

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSAN B. LONG)	
)	
and)	
)	
DAVID BURNHAM)	
)	
Plaintiffs,)	Civil Action No. 1:02CV02467 PLF
)	
v.)	
)	
DEPARTMENT OF JUSTICE)	
)	
Defendant.)	
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EXHIBIT LIST
DECLARATION OF SUSAN LONG

- Exhibit A “Criminal Enforcement Against Terrorists and Spies in the Year After the 9/11 Attacks.”
- Exhibit B “INS - New Findings on INS Guarding the Borders.”
- Exhibit C “Federal Prosecutors: Wide Variation Found in Handling of Criminal Referrals for Prosecution.”
- Exhibit D Letter of Patrick J. Leahy and Charles E. Grassley to the Hon. John Ashcroft, November 27, 2002.
- Exhibit E Appendix A- LIONS Codes, A-43-51 (Updated September 2002), pp. 42-52.
- Exhibit F “Central Criminal System: Program Maintenance Manual, Section 3.1 Delete History File.”
- Exhibit G March 26, 2002, Letter from Attorney Advisor Teresa Davis;
- Exhibit H September 17, 2002, Letter from the Assistant Director of the EOUSA FOIA and Privacy Staff, Marie O’Rourke;
- Exhibit I September 25, 2002, Letter from the Assistant Director of the EOUSA FOIA and Privacy Staff, Marie O’Rourke;
- Exhibit J October 16, 2002, Letter from the Assistant Director of the EOUSA FOIA and Privacy Staff, Marie O’Rourke;
- Exhibit K October 29, 2002, Letter from the Assistant Director of the FOIA/PA Division of the EOUSA, Marie O’Rourke;
- Exhibit L March 4, 2003, Letter from the Assistant Director of the FOIA/PA Division of the EOUSA, Marie O’Rourke.



A Special TRAC Report: Criminal Enforcement Against Terrorists

◆ A word about the data

Many Investigations But Few Referred for Prosecution

The FBI now reports conducting more than 10,000 terrorism investigations a year. (See [table](#).) By contrast, just released Justice Department data show that in the fiscal year ending September 30, 2001 that all the criminal investigative agencies of the government asked federal prosecutors to bring criminal charges against 463 individuals who the assistant U.S. Attorneys had identified as being involved in either international or domestic terrorism.

- The gap between the reported investigations and referrals for prosecution would appear to document a major challenge facing law enforcement in its attempts to prevent terrorism and punish terrorists.

Referrals for Prosecution Up Sharply Even Before September 11

The Justice Department's internal administrative data -- unlike the information reported by the FBI -- distinguish between international and domestic terrorism. Investigative requests for prosecution increased substantially in FY 2001 -- particularly for international terrorism -- but still represented only a tiny fraction of all federal criminal matters:

- In FY 1997 there were 48 referrals for prosecution involving *international terrorism*. For the next three years, the numbers remained relatively steady-- 33 in 1998, 60 in 1999, and 40 in 2000. They jumped to 204 in 2001 -- 124 out of the 204 occurred before September 11. (See [graph](#) and [table](#).)
- There were somewhat more referrals against those suspected of *domestic terrorism* during the same period: 147 in 1997, 166 in 1998, 187 in 1999, 194 in 2000 and 259 in 2001. A total of 214 out of the 259 occurred before September 11. (See [table](#) and [graph](#).)

But Federal Prosecutors Usually Decline To Bring Charges

- The data also show that federal prosecutors declined to bring charges against more than two out of three of the criminal suspects who they themselves had classified as being involved in domestic or international terrorism. (See [graph](#).) Most of the suspects were referred to the prosecutors by the FBI.

Such matters made up only a very small part of the 681,000 criminal

referrals of all kinds that the prosecutors said they had received from the investigative agencies during the five- year period. (See [graph](#).) But the events of September 11 -- and before that the bombings in Oklahoma City, Nairobi and Aden -- have made the processing of them a subject of major public concern.

■ The prosecutors cited many reasons for rejecting the recommendations of the investigators during the five-year period ending on September 30, among them Justice Department policy, the death of the defendant, and jurisdictional or venue problems. But the prosecutors said they had declined more than one third of the matters presented to them because the referrals lacked evidence of criminal intent, were of minimal federal interest, were backed up by weak or insufficient admissible evidence, or did not involve a federal offense. (See [international](#) and [domestic](#) tables for reasons.)

Curiously, sharp changes appear to have occurred in regard to the bringing of formal criminal charges against terrorist suspects during the last five years. Whether these changes are the result of new investigative practices, different prosecutorial procedures, modifications of the law or simply the mix of types of cases handled is not clear. Whatever the reason, while the proportion of domestic terrorism referrals that were declined was going up, the declination rate for international terrorism referrals was going down. (See [graph](#).)

One perspective on the substantial number of terrorism referrals being turned down by federal prosecutors can be gained by considering the "declination rate" for other groupings. Under law and custom federal prosecutions have always declined to prosecute a portion of the matters brought to them by the agencies. The Justice Department data show, for example, that during the last five years one out of three referrals were declined by prosecutors. (See [table](#).) Accordingly, the odds of declination for terrorism cases was twice as high since more than two out of three of these referrals were turned down by federal prosecutors during the same period. It must be assumed that collecting solid evidence about a terrorist is harder than for drug, immigration and white collar criminals.

Actual Federal Indictments Are Relatively Few

■ The number of actual indictments are dwarfed by the numbers of investigations and referrals for prosecution. This is because so few investigations result in actual referrals and because so few referrals then end up being accepted for prosecution by U.S. Attorneys. While small in number, trends for prosecutions of *international terrorists* were also sharply up last year: 8 indictments in 1997, 7 in 1998, 29 in 1999, 14 in 2000 and 57 in 2001. (See [table](#).) Indictments for *domestic terrorism* in sharp contrast did not increase despite the rise in referrals. Domestic terrorism prosecutions were: 47 in 1997, 37 in 1998, 41 in 1999, 48 in 2000, 38 in 2001. (See [table](#).)

Actual convictions are smaller than the number of prosecutions since about one third of indictments do not result in a conviction. This occurs for a variety of reasons, including the dismissal of the case or a not guilty verdict. (See [graph](#).)

Which Communities Most Active?

■ Government referrals for *international terrorism* have been made to U.S. Attorneys all over the country. But six federal judicial districts stood out. From 1997 to 2001, the U.S. Attorney in the District of Columbia reported 67 referrals. Right next door, the U.S. Attorney in Eastern Virginia counted 29. Given the location of the government these counts are hardly surprising. New York South (Manhattan) reported 40. The last three standout districts were California Central (Los Angeles), Michigan East (Detroit) and Florida South (Miami). In Virginia East and Michigan East virtually all of the referrals came in 2001. (See [table](#).)

■ The line-up of districts showing the most referrals for *domestic terrorism* for the same period looked strikingly different. California North (San Francisco) leads the list with 80 referrals, followed by Georgia North (Atlanta) with 51. Three other districts also had more than 40 referrals each: Tennessee Middle (Nashville), Texas North (Fort Worth) and Florida Middle (Tampa) (See [table](#). For federal district boundaries, see [map](#).)

International Terrorists Receive Light Sentences

■ News reports about high-profile cases leave the impression that extremely long sentences usually are imposed on all convicted terrorists. Justice Department data focusing only on international terrorists, however, suggest otherwise. Eleven of the 19 convicted terrorist where sentencing information was available, for example, received no prison time or one year or less. The median sentence -- half got more, half got less -- was ten months. The average time was much higher -- 65 months -- because a few people received very long sentences.

Domestic terrorists do receive heavier sentences. Only one in ten convicted domestic terrorists receive no prison time. The median sentence -- half got more, half got less -- was 37 months. But this is still less than the median sentence for drug offenses (45 months) or general weapons crimes (48 months). Average prison sentences run higher -- 79 months (domestic terrorism), 69 months (drug crimes), 84 months (weapons crimes) -- because a small proportion of these offenders receive very long sentences. (See [table](#).)

Dozens of Agencies Lead Terrorism Investigations

Federal prosecutors identified a surprisingly wide range of investigative groups as the "lead agency" in a terrorism investigation during the past five years -- from the U.S. Postal Service to the Commerce Department, from the Export-Import Bank of the United States to the Forest Service. But the Justice Department credits the FBI as being the lead agency in most:

■ The FBI was the lead agency in almost 9 out of 10 of the 385 matters classified as involving *international terrorism* from 1997 to 2001. (See [table](#).)

■ In regard to *domestic terrorism*, the FBI was cited as the lead in seven out of ten of the 953 matters in the same

period. (See [table](#).)

The Secret Service and the Bureau of Alcohol, Tobacco and Firearms were the lead agencies in most of the balance of domestic terrorism cases.

What Constitute Terrorism Offenses?

■ The agencies of the federal government appear to define terrorism in several different ways. This lack of consistency may raise difficult legal questions when the government -- as is now planned -- starts investigating and processing terrorist suspects under different legal procedures than it applies to other suspects. The Justice Department's Executive Office for United States Attorneys (EOUSA) defines domestic terrorism as involving matters where individuals or groups seek to further political goals wholly or in part through activities that involve force or the threat of force. The EOUSA defines international terrorism in an even more circular way: a federal offense relating to international terrorism which impact on United States interests. [Source: Department of Justice internal database users' manual.] In 1999, the EOUSA said 59 domestic or international terrorists were convicted in federal court. The FBI, in its annual budget submission to Congress, claimed 103 terrorist convictions. It is assumed that the different counts for terrorism convictions may be explained by differences in what is being counted. The FBI, however, has not responded to a November 5 inquiry from TRAC requesting information on this question.

■ Federal prosecutors listed more than 40 specific statutes as the "lead charge" in *domestic terrorism* prosecutions. The largest grouping -- about one third of the total -- involved explosives and weapons. Another group centering on threats against the president and members of a federal official's family came to 14 percent of the total. The lead charge against three individuals concerned threats, interference and firearms on board aircraft. Two people were charged with violating certain prohibitions with respect to biological weapons. (See [table](#).) A smaller number of lead charges were reported in connection with *international terrorism* cases. Here, 20 percent were charged with kidnapping or hostage taking, 12 percent with murdering U.S. nationals, 12 percent with being foreign agents, 8 percent with providing material support of terrorists and 4 percent with fraud and misuses of visas, etc. (See [table](#).)

Other Indicators

■ The changing number of referrals, indictments and convictions provides the public a narrow but imperfect way to measure the intensity of the government's overall effort to contain domestic and international terrorism. But there are several other indicators.

One such indicator is the annual number of special warrants the government obtains to conduct electronic and physical searches under the Foreign Intelligence Surveillance Act (FISA). According to a brief report that the Attorney General is required by law to submit to Congress each year, the number of FISA warrants granted in calendar year 2000 was 1,012. This total -- the latest available -- compared with 886 warrants in 1999, 796 in 1998, 748 in 1997 and 839 in 1996. The work under FISA is thought to mostly be carried out by the FBI. (See [graph](#).)

Another measure involves FBI funding earmarked for fighting terrorism. According to a July report by the Congressional Research Service, the bureau's actual funding devoted to this purpose was \$450.5 million in fiscal year 1998, \$432.9 million in 1999, and \$443 million in 2000. Funds approved by Congress for fiscal year 2001 were \$527 million. The Research Service said in its July report that \$565.5 million had been requested for fiscal year 2002. (See [table](#).)

An annual count of the FBI's terrorist investigations -- submitted in recent years to Congress -- provides another activity gauge. There were 7,125 such investigations reported in FY 1997, 9,046 in FY 1998, 10,151 in FY 1999, and 10,538 in FY 2000. (See [table](#).)

Note (6/02): The Justice Department has revised some referral dates in the files originally furnished TRAC. This affected the breakdown of referral counts before and after September 11, 2001. The text has been revised to reflect these DOJ updates.





New Findings

▣ Graphical Highlights

Patrolling Which Borders?

A core mission of the INS is to maintain "control of U.S. borders" --all of its borders. But because of long-standing political, economic and social pressures, the INS has for decades concentrated most of its Border Patrol agents along the border with Mexico.

▣ *The result: while the border to the south currently is defended by one agent for every 1,000 feet, along the border with Canada there is only one agent for every sixteen miles. (See [map](#).)*

Earlier considerations may well have justified this stark disparity in resources. But the development of a world-wide terrorism threat -- symbolized by 9/11 -- suggest that the Bush planners may have to consider the wrenching and costly relocation of thousands of Border Patrol agents.

So far, such consideration appears to have largely focused on the future. A White House "fact sheet" on the administration's action plan for "creating a secure and smart border", for example, talks about steps to achieve this vision that will only begin in the months after October 1, in FY 2003. Starting at that time, another document said, the INS would move to "advance strategic control of the Northern border while continuing to expand control of the Southwestern border."

Curiously, however, during the months since September 11, 2001, the record does not suggest that the Administration has so far moved to accomplish this important aspect of its overall border plan. In September of 2001, for example, there were 331 Border Patrol agents posted on the Canadian border. By March 2002, there were 346, an increase of only 15. On the Mexican border, the number of agents went from 9061 to 9094, an increase of 33. (See [table](#).)

Another example of this seemingly lackadaisical approach concerns recruiting. Although the INS currently has several thousand openings for new employees, web sites maintained by the INS and Office of Personnel Management say that the Border Patrol is only recruiting new agents along the border with Mexico, none along the Canadian border (see [recruitment notice](#) and [INS fact sheet](#)).

In the coming fiscal year, President Bush's budget proposal does recommend the hiring of 570 additional Border Patrol agents -- a 5 percent increase over existing authorized positions. But the plan calls for them to split between the north and south on a fifty-fifty basis. (See [budget](#).) Assuming this proposal is approved by Congress, the result would be one new agent for every 19.4 miles of the northern border and one for each 7.0 miles of the Mexican border. Thus, the vast staffing

disparities that existing today would remain essentially unchanged.

The stark contrast in the allocation of the nation's front line border troops is the product of many decades of overlapping and sometimes conflicting worries. There is America's on-again and off-again resistance to all foreigners. There is labor's concern that immigrants legal and illegal will take away jobs from U.S. citizens. There is the intense war against drugs.

But it is also a reflection of the fact that only very little change has been made in the deployment of current INS border agents since 9/11. Here are the hard numbers, according to the Office of Personnel Management:

■ *As of March 2002, the INS had assigned almost all of the Border Patrol -- 9,094 agents -- along the border with Mexico, which the administration's statement on the Department of Homeland Security said was 1,989 miles long. To the north, 346 agents were stretched out along the border with Canada which the June statement said measured 5,525 miles. In the previous September, the comparable figures were 9,061 agents in the south, and 331 along the north. (See [table](#) and [map](#).)*

Trends in INS Criminal Referrals for Prosecution

Post 9/11: While there was some decline after 9/11, Immigration and Naturalization Service recommendations for criminal prosecution have returned to their recent monthly highs, according to new data from the Justice Department.

In the spring and early summer of 2001, Justice Department records show the INS was making between 1,500 to 1,700 such referrals each month. Following the attacks, the referrals dropped to 1,070 in November and 1,074 in December. In March of 2002, however, the monthly count was 1,775. (See [graph](#).)

Long term trends: Looked at from a longer perspective, however, the number of INS referrals in fiscal year 2001 was substantially higher than what it was a decade and a half before --jumping to 17, 933 in FY 2001 from 11,551 in 1986. -- an increase of 55 per cent. (See [graph](#) and [table](#).)

Given the rapid growth in the size of the INS, the increase in its criminal referrals is not surprising. In FY 2001, the INS had a total of 31,971 full-time employees. This is nearly three times more than the 11,371 INS employees in 1986. (See [graph](#) and [table](#).)

INS Outranks FBI in Federal Criminal Convictions

Along with more INS referrals, the Justice Department has credited the INS with more and more prosecutions and convictions:

■ One result -- according to several measures, the INS has now become the most active of all federal agencies, out ranking the FBI, DEA, Customs, ATF and IRS. (See [graph](#).)

In FY 2001, for example, INS convictions made up 20.5% of all such verdicts reached in federal courts. This compared with 19.3% for the FBI, 17.8 for the DEA, 9.7 for the Customs Service, 6.2% for the Bureau of Alcohol, Tobacco and

Firearms and 1.6% for the IRS. (See [table](#).)

Other Performance Measures

While the growth in INS prosecutions and convictions was substantial, the increase in the length of resulting prison sentences was much larger.

■ In FY 1992 and 1993, the median sentence -- half the defendants got more, half got less -- was two months. In FY 2002 and 2001, the median was seven times higher, 15 months. (See [graph](#) and [table](#).)

Immigration offenses now rank in the middle in terms of federal prison time -- drugs, weapon offenses rate much higher sentences while white collar and official corruptions convictions receive substantially shorter prison terms.

Reflecting to a large degree the type of offenses INS has jurisdiction over, the agency has also had more success than virtually any other agency in having its referrals successfully prosecuted, and in the speed with which federal prosecutors act on them.

■ Under custom and law, assistant U.S. attorneys are authorized to prosecute those cases they deem appropriate and to decline to prosecute those cases that for one reason or another they feel do not warrant the bringing of formal criminal charges. In FY 2001, across the whole United States, federal prosecutors declined one out of three of the referrals coming from all federal agencies. For INS, prosecutors brought charges in almost all situations, 97% of the total. This compared with the FBI, where slightly more than half -- 51% -- were declined. (See [graph](#).)

■ The government processes INS matters with greater dispatch than those of any of the other major agencies. According to 2001 data from the Justice Department, apparently complex referrals from the IRS took the most time to deal. The INS the least. Measured in terms of the days that past from an agency referral to final disposition, the median for all IRS matters was 728. This compared with 337 days the FBI, 294 for the DEA, 283 for the ATF, 175 for Customs and 126 for the INS. (See [graph](#).)

Federal Prosecutors: Wide Variation Found in Handling of Criminal Referrals for Prosecution

A TRAC Special Report
January 24, 2003

By both law and custom federal prosecutors have been granted extensive discretionary powers. Chief among them is the authority to decide whether those individuals whom the investigative agencies have determined should face criminal prosecution will actually be brought to trial.

The number of matters that are investigated and then declined is extensive. During the last three years, for example, the agencies recommended that federal criminal charges be brought against slightly more than 140,000 individuals each year. During the same period, around 45,000 of these matters were declined by federal prosecutors each year.

In determining whether the investigator's recommendation to prosecute will be accepted or declined, prosecutors rely on the particular facts in the case, their experience, statutory law (what the law says), case law (actual court decisions), and the varying expectations of the communities where they work. While the choice to prosecute or not has a major impact on the system of justice at the federal level, until TRAC introduced its new Prosecutors Tool in December 2002 there was no way to systematically examine how the approximately 5,000 currently practicing assistant U.S. attorneys (AUSAs) have actually exercised their most important power.

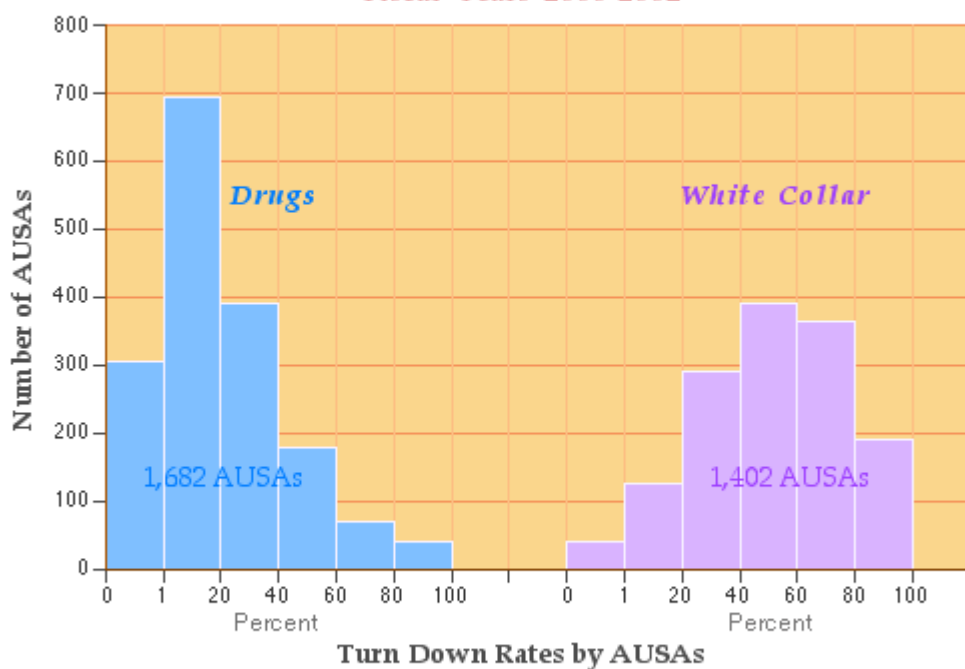
As suggested above, Justice Department records show that about one in every three referrals are declined by federal prosecutors. Reasons cited by the AUSAs for not going forward are numerous and include such factors as a lack of resources, weak evidence, and the submission of the matter to local authorities. Further analysis of the data, however, show the declination rates of individual AUSAs widely vary. At one extreme, for example, nearly 40 percent of the AUSAs who handled 25 or more cases *prosecuted every single referral* they received during the last three years. At the other end of the scale, were a smaller group of AUSAs -- ten percent of them -- who *declined half or more of their referrals*.

There of course are legitimate reasons why the declination rates among AUSAs can vary. For each case, many factual and legal factors must be considered. The data indicate that a key factor influencing these rates is the kinds of cases handled by an individual prosecutors. At the national level, for example, federal prosecutors in recent years have turned down slightly *more than one out of five of all drug referrals*. But when it came to white collar crime matters, *more than half of all referrals* were declined.

Often AUSAs specialize in the types of cases they handle. For example, during the last three years only a small fraction of federal prosecutors -- about 1,700 out of the 5,000-plus AUSAs -- were responsible for handling 10 or more potential defendants in drug matters. Put another way, this means that for the whole nation these 1,700 AUSAs handled 96 percent of all drug referrals. Similarly, about 1,400 AUSAs handled the bulk of white collar referrals during the same period. But even among these two select groups of AUSAs, widely different declination rates were recorded. While there was a tendency for AUSAs specializing in drug cases to prosecute more and turn down fewer referrals than their colleagues handling white collar referrals, in each group some AUSAs declined the majority of their referrals while others prosecuted every single one (see graph).

Agency Recommendations for Prosecution: Percent Declined by Individual Assistant U.S. Attorneys

Fiscal Years 2000-2002



AUSAs with 10 or more referrals acted on

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More information is available with TRAC's new [Prosecutors Tool](#), available by subscription to the [TRACFED](#) service. With this tool the public, Congress, reporters, businesses, scholars and lawyers for the first time ever can quickly determine how individual AUSAs have exercised their powers in handling both criminal and civil matters. Activities from fiscal year 2002 to fiscal year 1986 are covered. Matter-by-matter listings as well as statistics on a wide variety of indicators are available. In regard to criminal matters, TRAC's data provide counts of referrals, matters declined, matters prosecuted and matters disposed of along with the reason for each disposition. Also available is information about the number of days between when the referral was recorded as being received and when a prosecution was filed and the number of days between a filing and the ultimate disposition. Furthermore, various averages, rates and percentages are available such as the percent of referrals declined, the percent of referrals leading to a prosecution and

conviction rates. For those convicted, average and median sentences as well as the distribution by the length of sentence are available. For criminal matters the data can be examined by broad program category while civil matters can be viewed according to the cause of action.



Exhibit D

Letter of Patrick J. Leahy and Charles E. Grassley to the Hon. John Ashcroft,
November 27, 2002.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 27, 2002

The Honorable John Ashcroft
Attorney General
United States Department of Justice
Main Justice Building, Room 5137
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Ashcroft:

We write to follow up on your letter of October 15, 2002 relating to Transactional Records Access Clearinghouse ("TRAC") data that reveal the Department of Justice's ("Department") unchanged priorities in the types of cases investigated and prosecuted since the September 11, 2001 attacks, despite the need for federal investigatory and prosecutorial resources to be focused on preventing terrorism. Our letter is also spurred by a recent front page article in the New York Times indicating that senior FBI officials have written memoranda and messages expressing concern over the lack of progress in FBI field offices in changing their focus to preventing terrorist attacks.

The juxtaposition of these two events raises serious concerns. On one hand, the Department has responded to a bipartisan congressional inquiry questioning its expenditure of resources on non-terrorism related activities by attacking the validity of the TRAC data supporting that concern. At the same time, the FBI is apparently sending internal communications that appear to echo the critiques raised by the TRAC data. This inconsistency raises the specter that the Department is seeking to attack publicly data that bring into question its performance on terrorism matters at the same time as it privately acknowledges the validity of the very problems raised by that data.

During the last 15 months of FBI oversight, we have learned that such a knee jerk reaction to criticism is rooted in the FBI's history. Given the current stakes in protecting our country against terrorist attack, however, that culture cannot continue. Only by forthrightly acknowledging and addressing shortcomings can any organization avoid repeating the mistakes of the past.

In addition to its attack on the validity of the TRAC data, we are further troubled by the Department's recent attempt to cut off an important aspect of the TRAC data that is so valuable to the public's and Congress's oversight of the FBI. TRAC is a non partisan organization affiliated with Syracuse University. Using the Freedom of Information Act, TRAC obtains information from the Department's own records that allows it to analyze law enforcement trends and Department priorities. This information assists the public and the Congress in assessing the

The Honorable John Ashcroft
November 26, 2002
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Department's priorities and effectiveness.

It is troubling, then, that the Department has moved aggressively to cut down information flowing to this valuable independent source. In a letter dated October 29, 2002, just two weeks after responding to our oversight letter by attacking the validity of the TRAC data, the Department indicated that it would oppose continued release of an important component of that data. Specifically, the Department stated that it would discontinue release of "Program Category" data which has been released to TRAC under the Freedom of Information Act for a decade. This data allows TRAC to keep current tabs on whether the Department's public rhetoric is matched by its allocation of law enforcement resources.

Specifically, according to TRAC, program category data allows it to organize the information released by the Department by subject matter, so that it can analyze whether appropriate resources are being spent in specific program categories such as terrorism, civil rights, violent crime, and white collar crime. Without program category information, the public and the Congress are deprived of the ability to conduct a timely analysis of the Department and FBI's priorities and how they are using their limited time and resources. Such an analysis can be delayed by months or years without program category data.

The Department has justified its new position by stating that despite its decision to release this data for the last decade, releasing program category data in the future could interfere with the Department's anti-terrorism efforts. It has provided no support for that position.

Thus, the Department's response to the TRAC data has been twofold. First, the Department has attacked the validity of the data. Second, it is simultaneously trying to cut the flow of information that can be used by TRAC and the public to evaluate the Department and FBI's performance. Again, this attack is all the more troubling when juxtaposed with the FBI's own internal communications that allegedly question certain field office's focus on terrorism.

The answer for the Department and the FBI is to address the legitimate concerns about their enforcement priorities, not to blind Congress and the public.

With that background, please provide the following information as soon as possible:


1. Please provide copies of all written memoranda or messages sent within the Department or FBI in the last 6 months that refer to a lack of focus in any FBI field office or headquarters unit on anti terrorism efforts. This should include the two memos that were mentioned in the November 21, 2002 New York Times article and that were authored by Director Robert Mueller and by Deputy Director Bruce J. Gebhart.


The Honorable John Ashcroft
November 26, 2002
Page 3

2. Please explain what precisely has caused the Department to adopt the new position that "Program Category" data cannot be provided to TRAC. Please explain both the legal basis for this decision and cite any concrete example(s) of how this information has compromised any law enforcement effort in the decade that it was provided to TRAC or since the September 11, 2001 attacks.
3. Has the Department provided "Program Category" data to TRAC since September 11, 2001? If so, please list all dates when such information was provided and explain why the Department's decision to provide the information at that time did not compromise its anti terrorism efforts.
4. If "Program Category" data has been provided to TRAC since September 11, 2001, what, if anything, has now changed that caused the Department to reevaluate the legality of withholding that data?

We also have concerns about the completeness of the Department's response to our June 14, 2002 letter, and we will raise those concerns in a separate letter. Thank you for your prompt attention to these matters. We look forward to a complete response to the questions in this letter by Thursday, December 19, 2002.

Sincerely,


PATRICK J. LEAHY
Chairman


CHARLES E. GRASSLEY
Ranking Member
Crime and Drugs Subcommittee

cc:
Honorable Robert Mueller
Director
Federal Bureau of Investigation

EXHIBIT E

LIONS Users' Manual
Appendix A - LIONS Codes

PROGRAM CATEGORY

Public Corruption. Criminal prosecution public employees for misconduct in, or misuse of, office, including attempts by private citizens to bribe or otherwise corrupt public employees.

- 011 Federal Corruption - procurement. Corruption of any federal employee relating to the procurement of goods and services (may involve violations of 18 U.S.C. §§ 201, 203, 371, 872, 1001, 1962 and other statutes). (All such cases are National Priorities (N)).
- 012 Federal corruption - program. Corruption of any federal employee relating to federal programs, including grants, loans, subsidies, employment and other benefit programs (may involve violations of 18 U.S.C. §§ 201, 286, 287, 371, 641, 648, 1001, 1962, as well as program-specific statutes). (All such cases are National Priorities (N)).
- 013 Federal corruption - law enforcement. Corruption of any employee relating to law enforcement, including investigators, prosecutors, judges, court officials, prison officials (may involve violations of 18 U.S.C. §§ 201, 872, 1001, 1503, 1505, 1510, 1621, 1962 and others). (All such cases are National Priorities (N)).
- 014 Federal corruption - other. Corruption of any federal employee not covered by program categories 011, 012, or 013, including embezzlement by a "low level" federal employee, such as a postal clerk, but only if charged with a violation of 18 U.S.C. §§ 641, 1709, or 1711. (All such cases are National Priorities (N)).
- 015 State corruption. Corruption of any state government employee (may involve violations of 18 U.S.C. §§ 1511, 1951, 1962 and others). (All such cases involving governors, legislators, department or agency heads, court officials, law enforcement officials at policymaking or managerial levels, or their staffs are National Priorities (N)).
- 016 Local corruption. Corruption of any local government employee (may involve the same statutes listed in the state corruption category). (All such cases involving mayors, city council members or equivalents, city managers or equivalents, department or agency heads, court officials, law enforcement officials at policymaking or managerial levels, or their staffs are National Priorities (N)).
- 01Z Other Public Corruption. Use code 01Z ONLY if one of the specific codes does not apply.

Organized Crime

- 020 Organized Crime - Traditional Organizations. Violations of statutes relating to gambling, extortion alcoholic beverages, infiltration of legitimate business by traditional organized criminal elements, and related offenses (may involve violations of 18 U.S.C. §§ 371, 664, 1084, 1951, 1952, 1953, 1955, 1959, 1962 and similar statutes.)
- 021 Organized Crime - Emerging Organizations. Violations of statutes relating to gambling, extortion, alcoholic beverages, infiltration of legitimate business by members of street, ethnic, or biker gangs and related offenses (may involve violations of 18 U.S.C. §§ 371, 664, 1084, 1951, 1952, 1953, 1955, 1959, 1962 and similar statutes.)

White Collar Crime/Fraud. Criminal prosecutions of various nonviolent crimes involving deceit, concealment,

subterfuge and other fraudulent activity.

- 031 Federal Procurement Fraud. Fraud against the government relating to the procurement of goods and services, not involving corruption of government employees (may involve violations of 18 U.S.C. §§ 371, 1001, 1341, 1343 and other statutes). (Cases/matters involving \$25,000 or more in aggregate losses are National Priorities (N)).
- 032 Federal Program Fraud. Fraud against the government relating to the administration of government programs, not involving corruption of government employees (may involve violations of 18 U.S.C. 371, 1001, 1341, 1343 and various program-specific statutes.) (Cases/matters involving \$25,000 or more in losses are National Priorities.
- 033 Tax fraud. Fraud against the government involving tax evasion, non-reporting of income, etc. (may involve violations of 26 U.S.C. §§ 7201, 7203, 7206, and related statutes). All such cases authorized for prosecution by the Tax Division, USDOJ, are National Priorities (N)).
- 03H Fraud Against Insurance Providers. Fraud involving insurance, other than Health Care Fraud (03G) or fraud involving multiple employer welfare arrangements (MEWA) (03K), which is directed against an insurance provider by outsiders, including arson for profit. (All such cases involving a loss to the state, company, or policy holders of more than \$100,000, and all cases of arson for profit involving \$250,000 or more in aggregate losses or two or more incidents perpetrated by the same person or persons are National Priority (N).)
- 03J Insider Fraud Against Insurance Providers. Fraud involving insurance, other than Health Care Fraud (03G) or fraud involving multiple employer welfare arrangements (MEWA) (03K), which is directed against an insurance provider by an employee, officer, or member of the board of directors. (All such cases are National Priority (N).)
- 03K MEWA/MET (Multiple Employer Welfare Arrangements and Multiple Employer Trust) Fraud. Fraud involving a Multiple Employer Welfare Arrangement or Multiple Employer Trust. (All such cases involving a loss to a Multiple Employer Trust (MET) or a multiple employer welfare arrangement (MEWA) of more than \$100,000 are National Priority (N).)
- 036 Financial Institution Fraud. Fraud and embezzlement, including through the use of credit cards and credit card information, in which banks, savings and loan associations, credit unions and similar financial institutions are the victims (see 039 for other kinds of credit card fraud) (may involve violations of 18 U.S.C. §§ 371, 656 657, 1005, 1006, 1029, 1341, 1343, and 1344.)
- 037 Bankruptcy fraud. Fraud against creditors, concealment of assets, and other illegal acts related to bankruptcy and bankruptcy proceedings (may involve violations of 18 U.S.C. §§ 152, 153, 1341, 1343, 1962 and related statutes). (All such cases involving \$100,000 or more in aggregate losses are National Priorities (N)).
- 038 Advance fee schemes. Fraud against businesses or individuals involving the payment of a fee in advance for goods, services or other things of value (may involve violations of 18 U.S.C. §§ 1341, 1353, 1962 and related statutes). (All such cases involving \$100,000 or more in aggregate losses or 10 or more victims are National Priorities (N)).

- 039 Other fraud against businesses. Fraud against business entities not described in other program categories including credit card fraud in which a financial institution is not a victim (when a financial institution is the credit card victim, see 036) (may involve violations of 18 U.S.C. §§ 371, 1029, 1341, 1343, 1962 and related statutes). (All such cases involving \$100,000 or more in aggregate losses are National Priorities (N)).
- 03A Consumer fraud. Fraud against consumers in connection with the purchase or sale of goods and services (may involve violations of 18 U.S.C. §§ 1341, 1343, 1962 and related statutes), and violations of federal consumer protection and health and safety laws affecting the general public and individual citizens such as 15 U.S.C. § 2070 (Consumer Product Safety), 21 U.S.C. § 333 (Food and Drug), and 21 U.S.C. § 605 (Adulteration and Misbranding of Meat). (All such cases involving \$100,000 or more in aggregate losses or 25 or more victims are National Priorities (N)).
- 03B Securities fraud. Fraud committed in connection with the purchase and sale of securities (may involve violations of 15 U.S.C. §§ 77a *et seq.*, 78a *et seq.* or 18 U.S.C. §§ 1341, 1343 and 1962 and related statutes). (All such cases involving \$100,000 or more in aggregate losses are National Priorities (N)).
- 03C Commodities fraud. Fraud committed in connection with the purchase and sale of commodities (e.g., gold, silver, wheat, petroleum, beef) or futures contracts, deferred delivery contracts, etc., for such commodities (may involve violations of 15 U.S.C. § 714M or 18 U.S.C. §§ 1341, 1343, 1962 and related statutes). (All such cases involving \$100,000 or more in aggregate losses are National Priorities (N)).
- 03D Other Investment Fraud. Fraud in connection with the purchase and sale of goods, services or other things of value for investment purposes (e.g., land, other property) not described in program categories 03B or 03C. (All such cases involving \$100,000 or more in aggregate losses are National Priorities (N)).
- 03F Computer Fraud. Fraud and related activity involving violations of 18 U.S.C. 1030 (computers) or 2701 *et seq.*, (stored communications), computer "bulletin boards" and other schemes in which a computer, or a related data processing item, is the target of the offense, including when charged as violations of 18 U.S.C. 1343 (wire fraud), 2314 (ITSP), or 2319, (copyright infringement), e.g., computer viruses or where the defendant's goal was to obtain information or property from a computer or to attack a telecommunications system or data network. (All such cases are National Priorities.)
- 03G Health Care Fraud. Fraud against Medicare, Medicaid, other government or private health insurers/providers, false billings associated with drug diversion, fraud involving the rendering of inappropriate/unnecessary medical care. If a MET or MEWA is involved, report as Program Category 03K (MEWA/MET). (All such cases involving kickbacks or bribes and other cases involving \$25,000 or more in aggregate losses are National Priorities.)
- 03S Telemarketing Fraud.
- 03Z Other White Collar Crime/Fraud. Use 03Z ONLY if one of the specific codes does not apply.

LIONS Users' Manual

Antitrust Violations

Criminal violations of federal antitrust law (may involve violations of 15 U.S.C. §§ 1, 2, 13, 14, 18, 20 and related statutes). (All such cases involving 1,000,000 or more in commerce and either pricefixing or collusive activities affecting public work projects or public service contracts are National Priorities (N).)

- 03M Antitrust Violations - Airlines
- 03N Antitrust Violations - Banking
- 03P Antitrust Violations - Defense Procurement
- 03Q Antitrust Violations - Extraterritorial Application Of
- 03R Antitrust Violations - Finance Markets, Other than Banking
- 03E Antitrust Violations - Other
(Use 03E only if specific codes do not apply.)

Narcotics and Dangerous Drugs

- 040 Drug Trafficking. Controlled substance violations involving manufacture, possession with intent to distribute, distribution and importing (may include violations of 21 U.S.C. §§ 841, 843(b), 846, 848 and 859, and the 900 series relating to smuggling. (National Priority (N).)
- 045 Simple Drug Possession. Violations involving personal possession or use under 21 U.S.C. § 844.
- 047 OCDETF. Cases assigned exclusively to the Organized Crime Drug Enforcement Task Force. (National Priority (N).)

Civil Rights Prosecution

- 050 Civil Rights - other. Use 050 only if one of the other specific codes does not apply.
- 05D Civil Rights - Law Enforcement. Violations of 18 U.S.C. §§ 241, 242; Civil Rights Act of 1968, where the subject is a law enforcement official.
- 05E Civil Rights - Slavery/Involuntary Servitude. Violations of 18 U.S.C. §§ 1581 (peonage), 1583 (enticement into slavery) and 1584 (involuntary servitude).
- 05F Civil Rights - Racial Violence, including Hate Crimes.
- 05G Civil Rights - Access to Clinic Entrances (18 U.S.C. §248).
- 05H Civil Rights - Hate Crimes Arising out of Terrorist Attacks on US

Firearms/Triggerlock

053 Firearms/Triggerlock

A firearms case is one in which a defendant was involved in the illegal use, possession, sale, receipt, transportation, transfer, purchase, or manufacture of a firearm (or firearm accessories or ammunition).

Firearms are defined according to 18 U.S.C. 921(a)(3):

The term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.

Please be aware that, under 18 U.S.C. 921(a)(4), A destructive device includes bombs, grenades, and other explosive or incendiary devices.

Immigration

055 Violations of the Immigration and Nationality Act.

Crimes Against Government Property.

056 Crimes Against Government Property.

Government Regulatory Offenses

061 Counterfeiting and Forgery. Violations of statutes relating to the counterfeiting or forgery of U.S. currency, Treasury checks or bonds or other obligations or securities of the United States. (Chapter 25 of Title 18, United States Code; may also involve violations of 18 U.S.C. §§ 371, 1341, 1962 and related statutes). (All such cases are National Priorities (N)).

062 Customs Violations - Duty. Violations of customs regulations relating to the payment of duty (may involve violations of 18 U.S.C. §§ 541, 542, 543, 1001 and related statutes). (All such cases involving \$25,000 or more in revenue losses in one transaction or \$50,000 or more in revenue losses in multiple transactions are National Priorities (N)).

063 Customs Violations - Currency. Violations of customs regulations relating to the importation or exportation of U.S. currency or monetary instruments (may involve violations of 18 U.S.C. § 1001, 31 U.S.C. §§ 1059, 1101, and related statutes). (All such cases involving \$25,000 or more in currency in one transaction, or \$50,000 or more in currency in multiple transactions are National Priorities (N)).

06F Money Laundering/Structuring (Narcotics). Violations of 18 U.S.C. §§ 1956-1957 where the proceeds are from narcotics-related activities.

06G Money Laundering/Structuring (Other). Violations of 18 U.S.C. §§ 1956-1957 where the proceeds are from non-narcotics-related activities.

LIONS Users' Manual

- 064 Energy Pricing and Related Fraud. Criminal violations of statutes and regulations relating to the sale, distribution and pricing of federally regulated energy sources (e.g., petroleum, natural gas, electricity (may involve violations of 18 U.S.C. §§ 371, 1001, 1341 and related statutes)). (All such cases involving \$500,000 or more in costs fraudulently reported or prices illegally charged for energy products are National Priorities (N)).
- 066 Health and Safety Violations - Employees. Criminal violations of federal health and safety regulations affecting the work place and employees (includes violations of 29 U.S.C. § 662 (OSHA) and 30 U.S.C. § 819 (Mine Safety)). (All such cases involving life-endangering violations, i.e., business practices and other acts or products that are likely or may be reasonably foreseen to cause death or serious bodily injury to human beings, are National Priorities (N)).
- 069 Copyright Violations. Violations of statutes relating to copyrighted material, including motion pictures, sound recordings and similar items (may involve violations of 17 U.S.C. §§ 506, 18 U.S.C. §§ 1951, 1952, 1962, 2314 and related statutes). (All such cases involving manufacturers or distributors and distribution in three or more states or countries and \$500,000 or more in aggregate losses are National Priorities (N)).
- 06A Trafficking in Contraband Cigarettes. Interstate smuggling of contraband cigarettes (may involve violations of 18 U.S.C. §§ 1951, 1962, 2314, 2342 and related statutes). All such cases involving \$100,000 or more in aggregate tax revenue losses are National Priorities (N)).
- 06B Wildlife Protection. Violations of criminal statutes and regulations relating to fish, birds and other wildlife, including violations of Endangered Species Act, Lacey Act, Marine Mammal Protection Act, Airborne Hunting Act, Black Bass Act, Migratory Bird Act, Wild Horse and Wild Burros Act, the Magnussan Act, and the Bald and Golden Eagle Act, as well as violations relating to wildlife smuggling.
- 06C Marine Resources. Includes criminal violations under the Coastal Zone Management; Marine Protection Research * Sanctuaries; Abandoned Shipwrecks; and the Outer Continental Shelf Lands Act. Also includes violations involving the Army Corps of Engineers navigable waters.
- 06D Energy Violations. Criminal violations involving Nuclear Waste issues.
- 06E Environmental Crime. Criminal violations of environmental statutes, such as the Resource Conservation and Recovery Act (RCRA); Clean Air Act (CAA); Clean Water Act (CWA); Superfund (ERCLA); Federal Insecticide, Fungicide, and Rodenticide (FIRRA); Harbors; and the Toxic Substance Control Acts (TSCA), as well as issues concerning oil pollution.
- 06Z Other Government Regulatory Offenses. (Use code 06Z ONLY if one of the specific codes does not apply).

Indian Offenses

- 065 Offenses by or against Indians in Indian country for which the U.S. has jurisdiction.

Internal Security Offense

- 070 Matters relating to the Nation's internal security, including the prosecution of cases involving treason, espionage, sedition, sabotage, and violations of the Neutrality Act, Trading with the Enemy, Munitions

Control and Fishery Conservation and Management Acts. Also the Foreign Agents Registration Act of 1938 and Military Selective Service Act.

International Terrorism

- 071 International Terrorism Incidents Which Impact on U.S. Involves acts of an international nature, including threats or conspiracies to engage in such acts, which are violent or otherwise dangerous to human life and which appear motivated by an intent to coerce, intimidate, or retaliate against a government or a civilian population ("terrorist motive"). The conduct is of an international nature if it occurs primarily outside the United States or transcends national boundaries, or involves a foreign terrorist organization.

Statutory violations which, when accompanied by a terrorist motive, constitute federal crimes of terrorism include, but are not limited to: 18 U.S.C. §§ 32, 37, 81, 175, 175b, 229, 351, 831, 842(m)&(n), 844(f)&(i), 930(c), 956, 1114, 1116, 1203, 1362, 1363, 1366(a), 1751, 1992, 1993, 2155, 2280, 2281, 2332, 2332a, 2332b, 2339, & 2340A; 42 U.S.C. § 2284; or 49 U.S.C. §§ 46504, 46505(b)(3), 46506, & 60123(b). See 18 U.S.C. § 2332b(g)(5). (National Priority (N).)

Domestic Terrorism

- 072 Domestic Terrorism. Involves acts, including threats or conspiracies to engage in such acts, which are violent or otherwise dangerous to human life, which appear motivated by an intent to coerce, intimidate, or retaliate against a government or a civilian population ("terrorist motive"), and which occur primarily within the United States and do not involve a foreign terrorist organization.

Statutory violations which, when accompanied by a terrorist motive, constitute federal crimes of terrorism include, but are not limited to, those listed under Program Category Code 071--- International Terrorism. (National Priority (N).)

Terrorism Related Hoaxes

- 073 Terrorism Related Hoaxes. Involves instances in which an individual or group of individuals convey information, knowing it to be false, concerning conduct which if true would constitute a threatened or actual terrorist act, including any act involving the purported use of a chemical, biological, radiological, or nuclear substance. (National Priority (N).)

Terrorist Financing

- 076 Terrorist Financing. Involves instances in which an individual or group of individuals, subject to the jurisdiction of the United States, knowingly provides material support or resources, directly or indirectly, to a foreign terrorist organization or to support the carrying out of a terrorist act. This includes violations brought under 18 U.S.C. §§ 2339A and 2339B (providing material support to terrorists), 1956 (where the money laundering or transfers involve specified unlawful activity of a terrorist nature), and any other federal criminal violation where the intention is to provide material support to terrorists or to conceal the provision of such support. (National Priority (N).)

Anti-Terrorism

Any matter or case where the underlying purpose or object of the investigation is anti-terrorism related (domestic or international). This program category is meant to capture United States Attorney Office activity intended to prevent or disrupt potential or actual terrorist threats where the offense conduct is not obviously a federal crime of terrorism. To the extent evidence or information exists, in any form, reasonably relating the case to terrorism or the prevention of terrorism (domestic or international), the matter should be considered “anti-terrorism.” For example, a case involving offenses such as immigration violations, document fraud, or drug trafficking, where the subject or target is reasonably linked to terrorist activity, should be considered an “anti-terrorism” matter or case. Similarly, a case of identity theft and document fraud where the defendant’s motivation is to obtain access to and damage sensitive government facilities should be considered “anti-terrorism.” (National Priority (N).)

07A Anti-Terrorism/Environmental

07B Anti-Terrorism/Identity Theft

07C Anti-Terrorism/Immigration

07D Anti-Terrorism/OCDETF Drugs

07E Anti-Terrorism/Non-OCDETF Drugs

07F Anti-Terrorism/Violent Crimes

07G Anti-Terrorism/All Others

Offenses Involving the Administration of Justice

074 Offenses Involving the Administration of Justice.

Interstate Theft

075 Theft of property in interstate transportation (18 U.S.C. §§ 659, 2117) or interstate transportation of stolen property (18 U.S.C. §§ 2314, etc.) excluding motor vehicles.

Labor Management Offense. Criminal violations relating to labor management relations, internal operations of labor unions, and similar matters.

08A Union Official Corruptions - Pension Benefit Funds. Embezzlement, conversion and other misuse of union pension, welfare, and other benefit funds (may involve violations of 18 U.S.C. §§ 664, 1954, and 1962, 29 U.S.C. §§ 186, 501c and related statutes). (All such cases involving \$25,000 or more in the aggregate are National Priorities (N)).

08B Union Official Corruption - Bribery Kickbacks. Bribery of, or extortion by, union officials or similar corrupt acts (may involve violation of 18 U.S.C. §§ 664, 1954, and 1962, 20 U.S.C. §§ 186, 501c and related statutes). (All such cases involving \$5,000 or more in the aggregate are National Priorities (N)).

08C Labor racketeering - Use of union power for personal benefit, including extortion of businesses,

Appendix A - LIONS Codes

labor/management sweetheart deals and related acts (may involve violations of 18 U.S.C. §§ 664, 1951, 1954, 1962, 29 U.S.C. §§ 186, 501c and related statutes. (All such cases are National Priorities (N)).

08Z Other Labor/Management Offense - Use code 08Z **ONLY** if one of the specific codes does not apply.

Fugitive Crimes

081 Violations involving escape (Chapter 35 of Title 18 USC), concealing and flight (Chapter 49 of Title 18, USC), and failure to appear (e.g., 18 USC 3146), but only if one of these violations is the basis for opening a new case.

Postal Service Crimes

082 Violations relating to the Postal Service, including theft of mail (18 U.S.C. § 1691, et. seq.). Does not include mail fraud under 18 U.S.C. § 1341; public corruption under program categories 011-014; or pornography/obscenity under program categories 087 or 089.)

Bank Robbery

083 May involve violations of 18 U.S.C. § 2113.

Assimilated Crimes

084 Violations of state laws adopted for an area within special federal jurisdiction such as some military posts. (See 18 U.S.C. §§ 7, 13; does not include Indian offenses assimilated under 18 U.S.C. §§ 1152-1153 (065).) Also violations of federal crimes which are the equivalent of state crimes but are enacted for the "special maritime and territorial jurisdiction of the United States" (e.g., 18 U.S.C. § 661).

Election Fraud

085 Violations relating to elections and political activity (Chapter 29 of Title 18, United States Code; may also include 18 U.S.C. §§ 371, 911, and 1341-1343.)

Motor Vehicle Theft

086 May involve violations of 18 U.S.C. §§ 2312, 2313, etc.

Theft of Government Property

088 Embezzlement and theft of money, property, collateral and other items of value from the United States (18 U.S.C. § 641, et. seq.). This includes such violations by employees of the United States not classified as public corruption crimes under program categories 011-014 or as white collar crime under program categories 031-03Z.)

LIONS Users' Manual

Pornography/Obscenity

- 087 Pornography - Child. May involve violations of the Child Protection Act of 1984, 18 U.S.C. §§ 2251-2256, and related charges.
- 089 Obscenity. May involve violations of 18 U.S.C. §§ 1461-1465 (obscenity) or 47 U.S.C. § 223 (obscene or indecent telephone calls).

Domestic Violence

- 091 Domestic Violence . May involve violations of 18 USC 2261, 18 USC 2262, 18 USC 2261A, 18 USC 922g8, 18 USC 922g9. A domestic violence case is one that charges a violation of §§ 922(g)(8), 922(g)(9), 2261, 2261A and/or 2262. It also includes any other case that the charging AUSA designates as a domestic violence crime based upon the facts of the case. The AUSA is not limited by the statutes charged. A threatening communication indictment, charging 18 U.S.C. § 875, based upon a domestic abusers threats would properly be included in the Domestic Violence Program Category Code. Similarly, a felon in possession cases, charging 922(g)(1), charged because the defendant is a domestic abuser should be included in the newly created Domestic Violence Program Category Code. Any case that is domestic violence related - and that term is to be broadly defined - should be included.

Other Criminal Prosecutions

- 090 Include in this category everything which does not fall into one of the above categories.

PROPERTY TYPE (Local)

(Codes to be designated by the District.)

PROPERTY VALUE TYPE (Local)

(Codes to be designated by the District.)

QUI TAM INDICATOR

Y Yes
N No

RELATED CASE REASON (Local)

(Codes to be designated by the District.)

RELATED PARTICIPANT REASON (Local)

(Codes to be designated by the District.)

Exhibit F

2.1.7 Lead Charge in Probation Revocation Records

The lead charge in a central system probation revocation record, from a PROMIS/USACTS II district, is from the last or only charge disposition record (CHDS).

3.0 Maintenance Procedures

3.1 Delete History File

Starting with Fiscal Year 1992, the central criminal system includes a fiscal year cumulative tape file with records that are marked for deletion from the Central Master file. Pending records on the current central master file must have a matching USAO and defendant number on the incoming transaction file, otherwise one (1) is added to the delete flag field. Records qualify for the Delete History file if the delete flag in position 500 is greater than six (6). During the next month's update cycle these records are deleted from the Central Criminal Master file. Should a discrepancy occur between the local case management system and the central criminal system, this Delete file is used to identify and correct the difference. The Delete History update is submitted monthly in the following way: 1) Enter the vol=ser numbers of the latest Delete History file, DSN=L5.L5DELETE.CR.mmmmyy and the latest criminal Central non flagged master file. 2) Global change the mmmmyy in both data sets. The mmm represents the first 3 letters of the month and yy the year of the processing date. (Example: SEP94) Remember that this file is kept by fiscal year and only the Criminal Master file is used as input for the October run.

3.2 Tape Backup of Disks for Offsite Storage

Once a week, a password protected JCL job stream is submitted to create backup tapes for the following disk packs: L50004, L50005, L50006, L50007 and L50008. The DSN are: L5.L599BCKM.L50004.GnnnnV00, L5.L599BCKM.L50005.GnnnnV00, L5.L599BCKM.L50006.GnnnnV00, L5.L50007.GDG.DATA.GnnnnV00, L5.L599BCKM.L50008.GnnnnV00. As the DSN indicates, these tapes are generation data sets. They are kept for six (6) generations and are taken offsite for safe storage by agreement with JDC. If any of these tapes are needed for restoring data back to disk, the data center must be notified so that the given tape will be retrieved and made available for usage. The time laps for this is usually 1 to 2 days.

Exhibit G



U.S. Department of Justice

Executive Office for United States Attorneys

FOIA Unit

Suite 7300, Bicentennial Building
600 E Street, N.W.
Washington, DC 20530

(202) 616-6757
FAX (202) 616-6478

March 26, 2002

*Rec'd Fax
3/26/02*

Susan Long
TRAC
488 NewHouse II
Syracuse, N.Y. 1324402100

*Rec'd msg
3/26/02*

Dear Ms. Long:

As you and I previously discussed by telephone, former EOUSA Assistant Director Suzanne Little expressed her belief that EOUSA could provide October, November, December, and January Case Management System files by March 26, 2002. I regret to inform you that EOUSA will not be able to provide you that material by that date as we had originally hoped.

Since September 11, 2001, it has become incumbent upon EOUSA to ensure that our release of data does not in any way jeopardize the Department's counter-terrorism efforts or threaten current national security interests. Specifically, EOUSA must verify that any release of our data complies with current Department directives governing publication of information which could compromise national security in light of recent events. While we do not at this time anticipate any additional redactions to the data being necessary for this purpose, the process of ensuring that our releases are consistent with the applicable Department directives will necessitate additional time.

Because it will not be possible to release the records in question in accordance with the schedule we previously discussed, I am writing to attempt to arrange an alternative time frame for processing your request. We are still committed to providing you with this data, and we believe that we will be able to do so by April 16, 2002. We hope that this will be satisfactory to you.

Sincerely,

Teresa Davis
Attorney Advisor

Exhibit H



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7300, Bicentennial Building
600 E Street, N.W.
Washington, DC 20530

(202) 616-6757
FAX (202) 616-6478

September 17, 2002

VIA TELEFAX

Susan B. Long
Co-Director, TRAC and Associate Professor
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Dear Ms. Long:

I am writing to inform you that there will be a delay in our production of the May case management tapes, and tapes for subsequent months, in response to your Freedom of Information Act requests. Director Guy A. Lewis, who recently was appointed as the Director of the Executive Office for United States Attorneys, has requested that we conduct a thorough inquiry as to whether the release of information within the Central System could compromise national security or jeopardize the Department's anti-terrorism efforts, particularly in light of the recent addition of new coding categories to the Central System. This inquiry will be a top priority of this office, and will be concluded as expeditiously as possible. We estimate that we will be able to provide the requested data by mid-October 2002.

I apologize for this delay and any inconvenience it may cause.

Sincerely,

Marie A. O'Rourke
Assistant Director

Exhibit I



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7100, Bicentennial Building
600 E Street, N.W.
Washington, DC 20530

(202) 616
FAX (202) 616

September 25, 2002

VIA TELEFAX

Susan B. Long
Co-Director, TRAC and Associate Professor
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Re: Requests #02-1986, 02-2065, 02-2893, 02-2896

Dear Ms. Long:

I have received your letter of September 19, 2002, expressing concern with this office's disclosure of monthly central case file data for the above-listed Freedom of Information Act requests.

In my letter of September 17, 2002, I informed you that EOUSA is undertaking a review of whether data released from the Central System could compromise national security or jeopardize the Department's anti-terrorism efforts. You responded that EOUSA previously completed a thorough review and informed you that EOUSA had determined that releasing the information in question did not compromise national security or jeopardize anti-terrorism efforts. We are unaware of any such communication by this office. In any case, the new Director of EOUSA has determined that a thorough review must be undertaken at this time in light of evolving governmental concerns with sensitive law enforcement information. Any decisions made as a result of this review will apply only to information released from that time forward - therefore, the Vaughn index and motion for summary judgment that were filed in the litigation concerning the FY 1974-2000 databases will not be affected.

In your September 19 letter, you requested that EOUSA release those records which do not contain the new codes. The new codes are only a part of the concern that we explained in our letter of September 17; therefore, releasing only those records that do not contain the codes will not be feasible. I assure you, however, that we will conduct the review discussed in our September 17 letter expeditiously. We expect to notify you of our progress by mid-October.

Finally, it is not clear whether your request for a copy of any directive from Lewis and documentation of new coding categories is intended as a Freedom of Information request. Please let us know if this is the case, so that we may put your request in the proper order of its receipt for processing.

Sincerely,

Marie A. O'Rourke

Marie A. O'Rourke
Assistant Director

Exhibit J



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7300, Bicentennial Building
600 E Street, N.W.
Washington, DC 20530

(202) 616-6757
FAX (202) 616-6478

October 16, 2002

VIA TELEFAX

Susan B. Long
Co-Director, TRAC and Associate Professor
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Dear Ms. Long:

In my letter to you of October 3, 2002, I informed you that I would notify you by mid-October of our progress in conducting a review of EOUSA's central case management files. We have not yet concluded our review, but we expect to do so next week. At this time, we can provide you with some of the tapes you have requested under the Freedom of Information Act from EOUSA's civil and criminal case management files (civil flagged master, criminal charge file and civil delete history file) for the months of May, June and July 2002. These tapes will be sent to you today. Once our review is concluded, I will provide you with an estimated date as to when you can expect to receive the remaining tapes (criminal flagged master, criminal immediate declination file and criminal delete history file).

Additionally, we have completed our processing of your May 20, 2002 FOIA request, #02-1395, for schedule and processing records for monthly central file development. We are sending these records to you today.

Again, I apologize for this delay and any inconvenience it may cause. We appreciate that you are eager to receive monthly data, and we are making every effort to provide you with the requested records as expeditiously as possible.

Sincerely,

Marie A. O'Rourke
Assistant Director

Exhibit K



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7300, Bicentennial Building
600 E Street, N.W.
Washington, DC 20550

(202) 616-6757
FAX (202) 616-6474

October 29, 2002

VIA TELEFAX

Susan B. Long
Co-Director, TRAC and Associate Professor
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Re: Freedom of Information Act ("FOIA") Requests #02-1986; #02-2065; #02-2893;
and #02-2896

Dear Dr. Long:

We have determined that the continued release of the "Program Category" field from records of ongoing criminal investigations in EOUSA's Central System could reasonably be expected to interfere with the Department's law enforcement efforts, particularly in the area of anti-terrorism, and could endanger the lives and physical safety of individuals. The information in the "Program Category" field, in combination with other information in the records, could enable criminal suspects to determine the existence, scope, and direction of investigations, and could endanger the safety of potential witnesses. Therefore, in accordance with 5 U.S.C. §§ 552(b)(7)(A) and (b)(7)(F), we will redact the information contained in the "program category" field from the records of ongoing investigations in the Criminal Flagged Master, Criminal Unflagged Master, and Criminal Delete History files for the above-referenced FOIA requests.

We are in the process of developing a computer redaction program that will implement our withholding determination. We estimate that we will be able to provide you with the requested records by December 2, 2002.

This is our final agency decision. You may appeal by writing within 60 days to:

The Office of Information and Privacy
United States Department of Justice
Flag Building, Suite 570
Washington D.C. 20530.

Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act/Privacy Act Appeal." After the appeal has been decided, you may invoke judicial review by filing a complaint in the United States District Court in which you reside or have your principal place of business, the judicial district in which the records are located, or the District of Columbia.

Sincerely,

Marie A. O'Rourke

Marie A. O'Rourke
Assistant Director

Exhibit L



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7300, Bicentennial Building
600 E Street, N.W.
Washington, DC 20530

(202) 616-6757
FAX (202) 616-6478

March 4, 2003

VIA FEDERAL EXPRESS

Susan B. Long
Co-Director, TRAC and Associate Professor
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Re: Freedom of Information Act ("FOIA") Request # 03-02

Dear Dr. Long:

In response to your above-referenced FOIA request, enclosed is a CD containing the monthly case management files for December 2002, along with the December Systems Output. We have made one change this month affecting the criminal delete history file. Consistent with our practice of redacting information in the "lead charge" field from records of ongoing criminal investigations, and consistent with our determination on October 29, 2002, to redact information contained in the "program category" field from records of ongoing investigations in the criminal delete history file, we will now be redacting information contained in the "lead charge" field from records of ongoing criminal investigations in the criminal delete history file.

The delete history file is a system maintenance file, which is created during an automated process to identify records which no longer exist in LIONS. If a record previously present in EOUSA's master file does not appear in the monthly extracts for a period of six months, the record is deleted from the master file and placed in the delete history file until the end of the fiscal year.

A record may cease to appear in the extracts as a result of clerical changes; this does not necessarily signify that the case has been closed. For example, LIONS does not allow districts to change certain fields once a record is entered. Thus, the districts are required to make certain corrections by deleting the entire record and re-entering the correct information, thereby generating a new record. We have determined that under this process, information regarding open and ongoing investigations may exist in the criminal delete file.

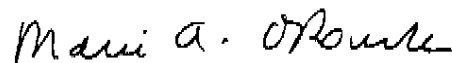
11/11/2002 11:40 010700130 HRAC PAGE 03/03

The continued release of "criminal lead charge" information from records of ongoing investigations in the criminal delete files in EOUSA's central case management database could reasonably be expected to interfere with the Department's law enforcement efforts. The information in the "criminal lead charge" field, in combination with other information in the records, could enable criminal suspects to determine the existence, scope, and direction of investigations. Therefore, in accordance with 5 U.S.C. § 552(b)(7)(A), we will redact the information contained in the "criminal lead charge" field from records of ongoing investigations in the criminal delete history files, beginning with the December 2002 data and for subsequent months.

This is a final agency decision. If you disagree with the decision to withhold certain information, you may appeal the decision in this matter by writing within sixty (60) days from the date of this letter to: Office of Information and Privacy, United States Department of Justice, Flag Building, Suite 570, Washington, DC 20530. Both the envelope and letter of appeal must be clearly marked "Freedom of Information Act/Privacy Act Appeal."

After the appeal has been decided, you may seek judicial review by filing a complaint in the United States District Court for the judicial district in which you reside or have your principal place of business, the judicial district in which the requested records are located, or in the District of Columbia.

Sincerely,



Marie A. O'Rourke
Assistant Director