division's workload in 1988 and 1989 will be impacted significantly by increased foreign participation in the U.S. securities markets.

One current project involves clarification of the extra-territorial application of the registration requirements of Section 5 of the Securities Act of 1933 as a result of developments in global markets and U.S. securities regulations. This would be accomplished by reexamining the principles expressed by the Commission in a release issued in 1964 (Release No. 33-4708). In this release, the Commission stated that it would not take any enforcement action if securities are sold abroad to foreign persons under circumstances designed to prevent the distribution of the securities into the United States or to U.S. persons. A proposal under consideration would apply the registration requirements to an offer or sale of a security if it occurs within the United States - a "territorial" approach.

A second staff project involves the facilitation of multinational securities offerings through the development of a "reciprocal prospectus." Under this proposal, specified offerings would be permitted in the jurisdictions of participating countries, if made by means of a prospectus that is accepted in the issuer's home country. The staff is currently considering the inclusion primarily of specified offerings by world class issuers, and rights and exchange offerings.

The staff also is considering recommending proposal of a small issuer exemption from registration requirements for rights and exchange offerings of less than \$5 million. The exemption might, among other things, facilitate participation of U.S. investors in rights and exchange offerings by foreign issuers. U.S. investors frequently are excluded from these offerings, because the issuers do not consider it cost-effective to comply with U.S. registration requirements.

Other rulemaking efforts, although not internationalization projects, also may affect offerings by foreign issuers. In January 1987, the Commission proposed new Rule 701 for comment. The Rule was reproposed in July, 1987, and is to be considered for adoption on April 7, 1988. Rule 701 would exempt limited securities offerings by companies not subject to the reporting obligations of the Securities Exchange Act of 1934. The amount of securities that may be offered pursuant to the exemption would be linked to a formula, but the aggregate amount in any 12 month

period could not exceed \$5 million. As proposed, the rule would be available to foreign issuers as well as domestic issuers.

In addition, the staff is developing a rule proposal to provide a non-exclusive safe harbor from the registration requirements of the Securities Act for resales of securities to institutional investors if certain conditions are met. The proposal would cover securities of foreign issuers as well as domestic issuers.

#### MARKET CRASH

##### QUESTION:

I understand that there has been an increase in complaints as a result of the October market "crash." What kinds of complaints are you receiving? What is the volume? From whom are you receiving them?

##### ANSWER:

Preliminary statistics indicate that the Commission has received in excess of 25,000 complaints and inquiries for the first half of fiscal year (FY) 1988, for a projected 25% increase for FY 1988 as compared with FY 1987. This includes approximately 9360 telephone complaints 1/ received from October 14 through November 27, 1987 and reported on in Chapter 12 of the Staff Report on the October Market Break. Of the complaints and inquiries recorded in the CMPI database, approximately 51% represent problems with broker-dealers; 12% with issuers; 6% with mutual funds; 6% with banks, transfer agents, or investment advisors; 1% with self-regulatory organizations; and the remainder designated general or miscellaneous. To date, only 1331 of the written complaints have been designated as having been specifically caused by the October market break; however, since the break, the volume of complaints and inquiries of the kinds normally received appear to have increased substantially. The vast majority are received from individual investors.

1/ Out of that number, approximately one-third were documented and tracked in the CMPI system.

INDICATORS OF POTENTIAL FRAUDQUESTION:

Your statement notes that the indicators of potential fraud are significant. In what areas are these indicators? What is the cause? And, what steps is the Commission taking to address this matter?

ANSWER:

Indications of potential fraud include leads provided by co-operative witnesses in recent investigations involving insider trading and other violations into possible further major violations by others in the securities industry. In another area, there have been indications of potentially manipulative activities (such as unexplained run-ups in securities prices) in the over the counter markets. Further, the number of investor complaints, traditionally an indicator of potential fraud, have risen steadily in recent years, and rose dramatically following the market break of October 1987.

We can only speculate as to reasons behind significant indicators of potential fraud. The dramatic increases in complexity and size of the securities markets provide opportunities for new or expanded fraudulent activities. Additionally, it has become increasingly challenging for even careful investors to become educated about the proliferation of investment opportunities being offered to them.

In response to the dramatic change and growth of the securities industry, the Commission requested and received from Congress last year authorization for a major increase in its enforcement staff. We are currently in the process of absorbing this increase. Staffing increases allow us to pursue and investigate greater numbers of enforcement leads, and to prosecute resulting cases.

As enforcement actions themselves increase in complexity we continue to devote increasing amounts of our resources to them. Additionally, the Commission is increasing its efforts to provide its enforcement staff with modernized office automation equipment and to apply automated techniques to its investigations and litigation.

We are also continuing our efforts to improve international co-ordination and co-operation. We are also continuing our support

of the Department of Justice and the U.S. Attorney's Offices in developing criminal cases, and our co-operative efforts with state and local law enforcement authorities, and with self-regulatory organizations.

### MARKET CRASH

#### QUESTION:

In light of the October market "crash," does the Commission plan to take any action in the area of "expiration Friday phenomena" related to program trading?

#### ANSWER:

The Commission has believed for some time that efforts should be made to smooth out the price swings sometimes associated with quarterly expirations, so-called "Triple Witching" days, and toward this end has been working with the Commodity Futures Trading Commission ("CFTC") and securities and futures self-regulatory organizations to mitigate this volatility. Remedial measures which already have been taken include: (1) adoption of procedures to disseminate buy or sell order imbalances before the opening and closing of trading on quarterly expiration days for major NYSE stocks, for the purpose of attracting contra-side interest; and (2) encouraging the shift of some expirations to the market opening in lieu of the market close to (a) take advantage of stock opening procedures designed to handle order imbalances and (b) provide the stock market with a full trading session to minimize the price impact of an influx of buy or sell orders on the opening. While experience with these measures has been limited to several expirations, they appear to have helped to correct order imbalance and volatility problems historically associated with Triple Witching Fridays. Our review of trading on those days has not identified evidence of manipulative activity. The Commission will continue to monitor closely the efficacy of current expiration Friday procedures to determine whether additional or alternative measures are warranted.

#### QUESTION:

Has the SEC had any consultation with foreign exchanges concerning October's "events"?

ANSWER:

Since the October market break the frequency with which the Commission has contacted foreign markets has increased. Immediately after the break, Commission staff were in constant contact with London and Tokyo, sharing information on market performance and investor activity. In addition, I personally travelled to Japan and Great Britain and met with securities regulators in those countries. We agreed at those meetings on the importance of maintaining direct access and communication with each other during periods of volatility in the securities markets.

In response to the increasing inter-relationship of the world's securities markets, the Commission has for some time sought greater cooperation and coordination with foreign securities regulators. This has included negotiating bilateral enforcement agreements and coordinating with foreign regulators on the establishment of a number of linkages between markets. Most recently, the Commission approved a proposed rule change by the NASD to establish a two-year pilot for the exchange of quotation information between the NASD and the Exchange of Singapore for selected securities. In addition, Commissioner Cox and the staff have participated in multilateral forums such as the International Organization of Securities Commissions and the Organization for Economic Co-operation and Development and contributed to discussions on capital adequacy standards, clearance and settlement and international enforcement and surveillance mechanisms.

The Commission and its staff will continue to work to develop productive, cooperative relationships with foreign markets and to encourage trading, and clearance and settlement linkages; international trade and quote mechanisms; improved financial oversight systems; and effective enforcement and surveillance arrangements.

LAPSE RATEQUESTION:

What is the lapse rate in your FY 89 budget request?

ANSWER:

The President's FY 1989 budget request for the SEC identifies the creation of 2,420 permanent positions of which just 2,222 are funded. The difference between these two numbers represents an 8.1 percent lapse rate. This compares with the 5 percent rate which has become widely accepted as a "rule of thumb" average for Federal agencies to account for staff turnover, leave-without-pay, and other periods of time in which authorized positions are partially vacant. To provide the SEC a lapse rate of 5 percent in FY 1989 would require an increase of 77 staff years with a related cost of \$4.3 million.

1989 PAY RAISEQUESTION:

The Administration has proposed a 2% pay raise for civilian employees in 1989. What would be the cost for the SEC? Does your FY 89 budget request include any funds for this proposed pay raise?

ANSWER:

A 2 percent pay increase for civilian employees effective in January 1989 would cost the SEC \$1.6 million. The President's 1989 budget for the SEC does not include any funds for this expense. A 50 percent absorption of this cost would require an offsetting reduction of 28 staff years.

NEW CENTRAL PROCESSING UNITQUESTION:

The Committee provided the SEC with funds for the acquisition of a new primary CPU? What is the status of this acquisition?

ANSWER:

The FY 89 budget request refers to a central processing unit (CPU) described in the FY 88 budget submission. Funding was

approved in FY-88 for the replacement of the obsolete IBM 370-158 CPU. A competitive procurement was conducted and the contract successfully awarded to acquire a new IBM 3090-150E CPU. The new CPU was installed in March 1988 and is now fully operational. The Commission is already realizing improved computer processing efficiencies with the new CPU.

During the FY 1987 budget request process, the House Committee on Appropriations, in HR 99-669, expressed concern about the Commission's primary computer processing unit. In the SEC's 1988 budget submission it requested funding to replace operating computer systems that had reached the end of their life cycle or had become obsolete through the introduction of new technologies. The 1988 budget request indicates that six new computer systems would be developed. Included in these six systems were the two obsolete mainframe computers, the IPL 4480 and the IBM 370/158 mainframe units.

In September 1987, the SEC awarded a contract replacing the IPL unit with a new IBM 4381-R14. The new IBM was installed November 14 and SEC users almost immediately experienced improved response time and increased reliability.

Additionally, the request for proposal (RFP) to replace the outdated IBM central processing unit was published in 1987 and a contract was awarded to the IBM corporation early this year. The new IBM 3090-150E was installed in early March and is now fully operational. Increased processing efficiencies have already been realized.

The Committee was concerned about the implications of a major equipment failure (particularly with the age of the existing units) on the SEC in carrying out its responsibilities. The capabilities of new mainframe computers dispel effectively this concern.

#### ADP MODERNIZATION

##### QUESTION:

What are the Commission's plans with respect to other ADP modernization in FY 88? FY 89?

##### ANSWER:

The Office of Information Systems Management in the past has been structured principally as a mainframe support organization with

The primary emphasis in the maintenance of existing automation systems. Increased staffing resources are necessary to adapt the existing automated systems to the end user personal computer based environment. ISM will convert the existing automated systems to provide the ability to move information to and from the mainframe and personal computers while harnessing the processing power of the personal computers.

The increased staffing request recognizes the necessary increase in user support services to facilitate user implementation on personal computers of specialized systems designed to increase the productivity and effectiveness of enforcement, market regulation and other program areas. Additionally, the increased staffing resources will enable the Office of Information Systems Management to implement a local area network to link personal computers in order to provide communications capability for the integration of case processing.

QUESTION:

The justification highlights your plans to install a local area network. Why is this project important? How much has been allocated for the project in your FY 89 request?

ANSWER:

The requested funding is required in order to proceed with implementation of a personal computer based professional and clerical productivity program. All staff who could benefit from the availability of a personal computer (PC) will have access. Major software development projects will be undertaken to convert the current SEC system to a PC based system. Additionally, staff accessibility to the Commission's centralized information systems will be improved through the installation of a local area network that will link personal computers with the SEC mainframes and external databases.

The current SEC computer systems software will be adapted to accommodate the EDGAR operational system. In addition, extensive support will be provided to full disclosure program activities during the transition from the EDGAR pilot to the operational EDGAR.

QUESTION:

In your statement, you say that the SEC's internal operations have not kept pace with the advances in automation. What aren't we doing that we should be doing?

ANSWER:

For many years the SEC has operated predominately mainframe based computer systems essential to the basic processing of a large, but fairly stable, volume of data and to manage the multiple, complex information systems in support of the disclosure, regulatory, administration, and enforcement responsibilities of the Commission. The basic system configuration served the Commission well for that period but had far outlived its expected systems life and ability to handle the more recent substantial increase in the trading volumes brought about through the use of automation by the various markets. The age of the equipment had reached such a point that principal parts requiring replacement were only available from cannibalized equipment. As with most machines of that antiquated generation, the failure rate grew as did the maintenance costs. The Securities & Exchange Commission, with OMB approval, requested of Congress in the 1987 appropriation process the replacement of the smaller of its two central processing units, the IPL 4480 mainframe system, and in the 1988 appropriation process for the replacement of the remaining obsolete IBM mainframe system. With the approval of funding for the replacement of the IPL CPU in FY 87, the Commission proceeded with a competitive procurement with a successful contract award made for an IBM 4381-R14, which was installed in November 1987. With the approval of funding for the replacement of the IBM 370-158 CPU, another competitive procurement was conducted with a contract successfully awarded for the acquisition of an IBM 3090-150E processor. This system was successfully installed at the Commission in March 1988. Processing efficiencies have already been realized through these replacement actions.

The replacement of the mainframe central processing units only begins to address the substantial information processing needs of the Commission staff. The Securities and Exchange Commission has recognized and fully appreciates the benefits that can be derived through the careful introduction and integration of state-of-the-art automation. With general funding for equipment having been significantly limited, the Commission has in the past concentrated on making the maximum utilization of its mainframe capabilities and on the limited acquisition and use of stand-alone word processing machines to provide some benefits of office automation. Although this approach aids in the reduction of some

manual tasks it lacks the full features of compatibility, communicability, and multi-functionality. For the past couple of years the Commission has, on a very limited basis, been gradually introducing microcomputers to meet specific critical and data intensive programmatic requirements. In late FY 87 the Commission successfully awarded a contract for the acquisition of 80 portable laptop microcomputers for the use of regional office examiners and investigators. In addition, an additional 128 desktop microcomputers were acquired that are being used to address the immediate information processing and rudimentary office automation requirements as part of the Commission's overall automation plan. The utilization of the microcomputer at the SEC has provided for localized computer capabilities for such applications as word processing and spreadsheet operations. While this approach is beneficial to the specific recipient organizations, it has failed to address the substantial benefits to be derived through the systematic introduction of automation into the office management environment. As part of the SEC's overall automation plan to improve both the quality of information and employee effectiveness and efficiency, the SEC desires to introduce an advanced, comprehensive, state-of-art, integrated office automation system for the staff of the Commission in the future. The Commission has initiated the formal, detailed analysis and studies required by OMB and procurement regulations in order to provide the necessary documentation as to the accuracy of the Commission's long term information planning and requirements. Funding for the establishment of a pilot office automation project within the SEC headquarters building has been included as part of the FY 89 budget submission.

Computer equipment acquisition provides the programmatic areas of the Commission with the hardware and software tools necessary to optimize the limited personnel resources available for an increasing workload but is not the total solution to the information needs. The staff has a significant requirement for access to many external data information and retrieval services. The use of these existing sources of information is much more cost efficient and practical than developing and maintaining such databases within the Commission. For example, the Commission has acquired access to the Bridge Market Information System which has had a substantial impact on meeting the information requirements of selected program areas of the Commission. Bridge provides real-time price and volume information, as well as consolidated quotes and news items on exchange-traded and over-the-counter stocks and options. It provides historical trade information which includes data on commodities and financial futures along with on-line graphics. It also permits recall of historical information up to 150 days. Stock/futures trading is able to be monitored more effectively. The system also permits on-line comparisons between financial futures and their underlying indices and computes an annualized rate of return available

through the execution of an arbitrage program. At present this service has limited access capabilities but is useful to many other programmatic areas. In addition access is required to Dow Jones News Retrieval Service, LEXIS, NEXIS, as well as Department of Justice information sources.

The automation process has only just begun at the SEC after remaining dormant for many years. Although advances are being made, it is important that the processes started are allowed to continue with appropriate funding levels. The efficiencies and economies to be achieved are well documented throughout the Government and will be a key to the Commission effectively meeting its regulatory mandates.

QUESTION:

What impact is this situation having on the SEC's ability to function even more efficiently and handle its growing workload.

ANSWER:

In order to fulfill the many obligations and meet the programmatic information needs of the Commission, the efficiency and productivity of existing information resources must be greatly enhanced. In addition, more modern information processing technology must be acquired and employed, and the technical skills of the information specialists and the Commission staff in general must be upgraded through the application of modern techniques for automated systems analysis, design, development, and maintenance. The Commission must also rely more heavily on the expertise and support of contractors to assist with the development of new and improved information handling and reporting systems. At the same time, the Commission will continue to heavily stress active participation by its ADP "users" in not only the classical phases of automated systems analysis and design, but also in satisfying their own ADP requirements through the tremendous capabilities now becoming available to them.

There has been a large increase in the amount of information available to the buyers and sellers in the market place. In the past information was gained from written information whereas today most information comes from digital sources and market feeds. Waiting for printed information to arrive in order to make decisions may mean that a decision is based on out-of-date or obsolete information. The waiting for printed information to be produced from digital data also has greatly slowed down the investigative actions. Associated with the growth in volume of

digital information available has come the need for the Commission staff to assimilate and analyze the extremely large amount of information. There has been an increasing demand for automation to be used to "sort" and analyze data from a wide variety of sources in order to replace time consuming and labor-intensive manual processes. Many of these changes have come about in the market place but not at the SEC as a result of funding limitations and the absence of aggressive automation planning. This reactive approach to automation within the Commission is no longer responsive to the many demands being placed upon the agency.

In response to the need for effective automation services to support the wide range of Commission programs, the SEC has undertaken an intensive, deliberate and structured modernization project. These efforts are aimed at the introduction of automation capabilities in a systematic manner from several concurrent directions. As mentioned earlier the Commission has just replaced its antiquated mainframe processors and is planning for the acquisition of additional digital storage and printing capabilities to address the extremely high volume of data that must be analyzed and maintained on the mainframe computer systems. At the same time the introduction of the microcomputer begins to address not only the fundamental office automation requirements such as word processing but provides the rudimentary individual analysis tools essential to the effective utilization of the programmatic personnel. As the automation process progresses on these two fronts, the Commission is moving forward with planning to utilize the emerging information processing capabilities of the microcomputer and data communications through a local area network as an integral part of the overall office automation project. The proposed office automation system will provide the "binding" for all of the various information systems.

The Securities and Exchange Commission has a tremendous challenge ahead of it as the securities industry becomes more complex and automation sophisticated. The goal of the SEC's automation strategy is to fully integrate the diverse and independently developed information technology systems of the Commission. Accessibility to the centralized information systems available through the Commission's main computer system as well as the commercial legal research, regulatory and securities-related firms through a single, integrated system would yield significant efficiencies. This system would be accessible to all Commission employees through multi-use terminals or microcomputers, as appropriate, located at each employee's work station eliminating the necessity for multiple pieces of hardware and the associated expenses of duplicative acquisition. The success of this endeavor is nevertheless directly dependent on the availability of appropriate funding as the project progresses.

QUESTION:

Do you have or are you developing a plan to address this situation? If a plan has been developed, I would be interested in receiving a copy.

ANSWER:

The SEC has developed a general management plan for the introduction and use of automation to improve its operating efficiencies and to improve productivity. The general automation approach is based upon successful strategies proven in other federal agencies as well as the overall direction the automation industry is heading. In the fall of 1986, the Securities & Exchange Commission issued a contract to the Federal Simulation Agency (FEDSIM) for a detailed study to determine the overall, detailed automation requirements as part of the preparation for the SEC Office Automation System (SECOA). Additionally, although not required to do so, the Commission has contracted through the General Services Administration automation services for contract support for the development of a detailed five year strategic automation plan which is to expand upon the existing general automation planning guidance. Upon completion of these detailed analysis the Commission would be pleased to provide them.

QUESTION:

What was your original budget request (to OMB) for automation that was not approved?

ANSWER:

The SEC's FY 1989 submission to OMB requested 750 micro computers, the President's budget provides 300 micro computers. The balance of 450 micro computers were requested to improve the analytical and productive output of greater numbers of Commission staff.

TAKEOVER BIDSQUESTION:

In light of the October "Market Crash", do you have any observations about the continued "appetite" for takeover bids? Do you expect this trend to continue? What impact does this activity have on the market -- None, positive, or negative?

ANSWER:

In the months immediately following the market break, there was a significant drop in takeover activity. For example, only 28 third party tender offers were filed with the Commission in the first quarter of 1988, compared to 84 in the same quarter of 1987. The high degree of takeover activity in the first quarter of 1987, however, has been attributed to tax changes that were scheduled to take effect at the end of that quarter.

The trend for the second quarter of 1988 has reversed; 69 third party tender offers were filed during the second quarter of 1988, compared to 32 for the same quarter in 1987. Since the beginning of 1988, issuer tender offers filed on Schedule 13E-4 have remained at the 1987 levels. This heavy volume is likely to continue so long as the stock market remains at a relatively low level; the dollar continues at its present exchange levels, thereby attracting foreign investment; and interest rates remain stable.

There is insufficient evidence to establish conclusively that takeovers are either good or bad for the economy, as a whole. Empirical studies do show, however, that these transactions can improve efficiency, transfer scarce resources to more highly valued uses, and stimulate corporate management. There also is evidence that tender offers increase shareholder wealth. In this regard, it should be noted that the average premium offered shareholders in tender offers is 25 percent.

DECLINING VALUE OF DOLLARQUESTION:

Is the decline in the value of the dollar having an impact on the market?

**ANSWER:**

The decline in the value of the dollar does affect the market, however, it is not possible to accurately predict in what direction. For example, many arguments about the effects of changes in the value of the dollar on the market center on the relationship between the value of the dollar and the trade deficit. A decline in the value of the dollar would be expected to improve the trade deficit, which is allegedly beneficial to the stock market. However, economists argue the recent decline in the value of the dollar has not improved the trade deficit for two reasons. First, due to an increase in the level of personal income, U.S. consumers have not significantly reduced their purchase of foreign goods. Second, since the U.S. has become a more service oriented economy U.S. firms are concentrating relatively more on services and less on manufactured goods. Therefore, the U.S. is exporting relatively less on manufactured goods that could be more easily sold abroad when the dollar declines.

On the other hand, there is the argument that a decline in the value of the dollar is bad because it reflects a weakness in the U.S. economy. However, the bull market experienced during the mid-80s disputes this notion. For example, from mid 1984 to mid 1987 the S&P 500 Index more than doubled while the dollar lost more than a third of its value against the Yen and the Swiss Franc.

**TAKEOVER BIDS****QUESTION:**

Recently I've been reading about takeover bids by foreign investors/companies. Is this the beginning of a new trend? What observations do you have on this subject?

**ANSWER:**

The Office of Economic Analysis has compiled data on tender offers and merger and acquisition activity of foreign firms. These data reveal recent increases in both tender offers and other acquisitions by foreign firms. For tender offers the data has been gathered from 1984 through February 1988 (Table 1). The number of such offers has generally increased from seven offers in 1984 to 29 offers in 1987. The market value of the firms that received these foreign bids rose from \$4.3 billion in 1984 to \$26.0 billion in 1987. In the first two months of 1988, target

firms valued at \$8.82 billion were subject to nine offers by foreign bidders.

The percent of total U.S. tender offer activity represented by foreign bids has also increased -- from 4.7 percent in 1984 to 18 percent in 1987 in terms of the number of offers. Likewise, in terms of the dollar value of the targeted firms, the percentage of total U.S. activity by foreign concerns increased from 7.1 percent in 1984 to 33.8 percent in 1987.

There is no systematic evidence that foreign takeovers harm the United States economy. In fact, to the extent that willing foreign bidders are discouraged or denied, shareholders in U.S. firms will be less likely to realize the highest value for their holdings. Similarly, if an element of competition for U.S. managers is removed or decreased, the incentives for performance for American management may be reduced.

TABLE 1  
FOREIGN TENDER OFFERS FOR U.S. TARGETS

<u>Year</u>	<u>Number of Offers</u>	<u>As a Percentage of all Offers</u>	<u>Dollar Value (billions)</u>	<u>As a Percentage of all Offers</u>
1984	7	4.7%	\$ 4.3	7.1%
1985	4	2.8%	\$ 3.6	4.2%
1986	24	12.2%	\$ 7.8	11.6%
1987	29	18.0%	\$ 26.0	33.8%
1988 (Jan.- Feb.)	9	20.9%	\$ 8.8	36.9%

Source: Office of Economic Analysis, SEC, Tender Offer Database; Investment Dealers Digest, Mergers and Acquisitions Database.

MARKET CRASHQUESTION:

Please summarize the impact the October market events have had on the Commission's workload. Which Division's have been affected most? Can you give us an estimate of the total resources that will be needed for these activities?

ANSWER:

The October market break has had a significant effect on the Commission's workload. First, the Commission staff prepared a comprehensive report on the market break which required tremendous resources, primarily from the Division of Market Regulation. The Commission expended almost 17 staff years over three months to conduct the study at a total cost of approximately \$1.2 million. While the study was being conducted, much of the division work was held in abeyance. As a result, workload levels for FY-88 and 89 had to be modified to reflect more realistic goals for the division staff. In addition, the staff will continue follow-up work on rulemaking and legislative proposals to prevent future market break events.

The Commission may require additional resources in other areas to deal with the market break aftermath. For example, the level of investor complaints rose dramatically following the market break, which may impact the enforcement program. At this time, it is difficult to estimate the additional resources needed by the Commission to respond to any increasing workload caused by the market break.

THURSDAY, MARCH 24, 1988.

**UNITED STATES ARMS CONTROL AND DISARMAMENT  
AGENCY**

**WITNESSES**

**MAJ. GEN. WILLIAM F. BURNS, DIRECTOR DESIGNATE  
WILLIAM J. MONTGOMERY, ADMINISTRATIVE DIRECTOR**

Mr. CARR [presiding]. Gentlemen, this afternoon we will review the budget request for the Arms Control and Disarmament Agency.

The fiscal year 1989 request is \$32 million. This is an increase of \$1,900,000 above the appropriation enacted for fiscal year 1988.

At this point we will insert into the record the justification materials submitted in support of this request.

[The budget justification materials follow:]

(401)



**UNITED STATES ARMS CONTROL & DISARMAMENT AGENCY**

# **FY-1989 BUDGET**

**Appropriation: ARMS CONTROL & DISARMAMENT ACTIVITIES**

**CONGRESSIONAL SUBMISSION**

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCYINDEX

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UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCYFY-1989 SUMMARY OF BUDGET REQUESTARMS CONTROL AND DISARMAMENT ACTIVITIES

	<u>POSITIONS</u>	<u>AMOUNT</u>
<b>FY-1988 APPROPRIATION</b>	<b>184</b>	<b>\$30,100,000</b>
<b>FY-1989 APPROPRIATION REQUEST</b>	<b>184</b>	<b>\$32,000,000</b>
<b>INCREASE/DECREASE</b>	<b>0</b>	<b>+ 1,900,000</b>

EXPLANATION OF REQUIREMENTS  
(\$000)

	<u>FY-1988</u>	<u>FY-1989</u>	<u>INCREASE OR DECREASE</u>
PROGRAM OPERATION	<u>\$26,650</u>	<u>\$28,670</u>	<u>+ 2,020</u>
EXTERNAL RESEARCH	<u>3,450</u>	<u>3,330</u>	<u>- 120</u>
	<u><b>\$30,100</b></u>	<u><b>\$32,000</b></u>	<u><b>+ 1,900</b></u>

**APPROPRIATION LANGUAGE**

**ARMS CONTROL AND DISARMAMENT AGENCY**

**Federal Funds**

**General and special funds:**

**ARMS CONTROL AND DISARMAMENT ACTIVITIES**

For necessary expenses, not otherwise provided for,  
for arms control and disarmament activities, including not to  
exceed (\$48,000) \$55,000 for official reception and  
representation expenses, authorized by the Act of September 26,  
1961, as amended (22 U.S.C. 2551 et seq), [\$30,100,00]  
\$32,000,000.

## CLASSIFIED INFORMATION

5

Introduction

By statute, the United States Arms Control and Disarmament Agency (ACDA) must have the capacity to provide the essential political, economic, political, military, psychological, and technological information upon which realistic arms control and disarmament policy must be based. ACDA shall have the authority, under the direction of the President and the Secretary of State, to carry out the following primary functions:

- (a) The conduct, support, and coordination of research for arms control and disarmament policy formulation;
- (b) The preparation for and management of U.S. participation in international negotiations in the arms control and disarmament field;
- (c) The development and coordination of public information concerning arms control and disarmament; and
- (d) The preparation for, operation of, or as appropriate, direction of U.S. participation in such control systems as may become part of U.S. arms control and disarmament activities.

FY-1989 Funding Request

The Fiscal Year 1989 budget and staffing requests of the U.S. Arms Control and Disarmament Agency are \$32,000,000 and 184 permanent positions. This budget request consists of two main elements: operating expenses at a level of \$28,670,000 and an external research program of \$3,330,000, which includes \$2,200,000 for the Reduced Enrichment in Research and Test Reactor (RERTR) program.

The proposed FY-89 budget is \$1,900,000 greater than the FY-88 funding level. The budget estimate contains funding for continuing ACDA operations in the amount of \$29,800,000, which represents an increase of \$2,300,000 over FY-88 levels for these activities.

FY-1988 Appropriation

For FY-88, ACDA is currently operating under the omnibus continuing resolution (P.L. 100-202) which included \$30,100,000 for ACDA's appropriation. This funding level provides for a personnel complement of 184 full-time permanent positions and includes \$2,600,000 for the RERTR program and \$27,500,000 for ongoing ACDA activities.

BILATERAL NEGOTIATIONS

The US-USSR Nuclear and Space Talks (NST) intensified in 1987. Two rounds of NST were held during the year: Round VII from January 15 to March 6, with the INF Negotiating Group extending to March 26; and an extended Round VIII from April 23 to November 24, with the INF Negotiating Group working further into December to complete the INF Treaty that was signed at the Washington Summit. During the year, significant progress was also achieved in narrowing differences between the sides in START.

Building on the progress achieved at Reykjavik in the fall of 1986, the NST negotiation showed a clear departure from previous rounds. First, the format for the talks and their tempo changed significantly at the beginning of Round VII with the sides agreeing to less formal procedures, the creation of working groups, and an increase in the number of weekly meetings by about a factor of five.

Then, in Round VIII, which was in session continuously for seven months, work in the START and INF Negotiating Groups shifted to treaty text drafting. Moreover, high-level agreements during foreign ministerial meetings during the year made it feasible to focus on the goals of concluding an INF treaty before the end of the year and, if possible, a START treaty in the first half of 1988.

In the Defense and Space Negotiating Group, the United States followed up on its proposal at the April Ministerial meeting in Moscow for time-limited commitments not to withdraw from the ABM treaty for the purpose of deploying advanced strategic defenses, and a predictability package consisting of data exchanges, reciprocal briefings and visits to research facilities, and establishment of procedures for reciprocal observation of strategic defense testing. The predictability package was proposed to create a regime that would allow dramatic reductions in offensive nuclear arms while ensuring that neither side faced sudden changes in the strategic environment.

The staff of the Strategic Programs (SP) Bureau and other elements of ACDA were intensively involved in preparation for, participation in, and support of these talks throughout 1987. The Strategic Programs Bureau represented ACDA in the interagency groups that supported the INF, START and Defense & Space negotiations. The Bureau's staff also prepared extensive political and technical analyses in support of policy decisions in Washington. In addition, ACDA contributed representation and organizational support for the negotiations in Geneva. All of these responsibilities add considerably to the ACDA workload, especially that of the Bureau of Strategic Programs.

The head negotiators for the three negotiating groups and their immediate staffs are supported by ACDA. ACDA also had a representative on each group in the Delegation, provided experts in support of the Delegation, and secretarial support for the ACDA contingent and for the translators. The Agency also chaired the Interagency Group on Defense and Space, as well as the Interagency Backstopping Committee which provides primary substantive support to the US Delegation to the NST negotiations.

Other bilateral arms control activities in 1987 included two regular sessions of the joint US-Soviet Standing Consultative Commission (SCC) in Geneva. ACDA has an important role in the preparation for, and conduct of, the sessions of the SCC just as it does with the NST negotiations. ACDA professional staff members lead the interagency work on policy formulation and backstopping, and provide members and support staff for the bilateral sessions. Also, the Office of the US SCC Commissioner is situated in ACDA to provide full-time continuous support for the US Commissioner and the Secretariat, the leadership and nucleus of the US Component of the SCC.

Beyond ACDA's role in negotiations and the day-to-day involvement in policy formulation, ACDA now has a long-term task of coming to grips with the arms control implications of a US deterrent strategy that might come to rely more heavily on strategic defenses, as well as the implications of existing and potential Soviet defenses. This understanding is needed to ensure that potential US defenses will most effectively reinforce deterrence and stability, and to identify arms control approaches that can securely assist a move to greater reliance on strategic defenses.

The proposed budget assumes that two NST negotiating groups and the SCC would be in Geneva at least half the year but perhaps longer. During this year, the key areas of emphasis will naturally relate to support of the ongoing NST negotiations and to support of the SCC, including ACDA's backstopping responsibilities in these two areas; to policy development for US-Soviet security relations as a whole; and to consultation on arms control issues with Allies, neutrals and Eastern European countries not party to the NST. The goals of the SP Bureau are:

- to anticipate and to develop rapid negotiating responses in remaining areas of the NST negotiation;
- to support ratification and implementation of the INF treaty; and, to provide policy guidance to the process of monitoring, inspection, and verification of the obligations assumed in the treaty;

- to support completion, ratification and implementation of a START treaty in 1988;
- to continue studying questions related to a future transition to a strategy of deterrence based on increased reliance on strategic defenses and the role of arms control in such a transition;
- to monitor SDI cooperation with the Allies;
- to work closely with other agencies in the area of civil space cooperation with the Soviet Union and other countries to ensure that US national security and arms control interests are fully taken into account;
- to consider steps to resolve the many issues concerning Soviet noncompliance with arms control commitments; and,
- to participate actively in consultations with Allies, neutrals and Eastern European countries to ensure their understanding of US arms control objectives and policies.

MULTILATERAL NEGOTIATIONS

ACDA is responsible for the preparation of guidance for, and backstopping of US delegations to the Conference on Disarmament (CD) in Geneva, the First Committee of the UN General Assembly (UNGA) which deals with disarmament and related issues, and the UN Disarmament Commission (UNDC). The Multilateral Affairs Bureau handles these issues for the Agency.

The CD meets for a total of about six months each year, with sessions scheduled for early February through April and June through August. The UNGA First Committee meets for two months each fall, and the UNDC normally meets for four weeks each summer.

The CD is the principal international forum for multilateral negotiations of arms control and disarmament agreements. Its primary focus of attention in 1987 was on the question of a comprehensive ban on chemical weapons, but the CD also considers many other issues, including outer space arms control, nuclear testing, radiological weapons, comprehensive program for disarmament and negative security assurances. The UNGA and UNDC address these and other issues such as nuclear weapons free zones, conventional arms control, and military expenditure reporting and limitations.

ACDA provides the US representative to the CD, who is also is the US representative to the First Committee and the UNDC. ACDA also provides much of the staffing for these delegations. In 1987, ACDA assumed (from the State Department) full financial responsibility for the CD.

Chemical weapons negotiations were a primary focus of ACDA and the Multilateral Affairs Bureau. The US-Soviet summit of 1985 called for more intensive work on negotiations towards a comprehensive, global and effectively verifiable ban on chemical weapons. As a result, complementary to the multilateral work in the CD, the US engaged in bilateral discussions with the Soviet Union. Three sessions were held in 1987. The US Representative to the CD leads the US delegation to these talks. In addition, the US in 1987 met with allies and, separately, with the Soviet Union, to address the problem of chemical weapons proliferation.

In 1987, ACDA also served as the lead US Agency in preparing for and staffing the delegation to the experts meeting of the Biological Weapons Convention which had been mandated by the 1986 Second Review Conference of the BWC. At this experts meeting, the 67 signatories of the convention worked out modalities for the exchange of information on biological research activities relevant to the Convention, an exchange which took place by October 15 through UN channels.

ACDA continued to serve as the lead US Agency for backstopping the US-Soviet nuclear testing experts meetings which continued through July 1987, and then for the full-scale nuclear testing talks which were announced by Secretary Shultz and Soviet Foreign Minister Shevardnadze on October 17. The first session of these talks were held from November 9-20, 1987.

ACDA, through the Multilateral Affairs Bureau, also takes a leading role within the US Government in the preparation for, and backstopping of, US delegations to the various negotiations concerning European security. In 1987, these were the Mutual and Balanced Force Reductions (MBFR) talks, the new East-West discussions on a mandate for future conventional stability talks, and the Conference on Security and Cooperation in Europe (CSCE) and its security arm, the Conference on Confidence- and Security-Building Measures and Disarmament in Europe, all taking place in Vienna, Austria.

The MBFR talks have three sessions each year, each lasting about 10 weeks. The CSCE Review Conference, which is considering, among other things, the possibility of resuming the CDE, met in Vienna virtually throughout the year, as did the separate discussions among the 23 members of NATO and the Warsaw Pact on a mandate for conventional stability negotiations. ACDA provided experts to these delegations.

ACDA has assumed the responsibility within the USG for maintaining all record-keeping relating to the implementation of the Stockholm CDE Document which was agreed in September 1986 by the 35 signatories of the CSCE. A total of 63 individual notifications covering 47 separate military activities in Europe were exchanged among the 35 during 1987. In addition, the United States, the UK, the Soviet Union and the GDR exercised their right to conduct on-site inspections of military activities in Europe.

In short, in 1987, ACDA was heavily engaged in the staffing and backstopping of many major multilateral arms control efforts in Geneva and Vienna, with primary emphasis on chemical weapons, nuclear testing and conventional forces, and of bilateral efforts on chemical weapons and nuclear testing. A large proportion of the officers of the Multilateral Affairs Bureau are therefore overseas at any given time.

Looking ahead to 1988, we expect continued intense activity in chemical weapons, conventional forces, and nuclear testing arms control efforts. In addition, the United Nations will be holding a Special Session Devoted to Disarmament (SSOD-III), the third such special session to be held. (The first was in 1978, the second in 1982). ACDA will be the lead Agency for preparing the US contribution to this major international event.

REDUCING THE RISK OF NUCLEAR PROLIFERATION

From the inception of the nuclear weapons era, a fundamental element of US national security policy has been to prevent the spread of nuclear weapons to additional countries. ACDA will continue to expend a substantial portion of its financial and human resources in implementing United States' nonproliferation policy through FY 1988 and FY 1989.

ACDA is involved in all stages of policymaking in this area, including efforts to strengthen and promote adherence to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco); to strengthen the International Atomic Energy Agency (IAEA) with its important safeguards system and technical assistance and safety programs; to work toward improved safeguards, controls, and physical protection measures to deal with the likely increase in the quantity of separated plutonium; to maintain policies and procedures on US nuclear exports that promote nonproliferation objectives; to improve and promote international consensus on sound nuclear export policies; to conclude and implement new agreements for cooperation with Japan, EURATOM, and other countries; to consult with other supplier countries, including the Soviet Union, on matters of mutual interest; and finally to develop strategies for dealing with countries posing major challenges to nonproliferation. Efforts in these areas will continue and be increased in many cases in FY 1989.

The NPT continues to receive broad international support as the key instrument in efforts to prevent the spread of nuclear explosives to additional countries. As the lead agency in the Executive Branch with regard to the NPT, ACDA utilizes considerable resources in ensuring the widest possible acceptance and full implementation of the Treaty. The successful outcome of the third NPT Review Conference in 1985 set the stage for continued intensive efforts to promote additional adherence. Six additional countries have joined the NPT since the 1985 NPT Review Conference. Spain is the most recent addition to the NPT, having joined on November 5, 1987, to become the 136th Treaty party. US efforts to obtain additional adherents to the NPT will continue throughout FY 1988 and FY 1989. Carrying out this policy requires constant monitoring of the views of non-NPT parties with a view to planning the timing and content of demarches. The United States also consults with other NPT parties with regard to promoting additional adherence.

Other issues discussed at the 1985 NPT Review Conference required follow-up activity and will continue to do so during FY 1988 and FY 1989. One example is the establishment of an experts group by the IAEA to study issues associated with the introduction of peaceful nuclear activities into developing countries, including the question of financing. This IAEA Experts Group completed its study in 1987 and forwarded a lengthy list of conclusions and recommendations to all IAEA members. ACDA staff will be working with other agencies to determine which of these recommendations the United States can support. Following up on the 1985 NPT Review Conference will be particularly important in FY 1988 and FY 1989. The fourth NPT Review Conference is scheduled to take place in 1990, and we will begin our initial substantive preparations during FY 1988. We expect to establish the internal US interagency backstopping committee early in 1988 so that work may begin on planning and on preliminary studies.

We expect, as well, that the fall 1988 United Nations General Assembly (UNGA) will pass a resolution establishing some of the initial organizational details for the Review Conference, such as the composition of the Preparatory Committee and the timing of its first meeting. Discussions involving the depositary governments -- US, UK, USSR -- and key US allies and members of the Non-Aligned will begin in the spring.

If past practice is followed, two Preparatory Committee meetings will be scheduled in FY 1989 with a third and final preparatory meeting scheduled in 1990 prior to the fourth NPT Review Conference itself. The fourth NPT Review Conference will be a particularly significant milestone in the Treaty's life as it will help to set the stage for 1995 when NPT Article X provides that the parties shall convene a conference "to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods." During FY 1989, ACDA staff will undertake thorough and far-reaching preparations for the 1990 Review Conference, including multilateral and bilateral consultations with other NPT parties and the development of a data base of technical assistance provided to the countries party to the Treaty. ACDA expects to devote considerable resources to the preparations for this important event.

During FY 1987, the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) held its Tenth Regular General Conference. OPANAL is charged inter alia with monitoring the implementation of and compliance with the Treaty of Tlatelolco. The United States is a party to the Tlatelolco Treaty's two Additional Protocols. Under Protocol I, the United States has undertaken not to deploy or station nuclear weapons in its territories in the region. At

the General Conference, the United States announced that it was beginning negotiations with the IAEA on a safeguards agreement covering all US Protocol I territories. ACDA staff will be responsible for carrying out these negotiations with the IAEA in FY 1988 and, if needed, in FY 1989.

The United States has long believed that the Treaty of Tlatelolco offers the best chance for achieving a nuclear weapons free Latin America. Consequently, the United States has sought to encourage eligible states to bring the Treaty into force and has encouraged OPANAL to use its resources to do the same. ACDA staff will continue these efforts in FY 1988 and FY 1989 in anticipation of the Eleventh Regular OPANAL General Conference which we expect to be held in 1989. ACDA staff again will be responsible for much of the preparation for the 1989 OPANAL General Conference.

The next few years will be particularly important to the future of the Treaty, as Argentina and Brazil increase the scope and pace of their nuclear programs. Their tentative efforts to find ways to ensure that their nuclear programs do not increase tensions between them will need to be taken into account in US nonproliferation efforts. We also will be looking for ways to encourage both countries to take concrete steps, including broader acceptance of IAEA safeguards, to demonstrate to each other and to the international community that their nuclear programs are truly peaceful.

The IAEA was created in 1957, largely at the initiative of the United States, to promote the peaceful uses of nuclear energy and to establish a system of safeguards designed to guard against diversion to military use. Over the years, this Agency has evolved into one of the most effective international organizations. It provides the underpinning for international nuclear commerce; serves as an important verification mechanism under both international and bilateral agreements, promotes the economic and social well-being of developing countries through the use of technical assistance, and increasingly has become the focal point for international cooperation on nuclear safety.

ACDA has been deeply involved in supporting and monitoring the implementation of IAEA international safeguards programs and technical assistance to assure their effectiveness and their efficient implementation, in order to promote US nonproliferation goals and objectives. During FY 1988 and FY 1989, ACDA will work directly with the IAEA in many ways, including participation in IAEA meetings of the Board of Governors and the General Conference, the Committee on Assurances of Supply, the Technical Assistance Cooperation Committee, and, at the discretion of the IAEA Director General, the Standing Advisory Group on Safeguards Implementation. ACDA

staff also will serve as technical consultants to the IAEA and on advisory groups for safeguards and fuel cycle issues. In addition, ACDA will work with other US agencies on programs designed to support IAEA safeguards and to provide technical assistance through the IAEA to developing countries. ACDA will continue to support these efforts in FY 1989.

In the wake of the April 1986 accident at the Soviet Union's Chernobyl nuclear power station, the IAEA's work in the area of nuclear safety has increased significantly, and, as a result, new demands have been placed on ACDA staff dealing with the IAEA. At the May 1986 meeting of the IAEA Board of Governors, an extensive program for enhancing international cooperation in nuclear safety was mapped out. These efforts are continuing in FY 1988 and are expected to extend into FY 1989.

In FY 1989, ACDA is requesting funding to continue the work of the Reduced Enrichment in Research and Test Reactors (RERTR) program. The Department of Energy, which had funded RERTR through FY 1986, decided not to include funding for RERTR in its FY 1987 budget; therefore, ACDA included RERTR funding in its FY 1987 and FY 1988 budgets. The goal of this program is to reduce international commerce in highly enriched uranium (HEU), a material which can be used in nuclear weapons. Such material has for many years been needed to fuel certain high-performance research and test reactors. Because of the important contribution the RERTR program makes to US nonproliferation goals, ACDA is vigorously committed to the successful and orderly completion of this program. ACDA is requesting funding for the RERTR program in FY 1989 to support this goal. During FY 1987, a full core demonstration of advanced low enriched uranium (LEU) silicide fuel was undertaken successfully at the Oak Ridge Research Reactor. The demonstration core performed in a fully acceptable manner. Provided funding from ACDA is available in FY 1988, the post-irradiation examination and testing of the spent fuel elements will be completed. If funding is available and the test results are successful, new LEU fuels will be available by 1990 for most, if not all, research reactors now requiring HEU.

During FY 1989 and beyond, it is likely that the use of plutonium as a fuel for power reactors will continue to increase significantly. This will pose new challenges for IAEA safeguards at new, large plutonium use facilities and for physical protection measures on the associated, increased international transport of plutonium. ACDA will continue to work with the IAEA and bilaterally with other nations to develop effective safeguards, physical protection, and institutional measures to assure that increased plutonium use will not significantly increase the risk of proliferation.

Section 127 of the 1978 Nuclear Non-Proliferation Act sets forth the criteria governing US nuclear exports. One of the six criteria states that adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. ACDA, along with other interested Executive Branch agencies, is charged with the statutory and regulatory responsibility to carry out this and the other five export criteria.

Along with these export activities, ACDA expects to be involved in two additional physical protection-related activities during FY 1988 and FY 1989. The first relates to domestic and international calls to update the internationally accepted Physical Protection Guidelines which were last revised in 1977. We anticipate that the IAEA will convene expert groups for this purpose and that ACDA will participate in preparations for its meetings. The United States also has undertaken active efforts to encourage states to join the Convention on the Physical Protection of Nuclear Materials. ACDA staff will continue its efforts, in coordination with other US agencies, to persuade states to join this Convention.

ACDA continues to play a major role in decisions on US cooperation with foreign civil nuclear programs. We expect to participate in ongoing and new initiatives to upgrade and clarify international trigger lists for items "especially designed or prepared" for the production of special nuclear material. During FY 1988 and into FY 1989, there will be an increased focus by ACDA on US policy on the export of dual-use items. This is a difficult policy area and one which requires considerable time and effort for ACDA staff. Dual-use items generally are those which can be used in both nuclear and non-nuclear applications. Policies and procedures need to discriminate among dual-use exports so that careful scrutiny is given to those that raise important nonproliferation issues, while others can pass through the system routinely. The focus of this effort for ACDA will be on ensuring that the export of such items does not contribute to the design, construction, or operation of unsafeguarded nuclear facilities in non-nuclear weapon states. In particular, ACDA will continue to participate in the Subgroup on Nuclear Export Coordination, which reviews dual-use exports and provides advice on US regulations, and will assist the State Department in discussions with other supplier countries concerning ways to increase international cooperation in controlling dual-use exports. Further, ACDA staff will also be working on improving interagency coordination to guard against illegal procurement of US-origin goods on behalf of foreign nuclear programs.

Another area of cooperation with foreign civil nuclear programs that will require effort during FY 1988 and FY 1989 is that of negotiating and implementing agreements for cooperation. On November 4, 1987, the United States and Japan signed a new agreement for peaceful nuclear cooperation, which is the first agreement to include advance, long-term approvals related to the use of plutonium. ACDA prepared the Nuclear Proliferation Assessment Statement for this agreement and will be involved in additional activities related to bringing the agreement into force. In addition, it can be expected that further discussions will be held with EURATOM in FY 1988 and FY 1989 regarding a new or amended agreement for cooperation which would include all of the requirements of the Atomic Energy Act, as amended.

Consultations with other nuclear supplier countries will continue to be an important area for ACDA in FY 1988 and FY 1989. Routine bilateral consultations were held with a number of countries in 1987. The number of countries with whom we hold such consultations is expected to grow in 1988 and 1989. Issues to be addressed include efforts to halt individual exports to countries of proliferation concern; to clarify further the existing international control lists; to avoid contributing to the design, construction, or operation of unsafeguarded nuclear facilities in non-nuclear weapon states; to encourage making significant, new nuclear supply commitments only to nonnuclear weapon states that have all their nuclear facilities under international safeguards; to promote further cooperation on the control of dual-use exports; and to encourage continued restraint in the export of plutonium, highly enriched uranium, and technologies for the production of these nuclear materials.

The UN Conference on the Peaceful Uses of Nuclear Energy (PUNE) was held in FY 1987 and, as expected, did not provide for any follow-on mechanism. The Conference's discussion of principles and ways and means to enhance cooperation in peaceful nuclear development, while inconclusive, provided a useful exchange of views. It also highlighted the need to keep open other multilateral channels of communication as part of ongoing efforts to address fundamental differences among states. One such forum is the IAEA's Committee on Assurances of Supply (CAS). The United States fully supports the CAS. During FY 1988 and FY 1989, ACDA staff will provide support for US activities related to CAS.

Country issues, including monitoring all sources of information on nuclear programs and intentions of countries of proliferation concern, will continue to be a high priority for ACDA during FY 1988 and FY 1989. The nuclear programs and policies of India and Pakistan will be of prime importance over

this period. The importance of the next few years in Latin America was noted above. Continuing allegations about Israel's nuclear program are a reminder of the volatility of that issue in the Middle East. There will be continued efforts to encourage South Africa to submit more of its nuclear facilities to international inspection and to follow-up on its announcement that it is prepared to consider joining the NPT. North Korea's decision to adhere to the NPT is a welcome development, but the nuclear situation in East Asia will continue to bear close watching.

ARMS AND TECHNOLOGY TRANSFERS

ACDA, in coordination with the Departments of State and Defense, is involved on a day-to-day basis in the implementation of the President's conventional arms transfer policy, enunciated on July 8, 1981. This policy recognizes that arms transfers, judiciously used, can help to deter aggression, strengthen our mutual security relationships, demonstrate our enduring interest in the security of friends and partners, and foster regional and internal security.

Under the President's policy, requests for arms are carefully evaluated on a case-by-case basis, primarily in terms of their net contribution to enhanced deterrence and defense. A wide range of factors, including arms control factors, are considered in evaluating prospective transfers.

ACDA's responsibilities in the arms transfer area are mandated by the Arms Export Control Act and the Foreign Assistance Act of 1961, as amended. Pursuant to these statutes, the Agency advises Executive Branch decision-makers on the extent to which proposed US arms transfers or military assistance will contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements. ACDA provides advice on the arms control implications of about 1,500 government-to-government requests for military equipment and commercial export license applications per year, many of which involve the transfer of more than one weapon to more than one country. The Agency also participates with other agencies in the development of the annual Executive Branch funding request for security assistance programs in order to ensure that arms control considerations are fully taken into account in the development of these programs.

The Soviet Union continues to jeopardize regional stability and threaten the security of independent Third World countries by providing massive amounts of arms to surrogate states. In some cases, radical regimes, although not necessarily dependent on Soviet arms, also threaten the security of their neighbors. The magnitude of these threats, together with the increasing sophistication of modern weapons, has increased the complexity of arms transfer issues and has led to more intensive ACDA involvement in the decision-making process. These conditions are expected to persist. The Agency will be required to assess a large volume of complicated arms transfer cases, and will be extensively involved with the Departments of State and Defense and other concerned agencies in the conduct of interagency arms transfer

policy studies and reviews. At the same time, ACDA will continue its efforts to identify and take advantage of opportunities to bring about multilateral controls on arms transfers whenever such controls hold promise of contributing to regional stability and international security.

In the area of technology transfers, new arms producers continue to turn to the United States (as well as other major suppliers) for the technology needed to build their own weapon systems. As a result, ACDA will be devoting greater attention to the issues raised by requests for the transfer of technologies which could lead to an independent capability of Third World countries to produce advanced weapons. The Agency will continue to be particularly concerned to ensure that civil space-related technology provided to other countries is used only for peaceful purposes. This work complements ACDA's nuclear nonproliferation activities. ACDA will be heavily engaged with other Executive Branch agencies in implementing the Missile Technology Control Regime which was established in April 1987. Under this regime, the United States and seven of its major allies have adopted common national policies to control the proliferation of nuclear-capable missiles. The seven nations now participating in the regime will be actively seeking the adherence to the regime of other major suppliers of missiles and missile technology.

DEFENSE, ECONOMIC ANALYSES AND ARMS CONTROL

The Defense Programs and Analysis Division assesses the national security implications of arms control concepts and proposals relating to military strategies and force postures. The Division's civilian and military staff members also analyze US defense policies, programs and technologies, and economic issues as they relate to arms control positions.

Since 1975, the Executive Branch has been required, by law, to submit arms control impact statements concerning nuclear weapons and those systems exceeding prescribed annual or program costs to Congress at the time the President submits his annual fiscal year budget request. The Defense Programs and Analysis Division is responsible for preparing these impact statements, which, before submission, are subject to interagency approval. The statements themselves analyze the implications of various programs on arms control agreements, policies, and negotiations. The FY 1989 ACIS submission will include an arms control policy statement and arms control impact analyses on strategic offensive systems, the strategic defense initiative, space defense, chemical weapons, the advanced laser isotope separation program, and an abbreviated list of other significant programs.

The Division has responsibility for preparing the ACDA annual report, which provides an in-depth review of all arms control activities during the year. The Division's knowledge and experience are also used in analyses of US and Soviet arms control positions, negotiations, and treaty reviews. Division representatives participate in agency and interagency working groups on space, the Soviet economy, the economic impact of US defense spending and arms transfers activities, and, in UN expert study groups. The Division also serves the Agency in initiating, participating in, and providing support for operational activities related to inspections conducted under the aegis of the Antarctic Treaty. An inspection is being planned to take place during FY 1989.

An annual statistical compilation, World Military Expenditures and Arms Transfers (WMEAT), is prepared by the Division. This publication is recognized internationally as the authoritative source providing military and economic statistical data pertaining to the distribution, size and trend of global military expenditures and the international arms trade. This information is presented over an eleven-year period for 145 individual countries, for alliances and groups of countries, and, for the world. Analyses are also provided on the implications and the trends in these data. Related essays by distinguished authors are also included.

VERIFICATION AND INTELLIGENCE

The Bureau of Verification and Intelligence is responsible for policy formulation and analysis and other studies dealing with the verifiability of provisions of current and projected arms control agreements. The Bureau also provides operations analysis, intelligence, and computer support for all of ACDA's activities. The Bureau is divided into three divisions: the Verification Division which deals with verification and compliance issues; the Operations Analysis Division which performs analytical studies and provides computer support; and the Intelligence Division which performs intelligence studies and provides ACDA with necessary intelligence information.

The Bureau plans, organizes and supervises studies and policy papers prepared within the Agency and reviews those prepared by other organizations dealing with the verifiability of provisions of current and projected arms control agreements; provides for the Director's use the assessments of verifiability and other information called for in the Arms Control and Disarmament Act (as amended); prepares analyses of information pertaining to compliance by other states with existing arms control agreements to which the U.S. is party; makes assessments of possible new systems, devices, and capabilities for verification; conducts liaison with intelligence and scientific agencies concerned with systems, techniques, and instruments useful for verification; makes arrangements for and participates in discussions of U.S. and international bodies involved in the verification of and compliance with arms control agreements; and provides intelligence information pertinent to the planning for arms control discussions, the conduct of negotiations, and the assessment of compliance.

The Bureau had a leading role within the Government in the development of the statutorily required arms control compliance reports which the President forwarded to the Congress. Four such reports have been forwarded, the most recent in March 1987. The Bureau has been leading and contributing to an interagency effort to examine and improve the methodologies used for estimating the yields of Soviet weapons tests. The Bureau also has just completed a strategic exchange analysis evaluating force structures from both the Soviet and U.S. points of view. Major extensions to this analysis are planned which will address the potential vulnerability of mobile missiles and the implication of the Strategic Defense Initiative.

Given the critical importance of verification and compliance, in November 1952 the President established a high-level committee for oversight of compliance with existing arms control agreements and for assuring the verifiability of agreements being negotiated. The Assistant Director for Verification and Intelligence is a member of the Arms Control Verification Committee (chaired by the Assistant to the President for National Security Affairs) and Co-chairman of the Analysis Group under this committee. This analysis group has been responsible for the preparation and interagency coordination of the Presidential Compliance Reports mentioned above.

The Bureau is also responsible for liaison action with the intelligence community, including storing and controlling and handling of all documents that contain special intelligence material, assisting Agency personnel in obtaining the necessary access to sensitive compartmented information, and disseminating and enforcing all regulations that pertain to discussions, visits, and other exchanges of information that involve special intelligence data.

In addition, the Bureau is responsible for the Agency's computer operations. Numerous computer programs are used by the staff in support of the Agency's work. Of particular importance are a number of information retrieval systems which permit the rapid retrieval of the negotiation records, position papers and background studies.

## SUPPORT FUNCTIONS

The Agency's support functions including those for international negotiations are provided by the offices of Administration, the General Counsel, Congressional Affairs, and Public Affairs.

The Agency has primary administrative support and substantive backstopping responsibility for delegations involved with US/Soviet bilateral negotiations. The United States and the Soviet Union are currently in the ninth session of the NST. In December, the Agency provided support for the Summit during which an INF Treaty was signed by the President and General Secretary Gorbachev.

As of this February, ACDA started providing primary administrative support for the new Nuclear Testing Talks (NTT) with the Soviets. However, no provision for the support of this new delegation was included in this submission.

ACDA also has a secondary role in assisting multilateral delegations who receive their principal administrative support from the Department of State. These include the Conference on Disarmament (CD), the Conference on Security and Cooperation in Europe (CSCE) and the Mutual and Balanced Force Reductions Talks (MBFR).

The Office of Administration is responsible for providing administrative support needed by the various arms control delegations, as well as additional backstopping capabilities in Washington. The office accomplishes its major objectives through its Budget & Accounting, Travel, Security, Personnel, Contracts, Office Automation, and Communications & General Services staffs.

The Office of the General Counsel is responsible for all matters of domestic and international law relevant to ACDA's work. It provides advice and assistance in drafting and negotiating arms control treaties and agreements, and on questions regarding their approval by Congress, implementation, interpretation, ratification, and revision. Lawyers from the office serve as legal advisers on US/Soviet bilateral negotiating delegations (e.g. INF, START, and NTT). The General Counsel is the legal adviser to Ambassador Kampelman as head of the Nuclear and Space Talks delegation in Geneva. Office lawyers also serve on multilateral negotiating delegations, at conferences reviewing past arms control agreements, and at sessions of the Standing Consultative Commission (SCC).

The Office is responsible for legal matters relating to arms control policy formulation and ACDA legislative programs, including drafting such legislation. It performs liaison as required with the Legislative Reference Division, Office of Management and Budget (OMB). ACDA lawyers, as officers of the American Bar Association's Committee on Arms Control, of which the General Counsel is Chairman, serve as liaison with that Association. The Office also handles the legal aspects of Agency policies and operations in the areas of personnel, ethics, security, patents, contracts, procurement, fiscal, and administrative matters.

The Office of Congressional Affairs (CA) has the primary responsibility for Congressional liaison, coordination and representation. Our activities include preparation for and attendance at Congressional briefings, consultations, and hearing preparation for visits by members of Congress to our negotiating fora and responsibility for Congressional inquiries. The status of proposed and existing arms control agreements, and inter- and intra-agency coordination of arms control Congressional matters are also included in the liaison activity. Intermittent representation on the NST delegation, as well as travel with Congressional arms control delegations, are within the purview of this office. Communication between the Agency and Congressional committees, Members and staff, formal and informal, is designed to keep Congress informed of our arms control efforts. This process includes obtaining insights by ACDA Congressional Affairs for suggestions and initiatives within ACDA.

In the months ahead, CA will play the lead role in the ratification of the proposed INF Treaty and the confirmation of ACDA's new Director and Deputy Director.

The Office of Public Affairs (PA) is charged with implementing one of the four major tasks assigned to ACDA by law: disseminating information on arms control and disarmament to the public.

To this end, the Public Affairs Office carries out three functions. In its "spokesman role", PA works to ensure that the media and other priority audiences have an accurate and complete understanding of US arms control policies. Secondly, this office manages the public affairs activities of ACDA. For example, it aggressively pursues speaking engagements for ACDA officials before private groups -- civic, professional, academic, and others. It publishes a variety of materials for and responds to thousands of information requests annually. The office acts as liaison with national and international media, provides support for and liaison with the national security interagency public diplomacy group, and coordinates ACDA's public education program of speaking engagements, seminars and conferences. Finally, the Office provides the Director and senior Agency officers with advice on public perceptions of US Government arms control positions.

ACDA EXTERNAL RESEARCH PROGRAM - FY-89

The following is a tabulation of ACDA's FY-88 and FY-89 external research by bureau:

	<u>FY-88</u>	<u>FY-89</u>
Director's Reserve	\$ 25,000	\$ 100,000
MA	20,000	75,000
NWC*	2,600,000	2,275,000
SP	25,000	100,000
VI	<u>780,000</u>	<u>780,000</u>
<b>TOTAL</b>	<b>\$3,450,000</b>	<b>\$3,330,000</b>

\*Included in the above external research funds for the NWC Bureau are \$2,600,000 and \$2,200,000 for the RERTR program for FY-88 and FY-89 respectively.

The ACDA FY-89 external research program has been structured to accommodate ACDA's FY-88/89 authorization bill which earmarks \$780,000 for use by the VI Bureau in both years. The total external research program as submitted by the President for FY-89 is \$3,330,000. After transferring funding to the Department of Energ for the RERTR program and allocating the mandated funds for verification studies, the Agency has a remainder of \$350,000 to distribute to the Director's reserve and the other bureaus.

The Director's reserve will be used primarily for backstopping the NST Delegation and quick turn around analysis for priority projects that are difficult to predict in advance.

The remaining funding will be used for limited support of strategic nuclear arms and defense and space arms negotiations, as well as, other nuclear arms delegations and nuclear non-proliferation and safeguard work.

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY  
OBLIGATIONS BY OBJECT CLASS  
(\$000)

	<u>FY-88</u>	<u>FY-89</u>	<u>Change +/-</u>
<b>PERSONNEL COMPENSATION</b>			
FULL-TIME PERMANENT	\$7,381	\$7,787	+406
OTHER THAN FULL-TIME PERMANENT	427	432	+5
CONSULTANTS, ETC.	150	221	+71
VISITING SCHOLARS (FOSTER FELLOWS)	310	320	+10
<b>REIMBURSABLE DETAILS</b>			
STATE DEPARTMENT	2,867	3,376	+509
MILITARY	1,817	1,586	-231
OVER-TIME AND HOLIDAY PAY	103	110	+7
TERMINAL LEAVE	25	50	+25
<b>TOTAL PERSONNEL COMPENSATION</b>	<b>\$13,080</b>	<b>\$13,882</b>	<b>+802</b>
<b>BENEFITS</b>	<b>\$1,708</b>	<b>\$1,978</b>	<b>+270</b>
<b>TOTAL PERSONNEL COMPENSATION &amp; BENEFITS</b>	<b>\$14,788</b>	<b>\$15,860</b>	<b>+1,072</b>
<b>OTHER OBLIGATIONS</b>			
TRAVEL, PER DIEM & TRANSPORTATION	\$1,810	\$1,663	-147
RENTS, COMMUNICATIONS & UTILITIES	1,153	1,300	+147
PRINTING & REPRODUCTION	18	19	+1
OTHER SERVICES	11,824	12,444	+620
SUPPLIES AND EQUIPMENT	507	714	+207
<b>TOTAL OTHER OBLIGATIONS</b>	<b>\$15,312</b>	<b>\$16,140</b>	<b>+828</b>
<b>TOTAL OBLIGATIONS</b>	<b>\$30,100</b>	<b>\$32,000</b>	<b>+1,900</b>

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

FY-1989

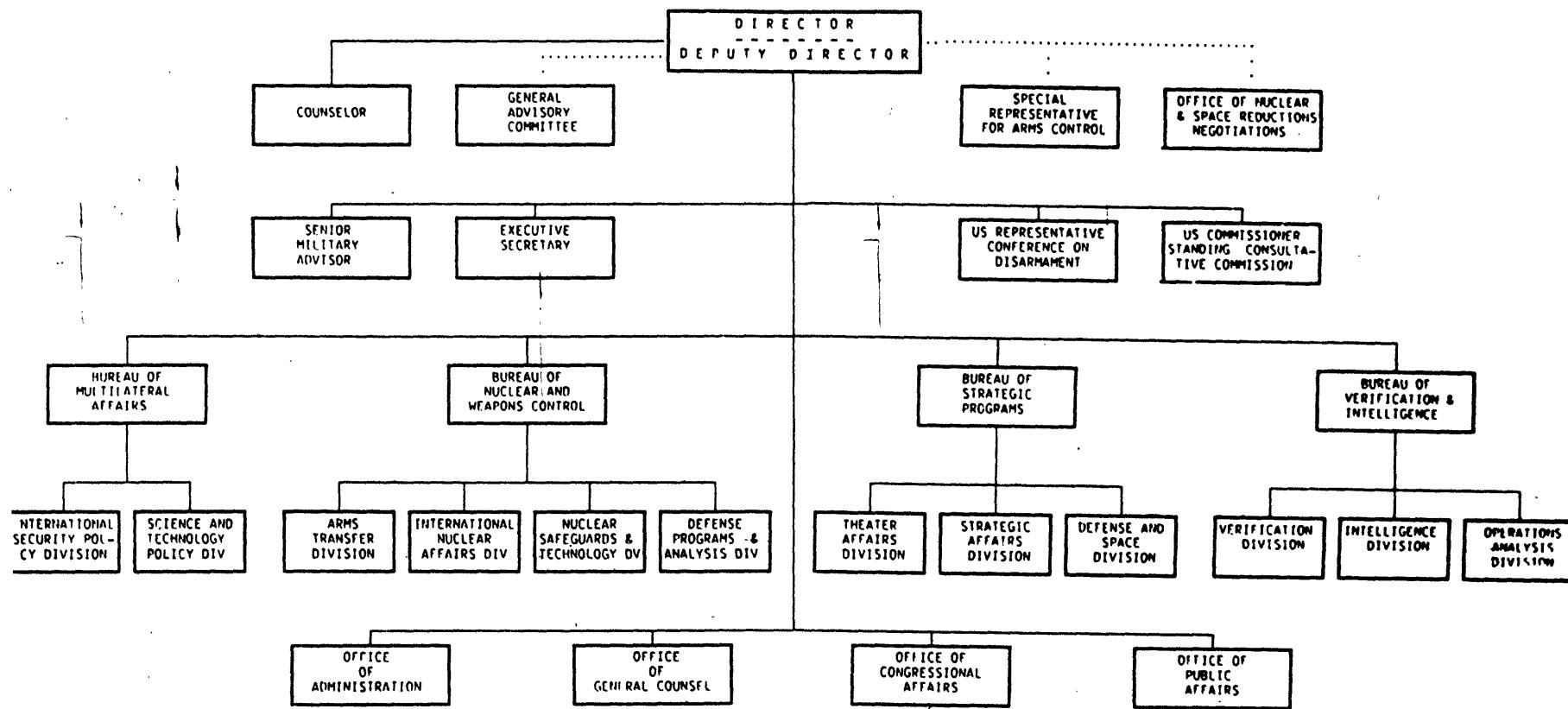
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	D	MA	NWC	SP	VI	ADMIN	CA	CC	PA	TOTALS
PERSONNEL OPERATIONS	833	585	682	6,394	775	2,943	126	215	257	12,810
PERSONNEL COMPENSATION	4,420	1,609	2,423	2,011	1,566	1,910	348	767	806	15,860
EXTERNAL RESEARCH	100	75	2,275*	100	780**	-	-	-	-	3,330
TOTALS	5,353	2,269	5,380	8,505	3,121	4,853	474	982	1,063	32,000

\*Includes \$2,200 for the RERTR Program

\*\*Reflects Authorization Earmark

# UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY



**Mr. CARR.** Here to testify is the new Director of the Arms Control and Disarmament Agency, General William F. Burns. Since this is your first appearance before the committee, we will insert your biographical sketch into the record at this point.

[The biographical sketch of General Burns follows:]

**MAJ. GEN. WILLIAM F. BURNS**

On January 7, 1988, President Reagan announced his intention to nominate Maj. Gen. William F. Burns to be the ninth Director of the U.S. Arms Control and Disarmament Agency. He is currently Principal Deputy Assistant Secretary of State in the Bureau of Politico-Military Affairs, Department of State.

Previously Maj. Gen. Burns has held a wide variety of important command and staff positions, including Joint Chiefs of Staff Representative to the Intermediate Range Nuclear Forces negotiations with the Soviet Union in Geneva, Switzerland from January 1982 until June 1984, and from January 1985 until November 1986.

General Burns has served in a variety of assignments preparatory to his most recent duties. These have included several field artillery battalion assignments, a stint as Assistant Professor of Military Science, LaSalle College, Philadelphia, Pennsylvania; combat experience in Vietnam 1966-67; command of the 4th Battalion, 94th Field Artillery, Fort Irwin, California, and of the 3rd Battalion, 73 Field Artillery, Fort Sill, Oklahoma. He studied at the United States Army War College in Carlisle Barracks, Pennsylvania from August 1971 through June 1972 and was Director of Political-Economic Studies in the Department of National and International Security Studies at the College from June 1972 to June 1976. Other assignments include Commander of the 42 Field Artillery Group, U.S. Army Europe, July 1976-April 1978; Senior Liaison Officer to the Army of the Federal Republic of Germany, May 1978-June 1980; Deputy Assistant Commandant, U.S. Army Field Artillery School, Fort Sill, Oklahoma, July 1980-December 1982; and Director of the Special Task Force, Corps Support Weapons System, at Fort Sill from February 1981 to January 1982. General Burns served as Deputy Commandant for the U.S. Army War College, July 1984-December 1984.

Awards and decorations which General Burns has received include the Defense Distinguished Service Medal, Defense Superior Service Medal, the Legion of Merit with Oak Leaf Cluster, the Bronze Star with "V" Device and three Oak Leaf Clusters, Meritorious Service Medal (with two Oak Leaf Clusters), Air Medals, and the Army Commendation Medal (with Oak Leaf Cluster).

Major General Bill Burns was born in Scranton, Pennsylvania on June 23, 1932. Upon completion of the Reserve Officers Training Corps curriculum and the academic courses of study at La Salle College, Philadelphia in 1954, he was commissioned a second lieutenant and awarded a Bachelor of Arts degree. He also holds a Master of Arts degree in International Relations from Princeton University.

He is married to the former Peggy Cassady; they have four sons: Dr. William J. Burns, U.S. Foreign Service; John R. Burns; Robert P. Burns; and 1st Lt. Mark E. Burns, USAF.

**Mr. CARR.** General Burns, it is a pleasure to have you appear before this committee. We would be pleased to have your statement at this time.

**GENERAL STATEMENT**

**General BURNS.** Thank you, Mr. Chairman. I, too, am delighted to be here.

For the record let me state that I am technically the Director Designate, not acting today. By law I can't retire from the Army until the end of the month so I cannot be sworn in until the 1st of April.

I am gratified that the committee and subcommittee have seen fit to take my testimony today in this rather different capacity. As you stated, the ACDA budget is a budget request for fiscal year 1989 of \$32 million.

With your forbearance I will not read my statement but simply make some summary comments.

Mr. CARR. Your full statement will be inserted in the record.  
[The prepared statement of General Burns follows:]

**STATEMENT OF MAJOR GENERAL WILLIAM F. BURNS**

**DIRECTOR DESIGNATE**

**U.S. ARMS CONTROL AND DISARMAMENT AGENCY**

**BEFORE**

**THE HOUSE APPROPRIATIONS COMMITTEE**

**SUBCOMMITTEE ON**

**COMMERCE, JUSTICE, STATE, AND JUDICIARY**

**MARCH 24, 1988**

Mr. Chairman, it is a privilege to appear before you and the Subcommittee on Commerce, Justice, State and Judiciary. We look forward to working with you and your distinguished colleagues. We appreciate the strong interest in and support for the Arms Control and Disarmament Agency (ACDA) which this committee has consistently demonstrated.

We continue to search for ways to strengthen our mission to develop good arms control and realistic arms control initiatives -- and arms control that really does help the security of the country and of our friends and allies overseas. The following budget request reflects this commitment and the fact that our principal Geneva negotiations and other talks with the Soviets are actively in progress.

The President's FY-89 budget request for ACDA includes \$29,800,000 for continuing ACDA programs and \$2,200,000 for the Reduced Enrichment in Research and Test Reactor (RERTR) program for a total of \$32,000,000.

Before we begin detailed discussions of ACDA's funding requirements, I would like to review some recent developments in our arms control efforts.

ACDA has been, and will continue to be, intensively involved in both the preparation for and support of the Nuclear and Space Talks in Geneva. The staff of the Strategic Programs Bureau, led by acting Assistant Director Louis Nosenzo, as well as other elements of ACDA have been intensively involved in preparation for, participation in, and support of these talks throughout 1987 and this will continue as we approach the 1988 Moscow Summit. They prepare and coordinate extensive political, technical and legal analysis for policy decisions related to those negotiations and lead the interagency process that develops specific guidance for the delegation. ACDA also supports the delegation by providing organizational and logistic assistance both in Washington and in Geneva, as well as by having representatives on the delegation.

Last year was one of both activity and accomplishment in the arena of nuclear arms control. As in 1985 and 1986, the United States and the Soviet Union met on a regular basis at the Nuclear and Space Talks (NST) in Geneva. The seventh and eighth negotiating rounds took place in 1987, with the eighth round constituting the longest since the inception of the NST discussions. That round ended with the completion of the negotiation of the Treaty on Intermediate-Range Nuclear Forces (INF), which as you know was signed at the December Summit in Washington by President Reagan and General Secretary Gorbachev.

These negotiations were supplemented by important high-level arms control contacts at various ministerial meetings. Secretary of State Shultz and Foreign Minister Shevardnadze held three such meetings last year, one in Moscow last April, a second in Washington last September, and a third in Moscow last October. At each meeting, arms control experts accompanied the Ministers, a practice that proved useful in clarifying and advancing the state of the Geneva talks. Finally, at the December Summit in Washington, the signing of the INF Treaty was accompanied by important progress in Defense and Space issues and in particular, in our talks on strategic arms reductions (START).

I will not review the INF Treaty in detail here, which of course is currently before the Senate for its advice and consent to ratification. However, in previous testimony I have made clear my view that the INF Treaty is in the security interests of the U.S. and our Allies. Through this Treaty, we and our NATO Allies will achieve the goal we set forth in 1979: elimination of the threat posed to our security by Soviet INF missiles.

The INF story is not finished, of course, and ACDA continues to work hard on INF matters. We are involved in Administration efforts to respond to Congressional questions and informational requests about the Treaty--efforts that are most important in light of Congress' constitutional role in addressing this Treaty. We are working closely with the On-Site Inspection Agency (OSIA)--whose principal deputy was nominated by ACDA--and the Nuclear Risk

Reduction Centers (NRRC) in preparing for successful implementation of INF's terms. This includes interagency work for the U.S.-Soviet technical discussions on INF Treaty implementation, the first set of which were held earlier this month in Moscow. In addition, the INF Treaty foresees meetings of the Special Verification Commission (SVC), whose mission will be to contribute to the effectiveness of the Treaty. ACDA can be expected to play a key role in these matters as well.

Considerable progress has also been made in our negotiations on START. The negotiators in Geneva have been working on a joint draft treaty text which reflects the agreements reached by the President and the General Secretary at the Geneva and Reykjavik Summits on achieving 50 percent reductions in strategic offensive nuclear arms. Specifically, the draft text includes agreement on ceilings of 6000 warheads on 1600 delivery vehicles for each side, a ceiling for heavy intercontinental ballistic missiles and their warheads, and counting rules for heavy bombers and their armament.

During the Washington Summit in December, further progress was made in START, including agreement on a sublimit of 4900 for the total number of ballistic missile warheads, a counting rule for existing ballistic missiles and, building on the verification provisions of the INF Treaty, guidelines for effective verification of a START Treaty. However, important differences remain, including such issues as mobile intercontinental ballistic

missiles, an additional warhead sublimit on ICBMs, sea-launched cruise missiles and the details of an effective verification regime. Because START verification problems are much more complicated than those addressed in INF, verification measures for START will have to be more stringent in important respects than those for INF.

Nevertheless, we believe that a START agreement could be reached this year. For this to be possible, the Soviets must apply themselves with the same seriousness as the United States. At last month's Ministerial in Moscow, Secretary Shultz and Foreign Minister Shevardnadze committed themselves as a next step to the development of joint texts for three Protocols to the START Treaty that will be necessary to ensure effective verification, and each side has now tabled drafts of these three texts in Geneva.

In all of this, it is important to be clear that the United States seeks a sound agreement and will not negotiate against any arbitrary deadlines. The President has made it clear that he would rather have no treaty at all than accept a bad treaty.

Our negotiators in Geneva also continue to work on strategic defense issues. In Washington, the two leaders agreed to instruct

their negotiators to work out a separate new treaty that would commit the sides to observe the ABM Treaty, as signed in 1972, while conducting their research, development, and testing as required, which are permitted by the ABM Treaty; and not to withdraw from the ABM Treaty, for a specified period of time.

In January, the U.S. tabled a Defense and Space draft Treaty that would accomplish these goals, and this month the Soviets agreed to work toward a joint draft text that would combine areas of agreement between our draft Treaty and their recently tabled draft Protocol. The U.S. position calls for a separate and new treaty that faithfully embodies the elements of agreement reached at the Summit. It would help to provide a jointly managed, predictable, precise, and stable basis for developing, testing, and when proven feasible, deploying advanced defenses against strategic ballistic missiles. Such defenses would decrease the risk of war.

In addition to the Nuclear and Space Talks, ACDA provides support for the Standing Consultative Commission, or SCC, the bilateral U.S.-USSR Commission established in 1972 pursuant to the ABM Treaty and the SALT I Interim Agreement. ACDA provides the U.S. Component of the Commission a Washington base of operations and plays a leading role in interagency preparation for the SCC sessions by chairing the SCC Backstopping Committee. In addition, members of the ACDA policy, technical and legal staffs serve as members of the advisory staff of the U.S. Component of the Commission during its sessions in Geneva.

During 1987, the Commission met two times in Geneva to discuss compliance issues of concern to the two sides. Both were regularly scheduled sessions, with the first taking place in March and the second in September. The ABM Treaty also provides for a review every five years, and such a review, under the terms of the Treaty must be started prior to October 2, 1988. The US has informed the Soviets that the US will provide its position on the exact time and venue for such a review through diplomatic channels.

The Multilateral Affairs Bureau, led by Assistant Director Lynn Hansen, is responsible for chemical weapons, conventional forces arms control, and for the various other arms control issues dealt with in the 40-nation Conference on Disarmament (CD) and in the United Nations. Ambassador Max Friedersdorf leads the U.S. Delegation to the CD, to the UN Disarmament Commission and to the First Committee of the United Nations General Assembly. When added together, the CD, the UNDC, and the UNGA amount to year-round negotiations. Dr. Hansen chairs the Interagency Group which provides policy guidance to these U.S. delegations. ACDA also provides administrative and financial support for the U.S. Delegation to the CD, to supplement funding supplied to the delegation by the State Department.

The primary activity at the Conference on Disarmament in Geneva is the negotiation of a global ban on chemical weapons. In accordance with the agreement between the United States and the Soviet Union at the 1985 Summit, and reaffirmed at the 1987 Summit, U.S.-Soviet bilateral negotiations have continued this year on an intensified basis. The U.S. and Soviet Union exchanged visits to chemical weapons facilities in 1987, and another exchange of visits is anticipated. Also pursuant to the 1985 Summit initiative, the United States and the Soviet Union continue to engage in bilateral discussions on the proliferation of chemical weapons, an increasingly important subject. In addition, the U.S. is actively involved in consultations with other Western countries on measures to curb the spread of chemical weapons. In all these activities concerning chemical weapons, ACDA plays a leading role and provides many of the experts for these negotiations.

ACDA, through the Multilateral Affairs Bureau, is an active participant in NATO deliberations preparing for possible new negotiations with the Warsaw Pact on conventional stability in Europe. The Agency is also represented by officers on the U.S. delegations to the Mutual and Balanced Force Reductions (MBFR) talks in Vienna and to the Conference on Security and Cooperation in Europe, which is continuing its Third Review Conference in Vienna. The MA Bureau also provides expertise concerning the implementation of the Stockholm CDE agreement on confidence and security-building measures in Europe and is responsible for maintaining all documentation for the U.S. Government.

ACDA plays a leading role in the Nuclear Testing Talks (NTT) which opened last November. In accordance with the agreement announced at the December 1987 U.S.-Soviet Summit, these negotiations are in the first instance considering improved verification measures for the 1974 Threshold Test Ban Treaty and the 1976 Peaceful Nuclear Explosions Treaty. As part of that process, U.S. and Soviet negotiators are working out procedures for conducting joint verification experiments at each other's test sites. The second session of these negotiations began February 15 and is still continuing. Both the Multilateral Affairs and the Verification Bureaus provide experts for the U.S. Delegation. The MA Bureau chairs the interagency backstopping group during negotiating sessions.

From the beginning of the nuclear era, a fundamental element of U.S. national security policy has been to prevent the spread of nuclear weapons to additional countries. ACDA participates actively in developing and implementing policies aimed at preventing nuclear proliferation. These include efforts to strengthen and promote adherence to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT); to support and strengthen the International Atomic Energy Agency (IAEA) which administers a far-reaching system of international nuclear safeguards; and to develop and maintain

policies and procedures for handling U.S. nuclear exports to promote nonproliferation objectives. ACDA's Assistant Director for Nuclear and Weapons Control, Dr. Kathleen Bailey, plays a key leadership role in this area, together with other senior U.S. officials. I will describe the principal elements of U.S. nonproliferation policy in which ACDA has been and will continue to be involved in the coming years.

The NPT continues to stand as the cornerstone of international efforts to prevent nuclear proliferation. As the lead agency in the Executive Branch with regard to the NPT, ACDA has placed considerable emphasis on ensuring the widest adherence to and full implementation of the Treaty. Since the successful 1985 NPT Review Conference, six countries have joined the Treaty. Spain is the most recent addition and became the 136th party last November. The fourth NPT Review Conference is scheduled to be held in 1990, and ACDA already has begun its initial substantive preparations for the conference.

The Treaty of Tlatelolco, an initiative of Latin American nations, is strongly supported by the United States as an important regional approach to non-proliferation. Under this Treaty, which entered into force in 1967, 23 Latin American countries have pledged not to acquire nuclear weapons. ACDA also has the lead within the Executive Branch for this Treaty and will continue to search for ways to bring it into force for all countries in the region.

The International Atomic Energy Agency (IAEA) plays a significant role in non-proliferation through the implementation of a system of safeguards designed to guard against the diversion of nuclear material to military uses and through technical assistance to developing countries in the peaceful uses of nuclear energy. The IAEA also has increasingly become the focal point for international cooperation in nuclear safety. ACDA's support for the IAEA requires substantial staff effort and constitutes an important component of overall U.S. support for the IAEA.

ACDA has developed considerable experience in the area of domestic and international nuclear export control. Current efforts within ACDA focus on further improvements in export control lists and on approaches to the question of dual-use exports (e.g., items with nuclear and non-nuclear uses). ACDA staff are also working to improve the U.S. Government's ability to prevent illegal procurement of U.S.-origin goods on behalf of foreign nuclear programs.

In the years ahead, it is likely that the use of plutonium as a fuel for power reactors will continue to increase significantly. This will pose new challenges for IAEA safeguards at large plutonium use facilities and for physical protection of the storage and international transport of plutonium. ACDA will continue to work with the IAEA and bilaterally with other nations to develop effective safeguards, physical protection, and institutional

measures to help assure that increased plutonium use will not significantly increase the risk of proliferation or the hazards of terrorism.

For many years, the United States has been seeking to reduce international commerce in high enriched uranium (HEU), a material which -- like plutonium -- is usable in nuclear weapons. To support this policy, in 1979, the Executive Branch established the Reduced Enrichment in Research and Test Reactor (RERTR) program. For FY-1988, funding was supplied in the ACDA budget but programmatic oversight for RERTR has been transferred to the Department of Energy. ACDA is again requesting funding in FY-1989 to continue RERTR work. Because of its importance to non-proliferation, ACDA is strongly committed to the successful completion of the RERTR program. We expect that by the end of the program in 1990 new lower enriched fuel will be available for most, if not all, research reactors now requesting HEU from the United States. There has been substantial international cooperation with this program, and continued budgetary support is very important to the further success of this effort.

The Convention on the Physical Protection of Nuclear Material should also be noted in connection with commerce in plutonium and HEU. This Convention, which entered into force last year, established norms for protecting nuclear material, especially when such material is in international transit. ACDA will continue its

efforts, in coordination with other U.S. agencies to persuade additional states to join this convention.

ACDA also spends considerable effort in monitoring the programs and policies of countries of proliferation concern. The destabilizing impact of nuclear programs in certain key regions poses major risks to U.S. security interests and to the prospects for peace. U.S. policies are directed at encouraging these countries to take steps to minimize regional nuclear instability. Such measures may include bilateral agreements or understandings, expanded coverage for IAEA safeguards, and acceptance of the NPT or, in Latin America, of the Treaty of Tlatelolco.

ACDA will also continue to meet its Congressionally mandated responsibilities to advise Executive Branch decision-makers on the extent to which proposed conventional arms transfers or military assistance will contribute to an arms race; increase the possibility of outbreak or escalation of conflict; or prejudice the development of bilateral or multilateral arms control arrangements. The Agency provides its views on the arms control implications of about 1,500 government-to-government requests for military equipment and commercial license applications per year. ACDA also participates in the development of proposed annual security assistance programs in order to ensure that arms control considerations are fully taken into account in the development of these programs. Complementing its nuclear non-proliferation activities, ACDA is engaged with other

Executive Branch agencies in implementing the Missile Technology Control Regime which was established in April 1987. Under the regime, the United States and seven of its major allies have adopted common national policies to limit the proliferation of missiles capable of delivering nuclear weapons.

Complementing all of ACDA's activities are our economic and military analyses programs. Arms control proposals and agreements have economic dimensions which are analyzed and reported upon. ACDA maintains records of military spending by 145 nations and reports these data along with arms transfers and economic data annually in World Military Expenditures and Arms Transfers. Our military force and weapons analysts prepare the Administration's annual Arms Control Impact Statements, which is provided to the Congress for its use, and support such areas of ACDA concern as conventional arms control.

In the critical areas of verification and compliance, Dr. Manfred Eimer, ACDA's Assistant Director for the Verification and Intelligence Bureau (VI), co-chairs the Arms Control Verification Committee (ACVC) Analysis Group which prepares the President's Reports to Congress on Soviet Noncompliance with Arms Control Agreements. Thus far, five Administration reports on Soviet Noncompliance have been forwarded to Congress. Classified and unclassified versions of these reports were sent to Congress in January 1984, February 1985, December 1985, March 1987, and the most

recent, on December 2, 1987. In addition to the Report on Soviet Noncompliance, the ACVAC Analysis Group also prepares a report addressing the issue of U.S. compliance with agreements. Soviet noncompliance continues to be a concern.

The VI Bureau devotes a considerable portion of its technical and policy analysis efforts, including external research, to the development of viable verification regimes for arms control treaties which will help assure the achievement of effective verification. This has already been accomplished in the INF Treaty. In response to the requirements of Section 37 of the ACDA legislation, a comprehensive, classified assessment of the verifiability of the INF Treaty (as signed December 8, 1987) was prepared and forwarded to the Congress. The report noted that: "Despite the rigor of the INF verification regime, there will be the unavoidable uncertainties and ambiguities we have described in our assessment. We must recognize, however, there is no such thing as perfect verification, especially in a treaty involving mobile and sometimes small weapons possessed by a party with a record of noncompliance and whose territory is the largest in the world." The report then concluded that: "Despite these inevitable uncertainties, ...the verification regime negotiated for INF will be effective in permitting us to achieve the considerable benefits offered by the Treaty." Policy analysis and research is also underway to develop an effective verification regime for the prospective START Treaty. This is a much more difficult task than INF and is requiring a major effort in the VI Bureau.

We are conducting a number of studies to improve the verification of future agreements. These studies have been key inputs in the development of the verification measures for the INF Treaty and in START. ACDA is working with other agencies on incorporating these measures into the draft START Treaty to reduce the verification uncertainties. The Executive Branch is attempting to increase its research efforts in order to resolve outstanding verification and compliance issues. The specially-approved \$780,000 for verification external research in the FY 88 budget is extremely useful in helping us analyze critical verification issues relating to a prospective START Treaty.

The United States and the Soviet Union had six sessions of the Nuclear Testing Experts Meetings (NTEM) in Geneva. In these meetings both sides have described, in detail, their preferred approaches to the verification of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosion Treaty. The U.S. position has been and continues to be that the first order of business is to obtain Soviet agreement to verification improvements for the TTBT and PNET, including on-site direct yield measurements. This is the principal subject of the new full-scale negotiations in the Nuclear Testing Talks (NTT). Once our TTBT and PNET verification concerns have been satisfied and the treaties have been ratified, we would engage immediately in negotiations on ways to implement a step-by-step parallel program, in association with a program to reduce and ultimately eliminate all nuclear weapons, of limiting and ultimately ending nuclear testing.

ACDA has provided the head of the NTEM delegation and the executive secretary. ACDA continued to provide the executive secretary and an ACDA representative through the end of these technical discussions (NTEM) and into the current full-scale negotiations (NTT). Both the NTEM and the NTT sessions are supported out of ACDA funds. The current Nuclear Testing Talks (NTT) have had two rounds, to date. ACDA will also have to support this effort through its external research program as called for in the Arms Control Act.

We are continuing the development of our analytical capabilities and our classified computer system. During 1987, we completed extensive analyses in support of the strategic arms negotiations with the use of the Arsenal Exchange Model. Numerous statistical analyses of data measuring the yield of Soviet underground nuclear tests were carried out. A computer program to utilize a data base of the seismic signals originating from all foreign and US nuclear tests has been implemented on the Agency's classified computer system. This program permits us to retrieve, summarize, display and plot pertinent information on any selected subset of this data base.

Currently, we are developing a computerized system to keep track of the CDE notifications. These notifications of military exercises in Europe by both NATO and Warsaw Pact nations are a result of the Conference on Security and Cooperation in Europe. In support of the forthcoming negotiations on conventional stability, we are also investigating the analytical procedures needed and the computer models required to compare the impact of various conventional force reductions on defense capabilities in Europe.

A number of computerized information retrieval systems have been installed to provide rapid access to all arms control negotiation records as well as to arms control related papers and external research studies. Additional retrieval systems are under development: one of these systems will enable rapid search of the text of arms control treaties for pertinent provisions; another will do the same for authoritative verification and compliance statements made by U.S., Soviet and other country officials. The latter project is being carried out cooperatively with the Canadian Foreign Ministry.

In the public affairs arena, ACDA has taken a robust part in fulfilling one of the Agency's four fundamental mandates: "coordinating and disseminating information to the public regarding arms control efforts."

During this fiscal year our speakers program has arranged for more than 75 members of the ACDA staff to participate in close to 300 speaking engagements, interviews, forums, and conferences on arms control issues largely in response to requests from professional, civic, religious, and academic groups nationwide. Our Community Outreach program has built media campaigns for civic and professional organization's conferences, meetings and seminars. In cooperation with our embassies in Europe, ACDA officers have met with influential overseas audiences to deepen worldwide understanding of our national security and arms control objectives.

This year we initiated a monthly newsletter, Arms Control Update. Using state of the art desktop publishing, we found we could produce quickly and cheaply an attractive and highly informative newsletter which we disseminate to more than 13,000 readers here and abroad.

A continuing problem for us has been keeping audiences informed of our policies and activities in the arms control arena. To this end ACDA's Office of Public Affairs initiated Issue Brief publications which aim to acquaint the public with easily understandable information about arms control topics.

We have revitalized our library and reintegrated into it the best of the more than 5000 works that were on loan to the George Washington University Library. The ACDA Library is now a highly focused arms control reference collection, the only USG collection of its kind in the U.S.

We will continue to zero in on public affairs targets of opportunity and expend our resources aggressively but carefully. For example, we have in preparation a comprehensive publication on the INF accord, titled "Understanding the INF Agreement," written in language that informed citizens as opposed to "arms control experts" would understand.

The Hubert H. Humphrey Fellowship in Arms Control and Disarmament Program continues to be one of our priority public affairs activities. In the last fiscal year, we awarded two fellowships for studies in arms control. During the lifetime of this program, substantive research has been contributed to the archives.

On the administrative side, ACDA continues to update its office automation capability. This year we will be expanding our network to include direct communication to our Geneva operations. This new system has been well received and utilized by ACDA personnel. It has significantly enhanced the capacity and output of our limited staff.

In FY-88, ACDA's authorization provided for the Department of State's Inspector General to be ACDA's Inspector General (IG). Already, the IG staff is busy familiarizing themselves with ACDA operations. Administrative support for this provision is and will continue to be needed as the IG carries out its work.

ACDA is also providing support for the newly established Nuclear Testing Talks (NTT). This bilateral delegation, currently meeting in Geneva, is headed by Ambassador F. Paul Robinson. This is a completely new requirement for ACDA, with no funding appropriated in FY-88. The financial impact of this new delegation will be discussed later in my testimony.

Mr. Chairman, at this time I would like to submit to the Subcommittee ACDA's FY-89 appropriation request.

Last fall, when we started the FY-89 budget process with OMB, we worked to determine the priority for ACDA's mission, competing with other Agencies for funding within the framework of the President's budget summit. The result was a positive endorsement of ACDA's role in the arms control process from OMB and the Administration. Consequently, we were able to obtain approval for our current budget request.

As previously mentioned, ACDA is requesting \$32,000,000 for FY-89. Of this amount, \$29,800,000 is for continuing ACDA

programs and \$2,200,000 is for the RERTR program, which is transferred directly to the Department of Energy. This request represents an increase of \$1,900,000 or 6.3% over our FY-88 funding level of \$30,100,000.

As you know, more than 50% or approximately \$15,860,000 of ACDA's continuing programs budget goes for salary and benefits. These funds provide for 208 positions either full-time permanent or temporary ACDA staff as well as additional reimbursable positions with personnel from other agencies, primarily the State Department and Department of Defense. This component of ACDA's budget also reflects the largest increase, \$1,072,000, which provides for the annualization of the current year's pay raise, the adjustment for clerical support in the Washington metropolitan area, FERS and CSRS requirements and devaluation adjustments for our personnel stationed in Geneva.

The "Other Services" category as identified in our budget request includes Geneva support, office automation, external research, maintenance and other support services.

ACDA's direct and indirect support for Geneva operations constitutes approximately one third of ACDA's budget requirements. This support includes provisions for the overall administrative support of the mission estimated at \$3,659,000.

shared administrative support through the State Department of \$276,000, interpreter expenses of \$744,000, and other indirect costs such as related salaries, PCS costs, allowances, and travel and per diem expenses.

An increase of \$330,000 in office automation requirements will be needed to continue our networking expansion throughout the agency both here in Washington and in Geneva.

An increase of \$280,000 for external research is requested to restore funding to bureaus other than the Verification Bureau in order that the agency not limit itself to verification studies but also look at other arms control issues.

Also included in our request is \$55,000 for representational funds, which reflects a \$7,000 increase over the current year. These funds are used primarily for informal contacts with representatives of foreign countries both here and overseas. The bulk of these expenditures are for the work of our delegations in Geneva, Vienna and in contact with foreign government representatives.

Additional increases for support services, which we receive from other agencies and which are provided to the delegations through the U.S. Mission Geneva make up the remainder of our request.

We have tried to offset the impact of some of these increased costs through tightening administrative controls and plan savings in travel as well as a \$400,000 reduction in the RERTR program, which is being orderly phased out in 1990. However, adding new, unfunded requirements such as the support to the NTT delegation and to the newly established On-Site Inspection Agency puts increased pressures on our already limited financial resources.

The new NTT delegation, comprised of a staff of 25 or so, is a bilateral negotiation meeting in Geneva. ACDA has been given the primary responsibility for this delegation. The estimated expenses for the NTT are \$966,000 and \$924,000 in FY-88 and FY-89 respectively. These expenses include provisions for personnel compensation, office space, travel and per diem, interpreters, PCS costs for the ambassador, representation and other miscellaneous support. Note, however, since this decision was not made until after our budget discussions with OMB, no funding for the support of the NTT was requested in this budget submission.

I realize that our FY-89 request for continuing ACDA programs is approximately 8.4% or \$2,300,000 higher than last year's level. But in light of the amount of negotiating activity with the Soviets and other countries and the other programs which ACDA is mandated to carry out and the decreased

value of the U.S. dollar, I believe that this level of funding  
is essential to our Agency's mission.

I ask for your support, Mr. Chairman, in obtaining  
Congressional approval for ACDA's FY-89 appropriation request.  
I, my staff and the members of our Geneva delegations look  
forward to working with this Committee and with the  
Congressional Arms Control Observer Group on the crucial and  
important arms control issues which we face today.

General BURNS. Thank you.

The role of ACDA, as I see it, is increasingly important today. Within the last few months we have concluded a treaty with the Soviet Union which I believe is well on the way through the ratification process in the Congress today.

This treaty, for the first time, brings about reductions in the forces of the superpowers and that alone would make it significant.

What is perhaps more important is that it has brought about not only reductions but verifiable reductions. For the first time, we have a verification regime which is intrusive, which provides a high degree of assurance that any cheating or any noncompliance with the treaty will be detected and which sets forth some very useful and interesting guidelines for future treaties.

Progress continues in the area of strategic arms reductions negotiations. There are replication problems in START and we are working on these with some diligence on the Soviet side and there is a possibility, although there are no arbitrary deadlines set, that we could achieve a START agreement sometime this year.

We continue negotiations on strategic defense issues. In January, the United States tabled a treaty draft on defense in space and we are beginning work with the Soviet side now on a joint draft text, reflecting the sides' views on this.

In addition to the Nuclear and Space Talks, the Arms Control and Disarmament Agency supports the Standing Consultative Commission which is, as you know, is the bilateral US-USSR Commission established in 1972, pursuant to the ABM Treaty and SALT 1 Interim Agreement. The SCC has met twice in Geneva during 1987.

#### **NUCLEAR TESTING TREATIES**

Nuclear testing talks have begun this year and the Arms Control and Disarmament Agency has taken the lead in these talks which are considering improved verification measures for the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty.

The second session of these talks began in February and continue at this time. In fact, it continues to actively participate in developing and implementing policies aimed at preventing nuclear proliferation.

Since the 1985 Non-Proliferation of Nuclear Weapons Treaty Review Conference, six nations have joined the Treaty.

The RERTR program funded by ACDA, is important in supporting ACDA's non-proliferation efforts.

ACDA has been active in the verification area across the range of treaties. The report on Noncompliance and Arms Control Agreements have been forwarded to Congress and ACDA's Verification Intelligence Bureau is developing viable verification regimes for arms control treaties currently under negotiation. They are conducting basic research as well as treaty-oriented projects.

#### **PUBLIC AFFAIRS**

In the area of public affairs, our speakers program, as contemplated by the ACDA Act, has arranged for more than 75 members of ACDA to participate in nearly 300 speaking engagements, inter-

views, forums and so forth, in this fiscal year thus far on arms control issues.

ACDA has begun to publish a monthly newsletter "Arms Control Update," which is sent to more than 13,000 readers here and abroad, and issues brief publications to acquaint the public with easily understandable information about arms control topics which were also initiated this year.

In the administrative area, ACDA continues to update its office automation capability. We hope this year to expand this to include direct communication with our Geneva operations.

As you know, the fiscal year 1988 ACDA authorization provided that the Department of State Inspector General to be the ACDA Inspector General.

I look upon this as a positive step in my military career and I am quite used to working with the Inspectors General. I found them an asset in the past and I am sure I will find them an asset in this particular role.

In conclusion, I would like to simply state that I am pleased to be in a position to take over the Arms Control and Disarmament Agency at this juncture.

I believe that ACDA has a very important role to play and I intend to ensure that ACDA not only complies with the letter but the spirit of the law in exercising its responsibilities.

Mr. Bill Montgomery, the Director for Administration of ACDA is here perhaps to deal with the more technical questions on the budget and I am happy right now to submit to your questions, Mr. Chairman.

Mr. CARR. Thank you very much, General.

#### **IMPACT OF DOLLAR DEVALUATION ON ACDA**

What has been the impact of the declining dollar against the Swiss franc in the Geneva operation? What particularly are you doing in terms of what program areas are having to absorb these costs?

General BURNS. First, let me say that having spent five years in Geneva I watched the dollar decline from 2.89, I think, in 1985 to 1.6 something when I left in late 1986 and it has dropped still more.

The impact, of course, in general is severe. Up until now, and for this fiscal year we must make economies in other areas to offset this.

One positive feature, purely from the budget point of view, is the fact we have concluded work on the INF Treaty and that is a savings.

On the opposite side of the fence, however, the nuclear testing talks have begun. This is a non-programmed activity in that the talks are now taking place as a full-fledged negotiation. So any savings in INF will be more than eaten up by nuclear testing.

I will defer to Mr. Montgomery in terms of where in the budget we may have to rob Peter to pay Paul.

Mr. CARR. You can supply something on that for the record that would be fairly specific.

Mr. MONTGOMERY. We will be happy to do that.

As General Burns stated, we are still suffering from the further decline of the dollar. When we submitted our 1988 submission, the dollar has declined from that point by over 16 percent to the current time.

From the time that we submitted our 1989 submission, the dollar had declined another 10 percent, so that it is still having a substantial effect. It is not quite as dramatic as it was last year when we testified. I think we talked about 38 percent, but it is a substantial effect.

And we spend for our Geneva operation between 25 and 30 percent of our total appropriation, so we have a fairly substantial amount of exposure over there due to the exchange in the dollar, but we will be very happy to give you specifics for the record.

[The information follows:]

In FY-87, ACDA, with the consent of this committee as well as the Senate Appropriation Committee, was able to reprogram funds from the RERTR program in order to meet necessary exchange rate shortfalls. For this year ACDA will have to absorb exchange rate losses through tightened administrative controls. ACDA's Administrative Director has already encouraged the bureau and office heads to limit expenditures to essential procurement and program activities only. Currently, ACDA is reviewing the following areas for potential savings in FY-88: (a) personnel compensation; (b) reimbursable detailees; (c) maintenance account; (d) Geneva operations; (e) computer network; and (f) miscellaneous expenditures such as travel, supplies, overtime, etc.

Mr. CARR. Let me ask you a question. This is pure conjecture, General, but given the information that we have been given in maturation of our relationship with the Soviets on arms control matters, can we look forward to a day when we don't do things in Geneva and we carry out our negotiations either in Washington or Moscow or through electronic means.

#### ELECTRONIC NEGOTIATIONS

Can we even, down the road 10 years or so, begin to think about that kind of communication? Do we always have to maintain these huge operations in Geneva and the cost associated with them?

General BURNS. That is an interesting question. I wondered about that myself.

Again, having observed the operation in Geneva, we are in Geneva, of course, because it is neutral ground. If the day comes when we no longer need neutral ground and we can negotiate with the Soviet Union as we do with the United Kingdom or France, then there are obviously some cost savings.

I think at the present time, for this budget year and probably the next and the next after that there will be a substantial operation in Geneva.

With regard to your question about electronic negotiations, that is an interesting concept and I suppose anything is possible in the future.

We have not found that particularly useful, however, to date in negotiating with friends and allies, if you will. So I imagine that that is again off in the distant future.

Mr. CARR. I don't seriously propose you can negotiate that way, but it seems to me that—I mean, you are talking right now about a fairly significant investment to give you real time communications

between here and Geneva. We are on the same side, and it would seem to me at least conceptually some people ought to be at least thinking about information technology and communications technology, capital to capital, that essentially builds on what is going on today between our capitals, between our industries. et cetera.

After all, most of the negotiation in principle is carried out in the respective country's capital, with an occasional summit someplace else.

It seems to me we ought to be thinking down the line that in 10 years or so "How can we get the details also wrapped up in the same way that the principal outline of the conceptual negotiations take place," and perhaps save ourselves a little money.

I hope we are not dedicated to Geneva as some kind of altar on which we all diplomatically pray. I love Geneva. I have been there myself, not recently, but I spent a lot of time at the SALT negotiations and it is a wonderful place to be, but it is very expensive.

General BURNS. It is very expensive.

Mr. CARR. With all due respect to the Swiss, maybe we can handle it without them.

General BURNS. That is an interesting concept. As you know, we recently opened a nuclear risk reduction center which uses fairly modern communications equipment and so forth to exchange information required under the INF Treaty and presumably under other treaties.

I think this is a step in the direction you suggest, because it may well be in the foreseeable future where the negotiations in the third place will take a back seat to other forms of negotiation, which in the long run could be cheaper.

The only other point I would make is that coming from the Pentagon two years ago, I was amazed at the relatively small amount of money the Nation places in the arms control budget.

The arms control budget could be paid for by not too many Pershing missiles, so I think we also have to put that in perspective.

But I agree with you we should be seeking ways of maintaining the most economical way of negotiating. I certainly would agree with that.

Mr. CARR. I guess by way of my very small jaw-boning, you lead the Agency in the twilight of the Reagan administration, and there may be or may not be much in the way of continuity after the first of the year, but I would hope that somewhere, with all of these other things you have to do, that someone, somewhere could begin to take a long look at how we might conduct arms control in ways that might save some money, even if it cost more money upfront. I think this committee and a lot of people in Congress would rather commit more researchers to you if you use them wisely.

#### GENEVA OPERATIONS: FISCAL YEAR 1988-89

Getting back to the longer term and acting more like accountants, can you tell me what the Agency has budgeted for its operations in Geneva in fiscal year 1988 and compare it with fiscal year 1989?

Mr. MONTGOMERY. I can give you that figure. The amount that we budgeted for 1988 for Geneva was \$6,712,000 and for 1989 it is

\$7,016,000. That is primarily to reflect the effect of inflation and some effect of currency translation but already we have gotten a lower value of the dollar than we used in that calculation.

I think it is important to point out when this submission was prepared there were a number of things we didn't know about which we now know about. One of the principal ones is the nuclear testing talks that are going on. This is an entirely new program which will cost us an additional \$966,000 this year and a slightly less amount than that, about \$924,000 for 1989.

So on top of the figure I just gave you, I have additional expenses just from one additional negotiating group.

Now, those figures that I gave you for Geneva are those that we can easily isolate. That does not include the expenses of various people on our staff that may go to Geneva for incidental meetings such as chemical warfare discussion or the Director of ACDA may go for a brief period. Those are the identifiable expenditures for the delegations that are in place.

Mr. CARR. Okay. I would like to talk about some of the fiscal year 1989 increases that you have requested.

#### EQUIPMENT PROCUREMENT

There is an increase of about \$330,000 for equipment procurement. What is that going to be used for? You already got quite a bit of computer capability over there.

Mr. MONTGOMERY. Are you talking now about the Geneva expenses?

Mr. CARR. We don't know what it is for.

Mr. MONTGOMERY. Well, in supplies and equipment, we have this situation.

Mr. CARR. You can supply it

Mr. MONTGOMERY. Sure, that is included in the Supplies and Equipment Account.

[The information follows:]

The increase of \$330,000 is not only for equipment procurement. Of this amount \$200,000 is for equipment which is to provide ACDA with direct on line communication with Geneva as well as enhance the local area network (LAN) in our Washington offices. The remainder of these funds are to provide for increased maintenance costs and general operation of the expanded network.

Mr. MONTGOMERY. We are planning an additional procurement of equipment for an office automation systems here in Washington. The total amount of the new equipment purchased in 1989 is \$500,000. That compares to \$300,000 of equipment purchases for 1988, so there is a difference of \$200,000.

We have been over the last 3½ years installing an up-to-date Wang office automation system and because of the nature of the work that we do, it has to be done in a very secure manner and everything has to be tempest and it is in conduit.

This additional equipment is just another step in completing that network. Unfortunately, because of the world we live in, the automated electronic equipment for the type of work we do has to be done with very expensive security requirements built into them so that if you compare these expenses with an agency that doesn't work with classified material, you will see that they are much higher.

#### DETAILEE EXPENSES

**Mr. CARR.** You are also planning an increase of about half a million dollars in the amount expended for detailees from the State Department while decreasing by \$231,000 the amount for military detailees. What is the rationale for the shift between State and DOD?

**Mr. MONTGOMERY.** First of all, the 1988 estimate for detailees was set at 57 individuals. We are actually staffed above that level now.

The 1989 estimate was based on an increase of five, to get the detailees up to 62. The increases here is because of pressures from the delegations either in Geneva or for back-stopping work.

The adjustments between the State Department and the military are relatively normal from what we experienced from year to year.

Generally speaking, the number of detailees between the State and military detailees is about even. Sometimes there is a few more in one area than another. I am excluding, however, the detailees that are at the NST delegation in Geneva.

For 1989, the military count is 26, which is pretty close to half the amount that we normally have here in Washington. The total state detailees are 36. Part of the increases in the State Department figure also reflect overall salary increases.

#### INSPECTOR GENERAL

**Mr. CARR.** Generally you have increased, or you are asking for an increase of \$150,000 for Inspector General activities and you refer to that in your statement. What activities or functions has the State Department Inspector General used so far?

**General BURNS.** I had discussed that with the Inspector General recently. At my request, he is undertaking a complete review of the Geneva operations.

**Mr. CARR.** Which operations?

**General BURNS.** Geneva operations. There are also, since ACDA has never had an Inspector General, the Washington-based operations, in my view, which need a complete review, so at least we establish a base line from which to move. I think the overseas operations, strictly those in Geneva, require close work at this time.

**Mr. CARR.** Is that prompted by anything other than it just being routine management?

**General BURNS.** Not prompted by anything except the assignment now of the Inspector General.

**Mr. CARR.** You seem to be quite satisfied with this arrangement, but do you have any concerns about the effectiveness of any IG arrangement?

**General BURNS.** The effectiveness of any IG is based on two factors: The support of the command, of the director, and the energy and efficiency of the Inspector General.

I have no doubt the energy and efficiency of the Inspector General. I believe I am going to provide the necessary support for him to do his job. So I believe that it is going to be a very favorable thing for us.

## EXTERNAL RESEARCH

Mr. CARR. You are also requesting an increase of \$280,000 for external research. Is this for INF support or what is it? What is the specific study you are going to undertake?

Mr. MONTGOMERY. The external research request for 1989 is set at \$3,330,000. If we take out the RERTR request, the requested research for ACDA programs we are asking for is only \$1,130,000. This compares to a non-RERTR funding for external research in 1988 of \$850,000. We are talking of relatively small amounts. The \$1,130,000 is broken down into several major components. \$100,000 we plan to use for the Director's reserve. Of that, about \$25,000 will probably go for the Hubert H. Humphrey Fellowship Awards. \$75,000 is programmed for the Multilateral Affairs Bureau, \$75,000 for the Nuclear Weapons Control Bureau, \$100,000 for the Strategic Programs Bureau, and the remainder, \$780,000 for verification studies, which has been earmarked by the authorizing committees.

Mr. CARR. What projects under that last verification study, \$780,000, what studies or projects are you planning to fund in 1988 and 1989?

Mr. MONTGOMERY. We can supply a list for the record of the projects for fiscal 1988. It is a fairly lengthy list.

Mr. CARR. Would you, please?

Mr. MONTGOMERY. But each one of those projects is for verification and intelligence studies and they are clearly earmarked, to satisfy the intent of the authorizing committees.

At this point, we are not prepared to specify the exact projects for 1989. Each year we have a similar situation. We use external research to supplement our core staff and we identify actual projects and contractors as we get closer to the fiscal year in question.

General BURNS. I might add that it seems to me this next year is going to be a very important one in terms of verification in general and specifically verification in areas of strategic research, so I think the money can be well used in terms of specific research projects that answer questions that still have not been fully developed.

Mr. MONTGOMERY. Mr. Carr, the list of projects in that area right now is classified and we will submit an unclassified listing of the projects for the record.

Mr. CARR. Yes. I would like to ask you for the classified, which we keep on file in a classified manner and we will insert the unclassified for the record.

Mr. MONTGOMERY. I will be very happy to do that.

[The information follows:]

VI BUREAU  
**FY-88 EXTERNAL RESEARCH PROPOSAL**  
 (Includes only highest priority  
 verification related projects)

28 January 1988

PROJECT #	TITLE	PRIORITY	FUNDS (\$1000)	TYPE OF CONTRACT
VI- I	Development of Soviet START Evasion Scenarios (Red Team)	1	30	Requirements
VI- II	Analysis of START Evasion Scenarios (Red Team)	2	40	Requirements
VI- III	START Verification Improvements (Red Team)	3	30	Requirements
VI- IV	Problems in Mobile Missile Verification	4	150	Reimbursable
VI- V	Value of On-Site Inspection as Enhancement to Verification	5	150	Competitive
VI- VI	Quick Response Verification Issues	6	50	Requirements
VI- VII	Defense & Space Verification (Other Physical Principles Systems)	7	150	Competitive
VI- VIII	Observable Surrogates of Strategic Capability	8	100	Competitive
VI- IX	Retrieval of Public Statements on Verification	9	30	Sole Source
VI- X	Remote Verification Technology	10	50	Reimbursable
<b>TOTAL</b>			<b>780</b>	

## FISCAL YEAR 1988 REPROGRAMMING

Mr. CARR. The committee is unaware of the specific requests that are to be appropriated for these verification studies in fiscal 1988 and, therefore, how are you going to fund this program and why haven't you requested a reprogramming?

Mr. MONTGOMERY. Mr. Chairman, we didn't think that the reprogramming request was a requirement, because the \$780,000 are for external research projects and we had requested an amount for external research for 1988 and we are trying to manage within that.

However, if the committee feels that a reprogramming request is required we will, of course, do that.

The authorization bill did not pass with that specific earmarking in it until the very, very end of the last calendar year. So that it is something that came after the preparation for this justification, but we did not think there was a need to request reprogramming.

Mr. CARR. Well, on advice of counsel here, and I only speak as one member of the committee. I would like you to do it, so I think the question really ought to be resolved between you and Congressman Smith. Counsel informs me that it is the customary procedure used to notify the committee of changes that are going on inside the functions of the Agency and you might want to confirm that with the chairman and you might anticipate that it will be requested.

Mr. MONTGOMERY. Sure. Mr. Chairman, our position, at least since I have been in ACDA, has always been to have an open working relationship with the staff of the committee and committee members. We work on a continuing basis with the staff and are more than happy to provide any information required. We have gotten good cooperation from this committee and its staff and we want to continue that.

Mr. CARR. You do important work and we want to support you.

## CONSULTANTS

You are requesting an increase of \$71,000 for additional consultants. What are they going to be used for and how do you plan or what are they going to study?

Mr. MONTGOMERY. Our core staff complement has been relatively fixed for years. This year the full-time equivalent ceiling is 212. That is what it has been for a number of years.

The increase in consultants is to permit us to bring experts in on short-term assignments to supplement the work of what has been a fixed core staff complement.

This is also in line with OMB's feeling, that agencies should try as much as possible to use a contract, or a non-permanent staff where possible instead of increasing the full-time permanent staff.

That dollar amount, by the way, would be the equivalent of something around one person year, so it is not a substantial change.

## RERTR

Mr. CARR. Turning to RERTR, the administration request for fiscal 1989 for the ACDA appropriation is about \$2.2 million more

than the amount authorized for ACDA operations and apparently the \$2.2 million is to be used for RERTR, is that right?

Mr. MONTGOMERY. The request in this justification for fiscal 1989 for RERTR is \$2.2 million, that is correct. That compares to \$2.6 million appropriated by the Congress in 1988.

Mr. CARR. Well, yes, but my question really goes to, is it authorized?

Mr. MONTGOMERY. Again, subsequent to the approval and printing of this justification, the authorization bill was passed and in the authorization bill there is some ambiguity on the authorized level for external research projects, which I think we have to clarify.

The authorization bill states that \$780,000 of external research money will be used for verification and intelligence studies.

It also states that no other external research program can exceed \$1.560 million. Now, if the \$1.560 million is to be applied to the RERTR program, then what you say is true, this justification requests more because it is \$2.2 million, but I think that is an ambiguous area.

I would like to work with the committee staff and also the staffs of the authorizing committees to make sure that we comply with the intent of the Congress on that matter. It is confusing to us right now.

Mr. CARR. All right. Well, we are glad to have that on the record so we can share your confusion.

But I would urge you to work with the authorizing committees so that we can straighten this out, because we don't want to have a problem with the authorizing committees either. We want to get ourselves all on the same plan here. If we are not on the same plan, then we ought to figure out what we do about that.

Mr. MONTGOMERY. Mr. Chairman, there is also a question on fiscal 1988. But the legal opinion we have had is that since the authorization bill passed, that the appropriation bill passed after the authorizing bill, that for 1988 the appropriation bill stands and that we are to abide by the appropriation bill which requires transfer of \$2.6 million for RERTR to the Department of Energy.

But we do have an unresolved question as far as 1989 goes and we will work with the staff to come to a mutually agreeable solution to it.

Mr. CARR. I think this committee probably would agree with your legal opinion about 1988, however, not trying to insist on legalisms, we want to make sure that the authorizing people support that interpretation or at least allow you to fund the programs.

In that regard, I have some other questions I would like to submit for the record. We are concerned that we are not totally one on one with the authorizing committee; we have some things to check out with them.

Mr. MONTGOMERY. We share that concern with the committee.

Mr. CARR. With all of these negotiations going on in town, I am awfully glad to see you, but it appears it is an inappropriate day for you to sit here with what is going on downtown.

[The questions and the answers submitted thereto follow.]

QUESTIONS SUBMITTED BY MR. CARRRERTRQUESTION:

Is it correct the Public Law 100-213 establishes a ceiling of \$1.56 million which may be obligated to any single external research project which ACDA undertakes? If so, how do you rationalize the administration's request for \$2.2 million for the RERTR program and have you requested an increase in this ceiling from either the House Foreign Affairs or Senate Foreign Relations Committees?

ANSWER:

ACDA FY88/FY89 authorizations bill was passed subsequent to the Administration's approval and printing of this justification. However, ACDA would like to resolve this issue with the appropriated committee staff to insure compliance with the intent of Congress.

QUESTION:

You are proposing a reduction of \$400,000 in the RERTR program which has been going on since 1978. What is the reason for the proposed reduction, and when does ACDA plan to complete its funding of this research program?

ANSWER:

The original budget request for FY88 was \$5.2 million, however due to budgetary restraints the program was altered to allow for an orderly closeout using the appropriated funds. A revised reduced three year closeout program was developed with Argonne National Laboratory in order to achieve the maximum number of objectives while dramatically reducing the costs. Therefore the FY89 request is for 2.2 million dollars and the final year FY90 is for 1.2 million dollars.

QUESTION:

Is this research so important for ACDA to continue to utilize two-thirds of its external research budget on this one effort?

ANSWER:

Yes, this is a high priority in the area of non-proliferation. The intended application of this research will enable nuclear reactors to utilize low enriched uranium (LEU) in lieu of high enriched uranium (HEU), which could be used to manufacture nuclear weapons..

QUESTION:

It is my understanding that Representatives Fascoli and Broomfield are not necessarily opposed to funding the RERTR program but believe that it should be authorized and appropriate through Department of Energy functions. I believe this view is predicated upon their judgement that ACDA's role is more that of a policy formulator when it comes to U.S. non-proliferation policy than it is of an operational program manager, and that much of the RERTR program's research will be conducted at the U.S. national laboratories. That being the case, is it the intention of ACDA to again transfer these funds to the Department of Energy? If so, why isn't the Department of Energy making this funding request?

ANSWER:

We find that everyone is in favor of the RERTR program objectives and appear to be willing to support it until its closeout. ACDA recognizes the non-proliferation importance of the program and has always supported it. When DOE, apparently due to the lack of funds, failed to request it in FY87, ACDA felt that it was important enough to request funds and to administrate the program. Argonne National Laboratory, the location of the expertise, has implemented the program since its start in 1978. DOE's office of Nuclear Energy has started that they feel that the technology development portion of the program is mainly completed and the implementation phase responsibility should rest elsewhere. ACDA has found that the Office for International Affairs and Energy Emergencies, the current contract administrator, has been very supportive of the program but has no research funds.

QUESTION:

What is the total amount of appropriated funds that the RERTR program has received to date? Of that amount, what percentage has been requested through the Department of Energy? In funding this program, Congress has been continually advised that the benefits of RERTR are just around the corner. Have we turned the corner yet and if not, when can we expect to see some tangible results and, or benefits from this program?

ANSWER:

Approximately \$35 million has been supplied to the RERTR program by DOE through FY-86. In FY-87 and FY-88, ACDA has supplied another \$7.4 million. There have been a number of significant benefits from the RERTR program: 1) when the RERTR program was initiated in 1978, over 100 reactors in 35 countries required about 1000 kilograms of HEU annually. The RERTR effort has helped reduce these requirements significantly (in 1986-87, about 10 reactors requiring only 300 kilograms); 2) all newly ordered research reactors during the last 5 years are designed for LEU fuel as a result of the newly developed higher density fuels from the RERTR program; 3) the majority of fuel suppliers throughout the world have used the RERTR derived technology to become qualified LEU fuel suppliers.

What other countries already developed the technology for using lower enrichments to operate their research reactors?

ANSWER:

Several countries have taken advantage of the US-supported RERTR program and have developed the ability to use LEU fuel in some of their research reactors. The US, FKG, France, Argentina, Canada, South Africa, USSR, and most recently Indonesia have acquired the ability to produce LEU fuels for reactor use. However, most of the countries do not have the national capability for converting the reactor cores. This is one of the focal points for the remaining RERTR tasks.

QUESTION:

Have domestic research-reactor operators demonstrated the capabilities and expressed a willingness to operate their reactors using the lower enrichment.

ANSWER:

Most of the US research reactors are designed for "life-time" cores and will not require additional fuel. The larger research reactors are currently evaluating their convertability. Several of these have active programs which will lead to the conversion of the cores to LEU.

General BURNS. I am not sure it is necessarily inappropriate, but we have been busy the last few days; I must say that. It is interesting to sort of sit back, however, as you have given me the opportunity to do this afternoon, and take a look at the process.

Yesterday, or two days ago, I'm sorry, at lunch, the Secretary of State mentioned to the Foreign Minister that they had met something like 24 times in the last 2½ years of Mr. Shevardnadze's term of office and I think this is very significant.

It is also significant that the President and the General Secretary are planning a fourth meeting in essentially the same period of time. Comparing this to the number of meetings that took place in the preceding, say, five years, I think it is doubly significant.

The final outcome of these talks is really difficult to predict right now. But I think the facts speak for themselves. There has been a greater understanding between the superpowers as to what has been their mutual interests and there is a better understanding on the part of the superpowers as to what is tolerable by each side. I think that is a very healthy understanding.

Secondly, we are now talking the same language, although certainly not in total agreement, in this very important area of verification.

We recognize the kinds of things that need to be verified and why. We recognize that limits placed on some systems allowing others to go free are not useful limits and we have had what I consider the good experience of the INF Treaty negotiations, which have given us, if not a complete pattern, certainly a beginning road map toward the resolution of this very difficult problem.

I think that results of ministry always, or summits are very difficult to judge 24 hours after they concluded or in this case 18 hours after they have concluded.

I think you have to look back and look at the full run of the last 2½ years and see the distance we have traveled to begin to gauge progress.

Mr. CARR. Well, we do make progress. I would just like to observe, and allow you to make a comment on it, that it seems to me there have been various times in monitoring agreements where ACDA is put in a very difficult position. On the one hand, the Arms Control and Disarmament Agency is looked upon by people in this country, and I think around the world, particularly in terms of the monitoring function, as an Agency whose veracity and whose credibility is thoroughly desired—because there is difficulty in translating the information about verification or compliance with arms control agreements in the world at large and yet we also know that governments, being what they are, made up of people, will attempt to also posture various things for the purposes of negotiations and for various negotiating strategies and the thought occurred to me that ACDA is thrown into a difficult dilemma many times, being the neutral objective monitor of arms control agreements, on the one hand, and being a policy player and an advocate and a negotiator, on the other.

It has always seemed to me that as valuable as ACDA's observations about compliance are, that it really ought to adopt one or two of those roles, but not both.

General BURNS. Yes; I agree one or other of the two roles, but not both, and there are a lot of people, regardless of who is in the administration at any given point in time, there are going to be people who have a politically charged viewpoint about the compliance under arms control agreements.

We have people who have, particularly our researchers and others that look at this from a more technical point of view, people who have a need for really solid, reliable information upon which they can make a judgment, not one which is suggested to them through the filter.

I don't know how we solve that dilemma but perhaps it is by way of having someone else be the monitor of the arms control agreements and freeing ACDA to take its charged position or maybe just having ACDA be that highly credible source of what is and what ain't and allowing the Secretary of State or someone else to have a charged position about what it means.

Mr. CARR. Hopefully, your administration down there will be able to make recommendations along that line, because we have this twofold thing that touches itself sometimes.

General BURNS. There is a dichotomy, Mr. Chairman, which I have already seen in sort of analyzing my role as Director of ACDA and I think you put your finger on what, if it is not a problem, at least it is a situation that I think we have to deal with.

All agencies of government, of course, do analyses and develop broad data on things. In my former incarnation with the Joint Staff, a lot of military assessments were made that I believe were made fairly objectively and ACDA makes fairly objective evaluations of things.

The problem, of course, is a real one, in terms of attempting to draw policy conclusions from the same basic data.

Quite frankly, I don't know how you solve that problem. One aspect of it, of course, is interesting now, and that is our On-Site Inspection Agency, which is a technical agency to execute on-site inspection provisions of the Treaty. And for, I think, good and sufficient reason, it has been placed in the Department of Defense, because in a relatively short period of time the Department of Defense is best situated with the assets to set an organization like this up.

I am quite satisfied, however, since the Deputy Director of this Agency is an ACDA appointee that ACDA will have a major role, not only in the execution of the function of the Agency but also in the policy formulations.

I think, given the time available, this is a useful fix on the problem. How this should ultimately be accomplished with the START agreement and other agreements, I think we have to leave to the future.

I want to watch the on-site Inspection Agency to see how an inspection agency, charged with a specific monitoring function, accomplishes its job. I think that might give us insights into the future organization of this Nation of the arms control community, if you will.

## INTENSIVE INSPECTION

Mr. CARR. You cited in your opening remarks about the significance of the INF Treaty. I am not sure about how significant the first item was, that is, elimination of a small class of small weapons, but I am sure that the verification that INF has done was a major breakthrough and a tremendously encouraging precedent from the interests of inspection.

I had a little familiarity with intrusive inspections when we went to the Soviet installation at Krasnoyarsk around six months ago. It really opened my eyes in a real world way as to what really could be possible in a new era of relations with the Soviet Union.

But maybe you have a telescope into the future and you can tell me 10 years down the road, where do you see, how do you see this evolving in terms of the concept of intrusive inspection?

General BURNS. Mr. Chairman, it is sort of difficult at this time to look through a very cloudy crystal ball into the future.

The facts are that we know the Soviet Union has accepted what a year ago would have been considered almost an impossibly intrusive verification regime at INF.

Your visit demonstrates that the Soviet Union is prepared, at least in some areas, to allow a fairly open visit of a particular facility and, as you demonstrated, to allow picture-taking, which I think is very important.

We were able to go as part of a delegation to Shikhany and look at their chemical weapons elimination facility such as it was. They had been to Tooele. We had an exchange through the On-Site Inspection Agency in the recent past talking about the specifics of how we are going to do on-site inspections, which is very important, and the Soviets were very direct and very helpful.

Now, if this trend line continues, then I see a new era in which on-site inspection will cease to be the threatening thing it is to both sides and we will become something which becomes more or less routine.

It is difficult to predict the course of the development of the Soviet society and it is more difficult there to project the course of U.S.-Soviet relations, but as an observer of these relations and as a participant on the military side for a good number of years, I have never seen this opportunity before and I think it is an opportunity that we should investigate thoroughly and if it is a real opportunity, to seize upon it.

Mr. CARR. Are there any lines you can draw against the intrusive inspections, and anything that you can see in the next 10 years or so that will make this thing not happen?

General BURNS. I suggested to a committee of the Senate during my confirmation that while all of this is very good in the process we should keep our powder dry and I believe we should.

I believe there are certain facilities, certain industrial techniques, and certain technological advantages that the United States currently has that the United States should protect, therefore, I think that a totally intrusive on-site inspection regime is not in the United States' interest at this time.

What the future might bring depends a great deal on how the Soviet Union evolves, assuming the Soviet Union does evolve.

As far as drawing specific lines, I believe that we are going to have an opportunity to develop those specific lines in the START verification negotiations.

The difficulty, of course, is the difficulty of how much intrusiveness we can accept and how much they will accept. Both sides have agreed we want to accept the minimum but that minimum has to be adequate and those are good words, but to put them into effect to determine what is good in terms of how many inspections and where one can visit is a very difficult thing.

Mr. CARR. I have heard the accusation that the INF Treaty calls for destruction of SS-20 sealed canisters and we have no way of knowing whether there are missiles inside the canister that is being destroyed. Is that true or can you enlighten me on that?

General BURNS. Because of the construction of SS-20 system, the missile must remain in the sealed canister until it is fired. Since the Soviet side has agreed to destroy so many missiles in accordance with the time schedule, they have the right to maintain these in this configuration until the time of destruction.

At the time of destruction, our inspectors, who have the right to be there, can ascertain for themselves, that that missile, I am sorry, that that canister actually has a missile in it.

In terms of inspection of canisters at other places, say coming out of the final assembly facility, we have the right to weigh and determine if there is something inside and we have the right to examine through non-intrusive devices, through X-ray, to determine if there is a missile inside and a right periodically to require the Soviets to open a particular canister and we have a right to inspect its contents.

So, no, it is not true that the Soviets could maintain an empty canister and destroy it and call it a missile or could move a canister and call it a missile of one type and have another type missile in it.

Mr. CARR. From what you have said, it implies we have a reliable data base on what the empty weight of the canister is?

General BURNS. I believe we have a sufficient data base on both missiles and canisters at this time.

#### FIRST STRIKE

Mr. CARR. As a general proposition, do you think the Soviet Union has a first strike superiority?

General BURNS. I believe that the Soviet Union, particularly with the SS-18 missile, has the capacity to strike the United States with a sufficiently devastating blow to approach a first strike capability, and with the advent of the strategic mobile missile, I think this increases my concern. That is why I believe that a START agreement in the near future is in our interest.

Mr. CARR. How does the strategic mobile missile increase its first-strike strength?

General BURNS. A strategic mobile missile basically adds to the Soviet capability, its mobility is not first strike, the danger of a mobile missile, of course, is that it is not only first strike, but it is also second strike.

Mr. CARR. Of course, first strike capabilities are not a relative question anyway. It is an absolute matter, isn't it?

General BURNS. Maybe I can answer your question this way. I don't know how many missiles it takes of high accuracy and relatively short flight time to make a first strike capability. The Soviets accused us that the Pershing II was a first strike weapon and we argued 108 missiles don't make a first strike system.

We didn't conjecture whether 109 or 110 did. So I think it is one of those things you may know it when you see it but it is very difficult to describe.

#### STABILIZING ARMS CONTROL

Mr. CARR. Again, I would like to get you to use your crystal ball and give me an idea of what you think, what kind of crisis stabilizing arms control we ought to be pursuing in the next 10 years? Maybe you could give me a priority listing in your mind of what we ought to be driving for first, second and third in terms of effort?

General BURNS. I think our first priority should be to pursue a strategic arms agreement. I think that is fundamental to the security of the United States.

Our second priority, and I would put two or three different items in this basket, would be to pursue some sort of conventional stability arrangement with the Soviets in the European area and perhaps at the same time the elimination of chemical weapons.

After we achieve these goals, and I think we are still within your 10-year projection, then I think we have to look again at nuclear arms to determine how best we can continue to reduce the threat of nuclear weapons and together with all of this I believe that we should continue our research on defensive systems.

So my priorities would be strategic nuclear first, then conventional and then let's take another look at nuclear weapons in total.

#### ASAT

Mr. CARR. How about ASAT, where does it fit in?

General BURNS. The Soviets have an anti-satellite system. One could argue from a deterrent point of view we need an anti-satellite system.

I believe that the ability to hold Soviet satellites at risk in the future might be absolutely necessary for us but a lot of it depends on the direction our offensive arms control relations go or arms control negotiations go.

Mr. CARR. Is it true that they have offered or made a proposal to have a treaty in which they would dismantle their ASAT?

General BURNS. They suggested a number of things in terms of what they would or would not do if we would give up our strategic defense research.

Mr. CARR. What about a depressed trajectory flight ban? Have you given serious consideration to that?

General BURNS. Quite frankly, I haven't. One of the problems we have had, of course, in the INF area, is the fact that a number of Soviet strategic systems can pick up the targets, if you will, of Soviet INF missiles can cover. I haven't really looked in myself to the concept or theory of depressed trajectory weapons. I could prob-

ably provide some specific information for the record on that, however.

Mr. CARR. I would like to ask you to do that. That has been a subject of great interest to myself and a couple of other Members of the House. In fact, back in the waning days of the SALT negotiations a proposal was actually put on the table but it was really too late in the SALT rounds to be really seriously considered, given the bureaucratic lethargy of the Soviet Union at the time. They couldn't turn around a decision on it.

A number of us are still quite interested in it. Maybe you could have one of your people trace a bit of the history, good or bad, for or reject, where that is at, if it is anywhere.

General BURNS. I will do that, Mr. Chairman.

[The classified responses to these questions are on file with the Committee.]

#### SSBN

Mr. CARR. Whether it has been rejected as a priority matter, maybe you can give us some information on it. How about a SSBN standoff zone? What kind of SSBN will you have?

General BURNS. I don't know how you verify it. The standoff zones for moderate SSBN's would have to be quite a distance. And recognizing the level of classification of this hearing, I think that about all I can say is that I am not sure we would want to share with the Soviet side our ability to verify.

Now, as far as the concept goes, location at sea is much more difficult to deal with than location on land. It might be an interesting area, though, to investigate, perhaps not a standoff zone as such, but areas in which that the SSBN's cannot be, much smaller than what a standoff zone would suggest, areas where SSBN's could more specifically threaten vital targets in the U.S. and Soviet Union than just SSBN's in the middle of the Atlantic and other places.

Mr. CARR. That along with an ASW and SSBN protective zone or some such thing, can we begin to think about this, not in the context of the way we have been thinking about it, but again in the context of intrusive inspection. Not that we can put a Soviet sail on our SSBN and they have one of ours on theirs, but we have had proposals floating around, CPT proposals in particular, where you install a device that would be tamper-proof and they would install a tamper-proof device which essentially would perhaps be a locator of some kind, locator of SSBN's but not a combat give-away or some such things. You know the thing about the whole ASW and SSBN areas is that, unless you can happily tell me I am wrong, we haven't seemed to be thinking about intrusive inspections or intrusive types, technological types of innovations the way we have for land-based systems.

General BURNS. That is true to a degree.

You know, in the START proposal, we would count missiles on SSBN's and we have developed some rather interesting ways of verifying those missiles on SSBN's, which would not require necessarily intrusion on the submarines at sea or perhaps even in docks.

The one advantage we have, of course, with SSBN's, is the relatively few in number and we have a fairly good number on when one is built or destroyed so we know how many and we know basically what their capacity is.

I haven't seen a device yet that is the tamper-proof beacon that you suggest, that is one of our problems, and we have looked at that, not in the SSBN area as far as I know, but in other areas. And what might be tamper-proof to you is not tamper-proof to me. Almost any device can be spooked if you know how to spook it. That is the basic problem.

Mr. CARR. Including SDI?

General BURNS. SDI is not a tamper-proof device. But, no, I think.

Mr. CARR. I guess we may have a philosophical difference, but you know we spend so many billions and billions of dollars on the SDI thing and without getting into whether it is good or bad, it would seem to me that some small amount of our research effort ought to be in the direction of verification and—well, we are working some appropriation money in it, but it is a drop in the bucket compared to some of the other things we do and the whole SSBN area, it seems to me, we are really very, very small in terms of that and maybe some of these things ought to be looked at on a research basis.

General BURNS. Let me take a look at it, Mr. Chairman, and make sure you don't come back and be asking for money to do it. I think you make a good point and there are a number of initiatives in the verification area that are ongoing, paid for by ACDA and paid for by Defense.

The concept of tagging, for instance, of missiles, is innovative and perhaps it may be useful. But let me take a look at that and see if there is not something we can do.

Mr. CARR. Well, those are good expenditures of money and we do seem to have a new era of, a totally new conception for environment of things that we didn't have a few years ago. I hope that we are taking every opportunity to take advantage of them.

We have some more questions for the record. I have a number of questions, about nine or so, on management issues and you have been most kind with your time and I appreciate getting to know you and welcoming you here.

[The questions and the answers submitted thereto, follow:]

Management IssuesQUESTION:

It has been reported that ACDA has had some compromises in its handling of highly classified information. How many security violations have occurred at ACDA in the last three years, what were the results of any internal or external reviews of ACDA's handling of classified information, and what action, if any, has ACDA recently taken to improve the handling of classified information?

ANSWER:

In the past three years there have been 97 security violations - 1985 (48), 1986 (30), 1987 (19).

In the past two years the following security reviews have been conducted of ACDA:

A - Security Survey team comprised of representatives from CIA - NSA and State Department conducted a review of security policies and procedures in April 1987.

B - ISOO (Information Security Oversight Office) - completed June 1987.

C - OPM conducted a review of the Personnel Security and Suitability Programs of ACDA during the period May to August 1987.

In all three reviews only minor adjustments to the security program were recommended. Overall the reports were very favorable.

In our effort to improve the handling of classified information and enhancing the security posture of ACDA, the following actions have been taken:

1. ACDA media has been used to alert employees of various security requirements/considerations.  
Subjects covered:

A - classified markings

B - conversations and contacts with communist country officials/nationals

C - security awareness - Foreign Intelligence Threat

2. ACDA employees have been afforded a rebriefing by the Security Officer.

3. New employee briefings now emphasize the proper handling of SCI material.

4. Re-Investigation of employees have been accelerated.
5. Increased after hour Marine security checks.
6. The ACDA manual has been updated and critical procedures/requirements have been included.

QUESTION:

Federal agencies are required to update the security clearances of their staffs involved in sensitive, critical positions every five years. Are the clearances of all ACDA personnel current? What procedures do you have for routinely identifying when an individual's security clearance needs to be updated, and what type reinvestigation is made?

ANSWER:

ACDA has an excellent record as to currency of security investigations and clearances. At the present time we have only eight employees whose investigations are more than five years of age. These investigations have been scheduled for updating.

The Security Office, ACDA maintains a log reflecting currency of investigations on employees. This log is reviewed quarterly and reinvestigations are scheduled as they become due.

Section 45 of the Arms Control and Disarmament Act requires that OPM conduct full field background investigations of all ACDA employees. OPM also conducts the background update investigations for ACDA.

QUESTION:

Your budget request includes a total of \$545,000 for consultants and visiting scholars. Since most of your work is classified, do all of these consultants have national security clearances?

ANSWER:

No person is permitted to enter on duty with ACDA and have access to classified material until a Top Secret clearance has been issued.

The ACDA Act does provide that an investigation and security determination may be waived by the Director, ACDA in the case of any consultant who will not be permitted to have access to classified information if the Director determines and certifies in writing that such waiver is in the best interest of the United States.

As a practical matter non-cleared consultants are not used by ACDA.

QUESTION:

For the upcoming summit meeting in Moscow, what special security precautions have ACDA officials recommended in light of the counterintelligence efforts the Soviets have used against the existing U.S. embassy and the embassy?

ANSWER:

ACDA employees working in an overseas environment come under the security umbrella of Diplomatic Security, U.S. Department of State.

For the past year ACDA Security Officers have conducted an active in house security education program which prepares employees for working and living in communist controlled countries.

QUESTION:

Why does ACDA's annual Federal Managers' Financial Integrity Act Reports focus only on the accounting aspects of its operations? Why don't those reports also include management control issues?

ANSWER:

Due to its limited resources, ACDA has focused its efforts on administrative control because this is where the financial resources are and where the greatest potential for liability exist. Being a small agency, ACDA has utilized an independent auditing firm to assist in implementation of this act. Now that we have been authorized an Inspector General, ACDA anticipates expanding its scope of coverage under the act.

QUESTION:

In December, 1987, legislation was enacted to require other agencies to reimburse the State Department fully for the overseas administrative support it provides them. How will the implementation of this legislation affect ACDA's office in Geneva?

ANSWER:

ACDA currently reimburses the State Department for overseas administrative support in Geneva. Therefore this legislation should have no additional impact on ACDA Geneva operations.

QUESTION:

In recent years the United States has not paid all of its assessments to international organizations, including the International Atomic Energy Agency. How has this funding issue affected your relations with the international nuclear energy community and U.S. efforts to achieve U.S. nonproliferation goals?

ANSWER:

Until 1987, the U.S. had paid its full assessment to the IAEA annually. Since then, however, we have fallen into arrears on our assessed contribution and it is anticipated that we will be unable to meet our assessment for some time into the future.

While our failure to pay our full assessment has not yet adversely affected U.S. nonproliferation objectives, continued underpayments are likely to have a negative impact in the future. However, it has begun already to cause IAEA management to direct more of its attention from its functional responsibilities, including safeguards, to coping with U.S. arrears.

In more concrete terms, if the United States is not able to make its full assessed contribution to the IAEA, there will be a shortfall between resources on hand and those needed to meet the IAEA's safeguards requirements. The IAEA already is being forced by the general budget constraints to conduct fewer inspections than they would otherwise, and any U.S. arrears will lead to further curtailment of inspection activities. If this situation were to continue over the long term, it could lead to questions about the overall effectiveness and credibility of IAEA safeguards which are the essential underpinning of international nuclear cooperation.

QUESTION:

I understand that the agency is involved in reviewing about 1,500 government and commercial export license applications each year. The rate of approval for these requests is very high. How much of your budget is allocated to these reviews?

ANSWER:

ACDA's review of foreign government requests for military equipment and commercial applications for licenses to export such equipment accounts for the bulk of the work of the Arms Transfer Division of the Nuclear and Weapon Control Bureau. This Division has an authorized strength of six officers and two secretaries. Approximately six and a half person/years of effort are devoted by the Agency to case processing.

QUESTION:

How much of your FY-1987 appropriation which was budgeted for object classes other than personnel compensation and benefits was spent in the last month of the fiscal year? Please provide a listing by object class?

ANSWER:

ACDA obligated \$374,000 in object classes other than personnel compensation during the last month of FY-87. Total obligations for the month are broken out by object class as follows:

	<u>September</u> (\$000)
11. Personnel Compensation	\$1,200
12. Benefits	105
21. Travel	43
23. Rent	50
24. Printing	1
25. Other Services	264
26. Supplies	<u>16</u>
Total	\$1,679

Other Research EffortsQUESTION:

In recent years ACDA has funded such nonproliferation research efforts as RECOVER and TRANSEAVER for use by the IAEA to monitor inventories and shipments of nuclear material through remote means. What have been the results of these major research efforts?

ANSWER:

RECOVER was a prototype system designed to demonstrate the feasibility of remotely monitoring the operating status of sensors located in fixed sites in a timely, secure and economical manner. In addition, RECOVER was designed to evaluate architectures for monitoring systems, protocols for communications and data processing, and design concepts for the security of equipment and data. An international field test of RECOVER in 1980-1981, established the principle of collecting encrypted data from tamper-resistant sensors and provided engineering information for the design of TRANSEAVER, a second generation more advanced system. TRANSEAVER was designed to monitor the shipment of nuclear or other special materials by ship. In addition to the characteristics of RECOVER, it provides tracking of the cargo containers on a real time basis. TRANSEAVER was tested successfully in 1986 during the voyage of a container ship from Tokyo to Seattle. The results of these projects have culminated in the conceptual design of ARTEMIS, which can provide tracking, security, safety and communication capabilities for the shipment of nuclear materials by cargo or aircraft.

QUESTION:

Has IAEA adopted either of them or have these projects been abandoned?

ANSWER:

RECOVER was undertaken in conjunction with the U.S. Support program to the IAEA. TRANSEAVER was not related to international safeguards but to physical protection. RECOVER was designed to explore technical and operational questions associated with the remote monitoring of sensors in an international environment; it was not designed as an operational system to be handed over to the IAEA. At the time, the concepts espoused by RECOVER, were technically too sophisticated for the immediate needs of the IAEA. Although the IAEA has not yet adopted the principle of remote monitoring, these projects have had and continue to have major impact on arms control efforts.

- A) In the Conference on Disarmament, papers dealing with the verification of a chemical weapons (CW) control treaty routinely assume the existence of a remote monitoring system. The principles of RECOVER were presented as early as 1983; now, remote monitoring of sensors is considered an integral component of a future treaty.
- B) Based on the RECOVER field test, Japan has built an improved systems named JAEMS (Japan Atomic Energy Monitoring Systems) for safeguards use. Under its Support Program for the IAEA, Japan is presently making an effort at the IAEA, to incorporate into the safeguards approach for reprocessing plants, a system based on the RECOVER-JAEMS design.
- C) TRANSEAVER, rebuilt at Japanese expense, is presently in Japan, ready to be used; it can monitor sea shipments of plutonium, if needed.
- D) The physical security provisions of the U.S. - Japan Agreement Concerning Peaceful Uses of Nuclear Energy are based on the design of ARTEMIS. Detailed technical and economic analysis of ARTEMIS is presently undertaken through a cooperative effort between ACDA and the Japan Atomic Energy Research Institute. ARTEMIS is the only system to date, which has been designed to satisfy the provisions of this agreement.

At present, ACDA has no external research efforts committed to remote monitoring. It pursues these activities by seeking cooperative efforts with Japan and other countries, through an Expert with limited time available.

Monitoring of Arms Control Agreements

QUESTION:

ACDA is the lead agency in developing annual reports on Soviet compliance with arms control agreements. What have these reports shown?

ANSWER:

Each of the series of reports including reports dated January 1984, February and December 1985, March 1987 and the 1984 Report on Soviet Noncompliance prepared by the General Advisory Committee on Arms Control has enumerated and documented, in detail, issues of Soviet noncompliance and our attempts to resolve the issues. As the President said in the December 1987 Report to Congress on Soviet Noncompliance:

When taken as a whole, this series of reports provides a clear picture of continuing Soviet violations and forms the basis for our concern that future agreements must be effectively verifiable and complied with.

The reports show that there is a pattern of Soviet noncompliance, and that although the U.S. has continued intensive efforts, the Soviets have neither provided explanations sufficient to alleviate our concerns on other compliance issues. Indeed, recent Soviet activities at an electronics facility at Gomel have raised an additional compliance issue with regard to the ABM Treaty.

QUESTION:

What percentage of ACDA's time and effort is spent on monitoring Soviet compliance?

ANSWER:

Approximately 4%

QUESTION:

How much do you spend on developing these compliance reports, and how wide is their circulation compared to your other publications?

ANSWER:

The primary cost is associated with personnel which, as stated above, is approximately 4% of ACDA's time. Other costs this year included support staff and normal printing costs for about 200 Reports. The classified version of the Noncompliance Report is distributed to those on the same lists as other Presidential Reports, and the unclassified version is made available to the public as are other such reports.

QUESTION:

Does your preparation of these Arms Control Impact Statements help you concentrate on the more important arms control issues or do you generate these impact statements merely to satisfy external requirements?

ANSWER:

Preparation of the Arms Control Impact Statements (ACIS) each year does focus ACDA and the other participating agencies on the important arms control issues. However, these arms control issues are an integral part of the Agency's daily routine and thus the illumination given them by the ACIS exercise is of minimal value to ACDA. By law, of course, the Administration is required to provide you with the ACIS and ACDA will continue its lead role in the process.

QUESTION:

Each year the State Department prepares a report to the Congress on Nuclear Nonproliferation. Does ACDA contribute to this report, and if so, how much time and effort do you spend on this effort?

ANSWER:

Yes, ACDA makes a substantial contribution to the annual report to Congress on nonproliferation (called the 601 report). ACDA prepares several of the chapters of the report and reviews and clears all the other chapters prepared by the State Department. Three ACDA Staff members write sections of the report and approximately seven others review the report. Each of these staff members may spend up to several hours of their time working on the 601 report.

Mr. CARR. I would just like to say, in my closing, that as far as I am concerned there is nothing more important than the government can do in this nuclear age than to carry out arms control, verifiable arms control agreements, and it isn't always the cheapest avenue. We don't necessarily have to do it just because we are going to save money but we want to make it safe for the world and I think it is an exciting time.

My appetite for this issue has been there for a long time. I was an observer to the SALT thing back in the 1970s, but being in the Soviet Union six months ago and discussing with their newer, younger leaders about their hopes and aspirations and how they are trying to shed a culture that they may not necessarily agree with as a cultural traditions that they handle intellectually, gives us a really new hope.

We were visiting with, and this is one thing I hope ACDA actively encourages rather than discourages, and I am not accusing ACDA but I know the State Department has discouraged some of this, we have teams of scientists who have their own channels of communications through scientific meetings around the globe and they get to know one another and have been able to discuss with one another and have some confidence building among them about methods and techniques and we were privileged to see U.S. scientists and Soviet scientists conducting joint discussions of seismograph experiments, and they were very interesting and very encouraging.

Yet when it came time for the private nonprofit group that had been conducting the investigations with Soviet scientists to reciprocate and have Soviet scientists come here for a joint experiment on our soil, our State Department has been vexatious with visa requirements and so on.

We don't want to do anything that is going to undermine government-to-government approach but these informal back channels of communication and dialogue and the like can be so important. And I hope that ACDA should take what I would call a more encouraging view toward encouraging scientists of both countries to conduct experiments that they can find. If they can find the money to do it and carry out these things in a scientific manner, I think we are all going to benefit.

They may come up with some things and the government might ought to look at it. So I hope that you can tell the Secretary of State and others down at the State Department that when a visa request comes through that your Agency will see the wisdom in allowing them to take place.

General BURNS. Thank you very much, Mr. Chairman.

I take the points and I thank you very much for your hospitality today and I hope we are back in frequent contact.

Mr. CARR. Thank you.

MONDAY, MARCH 28, 1988.

FEDERAL TRADE COMMISSION

WITNESSES

DANIEL OLIVER, CHAIRMAN

ROBERT S. WALTON, III, EXECUTIVE DIRECTOR

JEFFREY I. ZUCKERMAN, DIRECTOR, BUREAU OF COMPETITION

WILLIAM C. MacLEOD, DIRECTOR, BUREAU OF CONSUMER PROTECTION

DAVID T. SCHEFFMAN, DIRECTOR, BUREAU OF ECONOMICS

ROBERT D. PAUL, GENERAL COUNSEL

FREDERICK J. ZIRKEL, DIRECTOR, DIVISION OF BUDGET AND FINANCE

Mr. SMITH. The first item that we will take up this afternoon is the Federal Trade Commission budget request of \$67,503,000. We will insert the justification in support of this request in the record at this point.

[The budget justification follows:]

(487)



# FEDERAL TRADE COMMISSION



**FISCAL YEAR 1989**

**PROGRAM BUDGET**

**Submitted to Congress**





FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

February 12, 1988

Honorable Neal Smith  
Chairman  
Subcommittee on Commerce, Justice, State,  
the Judiciary and Related Agencies  
House of Representatives  
Washington, D.C. 20515

Honorable Ernest F. Hollings  
Chairman  
Subcommittee on Commerce, Justice, State,  
and Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This transmits the fiscal 1989 budget estimates and justifications for the Federal Trade Commission.

The agency's 1989 budget request amounts to \$67,503,000 and 987 workyears. It provides for a net increase of \$1.26 million over our fiscal 1988 appropriation, with no increase in workyear resources. As the justification materials describe, the budget, with careful management, will permit the Commission to pursue actively its—`Competition, Consumer Protection and Economic missions.

By direction of the Commission,

A handwritten signature in black ink, appearing to read "Daniel Oliver".

Daniel Oliver  
Chairman

Federal Trade Commission  
Fiscal 1989 Budget Request

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## OVERVIEW STATEMENT

The role of the Federal Trade Commission, as defined by Congress, is to enforce a variety of Federal antitrust and consumer protection laws. Under these laws, the Commission seeks to ensure that the nation's markets are competitive, function vigorously and efficiently, and are free from undue governmental as well as private restrictions. The Commission also seeks to improve the operation of the marketplace by eliminating "deceptive" and "unfair" practices, with emphasis on those practices that may unreasonably restrict or inhibit the free exercise of informed choice by consumers. The Commission's economic analyses support this law enforcement effort and contribute generally to the economic policy deliberations of the Congress, the Executive Branch, and the public.

The Commission's fiscal 1989 budget request totals \$67,503,000 and 987 workyears.<sup>1</sup> The agency's 1988 appropriation is \$66,243,000 and funds 987 workyears. While a level workyear budget is being proposed for the agency, the Commission is planning to transfer 23 workyears from headquarters to the regional offices. As a result, the regions will be allocated 185 workyears in fiscal 1989.

In fiscal 1987, the Commission voted to increase regional office strength over a three year period. The continued decline in overall agency size,<sup>2</sup> coupled with the 1986 Gramm-Rudman-Hollings cut, left the regions at staffing levels that were no longer considered optimum for providing effective law enforcement coverage. Consequently, this reallocation of 23 workyears from headquarters to the regions will ensure that each regional office is provided with a level of resources sufficient to effectively pursue mission objectives.

The dollar increase between fiscal 1988 and 1989 of \$1,260,000 or 1.9 percent is needed to fund annualized pay and retirement cost and to pay for selected inflationary price increases over which the agency has no control.

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<sup>1</sup> These fiscal 1989 amounts exclude 9 workyears and \$450,000 that are being proposed by the administration for transfer to the FTC from the ICC. The ICC activities being proposed for transfer deal with consumer protection matters in the household moving industry.

<sup>2</sup> See workyear chart at the end of this overview statement.

The numbers contained in this year's request reflect the Commission's desire to hold its budget to the minimum necessary to carry out the agency's statutory responsibilities. The agency's fiscal 1989 request is considered sufficient to meet all mission objectives. Program success will continue to be measured by the degree to which we obtain business compliance with our laws, rules and regulations and not solely by how often we litigate. In those cases where compliance is not obtained, this budget contains resources to aggressively pursue those who refuse to comply with the law.

In the past six years, the Commission has attempted to reshape policy to better meet consumer needs, while at the same time increasing staff effectiveness. Resources will be allocated in fiscal 1988 and 1989 to continue along the same policy lines established during these last few years. The Commission believes that a 1987 workyear level provides the minimum resource base from which to pursue such policies.

A case-by-case enforcement approach coupled with advisory efforts will continue to be the primary method of enforcing the law for the Commission. Resources will be allocated in fiscal 1989 to inform Congress about the possible harmful consequences of measures that might shield firms and industries from competition. Prudent case selection criteria will continue to be emphasized to ensure that agency resources are allocated only to activities that promise the best return for the public.

The Federal Trade Commission can be expected to use a portion of its resources to participate in the debate on any new exemptions from the antitrust and consumer protection laws; intervene in efforts by private litigants to obtain administrative or judicial relief from competition; develop positions on the merits of governmentally-directed efforts to revive depressed industries and to channel capital toward appealing new endeavors; and intervene when other Federal or State regulatory agencies could benefit from our economic analysis.

The remainder of this overview statement summarizes specific program activities that are included under the Commission's three principal missions.

#### I. Consumer Protection

The major goal of the Consumer Protection Mission is to improve market performance so that consumers can make informed purchase choices. The Mission seeks to halt or prevent deceptive and unfair practices that hinder optimum market performance. As

in the recent past, market-oriented remedies will be emphasized and information disclosure will remain central to many programs.

In fiscal 1989, the Consumer Protection Mission will utilize 486 workyears and \$33,085,000. Workyears increase by 5 over fiscal 1988, and dollars by \$903,000. These increases will allow regional offices to increase their consumer protection enforcement activities.

Under the Enforcement program, the Commission will continue to monitor compliance with its rules and orders, taking action as appropriate. Enforcement actions will seek civil penalties and injunctions as sanctions against order and rule violators. Redress will be sought for consumers who suffer economic loss from practices that violate rules and orders. This program will gain two workyears in fiscal 1989.

The Marketing Practices program focuses on identifying fraudulent practices and halting those acts and practices where injury to the public is ongoing. This effort includes seeking restitution or other relief for consumers harmed by deceptive sales or product claims. The program will also work to ensure that warranty information is understood and made available to consumers prior to sale, and that promises made under warranties are honored. Consumer and business education efforts will continue to play a prominent role in helping consumers avoid potential pitfalls. In fiscal 1989, this program will gain three workyears.

The Advertising Practices program seeks to reduce the number of unfair or deceptive service or product claims found in advertising. The Commission, as part of its case selection criteria, has developed statements on deceptive and unfair advertising that stress cost-benefit analysis. This approach assures the most efficient use of Commission resources.

The Credit Practices program seeks to pursue solutions to problems in the consumer credit market. In fiscal 1989, the program will focus on helping consumers comparison-shop for credit; reducing discrimination in the granting of credit; protecting the confidentiality of consumer financial data; and preventing economic losses resulting from computer billing errors. Consumer and business education play a large role in achieving the goals of this program.

The Commission's goal of reducing unnecessary and costly marketplace restrictions will be pursued through the Service Industry Practices program. This program will remain constant in terms of workyears between 1988 and 1989. Rule enforcement policies will be proposed and administered, as appropriate. The

Commission will assist state sunset commissions and other organizations interested in the impact of occupational regulation on consumers. Investigations, litigation, and advocacy efforts will be continued or initiated, as appropriate, involving standards, regulation of professionals, nursing homes, advertising of professional services, and fraud and deception in the promotion of alternative investments and career counseling.

Finally, resources will be allocated for management of the mission and to provide economic and legal analyses of proposed investigations and cases. These Program Management resources help ensure that all Commission actions will be supported by sound regulatory analyses. Emphasis will continue to be placed on supervision and the improvement of management at all levels of the Consumer Protection mission.

## **II. Maintaining Competition**

The major goal of this mission is to detect and eliminate antitrust law violations, including collusion, anticompetitive mergers, predatory single firm conduct, injurious vertical arrangements, and other anticompetitive practices in the private sector. Because Federal, state, and local government regulations may also restrict competition, a second major goal is to provide procompetitive analysis and comment in government proceedings that affect competition.

The Maintaining Competition mission budget includes 447 workyears and \$30,620,000 for fiscal 1989. Mission workyears will decrease by two over 1988 levels. However, the decrease is in support workyears allocated to the mission and therefore will not directly impact enforcement efforts. The \$485,000 dollar increase for the mission reflects pay and inflationary increases that exceed savings from reductions in support workyears. With this proposed level of funding, the Commission would have the means to carry forward into fiscal 1989 any existing fiscal 1988 matters and to initiate a number of new investigative, law enforcement, and advisory activities.

As in the last few years, the Commission will continue to work to fashion antitrust remedies that rely on industry members' competitive incentives for their effectiveness. The budget request continues to provide resources for thorough economic analyses to support mission antitrust activities.

For fiscal year 1989 the competition programs are rearranged along violation lines. The first of the Commission's five competition programs is the Premerger Notification program. Resources in this program will be used to investigate possible violations of the reporting requirements of the Hart-Scott-Rodino

Act and to administer the operation of the statutory premerger notification program. Staff assigned to this program will also continue to review and propose revisions to the rules that govern our premerger notification program to help streamline the process whenever possible. Direct workyears allocated to the premerger program will remain constant between 1988 and 1989.

Resources in the Merger and Joint Ventures program will be dedicated to investigating substantial mergers, acquisitions and joint ventures. It is anticipated that in 1989 the focus will be on mergers in the petroleum, health care, transportation and food industries. Resources in this program will also be allocated to ensure compliance with Commission orders requiring divestitures and any prior approvals of future acquisitions. Resource levels in this program are expected to remain constant between 1988 and 1989.

The Horizontal Restraints program is the Commission's largest competition program and is scheduled to remain constant in terms of workyears between fiscal 1988 and 1989. Program efforts consist of investigations and litigation against suspected collusion among competitors. The focus of this program for both 1988 and 1989 will be to review licensed occupations, to investigate and challenge boycotts, and reduce, whenever possible, the economic restrictions on the practice of innovative health care providers such as HMO's, PPO's or non-physician providers. Moreover, the program will continue to provide advice to courts, Congress and federal and state agencies. The structure and conduct of bid depositaries, activities of trade associations and standards-setting organizations will also be subjected to review for any possible violations of law.

The Distributional Arrangements program will investigate and prosecute suspected anticompetitive resale price maintenance, price discrimination including power-buyers inducement of discriminating prices; and non-price vertical arrangements.

The Single Firm Violations program consists of the investigation of suspected instances of price or non-price predation, of monopolization and of other abuses by firms with market power that are protected by entry barriers. Resources associated with litigation of these matters are also included in this program.

Finally, resources will be allocated for management of the mission and to ensure all Commission actions are supported by sound economic and legal analyses.

### III. Economic Activities

The Economic Activities mission guides and supports the Commission's Competition and Consumer Protection efforts in both policy development and matter selection and analysis. The long-range goal of the mission is to promote a more efficient and productive economy by strengthening market competition and reducing burdensome regulation. To achieve this goal, mission resources will be used to: provide economic analysis for antitrust and consumer protection investigations, cases, and rulemakings; advise the Commission on the impact of governmental regulation on competition and consumers in various industries; and develop special reports on competition, consumer protection, and regulatory issues of particular interest to the Commission and Congress.

In fiscal 1989, the Economic Activities mission will utilize 54 workyears and \$3,798,000. Overall mission workyears are down three from fiscal 1988 levels while dollars are reduced by \$128,000.

The Economic and Consumer Policy Analysis program undertakes numerous studies to further the Commission's knowledge regarding consumer protection and the proper role of government regulation in advancing a competitively functioning economy. Areas of expected activity in fiscal 1989 include: effects of occupational licensure on competition and consumer welfare; the effectiveness of advertising regulation in benefiting consumers and deterring false or deceptive advertising; and the role of standards and disclosure in solving consumer information problems.

The Antitrust Policy Analysis program complements the Commission's Maintaining Competition mission in much the same manner as the Economic and Consumer Policy Analysis program complements the Consumer Protection mission. This program's resources will be used in fiscal 1989 to increase the Commission's knowledge and understanding of those market situations in which antitrust action will result in a more competitively functioning economy. The following areas are expected to be studied in fiscal 1989: effects of cartellizing characteristics of the regulation of ocean shipping; the competitive effects of entry restrictions in the provision of nursing home services; and the effects of technology standards on the ability to enter some markets.

Finally, resources will be allocated to provide management direction of mission activities, and to coordinate efforts with the Maintaining Competition and Consumer Protection missions. Other objectives of this program will be to more fully develop and utilize professional staff, and improve access to information sources and other research tools.

**IV. Management Initiatives**

The agency's most significant management initiative involves efforts to improve staff productivity through the increased use of modern computer technology. Over the past years, the FTC has developed and put in place effective computer systems and related equipment. However, there still remains a substantial potential for productivity increases that the agency has yet to realize through computer technology.

With a modern telecommunications system in place, and with our space consolidation behind us, Commission management is now focusing its attention on office automation and the upgrading of the agency's central computer facility. To this end, the agency embarked on a course in 1987 to evaluate its entire information needs and to prepare a multi-year plan for phasing in its office automation efforts.

The first part of the plan is to provide for sufficient resources to upgrade our central computer facility. As personal workstations are spread throughout the agency, it inevitably becomes necessary to provide more timely and cost effective service to users of the agency's central information systems. Thus, the need to upgrade our central computer facility goes hand in hand with our desire to provide each professional with their own personal workstation.

The second phase of the plan, and the one with potentially the greatest impact on productivity, will be to make workstations available to all professional staff members. This effort will allow our professionals to access both internal and external data bases as well as perform communications, data base, economic analysis, and word processing functions. The implementation of both phases of our technology plan, which began in fiscal 1987, will be continued throughout 1988 and into 1989 assuming our full budget request is approved, but at a lesser spending pace than experienced in 1987.

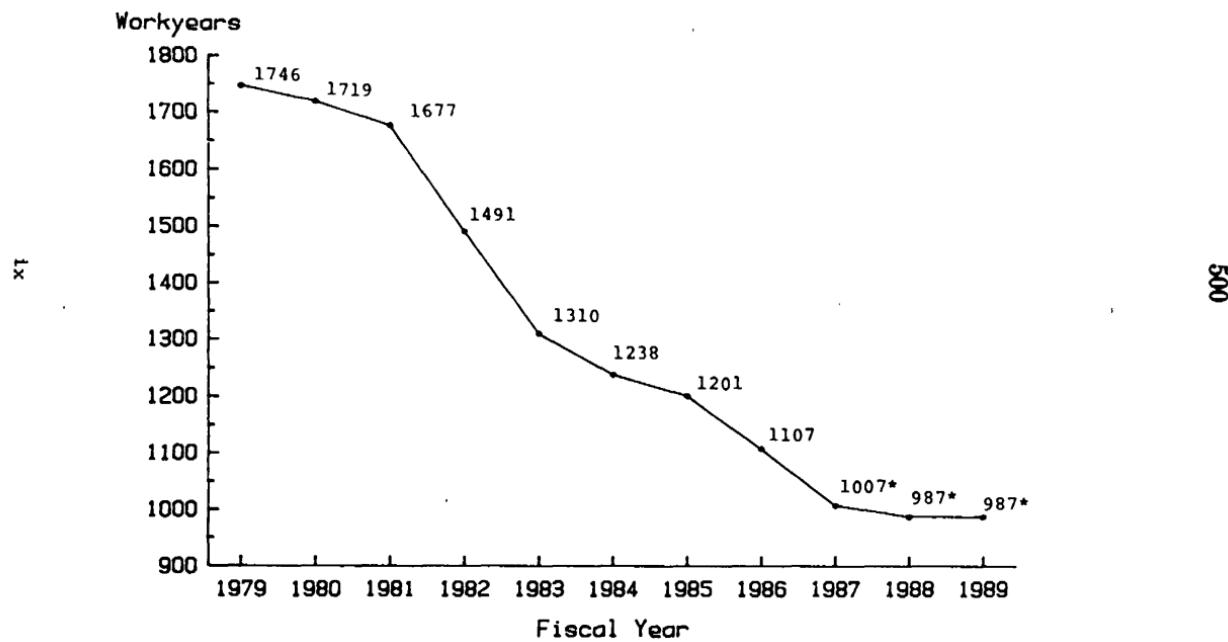
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In summary, the Commission's fiscal 1989 budget request provides for a workyear level of 987. This resource level will ensure an effective enforcement program while also allowing the regional offices to grow. The Commission's budget request represents the minimum resources considered necessary to carry out the important mandate that Congress has entrusted to the agency. Our request of \$67,503,000 is \$1,260,000 over fiscal 1988 levels. This 1.9 percent dollar increase is directly attributed to the cost of annualized pay and retirement costs, and other inflationary increases over which the Commission has no control and is not able to absorb.

**SUMMARY OF FISCAL 1989 BUDGET REQUEST**  
 (dollars in thousands)

	<u>Fiscal 1988</u>		<u>Fiscal 1989</u>		<u>Change</u>	
	<u>Wkyrs.</u>	<u>Dollars</u>	<u>Wkyrs.</u>	<u>Dollars</u>	<u>Wkyrs.</u>	<u>Dollars</u>
<b>I. MISSION:</b>						
Consumer Protection.....	481	\$32,182	486	\$33,085	5	\$903
Maintaining Competition.....	449	30,135	447	30,620	-2	485
Economic Activities .....	<u>57</u>	<u>3,926</u>	<u>54</u>	<u>3,798</u>	<u>-3</u>	<u>-128</u>
Total.....	<u>987</u>	<u>66,243</u>	<u>987</u>	<u>67,503</u>	<u>...</u>	<u>1,260</u>
<b>II. ORGANIZATION:</b>						
Headquarters.....	825	\$55,480	802	\$55,215	-23	-\$265
Regions.....	<u>162</u>	<u>10,763</u>	<u>185</u>	<u>12,288</u>	<u>23</u>	<u>1,525</u>
Total.....	<u>987</u>	<u>66,243</u>	<u>987</u>	<u>67,503</u>	<u>...</u>	<u>1,260</u>

FEDERAL TRADE COMMISSION  
Workyear History  
FY1979-FY1989



\*Included are seven (7) workyears for building maintenance services. The dollars to fund these workyears are provided through a reimbursable arrangement with GSA and are not included in our budget request of \$67.5 million.

MAINTAINING COMPETITION MISSION  
OVERVIEW STATEMENT

LONG-RANGE GOALS

In enforcing the Federal Trade Commission and Clayton Acts through its Maintaining Competition Mission, the Commission examines a wide variety of industries and commercial practices and, when appropriate, takes action to ensure that competition in the Nation's markets for goods and services is maintained and, if possible, enhanced.

The mission's specific long-range goals include the detection and elimination of antitrust law violations, including collusion, anticompetitive mergers, predatory single-firm conduct, and injurious vertical agreements. The Commission considers it vital that antitrust analysis also be brought to bear upon legislative and regulatory restrictions on competition imposed by government bodies at the federal, state, and local levels. Therefore, an additional long-range goal is to provide procompetitive analysis and comments in government proceedings that affect competition in areas important to consumers.

The Commission seeks to correct anticompetitive restraints in a manner that will best assure the working of free market forces. Thus, it seeks to fashion antitrust remedies that rely for their effectiveness on industry members' competitive incentives. These efforts ensure that the Commission, while maintaining a significant enforcement presence across many broad sectors of the economy, prescribes solutions for competitive problems that will work because they harness the forces and responses of freely competitive markets.

MAJOR OBJECTIVES

To achieve the Maintaining Competition Mission's long-range goals of reducing public and private restraints on competition and ensuring the operation of unhindered market forces throughout the economy, the Commission has targeted a number of discrete objectives based on the specific anticompetitive practices or particular statutory responsibilities of the Commission. These principal objectives are:

- (1) To monitor, investigate, and when appropriate, to take action against mergers and joint ventures that may substantially lessen competition, tend to create a monopoly, or otherwise violate the laws administered by the Commission.
- (2) To scrutinize industries for evidence of horizontal restraints and relationships that may have the effect of raising prices, impeding entry or expansion, or otherwise

blunting the competitive incentives of firms, and to take any appropriate action against such restraints.

- (3) To investigate and take appropriate action to eliminate or prevent distributional arrangements that adversely affect competition.
- (4) To investigate apparent problems of market dominance and market power, and to take appropriate enforcement action to rectify these problems.
- (5) To investigate single-firm, anticompetitive conduct such as abuses of governmental processes and initiate enforcement action as appropriate.
- (6) To perform specific responsibilities mandated by various United States statutes, including the Hart-Scott-Rodino Antitrust Improvements Act, the Railroad Revitalization and Regulatory Reform Act, and the Deepwater Port Act.
- (7) To provide information, advice, and assistance to the Congress and to various federal, state, and local government bodies concerning substantial competitive questions, with particular emphasis on the elimination of regulations that may unduly limit the supply or raise the prices of essential consumer goods and services.
- (8) To assure compliance with Commission orders to cease and desist from certain conduct, for divestiture, or for other forms of relief, and to investigate and take appropriate action against instances of non-compliance.
- (9) To provide guidance and information to those seeking to comply with the laws administered by the Commission.

#### SUMMARY OF PROGRAMS

The Commission budget includes 447 workyears and \$30,620,000 for the Maintaining Competition Mission. These resources reflect a two workyear decrease in support offices and a \$485,000 increase to fund the inflationary price increases. With this level of funding, the Commission would have the means to carry forward into fiscal 1989 existing matters and to initiate a number of enforcement, advocacy, advisory, policy analysis, and other activities.

#### PREMERGER NOTIFICATION PROGRAM

This program provides for the operation of the statutory premerger notification program which allows us to review prior to their consummation substantial mergers, acquisitions and joint ventures. This program will also continue to vigorously investigate possible violations of the reporting requirements of the Hart-Scott-Rodino Act and the Commission's rules

administering that Act. Finally, this program will continue to review and propose revisions to the rules that administer our premerger notification program.

#### MERGERS AND JOINT VENTURES PROGRAM

This program will investigate those substantial mergers, acquisitions, and joint ventures that come to our attention during fiscal 1989, and challenge those that appear likely to engender injury to consumers. We expect to focus particularly on those industries, such as petroleum and natural resources, health care, transportation, and food, in which the Commission has developed a special expertise. In addition, this program includes ensuring compliance with orders requiring divestitures or prior approval of future acquisitions.

#### HORIZONTAL RESTRAINTS PROGRAM

This program will consist of investigations and litigation against suspected collusion among competitors. A major feature of this program consists of the Commission's efforts in the health care industry and other licensed occupations, including investigating and challenging boycotts, concerted efforts to restrict the practice of health care providers such as HMO's, PPO's or non-physician providers, agreements among competitors to restrict price or other forms of competition among them, and collusive restraints on truthful advertising or efficient business practices. Moreover, this program will continue to provide advice to courts, Congress and federal and state agencies. In addition, this program will focus on the structure and conduct of bid depositaries, activities of trade associations and standards-setting organizations, and monitoring and enforcing compliance with outstanding Commission orders prohibiting horizontal activity.

#### DISTRIBUTIONAL ARRANGEMENTS PROGRAM

This program will investigate and prosecute suspected anticompetitive resale price maintenance; price discrimination, including power-buyers inducement of discriminating prices; and nonprice vertical restraints. The program also includes ensuring compliance with existing orders.

#### SINGLE FIRM VIOLATIONS PROGRAM

This program will consist of the investigation of suspected instances of price or nonprice predation, of monopolization or attempted monopolization, and of other abuses by firms with market power protected by entry barriers, and where appropriate, the litigation of such matters. The program includes ensuring compliance with existing and future orders.

FISCAL 1989 BUDGET REQUEST  
(dollars in thousands)

Mission: Maintaining Competition

<u>Program Description</u>	Fiscal 1988		Fiscal 1989		Change	
	<u>Wkyrs</u>	<u>Amount</u>	<u>Wkyrs</u>	<u>Amount</u>	<u>Wkyrs</u>	<u>Amount</u>
Premerger Notification.....	30	\$1,527	30	\$1,553	...	\$26
Mergers & Joint Ventures.....	127	6,700	127	6,778	...	78
Horizontal Restraints.....	123	6,432	123	6,571	...	139
Distributional Arrangements.....	11	551	11	558	...	7
Single Firm Violations.....	15	760	15	780	...	20
Other Direct Mission Resources.....	20	1,398	20	1,413	...	15
Total Direct Mission..... <sup>1</sup>	326	17,368	326	17,653	...	285
Support Activities Allocation <sup>1</sup> .....	123	12,767	121	12,967	-2	200
Total Mission.....	<u>449</u>	<u>30,135</u>	<u>447</u>	<u>30,620</u>	<u>-2</u>	<u>485</u>

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<sup>1</sup> Included are the cost of support organizations plus space and equipment rents, telecommunications, postage, Federal Register printing, library materials and other overhead expenses.

PROGRAM SUMMARY			PAGE 1 of 1															
MISSION MAINT. COMP.	PROGRAM NAME PREMERGER NOTIFICATION	CODE A	DATE 2-12-88															
<u>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOAL</u>																		
<p>The Hart-Scott-Rodino (HSR) Premerger Notification Act requires firms planning significant mergers or acquisitions to provide information and to delay consummation of such transactions, to allow the Commission and Justice Department to review their antitrust consequences and, if necessary, take appropriate enforcement action. The Commission administers the program and is responsible for ensuring compliance with the program's requirements. The long range goal of the program is to obtain adequate information for the government while minimizing the burden on filing firms. In addition, the program supports the merger program by performing the initial screening of transactions to determine which merit further scrutiny.</p>																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
<p>The program's objectives are to:</p> <ol style="list-style-type: none"> <li>(1) Encourage voluntary compliance by firms subject to the Act.</li> <li>(2) Screen all transactions to identify candidates for investigation.</li> </ol>																		
<p>The Commission's basic strategy is to encourage voluntary compliance by providing as much assistance as possible to firms subject to the Act and by aggressively prosecuting violators. To this end, the Premerger Notification Office has been improving the HSR rules and the publications explaining them, providing advice on particular situations orally, and increasing reliance on automated systems to improve speed, accuracy, and efficiency. The Bureau of Competition's merger litigation divisions have been undertaking increased investigations of possible HSR violations.</p>																		
<u>IMPACT STATEMENT</u>																		
<p>The proposed level of funding will assure adequate staffing for the Premerger Notification Office, allowing it to complete compliance reviews of all filings on time. This funding level will also allow the Bureau to continue improving the HSR rules and investigating possible violations of the Act.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK- YEARS</th> <th>DOLLARS (\$000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 88</td> <td>30</td> <td>1,527</td> </tr> <tr> <td>FISCAL 89</td> <td>30</td> <td>1,553</td> </tr> <tr> <td>CHANGE</td> <td></td> <td>26</td> </tr> <tr> <td>% CHANGE</td> <td></td> <td>2%</td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)	FISCAL 88	30	1,527	FISCAL 89	30	1,553	CHANGE		26	% CHANGE		2%
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PROGRAM SUMMARY			PAGE 1 of 1															
MISSION MAINT. COMP.	PROGRAM NAME MERGERS AND JOINT VENTURES	CODE B	DATE 2-12-88															
<b>DESCRIPTION OF PROGRAM AREA AND LONG-RANGE GOAL</b>																		
<p>Mergers, acquisitions, and joint ventures (hereinafter collectively referred to as mergers) may in some cases, result in the lessening of actual or potential competition and increase the market power of the joining firms. Such transactions can result in increased prices to consumers and limitations on the selection of goods and services. In addition, mergers may increase barriers to entry or expansion, foster interdependent conduct among firms, and suppress competitive vitality at various levels of production and marketing. The long-range goal of the Commission in this program is to prevent or undo mergers that threaten to restrict competition and harm consumers.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The Commission uses a three part process to protect consumers against harmful mergers:</p> <ol style="list-style-type: none"> <li>1. It monitors and screens all significant mergers.</li> <li>2. It investigates those mergers that the screening process has targeted for further inquiry.</li> <li>3. It takes action to prevent (or undo) those mergers that, after investigation and analysis, appear likely to lessen competition.</li> </ol>																		
<p>Performing the first step is a major objective of the Premerger Notification Program (Program A, described above). The objectives of the Merger Program are to perform the second and third steps: the investigation of and enforcement action against potentially harmful mergers.</p>																		
<p>The dominant strategy to achieve the Commission's second objective -- the investigation of all transactions that merit further analysis -- will continue to rely upon all investigatory tools available to the Commission, particularly "Requests For Additional Information" under the Hart-Scott-Rodino Act. To achieve its ultimate objective -- the prevention of mergers that may substantially lessen competition -- the Commission will continue to rely on injunctive relief. Where injunctive relief is inappropriate or unavailable, the Commission will rely on its administrative remedial powers to seek to restore competition lost as the result of illegal mergers.</p>																		
<b>IMPACT STATEMENT</b>																		
<p>The proposed level of funding will provide for investigations and litigations (including injunction actions in federal court) concerning mergers involving: (a) horizontal competitors; and (b) other situations that may endanger competition including strong vertical (buyer-seller) relationships or a clear-cut potential competition situation. No major changes in program activity are expected for FY 1989.</p>																		
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PROGRAM SUMMARY			PAGE 1 of 1															
MISSION MAINT. COMP.	PROGRAM NAME HORIZONTAL RESTRAINTS	CODE C	DATE 2-12-88															
<u>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</u>																		
<p>Horizontal restraints, such as price-fixing and other anticompetitive behavior among direct competitors, generally lead to clear injury to consumers in the form of excessively high prices and a reduction in the quantity and quality of goods and services.</p> <p>Horizontal restraints may take the form of collusive behavior, interdependent behavior that facilitates collusion, and governmental restraints on competition. The general consequences of these practices may be to deny consumers and businesses access to the optimal variety, quantity, and quality of goods and services at competitive prices, and to deny sellers the opportunity to produce, distribute, and sell goods or services in the variety and quantity at the prices that they would select under competitive conditions.</p> <p>A particular focus of the program is the health care industry, in which costs have been rising rapidly. The supply, quality, and cost of professional health services may be affected by numerous factors, including competition among health care providers, the availability in the marketplace of information about health care services and their cost, the nature of price-setting mechanisms, health care prepayment and financing programs, innovations in health care delivery, government regulations and benefit programs, competition among institutions in which professional health services are provided, competition among manufacturers of specialized equipment used in the delivery of health care services, and competition among providers of health insurance and other prepaid health care benefits.</p>																		
<p>The goals of the Horizontal Restraints Program are to: (1) reduce the incidence of private agreements that raise prices and diminish the quality and quantity of goods and services; and (2) limit the extent to which businesses and professionals are permitted to engage in anticompetitive or collusive activities under the aegis of governmental or self-regulation.</p>																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
<p>The objectives of the Horizontal Restraints Program are:</p> <ol style="list-style-type: none"> <li>1. To detect, investigate, and prevent anticompetitive collusive or interdependent courses of action that facilitate collusion among competitors;</li> <li>2. To eliminate to the fullest extent possible governmental and private restraints that limit the right to engage in competition; and</li> <li>3. To encourage the elimination of federal, state, and local governments' regulatory restrictions on competition.</li> </ol>																		
<p>The Commission plans to employ a strategy of investigation and litigation in pursuing these objectives. In addition, reports and comments to federal, state, and local government agencies; <i>amicus curiae</i> briefs; and advisory opinions will be provided where appropriate.</p>																		
<u>IMPACT STATEMENT</u>																		
<p>The proposed resource level of activity in the Horizontal Restraints Program will permit the investigation and, if appropriate, litigation in matters involving collusion among competitors, possibly anticompetitive activities of trade associations or standards-setting organizations, horizontal restraints under the aegis of governmental regulation, and construction bid depositaries' rules that may tamper with pricing mechanisms or create boycotts. This level of resources will permit a significant reduction in the incidence of collusive practices among competitors, in the potentially anticompetitive effects of ethical codes of trade and professional associations and industry standards, and in the prevalence of governmental regulatory restraints on competition among commercial and professional competitors.</p>																		
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PROGRAM SUMMARY			PAGE 1 of 1															
MISSION MAINT. COMP.	PROGRAM NAME DISTRIBUTIONAL ARRANGEMENTS	CODE D	DATE 2-12-88															
<u>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOAL</u>																		
<p>The Distributional Arrangements program generally covers restrictions on the distribution of goods from manufacturers to consumers. These practices include restrictions on the resale prices of goods (and other terms of sale) as well as restrictions on the marketing decisions of firms in the distribution chain. They may result from agreements between suppliers and purchasers, or from the coercion of purchasers by sellers (or vice-versa). The program also includes discriminations in price, terms, advertising allowances, and other merchandising services that tend to deny competitive opportunities to firms in the distribution chain and may injure consumers. These practices can limit sources of supply or restrict channels of distribution in ways that deny consumers the benefits of the competitive process. Restraints on distribution may produce higher consumer prices and reduced consumer choice.</p> <p>The goal of the Distributional Arrangements Program is to detect and remedy the coercive, collusive, discriminatory, or other harmful arrangements that may exist between sellers and purchasers, and to restore competition and its benefits.</p>																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
<p>The Commission seeks in its Distributional Arrangements Program:</p> <ol style="list-style-type: none"> <li>(1) To assure competitive prices to consumers by preventing agreements between suppliers and distributors or retailers on resale prices;</li> <li>(2) To eliminate discrimination in prices and promotional opportunities, where such discrimination may injure competition or consumers; and</li> <li>(3) To prevent the foreclosure of distributors or dealers from sources of supply or access to customers through anticompetitive practices.</li> </ol> <p>The Commission's principal strategies are investigation and litigation. As appropriate, the Commission will also issue guidelines or policy statements and advisory opinions and engage in competition advocacy.</p>																		
<u>IMPACT STATEMENT</u>																		
<p>The Commission will be able to conduct investigations of resale price maintenance, price discrimination, and other types of distributional arrangements. Resources will also be available for competition advocacy and policy analysis.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK- YEARS</th> <th>DOLLARS (\$000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 88</td> <td>11</td> <td>551</td> </tr> <tr> <td>FISCAL 89</td> <td>11</td> <td>558</td> </tr> <tr> <td>CHANGE</td> <td></td> <td>7</td> </tr> <tr> <td><b>% CHANGE</b></td> <td></td> <td><b>1%</b></td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)	FISCAL 88	11	551	FISCAL 89	11	558	CHANGE		7	<b>% CHANGE</b>		<b>1%</b>
RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)																
FISCAL 88	11	551																
FISCAL 89	11	558																
CHANGE		7																
<b>% CHANGE</b>		<b>1%</b>																

PROGRAM SUMMARY			PAGE 1 of 1															
MISSION MAINT. COMP.	PROGRAM NAME SINGLE FIRM VIOLATIONS	CODE E	DATE 2-12-88															
<u>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOAL</u>																		
<p>A single firm with market power can reduce output and increase price, thereby injuring consumers and misallocating society's resources. Where a firm is protected by anticompetitive practices, it can persist for long periods. The long-range goal of the Single Firm Violations Program, therefore, is to prevent or remedy instances in which market power has been created, maintained, or enhanced through anticompetitive behavior and in which entry barriers exist that protect the anticompetitive results of firm conduct. In particular, this program focuses on alleged instances of nonprice predation. I.e., abuses of governmental process for the purpose of maintaining or enhancing market power. Thus, the program is the primary vehicle within the Maintaining Competition Mission for identifying, analyzing, and prosecuting cases in which dominant firms have allegedly engaged in anticompetitive practices in an attempt to acquire, maintain, or extend substantial market power. Additionally, in some instances a firm, with or without market power as that term is traditionally used, may, through anticompetitive conduct raise its rivals' costs and thereby injure competition. This program is also the primary vehicle for such cases.</p>																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
<p>The program's objective is to prevent the acquisition or maintenance of market power or increases in rivals' costs through anticompetitive behavior, particularly misuse of governmental processes. If this program is successful, the result would be reduced prices, increased output, and a spur to innovation.</p>																		
<p>Strategies to be employed include investigation of and litigation against anticompetitive practices, competition advocacy, and legal and economic policy analysis.</p>																		
<u>IMPACT STATEMENT</u>																		
<p>At this level, the program should provide resources for enforcement action against monopolization price or nonprice predation, intervention in matters before governmental bodies for the purpose of reducing barriers to entry or predatory conduct, and legal and economic analysis of market power issues.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK- YEARS</th> <th>DOLLARS (\$000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 88</td> <td>15</td> <td>760</td> </tr> <tr> <td>FISCAL 89</td> <td>15</td> <td>780</td> </tr> <tr> <td>CHANGE</td> <td></td> <td>20</td> </tr> <tr> <td><b>% CHANGE</b></td> <td></td> <td><b>2%</b></td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)	FISCAL 88	15	760	FISCAL 89	15	780	CHANGE		20	<b>% CHANGE</b>		<b>2%</b>
RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)																
FISCAL 88	15	760																
FISCAL 89	15	780																
CHANGE		20																
<b>% CHANGE</b>		<b>2%</b>																

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PROGRAM SUMMARY			PAGE 1 of 1															
MISSION MAINT. COMP.	PROGRAM NAME OTHER DIRECT MISSION RESOURCES	CODE W10	DATE 2-12-88															
<u>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</u>																		
<p>The Maintaining Competition Mission requires that the diverse goals of its substantive programs be coordinated in budgeting and administration through the efforts of the Director and Deputy Directors of the Bureau of Competition and the Bureau of Economics with the assistance of the Bureau Assistant Director and the Regional Directors. The overall goal of this particular program is the efficient and carefully planned management of all the resources of the Commission's Maintaining Competition Mission.</p>																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
<p>The objectives of this program are to:</p> <ol style="list-style-type: none"> <li>1. Provide sufficient personnel and funds to manage Bureau resources effectively;</li> <li>2. Insure that the appropriate information regarding Mission activities is maintained, that responses are made to proper inquiries, and that correspondence is processed expeditiously;</li> <li>3. Select, plan, and pursue cases and projects that provide the most benefits to consumers; and</li> <li>4. Insure proper liaison with the Department of Justice and other government agencies and execute responsibilities under treaties and legislation governing international notification.</li> </ol> <p>Strategies will include an increasing use of careful policy and budget analysis, realignment of personnel to improve efficiency, and greater attention to the evaluation and training of Bureau personnel.</p>																		
<u>IMPACT STATEMENT</u>																		
<p>The Bureau's management team will be able to provide overall supervisory control of all litigation, compliance and allied divisions, including supervision of the Bureau of Economics' participation in Mission's goals. Through the supervision of the Deputy and Assistant Director, the Regional Office component of this Program will be integrated as a share of the Bureau's overall management responsibilities.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK- YEARS</th> <th>DOLLARS (\$000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 88</td> <td>20</td> <td>1,398</td> </tr> <tr> <td>FISCAL 89</td> <td>20</td> <td>1,413</td> </tr> <tr> <td>CHANGE</td> <td></td> <td>15</td> </tr> <tr> <td><b>\$ CHANGE</b></td> <td></td> <td><b>11</b></td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)	FISCAL 88	20	1,398	FISCAL 89	20	1,413	CHANGE		15	<b>\$ CHANGE</b>		<b>11</b>
RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)																
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FISCAL 89	20	1,413																
CHANGE		15																
<b>\$ CHANGE</b>		<b>11</b>																

CONSUMER PROTECTION MISSION  
OVERVIEW STATEMENT

LONG-RANGE GOALS

The Consumer Protection Mission strives to maintain a well-functioning marketplace that allows consumers to make informed purchase choices. The Mission seeks to halt or prevent deceptive and unfair practices that hinder optimum market performance. The Mission also works to identify and correct instances where restrictions placed on products, markets, or occupations diminish consumers' ability to choose the goods and services they desire.

MAJOR OBJECTIVES

The major objectives of the Consumer Protection Mission are to:

(1) reduce marketplace restrictions that inflate prices and limit available goods and services without providing offsetting benefits;

(2) increase the usefulness of advertising by creating incentives for advertisers to make accurate claims;

(3) encourage sellers to provide necessary product information so that buyers can make informed choices from a wide variety of goods and services;

(4) reduce instances of fraudulent or deceptive sales and marketing practices;

(5) prevent creditors from using unlawful practices in the granting of credit, the maintenance of credit information, the collection of debts, and the operation of credit systems;

(6) enable buyers to realize their reasonable expectations concerning product reliability and performance and ensure that sellers honor warranties, and;

(7) ensure compliance with Commission orders and Mission objectives.

SUMMARY OF PROGRAM

The fiscal year 1989 Consumer Protection Mission request includes 486 workyears and \$33,085,000. This amount is an increase of 5 workyears and \$903,000 over the fiscal year 1988 request. The workyear gain will allow increased regional office enforcement activity and the dollar increase will fund the additional workyears and known inflationary price increases necessary to maintain current activity levels. This resource level will allow continuation of activities directed to achieving the Mission's goals and objectives.

Enforcement

The Enforcement program will continue to pursue the dual goals of enforcing Commission orders and ensuring the statutory enforcement and reporting responsibilities of rules and statutes are met. Enforcement actions will seek civil penalties, injunctions, and where economic loss has occurred, consumer redress, as sanctions against order and rule violators. Ongoing investigations and litigation will continue. Industries governed by rules and companies under Commission order will be monitored for potential violations. Investigations will be initiated where appropriate.

Marketing Practices

The goals of the Marketing Practices program are to identify, halt, and redress injury caused by unfair and deceptive practices in the marketing and sale of a variety of products and services, and to ensure that companies honor warranty and other contractual commitments. The program will continue to work with NAAG, consumer organizations, and industry associations to identify fraudulent sales practices, including telemarketing fraud. Monitoring and enforcement activities will continue in the deceptive sales, product information, and warranties areas. The Commission's decision on the Informal Dispute Settlement Rule will be implemented, and monitoring of compliance with the rule will be continued. The Franchise and Funeral Rules will be enforced, carryover litigation and investigations will continue, and new investigations will be initiated, if appropriate.

Advertising Practices

The mission of the Advertising Practices program is to ensure that advertising is truthful and not misleading, thus protecting the informational benefits of advertising. Advertising monitoring activities will continue and selected follow-up investigations will be initiated. Activities in areas of longstanding Commission involvement, such as children's advertising, advertising directed at the elderly, food advertising, and advertising of health care products and services will continue. In addition, two federal statutes regulating the advertising and labeling of cigarettes and smokeless tobacco will be administered.

Credit Practices

The Credit Practices program will continue to pursue its goals as defined by the Consumer Credit Protection Act. A major component of the program is aimed at policing deceptive credit practices and determining if they cause serious injury. To this end, all ongoing enforcement investigations, and consumer and industry education programs will continue, and new investigations will be initiated as appropriate. The program will look at installment lenders and retail creditors, such as consumer finance companies, credit card issuers, mortgage lenders, and automobile dealers. Industry will be monitored to ensure compliance with the Credit Practices and the Holder In Due Course Rules.

Service Industry Practices

Two goals of the Service Industry Practices program are to lessen marketplace restrictions that are unnecessary and costly, and to decrease consumer loss by reducing the extent false and misleading information is disseminated to prospective purchasers of investments and professional services. Ongoing enforcement activities will continue in the areas of regulation of professional practices, investment fraud, and standards setting, and new investigations will be initiated as appropriate. An automated information system will be maintained and expanded to assist law enforcement efforts by the Commission, state attorneys general, and other law enforcement agencies. The Commission's decision on the Retail Food Store Rule amendment will be implemented and enforcement policies for the Ophthalmic Practices Rule will be proposed and administered. Rulemaking proceedings will be conducted to determine if the Funeral Rule should be amended in light of its impact on consumers and service providers.

Program Management

This program provides for the planning, evaluation, and management of Bureau activities and resources. Economic and legal analyses of proposed Consumer Protection matters will continue to be conducted. All Commission actions will be supported by sound regulatory analyses. Regulatory Flexibility Act and rulemaking studies will be conducted in appropriate areas. Ongoing efforts to improve supervision, management, and administrative processes will continue.

FISCAL 1989 BUDGET REQUEST  
 (dollars in thousands)

Mission: Consumer Protection

<u>Program Description</u>	Fiscal 1988		Fiscal 1989		Change	
	Wkyrs	Amount	Wkyrs	Amount	Wkyrs	Amount
Enforcement.....	84	\$4,226	86	\$4,380	2	\$154
Marketing Practices.....	57	2,918	60	3,119	3	201
Advertising Practices.....	58	3,027	58	3,058	...	31
Credit Practices.....	54	2,769	54	2,800	...	31
Service Industry Practices.....	64	3,398	64	3,441	...	43
Program Management.....	32	2,177	32	2,207	...	30
Total Direct Mission.....	349	18,515	354	19,005	5	490
Support Activities Allocation <sup>1</sup> .....	132	13,667	132	14,080	...	413
Total Mission.....	<u>481</u>	<u>32,182</u>	<u>486</u>	<u>33,085</u>	<u>5</u>	<u>903</u>

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<sup>1</sup> Included are the cost of support organizations plus space and equipment rents, telecommunications, postage, Federal Register printing, library material and other overhead expenses.

PROGRAM SUMMARY			PAGE 1 of 2
MISSION	PROGRAM NAME	CODE	DATE
CONSUMER PROTECTION	ENFORCEMENT	GEN	2-12-88
<u>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</u>			
<p>A major aspect of this program is enforcement of cease and desist orders that the Commission issues to stop fraudulent business practices or to rectify a malfunctioning marketplace. Careful compliance monitoring ensures that consumers benefit from these orders. Orders are not always obeyed, however, and the Commission often recommends that the Department of Justice file an action for civil penalties, consumer redress, or other equitable relief. The Enforcement program enforces the orders to ensure that the desired objective is effected and that previously found violations are corrected. Finally, consumers receive the restitution that they are entitled to. The main goals of order enforcement are to promote a free and competitive market in which consumers can obtain and make use of truthful purchasing information and benefit from fair market practices.</p>			
<p>The Enforcement program continues to seek cash refunds or product repair/replacement for consumers pursuant to recently issued orders. Especially prominent among restitution orders were land sales and automobile repairs, two of the most persistent problem areas for consumers. Two of the most successful actions have been the General Motors and Volkswagen cases which provide millions of car owners the opportunity to resolve their car problems through the National Council of Better Business Bureaus sponsored mediation and arbitration program.</p>			
<p>Problems arise when consumers cannot assess or compare the value of goods because they do not have essential information about the product, service or the method of distribution, e.g., goods that are inaccurately or incomprehensively labeled and mail order purchases. To obtain value for resources spent is exceptionally important in any basic and/or non-repeat purchase, such as an appliance, a house, a used car, or clothing. The goals of the rules portion of the program are to: (1) provide essential information to consumers for making value comparisons of packaged and labeled commodities; (2) prevent or redress economic injury to consumers resulting from failure to disclose material product information; (3) disclose essential prepurchase information to consumers and provide for redress, as appropriate, for injuries resulting from past purchases of insulation products, used cars, and purchases by mail or door-to-door sellers.</p>			
<p>These problems and related goals are addressed by this program, which enforces many of the Bureau's non-credit rules and statutes, including the Mail Order Rule, Used Car Rule, the Care Labeling Rule, the Fair Packaging and Labeling Act, the Appliance Labeling Rule, the R-Value Rule, the Octane Posting Rule, the Cooling-Off Rule, the Hobby Protection Act, and the Textile, Wool and Fur Labeling Acts. Compliance with the disclosure requirements and other requirements of these rules and statutes protects consumers and encourages fair competition.</p>			
RESOURCE SUMMARY	WORK- YEARS	DOLLARS (000)	
FISCAL 1988	84	4,226	
FISCAL 1989	86	4,380	
CHANGE	2	154	
% CHANGE	2%	4%	

PROGRAM SUMMARY (CONTINUED)			PAGE 2 of 2
MISSION CONSUMER PROTECTION	PROGRAM NAME ENFORCEMENT	CODE GEN	DATE 2-12-89
<b><u>MAJOR OBJECTIVES AND STRATEGIES</u></b>			
The major objectives of this program as to order enforcement are to:			
<ul style="list-style-type: none"> <li>(1) promote and encourage business conduct consistent with Commission orders;</li> <li>(2) ensure that orders requiring consumer redress are fully obeyed;</li> <li>(3) remedy consumer loss and obtain civil penalties for order violations;</li> <li>(4) monitor and advise the Commission of the enforceability of order provisions and effectiveness of our remedies; and</li> <li>(5) alter, modify or set aside existing orders where there exist changed conditions of law or fact.</li> </ul>			
The major objectives of this program as to rules are to:			
<ul style="list-style-type: none"> <li>(1) provide consumers with essential information related to products or services so that consumers can make informed buying decisions;</li> <li>(2) discourage deceptive, high-pressure or fraudulent sales tactics;</li> <li>(3) reduce consumer search costs; and</li> <li>(4) discourage packaging and labeling techniques that cause consumers to make false value comparisons or care for products in a manner that might create damage.</li> </ul>			
Strategies to achieve these objectives include investigations, periodic compliance review, analysis of remedies and, when necessary, civil penalties, injunctions, or consumer redress. Our strategies also include consumer education, interpretation and guidance for affected industries to encourage compliance, and coordination with Congress, other federal agencies and the states.			
<b><u>IMPACT STATEMENT</u></b>			
Under the funded resources, we will meet the established goals of the order enforcement program to: review and process initial and supplemental reports of order compliance; ensure all redress and third-party dispute resolution matters are in full compliance; process all petitions for order modifications; review all consumer protection proposed orders and pleadings; bring several civil penalty actions against respondents under order for serious violations; and review existing orders with the view of recommending modification or vacating of those provisions that no longer serve the purpose intended or constitute unnecessary compliance burden.			
With regard to enforcement of rules and statutes, activity to meet statutory enforcement and reporting responsibilities can continue. Carryover enforcement investigations and litigation for civil penalties and/or consumer redress will continue under the Mail Order, and X-Value Rules, as well as under other rules, as warranted. Under the Used Car, and Care Labeling Rules, these resources will permit us to monitor the industry, determine potential violators and to commence investigations where appropriate.			

<b>PROGRAM SUMMARY</b>			PAGE 1 of 2															
MISSION CONSUMER PROTECTION	PROGRAM NAME MARKETING PRACTICES	CODE GMP	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>Activity in this program is designed to identify, halt, and redress injury caused by unfair and deceptive practices in the marketing and sale of a variety of products and services to consumers and small businesses. The program also addresses the availability of warranty information to consumers prior to sale and the failure of warrantors to honor the warranty promises they make to consumers.</p> <p>Marketing and sales problems include the purchase of worthless goods and services, or purchases that would not otherwise have been made based on oral and written misrepresentations or on failure to disclose material information during sales transactions. These practices occur in a variety of transactions where consumers do not make repeat purchases, lack adequate information, and have little opportunity to verify representations made by sellers. In addition, many sellers who engage in such practices move quickly from state to state or change corporate identities frequently, making corrective action by individual consumers unworkable.</p> <p>This program also focuses on the market's failure to generate essential information about expensive consumer products or services, and "use-and-care" information which would permit owners to properly care for their products and to use them without risk of harm to health or safety.</p> <p>Warranty performance problems consistently rank among the top areas of consumer complaints received by the Commission. Many of the complaints focus on the repair of defects in major appliances, especially newly marketed products, and automobiles, although consumers complain on a wide variety of products. The cost of these repairs can amount to hundreds of millions of dollars each year. The high cost of warranty performance on expensive and infrequently purchased products may create an incentive to some firms to avoid performance on warranties or to perform warranty obligations inadequately. Because warranty performance disputes frequently may arise as a result of incomplete provision of warranty information to consumers, the program seeks to facilitate its dissemination.</p> <p>Consumers frequently lack practical recourse in cases of breach of warranty. The high costs of securing legal assistance may preclude consumers from resorting to judicial remedies in all but the most extraordinary cases of warranty non-performance. Through its informal consumer dispute mechanism activity this program seeks to promote the use of efficient informal dispute resolution mechanisms outside the framework of the court system.</p> <p>The goals of this program are to: reduce economic harm to consumers and small businesses arising from a variety of false and deceptive sales practices; where practicable, obtain redress for victims of fraud, deception, and misrepresentation; improve the availability to consumers of information that will enable them to make informed purchase, repair and maintenance decisions; enable consumers to minimize economic loss due to manufacturers' failure to disclose material information about their products; reduce the economic injury that occurs when warranty promises are not honored; facilitate the resolution of consumer product and housing disputes as quickly and fairly as possible; and facilitate informed consumer choice by making warranty information available to consumers prior to purchase.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK YEARS</th> <th>DOLLARS (000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 1988</td> <td>57</td> <td>2,919</td> </tr> <tr> <td>FISCAL 1989</td> <td>60</td> <td>3,119</td> </tr> <tr> <td>CHANGE</td> <td>3</td> <td>201</td> </tr> <tr> <td>% CHANGE</td> <td>5%</td> <td>7%</td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK YEARS	DOLLARS (000)	FISCAL 1988	57	2,919	FISCAL 1989	60	3,119	CHANGE	3	201	% CHANGE	5%	7%
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PROGRAM SUMMARY (CONTINUED)			PAGE 2 OF 2
MISSION CONSUMER PROTECTION	PROGRAM NAME MARKETING PRACTICES	CODE GCP	DATE 3-12-89
<b>MAJOR OBJECTIVES AND STRATEGIES</b>			
The major objectives of this program are to:			
<ul style="list-style-type: none"> <li>(1) prevent firms and individuals from using false and deceptive representations to market business opportunities, travel services, office supplies, computer-related equipment, health spa memberships, and other goods and services, and reduce consumer losses by obtaining redress for those affected by such practices;</li> <li>(2) ensure that firms provide consumers with that information about product characteristics and use which is essential to informed buying, maintenance and repair decisions, and reduce consumer losses by obtaining redress for those affected by such practices;</li> <li>(3) ensure that the terms of warranties offered on most consumer products are in compliance with the standards set forth in the Magnuson-Moss Warranty Act, and that information about these warranty terms is available to consumers prior to sale in accordance with federal law and FTC rules;</li> <li>(4) provide consumers with essential information related to products or services so that consumers can make informed buying decisions; and</li> <li>(5) encourage the growth of programs designed to allow the fair and expeditious resolution of consumer product disputes through informal mechanisms that are outside the framework of the court system.</li> </ul>			
<p>Strategies to attain these objectives include investigations leading to federal court or administrative litigation; advisory opinions and other informal assistance to industry members; consumer and business education; coordination with other federal, state, and local agencies; and rulemaking proceedings to amend existing rules, if appropriate.</p>			
<b>IMPACT STATEMENT</b>			
<p>This level of funding will permit staff to work with NAAG, consumer organizations, and industry associations to identify fraudulent practices in the deceptive sales area and noncompeting fraud. Staff would be to enjoin fraudulent acts and practices where injury to the public is ongoing, and would seek restitution or other relief for those affected by these practices. Funding would be available to complete litigation, if appropriate, of matters under investigation which involve significant loss to consumers. Funding would further be available to continue new matters in litigation, and would permit the examination of new investigative targets in the deceptive sales and product information areas.</p>			
<p>Resources would be available to implement the Commission's decision on, and to monitor compliance with, the Informal Dispute Settlement Rule. Funding would also permit responses to requests for advice, interpretations and guidance on industry questions pertaining to the application of the Magnuson-Moss Warranty Act rules. Resources would be available to conduct industry and consumer education concerning the Pre-Sale Availability Rule, and the Guides Against Deceptive Advertising of Guarantees. Funding would permit the program to continue monitoring and enforcement activities on companies that do not honor their warranties.</p>			
<p>Under the Franchise Rule, funding would permit continuation of carryover investigations and litigation, as well as initiation of enforcement actions as warranted. In addition, resources would permit monitoring of the funeral industry to determine potential violators and to commence investigations where appropriate.</p>			

PROGRAM SUMMARY			PAGE 1 of 1															
MISSION	PROGRAM NAME	CODE	DATE 2-12-88															
<b>CONSUMER PROTECTION</b>																		
<b>ADVERTISING PRACTICES</b>																		
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>Advertising constitutes the single most significant source of information to consumers about products and services they wish to buy. Advertising indicates the availability of products and other performance characteristics. Objective advertising claims about a product, such as those relating to its performance, often affect purchase decisions. However, where such claims are not truthful or are misleading, they do not improve the information available to consumers to make purchase decisions. Moreover, untruthful or misleading advertising also undermines the benefits of advertising generally by compromising its credibility, thus injuring consumers and honest advertisers. The long-range mission of the advertising practices program -- general advertising, tobacco advertising, food and drug advertising, and energy advertising -- is to ensure that advertising is truthful and non-misleading. In addition, the tobacco advertising program administers two federal statutes regulating the advertising and labeling of cigarettes and smokeless tobacco.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The major objectives of this program are to:</p> <ol style="list-style-type: none"> <li>(1) protect the informational benefits of advertising by helping to ensure that it is truthful and not misleading;</li> <li>(2) reduce economic and physical injury to consumers caused by untruthful and misleading advertising;</li> <li>(3) ensure that federally required health warnings are provided to purchasers of cigarettes and smokeless tobacco products.</li> </ol>																		
<p>The Commission's requirement that an advertiser possess a "reasonable basis" for objective claims before making these claims is one of its most important strategies for ensuring that advertising is truthful and not misleading. Other strategies include ad monitoring, consent orders, litigation, Section 5(m)(1)(B) actions, consumer education, and coordination with Congress, affected industries, consumer groups, the states, and other federal agencies. Staff utilizes the full range of Commission enforcement powers to implement the objectives of the program.</p>																		
<b>IMPACT STATEMENT</b>																		
<p>At the proposed funding level, ongoing investigation and law enforcement actions would be continued. The advertising monitoring activities also would be continued and selected follow-up new law enforcement actions would be initiated. Resources would continue to be devoted to specific program areas of longstanding Commission involvement. For example, staff would monitor children's advertising, advertising directed to the elderly, food advertising and advertising of health care products and services. Finally, the staff would continue its liaison with federal agencies (such as DOE, FDA and EPA) and appropriate state officials.</p>																		
<p>The cigarette advertising program would continue to administer two federal statutes regulating the advertising and labeling of cigarettes and smokeless tobacco. Ongoing investigations and litigation would continue, and new enforcement actions would be initiated as appropriate.</p>																		
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PROGRAM SUMMARY			PAGE 1 of 2															
MISSION	PROGRAM NAME	CODE	DATE															
CONSUMER PROTECTION	CREDIT PRACTICES	GCP	2-12-88															
<u>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</u>																		
<p>Credit has become an integral part of the American economic system. Few consumers purchase such major items as a house or a car for cash, and many now rely on credit to purchase everything from personal effects to a college education. The size of the consumer credit industry (\$79 billion dollars in outstanding consumer installment credit, not including residential mortgage loans) and its importance to both the economy and the individual have caused Congress and the Commission to be concerned about problems that arise in connection with the availability and terms of credit, the resolution of credit billing disputes, the privacy implications of maintaining consumer credit data banks, and the methods used by creditors and debt collectors to collect obligations in default. Consumer injury occurs when they are denied credit for unlawful reasons such as sex, age or race. Consumer injury also occurs when consumers are subject to faulty computerized billing procedures, abusive collection tactics by creditors and debt collectors, or improper reporting of their credit histories.</p>																		
<p>The goals of this program are to reduce consumer injury by ensuring equal access to credit on the basis of individual merit, by requiring proper reporting of consumer credit information, by promoting price competition in the credit markets through the use of clear and simple credit cost disclosures, by preventing the use of unfair credit terms which restrict consumer rights and jeopardize their financial stability, and by preventing the use of deceptive collection procedures. A major component of the credit program is aimed at policing deceptive credit practices and determining if they cause serious consumer injury.</p>																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
<p>The major objectives of this program are to:</p> <ol style="list-style-type: none"> <li>(1) ensure that consumers have accurate and understandable disclosure of costs and conditions in credit, lease and debit transactions at the time of the transaction and in advertising;</li> <li>(2) ensure that creditors evaluate credit applicants on the basis of their willingness and ability to repay without regard to unlawful discriminatory factors;</li> <li>(3) ensure that consumer reporting agencies maintain adequate controls on the accuracy of their reports, avoid reporting obsolete information, restrict access to consumer information to appropriate parties with a lawful purpose, and provide consumers with a meaningful opportunity to correct erroneous information in their credit files;</li> <li>(4) ensure that consumer credit contracts do not contain clauses that would prevent consumers from asserting their claims or defenses against the lender;</li> <li>(5) ensure that creditors establish and follow statutory and Federal Reserve Board-prescribed procedures for resolving credit and debit billing disputes and that consumers are given meaningful notice of these procedures; and</li> <li>(6) ensure that independent debt collectors abstain from engaging in unfair and deceptive debt collection practices.</li> </ol>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK YEARS</th> <th>DOLLARS (000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 1988</td> <td>54</td> <td>2,769</td> </tr> <tr> <td>FISCAL 1989</td> <td>54</td> <td>2,800</td> </tr> <tr> <td>CHANGE</td> <td></td> <td>31</td> </tr> <tr> <td>% CHANGE</td> <td></td> <td>1%</td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK YEARS	DOLLARS (000)	FISCAL 1988	54	2,769	FISCAL 1989	54	2,800	CHANGE		31	% CHANGE		1%
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PROGRAM SUMMARY (CONTINUED)			PAGE 2 of 2
MISSION	PROGRAM NAME	CODE	DATE
CONSUMER PROTECTION	CREDIT PRACTICES	GCP	2-12-88
<b>MAJOR OBJECTIVES AND STRATEGIES (Continued)</b>			
<p>The principal strategies for achieving these objectives includes: enforcement actions seeking civil penalties; consumer redress, restitution, and injunctions to correct unlawful conduct; extensive educational efforts directed at industry and consumers to promote voluntary industry compliance and inform consumers of their rights provided under these statutes; cooperative efforts with state and local agencies; and cooperative efforts with other federal agencies to ensure consistent enforcement policy among all segments of the credit market.</p>			
<b>IMPACT STATEMENT</b>			
<p>Resources at this level would fund all carryover enforcement investigations, existing industry and consumer education programs, and some new initiatives. In the General Credit area, resources would go to informal enforcement, and formal investigations and cases, particularly litigation associated with the Fair Debt Collection Practices Act and Section 5 of the FTC Act, including investigations of alleged misleading or fraudulent claims of credit repair clinics and others promoting or offering easy credit, and breach of mortgage finance commitments. Under the Equal Credit Opportunity Act (ECOA) we would complete ongoing investigations and resulting litigation. We would continue to monitor and enhance industry compliance with credit card issuers, and mortgage lenders. Finally, we would continue education efforts to assist industry compliance efforts. The major Truth in Lending matters, including enforcement efforts involving advertising of automotive credit and home mortgages, and unauthorized charges to consumers' open end credit accounts, would continue. Under the Fair Credit Reporting Act (FCRA), we would continue enforcement of the Act's requirements concerning consumer notification by creditors, along with our regulatory review of the statute, and would conduct investigations regarding credit bureaus' compliance with FCRA requirements, where appropriate.</p>			

PROGRAM SUMMARY			PAGE 1 of 2															
MISSION CONSUMER PROTECTION	PROGRAM NAME SERVICE INDUSTRY PRACTICES	CODE GSI	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>The delivery of professional services is often extensively regulated by both the states and the professions. Much of this regulation protects the public from protection of the quality of service. However, some regulation imposes significant costs on consumers but provide little or no corresponding benefits. These regulations restrict competition, keep prices artificially high, and discourage innovation. Examples of possible unnecessary regulation include: (1) restrictions on business structures and forms of ownership of provider firms; (2) restrictions on price competition; (3) restrictions that unduly limit entry; and (4) restrictions that unduly limit the information that may be communicated to consumers.</p>																		
<p>When consumers are unable to judge the appropriate level of price and quality for goods and services they tend to rely on exploitation by sellers who use deceptive sales tactics or withhold material information. For example, consumers annually spend as much as \$500 million on alternatives to more traditional but relatively low yield investments. A large part of the sales for some of these investment alternatives -- e.g., oil and gas leases, precious gemstones or rare coins sold as investments, and -- may be based on fraud and misrepresentations. Another example can be found in the advertising for bogus medical procedures. Such ads may seem credible to certain consumers because the advertiser is a physician or other health care professional and because the consumer is unable to obtain the information necessary to evaluate the effectiveness of such procedures.</p>																		
<p>Although private product standards and seals of approval help to make our complex economic system function more efficiently, some standards may at times distort the market and result in more expensive, less efficient, unsafe, or unreliable products. These market distortions are thought to occur in areas involving energy consumption, hospital costs, construction costs, fire hazards, and workplace health and safety risks. In some cases the standards development process may have been manipulated by established firms at the expense of consumers or small, innovative producers.</p>																		
<p>The goals of this program are to facilitate informed consumer choice and increase the availability of less expensive, safe and reliable services and products that consumers desire; facilitate fair competitive opportunities for smaller manufacturers in the standards-setting process; and reduce consumer losses based on false or misleading information.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The major objectives of this program are to:</p> <ul style="list-style-type: none"> <li>(1) review public and private regulations that may cause artificially high prices and limit the availability of goods and services without providing corresponding consumer benefits;</li> <li>(2) provide consumers with more objective information concerning the availability and costs of goods and services supplied by professionals;</li> <li>(3) reduce consumer loss by reducing the extent to which false and misleading information is disseminated to prospective purchasers of investments and professional services;</li> </ul>																		
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## PROGRAM SUMMARY (CONTINUED)

MISSION	PROGRAM NAME	CODE	PAGE 2 OF 2
CONSUMER PROTECTION	SERVICE INDUSTRY PRACTICES	GSI	DATE 2-12-88
<b><u>MAJOR OBJECTIVES AND STRATEGIES</u></b> (continued)			
<p>(4) assist federal, state, and local governments as they consider the consumer and competitive effects of the use of standards and seals for regulatory and procurement purposes; and</p> <p>(5) reduce consumer loss by reducing the extent to which the standards-making process is used by its participants to disadvantage competitors.</p>			
<p>Strategies to obtain these objectives include consumer and industry education; consultation and coordination with Congress, the states, and other federal agencies; participation in federal and state agency proceedings, where appropriate; administrative and federal court litigation; and rulemaking, if appropriate.</p>			
<b><u>IMPACT STATEMENT</u></b>			
<p>Investigations will be conducted and administrative cases brought challenging alleged overly restrictive regulation of professional practice. Cases challenging fraud in the advertising and promotion of the sale of health care diagnostic and treatment services will be pursued. Substantial assistance to state sunset commissions and others interested in the impact of occupational regulation will be provided. District court cases for injunctive relief and criminal contempt proceedings to reduce the incidence of investment fraud and civil or criminal contempt proceedings will be proposed to deter violators of previously obtained orders. Redress previously obtained will be distributed. An automated information system will be maintained and expanded to assist law enforcement efforts by the FTC, state attorneys general and other law enforcement agencies. Standards cases begun in fiscal 1988 will be pursued and completed as appropriate. Interventions on standards-related questions will proceed. Appropriate enforcement policies for the Ophthalmic Practices Rule will be proposed and administered. The Commission's fiscal 1988 decision on the Retail Food Store Rule amendment will be implemented. Rulemaking proceedings will be conducted to determine if the Funeral Rule should be amended in light of its impact on consumers and service providers.</p>			

FTC Form 45 A (Rev. 12-81)

<b>PROGRAM SUMMARY</b>			PAGE 1 of 2															
MISSION CONSUMER PROTECTION	PROGRAM NAME PROGRAM MANAGEMENT	CODE GPM	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG RANGE GOALS</b>																		
<p>The Consumer Protection Mission has three major goals:</p> <ul style="list-style-type: none"> <li>(1) removing private and public restrictions that unnecessarily limit the range of available goods and services;</li> <li>(2) encouraging reliable information to reduce search costs and permit rational marketplace decisionmaking; and</li> <li>(3) correcting practices that impede consumer choice in the marketplace.</li> </ul> <p>Achieving these goals requires a thorough understanding of consumer and industry behavior. In addition, various analyses have been mandated by Congress. The Magnuson-Moss Act, Title II, requires that the total effect of any regulation be evaluated to determine whether it is in the public interest. The FTC Act amendments require preliminary and final regulatory analyses, and the Regulatory Flexibility Act requires reassessments of the impact of promulgated rules. This program ensures that Commission regulations deliver benefits that exceed their costs and perform in the most effective manner.</p> <p>This program also provides administrative and managerial support to more than 300 professional and clerical employees in 15 operating units, including the regional offices.</p> <p>The management and administrative activities of the Mission are designed to improve the effectiveness and efficiency of its substantive programs and to increase staff productivity. These activities include:</p> <ul style="list-style-type: none"> <li>(1) monitoring and reviewing all substantive initiatives;</li> <li>(2) managing human resources, and providing administrative support to ensure that adequate resources are available; and</li> <li>(3) managing headquarters and regional office consumer and business education resources and activities.</li> </ul>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The major objectives of this program as to regulatory analysis are to:</p> <ul style="list-style-type: none"> <li>(1) integrate economic, consumer behavior, and marketing knowledge into investigations and adjudicative proceedings so that the cases pursued and remedies chosen yield the best possible results, augmenting market incentives, without unintended or adverse consequences;</li> <li>(2) develop and manage impact evaluations to determine the actual effects of rules;</li> <li>(3) develop and manage regulatory analyses to ensure that regulation costs are acceptable relative to the benefits.</li> </ul> <p>The strategy to achieve these objectives requires a regulatory analysis team possessing diverse training and experience to provide support to each major effort, and develop and supervise impact evaluations.</p>																		
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<b>PROGRAM SUMMARY (CONTINUED)</b>			PAGE 2 of 2
MISSION CONSUMER PROTECTION	PROGRAM NAME PROGRAM MANAGEMENT	CODE GPM	DATE 2-12-88
<p>The major objectives of this program as to administration and management are to:</p> <ul style="list-style-type: none"> <li>(1) increase the effectiveness and responsiveness of the consumer protection program through reviewing the management, progress, and output of all substantive initiatives;</li> <li>(2) ensure consistency of case work and programs through coordination between regional office and headquarters;</li> <li>(3) conduct periodic reviews of the organization, workload, and productivity of operating units;</li> <li>(4) integrate planning with program budgeting;</li> <li>(5) provide administrative support to operating units;</li> <li>(6) provide information about major Commission actions to consumer and business opinion leaders to assist them in informing their constituencies; and</li> <li>(7) provide information about major Commission actions to consumers and business owners so that they can make informed choices.</li> </ul>			
<p><b>IMPACT STATEMENT</b></p> <p>Funding allows for the continuation of all activities in this program, including: continuing economic and legal analyses of all major Consumer Protection Mission actions to ensure that benefits exceed costs; studying the impact of Consumer Protection Mission actions on the marketplace; and managing and administering consumer and business education efforts and substantive law enforcement activities.</p>			

FBI Form 45-A (Rev. 12-81)

**ECONOMIC ACTIVITIES MISSION  
OVERVIEW STATEMENT**

**Long-Range Goals**

The Economic Activities Mission guides and supports the Commission's Competition and Consumer Protection efforts in both policy development and matter selection and analysis. The long-range goal of the Mission is to promote a more efficient and productive economy by strengthening market competition and reducing burdensome regulation. To achieve its long-range goal the Mission: 1) provides economic analysis for antitrust and consumer protection investigations, cases, and rulemakings; 2) advises the Commission on the impact of governmental regulation on competition and consumers in various industries; and 3) develops special reports on competition, consumer protection, and regulatory issues of particular interest to the Commission.

**Major Objectives**

Section 6(a) of the Federal Trade Commission Act empowers the agency to "...gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce,... and its relation to other corporations and to individuals, associations, and partnerships." Section 6(f) of the Act further directs the agency to "make public from time to time such portions of the information obtained by it hereunder,... and to make annual and special reports to the Congress,... and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use. Within the framework of this authorizing legislation, and to further the achievement of long-range goals, the major objectives of the Economic Activities Mission are:

1. To provide the Commission, the President, the Congress, and the general public with economic analyses of consumer protection, antitrust, and regulatory issues.
2. To assist the Commission in assessing the antitrust and consumer protection measures it should take to strengthen competition and enhance consumer well-being.
3. To analyze the economic benefits and costs of alternative consumer protection, antitrust, and regulatory actions.
4. To inform the President, the Congress, and the public of the nature and extent of competition, market power, and market failure in the American economy.

### Summary of Programs

The fiscal 1989 Economic Activities Mission request includes 54 workyears and \$3,798,000. This reduction of three workyears from FY 88 to FY 89 should have little impact upon the Bureau's ability to function effectively, while the reduction of \$128,000 from FY 88 levels merely reflects the workyear reduction and its effect on salary expense. These resource levels will permit continuation of present program efforts.

#### Economic and Consumer Policy Analysis Program

The first priority of this program is to provide economic support to the law enforcement activities of the Consumer Protection Mission. If the law enforcement workload permits, economists will also undertake or complete studies in order to further our knowledge and understanding of : 1) consumer protection actions that increase consumer well-being; 2) the proper role of government regulation in advancing a competitively functioning economy; and 3) the special problems faced by small business. Areas of particular interest in fiscal 1989 include:

- the effects of occupational licensure on competition and consumer welfare,
- the effectiveness of advertising regulation in benefiting consumers and deterring false or deceptive advertising, and
- the role of standards and disclosure in solving consumer information problems.

#### Antitrust Policy Analysis Program

The first priority of this program is to provide economic support to the law enforcement activities of the Maintaining Competition Mission. If the law enforcement workload permits, economists will also undertake or complete studies in order to further our knowledge and understanding of those market situations in which antitrust action will result in a more competitively functioning economy. Areas of interest include:

- the effects of cartelizing characteristics of the regulation of ocean shipping,
- the effects of antitrust and other regulation on innovation and productivity, and
- the effects of entry on competition among hospitals.

#### Other Direct Mission Program

Resources allocated to this program will continue to provide the basis for direction of all Bureau activities, coordination of efforts with the Maintaining Competition and Consumer Protection Missions, and effective

use of available resources to achieve Bureau objectives. Objectives of the program are development and utilization of professional and support staff skills and experience, improved administrative support, increased communication with other offices, and easier access to information sources and other research tools.

FISCAL 1989 BUDGET REQUEST  
(dollars in thousands)

Mission: Economic Activities

<u>Program Description</u>	Fiscal 1988		Fiscal 1989		Change	
	<u>Wkyrs</u>	<u>Amount</u>	<u>Wkyrs</u>	<u>Amount</u>	<u>Wkyrs</u>	<u>Amount</u>
Economic and Consumer Policy Analysis..	10	\$541	10	\$549	...	+\$8
Antitrust Policy Analysis.....	12	648	12	656	...	+8
Other Direct Mission Resources.....	19	1,131	17	1,042	-2	-89
Total Direct Mission.....	41	2,320	39	2,247	-2	-73
Support Activities Allocation <sup>1</sup> .....	16	1,606	15	1,551	-1	-55
Total Mission.....	<u>57</u>	<u>3,926</u>	<u>54</u>	<u>3,798</u>	<u>-3</u>	<u>-128</u>

529

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- <sup>1</sup> Included are the cost of support organizations plus space and equipment rents, telecommunications, postage, Federal Register printing, library materials and other overhead expenses.

<b>PROGRAM SUMMARY</b>			PAGE 1 of 1															
MISSION	PROGRAM NAME	CODE	DATE															
ECONOMIC ACTIVITIES	ECONOMIC AND CONSUMER POLICY ANALYSIS	F07	2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>Support to the Commission's consumer protection mission has always been a major goal of the Bureau of Economics. The development of sound policy regarding consumer protection issues requires a thorough understanding of the economic consequences of consumer rules and cases. This understanding is furthered by the analysis that can be brought to bear on policy issues by the Bureau's economists. This expertise takes several forms. First, economists participate directly in case support for the Bureau of Consumer Protection. Second, they conduct analyses of consumer protection issues in the dissemination of economic briefs/short analyses to determine the optimal policy course. Third, economists provide analysis to the Commissioners directly or request in Part III matters. Fourth, studies analyzing particular government policies or the performance of particular industries can provide insight into the factors that may be causing consumer problems and into whether those problems can be remedied in a manner that is likely to enhance consumer welfare.</p> <p>The long range goal of the Program is to provide the Commission, Congress, and other policymakers with economic analyses of the costs and benefits associated with particular consumer protection cases, with consumer protection programs in general, and with government regulatory actions. In addition, the Program analyzes problems faced by small business.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The major objectives of the Economic and Consumer Policy Analysis Program are to: 1) provide direct support to the enforcement efforts of the Bureau of Consumer Protection, 2) enhance our understanding of the situations which consumer protection actions can enhance consumer welfare, 3) increase our knowledge about the effects of government regulations that affect consumers, and 4) advance our understanding about the special problems faced by small business.</p> <p>To achieve these objectives, several related strategies will be employed. These strategies include: 1) working directly at the staff level with BCP attorney staff to provide advice concerning the viability of various enforcement initiatives, 2) performing cost/benefit analyses of Commission consumer protection programs and economic briefings related to the effects of various government regulations, 4) distilling evidence currently available in the literature concerning the effects of consumer programs and other government regulatory activities related to the Commission's consumer protection mission; 5) providing economic advice to the Commission in adjudicatory proceedings, and 6) providing the results of our researches to the Commission, Congress, state representatives, and the public in the form of reports, testimony, letters, and other appropriate means.</p>																		
<b>IMPACT STATEMENT</b>																		
<p>The requested level of resources will allow us to provide support to BCP activities and, depending upon the law enforcement workload, it should allow us to continue (albeit at a reduced rate relative to prior years) with research activities directly related to the Commission's consumer protection mission and to the effects of government regulation on consumers generally. We will also be able to provide assistance to the Commission in adjudicatory matters as requested. At time allows, studies will be initiated concerning consumer information problems, the effects of standard versus disclosures, and occupational licensure.</p>																		
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<b>PROGRAM SUMMARY</b>			PAGE 1 of 1															
MISSION ECONOMIC ACTIVITIES	PROGRAM NAME ANTITRUST POLICY ANALYSIS	CODE F08	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>Government policy aimed at maintaining competition can have important effects on market performance. The development of sound policy requires an appreciation of the effects of past and prospective antitrust actions and of the industries and markets that are or would be affected by these actions. Several types of economic analysis can advance such an understanding. Studies of particular antitrust policies can provide valuable insight into the competitive functioning of the market. Analyses of the likely effects of mergers and other actions can determine the implications of the specific actions which may be causing competitive problems and whether such problems can be efficiently resolved through antitrust policy. In addition, cross-section studies that examine relationships among economic variables over many industries and/or firms can discern general patterns that conditions better or worse performance.</p>																		
<p>The long-range goal of this program is to provide support for the antitrust enforcement activities of the Commission. The program is also designed to provide the Commission, Congress, and the public with analyses of the impact of antitrust and competition policy. These analyses examine particular industries where problems may exist, particular government policies that may be causing competitive problems, and particular practices and factors which affect performance of a variety of industries.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The major objectives of the Antitrust Policy Program are to: 1) provide economic guidance to our antitrust enforcement activities; 2) increase our knowledge about those situations in which antitrust action will increase consumer welfare; 3) further the understanding of the role of government regulation in advancing or retarding a competitively functioning economy; and 4) advance our understanding of the special competitive problems faced by small businesses.</p>																		
<p>The strategies that will be followed for this program include: 1) providing direct support at the staff level to DC staff engaged in antitrust investigations; 2) conducting economic studies of industries to determine where and when antitrust activity may be appropriate; 3) performing applied analyses drawing extensively on existing research to advise policymakers on specific antitrust policy decisions; and 4) presenting the findings of these analyses to the Commission, Congress, and the public in reports, testimony, invited commentary, and other media as appropriate.</p>																		
<b>IMPACT STATEMENT</b>																		
<p>The requested level of resources will permit us to provide support to DC law enforcement initiatives and, depending upon the law enforcement workload, to continue some competition research. Possible study areas include: analyses of the impact of performance effects of mergers and divestitures; the use of stock market data to assess the effects of merger effects; helping analyze the effects of recent oil mergers; and to assess post policy; an analysis of the strategic use of litigation to reduce rivals' costs of competing; various factors in international competition; and an examination of the efficiency versus concentration arguments as explainers of superior firm performance.</p>																		
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<b>PROGRAM SUMMARY</b>			PAGE 1 of 1															
<b>MISSION</b> ECONOMIC ACTIVITIES	<b>PROGRAM NAME</b> OTHER DIRECT MISSION	<b>CODE</b> M12	<b>DATE</b> 2-12-88															
<b>DESCRIPTION OF PROGRAM AREA AND LONG-RANGE GOALS</b>																		
<p>This program provides managerial direction, budgetary, personnel, clerical, and computer support to approximately 120 professional and clerical employees of the Bureau of Economics. As the number of staff members has decreased in recent years without a corresponding reduction in workload, these support activities have become increasingly more important for an efficient and productive Bureau workforce. The long-range goals of the program are to improve the effectiveness and efficiency of the Commission's activities by: 1) managing professional and clerical staff to ensure high-quality work produced in a timely manner; and 2) providing administrative and clerical support to ensure that program objectives are met.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<b>Managerial Objectives and Strategies</b> <ol style="list-style-type: none"> <li>1 Increase the effectiveness of economic support to the Maintaining Competition and Consumer Protection missions through improved coordination among bureaus.</li> <li>2 Provide improved planning, guidance, and review for the Economic Activities Mission through frequent consultation among senior staff.</li> <li>3 Improve coordination between the Economic Activities and the Maintaining Competition and Consumer Protection Missions through increased communication, cooperation, and interaction with legal staff.</li> <li>4 Improve human resource utilization and capability through senior staff support for the training and achievement of EEO objectives.</li> </ol>																		
<b>Administrative and Clerical Objectives and Strategies</b> <ol style="list-style-type: none"> <li>1 Improve budget development, execution and review by: a) improving internal information flow and procedure; b) improving professional staff understanding of financial management matters; and c) improving communication and coordination among administrative staff of the bureaus and the Division of Budget and Finance.</li> <li>2 Improve personnel administration at the bureau level through improved analysis of personnel needs and more effective planning for recruitment, retention, and training.</li> <li>3 Improve data and word processing support to bureau professional staff through: a) increased training of professional and clerical staff; b) improved coordination between staff of the bureau's computer center and the Automated Systems Division; and c) periodic review and improvement of hardware and software capabilities.</li> <li>4 Provide increased technical information access for professional staff through improvements in records management, library service delivery, and assistance in using research sources.</li> </ol>																		
<b>IMPACT STATEMENT</b>																		
<p>At this funding and workyear level, the Bureau expects to achieve the managerial, administrative, and clerical objectives outlined above. Particular emphasis will be placed on improving both financial management planning and control, improvements in the accessibility and use of MIS and other internal data bases, and coordination of activities involving other bureaus.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK YEARS</th> <th>DOLLARS (\$000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 1988</td> <td>19</td> <td>1,131</td> </tr> <tr> <td>FISCAL 1989</td> <td>17</td> <td>1,042</td> </tr> <tr> <td>CHANGE</td> <td>-2</td> <td>-89</td> </tr> <tr> <td>% CHANGE</td> <td>-11%</td> <td>-8%</td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK YEARS	DOLLARS (\$000)	FISCAL 1988	19	1,131	FISCAL 1989	17	1,042	CHANGE	-2	-89	% CHANGE	-11%	-8%
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CHANGE	-2	-89																
% CHANGE	-11%	-8%																

FPC Form 43 rev 1-79

FISCAL 1989 BUDGET REQUEST  
(dollars in thousands)

Mission: Support Activities

<u>Program Description</u>	<u>Fiscal 1988</u>			<u>Fiscal 1989</u>			<u>Change</u>	
	<u>Wkyrs</u>	<u>Amount</u>		<u>Wkyrs</u>	<u>Amount</u>		<u>Wkyrs</u>	<u>Amount</u>
Commissioners.....	39	\$2,380		43	\$2,652		4	\$272
Executive Director.....	11	692		10	655		-1	-37
Office of Public Affairs.....	7	342		7	347		..	5
Office of Congressional Relations.....	7	249		7	252		..	3
Office of Policy Development.....	6	335		4	233		-2	-102
General Counsel.....	39	2,180		39	2,210		..	30
Presiding Officers.....	3	144		3	147		..	3
Administrative Law Judges.....	7	439		7	445		..	6
Office of the Secretary.....	22	772		20	712		-2	-60
Management Services <sup>1</sup> .....	79	3,416		78	3,452		-1	36
Planning and Information.....	51	3,046		50	3,087		-1	41
Total.....	<u>271</u>	<u>13,995</u>		<u>268</u>	<u>14,192</u>		<u>-3</u>	<u>197</u>

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<sup>1</sup> Included are 7 workyears for building maintenance services. The dollars to fund these workyears are provided through a reimbursable arrangement with GSA and are not included in our budget request of \$67.5 million.

PROGRAM SUMMARY			PAGE 1 of 1															
MISSION SUPPORT	PROGRAM NAME Commissioners	CODE 901	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>The Commissioners are responsible for ensuring that the agency effectively and efficiently executes its Congressionally mandated responsibilities. They formulate agency policy, thereby guiding and directing the work of staff, determine the type and extent of action that should be taken, allocate the resources required to implement courses of action and monitor the agency's progress in accomplishing stated goals. The long-range goal of the Commissioners is to encourage free and fair market performance by fostering free competition and by ensuring honest activities in the marketplace.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The Commission seeks to encourage free and fair competition by limiting or removing private and governmental restraints on the competition process; by correcting distortions in the market that inhibit the effective use of scarce consumer dollars; and, by ensuring that consumers are provided with accurate and useful information so that they can make informed purchasing decisions. The strategies to achieve these objectives may include issuance of complaints, acceptance of consent orders, promulgation of trade regulation rules, decisions in litigated matters, economic studies, consumer education, provision of information within areas of consumer expertise to other governmental policymakers, and industry guidance. The five Commissioners implement these strategies through research, review, conduct of hearings, debate and formal decisions.</p>																		
<b>IMPACT STATEMENT</b>																		
<p>The fiscal 1989 activities of the Commissioners will be the same as in fiscal 1988. The primary activities pursued by the Commission include:</p> <ol style="list-style-type: none"> <li>a. Allocating and reviewing the use of FTC resources;</li> <li>b. Conducting liaison with Congress, federal and state agencies, and others;</li> <li>c. Reviewing staff proposals for investigations, use of compulsory process, complaints and trade regulation rules;</li> <li>d. Promulgating trade regulation rules and guides and issue public reports;</li> <li>e. Rendering advisory opinions concerning an applicant's proposed course of conduct;</li> <li>f. Determining whether respondent's alleged courses of conduct violate existing statutes enforced by the FTC; and</li> <li>g. Determining whether proposed consent orders are in the public interest.</li> </ol> <p>The increase of 4 workyears provides full staffing for five Commissioner offices in fiscal 1989.</p> <p>In 1988 it is assumed that one Commissioner's office will be vacant for a part of the fiscal year.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK- YEARS</th> <th>DOLLARS (\$000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 1988</td> <td>39</td> <td>2,380</td> </tr> <tr> <td>FISCAL 1989</td> <td>43</td> <td>2,652</td> </tr> <tr> <td>CHANGE</td> <td>4</td> <td>272</td> </tr> <tr> <td>% CHANGE</td> <td>10%</td> <td>11%</td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK- YEARS	DOLLARS (\$000)	FISCAL 1988	39	2,380	FISCAL 1989	43	2,652	CHANGE	4	272	% CHANGE	10%	11%
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<b>PROGRAM SUMMARY</b>			PAGE 1 of 1															
MISSION	PROGRAM NAME	CODE	DATE															
Support	Executive Director	001	2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>The effective execution of the FTC's Congressionally mandated responsibilities requires central management to support timely development of Commission policy, oversee its implementation and ensure its integration in agency activities. The basic goal of the Office of the Executive Director will be to provide the required policy development and implementation support to the FTC in all areas, and to provide effective management and administration support to Commission staff.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<ol style="list-style-type: none"> <li>1. Provide executive direction for the implementation of Commission policy.</li> <li>2. Provide overall direction and evaluation of Commission programs with particular concern for resource planning and control through budget formulation and execution, program planning, management and organization analysis, evaluation of management information systems, human resource management, and administrative support services.</li> <li>3. Carry out delegated authority to maintain and support equal opportunity goals throughout the Commission, including recruitment and development of minorities, women, the aged and the handicapped.</li> <li>4. Insure that the FTC regional office structure is fully integrated into the agency's overall mission objectives and that resources are applied in the most effective manner.</li> <li>5. Coordinate special programs (such as competition advocacy) which involve the joint actions of agency, bureaus and offices.</li> <li>6. Identify and correct any instances of waste, fraud or abuse in the use of agency resources. This key objective will be met by the establishment of a system of adequate management controls supported by routine audits performed by an independent CPA firm.</li> </ol>																		
<b>IMPACT STATEMENT</b>																		
<p>The workyear resources of the Office of the Executive Director will be reduced one workyear in 1988. This resource level is sufficient to meet the objectives of the office. The primary activities of this office include:</p> <ol style="list-style-type: none"> <li>1. Advising the Chairman, the Commission and organizations on program development and on policy matters in the budget, management and administrative areas.</li> <li>2. Ensuring administrative and managerial effectiveness of all organizations in the FTC, including policy coordination among the bureaus and regional offices.</li> <li>3. Providing overall direction and evaluation to Commission programs which address resource planning and control, program planning, management and organization analysis, organizational evaluation, information systems, human resource management, EEO, and administrative services.</li> <li>4. Providing resources to perform vulnerability assessments, internal control reviews and routine program audits.</li> </ol>																		
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PROGRAM SUMMARY			PAGE 1 of 1															
MISSION	PROGRAM NAME	CODE	DATE															
SUPPORT	OFFICE OF PUBLIC AFFAIRS	002	2-12-88															
<u>DESCRIPTION OF LONG-RANGE GOALS</u>																		
<p>The Office of Public Affairs is responsible for informing the news media, business and professional interests, and the public at large about the operation of the Commission. OPA responds to media inquiries about Commission actions and policy and monitors print and broadcast news media for matters of interest to the Commission.</p>																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
<p>This is achieved by (1) the preparation of concise and effective news releases, (2) the distribution of news releases selectively and efficiently to appropriate audiences, and (3) the provision of a central source for the news media to contact when seeking information on Commission actions.</p>																		
<p>The Office of Public Affairs also advises the Commission on how best to inform the public of FTC activities by counseling staff on appropriate news media and public interviews and advising them what issues are of interest to the news media.</p>																		
<u>IMPACT STATEMENT</u>																		
<p>At the 1988 and 1989 workyear levels the Office of Public Affairs will be able to perform these essential functions:</p> <ul style="list-style-type: none"> <li>- produce releases on official actions of the Commission, including decisions by Administrative Law Judges;</li> <li>- provide assistance and materials to media involved in covering Commission activities;</li> <li>- produce "News Notes," a weekly document to inform members of the public who have requested to be kept apprised of official Commission actions;</li> <li>- produce the "Weekly Calendar and Sunshine Notices" to inform the public of scheduled Commission activities which they may wish to attend;</li> <li>- produce "News Summary," a compilation of press clips on the FTC, for distribution to Commissioners and FTC staff; and</li> <li>- work with the bureaus and regions in coordination of media coverage of their activities.</li> </ul>																		
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RESOURCE SUMMARY	WORK YEARS	DOLLARS (\$000)																
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FISCAL 1989	7	347																
CHANGE		5																
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FTC Form 02-001-500

<b>PROGRAM SUMMARY</b>			PAGE 1 of 1															
MISSION SUPPORT	PROGRAM NAME OFFICE OF CONGRESSIONAL RELATIONS	CODE 001	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>The Commission must work closely with the Congress in carrying out the Congressional legislative mandate and assisting Congress in exercising its oversight responsibilities. The Office of Congressional Relations provides a central source of information for individual members of Congress, Committees of Congress, and Congressional staff who have inquiries regarding proposed legislation, Commission activities, and individual constituent requests. The Office also advises the Commission on Congressional policies, procedures, interests, and pending legislative initiatives.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>The primary objectives of the Office are to (1) lead Commission dialogue with Congress, especially key congressional members and their staff; (2) promptly respond to Congressional requests for information on Commission activities and Commission policies or positions on antitrust and consumer protection issues. The Office coordinates agency responses to Congressional inquiries and coordinates staff testimony before the Congress. The Office also provides the Commission with current information on Congressional activities and proposed legislation that could affect the Commission's jurisdiction or programs.</p>																		
<b>IMPACT STATEMENT</b>																		
<p>Under this level of funding the Office will be able to conduct essential Congressional liaison activities. Congressional liaison functions conducted at this level would include:</p> <ol style="list-style-type: none"> <li>1. Coordinating Commission input into the development of pertinent legislation by key Congressional committees, through liaison with key staff;</li> <li>2. Coordination of Commission appearances or testimony before Congressional committees;</li> <li>3. Responding to verbal inquiries from Members of Congress or Congressional staff;</li> <li>4. Coordinating and controlling Congressional correspondence; and</li> <li>5. Assessing Congressional interest in key programs and providing advice to Commission staff.</li> </ol>																		
<p>At this level, the Office will continue to perform "outreach" activities. Most verbal inquiries will continue to be directed to members of the Commission staff, rather than being answered by Office of Congressional Relations staff. Review of Congressional correspondence will be handled the same as in the past. Time spent on Capitol Hill in face-to-face liaison meetings to share information will be somewhat limited as more time must be devoted to handling the load of Congressional inquiry on routine matters.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK YEARS</th> <th>DOLLARS (000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 1988</td> <td>7</td> <td>249</td> </tr> <tr> <td>FISCAL 1989</td> <td>7</td> <td>252</td> </tr> <tr> <td>CHANGE</td> <td></td> <td>3</td> </tr> <tr> <td>% CHANGE</td> <td></td> <td>1%</td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK YEARS	DOLLARS (000)	FISCAL 1988	7	249	FISCAL 1989	7	252	CHANGE		3	% CHANGE		1%
RESOURCE SUMMARY	WORK YEARS	DOLLARS (000)																
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CHANGE		3																
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FRC Form 05 rev 1/87

PROGRAM SUMMARY			PAGE 1 of 1															
MISSION Support	PROGRAM NAME Office of Policy Development	CODE 001	DATE 2-12-88															
<u>DESCRIPTION OF PROBLEM AREAS AND LONG RANGE GOALS</u>																		
The Office of Policy Development is responsible for researching, developing, and drafting long range policy recommendations on a wide variety of issues that come before the Commission.																		
<u>MAJOR OBJECTIVES AND STRATEGIES</u>																		
The Office of Policy Development will help shape future policy recommendations that are presented to the Commission by developing and articulating sound legal and economic policies that will guide the Commission in its deliberations.																		
<u>IMPACT STATEMENT</u>																		
At the proposed level of funding, the Office of Policy Development will be able to perform the following essential functions:																		
<ul style="list-style-type: none"> <li>- complete articulation of the sound legal and business policies relevant to unfair methods of competition under Section 5 of the FTC Act, evaluation of the implications of these policies for the presently employed approach to unfair methods of competition, and if necessary, propose means to resolve any deficiencies in the present approach;</li> <li>- complete analysis of the present meaning of monopolization in accordance with sound legal and economic policies, and, if necessary, propose means to resolve any deficiencies in the present approach;</li> <li>- continue analysis of merger case selection criteria and, if necessary, propose ways to make them consistent with the merger enforcement policy;</li> <li>- continue analysis of case selection criteria under the Deception Statement and, if necessary, propose ways to make them consistent with the Statement;</li> <li>- continue analysis of case selection criteria under the Unfairness Statement and, if necessary, propose ways to make them consistent with the Statement.</li> </ul>																		
The reduction in workyears represents a reduction in the number of projects to be undertaken and the completion of other major projects.																		
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FCC Form 60-100-147

<b>PROGRAM SUMMARY</b>				PAGE 1 of 1															
MISSION SUPPORT	PROGRAM NAME OFFICE OF GENERAL COUNSEL	CODE TOJ	DATE 2-12-88																
<b>DESCRIPTION OF PROBLEM AREAS AND LONG-RANGE GOALS</b>																			
<p>The General Counsel serves as the Commission's chief law officer and legal advisor. Responsibilities include conduct of litigation when the Commission is a party to Federal court actions; justification, support and defense of Commission policies and decisions; and advising the Commission on a wide range of matters. Also included are the general supervision, preparation and review of agency legal reports to the President and to Congress as to the basis, substance and constitutionality of proposed legislation upon which the agency has been requested to comment.</p> <p>The long-range goal of the General Counsel is to continue to render the highest quality representation for the Commission in its litigation, legal counseling and administrative functions.</p>																			
<b>MAJOR OBJECTIVES AND PRIORITIES</b>																			
<p>The primary objective of the General Counsel's office is to ensure Commission compliance with its own statutes and rules and with statutes of governmentswide applicability by providing timely advice on the manner in which particular activities may be executed. The office further seeks to ensure that the views of the Commission are fully and clearly presented in court proceedings to which the agency is a party, through direct representation of the Commission or through close liaison with the Department of Justice.</p>																			
<b>IMPACT STATEMENT</b>																			
<p><b>Immediate Office of General Counsel:</b> The fiscal 1989 budget funds the same level of activity as in fiscal 1988. Supervise OGC litigation responsibilities. Advise Commission and bureaus and offices on legal and policy issues. Serve as liaison with other federal agencies for the Chairman/Commission. Prepare comments on pending and proposed legislation at the request of OMB or Congress. Provide overall supervision and coordination of the Commission's Federal-State effort. Provide administrative support for the Office of General Counsel.</p> <p><b>Legal Counsel Function:</b> All statutory deadlines (such as FOIA) would be met. Informal advice will be rendered to staff on most matters but formal, written advice may be limited to the most significant issues. Timely responses to Commission inquiries will be provided. Assistance could be provided to individual Commissioners on adjudicative matters in some circumstances.</p> <p><b>Litigation Function:</b> Assuming that fiscal 1989 litigation demands are comparable to those in immediately preceding years, this funding level will permit the office to fully pursue "defensive litigation" (in which the agency is sued and is obliged to defend itself), for example, defending the Commission in suits for judicial review of orders to provide detailed information under Freedom of Information Act suits and reverse-FOIA cases (including appeals of such cases) and suits to enjoin agency action. This office will also pursue suits to secure information for use in Commission proceedings, and will prosecute preliminary and permanent injunction suits in federal court, in conjunction with BC and BCP, to remedy violations of the FTC Act and others enforced by the Commission.</p>																			
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% CHANGE		1%																	

<b>PROGRAM SUMMARY</b>			PAGE 1 of 1
MISSION	PROGRAM NAME	CODE	DATE
SUPPORT	OFFICE OF PRESIDING OFFICERS	TO 6	2-12-88

**DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS**

The Office of Presiding Officers is responsible for conducting rulemaking proceedings on behalf of the Commission, including proceedings to amend existing rules. New programs are initiated upon the issuance of a Notice of Proposed Rulemaking by the Commission. Presiding Officers are appointed to individual rulemaking proceedings by the Chief Presiding Officer and are responsible for the orderly conduct of the proceedings in accordance with the Commission's Rules of Practice. A Presiding Officer is authorized to publish necessary notices for the orderly conduct of a proceeding, set the time and place for hearing unless otherwise prescribed by the Commission, impose reasonable time limits on oral presentation of witnesses, control cross-examination of witnesses, recommend issuance of compulsory process, dispose of motions relating to procedural and evidentiary matters and certify rulings to the Commission, require that oral presentations be given under oath, designate group representatives to cross-examine witnesses, establish the time for filing written statements of rebuttal at the close of public hearings, and recommended decision is made to the Commission following publication of a staff report, based upon findings and conclusions as to all relevant and material evidence, and taking into account the report of the Commission's staff.

**MAJOR OBJECTIVES AND STRATEGIES**

- Exercise effective control over the public hearing phase of rulemaking proceedings, within the limits established by the Commission's Rules of Practice, to enable the participants to build a full and complete rulemaking record in each proceeding thereby assuring a basis for informed consideration by the Commission prior to final action to be taken.
- Conduct all proceedings within the time frame established by the Commission.
- Prepare and submit reports based on the evidence contained in the rulemaking record of each proceeding in timely fashion, setting forth detailed and specific findings and conclusions and including recommended decisions.

**IMPACT STATEMENT**

The Office of Presiding Officers receives its workload assignments directly from the Commission as new rulemaking proceedings are authorized and, as a consequence, does not directly establish or control workload levels. All rulemaking proceedings authorized by the Commission must be brought to a conclusion in the hearing phase in an expeditious manner.

The workload level anticipated for the program year will enable the office to meet its responsibilities under the Rules of Practice in establishing rulemaking records and preparing for four (4) rulemaking proceedings in the new fiscal year. The requested manpower level is unchanged from the previous fiscal year.

RESOURCE SUMMARY	WORK YEARS	DOLLARS (000)
FISCAL 1988	3	144
FISCAL 1989	3	147
CHANGE		3
% CHANGE		2%

<b>PROGRAM SUMMARY</b>			PAGE 1 of 1															
MISSION SUPPORT	PROGRAM NAME OFFICE OF ADMINISTRATIVE LAW JUDGES	CODE TOS	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREAS AND LONG-RANGE GOALS</b>																		
<p>Administrative Law Judges are officials to whom the Commission delegates its initial adjudicative fact-finding functions in conformity with applicable statutes, judicial precedent, Commission decision and the agency's rules of practice.</p> <p>When the Commission issues a complaint, and no consent settlement is reached, the matter, except in injunction proceedings before federal courts, is referred to the Office of Administrative Law Judges for assignment to an administrative law judge for trial. As the official presiding officer, an administrative law judge rules on virtually all matters arising in the course of the proceeding, including motions, discovery, other pretrial questions, procedural questions, and all issues arising during the trial including questions relating to admissibility of testimonial and documentary evidence, and prepares and files an initial decision. Many of these cases involve large national corporations and pose complex issues which are often controversial and relate to difficult economic, technical and competitive questions, which significantly impact upon the public, the national economy and business relationships between corporations within important industries.</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>All cases referred to this office must be handled as efficiently and expeditiously as possible, consistent with a fair hearing, and no discretion is available with respect to continuing, discontinuing, altering, or in any way delaying the proceeding other than those normal delays involved in the actual trial process. The office has no authority to return cases to the Commission, but must try them as expeditiously as possible unless the Commission directs otherwise or withdraws the matter from adjudication. Cases are resolved through the conduct of hearings and the issuance of initial decisions.</p>																		
<b>IMPACT STATEMENT</b>																		
<p>The office handles cases referred by the Commission and has no control over the number of such cases referred for trial. The office cannot expand or contract its workload in accordance with the amount of workyears or money available. All matters referred to the office for adjudication must be handled expeditiously. The number of cases an administrative law judge can handle during the course of a year is limited.</p> <p>The level of funding of 7 workyears would permit the office to carry out its basic functions. The activities conducted by the office will be about the same as in fiscal 1988.</p>																		
<table border="1"> <thead> <tr> <th>RESOURCE SUMMARY</th> <th>WORK YEARS</th> <th>DOLLARS (\$000)</th> </tr> </thead> <tbody> <tr> <td>FISCAL 1988</td> <td>7</td> <td>439</td> </tr> <tr> <td>FISCAL 1989</td> <td>7</td> <td>465</td> </tr> <tr> <td>CHANGE</td> <td></td> <td>6</td> </tr> <tr> <td>% CHANGE</td> <td></td> <td>11</td> </tr> </tbody> </table>				RESOURCE SUMMARY	WORK YEARS	DOLLARS (\$000)	FISCAL 1988	7	439	FISCAL 1989	7	465	CHANGE		6	% CHANGE		11
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CHANGE		6																
% CHANGE		11																

FPC Form 80 (Rev. 10-77)

<b>PROGRAM SUMMARY</b>			PAGE 1 of :															
MISSION Support	PROGRAM NAME Office of the Secretary	CODE TOA	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS:</b>																		
<p>The Office of the Secretary (OS) is the central repository and official custodian of the papers and records generated by the Commission. The function of the Office is similar to that of the clerk of a court, i.e., it receives all filings from the parties to proceedings before the Commission and issues and serves all official documents on the parties affected. The Office is also responsible for writing and distributing official minutes of Commission actions and for implementing the Commission's procedures for voting and decision making.</p> <p>The Office of the Secretary is striving to replace antiquated systems for creating, storing and retrieving records with modern computerized systems. The development of these systems requires intense effort on the part of a small staff, but the end result will be improved quality in the service of official documents and record keeping in general. The Office also intends to provide computerized methods of performing accurate searches of historical data concerning Commission actions. Development and implementation of these systems is contingent upon OS receiving the necessary resource allocations from the Automated Systems Division.</p>																		
<p>The long-range goals of the Office of the Secretary are to:</p> <ul style="list-style-type: none"> <li>o Serve Commission documents to the appropriate parties, including all appropriate documents and instructions;</li> <li>o Provide Commissioners with quick, accurate information about the status of Commissioner assignments, circulations, and votes in progress;</li> <li>o Notify the Commission's staff when the Commission had directed them to take particular actions, and to monitor the status of the staff's responses to those Commission directives;</li> <li>o Schedule oral arguments to be heard by the Commission on appeal from Initial Decisions of Administrative Law Judges, and to schedule open and closed meetings of the Commission and to issue appropriate notice of Commission meetings as required by the Government in the Sunshine Act;</li> <li>o Develop and implement an accurate and effective system of providing original and microfiche records to Commissioners, the staff, and the public, while preserving the integrity of those records; and</li> <li>o Convert all historical records of Commission action to a form accessible through computer terminals.</li> </ul>																		
<b>MAJOR OBJECTIVES AND STRATEGIES:</b>																		
<ul style="list-style-type: none"> <li>o To monitor and modify as appropriate the OSCAR computerized record keeping system</li> <li>o To enter historical data in the OSCAR system</li> <li>o To maintain all case status information in the OSCAR and MIS systems by entering data on a daily basis and maintaining quality control to confirm accuracy and completeness of information;</li> <li>o To provide copies of records upon request while maintaining integrity of the Commission's official records;</li> <li>o To eliminate errors in the service of official documents;</li> <li>o To establish procedures to segregate materials in closed files before the files are forwarded to OS so that microfilming can take place upon arrival;</li> <li>o To develop and implement programs to train FTC personnel and the public to access information about agency activity through computer systems.</li> </ul>																		
<b>IMPACT STATEMENT:</b>																		
<p>This projected level of resources will allow OS to:</p> <ul style="list-style-type: none"> <li>o Prepare minutes of Commission actions within 20 days;</li> <li>o Serve all required official documents within two weeks of Commission vote.</li> </ul>																		
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PROGRAM SUMMARY				PAGE 1 of 2															
MISSION Management	PROGRAM NAME Management Services	CODE R01	DATE 2-12-88																
<b>DESCRIPTION OF PROGRAM AREA AND LONG-RANGE GOALS</b>																			
<p>To help carry out the agency's responsibilities, a wide variety of management and support services must be provided. A central management organization is established to provide these critical services. This organization is also responsible for ensuring that when these services are provided, they comply with the requirements of various laws, regulations and executive orders. The long-range goal of this program is to deliver all required support services at the highest professional level as efficiently and effectively as possible.</p>																			
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																			
<p>The major objectives of this program are detailed under sub-activities: Financial Management, Human Resource Management and Management of Procurement and General Services.</p>																			
<p><b>I. Financial Management</b>            (1) To fulfill agency responsibilities regarding the formulation and execution of a budget that is (a) responsive to Commission, OMB and Congressional guidance on resource utilization; (b) responsive to agency resource needs; and (c) coordinated with program planning and execution. (2) To process, record and report accurately and on a timely basis all financial transactions using an automated financial management system. (3) To administer a payroll and travel management program that is responsive to employee needs.</p>																			
<p><b>II. Human Resource Management</b>            To maximize the efficiency and productivity of the agency's human resources through inter-related programs of: (1) Personnel administration, including classifying positions, recruiting for and filling vacancies, reviewing promotions and other personnel actions; (2) Specialized recruitment programs tailored to the needs of the agency's substantive programs; (3) Organizational analyses to ensure that the agency's structure and its positions are designed effectively; (4) Employee, labor and management relations programs and advice concerning policies designed to assist employees and managers, and to provide appropriate counseling on a wide range of issues, including benefits, retirement, and the obligations and requirements of employees under civil service regulations; (5) Development of employee potential as a means of maintaining a highly skilled workforce, through a variety of training programs; (6) Equal opportunity and affirmative recruitment and development programs; (7) Workforce management and personnel management information systems.</p>																			
<p><b>III. Management of Procurement and General Services</b>            (1) To produce effective contracts/purchase order documents with timeliness required to meet agency production needs and to ensure agency acquisition activities conform to Federal Acquisition Regulations to provide contracts that ensure proper performance as described by the contracted agreement; and to implement procedures and ensure FTC responsiveness to external reporting requirements and to procurement preference programs agreed upon with the Small Business Administration. (2) To manage our space allocation in a manner that is responsive to the Presidential initiative to reduce the space-per-person without endangering operational effectiveness. (3) To develop and maintain asset management controls to ensure effective planning, acquisition, utilization and disposition of agency property and supplies. (4) To maintain an in-house reproduction/graphics capability to meet the highly specialized, time-critical and frequently sensitive requirements of the Commission in a cost-effective manner; to provide for additional reproduction support through the GPO when requirements are routine and/or exceed FTC capacity.</p>																			
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<b>PROGRAM SUMMARY (CONTINUED)</b>			PAGE 2 of 2
MISSION	PROGRAM NAME	CODE	DATE
Management	Management Services	R01	2-12-88
<b><u>IMPACT STATEMENT</u></b>			
<p>The fiscal 1989 request reflects a one workyear decrease in the General Services function. The level of resources will remain sufficient to provide the effective delivery of support services to our enforcement efforts.</p>			
<p><b>I. Financial Management</b></p> <p>Budget work will be divided between: (a) recurring requirements of the budget process (i.e., responding to Commission, OMB, and Congressional schedules), and (b) analysing resources and expenditures in anticipation of adjusting to changing condition. This level of funding would place a priority on meeting recurring budget requirements. Remaining budget resources would be allocated to analysing trends and responding to ad hoc request for budget information.</p> <p>Routine processing of payroll, travel and miscellaneous vouchers would continue within established guidelines. Travel and contract claims will be processed within 30 days to comply with the requirements of the Prompt Payment Act. Areas designated for review by the Internal Control and Audit Committee would be audited. Follow-up and monitoring of prior audit findings in the financial area will also be performed.</p>			
<p><b>II. Human Resource Management</b></p> <p>The day-to-day personnel activities will be completed consistent with the Federal personnel regulations. We will continue to assist managers in filling all appropriate vacancies, by providing recruitment programs for attorneys, economists, and other positions. We will administer the affirmative recruitment programs in a fashion that will be adequate to meet our responsibility. We will continue to classify positions, audit promotions, and assist in developing position descriptions. We will have to rely on information from operating bureaus to perform these functions. Position audits will be conducted on a limited basis. The operating bureaus will have to provide sufficient information to justify all promotions. This level will require that the conduct of most employee development and training programs be obtained from outside vendors. The Division will continue to provide information on available courses, and to work closely with operating bureaus to identify the most appropriate training. The Division will continue to provide professional support for agency-wide training activities (e.g., Trial Advocacy), but will require administrative support for these programs from operating offices. The Division will continue to develop policy and provide guidance on incentive awards and will administer agency-wide awards programs. At this level, we will develop and maintain effective employee, labor and management relations programs designed to provide information, counseling and technical assistance to employees and managers on a wide range of employee and managerial issues, including grievances and disciplinary and adverse actions. We will represent the agency in discussions and negotiations with headquarters unions, and provide some assistance to regional offices in responding to regional office unions. This level will permit the Division to administer effective performance management systems. Finally, we will maintain the personnel management information system, with a moderate level of enhancement.</p>			
<p><b>III. Procurement and General Services</b></p> <p>The fiscal 1988 efforts include the full range of contracting activity such as (1) solicitation of technical and cost proposals, which includes writing a synopsis for the Commerce Business Daily, issuing requests for proposals and invitations for bids, and using small purchase procedures, etc.; (2) design of the contract document to preserve the Federal Trade Commission interest; (3) provision for adequate controls through effective specification description; and (4) contract administration which requires the office to monitor contract compliance and to ensure proper disposition of closed contracts.</p> <p>This year's program will continue activities required to provided space and property management, personnel and physical security, occupational safety, reproduction, and general support services. Emphasis will be placed on improving both the quality and cost effectiveness of these services.</p>			

<b>PROGRAM SUMMARY</b>			PAGE 1 of 4															
MISSION SUPPORT	PROGRAM NAME PLANNING AND INFORMATION	CODE R01	DATE 2-12-88															
<b>DESCRIPTION OF PROBLEM AREA AND LONG-RANGE GOALS</b>																		
<p>The overall goal of this program is to assist Commission staff in the effective and efficient management and use of information. The coordination of information consists of: planning, development, and maintenance of automated systems; application of information technology to improve the effectiveness and productivity of legal, economic, and office support activities; and organization and delivery of current and historic information resources to Commission staff and the public.</p> <p>In practice, the Planning &amp; Information program has been driven by eight central goals. They are to:</p> <ol style="list-style-type: none"> <li>1. Maximize the effectiveness with which staff uses existing information resources.</li> <li>2. Maintain a high quality base of information to support Commission legal, economic, management and administrative activities, implemented with security controls sufficient to maintain the integrity and appropriate levels of confidentiality of information resources.</li> <li>3. Maintain and develop the hardware, software, and personnel infrastructure needed to meet staff information system requirements.</li> <li>4. Improve the efficiency and effectiveness of methods for acquiring, organizing, retaining, communicating, and retrieving information stored in all agency records systems.</li> <li>5. Improve the efficiency and effectiveness of the process through which information is disseminated to and among staff, to other government organizations, and to the public.</li> <li>6. Maintain, improve and develop core automated systems to meet staff requirements for accessing, storing, and using information in agency computer systems.</li> <li>7. Maintain an aggressive program to use economic resources most effectively, to control and reduce costs wherever possible, to conform with agency budget plans, and to generate internally resources needed to fund improvements in information systems.</li> <li>8. Maintain an effective process for planning, budgeting, and coordinating the information systems program.</li> </ol> <p>Responsibility for coordinating and implementing the Planning &amp; Information Program is in large part centralized in the three Planning &amp; Information Divisions and their component branches: Automated Systems Division ("ASD"), Information Services Division ("ISD") and the Library ("LIB").</p>																		
<b>MAJOR OBJECTIVES AND STRATEGIES</b>																		
<p>I. <u>AUTOMATED SYSTEMS</u></p> <ol style="list-style-type: none"> <li>1. Implement and manage cost-effective ADP, office automation and telecommunications facilities and services using in-house resources and facilities, supplemented where necessary by contractors and non-FTC facilities.</li> <li>2. Provide technical consultation and assistance to agency staff in developing and using systems to support legal and economic activities of the Commission's enforcement programs, including litigation and investigation support.</li> <li>3. Develop and maintain administrative support systems that meet the needs of various Commission offices and staff, including both Commission-wide information systems like the Management Information System ("MIS"), Information Retrieval &amp; Indexing System ("IRIS", formerly "LRS"), Office of Secretary Control and Reporting System ("OSCAR"), Financial Management System ("FMS"), Consumer Complaint System ("CCS") and Contract Management System ("CMS"), and systems for individual offices.</li> </ol>																		
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PROGRAM SUMMARY (CONTINUED)			PAGE 2 of 4
MISSION SUPPORT	PROGRAM NAME PLANNING AND INFORMATION	CODE RDL	DATE 2-12-88
<p>4. Provide leadership in the development and implementation of agency-wide ADP, office automation and telecommunications strategies, long and short range plans, policies, standards, and procedures in accordance with applicable statutes, regulations and executive orders.</p> <p>5. Refine and maintain an agency management information system that provides timely, accurate, and appropriate information on the status and history of matters in progress and the resources devoted to these matters.</p> <p>6. Provide training to Commission staff on ADP, office automation, and telecommunications systems.</p>			
<b>II. LIBRARY</b>			
<p>1. Maintain a physical facility which provides ready access to information, library materials, internal databases, and equipment required by members of the Commission staff.</p> <p>2. Provide research expertise using traditional sources and online retrieval systems for the FTC staff and reference assistance to the general public.</p> <p>3. Develop and provide training programs for FTC staff on internal databases, commercial software, LEXIS, WESTLAW, and internal equipment, including professional workstations.</p> <p>4. Acquire, catalog, and process books, periodicals, microforms, audio visual materials, software, and databases that reflect current and retrospective interests of the Federal Trade Commission.</p> <p>5. Provide support to users of internal PRIME-based information systems, pc's, and core pc software.</p> <p>6. Coordinate a comprehensive, Commission-wide training program on the use of internal and external computer systems.</p> <p>7. Coordinate and maintain the integrated library system for the online catalog, circulation, acquisitions, and serials control.</p> <p>8. Provide legislative research assistance and collect and maintain a legislative document collection.</p> <p>9. Cooperate in a nationwide interlibrary loan program to provide materials outside the scope of the FTC Library collection to the FTC staff.</p> <p>10. Publish information and user guides on internal FTC systems and equipment and library resources.</p>			
<b>III. INFORMATION SERVICES</b>			
<p>1. Develop and maintain an ongoing plan to improve Commission information management, including the coordination, standardization, and documentation of Commission information systems, by identifying areas where inefficiencies exist and by establishing a program for continuous review of practices and procedures.</p> <p>2. Assure the effective administration of the access statutes and the accurate response to requests made under those statutes for non-public Commission documents by coordinating the efforts of all Commission staff.</p> <p>3. Assist members of the public in understanding the rights and responsibilities of both consumers and businesses by responding to complaints and inquiries and providing copies of Commission documents and publications.</p> <p>4. Assist Commission staff in identifying trends in consumer problems by providing useful information from data collected in the Commission-wide Consumer Complaint System.</p>			

PROGRAM SUMMARY (CONTINUED)			PAGE 3 of 4
MISSION SUPPORT	PROGRAM NAME PLANNING AND INFORMATION	CODE P01	DATE 2-12-88
<p>5. Provide efficient records and forms management policies and services through an ongoing review of existing practices.</p> <p>6. Assist the staff and the public in identifying and locating all types of Commission documents by expanding the scope and usefulness of the Information Retrieval and Indexing System (formerly the Legal Research System).</p> <p>7. Assure effective managerial control over ADP assets by developing and implementing an Asset Management Program.</p> <p>8. Assure consistent procedures throughout the Commission by maintaining and disseminating an accurate Operating Manual, Administrative Manual, and Correspondence Manual.</p> <p>9. Assure effective and accurate publication of Commission documents (including Federal Register Notices, Commission and court decisions, Rules of Practice, Statutes, and others) by coordinating all Commission efforts.</p> <p>10. Provide accurate personnel locator information on all Commission employees.</p>			
<u>IMPACT STATEMENT</u>			
<p>A one year reduction is proposed in the Information Services activity. Because of expanding program objectives, all Planning and Information activities will require careful management to ensure all program objectives are accomplished.</p>			
<p><b>I. AUTOMATED SYSTEMS</b></p> <p>This level of funding will be adequate for ASD to continue limited investment in PC workstations and printers for Commission staff, and minimally adequate to maintain and update other existing information systems. Highest priority efforts to further enhance office automation systems will be litigation and investigation activities, and to develop and enhance selected systems will be maintained. Resources will be marginally adequate to support the Commission's central systems, but will require increasing reliance on higher-cost contractor programming support. Progress will continue in expanding and improving the quality and quantity of training and assistance support delivered to Commission staff. Resources provided through centrally-budgeted accounts for equipment acquisition will be adequate only for ASD to continue its efforts to increase the availability of computer workstations for staff and to improve the quality of central office automation, data processing systems, and voice/data communications systems.</p>			
<p><b>II. LIBRARY</b></p> <p>The number of workyears at this level is minimally sufficient to provide current services, provided the library uses contractors efficiently to perform essential cataloging, looseleaf filing, microcomputer training, and computer support functions.</p> <p>The funding level in the resource guidelines is minimally adequate to maintain only basic library services. These include stack maintenance, shelving, monitoring looseleaf services filing and cataloging contracts, acquisitions, interlibrary loan, circulation, and serials records control. Research assistance, legislative reference, inhouse computer searching, and limited computer training and support can be performed for the FCC staff at this level. The publication of user guides and bibliographies will be done within available resources. Contract training and support on core FCC software and equipment will be provided to the extent permitted by funding from other Planning and Information programs. Extremely careful management of the use of external databases, such as LEXIS and WESTLAW, will be required to contain spending within planned budget levels.</p>			
<p><b>III. INFORMATION SERVICES</b></p> <p>Funding and staffing at the current level will require the Division to restrict some current services and will limit its ability to support improved information management at the Commission. The Information Management Branch will continue to further develop and manage the information resources outlined in "Major Objectives and Strategies," but the</p>			

PROGRAM SUMMARY (CONTINUED)			PAGE 4 of 4
MISION SUPPORT	PROGRAM NAME PLANNING AND INFORMATION	CODE R01	DATE 2-12-88
<p>proposed level of resources will significantly constrain the extent to which enhancements can be made. The Public Reference Branch will respond to requests made under the FOIA and PA for non-public material. However, formal and informal extensions of the statutory time limits will be needed in 60% of the requests. Documents responsive to FOIA and PA requests will be provided to requesters within 90 calendar days. Documents to be placed on the public record will be cleared by the FOIA/PA Section in 5 working days. The Branch will respond to requests for publications and miscellaneous public record documents within acceptable time limits. Public record documents will be indexed into the Information Retrieval and Indexing System, and paper copies of documents in that system will be provided to requesters within one day of the request. The Correspondence Branch will coordinate and maintain the Commission-wide Consumer Complaint System, and its related systems, the Congressional Correspondence System, the Office of the Chairman's Correspondence System, and the Telecommunications System. All Congressional, White House, and Chairman's correspondence referrals and other correspondence will be answered within established time limits. The Branch will complete requests from Commission staff for searches through automated and manual records within 3 working days.</p>			

FEDERAL TRADE COMMISSION  
SUMMARY OF REQUIREMENTS  
(dollars in thousands)

Adjustments to base and built-in changes

		Wkyrs	Amount
1988 Appropriation.....		987	\$66,243
. Annualization of Pay and FERS Increases.....		...	1,046
. Adjustment for Two Fewer Workdays.....		...	-320
. Rental Payments to GSA.....		...	111
. Other Adjustments to Base.....		...	423
Base for 1989.....		<u>987</u>	<u>\$67,503</u>

Mission	1988								Program Change
	1987 Actual	Appropriation	Base for 1988	1989 Estimate <sup>2</sup>	Wkyrs	Amount	Wkyrs	Amount	
	Wkyrs	Amount	Wkyrs	Amount	Wkyrs	Amount	Wkyrs	Amount	
Maintaining Competition..	460	\$29,560	449	\$30,135	449	\$30,677	447	\$30,620	-2
Consumer Protection.....	502	32,159	481	32,182	481	32,885	486	33,085	+5
Economic Activities.....	45	3,046	57	3,926	57	3,941	54	3,798	-3
Total <sup>1</sup> .....	<u>1,007</u>	<u>\$64,765</u>	<u>987</u>	<u>\$66,243</u>	<u>987</u>	<u>\$67,503</u>	<u>987</u>	<u>\$67,503</u>	<u>...</u>
									\$...

549

<sup>1</sup> Included for all three fiscal years are 7 workyears for building maintenance services. The dollars to fund these workyears are provided through a reimbursable arrangement with GSA for fiscal 1987 and an allocation arrangement for fiscal 1988 and 1989, and are not included in our appropriation figures.

<sup>2</sup> This analysis exclude 9 workyears and \$450,000 that are being proposed for transfer to the FTC from "sunsetting" of the ICC. The ICC activities being proposed for transfer deal with consumer protection matters in the household moving industry.

FEDERAL TRADE COMMISSION  
OBJECT CLASS ANALYSIS  
(dollars in thousands)

<u>Object Class</u>	<u>Fiscal 1988</u>	<u>Fiscal 1989</u>	<u>Change + or -</u>
Personnel Compensation and Benefits (Net)....	\$48,908	\$49,634	\$726
Space Rental Payments to GSA.....	9,254	9,365	111
Other Objects.....	8,081	8,504	423
<b>Total.....</b>	<b>66,243</b>	<b>67,503</b>	<b>1,260</b>

Explanation of Change by Object Class

Personnel Compensation and Benefits - This net increase of \$726 reflects annualization of the January, 1988 pay raise (\$219) and the Federal Employee Retirement System (\$211) two less days of compensation (-\$320), and merit pay increases for GM and GS employees (\$616).

Rental Payments to GSA - This one percent increase of \$111 represents the General Services Administration (GSA) charges for the space the agency will occupy in fiscal 1989. Total occupied space remains the same in both fiscal years.

Other Objects - This \$423 increase represents inflationary price increases in travel, telecommunications, printing, contractual services, ADP maintenance, and supplies, and a partial restoration of ADP enhancement programs.

FEDERAL TRADE COMMISSION  
APPROPRIATION LANGUAGE

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed \$2,000 for official reception and representation expenses; the sum of \$67,503,000. [Provided, that the funds appropriated in this paragraph are subject to the limitations and provisions of sections 10(a) and 10(c) (not notwithstanding section 20(e)), 11(h), 18, and 20 of the Federal Trade Commission Improvements Act of 1980 (Public Law 96-252; 94 Stat. 334).] (Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1988; additional authorization language has been proposed.)

Note: Material in brackets is proposed for deletion in fiscal 1989.

FEDERAL TRADE COMMISSION  
PROGRAM AND FINANCING  
(dollars in thousands)

	1987 <u>Actual</u>	1988 <u>Estimate</u>	1989 <u>Estimate</u>
<b><u>Program by Activities:</u></b>			
Direct program:			
1. Maintaining Competition.....	29,560	30,135	30,620
2. Consumer Protection.....	32,159	32,182	33,085
3. Economic Activities.....	<u>3,046</u>	<u>3,926</u>	<u>3,798</u>
Total direct program.....	<u>64,765</u>	<u>66,243</u>	<u>67,503</u>
Reimbursable program <sup>1</sup> .....	<u>1,295</u>	<u>50</u>	<u>50</u>
10.00 Total obligations.....	<u>66,060</u>	<u>66,293</u>	<u>67,553</u>
<b><u>Financing:</u></b>			
Offsetting collections from:			
11.00 Federal Funds.....	-1,296	-50	-50
25.00 Unobligated balance lapsing..	236	...	...
40.00 Budget Authority (Appropriation).....	<u>65,000</u>	<u>66,243</u>	<u>67,503</u>
<b><u>Relation of Obligations to Outlays:</u></b>			
71.00 Obligation incurred, net.....	64,763	66,243	67,503
72.40 Obligated balance, start of year.....	10,448	9,126	9,233
74.40 Obligated balance, end of year.....	-9,126	-9,233	-9,340
77.00 Adjustments in expired accounts.....	<u>-18</u>	<u>...</u>	<u>...</u>
90.00 Outlays.....	<u>66,067</u>	<u>66,138</u>	<u>67,396</u>

- 1 In fiscal 1987 the FTC had a reimbursable arrangement with GSA to provide building maintenance service amounting to \$1,195,000. For fiscal 1988 and 1989 OMB revised the method of accounting as we are now functioning under an allocation arrangement with GSA. In fiscal 1988 the allocation of funds to the FTC is \$1,261,000 and for fiscal 1989 it is \$1,305,000.

NOTE: Totals may not add due to rounding.

FEDERAL TRADE COMMISSION  
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS

The Federal Trade Commission is charged by law with ensuring that competition in the marketplace is vigorous, free, and fair. This is accomplished by eliminating threats to fair and honest competition from all sources, both public and private.

Maintaining Competition -- The Commission's efforts within this mission are aimed at fostering and preserving our competitive system with the goal of maximizing consumer welfare. In addition to enforcing the antitrust laws against private-sector restraints on competition, the Commission also scrutinizes regulatory policies that unduly restrain competition, and tries to exert a procompetitive influence in the development of such policies.

Consumer Protection -- The Commission is charged with eliminating unfair or deceptive acts or practices affecting commerce. The goal of the consumer protection mission is to improve market performance so that consumers can make informed choices when exercising their purchasing power. To accomplish this goal, the Commission will remove harmful private and public restrictions on market performance; encourage business to provide consumers with accurate and useful information; and, reinforce market forces that enhance consumer welfare.

Economic Activities -- This mission has four major functions: conducting research on the performance of the industrial economy; providing economic support to the Commission's antitrust and consumer protection efforts; advising the Commission on the impact of governmental regulation on competition in various industries; and developing economic reports on industrial structure and performance.

FEDERAL TRADE COMMISSION  
OBJECT CLASSIFICATION  
(dollars in thousands)

	<u>1987</u> <u>Actual</u>	<u>1988</u> <u>Estimate</u>	<u>1989</u> <u>Estimate</u>
<b>Direct Obligations:</b>			
Personnel Compensation:			
11.1 Full-time permanent.....	39,027	39,923	40,345
11.3 Other than full-time permanent.....	2,325	2,176	2,194
11.5 Other personnel compensation.....	798	804	804
11.8 Special personal services payments.....	6	5	5
11.9 Total personnel compensation.....	42,156	42,908	43,348
12.1 Personnel benefits:			
Civilian.....	5,029	5,957	6,243
13.0 Benefits for former personnel.....	50	43	43
21.0 Travel and transportation of persons.....	763	843	896
22.0 Transportation of things....	83	100	100
23.1 Rental Payments to GSA.....	8,052	8,939	9,050
23.3 Communications, utilities, and miscellaneous charges..	1,797	1,824	1,894
24.0 Printing and reproduction....	314	377	392
25.0 Other services.....	3,576	3,781	3,914
26.0 Supplies and materials.....	799	862	904
31.0 Equipment.....	2,146	609	719
99.0 Subtotal, direct obligations.....	64,765	66,243	67,503
99.0 Reimbursable obligations....	1,295	50	50
99.9 Total obligations.....	<u>66,060</u>	<u>66,293</u>	<u>67,553</u>

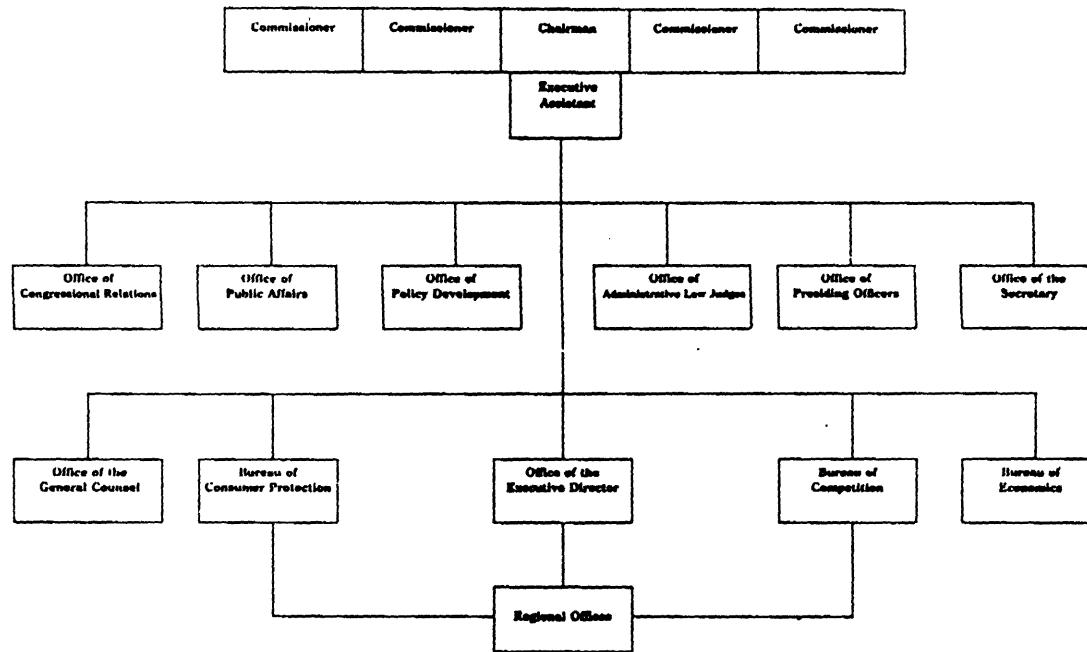
**Personnel Summary**

Total number of full-time permanent positions.....	918	936	936
Total compensable workyears:			
Full-time equivalent employment.....	1,007	987	987
Full-time equivalent of overtime and holiday hours.....	6	5	5

**ACTIVITIES TRANSFERRED FROM SALARIES AND EXPENSES  
INTERSTATE COMMERCE COMMISSION  
(PROPOSED FOR LATER TRANSMITTAL, PROPOSED LEGISLATION)  
PROGRAM AND FINANCING  
(dollars in thousands)**

	<u>1987 Actual</u>	<u>1988 Estimate</u>	<u>1989 Estimate</u>
<b><u>Program by Activities:</u></b>			
10.00 Total obligations.....	...	...	450
<b><u>Financing:</u></b>			
40.00 Budget Authority (Appropriation)..	...	...	450
<hr/>			
<b><u>Relation of Obligations to Outlays:</u></b>			
71.00 Obligation incurred, net.....	...	...	450
74.40 Obligated balance, end of year.....	...	...	-4
90.00 Outlays.....	...	...	446
<hr/>			

## FEDERAL TRADE COMMISSION



**STATUTORY AUTHORITY AND DUTIES OF THE  
FEDERAL TRADE COMMISSION**

The Commission exercises enforcement and administrative authority under these Acts:

(1) The Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. §§ 41-58 (1982 & Supp. IV 1986)) - Under this Act, the Commission is charged with (a) the prevention of unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce; (b) the conduct of investigations relating to (1) alleged violations of the antitrust Acts, (2) the manner in which decrees in antitrust suits brought by the United States have been carried out, and (3) the organization, business, conduct, practices and management of corporations engaged in commerce (with certain statutory exemptions) and their relation to other enterprises; (c) the making of reports and recommendations to the Congress with respect to legislation; and (d) prescribing (1) interpretative rules and general statements of policy with respect to unfair or deceptive acts or practices; and (2) trade regulation rules defining with specificity acts or practices which are unfair or deceptive including requirements for the purpose of preventing such acts or practices.

— Title II of the Magnuson-Moss Warranty - Federal Trade Commission Improvements Act (88 Stat. 2193; 15 U.S.C. §§ 45, 46, 49, 50, 52, 56, 57 *et seq.*) amended the Federal Trade Commission Act to enlarge the Commission's jurisdiction to cover activities "affecting commerce" as well as "in commerce"; to provide for certain procedures when the Commission prescribes substantive rules for unfair or deceptive acts or practices; to increase the Commission's authority to represent itself in civil court actions and before the Supreme Court under certain conditions; to authorize the Commission to commence a civil action to recover civil penalties for knowing violations of the FTC Act; and to authorize the FTC under certain conditions to file suit for consumer redress of injuries.

The Federal Trade Commission Act was further amended by the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, § 715(a), 101 Stat. 655 (August 10, 1987), to permit federal credit unions the same exemption from Commission enforcement and administrative authority as banks and savings and loan associations currently enjoy under Section 5(a)(2) of the FTC Act. The Commission may not investigate or prohibit the use of unfair or deceptive trade practices by federal credit unions, as this authority was transferred under the Banking Act to the National Credit Union Administration.

Section 20 of the Federal Trade Commission Improvement Act of 1980, Pub. L. No. 96-252, 94 Stat. 393, prohibited the Commission until September 30, 1982, from conducting any study, investigation, or prosecution of any agricultural cooperative for conduct exempted from the federal antitrust laws by the Capper-Volstead Act (7 U.S.C. §§ 291 et seq.). That section also prohibited the Commission until September 30, 1982, from conducting any investigation or study of agricultural marketing orders. Those prohibitions were extended to September 30, 1984, by Pub. L. No. 98-166, 97 Stat. 1071; extended to September 30, 1985, by Pub. L. No. 98-411, 98 Stat. 1545, 1551; extended to September 30, 1986 by P.L. 99-180, 99 Stat. 1136; extended to September 30, 1987, by Pub. L. No. 99-591, 100 Stat. 3341-67, and extended to September 30, 1988 by Pub. L. 100-202, \_\_\_\_ Stat. \_\_\_\_\_ (December 22, 1987).

(2) Clayton Act (38 Stat. 730, 15 U.S.C. §§ 12-27 (1982 & Supp. IV 1986) (as amended by Pub. L. No. 98-443, § 9 (l), (m), 98 Stat. 1708)) - Under Sections 3, 7 and 8 of this Act, the Commission is charged with the duty of preventing and eliminating unlawful tying contracts, corporate mergers and acquisitions and interlocking directorates. The statute was amended by the Robinson-Patman Act, 49 Stat. 1528, 15 U.S.C. §§ 13, 13b, and 21a, which charged the Commission with the prevention of certain specified practices, i.e., unlawful price and related discriminations.

(3) The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (90 Stat. 1383; 15 U.S.C. § 18a (1982)) - This Act, in part, amends the Clayton Act to require the filing of premerger notifications with the Federal Trade Commission and the Antitrust Division of the Department of Justice and to establish a waiting period before certain acquisitions or tender offers may be consummated.

(4) Packers and Stockyards Act (42 Stat. 159, 7 U.S.C. §§ 181-229 (1982 & Supp. IV 1986) (as amended by Pub. L. No. 98-620, 98 Stat. 3357 (November 8, 1984)) - The amendments to the Act extend the Commission's jurisdiction to cover certain matters previously subject to the exclusive jurisdiction of the Secretary of Agriculture.

The amendment, in effect, grants the Commission jurisdiction over the activities of packers not related to livestock, meats, meat products, and the like. The Commission is granted additional power and jurisdiction over all transactions in commerce of margarine and oleomargarine and over retail sales of meat and related products. Other matters involving meat and related products are made subject to the Commission's jurisdiction when the Secretary requests the Commission to investigate and report or where, under certain circumstances, action by the Commission

is necessary to exercise effectively its power or jurisdiction with respect to retail sales of meat and related products.

The statute was further amended by the Poultry Producers Financial Protection Act of 1987, Pub. L. No. 100-173, § 7, 101 Stat. 919 (November 23, 1987). This provision clarifies the authority of the Commission in regard to this statute by stating that the Commission has jurisdiction and authority over all transactions in commerce of poultry products. The Act states that the Secretary of Agriculture may exercise jurisdiction over oleomargarine, retail sales of meat, or poultry products only when the Secretary determines that this is necessary to avoid impairment of the Secretary's jurisdiction in certain specified proceedings. The Secretary must obtain clearance from the Commission prior to exercising such jurisdiction and must refrain if the Commission notifies the Secretary within ten days of a pending Commission investigation. Annual reports of the Secretary and of the Commission must include information relating to the administration of subsection (e), which specifies the instances in which the Secretary may exercise jurisdiction over poultry products.

(5) Export Trade Act (40 Stat. 516, 15 U.S.C. §§ 61-65 (1982)) - The Commission is responsible for receiving and filing articles of association or incorporation of "associations" organized under the Export Trade Act; investigating their operations which may adversely affect competition within the United States; making recommendations to the associations for readjustments deemed necessary therein; and where considered appropriate, making recommendations to the Attorney General for penal action.

(6) Wool Products Labeling Act (54 Stat. 1128, 15 U.S.C. §§ 68-68j (1982 & Supp. IV 1986)) - Under this statute the manufacture for introduction into commerce, or the introduction, sale, transportation or distribution, in commerce, or the importation into the United States of misbranded wool is an unfair and deceptive act and practice under the Federal Trade Commission Act. The Commission is authorized to make inspections, analyses, tests and examinations of all wool products subject to the Act and to make such rules and regulations as may be necessary and proper for the administration and enforcement of the Act. In addition, the Commission is also empowered under the statute to prevent the movement of misbranded wool products in commerce by injunction and to proceed by libel action in certain cases for condemnation of such products. This Act was amended on September 24, 1984, by the Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, §§ 301-307, 98 Stat. 1585, 1603, to require that wool product labels indicate the country where the product was

processed or manufactured, and that mail order promotional materials clearly and conspicuously state whether a wool product was processed or manufactured in the United States or imported.

(7) Lanham Trade-Mark Act (60 Stat. 427, 15 U.S.C. §§ 1051-1127 (1982 & Supp. IV 1986) (as amended by Pub. L. No. 98-620, 98 Stat. 3368 (November 8, 1984)) - Under this statute it is the duty of the Commission to make applications for the cancellation of registered trade-marks under certain specified conditions. The Commission, as applicant, must secure the proper evidence on which the application for cancellation is based, prepare the application, stating the grounds relied upon, be represented at the hearing before a Patent Office examiner for the purpose of presenting such evidence and otherwise prosecute the matter to a conclusion.

Section 18 of the Federal Trade Commission Improvements Act of 1980 prohibited the FTC from using any funds through the end of fiscal 1982 to petition for cancellation of a trademark on the ground that the mark has become the common descriptive name of an article or substance. The prohibition was extended to September 30, 1984, by Pub. L. No. 98-166, 97 Stat. 1071, extended to September 30, 1985, by Pub. L. No. 98-411, 98 Stat. 1545, 1551; extended to September 30, 1986 by P. L. 99-180, 99 Stat. 1136, extended to September 30, 1987, by Pub. L. No. 99-591, 100 Stat. 3341-67, and extended to September 30, 1988 by Pub. L. No. 100-202, \_\_\_\_ Stat. \_\_\_\_ (December 22, 1987).

(8) Fur Products Labeling Act (65 Stat. 175, 15 U.S.C. §§ 69-69j (1982)) - The Commission is charged with the administration and enforcement of this statute which requires the labeling of fur articles of wearing apparel, as well as truthful invoicing and advertising of furs and fur products to show, among other things, the true English name of the animal from which the fur was taken and whether the fur is dyed or used. The Commission is also charged with issuing a Fur Product Name Guide and is authorized and directed to cause compliance inspections, analyses, tests and examinations to be made of furs and fur products subject to the Act and to prescribe rules and regulations governing the manner and form of disclosing required information under the Act. In addition to administrative enforcement, the Act also provides for injunctive and condemnation proceedings.

(9) Textile Fiber Products Identification Act (72 Stat. 1717, 15 U.S.C. §§ 70-70k (1982 & Supp. IV 1986)) - This additional "truth-in-fabrics" statute takes up where the Wool Products Labeling Act leaves off. It became effective March 3, 1960, and covers the broad field of mandatory content disclosure in labeling, invoicing and advertising of textile fiber products. Under its terms, misbranding as well as false and deceptive invoicing and advertising of textile fiber products is unlawful.

The Commission is authorized under the Act to make inspections, analyses, tests, and examinations of all textile fiber products subject to the statute, and further, to make such rules and regulations as may be necessary and proper for administration and enforcement of the Act. In addition, the Commission is directed to establish a generic name for each man-made fiber that does not as yet have such a name.

Enforcement of this Act is to be carried out through administrative procedures provided for under the Federal Trade Commission Act, together with injunction and criminal proceedings in the U.S. District Courts.

This Act was amended on September 24, 1984, by the Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, §§ 301-307, 98 Stat. 1585, 1603, to require that a textile fiber product processed or manufactured in the United States be so identified, and that mail order promotional materials clearly and conspicuously indicate whether a textile fiber product was processed or manufactured in the United States or imported.

(10) Federal Cigarette Labeling and Advertising Act of 1966 (79 Stat. 282; 15 U.S.C. §§ 1331-1340) (1982 & Supp. IV 1986)) - This Act became effective on January 1, 1966, and was amended by the Public Health Cigarette Smoking Act of 1969, which took effect on January 1, 1970. The Act requires the Commission to submit annual reports to Congress concerning (a) the effectiveness of cigarette labeling, (b) current practices and methods of cigarette advertising and promotion, and (c) recommendations for legislation. The 1969 amendment requires that cigarette packages bear labels warning of the health hazards associated with cigarette smoking.

The Act was further amended by the Comprehensive Smoking Education Act, Pub. L. No. 98-474, 98 Stat. 2200, (October 12, 1984), which sets forth the text of four new health-related warning labels and requires that, one year from the enactment of this amendment, cigarette packages and advertisements begin carrying these warnings on a rotating basis according to plans to be submitted by each cigarette manufacturer or importer for approval by the Federal Trade Commission.

Additionally, Section 11 of the Nurse Education Amendments of 1985, Pub. L. No. 99-92, § 11, 99 Stat. 393, 402 (codified as amended at 15 U.S.C. § 1333(c)), amends the Act and gives special relief to small manufacturers and importers of cigarettes who package more than one-half of their cigarettes into brand styles which constitute less than one-fourth of one percent of all cigarettes sold in the United States. Under these amendments

small manufacturers and importers are not required to, but may, submit for Commission approval a quarterly label rotation plan.

(11) Fair Packaging and Labeling Act (80 Stat. 1296; 15 U.S.C. §§ 1451-61) (1982) - This Act requires the Commission to issue regulations having the force of law respecting net contents disclosures, identity of commodity, and name and place of business of manufacturer, packer or distributor. The Act authorizes additional regulations when necessary to prevent consumer deception or facilitate value comparisons in respect to declaration of ingredients, slack fill of packages, use of "cents-off" or lower price labeling, and characterization of package sizes. The Act became effective July 1, 1967, and gives the Commission responsibility for consumer commodities other than food, drugs, therapeutic devices and cosmetics. Violations of regulations issued under the Act will be treated as violations of Section 5 of the Federal Trade Commission Act.

(12) Truth in Lending Act (82 Stat. 146; 15 U.S.C. §§ 1601-1667e (1982 & Supp. IV 1986) (as amended by Pub. L. No. 98-443, 98 Stat. 708 (October 4, 1984)) - This Act (Title I of the Consumer Credit Protection Act) delegated to the Commission, effective July 1, 1969, enforcement responsibility for compliance by non-depository creditors with this consumer credit disclosure statute. The Act requires all creditors who deal with consumers to make detailed written disclosures concerning all finance charges and related aspects of the transaction, including disclosure of finance charges expressed as an annual percentage rate, before consummation of the sale or loan in the case of closed-end credit, and before the account is opened and on every periodic statement in the case of open-end or revolving creditors. The Act also contains specified requirements for any advertisement of credit terms, and it includes a three-day right of rescission in any transaction involving a security interest in the consumer's residence (except one taken in connection with the purchase or initial construction of a dwelling).

The Truth in Lending Act was amended on October 26, 1970, to prohibit the issuance of unsolicited credit cards. The Act was further amended by the Fair Credit Billing Act which, effective October 28, 1975, provides for prompt written acknowledgments of consumer billing complaints and reinvestigation of billing errors by creditors sending periodic billing statements. The amendment prohibits such creditors from taking action which adversely affects the consumer's credit standing until the reinvestigation is made, and affords other protections during disputes. The Fair Credit Billing Act further requires the creditors to promptly post payments to the debtor's account, and refund overpayments or credit them to the debtor's account. The Act was further amended by the Truth in Lending Simplification and Reform Act of 1980; the "Simplification Act" reduced the number of mandatory disclosures, introduced greater flexibility in credit advertising,

and required the Federal Reserve Board to promulgate model disclosures which, if employed and accurately updated, constitute compliance with the disclosure requirements. The Truth in Lending Act provides that a violation of the Act or any implementing regulation shall be deemed a violation of the Federal Trade Commission Act.

The Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, §1204, 101 Stat. 662 (August 10, 1987), requires that all adjustable rate mortgage loans include a limitation on the maximum interest rate that may apply during the term of the loan. Nondisclosure of this limitation is treated under the Act as a violation of the Truth in Lending Act and the Commission is given authority under §1204 to so enforce this provision.

(13) Fair Credit Reporting Act (84 Stat. 1128; 15 U.S.C. §§ 1681-1681s (1982 & Supp. IV 1986)) (as amended by Pub. L. No. 98-443, 98 Stat. 708 (October 4, 1984)) - The Fair Credit Reporting Act, effective April 25, 1971, is the only major federal privacy statute applicable to the private credit reporting industry. Its basic purpose is to ensure that consumer reporting agencies such as credit bureaus, insurance and employment reporting companies exercise their responsibilities in providing information to credit grantors, insurers, employers and others in a manner that is fair and equitable to the consumer, with regard to confidentiality, accuracy, and the proper use of such information. Users of such information must inform the consumer when adverse action (such as denial of credit, insurance or employment) is taken on the basis of such reports, and the user must identify the company which is the source of the report so that its accuracy and completeness can be verified by the consumer.

(14) Equal Credit Opportunity Act (88 Stat. 1521, 90 Stat. 251; 15 U.S.C. §§ 1691-1691f, (1982 & Supp. IV 1986)) (as amended by Pub. L. No. 98-443, 98 Stat. 708 (October 4, 1984)) - This Act, Title VII of the Consumer Credit Protection Act, effective October 28, 1975, prohibits discrimination on the basis of sex or marital status in the extension of business or consumer credit. It was amended effective March 23, 1977, to add race, color, religion, national origin, sex, marital status, age, receipt of public assistance or good faith exercise of any rights under the Consumer Credit Protection Act as prohibited bases of discrimination. The Act also requires creditors to provide credit applicants reasons for denial. Regulations are issued by the Federal Reserve Board. Any violation of the Act or the FRB regulations is treated in the same manner as a violation of a trade regulation rule under the Federal Trade Commission Act.

(15) The Fair Debt Collection Practices Act (91 Stat. 874; 15 U.S.C. §§ 1692-1692o (1982 & Supp. IV 1986)) (as amended by Pub. L. No. 98-443, 98 Stat. 708 (October 4, 1984)) - This

Act (Title VIII of the Consumer Credit Protection Act) delegated to the Commission, effective March 20, 1978, enforcement responsibility. Its purpose is to regulate the debt collection practices of third-party debt collection agencies who regularly collect or attempt to collect or whose principal purpose is to collect from consumers debts arising out of transactions that are primarily for personal, family or household purposes. This Act was amended by Act of July 9, 1986, Pub. L. 99-361, 100 Stat. 768, to remove the exemption for attorneys under the Fair Debt Collection Practices Act and to require attorneys in the business of collecting debts to comply with the provisions of the Act.

(16) Electronic Fund Transfer Act (92 Stat. 3728; 15 U.S.C. §§ 1693-1693r (1982)) - This statute, effective March 10, 1979, was enacted as Title IX of the Consumer Credit Protection Act to "provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights." Administrative enforcement authority under this Act over financial institutions, air carriers, and securities brokers and dealers is placed in the federal agencies having regulatory jurisdiction over such organizations. Except for the foregoing, the Federal Trade Commission is responsible for the administrative enforcement of this statute.

(17) The Consumer Leasing Act (90 Stat. 257; 15 U.S.C. §§ 1667-1667e (1982)) - This Act, an amendment to the Truth in Lending Act, regulates leases of personal property exceeding 4 months in duration to consumers for personal, family or household purposes. The statute requires disclosure of relevant lease costs and terms at consummation of the transaction, imposes substantive limitations on the size of penalties for delinquency or default and residual liabilities and requires truthful and full disclosures in leasing advertising.

(18) The Magnuson Moss Warranty - Federal Trade Commission Improvements Act (88 Stat. 2183; 15 U.S.C. §§ 2301-2312 (1982)) - Title I of this Act of 1975 authorizes the Federal Trade Commission to develop regulations for written and implied warranties. The Act authorizes the Commission to establish disclosure and designation standards for written warranties; defines the Federal content standards for full warranties; and establishes consumer remedies for breach of warranty or service contract obligations.

(19) The Hobby Protection Act (87 Stat. 687; 15 U.S.C. §§ 2101-2106 (1982)) - This Act became effective on November 29, 1973, and makes unlawful the manufacture or importation of imitation numismatic and political items unless marked in accordance with regulations prescribed by the Federal

Trade Commission. Imitation numismatic items must be inscribed with the word "COPY" and imitation political items must carry the calendar year of manufacture.

(20) The Deepwater Port Act of 1974 (88 Stat. 2126; 33 U.S.C. §§ 1501-1524 (1982 & Supp. 1985) (as amended by the Deepwater Port Act Amendments of 1984, Pub. L. No. 98-419, 98 Stat. 1607 (September 25, 1984)) - This Act requires the Secretary of Transportation to transmit a complete copy of any application for the issuance, transfer, substantial change in or renewal of any license for a deepwater port to the Federal Trade Commission and the Attorney General. Within 45 days following the last public hearing, the Federal Trade Commission and the Attorney General are to submit to the Secretary a report assessing the competitive effects of the issuance of the proposed license.

(21) The Energy Policy and Conservation Act (89 Stat. 871; 42 U.S.C. §§ 6201-6422 (1982 & Supp. IV 1986) (as amended by the Energy Policy and Conservation Amendments Act of 1985, Pub. L. No. 99-58, 99 Stat. 104 (July 2, 1985) and by the National Appliance Energy Conservation Act of 1987, Pub. L. No. 100-12, 101 Stat. 103 (March 17, 1987)) - The Act (42 U.S.C. § 6285 (as amended)) requires the Commission, along with the Justice Department, to participate in the development and, when practicable, the implementation of voluntary agreements and plans of actions by oil companies pursuant to the International Energy Program provisions of the Act and to comment upon the competitive consequences of such agreements and plans including reporting to Congress thereon every six months. The amendments (42 U.S.C. § 6285 (as amended)) provide that all authority under the International Energy Program, any rule, regulation or order issued pursuant to that program will expire on June 30, 1988. The Act also gives the Commission certain responsibilities with regard to provisions of the Act relating to automobile fuel economy, appliance efficiency and recycled oil.

(22) The Defense Production Act of 1950 (64 Stat. 798; 50 U.S.C. app. §§ 2061-2169 (1982 & Supp. 1985) (as amended by the Defense Production Act Amendments of 1984, Pub. L. No. 98-265, 98 Stat. 149 (April 17, 1984)) - Section 708 of this Act (50 U.S.C. app. §§ 2158, 2158a) requires the Commission and the Department of Justice to participate in the development and implementation of domestic voluntary agreements by oil companies, i.e., all voluntary agreements other than the one implementing the International Energy Program. It roughly parallels the Energy Policy and Conservation Act in that, with respect of all domestic voluntary agreements, it requires the Commission to monitor and survey the formation and implementation of the voluntary agreements. After consultation with the Commission, the Attorney General must report each year to Congress and the President on any anti-competitive consequences flowing from such domestic voluntary agreements.

(23) The Petroleum Marketing Practices Act (92 Stat. 322; 15 U.S.C. §§ 2801-2841 (1982)) - This Act, enacted on June 19, 1978, gives the Commission the authority to prescribe requirements for the calculation and posting of octane ratings by distributors and gasoline retailers. Title III requires the Federal Trade Commission and the Attorney General to consult with the Secretary of Energy in conducting a study of the extent to which producers, refiners, and other suppliers of motor fuel subsidize the retail or wholesale of such fuel.

(24) The Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629; 43 U.S.C. §§ 1801-1866 (1982)) - This Act authorizes the Commission to consult with and advise the Secretary of the Interior, the Secretary of Energy, the Federal Energy Regulatory Commission and the Attorney General under various provisions of this Act pertaining to rules and regulations for Outer Continental Shelf (OCS) leases; permits, rights-of-way, and related matters involving pipelines; anticompetitive matters relating to OCS pipelines; proposed OCS lease sales; and reports relating to the competitive and antitrust aspects of the OCS program.

(25) National Energy Conservation Policy Act (92 Stat. 3206; 42 U.S.C. §§ 8201-8286b (1982) (as amended by the Conservation Service Reform Act of 1986, 100 Stat. 932, 42 U.S.C. 8201 note)) - Section 212 of this Act (42 U.S.C. § 8213) requires the Department of Energy (DOE) to establish a residential energy conservation program and provides for the consultation by DOE with the FTC prior to promulgating rules on the content and implementation of residential energy conservation plans. Section 216 of the Act (42 U.S.C. §8217) requires that DOE consult with the Commission prior to granting a waiver allowing a public utility to finance, supply and install energy conservation equipment and prior to any subsequent determination by DOE that the public utility, in carrying out this function, has: (1) created a substantial adverse effect on competition or engaged in unfair, deceptive, or anticompetitive acts or practices; or (2) has provided the equipment at unreasonable rates or on unreasonable terms or conditions.

The amendments made by the Conservation Service Reform Act of 1986, to go into effect on June 30, 1989, provide that the Commission will have the final administrative review of complaints about the public utility's provision of such equipment, and only if an appropriate state agency fails to act. If, upon such review, the Commission determines that it has reason to believe that the utility has either charged "unfair or unreasonable prices or rate of interest" or has engaged in "unfair methods of competition or unfair or deceptive acts or practices," the Commission is required to initiate an

adjudicative proceeding in accordance with Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. §45(b).

(26) Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3289, 42 U.S.C. §§ 8301-8484 (1982) (as amended by Pub. L. No. 100-42, 101 Stat. 310 (May 21, 1987)) - Prior to the amendments, under this Act the Secretary of Energy could prohibit the use of natural gas or petroleum in various types of power generating facilities. Section 701 of the Act required the Commission to submit comments on the anticompetitive impact of any rule so prohibiting or any petition for exemption involving certain types of facilities or products. However, the amendments to the Act eliminated the discretionary authority of the Secretary and repealed Section 701, thereby eliminating any function for the Commission under this Act.

(27) Deep Seabed Hard Minerals Act (94 Stat. 553, 30 U.S.C. §§ 1401-1473 (1982 & Supp. III 1985) (as amended by Pub. L. No. 98-623, 98 Stat. 3408 (November 8, 1984)) - Section 103(d) of this Act (30 U.S.C. § 1413(d)) provides for antitrust review by the Attorney General and the Federal Trade Commission of applications for issuance or transfer of licenses to recover minerals from the deep seabed.

(28) Shipping Act of 1984 (98 Stat. 67; 46 U.S.C. app. §§ 1701-1720 (Supp. 1985) (as amended by Act of May 19, 1986, Pub. L. No. 99-307, § 11, 100 Stat. 447)) - Section 18 of this Act (46 U.S.C. app. § 1717) gives the Federal Trade Commission access to data collected by the Federal Maritime Commission concerning the impact of this Act upon the international ocean shipping industry. In 1989, the Federal Trade Commission must furnish Congress and the Advisory Commission on Conferences in Ocean Shipping with a report assessing the need for maintaining the tariff system enforced under this Act, establishing new tariff systems, or providing antitrust immunity for ports and marine terminals.

(29) National Cooperative Research Act of 1984 (98 Stat. 1815; 15 U.S.C. §§ 4301-4305 (Supp. IV 1986)) - This Act limits to actual damages, interest and reasonable attorney's fees the amount of recovery available in any antitrust suit brought under the Clayton Act relating to the conduct of any joint research and development venture for which voluntary, prior written notification has been filed under this Act with the Federal Trade Commission and the Attorney General. The limitation applies once the Federal Trade Commission or the Attorney General publishes notice of the joint venture in the Federal Register, usually within 30 days of filing, identifying the parties to the venture and the area of planned activity.

(30) Comprehensive Smokeless Tobacco Health Education Act of 1986. (100 Stat. 30; 15 U.S.C. §§ 4401-4408 (Supp. IV 1986))

- This Act prohibits the advertising of smokeless tobacco products on radio and television and requires manufacturers, packagers, or importers of smokeless tobacco products, for sale in the United States, to place one of three statutorily prescribed health warning labels on its product packages and in its advertisements by February 27, 1987. Under the Act, the Federal Trade Commission must promulgate regulations requiring the label warnings to be displayed, on a rotating basis, in a conspicuous format and prominent place on smokeless tobacco packages and advertisements. Manufacturers, packagers, and importers must submit, for FTC approval, plans that specify the method to be used to comply with the Act's rotation, display, and distribution requirements. Violations of FTC regulations issued under the Act will be considered a violation of Section 5 of the Federal Trade Commission Act.

CALENDAR YEAR  
1987 COURT DECISIONS

American Hospital Supply Corp., suit for civil penalties for violation of Commission order to cease and desist. On May 8, 1987, the United States District Court for the Northern District of Illinois granted the government's motion for summary judgment, holding that American Hospital Supply Corp. had violated an order against it by failure to notify the Commission prior to consummation of certain acquisitions. By order dated June 5, 1987, the district court assessed a civil penalty of \$600,000.

American National Cellular, Inc., suit for permanent injunction and other equitable relief. On February 25, 1987, the United States Court of Appeals for the Ninth Circuit affirmed the district court's grant of a preliminary injunction against alleged violations of the FTC Act, sought as part of the Commission's main action for permanent injunctive relief. The only challenge raised to the injunction on appeal was the claim that the Commission may not constitutionally prosecute suits for injunctive relief under Section 13(b) of the FTC Act because its members may be removed by the President only for cause. The court rejected this contention.

Atlantex Associates, suit for permanent injunction and other equitable relief for unfair and deceptive practices in violation of Section 5 of the FTC Act. On November 25, 1987, the United States District Court for the Southern District of Florida entered findings of fact, conclusions of law, and a final judgment, ordering defendants to halt deceptive practices in connection with the sale of oil and gas partnerships and to pay restitution to defrauded consumers in the amount of \$12,175,250.

Aura Promotions Ltd., petition to enforce Commission compulsory process. By order of December 18, 1987, the United States District Court for the District of Columbia granted the Commission's petition and ordered respondent to comply with the Commission's subpoena duces tecum.

Coca-Cola Company, suit for preliminary injunction to enjoin acquisition pending completion of administrative proceeding. On March 24, 1987, the United States Court of Appeals for the District of Columbia Circuit granted the motion of Coca-Cola Company to dismiss its appeal and remand the case to the district court with instructions to dismiss its injunction against Coca-Cola's acquisition of the assets of Dr Pepper Company. The decision was based upon the fact that Coca-Cola Company had abandoned the proposed acquisition and its appeal was therefore deemed moot.

Figgie International, Inc., petition for review of Commission order to cease and desist. On April 21, 1987, the United States Court of Appeals for the Fourth Circuit affirmed and enforced the Commission's order against Figgie International concerning Figgie's deceptive promotion of heat detectors as effective residential fire alarms.

Flowers Industries, Inc., suit to enjoin Commission action to effect compliance with an order to cease and desist requiring divestiture of assets. On December 15, 1987, the United States Court of Appeals for the Eleventh Circuit vacated the judgment of the United States District Court for the Middle District of Georgia and remanded the case to that court for further proceedings in accordance with its judgment. The district court had enjoined the Commission from taking steps to implement a divestiture decree. The basis for reversal was lack of venue.

Hospital Corporation of America, petition for review of Commission order to cease and desist. On May 3, 1987, the Supreme Court denied Hospital Corporation of America's petition for certiorari seeking review of a decision of the United States Court of Appeals for the Seventh Circuit affirming and enforcing a Commission order requiring divestiture of certain hospital assets acquired in violation of Section 7 of the Clayton Act.

Monahan, petition to enforce FTC compulsory process. On April 13, 1987, the United States District Court for the District of Massachusetts ordered enforcement of nine Commission subpoenas ad testificandum directed to members and employees of the Massachusetts Board of Registration in Pharmacy. On November 4, 1987, the United States Court of Appeals for the First Circuit affirmed the district court's order.

Public Citizen, petition for review of a Commission rule. On September 18, 1987, the United States Court of Appeals for the District of Columbia Circuit granted the Commission's motion to dismiss the petition for review, on grounds that review of the Commission's smokeless tobacco regulations was properly lodged in the district court.

Standard Financial Management Corp., suit for permanent injunction and other equitable relief. On October 6, 1987, the United States Court of Appeals for the First Circuit affirmed the ruling of the United States District Court for the District of Massachusetts, ordering that sworn personal financial statements submitted to the Commission by parties entering into the settlement of an injunctive action be unsealed and made part of the public record of the case.

Thompson Medical Co., Inc., petition for review of a Commission order to cease and desist. On February 23, 1987, the Supreme Court denied Thompson's petition for certiorari seeking review a decision of the United States Court of Appeals for the District of Columbia Circuit affirming in its entirety the Commission's order to cease and desist against Thompson, involving deceptive advertising for the product Aspercreme.

Ticor Title Insurance Co., suit to enjoin agency adjudication. On March 24, 1987, the United States Court of Appeals for the District of Columbia Circuit affirmed the decision of the United States District Court for the District of Columbia which had dismissed as unripe for review a constitutional challenge to the Commission's conduct of an administrative adjudication.

U.S. Oil & Gas Corp., suit for permanent injunction and other equitable relief. On June 29, 1987, the United States District Court for the Southern District of Florida entered a final judgment for restitution against defendants, requiring payment of \$51,265,367 and appointing a permanent equity receiver to take custody of the assets of corporate defendants.

CALENDAR YEAR 1987  
CIVIL PENALTY SUITS

Alan F. Goda, United States District Court for the Central District of California (January 7, 1987). Alan F. Goda, one of eleven defendants named in the Trans Alaska Energy Corp. complaint, agreed to pay \$100,000 in civil penalties to settle charges of defrauding consumers by inducing them to invest in worthless oil and gas leases in Alaska and Wyoming.

TS Industries, Inc., United States District Court for the District of Colorado (February 10, 1987). TS Industries agreed to a consent judgment requiring a \$125,000 civil penalty to settle charges it violated the R-Value Rule and misrepresented the effectiveness of its thermal insulation products.

Jeffrey K. Williams, United States for the Eastern District of Washington (February 9, 1987). Jeffrey Williams, owner and officer of Coast Credit Recovery and National Credit Bureau, was charged with violating the Fair Debt Collection Act in collecting consumer debts and the FTC Act in collecting commercial debts. A consent judgment required Mr. Williams to pay \$5,000 in civil penalties to settle the charges.

Tuff-Tire America, Inc., United States District Court for the Middle District of Florida, Tampa Division (March 13, 1987). The sellers of "Mr. Tuff-Tire" franchises were ordered to pay \$870,000 in civil penalties and \$1.4 million in refunds to consumers who bought franchises based on misrepresentations.

Sears, Roebuck & Co., United States District Court for the District of Colorado (March 16, 1987). The company agreed to pay \$200,000 in civil penalties to settle charges it misrepresented the amount of down filling in garments. Sears agreed not to sell any garment that is mislabeled as to down or down and feather content, or misrepresent the filling content of any down garment in an advertisement. It also agreed to provide the Commission, at its request, with garments to be tested by an independent laboratory.

Kellwood Co., United States District Court for the District of Colorado (March 16, 1987). Kellwood, a supplier of Sears, Roebuck & Co., agreed to pay \$200,000 in civil penalties to settle Commission charges it misrepresented the amount of down filling in garments. The company agreed not to misrepresent the kind or type of filling material in any down garment it sells.

Molbe Shoes, Inc., United States District Court for the Southern District of New York (March 20, 1987). This nationwide mail order marketer of clothing agreed to pay \$32,000 in civil penalties to settle Commission charges it violated the Mail Order Rule. Molbe Shoes, also known as French Boot Shop and FBS, is prohibited from deeming orders cancelled and offering a company credit for purchases of alternative merchandise instead of a refund.

PC Network, Inc., United States District Court for the Northern District of Illinois, Eastern Division (March 20, 1987). PC Network, a nationwide seller of computer hardware and software, was charged with violating the law by failing to give customers the option to cancel orders that were delayed, and failing to honor guarantees promptly. A consent decree settling the charges requires the company to pay \$61,000 in civil penalties.

Allied Stores Corporation, United States District Court for the Southern District of New York (March 31, 1987). Allied Stores agreed to pay \$25,000 as an additional civil penalty under an agreement amending a 1984 consent decree. The 1984 decree settled charges that Allied's Gertz division violated federal credit laws and required Allied to pay a civil penalty of \$122,000. Under the amendment, the Commission agreed to delete a notice requirement of the original decree and Allied agreed to pay the increased penalty.

The Avanti Group (U.S.A.) Ltd., United States District Court for the Northern District of Texas, Dallas Division (April 6, 1987). The Commission charged this Georgia based fur retailer with violating the Fur Products Labeling Act and the FTC Act by selling used fur garments as new, and by mislabeling furs. A consent decree requires the company to pay civil penalties of \$80,000.

North American Office Systems, Inc., United States District Court for the Northern District of Texas, Dallas Division (April 17, 1987). The company was ordered to pay \$60,000 to settle charges it deceptively marketed and sold photocopy supplies through a telephone "boilerroom" operation. The Commission charged the company with making repeated misrepresentations in selling the supplies over the phone to small businesses and nonprofit organizations around the country.

Walser Motors, Inc., United States District Court for the District of Minnesota (April 28, 1987). A consent decree prohibits this Minneapolis-St. Paul automobile dealer from violating federal credit laws, and may require a civil penalty of \$60,000, based on the outcome of two other car dealership litigations. The Commission charged the company with giving consumers incomplete credit information in its ads.

ACB Sales & Services, Inc., United States District Court for the District of Arizona (April 29, 1987). The court ordered this major debt collection organization to pay \$350,000 in civil penalties to settle charges it used abusive, deceptive, and unfair practices in collecting debts.

Troy Suggs Funeral Home, United States District Court for the Northern District of Texas, Dallas Division (May 18, 1987). The Commission charged this Texas funeral home and its owners with failing to give consumers information required by the Funeral Rule. A consent decree requires the owners to pay \$20,000 in civil penalties.

Robert L. Garvin, United States District Court for the Northern District of Texas, Dallas Division (July 21, 1987). A Texas car dealership and its president, Robert Garvin, were charged with violating the Used Car Rule by failing to display properly completed window stickers on used vehicles it offered for sale. Mr. Garvin agreed to pay \$20,000 in civil penalties to settle the charges.

G. B. Enterprises, Inc., United States District Court for the District of Columbia (July 27, 1987). The Commission charged this car dealership with violating the Used Car Rule. The company, which operated under the name Lee Used Ford Sales, has paid a \$25,000 civil penalty to settle charges.

Sheloon Friedrich Marketing, Inc., United States District Court for the Southern District of New York, New York City, (August 12, 1987). Seven mail order companies and three individuals agreed to pay \$600,000 in civil penalties to settle charges they violated the Mail Order Rule. The Commission charged the defendants with making misrepresentations in the sale of many nationally advertised products.

Norwest Financial, Inc., United States District Court for the Central District of California (September 25, 1987). One of the largest consumer finance companies in the country agreed to pay \$135,000 in civil penalties to settle charges it failed to give consumers information required by federal credit laws when they were denied credit.

Rocky Mountain Circulation, Inc., United States District Court for the District of Colorado, (October, 20, 1987). Dennis and Coletta Robinson, who did business as Rocky Mountain Circulation, agreed to pay \$20,000 to settle charges that they sold magazine subscriptions without providing the magazines and did not make refunds to consumers who were entitled to them under federal law.

Lady Foot International, Inc., United States District Court for the Eastern District of Pennsylvania, Philadelphia, (October 29, 1987). This shoe store franchisor was charged with failing to give potential investors important information about likely earnings and misrepresenting the kind of assistance the company would provide. Frank Fioravanti and Leon Coleman, principal officers and owners in the now defunct company, agreed to each pay a \$25,000 civil penalty.

Parfum de Paris, United States District Court for the Southern District of New York, (November 4, 1987). The Commission charged two companies selling imitation perfumes nationwide with violating the Mail Order Rule by failing to make timely shipments or refunds and failing to send proper notices when shipments would be delayed. The companies and their president agreed to pay civil penalties of \$75,000.

McCall Publishing Company, United States for the Southern District of New York (November 25, 1987). The company agreed to pay a \$400,000 civil penalty to settle charges it illegally billed consumers for magazine subscriptions that consumers did not expressly order.

U.S. vs American Hospital Supply Corp., Northern District of Illinois Eastern Division (June 5, 1987). A civil penalty litigation against the corporation was concluded with the entry of a judgment requiring American Hospital to pay \$600,000 for the corporation's violation of an order - requiring prior approval of acquisitions.

FISCAL 1987 ACCOMPLISHMENTS  
I. MAINTAINING COMPETITION

MERGERS

During fiscal 1987 there were 4,743 filings (equivalent to 2,533 transactions) with the Commission pursuant to the Hart-Scott-Rodino Premerger Notification Program. This is an increase of 31.3% over fiscal 1986. A large part of the increase occurred during the last part of calendar 1986, apparently motivated in large part by changes in federal tax laws that were to be implemented beginning in calendar 1987. The Commission issued "requests for additional information" relating to 26 transactions.

Within the general merger program, the Commission authorized preliminary injunction actions with respect to three transactions in fiscal 1987: Ingersoll Rand, Hoechst-Celanese and Invacare. (Enforcement actions with respect to mergers that fall within the jurisdiction of industry-specific Commission programs such as Energy and Health Care are reported elsewhere.) Settlement negotiations are under way with Ingersoll Rand. The Hoechst-Celanese matter was settled by consent agreement which has received final acceptance by the Commission. The consent order requires Hoechst to divest within one year either: (1) two or three Celanese plants, or (2) American Hoechst's plant. In Invacare the parties decided not to proceed with the transaction.

The Commission also issued proposed administrative complaints in two other merger transactions, L'Air Liquide S.A. and Alleghany Corp., which were settled by consent agreements. The agreement in L'Air Liquide, which has received final acceptance by the Commission, requires, inter alia, that L'Air Liquide divest within nine months: (1) certain Big Three and Liquid Air plants in Florida, New Mexico and Texas, and (2) the customer base and equipment for these plants, plus the total Liquid Air Texas customer base except for Texas Instruments. The Commission approved L'Air Liquide's divestiture of these assets to Tri-Gas, Inc. on August 17, 1987. In Alleghany Corp., a modified consent agreement is awaiting final approval by the Commission. The consent order requires Alleghany to divest within one year a Safeco title plant in Cook County, Illinois, and within 14 months, either Safeco's title plant in Los Angeles County or Alleghany's interest in the TRI plant in Los Angeles County.

Administrative trials were completed in two cases, Olin Corp. and Occidental Petroleum Company/Midcon. In Olin Corp., the administrative law judge ruled in favor of the Commission's trial staff. The case is presently on appeal to the Commission. In Occidental Petroleum Company/Midcon, post-trial briefs are pending before the administrative law judge. A third administrative case, Occidental Petroleum Co./Tenneco, is currently in litigation before an administrative law judge.

With respect to Hart-Scott-Rodino premerger notification rules, by Federal Register notice dated March 6, 1987, the Commission adopted nine of thirteen amendments to the rules that were proposed in September 1985. The changes became effective on April 10, 1987. All but one of the final rules are related to the Commission's burden reduction efforts which began in 1982. These amendments narrow the types of acquisitions that must be reported, reduce the volume of documents or information that must be filed, and clarify the meaning of certain notification rules. The other changes eliminated the reporting exemption in Section 802.70(b) for acquisitions subject to the approval of the Commission or a federal court. The Commission also rejected one proposed change for budgetary reasons and deferred action on the other three.

By Federal Register notice dated May 29, 1987, the Commission adopted another rule amendment which grew out of the original September 1985 proposal. The change, which became effective on July 3, 1987, closed substantially the so-called "partnership loophole." Previously, newly formed partnerships with assets under \$10 million that were used to acquire a company were non-reportable H-S-R transactions. As of July 3, any partnership that has a partner with a 50 or more percent interest in the partnership must report acquisitions made by the partnership that are otherwise reportable.

#### ENERGY AND NATURAL RESOURCES

The Commission continued its active involvement in maintaining competition in both petroleum and non-petroleum energy industries. During this fiscal year, several investigations were initiated or continued. In addition, the Commission authorized the Bureaus of Competition, Consumer Protection, and Economics to respond to a number of legislative requests for analysis and advice on energy competition issues.

The Commission also reviewed several significant proposed energy acquisitions under its statutory responsibilities pursuant to the Hart-Scott-Rodino amendments to the Clayton Antitrust Act, 15 U.S.C. § 18a. In one of these, DuPont/Asamera, the likelihood of anticompetitive results attributable to horizontal overlaps between the only two refineries in the Denver, Colorado area led to a Commission decision to seek a § 13(b) FTCA preliminary injunction, blocking the transaction in federal court. The acquisition was abandoned as a consequence. The Commission also directed its staff to seek a preliminary injunction to block Pacific Resources Inc.'s acquisition of Shell Oil's Hawaiian gasoline and other petroleum fuels terminaling and distribution operations because of the apparent horizontal overlaps in that market. The Commission is also continuing an administrative proceeding seeking a divestiture of certain offshore Gulf Coast natural gas pipelines that were combined into one company as the result of the MidCon/United merger.

The Commission continued its program of examining the regulatory activities of other federal and state agencies in energy markets, and examining proposed federal and state legislation in such markets. The Commission authorized the staff to offer advice on competitive effects when requested, and intervene in regulatory proceedings, when necessary or appropriate, to advocate market solutions as superior to regulatory activities, or to assess to what extent regulatory proceedings were initiated and maintained by competitors in energy industries to raise their rivals' costs and to diminish competition. The Commission approved joint comments by the Bureaus of Competition, Consumer Protection, and Economics in Georgia, California, and Nevada, at the request of state legislators, opposing state legislation requiring refiners to divest their retail gasoline stations, and so-called "below-cost" state legislation to prevent refiner- or jobber-operated gasoline stations from continuing to offer lower prices to consumers.

Finally, the Commission continued to discharge its responsibilities under the Energy Policy and Conservation Act with regard to the International Energy Program by monitoring industry meetings, providing antitrust advice to other agencies of the United States government, and preparing and issuing reports on the competitive impact of the International Energy Program to the President and to Congress. The Commission also continued to fulfill its obligations under the Deep Seabed Hard Mineral Resources Act, the National Energy Conservation Policy Act and the Power Plant and Industrial Fuel Use Act, and conducted several investigations in various resource industries.

#### HEALTH CARE

During fiscal 1987, the Commission continued its efforts to promote competition in the health care sector of our economy. The Commission was particularly active in law enforcement efforts to eliminate private and public restraints on competition in the health care industry. The Commission issued a complaint against a state association of chiropractors alleging that it had threatened a member boycott of a third-party payer in order to obtain higher reimbursement for its members. The Commission also issued consent orders against a county medical society alleging restrictions of advertising by its members and against a group of physicians in Pennsylvania alleging that they threatened to boycott a hospital as a means of forcing it not to open a competing clinic in their area. A case against a state regulatory board of optometry is currently before the Commission on appeal from an Administrative Law Judge's finding of a violation.

The Commission and its staff have also been active in investigating and enforcing the laws against anticompetitive mergers of competing health care facilities. The Commission's order against Hospital Corporation of America, issued to remedy the anticompetitive effects of its acquisition of competing

hospitals in Chattanooga, Tennessee, was upheld by the Seventh Circuit Court of Appeals and the Supreme Court. The Commission's staff has also conducted numerous investigations of allegations of efforts by health care providers collectively to coerce higher fees from third-party payers, collective activities by physicians to restrain competition from allied health professionals and alternative delivery systems, and abuse of the certificate-of-need regulatory process to exclude competitors from health care markets.

In addition to traditional law enforcement activity, the Commission's staff has provided advisory opinions and informal guidance to health care professionals seeking to insure that their proposed activities, including new forms of health care marketing and delivery, conform to the requirements of the antitrust laws. It has also provided advice and comments to the states and the public on matters involving competition in the health care field. The Commission's staff has submitted numerous letters commenting on proposed regulations governing advertising by health care professionals and has submitted its views on various issues raised by state certificate-of-need laws.

#### TRANSPORTATION

During fiscal 1987, the Commission continued its litigation of two motor carrier rate bureau cases. In New England Motor Rate Bureau, Inc., an administrative law judge found that respondents had conspired to fix prices within the states of Massachusetts, New Hampshire, and Rhode Island. He further held that their joint activities in Rhode Island were exempted from the antitrust laws by the "state action" doctrine but their activities in Massachusetts and New Hampshire were not. In Motor Transport Association of Connecticut, Inc., an administrative law judge found that respondents had conspired to fix prices but that their activities were exempted by the "state action" doctrine. Both cases are currently on appeal before the full Commission. The investigations of other motor rate bureaus have also continued. Also during this fiscal year the Commission accepted an order in settlement of its complaint charging Amerco (U-Haul) with non-price predation, including sham litigation, against a competitor. Finally, the Commission continued to monitor various taxi cab markets to determine whether opportunities exist for Commission participation either in the form of enforcement actions or competition advocacy projects.

#### COMPLIANCE

During fiscal 1987, a civil penalty litigation against American Hospital Supply Corp. was concluded with the entry of a judgment requiring American Hospital to pay a \$600,000 civil penalty; the complaint had alleged that American Hospital had made acquisitions without obtaining prior Commission approval as required by a final Commission order. Additionally, the Commission filed a civil penalty complaint against Union Carbide.

Corp. alleging that it had violated a Commission order prohibiting Carbide from entering requirements contracts whose terms exceeded one year. In the continuing civil penalty litigation in Louisiana-Pacific Corp., the district court's order remanding the matter for reopening to consider modification was appealed to the Ninth Circuit. The Commission authorized and referred to the Department of Justice for prosecution proposed civil penalty action in four cases involving alleged violations of the Hart-Scott-Rodino Act premerger reporting statute and rules. The Commission also acted on numerous petitions to modify orders and applications for approval of divestitures and acquisitions. In addition, compliance staff advised Bureau attorneys on the effectiveness of proposed remedies, and conducted investigations of possible order violations and possible violations of the Hart-Scott-Rodino premerger reporting statute and rules. --

#### INTERNATIONAL ANTITRUST

During fiscal 1987, the international antitrust program was active in a total of nineteen full phase and initial phase investigations involving such matters as: possible horizontal price fixing in formal wearing apparel, melamine, imported and domestic semiconductor chips, aluminum electrical wire, fresh-cut flowers and imported small gasoline engines; possible attempted monopolization of the market for melamine; and potential anticompetitive restraints resulting from proposed transnational mergers involving manufacturers of hydraulic cranes, wood pulping machinery, and sport utility vehicles and light trucks.

Through a total of sixteen projects, the international program has been active in a variety of intervention matters and international liaison activities involving transnational competition and antitrust law enforcement issues impacting upon the domestic economy. For example, the Commission authorized the staff to intervene in several trade law proceedings involving such products as imported specialty steel products, photocopier supplies, 256K computer chips, and softwood lumber; and to provide legal and economic analyses which sought to identify and quantify the economic costs to consumers and the national economy of trade relief remedies requested. Under its international liaison activities, the Division maintained full compliance with the notification provisions of bilateral and multilateral international antitrust cooperation agreements and understandings with foreign nations which serve to minimize international law and policy conflicts, as well as facilitate United States' antitrust law enforcement efforts involving international commercial transactions and/or the acquisition of evidence located abroad. In addition, the Commission, in cooperation with the Department of Justice and the State Department, continued its participation on the OECD Committee of Experts on Restrictive Business Practices, and the interagency Committee on Foreign Investment in the United States (CFIUS).

#### HORIZONTAL RESTRAINTS

During fiscal 1987, the Commission continued to devote substantial resources to eliminating anticompetitive agreements among competitors, especially among professionals. The Commission has focused its efforts on state boards' and private professional and trade associations' regulations that may have the purpose, or the effect, of fixing or stabilizing prices or reducing output, thus causing substantial injury to consumers. In implementing its program against anticompetitive horizontal restraints, the Commission has used various means: intervention, advocacy, cooperative efforts resulting in voluntary compliance, consent orders, and litigation.

This year, the Commission issued consent orders in partial settlement of two cases: Detroit Motor Vehicle Dealers involved an alleged conspiracy among 50 Detroit-area motor vehicle dealerships and their associations to restrict newspaper advertising; and Ticor Title Insurance Company involved alleged price fixing. There are six respondents in Ticor; the Commission's consent order pertains to First American Title Insurance Company and the matters involving the remaining five respondents are on appeal. The Commission also obtained voluntary agreements from 24 state professional licensing boards to change their regulations to ensure future compliance with the antitrust laws. In addition, the Commission authorized the staff to engage in advocacy on behalf of consumers in comments to 19 professional regulatory boards, state legislatures, and private associations. Of these, 11 involved the legal profession; four the pharmacy profession; two the real estate broker profession; one the accounting profession; and one the funeral industry.

#### MARKET POWER

During fiscal 1987, the Commission has continued investigations into possible abuses of market power, including possible abuse of the patent process and other practices that may raise rivals' costs as a means to destroy competition. The Commission accepted a consent agreement settling its charge that Amerco Inc., et al. (U-Haul) had acted unfairly in the bankruptcy of Jartran for the purpose, and with the effect, of delaying or preventing reorganization of that company as a viable competitor in the one-way trailer rental market.

The Commission staff is examining additional circumstances in which non-price predation may be an effective anticompetitive tool. Additionally, although they seldom constitute violations of prevailing legal standards, Commission staff carefully considers all complaints it receives alleging predatory pricing.

#### DISTRIBUTIONAL RESTRAINTS

The Commission issued a consent order against Max Factor & Co. which settled Robinson-Patman Act charges that Max Factor

practices discriminatory promotional allowances by certain purchasers of its cosmetic products. The Commission staff also is considering whether it would be desirable to revise the Fred Meyer Guidelines, which advise businesses regarding discriminatory advertising and promotional allowances. The Commission continued old investigations, and initiated new inquiries, involving other possible distributional restraints, such as unlawful refusals to deal, dealer termination, and interference with a rival's source of supply.

#### EVALUATION, PLANNING AND DEVELOPMENT

During fiscal 1987, the staff continued its participation in the Commission competition advocacy program. The staff wrote, and the Commission approved for filing, several briefs, analyses, and comments in a program designed to encourage and foster competition wherever the Commission's expertise might be useful. Briefs were filed before various tribunals, and, after invitation, comments were submitted to numerous federal, state, and local government entities. These comments concerned a wide range of issues, including the regulation of professions, taxicab licensure, certificate of need requirements for health care facilities, restrictions on credit card interest rates, and the regulation of public utilities.

Work has also continued on a variety of ongoing responsibilities, including evaluation of current investigations, management of the staff's efforts in competition advocacy, providing guidance to the public regarding Commission policies, research and analysis of significant antitrust issues, and supplying information to management on Maintaining Competition Mission activities.

#### FOOD

During fiscal 1987, the staff concluded several investigations in the soft drink industry. Administrative litigation continued in The Coca-Cola Company. The Commission also authorized the staff to seek a preliminary injunction against an acquisition of a supermarket division by a supermarket chain in the Supermarket Development Corporation/Safeway matter. A consent order to divest was subsequently accepted by the Commission for public comment. Investigations of mergers and of other activities that may violate the Clayton Act, the FTC Act, and the Robinson-Patman Act continue in the soft drink and food retailing industries.

Work on the retail grocery pricing study is continuing. The study examines the impact of new retail formats on price competition among retail grocers. In addition, the staff has filed comments in Maryland and Nevada, at the request of state legislators, opposing state legislation as likely to lessen competition and result in increased prices to consumers.

## II. CONSUMER PROTECTION

Enforcement

In fiscal year 1987, \$2,213,000 in civil penalties were obtained in matters involving violations of Commission rules and federal labeling acts, and over \$5.2 million in consumer redress was ordered in three matters involving the Franchise Rule. The nation's largest franchisor of bookkeeping, accounting, and tax services, Comprehensive Accounting Corp., was charged with violating the Franchise Rule by misrepresenting the earnings and profits of its franchisees. A consent decree requires the company to pay consumer redress, expected to reach \$3.5 million, and prohibits it from making false claims in the future.

The sellers of "Mr. Tuff-Tire" franchises were ordered to refund \$1.4 million to consumers who bought 87 franchises, paying amounts ranging from \$2,000 to \$98,000. The complaint charged that the sellers misrepresented the annual earnings of the franchises and did not provide pre-sale information required by the Franchise Rule. The Tuff-Tire franchisors were also ordered to pay \$870,000 in civil penalties. Control Technology was ordered to pay \$306,400 in consumer redress and \$430,000 in civil penalties for allegedly misrepresenting the earning potential of its energy-management systems franchises and also misrepresenting the services it would provide franchisees.

Three companies were charged with violating the Mail Order Rule. Raffoler Ltd., a mail order company selling inexpensive items under several different company names, agreed to pay \$150,000 in civil penalties and not to violate the rule in the future. The company was charged with not shipping merchandise on time and not offering refunds to consumers. PC Network paid civil penalties of \$61,000 to settle charges it failed to give customers the option to cancel orders that were delayed and failed to honor guarantees promptly. The company is a nationwide mail-order seller of computer hardware and software which offers near-wholesale prices through membership programs. FBS, a/k/a French Boot Shop and McBe Shoes, agreed to pay \$32,000 in civil penalties. This marketer of clothing is prohibited from deeming orders cancelled and offering a company credit for purchases of alternative merchandise, and from violating the Mail Order Rule.

Several other civil penalty consent decrees were entered in district court, including settlement of charges in a matter involving Sears, Roebuck and Co. and Kellwood Co., a Sears supplier. The companies will pay civil penalties of \$200,000 each to settle charges they misrepresented the amount of down filling in garments. Four thermal insulation companies, including TS Industries, were charged with misrepresenting the effectiveness of thermal insulation products. The companies paid \$125,000 in civil penalties and are required to operate a Commission-approved quality control program for five years and comply with the provisions of the R-Value Rule.

The Avanti Group (U.S.A.) Ltd. agreed to a \$80,000 civil penalty to settle charges it violated the Fur Products Labeling Act and the FTC Act. The Georgia-based fur retailer is prohibited from violating the Fur Act in the future, including all requirements relating to labeling, invoicing, and recordkeeping. Troy Suggs Funeral Home, and its owners, paid \$20,000 in civil penalties to settle charges it failed to provide consumers with information required by the Funeral Rule. Similar charges were also filed against two other funeral providers, Dudley Hughes Funeral Co. and Crane-Weiland Funeral Directors.

Two consent decrees settled charges of failing to display properly completed window stickers on used vehicles offered for sale, as required by the Used Car Rule. Robert L. Garvin, former president of a Texas car dealership, paid \$20,000 in civil penalties and G. B. Enterprises, Inc., a District of Columbia car dealership, paid \$25,000 in civil penalties. A complaint was filed against Crystal Ford also charging violations of the Used Car Rule.

A 1979 consent order with Beneficial Corp., involving the company's tax preparation services, was modified by deleting or revising several requirements. Provisions of a 1976 consent order with Glendinning Associates, concerning restrictions on contests the company prepares and sells, were altered or replaced, and a prohibition against running skill contests that are not based on "matters of established provable fact" was lifted. A 1979 consent order with Ford Motor Co. and Ford Motor Credit Co., establishing procedures for the sale of repossessed cars and light trucks, was also modified by replacing or eliminating certain provisions.

The Commission took action in several of the rules enforced under this program. The television advertising disclosure provisions of the Home Insulation (R-Value) Rule were deleted, bringing the rule into compliance with a federal court order. Additional rulemaking proceedings on the deleted provisions will not be held.

A study of the Appliance Labeling Rule, comparing the knowledge and attitudes about energy use of consumers who had recently bought either clothes washers or refrigerators, was released. Results suggest that energy data is becoming an important factor in consumers' decisions about which brand of appliance to purchase. The latest figures for average unit energy costs for electricity, natural gas, heating oil, and propane were incorporated into the Rule.

A rulemaking proceeding to adopt amendments to its Games of Chance Rule was initiated after the Commission received a number of requests for waivers from current provisions. The Rule requires promoters operating games in food stores and gasoline stations to provide detailed information on the number of prizes available, the odds of winning each prize, the geographic areas covered by the game, and the number of participating retailers.

Based upon reviews required under the Regulatory Flexibility Act, the Commission determined not to amend the Negative Option

Rule or the Franchise Rule, and to propose only nonsubstantive modifications to the Cooling-Off Rule. An exemption from the Franchise Rule was granted to Austin Rover Cars of North America.

Staff guidelines to help used car dealers comply with the Used Car Rule were published. The petitions of 65 auto leasing companies and Alamo Rent-A-Car for exemption from the rule were denied.

#### Marketing Practices

Reliance Wood Preserving and its owner, and McCoy Industries and Reliance Treated Wood, agreed not to make misrepresentations about the flame-retardant value of "Flameguard" wood. They also agreed to notify purchasers that some of the wood may not meet established safety standards. Aquanautics Corp., manufacturer of a marine survival suit, agreed to notify owners and users of its Imperial Model 1409 survival suit of the possible failure of the suit. The Commission charged the product had a safety defect that was potentially life threatening. C&D Electronics agreed not to sell its cable television decoders to unauthorized persons in the future. The agreement requires the company to state in its catalogs and sales materials that the unauthorized use of cable TV equipment is against the law.

The company that produces and sells lighter-to-lighter automobile battery chargers, Plas-Tix USA, agreed not to make false, misleading, and unsubstantiated claims about its product in the future. The company was charged with falsely claiming that its "Safe-T-Start" product could restart auto batteries as quickly as jumper cables. International Masters Publishers, the mail order seller of "My Great Recipes," agreed to honor cancellation and return requests in a timely manner and not to misrepresent its return and cancellation policies.

An adjudicated consent agreement accepted subject to final approval requires Volkswagen of America to establish an arbitration program for owners of certain Volkswagens and Audis with faulty valve seals and other oil consumption-related problems. The settlement could involve one million cars with eligible repair costs of between \$125 to \$2,000 each.

Two companies, involved in the nationwide marketing and sale of photocopy supplies to small businesses and nonprofit organizations through telephone "boilerroom" operations, agreed not to make future misrepresentations, to stop certain billing practices, and to make specified disclosures to potential buyers. North American Office Systems was ordered to pay \$60,000 in civil penalties to settle these charges and Copy Data Systems was ordered to pay \$300,000 in consumer redress. The president of Copy Data also agreed not to bill or collect any of the approximately \$400,000 in outstanding accounts receivable due to the company.

A complaint was filed against AMREP Corp. to obtain redress for the over 20,000 customers who spent more than \$35 million on

undeveloped land in New Mexico and Florida. AMREP was charged with misleading purchasers about the investment value and resale market of the land.

A complaint was filed against another land sales company, Southwest Sunsites, seeking redress for consumers who bought undeveloped land in Texas and continued to make payments on the land as a result of false and misleading claims. The Commission had previously issued an order requiring respondents to cease and desist their unfair and deceptive practices.

A court judgment was filed settling charges that Theodore Weiswasser misrepresented vacation timeshare interests in Hawaii, Lake Tahoe, Nevada, and the state of Washington. The settlement prohibits Weiswasser, currently serving a three-year prison term for criminal contempt, from having any further connection with timeshare businesses.

The Commission filed a complaint against Amy Travel Services, its principals, and affiliated corporations seeking injunctions against the allegedly deceptive sale of vacation packages, and redress for approximately 150,000 consumers. The court issued a temporary restraining order, an asset freeze, and a preliminary injunction in this matter.

The Commission issued a final order upholding an Administrative Law Judge's ruling in the Orkin Exterminating Co. case. The Commission ruled that Orkin unfairly raised the annual renewal fees for customers whose contracts called for fixed annual fees, and ordered the company to roll back those fee increases.

The Commission took action in two warranty-related rulemakings. The Mobile Home proceeding was terminated based on evidence that the rule would cost the average mobile home buyer more than twice as much as it might offer in benefits and that most mobile home buyers appear to receive warranty service within a reasonable time without the rule. The Pre-Sale Availability of Written Warranty Terms Rule was modified, giving retail merchants greater flexibility in meeting their statutory requirement to make warranties available to consumers before a sale.

#### Advertising Practices

The Commission issued administrative complaints in two advertising matters. North American Philips Corp. was charged with making false and unsubstantiated claims for its Norelco brand "Clean Water Machine." The complaint charged that the company claimed the machines would make tap water clean or cleaner, when in actuality the machines' filters added a chemical that is potentially hazardous to consumers' health. The Commission charged Kraft, Inc. with misrepresenting the calcium content of its Kraft Singles product in advertisements. The complaint charges the company with falsely claiming in advertisements that a slice of Kraft Singles has the same amount of calcium as five ounces of milk, and contains more calcium than most imitation cheese slices.

Sheldon Friedrich Marketing, and nine other defendants, agreed to pay \$600,000 in civil penalties for violating the Mail Order Rule. The defendants also agreed to a permanent injunction settling charges they made misrepresentations in the sale of many nationally advertised products, ranging from copper cookware to ceiling fans.

Consent agreements were accepted in each of three program areas: general advertising, food and drug advertising, and energy advertising. GCS Electronics agreed not to make misleading claims about the capabilities of its portable Mark II Executive Phone. The complaint charged that GCS did not have a reasonable basis for claims that the Mark II, selling for approximately \$4,000 to \$5,000, has a usable range of up to 50 miles and that the user can listen and speak simultaneously, as on a conventional phone. Cosmo Communications Corp., agreed not to misrepresent the capabilities of its telephones and must disclose that its touch-pulse telephones do not generate tones, but produce only pulses like rotary dial telephones.

Puritan-Bennett Aero Systems, a seller of fire- and smoke-protection masks, was charged with deceptive advertising for failing to disclose the masks do not filter carbon monoxide. A consent agreement, accepted subject to final approval, prohibits the company from making deceptive advertising claims for such products. A manufacturer and distributor of counter-top water distillers, New Medical Technologies, agreed, subject to final approval, not to misrepresent the ability of its devices to provide pure water. The company also agreed not to falsely represent that such devices are approved or endorsed by any person or organization.

Viobin Corporation, a subsidiary of A.H. Robins, agreed not to make false or unsubstantiated claims about its wheat germ oil products. Viobin must inform consumers that the benefits claimed in its long-running advertising campaign are not supported by scientific evidence. In a final consent agreement, Walgreen Co. agreed not to make unsubstantiated claims for Advil or other analgesic products. The complaint charged that the company did not have a reasonable basis for claims that Advil is an effective anti-inflammatory drug for arthritis and can be substituted for prescription forms of ibuprofen, the product's active ingredient.

An adjudicated consent agreement with Buckingham Productions, marketer of the "Rotation Diet" and several related weight-reduction plans, settled charges it made false, misleading, and unsubstantiated claims in advertising mail-order programs and products. Jerome Milton, Inc., maker of Shane toothpaste, is required to have adequate substantiation for claims of superiority in reducing plaque and efficacy in curing or alleviating gum problems associated with gingivitis and periodontitis, by an adjudicated consent agreement subject to final approval.

The Commission charged Solar Age Industries with falsely claiming its solar energy heater, retailing from \$1,095 to \$3,595,

could significantly reduce residential heating fuel consumption and would pay for itself in a few years. In a final consent agreement, the company agreed not to misrepresent the capabilities of the heater or any other solar product. An adjudicated consent agreement with Electronic Systems International settles charges that the company falsely advertised that consumers could save from 15 to 40 percent on their heating and air conditioning bills by installing duty cycler energy control devices.

An Administrative Law Judge ruled that Removatron International Corp., the largest maker of high-frequency, tweezer type hair removal devices, made false and unsubstantiated advertising claims that the product could permanently remove hair. The ALJ's initial decision, which upheld a 1985 FTC administrative complaint, found that the company's claims not only caused substantial financial injury but also profound emotional injury to Removatron patrons. Customers paid beauty salons and others \$10 to \$35 per hair removal session, with some customers having spent as much as \$3,000 to \$6,000 on Removatron treatments over several years. The ALJ's initial decision is on appeal to the Commission.

The Commission closed its in-house Cigarette Testing Laboratory due to the cost of maintaining the facility and the fact that the same information is available from other sources. The cigarette laboratory was set up in 1966 to test the tar and nicotine levels of most brands of cigarettes. Since 1971 the cigarette industry has voluntarily included tar and nicotine ratings in all advertisements. For the past several years, the industry has maintained a testing program that duplicated the Commission program.

The Commission issued final regulations to implement certain aspects of the Smokeless Tobacco Act. The Act requires manufacturers, packagers, and importers of smokeless tobacco to display health warnings on packaging and in most advertising, and submit plans to the Commission specifying the method used to rotate, display, and distribute the required warnings. After the issuance of the regulations, the Commission approved a number of plans submitted by industry members.

#### Credit Practices

Civil penalty judgments totaling \$815,000 were ordered in cases involving violations of credit-related statutes.

A major debt-collection organization, ACB Sales and Services, was ordered to pay a \$350,000 civil penalty as a result of charges it used abusive, deceptive, and unfair practices in collecting debts. The company was charged with violating a 1974 order and the Fair Debt Collection Practices Act. Central Adjustment Bureau, a debt collection agency, was ordered to pay a civil penalty of \$150,000 for violating the Fair Debt Collection Practices Act by making false threats of legal actions and harassing consumers.

Landmark Financial Services, a Maryland-based consumer finance company, paid a \$90,000 civil penalty to settle charges it knowingly discriminated against elderly credit applicants because of their age. Norwest Financial, an Iowa-based consumer finance company, paid a \$135,000 civil penalty for allegedly failing to provide disclosures to consumers required by federal credit laws. Allied Department Stores paid \$25,000 as an additional civil penalty under an agreement amending a 1984 consent decree. The original decree settled charges that Allied's Gertz division violated federal credit laws.

Two automobile dealers and their owners, Hopkins Dodge Sales and Freeway Dodge were prohibited by a federal court from violating the Truth in Lending Act. The judge found that the dealers' credit advertisements repeatedly violated the Act. The Commission, through the Department of Justice, appealed an earlier ruling by the court that the dealers were not liable for a civil penalty for the violations.

Another automobile dealer, Walser Motors, was prohibited under a consent decree from violating federal credit statutes, settling charges it violated the Truth in Lending Act by giving consumers incomplete credit information in its ads. The dealer may be required to pay a civil penalty of \$60,000 depending on the result of the appeal litigation in the Hopkins Dodge Sales and Freeway Dodge cases.

Jeffrey K. Williams, owner and officer of Coast Credit Recovery, Inc., paid a \$5,000 civil penalty to settle charges he violated the Fair Debt Collection Practices Act in collecting consumer debts and the FTC Act in collecting commercial debts. John Liberto, owner of a mail-order credit company, Credit-Masters, agreed to a consent decree prohibiting him from misrepresenting his services. The decree requires Liberto to provide redress in the form of public service announcements that warn consumers about potentially deceptive credit services.

A final consent agreement with J.C. Penney Co. settles charges that the company filed debt-collection cases in courts far from where customers lived, unfairly depriving those persons of their right to defend themselves. The nation's third largest retailer has agreed not to bring any debt-collection cases in judicial districts other than those in which a customer lives or signed the disputed sales contract.

The FTC filed a complaint against World Travel Vacation Brokers charging the company with deceptively marketing its \$29 vacation certificates to Hawaii. The Commission requested preliminary and permanent injunctions barring the defendants from violating the FTC Act and Truth in Lending Act in the future and ordering them to make refunds to consumers.

#### Service Industry Practices

In federal court actions brought under this program, the Commission sued forty-nine corporations and individuals for allegedly fraudulent sales of \$271 million of worthless or overvalued products or services to more than 39,000 consumers. The Commission acted to halt the challenged practices and permanently enjoin similar future action by the defendants. Along with halting the fraudulent practices, the Commission obtained court orders directing the defendants to provide redress of more than \$12 million, in cash or debt cancellation, for aggrieved consumers.

The eleven defendants named in the Trans-Alaska Energy Corp. complaint allegedly defrauded 1300 consumers out of \$12 million. The Commission succeeded in obtaining an order permanently restraining continuation of this telemarketing scheme which induced consumers to invest in worthless oil and gas leases on land in Alaska and Wyoming. Trans-Alaska, related companies and six officials were ordered to pay \$2.1 million into a fund to redress consumers. A settlement with another defendant in this matter, Alan F. Goda, required him to pay an \$100,000 civil penalty.

Alaska Land Leasing, Federal Lease Filing Corp. and nine other corporate and individual defendants were permanently enjoined from fraudulently selling oil and gas leases in Alaska which have little or no value. The defendants sales were approximately \$18 million. Consumers will receive \$1,980,000 in refunds, as part of a settlement of FTC charges.

Standard Financial Management Corp., which does business as New England Rare Coin Galleries, was charged with misrepresenting the grade, quality, and value of coins sold to consumers. The company, which had sales of \$30 million, and two individuals were permanently enjoined from making misrepresentations about the grade, quality or value of coins sold and requires them to make affirmative disclosures about coin grading and the investment value of rare coins. The settlement also provides \$1.5 million for consumer redress.

An agreement with five defendants in the matter of Rare Coin Galleries of America, permanently enjoins them from future misrepresentations and requires that they transfer their personal assets to a bankruptcy trustee for payment of creditors, including defrauded consumers. The agreement settles charges that the coin dealers, who had sold \$15 million in allegedly rare coins, misrepresented the grade and investment value of the coins they sold.

The Commission obtained a temporary injunction barring the three defendants in the Security Rare Coin & Bullion Corp. matter from misrepresenting the value and investment potential of coins it sells. The Commission is asking the court to order consumer redress and permanently enjoin defendants, which have sold \$160 million to over 20,000 consumers, from using the allegedly deceptive sales methods.

The Commission filed a complaint charging Numis Group, and four other defendants, with misrepresenting the value and

investment potential of its coins. The defendants market coins to consumers through telephone sales and written promotional materials. The staff estimates the defendants' sales of coins total several million dollars per year, with many customers investing between \$10,000 and \$20,000.

As part of a settlement with American National Cellular (ANC), the court ordered defendants not to mislead potential investors about the chances of winning federal lotteries for the right to build cellular telephone systems and the profits to be made from owning and operating such a system. The defendants had 5,500 customers and total sales of \$22.9 million. The settlement also provided consumers redress exceeding \$5 million of which \$1 million is cash. In addition, the Commission successfully prosecuted ANC's former president, Michael Godfree, for criminal contempt of a court order freezing his assets. Godfree was also ordered to pay \$28,000 in restitution. Defendants Charles M. Fischer and Jerald Woods pled guilty to criminal contempt charges for violating the injunction.

Five defendants in the Volcano Mining Project matter were charged with selling \$2 million in worthless gold mining ventures to 700 consumers. The complaint charges that the defendants told consumers that an investment of \$9,600 in the rights to unmined gold and silver ore would return between \$45,000 and \$100,000. Several of the defendants settled the allegations and agreed to pay \$65,000 into a consumer redress fund.

A complaint was filed against nine defendants including Atlantex Associates, a Miami-based "boilerroom" selling partnerships in an oil and gas drilling operation. The complaint charges defendants with falsely claiming they could guarantee 2,000 investors long-term, low-risk, high-level income from the drilling partnerships. Estimated sales are \$12 million.

The Commission charged Rainbow Enzymes, and nine other defendants, with misleading consumers into paying \$3,000 each to participate in manufacturing a cleaning fluid, and making false claims about the quality, composition and value of their product. The complaint also charged the defendants with falsely claiming that major companies and government agencies have endorsed the cleaner. The court issued a temporary restraining order, approved the appointment of a temporary receiver, and froze more than \$1 million contained in defendants' bank accounts.

In the Ophthalmic Practice rulemaking, the Commission published the final staff report and the presiding officer report for public comment. The proposed rule would prohibit certain state restrictions on optometrists' commercial practices. In proposing the rule in 1984, the Commission said it would examine whether the state bans injured consumers by raising prices and decreasing the availability of vision care without increasing or affecting quality of care provided.

The Commission also published the final staff and presiding officer reports in the Retail Food Store Advertising Rule amendment

proceeding. The current rule, adopted in 1971, requires grocers to stock advertised items in sufficient quantities to meet reasonable anticipated demand. Under the amendments, grocers could comply with the rule by offering rainchecks or substitutes of comparable value when they sell out of advertised items. An alternative proposal would allow grocers to advertise that items are available only in limited quantities or are only available at some store locations.

#### Consumer and Business Education

The Office of Consumer and Business Education plans and develops education programs aimed at providing information to consumers and industry on important Commission programs, statutes, rules and decisions. This allows for informed consumer choice and competitive business practice to function freely in the marketplace. The consumer and business education program is a cost-effective way of obtaining compliance with the law.

In fiscal year 1987, the Office developed and distributed four television video news releases. Produced as cooperative efforts, one video was done with the American Association of Retired Persons (AARP) concerning financial counseling; another with the Mortgage Bankers Association of America addressing mortgage financing; a third with the National Association of Attorneys General involving telemarketing investment fraud; and a fourth with the American Society of Travel Agents regarding vacation fraud. At the end of the fiscal year, a fifth news video concerning home equity credit lines was in production. In conjunction with each news video, free consumer brochures on the subject were marketed.

The Office also developed and distributed more than 25 new and revised consumer publications, many in joint efforts with other federal agencies and private sector organizations. For example, the Office worked with the Associated Credit Bureau, Inc. and the National Foundation for Consumer Credit on the subject of improving consumer credit ratings; with Citibank N.A. on the subject of lost or stolen credit cards; with AARP on the issue of credit and older Americans; and with the U.S. Office of Consumer Affairs and the Consumer Information Center (CIC) on the subject of buying and borrowing.

In addition, the Office developed and distributed four business publications, involving subjects such as writing readable credit forms, complying with the Commission's credit practices rule, and the federal warranty law. Approximately 1.7 million copies of consumer and business publications were distributed by the Commission, and hundreds of thousands more were distributed through cooperating public and private organizations, such as CIC and AARP.

### III. ECONOMIC ACTIVITIES

The primary mission of the Federal Trade Commission is to enforce Federal antitrust and consumer protection statutes. During Fiscal Year 1987, the Bureau of Economics provided continuing economic support to the Maintaining Competition and Consumer Protection Missions, provided support to the Commission in Part III matters, provided advice on the impact of governmental regulation on competition, and conducted research into the functioning of the industrial economy.

In the antitrust area, staff economists offered advice on the economic merits of alternative antitrust actions. Situations where the marketplace performed reasonably well were distinguished from those situations where competition in the marketplace might be enhanced by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding from the beginning, and to devise remedies that would negate or eliminate any anti-competitive effects of market activity.

In the consumer protection area, economists analyzed market data to determine the extent of consumer injury and to provide estimates of the costs and benefits of alternative policy approaches. Potential consumer protection actions were evaluated not only for their immediate impact, but also for their longer run effects on price, product variety, and consumer welfare.

Although the FTC is primarily a law enforcement agency, it is also charged with the responsibility for collecting, analyzing, and publishing information about the nation's business activity. Much of this work is undertaken by staff economists assigned to work in the Economic Activities Mission. In Fiscal Year 1987, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation. Research economists were also made available to provide economic advice to Commissioners.

#### Antitrust

In the antitrust area, staff economists participated in all investigations of potential antitrust violations and in the presentation of cases in support of complaints. Economists occasionally served as expert witnesses in cases in litigation. Economists also advised Commissioners on general antitrust matters. These activities absorbed the bulk of the Bureau's resources devoted to support of the Maintaining Competition Mission.

The continuing high level of merger enforcement activity during FY 87 caused delays in many antitrust research projects. Despite this, six major economic studies, ten papers in the working paper series, and eleven

miscellaneous study reports were completed during the year. Major reports in the antitrust area included: an evaluation of petroleum import tariffs; a study competition among hospitals; and reports on restrictions on the use of dental auxiliaries, international competitiveness and the trade deficit, and the potential for tax gains as a merger motive. Other studies which resulted in reports published during FY 87 included ones on: mergers and systematic risk, and the use of price correlations in market definition.

#### Consumer Protection

Staff economists also participated in investigations of potential violations of consumer protection laws, and contributed to various rulemaking and policy development activities. In addition, there was considerable progress made in a number of projects despite staff shortages caused by attrition and reassignment of staff to other activities. Publications included reports on: prices and consumer information; advertising and product quality; and buyers and entry barriers.

#### Regulation

In the regulation area, economists continued to participate in a program of commenting on the competitive effects of various regulatory activities. A major report examined state regulation of takeovers and shareholder wealth.

#### Line of Business

Several projects using line of business data were completed during Fiscal Year 1987. These projects included studies of: unionization and industry R&D intensity; innovation and R&D investment; and profit ratios and concentration in manufacturing.

Mr. SMITH. We have the Chairman of the Federal Trade Commission, Daniel Oliver, with us.

Mr. Oliver, please proceed.

Mr. OLIVER. Thank you, Mr. Smith.

I have a prepared statement which I would like to submit for the record, if I may, and summarize it briefly.

Before that I would like to introduce the new Executive Director, Mr. Robert Walton, who has been Executive Director now for about a week. Other senior staff members are here to answer questions as necessary.

#### GENERAL STATEMENT

Mr. Chairman, I am pleased to appear before you to discuss the Federal Trade fiscal 1989 budget request. As you know, Congress has charged the Commission with protecting the American public from unfair methods of competition and unfair or deceptive acts or practices in the marketplace. The Commission believes the fiscal 1989 budget that we are discussing today will permit the Federal Trade Commission to meet this responsibility fully.

The Federal Trade Commission's budget request for fiscal 1989 is for \$67,503,000 and 987 workyears. Our 1988 appropriation totals \$66,243,000 and also funds 987 workyears. Thus our 1989 request reflects no change in overall staffing but a dollar increase of approximately \$1.2 million. \$700,000 of this amount is needed for increased pay and retirement costs while the remaining \$500,000 is needed to fund miscellaneous inflationary increases.

Mr. Chairman, I am pleased to report that for fiscal 1989 our space rent increased only 1.2 percent. Resources for 1989 will continue to be directed against business practices that truly harm competition and injure consumers such as horizontal restraints of trade and deceptive or fraudulent practices. The Commission will continue to work directly with the business community to achieve voluntary compliance through education and articulation of our policy.

#### MISSION DETAILS

In maintaining competition, the budget for fiscal 1989 reflects a 2 workyear decrease from fiscal 1988. The \$30.6 million and 447 workyears we propose be allocated to the maintaining competition mission will provide sufficient enforcement resources to pursue aggressively practices that harm the competitive marketplace.

The consumer protection mission budget for fiscal 1989 contains a 5 workyear increase from fiscal 1988 levels. The figure \$3.1 million and 486 workyears that we propose be allocated to this mission will allow us to obtain our goal of improving market performance so that consumers are better able to make informed choices.

Finally, the economic activities mission budget contains a request for 54 workyears, or a 3 workyear drop from fiscal 1988 levels. The \$4.3 million allocated to this mission will be used to provide economic analysis for antitrust and consumer protection investigations and rulemaking and stress the Commission's traditional emphasis on independent analysis and reporting on important issues concerning the economy.

**REGIONAL OFFICES**

In fiscal year 1987, the Commission approved a plan to strengthen its regional offices. This 3 year plan would restore prior years' cuts in the regions by transferring headquarters' workyears to the regions. Thus, the Federal Trade Commission's fiscal 1989 budget request reflects an increase of 23 workyears for the regions.

**AUTHORIZATION**

As you know, our authorization legislation expired at the end of fiscal 1982. A Federal Trade Commission reauthorization bill was passed by the Senate in April of 1987 and by the House in October of 1987. I understand that conferees have been named for both the House and the Senate, but no date has been set for the conference.

In conclusion, I feel that the resource level proposed for fiscal year 1989 of \$67.5 million and 987 workyears is adequate for the Federal Trade Commission to meet its congressional mandate.

That completes my opening remarks, Mr. Chairman. I will be happy to respond to any questions.

[The prepared statement of Mr. Daniel Oliver follows:]

PREPARED STATEMENT  
OF  
DANIEL OLIVER  
CHAIRMAN  
FEDERAL TRADE COMMISSION  
BEFORE THE  
SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE,  
THE JUDICIARY, AND RELATED AGENCIES  
OF THE  
COMMITTEE ON APPROPRIATIONS  
U.S. HOUSE OF REPRESENTATIVES

MARCH 28, 1988

Mr. Chairman and Members of the Subcommittee: I am pleased to appear before you today to discuss the Federal Trade Commission's fiscal 1989 budget request and to answer your questions.

As you know, Congress has charged the Commission with protecting the American public from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. Thus, the Federal Trade Commission has an ongoing responsibility to ensure that American consumers are able to enjoy all the advantages of a vigorously competitive market -- free of unfair, fraudulent, and deceptive practices. With these resources, the Federal Trade Commission can continue to meet this important responsibility.

Fiscal 1989 Budget Request

The FTC's proposed budget for fiscal 1989 represents the same level of workyears as appropriated for the agency in 1988. The agency's fiscal 1989 request totals \$67,503,000 and 987 workyears. This funding level is 1.9 percent over the agency's fiscal 1988 appropriation of \$66,243,000. This dollar increase between fiscal 1988 and 1989 of \$1,260,000 is needed to fund

annualized pay and retirement cost and to pay for selected inflationary price increases over which the agency has no control.

As in prior years, resources for fiscal 1989 will continue to be directed against business practices that truly harm competition and injure consumers. In fiscal 1989, the Commission will continue to work directly with the business community to achieve voluntary compliance through education and articulation of policy. In addition, a case-by-case enforcement approach coupled with advisory efforts will continue to be the primary method of enforcing the law for the Commission.

The Commission's fiscal 1989 budget requests funding for the agency's three missions as follows: Maintaining Competition - \$30.6 million and 447 workyears; Consumer Protection - \$33.1 million and 486 workyears; and Economic Activities - \$3.8 million and 54 workyears.

#### Maintaining Competition Mission

The Maintaining Competition Mission for fiscal 1989 reflects a reduction of two workyears from fiscal 1988. This drop in mission workyears results from headquarter resources being transferred to the regions. Among other things, the \$30.6 million dollars and 447 workyears we propose be allocated to the Maintaining Competition Mission will permit the Commission to:

1. Challenge anticompetitive mergers that could lead to higher prices, restricted production, diminished quality, or other harms to consumers.
2. Investigate alleged restrictions on competition in the delivery of health care services, a major sector of the economy that has been characterized for many years by rapidly rising consumer prices.
3. Continue our emphasis on finding and eliminating restraints among direct competitors that raise or maintain prices above competitive levels or otherwise harm consumers.
4. Assure compliance with all outstanding Commission orders while also reviewing selected orders to ensure they still promote the procompetitive environment that is central to the Commission's legal mandates.
5. Render advisory opinions, to increase business conformance with the laws we enforce.
6. Respond to requests from Congress for our assessment of the competitive impacts of proposed legislation.

7. Articulate the competitive consequences of proposed policy changes contemplated by government agencies.

#### Consumer Protection Mission

The Consumer Protection Mission for fiscal 1989 reflects a five workyear increase from fiscal 1988. This change is the result of the Commission's decision to increase regional offices staffing. These additional workyears are allocated among all the substantive programs. The \$33.1 million and 486 workyears proposed for this mission will allow us to:

1. Target areas where the market is slow to react resulting in substantial consumer injury -- particularly on cases involving fraud, or deceptive sales or marketing practices, false or deceptive advertising, and credit law violations.
2. Work closely with both state and federal agencies to analyze the effects of their rules and regulations on consumers, and to share information necessary for effective law enforcement.
3. Work aggressively to educate consumers of their rights and businesses of their responsibilities under the consumer protection rules and orders.
4. Continue litigation, investigations and rule-related activities and monitor compliance with existing laws, rules, and orders.

#### Economic Activities Mission

The Economic Activities Mission budget for fiscal 1989 totals 54 workyears, which reflects a three workyear drop in overall Mission resources from fiscal 1988. This drop stems from the Commission's decision to transfer headquarter workyears to the regions. The \$3.8 million and 54 workyears proposed for allocation to this mission will permit review and study of these areas:

1. The effects of occupational licensure on competition and consumer welfare.
2. The effectiveness of advertising regulation in benefitting consumers and deterring false or deceptive advertising.
3. The role of standards and disclosure in solving consumer information problems.
4. The effects of cartelizing characteristics of the regulation of ocean shipping.

5. The effects of antitrust and other regulation on innovation and productivity.
6. The effects of entry on competition among hospitals.

#### Regional Office Growth

In fiscal 1987 the Commission approved a plan to strengthen its regional offices. While the regional component of the FTC budget decreased proportionally with the reduction of the total agency budget over the past few years, the Commission determined that a portion of those resources needed to be restored to the regions to meet projected program objectives. This increase was scheduled to take place over three fiscal years.

The regional office build-up began in 1987 and will be completed by the start of 1990. The FTC's budget for fiscal 1989 contains a funding request of 185 workyears for the regions which reflects an increase of 23 workyears over fiscal 1988 levels. This increase is being funded through a transfer of headquarter workyears to the regions.

#### Management Initiatives

The Commission always places great importance on finding ways to improve agency productivity. A major Commission accomplishment in this area has been to make greater use of available automated technology.

During the past four years, the Commission has been able aggressively to move forward with an office automation program that has permitted a majority of agency employees to achieve the many productivity improvements commonly associated with having individual work stations tied to an enhanced central computer facility. In addition, all FTC staff are now using a modern telecommunication system that was installed in fiscal 1986. For fiscal years 1988 and 1989, this program will continue at a somewhat slower pace consistent with reduced funding levels.

#### Concluding Remarks

Mr. Chairman and members of the Subcommittee, I hope that our fiscal 1989 budget submission makes it clear that the Commission is determined to carry out effectively all its statutory mandates using only a minimum level of resources.

\* \* \* \*

Mr. Chairman and Members of the Committee: that concludes my prepared remarks. I would be happy now to respond to your questions.

**AUTHORIZATION COVERAGE**

Mr. SMITH. This authorization bill you are referring to—what fiscal years are authorized?

Mr. WALTON. Fiscal years 1988, 1989 and 1990.

Mr. SMITH. 1988, 1989 and 1990?

Mr. WALTON. Yes.

**IMPACT OF ADDITIONAL MERGERS**

Mr. SMITH. I am just amazed at how we are funding the additional costs of additional mergers; it just goes on and on and on. What impact has this had on your operation?

Mr. OLIVER. This year there was something like 2200-plus Hart-Scott-Rodino filings, which the Commission has to investigate. Most of them, obviously, required only a cursory look, they present no problem. A few of them, about 20 or 30, require a closer review so the agency will issue a second request. Some of these eventually come up through the Commission where we object to some of the mergers. It presents, obviously, a burden to have that number of Hart-Scott-Rodino filings, but the staff does seem to manage.

**FTC-DOJ MERGER WORKLOAD**

Mr. SMITH. Well, how is the division between you and the Justice Department handled? Have most of these mergers been looked at by you or by Justice?

Mr. OLIVER. I will have to ask the Director of the Bureau of Competition. We divide it up but I don't know if it is equal or not.

Mr. SMITH. Do you have any idea?

Mr. ZUCKERMAN. Each agency receives a copy of each filing and takes a cursory look at each filing. In the last fiscal year the Justice Department looked at a slightly greater number than we did. The current fiscal year, we are looking, or we have been looking at more than they have by a larger margin.

There is a coordination process between the two agencies so that we don't duplicate effort. Then only one agency will work on it.

**COST ABSORPTION**

Mr. SMITH. What was the impact of the absorption you had to make in 1988?

Mr. WALTON. What part of the absorption are you talking about?

Mr. SMITH. You had to absorb about \$2.8 million below the amount that was either in the House or Senate bill. When we got into conference we had to reduce the funding. What impact has that had on your budget?

Mr. WALTON. For the most part that ends up reducing the number of workyears that we have available to us.

**WORK REDUCTIONS**

Mr. SMITH. What kind of work does it reduce? Does it reduce the effectiveness of the agency, or what areas did you reduce? Or did you postpone something? What specifically did you do?

Mr. WALTON. Generally, what we were able to do is be more economical in the use of our resources. We redirected a couple of

workyears into our automation efforts which increased productivity and allowed us to get by with fewer workyears.

Mr. SMITH. You mean you didn't do as much, is that it?

Mr. WALTON. Not necessarily. The Commission found other ways to do work or the support workyears that were required to be abolished.

Mr. SMITH. You mean you asked for too much money to start with?

Mr. WALTON. No.

Mr. SMITH. You are telling me now you are going to do exactly the same thing as if you had gotten the other \$2.8 million.

Mr. WALTON. No. That is not right. We are able to reduce the impact of a smaller budget by better utilization of our folks. We are also directing our efforts to focus program objectives to those that have the highest impact on the consumers.

Mr. SMITH. That is my real question. In your judgment, what won't be done to the extent it would have been done if you had the larger amount?

Mr. OLIVER. I don't know if I have the answer. My own feeling is, obviously, that at the margin it is always difficult to document what you need. So you make an educated guess as to the fact that you need these kinds of resources. Whether or not you wind up doing less than you would have, I think is hard to determine.

We win a lot of our cases and, indeed, some people complain that we win too many of our cases. I think our record has been very good so I won't be sure of this situation.

#### WORKYEAR REDUCTIONS

Mr. SMITH. These man-years that you had to reduce, are you doing that by not replacing people?

Mr. OLIVER. Yes, I think some of the reductions came from attrition.

Mr. WALTON. Yes, most of it is through attrition.

Mr. SMITH. Does it come out of the Bureau of Competition or some other bureau?

Mr. OLIVER. It comes out of all of the bureaus depending on where the attrition is.

#### REQUEST TO OMB

Mr. SMITH. What was your request to OMB?

Mr. OLIVER. The FTC's original request to OMB was \$72.2 million, which was to fund 1,048 workyears.

Mr. SMITH. So you got approval to ask for \$67.5 million. What represents that difference? What is it you would have to cut out to be at that level?

Mr. OLIVER. Originally, we had planned to expand the regional offices without cutting down on headquarters staff. As it is now, we will probably switch some resources from headquarters to the regions.

Mr. SMITH. Does that account for that much money?

Mr. WALTON. Yes. It accounts for a large majority of those funds.

Mr. SMITH. There has been a lot of attention right now—including in the trade bill—on foreign firms that acquire a firm in the United States. Did this have any impact on you?

Mr. OLIVER. It has had no special impact on us. If foreign firms are trying to acquire domestic firms, they must go through the same process as domestic firms. So it presents essentially no peculiar differences.

Mr. SMITH. Is there any difficulty in your getting information from these foreign firms?

Mr. OLIVER. Not to my knowledge.

Mr. ZUCKERMAN. As I understand it, when they complete their transaction they have to provide us with all of the information in the request.

Mr. SMITH. I see. And after they have completed it, does that satisfy your requirements for information? If so, for how long?

Mr. ZUCKERMAN. Once they are operating in the United States they are fully subject to the U.S. antitrust laws and subject to the compulsory process of the Commission, just like any other firm operating in the United States.

Mr. SMITH. They have to have an office in the United States to operate?

Mr. ZUCKERMAN. That is a matter of State laws.

Mr. SMITH. Mr. Dwyer?

#### TELEVISION MERCHANDISING COMPLAINTS

Mr. DWYER. Thank you, Mr. Chairman.

Have you had a great deal of increase in your activities because of the television merchandising that goes on today? I know that you have responsibility for false advertising.

Mr. OLIVER. We do police advertising.

Mr. DWYER. We know you police it, but has there been a lot of complaints generated because of the merchandising of products over television where you actually call and order products over the telephone? I don't believe I have ever seen it but I have had people write to me about it. A company will try to sell a diamond ring using television advertising and then when the consumer receives it, it is not the product that they thought it would be.

Mr. OLIVER. Mr. MacLeod is Director of the Bureau of Consumer Protection and he can answer that.

Mr. MACLEOD. We have seen a few coming in by that medium. I think primarily what we see here is simply a new vehicle by which marketing is taking place and the quality of goods that are delivered or the fact that the goods are not delivered has traditionally been an area of complaints to the Commission, and now we are seeing as well as mail order, as well as print advertising, television advertising cropping up in those complaints.

Mr. DWYER. So the answer to my question is that there is an increase in activity because of this new method of merchandising?

Mr. MACLEOD. Yes.

#### WARRANTY SERVICE LOCATION DISCLOSURE

Mr. DWYER. Another complaint I had from a constituent was, they had purchased a Japanese compact disc recorder, and it didn't

work. When they took it back to the merchant, the merchant said, "You have to send it to an address in California." I think it was California.

They called the company offices in New York. Because they had not purchased it from an authorized agency, they had to send it back to that California address. That is pretty much the story as I remember it.

Would that come under faulty advertising or misrepresentation of warranties?

Mr. MACLEOD. That depends usually on pretty complicated facts and circumstances surrounding the transaction. Very often when goods become available through dealers that are not authorized by the manufacturer, those dealers do not provide the warranty coverage that perhaps an authorized dealer would. That is one of the ways by which they provide goods at discount prices.

Consumers, and we often tell them this, that they need to be aware of the kinds of warranty services that may be available when making a purchase.

#### TYPES OF WARRANTY SERVICE

Mr. DWYER. Why aren't the warranties in the box with the piece of equipment?

Mr. MACLEOD. They normally are, but the difference is whether the warranty service can be done by the store, which often might charge a slightly higher price, or the store is simply allowing the warranty service to be done by the manufacturer. In this case, the consumer has to undertake a little bit more of the work than otherwise would happen at the store.

Mr. DWYER. Most stores today that sell appliances do not have a repair facility or shop in the rear of the store.

Mr. MACLEOD. But they often still will provide the kind of service, or they will provide a service window, for example, where they will handle some of those problems for a consumer, whereas other stores, that typically offer a lot lower prices, will ask the consumer to do it.

Mr. DWYER. So a franchised dealer who has a particular line of appliances—they might take the package back from the customer and send it back to California to be repaired. Whereas, with a discount store, they just don't take the box from you but tell you to send it to California?

Mr. MACLEOD. Well, some discount stores possibly. There are many, many ways of handling this problem and there are different arrangements by the stores, so it is hard to generalize across any category.

#### WARRANTY SERVICE INFORMATION

Mr. DWYER. Well, do you get into this area? Do you think that things could be better advertised or the warranties could be printed on the outside of the box saying "This item has to be returned to a far off address" or something like that?

Mr. MACLEOD. That kind of information generally is made available pursuant to Commission rules and Commission laws.

Mr. DWYER. But that is inside the box, that is the problem.

Mr. MACLEOD. No. It is accessible to consumers before the transaction and outside of the box.

Mr. DWYER. Where would it be accessible?

Mr. MACLEOD. As a matter of fact, usually by catalogs at the point of purchase, and sometimes on the box itself. There are a number of means by which consumers can get that information. Very often, consumers don't focus on that particular issue.

For example, with a disc player, in one out of two or three hundred sales, it is the kind of thing that a consumer doesn't think about until the machine breaks down and that is when we begin to hear about these kinds of problems.

It is not that the consumers are denied the information, and, frankly, you can only go so far pushing that information in the consumers' faces when they are making the purchase. We can make it available to them but we can't ask a store to stop the consumer in the consumer's transaction and make sure that consumer gets it.

Mr. DWYER. Well, I think the consumer, or rather the constituent, who is a consumer to you—called my attention to the fact that some type of advisory should have been on the outside of the box and been there in bold black letters, with the warning "prepared under this guarantee," and that it also might point out it has to be sent to an address printed on the box.

Thank you, Mr. Chairman.

Mr. SMITH. Well, I don't know if it would do any good to go into more detail. I know you have asked for an increase and I just have to tell you what our budget situation is under this budget that just passed last week. They had a love feast down there and everybody on both sides talked about what a great thing it was that they agreed to. But what they agreed to was a freeze of last year less 1 percent on almost everybody, and that is going to be difficult. We will be in contact with you and your budget people when we determine what we can do.

Thank you. We will have some additional questions for the record.

[Questions for the record and the answers thereto, follow:]

**QUESTIONS SUBMITTED BY MR. SMITH**  
**FISCAL YEAR 1989 BUDGET REQUEST**  
**SALARIES AND EXPENSES**

**PAY COST ABSORPTION**

**QUESTION:**

You are absorbing the FY 1988 increased pay costs. How much is that amount, and what has been the impact of that item on your FY 1988 program?

**ANSWER:**

The increased pay cost absorbed by the Federal Trade Commission for fiscal year 1988 is \$669,000. A reduction of approximately 14 workyears was needed to fund this absorption. The program impact of the absorption has been lessened by allocating the workyear reduction to all major missions. This workyear reduction was achieved through attrition (i.e., not filling vacancies).

**PAY AND FERS COSTS**

**QUESTION:**

You are requesting an increase of \$1,046,000 for annualization of pay and FERS. How much are you requesting for each and do these requests represent the entire amount that you will need to meet these requirements in FY 1989?

**ANSWER:**

The pay raise increase totals \$835,000 while the cost of FERS is \$211,000. The fiscal 1989 pay raise increase of \$835,000 is an annualized figure. The \$211,000 of additional FERS costs is an incremental increase over fiscal 1988. The total cost of FERS for fiscal 1989 is estimated to be \$2,254,000. This amount includes the \$211,000. Additional FERS funding is necessary to pay for higher levels of employee participation in the government's new pension system.

ADJUSTMENTS TO BASEQUESTION:

You are requesting an increase of \$423,000 for other adjustments to base. How much, if any, of these costs are you being required to absorb?

ANSWER:

The \$423,000 for "other adjustments to base" is needed to cover the cost of inflationary increases in such areas as travel, telecommunications, printing, and contractual services.

No absorption of inflationary increases was required for fiscal 1989. However, the Commission has significantly reduced its base in these various expense categories over the past few years. This action was necessary to adjust to lower appropriation levels. For example, the Commission spent \$2,146,000 on equipment in fiscal 1987 but is only requesting \$716,000 for fiscal 1989. While our 1989 request contains an adequate inflationary increase over 1988, it does not reflect the same progressive equipment program that the Commission had moved forward with in fiscal years 1985, 1986, and 1987.

**MONDAY, MARCH 28, 1988.**

**NATIONAL ENDOWMENT FOR DEMOCRACY  
WITNESS**

**CARL GERSHMAN, PRESIDENT**

**Mr. SMITH.** The next item that we shall consider today is the fiscal year 1989 budget request for the National Endowment for Democracy. The fiscal year 1989 request is for \$15,800,000. This represents a reduction of \$1,075,000 compared to 1988. We will insert the justification materials in support of this request.

[The budget justification follows:]

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	<u>1987 Actual</u>	<u>1988 Estimate</u>	<u>1989 Estimate</u>	<u>Increase or Decrease (-)</u>
Appropriation Requirements (Relationship of Appropriation Estimate to Current Appropriation)	\$15,000,000	\$16,875,000	\$15,800,000	-\$1,075,000

General Statement

The National Endowment for Democracy is a private, non-profit corporation established in the District of Columbia in 1983. The Endowment is administered by an independent bipartisan Board of Directors representing a broad range of private-sector organizations committed to the strengthening of democratic values and institutions around the world.

The purposes of the Endowment, as stated in its Articles of Incorporation, are:

1. to encourage free and democratic institutions throughout the world through private-sector initiatives, including activities which promote the individual rights and freedoms (including internationally recognized human rights) which are essential to the functioning of democratic institutions;
2. to facilitate exchanges between United States private-sector groups (especially the two major American political parties, labor and business) and democratic groups abroad;
3. to promote United States nongovernmental participation (especially through the two major American political parties, labor, business, and other private-sector groups) in democratic training programs and democratic institution-building abroad;

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4. to strengthen democratic electoral processes abroad through timely measures in cooperation with indigenous democratic forces;
5. to support the participation of the two major American political parties, labor, business, and other United States private-sector groups in fostering cooperation with those abroad dedicated to the cultural values, institutions, and organizations of democratic pluralism; and
6. to encourage the establishment and growth of democratic development in a manner consistent both with the broad concerns of United States national interests and with the specific requirements of the democratic groups in other countries which are aided by programs funded by the Endowment.

The authorization for the Endowment, the "National Endowment for Democracy Act," (P.L. 98-164 as amended) establishes auditing and reporting procedures for the Endowment and provides that the United States Information Agency make an annual grant to the Endowment to carry out the purposes stated above. The Endowment does not carry out programs directly but provides funding for the activities of numerous other private groups and organizations.

After more than four years of operation, it is clear that the Endowment could usefully program substantially greater funding than has yet been made available. It is noteworthy that the Endowment was authorized at a start-up level of \$31.3 million in FY 1984. Because the Endowment did not get underway until well into that fiscal year, a partial budget of \$18 million was appropriated for FY 1984. In FY 1987 the Endowment received an appropriation of \$15 million, representing a cut of more than 16% from the amount Congress appropriated for FY 1984 -- a partial year -- which in turn was less than 60% of the original authorization.

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Despite the pervading climate of budgetary stringency in FY 1988, the Congress recognized the growing importance of the Endowment's global work by increasing its appropriation from \$15 million in FY 1987 to \$16.875 million in FY 1988. At the same time, the Congress authorized the Endowment for FY 1989 at \$18.1 million.

The FY 1989 budget estimate for the Endowment totals \$15.8 million as part of the overall 1989 budget level proposed by the Administration, in keeping with the bipartisan budget agreement.

Last year was an encouraging year for the National Endowment for Democracy. Democracy, after a period of decline in the developing world, has made dramatic gains. In Latin America today, non-democratic governments, far from being ascendant, now constitute a dwindling minority. Throughout the world, democratic forces are showing the signs of a new confidence. When long-entrenched dictatorships fell in the Philippines and Haiti in 1986, the transitions in those countries held out the promise of a democratic future. Now, the Philippines is successfully consolidating its renewed democratic system, while Haiti continues the complicated task of transition.

The Endowment is an integral factor in the resurgence of democracy. The creation of the Endowment was both a reflection and a symbol of a renewed American commitment to the democratic cause. At the ceremony announcing the Endowment's creation in December 1983, President Reagan stated, "The establishment of the National Endowment for Democracy goes right to the heart of America's faith in democratic ideals and institutions. It offers hope to people everywhere." Today, four years later, the Endowment is fulfilling many of the hopes that were kindled by its founding. In key countries where the struggle to create or preserve democracy is being waged, the National Endowment for Democracy is making a real difference.

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In its first years of operation, the Endowment built a solid foundation for its operations: administrative operations of the Endowment have been firmly established and program activities are well underway. In some cases, programs which the Endowment funded in its start-up years were exploratory in nature and have generated more extensive program agendas and numerous proposals in those areas of work. As in past years, it is anticipated that viable requests for assistance will total much more than the full amount requested for fiscal year 1989. Of course, as the existence of the Endowment has become more widely known, the field of applicants has greatly expanded.

The Endowment has sought to set its priorities while retaining the capacity to be responsive to promising initiatives from a wide range and variety of non-priority countries. Grant allocations for groups in countries of lesser priority, even if the funds are relatively modest, serve important purposes. Such small grants represent crucial assistance to struggling democratic groups. Moreover, they help put the Endowment in a position to respond quickly in non-priority situations if new opportunities suddenly develop (as they did, for example, in the Philippines and Haiti). Not least, being as responsive as possible to authentic democratic advocates around the world is consistent with the Endowment's overall commitment to assist efforts to further democratic development.

The Endowment also seeks to balance its desire to sustain and nurture existing projects with its wish to respond to new initiatives. Unfortunately, given severe budget constraints, in almost all cases excellent programs are funded at only a fraction of what the applicant requests and needs. And, as these constraints increase, the Endowment's ability to fund important new initiatives declines sharply.

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The Endowment is currently funding programs in the following substantive areas:

Pluralism. The Endowment encourages the development of strong, independent private-sector organizations, especially trade unions and business associations. It also supports cooperatives, civic and women's organizations, and youth groups, among other organizations. Programs in the areas of labor and business are carried out, respectively, through the Free Trade Union Institute (FTUI) and the Center for International Private Enterprise (CIPE).

Democratic Governance and Political Processes. The Endowment seeks to promote strong, stable political parties committed to the democratic process. It also supports programs in election administration and law, as well as programs that promote dialogue among different sectors of society and advance democratic solutions to national problems. Much of the Endowment's work in this area is carried out through the National Democratic Institute for International Affairs (NDI) and the National Republican Institute for International Affairs (NRI). G14

Education, Culture and Communications. The Endowment funds programs that nourish a strong democratic civic culture, including support for publications and other communications media and training programs for journalists; the production and dissemination of books and other materials to strengthen popular understanding and intellectual advocacy of democracy; and programs of democratic education.

The Endowment also devotes modest funding for Research on questions related to democratic development, and to programs that encourage regional and International Cooperation in promoting democracy. Unfortunately, given the budgetary constraints which have been imposed upon the Endowment, it is likely that the Endowment will have to curtail these modest, yet important, efforts and focus on action-oriented programs that take place within countries. This will seriously impair the Endowment's ability to serve as a catalyst to encourage greater academic attention to the important issue of democracy and its role in the contemporary world.

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Some areas of Endowment programming are better suited to some countries or regions than to others. A broad, multi-faceted program is feasible in Latin America, for example, because the opportunities are great and there exist numerous possibilities to work with independent unions, business associations, parties and other private institutions as well as to conduct programs in the area of education, culture, and communications. But in closed societies, such as those in Eastern Europe and the Soviet Union, the absence of legal independent private institutions inevitably restricts work in the areas of pluralism and democratic governance. Here the preponderance of programs is in the area of education, culture, and communications. Wherever there is the possibility for broad Endowment support involving all of its core grantees as well as other grantees, the Endowment aims to coordinate the various programs so as to avoid duplication and to maximize the impact of the overall effort. The Endowment also engages in regular consultations with the Department of State, the U.S. Information Agency, and the Agency for International Development for the same purpose.

I. Latin America and the Caribbean

The opportunity for the Endowment to make a decisive contribution at this time to the development of democracy abroad is nowhere greater than in Latin America and the Caribbean. Just a decade ago, the region was dominated by authoritarian military governments which claimed to be the best guarantors of peace, stability and prosperity. Now, such regimes have given way to democratically elected civilian governments in nine countries: Argentina, Bolivia, Brazil, Ecuador, El Salvador, Guatemala, Honduras, Peru, and Uruguay. During the same period, democracy advanced in the Dominican Republic, Belize attained independence as a democratic state, and dictatorships were ousted in Grenada and Haiti. There have been exceptions to the general democratic trend, most notably in Cuba and Nicaragua on the anti-democratic left and in Chile and Paraguay on the anti-democratic right. But even in these countries, with the possible exception of Cuba, the pressures for change have been growing.

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FY 1989 budget stringency will hamper the Endowment's ability to fulfill its objective of assisting in the consolidation of democratic gains in the new Latin American democracies. Activities, primarily in the areas of pluralism and democratic governance, have included programs that advance market-oriented thinking and policies, programs in political development with parties and legislators, union-building efforts, and civic education efforts designed to encourage popular understanding of and participation in the democratic process.

Programs in Nicaragua, Haiti, Chile and Paraguay have been accorded a high priority in the Endowment's work, as have programs to defend human rights in Cuba. In FY 1988, support for the nonviolent civic opposition in Nicaragua was viewed as a top priority for the Endowment by the Congress. Congress increased the Endowment's budget by \$250,000 in the authorization, mandating that the Endowment provide that amount to support the nonviolent civic opposition in Nicaragua at this crucial time. Such assistance, though most likely at a reduced level, will continue to be a priority in FY 1989.

The fragile economies and small size of the island states of the Caribbean make them vulnerable to attempts to reverse the democratic trend. The Endowment will be limited in its ability to provide them with the necessary democratic assistance in FY 1989 which has heretofore been an important area of Endowment programming.

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II. Asia

Democracy has been advancing in Asia, a trend exemplified most dramatically by the transition to democracy in the Philippines in 1986. As the Philippine government seeks to establish a new constitutional framework for stable, pluralist democracy, it faces awesome challenges in reviving the economy and ending the Communist guerrilla insurgency. The Endowment's crucial assistance in the Philippines was noted by Philippine President Corazon Aquino in May 1987 when she wrote: "We shall always remember in gratitude and appreciation the Endowment's important assistance to the

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democratic struggle of our country. Such contribution and commitment to the hopes and ideals of democracy is the Endowment's greatest legacy, not only to the Filipino people, but to the rest of humanity."

Other positive developments in Asia include the progress toward a democratic transition in Korea, the continuation of democratic development in Thailand, and the organization of an opposition party in Taiwan and its participation in the recent elections there. Not least, of course, is the continuing process of reform in China.

Endowment programs in Asia have sought to encourage democratic development in these countries, concentrating above all on assisting democratic unions, business associations, political parties, youth organizations and other groups in the Philippines. In addition, in Pakistan, where martial law has been lifted and there are new possibilities for political activity, Endowment programs have focused on cooperation with democratic unions and business associations.

the Endowment continued efforts to strengthen democratic unions in the South Pacific. In South Asia and the Near East, the Endowment supported educational and informational activity in Afghanistan. It also assisted democratic publishing and educational activities in Turkey; provided support to democratic educational programs in India; and assisted efforts to defend human rights in Vietnam.

III. Eastern Europe and the Soviet Union

One of the most important democratic developments in the world has been the growth in Poland, five years after the declaration of martial law and the effort to crush Solidarity, of a vast array of independent social and cultural activities designed to strengthen civil society. A panel of experts convened in December 1986 to review Endowment programs in Eastern Europe and the Soviet Union noted that while the decline of Communist legitimacy is more advanced in Poland than in the rest of the region, the same tendencies are evident in parts of Eastern Europe and, to a lesser extent, in the Soviet

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Union as well. These include ideological decay and economic stagnation, and the growth of independent forms of intellectual and cultural expression. Moreover, the communications revolution has now spread throughout the region, and independent groups are using VCRs and computers in creative ways to break the regimes' monopoly on information.

Poland remains the country of highest priority for the Endowment in this region, given the scope of the work that is possible there in support of Solidarity and independent cultural organizations and the potential significance of developments in Poland for the rest of the region. With limited resources, the Endowment will attempt to maintain its level of programming in Czechoslovakia and Hungary, continue support for a new initiative in Romania, as well as to assist Russian-language journals and other programs to encourage independent intellectual and cultural expression in the Soviet Union.

IV. Africa

Democratic gains in Africa have not been as dramatic as in other regions. Nonetheless, Sudan has held its first free national election in over seventeen years, and the military governments in Uganda and Nigeria have pledged to return to civilian government within the next four to five years. Elsewhere in Africa, progress was visible in the efforts of a number of countries to strengthen market forces in the economy. Multi-party democracy was maintained in Botswana, Senegal, and the Gambia.

The country of greatest priority for the Endowment in Africa is South Africa. Despite the terrible racial conflict there -- in fact, because of it -- efforts continue to strengthen those groups in the black and white communities who are committed to the peaceful dismantling of apartheid and its replacement by a democratic system that allows all to participate fairly. The Endowment has begun programs to develop black consumer groups and cooperatives, support the activities of community groups working to reduce violence and encourage peaceful change, and aid intellectual and informational efforts to

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promote understanding of democracy and dialogue among anti-apartheid groups seeking alternatives to violence.

V. Western Europe

While democracy is well established in most of Western Europe, it was only during the 1970's that it was restored in Spain, Portugal and Greece. Democracy now appears secure in these countries, but democratic groups continue to be challenged by powerful and well-funded anti-democratic rivals. This is especially the case in Portugal where the Communists remain a paramount force in the labor movement. A modest portion of Endowment resources have gone to strengthen democratic unions, business associations, and other democratic groups in Western Europe.

VI. Multiregional Programs

A number of Endowment programs are multiregional. These may include efforts to establish contacts among democratic advocates from different regions, a publication that reaches beyond a single region, a study of democratic development, a women's conference, or a global human rights program. Such programs represent an important means to encourage international cooperation in the building and strengthening of democracy. Through such efforts, the Endowment has hoped to foster a sense of common identify and purpose among democratic groups and societies.

It is the Endowment's policy to fund requests which respond to the expressed needs of those the program is intended to assist. Because the Endowment Board is unable to predetermine the nature and quality of the proposals which will be submitted, the priorities which it sets must remain somewhat flexible. At the same time, the Endowment has already identified and funded a number of very high quality programs which are likely to be refunded, although not at the levels required, if this is justified by careful

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evaluation. This introduces an important element of predictability and continuity. The budget projections which follow are intended to accommodate that flexibility as well as to indicate the overall program direction and goals of the Endowment.

NATIONAL ENDOWMENT FOR DEMOCRACY  
Summary of Direct Obligation Requirements

<u>Program Categories &amp; Resources</u>	<u>1987 Actual</u>	<u>1988 Estimate</u>	<u>1989 Estimate</u>	<u>Increase or Decrease</u>	<u>Page Ref.</u>
A. Pluralism.....J\$7,400,495		\$8,368,813	\$7,820,000	\$(548,813)	13
B. Democratic Governance.3,608,480 & Political Processes	4,080,630	3,816,205	(264,425)		28
C. Education, Culture....2,620,360 & Communications	2,963,220	2,766,940	(196,280)		33
D. Research &.....103,200 International Cooperation	116,705	81,855	(34,850)		39
E. Program Direction.....1,267,465	1,345,632	1,315,000	(30,632)		42
<hr/>					
Total.....15,000,000		16,875,000	15,800,000	(1,075,000)	

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- A. Pluralism (1987 Actual, \$7,400,495; 1988 Estimate, \$8,368,813; 1989 Estimate, \$7,820,000; Decrease, \$548,813).

An essential precondition of democracy is the existence of a variety of autonomous organized groups representing diverse interests. Exercise of the basic right of freedom of association, recognized both in our own First Amendment and in many international agreements, enables individuals with common interests to combine into strong and independent organizations that can represent the views and protect the rights of their members. Where this kind of pluralism is allowed to flourish, it is likely that undemocratic political systems ultimately will have to accommodate to a process of free and fair competition for power. And in functioning democracies, vigorous private-sector institutions present powerful obstacles to unwarranted extensions of governmental authority. Moreover, these organizations serve as "schools of democracy," accustoming their members to the free discussion, accommodation of differing views, and respect for procedural rules that are intrinsic to democratic politics.

The two largest and most important elements of pluralism in the economic sphere are business and labor. The Free Trade Union Institute and the Center for International Private Enterprise, Endowment core grantees, each carry out a series of integrated programs aimed at strengthening the contributions to democratic pluralism of their counterparts abroad.

Free and independent trade unions play an indispensable role in the process of democratization. Encouraging their growth and stability constitutes a fundamental part of the Endowment's effort to promote democracy. A significant portion of the Endowment's program resources is devoted to this area of work through grants to the Free Trade Union Institute (FTUI).

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The Free Trade Union Institute has organized its programs into six substantive categories. These categories are defined below with a brief description of FY 1987 programs supported by FTUI. The Endowment anticipates continued support for FTUI's global program for similar projects in FY 1989, although some will be at reduced levels and others may have to be eliminated due to the scarcity of resources. Most FTUI projects have required sustained commitments over several years. FTUI has been prepared to stand with its friends abroad over the long term, to remain engaged in the arduous task of strengthening organizations and bringing them into the democratic fold in the variety of circumstances found throughout the world.

- a. Institution Building: Aid to national trade union centers and international trade secretariats for infrastructure development; organizational support for regional trade union groups and for international labor organizations; efforts to counter anti-democratic subversion; funds for emergency organizational support; and funds for trade union exiles.

The bulk of programs sponsored by the Free Trade Union Institute involves helping sister unions develop democratic structures as a bulwark against Communist subversion and as essential to any transition from authoritarian to democratic forms of government. Among the unions being assisted by the Free Trade Union Institute are those in:

- Poland, where FTUI has supported the Brussels-based Coordinating Office of Solidarnosc Abroad, to collect information on the labor movement in Poland, disseminate information on trade union rights inside Poland, and assist the independent Polish press. The government continues to harass Solidarnosc, the only strong, democratically-inspired union to emerge in a Communist country.

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- Chile, where FTUI has assisted the Central Democratica de Trabajadores (CDT), the besieged democratic trade union federation which is prohibited by law from collecting dues. The CDT is actively engaged in the effort of the democratic opposition to register voters for the 1988 plebiscite that could determine whether Chile will remain under the control of the armed forces or return to civilian government.
- Asia, where FTUI has provided assistance to International Trade Union Organizations. One aspect of the program involves U.S. unions working with their counterpart unions in Asia through international trade secretariats. A second aspect involves support for the five trade union federations whose national governments are members of the Association of Southeast Asian Nations (ASEAN), namely, the Philippines, Indonesia, Malaysia, Singapore and Thailand. The federations have formed a loose association called the ASEAN Trade Union Council which, it is hoped, will one day parallel the functions of the Trade Union Advisory Council of the OECD.
- Southern Africa, where support has gone to three regional coalitions of unionists, the Southern Africa Trade Union Coordinating Council (SATUCC), the Organizations of Trade Unions of West Africa (OTUWA) and the Organization des Travailleurs de L'Afrique Centrale (OTAC). Each has established agendas for promoting the development of democratic union movements in their respective regions and for devising common solutions to regional problems. An element of each program is attendance at conferences and meetings where national federation leaders discuss common problems and seek regional solutions.

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- b. Exchanges: Travel that is specifically tied to other types of programs, especially comprehensive training, conferences, and study. For example, FTUI has sponsored continued exchanges of labor leader delegations in Latin America to strengthen fraternal relationships through discussions of specific inter-American political, economic, and social problems.
- In September 1987 a solidarity exchange visit to the United States was made by representatives of Nicaraguan and Salvadoran trade unions, who toured several American cities and met with labor leaders, state and municipal officials, community spokesmen and the local media.
- In the Spring of 1987, FTUI supported the visit to the U.S. from Hungary of Mr. Sander Racz. Elected leader of the Workers' Council of Budapest in 1956, Mr. Racz led a nationwide strike against the Soviet military invasion that was crushing Hungary's democratic revolution of November 1956. Despite seven years of imprisonment, surveillance and harassment, Mr. Racz remains active in peaceful democratic organizations. His visit to the U.S. heartened, informed and encouraged many American trade unionists to support the promotion of free trade unionism abroad.
- c. Training and Civic Education: FTUI has established a broad program of training and civic education which includes programs in areas such as education on parliamentary procedure and democracy; education on techniques for organizing and servicing members; and publication and dissemination of materials. FTUI-sponsored efforts include programs in:
- Haiti, where support has been given for a program of civic education to Haitian workers through the Workers Federation of Trade Unions (FOS) and to assist in the development of a trade union structure as this country works toward a democratic transition.

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- Nicaragua, where support has been provided to the Nicaraguan Confederation of Labor Unification (CUS) to maintain its independence in a hostile environment. An important element in CUS' new prominence has been the revival of its newspaper "Solidaridad," whose publication was suspended by the government in December 1985. Union recruitment aimed largely at unorganized workers has been accelerated and CUS has become a principal exponent of further relaxation of controls on political and labor activity.
  - Sudan, where assistance to the Sudan Times, the only English language daily newspaper in the Sudan, results in an objective and informative source of news and opinion for the many factions in that country. In publication since 1985, the paper's daily circulation has increased from 5,000 to over 17,000 throughout the country. The paper has a broad readership in Sudan because its coverage transcends local influences and factionalism.
- d. Electoral Processes: Training dealing with electoral processes, get-out-the vote efforts, and building organizational capability to urge membership voting participation.

Many democratic unions find themselves in transitional political situations. These unions have requested American labor's help in heightening voter awareness and in preparing the unions themselves to monitor elections and act as guarantors of democratic political development.

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One program underway in this category assists unions in a number of Central American countries seeking to mobilize their members to vote. In cooperation with the affiliates of five labor federations in Central America, this effort focuses on educational workshops, trains unionists in political action, and develops techniques for non-partisan voter mobilization. In Guatemala, the democratic trade union Federation, CUSG, maintained a heavy schedule of seminars and conferences on political action for both union leaders and rank and file. Over 3,000 workers attended 60 two-day seminars sponsored throughout the country by the CUSG.

- e. **Democratic Pluralism:** Research and publications promoting democratic values or exposing those who oppose them; efforts to counter anti-democratic subversion; projects to assist efforts in totalitarian or dictatorial countries; the international promotion of American labor's positions; and support for trade union publications.

Information to counter the propaganda efforts of anti-democrats and to expose the violation of trade union rights may be collected and disseminated by unionists, or by other organizations with which they have ties. Research institutes and organizations of intellectuals and trade unionists concentrating on trade union freedoms have received significant funding from FTUI. Among these are programs in:

- Francophone Africa, where assistance has been provided to the national federations in French-speaking West and Central Africa. This support has helped to develop effective labor education programs which, in turn, enable workers' representatives to counter the weight of government and/or employer influences on working and living conditions.

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- Korea, where FTUI assistance has enabled the purchase of newspaper space in several of South Korea's most influential daily newspapers, in which the Federation of Korean Trade Unions (FKTU) can publicly present its views on the grievances of workers to both employers and government authorities. The FKTU is reprinting the ads in the form of brochures.
- f. Democratic Development: Support for labor-related projects such as land reform, community development and aid to international organizations, such as the International Confederation of Free Trade Unions, which sponsor similar efforts.

Frequently, democratic trade union development relies on the corresponding development of technical expertise. Particularly in the case of Third World unions, technical assistance enhances union capability to organize and service members. The largest FTUI program in this category is in the Philippines, where support has been provided for a country-wide program concentrating on both urban and rural workers. The program supports: 1) union newspapers and publications, 2) trade union education, 3) organizing and membership services, 4) provision of health care, and 5) assistance and counseling to farmers, including the introduction of new technologies. A special initiative includes the development and training of union journalists.

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In support of programs designed to foster the development of open market, private enterprise systems and the growth of independent business institutions as a means of encouraging the development of democratic pluralism abroad, the Endowment awards grants for the work of the Center for International Private Enterprise (CIPE), an affiliate of the U.S. Chamber of Commerce and the Endowment's core grantee for business programs. CIPE's overall goals are to foster the development of open market, private enterprise

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systems and the growth of independent business institutions as a means of encouraging the development of democratic pluralism abroad. An Executive Council, including other U.S. private business organizations, corporations, small businesses, chambers of commerce, academic institutions, foundations, and international business experts, assists the CIPE Board in the development of its programs.

CIPE has identified a number of model programs that provide a basis for continued programming. The successes of these programs have been dramatic, particularly in the last year. To date, over one hundred foreign association executives have received advanced training at the U.S. Chamber's Institutes for Organization Management through CIPE scholarships. Each participant has become a key resource in efforts to create Institute programs located in regional centers abroad. This program was originally targeted for Latin America, but CIPE has now inaugurated a South Asian Institute for Organization Management as well. It is uncertain how budgetary constraints will impact upon CIPE plans to develop an English language African Institute.

In addition, CIPE has continued to provide funding to the Institute for Liberty and Democracy (ILD) in Lima, Peru, for a research and advocacy project promoting open economic systems. A private sector think tank, ILD has found that almost half of the Peruvian work force is engaged in "informal sector" activities because access to the economic system is blocked by impenetrable layers of regulation. Over the past four years, ILD has used CIPE funds to advocate deregulation, simplification of rule making, and access to the political system.

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ILD's book on the informal sector, El Otro Sendero (The Other Path) has become a best-seller throughout Latin America. With FY 1987 CIPE support, ILD is preparing a less expensive version and an executive summary of the book; writing sectoral summaries of sections of the book, on transport, commerce, and housing; creating a weekly 2-3 minute radio show and daily one-minute television spot, each highlighting issues of economic informality; and conducting other activities. This program on the informal sector has swept through Latin America and the developing world; ILD has had a growing influence on public policy and its work serves as a model that has application elsewhere in the hemisphere and in other parts of the world. ILD has already engaged in cooperative work on the informals with groups in the Philippines, Argentina, South Africa, Tunisia, Paraguay and elsewhere. Over 37 country representatives were in attendance at CIPE's October 1987 "International Conference on the Informal Sector," held in Washington, D.C. Replication of the program in other parts of the developing world is a key priority for CIPE.

CIPE's programs are carried out in the following substantive areas:

- a. Association Development. These programs focus on strengthening voluntary business organizations abroad as a means of fostering democratic pluralism. CIPE is currently expanding management and technical assistance programs in order to provide in-depth institution-building assistance to meet the needs of counterpart business organizations abroad. In this area, examples of current programs include:

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- South Africa, where CIPE has assisted the Get Ahead Foundation to enable the black population in the Durban area to participate in a free enterprise-oriented informal economy. With CIPE's assistance, the Foundation is establishing a branch office in the Durban area, using its recent experience in Port Elizabeth as a guide.
- China, where support was provided for a four-day training workshop for members of the All China Federation of Industry and Commerce (ACFIC). Leaders of the ACFIC participated in the workshop, which was designed to upgrade its management and that of its affiliates, based on the U.S. Chamber of Commerce's Institutes for Organization Management program. ACFIC training treats membership development, service to members, staff training, communication with members and the public, information management and retrieval, and office management. The goal is to improve the ACFIC's ability to advocate policy changes to the Chinese government which will further liberalize the economy, advance reform, permit more economic decisions to be made at the enterprise level and generally reduce direct state intervention.
- the Philippines, where CIPE has assisted the Philippine Chamber of Commerce and Industry (PCCI) and the Employers' Confederation of the Philippines (ECOP). Technical assistance is provided to both organizations to: assist the ongoing PCCI/CIPE project for the professional development of regional chambers of commerce and their business advocacy program; improve the skills of ECOP's professional staff and its ability to carry out business advocacy programs; and explore project possibilities with the PCCI which will address labor/management issues.

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- Pakistan, where CIPE has assisted the Federation of Pakistan Chambers of Commerce and Industry. This model project is part of CIPE's efforts to raise the performance level of business organizations, particularly vis-a-vis public policy. Assistance will go to strengthen chambers of commerce and business associations by improving the ability of the volunteer leadership of these organizations to: organize their activities for the benefit of members; focus members and staff on key policy issues; develop appropriate proposals for legislation; and advocate business' position on key issues.
- b. Private Enterprise Education. CIPE is currently working to expand the teaching of private enterprise and enhance the capacity of business communications to reach such audiences as the media, political leaders, employees, youth and others. An expansion of CIPE's efforts is in progress in this program category. Examples of CIPE activities in this area include:
- Support to EMPRESA (Enterprise), a Spanish-language education program that teaches the basics of private enterprise, focusing on the role of enterprise in society and how aspiring entrepreneurs can start their own businesses. COPARMEX, the leading independent business association in Mexico, initiated use of the Empresa program, and wide interest in the program has been shown by other CIPE counterpart organizations in Latin American and Spain.

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- Pakistan, where CIPE has supported the development and implementation of a workshop on business and economic journalism for the ~~Press~~ Institute of Pakistan, whose audience will be members of the Pakistani press who regularly cover business and economic issues.
- c. Business Advocacy and Public Opinion: CIPE programs in this category are based on the conviction that the creation of open market, private enterprise systems is a key factor in strengthening pluralism. Examples of CIPE programs in this area include:
  - Assistance to the Centro de Orientacion Economica (COE) in the Dominican Republic. The COE will expand the economic advisory service for the Dominican Republic's Congress begun in 1986 which seeks to guide elected officials in their debates on economic and business-related issues. COE is publishing 25 written analyses of proposed economic legislation in simple language. These analyses will be printed in the form of brochures and distributed to elected officials and staff, business and professional associations, labor unions, universities, and government departments.
  - Support to the Union Social de Empresarios y Ejecutivos Cristianos (USEC) -- the Social Union of Christian Businessmen and Executives -- in Chile. USEC is reprinting 4,000 copies of its publication, "Economic and Social Importance of Private Enterprise," for use as a reference point for various seminars designed to promote the advantages of private enterprise. USEC has also commissioned position papers on management-labor relations for the purpose of identifying points of agreement between the two groups.

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- The Asociacion Panamenia de Ejecutivos de Empresa (APEDE) (Panamanian Association of Business Executives) is conducting a high school economic education program with CIPE support. APEDE is running a public opinion poll to gauge how free enterprise, businessmen, and private sector organizations are perceived in Panama. Among the variables addressed in the poll are the levels of knowledge of free enterprise and how it functions, moral attitudes toward private enterprise and profit, individuals' preferences for working with the private or public sectors, perceptions of enterprise by size or local versus foreign origin, and the perceived role of business organizations. APEDE is also offering EMPRESA courses to 6,450 high school students in various cities in Panama.
- d. Clearinghouse: This category involves both research and demonstration programs as well as special projects. Examples of CIPE programs in this area include:
  - In October 1987 CIPE, in cooperation with the Agency for International Development, convened an "International Conference on the Informal Sector," at the U.S. Chamber of Commerce in Washington, D.C. The conference demonstrated the potential for democratic political development and economic growth of the informal sector to the more than 200 business, political, government and academic leaders in attendance from 37 countries.
  - Given the relative lack of market-oriented materials in the developing world, CIPE has provided support for a quarterly journal entitled the Journal of Economic Growth in conjunction with the U.S. Chamber of Commerce. The Journal is designed to provide the proponents of free market/limited government views with facts and ideas that can be used in their efforts to influence and formulate public policy. In keeping with its desire to disseminate this information in the developing world, a liberal reprint policy is encouraged by the Journal. The Journal is currently published in English, French and Spanish; however, resource limitations may require cutbacks.

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Through a variety of other grantees, the Endowment also provides support to strengthen other kinds of private-sector organizations abroad. For example, the Endowment funds programs that reinforce the democratic character of cooperatives and enhance their contribution to the democratization of developing countries. Assistance is also provided to a variety of civic and social organizations, including those designed to increase the democratic participation of women, youth, and minorities.

Examples of programs the Endowment supported in FY 1987 to strengthen pluralism include:

- The Patronato Pro-integracion de la Mujer al Desarrollo (PIMUDE) (Foundation for the Integration and Development of Women), of El Salvador, to strengthen its ongoing democratic education work and broaden its activities to a wider audience, particularly on the secondary school level. PIMUDE will conduct three-day teacher training seminars on "Education for Democracy"; distribute printed materials on the methods and practices of a democratic system; publish a series of books, pamphlets, and brochures on the goals and ideals of democracy; and promote citizen participation through conferences, lectures, and selected media.
- Conciencia, a nonpartisan, private organization in Argentina established by women to promote citizen participation in the democratic process. Originally funded by NED in FY 1984, Conciencia has become an extremely effective vehicle for providing democratic education and encouraging wider citizen participation in Argentina's democratic process. Conciencia's success has generated intense interest among women throughout Latin America who have begun to emulate the program in their own countries. Conciencia held an Endowment-supported conference in October 1987 on "Civic Education and Participation: The Role of Women," which brought together women from 15 countries in Buenos Aires to devise concrete, specific strategies to promote

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political participation and improve civic education. The success of this dynamic initiative throughout the hemisphere is placing a heavy demand for resources on the Endowment, as women in other countries undertake similar efforts.

- Assistance to the Asociacion de Investigacion y Estudios Sociales (ASIES), a private nonpartisan organization in Guatemala devoted to research, discussion and analysis of national issues. ASIES was awarded a grant to hold its fourth "Seminar on National Reality." This two-day meeting of some 500 representatives of diverse sectors of Guatemalan society will focus on the economic and sociopolitical problems confronting Guatemala in its second year of the democratization process, and present alternative policies for addressing them.
- The Friends of Namfrel in America (FON) was provided assistance to sponsor a two-day conference of women sectorial leaders in the Philippines for the purpose of organizing a national nonpartisan women's civic movement. The February 1988 conference brought together women leaders to discuss the role of women in strengthening democratic values, practices and institutions. The conferees designed activities and an organizational structure to achieve their objectives. More than 100 Filipino women leaders attended the conference -- representing the business, academic, religious, labor, civic, professional and urban poor sectors.
- The Endowment has assisted the Centro de Estudios del Desarrollo (CED) and the Facultad Latinoamericana de Ciencias Sociales (FLACSO) in their efforts to support the goal of free and open elections in Chile. These efforts include encouraging voter registration and teaching election monitoring skills. In addition, a publicity campaign is being carried out, conveying the importance of registration and voting, and CED and FLACSO will monitor public opinion through polling.

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B. Democratic Governance and Political Processes (1987 Actual, \$3,608,480; 1988 Estimate, \$4,080,630; 1989 Estimate \$3,816,205; Decrease, \$264,425).

Democracy requires a system of representative government in which leaders are chosen in freely contested, fair and periodic elections, and the rights of individuals and groups within a society are assured through the just and equitable rule of law. The Endowment seeks to strengthen such systems in countries where democracy is newly established, fragile or under challenge from anti-democratic forces of the left or right. The Endowment also seeks to facilitate and encourage a transition to democracy where such opportunities for a positive evolution exist. Even in non-democratic countries, the Endowment is able to work with certain official institutions -- e.g. an independent judiciary -- whose strengthening may facilitate an eventual emergence of democratic rule.

A democratic political system requires strong, stable political parties committed to the democratic process. In FY 1987 the Endowment committed a significant portion of its program resources to this area, aiding parties abroad through the National Democratic and National Republican Institutes for International Affairs, core grantees of the Endowment. The essential role of political parties in any stable democracy is universally accepted and the goal of strengthening their participation in the political process is a high priority for the Endowment. For these reasons, the Endowment will continue to provide significant support for the work of these two Institutes in FY 1989.

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Examples of programs the National Democratic Institute for International Affairs has initiated in this area include:

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- A two-phase project to assist Chile's Movement for Free Elections (MFE). The first phase consists of a survey mission to examine the organizational needs of the MFE and the electoral codes and registration procedures being implemented by the government. Based on the recommendations of the survey team, the second phase will be a workshop with the MFE on organizational techniques, media skills and fundraising.
- An international observer team was organized by NDI to observe the presidential/legislative elections in Haiti scheduled for November 29, 1987. Thirty delegation members participated from Venezuela, Canada, Costa Rica, Senegal, the Philippines, Northern Ireland, Jamaica and the U.S. The delegation issued a statement following the cancellation of the elections detailing the incidences of violence the group witnessed and calling for solidarity with the people of Haiti in their quest for democracy and freedom.
- NDI is designing a course with the Evelio B. Javier Foundation for new members of the Philippine Legislature and their key staff personnel. The course will be structured around three topics: the legislative process, office organization, and typical issues to be faced in the sessions. Key congressional, party, and academic Filipinos will be consulted in the design of the course and formulation of the training materials.
- NDI has assisted the training and development of the Social Democratic Group Limited (SDGL) which was first established with FY 1986 NDI support. The SDGL, affiliated with the Social Democratic and Labour Party of Northern Ireland, seeks to facilitate the development of expertise in the democratic processes of constituency-building, issues formulation and civic education.

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- In cooperation with the Liberal International and the Foundation for Liberty and Progress, NDI cosponsored a follow-up to its Madrid conference on "Democratic Alternatives for Nicaragua." The follow-up conference, held in October 1987 in Managua, was entitled "Promoting Peace and Democracy." It provided an international forum to detail the requirements necessary to achieve real political and social reforms. Leaders of the Nicaraguan civic opposition were brought together with representatives from the United States, Europe, Venezuela, and other Central American countries to formulate organizational strategic and tactical planning as they begin basic preparations for possible participation in future local elections.
- In December 1987 NDI sent a delegation to Korea to view the electoral process and discuss future NDI involvement in Korean democracy. The bipartisan delegation visited polling sites, witnessed rallies and discussed the election with representatives of various campaigns. The delegation also met with a broad range of political leaders from the government and opposition.

The National Republican Institute for International Affairs has also undertaken a number of key initiatives in this program area in FY 1987, which include:

- Support to the Fundacion Boliviana para la Capacitacion Democratica (FUNDEMOS), a nonpartisan public policy institute dedicated to the promotion of democratic and free market values in Bolivia. FUNDEMOS will expand its civic education and political participation seminars, focusing on the definition of parliamentary democracy and its applicability to Bolivia. The program places special emphasis on the role of labor groups in the process of democratic development. With NRI support, FUNDEMOS will host a follow-up to its 1987 Economic Development Conference in March 1988 in Santa Cruz, Bolivia.

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- Assistance to enable the Associacao para a Cooperacao e Desenvolvimento Social (ACDS) to continue the third phase of a three year research project, "The Methodology of Communism and other Anti-Democratic Forces in Portugal." This project combines an extensive variety of studies and seminars, conducted by academic and professional members of ACDS, on the methods and tactics used by totalitarian forces in local, regional, and global contexts.
- The Instituto de la Economia Social de Mercado has received NRI assistance in Argentina. Seminars and training programs on democratic theory, voter education, research, party organization, media and communications will be developed to encourage greater post-election participation of Argentine conservatives in the country's political life.
- The Fundacion Simon Bolivar has received NRI support for the establishment of an Inter-American Forum in Colombia. The Forum will serve as a clearinghouse for exchanges among the moderate and conservative democratic parties throughout Latin America on topics related to communications, organization, public opinion surveys and telephone banks, and as a public policy institution to disseminate information on foreign policy issues of interest to all parties throughout the hemisphere.
- NRI has assisted the Freedom in Democracy Committee of Dominica in conducting a Democracy Awareness Campaign. The Committee is a nonprofit association composed of businessmen, educators, and political activists who joined together to provide a structure for a national civic education campaign. Educational and audio-visual materials and seminars for youth, business people, women and students, emphasize democratic development through community service.

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The Endowment also seeks to strengthen democratic governance and political processes through other programs, including technical assistance in the design and administration of election systems, support for nonpartisan public policy institutes that pursue democratic goals, efforts to enhance judicial independence and effectiveness, and programs aimed at encouraging the commitment to democracy of key public-sector groups including the military.

FY 1987 Endowment grants in this program area included assistance to:

- The United States-South Africa Leadership Exchange Program (USSALEP), to enable the Institute for a Democratic Alternative for South Africa (IDASA) to sponsor a national conference in Port Elizabeth entitled, "A Democratic Alternative for South Africa." Established in November 1986, IDASA is a nonpartisan research center seeking to improve communication and understanding between the white and black communities in South Africa.
- The Council of the Americas, to assist the Centro Peruano de Estudios Internacionales (CEPEI), a private nonpartisan research center in Lima. CEPEI is conducting a series of seminars and publishing related papers on the role of the military in a democratic Peru. These efforts will promote a dialogue between civilian and military perspectives on security relationships with Peru's neighbors, the foreign debt crisis, the impact of narcotics trafficking, and the effect of terrorism and subversion on Peruvian democracy.
- The America's Development Foundation, to enable the Haitian International Institute for Research and Development (IHRED) to continue its basic program, the "Forum for Democracy and Development." The program consists of a series of colloquia that bring

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together representatives of diverse democratic sectors in Haiti to address issues fundamental to the future of Haitian democracy. IHRED was established in the wake of Duvalier's fall in February 1986 and has served as a key neutral forum for dialogue on efforts to achieve a successful transition to democracy in Haiti.

- Delphi Research Associates, to assist the Fundacion para la Accion Vecinal y Comunitaria (AVEC), in providing organizational support and technical assistance to democratically-oriented community leaders in slum districts and squatter settlements in major Chilean urban zones. AVEC is holding nationwide meetings with democratic leaders of poblaciones (poor urban communities); organizing work sessions to examine specific problems confronting democratic organizations; and conducting coordination meetings among democratic grassroots leaders of poblaciones from the major urban areas to discuss critical national issues.
- c. Education, Culture and Communications (1987 Actual, \$2,620,360; 1988 Estimate, \$2,963,220; 1989 Estimate, \$2,766,940; Decrease, \$196,280).

One of the most essential aspects of the Endowment's work is in the realm of education, culture and communications. Democratic political institutions will not take hold and endure unless they are buttressed by a strong civic culture and supported by a populace that is committed to such ideals as the rule of law, individual liberty, free and open debate, majority rule, and protection of the rights of minorities. Training in democratic habits and principles is most effective if it begins during youth. In FY87, the Endowment provided assistance to a number of youth civic education initiatives.

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The general prospects for the advance of democracy in the world depend in large part on the cogency and vigor with which its advocates can defend the case for free societies. Accordingly, the Endowment has supported programs in closed societies aimed both at improving popular understanding of democracy -- through, for example, the dissemination of books, films and now in the rapidly expanding area of videos -- and at promoting contacts among pro-democratic intellectuals, writers, scientists and artists. Efforts in the realm of culture and opinion assume special importance with regard to closed societies, where other levers for promoting progress toward democracy are generally not available.

To date, the Endowment has maintained a broad, bold, and multi-faceted program in the category of education, culture and communications, highlights of which follow.

- Support has been given to the Afghanistan Relief Committee for two Afghan publications projects: the Writers Union of Free Afghanistan (WUFA), a group of intellectuals who publish a quarterly journal and who translate books and articles about the Soviet system for distribution inside Afghanistan; and the Afghan Information Centre, which publishes a monthly English-language bulletin reporting on events inside Afghanistan.
- With Endowment support, the James F. Byrnes International Center of the University of South Carolina has been able to assist the Leslie Sawhny Programme (LSP) of Bombay, India, to continue its program of training in the processes of participatory democracy. The benefits of LSP's training program have had a multiplier effect, as participants often return to their homes and conduct similar activities.

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- The Czechoslovak Society of Arts and Sciences has received support for a number of initiatives to assist independent publishing, cultural and scholarly activities in Czechoslovakia. One aspect of the program involves assistance to a London-based Support Group for the Jazz Section, a unit of the Czechoslovak Musicians' Union which serves as a voice for the alternative culture in Czechoslovakia. Regular visits will be made to Czechoslovakia to advise the Jazz Section on legal issues and provide moral and material support. The Jazz Section's banned bulletin will be published in the West for distribution inside the country.
- Freedom House, with NED support, has assisted the Hungarian Cultural Centre in its work in support of democracy and independent activities in Hungary. The Centre operates an information bureau in London for collecting and distributing information from and to Hungary; publishing and distributing newsletters, political and literary writings and other materials produced by Hungarian authors; and coordinating activities of democratic groups in Hungary and other East European countries. A samizdat library has also been established.
- The Institute for Democracy in Eastern Europe has been supported in its activities to assist independent publishing houses and self-education and human rights groups in Poland. Endowment assistance provides a consortium of independent publishers with funds for equipment, supplies and personnel costs for the publishing houses.
- Support has also been given, through the Polish American Congress, for a number of projects supporting the democratic movement in Poland. One program provides material assistance (food, medicine and clothing) to political prisoners in Poland and their families. Another assists independent film producers in Poland to produce new video films and to acquire existing films for reproduction on video cassettes to be shown by independent organizations throughout Poland.

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- The American Council of Young Political Leaders (ACYPL) received NED support to assist the Fundacion Universitaria del Rio de la Plata (FURP) in its leadership training program. The program brings regional Argentine youth leaders to Buenos Aires to examine Argentina's federal structure in depth and met with key public policy leaders.
- Through Delphi Research Associates the Endowment has assisted the Centro de Desarrollo Juvenil (CDJ) youth development center with its project of Democratic Education and Training for Chilean youth. CDJ educates and trains youth leaders from various sectors in the principles of democracy through seminars, conferences and research with the intent that each individual trained will reach an additional 15-20 young people over a two-year period.
- The Cuban American National Foundation has received NED support to assist the International Coalition for Human Rights in Cuba, directed by Armando Valladares, to expand their network of citizen committees which gather and disseminate information about human rights violations in Cuba.
- Southern Legal Assistance received a NED grant to assist the 22nd of January Movement of the Mothers of Political Prisoners to increase public awareness within Nicaragua and abroad of the plight of those incarcerated for allegedly violating the country's security laws, and to provide improved legal services and material assistance to the families of Nicaraguan detainees.

The indispensability of a free and vigorous press argues for an active Endowment effort aimed at encouraging democratically-oriented publishing enterprises in the Third World. Among the initiatives supported by the Endowment in this area are:

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- Assistance to La Prensa, the only independent newspaper in Nicaragua. When the paper was given permission in September 1987 to re-open -- after having been closed more than a year ago by the Nicaraguan government -- the Endowment was able to move quickly to again provide crucial assistance. A NED grant, administered by Delphi Research Associates, provides the printing supplies and other equipment which are desperately needed for the paper's ongoing publication.
- Support to the Newspaper Trust of Botswana for a training program for newspaper staff in Botswana and to assist The Reporter, the only truly independent weekly in the country. The paper has a readership of over 13,000 and covers development issues and other stories of national interest in addition to news and feature articles.
- The China Perspective, Inc. has received support for continued publication of The Chinese Intellectual (TCI) and the establishment of two "intellectual centers" in China. TCI is a Chinese-language quarterly journal dedicated to promoting open discussion of democratic values and institutions and of issues important to China's future. Building upon the magazine's remarkable success in gaining acceptance within China, "intellectual centers" will be opened in Beijing and Shanghai to serve as forums for meetings and discussion of political ideas.
- QUE ME has been awarded a grant for the publication and circulation within Vietnam of its Vietnamese-language magazine entitled Que Me. The monthly magazine contains articles on topics relevant to the struggle for democracy.

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- In FY 1987 the Endowment initiated its first Romanian program with the Foreign Policy Research Institute (FPRI). FPRI is publishing a new Romanian-language cultural quarterly, Agora, written for readers in Romania. The journal focuses on the current intellectual and cultural scene in that country and draws on samizdat writings from Romania as well as works by emigres.
- The Slovak Research and Studies Center received NED support to expand its Slovak-language publication, Nasy Snahy (Our Trends). This bimonthly covers political, economic and cultural issues and is distributed in Slovakia, the Eastern part of Czechoslovakia.
- Through a grant to the Polish American Congress the Endowment provides support to the Polish-language quarterly Zeszyty Literackie (Literary Notebooks), a highly respected Polish intellectual and literary journal published in Paris and distributed within Poland.
- The Intergraph Corporation was awarded a NED grant to provide assistance to the Stabroek News, an independent newspaper in Guyana established in 1986 with NED support. FY 1987 Endowment assistance supplied the paper with the newsprint and other materials necessary for its continued publication.

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- Freedom House received a NED grant to assist Radio Nanduti of Asuncion, Paraguay to conduct democratically-oriented forums with emphasis on active audience participation in the station's auditorium. Though the station's AM transmission capabilities were suspended in January 1987 in response to government pressures, panel discussions on critical issues in Paraguayan political life continue to be held. Proceedings of the forums are being published in printed form.
  - The Caribbean Publishing and Broadcasting Association (CPBA) received NED support to continue its year-round counseling program for Caribbean media. CPBA provides on-site, in-plant training and advisory services for journalists and broadcasters associated with newspapers and radio stations of the smaller Caribbean islands.
  - The Asociacion de Libro Libre in Costa Rica received NED support, through Freedom House, to continue and expand its program of dissemination of democratic thought in Central America. In two and one half years, Libro Libre has been able to increase its publication rate to three to four books a month on such topics as human rights, political philosophy, and Latin American history.
- D. Research and International Cooperation (1987 Actual, \$103,200; 1988 Estimate, \$116,705; 1989 Estimate \$81,855; Decrease, \$34,850).

Although most of its grants support action-oriented programs, the Endowment believes that well-conceived and clearly targeted research can usefully contribute to the effort to promote democracy. Accordingly, it has allocated in previous years a small portion of its resources to funding research and programs which strengthen international cooperation. Programs in this area in FY 1989 must be limited as the Endowment seeks to maximize the resources it can provide to action-oriented efforts to assist indigenous democratic groups abroad.

Examples of programs funded in this area in FY 1987 are:

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Examples of programs funded in this area in FY 1987 are:

- A grant to Stanford University to make possible a wider and more effective distribution of Democracy in Developing Countries. In FY 1984 the Endowment funded this four-volume comparative examination of factors contributing to the success or failure of democratic government in twenty-seven developing countries.
- Support to the Committees for a Community of Democracies (CCD) to nurture and expand the ranks of national CCD citizen groups and to prepare for a major All-Democracies Conference in 1988. CCD has been engaged in an ongoing effort aimed at building a new intergovernmental association of democratic countries as a basis for strengthening democracy worldwide.
- The Interparliamentary Group for Human Rights in the Soviet Union (IPG) received NED support to sponsor the second annual IPG Leadership Conference in West Berlin. IPG is a voluntary association of more than 600 parliamentarians from Western Europe and other countries which seeks to build Western and neutral country unity in support of the Helsinki Accords.
- Freedom House received assistance to continue and expand its Exchange program, a network of democratic opinion-leaders in both the developing and the developed world launched in 1984 with NED support. This network consists of over 370 individuals in more than 50 countries around the world who circulate materials from the Exchange mailings and share with others on the circuit the best short writings

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THE NATIONAL ENDOWMENT FOR DEMOCRACY

- E. Program Direction and Administration. (1987 Actual, \$1,267,465; 1988 Estimate, \$1,345,632; 1989 Estimate, \$1,315,000; Decrease, \$30,632).

Under this heading are grouped the administrative and oversight activities of the Board of Directors, officers and staff of the Endowment which include: program development; grants management; public information; and general administrative functions. As the number of ongoing programs increases and new initiatives are begun, the Endowment's oversight and administrative responsibilities necessarily grow. Indeed, the Congress, USIA and the GAO have all stressed the importance of these administrative responsibilities, an assessment with which the Endowment Board fully concurs. A decrease in funds available for administrative will strain the Endowment's ability to fulfill these responsibilities.

Mr. SMITH. We have with us the president of National Endowment for Democracy, Mr. Carl Gershman. You may proceed with your statement.

Mr. GERSHMAN. Thank you, Mr. Chairman.

#### GENERAL STATEMENT

Mr. Chairman, I want to thank you and the members of the subcommittee for giving me the opportunity to testify before you today on behalf of the National Endowment for Democracy. I welcome the chance to respond to your questions, since I am confident that the more that is known about the Endowment's work, the more support there will be for its unique and profoundly important mission.

From where we stand today, we can look back upon four years of work, four years of building an institution that has the explicit, unambiguous purpose of advancing democracy throughout the world. No one, Mr. Chairman, has followed this process more closely than your subcommittee, and I hope that you will agree that the progress made by the Endowment has been steady and encouraging.

This progress—and what I believe will be the bright and important future of the Endowment—is the result of three fundamental factors. The first is what we have done here to build the Endowment. The second is what others have done abroad to advance democracy. And the third is the very nature of the world situation in which we find ourselves.

First, with regard to the Endowment itself, over the past four years we have established a durable foundation that is at once conceptually, programmatically and procedurally sound. Consequently, our work has been based upon the view, set forth in 1984 in our "Statement of Principles and Objectives," that "the existence of autonomous economic, political, social and cultural institutions"—in a word, civil society—"is the foundation of the democratic process and the best guarantor of individual rights and freedoms."

Programmatically, we have acted upon this idea by contributing to the development, and in some cases the very survival, of a wide array of free institutions devoted to the values of democracy: trade unions, business associations and political parties (work carried out through our core grantees in these fields, the Free Trade Union Institute, the Center for International Private Enterprise, and the National Democratic and the National Republican Institutes for International Affairs), as well as civic organizations of women and youth, public policy institutes, cooperatives, and a variety of free communications media including newspapers, journals, books and films.

Procedurally, in addition to establishing high standards for the careful selection, monitoring and evaluation of grants, we have adhered to three basic operating principles: our grants are open to public scrutiny, our programs are responsive to the needs and initiatives of our partners abroad and our approach is consistent, not veering to the left or to the right but holding faithfully to a democratic course.

In practice, this means that we are ready to assist authentic democratic initiatives in a wide variety of circumstances: in authoritarian systems where the goal is transition to democracy; in developing democracies where the goal is the reinforcement of democratic structures and values; in closed societies where the goal is opening the system to independent activity; and in conflict-ridden countries where the goal is sustaining the possibility of democracy when the violence subsides.

This approach, Mr. Chairman, has been presided over by a Board of Directors that reflects the broad diversity and vigorous pluralism of American society. It has found support in a growing bipartisan majority in Congress and acceptance here and abroad among groups actively working to promote democratic ends. The fact that this bold, innovative and authentically democratic approach has also been unifying and consensual demonstrates how broad and deep is the commitment to democracy in our own country and indeed throughout the world.

If we have been successful, Mr. Chairman, it is largely because there exist people abroad who are passionately and courageously devoted to democracy. For them, democracy is not something to be taken for granted. It is a precious ideal whose value is enhanced by the very precariousness of its existence in some countries, or by its denial by force in many others. These people, with whom the Endowment has established bonds of solidarity and cooperation, include: in the Philippines, trade unionists, business leaders, women civic activists, high school students and others who are struggling to consolidate their new democracy under the most difficult conditions; in Haiti, democrats who refuse to relinquish the political space they have gained since the overthrow of Duvalier, and who continue to work for the establishment of democracy despite the violence of the past year; in Nicaragua, where the labor, business and political groups comprising the civic opposition, along with the editors of "La Prensa", the Mothers of Political Prisoners, youth activists and many others have refused to succumb to fear and repression and may now be in a position to advance their democratic aspirations; in Chile, where the unfolding political process that will result in a plebiscite later this year could bring about the transition to democracy that groups across the democratic political spectrum have been striving to achieve; in South Africa, where black and white democrats, undaunted by the new wave of repression, are working together to replace apartheid with a democratic system and in Poland, Czechoslovakia, Hungary and other countries of Eastern Europe where there has been an extraordinary growth in independent democratic action, a process that is now spreading even to the Soviet Union itself.

These are but a few of the countries in which we have been active, all of which are listed in the annual report that we have submitted to the subcommittee. Among the many projects described, there are some that already have had an especially broad and significant impact. I would like to call the subcommittee's attention to: the Institute for Liberty and Democracy in Peru, where pioneering work with the vast informal sector of microentrepreneurs has produced a new free-market approach to development in the Third World that is beginning to transform development

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The people who lead these efforts were among those who spoke at a conference we organized last year to describe our work. Their remarks, as well as those of other equally remarkable democratic leaders who spoke there, are included in this book, "The Challenge of Democracy," which I would also like to present to the subcommittee.

Mr. Chairman, the third and final factor that accounts for the progress and acceptance of the Endowment is the very nature of the world situation in which we find ourselves. This situation is clearer to us now, after the experience of Nicaragua, than it was before. What we have all learned and, I think, can agree upon is that an anti-Communist dictator (such as Somoza) is not a bulwark against Communism, nor is the removal of such a dictator a guarantee of democracy. If we don't build up the democratic forces—systematically, over time, with adequate resources—then there will not be a strong democratic alternative when the authoritarian system collapses, as inevitably it must. In a word, we will have only ourselves to blame if we find ourselves with no option other than retreat or the use of force, and we will pay the price—as we have—in money, in division that strains the political fabric of our society, and possibly in lives as well.

There is even a more basic reason for the relevance of the Endowment today. We live in a state of strategic parity with our main rival, the Soviet Union. There may be violent conflicts at the margins of the world political system, but the overall balance is likely to be preserved. This means that the use of force will continue to decrease as an instrument of policy, and competition will increasingly shift to the realm of politics. We must have the capability to engage effectively in this competition.

Ironically, while democracy is the most broadly accepted and legitimate political idea in the world today, we have never done very well at explaining and defending it. In fact, we have all but abandoned the field of political competition to our ideological rivals, who have usurped the banner of democracy for their own anti-democratic ends.

We are now beginning to wake up to this unpleasant reality, but we still have a long way to go. True, there has been a democratic revival during this decade, and conditions are still favorable for democratic advance. But this is no cause for complacency. It was only a little more than a decade ago that democracy was thought

to be in decline, and it will not take many setbacks for pessimism to return once again.

In the meantime, we should accept the fact that political competition will not disappear, that democracy has dedicated opponents who have hardly given up the fight, and that we must therefore have the wherewithal to defend and promote our values in a world of diverse cultures and competing political philosophies.

I believe that the Endowment is potentially the most effective instrument we have for advancing our values in the world. It is cost-effective, activist, engaged. It not only provides concrete assistance to democrats on the frontlines of political struggle, but sends a message of solidarity and democratic commitment. We are gaining good will even as we assist our friends and thereby advance our own interests as well.

Mr. Chairman, we have been immensely grateful for the support and understanding which you and the subcommittee have shown for the Endowment. We hope that as we continue to progress, you will continue to weigh our needs against the enormity of the challenge we face and the promise this new institution offers for serving the finest ideals and highest interests of our country.

[The prepared statements of Carl Gershman and Eugenia Kemble follow:]

STATEMENT OF CARL GERSHMAN  
PRESIDENT  
NATIONAL ENDOWMENT FOR DEMOCRACY  
TO THE  
HOUSE APPROPRIATIONS SUBCOMMITTEE ON  
COMMERCE, JUSTICE, STATE AND JUDICIARY

Monday, March 28, 1988

I want to thank you, Mr. Chairman, and the members of the subcommittee, for giving me the opportunity to testify before you today on behalf of the National Endowment for Democracy. I welcome the chance to respond to your questions, since I am confident that the more that is known about the Endowment's work, the more support there will be for its unique and profoundly important mission.

From where we stand today, we can look back upon four years of work -- four years of building an institution that has the explicit, unambiguous purpose of advancing democracy throughout the world. No one, Mr. Chairman, has followed this process more closely than your subcommittee, and I hope you will agree that the progress made by the Endowment has been steady and encouraging.

This progress -- and what I believe will be the bright and important future of the Endowment -- is the result of three fundamental factors. The first is what we have done here to build the Endowment. The second is what others have done abroad to advance democracy. And the third is the very nature of the world situation in which we find ourselves.

First, with regard to the Endowment itself: Over the past four years, we have established a durable foundation that is at once conceptually, programmatically and procedurally sound. Conceptually, our work has been based upon the view, set forth in 1984 in our Statement of Principles and Objectives, that "the existence of autonomous economic, political, social and cultural institutions" -- in a word, civil society -- "is the foundation of the democratic process and the best guarantor of individual rights and freedoms."

Programmatically, we have acted upon this idea by contributing to the development, and in some cases the very survival, of a wide array of free institutions devoted to the values of democracy: trade unions, business associations and political parties (work carried out through our core grantees in these fields,

the Free Trade Union Institute, the Center for International Private Enterprise, and the National Democratic and the National Republican Institutes for International Affairs), as well as civic organizations of women and youth, public policy institutes, cooperatives, and a variety of free communications media including newspapers, journals, books and films.

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This approach, Mr. Chairman, has been presided over by a Board of Directors that reflects the broad diversity and vigorous pluralism of American society. It has found support in a growing bipartisan majority in Congress and acceptance here and abroad among groups actively working to promote democratic ends. The fact that this bold, innovative and authentically democratic approach has also been unifying and consensual demonstrates how broad and deep is the commitment to democracy in our own country and indeed throughout the world.

If we have been successful, Mr. Chairman, it is largely because there exist people abroad who are passionately and courageously devoted to democracy. For them, democracy is not something to be taken for granted. It is a precious ideal whose value is enhanced by the very precariousness of its existence in some countries, or by its denial by force in many others. These people, with whom the Endowment has established bonds of solidarity and cooperation, include:

- in the Philippines, trade unionists, business leaders, women civic activists and high school students who are struggling to consolidate their new democracy under the most difficult conditions;
- in Haiti, democrats who refuse to relinquish the political space they have gained since the overthrow of Duvalier, and who continue to work for the establishment of democracy despite the violence of the past year;
- in Nicaragua, where the labor, business and political groups comprising the civic opposition, along with the editors of La Prensa, the Mothers of Political Prisoners, youth activists and many others have refused to succumb to fear and repression and may now be in a position to advance their democratic aspirations;

- in Chile, where the unfolding political process that will result in a plebescite later this year could bring about the transition to democracy that groups across the democratic political spectrum have been striving to achieve;
- in South Africa, where black and white democrats, undaunted by the new wave of repression, are working together to replace apartheid with a democratic system;
- in Poland, Czechoslovakia, Hungary and other countries of Eastern Europe where there has been an extraordinary growth in independent democratic action, a process that is now spreading even to the Soviet Union itself.

These are but a few of the countries in which we have been active, all of which are listed in the annual report that we have submitted to the subcommittee. Among the many projects described, there are some that already have had an especially broad and significant impact. I would like to call the subcommittee's attention to:

- The Institute for Liberty and Democracy in Peru, where pioneering work with the vast informal sector of microentrepreneurs has produced a new free-market approach to development in the Third World that is beginning to transform development theory and policy around the world;
- Conciencia in Argentina, a women's civic action movement that is spreading to fifteen other Latin American countries and has been established in the Philippines as well;
- Libro Libre in Costa Rica, a movement of democratic intellectuals, which has produced a new democratic literature for Central America and which represents the first coherent attempt to promote democratic ideas in the region;

- The International Coalition for Human Rights in Cuba, headed by Armando Valladares who just recently led the successful fight for the establishment of a United Nations commission to investigate Cuban human rights violations.
- The Chinese Intellectual, a journal of independent opinion circulating in China whose editor has now established a major intellectual center in Beijing which is working to further the process of reform and opening.

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There is even a more basic reason for the relevance of the Endowment today. We live in a state of strategic parity with our main rival, the Soviet Union. There may be violent conflicts at the margins of the world political system, but the overall balance is likely to be preserved. This means that the use of

force will continue to decrease as an instrument of policy, and competition will increasingly shift to the realm of politics. We must have the capability to engage effectively in this competition.

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up the fight, and that we must therefore have the wherewithal to defend and promote our values in a world of diverse cultures and competing political philosophies.

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Mr. Chairman, we have been immensely grateful for the support and understanding which you and the sub-committee have shown for the Endowment. We hope that as we continue to progress, you will continue to weigh our needs against the enormity of the challenge we face and the promise this new institution offers for serving the finest ideals and highest interests of our country.

Submitted statement of Eugenia Kemble, Executive Director  
Free Trade Union Institute, AFL-CIO  
to the  
Subcommittee on Commerce, Justice and State  
Committee on Appropriations  
U.S. House of Representatives

March 28, 1988

On behalf of the AFL-CIO and the Free Trade Union Institute (FTUI), I would like first to thank you, Mr Chairman, for the opportunity to present our views on further funding of the National Endowment for Democracy.

The AFL-CIO supports increased Congressional funding of the Endowment, and would urge you and the subcommittee to appropriate at least the full \$18.1 million authorized by the Congress for FY 1989. We do so not just because we receive grants from the Endowment which fund part of the international work of the AFL-CIO. We believe the Endowment's overall grant program significantly enhances the important and constructive work being done in support of democratic ideals and institutions worldwide by numerous private organizations, including the two principal American political parties, the U.S. Chamber of Commerce and many others -- work that simply would not be possible otherwise.

As you are surely aware, the Free Trade Union Institute is the recipient of a significant share of the Endowment's program budget -- \$5.4 million in the current fiscal year. It supports

more than 40 programs, involving trade unions in approximately 60 countries. These programs are carried out by FTUI together with three other AFL-CIO institutes -- the American Institute for Free Labor Development (AIFLD), the African-American Labor Center (AALC), and the Asian-American Free Labor Institute (AAFLI). Indeed, the labor program is unique among those funded by the Endowment in that it is carried out by a worldwide team of American labor specialists, many of whom are based in the countries concerned.

For the information of the subcommittee and the Congress, I am submitting as an appendix to this testimony a short report prepared by the staff of the Free Trade Union Institute entitled "Freedom of Association: Private Work in the Public Interest." It is an explanation of how and why and where the AFL-CIO and its four international affairs institutes have invested the funds received from the Endowment in the fiscal years 1984 to 1987. I hope that Members and staff of the subcommittee will have an opportunity to review its contents, as I expect you will agree that these funds are being wisely and constructively spent in places where the future of democracy is very much in question -- in the Philippines, Chile, Poland, Haiti, Central America and southern Africa.

While some of the programs described in the report will surely be new to some Members of this subcommittee, many of you are familiar with our largest programs and have met some of the

foreign labor leaders involved during their occasional visits to Washington. Our more important programs include support to:

o The Trade Union Congress of the Philippines, which has played a crucial role in bolstering the democratic center in that country. The TUCP was instrumental in getting out the vote for the key presidential ballot in February 1986 -- and in monitoring the results as part of NAMFREL. The TUCP has remained an active and constructive advocate of democratic values and institutions, and has pressed for a responsible public policy program that will promote social peace and justice.

o Solidarnosc, which continues as the most representative body in Poland, thanks to both the indomitable spirit of the Polish people, and the material assistance that is provided from the international labor movement. We provide considerable assistance to the underground there that is continuing to provide the principal peaceful pressure on the Communist government for political and economic reform.

o The democratic workers organizations of Chile, which have endured 15 years of repression are nevertheless busily engaged in a massive voter registration campaign whose goal is the restoration of political freedom in their country.

o A small democratic trade union organization in Nicaragua, the Confederation of Trade Union Unity, survives in the face of concentrated government pressure to merge with a non-democratic 'union' organization.

o A series of important education programs conducted by the African American Labor Center for trade unions throughout the

continent of Africa.

o Support to trade unions in Nigeria and Uganda, still recovering from years under military dictators, benefit from assistance provided by the American labor movement.

For the present, however, I would like to focus a bit on the work that is not being done in the labor field -- and that could be. For we are convinced that only a portion of the work necessary and possible toward the enhancement of democracy in the world is now underway. So we would ask that you consider increasing the amount that will be appropriated for the Endowment in the fiscal year 1989 -- certainly to the modest amount that has already been authorized by the Congress for FY 1989, \$18.1 million.

Let me offer now a few words about why these numbers matter; why this money makes a difference to organized labor here and abroad. The AFL-CIO and its four institutes maintain offices, and a personal presence, in 35 countries. Most of these predate the creation of the Endowment, but virtually all have benefited from the additional programming that the Endowment has made possible. While we draw great satisfaction from the work that our people in the field are thus able to conduct, we are continually aware of the projects that trade unionists in foreign lands have proposed to us that we simply do not have sufficient funds to support at present.

Some examples:

o We would like to have a larger program in Pakistan, where three large democratic trade union federations are trying to find their respective ways in a volatile pre-democratic period dominated by a military government and a strong Islamic fundamentalist movement.

o We would like to have a more comprehensive program focused on the defense of worker rights as expressed in international covenants. We would like to enable democratic unions in repressive countries themselves to identify, document and challenge violations of worker rights. We have also considered a program to sensitize and educate government officials, academics and other decision makers in some countries to be better aware of the problems of abusive and inhuman working conditions -- and of the possibilities for democratic institutions and governments to remedy them.

o Eastern Europe is currently experiencing a revival of peaceful activism on the part of independent social activists, and we would like to support those democratic trade unionists who request assistance, as we have been doing with respect to Solidarnosc in Poland.

o In the Central American countries which are at various stages in a complex, and ultimately uncertain transition to

democratic systems, our trade union friends would like to resume large scale programs in support of electoral education as a new season of national and local elections dawns.

o We would like to broaden the participation by American unions in what is now a modest union-to-union program in which trainers, organizers and educators associated with a particular U.S. union are encouraged to work with counterparts in similar industries or situations abroad. Such personal contact between unionists -- leaders and rank-and-file alike -- is often vital to a truly effective program of cooperation and assistance.

o We would like to expand our program of cooperation with unions in the Islamic world, including especially northern Africa, where anti-democratic movements frequently combine political and religious rhetoric to rationalize the oppression of working men and women.

o Throughout the world, and particularly in those countries where state-dominated economies are currently entering a period of massive lay-offs and cutbacks, unions want to become more active --and we would like to help them -- in establishing and maintaining job-providing programs, through cooperatives and other methods. These are vital in many places to the reputation and effectiveness of stable, democratic institutions.

The list is long, and is limited only by the uneven state of freedom in the world and the amount of funds available to our dedicated field staff to conduct programs in defense of trade union liberties. I hope you will agree that it is consistent with the American interest in the promotion of a free and democratic, and peaceful, world that private groups including unions should be strengthened in order that they may defend the interests of their members in pluralist society.

DEFENDING FREEDOM OF ASSOCIATION

Private Work in the Public Interest

The AFL-CIO  
and the  
National Endowment for Democracy

A Report  
by the  
FREE TRADE UNION INSTITUTE

1987



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**FIRST PRINCIPLES**

**The AFL-CIO**

**and**

**International Affairs**

Labor's Goal

The men and women of the American labor movement believe that the vitality and effectiveness of representative workers organizations is closely tied to the strength and vibrancy of democratic political institutions.

It is a lesson learned from the history of the United States. The expansion of our own political rights and civil liberties, which over the course of the 20th Century have made this a more fully participatory democracy, parallels the growth of organized labor and the related improvements in the standard of living for the average citizen. It is also evident in the histories of other lands: independent labor organizations are among the first targets of dictatorial regimes, which seem universally to fear and despise genuinely popular movements such as free trade unions.

This basic understanding -- that unions and workers thrive in democratic systems, and must struggle even to survive in non-democratic ones -- has traditionally guided the foreign policy views of the American labor movement. In 1983, it led the AFL-CIO to join with three other major American institutions in supporting a significant new venture in international affairs. Along with representatives of the U.S. Chamber of Commerce and the Democratic and Republican parties, as well as distinguished scholars and others, leaders of the labor movement helped found the National Endowment for Democracy.

The ideas that guided the creation of the Endowment, and informed labor's support for the initiative, were several.

**o American workers' interests are advanced by the proliferation of democracy in the world.**

It is true that organized labor has a humanitarian interest in the fate of freedom in other lands. American workers have traditionally supported human rights policies because, above all, it is the morally decent thing to do. Yet there is more.

In a world where the wages and living conditions of workers in other countries are artificially low, due to the repressive policies of dictatorial governments, American workers are obliged unfairly to compete in a global economic environment in which they are, in effect, asked to work for unreasonably low remuneration. Because unions are able to improve conditions of service only in countries where basic democratic freedoms are protected -- especially freedom of association, the most elemental of the rights upon which the survival of unions depends -- the spread of democracy is wholly consistent with improvements in the material well-being of American workers.

o The interests of working people in foreign lands are enhanced and advanced by the proliferation of democracy.

Standards of living rise more consistently -- and in more equitable manner -- in free countries than under other forms of social and political organization.

In some non-democratic states, short-term advantages in industrial efficiency, which may yield impressive national statistics, are frequently belied by huge concentrations of wealth -- and those societies are frequently marred by the repression necessary for a wealthy minority to maintain its position of privilege. In other non-democratic states, the nominally egalitarian "people's republics," all rhetoric to the contrary notwithstanding, unions representing the interests of workers are illegal, and individuals are denied basic rights.

o American national interests are advanced by the spread of democracy in the world.

A free world is a peaceful world: international disputes are settled through negotiation and compromise. Modern democracies do not go to war with one another. A free world is also a more prosperous world, as commerce and trade are unimpeded by strife.

o The American experience demonstrates that democracy is not something created by governments.

The American experiment teaches that democracy is, rather, a creation of the many disparate private interests -- individual and collective -- which comprise 'the people' referred to, for instance, in "We, the People of the United States, in order to form a more perfect union ..." In competition and collaboration with one another, they construct government, which is a decision-making system.

In a free society, the system of governance created tends to be representative and democratic, so that groups and individuals are generally satisfied with the opportunities afforded each to defend and advance its own interests. And organization into groups provides individuals with an additional measure of protection from arbitrary abuses of power -- by government or employer or other interest groups.

\* \* \*

#### Private Work in the Public Interest

Over the years, many people abroad have asked for American help in extending to their own countries the freedoms we in the United States enjoy. In many cases, they do so on a private

basis -- that is, organizations ask not for government support, but for assistance from their counterparts in this country. In the case of labor unions, the AFL-CIO has heard pleas for organizational and financial assistance, at one time or another, from struggling union leaders in every part of the world.

Persuaded that private organizations could perform a public service in this respect, the Congress in 1983 appropriated funds to the National Endowment for Democracy, created in 1983 by four of the most representative of American institutions -- the two major political parties, the U.S. Chamber of Commerce, and the 13-million-member trade union federation, the AFL-CIO.

These four (and many smaller groups, as circumstance would suggest appropriate) would help their counterparts abroad to build democratic institutions -- which would, in turn, form the bulwarks of free societies. The Endowment's purpose, as set forth in its Articles of Incorporation, would be to -

encourage the establishment and growth of democratic development in a manner consistent both with the broad concerns of United States national interests and with the specific requirements of the democratic groups in other countries which are aided by programs of the Endowment.

The structure of the Endowment is unique. It is a private, non-profit corporation, whose policies are determined by its Board of Directors. Because public funds are made available for private undertakings, the Endowment and its grant recipients are, of course, accountable for appropriated money they receive (and regular financial and program reports are a matter of public record). But they do not work for the government; Endowment programs do not have to be approved by, nor can they be vetoed by, government.

Central to the idea of the Endowment was the understanding that it would be the private groups themselves -- both the American grant recipients and their partners abroad -- who would determine how best to invest the public funds to strengthen democratic institutions. Acting independently of the particular U.S. Administration of the day, the Endowment would finance work which supported the enduring American commitment to democratic development. The AFL-CIO would not have participated had this guarantee of independence not been assured, leaving all decisions about program and policy in private hands.

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Labor's Historic Internationalism

That trade union activity would play a large role in the work of the Endowment was clear from the outset. In part, this was due to the considerable record of accomplishment by American labor over many years of international development work.

A powerful demonstration of its commitment was the aid it provided to European democratic unions in the aftermath of World War II. In the post-war years, U.S. labor leaders, working through the Free Trade Union Committee, responded to requests for help from trade union leaders in Europe who were engaged in fighting Soviet-supported efforts to obstruct and undermine the Marshall Plan for economic reconstruction. Then as now, the Soviets frequently sought to work through trade union fronts to entice working men and women in free societies to support policies that would enhance Soviet state power and influence. Fortunately, however, the effort by the the free trade unions of Western Europe and the United States to bolster independent and representative workers' organizations was successful, as the vitality of the European democracies today attests.

The need for similar organizational aid to trade unionists in the developing world soon became clear. Accordingly, in 1962, the **American Institute for Free Labor Development** was created by AFL-CIO leaders to operate in Latin America and the Caribbean. In 1964, the **African-American Labor Center** launched similar programs with African unionists. And in 1968, the **Asian-American Free Labor Institute** began working with union brothers and sisters in Asian nations.

In 1977, the **Free Trade Union Institute** was created to administer training and exchange programs with European trade unionists, especially those from the new democracies of Spain and Portugal. In 1984, FTUI was given the assignment by the AFL-CIO of coordinating Labor's involvement with the National Endowment for Democracy.

Most of the work of these four institutes may be summarized as educational and historically oriented toward "economic" work, in that it has involved training in union organization and collective bargaining, with occasional exchange visits to build an appreciation for the situations of workers in other lands.

Over the years, however, the nature of the political systems of these countries time and again intruded on these nuts-and-bolts union-to-union assistance programs. In places where freedom of expression and freedom of assembly were abridged or denied, there was little of material consequence that a union could effectively do -- regardless of how modern or professional or well-informed its leaders and organizers became. For it is the political system of a nation which determines in the end

whether and in what circumstances unions may legally exist -- and what they may do with respect to working conditions, wages, retirement benefits and the like (let alone the secondary activities unions can perform as stable social forces and civic leaders). History teaches that only in societies where basic civil liberties are protected are unions able to function effectively as advocates of workers' interests.

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#### Freedom of Association

In a democratic society, individuals are able to associate freely and to express themselves on decisions facing their communities. For Americans, this may be the essential civic right, as important in its practical impact as the right to vote.

"In no other country in the world," wrote Alexis de Tocqueville, in his 1835 classic, Democracy in America, "has the principle of association been more successfully used, or applied to a greater multitude of objects, than in America." He went so far as to suggest that "liberty of association has become a necessary guaranty against the tyranny of the majority." This because private organizations (including those we know today as political parties and public interest lobbies, as well as professional associations and trade unions) provide the means for even a modest number of persons to pool resources and present their views in concert -- to employers, to the government, and to the larger society which, in free countries, chooses the government.

For democratic unions, freedom of association is the basic right. Without it, there is no power to defend and represent workers' interests before employer, or government.

As AFL-CIO President Lane Kirkland wrote, in the journal Commonsense, in November 1983:

Experience teaches us (even if some remain to be convinced) that free and strong trade unions are the most effective instrument for improving wages and working conditions. Experience has also taught us that such unions cannot flourish except in a climate of respect for human rights ...

Of all the commonly enumerated human rights, we believe the most important is freedom of association - not only because it is the

bedrock principle of trade unionism, but because it enables and defends the exercise of all other human rights.

Freedom of association means, simply, the right of ordinary people who share common interests to form their own institutions in order to advance those interests and to shelter them against the arbitrary power of the state, the employer, or other strongholds of self-interest. Absent such sheltering institutions, not only are the people powerless to defend such other rights as they may have against state encroachment, but those rights are inevitably attenuated. Freedom of speech is reduced to the right to cry alone in the wilderness; freedom of worship is restricted to solitary meditation; and freedom of assembly is, literally, pointless. Effective political opposition - and therefore democracy itself - is impossible.

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#### American Labor's Program of Democratic Development

With the advent of the National Endowment for Democracy in 1983, and the AFL-CIO's decision to seek funding support from it, numerous foreign trade union organizations were able to launch new programs. Acting generally through the agency of one of the AFL-CIO's four international affairs institutes, these trade unions began to look for ways to establish or improve their political presence in the countries within which they worked, and to address a broader range of issues than those conventionally found at the bargaining table.

More than three years have passed since the first Endowment grant was awarded to the AFL-CIO's institutes. It is appropriate, therefore, to provide an account of how that money has been spent and what the program has accomplished -- not least because the men and women of the American labor movement are U.S. citizens and taxpayers, too, and so should be apprised of what is being done with their money and in their name.

The pages that follow provide a review of what the AFL-CIO's four international affairs institutes have done to date with the assistance provided by the National Endowment for Democracy in 1984, 1985, 1986 and 1987.

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**THE NATIONAL ENDOWMENT FOR DEMOCRACY**

**A New Kind of Assistance**

**... to Unions Abroad**

### A New Dimension to Labor's Work

When the Free Trade Union Institute received its first grant from the Endowment in April 1984,\* the needs of desperate trade unionists in countries around the world were well established.

The AFL-CIO and its institutes had offices in three dozen countries, were intimately familiar with the union situation in twice as many, and had already received urgent requests from beleaguered unionists around the world who were greatly heartened by news of the founding of the Endowment. Accordingly, the American labor movement took immediate steps to respond.

The international affairs institutes of the AFL-CIO had previously received grants of funds from government departments, including the U. S. Information Agency, the Department of Labor, and the Agency for International Development. But the grants from the Endowment enabled the AFL-CIO to answer a much broader range of requests, covering a significantly larger agenda of trade union needs.

American labor could now support unions abroad in efforts to educate their members about the democratic political process -- whether for the purposes of union democracy, or as part of efforts to democratize the governments and laws under which their unions function. Assistance could be provided to address matters which were not so much affected by the collective bargaining process as determinants of the bargaining process; matters which shaped the social, economic and political environment within which unions necessarily operate. Unions wanted to build coalitions with other democratically-inclined organizations -- including political parties, business associations, church groups and other civic bodies. They wanted to hire experts in economics and labor law, to help them develop better informed and more persuasive positions on public policy. They wanted to produce publications to strengthen communications with their membership. They wanted to establish ways to tell others outside their own borders when trade union freedoms were violated and organizational activity suppressed. The AFL-CIO wanted to help.

The need for this had long been clear. After all, advances in 'GNP', 'export earnings,' or 'per capita disposable income' do not benefit the families of workers unless they are able to share in the wealth thus created. In societies where the essential

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\* Funding available to the Free Trade Union Institute from the Endowment has fluctuated a great deal. In 1984, \$11 million was made available to labor. In 1985, \$13.8 million. In 1986, however, labor's share of the Endowment's funding declined drastically (as the Endowment's total budget also declined) to \$4.3 million. In 1987, it rose slightly, to \$4.8 million.

freedoms which a union requires are abridged, "economic" development is inevitably undermined by the lack of commensurate political development. Only through organization into trade unions, history shows, are workers likely to be able to negotiate with their employers (which in many countries are closely allied to the governing elite) for a fair distribution of the fruits of their own labor. Most of what was new in the requests for assistance presented amounted to programs which would enhance the strength and the clarity of the public, political voice of the trade unions. To these requests, the AFL-CIO is inclined to respond with a great deal of sympathy and understanding.

The American labor movement does not subscribe to the notion -- advanced by dictators of various ideological stripes and their apologists -- that political freedoms are inconsistent with, or irrelevant to, material improvement in the lives of the poor. In fact, we believe that it is only through the protection of individual liberties that the means to protect and feed one's family can be secured to working men and women.

The arrival on the scene of the National Endowment for Democracy enabled the American labor movement to work with foreign labor movements which requested such help \*, to improve and accelerate their own institutional political development, and their civic involvement in the larger society -- and thus to contribute to the political maturation of their countries.

The labor programs funded by the Endowment can be divided into six categories of work. They are:

- o Basic institution-building support to democratic trade unions, to international trade secretariats, and for support of trade union exiles and their families.
- o Aid for exchanges of trade unionists focusing on specific functional trade union and political development issues.
- o Assistance to civic education and training efforts for members on trade union issues and the range of public policy questions whose resolution can be constructively shaped through the democratic process (including elections).
- o Support for the development of trade union participation in electoral activities, including training, the development of descriptive materials about elections and issues at stake, registration and get-out-the-vote efforts, monitoring of election day activities to safeguard the integrity of the ballot.

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\* One of the propositions that guides all of the AFL-CIO's international work is that assistance is only provided when and where it is requested.

o Enhancement of democratic pluralism through: the publication of periodicals (newsletters, union newspapers), as well as special democratic education materials; advice and support for building coalitions of private organizations working together to advance the democratic cause; direct aid to unions and related groups in dictatorial or totalitarian countries; dissemination abroad of American labor's own views on issues of international concern.

o Democratic development, which includes aid to labor-related community projects, such as land reform programs or the organizing of credit union or consumer purchasing cooperatives; and cooperation with other labor bodies, such as the International Confederation of Free Trade Unions (the ICFTU), which sponsor and support such efforts.

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#### New Projects

Grants from the National Endowment for Democracy in the first year financed activities in each of the rubrics above. Many projects were country-specific, while others were regional or transnational in nature; most involved the training of local union leaders to educate their fellow members in the topics involved; all were directed toward strengthening freedom of association, in law and in practice.

A handful of the projects launched in 1984 were able to realize some demonstrable successes in that first year. One example of this would be a civic education drive in Grenada, in which local labor officials joined with other civic leaders to mobilize interest and participation in the December 1984 parliamentary elections. Despite the absence of functioning democratic institutions during the previous ten years, voter turn-out on election day was 86 percent -- and a peaceable and legitimate transfer of political power.

Most projects, however, have required sustained commitments over several years by their American supporters. The AFL-CIO was (and is) prepared to stand with its friends abroad over the long term, to remain engaged in the arduous task of strengthening organizations and bringing them into the democratic fold in the variety of circumstances found throughout the world.

The AFL-CIO's friends abroad were persuaded that creation of the Endowment meant that the United States, through its most effective private sector organizers, was re-entering the worldwide struggle for human freedom in a meaningful way. Labor's representatives in the field were already familiar with trade unionists committed to democratic institution-building in many

countries, and quickly began to provide the long-overdue assistance they needed.

In Central America, the American Institute for Free Labor Development (AIFLD) started a series of civic education programs in several countries then approaching transitions in which military rule would give way to elected governments; trade unions in Guatemala, Honduras and Panama wanted to ensure that the voice of the workers was heard by those individuals running for political office in 1985 and 1986.

The African-American Labor Center (AALC) launched a multi-faceted program of assistance to the Southern Africa Trade Union Coordinating Council (SATUCC), which in August 1984 became an autonomous organization bringing together union federations in nine countries and exiles from South Africa and Namibia. In addition to the provision of some basic infrastructure support, including vehicles and office machinery for the SATUCC headquarters in Botswana, the AALC provided specific technical advice and assistance to particular member unions in the region. This included help on union elections (in Zimbabwe), on the administration of a labor studies center (in Lesotho), and the establishment of an agricultural cooperative for members of a mineworkers union (in Zambia).

In the Pacific, the Asian-American Free Labor Institute (AAFLI) was able to provide a broad program of organizational assistance integrated with civic education for the Trade Union Congress of the Philippines, which was then (in 1984) engaged in a difficult struggle to establish itself as an independent and democratic workers organization, despite concerted efforts by the Marcos dictatorship to control it. AAFLI also commenced work with the trade unions in the island states of the South Pacific.

In Europe, the Free Trade Union Institute (FTUI) provided administrative assistance to new unions in democratic Portugal and Spain, and to the embattled SOLIDARITY trade union movement in communist Poland. FTUI also provided some support to several research and publication efforts focusing on telling the story of union repression in the Soviet bloc (including Vietnam).

In Latin America, AIFLD provided aid to unions in dictatorships as diverse as Chile, Suriname and Nicaragua, and also supported a regional human rights monitoring project.

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#### An Early Setback

In 1986, funding available to the Endowment, and thus also to labor, declined. Indeed, whereas the Free Trade Union

Institute had received grants totaling \$13.8 million in fiscal year 1985, in the following year only \$4.3 million was received. Moreover, the magnitude of the cut was generally not anticipated until very late in the process of program planning.

This meant that a number of promising initiatives, just begun in 1984 and 1985, had to be terminated suddenly. While efforts were made to cushion the blow through reprogramming and the stretching out of funds over longer periods of time than originally planned, the scale of the worldwide program was cut by approximately two-thirds, to a level of less than \$5 million (where it remains today).

\*

Among the programs just begun which had to be abandoned in 1986 for lack of funding were:

o a North African civic education program, run by the AALC in cooperation with unions in Egypt, the Sudan, Mauritania and Chad, in order to provide a counter-weight to continuing efforts by Libyan-supported activists to politicize union organizations in a distinctly anti-democratic manner;

o two cooperative programs in Latin America, in which union federations in Venezuela and Israel collaborated with AIFLD to provide training to unions in lesser developed countries. The Venezuelan Labor Confederation (CTV), one of the institutional bulwarks of the well-established democracy in that nation, runs a Labor University (UTRAVE) offering technical instruction and political education, to which AIFLD brought scores of young trade union officials from the countries of Central America and the Caribbean. The Center for Labor and Cooperative Studies, the training arm of HISTADRUT, the General Federation of Labor in Israel, sent field technicians to work with AIFLD and agrarian unions in Peru, Guatemala and El Salvador. For the one year this program was under way, the HISTADRUT experts helped the unions develop member service delivery systems.

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Other programs were obliged to cut back significantly at a time when the political and union situation in important countries suggested that maintenance or expansion of the program would have been more appropriate. Among these were:

o the broad AAFLI-administered program of support to the Trade Union Congress of the Philippines. In 1986, when the foundations of the revived Filipino democracy were being reconstructed, and democratic labor was playing an increasingly vital and constructive role, the cooperative program of political education and organizational development was cut in half;

o a commitment by AAFLI to the independent labor federations of Pakistan that a permanent office and continuing AFL-CIO presence would be established had to be withdrawn. The unions of Pakistan remain anxious to develop civic and political education programs for their members in anticipation of a much hoped-for democratization in the period ahead, and this is being aided through a reduced program of seminars conducted by visiting lecturers and AAFLI staff personnel.

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**UNDERWAY\_ABROAD**

**Highlights of the New AFL-CIO Programs**

**1984 - 1987**

Program Highlights

A formal review of all the labor programs supported by grants from the National Endowment for Democracy since 1987 would run to hundreds of pages. It may, however, be worthwhile to note briefly and with illustrative examples the broad range of projects supported.

While some have continued to oppose the very notion of an American engagement in the worldwide battle of ideas, and question the wisdom of investments in democratic institutions and procedures through non-governmental organizations such as free trade unions, there has been little dispute over the merits of most projects funded through the Free Trade Union Institute.

\* \* \*

- Union-building where Unions face Anti-Democratic Pressures, emanating either from governments or anti-democratic forces supported from outside the country.

In Poland, aid was immediately channelled to Solidarnosc, the democratic trade union movement which by 1984 had already been declared illegal by the Communist government, after its brief legalization in 1980 and 1981. This aid has helped Solidarnosc continue to organize the community of democratic trade unionists in that troubled country, helped the underground press to spread the message of freedom, and enabled the democratic opposition to communicate with the Western world.

One measure of the continuing vitality of the free trade union movement in Poland is the fact that, in November 1986, six years after the Polish military's brutal crackdown commenced, Solidarity was accepted into affiliation by both of the free world's labor communities, the social democratic International Confederation of Free Trade Unions and the Christian democratic World Confederation of Labor.

\*

In Portugal, support was given to the fledgling Uniao Geral de Trabalhadores (UGT), the trade union movement comprising mainly socialists and social democrats, who have joined forces in the working class in direct competition with the Communist trade union organization, Intersindical. Here -- because Portugal is nowadays a free country -- the funding has gone into more traditional union-building activities, administered by the UGT itself. The federation has been able to hire professional staff for regional union offices, to advise union members about their rights in the workplace, and benefits available to them, as well as for organizing new UGT shops throughout the country.

\*

In Chile, where a heavy-handed military dictatorship frequently seeks out trade unionists for especially brutal punishment for their defense of the rights of working people, and their outspoken support of a democratic transition, aid has been provided to help the Central Democratica de Trabajadores (CDT), which is handicapped by official prohibitions on fund-raising, including dues collection. Efforts to open additional offices in several regions of the country, and to support additional organizing activities, were also launched.

\*

In Nigeria, the AALC has provided basic infrastructure support to the Labour Management Development Center (LARMDEC), an education and research institute founded in 1984 to bring together democratic trade unionists of the Nigeria Labor Congress for training in civic education and leadership development.

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The Confederation of Trade Union Unity (the CUS) of Nicaragua, a force in the civic opposition to the Somoza dictatorship before 1979, has found itself harassed and brutalized by the Sandinista regime -- which seeks to marshall all trade union organizations in the country under the control of the state-run Central Organization of Sandinista Workers. Since 1984, AIFLD has provided direct support to enable the CUS to continue its work in Nicaragua, including such organizing as it is permitted under the Sandinistas' martial law regime, and to publish studies on economic and social issues.

While the CUS newspaper, SOLIDARIDAD, was closed down by the government in 1986, the determination of the membership to maintain their organizational integrity remains, and the CUS looks forward to the day when it is permitted to offer its members the full services of a free trade union.

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Exchange visits may be tied directly to other programs financed by Endowment grants; they may be part of an exploration of possibilities for future cooperation; or they may simply be to familiarize trade unionists of various backgrounds with the democratic struggles of unions in other societies.

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Nonpartisan committees on political education were organized by unions in several countries -- to enable unions to play a role on behalf of workers -- where elections were scheduled to be held in the mid-1980s. For instance:

o From Latin America, 26 labor leaders from Brazil, Columbia, the Dominican Republic, El Salvador, Panama, Guatemala, Nicaragua and Venezuela came to the U.S. in October 1984 to observe the American elections. They met with campaign strategists from the Republican and Democratic parties, consulted with labor officials, received briefings on the American electoral system from labor experts in the field, and observed Election Day 1984 at the precinct level in various localities.

o A similar program was arranged at about the same time for organizers from the Liberian Federation of Labor Unions (LFLU), who were charged with mobilizing their membership to participate in a presidential election to be held in Liberia in 1985. In addition, AFL-CIO state federation officers and organizers travelled to Liberia to conduct seminars for local union leaders on registration and get-out-the-vote techniques. (While gross irregularities and fraud rendered the election illegitimate, the LFLU did maintain its organizational integrity and independence, in the face of considerable official pressure to hew to the government line, and successfully motivated and mobilized its membership.)

\*

In the Spring of 1987, the Free Trade Union Institute was proud to have supported the visit to the United States from Hungary of Mr. Sandor Racz. Elected leader of the Workers' Council of Budapest in 1956 (at age 23), Mr. Racz led a nationwide strike against the Soviet military invasion that was crushing Hungary's democratic revolution of November 1956. Despite seven years imprisonment, and constant surveillance and interrogations to this day, Sandor Racz remains active in peaceful democratic organizations. His tour of several U.S. cities heartened, informed and encouraged many American trade unionists to support the promotion of free trade unionism abroad.

\*

State and local AFL-CIO officials and organizers have had the opportunity to visit countries where unions are actively

engaged in difficult and sometimes deadly struggles to build democratic societies -- such as in Central America -- and then to report to their organizations around the U.S. on their visits.

\* \* \*

Support for democratic pluralism has taken many forms, including subsidies to pro-democratic publications and research efforts, and support for individuals who have been forced from their jobs or homelands for their work on behalf of democratic principles.

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In the Sudan, the African American Labor Center has provided funding for printing presses and the film, ink and paper necessary to help The Sudan Times re-establish itself as the beacon of democratic values it was before being closed by the previous regime. After two years of expanding circulation, this daily newspaper has secured a reputation for journalistic integrity and editorial independence, and is expected to be fully self-sustaining very shortly.

\*

The Free Trade Union Institute provided operating subsidies to Pravo Lidu ("the voice of the people"), the monthly publication of the exiled social democratic community of Czechoslovakia -- which facilitated the circulation of uncensored news and commentary inside that communist country. Because of other obligations, FTUI has had to discontinue this support as of mid-1987, and the future of Pravo Lidu is uncertain.

\*

Trade union exiles from Chile, Paraguay, Suriname and other countries were given sustenance until they were able either to establish themselves in new locations or return to their homes.

\*

In the Philippines, a multi-faceted program of assistance to the Trade Union Congress of the Philippines (TUCP) has supported organizing efforts, the launching of publications, and a broad scale civic education effort, which included efforts in which local union groups would seek to build community relationships with other institutions, such as the Catholic church, business associations, and officers in the middle ranks of the military.

AAFLI's program of assistance to the TUCP has been the largest NED-funded program of any sort during the last four

years. Although the TUCP has recently become best known for its well-organized get-out-the-vote campaigns in support of the 1986 election (which brought Cory Aquino to the presidency) and in the constitutional referendum of February 1987, the TUCP has long been principally engaged in a series of innovative programs to improve the economic situation of its membership. With AAFLI support, the TUCP continues to grow stronger as an institution through pioneering consumer cooperatives, medical aid plans, and other tangible membership benefit programs.

\* \* \*

**Education on Democratic Theory, Values and Practices,  
including trade union rights monitoring.**

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Central American Political Education. Aided by the fact that the six countries of Central America share a common language, a program of lectures and written materials was prepared and disseminated to democratic labor federations in Costa Rica, El Salvador, Guatemala, Honduras, Panama and the Dominican Republic. All approached elections in the period 1984 to 1986, and sought AFL-CIO assistance in training their members to involve themselves constructively in the political process.

With varying emphases, the labor confederations in these countries organized seminars and training courses on political action, informed their memberships about the electoral process, conducted registration and get-out-the-vote drives at the national, provincial and municipal levels. Civil electoral processes were bolstered in the main by the contributions of organized labor during this critical period, and the prospects for stronger democracies in the future were strengthened.

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In Pakistan, Cyprus, Thailand and the South Pacific, AAFLI has sponsored week-long seminars devoted to "The Role of Unions in a Democratic Society."

\*

African-American Labor Center: Department of Education. Key trade union officials and staff professionals from more than three dozen African countries have participated in a specially designed program of education, at the Meany Labor Studies Center in Silver Spring, Md. Two international delegations, each consisting of 10 to 20 individual union leaders (generally nominated by their national federations), assemble annually for two to four weeks of intensive education and discussion -- and sharing of personal

experiences all around -- regarding the social and political role of trade unions in the developing countries of Africa. One program is organized for a francophone delegation; another for trade union personnel from anglophone countries.

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#### Assistance to regional trade union bodies.

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The Asian-American Free Labor Institute has provided financial and organization assistance to the ASEAN Trade Union Council, which brings together trade union leaders from the five member nations of the Association of Southeast Asian Nations, to discuss and coordinate policies which affect the region.

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The AALC furnishes support for the administrative infrastructures of three regional labor organizations in Africa, to enable these groups to provide member federations with the means to coordinate joint policies and to participate in international meetings, such as at the Organization of African Trade Union Unity or at the ILO. The three bodies are: the Organization of Trade Unions of West Africa (OTUWA); the Southern African Trade Union Coordinating Council (SATUCC); and the Organisation des Travailleurs de l'Afrique Centrale (OTAC).

**ASSESSMENT**

**Has the AFL-CIO Accomplished**

**What it Set Out to Do ?**

### Labor's Democratic Agenda

So what has really been accomplished so far? How can one assess the value of this endeavor?

One important standard against which the work should be measured is the statement of purpose and objective provided at the outset by American labor. Recall the testimony of AFL-CIO President Lane Kirkland, speaking to the Senate Committee on Foreign relations when it was considering the first authorization of funds for the Endowment, on April 27, 1983:

We hope, for example, to help unionists develop and participate in democratic electoral processes. We would like to offer new unions, as well as those suffering devastation at the hands of governments, basic administrative support. For unions facing organizational extinction and for union leaders suffering personal threat, we want to do more to publicize their plight and dramatize their need. We plan to help pro-democratic international trade union organizations, like the International Confederation of Free Trade Unions and its individual trade secretariats do these same kinds of things. We want to bring more of our trade union friends here to see how our system works.

Four years have now passed since that ambitious agenda was set forth in public, and more than three years since the first Endowment grant was awarded to the Free Trade Union Institute. How well have we done in accomplishing what we set out to do?

Certain of the Endowment-funded projects managed by the American labor movement have had more tangible, or more obviously beneficial results, than others. Some have been postponed or abandoned for a variety of reasons. In many places it is not (and will not soon be) possible to draw final conclusions about the merit of particular programs. Nevertheless, some preliminary judgments can be made.

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### Accomplishments

Unions suffering devastation at the hands of governments have been provided basic administrative support.

In several unfree countries, democratic trade union

movements have managed to survive, with their independence from state control preserved, their organizational integrity intact, and their commitment to freedom undiminished.

Most significant in this category are Poland, Chile, and Nicaragua. While this is a tribute principally to the brave men and women of those organizations, they have clearly been helped by the assistance provided by the AFL-CIO.

\* \* \*

There is little question that organized labor in Central America, supported by its North American friends, has in the mid-1980s bolstered the process of democratization -- though the gains are partial and still threatened. Participation in elections has been high; activism in the campaign process has been informed and enthusiastic. And the governments elected are trying to build more liberal and more equitable societies.

\* \* \*

In the Philippines, the Trade Union Congress of the Philippines indisputably played a critical role in the largely peaceable transition from a military-backed kleptocracy to a popularly supported civilian regime, which has itself taken significant steps toward the consolidation of a democratic constitutional order. At the same time, the TUCP has emerged as a well-organized, articulate, effective advocate for the workers of the Philippines, and their unemployed countrymen. The training and exchange programs administered by the Asian-American Free Labor Institute have helped the TUCP significantly.

\* \* \*

In Haiti, where poverty and illiteracy are endemic and socially crippling, and the nature of the political order still very much in doubt, a boost from the AFL-CIO has enabled the small but dedicated Force Ouvriere Syndicalise (POS) to begin training activists and organizers who hope in time to build a modern free trade union movement.

\* \* \*

Existing relationships with fellow democrats in the trade union world have been strengthened by the ability of American labor to finance joint projects on behalf of less fortunate brothers and sisters.

The Force Ouvriere of France has joined in providing technical assistance to unions in francophone Africa and the

French-speaking Caribbean. Once established in this role, FO expects to be able to continue without further subventions.

Though they are now in abeyance, the joint programs described earlier, with HISTADRUT of Israel and the Venezuelan Workers Confederation (CTV) have reinforced already strong ties with the AFL-CIO. The shared experience of administering training programs for men and women throughout the Americas contributes to the vitality of the democratic community, and provides example and inspiration to others.

\* \* \*

American unions have become more active in supporting their counterpart unions abroad in the process of democratization.

U.S. affiliates have become more active in the work of their respective International Trade Secretariats (ITS), the international federations of workers engaged in similar or related work in different countries, in the following ways:

- the Communications Workers of America, in cooperation with the Postal, Telegraph and Telephone International (PTTI), have organized training seminars for South Pacific nations including Papua New Guinea and Fiji;
- the American Federation of Teachers, in cooperation with the International Federation of Free Teachers Unions (IPFTU), have provided support to the embattled Colegio de Professores in Chile;
- the Service Employees International Union, has brought health care workers from countries including Brazil, Mexico, Venezuela to meetings of the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET), with counterparts from Austria, Australia, Canada and Britain.

\*

Grants to individual affiliates have enabled them to launch or expand bilateral union-to-union programs, in which American affiliates conduct programs directly with their counterparts within related employment sectors. These projects, which provide a vital basis for cooperation among democratic trade unionists in international forums and in the world economy, include:

- the International Union of Bricklayers and Allied Craftsmen, working with construction workers in El Salvador;

- the American Federation of State, County and Municipal Employees providing technical assistance to public employees union leaders in the Phillipines, Fiji and other nations in the South Pacific.

\* \* \*

Some programs have become self-sustaining or otherwise proven so worthwhile that other institutional sponsors have appeared to help them, when AFL-CIO institutes have been obliged by funding constraints reluctantly to withdraw from active support:

o The popular Costa Rican-based Libro Libre book publication program, originally funded through AIPLD, is now supported directly by a grant from the Endowment. This program makes available in Spanish, for distribution in Central and South America, many of the classic works of democratic philosophy (The Federalist Papers, e.g., as well as topical books on current issues in international politics.)

o Similarly, the Vietnamese human rights monitors of "Que Me", based in Paris, have been awarded a grant directly from the Endowment to finance certain publications which will allow people in isolated Vietnam to communicate with the outside world -- continuing a program administered by the Free Trade Union Institute from 1984 through early 1987.

o The Inter-American Regional Labor Organization, known by its Spanish initials ORIT, is now providing support (and space, in ORIT's Mexico City headquarters) for the regional labor rights monitoring project launched in 1984 with Endowment funds, and a monthly publication on these activities, the QRIT/ICFTU Human and Trade Union Rights UPDATE.

o In Niger, where AALC has aided the Union des Syndicats des Travailleurs du Niger in the establishment of an agricultural cooperative to help sustain union members who are otherwise not working, administration of the program has in 1987 been passed over to local control and administration.

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**Assessment**

It is fair to say that we in the American labor movement have in fact begun to accomplish what we set out to do. Real progress has been made toward achieving the goals set forth by Lane Kirkland in his testimony to the Congress in 1983.

We have helped unionists develop and participate in democratic electoral processes (in Central America and in the Philippines, most notably). We have provided basic administrative support to new union organizations (in Brazil, Nigeria and in the African regional labor federations, most significantly). We have provided infrastructure support to unions in new democracies (such as Portugal and in the South Pacific). We have sought to publicize and alleviate the suffering of union activists and leaders facing personal threats and organizational extinction (in Poland, Nicaragua, Chile and Paraguay). We have helped unions participate more actively in the work of the International Trade Secretariats. And we have brought more of our union friends to the United States to see how our system works.

With the financial assistance provided by grants from the National Endowment for Democracy, the AFL-CIO has been able to protect and enhance the material, political and organizational situation of free trade unions abroad.

Yet clearly this task is only just begun. Important work in a score of countries remains to be done in protecting recent democratic gains, and difficult work remains to be done to prod still more countries along the road toward the better quality of life that workers and their families can only enjoy, in security and peace, in democratic societies.

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## EL SALVADOR

Mr. SMITH. You mentioned a lot of countries but you didn't mention El Salvador. What is going on down there, and what is your program doing down there?

Mr. GERSHMAN. Our program in El Salvador has been primarily through the Free Trade Union Institute's program of training and political education and of civic education. Other than that the main focus of our efforts in the region has been Guatemala, Nicaragua and Costa Rica. Also, the Libro Libre program has an office in El Salvador.

Mr. SMITH. The elections didn't go as some people would like them to go. That is now being used as proof that trying to encourage these countries to be a little more democratic sometimes results in them going back to the right instead of the way that we would prefer. What do you have to say about that?

Mr. GERSHMAN. Frankly, I think, Mr. Chairman, if you can absorb the right into a democratic political process, that is a gain for democracy. They accept the rules of the game. They won in a free election and, hopefully, El Salvador will continue to have fair competition, and the other side will win when it can make a better case to the people.

I thought what was extraordinary about the situation in El Salvador was that despite the fact that the guerrillas were threatening to murder people who were voting and cut off electricity and water resources to the people, some 60 to 70 percent of the people of El Salvador risked their lives to vote. I think that is an extraordinary statement on behalf of democracy, and it shows that democracy is working. And if you get a 2-party system in El Salvador, that is not bad for democracy.

Mr. SMITH. It does not demonstrate that they wanted someone to deal with them in a less democratic way and be more arbitrary and get rid of them.

Mr. GERSHMAN. Well, Mr. Chairman, I was not down there for this election. I did speak to some people who were down there, and I think there were a lot of other issues that were at stake. As always in a democratic system the ruling party can lose support for one reason or another. There are a lot of issues that, as you know, were of concern to people there. I don't see it as a setback for democracy.

## BUDGETARY REQUEST

Mr. SMITH. What was your request to USIA, and also to OMB?

Mr. GERSHMAN. OMB has made a request for the Endowment to the Congress of \$15.8 million.

Mr. SMITH. What was your request to them? What did you ask them for?

Mr. GERSHMAN. Well, we asked for an amount which was the equivalent of the originally authorized level that we had asked for in the past, which was, as I remember, \$82.6 million.

Mr. SMITH. Now how would the reduction of \$1.73 million be prorated or absorbed?

Mr. GERSHMAN. Well, it would be felt throughout the program. If I may, I can indicate to you where we stand now and what the effect of that might be on our program.

Mr. SMITH. Yes.

Mr. GERSHMAN. We have found that even operating within the current budget puts a tremendous strain on the Endowment.

Our program is now in its fifth year and we are operating at a level of resources well below what it was in its first year. During this period groups from all over the world have come to us with excellent ideas and the quality of proposals has been increasing, I think dramatically, as we develop experience, as people develop a better understanding of the Endowment, and as we develop more and different kinds of initiatives that can be undertaken. Yet at the very time that the quality and the numbers of requests have been increasing, the level of resources has either been remaining stable or has been decreasing since we actually reached our peak year in 1985 at \$18.5 million.

And significantly, that year we were not permitted to fund our two political party institutes, so we are now functioning at a lower level of overall resources, funding these two additional core grantees, so that the limited funds have to be spread more widely.

The kind of effect this has had on our program is, first of all, that we find ourselves funding only those programs that are the most urgent and in certain of the most critical countries, and we have not been able to fund programs that do not have a special urgency. Sometimes this means we sacrifice programs that have a long-term training and civic education component because the budget limitations require us just to fund that which is urgently in need of support.

At the present time we tend to focus on crisis countries and are often unable to devote the kind of resources that are needed for countries which are not at the moment in a state of crisis. Significantly, the size of the grants awarded has decreased steadily.

#### GRANT PROGRAMS

In 1984, the average size of a grant in our discretionary program was \$90,000. That figure had reached \$67,000 in 1986 and \$52,000 in 1987, and is \$43,000 so far in 1988. The average new grant in FY 1988 is being funded at an even lower level, \$24,000.

Mr. SMITH. Is that the same number of grants or are you making more grants?

Mr. GERSHMAN. We are making more grants and spreading less money over a broader surface.

This has a tremendous effect on responding to new requests. If we try to continue some ongoing programs, we sometimes have to cut other valuable ongoing programs. We certainly are doing whatever we can to try to obtain private resources for grantee programs, because we are trying to square the circle here. We are trying to maintain a growing and vibrant program without adequate resources to do that job.

We have had to cut some very significant efforts. Examples from fiscal 1986 and fiscal 1987 include Afghanistan, where the Cultural Council of the Afghan Resistance, which had opened up schools

inside of Afghanistan, the first to do that, was cut from \$250,000 to \$150,000. In Haiti, the Haitian International Institute for Research and Development, which was the main group organizing the democratic center in Haiti, which I referred to in my prepared remarks, was cut from \$250,000 to \$100,000. And Libro Libre, which as you know from having Xavier Zavala yourself—is the first significant effort to try to strengthen intellectually the democratic forces in Central America, where the Marxist forces have had a monopoly on ideological competition, had to be cut from \$330,000 to \$210,000.

These are our large programs which had to be cut back in order to make funds available for some smaller programs. We have not been able to give enough attention elsewhere in the Central American region, even for a Cuba program. This program, run by Armando Valladares, has been in desperate need of expansion and we have had to freeze it, even though the needs of that program have been growing very sharply and his international reputation has been growing and putting additional pressures on the program.

One area where we have not been able to devote the kind of resources we would like is in women's programs, where the Conciencia program, which I mentioned previously, has now led to the creation of similar types of programs elsewhere in Latin America. They held a conference in October attended by women from 15 Latin American countries, and we are now being presented with requests to set up new Conciencias in some of those countries. We just agreed to fund one in Paraguay, and one in Colombia. A similar program was launched in the Philippines as a result of contact with Conciencia. We are trying with shrinking resources to fund all of these additional efforts and we find this to be a great strain.

One last point I would make is that there are large areas of the world where we cannot put in the kind of resources that we should. In part, this is because when we got started there were not many groups from these areas that approached us. We are responsive to requests and some additional effort will have to be made to develop programs in these areas.

Africa is one such area—aside from South Africa where we have a substantial program. In the rest of Africa our core grantees have been active, and in the discretionary field we now have what look like three very promising initiatives that will be taken. But again they have to be funded out of a shrinking budget, meaning resources will have to be taken away from other successful ongoing activities.

The Islamic world is another area where we think we can do much more. We have some very promising new initiatives now. A couple of them are in Pakistan and one in Turkey, and we hope to be able to act upon those. But with the resource situation, it means that we discourage a lot of new initiatives, and when we are able to respond to some things it is far, far below the level which is needed to carry out something effectively.

Mr. SMITH. Mr. Dwyer?

Mr. DWYER. Thank you, Mr. Chairman.

## AID FUNDING

In this report, I see you have received additional funds from the Agency for International Development.

Mr. GERSHMAN. That is correct.

Ms. MORTON. Tell us about those funds.

Mr. GERSHMAN. Well, we have received two kinds of funds from AID. The first is for programs in South Africa. We made the case that since there were substantial public funds going to South Africa, and given the extreme tightness of our own resources, we discussed with AID whether they would consider making available some resources to the Endowment for Endowment-related programs, democracy programs, as opposed to the traditional AID types of programs. AID was agreeable to that, and we have had about five or six programs that we have been able to fund in South Africa out of AID monies.

The second type of AID funding we have had in the past year shows the growing acceptance of the Endowment. Where there has been or seems to have been a crisis situation and Congress has wanted to appropriate additional funds to assist the democratic forces, they have turned to the Endowment for that purpose and have earmarked some special funds.

Mr. DWYER. You say Congress wanted to earmark some funds, wanted to put some additional funds in?

Mr. GERSHMAN. Yes.

Mr. DWYER. On what initiative?

Mr. GERSHMAN. ESF funds were earmarked for Solidarity in Poland and for support of democratic activities in Chile.

Mr. DWYER. We were talking about South Africa. Can you go back to South Africa?

Mr. GERSHMAN. Well, these are two different things.

Mr. DWYER. Well, we are talking about South Africa. I wanted to follow through with that. Did Congress authorize some funds be spent in South Africa? You said congressional initiative. I was wondering.

Mr. GERSHMAN. The congressional initiative was to appropriate some \$20 or \$30 million in support of activities in South Africa that had the participation of the black majority. In that regard several programs which specifically relate to strengthening political democracy in South Africa have been funded through the Endowment.

## FREEDOM HOUSE

Mr. DWYER. Again, going through this report, I see Freedom House is shown in here six times. Can you tell us something about the Freedom House, who they are, and where they are located?

Mr. GERSHMAN. Freedom House is a human rights organization based in New York, and is one of the most distinguished organizations of its kind in America. As you know, when the Endowment funds programs abroad it prefers to do so through private U.S. organizations.

The Endowment is not an operating foundation which conducts its own programs. There are a number of programs, especially those which fall into the area of intellectual activities or human

rights activities abroad, where Freedom House is an appropriate and competent U.S. grantee and has therefore acted as a grantee and program manager for these programs.

I might say, in order to do this, Freedom House has taken an administrative overhead fee which is one-half its normal rate. This is really a sacrifice that they have made. We try to impose on all of our discretionary U.S. grantee organizations a limit of 10 percent for administrative costs, which involves their costs for staff, reporting, travel, and other items necessary to administer the grant.

I have seen on many grants given by other organizations that these costs often run up to 50 or 60 percent. We did not want to see our funds being absorbed by the U.S. organizations but wanted the U.S. organizations to serve as the point of transmission, and also to provide cooperation and technical assistance where needed to the foreign grantees. Freedom House has done that in a number of programs which fall into its area.

Mr. DWYER. Are there any other organizations that do the same type of work?

Mr. GERSHMAN. Yes, there are many.

Mr. DWYER. How are these awards made? Are they just by proposals that are asked for and submitted by various organizations that compete for the funds or is it just one person that makes the decision?

Mr. GERSHMAN. Well, in these particular cases I should emphasize that the funds are really not for Freedom House. They are for use by the groups abroad. Freedom House serves as the grant-managing organization for a very minimal overhead rate.

Mr. DWYER. What is that rate?

Mr. GERSHMAN. It is 10 percent. Generally, their rate is 18 percent and we asked them to lower it to 10 percent for Endowment grants because we did not want to see these funds being absorbed by U.S. organizations but rather to go for the actual programs.

Mr. DWYER. Thank you, Mr. Chairman.

Mr. SMITH. Mr. Rogers?

Mr. ROGERS. Mr. Gershman, good to see you again.

Mr. GERSHMAN. Good to see you, Mr. Rogers.

#### LATIN AMERICA

Mr. ROGERS. I understand that CIPE has been involved with the development of the informal sector in many parts of Latin America. Would you give us some additional details of what is done in this area including some information on why it is especially important in that part of the world and indicate some types of success that you have had?

Mr. GERSHMAN. Mr. Rogers, in many respects I think this may be one of the most significant things that the Endowment has been engaged in, with far-reaching implications for not only the future of democracy in the Third World but also the future of development. This started in Peru with the work of Hernando de Soto, who runs the Institute for Liberty and Democracy.

He, in a kind of path-making way, started to research what we call the informal sector. Millions of people from the countryside in Peru had come into the urban areas, as they have all over Latin

America over the last two decades, and were living outside of the legal or formal economic system.

They had been targets, as you can imagine, for Marxists who saw them as kind of a revolutionary proletariat that should be used as a weapon with which to overthrow the existing system.

But de Soto studied this group and found out that they were not a working class, nor a proletariat, but rather small entrepreneurs who had established a rather sophisticated economy, but all of it was operating outside of the legal system. He tried to find out why these people were operating outside of the legal system. Did they somehow have a lack of respect for the law? To answer that question he had two people experiment by trying to start a small, two-sewing-machine business in Lima, Peru, going through all of the legal steps to establish that business. It took 289 days of labor just to get the business registered. In a comparative way he did the same thing in Tampa, Florida, and it took 3½ hours.

The suggestion was that perhaps overregulation, state control, had something to do with the suppression of independent initiative and forcing these people outside of the formal sector. He continued these studies. What this led to was an analysis, a theory of development, that these people wanted to participate and have great initiative that can be used by the system, but they were prevented from doing so by a mercantilist system which basically favors state monopolies.

The implications of this are enormous because by trying to find ways of deregulating the formal sector and incorporating these people into the system you are protecting the people. He found out that their productivity levels will increase if they have contracts and own property, because they then have security.

So he has organized these people to insist upon property rights and inclusion into a more open system. And ultimately, this has great significance for stability in democracy because you can hardly have a stable democratic order if half of the people don't participate in the system and are just outside of it.

It also has significance for resolving the debt issue because if Latin American economies do not become more productive through these kinds of measures, then, of course, they are going to remain unproductive and not be able to meet the enormous debt burdens that exist.

De Soto has now begun to look at this problem elsewhere in Latin America. He has written a book on this called "The Other Path," which is a challenge to the terrorist movement in Peru, called the Shining Path, saying this is the alternative to violent revolution. This book is not only the best selling book in the history of Peru, but the best selling book in the history of Latin America.

He has been to Mexico where the book has been launched with major TV appearances and conferences. Also, in Colombia it is the best selling book, and he has been to Chile, Bolivia, and all over Latin America. In October a conference was held here in Washington, attended by representatives of 37 countries, to explore the significance of this problem throughout the Third World.

The likelihood is that this is a global problem and his efforts will increase. I think we will be examining this problem in its global

context, and I think it has significant implications for development theories, for stable democratic politics, and for the future of democracy in the Third World.

Mr. ROGERS. Well, if it is successful, it will create that middle class that doesn't exist there now?

Mr. GERSHMAN. That is exactly right.

Mr. ROGERS. How much money has been allocated for such activities in fiscal 1988, and how much would you estimate for FY 89?

Mr. GERSHMAN. If I remember correctly, the CIPE funded these informal programs at a level of approximately \$300,000 last year and it would like to continue at about that level this year. I spoke with CIPE recently and asked them the question, what would happen if we took a cut? This is one of the programs that might have to suffer if they are going to have to pass the cuts throughout the program.

This program has the potential of expanding very rapidly and CIPE funds have been used for the actual political activities related to the program, not just the research.

The ILD and de Soto have a systematic program whereby they identify specific issues and the specific reforms that are required. Then they organize petition campaigns around these issues and they get hundreds of thousands of signatures. For instance, there was a petition demanding property title, and the Marxist mayor of Lima actually was the one who granted the property title to the citizens in the informal sector. It is these types of initiatives which would suffer as a result, if inadequate resources were devoted to them.

#### PHILIPPINES

Mr. ROGERS. FTUI has been involved in the Philippines in seeking to keep alive a non-Communist labor organization. Would you care to comment on their involvement in that area? Has it been successful?

Mr. GERSHMAN. Well, I think the effort of the free trade union movement in the Philippines has to be viewed historically. When labor first got involved, Marcos was still president and labor was the main nongovernmental force in the country which was resisting the activities of the New People's Army.

Many trade union members were murdered as a result of this, and the unions were competing for the loyalty of the poor in trying to offer a democratic alternative to people who were being offered a revolutionary and violent alternative.

During that period I think they helped lay the groundwork for what ultimately became a successful transition in 1986 by helping to keep the democratic forces strong and mobilized and preventing the far left from penetrating in that area. They have continued to undertake those kinds of activities.

Labor took the largest cut in the Endowment program between fiscal 1985 and 1986. Their funds were sharply reduced but they continue to support free and democratic unions against the efforts of Communist unions to turn the workers into a political force that can be used against the system.

There is a great difference between the free trade unionist's theory and philosophy—who believes in a kind of pragmatic economic trade unionism to try to get people integrated into the economic and political system for the purposes of bargaining and for purposes of satisfying their basic needs—and the Communist movement, which has sought to promote political ends and to use the workers as a political instrument with which to attack and ultimately overthrow the system.

So I think, therefore, they have been successful in the Philippines and the system continues to survive.

Mr. ROGERS. Have you seen that same kind of threat in Latin America?

Mr. GERSHMAN. It exists throughout Latin America. This is, as you know, one of the main problems that they face in the area.

In the Southern Cone, throughout the continent, this is a global problem. The world labor movement is divided. The Soviet Union puts significant resources, through the Prague-based World Federation of Trade Unions, into the labor movements that they support throughout the world and the AFL-CIO, in cooperation with the WFTU's rival, the International Confederation of Free Trade Unions, is a free and democratic rival to totalitarian efforts in the field of labor.

I would, if I may, make one additional comment about that. When the Endowment was created it was known that labor was active competing with the Communists. One of the Endowment's purposes was to assist labor in expanding those efforts and also to allow others to get into this field because the Soviets have nine other major organizations like the WFTU in the fields of journalists, students, lawyers, women, youth, and other areas, and they have major political operations which are being organized on a global basis, and we are simply not active in those areas.

That is what I meant in my introductory remarks when I said that we have to start getting active here. Political competition is the key competitive arena in the world today and we have to broaden what has been done historically and continues to be effective in the labor field into other areas because the struggle takes place in all sectors.

#### GLASNOST

Mr. ROGERS. In Eastern Europe, what has been the impact, that you can tell, of Glasnost, the so-called new Russian attitude, on the nationalist movement?

Mr. GERSHMAN. Well, I think we are seeing the impact in the press every day. This is a problem which has been building up for a long time, it is a fundamental problem, I think, which the Soviet system faces; namely, the problem of the non-Russian nationalities in the Soviet Union.

Glasnost inevitably has created a greater demand on the part of these groups for their national rights because these are groups which have been denied their national rights, even though they are recognized in the Soviet constitution. You have efforts throughout the non-Russian Republics in the Soviet Union to Russianize them.

"Well we have seen, before the recent end of our tour in Central Europe and Azerbaijan, was that in August of last year in Lithuania there was a demonstration of 4,000 people. We have pictures of it in our office. That is 4,000 people demonstrating and demanding their rights - their national rights, and this was unheard of before.

Similar demonstrations took place in the other Baltic republics. Now it is beginning to spread to the Caucuses. The Ukraine, ultimately, of course, remains the major explosive situation. It is in the Ukraine that the Soviets crushed any independent nationalism in the 1930's through the forced famine which resulted in the deaths of seven million people. And they tried to keep them firmly under control, but the Ukraine also represents the largest independent thinking nation, as it were, in the Soviet system.

Now, if this carries over, it will also have obvious consequences in Eastern Europe. Throughout Eastern Europe you have a national problem, which is national opposition to foreign control, to be part of, as it were, the Soviet empire. This is in addition to fundamentally severe economic problems and a fundamental ideological crisis. The Communist Parties in these countries have lost their authority in an ideological sense, but they still control the troops.

Mr. ROGERS. What are you doing in that arena?

Mr. GERSHMAN. This has been, I think, one of the most important and promising areas of the Endowment's work.

The main country in which we have been active is Poland, where we have put significant resources, not just supporting the Solidarity trade union federation, but also other institutions promoting independent culture.

We have supported the Committees for Independent Culture, which are, as it were, the "official" institutions of independent culture in Poland in the fields of education, research, science, and health. We have also put funds into the Foundation for Independent Publishing, which is a consortium of independent, underground publishing houses which have produced a vast independent literature in Poland, hundreds of titles and millions of copies, and we have put funds into the independent press. There are over 1,000 independent publications, shop floor publications and journals being produced in Poland.

And we have put funds into independent film production in Poland. In other words, all of the support has been going to what the Poles think of as civil society-independent society not controlled by the totalitarian state. This is happening in other countries in Eastern Europe, and in Czechoslovakia our funds are going to support samizdat publishing, as well as for other purposes.

Ten years ago there were no independent samizdat journals in Czechoslovakia. Today there are scores of them, which shows the extent to which, even in a highly repressive situation, such activities are growing.

We are also working in Hungary, and have now approved two programs for Romania. For the Soviet Union we have been supporting Russian language journals for several years now, which find their way into the Soviet Union. These are generally produced in the West. Some of them fill historical gaps, because the Soviets are still not coming fully to grips with their history, and these journals provide historical documentation which fills those gaps.

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Also, we have supported a program which provides actual material assistance to some of the dissident organizations. There was a very interesting article in the "Washington Post" today about an independent press in the Soviet Union which is functioning like our own UPI or AP, and it is an extraordinary development. I think this shows the possibilities which exist in these situations.

Mr. ROGERS. Did you have anything to do with it?

Mr. GERSHMAN. We might have. We are helping a group of dissidents in the West who were formerly part of that whole network in the Soviet Union and they are working with their counterparts who remain in the Soviet Union.

Mr. ROGERS. Do you get any pressure from those local governments, to gather such?

Mr. GERSHMAN. Well, not so far in a formal way. I had mentioned before when I was asked the question about AID that we had received special funds for Solidarity from AID on the initiative of Congress.

When we had been providing funds to Polish groups before we never heard any criticism, but when there was a specific act of Congress to provide these resources for Solidarity the Polish government did react, and they reacted rather strongly. Otherwise, we have not heard anything in that area. But I think they are aware of it. If it continues to develop, we might be hearing something, but so far it has been proceeding quietly.

#### FREE ELECTIONS

Mr. ROGERS. Finally, some people say that democracy is going to have a tough time in places like Central and Latin America and other places where the educational level is so low and poverty is so widespread and their governments are strong and you have dictators to the right and left of you. They say that it is going to be awfully tough for a truly free election of leaders to take place in those kinds of surroundings. Is that true? And if it is not, why not?

Mr. GERSHMAN. I think it is definitely true. I think that what we have to start with is the assumption that democracy is much more than just an election. Because if democracy is seen as just an election, you are going to have what we have had in the past, which is rapid swings from elections to coups and dictatorships and what have you. Democracy must fundamentally be based upon the existence of a large number of private institutions which provide strength to democracy over the long term.

This is something that Tocqueville saw about our own country when he visited in the 1830's. What was strong about America was the large number of voluntary private institutions through which people could participate and through which their voices could be heard.

This is, by the way, what de Soto has discovered in Peru: That the laws in Peru don't flow from the bottom up and there is no accountability to the people. Everything is done through a central dicta, even if sometimes the decisions are being made by a democratically elected government. But there are no means for people to participate, and if you don't have that, you are going to have chronic instability.

Mr. ROGERS. Those sound like special interest tactics.

Mr. GERSHMAN. Well, I don't know that they are special interests, but I think there is nothing anti-democratic about interests. People have interests and the strength of a democracy is to find a structure within which different interests can compete. This is what Madison spoke about in the Federalist papers, and this is why we have checks and balances in our Constitution. And a strong system in Latin America would be a system whereby people could find a structure or structures through which they could have those interests represented—not at the expense of everybody else, but to try to develop a healthy pluralism that does not now exist sufficiently in these countries.

I think the core of what the Endowment is trying to do is to try to enable these types of pluralist institutions, whether they be unions, business associations, parties, newspapers, women's organizations, youth organizations, etc., to get themselves established so that people can participate more effectively. If a crisis develops and there is the danger of a return to an authoritarian system, then you would have organized groups that want to work for the continuation of a democratic system.

Now, in the past this is something which has been done primarily by opponents of democracy. This is the great irony. The Soviets would establish groups working for the rights of lawyers or women or what have you, but they would use them basically to subvert the democratic order. So for the first time now we are trying to get into the business of using this type of work to strengthen the democratic order, but we have to go much further than we have so far.

#### FOREIGN AID

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. SMITH. You had \$250,000 to support elements of the free press in Nicaragua, and what has happened there?

Mr. GERSHMAN. The current funds that were passed over the summer included a provision to support the civic opposition. We have made a grant to "La Prensa" and we are looking at a second grant to "La Prensa".

Mr. SMITH. How long ago was that?

Mr. GERSHMAN. The grant of \$27,000 to "La Prensa" was made at our January 1988 Board meeting.

Mr. SMITH. Did it do any good?

Mr. GERSHMAN. Yes. They purchased a vehicle with it and some of the equipment that they need to produce the paper. We have been helping "La Prensa" since 1984.

Mr. SMITH. Has the government down there permitted them to get paper and ink and other things that they need?

Mr. GERSHMAN. Yes. If I may digress one moment, when we started supporting "La Prensa" in 1984, I believe the strategy of the government was to strangle them economically so as not to appear to be closing them for political reasons. And "La Prensa" came to us desperately saying that even though they paid cordobas into the Central Bank they could not obtain the supplies they needed from abroad because the Central Bank said there was no hard currency.

We made an arrangement whereby we paid the supplier, in effect, and he was able to ship the supplies. The government did not prevent the supplies from going in. This is a continuation of that relationship which existed before.

We also made a grant to a Costa Rican based group for a training institute, the Association for Democracy, which has organized training programs for the civic opposition in Nicaragua, and a large grant was made to the Free Trade Union Institute for organizing the free trade unions there.

Nicaragua is a perfect point to illustrate the question you raised before about unions in Latin America, although in a different sense. There you have the official system, which is trying to force all workers into the WFTU-affiliated, so-called union, and they refuse. They want to stay in the CUS and the CNT, two independent federations, one affiliated with the ICFTU and the other with the Christian World Federation.

These are the groups which are most active in terms of organizing independent activities, street demonstrations and what have you, and the labor funds have been going largely for that. One additional grant was made to an institute associated with the conservative party in Nicaragua, which is done through our own Republican Institute.

Mr. ROGERS. What about the million dollars that wasn't in our part of the bill but it was put into the foreign aid part of the bill for Poland and Chile. What has happened to that?

Mr. GERSHMAN. Well, the million to Poland was—actually it was the second time that was done and I would like to take those two together, because it was put first in the supplemental in fiscal 1987. This did produce a controversy. The monies were supposed to be used by Solidarity for its trade union activities, but because of pressure from the government Walesa made the decision to establish a medical fund, a Solidarity-sponsored medical fund, to deal with the health problems of the Polish people.

Even though this had a kind of unusual origin, the medical fund has been working splendidly. The International Rescue Committee, which is one of the leading private relief agencies in the United States, is the grantee. They have established a parallel committee to work with the Polish Committee, and have visited Poland. There are three ambulances which are being purchased which will be Solidarity ambulances, and the fund will support Solidarity diagnostic clinics.

Here is where health resources are being used—not to strengthen the undemocratic central government, but to support the independent institutions of civil society. And it is working very, very well. It is involving a lot of people in this country who have a strong interest in medical support to Poland, and we hope that the IRC will also be able now to raise private funds for medical supplies.

But it is true that the main purpose of those funds was to go to Solidarity, and Congress then, in the fiscal 1988 bill, appropriated a second \$1 million. We do not yet have the word from Solidarity on how that money is to be used. We are told that Solidarity will recommend using it for trade union and political purposes and not for

the health fund again. We are awaiting from them a formal communication to tell us how they want that money spent.

With respect to Chile, because of the plebiscite that is coming up later this year, a million dollars was put into the appropriations bill to support democratic activities in Chile leading to a transition to democracy. Our Board has now acted at two Board meetings on proposals to this end.

The proposals will support participation, registration, civic education and also the monitoring of the political process there.

#### AUTHORIZATION

Mr. SMITH. You are authorized for what period of time?

Mr. GERSHMAN. We are authorized through fiscal 1989.

Mr. SMITH. That is 30—

Mr. GERSHMAN. No, the authorization level is 18.1 for FY 1989.

Mr. SMITH. 18.1. Are they going to have hearings again this year on authorizations?

Mr. GERSHMAN. No.

Mr. SMITH. On '90?

Mr. GERSHMAN. Yes.

Mr. SMITH. They will have them?

Mr. GERSHMAN. Yes, I believe so.

Mr. SMITH. Any more questions, Mr. Rogers?

Mr. ROGERS. No, thank you, Mr. Chairman.

Mr. SMITH. All right. Thank you for your testimony. We will have some additional questions for the record.

Mr. GERSHMAN. Thank you, Mr. Chairman. And thank you, Mr. Rogers.

[The questions for the record and the answers thereto, follow:]

You are proposing a program reduction of \$1,524,000 for the National Endowment for Democracy. What will be the impact of this reduction on the Endowment's programs?

Because of already severe budgetary constraints, the Endowment is forced to concentrate its resources in the most critical situations, and even there it can fund only the most urgent projects, while foregoing many initiatives in the field of training and education which will bear fruit only over time. The Endowment faces many such choices and too frequently it must turn down worthy projects simply because scarce funds have to be directed to crisis areas. And even in these cases, projects can only be funded at a fraction of their real needs.

The Endowment must be able to assist worthy democratic groups in countries wracked by crisis. But if it is to fulfill its mission, it must also have adequate resources to nurture programs and groups in countries which appear more placid. Only in this way can the Endowment make possible the avoidance of future crises, even as it comes to the aid of democrats for their survival against great odds.

(Previously submitted by USIA in response to question 1,  
"Proposed Program Reduction.")

Proposed Increase for Price Adjustments

The budget justifications indicate that the requested increase of \$449,000 for built-in price adjustments will only partially fund this requirement. How much of the increase in prices are you absorbing, and what is the impact of that absorption on your program?

The formula that resulted in the identification of \$449,000 as requested increases to cover "built-in price adjustments" was employed by USIA, which has provided the following language in response to the Subcommittee's question:

Using OMB inflationary assumptions for the 1989 request, USIA projects that built-in adjustments will total approximately \$641,250. The requested \$448,875 will fund approximately 70 percent of this projected increase. Thus, the Endowment would absorb \$192,375. If the built-in requirements do ultimately materialize at the projected level, the Endowment will have to implement additional program reductions in 1989 beyond those displayed in the current budget justification.

Regardless of the formula, given the budget mark proposed by OMB for the Endowment in FY 1989, the Endowment would be absorbing not merely \$192,375, but \$1,075,000 in cuts from the FY 1986 level. The Endowment's budget is already strained to the point that the average new discretionary grant in FY 88 is funded at 25 percent of an average FY 84 grant. Obviously, the Endowment would be required to cut drastically almost all of its programs, be severely constrained from supporting new programs, and even eliminate certain worthwhile ongoing initiatives.

(Also see the response to question 1 under "Proposed Program Reduction.")

Do you have any plans for new programs in Nicaragua and Central America which could be implemented following the recently announced cease fire between the Sandinistas and the Contras? Would you be able to carry out those programs at the reduced level of resources proposed for FY 1989?

Since 1984, the Endowment has been providing support to a wide variety of democratic groups in Nicaragua and the rest of Central America. As in other areas of the world, the Endowment's goal in the region has been to ensure the survival and contribute to the development of such democratic institutions as trade unions, business associations, political parties, women and youth civic organizations, human rights groups, nonpartisan public policy institutes, and a variety of free communications media including newspapers, journals and books. A description of Endowment-funded programs in the region is attached.

With regard to Nicaragua, the Esquipulas II agreement and the recently announced cease-fire between the Nicaraguan government and the armed resistance has made it increasingly clear that the prospects for democracy in Nicaragua will largely depend on the ability of the internal democratic civic organizations to achieve democracy through peaceful political competition. Now that the violence has subsided and several important steps have been taken toward a partial political opening in compliance with the Esquipulas II agreement, it is especially urgent to continue to support nonviolent efforts to

strengthen the internal opposition and promote democratic institutions and goals.

Despite scarce material resources, opposition political parties, labor unions, youth groups, religious groups, and business and professional associations in Nicaragua are determined to test the limits of the democratic opening. But without additional resources, the Endowment will be limited in its ability to be responsive to their needs. Based on consultations with the internal civic opposition, the Endowment prepared the attached proposal which describes specific programs previously funded by the Endowment in Nicaragua, and also provides an overview of the kinds of material and financial assistance currently needed to initiate new activities.

If this program is to be carried out in more than a token fashion, new and additional resources are needed. If the Endowment actually receives less resources in FY 1989 than in the current fiscal year, its ability to maintain the existing, albeit modest, level of programming would be seriously impaired. It goes without saying that a significant new initiative of the kind described above would be out of the question.

PROGRAMS OF NED AND ITS INSTITUTES  
IN CENTRAL AMERICA

**COSTA RICA**

**NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDIIA)**, to convene a seminar in San Jose, Costa Rica, as Phase II of its program on democracies in regions in crisis. Phase I examined the institutions and practices that have helped sustain Israeli democracy. This seminar will examine democratization in the Central American region, with a specific focus on the Costa Rican democratic experience. The Costa Rican model is particularly relevant given the internal and external pressures on Costa Rica that have been created by the current Central American situation. NDIIA's long-term goal is to develop a general model for analyzing successful democracies in regions of crisis.

FY 1987 - \$ 76,432

**NATIONAL REPUBLICAN INSTITUTE FOR INTERNATIONAL AFFAIRS (NRIIA)**, to provide assistance to the Asociacion para la Defensa de la Libertad y Democracia en Costa Rica (ADLD), a moderate political and educational foundation based in San Jose. The ADLD will continue its program of popular education, public opinion and survey polls, research, and publication of the magazine Fragua. It is also undertaking a major communications and publications campaign designed to increase support for democracy and free market development, targeted particularly at Costa Rican youth.

FY 1986 - \$151,000  
FY 1987 - \$100,000  
FY 1988 - \$145,000

**YMCA OF THE USA - INTERNATIONAL DIVISION**, to support the development of a youth civic education project in Costa Rica. The YMCA of Costa Rica will work in cooperation with the YMCA of Panama, which has an ongoing youth democracy training program, to create a similar program adjusted to suit the local conditions of Costa Rican society. Directed at high school students, the program will involve urban and rural youth in a series of local, regional and national assemblies providing the participants with hands-on experience on how democracy functions in Costa Rica.

FY 1986 - \$ 11,157

**DOMINICAN REPUBLIC**

The **CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE)**, to provide assistance to the Centro de Orientacion Economica (COE), a private research organization that provides information and policy recommendations to legislators in the Dominican Republic on economic issues. Working in cooperation with the business community, COE's advisory service also provides materials on economic matters to the Dominican media, labor unions, academia, and other branches of government. With CIPE support in 1986 COE expanded its legislative analysis service. COE provides summaries of proposed economic legislation and an evaluation of the implications of the laws on the Dominican economy.

FY 1986 - \$ 80,000  
FY 1987 - \$113,000

**CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE)**, to organize with the International Organization of Employers (IOE) in Geneva, Switzerland, a workshop in the Dominican Republic designed to improve Latin American employers' organizations use of modern communication techniques.

FY 1985 - \$ 50,792

**DELPHI INTERNATIONAL**, to provide continued assistance to the Asociacion Dominicana de Mujeres Votantes (ADMV). NED support in FY 1986 helped ADMV to become an established Dominican entity, widely recognized as a nonpartisan organization working to strengthen the democratic process in the Dominican Republic. NED funds enable ADMV to continue development and expansion of its civic education program; to provide materials and technical assistance to each of its branches established in the twenty-nine provinces; and to serve as an information and documentation center on democratic principles in order to promote the study of women's participation in the democratic development of the Dominican Republic.

FY 1986 - \$141,743  
FY 1987 - \$ 40,000

The **CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE)**, to provide support to the Greater Newark Chamber of Commerce (GNCC) for a program of institution-building assistance to local chambers of commerce in the Dominican Republic. GNCC is providing technical assistance and training in organization management to rural chambers and, most importantly, helping to strengthen the linkages between rural and urban chambers in the Dominican Republic. The long-term goal of the project is the establishment of a national federation uniting the local chambers of commerce and enabling the Dominican business community to play a larger and more effective role in public policy advocacy.

FY 1984 - \$152,760  
FY 1986 - \$ 42,300

The **CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE)**, to assist the APEC Centers for Distance Education (CENAPEC), a Dominican organization specializing in adult extension education. CENAPEC designs, prints and distributes, at minimal or no cost, one million study units to 13,000 students annually in outlying areas of the Dominican Republic. Under this grant, the materials for the economics courses are being revised in order to provide CENAPEC's students greater exposure to free-market economics. In addition, a new component is being built into the courses on the role of business and business associations in society.

FY 1986 - \$ 14,238

**FREE TRADE UNION INSTITUTE (FTUI)**, to conduct a program of national seminars on political theory that builds on work of the labor-initiated "forum on economic problems" by establishing a major organizing drive. The organizing drive involves full-time organizers operating out of offices in urban centers.

FY 1985 - \$125,000

**EL SALVADOR**

**PATRONATO PRO-INTEGRACION DE LA MUJER AL DESARROLLO (PIMUDE)** (Foundation for the Integration and Development of Women), to strengthen its ongoing democratic education work and broaden its activities to a wider audience, particularly on the secondary school level. Specifically, PIMUDE will conduct two three-day teacher training seminars on "Education for Democracy"; distribute printed materials on the methods and practices of a democratic system; publish a series of books, pamphlets, bulletins and brochures on the goals and ideals of democracy; and promote citizen participation through conferences, lectures and selected media. PIMUDE is a private, nonpartisan women's organization based in El Salvador originally established to promote the educational development and social, economic and legal welfare of women in Salvadoran society.

FY 1987 - \$ 10,647

**GUATEMALA**

**CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE)**, to allow the Camara de la Libre Empresa to present a three day course to Guatemalan and Salvadoran business community leaders, entitled "Understanding Politics," designed to encourage the development of active business participation in the political process.

FY 1985 - \$ 34,645

**CENTRO DE ESTUDIOS POLITICOS (CEDEP)**, a nonpartisan center for political studies in Guatemala City, Guatemala. The center was established by a group of Guatemalan professionals and businessmen to provide a neutral forum for discussion among politicians and emerging political groups. FY 1984 assistance enabled the center to expand its activities in three areas: training courses in contemporary Guatemalan history and politics; research designed to increase knowledge about and contribute toward solutions of national problems; and dialogue between political and private sector leaders. FY 1985 assistance enabled CEDEP to organize and execute a get-out-the-vote promotional campaign, which was endorsed by all major political parties participating in the November 1985 elections. CEDEP is also conducting public opinion polls on such national issues as agrarian reform, political violence/human rights, unemployment, inflation and social services and publish poll results in papers for distribution at local government meetings and other public forums of representatives from the private and public sectors.

FY 1984 - \$127,500

FY 1985 - \$152,450

**FREE TRADE UNION INSTITUTE (FTUI)**, to support civic and electoral education programs sponsored by the Confederation de Unidad Sindical de Guatemala (CUSG), a major Guatemalan union.

FY 1985 - \$100,000

The **NATIONAL REPUBLICAN INSTITUTE FOR INTERNATIONAL AFFAIRS (NRIIA)**, to assist the Centro de Estudios Economicos-Sociales (CEES), a group of academics, businessmen and public policy analysts in Guatemala, in establishing a research and analysis service for center-right Guatemalan legislators. The CEES group will both frame and provide evaluations of proposed legislation in the hopes of raising the level

of debate in the Guatemalan Congress. This research and analytical staff support will be open to all legislators but will be focused on those issues and proposals having the strongest appeal to conservatives. Meetings, seminars, lectures, and a publication program will be the principal products of CEES.

FY 1986 - \$100,000

The ROOSEVELT CENTER FOR AMERICAN POLICY STUDIES, to assist the Asociacion de Investigacion y Estudios Sociales (ASIES), a Guatemalan organization devoted to research, discussion and analysis of political issues, in sponsoring a "Seminar on National Reality" in May of 1986 and May of 1988. These four-day meetings of some 500 representatives of diverse sectors of Guatemalan society focus on the economic and sociopolitical problems confronting Guatemala in its democratization process, and present alternative policies for addressing them. Created in 1979, ASIES is a private, nonpartisan organization devoted to research, discussion and analysis of national issues.

FY 1986 - \$ 14,308  
FY 1987 - \$ 16,000

Additional FY 1986 Endowment assistance to the ROOSEVELT CENTER FOR AMERICAN POLICY STUDIES enabled the Asociacion de Investigacion y Estudios Sociales (ASIES) to carry out a program of developing and implementing a nationwide program of civic education. The Guatemalan school system, as well as newspapers, television, and radio stations, were used to explain the rights and responsibilities of citizens in a participatory democracy. ASIES worked closely with the Guatemalan Ministry of Education in implementing this project as one element in Guatemala's National Educational Reform Plan.

FY 1986 - \$170,228

#### MEXICO

CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE), to assist the Confederacion Patronal de la Republica Mexicana (COPARMEX) to continue its EMPRESA program, a Spanish-language education program that teaches the basic economic principles of profit, productivity and competition by focusing on the role of private enterprise in society and entrepreneurship. Under a 1984 CIPE grant, COPARMEX signed an agreement with CONALEP, a vocational and technical school system, to include the EMPRESA course in its curriculum. FY 1987 assistance will enable COPARMEX to increase the number of courses it teaches in CONALEP from about 300 to over 800. Cooperative agreements with other educational institutions will be negotiated. In addition, COPARMEX will continue to present the course nationwide to trade unions, journalists and employees through its 53 chapters. Established in 1929, COPARMEX is the largest completely voluntary business organization in Mexico, representing over 34,000 member businesses.

FY 1984 - \$55,289  
FY 1987 - \$94,418

The CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE), to assist the Centro de Estudios en Economía y Educación (CEEI), an independent, nonprofit, nonpartisan institute based in Monterrey, Mexico, with its program designed to foster a responsible and open press. Activities included seminars for Mexican journalists on the principles of basic economic theory and the preparation and distribution of editorials to selected Mexican newspapers to ensure that the Mexican public has access to unbiased, nonpartisan facts about the major economic issues of the day.

FY 1984 - \$ 33,000  
FY 1986 - \$ 33,000

FREE TRADE UNION INSTITUTE (FTUI), to assist the Confederación de Trabajadores Mexicanos in its grassroots democratic education programs for union activists, which includes eight week-long national seminars involving hundreds of union activists.

FY 1985 - \$100,000

#### NICARAGUA

ASOCIACION PRO-DEMOCRACIA (APD) of San Jose, Costa Rica, to conduct a project devoted to the study and discussion of democratic ideas and their potential application in Nicaragua. Activities will include training programs, seminars and panel discussions focusing on such issues as freedom of the press, free trade unions, property rights, private enterprise, an open agricultural sector, freedom of religion, political, civil and human rights, and the rule of law. This grant also supports the translation and publication of documents concerning the human rights situation in Nicaragua. The grant was originally awarded to the Friends of the Democratic Center in Central America (PRODEMCA), but was transferred to APD in March, 1987.

FY 1985 - \$200,000

A second grant to ASOCIACION PRO-DEMOCRACIA (APD) in FY 1988 to restructure its ongoing program of training and civic education for a broadly based collection of democratic political, civic and economic groups in Nicaragua. APD is a private nonprofit, nonpartisan organization in San Jose originally established to promote the values of Costa Rican democracy. APD plans to establish a new Central American organization that will provide improved training to the Nicaraguan democratic opposition and help it to forge links with other democratic civic groups throughout the region.

FY 1988 - \$ 25,753

CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE), to undertake a comprehensive survey of economic and political forces in Nicaragua and analyze their impact on the private business sector as represented by the informal economy.

FY 1984 - \$ 45,000

FREE TRADE UNION INSTITUTE, to support the two remaining democratic Nicaraguan trade union federations resisting government control and repression. Despite constant government harassment, the Confederation of Trade Union Unity (CUS) and the Nicaraguan Workers' Central (CTN) continue to promote peaceful democratic change. Assistance to the CUS has enabled it to survive as an apolitical organization -- dedicated

strictly to the application of democratic trade union principles to achieve gains for the worker. Despite the Sandinista regime's systematic attempts to repress the CUS, vocational training programs have been revitalized, technical assistance is still provided for members, community service work has expanded, and publication of the confederation's newspaper, Solidaridad, continues.

FY 1984 - \$ 79,17-
FY 1985 - \$156,00
FY 1987 - \$150,000
FY 1988 - \$150,000

**FRIENDS OF THE DEMOCRATIC CENTER IN CENTRAL AMERICA (PRODEMCA),** to administer two grants providing essential supplies to La Prensa. The purchase of these supplies was crucial to La Prensa's continued existence as a force for democracy in Nicaragua.

FY 1985 - \$100,000
FY 1986 - \$ 51,500

**DELPHI INTERNATIONAL,** to cover some of the costs for wire services and to purchase and ship badly needed supplies, replacement parts and equipment for La Prensa, Nicaragua's only independent daily. NED grants have provided for much of the equipment and supplies needed for the paper's publication both prior to its forced closing in June of 1986, and since its reopening in October of 1987.

FY 1986 - \$103,500
FY 1988 - \$ 27,500

**NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDIIA),** to conduct a four-day "Party Building Workshop" for the Nicaraguan civic opposition in cooperation with the Liberal International. The workshop was held in Madrid, Spain, in July, 1987.

FY 1987 - \$121,360
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**NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDIIA),** to cosponsor with the Liberal International and the Foundation for Liberty and Progress a follow-up to the Madrid Conference for the principal Nicaraguan opposition parties. This October 1987 conference in Managua, "Promoting A Democratic Alternative," provided an international forum to detail the requirements necessary to achieve real political and social reforms.

FY 1987 - \$63,397
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**NATIONAL REPUBLICAN INSTITUTE FOR INTERNATIONAL AFFAIRS (NRIIA),** to develop civic education projects with the Instituto Conservador of Nicaragua. NRIIA is also providing assistance to the Fundación General José Dolores Estrada, an institute affiliated with the Conservative Party, for a technical and civic education program.

FY 1986 - \$ 85,714
FY 1987 - \$100,000
FY 1988 - \$ 40,000

**SOUTHERN LEGAL ASSISTANCE, INC.,** to assist the 22nd of January Movement of the Mothers of Political Prisoners in Nicaragua to increase public awareness within Nicaragua and abroad of the plight of those incarcerated for allegedly violating the country's security laws, and to provide improved legal services and material assistance to the families of Nicaraguan detainees.

FY 1987 - \$20,000
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**CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE),** to assist the Asociación de Ejecutivos de Empresa (APEDE) in conducting a public opinion poll to gauge how free enterprise, businessmen and private sector organizations are perceived in Panama. In addition, ASESIA, a Spanish-language education program that teaches the basic economic principles of profit, productivity and competition, will be redesigned for better use in Panama. AIEDE is a private, non-profit organization founded in 1958 for the purpose of promoting among its members sound management practices and a belief in democratic principles.

FY 1987 - \$ 58,800

**NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDIIA),** to sponsor a seminar for 20 Panamanian civic and political party leaders and various international specialists on transitions to democracy, elections and military-civilian relations. The purpose of the meeting is to assist the democratic parties of Panama in their effort to promote free and fair elections and the peaceful transition to democracy. The conference, which will be held at a site near S. Spain, Georgia, is planned for March of 1988, depending on political circumstances in Panama.

FY 1988 - \$57,430

**YMCA OF THE USA - NATIONAL DIVISION, to continue and expand the Youth in Civic Development Project in Panama.** The program, begun in 1984 with USIA support, is designed to train urban and rural youth in democratic political leadership through the study of the Panamanian constitution, parliamentary processes, and the formal and informal structures of government. The three-part program involves local and regional assemblies, and culminates in a youth legislative assembly in Panama City where participants apply the knowledge and skills learned throughout the year. FY 1987 funds will be used to increase the number of Youth Civic Clubs from 26 to 35, train 900 more students in democratic political leadership, and expand ties with other non-governmental organizations in the private sector.

FY 1984 - \$ 41,500

FY 1986 - \$ 83,343

FY 1987 - \$ 40,000

#### REGIONAL

The **CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE)**, to continue its support for the Costa Rican-based Latin American Institute for Organization Management. The Institute, established in 1985, provides professional development education for chamber and association executives in the region through seminars and courses. The Latin American Institute has been extremely successful and now involves more than seventy business organizations from sixteen Latin countries.

FY 1985 - \$325,104

FY 1986 - \$219,375

FY 1988 - \$273,410

**CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE (CIPE)**, to enable the Pan American Development Foundation (PADF) to analyze the informal business sector in five Central American countries leading to a conference of Central American development organizations. This is a follow-on to a 1984 program focused on Nicaragua.

FY 1985 - \$ 67,100

The **FREE TRADE UNION INSTITUTE (FTUI)**, to assist the AFL-CIO/Inter-American Regional Organization of Workers (ORIT) in conducting a series of national seminars throughout Latin America for the purpose of developing trade union policy recommendations on national economic issues. Four regional seminars will follow the national seminars in an effort to analyze the recommendations and develop a single and coordinated policy which will enable ORIT and its affiliates to participate with one voice in deliberations with governments.

FY 1986 - \$168,500

**FREE TRADE UNION INSTITUTE (FTUI)**, to assist U.S. trade union cooperation with International Trade Secretariats to which they are affiliated in educational activities in Latin America and the Caribbean. The Service Employees International Union will broaden its relationship with the ITS's in the English-speaking Caribbean and Latin America from its base with health-care unions in the region. Special emphasis will be placed on programs with democratic service employee unions in Brazil, El Salvador and the Dominican Republic.

FY 1984 - \$100,000  
 FY 1985 - \$475,000  
 FY 1987 - \$140,000  
 FY 1988 - \$110,000

**FREE TRADE UNION INSTITUTE (FTUI)**, to sponsor continued U.S.-Latin American exchanges of labor leader delegations to strengthen fraternal relationships through discussions of specific inter-American political, economic and social problems. Participants in the exchanges will share their experiences with union members, government representatives and other decision-makers.

FY 1984 - \$234,360  
 FY 1985 - \$206,010  
 FY 1986 - \$157,150  
 FY 1987 - \$148,375  
 FY 1988 - \$236,000

**FREE TRADE UNION INSTITUTE (FTUI)**, to provide assistance to nonpartisan committees on political education in the democratic labor federations in Guatemala, Honduras, Panama and the Dominican Republic. The program will raise the political consciousness of union members through educational conferences, training seminars and public forums. As a result of the programs, candidates for public office will be more responsive to worker needs.

FY 1984 - \$494,000  
 FY 1985 - \$824,000  
 FY 1987 - \$228,856  
 FY 1988 - \$210,040

**FREE TRADE UNION INSTITUTE (FTUI)**, to provide trade unionists in Latin America and the Caribbean with an in-depth orientation in modern political ideologies, familiarity with economic trends and basic training materials for rank-and-file education programs. Training materials in political and economic theories are prepared and two-man lecture teams conduct trips to provide additional instruction. Major research projects on such topics as the Latin American debt crisis and an analysis of the impact of the twin-plant (maquiladora) industries on the Mexican economy, are conducted.

FY 1984 - \$270,893  
 FY 1987 - \$ 88,000  
 FY 1988 - \$ 70,000

**FREE TRADE UNION INSTITUTE (FTUI)**, to continue assisting the Labor Watch Program conducted by the Inter-American Committee on Human and Trade Union Rights (CIDHS). CIDHS monitors the status of human and trade union rights in Latin America and the Caribbean. CIDHS has established itself in the international human rights community as a credible, authoritative body keeping a close check on individual rights. A bi-monthly Information Bulletin is published which presents the human rights situation not only in countries which are most blatant in their violation of citizens' rights, such as Chile, Nicaragua, Paraguay and Haiti, but also in democracies such as Brazil, Bolivia, Colombia, the Dominican Republic, El Salvador, Guatemala and Mexico.

FY 1984 - \$141,459  
 FY 1985 - \$215,000  
 FY 1987 - \$ 40,000  
 FY 1988 - \$ 45,000

**FREEDOM HOUSE**, to assist the Asociación de Libro Libre in Costa Rica to continue and expand its program of dissemination of democratic thought in Central America. With Endowment support, Libro Libre has been able to increase its publication rate to three to four books a month on such topics as human rights, political philosophy and Latin American history. Endowment support will also be used to establish through Libro Libre a Center of Central American Research and Information (CINCO) that will engage in research, analysis and the development of strategies for stable democracy in Central America.

FY 1986 - \$330,000  
 FY 1987 - \$308,000

**FREE TRADE UNION INSTITUTE (FTUI)**, to assist Libro Libre, a major book and pamphlet publishing and distribution program located in Costa Rica. The effort focuses on literature distribution aimed at trade union leaders, the promotion of democratic and pluralist values through conferences and seminars, and on the relationship between government and society.

FY 1984 - \$483,050  
 FY 1985 - \$ 80,000

**FREEDOM HOUSE**, to assist the magazine Pensamiento Centroamericano, a journal of original writings of some of the most notable Central American authors and political thinkers, in expanding its circulation in Central America. Publication of this quarterly was prohibited by the Sandinista Government in 1986 and the editors were forced to move offices from Nicaragua to Costa Rica.

FY 1986 - \$ 58,560

NATIONAL REPUBLICAN INSTITUTE FOR INTERNATIONAL AFFAIRS (NRIIA), to sponsor a Political Activist Training Program for key political activists from the Western Hemisphere. The four-day seminar will focus on the techniques of modern communications technology, survey research and political organization.

FY 1986 - \$106,520

NATIONAL REPUBLICAN INSTITUTE FOR INTERNATIONAL AFFAIRS (NRIIA), to form, in cooperation with several international political foundations and regional political parties and institutes, a Central American Academy. This academy will serve as a learning and teaching center for emerging democracies in the region. Support grants will be given to the Association for the Defense of Costa Rican Liberty and Democracy, a political institute affiliated with the Movimiento Accion Solidaria (MAS) in Guatemala, and an institute of the National Party in Honduras to conduct training seminars for domestic political actors and promote cooperation between like-minded parties.

FY 1987 - \$ 75,000

OVERSEAS EDUCATION FUND (OEF), to provide supplemental support to the Argentine women's organization Conciencia for its "South American Meeting on Civic Education and Participation." Although it was originally designed for participants from only five other South American countries -- Brazil, Uruguay, Peru, Bolivia and Chile -- the announcement of the conference prompted a tremendous response, increasing the number of countries to 15 -- the five mentioned above as well as Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, the Dominican Republic, Paraguay, Spain and Venezuela. The conference, held in October 1987 in Buenos Aires, focused on strategies aimed at establishing and consolidating Latin American women's organizations devoted to providing civic education and promoting citizen participation in the political life of their respective countries. FY 1988 support will be used for follow-up activities to this conference.

FY 1986 - \$ 33,190

FY 1987 - \$ 20,634

FY 1988 - \$ 31,100

April 1988

NATIONAL ENDOWMENT FOR DEMOCRACY  
PRELIMINARY PROPOSAL ON NICARAGUA  
February 1988

Since 1984, the National Endowment for Democracy has been providing modest support to a variety of democratically-oriented groups in the Nicaraguan opposition.

The government of Nicaragua has recently made international commitments to allow greater freedom for the press and for opposition groups to conduct political activities. Despite the continuing risks involved in undertaking activities to promote democracy inside Nicaragua, civic opposition groups are trying to take advantage of the current situation to expand their work. But the Endowment will be limited in its ability to be responsive to their needs if it cannot obtain additional funds for Nicaraguan programs.

Nonpartisan programs previously funded by the Endowment include:

Support to La Prensa newspaper: to assist in obtaining desperately needed equipment, supplies, news and feature services, and spare parts for the continued publication of Nicaragua's only independent daily.

Support to the Confederation of Trade Union Unity (CUS) and the Nicaraguan Workers' Central (CTN) to assist the two remaining democratic Nicaraguan trade union federations resisting government control and repression.

Support to the 22nd of January Movement of the Mothers of Political Prisoners: to assist the efforts of this group to increase public awareness within Nicaragua and abroad of the plight of those incarcerated for allegedly violating the country's security laws, and to provide improved legal services and material assistance to the families of Nicaraguan detainees. This program is administered by Southern Legal Assistance, Inc., an Atlanta based 501 (c)(3) headed by former Attorney General Griffin Bell.

Support for the Center of Central American Research and Information (CINCO): for creation of an archive and basic reference library in Costa Rica, which will house a wide range of data and analysis on the social, economic, human rights, and political situation in Nicaragua. CINCO seeks to support Nicaraguan democrats who believe that an accurate record of events and careful analysis of internal issues will serve as an intellectual foundation for a democratic future in Nicaragua.

Support to the Asociacion Pro-Democracia (APD): a Costa Rican organization based in San Jose which has been conducting a program in coordination with the civic opposition in Nicaragua devoted to the study and discussion of democratic ideas and

their potential application in Nicaragua. Activities have included training programs, seminars and panel discussions -- held in San Jose and Managua -- focusing on such issues as freedom of the press, free trade unions, property rights, private enterprise, an open agricultural sector, freedom of religion, political, civil and human rights, and the rule of law.

Support to the Nicaraguan civic opposition, provided by the National Democratic Institute, in the form of a four-day "party-building workshop" conducted in Madrid in cooperation with the Liberal International and a conference in Managua on "Promoting a Democratic Alternative."

Support to the Instituto Conservador and the Fundacion General Jose Dolores Estrada, affiliated with the Conservative Party, provided by the National Republican Institute, to develop civic education projects.

Support for the translation into Italian, German and French of human rights reports produced by the Nicaraguan Permanent Commission on Human Rights (CPDH).

In light of the new situation in Nicaragua, additional funds are urgently needed to supplement existing programs and to initiate new activities with democratically-oriented Nicaraguan groups. The grant would support some or all of the following:

1) Continued support to provide supplies, equipment and editorial staff salaries to La Prensa, as well as other radio and print media of the opposition. Supplies and equipment most needed are cassette and reel-to-reel audio tapes, offset printing supplies, rechargeable batteries and chargers to run portable tape recorders, office equipment such as desks, chairs, telephones, manual typewriters, ribbons and daisy wheels, bond paper, gasoline generators to provide continuous power supply during power blackouts, and vehicles for reporters and distribution of magazines and bulletins.

2) Support for the free trade unions in Nicaragua to be provided through the Free Trade Union Institute of the AFL-CIO.

3) Support for strengthening parties of the democratic opposition to be provided through the National Democratic Institute for International Affairs and the National Republican Institute for International Affairs.

4) Support for a regional effort to provide organizational training and materials to constituent members of the Nicaraguan Democratic Coordinator (CDN).

5) Support for independent business associations to be provided through the Center for International Private Enterprise, affiliated with the U.S. Chamber of Commerce. Assistance could include support for a COSEP-owned television station, and provision of word processors and other equipment needed to publish regular bulletins.

6) Support for a Nicaragua-based foundation to be established by the Nicaraguan Democratic Coordinator (CDN), which would serve as an institute for political training, and also enable the CDN to distribute logistical and material support to its constituent members as well as other members of the civic opposition. The material assistance required by Nicaraguan political parties and other civic opposition groups includes:

a) Office Equipment such as typewriters, mimeograph machines, word processors, photocopiers, paper and other consumables, furniture and telephones;

b) Vehicles for organizing efforts outside of Managua;

c) Propaganda supplies: Bullhorns, small loudspeakers systems, T-shirts, caps, banners and the means to produce them.

7) Material support to independent Nicaraguan human rights groups. Assistance to the Permanent Commission on Human Rights would enable it to hire and train additional lawyers, and open and maintain offices outside of Managua in such cities as Matagalpa, Chontales, Jinotega, Esteli, and Juigalpa. Continued assistance to the January 22 Movement of Mothers of Political Prisoners would enable it to rent its own office, produce regular bulletins, organize rallies and marches, develop extensive international contacts, and expand their activities to Matagalpa, Juigalpa, and Esteli. Assistance is needed for the purchase of office equipment and supplies, mattresses, furniture, refrigerator, camera, and a vehicle, as well as to cover legal, medical, and humanitarian assistance costs.

8) Journalism and editorial training for local newspapers and radio staticns, and internships for Nicaraguans who wish to work both in the media or in democratically-oriented civic and social institutions which plan to produce newsletters and other public outreach materials.

9) Assistance to the Centro de Formacion Juvenil (CEFOJ), a non-partisan youth training center established in July 1987. This institution has been one of the key groups in Nicaragua through which APD has organized its program of democratic study and training. Modest assistance would enable this group to expand its internal program of organizational training and non-partisan political education for youth.

10) Support for humanitarian assistance programs of the Catholic Church. Direct assistance to the Archdiocese of Managua would benefit the poor while strengthening the position of the Catholic Church vis-a-vis the Nicaraguan government.

11) Development of grass-roots community organizations through a Costa Rican institution with extensive experience in developing community self-help projects in the areas of housing, health, youth and cultural development.

12) Publication of intellectual journals on democratic thought.

What other resources were available to the Endowment in FY 1987? What resources other than this appropriation do you anticipate will be available to the Endowment in FY 1988 and FY 1989?

The Congressional appropriation of funds through USIA constitutes almost the entire Endowment budget. However, since 1981, the Endowment has received a small amount of funding from several other sources -- private foundations and the U.S. Agency for International Development.

1. In the spring of 1987, the Endowment received several corporate contributions and foundation grants (approximately \$100,000 total) to cover the costs of a major conference, "The Challenge of Democracy," which was held May 18-19, 1987. The conference, the proceedings of which have been submitted to the Subcommittee, represented an unprecedented gathering of democratic activists from all over the world. The Endowment is currently planning to hold another major conference in April 1989, which will also be funded by foundation and other private grants.
2. In 1986, the Agency for International Development received a large special appropriation for programs designed to assist democratic groups in South Africa working peacefully for an end to apartheid. In both 1986 and 1987, AID funded a package of Endowment grants for programs to encourage the

development of democratic infrastructure. We undertake programs of civic education and training in techniques of conflict resolution and nonviolent activism and promote the discussion of democratic alternatives for South Africa. AID provided \$211,866 in FY 1986 and \$605,000 in FY 1987 for these programs. We would hope that AID would continue to support these extremely important programs at a significant, if not increased, level in the years to come.

3. As a result of congressional legislation, the Endowment has received economic support funds (ESF) from AID to carry out special programs in two areas: Congress set aside \$1,000,000 in fiscal years 1987 and 1988 for NED support to the free trade union Solidarity in Poland; in FY 1988, Congress approved another special \$1,000,000 in ESF funds for NED-funded programs to assist democratic activities in Chile leading to a transition to democracy.

It is, of course, difficult to anticipate when Congress may again turn to the Endowment in a case of special concern or urgency, though we are gratified to be seen as the appropriate organization to come quickly and efficiently to the aid of those struggling for democracy and freedom against tyranny -- whether of the left or right.

In addition, the Endowment is in touch with a number of private foundations and makes a concerted effort to assist our grantees in obtaining additional funding for programs we are not able to support at the required levels.

**MONDAY, MARCH 28, 1988.**

**LEGAL SERVICES CORPORATION**

**WITNESSES**

**WILLIAM CLARK DURANT III, CHAIRMAN, BOARD OF DIRECTORS**

**MICHAEL B. WALLACE, MEMBER OF THE BOARD**

**JOHN H. BAYLY, JR., PRESIDENT**

**Mr. SMITH.** The next item that the Committee will consider is the FY 1989 budget request for the Legal Services Corporation. The original request submitted to Congress directly from the Corporation was \$305,500,000, the same amount that was appropriated for FY 1988. I understand that the Board of the Corporation voted 6 to 5 to amend the request to \$250 million, the same amount the President included for the Corporation on his FY 1989 budget. This was the first time the current Administration has recommended any funding. We will submit the amended justification at this point.

[The justifications follow:]

(735)

**AMENDED  
BUDGET REQUEST  
FOR  
FISCAL YEAR 1989**

**Submitted to Congress**

**LEGAL  
SERVICES  
CORPORATION**

*400 Virginia Ave., S.W., Washington, DC 20024-2751*  
Non-Profit Organization



**LEGAL SERVICES CORPORATION**  
**AMENDED BUDGET REQUEST - FISCAL YEAR 1989**

	FY 1988 REQUEST	APPROPRIATION LEVEL	FY 1989 REQUEST
<b>I. DELIVERY OF LEGAL ASSISTANCE</b>	<b>\$292,960</b>	<b>\$280,114</b>	<b>\$241,000</b>
A. FIELD PROGRAMS	288,960	278,014	237,600
1. Basic Field Programs	281,938	261,294	231,800
2. Native American Programs and Components	7,022	7,022	5,800
3. Migrant Programs and Components	---	9,698	---
4. Reserve for Special Adjustments	---	---	---
B. PROGRAM DEVELOPMENT	---	---	---
C. SUPPLEMENTAL SERVICE PROVISION	2,000	2,100	1,650
1. Law School Clinics & Recruitment	1,000	1,100	825
2. Supplemental Field Programs	1,000	1,000	825
D. DIRECT DELIVERY ALTERNATIVES DISPUTE RESOLUTION INITIATIVES	2,000	---	1,600
E. TRAINING DEVELOPMENT & TECH. ASSISTANCE	---	---	150
<b>II. SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE</b>	<b>---</b>	<b>17,070</b>	<b>---</b>
A. TRAINING AND TECHNICAL ASSISTANCE	---	624	---
1. Training Development & Tech. Assistance	---	---	---
2. Regional Training Centers	---	624	---
B. OTHER SUPPORT	---	16,446	---
1. National Support	---	7,228	---
2. State Support	---	7,843	---
3. Clearinghouse	---	865	---
4. CALR Grants	---	510	---
<b>III. CORPORATION MANAGEMENT &amp; GRANT ADMINISTRATION</b>	<b>12,540</b>	<b>8,316</b>	<b>9,000</b>
1. Management & Administration	12,540	8,316	8,755
2. Program Development	---	---	245
<b>TOTAL</b>	<b>\$305,500</b>	<b>\$305,500</b>	<b>\$250,000</b>

## LEGAL SERVICES CORPORATION

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PREFACE

On December 17, 1987, the Board of Directors of the Legal Services Corporation voted to submit a budget request of \$305.5 million for FY 1989. On February 18, 1988, President Reagan transmitted his budget to Congress. For the first time since he took office the President requested that funds be appropriated for the Legal Services Corporation.

The President's proposal for LSC in the Budget of the United States Government for 1989 contains three reforms that the Corporation supports as fundamental to increasing access to justice for poor persons.

First, the President has asked that 96% of all federal funds appropriated for legal services be spent on the direct delivery of legal services to poor eligible clients. This request reflects a consensus that the government help with the specific, day-to-day, legal needs of the poor. At the same time, the request reflects the notion that taxpayers should not support legal "think tanks" committed to various programs of social reform.

Second, the President has asked that the Legal Services Corporation be made to open its grants and contracts to competition. Congress has rightfully embraced competition as appropriate in almost all grantmaking and procurement activities.

competition of LSC grants and contracts would inject accountability and discipline into a program where current providers have a nearly irrevocable right to continued federal funding. But most important, at a time when nearly all Americans are awakening to the failures of old solutions to the problems of the poor, we must open the door of the legal services community to fresh ideas and innovative approaches.

Third, the President has asked that the Legal Services Corporation be given \$250 million of federal funds for the 1989 fiscal year. This represents a reduction from the 1988 appropriation. When considering whether to support this level of funding, the Corporation examined a number of factors, including:

1. Legal services is a mature program that is well-established in the communities and states it serves. The Corporation wants to encourage a reduced reliance on federal funding, greater participation by the private sector, and greater involvement by state and local governments.
2. The Corporation expects that broadening the base of service providers, coupled with the discipline of competition and the innovations it brings, will result in more eligible clients being served at a lower cost with more organizations and individuals serving the needs of the poor.
3. By directing that 96% of funds go to direct delivery of

legal services to the poor, scarce federal resources will be concentrated on those who are meeting the urgent day-to-day legal needs of the poor. It is important also that legal services should be client-centered.

4. Finally, the Corporation recognizes that the American people are demanding that we be careful stewards of their money. While \$250 million is less than last year's appropriation, it is in the Corporation's opinion still sufficient to continue to provide a stable base of federal support upon which successful programs can grow, particularly in light of the fact that in 1986 alone other non-federal funding for legal services had grown to over \$123 million.

The Legal Services Corporation Board of Directors' vote on March 25, 1988 to amend its budget request for FY 1989 raises several questions which should be considered as Congress deliberates fiscal year 1989's budget for LSC:

1. Why did the Board at this time decide to amend the budget it passed in December of last year?

The Board carefully considered the budget request it adopted in December and submitted in February. However, at that time, the Board did not know the President would be including a request for funds for Legal Services for the first time.

After the President submitted his budget the Board decided to evaluate whether its goals of providing access for more poor persons to legal services would be better served by the budget submission already made by the Corporation or the President's budget. At its March 25th meeting the Board concluded that, on balance, the poor would be better served by the structural arrangements contained in the President's budget, even though the dollar figure for federal funding would be lower.

2. How can persons who are pledged to support legal services for the poor also support less money for the Legal Services Corporation?

First of all, when the Board was considering the President's budget, it did not feel it had the option to consider the

dollar figure in isolation from the other structural reforms contained in the President's budget.

Second, Legal Services is a mature program. Both the concept and the program are well-established in the local communities they serve and in the states in which they operate. The goal of many grant-making programs is to move the grant recipients towards self-sufficiency or towards reliance on other than federal funding. The evidence the Board received is that Legal Services has been unusually successful in generating other sources of income when, for one reason or another, federal funds have been limited. The Board has every reason to think that will continue to be the case.

3. Does the Board expect services to be diminished as a result of the budget cuts that you are endorsing?

In the long run, no. The Board expects that the efficiencies that will result from competition will improve the use of resources to a significant extent. The data presented by the staff shows the disparities in costs of handling cases to be enormous among various programs. Competition will bring those costs down and therefore the number of individuals served will increase.

Second, in the long run, there is every reason to believe

that the level of funding from other sources to Legal Services programs will increase, and that combined with gains from competition, the poor will be better served than ever. It is often the case that after a period of belt-tightening, companies emerge stronger and more competitive than ever.

4. There are those who question whether this Board, which is supposed to be independent, is merely lining up behind the President's budget submission.

First, it is more the case that the President is lining up behind the Board's position. The Board has long advocated a restructuring of Legal Services so that whatever federal resources are available are directed to the local level where the services are actually delivered to the poor. The President's budget does that. This Board has long discussed the need for competition. The President's budget calls for competition. The Board encouraged the passage of legislative language restricting lobbying activities. The President's budget adopts that language. The Board has long encouraged the field to develop alternative sources of funding. The President's budget encourages more reliance on other than federal funding. So, in fact, rather than the Board's lining up behind the President's budget, the President has lined up behind the positions taken by the Board over its tenure.

In summary, the Corporation supports the President's Budget Request for LSC and has submitted this Amended Budget Request for Fiscal Year 1989 because it feels the poor will be better served by the mix of reforms contained in the President's budget.

I. INTRODUCTION AND SUMMARY

The Legal Services Corporation requests an appropriation of \$250,000,000 in accordance with the President's Budget of the United States Government for Fiscal Year 1989.

This amended FY 1989 Budget Request reflects the LSC Board's concurrence with the President that federal expenditures should be dedicated to the direct delivery of legal services to those poor persons who cannot otherwise afford legal assistance. Direct LSC funding for the provision of support, training, and computer assisted legal research under this budget would be eliminated. This important change in approach provides attorneys in field offices with greater control over resource allocation and increases their capacity to meet the legal needs of the poor in their respective communities.

The Administration's budget is consistent with the LSC Board's longstanding commitment to ensuring quality legal services at the local level while promoting the growth of private sector funding and services. The President's budget is an important step in facilitating both of these goals. While some may argue that a reduction in federal funding is counterproductive, data from 1982-87 suggests just the opposite.

In 1981 Congress reduced the LSC's FY 1982 budget to \$241,000,000 from its FY 1981 level of \$321,000,000. That 25

percent reduction spurred a dramatic rise in state, local and philanthropic support for legal services for the poor. The sources most prominent in their contributions were private attorneys acting pro bono publico, Alternative Dispute Resolution (ADR) programs, and Interest on Lawyers' Trust Accounts.

Data available on these sources of support indicates a concerted effort by members of the organized bar, state legislatures, and lay advocates to address the legal needs of those less fortunate members of society with non-federal resources. The number of organized pro bono programs increased from 508 in 1984 to 580 programs in 1987; the number of participating attorneys increased from 65,345 to 93,265--an increase of nearly 50 percent. The number of Alternative Dispute Resolution programs rose from 80 in 1983 to 350 programs in operation by 1987. Finally, data on IOLTA programs indicates that these state-organized programs, the first of which began in 1981, had, by 1987, raised over \$120,000,000, with more than \$79,000,000 designated for legal services programs. If IOLTA funds continue to grow at the current rate, they will soon dwarf the LSC budget.

The President's Budget not only contains several provisions which support initiatives the LSC Board has been proposing for several years, but proposes further steps toward ensuring that poor individuals receive the services they require in the most efficient and effective manner possible. The President's proposal that recipients must compete for grants would not only

ensure program accountability to LSC, but would also serve to promote the efficient use of resources and thus better serve legal services clients. Preliminary 1987 program case service data indicates that the average cost of a case handled by LSC recipient offices is \$215. However, this data also demonstrates an extremely wide variation in resource utilization among programs and indicates the differences in cost-effectiveness among LSC recipients.

A competitive system of grantmaking would reduce this wide range of case costs, providing a discipline which will allow recipients to serve their clients more effectively. The biggest advantage of a competitive environment is its tendency to provide a natural regulator to supplement the current system of costly program monitoring. Over a very short period of time, grantees competing for awards would establish reasonably standard prices (costs to the Corporation) for providing various types of services. Just as specializations develop in the private sector, specializations would be expected to arise in a competitively funded legal services environment.

#### A. HISTORY

The Legal Services Corporation was established by an Act of Congress in 1974 to "provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel." Section 1001(2) of the Legal Services Corporation Act of 1974, Public Law 93-355, 88 Stat. 378 (1974), as amended, 42

U.S.C. Section 2996 ("Act"). The Legal Services Corporation is the successor of the Office of Legal Services which was created in 1965 as a part of the Office of Economic Opportunity to provide legal assistance to the poor. According to its organic act, LSC was to be "free from the influence of or use by it of political pressure." The Corporation was, accordingly, established as a private, non-membership, nonprofit corporation with statutory restrictions on lobbying and political advocacy. The Act provided, however, that the Board of Directors be appointed by the President and confirmed by the Senate.

The Act was amended in 1977 to eliminate restrictions on the representation of juveniles; require open meetings of the Board of Directors and of State Advisory Councils; require recipients to set priorities for their programs; and provide for independent hearing examiners in proceedings determining denial or termination of refunding. Public Law 95-222, 91 Stat. 1621 (1977).

The 1977 legislation also included provisions prohibiting political activity by the Corporation or its grantees. Legal services grantees were likewise prohibited from using LSC funds for legislative or administrative advocacy, except when necessary for representation of an eligible client. Id.

In response to continuing criticism that legal services grantees pursued legislative advocacy and lobbying, Congress in succeeding years added several restrictions on the use of LSC funds. The 1979 appropriation act included an amendment which

prohibited publicity or propaganda designed to support or defeat state or federal legislation. Public Law 95-431, 92 Stat. 1021 (1978). In subsequent appropriations measures Congress placed additional prohibitions on lobbying, legislative advocacy, and grass roots lobbying. See, e.g., Public Law 97-377, 96 Stat. 1874 (1982); Public Law 99-180, 99 Stat. 1162 (1985). Federal regulations implementing these provisions have been recently published Reg. 27539 (1986) (to be codified at 45 C.F.R. Part 1612).

Congress also placed restrictions on certain other activities by legal services programs. Congress's FY 1988 appropriations bill prohibits the use of LSC funds for the representation of illegal aliens, for abortion litigation, for support and training for boycotts and strikes, and for political activities. Public Law 100-202, 101 Stat. 1329 (1987). The Legal Services Corporation has, in turn, promulgated regulations implementing prohibitions on all activities restricted by Congress. 45 C.F.R. Parts 1607 and 1626; 51 Fed. Reg. 27539 (1986) (to be codified at 45 C.F.R. Part 1612).

#### B. STRUCTURE

The Board of Directors of the Corporation is composed of eleven voting members and is appointed by the President of the United States with the advice and consent of the Senate. The Board of Directors provides oversight and sets general policy for the Corporation. It likewise promulgates regulations which

govern the activities of the Corporation and its grantees. 45 C.F.R. Parts 1600-1631.

The Chairman of the Board is elected by the Board members. Nine members of the Board are attorneys and two are lay members of the client community. The Board of Directors appoints the Legal Services Corporation President who directs the operations of the Corporation and appoints its other officers.

The Legal Services Corporation is authorized by Congress to provide grants or contracts for the provision of legal assistance to clients who meet certain eligibility requirements. A maximum income level, which may not exceed one hundred twenty-five percent of the current official Federal Poverty Income Guidelines, is set by each recipient to determine client eligibility. 45 C.F.R. Part 1611. In establishing eligibility in its respective service area the recipient may consider other factors as well, including the cost of living in the area, the number of potential clients, i.e., the local poverty population, and the level and nature of legal services provided by the local bar.

The Legal Services Corporation currently funds 284 basic field offices which provide legal assistance to indigent persons throughout the fifty states, Puerto Rico, the Virgin Islands, Guam, and Micronesia. Thirty-two recipients receive special grants to provide services to Native Americans. Forty-two programs also receive funds to provide services to migrant workers. Recipient programs are staffed by full-time and part-

time attorneys, paralegals, and support personnel.

Legal services programs that receive LSC funds are governed by recipient boards. Two-thirds of the members of local boards are required to be members of the bar of the state in which legal assistance is provided while one-third of local board members must be persons who are client eligible. Under the LSC Act, as amended in 1977, all basic field programs are required to establish service priorities based on the needs of eligible clients in their communities and to determine the most effective means of delivering legal assistance to their clients.

The Board of Directors has tried to ensure that appropriated resources are used economically and effectively in the delivery of legal services to eligible clients. The FY 1989 Budget Request reflects the President's, as well as the LSC Board's, desire to concentrate LSC resources on the fundamental mandate of the LSC Act -- the efficient, effective delivery of services to client-eligible individuals.

#### C. A New Approach to Funding

The Legal Services Corporation has continued its efforts to expand services available to the poor by emphasizing direct legal assistance to eligible clients. Consistent with this effort, during its October 2, 1987, meeting in Washington, D.C., the Corporation's Board of Directors adopted a resolution to allocate ninety-six percent of LSC funds directly to basic field programs.

The Board's action was not without precedent. Throughout

the tenure of the current Board, the funding of services that do not provide direct delivery has been subject to critical examination. The Audit and Appropriations Committee, at its March 7, 1985, meeting, questioned the efficacy of funding national and state support centers at the expense of providing direct delivery of legal services to the poor. The issue was taken up again at the Board of Directors meeting of June 28, 1986, when the Board voted to transfer national and state support funds to basic field programs. On June 26, 1987, the Board of Directors again voted to increase funds for basic field programs by eliminating FY 1988 funding for computer assisted legal research programs.

As it had resolved in years past, the Board of Directors voted on October 2, 1987, to transfer funds from state and national support centers, as well as training development and technical assistance, to basic field programs so as to increase funds available for direct delivery of legal assistance to the poor and to enhance local autonomy.

The Board's action on its Amended Budget Request for Fiscal Year 1989 represents a longstanding commitment to guarantee local control of limited LSC funds. In each of the last three budgets adopted by the Board, on October 2, 1987, for the FY 1988 Budget Request; on December 17, 1987, for the original FY 1989 Budget Request; and March 25, 1988, for this amended FY 1989 Budget Request, over ninety-six percent of the budget would be allocated exclusively to local programs to serve directly the needs of

their communities. Decisions and policies currently far removed from the local community would return to local boards, clients, and bar associations. In other words those in the best position to ascertain the needs of programs and their clients would direct the appropriation of funds.

#### Voucher Projects

During 1987 the Legal Services Corporation continued its study of the voucher concept as a mechanism to serve eligible clients. Initial findings of a study of the San Antonio, Texas, voucher project, an effort conducted jointly with the American Bar Association since 1985, are under review. In addition, results of a voucher project administered in Orange County, California -- also funded by LSC -- are currently being studied.

Areas of particular interest to the Corporation with respect to voucher programs are: the feasibility of voucher programs in areas of low population; providing clients with a choice of attorneys; reducing attorney paperwork; and broadening the base of attorneys willing to participate in voucher programs.

#### Law School Clinics

The Legal Services Corporation has also been active in supporting law school clinics as an additional source of legal assistance for the poor. A significant achievement of these clinics has been their ability to educate students in substantive law and professionalism while providing a service to clients in

their local communities. Law school clinics not only offer services with a high level of client satisfaction, but seventy-two percent of students polled also report that their clinical experience increased their willingness to do work pro bono publico once they enter private practice.

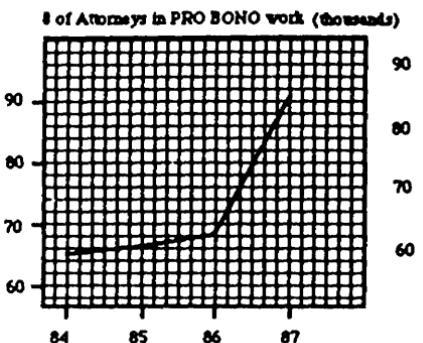
Law school clinics were allocated \$1,114,384 by LSC for the 1987-88 academic year. Funds went to support programs at twenty-six law schools selected for participation by a panel of experts. In light of the success of the clinic programs, the Corporation proposes to annually include clinics in its budget.

The Legal Services Corporation has provided funds for many successful law school clinic programs including clinics at Notre Dame University, the University of Virginia, Southern Methodist University, Loyola University, Gonzaga University, University of San Diego, State University of New York at Buffalo, Indiana University, the University of North Dakota, and St. Mary's University of San Antonio.

D. ALTERNATIVE FUNDING AND SERVICES

The FY 1989 Budget Request of the President is a reaffirmation of his continued commitment to the provision of quality legal assistance to the nation's poor. The LSC Board of Directors is dedicated to encouraging and supporting innovation in legal assistance delivery methods, with a special emphasis on private sector resources to augment the current program. The Board's goal is to broaden the scope and improve the quality of

This dramatic growth in private bar involvement supplements services made available by grantees of the LSC and has served to enlarge the supply of free or reduced-fee legal aid for the poor. The result is an expanding field of attorneys and programs from which indigent persons can obtain legal assistance.



Source: Office of Policy Development  
Legal Services Corporation

The increase in attorney participation also demonstrates a growing commitment by practicing attorneys to engage actively in the provision of free legal assistance to the poor, as directed by the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association.

#### Alternative Dispute Resolution

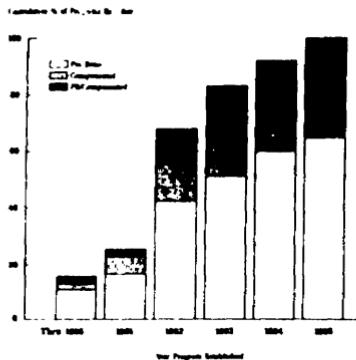
Legal observers have long recognized that a great number of

legal assistance available to the poor.

Pro Bono Representation Programs

Many lawyers across the country voluntarily participate in pro bono legal programs to provide needy people with free or reduced-fee legal representation. These programs are generally established and operated through local bar associations. As the table below illustrates, pro bono programs, and the number of attorneys participating in them, have grown significantly in this decade. The growth of the IOLTA program has also spurred an increase in pro bono representation: in 1987 more than \$1.27 million in IOLTA funds went to pro bono programs.

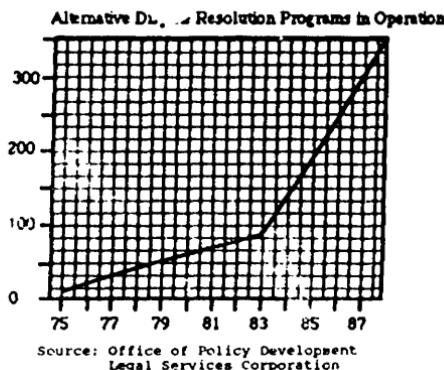
Pro Bono Program Year of Establishment



source: American Bar Association, "Directory of Private Bar Involvement Programs, 1986 edition

spurious or unnecessary result in litigation. Frequently people with legitimate disputes require only a disinterested third party to mediate.

Through dispute resolution services many basic conflicts can be settled without the expense of legal counsel and recourse to the courts.

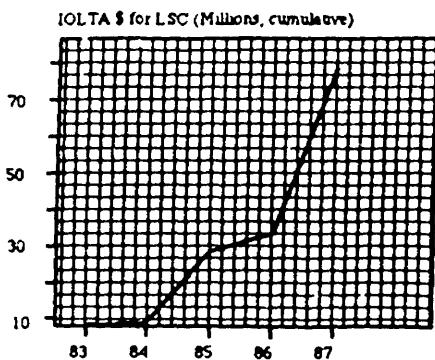


Alternative Dispute Resolution programs constitute an important component in the delivery of conflict resolution services to the poor. Hundreds of thousands of disputants have avoided the cost and delays of court adjudicated dispute resolution by utilizing these services. As the chart above indicates, ADR programs are expanding rapidly. In 1975, there were less than a dozen projects in operation in the United States. By mid-1987, 350 ADR programs had been established. This growth reflects growing public acceptance of ADR as an

alternative to litigation.

#### IOLTA Programs

One of the fastest growing and most promising sources of non-LSC funds is Interest on Lawyers' Trust Accounts (IOLTA). Conceived in 1981, the IOLTA programs generated \$4,485,763 in 1983. As the chart below indicates, the growth was so rapid that, by 1987, the programs accounted for \$122,502,224. Of this, \$78,903,127 was made available to legal services grantees (up from \$3,296,803 in 1983). The remainder of IOLTA funds go to other public service projects.



Source: Office of Policy Development  
Legal Services Corporation

The IOLTA concept allows (or, in some states, requires) lawyers and law firms to establish interest bearing trust accounts for pooled clients' funds which by themselves are either

nominal or are held for a short period of time. Traditionally, lawyers would in such cases place the funds in non-interest bearing accounts. An IOLTA program, created by state legislation or a court ruling, permits attorneys to open negotiable order of withdrawal (NOW) accounts and transfer interest earned to a non-profit corporation that disburses the funds for public service projects.

Forty-six states presently have an operational IOLTA program, and recruitment efforts are constantly under way urging more lawyers to participate in the program. In some of these states only a fraction of lawyers who are eligible presently participate in IOLTA. The potential for growth is therefore substantial. In Florida, for example, by 1986 only 21% of eligible lawyers in the state participated in the IOLTA program but the program generated \$10.386 million. The net effect of the growth in IOLTA funds is an increasing flow of non-LSC resources to recipient programs.

The growth of various alternative sources of funding and services, such as IOLTA, Law School Clinics, Alternative Dispute Resolution, and greater pro bono participation, have significantly increased the availability of legal aid to the poor. This increase in private sector resources makes available a wide range of alternatives to poor persons who are in need of legal assistance.

LEGAL SERVICES CORPORATION  
BUDGET IN BRIEF -- FISCAL YEAR 1989

(dollars in thousands)

	1987 Actual	1988 Estimate	1989 Estimate	Change from 1988 to 1989		
	Amount	Per Pctn's	Amount	Per Pctn's	Amount	Per Pctn's
<b>I. DELIVERY OF LEGAL ASSISTANCE</b>	<b>283,866</b>	<b>282,270</b>	<b>241,000</b>	<b>(41,270)</b>		
Appropriation	280,353	280,114	241,000	(39,114)		
Funds Carried Forward from previous year	3,513	2,156	---	(2,156)		
<b>A. FIELD PROGRAMS</b>	<b>280,548</b>	<b>279,365</b>	<b>237,600</b>	<b>(41,765)</b>		
Appropriation	278,013	278,014	237,603	(40,414)		
Funds Carried Forward from previous year	2,535	1,351	---	(1,351)		
<b>B. PROGRAM DEVELOPMENT</b>	<b>2,218</b>	<b>805</b>	<b>---</b>	<b>(805)</b>		
Appropriation	1,340	---	---	---		
Funds Carried Forward from previous year	878	805	---	(805)		
<b>C. SUPPLEMENTAL SERVICE PROVISION</b>	<b>1,100</b>	<b>2,100</b>	<b>1,650</b>	<b>(450)</b>		
Appropriation	1,000	2,100	1,650	(450)		
Funds Carried Forward from previous year	100	---	---	---		
<b>D. DIRECT DELIVERY ALTERNATIVES</b>						
DISPUTE RESOLUTION INITIATIVES	---	---	1,600	1,600		
Appropriation	---	---	1,600	1,600		
Funds Carried Forward from previous year	---	---	---	---		
<b>E. TRAINING DEVELOPMENT &amp; TECHNICAL ASSISTANCE</b>	<b>---</b>	<b>---</b>	<b>150</b>	<b>150</b>		
Appropriation	---	---	150	150		
Funds Carried Forward from previous year	---	---	---	---		

LEGAL SERVICES CORPORATION  
BUDGET IN BRIEF -- FISCAL YEAR 1989

(dollars in thousands)

	1987 Actual	1988 Estimate	1989 Estimate	Change from 1988 to 1989				
	Amount	Per Pcen's	Amount	Per Pcen's	Amount	Per Pcen's	Amount	Per Pcen's
<b>II. SUPPORT FOR THE DELIVERY OF</b>								
LEGAL ASSISTANCE	19,914	17,463	...		(17,463)			
Appropriation	17,747	17,070	...		(17,070)			
Funds Carried Forward from previous year	2,167	393	...		(393)			
A. TRAINING & TECHNICAL ASSISTANCE	1,378	799	...		(799)			
Appropriation	1,000	626	...		(626)			
Funds Carried Forward from previous year	378	175	...		(175)			
B. OTHER SUPPORT	18,536	16,664	...		(16,664)			
Appropriation	16,747	16,446	...		(16,446)			
Funds Carried Forward from previous year	1,799	218	...		(218)			

LEGAL SERVICES CORPORATION  
BUDGET IN BRIEF -- FISCAL YEAR 1989  
.....  
(dollars in thousands)

	1987 Actual			1988 Estimate			1989 Estimate			Change from	
	Per		Per	Per		Per	Per		Per	1988 to 1989	
	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount	Per cent	Amount
<b>III. CORPORATION MANAGEMENT &amp; GRANT</b>											
ADMINISTRATION	11,554	222	10,526	222	9,000	222	(1,526)	222	---	222	---
Appropriation	7,400	222	8,316	222	9,000	222	684	222	---	222	---
Funds Carried Forward from previous year	4,154		2,208		---		(2,208)				
<b>TOTAL -- REQUIREMENTS</b>	<b>315,334</b>	<b>222</b>	<b>310,257</b>	<b>222</b>	<b>250,000</b>	<b>222</b>	<b>(60,257)</b>	<b>222</b>	<b>---</b>	<b>222</b>	<b>---</b>
Appropriation	305,500	222	305,500	222	250,000	222	(55,500)	222	---	222	---
Funds Carried Forward from previous year	9,296		6,165		---		(6,165)				
Other Sources	538		592		---		(592)				

**LEGAL SERVICES CORPORATION**  
**APPROPRIATION REQUEST IN RELATION TO TOTAL FUNDS AVAILABLE**  
**(dollars in thousands)**

	POSN'S	AMOUNT
	-----	-----
<b>1. Total Funds Available in Fiscal Year 1988</b>		
Appropriated funds carried forward from 1987	4,165	
Other Sources	592	
<b>Appropriation, 1988</b>	305,500	
<b>Total available in fiscal year 1988</b>	310,257	
	*****	
 <b>2. Request for Fiscal Year 1989 -- Summary of Changes</b>		
Appropriation, 1988	222	250,000
FY 1989 Base	...	...
Adjustments to Base:	...	...
<b>Total appropriation requested for 1989</b>	222	250,000
	***	*****
 <b>3. Total Funds Available in Fiscal Year 1989</b>		
Requested Appropriation	250,000	
Appropriated funds carried forward from previous fiscal year (1988, estimate)	...	
<b>Total available in fiscal year 1989</b>	222	250,000
	***	*****

**APPROPRIATION LANGUAGE**

100<sup>th</sup> CONGRESS  
1<sup>st</sup> Session

HOUSE OF REPRESENTATIVES

Report  
100-126

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR  
ENDING SEPTEMBER 30, 1988

CONFERENCE REPORT

TO ACCOMPANY

H.J. Res. 395



December 22 (legislative day, December 21), 1987.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1987

10-200

**JAPAN-UNITED STATES FRIENDSHIP COMMISSION  
JAPAN-UNITED STATES FRIENDSHIP TRUST FUND**

*For expenses of the Japan-United States Friendship Commission as authorized by Public Law 96-118, as amended, from the interest earned on the Japan-United States Friendship Trust Fund, \$1,800,000, to remain available until expended; and an amount of Japanese currency not to exceed the equivalent of \$1,700,000 based on exchange rates at the time of payment of such amounts, to remain available until expended: Provided, That not to exceed a total of \$3,500 of such amounts shall be available for official reception and representation expenses.*

**LEGAL SERVICES CORPORATION**

**PAYMENT TO THE LEGAL SERVICES CORPORATION**

*For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$305,500,000 of which \$261,294,000 is for basic field programs, \$7,022,000 is for Native American programs, \$9,638,000 is for migrant programs, \$1,100,000 is for law school clinics, \$1,000,000 is for supplemental field programs, \$624,000 is for regional training centers, \$7,228,000 is for national support, \$7,843,000 is for State support, \$865,000 is for the Clearinghouse, \$510,000 is for computer assisted legal research regional centers, and \$8,916,000 is for Corporation management and administration: Provided, That none of the funds appropriated in this paragraph shall be expended for any purpose prohibited or limited by or contrary to any of the provisions of Public Law 99-180 and section 118 of Public Law 99-190: Provided further, That the funds distributed to each grantee funded in fiscal year 1988 pursuant to the number of poor people determined by the Bureau of the Census to be within its geographical area shall be distributed in the following order:*

*(1) grants from the Legal Services Corporation and contracts entered into with the Legal Services Corporation under section 1006(a)(1) shall be maintained in fiscal year 1988 at not less than 1 per centum more than the annual level at which each grantee and contractor was funded in fiscal year 1987 or \$8.30 per poor person within its geographical area under the 1980 Census, whichever is greater; and*

*(2) each such grantee shall be increased by an equal percentage of the amount by which such grantee's funding, including the increase under the first priority above, falls below \$14.56 per poor person within its geographical area under the 1980 census.*

*Provided further, That if funds become available because a national support center has been defunded or denied refunding pursuant to section 1011(2) of the Legal Services Corporation Act, as amended by this Act, such funds may be transferred to basic field programs, to be distributed in the manner specified by this paragraph, if the Appropriations Committees of both Houses of Congress have been notified pursuant to section 608 of this Act: Provided further, That the Corporation shall utilize the same formula for distribution of fiscal*

year 1988 migrant funds as was used in fiscal year 1987: Provided further, That none of the funds appropriated by this Act or prior Acts may be used by an officer, board member, employee or consultant of the Corporation to implement or enforce provisions in the regulation regarding legislative and administrative advocacy and training (Part 1612, 53 FR 22424 (July 22, 1987)) which impose restrictions on private funds received by a recipient for the provision of legal assistance except to the extent that such restrictions are explicitly authorized by sections 1007(a)(5), (b)(6), (b)(7), and 1010(c) of the LSC Act: Provided further, That the Corporation shall not impose requirements on governing bodies of recipients that are additional to, or more restrictive than, the provisions of Public Law 99-180 and section 1007(c) of the Legal Service Corporation Act including, but not limited to (1) the procedures of appointment, including the political affiliation and the length of terms of, board members and (2) the size, quorum requirements, and committee operations of such governing bodies.

100TH CONGRESS  
1st Session

HOUSE OF REPRESENTATIVES

REPORT  
100-498

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR  
ENDING SEPTEMBER 30, 1988

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CONFERENCE REPORT

TO ACCOMPANY

H.J. Res. 395



DECEMBER 22 (legislative day, December 21), 1987.—Ordered to be printed

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H-498

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1987

## TITLE VI—GENERAL PROVISIONS

**Sec. 601.** No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

**Sec. 602.** No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

**Sec. 603.** The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

**Sec. 604.** If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

**Sec. 605.** None of the funds appropriated in titles II and V of this Act may be used for any activity to alter the *per se* prohibition on resale price maintenance in effect under Federal antitrust laws: Provided, That nothing in this provision shall prohibit any employee of a department or agency for which funds are provided in titles II and V of this Act from presenting testimony on this matter before appropriating committees of the House and Senate.

**Sec. 606.** None of the funds appropriated by this Act to the Legal Services Corporation may be used by the Corporation or any recipient to participate in any litigation with respect to abortion.

**Sec. 607.** No funds appropriated under this Act may be used to procure any item or service from a foreign entity which engages, directly or indirectly, in activities which, if it were a United States person, would violate section 8 of the Export Administration Act of 1979 (50 U.S.C. Appendix, section 2801 et seq.).

**Sec. 608.** (a) None of the funds provided under this Act shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employee; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Appropriations Committees of both Houses of Congress are notified fifteen days in advance of such reprogramming of funds.

(b) None of the funds provided under this Act shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$250,000 or 10 per centum, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 per centum funding for any existing program, project, or activity, or numbers of personnel by 10 per centum as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress, unless the Appropriations Committees of both Houses of Congress are notified fifteen days in advance of such reprogramming of funds.

**Sec. 609.** No funds appropriated under this Act may be used to sell direct loans which are held by the Small Business Administration or any loan guaranty or debenture guaranty made by the Small Business Administration under the authority contained in the Small Business Investment Act of 1958, and which was held by the Federal Financing Bank on September 30, 1987.

**Sec. 610.** (a) Unless specifically permitted by subsequently enacted legislation, none of the funds appropriated or made available by this Act to the Small Business Administration may be used—

(1) to impose a user fee in connection with a Small Business Administration program or service for which no user fee was in effect on September 1, 1987, or

(2) to increase a user fee which was in effect in connection with such a program or service on such date.

100TH CONGRESS  
1st Session

HOUSE OF REPRESENTATIVES

REPORT  
100-498

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR  
ENDING SEPTEMBER 30, 1988

CONFERENCE REPORT

TO ACCOMPANY

H.J. Res. 395



December 22 (legislative day, December 21), 1987.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1987

16-498

**INTERNATIONAL TRADE COMMISSION  
SALARIES AND EXPENSES**

Appropriates \$34,750,000 instead of \$35,400,000 as proposed by the House and \$34,400,000 as proposed by the Senate.

**LEGAL SERVICES CORPORATION**

**PAYMENT TO THE LEGAL SERVICES CORPORATION**

Appropriates \$305,500,000 as proposed by the House instead of \$310,000,000 as proposed by the Senate.

The House proposed language which would have provided that all of the limitations applicable to the Corporation in the FY 1987 Appropriations Act continue to apply until changes are approved in legislation passed by the House or are enacted in an FY 1988 authorization. The Senate amendment deleted the House language and inserted language retaining the provisions enacted into law in the FY 1987 Appropriations Act, with the exception of the restriction affecting the regulation developed by the Corporation governing legislative and administrative advocacy. These provisions include language restricting certain activities of the Corporation, providing for a legislative funding formula, providing for reductions in the event of sequestration, providing for the redistribution of national support funds resulting from an action to defund or deny re-funding of a center, requiring migrant funds to be distributed under the Corporation's FY 1987 formula, prohibiting the implementation or enforcement of the regulation on legislative and administrative advocacy on private funds received by a Legal Services grantee except to the extent that such restrictions are explicitly authorized by certain sections of the LSC Act, and earmarking funding levels for each of the Corporation's program activities.

The conference agreement provides for all of the Senate language provisions except that providing for reductions in the event of sequestration, and adds a new provision prohibiting the Corporation from imposing requirements on governing bodies of recipients that are not included in Public Law 99-180 and Section 1007(c) of the Legal Services Corporation Act. The conference agreement earmarks funding levels for each of the Corporation's program activities. The following table shows the House, Senate, and conference levels:

Program	House	Senate	Conference
Basic field programs	\$261,291,672	\$264,591,000	\$264,294,000
Native American programs	7,022,000	7,022,000	7,022,000
Migrant programs	5,000,000	5,000,000	5,000,000
Program development, including law school clinics	1,320,000	1,320,000	1,320,000
Law school clinics			1,320,000
Supplemental field programs	1,000,000	1,000,000	1,000,000
Regional training centers	621,964	621,964	621,964
Training development and technical assistance	370,000	370,000	370,000
Relief support	7,528,210	7,521,000	7,220,000
State support	7,042,864	7,043,000	7,043,000
Outreach	863,000	863,000	863,000
CILR regional centers	510,444	511,000	510,000
Corporation management and administration	7,400,000	8,000,000	8,176,000

Program	Basis	Source	Outcome
(Carryover) .....	(1,304,000)	(1,304,000)	(1,304,000)
Total .....	304,500,000	304,500,000	304,500,000

The conferees are agreed that any additional carryover beyond \$1,700,000 may be allocated to the Corporation's management and administration activities subject to submission and approval of a reprogramming proposal under the reprogramming procedures set forth in Sec. 603 of this Act.

The conference agreement maintains programmatic earmarks at FY 1987 levels with the exception of reductions in the levels of two components and the elimination of the training development and technical assistance earmark. These funds were applied to the Corporation Management earmark. The conferees have provided \$1,100,000 to fund law school clinics at the same level as provided for in FY 1987 and have eliminated the earmark for Program Development. The conferees have reduced the earmark for National Support to reflect action taken by the Corporation and upheld by the U.S. District Court for the District of Columbia to defund the National Social Science and Law Center. The conference level will fully fund the remaining National Support Centers at FY 1987 levels.

The conferees direct that the Legal Services Corporation shall not disapprove a subgrant to a subrecipient pursuant to section 1627 of the Legal Services Corporation regulations until the subrecipient has been accorded the same rights accorded to a recipient under section 1606 of the Legal Services Corporation regulations when the subrecipient has previously received funding under a corporation approved subgrant.

**MEMBER OF CONGRESS**  
PENNY MARSHALL, D-PA  
**WASHINGTON OFFICE**  
2272 Rayburn House Office Building  
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Phone (202) 223-6221

**DEPARTMENT OF COMMERCE**  
Department of State  
Department of Transportation  
Postal Service  
Small Business Administration  
Patent, Trademark Commission  
F.A.C.C.

F.I.C.C.  
International Trade Commission  
U.S. Trade Representative  
U.S. Arms Control Agency  
United Nations Assistance

**AGRICULTURE**  
Department of Health and Human Services

**LABOR**  
Department of Transportation  
U.L.A.A.

**HEALTH AND HUMAN SERVICES**  
Public Health Service  
Centers for Disease Control

**SMALL BUSINESS**

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

January 4, 1988

Mr. John H. Bayly, Jr.  
President  
Legal Services Corporation  
400 Virginia Avenue, S.W.  
Washington, D.C. 20024-2751

Dear Mr. Bayly:

It has come to our attention that the conference agreement on the FY 1988 appropriation for the Legal Services Corporation contains a technical error in the language setting forth the funding formula for the distribution of grants and contracts under section 1006(a)(1) of the Legal Services Corporation Act, as amended.

The Corporation's FY 1988 funding level of \$305,500,000 along with the earmark of \$261,294,000 for basic field programs does not provide an increase over the FY 1987 funding level for grantees. You should be aware that it was the intent of the conferees to maintain funding for each grantee and contractor referenced in the second proviso of the statutory language at the same annual level at which each grantee and contractor was funded during fiscal year 1987.

Sincerely,

*Neal Smith*  
NEAL SMITH, Chairman  
House Commerce, Justice,  
State Appropriations  
Subcommittee

*Harold Rogers*  
HAROLD ROGERS, Ranking Member  
House Commerce, Justice,  
State Appropriations  
Subcommittee

*Pete Hollings*  
ERNEST F. HOLLINGS, Chairman  
Senate Commerce, Justice,  
State Appropriations  
Subcommittee

*Warren B. Rudman*  
WARREN B. RUDMAN, Ranking Member  
Senate Commerce, Justice  
State Appropriations  
Subcommittee

APPENDIX



EXECUTIVE OFFICE OF  
THE PRESIDENT  
OFFICE OF MANAGEMENT  
AND BUDGET

---

BUDGET  
OF THE  
UNITED STATES  
GOVERNMENT

---

FISCAL YEAR

1989

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## OTHER INDEPENDENT AGENCIES

	Number of obligors to debtors	1987 actual	1988 est.	2,815
71.00 Obligors incurred net	1,562	2,485	2,815	
72.00 Obligated balance, start of year	1,200	122	—	
73.00 Obligated balance, end of year	122	—	—	
74.00 Adjustment: It incurred accounts	—	27	—	
75.00 Outlays	3,275	2,508	2,615	

The Japan-United States Friendship Act of 1975 established the Japan-United States Friendship Trust Fund and created the Japan-United States Friendship Commission to make grants from the Fund for the promotion of scholarly, cultural, and artistic activities between Japan and the United States. The Commission is authorized to make expenditures from the appropriated income of the fund and, in an amount not to exceed 5 percent annually of the principal of the fund, to pay the expenses of the Commission and to make grants in support of studies, fellowships, scholarships, book collections, art programs, and other cultural and educational activities, primarily in the United States. The Commission received a contribution in September 1987 of \$1 million from the Government of Japan to be used for the purposes of the Act.

## Object Classification (in thousand of dollars)

Object code 75-3805-0-7-154	1987 actual	1988 est.	1989 est.
<b>Direct obligations</b>			
Personnel compensation			
Full-time personnel	179	186	195
Other than full-time personnel	17	23	23
Other personnel compensation	5	5	5
Total personnel compensation	201	214	218
Other personnel benefits	78	33	26
Travel and transportation of persons	13	20	26
Transportation of things	—	10	—
Rental payments to CSA	34	41	44
Communication, utilities, and miscellaneous charges	7	7	8
Printing and reproduction	8	8	10
Other expenses	39	51	58
Supplies and materials	—	1	7
Grants, subsidies, and contributions	1,212	2,100	2,219
Subtotal, direct obligations	1,562	2,485	2,815
Indirect obligations	25	125	75
Total obligations	1,587	2,510	2,890

## Personnel Summary

Total number of full-time permanent positions	3	4	6
Total compensated employees, full-time equivalent employment	4	5	5

## LEGAL SERVICES CORPORATION

## Federal Funds

## General and special funds:

## PATRIOT TO THE LEGAL SERVICES CORPORATION

(For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$85,500,000 of which \$261,294,000 is for basic field programs, \$1,822,000 is for Native American programs, \$1,836,000 is for migrant programs, \$1,100,000 is for law school clinics, \$1,000,000 is for supplemental field programs, \$624,000 is for regional training centers, \$1,228,000 is for national support, \$7,843,000 is for State support, \$65,000 is for the Clearinghouse, \$510,000 is for computer assisted legal research regional centers, and \$3,316,000 is for Corporation management and administration. Provided, That none of the funds appropriated in this paragraph shall be expended for any purpose prohibited or limited by or contrary to any of the provisions of Public Law 99-180 and section 112 of Public Law 99-190. Provided further, That the funds distributed to each grantee funded in fiscal year 1988

pursuant to the number of poor people determined by the Bureau of the Census to be within its geographical area shall be distributed in the following order:

(1) grants from the Legal Services Corporation and contracts entered into with the Legal Services Corporation under section 1006(k)(1) shall be maintained in fiscal year 1988 at not less than 1 per centum more than the annual level at which each grantee and contractor was funded in fiscal year 1987 or \$3.80 per poor person within its geographical area under the 1980 Census, whichever is greater, and

(2) each such grantee shall be increased by an equal percentage of the amount by which such grantee's funding, including the increase under the first priority above, falls below \$14.56 per poor person within its geographical area under the 1980 census.

Provided further, That if funds become available because a national support center has been defunded or denied refunding pursuant to section 1011(b) of the Legal Services Corporation Act, as amended by this Act, such funds may be transferred to basic field programs, to be distributed in the manner specified by this paragraph, if the Appropriations Committees of both Houses of Congress have been notified pursuant to section 608 of this Act. Provided further, That the Corporation shall utilize the same formula for distribution of fiscal year 1988 migrant funds as was used in fiscal year 1987. Provided further, That none of the funds appropriated by this Act or prior Acts may be used by an officer, board member, employee or consultant of the Corporation to implement or enforce provisions in the regulation regarding legislative and administrative advocacy and training (Part 1612, 52 FR 28434 (July 29, 1987)) which impose restrictions on private funds received by a recipient for the provision of legal assistance except to the extent that such restrictions are explicitly authorized by sections 1007 (a)(5), (b)(6), (b)(7), and 1010(c) of the LSC Act. Provided further, That the Corporation shall not impose requirements on governing bodies of recipients that are individual to or more restrictive than, the provisions of Public Law 99-180 and section 1007(c) of the Legal Services Corporation Act including, but not limited to (1) the procedures of appointment, including the political affiliation and the length of terms of, board members and (2) size, quorum requirements, and committee operations of such governing bodies.]

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$350,000,000, of which \$241,000,000 shall be expended for direct delivery of legal services to poor eligible clients and provision of funds for law school clinics, training development and technical assistance, and of which \$9,000,000 shall be for management and administration. Provided, That for the purposes of this paragraph, "direct delivery of services to poor eligible clients" means the provision of basic dispute resolution services to eligible clients through local grant recipients whose purpose is to provide direct delivery of legal assistance to eligible clients. Provided further, That all such grants to local grant recipients shall be awarded competitively at least every two years. Provided further, That none of the funds appropriated in this paragraph shall be expended for any purpose prohibited or limited by or contrary to any of the provisions of Public Law 99-180 or section 112 of Public Law 99-190. Provided further, That none of the funds appropriated in this paragraph may be used by the Corporation on any recipient to participate in any litigation with respect to abortion. Provided further, That funds appropriated in this paragraph shall be subject to 31 U.S.C. 1901. Provided further, That if a Presidential order pursuant to section 659 of Public Law 99-177 is issued for fiscal year 1989, funds provided under this paragraph shall be reduced by the percentage specified in the Presidential order (Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1988).

## Program and financing (in thousands of dollars)

Identical code 70-0501-4-1-757	1987 actual	1988 est.	1989 est.
<b>Program by activities</b>			
00.01 Delivery of legal assistance	273,716	288,114	241,000
00.02 Support and training	18,412	17,070	—
00.03 Management and administration	18,872	17,315	1,000
Total obligations (object class 410)	301,980	305,500	250,000
<b>Financing</b>			
00.00 Budget authority (appropriation)	305,500	305,500	250,000

## General and special funds—Continued

## PAYMENT TO THE LEGAL SERVICES CORPORATION—Continued

## Program and Financing (in thousands of dollars)—Continued

Modification date	1981 actual	1980 est.	1981 est.
<i>Salaries of obligees to obligor</i>			
71.00 Obligee incurred, net	305,500	303,500	256,000
72.00 Obligated balance, start of year	31,624	29,194	70,419
74.40 Obligated balance, end of year	-30,114	-71,149	-32,729
98.00 Overage	300,313	294,265	251,169

The Legal Services Corporation (LSC) funds State and local agencies that provide free civil legal assistance to the poor. LSC is a private, non-profit corporation which is outside the Federal Government and acts independently of related social and community services programs. The Administration supports actions to ensure that grantees are involved in cases for individual clients, rather than broader "law reform" activities.

## MARINE MAMMAL COMMISSION

## Federal Funds

## General and special funds:

## SALARIES AND EXPENSES

For necessary expenses of the Marine Mammal Commission as authorized by Title II of Public Law 92-522, as amended, [§353,000] \$353,000 (Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1988)

## Program and Financing (in thousands of dollars)

Modification date	1981 actual	1980 est.	1981 est.
<i>Program by activities</i>			
10.00 Total obligations	938	933	933
<i>Financing</i>			
21.00 Budgeted balance beginning	7	—	—
40.00 Budget authority (appropriation)	918	863	933
<i>Salaries of obligees to obligor</i>			
71.00 Obligee incurred, net	938	933	933
72.00 Obligated balance, start of year	221	252	252
74.40 Obligated balance, end of year	-226	-262	-252
77.30 Adjustment in unpaid accounts	-14	—	—
98.00 Overage	966	947	933

The Commission coordinates marine mammal policy and programs; reviews the status of marine populations; recommends to the Secretaries of Commerce, Interior, and State steps to conserve marine mammals domestically and internationally; and manages a research program.

## Object Classification (in thousands of dollars)

Modification date	1981 actual	1980 est.	1981 est.
<i>Personnel compensation</i>			
11.1 Full-time personnel	793	666	481
11.3 Other than full-time personnel	53	167	165
11.9 Total personnel compensation	846	833	546
12.1 Other personnel benefits	16	73	73
12.3 Travel and transportation of persons	53	55	57
22.0 Transportation of goods	17	17	18
23.1 Rental payments to CSA	45	55	55
23.3 Communications, utilities, and miscellaneous charges	31	36	37
24.1 Postage and reproduction	7	7	3
25.0 Other services	262	137	98

## APPENDIX TO THE BUDGET FOR FISCAL YEAR 1981

26.0 Supplies and materials	\$	\$
31.0 Equipment	3	3
99.5 Total obligations	706	563

## Personnel Summary

Total number of full-time permanent positions	10	11
Total compensated workers, full-time equivalent employment	11	12

## MERIT SYSTEMS PROTECTION BOARD

## Federal Funds

## General and special funds:

## SALARIES AND EXPENSES

## (INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan Number 1 and the Civil Service Reform Act of 1978, including salaries authorized by § 5 U.S.C. §109, rental of conference rooms in the Dept. of Columbia, and elsewhere, hire of personnel, and other costs, total value [§20,257,000] \$20,257,000 \$20,448,000, together with that to exceed [§1,000] \$1,000 for administrative expenses to administer retirement plans to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board. (Independent Agencies Appropriations Act, 1981)

## Program and Financing (in thousands of dollars)

Modification date	1981 actual	1980 est.	1981 est.
<i>Program by activities</i>			
00.01 Direct program	—	—	—
00.02 Required operations	2,726	1,775	—
00.02 Appeals	2,199	2,577	—
00.03 Legal studies and administration	3,669	3,165	—
00.91 Total direct program	14,584	10,357	—
01.01 Reimbursable program	1,255	1,255	—
01.01 Total obligations	15,839	12,612	—
<i>Financing</i>			
02.00 Offsetting collections from:	—	—	—
Federal funds	—	—	—
Trust funds	—	—	—
03.00 Undesignated balance beginning	571	—	—
40.00 Budget authority (appropriation)	19,412	15,839	—
<i>Salaries of obligees to obligor</i>			
71.00 Obligee incurred, net	14,534	10,357	—
72.00 Obligated balance, start of year	—	—	—
74.40 Obligated balance, end of year	—	—	—
98.00 Overage	14,534	10,357	—

The Merit Systems Protection Board performs adjudicatory functions necessary to maintain the service merit system. These include hearing appeals adverse actions, reduction-in-force actions, and retirement. The Board will report to the President on whether merit systems are sufficiently free from prohibited personnel practices to protect the public interest. Board workloads are reflected in the following:

## PRODUCTION COUNT

	1981 actual	1980 est.
Administrative (legis-Reg)	1,055	1,055
Adverse action appeals	1,055	1,055
Reduction-in-force appeals	—	—
Other	1,055	1,055

**LEGAL SERVICES CORPORATION  
PROGRAM AND FINANCING FOR FEDERAL APPROPRIATIONS  
FISCAL YEARS 1987, 1988, 1989**

(dollars in thousands)

	1987 Actual	1988 Estimate	1989 Estimate
<hr/>			
<b>Program by Activities</b>			
1. Delivery of Legal Assistance	283,866	282,270	241,000
2. Support for the Delivery of Legal Assistance	19,914	17,463	---
3. Management and Administration	11,554	10,524	9,000
	<hr/>	<hr/>	<hr/>
Total program costs, funded	315,334	310,257	250,000
Change in Selected Resources	---	---	---
Other non-Federal sources	(538)	(592)	---
Appropriated funds from prior years	(9,296)	(4,165)	---
	<hr/>	<hr/>	<hr/>
10.00 Total obligations (object class 41)	305,500	305,500	250,000
 <hr/>			
<b>Financing:</b>			
40.00 Budget Authority (appropriation)	305,500	305,500	250,000
 <hr/>			
<b>Relation of obligations to outlays:</b>			
71.00 Obligations incurred, net	305,500	305,500	250,000
72.40 Obligated balance, start of year	33,624	30,194	25,437
74.40 Obligated balance, end of year	(30,194)	(25,437)	(25,437)
	<hr/>	<hr/>	<hr/>
90.00 Outlays	308,930	310,257	250,000
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**LEGAL SERVICES CORPORATION**  
**SUMMARY STATEMENT OF SUPPORT, REVENUE AND EXPENSE AND OTHER CHANGES**  
**IN FUND BALANCES -- FISCAL YEARS 1987, 1988, 1989**

(dollars in thousands)

	1987 Actual	1988 Estimate	1989 Estimate
<b>Fund Balances at Beginning of Fiscal Year</b>			
Federal appropriation	9,296	4,165	---
Other sources	538	592	---
<b>Total fund balances</b>	<b>9,834</b>	<b>4,757</b>	<b>---</b>
<b>Support and Revenue during the Period</b>			
Federal appropriation	305,500	305,500	250,000
Interest / income earned	54	---	---
Other sources	---	---	---
<b>Total support and revenue</b>	<b>305,554</b>	<b>305,500</b>	<b>250,000</b>
<b>Total funds available</b>	<b>315,388</b>	<b>310,257</b>	<b>250,000</b>
<b>Expenses during the Period</b>			
<b>Program activities:</b>			
Grants and contracts	299,729	299,558	241,000
Program services	30	175	---
<b>Total program activities</b>	<b>299,759</b>	<b>299,733</b>	<b>241,000</b>
<b>Supporting activities</b>			
Management and administration	10,654	10,454	8,935
Property and equipment	218	70	65
<b>Total expenses</b>	<b>310,631</b>	<b>310,257</b>	<b>250,000</b>
<b>Fund Balances at Close of Fiscal Year</b>	<b>4,757</b>	---	---

LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>I. DELIVERY OF LEGAL ASSISTANCE</b>				
Total	282,270	282,270	261,000	(41,270)
Appropriation	280,114	280,114	261,000	(39,114)
Funds Carried Forward from Previous Year	2,156	2,156	---	(2,156)

Funds appropriated for the direct delivery of legal assistance have been decreased. Funds for training, development, and technical assistance are also included in this line. Legal service attorneys will be able to tailor their efforts to meet the needs of the poor in their areas of service without sacrificing quality legal aid. This consolidation of budget lines represents a recognition of the varying needs and priorities of different communities across the nation as well as an appreciation of the wide range in programmatic abilities and expertise.

LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>A. FIELD PROGRAMS</b>				
Total	279,365	279,365	237,600	(61,765)
<hr/>				
Appropriation	278,014	278,014	237,600	(60,414)
Funds Carried Forward from Previous Year	1,351	1,351	---	( 1,351)

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Local recipients employ a salaried staff of attorneys and support personnel. Many recipients also employ part-time assistance in an effort to increase delivery with limited resources. In addition, recipients may secure the services of private attorneys who provide legal assistance to poor clients for free or for partial compensation.

**782**LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>B. PROGRAM DEVELOPMENT</b>				
Total	805	805	...	(805)
Appropriation	...	...	...	...
Funds Carried Forward from Previous Year	805	805	...	(805)

Funds allocated for program development in FY 1989 are included in the Management and Grant Administration line of the Budget Request.

**LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)**

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>C. SUPPLEMENTAL SERVICE PROVISION</b>				
Total	2,100	2,100	1,650	(450)
Appropriation	2,100	2,100	1,650	(450)
Funds Carried Forward from Previous Year	...	...	...	...

The Legal Services Corporation allocates funds for supplemental field programs. These programs are engaged in direct delivery. Ten such programs exist, two of which are basic field programs receiving supplemental service funds through this budget line.

In the FY 1989 Budget Request a separate line for law school clinics has been established within the supplemental service provision. This reflects a consensus among members of the Corporation's Board of Directors that law school clinics have been shown to provide an important and cost-effective means of supplementing delivery of legal assistance to the indigent. Simultaneously, clinics attract lawyers to a life-long commitment of service to the poor.

Most importantly, however, pilot programs previously funded by the Legal Services Corporation have yielded a high degree of client satisfaction. Studies further demonstrate that law students who participate in their school's clinical program find the experience a positive one. Such affirmative exposure at the beginning of a career increases the likelihood of further participation in providing legal aid to the poor.

The Corporation continues to monitor law school clinical programs and to assess the viability of clinics as an increasingly useful--and often innovative--supplemental source of legal assistance for the poor.

LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>D. DIRECT DELIVERY ALTERNATIVES</b>				
<b>DISPUTE RESOLUTION INITIATIVES</b>				
Total	...	...	1,600	1,600
Appropriation	...	...	1,600	1,600
Funds Carried Forward from Previous Year	...	...	...	...

The FY 1989 Amended Budget Request also includes a separate budget line of \$1,600,000 for Direct Delivery Alternatives. Appropriated funds will be used to develop dispute resolution initiatives as a means of broadening access to justice for poor clients and providing cost-effective alternative means of resolving differences and disputes which can answer many of the problems faced by the poor. Alternative Dispute Resolution programs are recognized by the American Bar Association and provide a valuable resource with which to address the legal needs of the needy. As reported by the Dispute Resolution Clearinghouse, more than 350 Alternative Dispute Resolution centers are now in existence. They accept more than 315,000 cases per year.

LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>E. TRAINING DEVELOPMENT &amp; TECHNICAL ASSISTANCE</b>				
Total	...	...	150	150
Appropriation	...	...	150	150
Funds Carried Forward from Previous Year	...	...	...	...

In the past, funds have been specially earmarked to ensure professional training for legal services attorneys. In addition to funds available for various training events, regional training centers were separately established and funded. Under the proposed budget, however, direct funding of training centers would be eliminated. Here, too, the stress is on reliance on local initiative and on each provider's ability to determine its training needs. The first step in the direction taken by the Board occurred in 1981 when the training centers were decentralized in an attempt to localize control over training resources and actual training. The Board is now proposing to extend this concept even further and to allow each basic field program to select training programs that expressly deal with the concerns and needs of its staff and the people they serve.

The training and technical assistance budget line also includes funds for training of client eligible members of local boards of LSC recipients.

**LEGAL SERVICES CORPORATION**  
**ACTIVITIES IN BRIEF**  
**(dollars in thousands)**

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>II. SUPPORT FOR THE DELIVERY OF</b>				
<b>LEGAL ASSISTANCE</b>				
Total	17,463	17,463	---	(17,463)
Appropriation	17,070	17,070	---	(17,070)
Funds Carried Forward from Previous Year	393	393	---	( 393)

Previously, the Corporation separately funded support for the delivery of legal assistance and recognized it as a line distinct from the basic field program appropriation. In 1988, for example, support included \$16,664,000 in national and state support and computer assisted legal research. In addition, the line comprehended \$799,000 in training and technical assistance. Total funding for support in FY 1988 was set at \$17.463 million. Under the proposed budget for FY 1989, however, direct funding for support would be eliminated. Under the previous method of allocating resources, important decisions as to support services were made at positions far removed from the field and often in Procrustean fashion. The proposed budget allows those decisions to be made at the field level, thereby ensuring that every program will be directly responsive to the needs of its service area and will have full opportunity to enlist local participation in appropriating resources and exercising discretion.

LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>A. TRAINING &amp; TECHNICAL ASSISTANCE</b>				
Total	799	799	...	(799)
Appropriation	624	624	...	(624)
Funds Carried Forward from Previous Year	175	175	...	(175)

Funds for training and technical assistance have been included under the direct delivery line.

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LEGAL SERVICES CORPORATION  
ACTIVITIES IN BRIEF  
(dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	Increase or Decrease 1989 Est. to 1989 Base
<b>B. OTHER SUPPORT</b>				
Total	16,664	16,664	---	(16,664)
Appropriation	16,446	16,446	---	(16,446)
Funds Carried Forward from Previous Year	218	218	---	( 218)

For FY 1988, Other Support included \$16,664,000 in national and state support and computer assisted legal research. Currently the Corporation is urging the elimination of direct funding of support and leaving decisions about support services at the local level.

**LEGAL SERVICES CORPORATION**  
**ACTIVITIES IN BRIEF**  
 (dollars in thousands)

	1988 Estimate	1989 Base	1989 Estimate	1989 Est. to 1989 Base	Increase or Decrease
	Per Capita Amount Per Capita	Per Capita Amount Per Capita	Per Capita Amount Per Capita	Per Capita Amount	Per Capita Amount
<b>III. CORPORATION MANAGEMENT AND</b>					
<b>GRANT ADMINISTRATION</b>					
Total	10,524 222	10,524 222	9,000 222	(1,524)	---
Appropriation	8,316 222	8,316 222	9,000 222	684	---
Funds Carried Forward from Previous Year	2,208	2,208	---	(2,208)	

**REGIONS OF OPERATION**

William Clark Burant, III, Chairman  
 Robert Voleto, Vice Chairman

**EXECUTIVE OFFICE**

<b>OFFICE OF COMPTROLLER</b>	<b>JOHN R. BAILY, JR., PRESIDENT</b>	<b>OFFICE OF THE GENERAL COUNSEL</b>
David Richardson, Comptroller	Charles Jarvis, Vice Pres. Treasurer (Acting)	Timothy Shee, General Counsel
Michael Bush, Budget Officer	Timothy Shee, General Counsel	Victor Fortune, Sr. Lit. Counsel
Yvonne Robertson, Accounting Supervisor	Maureen Reilly, Secy. of Corp.	John Panchiger, Paul Kendall & Suzanne Blaser, Assistant General Counsel

<b>Office of Policy Development and Communications</b>	<b>Office of Management Services</b>	<b>Office of Monitoring, Audit Compliance &amp; Review</b>	<b>Office of Field Services</b>
James Weston, Director (Acting)	John Meyer, Director, (Acting) Alice Bickerson, ED Administrator	Edelle Blalock, Director (Acting)	Mary Biggins, Director Charles Nease, Associate Director
Division of Policy Develop. Robert Slatin, Manager	Division of Information Systems James McIntyre, Manager (Acting)	Audit Division Steve Balle, Manager	Grants & Budget Division Ellen Sneed, Manager
Division of Gov't. Affairs Manager (Vacant)	Division of Human Resources Alice Bickerson, Manager (Acting)	Compliance Division Edward Bond, Manager	Program Development & Substantive Support Division
Division of Public Affairs Beryl Bergquist, Manager	Division of Administration John Meyer, Manager (Acting)	Monitoring Division Anthony Gomes, Manager	Manager (Vacant)
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<b>Southern Regional Office</b>	<b>Midwest Regional Office</b>	<b>Rocky Mountain Regional Office</b>	<b>Pacific Regional Office</b>
Pelon Ross, Regional Officer (Acting)	Dean Reuter, Regional Officer (Acting)	Gudelupe Garcia, Regional Officer (Acting)	Native American Unit First Dicksingbird, Manager
<hr/>			

Corporation Management and Grant Administration constitutes approximately four percent of the Legal Services Corporation budget. These funds support an eleven-member Board of Directors, seven offices within corporate headquarters, and five regional offices. Pursuant to statute, the Board sets policy and provides direction for operations mandated by the Legal Services Corporation Act. Corporate headquarters include the Executive Office; the Office of Comptroller; the Office of Policy Development and Communications; the Office of the General Counsel; the Office of Management Services; the Office of Monitoring, Audit, and Compliance; and the Office of Field Services. Regional offices are located in the Southern, Midwest, Rocky Mountain, and Pacific States in order to facilitate the provision of services and the Corporation's oversight function.

The Board of Directors is appointed by the President of the United States with the advice and consent of the Senate. The Board periodically holds public meetings in Washington, D.C., and around the nation to address legal services issues, to consider recommendations from its three standing committees, and to take public comment on Board initiatives affecting program recipients and concerned citizens. The proposed FY 1989 budget for the Board of Directors is \$102,000 and represents only the costs associated with services contributed by the Directors. Board members are not compensated for their service by the Corporation.

The Executive Office comprises the President (appointed by the Board), other Corporate officers, and support staff responsible for the implementation of Board policy and the oversight of Corporate operations. The proposed FY 1989 budget for the Executive Office is \$393,000.

The Office of the General Counsel serves as legal advisor to the Corporation and its Board of Directors. OGC also provides interpretations of the Legal Services Corporation Act and other provisions of law for the Board as well as for Corporate officers and staff, recipient programs, and members of the general public. It likewise assists the Board's Committee on Operations and Regulations in the research and development of regulations governing the Corporation and its recipients. In addition, OGC represents the Corporation in civil and administrative litigation either directly or by managing its conduct. Approximately 15 separate matters involving the Corporation are now in litigation. Besides the General Counsel, OGC employs five staff attorneys, four support staff members, and several law clerks to carry out office functions. The proposed FY 1989 budget for OGC is \$860,000. It includes expenses for representation by outside counsel and contingency amounts required by litigation demands as well as funds available to compromise claims against the Corporation.

The Office of Comptroller is responsible for maintaining the efficiency of the Corporation's financial system and the integrity of its accounts. In addition to the Comptroller, the office of Comptroller employs six financial professionals and one support staff member who provide assistance in internal financial planning, maintain in-house and program grant management functions, provide financial reports, oversee procedures that generate financial transactions, and operate the Corporate accounting system. The Office of Comptroller also assists in the Corporation's annual independent audit, helps prepare this budget request, and submits LSC's audit report to the General Accounting Office. The proposed FY 1989 budget for the Office of Comptroller is \$291,500.

The Office of Policy Development and Communications consists of three divisions: the Division of Policy Development, the Division of Government Affairs, and the Division of Public Affairs. Oversight for the three divisions is provided by the Director of the Office who is appointed by the President. The proposed FY 1989 budget for the Office is \$507,000.

The Division of Policy Development employs four policy experts and two support staff members who engage in research and development of policy as requested by the Board of Directors. In addition, the Division, upon request, drafts Congressional testimony for members of the Board and periodically presents policy proposals before the Board at its public meetings. Staff also serves in a liaison capacity with the Board's Committee on the Provision of Legal Services.

The Division of Government Affairs employs two legislative experts who serve, with the Office Director, in a liaison capacity with Congressional oversight and appropriations committees responsible for Corporation activities, with the General Accounting Office, and with relevant federal, state, and local agencies.

The Division of Public Affairs relies on one employee who provides the Board and members of Corporate staff with published information concerning the Corporation and its recipient programs. In addition, the division responds to inquiries from the media and other interested parties about matters of Corporate policy and recipient program activities.

The Office of Management Services consists of four divisions: OMS Central; the Division of Information Systems; the Division of Human Resources; and the Division of Administration. Oversight for the three divisions is provided by the Director of the Office, who is appointed by the President. The proposed FY 1989 budget for the Office of Management Services is \$2,425,000. OMS Central employs four individuals who direct and coordinate the work of the other divisions within the Office. OMS Central is also responsible for providing all the necessary support services for the Corporation headquarters. The FY 1988 OMS budget includes \$1,160,000 in occupancy costs for Corporate headquarters and \$30,000 for insurance, in addition to funds for

office supplies and equipment, telephone and security systems, printing and mail services.

The Division of Information Systems employs seven individuals to provide support for all Corporate computer and word-processing functions. This division also maintains a large data-processing capability for the processing of grantee information and conducts various ad hoc projects as requested by other Corporate divisions.

The Division of Human Resources employs eight individuals to assist the various offices of the Corporation in meeting personnel needs. The division prepares and implements the Corporation's personnel policies, administers the Corporation's salary and benefits plans, prepares and monitors personal service contracts, and reviews all monitoring and technical assistance contracts for compliance with relevant laws and regulations.

The Division of Administration employs ten individuals responsible for the daily operations of the Corporation. Activities of the division include printing, mail, and machinery maintenance, the purchase and distribution of supplies throughout the Corporation, and the maintenance of capital equipment and all internal communications networks.

The Office of Field Services consists of three divisions: OFS Central, the Division of Grants and Budget (GBD), and the Division of Program Development and Substantive Support (PDSS). Oversight is provided by the Director who is appointed by the President of the Corporation. The proposed FY 1989 budget for OFS is \$738,500.

OFS Central employs a staff of eleven which coordinates activities among the several divisions within the office. The division also works with the Board of Directors and outside agencies on matters affecting grantee capabilities and performance. OFS Central houses grantee information archives, conducts research, and provides technical assistance to grantees upon request.

GBD employs a staff of seven and performs three major functions on behalf of the Corporation: grant (and subgrant) administration; budget oversight; and recipient fiscal compliance review, including review and approval of recipient budgets and fund balances.

The PDSS staff of four performs four functions: experimental delivery system development and implementation; oversight of private bar involvement programs; review of private attorney involvement waiver requests; and oversight of training for program attorneys. In addition to the PDSS operating budget, the Board of Directors is proposing an allocation of \$340,000 in special project funding for voucher programs to be administered by the division. PDSS is usually involved in other special projects as directed by Corporate Management.

The Office of Monitoring, Audit, and Compliance consists of four divisions: MAC Central, the Audit Division, the Compliance Division, and the Monitoring Division. In addition, the office has oversight responsibility for the five regional offices, four

of which are located outside the District of Columbia. The office's primary function is monitoring programs that receive funds from the Corporation. Oversight for the office is provided by the Director who is appointed by the President of the Corporation. The proposed FY 1989 budget for the office is \$3,438,000.

The Audit Division employs six professionals and two support staff members responsible for review and analysis of fiscal reports of recipient programs.

The Compliance Division employs nine professionals and two support staff members responsible for addressing issues arising from program compliance with the Legal Services Corporation Act, annual appropriations riders, and LSC regulations. It responds to Congressional inquiries concerning program compliance, answers citizens' complaints, replies to questions from bar associations and local governmental entities, and, as appropriate, participates in proceedings on behalf of the Corporation.

The Monitoring Division, by far the largest office within the Corporation, employs twenty-nine professionals and fourteen support staff members. Through a detailed system of program monitoring, it is responsible for ensuring that Legal Services Corporation grantees conduct their affairs in accordance with applicable laws and regulations. Its work is supplemented by a revolving pool of several hundred, mostly part-time, often locally-based, consultants who perform on-site monitoring tasks such as fiscal and management reviews. The monitoring process entails an extensive examination of each program's functions, personnel policies, performance of mandated tasks, and compliance with regulations. It involves on-site inspection and is completed with the filing of a final report which is available for public comment and review. The monitoring process is performed on an 18-month cycle to ensure that recipient programs are reviewed on a routine basis.

MAC also has oversight authority for the five regional offices which serve an intermediary function for the Corporation. These offices handle problems more local in nature, facilitate monitoring, and assure a smooth flow of information between the Corporation and its recipients.

The Corporate management and administration line also includes \$245,000 to fund program development. In addition to Alternative Dispute Resolution centers, numerous groups and organizations providing mediation and arbitration services have evolved as effective, low-cost alternatives to courtroom adjudication. In accordance with the organized bar's efforts to expand this avenue of legal assistance, the Board of Directors has indicated that a portion of Corporate funds is to be dedicated to developing such alternatives.

**BASIC FINANCIAL TABLES**

LEGAL SERVICES CORPORATION  
BUDGET SUMMARY -- FISCAL YEARS 1987, 1988, AND 1989  
(dollars in thousands)

	1987 ACTUAL	1988 ESTIMATE	1989 ESTIMATE	CHANGE 88 TO 89
DELIVERY OF LEGAL ASSISTANCE	283,866	282,270	241,000	(41,270)
Appropriation	280,353	280,114	241,000	(39,114)
Funds Carried Forward from Previous Year	3,513	2,156	---	(2,156)
SUPPORT FOR THE DELIVERY OF LEGAL ASSISTANCE	19,914	17,463	---	(17,463)
Appropriation	17,747	17,070	---	(17,070)
Funds Carried Forward from Previous Year	2,167	393	---	(393)
CORPORATION MANAGEMENT AND GRANT ADMINISTRATION	11,554	10,524	9,000	(1,524)
Appropriation	7,400	8,316	9,000	684
Funds Carried Forward from Previous Year	4,154	2,208	---	(2,208)
TOTAL -- REQUIREMENTS	315,334	310,257	250,000	(60,257)
Appropriation	305,500	305,500	250,000	(55,500)
Funds Carried Forward from Previous Year	9,296	4,165	---	(4,165)
Other Sources	538	592	---	(592)

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LEGAL SERVICES CORPORATION  
APPROPRIATION EXPENSES BY ACTIVITY -- FISCAL YEARS 1988 AND 1989  
(dollars in thousands)

	1988 Funds		1988		1989 Base		1989 Request	
	Carried Forward from 1987		Appropriation					
	Amount	Perm Pos'n's	Amount	Perm Pos'n's	Amount	Perm Pos'n's	Amount	Perm Pos'n's
Management and Administration	2,208	---	8,316	222	8,316	222	9,000	222
Program Activities	2,549	---	297,184	---	297,184	---	241,000	---
<b>TOTAL</b>	<b>4,757</b>	<b>---</b>	<b>305,500</b>	<b>222</b>	<b>305,500</b>	<b>222</b>	<b>250,000</b>	<b>222</b>

LEGAL SERVICES CORPORATION  
BUDGET SUMMARY -- FISCAL YEARS 1987, 1988, AND 1989  
-----  
(dollars in thousands)

	1987 ACTUAL	1988 ESTIMATE	1989 ESTIMATE	CHANGE 88 TO 89
<b>DELIVERY OF LEGAL ASSISTANCE</b>	283,866	282,270	241,000	(41,270)
Appropriation	280,353	280,114	241,000	(39,114)
Funds Carried Forward from Previous Year	3,513	2,156	---	(2,156)
 <b>SUPPORT FOR THE DELIVERY OF</b>				
<b>LEGAL ASSISTANCE</b>	19,914	17,463	---	(17,463)
Appropriation	17,747	17,070	---	(17,070)
Funds Carried Forward from Previous Year	2,167	393	---	(393)
 <b>CORPORATION MANAGEMENT AND</b>				
<b>GRANT ADMINISTRATION</b>	11,554	10,524	9,000	(1,524)
Appropriation	7,400	8,316	9,000	684
Funds Carried Forward from Previous Year	4,156	2,208	---	(2,208)
 <b>TOTAL -- REQUIREMENTS</b>	315,334	310,257	250,000	(60,257)
Appropriation	305,500	305,500	250,000	(55,500)
Funds Carried Forward from Previous Year	9,296	4,165	---	(4,165)
Other Sources	538	592	---	(592)

LEGAL SERVICES CORPORATION  
APPROPRIATION EXPENSES BY ACTIVITY -- FISCAL YEARS 1988 AND 1989  
-----  
(dollars in thousands)

	1988 Funds Carried Forward from 1987		1988 Appropriation		1989 Base		1989 Request	
	Amount	Per Posn's	Amount	Per Posn's	Amount	Per Posn's	Amount	Per Posn's
	*****	*****	*****	*****	*****	*****	*****	*****
Management and Administration	2,208	---	8,316	222	8,316	222	9,000	222
Program Activities	2,549	---	297,184	---	297,184	---	241,000	---
TOTAL	4,757	---	305,500	222	305,500	222	250,000	222
	*****	*****	*****	*****	*****	*****	*****	*****

**LEGAL SERVICES CORPORATION**  
**EXPENSES FROM ALL SOURCES BY ACTIVITY AND OBJECT CLASS**  
**FISCAL YEARS 1988 AND 1989**  
-----  
(dollars in thousands)

OBJECT CLASS	MANAGEMENT & ADMIN		PROGRAM ACTIVITIES		TOTALS		CHANGE
	1988	1989	1988	1989	1988	1989	
Personnel Compensation	3,968	3,385			3,968	3,385	(583)
Employee Benefits	773	828			773	828	55
Other Personnel Services	1,143	660			1,143	660	(483)
Independent Consulting	1,507	1,127			1,507	1,127	(380)
Travel and Transportation	968	762			948	762	(186)
Communications	159	147			159	147	(12)
Occupancy Costs (Space)	1,294	1,242			1,294	1,242	(52)
Printing and Reproduction	97	93			97	93	(4)
Other Operating Expenses	565	446	175	—	740	446	(294)
Capital Expenditures	70	65			70	65	(5)
<b>Subtotal</b>	<b>10,524</b>	<b>8,755</b>	<b>175</b>	<b>—</b>	<b>10,699</b>	<b>8,755</b>	<b>(1,944)</b>
Direct Delivery Alternatives	---	---			---	---	---
Program Development	---	245	—		---	245	245
Grants and Contracts	---	---	299,558	241,000	299,558	241,000	(58,558)
<b>Total Expenses</b>	<b>10,524</b>	<b>9,000</b>	<b>299,733</b>	<b>241,000</b>	<b>310,257</b>	<b>250,000</b>	<b>(60,257)</b>
	*****	*****	*****	*****	*****	*****	*****

Source of Funds		
Appropriation		305,500
Funds Carried Forward from		250,000
Previous year		4,165
Other Sources		592
<b>Total</b>		<b>310,257</b>
	*****	*****

**APPENDICES**

LEGAL SERVICES CORPORATION  
STATEMENT OF SUPPORT, REVENUE AND EXPENSES AND OTHER CHANGES IN FUND BALANCES  
-----  
FISCAL YEAR 1987  
-----  
(dollars in thousands)

	General	Federal Appropriation	Total
<b>Fund Balance at Beginning of Year</b>			
Federal Appropriation	...	9,296	9,296
Other sources	538	---	538
Total Fund Balances	538	9,296	9,834
<b>Support and Revenue During the Period</b>			
Federal Appropriation	...	305,500	305,500
Donated Services	---	---	---
Interest / Income Earned	54	---	54
Total Support and Revenue	54	305,500	305,554
Total Funds Available	592	314,796	315,388
<b>Expenses During the Period</b>			
<b>Program Activities:</b>			
Grants and Contracts	---	299,729	299,729
Program Services	---	30	30
Total Program Activities	---	299,759	299,759
<b>Supporting Activities:</b>			
Management and Administration	---	10,654	10,654
Property and Equipment	---	218	218
Total Expenses	---	310,631	310,631
<b>Fund Balance at Close of Year</b>	<b>592</b>	<b>4,165</b>	<b>4,757</b>

LEGAL SERVICES CORPORATION  
STATEMENT OF SUPPORT, REVENUE AND EXPENSES AND OTHER CHANGES IN FUND BALANCES

FISCAL YEAR 1988 ESTIMATE

(dollars in thousands)

	General	Federal Appropriation	Total
<b>Fund Balance at Beginning of Year</b>			
Federal Appropriation	---	4,165	4,165
Other sources	592	---	592
	-----	-----	-----
<b>Total Fund Balances</b>	<b>592</b>	<b>4,165</b>	<b>4,757</b>
<b>Support and Revenue During the Period</b>			
Federal Appropriation	---	305,500	305,500
Interest / Income Earned	---	---	---
	-----	-----	-----
<b>Total Support and Revenue</b>	<b>---</b>	<b>305,500</b>	<b>305,500</b>
<b>Total Funds Available</b>	<b>592</b>	<b>309,665</b>	<b>310,257</b>
<b>Expenses During the Period</b>			
Program Activities:			
Grants and Contracts	592	298,966	299,558
Program Services	---	175	175
	-----	-----	-----
<b>Total Program Activities</b>	<b>592</b>	<b>299,141</b>	<b>299,733</b>
Supporting Activities:			
Management and Administration	---	10,454	10,454
Property and Equipment	---	70	70
	-----	-----	-----
<b>Total Expenses</b>	<b>592</b>	<b>309,665</b>	<b>310,257</b>
<b>Fund Balance at Close of Year</b>			
	---	---	---
	-----	-----	-----

LEGAL SERVICES CORPORATION  
STATEMENT OF SUPPORT, REVENUE AND EXPENSES AND OTHER CHANGES IN FUND BALANCES  
FISCAL YEAR 1969 ESTIMATE  
(dollars in thousands)

	General	Federal Appropriation	Total
<b>Fund Balance at Beginning of Year</b>			
Federal Appropriation	---	---	---
Other sources	---	---	---
<b>Total Fund Balances</b>	<b>---</b>	<b>---</b>	<b>---</b>
<b>Support and Revenue During the Period</b>			
Federal Appropriation	---	250,000	250,000
Interest / Income Earned	---	---	---
<b>Total Support and Revenue</b>	<b>---</b>	<b>250,000</b>	<b>250,000</b>
<b>Total Funds Available</b>	<b>---</b>	<b>250,000</b>	<b>250,000</b>
<b>Expenses During the Period</b>			
<b>Program Activities:</b>			
Grants and Contracts	---	241,000	241,000
Program Services	---	---	---
<b>Total Program Activities</b>	<b>---</b>	<b>241,000</b>	<b>241,000</b>
<b>Supporting Activities:</b>			
Management and Administration	---	8,935	8,935
<b>Property and Equipment</b>			
	---	65	65
<b>Total Expenses</b>	<b>---</b>	<b>250,000</b>	<b>250,000</b>
<b>Fund Balance at Close of Year</b>			
	-----	-----	-----

**LEGAL SERVICES CORPORATION  
STAFF POSITIONS - FISCAL YEARS 1987, 1988, AND 1989**

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	1987 Actual	1988 Estimate		1989 Estimate	
	Number of Positions	Change From 1987	Number of Positions	Change From 1988	Number of Positions
<b>OFFICE</b>					
Executive Office	12	0	12	0	12
General Counsel	13	0	13	0	13
Comptroller	14	0	14	0	14
Policy Dev. & Communication	20	0	20	0	20
Management Services	38	0	38	0	38
Monitoring,Audit,Compliance	61	0	61	0	61
Southern Region	7	0	7	0	7
Midwest Region	7	0	7	0	7
Rocky Mtn. Region	6	0	6	0	6
Native American Unit	3	0	3	0	3
Pacific Region	6	0	6	0	6
Field Services	35	0	35	0	35
TOTAL	222	0	222	0	222

LEGAL SERVICES CORPORATION  
STAFF SALARIES - FISCAL YEARS 1987, 1988, AND 1989

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SALARY RANGES	1987 Actual	1988 Estimate		1989 Estimate	
	Number of Positions	Change From 1987	Number of Positions	Change From 1988	Number of Positions
LSC LEVEL I \$10,112 - \$15,617	2	0	2	0	2
LSC LEVEL II \$13,481 - \$19,379	22	1	23	0	23
LSC LEVEL III \$17,273 - \$23,761	32	4	36	0	36
LSC LEVEL IV \$21,206 - \$29,071	38	-2	36	0	36
LSC LEVEL V \$26,541 - \$36,767	41	0	41	0	41
LSC LEVEL VI \$32,721 - \$45,895	61	-10	51	0	51
LSC LEVEL VII \$40,164 - \$56,875	18	7	25	0	25
Unclass. Posn's.	8	0	8	0	8
<b>TOTAL</b>	<b>222</b>	<b>0</b>	<b>222</b>	<b>0</b>	<b>222</b>

**Mr. SMITH.** We have three witnesses and we will include any prepared statements you might have in the record. We have here to testify in support of this request the President of the Corporation, Mr. John Bayly, and Mr. Clark Durant, the Chairman of the Board of the Corporation, and Mr. Michael Wallace, a member of the Board. Which one of you will go first?

#### GENERAL STATEMENT

**Mr. DURANT.** I guess I will go first, Mr. Chairman. Nice to see you again, Congressman Smith and Congressman Rogers.

My name is Clark Durant, and I am the Chairman of the Board of the Legal Services Corporation, and my written statement has been submitted for the record. I would like to make a few summary points.

I think it is interesting that over the last 10 years there has not been an authorization bill for the Legal Services Corporation. I think the lack of that authorization in great measure reflects the lack of consensus that has always existed regarding the ends and purposes of the Corporation.

As you know, Mr. Chairman, there have been times even on the House floor, because there has been no approval on appropriate rules, that there has been even zero funding on the House floor and this President for seven years has recommended zero funds.

Now, I think we are confronted with a historic opportunity. As you know, the President has submitted in his budget for the first time funding for the Legal Services Corporation. The President has called for competing grants to legal services providers and that competition, I think, can be expected to reduce the costs to certain eligible clients and increase the number of clients who can be served.

It will also increase the number and kinds of service providers and many organizations who are now foreclosed from competing for LSC grants. They will now be eligible to apply if the President's budget and our budget is adopted.

The President's request for reducing the Federal share of funding legal services programs from \$305 million, which was our original request, to the amended amount that we have submitted of \$250 million I think will encourage funding from other sources.

**Mr. SMITH.** What other sources?

**Mr. DURANT.** Well, for example, there has been a tremendous increase in IOLTA funding. The proportion of private and miscellaneous funding, separate from IOLTA, in 1986, was \$43 million and in 1987 it was \$50 million from United Way and from various other kinds of independent funding sources.

State and local funding had remained constant in 1986 at \$23 million and was just over \$22 million in 1987, \$23 million in 1986 and \$22 million in 1987. The Federal, separate from Legal Services' money, was \$25 million in 1986, and I don't right now have the 1987 figure, and then IOLTA in 1986 was just under \$6 million, and in 1987 it was \$45 million. So that additional sources of funding in 1986 totaled \$96 million and in 1987 was \$119 million, and the \$119 million is not counting other Federal sources. I will submit that ad-

ditional number at the appropriate time, as soon as we are able to get it.

I think what is important about our budget request is that it concentrates scarce Federal resources on the direct delivery of legal services to the poor. Under this proposal, local programs would be free to contract for support services as determined by local boards and management as it applies to cases handled by local programs.

I also think that our proposal and the President's proposal would strengthen the restraints on lobbying by the Legal Services Corporation grantees and therefore free them up to do more direct service providing.

I think also it would reduce the likelihood of programs becoming embroiled in issues which detract from what would be the primary mission of providing direct legal services to eligible clients.

Lastly, our proposal and the President's proposal would leave the Legal Services Corporation free to continue supporting law school clinics and alternative dispute resolution programs. I have asked—and I know it would be important to the subcommittee, I hope—that Mr. Michael Wallace, who is Chairman of our Operations and Regulations Committee, also be here today to address other parts of our proposal that I think have an impact on the appropriations language that is associated with that.

[The prepared statement of Mr. William Clark Durant III follows:]

STATEMENT OF WILLIAM CLARK DURANT III  
CHAIRMAN  
BOARD OF DIRECTORS  
LEGAL SERVICES CORPORATION  
BEFORE THE  
SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, THE JUDICIARY,  
AND RELATED AGENCIES  
OF THE COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
MAY 28, 1988

Good afternoon, Congressman Smith, and members of the Subcommittee. I am Clark Durant. I am a partner with the law firm of Durant and Durant in Detroit, Michigan. I serve as the Chairman of the Board of Directors of the Legal Services Corporation (LSC). Accompanying me this afternoon is Michael B. Wallace, who is the Chairman of the Committee on Operations and Regulations of the LSC Board of Directors. Mr. Wallace's statement will focus on the Corporation's activity in the area of regulation during the 1987 fiscal year. Finally, also with us this afternoon is John H. Bayly, Jr., who is President of the Legal Services Corporation. Mr. Bayly, who also is an *ex officio* member of the LSC Board, will have a brief statement to make this afternoon.

Mr. Chairman, as you know, the Legal Services Corporation is requesting an appropriation of \$250 million from the Congress for FY 1989. The LSC Board of Directors adopted this budget mark by a vote of 6 to 5 at its meeting on March 25, 1988.

Mr. Chairman, I believe that I fully understand the sincere motivations behind those in the minority on the Board and those observers who call for a \$305.5 million or higher funding level for legal services for the poor. And, as you know, in the past I have supported the \$305.5 million level consistently. However, in this instance I believe the Board is justified in adopting the President's budget figure. As I have testified before, the

problem is not financial; rather it is structural. The majority of the board feels that until these structural problems endemic to the current system of legal services are adequately addressed, we will have failed in our responsibility to increase the access to justice for the poor that all agree is too low. I am here before you today to ask your assistance in making the changes necessary to achieve our common goals.

As you may know, on December 17, 1987, the Board of Directors of the Legal Services Corporation voted to submit a budget request for FYI 1989 of \$305.5 million. On February 18, 1988 President Reagan transmitted his budget to Congress. For the first time since he took office, the President has requested that funds be appropriated for the Legal Services Corporation.

In addition, the President not only adopted programmatic reforms the Board has been seeking since its inception, but went further in calling for the implementation of competitive bidding among providers of legal services. It is these structural changes which should be recognized as the catalyst for achieving our mandate--high quality, economic, and effective legal assistance for the poor.

The President's proposal for LSC in the Budget of the United States Government for 1989 contains three reforms that the Corporation supports as fundamental to increasing access to

justice for poor persons.

First, the President has asked that 96% of all federal funds appropriated for legal services be spent on the direct delivery of legal services to poor eligible clients. There is a consensus that the government help with the specific, day-to-day legal needs of the poor. There is no consensus that taxpayers should support legal "think tanks" that are committed to a social reform agenda. Local programs can use and hire experts as needed on a case by case basis.

Second, the President has asked that the Legal services Corporation be made to compete its grants and contracts. Congress has rightfully embraced competition as appropriate in almost all grantmaking and procurement activities. Competition for LSC grants and contracts would inject accountability and discipline into a program where current providers have a nearly irrevocable right to continued federal funding.

Letting bids for services can serve to streamline delivery structures, resulting in significant tax dollar savings, and relieving the government of the burden and cost of an infrastructure necessary for program support and monitoring functions. Under a truly competitive regime a much less burdensome monitoring system would be necessary.

Competition and greater private sector involvement would necessarily bring vital market forces into play, broadening the base of those organizations available to deliver legal services to the poor. Under the Older Americans Act of 1978, grants are not limited to a select group of attorneys, but recognize that a much wider set of individuals exists who are very capable of providing legal assistance to individuals seeking redress before many federal, state, and local agencies. The same can be and should be true for LSC grants.

Finally, the President has asked that the Legal Services Corporation be given \$250 million of federal funds for the 1989 fiscal year, which represents a reduction of roughly 15% from the 1988 appropriation. The Board supports this request. When considering whether to support this level of funding, a number of factors can be considered.

1. Legal Services Corporation is a mature program that is well established in the communities and states it serves. The Corporation wants to encourage a reduced reliance on federal funding, greater participation by the private sector, and greater involvement of state and local government.
2. Broadening the base of service providers coupled with the discipline of competition and the innovations it brings

will result in more eligible clients being served at a lower cost with more organizations and individuals serving the needs of the poor.

3. By directing that 96% of funds go to direct delivery of legal services to the poor, scarce federal resources will be concentrated on those who are helping resolve the day-to-day legal problems of the poor. It is important that legal services should be client-centered and client-controlled:

4. The Corporation recognizes that the American people are demanding that we be careful stewards of their money. While \$250 million is less than last year's appropriation, it is in the Corporation's opinion still sufficient to continue to provide a stable base of federal support upon which successful programs can grow, particularly since legal services recipients receive an increasingly larger share of their funds from sources other than LSC. The IOLTA program, for example, has grown exponentially since the first programs became operational in 1983. By 1986, IOLTA programs had contributed \$79 million to LSC recipients and the IOLTA program continues to grow annually.

5. Finally, the corporation will liberally grant waivers to legal services grantees of their requirement to allocate 12-1/2 percent of their funds to private attorney

involvement programs. The PAI requirement successfully increased the involvement of private attorneys in the delivery of legal services to the poor; with a waiver of the PAI requirement legal services recipients will have an additional \$29 million available for direct delivery of legal services by local programs.

The Legal Services Corporation Board of Directors' vote on March 25, 1988 to amend its budget request for FY 1989 raises several issues which I would like to address.

First, the Board carefully considered the budget request it made in February. However, at that time, the Board did not know the President would be including a request to fund Legal Services for the first time.

After the President submitted his budget, the Board decided to evaluate whether its goals of providing access for more poor persons to legal services would be better served by the budget submission already made by the Corporation or the President's budget. The Board concluded that the President's budget contains reforms that the Board has always supported.

The Board has long advocated a restructuring of Legal Services so that whatever federal resources are available are directed to the local level where the services are actually

delivered to the poor. The President's budget does this. The Board has long discussed the need for competition to bring costs down and increase efficiency among legal services providers. The President's budget calls for competition. The Board encourages the passage of legislative language restricting lobbying activities. The President's budget adopts that language. The Board has long encouraged the development of alternative sources of funding. The President's budget encourages greater development of other than federal funding.

The Corporation supports the President's budget request for LSC and has submitted this Amended Budget Request for 1989. This budget proposes funding and reforms for the Legal Services Corporation which will ensure that legal services recipients provide a better legal service for the poor.

CONCLUSION

In closing, I would like to reiterate that for the first time during his administration, the President has supported the federal funding for the Legal Services Corporation. He has also adopted principles long held by the LSC Board of Directors--principles we believe will lead to greater access to a much wider range of services made available by a much broader base of providers. These principles underlie our preference toward direct delivery of services, competition for grants among

providers, and a greater reliance on expanding non-federal funding for services.

Direct delivery of services ensures greater program responsiveness to community and client needs. Competition for grants ensures greater responsiveness to client needs and induces all legal services providers to offer services imaginatively and efficiently. The client who seeks legal services will benefit.

I must say that the LSC Board of Directors is proud that it has not only succeeded in obtaining the President's support for Legal Services, but the Board is delighted in having the President's endorsement for the structural changes it has sought in Congress for so long. Finally, it is with great hope that I ask you to study our proposals and join with the Corporation and the President in seeking to maximize every opportunity the poor may have in seeking access to our system of justice..

**Mr. SMITH.** Okay. Go ahead Mr. Wallace.

#### GENERAL STATEMENT

**Mr. WALLACE.** Thank you, Mr. Chairman, and Congressman Rogers, and members of the subcommittee. I am Michael Wallace of Jackson, Mississippi, and I am chairman of our Regulations Committee. Let me begin by saying what a special privilege it is for me to be here today, as a former employee of the House. I served as counsel to the Republican Whip for three years, and it is very unusual for me to be in this position. I have been in a lot of hearing rooms in the House of Representatives but not from this perspective, and I have great affection and respect for this body and I have many happy memories of my years here.

Let me also repeat what our chairman has said about the President's proposal. I am here to talk about regulations and I realize that regulations are not ordinarily within this subcommittee's jurisdiction. This is substantive legislation, as you know, and as I know. We are here because during the 10 years that there has been no consensus over the future and the role of the legal services program there has been no authorization bill.

Now that the President has agreed that this Corporation ought to be reformed along the lines that we have been urging for years, that it ought to be funded at a substantial level, we believe that the consensus now exists to get this program back on a regular track.

I hope this subcommittee will adopt the President's regulations in full, demonstrate that a consensus exists, and then, perhaps, in the near future we will get a reauthorization bill and this subcommittee won't have to listen to us talk about regulations every year.

The regulations I am here to talk about today are two. One has to do with the composition of governing boards of local programs, and the second has to do with the restrictions on lobbying and other political activities that we have been wrestling with for some time.

As to governing boards, Mr. Chairman, we had been in the middle of notice and comment on a series of revisions to our regulations governing the composition and the conduct of governing boards for each of our recipients. In the current Continuing Resolution there now appears language which prohibits us from enacting restrictions that are different from or more restrictive than those found in the Act with regards to governing boards.

We do not know the history or the purpose behind this language. It has not been considered by this subcommittee before today. I hope that the subcommittee will consider this as a matter of first impression and look at the issues on all sides of it.

My report goes into detail on the history of the evolution of the regulations which we have now passed more or less in a proposed form, since we understand that we cannot implement it. Let me just hit the high points for the subcommittee and the reasons that we seek the authority to implement the regulations.

It is primarily there to implement the McCollum amendment adopted by the House and by the full Congress requiring that a majority of all boards be made up from State, local and municipi-

pal—or State, county and municipal—bar associations, the members elected by those boards.

There have been difficulties in the implementation of that regulation primarily because we have many multi-county programs, so you just don't have one bar association to deal with, but you have many bar associations.

The record made before our committee indicates that not always are the most populous bar associations represented in reasonable proportion to their membership, and there are many counties that are left out altogether. We thought we could solve this problem by going to State bar selection. We were convinced by the comments, not that there is no problem, but that the solution by requiring appointment through State bars is too expensive and too cumbersome. We backed away from that and we essentially put in the requirement that we have now; by writing it into the legislation, trying to ensure that there will be some balance among the various counties in a service area.

One other item. The evidence shows, to our way of thinking, that none of the National Support Centers have ever complied with the McCollum Act. If you accept our proposal and the President's proposal, we won't have to worry about that problem next year. There won't be any National Support Centers. If the subcommittee rejects the President's proposal we have to consider whether or not they should comply with the McCollum amendment.

At this point our National Support Centers generally just use the bar association in the area where they have their head office. We do not believe that this complies with the literal language and we have required them to get bar associations from all over the country to participate in the selection of the Board. While we recognize that this is a cumbersome practice, it is the only practice that we think is consistent with the McCollum amendment.

We have retained a provision in our regulations that would require bipartisan governing boards. We believe that we have the authority to do this, and we believe that it is a good idea to do this. Many people came before us and said: Let's keep politics out of the legal services program.

Politics is in the legal services program, as it is in every program where Federal money is involved. Checks and balances are at the heart of the political system. We believe that the best way to ensure that no one's unconscious biases may send them in one direction or another is to make sure that two sets of biases are represented on the committee.

Congress does that on our Board and it does it on innumerable other Federal boards, requiring bipartisan representation. We believe it is a good idea, an important idea, and we have approved that subject, of course, to congressional approval.

We have also put in requirements in the regulations limiting the use of proxy votes, requiring that quorums actually be present at meetings. We essentially have imposed on the boards of local corporations the same requirements that we impose on ourselves. I cannot hand a proxy to Chairman Duran and let him cast my vote, for me. I have to do it myself. We live that way and we think that is an appropriate way for our programs to live.

We think this is a good regulation and we think we have responded to the concerns and comments, and we think it ought to be permitted to go forward by the Appropriations Committee.

The lobbying regulation this committee has dealt with for many years. We are down to the last problem, and that is the extent to which we are entitled to regulate the use of private funds by our federally funded grantees for lobbying activities and political activities.

As you know, we have gone through several drafts of the regulations and entered into negotiations with counsel for our field organizations, and we have reached a compromise that they were willing to support and that they did support. It was unanimously adopted by our committee and by our Board, and it was approved by both committees and by reprogramming committees in both houses. And notwithstanding all of that, the current Continuing Resolution has language in it that says, as to private funds, you may only enforce the regulation for those provisions which are explicitly authorized by the Legal Services Corporation Act.

I have asked my general counsel to tell us what those provisions are so this committee can be informed of what we think we can enforce and what we can't enforce and that is in the testimony I have given you. I won't go through it today.

But we believe we have constitutional authority to regulate all private funds; 10(c) of the Act tells us to do it. The regulation of private funds avoids the anomaly of a lawyer sitting at a taxpayer's funded desk with a taxpayer's funded light bill, with a taxpayer's funded rent doing legal lobbying activities and saying: It is all right because the private company is paying my salary for the 20 minutes I am on the phone.

We don't think that is fair and we think it is an accounting nightmare and that is why we adopted the rules we did. We ask that we be allowed to enforce them in full.

If the Board, if the subcommittee and Congress adopt the President's proposed budget, we will be able to enforce these regulations. We think they are good regulations and we ask the subcommittee and the Congress for authority to let us put them into effect.

I thank the subcommittee for its patience with these details.

[The prepared statement of Mr. Wallace follows:]

STATEMENT BEFORE THE

SUBCOMMITTEE ON THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE,  
THE JUDICIARY AND RELATED AGENCIES,

OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

BY

MICHAEL B. WALLACE  
MEMBER OF THE BOARD  
OF THE  
LEGAL SERVICES CORPORATION

MARCH 28, 1988

**-Testimony of Michael B. Wallace**

Good morning, Mr. Chairman, and Members of the Subcommittee. I am Michael B. Wallace. I am a partner with the law firm of Phelps, Dunbar, Marks, Claverie, and Sims of Jackson, Mississippi. I serve as a Member of the Board of Directors of the Legal Services Corporation ("LSC"), and as the Chairman of its Committee on Operations and Regulations.

Mr. Chairman, I will focus my testimony on efforts of the LSC Board to promulgate revisions to its lobbying and recipient governing boards regulations during 1987. Restrictions on the Corporation's ability to regulate in these areas were included in the Corporation's 1988 funding measure. I am hopeful that my explanation of the Corporation's actions regarding the lobbying and governing boards regulations will persuade your Committee and the full Congress to remove the restrictions as unnecessary.

At the outset, I must express my appreciation to this Subcommittee for its continuing willingness to wrestle with substantive matters which would ordinarily be the sole concern of the authorizing committee. Since I was first appointed to the Board in 1984, I have repeatedly encouraged the authorizing committees of both houses to bring a reauthorization bill to the floor so that this Corporation can be reviewed and corrected in the regular cycle appropriate to all federal agencies. No bill has come to the floor of either House during my tenure, probably

because there has existed no consensus among the President, the House, and the Senate as to the proper role of the Corporation since the last reauthorization was adopted in the first year of the Carter-Mondale administration. This Subcommittee has had no choice but to fill the vacuum.

As one who has disagreed with President Reagan's proposals simply to abolish the Corporation, it gives me great satisfaction that his 1989 budget signifies that the potential for a new consensus has now been forged. The President now endorses the continued vitality of the Corporation and the reforms that this Board has attempted to implement for several years now. Our Board is satisfied that the enforcement of the regulations we have already approved together with the concentration of all available funds into direct delivery will do much to eliminate the abuses which have plagued the federal legal services program since before the creation of the Corporation in 1974. President Reagan now agrees with us and our Board is proud to urge this Subcommittee to adopt his proposal in full. Congressional acceptance of the President's compromise initiative can pave the way for a reauthorization measure embodying the new consensus, and this Subcommittee can finally return to its task of appropriating funds for authorized programs.

The danger of the current system of substantive legislation through the appropriations process is most plainly exemplified by the language in the 1988 continuing resolution restricting the Corporation's power to modify its existing regulation on

governing boards, even though the proposal remained in the notice and comment stage. I cannot say what fears and concerns may have motivated the Members of Congress responsible for the insertion of this language, because the legislative history does not even disclose who they are. I offer no criticism of those Members, because I well understand that the prevailing system of annual continuing resolutions requires that perceived emergencies, real or imagined, be addressed on the first available vehicle because there will not be another chance for a year. At the same time, I remind you that this Subcommittee has never considered this restriction, has never heard all sides of the question. This Subcommittee has as much reason as the Corporation to regard this issue as an open question and to decide the matter on the basis of all the evidence.

Much of the negative reaction to LSC's proposed revisions to Part 1607 appears to have been based on inaccurate speculation that neither the Operations and Regulations Committee nor the full Board would carefully weigh public comment and make appropriate changes. However, a review of the procedures followed by my Committee and the whole Board, I believe, demonstrates that the Corporation, in the ordinary course, conscientiously discharges its authority to regulate with careful attention to the objectives of the Legal Services Corporation Act, 42 U.S.C. 2996, et seq.

The record will show that Committee members, in the first instance, and then the Board members carefully considered all

comments and, when appropriate, receded on a number of points in the proposed rule. My Committee originally proposed changes to 45 C.F.R. Part 1607, LSC's regulations on recipient governing bodies, in October 1987. Due to public request, the comment period was formally extended once to December 10, but comments submitted up until the February 1988 Board meeting were duly considered. The Committee held public hearings on the proposed changes in Philadelphia, Pennsylvania, on November 20, 1987, in Charleston, South Carolina, on December 17 and 18, 1987, and in Washington, D.C., on January 28-29, 1988. The Board heard public comment on February 26, 1988.

The primary purpose of the Committee in proposing revisions to Part 1607 was to ensure the proper implementation of the McCollum Amendment which requires that a majority of a recipient's board be attorneys appointed by general membership state, county or municipal bar associations, the membership of which represents a majority of the attorneys practicing law in the locality in which the organization is to provide legal assistance. The purpose of the McCollum Amendment was to ensure accountability of recipients by giving oversight responsibility to appropriate bar associations and by preventing self-selecting and self-perpetuating recipient governing bodies. Because the Corporation has encountered problems in the implementation of the McCollum Amendment, the Board initiated proposed changes to address some of the problems.

One of the proposals made by the Committee was to require

that the state bar associations, rather than local bars, be given appointment authority for local boards. The record made before our committee demonstrates that many county bar associations lack representation on the boards of multi-county programs, and representation on many boards does not even remotely approximate the distribution of lawyers in the service area. We thought that appointment by the state bar, which represents all lawyers, would insure that all lawyers would have a chance to be heard. Wishing to broaden democratic participation, we proposed that the bars elect appointing committees. These provisions were later dropped by my Committee, not because we concluded the problem did not exist, but because the proposed solution entailed disproportionate cost and administrative demands.

The evidence also shows that no national support center has ever complied with the McCollum Amendment. The policy adopted by our predecessors allows the recipient to choose the state, county, or local general membership bar in the area where the recipient maintains its principal place of business, which was used as a proxy for service area. New language added would require that the attorney appointment function for national support centers be performed by a combination of state, county or municipal bar associations whose combined membership represents a majority of attorneys in the nation. A central purpose of the McCollum Amendment was to vest appointing authority in the general membership bar association or associations located in the recipient's service area. By definition, the area served by the

national centers is the entire nation. Thus, in order for the regulations to comport with the language and intent of the McCollum Amendment, the Board believes it necessary to vest authority in an appropriate combination of state, county, or municipal bars whose memberships represent a majority of attorneys in the nation. We leave it to each program to assemble a collection of bar associations meeting this standard. While we know this procedure is cumbersome, no other rule is consistent with the plain language of the amendment.

We retained the original proposal requiring bipartisan recipient boards. No more than sixty percent of a governing body may be members of the same political party, excluding those registered as independents. The method for determining party affiliation is also provided. Just as Congress felt that a bipartisan board at the national level was necessary to ensure an organization free from domination by one political party, so the LSC Board believes that a bipartisan requirement for the local recipient boards will further the same interests and is necessary to implement requirements in the LSC Act to keep the legal services programs free from the influence of political pressures.

The Constitutional concerns raised by some comments are not persuasive. Indeed, the cases cited in the comments support the Corporation's view that political affiliation is a legitimate factor for consideration where the interest protected is the preservation of the democratic process or the freedom of individuals from control or abuse by one political party. As

Madison knew, it is not enough simply to tell recipients of federal authority to forswear partisan abuses; checks and balances are also necessary. It is the obligation of this Board to protect the rights of indigent clients to receive legal services free from political party concerns and a bipartisan board is the best check and balance that we can provide.

The Board also added a provision granting authority to recipient governing bodies to appoint committees but prohibits the committees from taking any final or binding action unless the action is ratified by the full governing body prior to implementation, or unless the committee's quorum and membership requirements reflect those of the full Board. This provision was added to ensure accountability and involvement by the full Board and prevent a situation where just a few Board members control activities. This is especially important if it is client Board members who are left with an inactive role. For the same reasons, proxy voting restrictions and voting requirements were added to ensure accountability and full, active, and informed participation by all Board members. There is nothing onerous about these regulations; they are largely identical to the restrictions our Board has imposed on itself.

Finally, language was incorporated from LSC's Guideline 83-1 on recipient governing bodies where appropriate. This incorporation does not signify a change in law as the recipients are already subject to the Guideline, but is added so that the information can be readily available in the Code of Federal

Regulations to all interested parties.

I assure this Committee that the LSC board has conscientiously acted to promulgate regulations consistent with the McCollum Amendment and other applicable statutory authority. We remain open to suggestions from anyone for improvement in our implementation of Congressional intent. Should this Subcommittee, after reviewing the full record, disagree with our view of the law, then it should adopt specific language to correct specific problems instead of depriving us of all authority to deal with problems that may arise now or in the future.

I would now like to turn to the Corporation's lobbying regulations which are delineated in Part 1612 of Title 45 of the Code of Federal Regulations. In May, 1984, due to Congressional concern about certain political activities being carried out by the Corporation and its recipients and recommendations by the Government Accounting Office that LSC revise its lobbying regulations, the Corporation revised Part 1612. Not fully satisfied with the revisions Congress included a reprogramming requirement in LSC's FY 1985 funding act and instructed LSC to republish its regulations for comment. After extended consideration of proposed changes, LSC adopted another amended rule that was published as final in August 1986. Still not completely satisfied, Congress included a proviso in LSC's 1987 funding act that prohibited the Corporation from enforcing or implementing either the 1984 or 1986 lobbying regulations.

After publishing its regulations for further reconsideration, the Corporation worked closely with the designated representative of legal services programs, and carefully reviewed the concerns expressed by Members of Congress. Consequently, the Corporation was able to achieve a compromise that, according to statements made at public hearings, had the strong support of representatives of LSC grantees.

The Corporation received reprogramming approval from the appropriations committees but was requested by the Senate Committee to revisit the issue of regulation of private funds. The Corporation promptly published the rule as final and requested public comment on the narrow issue of private funds. As a result of deliberations in Seattle in August 1987, the LSC Board agreed to make two changes to the rule. Clarifying language was added to the exception on the use of private funds to pay dues, and a grandfather provision was added to minimize any hardship for recipients that entered into contracts prior to notice of LSC's intent to regulate private funds in certain areas. At the same time, the Board thoroughly considered and rejected the suggestion that the restrictions on private funds violate the first amendment rights of LSC recipients.

Concern about the constitutional challenge prompted Congress to include a new restriction in LSC's FY 1988 funding act which disallows the use of LSC funds to implement or enforce provisions in Part 1612 "which impose restrictions on private funds received by a recipient for the provision of legal

assistance except to the extent that such restrictions are explicitly authorized by the LSC Act. LSC understands this language to mean that the Corporation may regulate the use of private funds for restrictions delineated in the LSC Act but may not regulate the use of private funds for those restrictions found in the appropriations act that go beyond those found in the LSC Act.

Essentially, there are two prohibitions in the appropriations act language that are more restrictive than those in the LSC Act. First, the broad language in section 1007(a)(5) of the LSC Act provides that no funds made available to recipients may be used, directly or indirectly, for legislative, administrative, or grassroots lobbying except when done on behalf of an eligible client or at Congressional request. Although the more specific proscriptions in the appropriations act generally complement the broad provisions of section 1007(a)(5) by generally setting out the same proscriptions with more detail, the appropriations act eliminates the eligible client exception to the grassroots lobbying proscription. Because of last year's lobbying rider, LSC may not enforce its regulation prohibiting the use of private funds for grassroots lobbying on behalf of eligible clients.

Second, section 1007(b)(6) of the LSC Act prohibits the use of funds for certain advocacy training activities but allows funding for the dissemination of information about public policies and certain delineated activities. The appropriations

act specifically disallows the use of funds for the dissemination of such information. Because of last year's lobbying rider, LSC may not enforce its regulation prohibiting the use of private funds for dissemination of this information. With these two exceptions, it is our present view that we may use appropriated funds to enforce all provisions of our lobbying regulations. I remind the Subcommittee that, whether we can implement or enforce it or not, the entire regulation is still law, and it is binding on all recipients.

It is LSC's belief that it has the authority under the LSC Act and as a private non-profit corporation to apply private funds restrictions to all lobbying restrictions in the appropriations acts. LSC's assertion of authority in this area is consistent with the intent of Congress when it promulgated the 1974 LSC Act. It is clear, as evidenced by section 1010(c) of the Act and its legislative history, that Congress intended to prevent legal services programs from engaging in prohibited activities, even when using private funds, so that the programs would be free from using or being influenced by political pressures. If today we allow the use of private funds for activities restricted in the appropriations act, such action would defeat this original Congressional intent, which was one of the preconditions of the Corporation's creation.

It is also LSC's view that section 1010(c) is constitutional as applied to both the LSC Act and the appropriations acts. Counsel for the LSC recipients testified at our hearing in

Seattle that section 1010(c) of the LSC Act is unconstitutional even when applied to lobbying activities restricted in the LSC Act. Thus, if the Conference report is correct, that our regulation is unconstitutional to the extent it restricts the use of private funds, it logically follows that LSC should be precluded from enforcing section 1010(c) at all. However, section 1010(c) was an essential and non-several part of the Act which created the Corporation. If section 1010(c) falls, in my view, the whole Act falls, and the Corporation must close until Congress and the President can agree on a new, fully constitutional Act.

The Board, however, has avoided this dilemma by rejecting the constitutional argument on its merits. Generally, Congress can place conditions reasonably related to the objects of the program upon a grant of federal money, such as the restrictions found in the LSC Act and appropriations act and the Civil Rights Restoration Act passed over the President's veto last week. Pursuant to this authority, Congress has placed numerous restrictions on political activity in the LSC Act. Some of these restrictions, such as those on electoral activities by employees of LSC recipients, have been sustained as constitutional, based on well-settled Hatch Act precedent. Case law supports the view that intrusion into political activity is permissible when the interest protected is the right of individuals to receive government services free from discriminatory political concerns.

In summary, the Corporation remains committed to enforcing the clear mandates of the LSC Act. The Corporation believes that section 1010(c) is constitutional as applied to lobbying restrictions, both in the LSC Act and the appropriations rider. It also believes that Congress intended to preserve the integrity and strength of the legal services program by not subsidizing programs that engage in most lobbying activities even when these activities are funded with private funds, and that it has attempted, in good faith, to promulgate regulations consistent with Congressional intent and constitutional constraints. The language contained in the President's budget request for LSC for 1989 will allow the Corporation to continue its efforts to ensure compliance of LSC with the mandates of Congress. It is with enthusiasm that I urge your support of the President's proposal.

Mr. SMITH. Next we have Mr. Bayly.

#### GENERAL STATEMENT

Mr. BAYLY. Thank you, Mr. Chairman.

Mr. Chairman and Mr. Rogers, I thank you for the opportunity to appear. I want to assure this subcommittee, and indeed anyone in Congress, that whatever funds are appropriated I can assure the Congress that the Legal Services Corporation staff will do its very best to make sure they are expended for the provision of legal services to the needy members of our community in a fashion that is effective, efficient and conforms to every provision of law.

Beyond that, Mr. Chairman, I have no further prepared remarks to make, but I will be happy to answer any questions.

#### STATUS OF AUTHORIZATION

Mr. SMITH. Well, what about the authorization? I did talk directly to members of the committee the other day but some inquiries came through the staff concerning their going ahead with the authorizing legislation. Have you talked to them in the last week or 10 days.

Mr. BAYLY. No, sir, I have not, at least not in the past few days. You might have heard, Mr. Chairman, that the Board recently met in Santa Fe and I have not been in town for the past few days, but I have heard nothing definite over the past few days.

Mr. DURANT. It certainly would be excellent if we could get a bill that would be a consensus.

Mr. SMITH. I would much prefer that, if it is possible.

Mr. DURANT. Yes, I am sure we all would.

Mr. SMITH. Actually, there is not a lot new other than the fact that the President has made a request in his budget. Of course, you are independent of that set-up under the law, and make your own request, so we can then act on your request and your proposed budgets whether or not the Administration asks for one or no matter what they ask for.

However, now you are submitting today a changed budget, is that correct?

Mr. DURANT. That is correct, Mr. Chairman.

Mr. SMITH. You had a meeting of some kind to change your request. What has happened since the original request was made that has changed your mind?

Mr. DURANT. Well, I think it is essentially that the Board felt that it was a very significant step that the President had gone from recommending zero funding to recognizing a substantial amount of funding for the Corporation. The President went further on one particular aspect in terms of competitive bidding than we had, and while we had talked about it—each of us individually—we had never as a Board adopted this.

And the Board determined that the initiative that the President set—in terms of changing his position, and in effect adopting a percentage of the numbers that we had talked about in the past—would present an excellent opportunity to try to build a consensus and in order to also, quite frankly, try to establish, in fact, a broader array of service providers in addition to the existing providers.

As you know, for the last three years we have recommended \$305 million, which has been identical to the congressional recommendation or appropriation. With the President making such a significant change, it was important to re-examine where we were and to see whether or not it couldn't be an opportunity to bring about fundamental structural reforms and also to more fully appreciate all of the alternative funding that had developed curiously enough or perhaps directly as a result of reduction in funding that had occurred at the Corporation back from 1981 to 1982 when the Corporation went from \$320 million down to \$241 million.

At that point there began a tremendous outpouring of additional support that, frankly, I think, came as a result of Congress being willing to say the status quo is not what is meeting the need, and if we take a tough position and a firm position and let these expanded resources develop—the Legal Services Corporation, for example, was out front in developing and in providing seed money for the IOLTA grants which have now or which are now approved in 46 states providing substantial amounts of money for legal services programs.

Mr. SMITH. But the IOLTA funds are not evenly distributed where the people that need the services are located, and I don't think you can ever overcome that.

Mr. DURANT. I don't think it can be entirely overcome but I think there are a couple of things, though, that can be addressed and I am glad the chairman has pointed that out.

One of the things that is in the President's budget and in our budget is that there will no longer be presumptive funding of existing grantees and that, therefore, the Corporation certainly in the beginning can make a judgment as to which programs perhaps are not benefitting from as much, if you will, new money and make adjustments accordingly.

You certainly don't want to have that as a general rule for years and years and years, but in order to allow a broader participation in the initial stages, certainly those differentials can be taken into account in determining the level of the grant.

#### ALTERNATIVE DISPUTE RESOLUTIONS

Mr. SMITH. What about alternative dispute resolution? Do you see any progress in this regard?

I hear a lot of talk about it, but I am not quite sure that we are making any progress.

Mr. DURANT. According to the statistics provided by the ABA, and I touched on it briefly in my statement, the number of programs or the number of opportunities for alternative dispute resolution services has gone up rather significantly. I don't have the exact number at the tip of my fingers but I do touch on it in my statement, that there has been an increase in ADR services.

In fact, in Wayne County, Michigan, the local program there was able to develop in Landlord-Tenant Court a variety of ways to have mediation separate from litigation in resolving some of those disputes. So it is going on and it does provide a more efficient, less adversarial but still effective way of resolving disputes. Because if it isn't, then there are other opportunities.

Mr. SMITH. I want you to put in the record, and I won't take it up at this time, put in the record grantees, the support centers, for the last, say, 1986, 1987 and 1988 years, and the amount of funding that each one received.

Are they recognizing each one of them as having a major expertise or are some of them rather general?

Mr. DURANT. Well, conceptually each is to provide a different kind of expertise in housing, welfare, law, consumer law, or whatever.

Mr. SMITH. Well, to whatever extent you can, describe that and submit it, whatever you are supposed to get for that particular support center.

Mr. DURANT. Mr. Chairman, we will submit that for the record. [The information follows:]

NATIONAL SUPPORT CENTERS

**Question:** Provide a list of the 17 National Support Centers, indicating their area of specialization and level of support for FY 1986, FY 1987, and FY 1988.

**Answer:**

<u>National Support Center</u>	<u>Specialization</u>
National Consumer Law Center 1986 funding level was \$653,926 1987 funding level was \$653,926 1988 funding level is \$653,926	Consumer; Energy; Utility Law
Center for Law and Education 1986 funding level was \$582,148 1987 funding level was \$582,148 1988 funding level is \$582,148	Education; Discri- mination
Center on Social Welfare Policy and Law 1986 funding level was \$669,050 1987 funding level was \$669,050 1988 funding level is \$669,050	Needs standards; Benefit levels
National Employment Law Project 1986 funding level was \$504,031 1987 funding level was \$504,031 1988 funding level is \$504,031	Employment Law; Unemployment
National Center on Women and Family Law 1986 funding level was \$244,846 1987 funding level was \$244,846 1988 funding level is \$244,846	Battered Women; Custody
Migrant Legal Action Program 1986 funding level was \$547,649 1987 funding level was \$547,649 1988 funding level is \$547,649	Migrant Law
National Veterans Legal Services Project 1986 funding level was \$91,308 1987 funding level was \$91,308 1988 funding level is \$91,308	Veteran Law
Food Research and Action Center 1986 funding level was \$60,553 1987 funding level was \$60,553 1988 funding level is \$60,553	Food Programs —

National Legal Center for Medically Dependent and Disabled	Mental Health; Disability
1986 funding level was \$420,000	
1987 funding level was \$432,000	
1988 funding level is \$432,000	
Indian Law Support Center	Indian Law
1986 funding level was \$249,108	
1987 funding level was \$249,108	
1988 funding level is \$249,108	
National Economic Development and Law Center	Neighborhood Development
1986 funding level was \$410,058	
1987 funding level was \$410,058	
1988 funding level is \$410,058	
National Housing and Community Development Law Project	Landlord & Tenant; Public Housing
1986 funding level was \$716,451	
1987 funding level was \$716,451	
1988 funding level is \$716,451	
National Center for Immigrants' Rights	Immigration Law
1986 funding level was \$164,420	
1987 funding level was \$164,410	
1988 funding level is \$164,410	
National Health Law Program	Health Law, Medicare
1986 funding level was \$609,820	
1987 funding level was \$609,820	
1988 funding level is \$609,820	
National Senior Citizens Law Center	Age Discrimination & Social Security
1986 funding level was \$589,512	
1987 funding level was \$589,512	
1988 funding level is \$589,512	
National Center for Youth Law	Children's Rights, Health Nutrition
1986 funding level was \$605,073	
1987 funding level was \$605,073	
1988 funding level is \$605,073	
National Social Science & Law Center	Social Science Research; Welfare Law
1986 funding level was \$306,902	
1987 funding level was \$280,750	
1988 funding level was \$0	

**Mr. SMITH.** Mr. Rogers.

**Mr. ROGERS.** Thank you, Mr. Chairman.

It is good to have you back with us, Mr. Wallace. I gather the feeling you have is that it is different sitting on that side of the table, different from where you have normally sat?

**Mr. WALLACE.** It is an unaccustomed viewpoint, Mr. Rogers.

#### METHOD OF AWARDING GRANTS

**Mr. ROGERS.** It reminds me of a time or two that I was called in to testify and after you have been the one that grilled others, the oath changes.

Let me talk to you about the change in the way that you propose that grantees be awarded funds, moving towards a competitive bid by those entities who are best able to provide the services.

Do you have reason to believe, Mr. Chairman, that there are additional entities out there who would be able to provide good programs if given a chance?

**Mr. DURANT.** I do believe so, Congressman Rogers. I think there are a number of our programs, and I think that this has to be stated very clearly on the record. There are a number of our programs which, under a competitive bid situation, I am very certain would receive the grants because they are operating effectively and efficiently. I visited some of those programs and I think that they do an excellent job.

But I think it should be an opportunity. The competitive opportunity should be seen as a way of expanding the base of providers. There is experience, as Congress is well aware, under the Old Americans Act, for example, where a variety of other organizations are providing services, for example, to the elderly, at reduced costs from some of the programs or services that we provide, and I think we should certainly explore those kinds of programs and whether or not for certain types of people with certain types of problems maybe there is a more effective, efficient way of providing those services.

**Mr. ROGERS.** Would law schools be eligible under your system? Would law students be eligible under your system?

**Mr. DURANT.** Yes, they would be.

**Mr. ROGERS.** Are any of the law schools presently grantees under the program?

**Mr. DURANT.** We have approximately 20 law schools that are presently getting assistance.

**Mr. ROGERS.** Out of how many grants?

**Mr. BAYLY.** About 300 grantees of the Corporation.

**Mr. ROGERS.** About 20 of them are law schools?

**Mr. DURANT.** For legal clinics, that is correct.

**Mr. ROGERS.** But if you add the two together, law school clinics as well as other providers, be they national or be they local, it would be about 320 or 325 altogether?

**Mr. DURANT.** Yes. We would also envision where private attorneys, for example, in smaller towns, maybe in larger towns, would also be eligible to competitively bid to provide services.

We had some experience with using competitive bidding or fixed grant awards to private attorneys because it certainly helps on

some of the overhead that is being provided by a broader base of that private attorney's clients. It is not perfect in all circumstances and I think that great weight, an important weight, would have to be given to those who are already providing services, because you don't want to have a problem and start up to have a transition or whatever. But certainly there is a broader array of people who ought to be encouraged to be part of the legal services delivery to poor people.

Mr. WALLACE. Congressman, let me just make one other suggestion. In my home State of Mississippi, we have eight recipients and one of them is a judicare program. It is sort of treated as a step-child by everybody else for that reason.

We have good programs, bad programs and mediocre programs and I would love to see some of the good programs willing to bid to take over the territory of the bad programs. I don't know that that will ever happen because they have the attitude, old Ben Franklin attitude, we must all hang together or we will all hang separately.

But I would love to see programs competing with each other for territorial rights.

Mr. ROGERS. I am speaking from practical experience. I suspect that several of us have had this same type of experience. The way it is now, particularly in rural areas, where you have four or five Legal Aid lawyers trying to cover an area the size of the State of Maryland or more, when the judge, other lawyers and in many cases juries sees X Legal Aid lawyer come, they are already prejudiced and sometimes they really don't get a fair hearing. The poor people are not getting a fair hearing in that situation.

I can imagine a system whereby some grantee would contract with private attorneys and those locals who have contact with the jury and who have influence with the people at large, whereby the poor people would be getting much more effective representation than they are getting now. I think it is eminently fair that we do away with presumptive funding where these grantees know from year to year that they are going to get funded whether or not they perform efficiently or effectively.

It is one of the few areas in the government that I know of where you don't have competitive bidding for receiving Government funds for doing a public service.

I am amazed that such a procedure has been allowed to persist this long. So whatever we can do to get some more effective representation for poor people by letting the person best able to do the job have a shot at it, I would support. Your proposal is that every three years we rebid and I would do it every year if it were mine. But it seems to me that there ought to be some way that we can break this lockhold on Federal funds in many cases by grantees that are not doing as effective a job as they should be doing.

So I congratulate you on a reasonable proposal and I hope it can be put in place quickly.

Are there any other types of funds that are disbursed in a similar manner, through presumptive funding?

Mr. DURANT. You mean in the Government?

Mr. ROGERS. Yes. Federal government.

Mr. WALLACE. I know we have asked the staff periodically if they know of anybody else that operates like we do, and I don't ever re-

member getting an affirmative answer to that question. That doesn't prove that there is nobody out there, but I don't know who it is.

I am sorry. Mr. Wootton has a list of various agencies that require competitive bidding. We are not on it. I don't know who else is not on it, but certainly competitive bidding is the way things are usually done in this Government and I don't know of anybody that has the sort of system that we have.

Mr. DURANT. With the Chairman's permission, we would submit this to be a part of the record. There are 31 different agencies or Cabinet departments that are listed, everything from OSHA to the Department of Energy to the Bureau of Land Management, and whatever.

Mr. ROGERS. These are agencies that require competitive bidding?

Mr. DURANT. Yes.

Mr. ROGERS. Could you file that with your testimony?

Mr. DURANT. We will do that, yes, sir.

[The information follows:]

#### COMPETITION FOR GRANTS

Mr. ROGERS. If you could file [a copy of the federal agencies and Cabinet Departments which require competitive bidding] with your testimony?

Mr. DURANT. We will do that, yes, sir.

ANSWER. According to the Catalogue of Federal Domestic Assistance (1987 Edition), the following federal entities make grants and use some kind of competitive basis for grant award decisions: (1) Department of Agriculture; (2) Department of Energy; (3) Department of Commerce; (4) Department of Education; (5) Department of Labor; (6) Department of Health and Human Services; (7) Department of Housing and Urban Development; (8) Department of Transportation; (9) Department of the Interior; (10) Department of the Treasury; (11) ACTION; (12) Environmental Protection Agency; (13) Federal Emergency Management Agency; (14) National Foundation for Arts and Humanities; (15) Bureau of Land Management; (16) National Park Service; (17) Small Business Administration; (18) National Science Foundation; (19) Overseas Private Investment Corporation; (20) Occupational Safety and Health Administration; (21) Bureau of Mines; (22) Bureau of Labor Statistics; (23) Federal Aviation Administration; (24) Federal Highway Administration; (25) Federal Railroad Administration; (26) Urban Mass Transportation Administration; (27) Maritime Administration; (28) Federal Maritime Commission; (29) National Endowment for the Humanities; (30) U.S. Fish and Wildlife Service; (31) Health Care Financing Administration; (32) Public Health Service; (33) National Telecommunications and Information Administration; (34) National Oceanic and Atmospheric Administration; (35) National Bureau of Standards; (36) Minority Business Development Agency; (37) Economic Development Administration; (38) U.S. Forest Service; and (39) Department of Defense.

Mr. ROGERS. Why do you believe that the needs of individual poor clients would be better served under your proposal?

Mr. DURANT. Well, I think two things would certainly come about. Number one is that it is axiomatic that if you can broaden the base of service providers in localities, you can have closer client control, client center types of services, at an effective cost. I think that by expanding those bases with limited Federal resources more people, frankly, are served.

But, second, I think that our emphasis on direct delivery of services or the provision of direct delivery of services is a greater opportunity to be closer to individual clients making individual accountable choices about their needs and wants.

In my travels around the country, in talking with individual clients and in visiting in different areas, I sense a frustration that is related to your point, that it is always the same people providing the services. If there was more of an opportunity, more people would be heard and more people would have an opportunity to have their grievances effectively advocated.

Quite frankly, I have seen examples and talked with different clients under attorney supervision, who themselves perform effective administrative advocacy in all sorts of welfare hearings and certain kinds of other hearings and very effectively. I think that the more we can open it up to people having more control over their own lives in how these decisions are made, you are going to have more effective delivery of services.

Mr. ROGERS. I also think it is important that the local bar associations be involved in the governing of these local communities. Because there still exists out there the same ethical drive, and I hope it is still there, that existed before we had the Legal Aid Society or Legal Aid lawyers, where every lawyer was required by his oath of office to perform some free work. I did it myself, and frankly, it was a good learning experience and it helps you inside your heart to know you are doing something good for somebody.

I would think that if we can get those local bars involved again, surely some ethical drive would result that would assist the paid legal aid counsels in their delivery of more effective representation.

I have a very poor district, one of the poorest in the country, I think we are the fourth poorest. So legal aid services are terribly important in my district. My office relies upon such aid a lot for help to poor people.

But they are spread so thin that they can't be as effective as they should be, and many times they are stigmatized by the local society. They are not then able to render the most effective service. So I want to see those services rendered to those poor people.

The way things are going now, they are certainly not able to fulfill the need and I don't think we can ever fill the need with pure Federal dollars through this kind of system. We are not taking advantage of the resources that are out there. The private bar wants to be of help and yet Federal regulations preclude it.

My local bar association in my home county is concerned about the quality of the representation. I think one of these days it is going to be a constitutional question as to the effective representation of clients, which is a basic right under the Constitution.

So I would like to see some way that we can allow those local groups, be it a law school or a local bar or a group of young lawyers who want to make a name for themselves to participate more fully.

I am not ashamed to say in my young days I welcomed appointment to these free cases. It helped me make my mark in the profession, what little mark I made.

So I congratulate you on your proposal. I hope that we expand and expound on this and if you have any further material on this concept for the record, I wish you would submit it to us.

Mr. DURANT. One comment, Mr. Rogers, I think it was the Young Lawyer's Journal, or maybe it was the Pro Bono Journal of the ABA, that did a cover story a couple of years ago about how

young lawyers who were involved in pro bono work said that it was, in fact, the basis for building up their regular practice. That by effectively performing in pro bono services, these young lawyers, in California in particular, had, just as you were talking about in terms of your situation, have used that as an opportunity not only to serve but to build their practice and to provide service to these people.

Mr. ROGERS. That is exactly the way that I started practicing law. It was through pro bono work and I didn't make much money. I had just my own secretary and one typewriter and three books, and that was it. But through that pro bono work I was able to get started. If I helped that client for free, when he got a job and had some need to be served, he would write or he would come back to the only lawyer that he knew. So it is a good way for young lawyers to use their talent in aid of poor people who otherwise could not afford that kind of talent.

As a result of presumptive refunding, we are denying these people their chance to this to be involved in effective representation. It has become a regular fact of these appropriation bills that we are seeing legislative amendments restricting the LSC operations. Can you summarize the effect of these riders on your operations?

Mr. DURANT. Mr. Wallace?

Mr. WALLACE. It sounds like a bar examination question because there are so many riders on these amendments, Congressman. I am not sure that I can summarize all of them. There are plenty of riders restricting lobbying activities. They restrict abortion activities. They restrict representation of illegal immigrants. There is one that requires us to complete defunding proceedings within 90 days.

I believe most of these riders have already been incorporated into our regulations and there is really no particular continued need for some of them because it is already incorporated in here.

There are two particular riders that we are concerned about, my testimony focuses on, because they inhibit our ability to enforce regulations that have been published. One has to do with lobbying, which restricts our ability to enforce our regulations as to the use of private funds. I explained that—during my testimony—that you wear the private funds' hat when you are engaged in political and lobbying activities, and then when you go back to child support and landlord-tenant, then you wear your Federal hat. We think that is just an accounting gimmick. It is a game, and we ought to get rid of that, and we would like to have the authority to enforce the regulations against it.

The second one has to do with the governing boards regulation, which we have adopted to enforce the McCollum amendment, to increase actual bar association participation, to avoid problems of delegation of authority to executive committees and thereby bypassing the control of the bar associations. We think these are good regulations. We discuss them in detail in my testimony, and I remind the subcommittee that the rider restricting those regulations was adopted before the regulations were even finished.

We were prohibited from passing the regulations when we were still in the notice and comment stage. Notice and comment stage is

over. We passed the regulation. We think it is a good one and we would like to have that language removed so we can get about the business of enforcing the regulation.

If the subcommittee has particular problems with a particular piece of the regulations, you can tell us: Don't enforce subparagraph 6(c), or whatever part you don't like. But it does not make sense to completely withdraw from us the authority to deal with governing boards. We couldn't deal with new problems if they arose in the future under the current rider.

Mr. ROGERS. Is there anything you would like to add to the amended budget request that you filed with us today by way of a thumbnail explanation?

Mr. DURANT. We will be submitting tomorrow a full budget justification with the appropriate history and specifics. That is being done later today and it will be submitted tomorrow.

Mr. BAVLY. I fully expect we will be able to submit one tomorrow, Congressman Rogers.

Mr. ROGERS. Well, we are operating under a different situation this year since the President is requesting funds for LSC for the first time since he has been President. It is more than I would request, to be frank with you. But it is a different set of circumstances that we have this year.

Thank you very much.

Mr. DURANT. Thank you, Congressman Rogers.

#### CONTRACT SERVICES

Mr. SMITH. How would you deliver the services from independent lawyers? Who would hire them and who would determine how much they are paid?

Mr. DURANT. Up to now in some of the experimental programs that we have done with different lawyers in the private bar we did it through soliciting those who were interested in providing them. We negotiated contracts providing certain very basic services, such as in divorce and other kinds of things, and entered into contracts with them.

Mr. SMITH. You say "you."

Mr. DURANT. The Corporation.

Mr. SMITH. At the national level?

Mr. DURANT. No other community comes to mind right at the moment, but it has been replicated elsewhere.

Mr. SMITH. Wouldn't it be better if we were to do that for a grantee that has the responsibility over some particular area who needs help to supplement their resources so as to be permitted to hire a lawyer in some rural area that can provide services?

Mr. DURANT. That certainly would be an option. I mean that would certainly be one way of perhaps doing it. In each of the different agencies that do require competitive bidding, I think the chairman knows of a variety of different ways of doing it. I think the important thing is to try to do it in a way that would be most effective in delivering services. Competition is very effective in reducing the price that has to be paid in expanding the innovation and the number of people who can provide services.

Mr. ROGERS. Mr. Chairman, will you yield?

Mr. SMITH. Yes.

Mr. ROGERS. Well, I imagine as it is now everyone knows that there is no point in putting together a package to make an application because the grantee has it locked up and it is presumed will continue to receive funding, so no one bids against them. But if it were open bidding, and the world knew that the process was open, I think you would see in several areas, especially rural areas, consortiums of young lawyers getting together and putting together a bidding package. For example, you might see a divorce lawyer, and someone else in another field and they would get together and you would see bids from people who never even had a chance so far, but they would be welcome.

Mr. DURANT. In the Department of Aging in some of their grants, I mean in grants in some of the states, they have, you know, sometimes a legal services program competing against a private provider for particular elderly services and they have appropriate standards to weigh which is the most effective and the cost sensitive way of getting out services.

I think you are right, if people knew there was competition, you would find more people interested.

Mr. ROGERS. Well, because there is presumptive funding everyone knows there is no point in bidding for it, you've been locked into a most inefficient system because the grants are not being challenged.

Mr. SMITH. I am not sure that we are getting into an area where you can really have competition.

You can have a case in some rural area where there is only one lawyer and he may never even have a need for another two years to handle a case, but if you have a case you may very well, instead of handling it directly, want to get him to handle it. This is like with the judges in Iowa, and certainly this was not competition. But you would go down and tell them that you are available if they have any cases and they would receive \$20 for each case they got. That wouldn't really be competition, but just talking about making yourself available.

I can see how you can get involved in an awfully lot of paperwork if you have anybody other than the grantee in the area doing this.

Mr. ROGERS. If you will yield, Mr. Chairman?

Mr. SMITH. Yes.

Mr. ROGERS. You could have a grantee, or you could have a group acting as grantee, perhaps a consortium of four or five lawyers performing a service as a corporation, and then if they have a case in one of their 15 counties, say, they may do it themselves or contact a local lawyer to make some sort of arrangement to handle that case, say, 50 miles away, but I still think you would have your grantee.

Mr. SMITH. Well, you still have to have somebody that can screen these people to see whether or not the case is going to hang on something. You have to have a guarantee of responsibility for a certain area, even if he goes around once a week to the county courthouse to interview the people who think they have a problem, because some of them don't have a problem when you get to talk to them about it.

Another thing, we have had level funding here for a number of years. In fact, we are below what we had five or six years ago. We tend to think always about the lawyers providing this service, but there are people other than lawyers who are involved in legal services and it is getting really tough to get support services that the lawyers need with these grantees, and they have had to cut back on the numbers in order to serve.

Some of them do have a little increase in salary but in many cases some people in the cities or in towns have not gotten any kind of cost of living increase for several years. So I don't know how you can cut back on a budget and do anything about that.

Mr. WALLACE. Mr. Chairman, let me suggest just two or three things. One is that the size of the cut to the programs that will remain funded is not nearly as substantial as might appear just looking at the gross numbers. We have decided that the support centers do not provide much support and that is money that we believe is just going down the drain. You compare the President's mark, which is also our Board's mark, with what local programs actually got last year and it is not that substantial a cut.

We have the IOLTA programs that are just growing by leaps and bounds.

Mr. SMITH. These people don't get the IOLTA money.

Mr. WALLACE. Many do in Mississippi, they get some funds and many programs around the country get IOLTA funds, so it is not just the Federal dollars that we are looking at to solve the problem. It is private and bar association dollars that have grown substantially over the years. We believe that this is a reasonable proposal that the President has made and that is why we have been persuaded.

Mr. SMITH. Do you have any more questions?

#### STATE SUPPORT CENTERS

Mr. ROGERS. I have just a couple.

How much of or what proportion of the grant monies go to the National and State support centers as opposed to local grantees for representing poor people?

Mr. WALLACE. Congressman Rogers, the fiscal 1988 appropriation level has \$17 million that goes to National and State Support, Clearinghouse, and regional training centers. That is \$17 million, and what goes to basic field programs is \$261 million. I can't calculate in my head what that is, but you get an idea of the relative magnitude.

Mr. ROGERS. How do the salary levels at these National Support Centers compare to what we are paying a person out there actually doing the work? Do you have any figures on that?

Mr. BAYLY. Congressman Rogers, I do not have any figures, but I do know that in most respects the salary level is the same; that is to say, the more senior people at the National Support Centers are paid what more senior people at the local programs are paid. Sometimes the compensation, relatively speaking, is high, but ordinarily it is fairly moderate.

Mr. DURANT. We will provide that information.

**Mr. BAYLY.** May I? I don't mean to correct my chairman, but I want to indicate to you that we can give you a sampling, I am quite sure, but it might be difficult to try to amass all of this.

**Mr. ROGERS.** Well, don't go to the trouble of amassing all of these figures.

**Mr. BAYLY.** We are happy to do it.

**Mr. DURANT.** We will just do a summary.

**Mr. ROGERS.** Well, a summary or a sampling.

[The information follows:]

#### SALARY COMPARISON

**Mr. ROGERS.** What is the salary level? How does what we are paying at these National Support Centers compare to what we are paying a person out there actually doing the work?

**Mr. DURANT.** We will just do a summary.

**ANSWER.** The most recent salary figures compiled, suitable for comparison of National Support Center attorneys and Field attorneys, are for 1984. The figures are as follows:

National Support Center Attorneys .....	\$39,173
Field Attorneys.....	24,647

The above figures represent the arithmetic mean, and do not reflect differing levels of experience, expertise or seniority.

The Office of Field Services is currently computing the figures for 1987. They will be provided as soon as the necessary computations are complete.

**Mr. ROGERS.** How many National Support Centers are there?

**Mr. DURANT.** Seventeen.

**Mr. WALLACE.** Is that before or after the last couple of changes? Well, it is in that neighborhood. We have one or two that are in litigation right now over their continued existence.

**Mr. ROGERS.** Are any of the law schools serving as support centers in the States?

**Mr. WALLACE.** I don't believe that is so. I guess, you know, many of them began with an affiliation with a university, but at the present time, if there is an affiliation, it is probably fairly well attenuated. They are essentially independent, I would say, of an affiliation with a university or some other institution of higher learning. I am trying to think really quickly.

**Mr. ROGERS.** Is a good or bad development?

**Mr. WALLACE.** Well, I am hard pressed to express an opinion on that, I suppose. On the one hand, if they are still affiliated with universities, they might be more apt to develop initiatives or innovative ways of developing or delivering legal services. Still, if they are a free-standing or independently funded, then they may not find themselves too closely hobbled or compromised or directed by whatever the opinion or view of the law school faculty is, or the State legislative or board of trustees of the school, and they would have perhaps a more clear and more complete agenda that has to do with delivery of legal services for poor people.

With a university, I suppose there is always a possibility that the Commission might become diluted or there would be too much influence from another faculty or another school or for some other reason. There is also the possibility, I guess, that the work that they do is too experimental and too remote from the problems of poor people. So even as I am trying to shape a response to you, I guess the response to that is I just don't know.

Mr. ROGERS. You mean the law school would be too remote?

Mr. WALLACE. No, the way it is now it seems to me you can make an argument that support centers have as their almost exclusive responsibility the support or the provision of support for delivery of legal services. There is no other concern or responsibility that they have. If a support center were associated with a university, it seems to me that the support center might take on more the cast of an academic discipline and its concerns would be so much less pragmatic, so much more removed from the problems that are experienced in day-to-day delivery of legal services. But that is just my own impression on the matter. I have not studied it.

Mr. DURANT. It is also true that some of the support centers are totally funded by us and others are not. I mean they have alternative sources of funding.

Second, most do provide services outside of the direct services, dealing with the legal services programs. Our proposal does not necessarily mean their elimination from the face of the galaxy. If a local program, for example, determined that it had a specific need for an expert rather than generalized material, that can still take place through a subcontractor or whatever. When I try a lawsuit and I need an expert to come in and testify or to assist me in a piece of litigation, for example, that is what we are doing now . . . where we have had to hire an engineer to come and advise us as to how to approach this particular kind of case.

That can still exist here. It is simply not directly funded by us, because we are focusing on the direct face-to-face dealings in a local community.

Mr. ROGERS. The way the system is set up now, I will tell you we have a rocket engine mounted on a Model T Ford chassis and it is not effective and it will possibly explode in our faces one of these days. I think this is extremely important, and it is not providing effective representation.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, gentlemen. We may have some additional questions for the record.

[Questions and answers for the record follow.]

## CHAIRMAN SMITH'S QUESTIONS

Alternative Dispute Resolution

Q1. Your budget request refers to Alternative Dispute Resolution (ADR) as a means to increase legal assistance options of the poor. Please describe ADR goals and objectives.

A1. The objective of Alternative Dispute Resolution (ADR) programs is to provide alternative means for settling less complex disputes in a more humane, economic, and swift manner. Courts have become flooded with family, small claims, landlord-tenant, and consumer cases, causing delays in case resolution for years. ADRs have become popular as a means of avoiding the clogged, cumbersome, and often acrimonious court system. Mediation, for example, has been found to be a more humane approach to settling custody issues in divorce cases. A growing number of cities have neighborhood justice centers where trained community volunteers or paid staff mediate or arbitrate interpersonal, family, neighborhood, consumer, and landlord tenant disputes.

ADRs represent an opportunity for LSC to provide an alternative dispute resolution choice to the poor, by funding its own ADR programs or utilizing the services of the several hundred programs presently accessible around the country.

Q2. How is ADR designed to achieve these goals and objectives?

A2. ADR programs vary throughout the country. Many cities have neighborhood justice centers where attorneys or trained lay volunteers mediate or arbitrate disputes. Others are sponsored by or are part of the local court system or prosecutor's office. Some community-based centers use community leaders as mediators. Trade associations, individual businesses, prisons, schools, and other organizations have instituted programs. The type of programs is often determined by local law or the special legal needs of the community. Although the many ADR programs are variously designed, almost uniformly they seek to settle disputes in a less costly, time-consuming, and acrimonious fashion by utilizing trained personnel and already available community resources and by avoiding the complex court system.

- Q3. What effect will ADR have on the services now provided by the basic field programs?
- A3. The integration of ADR techniques into LSC recipient program services will simply mean that a wider choice of dispute resolution methods to indigent clients will be available through field programs or otherwise. Funds and time saved in cases handled by ADR methods will be available to serve a greater number of clients.

Case Service Reporting

- Q4. The Case Service Reporting (CSR) System is the Corporation's principal means for monitoring the activities of the basic field programs. However, there have been questions about the accuracy of the data submitted by the field programs concerning the level and nature of their caseloads. How does the Corporation monitor and verify the accuracy of the data submitted?
- A4. CSR data are reviewed in monitoring visits, interviewing recipient personnel, and refunding applications provided by recipients. The utility of the data furnished by the current system is quite limited because programs do not share a uniform understanding as to what constitutes a case for reporting purposes. The current CSR system does not provide a means of distinguishing, for example, the amount of work effort required to close a given brief service case versus a litigated case. Consequently, it is difficult to derive accurate information concerning case costs and the kinds of services offered by recipients. The Corporation has proposed that recipients use a functional reporting system which will provide data about case costs and time utilization. The GAO has recently issued a report on that initiative.
- Q5. Does the Corporation plan to renew its efforts to automate the Case Service Reporting System?
- A5. Yes, pursuant to the LSC Board vote on March 25, 1988, and subject to appropriate Congressional approval, the Corporation plans to proceed with the development of a program which will correct the deficiencies of the current system.
- Q6. If so, how is the Corporation going to assess user fees, define objectives and functions, and plan the orderly design, development, and implementation of requirements?

- A6. GAO was requested by Congress to study LSC's proposed functional reporting system. The Corporation has received GAO's final report which includes suggestions on designing, developing, and implementing the reporting system. The Corporation is in the process of reviewing the recommendations contained in the GAO final report.
- Q7. In 1986 and 1987 the Corporation purchased 260 computers for basic field programs in order to automate the Case Service Reporting Systems. In view of the fact that the CSR has not been automated, how are the computers currently being used?
- A7. Some programs, in fact, do use computers for CSR. The recipients who received computers are also using the systems for legal research, word processing, and other office support functions.

Voucher Program

- Q8. In 1985 and 1986 the Corporation initiated pilot projects in San Antonio, Texas, and Orange County, California, respectively, to study the use of vouchers as an alternative means for providing legal services to the poor. These projects were to be completed within one year. Have these projects been completed, and if not, why is it taking so long to complete them?
- A8. Both the San Antonio and the Orange County voucher projects have been completed; reports are in the drafting stage at present. Both projects were completed under grants issued by LSC. The Corporation is awaiting final reports to be submitted by the grant recipients. The San Antonio voucher project was conducted jointly by LSC and the American Bar Association, and LSC is now waiting for the ABA to present a final draft of the report to the Corporation. LSC has prepared an in-house draft evaluating the Orange County Voucher Project which cannot be finalized until the official report of the Orange County Voucher Project is submitted to the Corporation by the recipient. This report has been delayed until client satisfaction interviews with those involved in the program can be completed.
- Q9. What did these projects demonstrate with regard to the use of vouchers?
- A9. Currently, the use of vouchers is still under study by the Corporation. Until the study is finalized and evaluated the Corporation cannot offer any recommendations as to the efficacy of vouchers.

Annual Report

Q10. Section 1008(a) of the Legal Services Corporation Act requires the Corporation to publish an annual report which is to be filed with the President and the Congress. I understand that the most recent Corporation annual report covers fiscal years 1982 and 1983. Is the fiscal year 1982 and 1983 annual report the most recent that the Corporation has issued?

A10. Yes.

Q11. Why is the Corporation unable to issue its annual reports on a more timely basis?

A11. Although the Corporation must concede that its reports have not always been submitted on a timely basis, the Corporation nonetheless has provided Congress with detailed financial and operational information each year in its budget request as well as in response to ad hoc Congressional requests. The Corporation will make every effort in the future to submit a full and timely report.

Q12. When will the next annual report be issued?

A12. The Corporation hopes to publish an annual report this year.

Q13. How much was included in the Corporation's budget for Monitoring activities in FY 1987? How many local programs were monitored, and how many reports were issued as a result of those efforts?

A13. The budget for Office of Monitoring, Audit, and Compliance for FY 1987 was \$4.881 million. These funds resulted, among other things, in the Corporation conducting 239 on-site reviews in 1987. The number of reports issued as of March 29, 1988, resulting from the on-site reviews conducted in 1987 are illustrated in the chart below:

<u>1987</u>	
Total On-Site Visits	239
Draft Monitoring Reports Issued	231
Final Monitoring Reports Issued	106
Final Monitoring Reports Outstanding	133 <sup>1</sup>

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<sup>1</sup>The Office of Monitoring, Audit, and Compliance is awaiting comments from 105 programs. Once these comments are received, they will be incorporated where appropriate and a

Q14. How many programs will be monitored in FY 1988, and what are your plans in this regard for the FY 1989? What are the amounts for monitoring activities in the budget in FY 1988 and FY 1989?

A14. The Corporation conducts on-site reviews for each of its 357 direct recipients every 18 months, pursuant to an LSC Board mandate. Consequently, the Corporation's target figure is eighteen on-site reviews monthly in FY 1988. Absent a substantial change in its operational budget, the Corporation intends to continue to conduct eighteen on-site reviews monthly in FY 1989.

The Office of Monitoring, Audit, and Compliance received \$4.5 million in 1988, and its proposed budget for FY 1989 is approximately \$3.4 million based upon the most recent budget proposal recommended by Congress.

#### CONGRESSMAN EARLY'S QUESTIONS

Q1. Why did the Board of Directors reconsider the FY 1989 Budget Request?

A1. When the LSC Board of Directors first approved its FY 1989 Budget Request in December 1987, it was not aware that the President would be including a specific proposal for LSC in his budget submission which was transmitted to Congress on February 18, 1988.

In light of the President's specific recommendations and in keeping with the LSC Board's desire to focus the greatest proportion of funds possible to direct delivery of legal assistance, the Board amended the budget request to its present form.

Q2. How was the adjusted request of \$250 million arrived at?

A2. Though the exact figure of \$250 million is the amount requested by the President, the LSC Board had long considered reconfiguring the funding structure to concentrate funds on direct delivery vehicles. This reconfiguration would allow individual recipients to further localize resource allocation decisions and to apply budgets more effectively. Another important consideration in adopting the \$250 million mark is the tremendous growth in alternative funding sources and alternative delivery methods which complement LSC's efforts. In fact, the growth

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final monitoring report will be issued.

of funds available to legal aid groups from Interest on Lawyer Trust Accounts ("IOLTA") alone may soon dwarf LSC's own funding. Other sources of non-LSC funding are also growing, as are the provision of pro bono legal assistance and Alternative Dispute Resolution (ADR) services. Therefore, the \$250 million figure implemented through the proposed funding system is more than sufficient to meet LSC goals in the provision of quality legal aid to the nation's indigent.

- Q3. Was this decision made to conform to the Administration's request?
- A3. As explained in the answer above, the decision was both a response to the President's request and a fulfillment of the Board's stated intention to reconfigure LSC's resource allocation structure.
- Q4. What are the major differences between your original request and the request now before us?
- A4. The Board's amended 1989 budget request takes into account the economies that will result from competitive bidding and a recognition that increased private and public sector participation in, and contribution to, the delivery of legal services to the poor has reduced the dependency of legal services providers upon federal tax dollars.
- Q5. For the record provide a detailed account of the \$55 million difference.
- A5. The Board's amended FY 1989 budget requests \$237,600,000 for basic field programs, \$5,800,000 for Native American programs, \$1,650,000 for law school clinics and supplemental field programs, \$1,600,000 for direct delivery alternatives, and \$150,000 for training development and technical assistance. The Board also requests \$245,000 for program development and \$8,755,000 for Corporation management and grant administration.

Law School Clinics

- Q6. Under your newly revised request how much will be allocated to the law school clinics?
- A6. \$825,000 has been allocated to law school clinics for FY 1989.

- Q7. How many law schools will be participating under the FY 1989 request?
- A7. The total number of law schools has not been determined because LSC is still receiving applicants for FY 1989 grants. The total number of participating law schools will be available at the end of April 1988.
- Q8. Provide a list of the schools now participating, under the FY 1988 appropriation, and indicate each school's level of support.

A8. LAW SCHOOLS PARTICIPATING IN FISCAL YEAR 1988

Brooklyn Law School  
1988 funding level is \$50,000

Columbus School of Law  
The Catholic University of America  
1988 funding level is \$23,471

The George Washington University School of Law  
1988 funding level is \$37,200

Gonzaga University School of Law  
1988 funding level is \$50,000

Loyola University of Chicago School of Law  
1988 funding level is \$28,000

McGeorge School of Law  
1988 funding level is \$50,000

Northwestern School of Law of Lewis & Clark College  
1988 funding level is \$50,000

St. Louis University School of Law  
1988 funding level is \$50,000

Southern Illinois University School of Law  
1988 funding level is \$48,600

Stetson University College of Law  
1988 funding level is \$35,000

SUNY/Buffalo Law School  
1988 funding level is \$50,000

Thomas M. Cooley Law School  
1988 funding level is \$43,638

Thurgood Marshall School of Law  
Texas Southern University  
1988 funding level is \$32,000

University of Denver College of Law  
1988 funding level is \$50,000

University of Maine School of Law  
1988 funding level is \$50,000

University of Michigan School of Law  
1988 funding level is \$30,000

University of Nebraska College of Law  
1988 funding level is \$49,892

University of North Dakota School of Law  
1988 funding level is \$39,850

University of Texas at Austin School of Law  
1988 funding level is \$39,848

University of Utah College of Law  
1988 funding level is \$50,000

Valparaiso University School of Law  
1988 funding level is \$25,615

Villanova University School of Law  
1988 funding level is \$50,000

Willamette University College of Law  
1988 funding level is \$35,000

William Mitchell College of Law  
1988 funding level is \$50,000

Yale Law School  
1988 funding level is \$46,324

Yeshiva University  
Benjamin N. Cardozo School of Law  
1988 funding level is \$50,000

Q9. Can you give us some examples of the innovative ways in which law school clinics attract private sector resources and participation to supplement their programs?

A9. The law school clinic program is a cooperative effort with the private sector because the universities which sponsor

the law clinics provide considerable funding. In addition to funding, law schools contribute expertise by the availability of faculty assistance. Many law school clinics also receive funds from IOLTA programs. Some clinics have successfully approached private organizations and corporations for additional funding.

Regional Training Centers

Q10. Provide a list of the five Regional Training Centers, and indicate their level of support in FY 1988.

A10. Regional Training Centers

1. Northeast Regional Training Center  
Massachusetts Law Reform Institute  
1988 funding level is \$154,780
2. Mid-West Training Resource Center  
Legal Services Organization of Indiana  
1988 funding level is \$130,595
3. Southeast Training Center  
Legal Services of Arkansas  
1988 funding level is \$125,765
4. Western Regional Training Center  
Colorado Rural Legal Services  
1988 funding level is \$164,458
5. Substantive Law Training Project  
Western Center on Law & Poverty  
1988 funding level is \$48,366

Q11. Will these centers receive support under your FY 1989 request? If so, how much?

A11. No.

National Support Centers

Q12. Provide a list of the 16 National Support Centers, funded under the FY 1988 appropriation, and indicate their area of specialization and level of support.

A12.

<u>National Support Center</u>	<u>Specialization</u>
National Consumer Law Center 1988 funding level is \$653,926	Consumer; Energy; Utility Law
Center for Law and Education 1988 funding level is \$582,148	Education; Discrimination
Center on Social Welfare Policy and Law 1988 funding level is \$669,050	Needs standards; Benefit levels
National Employment Law Project 1988 funding level is \$504,031	Employment Law; Unemployment
National Center on Women and Family Law 1988 funding level is \$244,846	Battered Women; Custody
Migrant Legal Action Program 1988 funding level is \$547,649	Migrant Law
National Veterans Legal Services Project 1988 funding level is \$91,308	Veteran Law
Food Research and Action Center 1988 funding level is \$60,553	Food Programs
National Legal Center for Medically Dependent and Disabled 1988 funding level is \$432,000	Mental Health; Disability
Indian Law Support Center 1988 funding level is \$249,108	Indian Law
National Economic Development and Law Center 1988 funding level is \$410,058	Neighborhood Development
National Housing and Community Development Law Project 1988 funding level is \$716,451	Landlord & Tenant; Public Housing
National Center for Immigrants' Rights 1988 funding level is \$164,410	Immigration Law
National Health Law Program 1988 funding level is \$609,820	Health Law, Medicare
National Senior Citizens Law Center 1988 funding level is \$589,512	Age Discrimination & Social Security

National Center for Youth Law  
1988 funding level is \$605,073

Children's Rights,  
Health Nutrition

Pro Bono

Q13. What portion of the services provided by the LSC is done on a pro bono basis?

A13. The Legal Services Corporation currently requires that basic field offices devote 12-1/2% of their funds to encourage the participation of private attorneys in the delivery of legal assistance to the poor. In each area, the means of participation by private attorneys varies according to needs and circumstances of the community. Some attorneys offer legal services pro bono publico to poor persons referred by the local legal services offices; others provide legal services for the poor at a reduced rate; some attorneys agree to take a certain number of similar cases for a contracted fee. Based on the 1988 applications for refunding, LSC recipients reported the involvement of at least 60,000 private attorneys

Q14. Has this contribution been increasing over the past 3 or 4 years?

A14. According to LSC data, the pro bono model of PAI has increased substantially over the past three to four years. The number of closed PAI cases during 1984 was 141,667, while the number of closed cases in 1987 was approximately 214,000. Thus, an increase of over 50% was realized in the various PAI delivery models, including substantial pro bono from 1984 to 1987.

Q15. How are the services of private practice attorneys now being recruited?

A15. The services of private practice attorneys are recruited for pro bono work in various ways, depending upon their respective locale. Many of the legal services offices have staffs that coordinate their PAI programs and recruits local attorneys for pro bono work. Some offices have an agreement that attorneys who take three pro bono cases will receive a referral for fee-generating cases from the bar referral service. In some areas, the local bar association will agree to refer fee-generating cases to attorneys who have participated in a pro bono program. Honors to attorneys for pro bono work, giving them local recognition for their participation, are awarded in some areas. Some local legal services programs also offer free training programs for

attorneys who have participated in their pro bono programs, allowing them to receive CLE credits. Local offices also provide support for private attorneys who wish to develop expertise in another area of law, for example, domestic law, providing assistance in return for pro bono participation. Each local office develops its own recruitment strategy depending upon its relationship with the local bar and the number of private attorneys in the area, as well as other circumstances.

Moreover, the local bar association in most states establishes and operates a pro bono legal program and encourages local involvement with considerable success, thus increasing the availability of legal assistance to those in need.

Q17. Are any local LSCs using creative methods of attracting the services of private attorneys? If so, give us a few examples.

A17. A variety of innovative methods has been developed on a national, statewide and local level to attract private attorneys. For example, organizations such as the Gillis W. Long Poverty Law Center located in New Orleans, Louisiana regularly provide substantive continuing legal education training; attorneys who participate in pro bono programs through local legal services offices are allowed to attend for free. This method of encouraging PAI is becoming more widespread as mandatory CLE is adopted by state bar associations across the country.

Unusual methods of fostering pro bono services also are encouraged through the local LSC programs. For example, the Legal Services Program of Greater Gary, located in Gary, Indiana, supports a structured professional pro bono program with a PAI coordinator. The Executive Director has become active in three separate bar associations to solicit and maintain their participation. Each year, attorneys are "awarded" with a pro bono award at a major banquet to recognize those private practitioners who make a significant service contribution. Such functions are useful both for morale of participating attorneys as well as for recruitment of new attorneys.

Another example is the Legal Aid Society of San Diego which expands co-sponsorship of its volunteer lawyer's program to include not only the Bar Association, but also the local law school. In addition to an active recruitment speaking schedule, the Executive Director regularly attends bar functions. The Volunteer Bar Law Project offers a consultation and extensive training program for all pro bono

panel members, designed to encourage younger attorney participation. Such regular orientation sessions complement an aggressive direct mail solicitation campaign which is updated to reach new bar association members monthly.

In several locations, the encouragement of pro bono has gone beyond the local LSC programs to include the court systems. For example, a mandatory pro bono caseload has been adopted by the local court in El Paso, Texas, with the support of the local bar association and the local LSC provider. Under the program, practicing attorneys must either provide pro bono services in a small number of domestic relations cases each year, or pay a small sum of money to help support other methods of service delivery.

The above examples are demonstrative of the variety of innovative activities undertaken each year to ignite significant private attorney participation in the delivery of legal services to the poor.

#### Native American

Q18. Provide a list of the LSC offices which are currently receiving special grants to provide services to Native American and Migrant workers.

A18. Native American

1988 Funding Level

Connecticut Legal Services, Inc.	(CT)	12,714
Pine Tree Legal Assistance	(ME)	52,351
Legal Aid Society, Inc.	(NE)	26,848
Legal Assistance of North Dakota	(ND)	42,800
Wisconsin Judicare	(WI)	111,268
East Mississippi Legal Services	(MS)	67,515
Legal Services of North Carolina	(NC)	113,096
Pinal & Gila County LAS	(AZ)	27,362
Community Legal Services, Inc.	(AZ)	25,152
Papago Legal Services, Inc.	(AZ)	179,596
Southern Arizona Legal Aid	(AZ)	140,141
DNA-People's Legal Services	(AZ)	2,179,566
California Indian Legal Services	(CA)	717,579
Colorado Rural Legal Services	(CO)	23,181
Native Hawaiian Legal Services	(HI)	103,775
Michigan Indian Legal Services	(MI)	116,603
Anishinabe Legal Services	(MN)	194,103
S. New Mexico Legal Services	(NM)	12,352
Northern New Mexico LS	(NM)	10,810
Indian Pueblo Legal Services	(NM)	353,394
North Dakota Legal Services	(ND)	115,458
OKlahoma Indian Legal Services	(OK)	294,708

Dakota Plains Legal Services	(SD)	758,366
Texas Rural Legal Aid	(TX)	25,420
Utah Legal Services	(UT)	36,274
Wind River Legal Services	(WY)	140,354
Nevada Legal Services	(NV)	108,004
Alaska Legal Services	(AK)	439,257
Idaho Legal Aid Services, Inc.	(ID)	52,768
Montana Legal Services	(MT)	108,332
Oregon Legal Services	(OR)	149,937
Evergreen Legal Services	(WA)	196,163

Migrant

<u>Migrant</u>		<u>1988 Funding Level</u>
Comm. Renw. Team of GTR Hartford	(CT)	59,982
Pine Tree Legal Assistance	(ME)	197,350
New Hampshire Legal Services	(NH)	5,550
Rhode Island Legal Services	(RI)	5,550
Vermont Legal Aid	(VT)	5,550
Farmworker Legal Services	(NY)	253,090
Puerto Rico Legal Services	(PR)	398,566
Legal Aid Bureau, Inc.	(MD)	100,492
Camden Regional Legal Services	(NJ)	123,327
Community Legal Services	(PA)	55,438
Michigan Migrant Legal Assistance	(MI)	447,793
Advocates for Basic Legal Equality	(OH)	279,812
Peninsula Legal Aid Society	(VA)	71,125
West Virginia Legal Services Plan	(WV)	12,725
Legal Assistance Fd. of Chicago	(IL)	253,232
Legal Services Org. of Indiana	(IN)	118,882
Legal Services Corp. of Iowa	(IA)	13,632
Kansas Legal Services	(KS)	57,254
S. Minn. Regional Legal Services	(MN)	324,005
Legal Aid of Western Missouri	(MO)	10,905
Western Nebraska Legal Services	(NE)	28,174
Blackhills Legal Services	(SD)	5,550
Legal Action of Wisconsin	(WI)	111,694
Florida Rural Legal Services	(FL)	889,729
Georgia Legal Services Program	(GA)	305,893
Western Kentucky Legal Services	(KY)	5,549
Acadiana Legal Services	(LA)	79,067
Legal Services of North Carolina	(NC)	279,035
Neighborhood Legal Assistance Prog.	(SC)	109,967
Community Legal Services	(AZ)	272,953
Colorado Rural Legal Services	(CO)	180,678
S. New Mexico Legal Services	(NM)	98,863
Legal Aid of Western Oklahoma	(OK)	87,246
Texas Rural Legal Aid	(TX)	1,716,675
Utah Legal Services	(UT)	39,989
California Rural Legal Assistance	(CA)	1,305,060

Nevada Legal Services	(NV)	5,453
Idaho Legal Aid Services, Inc.	(ID)	215,539
Montana Legal Services	(MT)	109,967
Oregon Legal Services	(OR)	290,949
Evergreen Legal Services	(WA)	451,682
Legal Aid Services	(WY)	46,349

- Q19. Why are you not requesting an appropriation for training, technical and support services?
- A19. The Board has requested \$150,000 for training development and technical assistance for FY 1989. Any other support services required by recipients can be purchased by the recipients themselves, according to their own needs.
- Q20. How will the proposed reduction, from the FY 1988 level, for the delivery of legal assistance impact current operations and service levels?
- A20. Although the FY 1989 budget proposal's direct funding for Basic Field Recipients is lower than FY 1988, projected net income for LSC grantees is expected to be actually higher for 1989 than 1988. Continued growth in non-LSC funding levels, particularly Interest on Lawyer Trust Accounts (IOLTA) funds, is expected to more than offset any shortfalls in the budget. For example, between 1983 and 1987, IOLTA programs made available nearly \$79 million for legal services grantees. The IOLTA program is expanding in many areas, and the amount of funds available to LSC grantees will continue to grow. Though IOLTA is the largest and fastest growing source of non-LSC funding, there are other sources which will continue to enlarge total non-LSC funding. In fact, total non-LSC funding to LSC grantees has grown from less than \$65 million in 1983 to more than \$137 million in 1986 (the latest year for which complete figures are available). Expanded pro bono and law school clinic programs will also further supplement the pool of legal assistance available to poor clients. According to the American Bar Association's Directory of Private Bar Involvement Programs (1987 Edition), there were only 96 pro bono programs in operation in 1980, and by 1987 there were more than 580. This trend is expected to continue, significantly increasing the amount of free legal aid available to the poor. Alternative Dispute Resolution (ADR) programs, which can often settle disputes outside of courts and avoid costly litigation, are now serving more clients than ever. In 1975, there were only 10 ADR programs in service in the United States. By 1987 there were more than 350.

Therefore, more poor clients will receive legal assistance and dispute resolution services in 1989 than at any time in the history of the Legal Services Corporation, and the majority of this aid will come from non-LSC funded sources.

Q21. How many fewer clients do you estimate will be served?

A21. It is projected that the number of clients directly served by LSC grantee staff attorneys will increase approximately five percent in 1989 over 1988. By reconfiguring funding structures, basic field recipients will have the opportunity to make resource allocation decisions at the local level, and will be paying only for those support and training services which they deem necessary.

This removes what has in the past effectively acted as a "tax" on individual grantees, from whom LSC resources were taken to fund an array of support centers. As pointed out in answer to the above question, it is estimated that more, not fewer, clients will be served under the structure of the FY 1989 budget proposal.

Q22. What feedback have you received from the local LSC regarding the manner in which the most recent monitoring visits were conducted? What was the focus of the most recent visits? What was the average amount of time spent on these visits?

A22. Recently, the Legal Services Corporation has received positive feedback regarding its on-site review process as well as compliments regarding the courtesy and professionalism of its monitoring team members. In addition, the Corporation has received positive feedback on the accuracy and utility of its reports in assisting legal services programs in their continuing efforts to provide high quality legal assistance in an effective, efficient, and economical manner to needy members of their communities. LSC has received only a few negative comments since about January 1, 1988, regarding the monitoring process. In each instance, however, the Monitoring Division has attempted to take measures that appropriately respond to the program's concerns.

Specifically, during 1988, the Monitoring Division received approximately 37 letters from LSC recipients conveying a general impression on the on-site monitoring review process or the monitoring report--apart from comments on draft reports issued by LSC. The result is illustrated below:

Comments on the On-Site Review Process

Positive	20
Negative	6

Comments on Monitoring Reports

Positive	8
Negative	3

During 1987, the Monitoring Division received approximately 144 letters from LSC recipients containing 199 comments concerning the on-site review process or the monitoring report issued by LSC. The content of the comments submitted during 1987 is illustrated below:

Comments on the On-Site Review Process

Positive	64
Negative	49

Comments on Monitoring Reports<sup>2</sup>

Positive	61
Negative	25

The general focus for each on-site review is to ensure that programs deliver high quality legal assistance efficiently, economically, and effectively and in accordance with the LSC Act and its implementing regulations. The monitoring process usually entails a detailed examination of each program's functions, personnel policies, service delivery processes, and compliance with applicable law. The specific focus on an on-site review varies from program to program.

During 1987, the average amount of time spent on-site for a monitoring review is approximately 105 monitor hours.

Q23. Particularly, how much time do you estimate was required by the staff of the office being visited to assemble the requested data and records?

A23. It is difficult to estimate the amount of time required by a program to respond to the Corporation's request for documents that are needed to ensure that the on-site review

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<sup>2</sup> See Note 1, *supra*.

is conducted efficiently, expeditiously, and thoroughly. Indeed, the amount of time required by a program to respond to the Corporation's requests prior to, during, and subsequent to the on-site review can vary dramatically based upon the program's size, amount of funds received, organization, and the program's legal, fiscal and management systems. A program that has expended \$12 million since the last on-site review, having ten satellite offices and a staff in excess of sixty people, will surely devote more resources to fulfilling the Corporation's request for documents than a smaller, less complex program.

For example, a program, which was scheduled to be monitored on April 3-6, 1988, provided to LSC, in preparation for the on-site review, approximately 600 pages of documents including brochures and other publications. This program was awarded approximately \$500,000 in LSC funds since the last monitoring review. In contrast, another program scheduled for a monitoring on April 29, 1988, and which received nearly \$1.7 million since the last monitoring review, submitted 1,300 pages of documents, including brochures and publications.

Prior to the on-site review, the documents provided by a program are reviewed and evaluated carefully by LSC. The review and evaluation of these and other documents result in the preparation of a briefing book and a monitoring workplan. Subsequently, these monitoring tools are provided to each team member prior to the on-site review. These materials are intended to ensure that each team member is familiar with the activities and operation of the program and to streamline the on-site monitoring review so that it may be conducted efficiently and thoroughly.

While on-site, monitors often request access to original documents such as ledgers and annual financial statements. In some circumstances, monitors will also request copies of documents not previously provided by the LSC recipient. In such cases, the monitors are instructed to exercise professional judgment in avoiding duplicate requests or requesting copies of documents when on-site access to the document will suffice.

Q24. What action or actions have been taken with the information gathered on these monitoring visits?

A24. The Corporation reviews and assesses the information gathered as a result of its monitoring efforts. Action the Corporation may initiate as a result of this

information varies based upon the severity of the concerns identified. Over the past two years, the Corporation has, as a result of its monitoring efforts:

- 1) required programs to institute a corrective action plan;
- 2) incorporated special conditions into a program's grant award;
- 3) placed programs on interim funding; and
- 4) initiated proceedings to deny refunding.

In addition, the Corporation has prepared reports that contain an analysis of findings regarding similarly situated recipients and regarding specific compliance issues.

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