



ELECTRONIC PRIVACY INFORMATION CENTER

WATCHING THE WATCHERS – Policy Report #2 (February 2002)

“PAYING FOR BIG BROTHER: A REVIEW OF THE PROPOSED FY2003 BUDGET FOR THE DEPARTMENT OF JUSTICE”

SUMMARY

Following the events of September 11, the Department of Justice and its subsidiary divisions seek to benefit significantly from federal funding increases for FY2003. The Justice Department is requesting a budget increase of \$1.8 billion for a total of \$30.2 billion, not including the \$539.2 million it received under the post September 11 emergency spending legislation.

Included in the DOJ Budget are many new surveillance and electronic security programs. Many such initiatives may be necessary and beneficial in meeting the Department’s objective of preventing and prosecuting crime, especially terrorism. However, the Budget documents released thus far lack adequate transparency and level of detail concerning the Department’s programs that would allow a fair public evaluation of their necessity, efficacy, and possible risks to civil liberties and Constitutional values. More information is also required about the capabilities of many systems, the threshold tests which will be implemented in their

deployment, and the privacy and security mechanisms, if any, that will be put in place to protect individuals against undue levels of government interference.

PROGRAMS

General DOJ Programs

The Department Justice plans a large-scale Identification Systems Integration (ISI) that would greatly increase the sharing and compilation of personal information held by federal agencies. The FY2003 Budget requests a total increase in funding of \$23.5 million.¹ There is no information in the budget materials provided to the public that indicate privacy or security issues have been considered in the development of ISI. In any large-scale data collection system, proponents must consider the

¹ Appendix, Budget of the United States Government, Fiscal Year 2003, Page 611, <http://www.whitehouse.gov/omb/budget/fy2003/pdf/app13.pdf>, <http://www.usdoj.gov/jmd/2003summary/pdf/identification%20systems%20integration-bs.pdf>.

appropriate uses and means of protecting the data, and the potential risk of misuse of the personal information amassed. Such systems are also notoriously plagued by functionality and security problems, especially when they attempt to incorporate potentially incompatible information sources. These problems may also compromise their effectiveness. The Identification Systems Integration program has two components:

The DOJ receives \$14.5 million to continue the development and nationwide deployment of the Joint Automated Booking System (JABS). JABS is a comprehensive nationwide database of all individuals who come into contact with local, state or federal law enforcement agencies, and makes any information collected by one agency automatically available to all others, including fingerprints and photographs.² Minimal information is publicly available about JABS.³ The Justice Department plans that JABS will eventually link five of its law enforcement bureaus: the Drug Enforcement Administration, the FBI, the U.S. Marshals Service, the Immigration and Naturalization Service and the Bureau of Prisons. It will have the ability to retrieve thousands of images of potential

suspects to assemble a virtual line-up. Bob Patterson, unit chief for the DEA's investigative equipment section, in 1997 described the potential of computer-matched lineups: "It would take about 30 seconds and then you wouldn't have to justify it in court... You could just say it was a randomized lineup using images generated by a computer."⁴ This system raises significant concerns about due process safeguards.

Before further federal funds are allocated to the deployment of JABS, more detailed information on the system itself should be made available, including the number of individuals profiled, the conditions under which their information may be entered or searched for in the system, which officials have access to the system, and what safeguards are in place to ensure security of the information and prevent misuse. The system has serious privacy and security risks due to the sensitivity of the information and the potential for misuse of data by agents.⁵

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² Appendix, Budget of the United States Government, Fiscal Year 2003, Page 612, <http://www.whitehouse.gov/omb/budget/fy2003/pdf/app13.pdf>. The Budget identifies JABS's three major functions: (1) facilitates rapid identification of individuals under arrest or detention through automation of the booking process and an interface with the Federal Bureau of Investigation (FBI) fingerprint identification system; (2) minimizes duplication of data entry by multiple law enforcement agencies during the booking process, and; (3) promotes data sharing of arrest records among JABS participants and other interested parties.

³ JABS is administered by PEC Solutions, Inc under an existing contract: http://www.pec.com/news/jabs_federal.html. See also the National Institute of Justice's evaluation of JABS in 1996: <http://www.usdoj.gov/jmd/irm/jabs/>

DOJ has also requested \$9 million to integrate the INS' Automated Biometric Identification System (IDENT) with the FBI's Integrated Automated Fingerprint Identification System

⁴ Jennifer Jones, "DEA to roll out booking system," Federal Computer Week, June 23, 1997, http://www.fcw.com/fcw/articles/1997/FCW_062397_586.asp

⁵ See "DEA agent charged with selling data: Law enforcement computers allegedly became a treasure trove for California info broker" <http://www.securityfocus.com/news/142> and http://www.businessweek.com/technology/content/feb2002/tc20020212_0204.htm

(IAFIS) to create a Joint Fingerprinting System.⁶ This project will provide state and local law enforcement personnel with direct access to INS data, and enable INS to check an apprehended person's criminal file, all by executing a single search request. With this funding, DOJ proposes to deploy the initial program to an additional ten (unspecified) sites.⁷

Both these projects have previously received funding for the same objectives now cited by the Attorney General. President Clinton's FY2001 Budget Proposal included \$1.8 million to *complete* JABS, and \$5 million for IDENT/IAFIS Integration.⁸ DOJ should explain why additional funding is necessary.

⇒ Any attempt to expand the FISA procedure should require the development of corresponding safeguards and oversight.

⁶ The INS operates the Automated Biometric Identification System (IDENT), which captures the left and right index fingerprints and a photo of individuals apprehended by INS since 1997 and enables searches of on-line databases to identify criminal and non-criminal deportable aliens. As of March 2000, it contained records of 400,000 individuals:

http://www.ins.gov/graphics/aboutins/foia/ereadm/reference/majorinfosys/ident_9.htm.

The FBI operates the Integrated Automated Fingerprint Identification System (IAFIS), which is the world's largest biometric database, containing over 42.8 million digitized ten-print fingerprint records (at least four times larger than all of the fingerprint repositories in Europe combined), and adding 7,853 new searchable criminal entries per day:

<http://www.fbi.gov/congress/congress01/kp111401.htm>.

⁷ Department of Justice Budget Summary, Identification Systems Integration, <http://www.usdoj.gov/jmd/2003summary/pdf/identification%20systems%20integration-bs.pdf>

⁸ Declan McCullagh, "Clinton's Wiretap-Heavy Budget", February 7, 2000, <http://www.wired.com/news/infostructure/0,1377,34164,00.html>

The Department of Justice's Office of Intelligence Policy and Review requests an additional 10 positions and \$2 million to handle anticipated "increased requests for [Foreign Intelligence Surveillance Act] FISA surveillance and searches."⁹ FISA searches and surveillance are particularly intrusive investigative mechanisms conducted in secrecy without opportunity for public oversight or scrutiny. Any attempt to expand the FISA procedure should require the development of corresponding safeguards and oversight, including enhanced public reporting on warrants issues and the nature of the investigation pursued.

Immigration and Naturalization Service

The Immigration and Naturalization Service (INS) requests budget increases of 1,030 employees and \$660 million for Border Enforcement. This includes \$380 million for a entry/exit system for the United States, which will use "advanced technology" to track the arrival and departure of non-U.S. citizens.

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The request includes enhancements for 570 Border Patrol agents, 460 Inspectors, improvements in intelligence-gathering capabilities, and increased participation in joint terrorism taskforces to support the capability to apprehend and remove increasing numbers of criminal and non-criminal aliens. An additional 700 agents will be employed at airports and

⁹ Department of Justice Budget Summary, General Administration <http://www.usdoj.gov/jmd/2003summary/pdf/ga-bs.pdf>, Page 4.

seaports for Border Enforcement, at a cost of \$51 million, which will be recovered from the Immigration User Fee Account.¹⁰ DOJ also proposed to appoint an additional 20 employees, to be financed by INS, to provide for Facilities and Administrative Services Staff “to assist INS in implementing a comprehensive Entry/Exit System at all of the Land Ports of Entry to the United States.”¹¹

Heightened enforcement efforts are not necessarily inimical to privacy and civil rights, so long as they are conducted appropriately. However, INS and DOJ have not yet disclosed what are the new advances in technology they propose to employ, or offered any opportunity for scrutiny of these measures.

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In addition to the direct cost of INS’s Border Enforcement expansion, the initiatives are expected to increase Executive Office for Immigration Review (EOIR) caseload by an estimated 27,800 cases and appeals annually, requiring an additional 153 employees at a cost of \$10 million. It is heartening to see that the Justice Department has provided for the increased availability of review and appeals processes to complement the enforcement drive and protect the rights of immigrants.

INS also requests \$28 million to enhance the ENFORCE database and to deploy additional

biometric equipment. The ENFORCE database includes information on apprehended aliens, including the name, age, time and place of apprehension, nationality, name and relationship of any accompanying persons, and the person’s immigration status (voluntary return or other), and is used to document and track the investigation, identification, apprehension, detention, and/or removal of immigration law violators.¹² Information is collected and entered for both adults and juveniles.¹³ Any expansion of the application and information captured by the ENFORCE database should be scrutinized closely to ensure that it does not unduly impinge upon immigrants’ privacy rights.

INS requests 78 positions and \$10 million to enhance the INS Intelligence Program. These positions will help provide information useful to all INS enforcement officers in identifying and apprehending terrorists and those who smuggle humans across the U.S. borders.¹⁴ No other details are currently available about the scope of this program or the surveillance and intelligence mechanisms on which the increased funding will be spent.

INS also requests 59 positions and \$6 million to participate in the activities of the FBI’s Joint Terrorism Task Forces.¹⁵

¹⁰ Department of Justice Budget Summary, Immigration and Naturalization Service, <http://www.usdoj.gov/jmd/2003summary/pdf/ins-enforce.pdf>, Page 4.

¹¹ Department of Justice Budget Summary, General Administration, <http://www.usdoj.gov/jmd/2003summary/pdf/ga-bs.pdf>, Page 2.

¹² ENFORCE also has some data protection mechanisms and access regulations: http://www.ins.usdoj.gov/graphics/aboutins/foia/ereadrm/reference/majorinfosys/enforce_7.htm.

¹³ See, for example “Juvenile Repatriation Practices at Border Patrol Sectors on the Southwest Border”, <http://www.usdoj.gov/oig/i0110/app1.htm>.

¹⁴ Department of Justice Budget Summary, Immigration and Naturalization Service, <http://www.usdoj.gov/jmd/2003summary/pdf/ins-enforce.pdf>, Page 4.

¹⁵ Department of Justice Budget Summary, Immigration and Naturalization Service, <http://www.usdoj.gov/jmd/2003summary/pdf/ins-enforce.pdf>, Page 4.

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National Security Coordination Council

The Attorney General wishes to establish a new National Security Coordination Council (NSCC). Following the events of September 11th, Congress asked the President to submit as part of the FY 2003 budget "a proposal to restructure the Department of Justice to include a coordinator of ... activities relating to combating domestic terrorism."¹⁶ Seven new positions are created, at a cost of \$1 million, to administer this Council. The Council will include the Deputy Attorney General, the Chief of Staff to the Attorney General, the Director of the FBI, the Assistant Attorney General in charge of the Criminal Division, the Commissioner of the INS, the Assistant Attorney General in charge of the Office of Justice Programs, and the head of the Office of Intelligence Policy and Review (OIPR).

The Council's function is to coordinate counterterrorism and national security efforts in the Department, including "promoting coordination and information-sharing within the Department, between DOJ and other federal agencies and interagency bodies, and between DOJ and state and local law enforcement authorities, to prevent, prepare for, and respond to terrorist attacks."¹⁷ The promotion of information-sharing between DOJ organizations and with other federal, state and local agencies,

if it is indeed necessary, should be matched with a recognition of privacy interests and assurances of due process.

Detention Trustee

The Detention Trustee will work with the Federal judiciary and the INS to expand the use of home detention and electronic monitoring where appropriate. As part of this effort, the Trustee will work with the Federal Judicial Center and the Administrative Office of the U.S. Courts to develop a risk prediction instrument to assist in the determination of which offenders would be best suited for home detention/electronic monitoring.¹⁸ Further information is required, and there should be close scrutiny of any such electronic monitoring and profiling programs, due to their inherent propensity to compromise individual privacy.

An additional \$4.47 million is requested for the Detention Trustee's general program funding, some of which is to be spent on "electronic database networking, which will assist the Trustee with overseeing the detention programs."¹⁹ It is important to consider what information will be placed on the database, and with whom it will be shared, in order to evaluate the necessity and likely effectiveness of the program.

The Budget also allocates \$5 million to a new national online network on which state and local governments and private detention providers can electronically post vacancies, rates, medical services, transport and other facilities available.

¹⁶ Department of Justice Budget Summary, General Administration, <http://www.usdoj.gov/jmd/2003summary/pdf/ga-bs.pdf>, Page 3.

¹⁷ Department of Justice Budget Summary, General Administration, <http://www.usdoj.gov/jmd/2003summary/pdf/ga-bs.pdf>, Page 3.

¹⁸ Department of Justice Budget Summary, Office of the Detention Trustee, <http://www.usdoj.gov/jmd/2003summary/pdf/dt-bs.pdf>, Page 2.

¹⁹ Department of Justice Budget Summary, Office of the Detention Trustee, <http://www.usdoj.gov/jmd/2003summary/pdf/dt-bs.pdf>, Page 3.

The “electronic detention space clearinghouse” appears to be a valuable initiative in promoting transparency, allowing verification of a facility’s services and credentials, and promoting efficiency in placing and transporting prisoners.²⁰

Counterterrorism Fund

The Department requests a large increase to its Counterterrorism Fund, which is used to reimburse Department of Justice organizations for work performed in detecting, preventing and recovering from terrorist attacks. DOJ requests \$35 million in 2003, which would go to the Drug Enforcement Administration to “enhance the critical intelligence support that DEA provides to the FBI and other agencies conducting counterterrorism activities.”²¹ The resources would increase DEA’s capability “to gather real-time intelligence, analyze sensitive data, and disseminate valuable information on the command and control activities of terrorist organizations that cannot be obtained through other intelligence methods,” which would then be employed to assist the FBI and other agencies conducting counterterrorism activities.²²

It is surprising that funds earmarked for counterterrorism should be channeled purely into an anti-drug agency, particularly as the Department’s stated reason is that the DEA engages in intelligence methods of which other agencies are not capable. Although intelligence

²⁰ Department of Justice Budget Summary, Office of the Detention Trustee, <http://www.usdoj.gov/jmd/2003summary/pdf/dt-bs.pdf>, Page 3.

²¹ Department of Justice Budget Summary, Counterterrorism Fund, <http://www.usdoj.gov/jmd/2003summary/pdf/ctf-bs.pdf>, Page 1.

²² Department of Justice Budget Summary, Counterterrorism Fund, <http://www.usdoj.gov/jmd/2003summary/pdf/ctf-bs.pdf>, Page 1.

operations are necessarily sensitive and confidential, further details on the nature of DEA’s counterterrorism initiatives and information dissemination should be available.

Federal Bureau of Investigation

The FBI is a substantial beneficiary of increased funding under the FY2003 Budget, receiving a total funding increase of \$411.6 million, on top of \$238 million for ongoing activities funded in its \$745 million FY 2002 Counterterrorism Supplemental appropriation grant.

⇒ *It is surprising that funds earmarked for counterterrorism should be channeled purely into an anti-drug agency,*

The FBI will receive an additional \$61.8 million and 201 personnel to enhance its “surveillance capabilities to collect evidence and intelligence,” including controversial surveillance technologies like Carnivore, key logger, and Magic Lantern. The grant is divided into:²³

- a) \$5.65 million and 2 positions for contractor services and equipment to support operations of a “data collection facility.” No additional information on this facility has been publicly released;
- b) \$32 million and 194 positions (2 agents) “to support the FBI’s ability to collect evidence and intelligence.” The Department’s Budget request states that “the FBI’s surveillance entities must have the most efficient tools and training programs available to counter the most sophisticated targets,” and that demand for surveillance technology and equipment continues to increase.²⁴ In

²³ Department of Justice figures from <http://www.usdoj.gov/jmd/2000-budget/fy2003.htm>.

²⁴ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 3.

evaluating the large allocation under this grant, it is necessary to have information about the nature and effectiveness of the surveillance systems proposed;

- c) \$10.9 million and 2 positions to support electronic surveillance operations and liaison with the telecommunications industry. The request will provide the resources for the FBI to meet the rising costs charged by the telecommunications industry for surveillance, and to provide the operational support necessary to conduct electronic surveillance activities.²⁵ The rates levied by the telecommunications industry, and the general and surveillance information they provide to the government is deserving of closer scrutiny;
- d) \$11.3 million and 3 positions for an Electronic Surveillance Data Management System (EDMS) to enable the automated sharing of electronic surveillance intelligence and/or evidentiary material. EDMS will provide an interface between FBI's electronic surveillance central monitoring plant located in each field office and users connected to the field offices' local area network through enterprise-wide access provided through the Trilogy program.²⁶ The FBI has not disclosed how the EDMS system or the Trilogy program operates, nor the scope of "automated sharing"; and
- e) \$2 million for increased fuel, maintenance and lease costs for an additional off-site location associated with the Special Operations Group program's intelligence and surveillance operations.

²⁵ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 4.

²⁶ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 4.

The FBI requests 110 positions for Intelligence Research Specialists and \$7.7 million to enhance headquarters and field office analytical capacity to support the Counterterrorism program.²⁷ DOJ argues that "volumes of intelligence resulting from counterterrorism investigations, information gathered from Foreign Intelligence Surveillance Act (FISA) techniques, data gathered from human sources, and information received from other intelligence agencies have not been adequately processed and disseminated," and that more personnel are required to analyze the exploding quantities of complex information gathered.

The FBI requests 15 positions (7 agents), and over \$12 million to enhance its ability to respond to increasing physical search requests and to address changes in technology through research, development, and engineering. Careful oversight is necessary to ensure that the greater number of electronic and conventional searches conducted by the FBI result only from increased vigilance, and not from a lessening degree of protection for individual privacy, due process or civil liberties.

The FBI also receives \$146 million and 6 additional employees for various Information Technology (IT) Projects.

Included in this amount is \$11 million funding to expand "collaborative capabilities" and allow further sharing of information. The FBI will develop "new-generation Trusted Guards and use other modern information technologies to provide direct, secure access to external databases; and to establish secure e-mail capabilities among the FBI and other members

²⁷ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 3.

of the law enforcement, counterintelligence, and counterterrorism communities.”²⁸ The FBI also intends to expand information sharing capacity by means of a \$10 million grant to scan and digitally store 5 million existing documents that they believe are “related to terrorist groups and organizations.”

Under its project for “Investigative Data Warehousing”, the FBI’s Trilogy project will consolidate data from the five main investigative applications to reduce “stovepiping.” In 2003, the FBI requests \$50.3 million to integrate data from the remaining FBI systems and applications into a Virtual Knowledge Database.²⁹

To help agents and other analysts involved in a variety of investigative activities identify patterns and recognize relationships, the FBI requests \$5 million to purchase new data mining and visualization tools. These tools will work with the upgraded Trilogy network and legacy systems for case management and document management to sift through vast amounts of data available in order to focus on the information appropriate for data analysis.³⁰

The proliferation of spending on various data compilation and sharing projects described above warrants closer examination of the purpose, use and security of such information, as well as mechanisms implemented by the Department to prevent misuse of the data.

²⁸ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 6.

²⁹ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 7.

³⁰ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 7.

Separate from the IT Projects grant, the FBI will also spend \$48.2 million on information security to remedy intrusions such as the Hanssen case, 10 positions (3 agents) and \$1 million to enhance their ability to “identify and assess the technical capabilities of adversaries,”³¹ and \$32.3 million on enhanced technical program support. Because so little of this spending is itemized for public scrutiny, the precise amounts spent on surveillance are unknown.

The increasing use of electronic monitoring and data warehousing also magnify the scope of the FBI’s request for technology support funding. The FBI requests 56 positions (50 agents) and \$10 million for Technically Trained Agents (TTAs) and training resources “to support the administration of all Central Monitoring Plant functions, digital collection systems, and ongoing investigations.”³² The FBI should disclose further details of the functions of the Central Monitoring Plant, including what it monitors, what “digital collection systems” it utilizes, and the types of ongoing investigations in which it is deployed.

⇒ Because so little of this spending is itemized for public scrutiny, the precise amounts spent on surveillance are unknown.

The FBI requests 62 positions and \$10 million to enhance the FBI’s field Electronic Technicians program that supports the FBI’s encrypted radio system, Trilogy deployment, and other electronic security services. Funding will

³¹ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 8.

³² Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 4.

provide additional ETs, associated equipment, regional training initiatives to augment the existing ET in-service training program, and training supplies.³³

The FBI also requests an additional \$21 million and 138 positions (including 81 agents) to increase the work of the National Infrastructure Protection and Computer Intrusion Program (NIPCIP), an investigative program within the Counterterrorism Division.³⁴ DOJ states that the resources would be used to “enhance NIPCIP’s ability to respond to computer intrusions and threats” and “improve the FBI’s capability to identify and arrest those individuals engaged in criminal computer intrusions.” The precise definitional scope of “criminal” computer intrusions has been very contentious, and may include breaches of intellectual property rights and other ‘cyber crime’ and security investigations. DOJ should clearly disclose the types of investigations in which NIPCIP would be deployed. This grant will be supplemented by \$7.7 million and 110 positions to broaden the FBI’s “analytical capacity” to track information that may be related to terrorist activities.

The FBI is also expanding its capability to collect and analyze DNA with an additional \$867,000 under the Federal Convicted Offender Program. The DNA Analysis Backlog Elimination Act of 2000 authorized the FBI to collect DNA samples from individuals convicted of qualifying offenses. The USA PATRIOT Act of 2001 expanded the list of qualifying offenses

³³ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 4.

³⁴ Statement of Thomas T. Kubic, Deputy Assistant Director, FBI Criminal Investigative Division on The FBI’s Perspective on the Cyber Crime Problem, before the House Committee on the Judiciary, Subcommittee on Crime, June 12, 2001: <http://www.fbi.gov:80/congress/congress01/kubic061201.htm>.

to include terrorism-related offenses and other crimes of violence.³⁵

The FBI requests \$15.67 million to support a total of 56 Joint Terrorism Task Forces in 2003.³⁶ The JTTFs involve cooperation between local, state and federal agencies on various initiatives which attempt to combat terrorism.

The DOJ’s Internet Crimes Against Children Task Force Program requests an additional \$6.1 million to establish a regional task force in at least 40 states, and expand unspecified “capacity-building activities.”³⁷

All these proposed funding increases would contribute to and expand programs that may encroach upon privacy rights and civil liberties. The scope of the impact is impossible to judge without greater disclosure from the FBI and the DOJ, and clarification of the budget’s broad generalizations about the Bureau’s surveillance and profiling initiatives.

Drug Enforcement Administration

In addition to the \$35 million allocated to the DEA via the Counterterrorism Fund, the DEA receives substantial funding increases related to surveillance.

⇒ *It is crucial to ensure, by strict oversight, that the threshold standards allowing DEA to monitor an individual’s*

³⁵ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 6.

³⁶ Department of Justice Budget Summary, Federal Bureau of Investigation, <http://www.usdoj.gov/jmd/2003summary/pdf/fbi-se-bs2.pdf>, Page 3.

³⁷ Department of Justice Budget Summary, Office of Justice Programs, Justice Assistance, <http://www.usdoj.gov/jmd/2003summary/pdf/ojp-jabs.pdf>, Page 3.

or an organization's financial transactions are rigorously adhered to, and that this program is not allowed to encroach upon financial privacy.

DEA requests 27 positions (20 special agents) and \$4,121,000 to enhance financial investigations in domestic field offices, especially in New York, Miami, and Los Angeles, with the aim of improving DEA's ability "to monitor and track the financial holdings and transactions of drug trafficking organizations."³⁸

It is crucial to ensure, by strict oversight, that the threshold standards allowing DEA to monitor an individual's or an organization's financial transactions are rigorously adhered to, and that this program is not allowed to encroach upon financial privacy.

United States Marshals Service

As part of its \$43.2 million budget increase, the USMS requests \$2.4 million and 22 criminal investigators to participate in the FBI's Joint Terrorism Task Forces (JTTF).³⁹ This is another example of the large increases in funding the DOJ's organizations are seeking. Each subsidiary organization seeks its own multi-million dollar allocation to participate in the program,⁴⁰ in addition to the \$15.7 million requested by the FBI to administer it. An open evaluation of the efficacy of the JTTF program

³⁸ Department of Justice Budget Summary, Drug Enforcement Administration, <http://www.usdoj.gov/jmd/2003summary/pdf/dea-se-bs.pdf>, Page 2.

³⁹ Department of Justice Budget Summary, US Marshals Service, <http://www.usdoj.gov/jmd/2003summary/pdf/usms-se-bs.pdf>, Page 2.

⁴⁰ See, for example, INS' \$6 million request above at Page 4.

is warranted to ensure federal funds are well spent.

United States Attorneys

The US Attorneys Office seeks \$11 million in IT spending to enhance the communications system and complete the Internet Protocol Telephony project. The grant will also be used to "connect to and optimize remote databases."⁴¹ Little information has been forthcoming about the data included in these databases, who has access to them, and their necessary insulation from the DOJ's investigative functions.

Other Agency Budgets

The Department of Justice is only one of several federal agencies that will ask for significant increases in federal to support the development and deployment of new systems of surveillance after September 11. EPIC will review the other budgets as they become available.

THE BUDGET PROCESS

The President's Budget is not final, but considered to be the Administration's request for spending for the coming fiscal year. Following the submission of the President's Budget, Congressional committees hold hearings and submit their views and estimates of spending and revenues within their respective jurisdictions to the House or Senate Budget Committees. The Budget Committees independently develop their own versions of a budget resolution, which are submitted to floor votes. By early April, this stage has usually been completed, and Budget Conference

⁴¹ Department of Justice Budget Summary, US Attorneys, <http://www.usdoj.gov/jmd/2003summary/pdf/usa-bs.pdf>, Page 2.

Committee, including the leading members from both chambers develop a consensus agreement on a concurrent resolution on the budget, called a Conference Report. The House and Senate each vote on the acceptance of the Conference Report, typically in late April or May. The Concurrent Budget Resolution is not itself a law, but sets in motion legislation that, when enacted, will have the force of law.⁴²

The Appropriations Committees of the House and Senate develop and report on spending measures to comply with the Budget Resolution. They develop Appropriations Bills under the jurisdiction of each of the 13 Appropriations Subcommittees, which cover only the discretionary portions of the budget, not mandatory benefit programs such as Social Security and Medicare. By custom, the House initiates all appropriations measures, although the Senate may amend them as it sees fit. The Senate and House vote on each of these Bills, then form conference committees to reach conference reports for consensus resolutions. The chambers then vote on the conference reports, which must be signed by the President to become law.

The appropriations bills are constrained by the total amount allocated under the budget resolution as well as by the guidelines established separately in authorizing legislation. Authorizations may be permanent or temporary, and their provisions may be general or specific, but they do not themselves provide funding in the absence of appropriations actions.

⁴² "The Long Path to a Federal Budget" Washington Post, February 4 2002, at Page A14; CRS Report for Congress, "The Federal Budget Process: A Brief Outline," April 1996, <http://cnie.org/NLE/CRSreports/legislative/leg-27.cfm>; "The Annual Budget Process" http://www.house.gov/rules_bud/annual.htm

At the same time as the Appropriations Committees are working on appropriations bills, the House and Senate Authorizing Committees develop and report their proposed changes in the law necessary to comply with the Budget Resolution. Authorizing Committees deal with entitlements and other mandatory spending. To change these amounts, laws must be rewritten, recommended to the Budget Committee of the respective chamber and voted on. Budget Reconciliation Conference Committees meet to reconcile the House and Senate authorizations. The Chambers then vote on the reconciled measures, and the President may sign or veto the reconciliation bill.

The Budget process should be completed by October 1, the start of the new fiscal year, or interim continuing resolutions will be required.

CURRENT STATUS AND NEXT STEPS

A budget hearing was held before the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary on Tuesday, February 26, 2002. Attorney General Ashcroft testified concerning the FY 2003 Budget, among other matters.

Several hearings will be held over the next few weeks. The House Judiciary Committee will meet on February 27, 2002 "to consider its views and estimates on the FY 2003 budget" and other matters. On February 28, 2002 the Senate Budget Committee will hold hearings "to examine the President's proposed budget request for fiscal year 2003, focusing on winning the war, transformation, and reform issues." Also on February 28, 2002, the House Appropriations Subcommittee on Commerce, State, Justice and the Judiciary will conduct a hearing with Attorney General Ashcroft. On March 6, the House Appropriations Subcommittee on Commerce, State, Justice and the Judiciary will

conduct a hearing concerning the proposed budget for the Federal Bureau of Investigation. On March 7, 2002 the House Appropriations Subcommittee on Commerce, State, Justice and the Judiciary will conduct a hearing concerning the proposed budget for the Immigration and Naturalization Service. On March 20, the House Appropriations Subcommittee on Commerce, State, Justice and the Judiciary will conduct a hearing concerning the proposed budget for the Drug Enforcement Administration. The Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary will meet on March 21. This hearing will consider "proposed budget estimates for fiscal year 2003 for the Federal Bureau of Investigation, Immigration and Naturalization Service, and the Drug Enforcement Administration, all of the Department of Justice."

All these Committee meetings are open to the public. Please check the links below to ensure no changes have been made to the schedule above since its publication. The public may also submit written testimony for the record to these committees.

Legislators should take every opportunity at these hearings and throughout the Budget process to examine the consequences of the Department of Justice's initiatives for privacy and civil liberties.

CONCLUSION

The FY2003 appropriation for the Department of Justice will substantially increase federal funding for electronic and conventional surveillance, information collection and dissemination projects under the jurisdiction of the Department of Justice. Many such increases may be warranted by the changed security climate and consequently altered enforcement priorities. However, without greater information about the spending programs and the features of

the proposed initiatives, including the privacy and security risks they pose to individuals' personal information, Congress and the public will be unable adequately to evaluate the need for and the likely effectiveness of the Administration's program, or to provide the appropriate oversight. More detail on new systems and programs, including the Identification Systems Integration project, and the various surveillance, intelligence and information technology initiatives is necessary.

REFERENCES

Testimony of Attorney General Ashcroft before the Senate Appropriations Committee, February 26, 2002
<http://appropriations.senate.gov/releases/record.cfm?id=181386>.

Department of Justice Budget Information:
http://www.usdoj.gov/02organizations/02_3.htm
↓

Senate Appropriations Committee
<http://appropriations.senate.gov/>

Senate Appropriations Subcommittee on Commerce, State, Justice, and the Judiciary
<http://www.senate.gov/~appropriations/commerce/index.htm>

Instructions for submitting written testimony to the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary
<http://www.senate.gov/~appropriations/commerce/testimony.htm>

Senate Budget Committee
<http://www.senate.gov/~budget/>

Senate Judiciary Committee
<http://www.senate.gov/~judiciary/>

House Appropriations Committee

<http://www.house.gov/appropriations/>

Instructions for submitting written testimony to the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies

<http://www.house.gov/appropriations/hearings/testimony03cj.htm>

House Budget Committee

<http://www.house.gov/budget/>

House Judiciary Committee

<http://www.house.gov/judiciary/>

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The Electronic Privacy Information Center is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, freedom of expression and constitutional values in the information age.

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