

**BUREAU OF PRISONS OVERSIGHT: THE
IMPORTANCE OF FEDERAL PRISON INDUSTRIES**

HEARING

BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE OVERSIGHT
OF THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

THE BUREAU OF PRISONS OVERSIGHT OF THE ROLE AND IMPORTANCE
OF THE FEDERAL PRISON INDUSTRIES

MAY 24, 1999

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BUREAU OF PRISONS OVERSIGHT: THE IMPORTANCE OF FEDERAL PRISON INDUSTRIES

MONDAY, MAY 24, 1999

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL JUSTICE OVERSIGHT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 3:12 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. The subcommittee will come to order.

I am pleased to hold this oversight hearing today regarding Federal Prison Industries, the most important inmate program of the Federal Bureau of Prisons. Created during the Great Depression, FPI is a program for managing, training, and rehabilitating inmates in Federal prisons.

The Bureau of Prisons plays a key role in America's fight against crime. To protect our citizens, America is placing more and more dangerous and violent criminals in prison. The number of inmates in Federal prisons has more than doubled in the past decade, and we can expect that trend to continue.

One of the main reasons crime rates in America are going down is because the number of criminals we are putting behind bars is increasing. The Bureau of Prisons has an extremely important and complex task in housing and, to the extent possible, rehabilitating these inmates. FPI is critical to this task.

Prisoners must work. Idleness and boredom in prison leads to mischief and violence. FPI keeps inmates productively occupied, which helps maintain prison safety and security.

Moreover, prisoners who work in FPI develop job skills and learn a work ethic. As a result, they adjust better in prison and are better prepared to become productive members of society when they leave.

FPI is a self-sufficient government corporation. It would be extremely expensive to create programs that would provide similar benefits to inmates and similar security to prison facilities.

I am very concerned about current efforts to change the mandatory source preference that FPI receives from Federal agencies. FPI

may only sell products to the Federal Government, and further restricting FPI's limited market could endanger the program.

The Department of Defense represents almost 60 percent of FPI sales. If changes are made regarding procurement for Federal agencies, such as Defense, then we should consider providing Prison Industries other opportunities to sell its products, such as allowing it to sell in the commercial market products that are currently imported from foreign countries and made with foreign labor.

The Department of Defense and Bureau of Prisons have just completed a joint study that we ordered in a defense authorization bill 2 years ago, and I am pleased that we will hear about the findings of this study today.

Prison Industries does not have an advantage over the private sector. Although inmates make less money than civilian workers, FPI must deal with many hidden costs and constraints that do not apply to the private sector. For example, working inmates must be closely supervised, adding to labor costs, and extensive time-consuming security procedures must be followed.

While the private sector often specializes in certain products, FPI by law must diversify its product lines to lessen its impact on any one industry. Also, the private sector tries to keep labor costs low, while FPI keeps its factories as labor-intensive as possible. Moreover, inmate workers generally have little education and training and often have never held a steady job.

Many private businesses depend on the program, providing FPI raw materials and component parts. Contracts for such purchases are awarded in nearly every State, and over half go to small businesses.

Moreover, FPI helps victims of crime recover the money they are due. The program requires that 50 percent of all inmate wages be used to pay for victim restitution, fines, child support, or other court-ordered payments. Last year, FPI collected nearly \$2 million for this purpose.

FPI is a correctional program that is essential to the safe and efficient operation of our increasingly overcrowded Federal prisons. While we are putting more and more criminals in prison, we must maintain the program that keeps them occupied and working.

While Prison Industries is essential, it is partly a business, and it should operate as efficiently and effectively as possible within the constraints imposed on it. Federal agencies should be provided products that are of at least the same quality and price as the private sector, and they should receive them in a timely manner. Previous studies from GAO and other sources have raised questions regarding customer service. For example, the joint study with DOD found that timely delivery remains a significant concern of Defense customers. FPI must work tirelessly to address these issues.

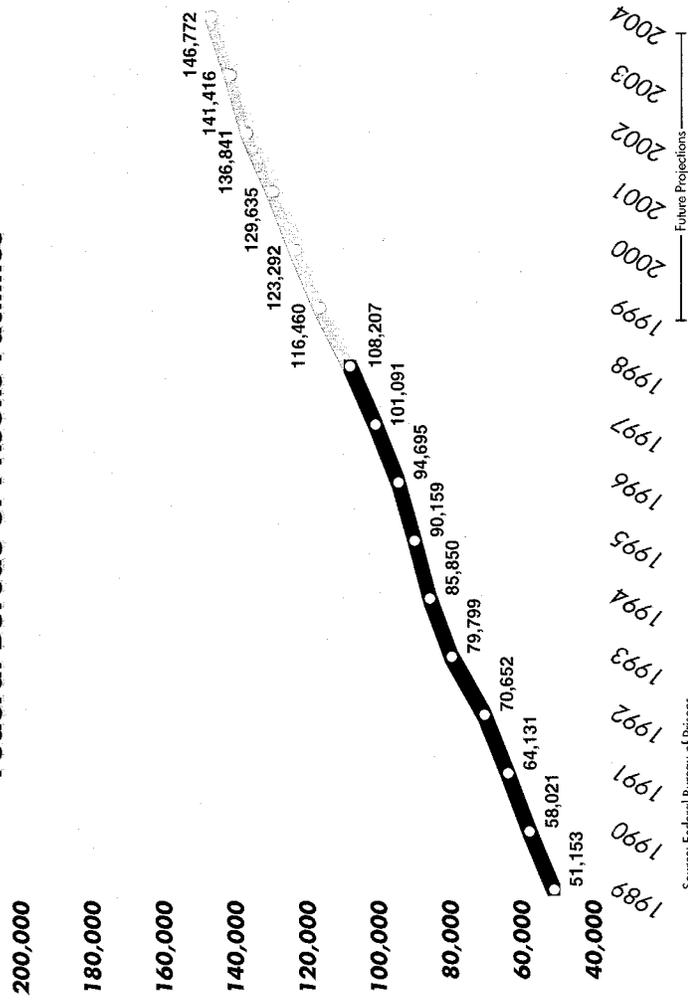
I wish to thank the witnesses for appearing today, and I look forward to discussing the importance of Federal Prison Industries.

I wish to place in the record a listing of the total amount of FPI contracts awarded by States to private sector companies in 1998, and a chart showing the growth in inmate population. I ask unanimous consent that that be done.

[The listing and chart follow:]

Growth in Inmate Population

Federal Bureau of Prisons Facilities



Source: Federal Bureau of Prisons

Senator THURMOND. Also I would like to put in the record the prepared statement of Senator DeWine.
 [The prepared statement of Senator DeWine follows:]

PREPARED STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR
 FROM THE STATE OF OHIO

First, let me thank our chairman, Senator Thurmond, for holding a hearing to review the Federal Prison Industries program and the federal "mandatory source preference" rule. In light of recently introduced legislation designed to eliminate the Department of Defense's mandatory source preference for FPI products, this issue has taken on new immediacy. Today, the FPI provides numerous goods and services under the trade name UNICOR to a variety of federal departments and agencies, primarily the Department of Defense. In fact, federal mandatory preferences for UNICOR products assist the FPI to remain entirely self-supporting. In turn, FPI continues to strive towards the achievement of two important goals—safer prisons and safer communities—goals which I strongly support. FPI also continues to try and improve upon its services and relationships with customers, while finding new ways to wean itself from a reliance upon mandatory source preferences, which some in the private sector have criticized. I appreciate the willingness of all today's witnesses to come and explain their positions regarding FPI to the Subcommittee.

Since the program's creation by Congress in 1934, FPI has sought to make prisons more manageable institutions, and as a result safer places for those who live and work in them. Idleness in prisons can lead to misconduct. By occupying as many prisoners as possible in labor intensive work activities, inmates have less opportunity to cause disturbances, and management of correctional institutions should be easier for staff. Work not only keeps inmates out of trouble; it can also be an effective incentive to induce good behavior. Since good time credit and parole opportunities have been reduced or eliminated in our federal prisons, work programs remain as one of the best proven methods of eliciting good behavior from inmates. Today, we will hear powerful testimony from our corrections officials supporting FPI's value as a prison safety and management tool.

Perhaps more importantly, work activities can teach inmates skills and values that may allow them to reenter our communities as productive, law abiding citizens. In fact, two recent studies indicate that recidivism rates drop significantly among populations of former inmates who have participated in prison work programs. The Bureau of Prisons just completed a twelve year study of FPI which indicates that inmates who participated in FPI were 24 percent more likely to find work after release and, consequently, less likely to commit another criminal act. Another study done by the California Board of Corrections makes similar findings. I am encouraged by such findings, as I am personally committed to finding ways in which the federal government can reduce our Nation's unacceptably high crime rate.

FPI is not a business—it is a correctional program. Rather than seeking standard business efficiencies, increasing productivity and cutting costs to generate higher profit margins, FPI employs as many inmates as possible in inefficient, labor-intensive work. However, by law, the FPI must also function as a self sustaining program and produce quality products that are cost competitive with similar private sector products. Accordingly, the mandatory federal source referencing rule was crafted to assist FPI overcome these various constraints and secure a stable customer base for its products. The mandatory source preference rule reduces the added expense of advertising goods and services, and soliciting private sector partners that FPI would otherwise incur. In practice, the mandatory rule seems to be quite workable. FPI's federal government customers give the program high marks. The DoD has just conducted a study of the mandatory source rule and its procurement of FPI goods. The Department found that FPI rated average to excellent in every category from quality to price of their products. DoD and FPI are also currently exploring ways to improve their procurement relationship to ensure that the source preference rule remains mutually beneficial to both parties.

Recently, some in the private sector have expressed concern about the potential negative impact of the mandatory preference rule and FPI on their efforts to secure contracts with the Federal government. I am impressed, however, with the FPI's efforts to reduce any adverse impact on private sector business. First, the FPI, by law, must diversify its goods and services in order to minimize the level of competition with any one industry or type of business. Indeed, FPI provides a range of goods and services to the Federal government from office equipment to electronics. Further, FPI must avoid capturing more than a reasonable share of the market among federal departments. I believe some of our witnesses today will testify to the fact

that FPI goods and services currently account for less than 1 percent of federal government purchases. Additionally, FPI maintains an Industry Involvement Guidelines Process which allows interested industry officials to comment on any proposed new line of FPI goods or services. And, finally, FPI has adopted a long range strategy to direct more of their efforts toward non-mandatory source preference work, such as providing services, which do not fall under the mandatory source rule, or subcontracting with other companies that already have government contracts.

Other voices in the private sector have been raised in strong support of FPI and the mandatory source preference rule. Many small companies have secured government work, by teaming up with FPI, that may otherwise not have had the resources to compete for these highly sought-after contracts. In fact, today, we will hear from one small businessman who credits FPI with enabling his business to begin and grow through a partnership with the program on a DoD electronics contract. FPI also aides business by purchasing raw materials and services. In fact, for every dollar in FPI sales, it is estimated that 76 cents goes directly back to private sector companies. FPI accounted for \$419 million in private sector business last year. Sixty two percent of these purchases were from small and/or minority owned or disadvantaged businesses.

The Federal Prisons Industries program continues to aim for the goals articulated by Congress over sixty years ago. On balance, the program seems to be meeting these twin goals of making our prisons and communities safer. Moreover, the program continues to seek new ways to maximize its utility as a correctional tool, while limiting any negative impact on private business. I support the aims of this long-standing program. I know today's discussion will be thoughtful and productive, and I look forward to hearing our witnesses' testimony. Thank you again, Mr. Chairman.

Senator THURMOND. We have just received a statement of administration policy on the defense authorization bill. It states that the administration opposes section 806 in the bill which would essentially eliminate the FPI mandatory sourcing with the Defense Department. I wish to read this statement into the record.

The administration opposes section 806 which would essentially eliminate the Federal Prison Industries' mandatory sourcing with the Defense Department. Such action could harm the FPI program, which is fundamental to the security of Federal prisons. In principle, the administration believes that the Government should support competition for the provision of goods and services to Federal agencies. However, to ensure that Federal inmates are employed in sufficient numbers, the current mandatory sourcing requirement should not be altered until an alternative program is designed and put in place. Finally, this provision would only address mandatory sourcing for the Defense Department without regard to the rest of the Federal Government.

I will now introduce the first panel today. Our first witness is Dr. Kathleen Hawk Sawyer. Dr. Sawyer, I am glad to see you again.

Ms. SAWYER. Good to see you, Senator.

Senator THURMOND. I have had the pleasure of working with you in the past, and you are a very efficient, able, and fine lady.

Ms. SAWYER. Thank you, sir.

Senator THURMOND. She is the Director of the Justice Department's Federal Bureau of Prisons with 23 years of management and training experience in the Bureau of Prisons. She doesn't look that old.

Ms. SAWYER. Thank you, Mr. Chairman.

Senator THURMOND. She currently oversees the operation of 94 Federal institutions. She holds a bachelor's degree from Wheeling

Jesuit College in West Virginia and both an M.A. and a Doctor of Education degree from West Virginia University.

Our second witness is Phil Glover, president of the Council of Prison Locals, American Federation of Government Employees, and senior officer at the Federal correctional institution in Loretto, PA. Mr. Glover worked as a line staff correctional officer with the Bureau of Federal Prisons from 1990 to 1997.

Our third witness is Joseph Aragon, chairman of the board of the Federal Prison Industries. He is president and chief executive officer of ProServe Corporation, an award-winning food service management company. Mr. Aragon, a graduate of Florida State University, worked for the Bureau of Prisons for 4 years.

We will start with Director Sawyer and go down the line. Thank you all for being here today.

PANEL CONSISTING OF KATHLEEN HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS, AND CHIEF EXECUTIVE OFFICER, FEDERAL PRISON INDUSTRIES, WASHINGTON, DC; JOSEPH M. ARAGON, CHAIRMAN, BOARD OF DIRECTORS, FEDERAL PRISON INDUSTRIES, WASHINGTON, DC; AND PHILIP W. GLOVER, PRESIDENT, COUNCIL OF PRISON LOCALS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, JOHNSTOWN, PA

STATEMENT OF KATHLEEN HAWK SAWYER

Ms. SAWYER. Thank you, Mr. Chairman. Good afternoon, and I appreciate the opportunity to appear before you today to discuss the Federal Prison Industries Program.

The debate about the role of FPI has certainly increased in intensity over the past several years. The debate involved many complex issues and involves parties with conflicting views. FPI cannot address this important public policy on its own but needs the input of all affected parties.

The Federal Bureau of Prisons believes, as you stated, Mr. Chairman, that it has the obligation to provide realistic and productive work opportunities for inmates in our custody. We hope that the private sector business and labor communities will work with us in crafting a mutually acceptable solution. We hope we can establish a collective commitment from FPI, elected officials, business, and labor to craft a reasonable and viable solution. The task may not be easy, but we believe that consensus can be achieved if the goal at the outset is a win/win solution, and the administration is actively reviewing options to reach such a solution.

FPI has been and continues to be the Bureau of Prisons' most important, efficient, and cost-effective correctional management program to teach inmates marketable work skills, to relieve inmate idleness, and contribute to the orderly operation of our prisons.

A comprehensive study conducted over a 12-year span by the Bureau of Prisons demonstrates that FPI is an important rehabilitation tool which provides inmates an opportunity to develop work ethics and work skills that can be used upon release from prison. Comparing inmates with similar characteristics, the study found that FPI training programs contribute substantially to lower recidivism rates and increased job success for inmates after release. In

fact, inmates employed by FPI were found to be 24 percent more likely to become employed upon release and remain crime-free for as many as 12 years.

The FPI program also contributes significantly to the safety and security of the Bureau's correctional institutions. FPI helps keep inmates productively occupied and reduces inmate idleness and the violence associated with that idleness. It is important to the security of our prisons, our staff, our inmates, and the communities in which they are located.

FPI's role as a correctional program has grown more important in the face of a dramatically rising inmate population. Overcrowding in prisons is a continuing problem, and the Bureau relies heavily on its correctional programs as management tools to combat the dangers caused by inmate idleness. With the abolition of parole and the reduction of good time credit, FPI is one of the few incentives left to encourage positive inmate behavior. Inmates are required to maintain clear conduct and participate in educational programs in order to work in FPI.

FPI also reduces the costs of incarceration by being self-sustaining and providing an important inmate program at no cost to the taxpayer. As you indicated, Mr. Chairman, in your comments, our inmates are required to contribute 50 percent of their earnings toward victim restitution, child support, and fines, and we collected nearly \$2 million in 1998 from UNICOR inmates to satisfy those obligations.

As I have testified in the past, I strongly believe that FPI is the most successful prison industries model in America. The evidence confirms that no other prison industries program has done more comprehensive research to demonstrate the post-release recidivism benefits of inmate employment. No other program has so greatly diversified its production so as to minimize impact on any particular industry, and it has been continuously self-sustaining for over 60 years.

The elevated level of controversy about FPI is a relatively recent development in its 64-year history. The intensity of debate directly correlates with FPI's increased output of goods and services which, in turn, has been driven by the bipartisan Federal criminal justice policy for the past two decades, of putting more people in prison for longer periods of time. There is a clear and direct relationship, fully acknowledged by former and the current administration and Congress, between the number of Federal inmates and the number of FPI jobs needed.

The future challenge in this regard is daunting. The Bureau of Prisons inmate population increased more in fiscal year 1998 than in any previous year, by more than 10,000 inmates. Current forecasts for fiscal year 2006 project over 177,000 inmates in our custody, a possible increase of almost 50,000 inmates in just 7 years. The vast majority of these will be housed in Bureau of Prisons institutions. We have provided as an attachment a chart which illustrates the dramatic increase in inmate population. As the Bureau's population grows, the need for expansion of Federal Prison Industries grows commensurately.

In conclusion, FPI is committed to the goal of providing self-sustaining work programs for an inmate population, but we need assistance in coming up with a mutually agreeable solution.

That concludes my comments, Mr. Chairman, and I am very willing to answer any questions you or other subcommittee members may have.

[The prepared statement of Ms. Sawyer follows:]

PREPARED STATEMENT OF KATHLEEN HAWK SAWYER

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the Federal Prison Industries, Inc. (commonly referred to as FPI or UNICOR, its trade name) program.

The debate about the role of FPI has increased in intensity over the past several years. There are numerous reasons for this, some of which I will discuss later on. The debate involves complex issues and involves parties with conflicting views. FPI cannot address this important public policy on its own but needs the input of all affected parties.

The Federal Bureau of Prisons (BOP) believes it has an obligation to provide realistic and productive work opportunities for its inmates. We hope we can establish a collective commitment from FPI, elected officials, business and labor to craft a reasonable, viable solution. The task may not be easy, but we believe that consensus can be achieved if the goal at the outset is a "win-win" solution, and the Administration is actively reviewing options to reach such a solution.

THE FPI PROGRAM

FPI has been and continues to be the BOP's most important, efficient, and cost effective correctional management program to teach inmates marketable work skills, relieve inmate idleness, and contribute to the orderly operation of federal prisons. FPI's statute carefully balances key, and sometimes competing, public policy interests such as the impact of prisoner production on the private sector, the need to generate sufficient sales to employ and provide skills training to as many inmates as practicable, and the expectation that the program be self-sustaining. To maintain an appropriate balance between these interests and to ensure that the FPI program is administered fairly and effectively, the statute also provides for a Presidentially-appointed Board of Directors to govern the affairs of the corporation.

A comprehensive review of FPI's statute strongly conveys that FPI is first and foremost a correctional program, whose principal purpose is to provide meaningful job skills training for inmates. A comprehensive study conducted over a 12-year span by the BOP, entitled the Post Release Employment Project (PREP), demonstrates that FPI is an important rehabilitation tool which provides inmates an opportunity to develop work ethics and skills that can be used upon release from prison. Comparing inmates with similar characteristics, the study found that FPI training programs contribute substantially to lower recidivism and increased job-related success for inmates after their release. Inmates employed by FPI were found to be 24 percent more likely, upon release, to become employed and remain crime-free for as long as 12 years after release.

The FPI program also contributes significantly to the safety and security of the BOP's correctional facilities. FPI helps keep inmates productively occupied and reduces in-mate idleness and the violence associated with it. It is essential to the security of the Federal Prison System, its staff, inmates, and the communities in which they are located.

FPI's role as a correctional program has grown more important, particularly in the face of a dramatically rising inmate population. Overcrowding in the nation's prisons is a continuing problem, and the BOP relies heavily on its correctional programs as management tools to combat the dangers caused by inmate idleness. With the abolishment of parole and the reduction of good time credit, FPI is one of the few incentives left to encourage positive inmate behavior. Further, inmates are required to maintain clear conduct and participate in educational programming in order to maintain employment in FPI.

FPI also reduces the costs of incarceration by being self-sustaining, providing an important inmate program at no cost to the taxpayers. An additional direct benefit to the taxpayer, is the requirement that inmates employed by FPI contribute 50 percent of their earnings toward victim restitution, child support, and fines. In fiscal year 1998, nearly \$2 million was collected from UNICOR inmates toward these obligations.

As I have testified in the past, I strongly believe that FPI is the most successful prison industries model in American history. Specifically, the evidence confirms that no other prison industries program: (1) employs a greater percentage of the inmate population; (2) has done more comprehensive research to demonstrate the post-release recidivism benefits of inmate employment in industries; (3) has so greatly diversified its production so as to minimize impact on any particular industry; (4) has been continuously self-sustaining for over 60 years; (5) creates as many jobs in the private sector, especially among small and disadvantaged businesses, with its procurements; and, very importantly, (6) is as integrated into the management of the correctional agency and the individual prisons.

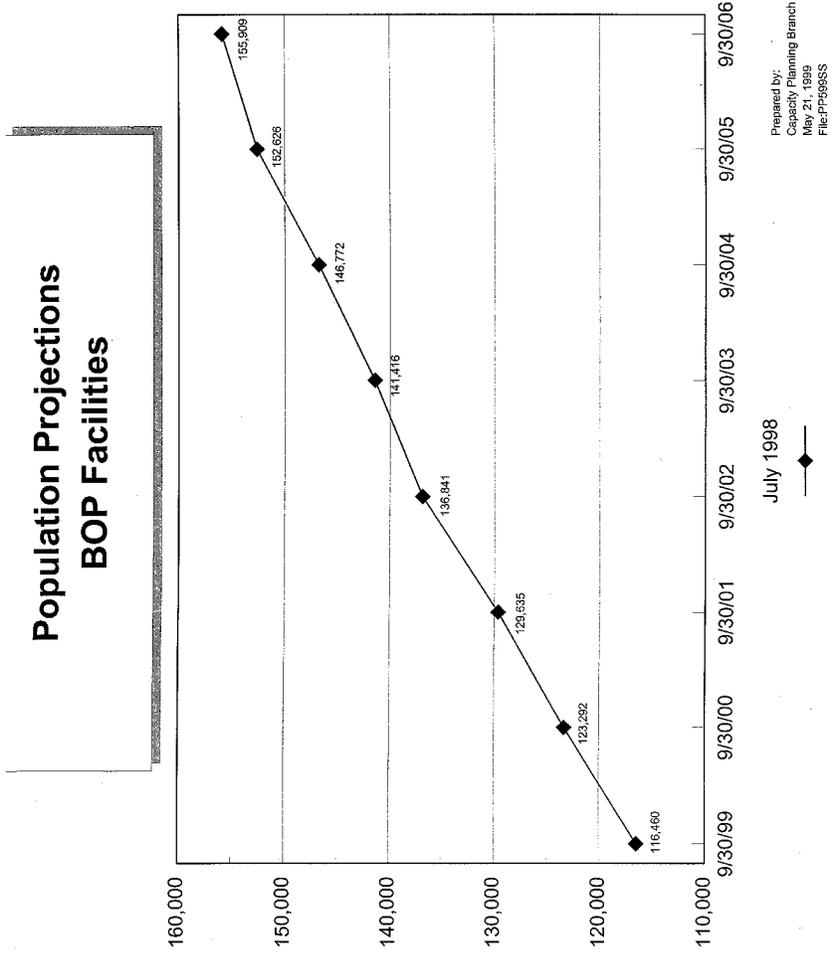
THE SOURCE OF THE CONTROVERSY

The elevated level of controversy about FPI is a relatively recent development in its 64-year history. The intensity of debate directly correlates with FPI's increased output of goods and services which, in turn, has been driven by the bi-partisan federal criminal justice policy for the past two decades, of putting more people in prison for longer periods of time. There is, however, a clear and direct relationship, fully acknowledged by former and the current Administration and Congress, between the number of federal inmates and the number of FPI inmate jobs needed.

The future challenge in this regard is daunting. The BOP inmate population increased more in fiscal year 1998 (over 10,000) than in any previous year. Current forecasts for fiscal year 2006 project over 177,000 inmates in BOP custody, a possible increase of approximately 50,000 inmates in just 7 years, the vast majority of which will be housed in BOP facilities. This continued population increase is due primarily to increased sentences, increased convictions for drug and immigration offenses, and the absorption of the District of Columbia prison population. See Attachment A. As BOP's population grows, the need for expansion of FPI grows commensurately.

In conclusion, FPI is committed to the goal of providing self-sustaining work programs for an inmate population which continues to grow unabated. However, this challenge cannot be achieved by FPI alone. As greater numbers of convictions occur, it is essential that there also be commensurate support for realistic alternatives to create additional inmate jobs.

Again, Mr. Chairman, I appreciate this opportunity to provide our views concerning the BOP's most important correctional program. This concludes my remarks. I would be happy to answer any questions you or other members of the Subcommittee may have.



Senator THURMOND. Mr. Aragon.

STATEMENT OF JOSEPH M. ARAGON

Mr. ARAGON. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you today to speak about Federal Prison Industries, FPI.

I come here as a private citizen with no vested interest in FPI except for that which has been bestowed upon me by the President of the United States. I currently serve as Chairman of FPI's Board of Directors, a board that I was appointed to by the President almost 5 years ago.

By way of introduction, let me first provide you with a brief overview of the board of directors and those who serve at the will of the President.

The presidentially appointed board members are selected to govern FPI's operations and advance its mission by establishing general policies and long-range corporate plans. Commissioned to serve without compensation, the board uses its diverse background experience in business, government, and industry to achieve FPI's statutory mandates. This responsibility evolves from FPI's unique mission to: operate in a self-supporting manner without appropriated funds from Congress; create constructive activities for Federal inmates to relieve stress and idleness; and to instill work ethics and job skills in inmates to reduce the rate of recidivism.

The board itself is comprised of six members representing industry, labor, agriculture, retailers, and consumers, the Secretary of Defense, and the Attorney General.

The board consists of a wide variety of accomplished individuals. Together, we are responsible for administering all aspects of FPI's operations, key aspects of which are: Approving FPI's financial operating plans, developing strategic plans, approving the establishment and activation of new factories, approving major capital expenditures, and approving FPI proposals to produce a new product or expand its market share of an existing product.

The majority of FPI's board members, however, are employed in the private sector and are keenly aware of the challenges that those in the private sector, and small business owners, in particular, face.

Mr. Chairman, I am a small business owner and have operated my business for 15 years. Some of the work that we do is currently performed by UNICOR operations in various facilities. However, I believe the program's overriding interest in employing inmates supersedes that lack of market share that I could possibly go after.

The challenge to the board is to be responsive to the concerns and interests of a vast segment of private sector groups ranging from professional trade organizations, business corporations, and various manufacturers to organized labor groups, public officials, and individual private citizens, while guiding FPI on a course that will ensure its self-sufficiency in the future.

Perhaps the most visible way in which the board fulfills its responsibility is through the guidelines process. When FPI proposes to produce a new product or significantly expand production of an existing product, it must first conduct a market impact study. This study must identify and consider: The number of vendors currently

meeting the requirements of the Federal Government; the proportion of the Federal market for the product currently served by small business and small disadvantaged businesses or businesses operating in labor-surplus areas. We also consider the size of the Federal and non-Federal markets for the product, the projected growth in the Federal Government's demand for the products, the projected ability of the Federal market to sustain both FPI and private vendors, and the trends of the commercial market for a comparable product.

FPI must then announce in the Commerce Business Daily its proposal and invite comments from private industry and organized labor. FPI must also directly notify those trade associations affected and allow them to provide comments. The board of directors has provided copies of the market impact study, the comments received, and FPI's recommendations. The board also holds hearings at which the public can come and provide testimony. At the conclusion of the above process, the board renders its decision, which is also published in the Commerce Business Daily.

As a member of the board, I can state that we take our position and our representative status very seriously when making these decisions. By Federal statute, we are called upon, on the one hand, to provide employment for the greatest number of inmates who are eligible to work but, on the other hand, to represent a segment of society that often has competing interests. This task is compounded by the continued spiraling growth of the Federal inmate population, as noted by Director Hawk Sawyer in her testimony.

We are constantly struggling with the challenge of balancing the needs of FPI while minimizing the impact on the private sector. When there has been persuasive information that FPI might have an adverse impact on a particular industry, especially one dominated by small business, the board has restricted and even precluded FPI's presence in that industry.

Mr. Chairman, if there is one thing I know all the board members would agree on, it is the fact that there are no easy answers or magical solutions. The current process, I believe, provides for wide-ranging input and representation, compels full consideration of all the relevant issues, and allows public policy to be implemented in the fairest and most responsible manner. If we are going to change things, the changes must be measured, balanced, and mutually beneficial. There is no black or white nor right or wrong. Responsible public policy must take into account all of the legitimate interests involved.

Mr. Chairman, this concludes my remarks. I would be pleased to answer any questions you or other members of the subcommittee might have.

Thank you.

[The prepared statement of Mr. Aragon follows:]

PREPARED STATEMENT OF JOSEPH M. ARAGON

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to speak about Federal Prison Industries (FPI).

I come here as a private citizen with no vested interest in FPI except for that which has been bestowed upon me by the President of the United States. I currently serve as Chairman of FPI's Board of Directors, a Board that I was appointed to by the President almost five years ago.

By way of introduction, let me first provide you with a brief overview of the Board of Directors and those who serve at the will of the President.

BOARD OVERVIEW

The Presidentially-appointed Board members are selected to govern FPI's operations and advance its mission by establishing general policies and long range corporate plans. Commissioned to serve without compensation, the Board uses its diverse background experience in business, government, and industry to achieve FPI's statutory mandates. This responsibility evolves from FPI's unique mission to : (a) operate in a self-supporting manner without appropriated funds from Congress, (b) create constructive activities for Federal inmates to relieve stress and idleness, and (c) instill work ethics and job skills in inmates to reduce the rate of recidivism.

The Board itself is comprised of six members representing industry, labor, agriculture, retailers and consumers, the Secretary of Defense and the Attorney General. They are as follows:

1. Susan Loewenberg represents industry. Ms. Loewenberg has worked in the communications industry since 1974 and is currently Producing Director of L.A. Theatre Works;
2. Richard Womack represents labor. Mr. Womack has served as Director of the Office of Civil Rights for the AFL-CIO since 1986;
3. Todd Weiler represents the Secretary of Defense. Mr. Weiler is Deputy Assistant Secretary of the Army for Reserve Affairs, Mobilization, Readiness and Training (RAMRT);
4. Stephen Colgate represents the Attorney General. Mr. Colgate is Assistant Attorney General for Administration;
5. Arthur White represents Agriculture. Mr. White is Vice Chairman of Yankelovich Partners, Inc., where he has directed more than 200 research and consulting assignments for corporations, government agencies, industry associations, media and non-profit organizations, and universities;
6. I, myself, represent retailers and consumers. I founded and continue to serve as President and CEO of ProServe Corporation, a food service management company.

As you can see from the list of representatives, the Board consists of a wide variety of accomplished individuals. Together we are responsible for administering all aspects of FPI's operations, key aspects of which are: approving FPI's financial operating plans, developing strategic plans, approving the establishment and activation of new factories, approving major capital expenditures, and approving FPI proposals to produce a new product or expand its market share of an existing product.

The majority of FPI's Board members, however, are employed in private sector positions and are keenly aware of the challenges that those in the private sector, and small business owners, in particular, face.

Consequently, the challenge to the Board is to be responsive to the concerns and interests of a vast segment of private sector groups ranging from professional trade associations, business corporations, and various manufacturers to organized labor groups, public officials, and individual private citizens, while guiding FPI on a course that will ensure its self-sufficiency in the future.

GUIDELINES PROCESS

Perhaps the most visible way in which the Board fulfills its responsibility is through the Guidelines Process. When FPI proposes to produce a new product or significantly expand production of an existing product, it must first conduct a market impact study. This study must identify and consider: the number of vendors currently meeting the requirements of the Federal Government; the proportion of the Federal market for the product currently served by small business; small disadvantaged business; or business operating in labor surplus areas; the size of the Federal and non-Federal markets for the product; the projected growth in the Federal Government demand for the product; the projected ability of the Federal market to sustain both FPI and private vendors; and the trends of the commercial market for a comparable product. FPI must then announce in the *Commerce Business Daily* its proposal and invite comments from private industry and organized labor. FPI must also directly notify those trade associations affected and allow them to provide comments. The Board of Directors is provided copies of the market impact study, the comments received, and FPI's recommendations. The Board also holds hearings at which the public can come and provide testimony. At the conclusion of the above

process, the Board renders its decision, which is also published in the *Commerce Business Daily*.

CHALLENGES FACED BY THE BOARD

As a member of the Board, I can state that we take our position and our representative status very seriously when making decisions. By Federal statute, we are called upon, on the one hand, to provide employment for the greatest number of inmates who are eligible to work and, on the other hand, to represent a segment of society that often has competing interests. This task is compounded by the continued spiraling growth of the Federal inmate population, noted by Director Hawk Sawyer in her testimony.

We are constantly struggling with the challenge of balancing the needs of FPI while minimizing the impact on the private sector. When there has been persuasive information that FPI might have an adverse impact on a particular industry, especially one dominated by small businesses, the Board has restricted and even precluded FPI's presence in that industry. For example, of the 28 separate proposals submitted by FPI since the inception of the Guidelines process, the Board has approved only eight without change. The rest were reduced, modified, denied or later determined to be infeasible. The Board has invited private industry and labor to bring to their attention any situation wherein the impact of one of their decisions authorizing FPI's production has been more significant than originally anticipated. To date, no replies have been received.

As Chairman of the Board of Directors, I can say that, when rendering decisions, our goal is to diversify FPI's product line so that no single industry is forced to bear an undue burden and to reduce to a minimum competition with private industry or free labor; that is what is required of us under Federal law.

Mr. Chairman, if there is one thing I know all the Board members would agree on is the fact that there are no easy answers or magical solutions. The current process, I believe, provides for wide-ranging input and representation, compels full consideration of all the relevant issues and allows public policy to be implemented in the fairest and most responsible manner. If we are going to change things, the changes must be measured, balanced, and mutually beneficial. There is no black and white, no right or wrong. Responsible public policy must take into account all of the legitimate interests involved.

Mr. Chairman, this concludes my remarks. I would be pleased to answer any questions you or other members of the subcommittee might have.

Senator THURMOND. Thank you.

Mr. Glover.

STATEMENT OF PHILIP GLOVER

Mr. GLOVER. Mr. Chairman, I am the elected representative of the 24,000 bargaining unit employees working in the Federal Bureau of Prisons. I would like to thank the committee for allowing me to appear before you today and express the views of the line staff in the Bureau of Prisons.

Our organization, the Council of Prison Locals, American Federation of Government Employees, believes it is imperative for the safety of employees, the public, and inmates that we provide a strong prison work program. That is what Federal Prison Industries represents to employees working in the field.

In this debate, I am in the unenviable position of being a strong advocate for labor, yet representing those of us working in the prison system to keep staff safe. We must keep this program intact until we decide as a Nation how to maintain an increasing inmate population.

This is more than simply a cost issue or production issue to us. It is first and foremost a health and safety issue. When inmates have a productive, fully satisfying day at work, they are less likely to pose a threat to the men and women working inside the fences and walls of correctional facilities.

We cannot afford to simply warehouse inmates. Until a comprehensive, well-thought-out approach is decided upon, with all interested parties in concurrence, we oppose elimination or erosion of mandatory source. It is a dangerous proposition to accept changes in at this time.

I have heard complaints that FPI should compete for contracts based on price, product, and quality. As a representative of line employees, it is not our concern what products or work the inmates are involved in, but there must be work. As a correctional officer who has worked in the field for nearly 10 years, let me explain something about competition in prisons. Imagine having employees who have little or no discipline, generally lack formal education, are difficult to control, and whose values are often the opposite of yours and mine. This essentially is an inmate worker. Although FPI and BOP do a good job in getting these people to work, think of competing with this workforce.

Additionally, think of coming to work on any given morning and having a factory unable to produce products because of adverse weather such as fog, because two inmate groups were in a fight the night before, or the factory had to be searched for contraband. Could you compete?

I have worked with inmates who are employed in FPI custodial, general maintenance, and food preparation jobs. The FPI inmates and those on the waiting list for FPI are generally more manageable and concerned about their own behavior. Inmates stand to earn the most money in FPI as opposed to other prison jobs. This money enables them to meet some of their personal financial responsibilities like fines, restitution, and child support. They seem to interact with staff better than other inmates. They take directions at work in a more positive way as well.

Now, how does this relate to the issue before us? The inmate population is expanding. We must keep the inmate population occupied in at least a satisfactory manner. It has been suggested that inmates be kept in perpetual vocational/technical training modes. This is worthwhile. But are you going to strain someone for 40 years? It has also been suggested that inmates build something, take it apart, and build it again over and over. How long does anyone expect a large inmate population to continue doing this? How long would it take for them to get frustrated, upset, and refuse to work and take it out on the employees? I don't think very long. This makes it unsafe for staff, the community, and other inmates.

Currently, mandatory source is the way we keep 20 to 25 percent of the inmate population productive and occupied. No one advocating its elimination has given any productive ideas on its replacement, just remove it and compete. In the next several years, we will increase the country's Federal inmate population. If a solution is to be found, it can't be during a debate on an unrelated piece of legislation. It must be a comprehensive public policy debate by the appropriate committee with all viewpoints heard.

This concludes my statement. I will be happy to answer any and all questions.

Senator THURMOND. Thank you.

Director Sawyer—or Dr. Sawyer, which do you——

Ms. SAWYER. Either is fine, sir.

Senator THURMOND. Please explain why Prison Industries is the most important program you have for keeping inmates occupied and teaching them skills they can use when they are released.

Ms. SAWYER. I think there are several parts or reasons why it is so important to us, and I think the first one really addresses our responsibility to society, and that is the evidence that was demonstrated through the PREP study, which showed that inmates who have been through Prison Industries, worked Prison Industries, learned work skills and the work ethic, have a 24 percent less likelihood of recidivating and a greater likelihood of being gainfully employed upon release. Our responsibility is not just to house inmates in our institutions, but to prepare them to do better and to remain crime-free when released.

Any economist that has looked at this issue will say very strongly that being able to reduce recidivism for inmates for one year has a profound economic benefit to the community. If we can show a 24 percent reduction over a 12-year span, it has tremendous benefit to the community.

In addition to the community's benefit, it is also our program that keeps inmates constructively occupied. It occupies their minds, their hands, their time in very constructive modes. As Mr. Glover indicated in his comments, the rate of misconduct among inmates in Prison Industries is far less than among the general population. It has a profound impact upon keeping the peace, keeping it calm in the institution. They don't become aggressors toward each other, and they don't become aggressors toward staff. It is a very valuable program.

Senator THURMOND. Thank you.

Director Sawyer, your study that you conducted with the Department of Defense made various recommendations to improve efficiency and reduce costs between the two agencies. Does Prison Industries intend to implement these recommendations?

Ms. SAWYER. We certainly do, Mr. Chairman. We worked hand in hand in concern with the Department of Defense in crafting the study and the recommendations, and we are very committed to each of the—I guess three primary recommendations that have to do with piloting a waiver on mandatory source because the belief is from both sides that that needs to be tested before it actually becomes policy or becomes a statutory change, and also it looks at clarifying the waiver process to make sure it is much better understood from the procurement standpoint among Department of Defense staff, and looking more closely at our deliveries.

The vast majority of our deliveries that were looked at in the DOD study were on time. The vast majority is not good enough. We need to get 100 percent of our deliveries on time, and we vow to work closely with DOD to improve that and to report to them on our success.

Senator THURMOND. Director Sawyer, if the Congress carved out large exemptions from the mandatory source requirement for the Defense Department, such as those proposed in section 806 of the defense authorization bill, what impact could this have on Prison Industries?

Ms. SAWYER. We believe it would have a very serious impact, Mr. Chairman, because 60 percent of our orders come from DOD. And

although the amendment simply references those orders under \$2,500, roughly three-quarters of all of our orders from the Department of Defense are for orders under \$2,500. So you have immediately affected approximately three-quarters of our orders from DOD, which would have a significant impact upon those numbers of inmates who are involved in those operations. So we believe the carving that has been done in that amendment could have a very negative impact upon our sales, our orders, and our inmate population employment.

Senator THURMOND. Mr. Aragon and Mr. Glover, do you agree with Director Sawyer? Please explain.

Mr. ARAGON. If I may, Mr. Chairman, I absolutely do agree with the Director of the Bureau. As you mentioned in the brief information about myself, I was an employee at a Federal correctional— at several Federal correctional institutions some years ago and knew firsthand that Federal Prison Industries was just a critical, essential element to the orderly running of our institutions.

In one of my positions with the Federal Prison System, I was director of training for food service, and in that role it was my responsibility to go into many, many other institutions at the State level and correctional facilities in counties, et cetera. And the lack of Federal Prison Industries and viable work opportunities for inmates really did have a demonstrable effect on managing the population, on keeping the institution safe, and as the Director testified, in the effect it has on recidivism and keeping these inmates from continuing the cycle.

Senator THURMOND. Mr. Glover, do you agree with Director Sawyer?

Mr. GLOVER. Yes, I do, Mr. Chairman. Working inside the prison as a line staff member, Federal Prison Industries inmates are less likely to be confrontive with staff. They listen to you a lot better. They don't want problems because they want to keep their FPI job. There are waiting lists in place. Those inmates don't cause problems because they want to work in FPI. It is a better opportunity for them, and it keeps them occupied 8 hours a day. When they come back to a housing unit, they are tired. They don't want to—they don't cause problems. They just want to come back and do their time. And that is what we want as the line staff in the Federal Bureau of Prisons.

Senator THURMOND. Director Sawyer, I am pleased that at least half the wages of inmates in FPI must be applied to any fines, restitution, or other court orders. Of course, many inmates are paid for working in areas of the prison other than FPI. Should all inmates who owe fines and restitution have to put aside at least half of their income just as FPI participants do?

Ms. SAWYER. Every inmate within our prison system, Mr. Chairman, who have any monies at all, either sent it from home or that they earn in the prison, are required to pay toward any outstanding fines, victim restitution, child support, or whatever it might be.

We know exactly how much the inmates are going to make in Prison Industries because those salaries are set very firmly. So we put a required 50 percent obligation on any inmate working in Prison Industries.

For all the other inmates, the amount of money they have varies, and so we negotiate—the unit team that works with each inmate negotiates a fair amount, an appropriate amount, a realistic amount that we can expect them to contribute monthly toward any outstanding debts they receive.

The Bureau of Prisons last year in total collected about \$5 million toward all of these different indebtedness on the part of inmates. Our inmate financial responsibility program collected about \$5 million; \$1.8 million of that was from Prison Industries staff. The remaining \$3.2 million was from non-Prison Industries employees. So we collect, we believe, an appropriate amount from every inmate who owes anything to society while they are in prison. It is not all necessarily a required 50 percent. Some is greater, some is lesser.

Senator THURMOND. Mr. Aragon, given that FPI can only produce products for Federal agencies, it has a very limited market. Should the Congress consider permitting FPI to sell in the commercial market products that are currently imported from foreign countries?

Mr. ARAGON. Yes, Mr. Chairman. The board has formally taken the position that because of the continued conflicts that we have in creating new jobs because our marketplace, the Federal Government, continues to constrict and we continue to have a requirement for more inmate positions, we believe that by repatriating work that has long since moved offshore, that would be a constructive way to create new jobs and sell products in the American marketplace and keep the dollars here in this country, and by doing so, we will assist the economy to continue to be strong, and we hopefully will have those jobs back in the States and perhaps sometime private industry may want to work in that arena again. And if so, we would be certainly happy as a board to find a mutually acceptable position in terms of the production that we manufacture.

Senator THURMOND. Mr. Aragon, as you know, the more Prison Industries focuses on services, the less impact it has on products such as furniture and clothing. What efforts are being made to focus more on services, both to the Federal Government and to the private sector?

Mr. ARAGON. In this area, also, Mr. Chairman, the Federal Prison Industries Board has taken the position that it would be a very important complement to our ability to employ our rising number of inmates if we had service work in our approved list of work that we can do. Services is an arena that we have worked in in Federal Prison Industries because various agencies have brought that to us or we have had it historically. However, mandatory source does not apply to services.

If we were able to more viably market our services and get more service work, it would take the pressure off the manufacturing work that we do in, again, the arenas that are continually constricting availability of market share and the need for our jobs.

Senator THURMOND. Mr. Glover, how is a typical inmate who is employed in Prison Industries different from other Federal inmates?

Mr. GLOVER. Mr. Chairman, again, the inmates that work in FPI don't want problems inside the prison. They go to work in the

mornings. They don't fight with other inmates. This is in a general sense. They work with staff better. They don't want to end up with incident reports because that would eliminate them from being able to work in an FPI position. And so they are just a better-behaved type of inmate while they are working FPI and while they are on the waiting list waiting for a job in FPI, which benefits the staff greatly by making it easier to control a large inmate population.

Senator THURMOND. Mr. Glover, are the criminals being sentenced to Federal prison today younger and more violent than they were in the past? And if so, does this make programs like Prison Industries more important?

Mr. GLOVER. Yes, Mr. Chairman, they are much more aggressive, younger inmates. For example, when I started at FCI Loretto, our average inmate population was around 35 years old. I think it is 28 years old now, somewhere in there. It is a completely different atmosphere inside the prison as it was then. And that is just in a span of 7 to 10 years. So, yes, the inmate population is changing, and they are more aggressive. And a program such as FPI helps us manage those inmates in an appropriate way.

Senator THURMOND. Director Sawyer, please explain how Prison Industries helps reduce the possibility that inmates will return to a life of crime based on the results of the PREP study?

Ms. SAWYER. Well, the PREP study indicated that any of the inmates working in Prison Industries not only behave better in the institution and have less misconduct, as was indicated, but also have a far greater success rate in terms of staying free on the street, not getting back in crime again, and in being gainfully employed.

The study went on for a 12-year period. We actually tracked inmates for 12 years, and these weren't just a specially selected group of inmates. We matched every inmate that went through Prison Industries with like inmates with similar backgrounds, similar work histories, similar offenses and characteristics, to ensure that we weren't simply creaming off the good inmates and sending them to Prison Industries.

What we found was that there was clearly an impact of Prison Industries, and it indicated that they had a 24 percent less likelihood after 12 years to be crime-free on the streets, to be gainfully employed, and actually the wages they were actually making were higher than any other inmates who were released without being in Prison Industries who also remained on the street. So there is a significant positive benefit to the inmate, to the society, and to the economy by these individuals staying on the street, being productive for a long period of time.

Senator THURMOND. Director Sawyer, as you know, the number of inmates that you must manage has more than doubled in the last 10 years and continues to rise sharply. Even without statutory changes that could harm the mandatory source requirement, are you concerned about being able to keep the growing inmate population occupied?

Ms. SAWYER. We are very concerned, Mr. Chairman, about keeping the growing population occupied, and that is why we believe that it is going to take more than simply the Bureau of Prisons and Prison Industries to address this concern. It is a public policy issue.

It is an issue that has been created by trying to respond to crime in an aggressive way in this country. But it means that we have a lot more inmates coming our way who will stay for a long period of time.

The elimination of mandatory source in this era of our existence is very threatening if there are not other viable alternatives, viable authorities given to the Bureau of Prisons to be able to maintain similar levels of employment of inmates during our significant growth period here and our significantly high populations. And, also, we need to ensure that if any viable alternatives are identified, we need sufficient time to implement any of those alternatives because there may be a grand idea, but if it is implemented too quickly and we are not able to bring up the work levels for the inmate population, we could be sitting on institutions with minimal inmate employment which would be very volatile situations because we need to have a significant number of the inmates employed.

Senator THURMOND. I wish to thank all members of this first panel. I appreciate your presence and appreciate your fine testimony that you have given.

Now we will go to the second panel. On the second panel, our first witness is David Oliver, Principal Deputy Under Secretary of Defense for Acquisition and Technology. He holds a bachelor's degree from the U.S. Naval Academy and an M.A. from American University. While in the Navy, Mr. Oliver commanded two submarine groups and served as chief of staff to the 7th Fleet.

Our second witness is Ann Hoffman, legislative director for the Union of Needletrades, Industrial and Textile Employees. Ms. Hoffman has been both associate general counsel and a lobbyist for the International Ladies Garment Workers Union. She has also served as counsel to the Communication Workers of America.

Our third witness is Steve Schwalb, Assistant Director of the Bureau of Prisons, and Chief Operating Officer of Federal Prison Industries. In this position, he is responsible for managing a self-sufficient Government corporation which \$600 million in annual sales, 1,800 staff, and 19,000 inmate workers. Mr. Schwalb is a graduate of the University of Washington.

We also intended to have Andrew Linder, president of Power Connector, representing the Correctional Vendors Association. Unfortunately, he could not be with us because of transportation problems. However, I will place his statement in the record.

[The prepared statement of Mr. Linder follows:]

PREPARED STATEMENT OF ANDREW S. LINDER

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: I am Andy Linder, President and Owner of Power Connector, a small electronics business based on Long Island, NY employing 65 people. My company commenced business on April 1, 1987 and has since concentrated its manufacturing efforts primarily in the areas of electronic connectors and cable hardware for the U.S. military. We supply these component parts primarily to the Department of Defense, Federal Prison Industries (FPI) and to our nation's primary defense contractors.

I am here today to relay my FPI story as a private sector, small business owner and one which I believe many small businesses and other members of the Correctional Vendors Association from around the country could tell. It is a story that surprises many people involved in the FPI debate as many do not realize the extent to which private sector vendors are involved with FPI. But for the sake of a fair

debate regarding FPI's impact on private sector vendors, one needs to examine how companies like mine who currently have contracts with FPI, who have capitalized their businesses and hired employees based on FPI contracts, could be impacted by changes to FPI. For example, in fiscal year 1998 I was just one of some 15,000 private industry vendors nationwide who were registered with FPI. Together we conducted \$419 million in business with FPI and had thousands of employees and families dependent on these same sales. That means that for every dollar in FPI sales, some \$.76 cents went directly back to private sector companies like mine from FPI purchases of our raw materials and services.

On a personal level, I can tell you without equivocation that my company, Power Connector, would not be in business today without FPI's efforts and mission to seek out small operations like mine with whom to do business. I have personally witnessed the dedication of FPI's staff and the commitment of resources to use the talent and skills of small business in order to fulfill FPI contracts. FPI has achieved this by breaking down their finished products into component parts and allowing small companies like mine the opportunity to bid, resulting in opportunities that we otherwise would not have had. I believe I can best tell you the importance and value that FPI's subcontracting endeavor has had on my business and me by telling you about my business.

I was introduced to FPI through my work with a former employer who had several contracts with FPI. I became very familiar with various elements of the electronic connectors and cable hardware industry through my work there. Unfortunately, that business like many others, did not survive.

At that time, the U.S. Army's CECOM Division in Fort Monmouth, NJ was seeking alternative suppliers to fulfill a contract for upgrading their SINGARS Program—the single channel ground to air radio system. The Army had become frustrated by a large prime defense contractor that had a monopoly on the supply of cable and components necessary for the SINGARS upgrade program and they turned to FPI seeking to develop other sources for these labor intensive, high priced cables and connectors.

FPI recognized the opportunity to reach out to small businesses like myself. They broke down the contracts that they received from the U.S. Army into component parts and requested small businesses, including mine, to participate and bid on prototypes. They did this by partnering with small businesses and providing the capital through competitive bids for the costly testing and assembly, which allowed them to participate.

By assuming the financial burden for the testing of prototypes, FPI eliminated the major financial barrier, which precluded most small companies like mine from competing for these contracts, which were normally, reserved for larger companies who had the necessary capital and human resources. Mine was a startup company, struggling to make payroll and it was only through sharing expenses and sub-contracts that my company became successful.

As a result of FPI's efforts to work with the small business community our products were approved. FPI provided the intensive labor required, we provided the component parts. Bidding on these contracts was required and I am proud to say my company won the bids for the component parts enabling FPI to provide them to the Department of Defense at $\frac{1}{3}$ of the price they had originally paid, thereby saving taxpayers millions of dollars over the last nine years.

My point in relaying my story today is to make clear that a startup business like mine could not have done this on its own.

FPI was interested in our ability to meet their requirements, not our size or numbers. If we could meet the military standards and perform, being a small, startup business was not a liability. It was FPI's mission to afford fledgling companies like my own with this rare opportunity to partner and it allowed us to gain contracts for which we would otherwise not have been able to compete. Without FPI, these contracts would have gone to and been absorbed by larger companies, at higher prices. I am certain that the active involvement of FPI as a significant source to the Army ensured small business growth and opportunity that otherwise would not have materialized.

In my first few years of business, 100 percent of my employees and my entire revenue was attributable to FPI business. My company's survival was firmly rooted in its relationship with FPI.

Today, 17 out of my 65 employees or 25 percent of my labor force are directly attributable to FPI business. This is a result of FPI's efforts to reach out to small businesses like mine. I now have over 40 employees dedicated to fulfilling contracts with other U.S. government agencies and military defense contractors obtained on my own. I can honestly say that 100 percent of our capability to bid for and supply this other work has come from our ability to establish a credible performance track

record as a result of FPI's business. By giving us the opportunity to prove ourselves, when most agencies or defense contractors would not look twice at a start up company, FPI gave us that fighting chance to demonstrate our competitive spirit. In addition to our own success, the amount of subcontracts and work we have outsourced over the past nine years, to over 40 other small businesses has generated the hiring of almost 120 full time employees.

I believe this is also a good opportunity to report that FPI has implemented some very significant programs. There is a vigorous quality control program and quality assurance program for both vendors and FPI. FPI has implemented a thorough and aggressive campaign to encourage timely vendor delivery. FPI has in place a rapid response and accelerated procurement and delivery system in times of acute need such as in Desert Storm and perhaps for the current conflict in the Balkans. The FPI multi-institution network also provides for redundant production assembly lines to assure consistent availability.

Mr. Chairman and Members of the Subcommittee, I respectfully request very careful consideration of any attempts to curtail or diminish FPI. FPI is a proven correctional tool for managing our federal prisons and protecting both inmates and Bureau of Prison employees. It is also a lifeline for many small businesses like my own. I urge you to carefully weigh all sides of any debate that suggests curtailment of FPI's ability to provide the important safeguards to our prison system and to do business as usual with small companies like mine.

Thank you for your time and consideration.

Senator THURMOND. We will now first hear from David Oliver.

PANEL CONSISTING OF DAVID R. OLIVER, PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY, DEPARTMENT OF DEFENSE, WASHINGTON, DC; ANN F. HOFFMAN, LEGISLATIVE DIRECTOR, UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES, WASHINGTON, DC; AND STEVE SCHWALB, ASSISTANT DIRECTOR, FEDERAL BUREAU OF PRISONS, AND CHIEF OPERATING OFFICER, FEDERAL PRISON INDUSTRIES, WASHINGTON, DC

STATEMENT OF DAVID R. OLIVER

Mr. OLIVER. Mr. Chairman, I have submitted my statement for the record. We participated in this study—

Senator THURMOND. All of your entire statements will go in the record. Just take about 5 minutes and summarize.

Mr. OLIVER. Yes, sir. Essentially, the statement is for the record, and it says that we participated in this study. We were anxious to talk to our people and get their opinions. Essentially, we found the quality of the products to be good. We found that there were some problems with timeliness and service. And we talked to the FPI, and we have initiated or are going to initiate some pilot programs, including which is we put on FPI on our electronic mall web on the Internet, which we have already done, so that all of our people can get to that access. But, also, we are very interested in eight pilot programs by which we get waiver authority so that for buys up to \$2,500, the same amount that we use for our credit cards to do micro purchases, that we can agree that we will exempt these things from the mandatory sourcing policy.

I will be happy to answer any questions later, sir.

[The prepared statement of Mr. Oliver follows:]

PREPARED STATEMENT OF DAVID R. OLIVER

Good afternoon, Mr. Chairman, and Members of the Subcommittee. I want to thank you for this opportunity to share with you some aspects of the relationship between the Federal Prison Industries and the Department of Defense. The Depart-

ment has worked closely with the Federal Prison Industries (FPI) for almost seventy years and has procured many mandatory items from them in times of war, cold war, and peace. Generally, we have been in agreement on most procurement matters.

In accordance with section 855 of The National Defense Authorization Act for fiscal year 1998, P.L. 105-85, the Department of Defense and the Federal Prison Industries reviewed the procurement procedures, regulations, and statutes that govern procurement transactions between DOD and FPI, and provided recommendations to improve the process. Before I discuss the specifics of these recommendations, I need to make some general observations.

DoD supports FPI's mission as a Federal correctional program to employ and train inmates through its purchase of FPI products and services produced in various Federal correctional facilities. FPI, in its role as a preferred source of supply, offers DoD a number of advantages in procurement (e.g., inter-government transfer of funds, inter-agency agreements). FPI is a mandatory source of supply for products listed on the FPI Schedule of Products; however, the defense department is permitted to request a waiver to purchase from sources other than FPI whenever FPI cannot meet our needs. FPI sales to DoD represent about 60 percent of FPI's total sales to Federal government agencies.

A comprehensive survey was conducted for this joint study and provided a representative sample of DoD customers, based on dollar amount purchased, experience using FPI, branch of military service, and product purchased. As expected 76 percent of the total respondents indicated the primary product purchased in the last 12 months was office furniture, of which nearly 40 percent were for purchases under \$25,000. In response to questions regarding the quality of specific products purchased in the last 12 months, FPI was generally rated good. On the whole, respondents seem to be least satisfied with delivery and ambivalent on price. This was especially true for furniture products (office case goods, systems, and dorm and quarters furniture), where over 40 percent rated FPI as fair or poor in delivery.

FPI was rated highest as an overall supplier in the area of quality, where 42 percent of respondents rated FPI as excellent and 39 percent rated FPI as average. Of the 64 percent of total respondents who had purchased products similar to those provided by FPI in the past 12 months, nearly three-fourths of them rated FPI the same in comparison to outside sources in quality, while a majority rated FPI about the same on efficiency (56 percent), and best value (52 percent). When making a comparison on timeliness, 33 percent rated FPI the same and 59 percent rated FPI worse than outside sources.

Open-ended comments and suggestions supported these findings as well, indicating that timeliness in delivery is the principal concern among FPI's DoD customers. Pricing concerns were also raised, although to a much lesser extent. Improving communications and customer service were recommended by over 10 percent of the total respondents. Some respondents (6 percent of the 617 total respondents) also expressed a concern with mandatory source.

From the survey results, DoD and FPI developed a set of three recommendations and three administrative actions. DoD and FPI believe that implementing the recommendations will improve the efficiency and reduce the cost of procurement transactions between the two agencies. Implementation of the administrative actions should facilitate and enhance the working relationship between the two agencies.

In brief, DoD and FPI propose the following recommendations:

- (1) *Raising the Threshold for Waiver Exceptions.* FPI will work with the appropriate procurement officials to raise the exception to waiver threshold from \$25 to \$250 for DoD purchases, or grant DoD an administrative waiver for orders totaling \$250 or less that require delivery within 10 days. This recommendation should increase the flexibility of DoD in its small purchasing, while continuing to allow FPI to accomplish its mission of employing the greatest number of inmates as possible;
- (2) *Expedited Waiver Process for Orders \$2,500 or Less.* FPI will expedite the waiver process for all orders \$2,500 and less. This recommendation should address the concerns of those customers for whom the time involved in waiting for a waiver response is problematic, particularly on small dollar value orders; and
- (3) *Limited Pilot: Exception to FPI Clearance Procedures.* DoD and FPI will enter into a pilot program at eight DoD locations which will provide that orders for listed items totaling no more than \$2,500 that require delivery within 10 days, will be administratively waived by FPI, in accordance with specific conditions described in the recommendation. This recommendation will allow more flexibility for DoD in purchasing, will examine the extent to which waiving all items under \$2,500 would affect FPI programs, and will correspond with FPI's goal of offering enhanced services to its customers.

DoD and FPI further propose the following administrative actions be taken:

(1) *Timely Delivery of FPI Products.* FPI should continue to evaluate and monitor delivery performance and develop data to objectively measure timeliness. The survey results clearly indicated that DoD customers are concerned about the timely delivery of FPI products;

(2) *Doing Business with FPI.* FPI will develop a guide which will demonstrate clearly and concisely how to efficiently conduct business with FPI. The efficiency of the entire ordering process could be increased if the procedures, points of contact, and areas of responsibility are explained in an orderly and user-friendly manner; and

(3) *Full Use of Electronic Purchasing and Web Links.* All DoD locations with web sites should consider adding a link to the UNICOR web site on their procurement pages. Having this link allows DoD customers to take full advantage of all FPI has to offer, to research FPI product choices, to compare prices, and to order on-line.

As stated earlier, implementation of these recommendations and administrative actions should improve the efficiency and reduce the cost of procurement transactions between the two agencies. In addition, the pilot program would provide us with the opportunity to obtain data that would detail the impact of raising the waiver threshold to \$2,500 prior to any full-scale implementation.

Mr. Chairman, thank you for this opportunity to share with you our observations and study results. I stand ready to answer any questions that you and the members may have.

Senator THURMOND. Thank you.

Ms. Hoffman.

STATEMENT OF ANN F. HOFFMAN

Ms. HOFFMAN. Thank you, Mr. Chairman. Thanks for the opportunity to present the views of UNITE, the Union of Needletrades, Industrial and Textile Employees, the largest union of garment and textile workers in North America.

Our 250,000 members and the companies for whom they work, most of which are small businesses, have been among the prime victims, if I may use that word, of the practices of Federal Prison Industries.

UNITE shares the view of the AFL-CIO and its other affiliates that training opportunities should be provided for prisoners, to help in their rehabilitation and to prepare them for work life after prison. Prisoners should never be used, however, in competition with nonprison labor or to replace workers who are not in prison. Unfortunately, that is becoming more and more the norm.

Crime is a serious national problem. It imposes real costs on society. Prison Industries represent one element of that cost—one method used to control the rapidly expanding prison population.

Most social costs, including the direct costs of incarceration, are spread relatively evenly throughout the population through taxation and then appropriation of funds.

Federal Prison Industries is funded in a very different way. It generates income by selling products and uses the funds it generates to finance its activities. It receives no appropriated funds.

We agreed with you, Mr. Chairman, that funding Federal Prison Industries in any other way would be extremely expensive, but we think that is an important fact, that the way Prison Industries is funded suggests to the public and to Congress that incarcerating increasing numbers of people costs less than it actually does. The cost of FPI is thus levied not against general revenues, but against those industries in which FPI chooses to become involved.

Unfortunately for UNITE members and our employers, FPI has frequently chosen to be involved in the manufacture of apparel and textile products. These industries and their workers have thus borne a grossly disproportionate share of the cost of employing prisoners.

FPI dominates the Federal Government apparel market. In its report to Congress for fiscal year 1998, FPI showed apparel sales of \$134 million, about 25 percent of their total net sales. Thirty percent of the inmates employed by FPI were engaged in the production of apparel and textiles. FPI is now the single largest supplier of apparel to the Department of Defense.

Not only are Federal Prison Industries competing with free labor, their impact is most often borne by the most vulnerable workers in this country. Industries that are most suitable to prison-based factories tend to be lower-skilled, low-wage, not highly capitalized and labor-intensive. These are, for the most part, the same industries which have faced the greatest competition from offshore production.

As you well know, Mr. Chairman, the apparel and textile industries have lost an incredible number of jobs over the last decades. Between December 1994 and January 1999, the U.S. apparel industry lost 249,000 jobs and the textile industry 104,000 jobs, for a total loss of 353,000 jobs. FPI is thus competing against a workforce that has already been battered by import-related job losses. FPI is also competing in the vastly decreased apparel and textile work that remains in the United States, in particular work for the Department of Defense.

As you know, consideration is being given to encourage manufacture of products that would otherwise be produced offshore. This is not likely to help.

First, as you well know, Mr. Chairman, in the apparel industry in particular, it is virtually impossible to determine whether a particular item would be produced by foreign labor if it were not prisonmade. There is not a fixed level of domestic production of any particular product. A company may be producing in this country one year, offshore the next, and back here the next, or may produce a product offshore and here at the same time. Doing that in the apparel industry would result in a great deal of manipulation of the definition of the item.

It is significant that in determining whether FPI is operating within its statutory limits the judge, the jury, and the court of appeals is the Board of Directors of FPI. UNITE has had direct experience with FPI's manipulation of its procedures just 2 years ago in a case involving the production of gloves for the military. That case is detailed in my testimony. The most salient facts to me are that the board initially considered the entire market for gloves in the United States as the market, although the commercial market is almost entirely manufactured offshore. When pressed, because the industry came up with contrary information, they used a year as their baseline that was already increased because of the Gulf War.

We think a more appropriate solution for the problem of employing more prisoners is to increase vocational training. If somebody is not coming out for 40 years, a job is no more important to

antirecidivism than vocational training. If they are coming out more rapidly, vocational training is every bit as valuable as job training particularly in an industry in which there are very few job opportunities.

The goal of Congress and the administration should be to increase investment in education, afterschool programs, school counselors, social services, and job training so that we can lower our extraordinary rate of incarceration and the resulting need for prison work programs.

Thank you.

[The prepared statement of Ms. Hoffman follows:]

PREPARED STATEMENT OF ANN F. HOFFMAN

Mr. Chairman, Senator Schumer, Members of the Subcommittee, thank you for the opportunity to present the views of UNITE, the Union of Needletrades, Industrial and Textile Employees, as you look at the operations of the Bureau of Prisons and particularly Federal Prison Industries.

UNITE is the largest union of garment and textile workers in North America. Our 250,000 members and the companies for whom they work have been among the prime "victims," if I may use that word, of the practices of Federal Prison Industries. We welcome the Subcommittee's interest in the issue and hope you can work with us and other unions and employers adversely affected by FPI's actions to bring about constructive change.

UNITE shares the view of the AFL-CIO and its other affiliates that training opportunities should be provided for prisoners, to help in their rehabilitation and to prepare them for work life after prison. Prisoners should never be used, however, in competition with non-prison labor or to replace workers who are not in prison. Unfortunately, prison labor is increasingly being used, by both the states and the federal government, to perform work in both the public and private sectors ordinarily done by workers who are not incarcerated. This is unacceptable.

THE COST OF FPI IS UNFAIRLY BORNE BY CERTAIN INDUSTRIES

Crime is a serious national problem. It imposes real costs on society. Prison industries represent one element of that cost—one method used, to control the rapidly expanding prison population.

Most social costs, including the direct costs of incarceration, are spread relatively evenly throughout the population. Our representatives in Congress and in the states decide what taxes should be levied and what programs should exist, and they distribute revenues among all the programs they choose to fund.

Federal Prison Industries is funded in a very different way. FPI is "self sustaining." It generates income by selling products and uses the funds it generates to finance its activities. 18 U.S.C. § 4126. It receives no appropriated funds. This has the effect of masking the cost of Federal Prison Industries, suggesting to the public and to Congress that incarcerating increasing numbers of people costs less than it actually does. The cost of FPI is thus levied not against general revenues, but against those industries in which FPI chooses to be involved.

Unfortunately for UNITE members and their employers, FPI has frequently chosen to be involved in the manufacture of apparel and textile products. The apparel and textile industries and the workers in those industries have thus borne a grossly disproportionate share of the cost of employing prisoners.

FPI dominates the federal government apparel market. In its report to Congress for Fiscal Year 1998, FPI showed apparel sales of \$134 million, about 25 percent of their total net sales of \$534.3 million dollars. Thirty percent of the inmates employed by FPI, more than 6,000 people, were engaged in production of apparel and textiles. FPI is now the single largest supplier of apparel to the Department of Defense.

This concentration violates the statute governing Federal Prison Industries. The law requires FPI to

diversify * * * and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor.

18 U.S.C. § 4122 (b)(1) (emphasis added).

Not only are Federal Prison Industries competing with free labor, their impact is most often being borne by the most vulnerable workers in this country. By statute, FPI is mandated to

concentrate on * * * those products which permit employment of the greatest number of those inmates who are eligible to work as is reasonably possible.

18 U.S.C. § 4122 (b)(2). Industries that are most suitable to prison-based factories tend to be lower-skilled, low-wage, not highly capitalized and labor intensive. These are, for the most part, the same industries which have faced the greatest competition from offshore production.

The apparel and textile industries have been particularly hard hit by import penetration. According to a February, 1999 report of the Bureau of Labor Statistics, between December of 1994 and January of 1999, the U.S. apparel industry lost 249,000 jobs and the textile industry 104,000 jobs, for a total job loss of 353,000. FPI is thus competing against a workforce that has already been battered by import-related job losses. FPI is also competing with the decreased amount of apparel and textile work that remains in the U.S., in particular work for the Department of Defense.

The degree of job loss in apparel and textiles causes FPI to violate its operating statute in another respect. FPI is mandated to provide employment that will give inmates "a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release." 18 U.S.C. § 4123. Prisoners trained to manufacture clothing, for example, will find themselves upon release competing for work with hundreds of thousands of unemployed garment workers who lost their jobs as a result of imports.

Consideration is being given by the leadership of Federal Prison Industries to encourage manufacture of products that would otherwise be produced offshore. This is not likely to bring FPI into compliance with its Congressional mandates.

First, in the apparel industry in particular, it is virtually impossible to determine whether a particular item would be produced by foreign labor if it were not prison-made. There is not a fixed level of domestic production of any particular product in this country. A company can manufacture products for the U.S. market either in this country or elsewhere. A company may produce a product in this country one year and elsewhere in the next year, or may manufacture the same product both here and abroad at the same time. Identifying an apparel product as one which would otherwise be made by a "non-domestic" contractor would be a sham, totally subject to manipulation.

Furthermore, having prisoners produce products that would otherwise be made offshore guarantees the absence of related post-incarceration employment. By definition, production of the products in question will not exist in the United States. By implication, jobs in that industry will not exist.

Finally, if an item that would otherwise be made offshore can be made competitively in the United States, the first opportunity to make that product should go to free labor, rather than to prisoners.

FPI'S RECORD ON FOLLOWING ITS OWN RULES IS NOT GOOD

Federal Prison Industries gives lip service to fulfilling its legal obligation to minimize its harmful impact on industries and workers. Its performance gives the lie to its pronouncements. Reviewing annual reports of FPI, or the catalog and web site of UNICOR (the trade name adopted by FPI) or the testimony of FPI officials, it is clear that FPI views its highest priority as employing more and more prisoners. All of its other statutory goals take a back seat.

FPI is able to accomplish this goal because of two peculiar elements of its structure. First, federal agencies are required to buy from FPI virtually any product FPI chooses to supply, even if the agency could purchase a better and cheaper product from a private sector provider and obtain more timely delivery. This is FPI's jealously guarded "mandatory source" privilege.

Second, in determining whether FPI is operating within its statutory limits, the judge, the jury and the court of appeals is the Board of Directors of FPI. It is the Board that determines whether FPI is "capturing more than a reasonable share of the market * * * for any specific product." It is the Board that determines whether FPI may "produce a new product or significantly expand the production of an existing product." And in determining whether these actions are appropriate, it is FPI itself that provides the definitions and market study upon which the Board must rely. Nothing in the statute establishes the independence of the Board, and practice

makes it clear that the Board is the creature of the FPI administration, rather than its master.

Not surprisingly, FPI designs the market study to support its desired result. FPI may define the product it wishes to produce as "gloves" or "leather gloves" or "dress military gloves" or even \$50,000 worth of gloves." The definition determines the size of the market. FPI may choose to include commercial products in its market basket, even if the product under consideration is used only by the military. By virtue of this type of manipulation, FPI has been authorized to supply 100 percent of the needs of the Department of Defense for certain products, notwithstanding its restriction to a "reasonable share" of the market.

UNITE had direct experience with FPI's manipulation of its procedures just two years ago. FPI in January of 1997 asked its Board of Directors to ratify its unlawful, unauthorized expansion of production of gloves for sale to the military, and to permit further expansion of that production. FPI had exceeded its permissible production in fiscal year 1992, and continued to do so in the years that followed. Between 1990 and 1997, FPI production of gloves doubled. FPI produced 100 percent of the military's requirements for 5 different types of gloves.

While FPI was illegally expanding its production of gloves, the private sector companies manufacturing gloves for the military were laying off employees, losing profits and, in two cases, going into bankruptcy.

UNITE represented workers at four plants supplying gloves to the military. Average seniority was over 15 years at four of the UNITE plants. The glove-makers depended on their jobs, and did not have other options for employment. The non-military glove industry has been devastated by imports, and there are few comparable jobs available in these communities.

The unauthorized expansion of glove production directly led to the loss of private sector glove jobs, both through the bankruptcy of two glove companies during this period, and through workforce reductions at others. As an example, Knoxville Glove in Tennessee lost more than half of its workforce, cutting its eighty person workforce to thirty-five. This loss directly resulted from FPI claiming the military glove work that Knoxville was doing. The loss of military glove production left the plant struggling to survive and the remaining jobs in jeopardy.

FPI attempted to justify its predatory expansion through flawed research and manipulation of data. Its initial market study, required by law to be objective, exaggerated the market for domestic production; exaggerated the size of the federal market; fabricated a theory of new technology in the glove industry; and made unwarranted predictions of future expansion of the federal market. Forced by the glove industry's research to revise its study, FPI next attempted to minimize the size of the unauthorized expansion by using as a baseline fiscal year 1991 sales, inflated some 20 percent above normal because of the Gulf War.

Based on FPI's behavior in the glove case, UNITE believes more effective control of FPI by someone other than its own Board of Directors is a more critical need than expansion of its mission.

SOME MORE APPROPRIATE SOLUTIONS

FPI and its supporters have put forth a variety of proposals for expansion of work opportunities in federal prisons. One is the "import substitution" model discussed above. Another is taking over work in the public sector. This would have the same adverse impact on free labor as has already been experienced in the manufacturing and service sectors. A third option posited is selling into the private commercial market, an option expressly forbidden by law, 18 U.S.C. § 4122 (a).

None of these schemes deals with the critical issue of keeping inmates occupied *without displacing other workers*. UNITE believes that this need can best be met in two ways: through enhanced training programs, geared to industries in which growth is anticipated, and through production of goods for which there is no commercial market.

The statute creating FPI authorizes it to provide vocational training in addition to work opportunities. Within FPI, this appears to be an opportunity lost. This is not the case at the state level.

Local unions have cooperated with state prisons in various areas to establish apprenticeship programs in skilled trades. These programs provide high-quality training for jobs that exist, and lead to Department of Labor certified status at the conclusion of the program. Such programs are appropriate, of course, only in areas with identified anticipated shortages in certain skilled trades. It should be possible to design similar rigorous training programs for other growing occupations that not only keep inmates occupied but truly equip them for life on the outside.

Good training programs require careful consultation with the knowledgeable and affected people in the area to determine both the need for trained workers in certain occupations in the future and the nature of the training. They involve positive contact between inmates and potential future co-workers. They lead to real jobs when an inmate completes his or her term of confinement.

We believe this is one direction that the Bureau of Prisons should be following as its inmate population expands. Unlike the current FPI program, it would not be training inmates for jobs that will not exist for them on the outside. It would not be increasing the tension between the incarcerated population and those who are not confined. It would not be competing with workers in either the private or public sector for jobs.

Another option would be to have FPI provide products or services for which there is no commercial market; for example, unprofitable types of recycling or equipment for low-income social service providers. UNITE suggests that Congress determine whether there are products or services that could meet this definition; draft a specific and narrow statute authorizing short-term pilot projects of this sort; and establish a statutory review process outside of the Board of Directors of FPI in which workers, companies and other interested parties could present evidence on the success of the pilot programs.

UNITE does not wish to suggest that replacing the current FPI program will be easy. We do believe it is both statutorily required and necessary for continued public support of prison work programs.

The goal of Congress and the Administration should be to increase investment in education, after-school programs, school counselors, social services and job training so that we can lower our extraordinary rate of incarceration and the resulting need for prison work programs.

We would be happy to work with the Subcommittee on any of these suggestions. Thank you for your attention.

Senator THURMOND. Mr. Schwalb.

STATEMENT OF STEVE SCHWALB

Mr. SCHWALB. Thank you, Mr. Chairman.

Mr. Chairman, we recognize there has been a lot of criticism of FPI based on concerns of adverse impact or job displacement. While we think these concerns are overstated, nonetheless, FPI in response has diversified its production and restricted its market share.

We believe these actions have minimized adverse impact, as indicated in the private industry's own data. The furniture industry, for example, as a whole has experienced increased sales, earnings, and employment over the last 20 years, despite our presence and our growth, and as Ms. Hoffman said, the textile industry certainly has been decimated by imports which we think is the bigger part of the problem than FPI.

We have heard much criticism about the unfair competitive advantage that FPI has by mandatory source and below minimum wages paid to inmates. But we think it is clear these provisions do not provide an unfair advantage to FPI.

As a correctional work program, we must contend with conditions which are inherent to a prison environment, such as the high costs of training undereducated and underexperienced workers, prison security procedures, labor-intensive work practices, and high turnover from inmates being released and transferred. Private sector businesses simply do not confront these issues to the same extent as FPI.

In practice, our mandatory source provision is merely a procurement vehicle to achieve an important social goal. The principal benefits of mandatory source to FPI are the attraction of private sector business partners and the reduction of our marketing expenses.

For many of our product offerings, FPI relies on partnerships with private sector companies. They bring their research, design, and manufacturing expertise to the relationship, and FPI contributes inmate labor. The sale of the resulting product under our mandatory source affords these companies an additional distribution channel for their products. And it should be noted that FPI sales under mandatory source generate over \$400 million a year in purchases of materials equipment, machinery, and services for our private sector vendors, 62 percent of whom are small, minority-owned, women, and disadvantaged businesses.

Several companies have told the board in the past they would not have responded to our solicitations for partnering in the absence of mandatory source. Thus, it is very probable that FPI would have to discontinue several major product lines if mandatory source were eliminated or eroded.

The potential undesirable effects of FPI's mandatory source are further minimized by the fact that in 1998, for instance, 90 percent of the waivers to our mandatory source which were requested were approved.

Regarding our prices, GAO recently examined the prices of several different FPI products and concluded that for virtually every one FPI's prices were within the market range of commercially comparable products.

Regarding earnings, our annual net margin is typically in the 2 to 3 percent range, hardly an indication of low cost. In short, we do not believe FPI derives an unfair advantage from mandatory source or low inmate wages. And, in fact, any benefits these provide are more than offset by market restrictions, workforce constraints, and the prison environment limitations.

Mr. Chairman, we are constantly searching for new alternatives for inmate job creation which will not generate opposition, recognizing, however, there are only so many things you can make with inmates in a prison environment.

We have attempted over the years to reduce the ratio of our sales derived from mandatory source, from traditional products, and from the Federal market. Several such initiatives within our current authority are underway.

For instance, we recently negotiated a pilot waiver of the mandatory source for dorm furniture. This will take effect in January 2000.

In addition, we have 2,500 inmates, about 15 percent of our workforce in FPI, performing service work for Federal agencies, services such as laundry, equipment repair, furniture refinishing, computer recycling, and data processing.

We are considering establishing a commercial services program on a pilot basis to seek business partners from the commercial sector who are interested in bringing service work back from overseas to have it performed by FPI inmates. Several of our factories are currently performing subcontracting work for such contractors as Northrup Grumman and Lockheed Martin to the satisfaction of both companies.

We are currently working on joint proposals where FPI could serve as a subcontractor to the blind and severely disabled work-

shops, which, of course, produce products and services to Federal agencies under the provisions of the Javits-Wagner-O'Day Act.

Mr. Chairman, we are not advocating the maintenance of the status quo. We are willing to work closely with those in industry and labor to find that win/win solution the Director referred to in her remarks. But as a matter of long-range strategy, our objective is to reduce our reliance on sales derived from mandatory source, from traditional products, and from the Federal market, provided that we can maintain the required inmate employment levels.

As a practical matter, Mr. Chairman, any change to the FPI program must ensure a means to create the necessary number of inmate jobs and must afford a realistic time period for the transition.

Thank you, Mr. Chairman. I would be happy to answer any questions you might have.

[The prepared statement of Mr. Schwalb follows:]

PREPARED STATEMENT OF STEVE SCHWALB

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the Federal Prison Industries, Inc. (commonly referred to as FPI or UNICOR, its trade name) program.

FPI'S PERCEIVED ADVERSE IMPACT ON THE PRIVATE SECTOR

We recognize that there has been criticism of FPI based on concerns of adverse impact or job displacement in the private sector, caused by the program's mandatory source requirement. Our own assessments and statements by various respected economists, however, do not generally support such conclusions. Nonetheless, in response to these concerns, FPI has diversified its production, concentrated on products where total market expansion was forecast, unilaterally restricted market share to reasonable levels and pursued business partnerships with the private sector.

We believe these actions minimize adverse impact on the private sector. Confirmation of FPI's impact is reflected in the private industry's own data. The office furniture industry, for example, as a whole, has experienced increased sales, earnings and employment over the past 20 years, despite FPI's continuous presence and sales growth in this product line.

FPI'S PERCEIVED COMPETITIVE ADVANTAGE

We have heard much criticism about the unfair competitive advantage FPI is afforded by the mandatory source provision and by below-minimum wages paid to inmates. For the reasons I will outline, we think it is clear that these provisions do not provide an unfair advantage to FPI.

First, FPI is not a business; it is a correctional work program which operates in a self-sustaining manner. As a correctional work program, FPI must contend with conditions inherent to a prison environment, such as the high costs of training an under-educated and under-experienced workforce; prison security procedures which reduce efficiency (for example, last year FPI lost over 250 production days due to lock downs); labor-intensive work practices which both limit production and increase costs; high costs of supervising inmates who are security risks; high turnover from inmates being released and transferred (the turnover rate in FPI is approximately 5 percent per month); and, the establishment of many half-day work programs in order to afford inmates access to academic, vocational and drug treatment programs.

Private sector businesses do not confront these issues to the same extent as FPI.

In practice, the mandatory source provision is a means of supporting an important social goal. Its effect is similar to many other public policy programs, such as preferential procurement from workshops for the blind and severely disabled or procurement set-asides for small, disadvantaged, and women and minority owned businesses. Restriction of choice is a deliberate and frequent public policy, such as the requirement that veterans seek medical attention at government operated Veterans Administration hospitals, instead of receiving vouchers for the private hospital of their choice.

The principal benefits of the mandatory source to FPI are the attraction of private sector business partners and the reduction of marketing expenses. For many of its

product offerings, FPI relies on partnerships with private sector companies. These companies bring their research, design and manufacturing expertise to the relationship; FPI contributes inmate labor. The sale of the resulting product under FPI's mandatory source affords these private sector companies an additional distribution channel for their products. Several companies have told the Board that they would not have responded to FPI's solicitations in the absence of mandatory source. It is probable that FPI would have to discontinue several major product lines if the mandatory source were eliminated. This would affect the prospective sales of FPI's private sector partners as well.

The potential undesirable effects of FPI's mandatory source are minimized by statutory requirements that FPI diversify its production to the maximum extent practicable, sell products only to the federal government and produce no more than a reasonable share of the federal market. Further, FPI has established and liberally applied procedures to grant waivers of the mandatory source when it cannot meet a customer's delivery requirements, technical specifications or price needs. Customer requests for FPI to waive its mandatory source are granted over 80 percent of the time. This gives the customers free choice and re-directs hundreds of millions of dollars in sales to the private sector. It should also be noted that FPI's sales under the mandatory source generate nearly \$400 million per year in purchases of materials, equipment, machinery and services for FPI's private sector vendors. In 1998, 62 percent of such purchases (\$223 million) were made from small/minority-owned, and disadvantaged businesses. Many of these vendors have expressed concerns about the potential loss of business associated with the elimination of FPI's mandatory source.

FPI's prices are not substantially below the market. In fact, almost all of FPI's critics have suggested that FPI's prices are too high. In August of 1998, a GAO study examined prices of several different FPI products and concluded that for almost every product, FPI's prices were within the range of commercial prices for comparable products. FPI's enabling statute contemplated this pricing non sequitur by requiring that FPI's products be sold at "not to exceed the current market price." There is no statutory or other restriction on selling below the market price. Of all the complaints FPI has received over the years about pricing, we have yet to hear that FPI's prices are too low or that FPI is undercutting the market.

Regarding earnings, FPI's annual net margin is typically in the 2-3 percent range. Fred Braun, former CEO of Zephyr Products, and considered by many to be the modern pioneer of private sector employment of inmates, summed it up well recently in comments: "I continue to be frustrated by the many interested people who erroneously believe that [inmate] wage rates are the same as labor costs."

In summary, we do not believe FPI derives an unfair advantage from mandatory source or low inmate wages. Any benefits these provide are more than offset by market restrictions, workforce constraints and prison environment limitations.

FPI'S STRATEGY TO CREATE MORE INMATE JOBS WHILE MINIMIZING IMPACT

We are constantly searching for new alternatives for inmate job creation which will not generate opposition. Pursuant to its statute, FPI attempts to diversify to the maximum extent possible, recognizing, however, that it must select product areas that are conducive to an inmate working environment. FPI also attempts to select areas where it foresees an increased federal market in order to reduce the potential of impact on the private sector.

FPI has attempted over the years to reduce the ratio of its sales derived from mandatory source, traditional products and the federal market. Several such initiatives, within our current authority, are currently underway.

With the approval of our Board of Directors, FPI has negotiated with the industry association a pilot waiver of mandatory source for dormitory furniture, which will take effect in January 2000.

Mandatory source does not apply to services provided by FPI. Over the past several years, we have put a great emphasis on creating inmate jobs by providing services to federal agencies. Today, over 2,500 inmates, approximately 15 percent of those employed by FPI, are performing such service work. The services include laundry, equipment, and vehicle component repair, furniture refinishing, computer recycling, printing, sorting, textile repair, distribution, data processing, and computer-aided design. This work is, of necessity, labor intensive, and we continue to look for other opportunities to provide such services.

FPI is considering establishing a Commercial Services Program, on a pilot basis, to seek business partners from the commercial sector who are interested in bringing service work back from overseas for performance by FPI inmates. We are still evaluating this new area but we believe it may have future potential.

Mandatory source also does not apply when FPI performs as a subcontractor to a federal government contractor. Several of our factories are performing work for such contractors as Northrup Grumman and Lockheed Martin. We believe this area offers considerable potential and we are pursuing several additional contracts.

We have also had several meetings with the national organizations representing the blind and severely disabled, which provide products and services to the federal government under the provisions of the Javits-Wagner-O'Day Act. We are currently working on joint proposals whereby FPI would serve as a non-mandatory source subcontractor to these workshops for work normally not performed by the blind and disabled workers. We believe this option offers an outstanding mutual benefit to our respective constituents.

FPI'S STRATEGY FOR THE FUTURE

So where do we go from here? We are not advocating the maintenance of the status quo. We are willing to work closely with those in industry and labor to find that "win-win" solution the Director stated in her remarks.

Recently, a Congressionally mandated joint study of the procurement, procedures, regulations and statutes that govern procurement transactions between the Department of Defense and FPI was completed. The study concluded that no legislative changes were necessary, but did make three recommendations, which we are adopting. These include:

- (1) Raising the threshold for waiver exceptions;
- (2) Expediting the waiver process for orders under \$2,500; and
- (3) Initiating a pilot waiver of the mandatory source at eight DoD locations for items which cost less than \$2,500 and require delivery within 10 days. As a matter of long-range strategy, FPI's objective is to reduce its reliance on sales derived from mandatory source, traditional products and the federal market, provided that we can maintain the required inmate employment levels. As a practical matter, any change to the FPI program must ensure a means to create the necessary number of inmate jobs and must afford a realistic time period for transition.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions you or other members of the Subcommittee may have.

Senator THURMOND. Thank you very much.

Mr. Oliver, do you generally consider the Defense Department and Prison Industries to have a mutually beneficial and cooperative relationship, both currently and historically?

Mr. OLIVER. Mr. Chairman, we have been working together since 1934. I think that the study pointed out that there is a mutually good relationship with the exception that many of the respondents to the study, which is really what I am talking about because just with respondents to the study, many of the respondents to the study were not completely happy with the timeliness or the service of the products. The quality they thought was good and the price was—they weren't permitted to check on the prices, but they felt the others were good.

Senator THURMOND. Mr. Oliver, do you consider the joint study between DOD and FPI to be a complete, comprehensive study, and does it adequately address the major issues regarding the relationship between DOD and FPI?

Mr. OLIVER. I think that the study, sir, really was a poll of several hundred people to see what they thought about what they had—what they thought with respect to the prices they had paid in the last year and last 24 months and what they thought about the product. And the study really focused on getting those people's opinion. I think 631 people. And I think that that is—the study is a good study and reflects that in the data, provides a great depth of data.

Senator THURMOND. Mr. Oliver, the joint study survey of DOD customers found that FPI could improve in some areas such as

timeliness of delivery. However, overall it appears that the survey found that DOD customers were generally satisfied with Prison Industries as a supplier. Do you agree?

Mr. OLIVER. Mr. Chairman, I would say that if you looked at the study, you would actually see that people were generally not satisfied with it as a provider, and I can't find the page, but I was looking at the percentages, and essentially the people are—with respect to efficiency, timeliness, best value, they found them worse than the other people they bought from.

Senator THURMOND. Mr. Oliver, the joint study concludes that no legislative changes are needed in the procurement practices between DOD and FPI. For example, it recommends a pilot program to determine the impact of raising the waiver threshold from \$250 to \$2,500 for DOD orders. Do you agree with the joint study that legislative changes are not warranted?

Mr. OLIVER. Mr. Chairman, we are really anxious to get together with FPI and develop the eight places to look at the pilot studies to raise the limit to \$2,500 and believe that we should do these pilot studies as soon as possible.

Senator THURMOND. Ms. Hoffman, I understand that Harvard economist Richard Freeman suggested last week that prisoners should make for the commercial market products that are currently imported from other countries and produced by foreign labor. He said it would help the trade balance, help prisoners, and help U.S. businesses. Do you agree with that?

Ms. HOFFMAN. Not at all. In addition to what I said in my statement, the businesses that used to do that work have now gone out of business. The businesses that would be helped are the retailers here who are doing just fine. It would do nothing to build up the U.S. economy. It would just create replacement products for what is currently being sold, and I think it is not a positive thing to do at all.

Senator THURMOND. Ms. Hoffman, you suggest in your testimony that Prison Industries should provide products or services from which there is no commercial market. How could Prison Industries remain a self-sufficient corporation if it made products without a commercial market?

Ms. HOFFMAN. I think the concept of self-sufficiency is wrong. I think that all that is doing is putting on to whatever industries and workers Federal Prison Industries compete with the cost of Federal Prison Industries. It is not self-sustaining. It is making money from the economy, and it does that by taking work away from people who are not in prisons and companies that ought to be able to continue performing that work.

Senator THURMOND. Mr. Schwalb, do inmates in Prison Industries generally pay more restitution than other inmates who work in other areas of the prisons?

Mr. SCHWALB. Yes, Mr. Chairman, they do. Because they earn a higher wage and because we have a minimum 50 percent requirement for them to pay, our data shows that they pay roughly about twice as much per capita toward restitution as inmates who are not in Prison Industries.

Senator THURMOND. Mr. Schwalb, I understand that DOD and other Federal agencies are working to create more flexibility in

their procurement practices such as by making more credit card purchases. Does FPI interfere in Defense or other agencies' streamlining efforts?

Mr. SCHWALB. Well, we certainly don't attempt to, Mr. Chairman. We are trying to assist all the Federal agencies in their efforts. We accept credit cards for our orders. We are doing Internet orders. We are doing electronic transmission of invoicing and ordering data. We are trying to parallel the efforts of all the Federal agencies so that we can be viewed as an attractive alternative rather than an impediment to their streamlining efforts.

Senator THURMOND. Mr. Schwalb, as proposed in the defense authorization bill, FPI could lose its preference for making certain products because they are part of a larger product that is used for military intelligence or weaponry. What impact could this have?

Mr. SCHWALB. Well, Mr. Chairman, we think that could have a substantial impact, particularly on our electronic product line. The majority of the products we make for the Defense Department are cable assemblies and other related items that, in fact, are components of other products, and especially if it was broadly construed, we think it would have a very substantial impact on that entire product line, which is about 20 percent of our sales.

Senator THURMOND. Mr. Schwalb, if Congress were to create broad exemptions from the mandatory source preference for Defense Department procurement, such as those proposed in section 806 of this year's defense authorization bill, would you explain how such a provision would specifically affect Federal Prison Industries?

Mr. SCHWALB. Well, Mr. Chairman, as the Director mentioned in her comments earlier, the impact of the provisions of the current amendment we believe could affect about 75 to 80 percent of the orders that we receive from DOD. And, of course, when you translate that into the number of inmates, it could affect adversely about half of our inmate workforce who work in those factories that produce those products.

Mr. Chairman, as I have said and as the Director has said, we are not opposed to the idea of revisiting or reforming the way FPI's mandatory source works. What we are opposed to are all this nibbling around the edges, whether it is an amendment to this bill or a restriction in that category without stepping back and collectively in a consensus way addressing all of the concerns and providing, in the absence of mandatory source, alternative means for us to create the jobs for the burgeoning inmate population in enough time to make the transition.

Senator THURMOND. Mr. Schwalb, the joint study between DOD and FPI found that FPI should develop a guide to explain how to conduct business with FPI. Also, an October 1998 DOD inspector general study found that DOD often lacks effective means for appealing waiver requests. Is FPI attempting to better educate its customers in areas such as the waiver process?

Mr. SCHWALB. Absolutely, Mr. Chairman. As Mr. Oliver suggested, we are collaborating with them on their purchasing vehicles, like their e-mail that they use for their customers. We are also collaborating as a result of the joint study on the joint development of a procurement brochure, if you will, that will go out to all the DOD customers. It will explain everything from what FPI is, how

to do business, how to secure waivers. The most efficient transaction relationship we can have is what we are trying to secure.

Senator THURMOND. Mr. Oliver, the executive summary of the joint study states, "On the whole, respondents seemed to be very satisfied with quality and service, most satisfied with price, and least satisfied with delivery." The study also states, "Most respondents rated FPI either good or average as an overall supplier in efficiency, timeliness, and best value."

Is this your understanding of the study?

Mr. OLIVER. Mr. Chairman, that is an accurate statement of the executive summary, and I think it is an accurate summing of the numbers in the respondents.

Senator THURMOND. Mr. Oliver, given that Prison Industries is a preferred source of supply, does Prison Industries offer DOD some advantages in procurement over private suppliers?

Mr. OLIVER. Mr. Chairman, first of all, there are two factors. One is that the Congress does the balancing between various programs, and the second is the administration establishes policy for me and other appointees. But with respect to defense alone, and with respect to what we are trying to do with best value and improving our procurement, many of the things with respect to a specified source are opposite to what we are trying to teach our buyers to do. We are trying to teach them to look for best value in the marketplace and be very adaptive to market conditions.

Senator THURMOND. Mr. Schwalb, some are proposing that the Department of Defense determine whether an FPI product is as comparable in price, quality, and timely delivery as the private sector. Are you concerned about permitting agencies to decide for themselves whether the FPI preference is applicable?

Mr. SCHWALB. Well, Mr. Chairman, we certainly don't have any suggestion that customers shouldn't determine what they need and whether or not we can satisfy that. The current process provides for the customer to review what we offer and make a comparison, and then if they believe that we cannot satisfy their needs, they submit a waiver request. We granted last year, as I mentioned, 90 percent of the waiver requests, and we did it within 4 days. So we try to be very liberal and reasonable about the application of the mandatory source.

But it seems to me that if you take it beyond the concept of the waiver process and say that everybody essentially must buy from us if they think they should—that is essentially what happens when you say the customer makes the determination—then you might as well cancel the mandatory source outright because that will be the practical effect.

Senator THURMOND. Mr. Schwalb, a June 1998 GAO report found that problems remain in FPI's delivery performance. Also, the joint DOD and BOP study found that timely delivery remains a major concern of DOD customers and that FPI should develop data to objectively measure timeliness. How are you working to address this problem, especially for defense customers?

Mr. SCHWALB. Mr. Chairman, we agreed with the recommendations of both of those reports, and we have taken a lot of efforts to improve our deliveries. It has improved every year since we have been at this effort. In 1998, the average on-time delivery for the en-

tire year was 91 percent. As the Director said earlier, 91 is not as good as 100, and we are not going to be satisfied until we improve it. But we have continued to improve this year, and I am happy to report that at the end of April our on-time delivery for this year was 93 percent. So we continue to improve that, and that is for all customers, including DOD.

Senator THURMOND. I think that completes the testimony unless somebody has something you want to add. Mr. Oliver or Ms. Hoffman or Mr. Schwalb, do you have anything else you want to say?

Mr. OLIVER. No, sir.

Ms. HOFFMAN. No, sir.

Mr. SCHWALB. No, sir.

Senator THURMOND. Well, we thank you for your presence and thank you for your testimony. It adds greatly to this record.

Now, we will leave the hearing record open for 1 week for additional material and for followup questions. If that is all, the hearing is adjourned.

[Whereupon, at 4:22 p.m., the subcommittee was adjourned.]

A P P E N D I X

QUESTIONS AND ANSWERS

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS,
Washington, DC, October 1, 1999.

The Honorable STROM THURMOND,
*Chairman, Subcommittee on Criminal Justice Oversight,
Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to follow-up questions from the May 24, 1999 hearing entitled "Bureau of Prisons Oversight: The Importance of Federal Prison Industries."

RESPONSES OF KATHLEEN HAWK SAWYER TO QUESTIONS FROM SENATOR THURMOND

Question 1. The Inmate Financial Responsibility Program (IFRP), which began in 1987, provides a means for collecting special assessments, debts to the IRS, court-ordered child support or alimony, and fines or restitution from the incarcerated debtor. In fiscal year 1998, nearly \$2 million was collected from UNICOR inmates toward these obligations, \$1.4 million of which provided restitution to victims. It appears to me that all inmates, whether they are in Prison Industries or work in other jobs, should have to pay fifty percent of their income toward court ordered fines and restitution. Will you consider implementing such a program for all inmates?

Answer 1. All federal inmates are encouraged to participate in the IFRP, and inmates who refuse to participate suffer a host of consequences including being quartered in the lowest status housing, denied participation in community-based programs, denied incentive for participation in drug treatment programs (including sentence reductions), and denied the opportunity to purchase particular items from the commissary. Inmates who work in UNICOR are required to contribute 50 percent of their earnings toward obligations that are tracked through IFRP; other inmates contribute an amount (at least \$25 per quarter) established by the staff who work closely with the inmates. Please note that in establishing this amount, staff review both inmate earnings and outside contributions to inmate accounts to encourage higher payments from inmates with significant community resources.

It would not seem appropriate to require all inmates who participate in IFRP to contribute 50 percent of their earnings for two reasons. First, we currently require inmates to purchase several items from the inmate commissary. For example, inmates are encouraged to purchase over-the-counter medication from the commissary. This results in savings to the Bureau in the form of pharmacy expenditures and staff processing time. The Bureau of Prisons also generally urges inmates to purchase stamps and personal hygiene items through the commissary. Mandating that all inmates relinquish 50 percent of their performance pay may result in inmates in low-paid positions (and without community resources) being unable to make commissary purchases, ultimately driving up Bureau costs. Moreover, such a requirement would also put greater undue pressure on inmate families: when inmates deplete earnings to meet the 50 percent requirement, families may feel even greater pressure to send money to support inmate commissary and telephone purchases.

Second, as a result of the Inmate Telephone System (ITS) court settlement, all inmates are permitted to maintain \$75.00 per month in their inmate trust fund account exclusively for use toward telephone calls. The Bureau must exclude that \$75.00 from the IFRP financial plan. Mandating that all inmates contribute 50 per-

cent of their performance pay to IFRP would necessitate court intervention to address the impact of the ITS exclusion in light of a mandatory IFRP contribution.

Question 2 Would Federal-Prison Industries (FPI) agree to give up its mandatory source regarding federal agencies if it could make products to sell in the commercial market that are now being made in foreign countries? Also, what type of repatriated work is FPI interested in pursuing?

Answer 2. FPI is strongly in favor of gaining new authorities from Congress to pursue new markets that will help us create the requisite number of jobs to accommodate our increasing inmate population. Not only will repatriation help us achieve this goal, but it will also benefit private industry and labor. FPI repatriation programs will create additional jobs for U.S. citizens as FPI operations purchase raw materials, supplies, transportation, and other services. In addition, FPI repatriation programs will provide relief for our business partners from foreign language challenges, tariffs, unstable host economies, and overseas transportation costs.

However, repatriation alone will not create sufficient market opportunity to completely offset the loss of the mandatory source in the federal market. In order to create the necessary number of jobs needed in the future to employ and train a burgeoning federal prison population, and to replace existing FPI jobs that may be lost as a result of elimination of the mandatory source, FPI will need the ability to sell other products that are currently being produced in the U.S. domestic market as well. It is expected that such authority will be accompanied by appropriate protections, including the payment of minimum wage to inmates for the manufacture of certain products, that will afford protection to private industry and minimize any impact on labor it is worthwhile to note that states have had similar authority available to them for twenty years through the Prison Industry Enhancement (PIE) program, and both business and organized labor agreed to the provisions involved in the PIE legislation.

Please do not hesitate to contact me if you would like additional assistance with this or any other matter.

Sincerely,

KATHLEEN HAWK SAWYER,
Director.

U.S. DEPARTMENT OF JUSTICE, UNICOR,
FEDERAL PRISON INDUSTRIES, INC.,
Washington, DC, October 1, 1999.

The Honorable STROM THURMOND, Chairman,
Subcommittee on Criminal Justice Oversight,
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I appreciate the opportunity to respond to your follow-up questions pursuant to the May 24, 1999, Bureau of Prisons Oversight hearing.

RESPONSES OF JOSEPH ARAGON TO QUESTIONS FROM SENATOR THURMOND

Answer 1. You ask what role the Ombudsman has played in improving Federal Prison Industries (FPI) relationship with its customers, and what avenues have been made available to the private sector for sharing its concerns about FPI's development and significant expansion efforts.

The Office of Ombudsman was established by FPI's Board of Directors in 1992 as a "focal point" for channeling and resolving issues of importance and concern to FPI from industry, trade associations, labor and federal agencies.

More specifically, the Ombudsman routinely assesses FPI's internal operations policies to ensure that they impact fairly on federal customers and the private sector. To this end, the Ombudsman has taken significant strides towards the elimination of delinquent orders and the expeditious resolution of waiver requests (the current average being 3 days), The Ombudsman has 'demystified' the waiver process by presenting workshops to both federal customers and the private sector. The Ombudsman is called upon to resolve a myriad of issues from external sources and has been instrumental, over the years, in maintaining open lines of communication with industry representatives. The Ombudsman also regularly updates the Board about FPI customers' evolving needs and candidly discusses FPI's ability to satisfy them in terms of its product offerings, servicing expertise, and quality assurance levels. The Ombudsman offers an impartial avenue through which federal agencies' appeals to denied waivers can be negotiated and equitably resolved.

Answer 2. As a segue to your second question, the ombudsman acts as a facilitator of the guidelines process, formulates outsiders' market share concerns in their most

representative light, and relays them to the Board for consideration. It is not unusual for the ombudsman to meet in private session with the Board to convey industry's concerns about FPI's intent to introduce new products, or significantly expand production levels. Further, FPI's public involvement procedures call for it to contact known parties having interest in a proposal, announce its proposed changes in the *Commerce Business Daily (CBD)*, furnish copies of FPI's impact studies to all interested parties, and solicit comments from the private sector within 45 days of the announcement. Such comments are submitted to the Board, intact, for consideration prior to voting. Industry representatives are welcome and encouraged to testify during FPI's new product/product expansion hearings, which are generally convened just prior to the Board's deliberations (and decisions made by majority vote).

If you have any further questions, please do not hesitate to contact me.

Sincerely,

JOSEPH ARAGON,
Chairman, FPI Board of Directors.

RESPONSES OF DAVID R. OLIVER TO QUESTIONS FROM SENATOR THURMOND

FPI PERFORMANCE LEVEL

Question 1. You stated during your testimony that "if you looked at the study, you would actually see that people were generally *not* satisfied with [FPI] as a provider, and I can't find the page, but I was looking at the percentages, and essentially the people are—with respect to efficiency, timeliness, best value, they found them worse than the other people they bought from." The Executive Summary of the Joint Study provides: "In response to questions regarding the price, quality, delivery, and service of specific products purchased in the last 12 months, FPI generally rated in the good to excellent or average ranges in all categories. On the whole, respondents seem to be very satisfied with quality and service, mostly satisfied with price, and least satisfied with delivery * * * Most respondents rated FPI either good or averages, as an overall supplier, in efficiency, timeliness, and best value." Please explain how your oral answer is consistent with the findings of the study.

Answer 1. The statement quoted in your question was intended to describe what the study revealed about the overall view of FPI as a supplier expressed by the respondents to the Department of Defense (DoD)/Federal Prisons Industries (FPI) Study. Table IV-4, page 31 of the study reflects the ratings given to FPI as an overall supplier. In three out of the four categories identified, a majority of the respondents rated FPI as average, fair, or poor as an overall supplier. The three categories in which a majority of the respondents rated FPI as average, fair or poor are timeliness, quality, and best value. In only one category, efficiency, did a majority of the respondents rate FPI as either excellent or good. The fact that the overwhelming majority of the study respondents indicated that they used FPI because it is a mandatory source (87 percent), indicates to me that the majority of respondents continue to use FPI because of its status as a mandatory source and not because they are satisfied. If other sources could be used, the data suggests that a majority of respondents, seeking sources that were better than just average, would not use FPI.

WAIVERS FROM PURCHASING FPI PRODUCTS

Question 2. A Department of Defense Inspector General Report stated the DOD does not have a service-wide procedure for obtaining waivers from purchasing Federal Prison Industries products, and does not maintain waiver data. Has the DOD initiated a program to inform and educate your procurement officials concerning the waiver process and establish a way to keep track of the waivers which are requested and received?

Answer 2. There is no need to establish a service-wide procedure to obtain waivers from FPI. The process and procedures for obtaining waivers from FPI are established and controlled by FPI and implemented by each purchasing organization. Procurement personnel are fully educated in acquisition from FPI and the waiver process is part of mandatory training for all 1102 personnel. Since FPI maintains waiver data for all Government organizations, it would be a wasteful duplication of effort with no additional value added for DoD to collect and maintain a separate database.

DOD INSPECTOR GENERAL FINDINGS

Question 3. In October 1998, the Department of Defense Inspector General conducted an audit of Defense Logistics Agency procurements from Federal Prison In-

dustries. In this report the IG reported that in a majority of purchases, the price of FPI supplies compares favorably with the price for the same supplies purchased from the commercial sector and both had the same quality defect rate of one percent. Are you aware of these findings, and do you believe they are accurate?

Answer 3. We are aware of the findings in the DoD Inspector General Report that the price of FPI supplies compares favorably with the price for the same supplies purchased from the commercial sector and both had the same quality defect rate of one percent. The findings of the report are not inconsistent with the findings of the DoD-FPI Study. Generally, FPI products are reasonably priced and are not defective. However, it should also be pointed out that the DoDIG report found that the Defense Logistics Agency “* * * could have purchased the supplies in our comparisons at a lower price if its buyers had purchased or been able to purchase the supplies at the lower of the FPI or commercial price * * * For the 20 percent of the supplies that matched, FPI prices were higher than commercial sector prices. Had DLA been authorized to purchase these supplies at the lower of commercial unit prices or negotiated a comparable price with FPI, DLA could have reduced its costs by \$2.6 million.”

DEFECTIVE SUPPLY ITEMS

Question 4. Of the items reported to have a deficiency, the IG reported that the Defense Supply Centers did not exercise FPI's warranty provisions and missed the opportunity to replace about \$127,000 in defective supply items. Why did the Defense Supply Centers not follow through with FPI's warranty provisions? Has the Defense Logistics Agency established a new procedures that can track this types of items and allow them to replace defective items through FPI's warranty provisions?

Answer 4. There is no single answer why the Defense Supply Centers did not exercise warranty rights against FPI for defective products. DLA activities may generally be less likely than their Service counterparts to exercise warranty rights because they often are not the ultimate consumers of the items they purchase. Under commercial warranty conditions, by the time a DLA inventory control point (ICP) becomes aware of a quality defect in a tendered item via the product quality deficiency report (PQDR) process, the warranty may have expired. The ICPs may not previously have been aware that the FPI “escape proof guarantee” amounts to a lifetime warranty with no expiration date. DLA has taken steps since the publication of the cited DoD Inspector General Report to ensure that the buying activities familiarize themselves with this FPI consumer policy. The revised DLA Instruction 4155.2, Quality Assurance Program Instruction for DLA ICPs, which already required PQDRs to be provided through Defense Contract Management Command to the contractor for source inspected items, and directly to the contractor for destination-inspected items, now emphasizes applicability of the FPI escape proof guarantee to this process. Tracking of replacement items, though, is beyond DLA's purview as a wholesale supplier.

In addition the Department has linked FPI's data base and ordering systems to our web sites to facilitate easy of use by our contracting officers. We have initiated discussions with FPI regarding the recommendations included in the report to pilot-test abbreviated waiver procedures. However, FPI has informed us that they wish to study the issue instead of testing.

UNION OF NEEDLETRADES, INDUSTRIAL
AND TEXTILE EMPLOYEES,
New York, NY, October 1, 1999.

RE: Hearing on “Bureau of Prisons Oversight”
The Honorable STROM THURMOND, Chairman,
Subcommittee on Criminal Justice Oversight,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: I am writing in response to the follow-up questions you submitted to me, based on my testimony at the May 24, 1999 Oversight Hearing on BOP. The questions and answers are as follows:

RESPONSES OF ANN HOFFMAN TO QUESTIONS FROM SENATOR THURMOND

Question 1. You stated in your prepared testimony that one reason prisoners should not make products only made overseas is that this work will not provide them with specific, employable job skills. You also state that inmates should make products for which there is no commercial market. How will making products [for]

which there is no commercial market provide inmates with specific employable skills?

Answer 1. I suggested as examples of the kinds of products and services that might be appropriate “unprofitable types of recycling or equipment for low-income social service providers.” The skills involved in performing recycling work or making equipment for low-income social service providers are clearly applicable to profitable recycling, and to equipment manufacture for the commercial market.

In addition, I suggested that “Congress determine whether there are products or services that could meet this definition and authorize pilot projects subject to review and analysis by someone other than the Board of Directors of FPI. I am confident that such a process might result in more consensus than exists currently.

Question 2. At a symposium on May 14th, several nationally respected economists argued that the sale of inmate-made products in the commercial market would not have an adverse effect on the economy. Do you agree with this assessment? Why or why not?

Answer 2. I am not aware of a symposium on May 14th, so I cannot react to the premise of the question. I believe the thrust of my testimony was to the effect that expansion of prison industries, into the commercial market or otherwise, will have an adverse impact on the economy for the reasons stated therein.

Sincerely,

ANN HOFFMAN,
Legislative Director.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS,
Washington, DC, September 21, 1999.

The Honorable STROM THURMOND, Chairman,
Subcommittee on Criminal Justice Oversight,
Committee on the Judiciary, U.S. Senate Washington, DC.

DEAR MR. CHAIRMAN: I appreciate the opportunity to respond to your follow-up questions pursuant to the May 24, 1999, Bureau of Prisons Oversight hearing. Our responses are as follows:

RESPONSES OF STEVE SCHWALB TO QUESTIONS FROM SENATOR THURMOND

Question 1. You mentioned in your testimony that FPI is pursuing a commercial services initiative as an example of an initiative which does not rely on mandatory source. How will FPI's Commercial Services Program be implemented? (No. 1 and No. 7 are the exact same question.)

Answer 1. FPI's commercial market services (CMS) initiative is being pursued cautiously, with the authorization of the Department of Justice and approval by FPI's Board of Directors. The CMS initiative is being undertaken as a pilot effort, with the first projects to be implemented all involving service work that is currently being performed outside of the United States. FPI will repatriate that work, thus having no adverse impact on domestic U.S. jobs. In fact, the CMS initiative may result in the creation of new U.S. jobs (e.g., inmate supervision and purchases of equipment, supplies, and services) in support of the work that will be done by inmates inside our Federal prisons. The work we will focus on seeking will be labor intensive, such as data services, sorting, and packaging.

Question 2. Some have argued that for every job an inmate has in Federal Prison Industries, there is one less job for a law-abiding citizen losing his or her job. Why do you not believe that to be the case?

Answer 2. Since one of FPI's mandates is to employ the greatest number of inmates, it does not conduct its manufacturing process in the same manner the private sector does. FPI uses techniques that are labor intensive, thereby minimizing any impact on private sector jobs. It has been established and well documented (Deloitte & Touche, market study report to Congress, 1991) that on average, prison industries output equates to approximately one fourth that of a worker producing comparable goods in the free world. Thus, even at a superficial level, it would take four inmate workers to equate to one private sector job.

There are several other factors that should be considered before any FPI sales are assumed to result in any job displacement in private industry. A principal consideration is growth in the economy. As long as the economy is growing, inmate jobs do not come at the expense of private sector workers. This is because inmate jobs are created out of an overall expanding market pie. Take the furniture industry, for example. The overall U.S. market for office furniture grew from approximately \$10 bil-

lion in 1996 to nearly \$13 billion in 1999. The expanded inmate jobs created during this time period are simply a small fraction of the overall growth. Thus, inmate jobs do not come at the expense of someone's job in the private sector, since private industry is hiring and creating new jobs at the same time.

In a more stable, or even declining, market such as textiles, any impact would be dispersed across multiple manufacturers in the industry. Thus if the contracts awarded to FPI were to be awarded to the private sector instead, the work would likely be divided up among several different firms. Thus any impact of FPI's having this work is likewise dispersed among several companies in the industry.

Another factor to consider is attrition. That is, even if a company does reduce the size of its workforce, a certain amount of that reduction will occur through normal attrition, i.e., retirements, turnover, etc. Thus the most often asserted scenario by FPI critics, i.e., actual direct displacement of persons in existing jobs, is one that is the least likely to occur.

A company's capacity utilization is also a factor. Much of FPI's work, if it were not being performed by FPI, would be absorbed into the existing capacity of a number of firms across the industries in which FPI operates. If FPI sales were to go to the private sector, it is highly unlikely that these sales would result in the creation of new jobs. FPI's impact is most likely felt in a slightly reduced profit margin on the part of private companies rather than on employment per se.

On the positive side of the ledger, it cannot be overlooked that FPI actually creates jobs. First, FPI employs nearly 2,000 civilian staff in support of its operations. Second, of every dollar spent by FPI, 94 cents is returned to the private sector in the way of purchases of raw materials, staff salaries, utilities, equipment maintenance and supplies. These contributions by FPI help create private sector jobs. Therefore, in lieu of FPI's existence in the marketplace, the jobs directly supported by FPI operations would be adversely affected, resulting in a loss of jobs to the economy.

Question 3. Please discuss the percentage of products and services that the Federal government purchases from FPI compared to other suppliers.

Answer 3. FPI's share of total Federal government purchases is about one quarter of one percent (i.e., FPI sales of roughly \$600 million out of total Federal procurements of nearly \$200 billion). FPI's market share in only those 88 Federal Supply Class (FSC) codes in which FPI provides goods and services is slightly higher, at 3.6 percent. FPI has a market share higher than 20 percent in only 15 out of the 88 FSC codes in which it operates. (Four of these FSCs are in services, for which FPI is not mandatory.) If we include the broader overall commercial market for the products and services that FPI provides, its market share in most cases is only a fraction of one percent.

Question 4. Based on the May 21st symposium that you attended, do economists believe that FPI has an economically significant impact on the American economy? Please explain.

Answer 4. An article was published in the May 20, 1999, edition of the Wall Street Journal entitled "Economists Join Debate on Prison Work." The article was published the day before George Washington University hosted a day-long seminar of nationally recognized economists and others to discuss this critical issue of prison work. There was virtual consensus among those in attendance at this seminar that increased opportunities for prison work could be beneficial rather than detrimental to the overall U.S. economy. Professor Richard Freeman, a respected labor economist from Harvard University, in discussing the benefits of inmates repatriating work to the U.S., stated, "That helps the trade balance, it helps the prisoners, it helps U.S. businesses, at almost no cost to the people who are free." In that same article, Morgan Reynolds, a Texas A&M economist stated "Production by prisoners creates rather than destroys jobs" as a result of the multiplier effect, whereby workers making things require other workers to produce and deliver their raw materials, transport their finished goods, etc.

Similarly, at a recent House Crime Subcommittee hearing held on August 5, 1999, chaired by Congressman McCollum, representatives for both the textile and office furniture industries testified in response to a question from Congressman Bobby Scott, that FPI's impact on their overall industries is relatively insignificant.

Question 5. Federal Prison Industries has received criticism in the past for employing non-citizen inmates in your factories which learn skills and then upon their release they take these skills back to their country. Does FPI employ foreign nationals in your factories, and what is your policy in this regard?

Answer 5. In accordance with a final rule published in the Federal Register on June 15, 1999, inmates or detainees who are currently under an order of deportation, exclusion, or removal, are no longer permitted to work in FPI (UNICOR). In-

mates or detainees for whom no decision has been made are unaffected by this policy. The only exception to this policy is where a deportation order has been issued, and the inmate is from a country that will not accept them back, in which cases such inmates may be permitted to work in UNICOR.

Question 6. FPI recently published a proposed rule that some have claimed precludes agencies from comparing FPI's products to commercial sources. Can you please address this?

Answer 6. FPI's proposed rules were intended only to codify long standing policies and practices. In light of renewed legislative efforts to pass comprehensive legislation that would grant FPI new market authorities and overhaul the current way FPI operates, FPI has withdrawn the draft rules referenced.

Question 7. You mentioned in your testimony that FPI is pursuing a commercial services initiative as an example of an initiative which does not rely on mandatory source. How will FPI's Commercial Services Program be implemented?

Answer 7. Same as Question #1 (see response to Q. #1)

Question 8. A March 1998 GAO report said that FPI is unable to demonstrate with any degree of certainty the level of customer satisfaction it delivers. It remains vulnerable to assertions by its critics that federal customers are dissatisfied and should no longer be required to buy FPI products, and misses opportunities to improve its operations by having better data on how federal customers view its performance. What is FPI doing to improve their management information systems to obtain feedback on timeliness, price, and quality from federal customers?

Answer 8. In April 1999, FPI and the Department of Defense submitted its joint study of business transactions conducted between the two agencies. The study was directed by the Congress as part of an Amendment to the 1998 DoD authorization bill sponsored by Senator Phil Gramm. As part of the study, DOD and FPI conducted a comprehensive survey of DOD customers to determine their views about FPI.

In the jointly conducted survey, questions were asked regarding the price, quality, delivery, and service of specific products purchased within the last 12 months, with FPI generally rated in the average, good, or excellent ranges in all categories of the DOD customers surveyed, 88 percent rated FPI average to excellent for efficiency, 69 percent rated FPI as average to excellent for timeliness, 85 percent rated FPI's prices average to excellent, and 88 percent rated FPI as average to excellent for quality.

In addition to this in depth review of DoD customer satisfaction, FPI is in the process of developing a customer satisfaction database. We continue to develop survey questions for implementation. The surveys are expected to begin in October 1999. The database will be started concurrently with the implementation of the surveys.

Question 9. A June 1998 GAO report showed that FPI's delivery times continue to need improvement. What specific steps has FPI taken in the past year to increase the timeliness of its customers orders?

Answer 9. One of the questions posed to DoD customers in the joint DoD-FPI study was whether FPI had improved in the past year. Of those surveyed, 63 percent indicated that FPI had indeed improved, empirically substantiating verbal feedback that FPI has received from its Customer Advisory Group and others.

Moreover, FPI has been closely tracking progress on achieving its on-time customer delivery goals. In fiscal year 1999, FPI's on-time deliveries have improved from 85 percent in October to almost 92 percent at the end of July. Other specific steps that are being taken by FPI include plans to reduce its standard (non quick ship orders) delivery lead times in its office seating line from 90 to 60 days.

Finally, FPI is currently preparing for implementation of a new Enterprise Resource Planning system in May of 2000. This new management information system will provide enhanced capability for tracking, on a real-time basis, customer status and requirements for price, specifications, and timeliness, and will result in improved overall customer service.

Again, we appreciate the opportunity to respond to your concerns. Please do not hesitate to contact me if you require additional information.

Sincerely,

STEVE SCHWALB,
Assistant Director, Industries, Education, and Vocational Training.

ADDITIONAL SUBMISSIONS FOR THE RECORD

PREPARED STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

The Administration supports prompt congressional action on the national defense authorization bill for fiscal year 2000; however, S. 1059 raises serious budget concerns and a number of policy concerns outlined below.

FUNDING LEVELS

The Administration opposes the extent of the base funding increases for defense programs S. 1059. The President's defense budget for fiscal year 2000 provides a \$9 billion increase proposed in over the fiscal year 1999 enacted level, excluding emergencies enacted in the fiscal year 1999 Omnibus Appropriations Act. The President's budget ensures that critical readiness needs are met, allows for weapons modernization, and proposes an appropriately generous military compensation plan, while ensuring that other critical U.S. priorities receive sufficient funding. The Senate bill, in contrast would authorize \$8 billion more in total spending for defense than the \$280.8 billion requested in the President's budget, potentially draining critical resources, from other programs. The Administration believes that S. 1059 must be considered in the context of deliberations on a comprehensive budget framework that addresses Social Security, Medicare, and all discretionary spending. For these reasons, the Administration opposes the magnitude of the base funding levels of S. 1059.

BASE REALIGNMENT AND CLOSURE (BRAC)

The Administration is disappointed that the bill fails to support the Department of Defense's proposal to authorize two additional rounds of base closures and realignment. Defense's base in a structure is far too large for its military forces and must be reduced. The failure to downsize Defense's base infrastructure proportionately is apparent in the fact that since fiscal year 1989 force structure has been cut 36 percent compared to only 21 percent in base structure through four BRAC rounds. Future BRAC rounds are critical to secure funds for readiness, modernization, and quality of life priority programs and to allow the Department to reshape its base infrastructure to match changing mission requirements for the 21st century.

MILITARY PAY AND BENEFITS

While the Administration is pleased that S. 1059 endorses the key elements of the President's plan to improve military compensation, we are concerned about the excessive costs of the committee bill. The Administration is concerned that program costs of the bill's military pay increases exceed the Defense program for fiscal year 2000–2005 by nearly \$6 billion. They also create a disparity with civilian pay raises. The bill's retirement reform would be significantly more costly in the long run than the Administration's proposal.

CENTRAL TRANSFER ACCOUNT TO FUND PROGRAMS TO COMBAT TERRORISM

The Administration objects to Section 1007, which creates a central transfer account to fund the combating terrorism aspect of the force protection mission. This central funding of a fundamental command responsibility would impede efforts by commanders to insure the security and readiness of their forces. Additionally, the total amount of funding consolidated into section 1007 exceeds the amounts for combating terrorism in the President's budget request that would be otherwise located in other titles of the bill. This has the effect of unintentionally cutting critical readiness spending. The Administration would strongly prefer to work with Congress to finalize the Administration's proposed process to provide the committee with the oversight information it now finds lacking.

DEPARTMENT OF ENERGY ISSUES

The Administration is pleased with the bill's support for most of the programs under the President's Extended Threat Reduction initiative to improve the security of weapons of mass destruction in Russia. The Administration, however, is disappointed with reductions to the Nuclear Cities Initiative (NCI) and the Initiative for Proliferation Prevention programs. Furthermore, the bill would place burden-

some restrictions on these programs that could bring them to a halt. The most problematic is requiring agreement from Russia to close weapons production facilities as a condition for assistance from the NCI program.

The Secretary of Energy has taken decisive measures with regard to counter-intelligence, safeguards and security issues at Department of Energy (DOE) facilities. His efforts will be strengthened by a number of provisions in this bill. However, the Administration objects to the proposed moratorium on cooperative program with Russia, China, and other nations pending certain security-related certifications. This provision could negatively impact a number of vital national security programs, such as disposition of Russian missile material. With respect to the provision requiring detailed background investigations for all employees who work in the vicinity of restricted data, the Administration believes that this costly and intrusive provision is inconsistent with procedures throughout the Executive Branch established by Executive Order 12968. DOE is implementing measures that will more effectively deal with the concerns this provision seeks to address, including improved security, use of polygraphs, and counter-intelligence initiatives. While Supporting accelerated completion of DOE closure projects, the Administration opposes the provision that would authorize the Secretary of Energy to accept loans from cleanup contractors and use the funds for additional cleanup. This provision is detrimental to ongoing contract and management reform initiatives at the DOE and is inconsistent with longstanding policy on Federal agency borrowing.

SPECTRUM

The Administration strongly opposes Section 1049, which would elevate the Defense Department's use of the spectrum above all other Federal, State and local government, and private sector uses. It would undermine the President's authority to set spectrum management priorities for the Federal Government and impair the Federal Communications Commission's (FCC) ability to manage the spectrum for the private sector and State and local governments. It could also discourage investment in new and more spectrum-efficient technologies, create disincentives for spectrum sharing, and impose significant costs on Federal, State and local governments, and the private sector.

The Administration also opposes Section 1050 which prohibits the Federal Government from providing licenses, permits and funding to entities broadcasting without specific authorization from outside the United States into the country on frequencies reserved to or used by the Defense Department. This provision infringes upon international spectrum management, which is appropriately addressed by the FCC and others through the International Telecommunications Union (ITU). It would be inconsistent with U.S. obligations under the ITU and could set a precedent that other countries could follow to the detriment of U.S. interests abroad.

FEDERAL PRISON INDUSTRIES MANDATORY SOURCE EXEMPTION

The Administration opposes Section 806 which would essentially eliminate the Federal Prison Industries (FPI) mandatory source with the Defense Department. Such action could harm the FPI program which is fundamental to the security in Federal prisons. In principle, the Administration believes that the Government should support competition for the provision of goods and services to Federal agencies. However, to ensure that Federal inmates are employed in sufficient numbers, the current mandatory source requirement should not be altered until an alternative program is designed and put in place. Finally, this provision would only address mandatory sourcing for the Defense Department, without regard to the rest of federal government.

STRATEGIC FORCE STRUCTURE

The Administration appreciates the bill's endorsement of our plan to reduce the Trident submarine force from 18 to 14 boats, while maintaining a survivable, effective START 1-capable force. However, we prefer repealing the bill's general provision that maintains the prohibition, first enacted in the fiscal year 1998 Defense Authorization Act, against obligating funds to retire or dismantle any other strategic nuclear delivery systems below specified levels unless START II enters in force. The Administration believes this provision would unnecessarily restrict the President's national security authority and ability to structure the most capable, cost-effective force possible.

THEATER MISSILE DEFENSE UPPER-TIER ACQUISITION STRATEGY

The Administration strongly opposes Section 221, which proposes a management and funding structure that negates the Department's overall Ballistic Missile Defense strategy. The Department's strategy will allow for the earliest, affordable delivery of an effective upper-tier system. This would not be the case if the Department had to develop the Theater High Altitude Area Defense and the Navy Theater Wide systems concurrently. The provision cannot be implemented with the resources provided and would seriously impact the safety of our troops on the ground.

PATRIOT ANTI-CRUISE MISSILE (PACM)

The Defense Department's top Theater Missile Defense system priority is the Patriot Advanced Capability—3 (PAC-3) missile, and it supports the \$212 million increase for this program. However the Department did not request funding for and does not support the bill's \$60 million authorization for the Patriot Anti-Cruise Missile (PACM), for which the Army does not have an operational requirement.

INVENTORY OF MAJOR END ITEMS

The Department of Defense objects to Section 1024, which requires each military service to conduct an inventory of all major end items (i.e. aircraft, ships, missiles etc.) and report the results, including the status and location of each accountable item. This would be a costly duplication of thorough inventories already conducted and is based on the incorrect assumption that our military commanders are derelict in their oversight of their assigned end items.

troops-to-teachers

The Administration believes that the Department of Defense should continue to have authority to administer the current Troops-to-Teachers program until the Administration's proposed "Transition to Teaching: Troops to Teachers" initiative is enacted to expand this important effort as part of the reauthorization of the Elementary and Secondary Education Act.

LAND WITHDRAWAL

The Administration agrees that legislation on renewal of military land withdrawals is needed and looks forward to presenting its proposal to and working with the Congress on this issue.

PROCUREMENT REFORM

The Administration urges the incorporation of our proposed provisions that would further improve the acquisition process and its ability to support the Defense mission. Activities would include, among other things, reducing government-unique accounting requirements, streamlining the acquisition of commercial items, and taking greater advantage of electronic commerce.

VOLUNTARY EARLY RETIREMENT AUTHORITY

The Administration does not oppose the provision accelerating the effective date of the Defense Department's Voluntary Early Retirement Authority. However, the Administration urges the Congress to adopt the Administration's proposal to extend the availability of comparable early out authority government-wide.

PAY-AS-YOU-GO SCORING

S. 1059 would affect receipts and direct spending; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. This office's pay-as-you-go scoring of S. 1059 is under development.

The Administration will continue its review of the bill and may identify other issues. The Administration looks forward to working with congressional leaders to forge a strong Authorization Act for fiscal year 2000.

Industrial Programs
Locations, Inmate Employment, and Net Sales
as of September 1998
(Dollars in Thousands)

Textiles	Electronics	Furniture	Metals	Graphics/Services
<ul style="list-style-type: none"> ■ Alderson, WV ■ Atlanta, GA ■ Bastrop, TX ■ Beaumont, TX ■ Bryan, TX ■ Butner, NC ■ Dublin, CA ■ Fort Dix, NJ ■ Greenville, IL ■ Jesup, GA ■ Leavenworth, KS ■ Manchester, KY ■ Miami, FL ■ Oakdale, LA ■ Otisville, NY ■ Ray Brook, NY ■ Safford, AZ ■ Sandstone, MN ■ Seagoville, TX ■ Terre Haute, IN ■ Tucson, AZ ■ Yazoo City, MS ■ Waseca, MN 	<ul style="list-style-type: none"> ■ Beaumont, TX ■ Big Spring, TX ■ Boron, CA ■ Danbury, CT ■ Estill, SC ■ Fairton, NJ ■ Lexington, KY ■ Lompoc, CA ■ Loretto, PA ■ Marion, IL ■ Memphis, TN ■ Oxford, WI ■ Petersburg, VA ■ Phocaix, AZ ■ Rochester, MN ■ Three Rivers, TX 	<ul style="list-style-type: none"> ■ Allenwood, PA ■ Ashland, KY ■ Beckley, WV ■ Florence, CO ■ Forrest City, AR ■ Leavenworth, KS ■ McKean, PA ■ Lompoc, CA ■ Marianna, FL ■ Sheridan, OR ■ Talladega, AL ■ Tallahassee, FL ■ Texarkana, TX ■ Three Rivers, TX 	<ul style="list-style-type: none"> ■ Coleman, FL ■ El Reno, OK ■ Lewisburg, PA ■ McKean, PA ■ Milan, MI ■ Morgantown, WV ■ Pekin, IL ■ Schuylkill, PA ■ Terminal Island, CA 	<ul style="list-style-type: none"> ■ Bastrop, TX ■ Butner, NC ■ Cumberland, MD ■ Dublin, CA ■ Eglin, FL ■ El Paso, TX ■ Fort Dix, NJ ■ Fort Worth, TX ■ La Tuna, TX ■ Leavenworth, KS ■ Lexington, KY ■ Lompoc, CA ■ Marianna, FL ■ Montgomery, AL ■ Petersburg, VA ■ Sandstone, MN
Inmates Employed:†				
6,112	3,742	4,427	3,053	2,879
Net Sales:				
\$ 133,968	\$ 105,849	\$ 111,766	\$ 140,054	\$ 42,642

Some locations have multiple plants.

† The total number of inmates employed by Federal Prison Industries as of September 1998 was 20,213. This includes 2,004 inmates employed in support positions.

PREPARED STATEMENT OF AMERICAN APPAREL MANUFACTURERS ASSOCIATION

Thank you for providing an opportunity for American Apparel Manufacturers Association (AAMA) to present its views on Federal Prison Industries.

AAMA is the central trade association for US companies that produce clothing. Our members are responsible for about 85 percent of the \$100 billion worth of garments sold at wholesale in this country every year. While the industry is large, most of the companies are relatively small. Three-fourths of our members have sales under \$20 million and more than half have sales under \$10 million. Our members manufacture every type of garment and are located in nearly every state. About 50 of our members supply uniforms and clothing to the military and, therefore, are in direct competition with FPI. Our industry employs more than 700,000 Americans.

AAMA is not seeking the dissolution of FPI or seeking special protection for the apparel industry. Rather, we are suggesting two simple solutions that can resolve current complaints with FPI's operations and provide a groundwork for how FPI's future activities can be evaluated.

And those solutions are relatively straightforward. *First, FPI must operate within its statutory mandate to cause no undue damage to the private sector. Second, oversight should be strengthened to ensure FPI adherence to this mandate.*

BACKGROUND ON APPAREL INDUSTRY

AAMA's 50 or so government contracting companies have a long history of making specialized products to exacting military standards. Many only make a handful of distinct products and most of them only have one customer—the US military. They represent a key component of the warm industrial base that is so critical for our “ready to go to war” capability. Without them, we would not be able to respond easily to US security threats, such as those posed by Saddam or Milosevic.

But outside of this role, these apparel companies have few options. They have little or no experience in the already overcrowded commercial marketplace. Half of that market already has been taken by imports, while the other half is contested by about 12,000 domestic firms. Moreover, the apparel industry in the United States is shrinking dramatically. In the last five years, we have lost more than 220,000 jobs.

At the same time, FPI now dominates the government contracting market for apparel. In its fiscal year 1998 report, FPI's apparel sales equaled \$134 million, or about 25 percent of FPI's total net sales. It operates 23 textile and apparel plants in 17 states and employs more than 5000 inmates. FPI is now the single largest apparel supplier to the Defense Department.

Our government contracting companies have a long history dealing with FPI and their repeated expansions into the apparel industry. It is this perspective that we want to share as you evaluate FPI's operations.

THE CURRENT SITUATION

FPI responds to a clear social need—controlling an ever-expanding inmate population. But it is doing so at the expense of a very small segment of our country. Because the hurt is concentrated in a few industries, such as apparel, we are shouldering a disproportionate share of the burden. We are rapidly being driven out of business. This is not a healthy model and is clearly not what the Congress intended when FPI was originally authorized 65 years ago. Congressman Connery of Massachusetts said it best in 1934—during the debate on legislation authorizing FPI—when he stated “The only solution is to permit them to make a little of this, a little of that, so that there will not be undue competition with the private sector.”

So what should we do?

Reform of FPI starts with the fundamental realization that FPI currently exceeds its statutory authorization. FPI authorizing law requires it to diversify its production, minimize competition with the private sector, and avoid capturing more than a reasonable share of the Federal Government market for any specific product. The experience of government contractors in the apparel industry is that each of these mandates has been routinely disregarded.

Attached to this testimony is a list of apparel products for which FPI has been authorized to produce 100 percent of defense procurement needs. Even though FPI is expressly prohibited from taking more than a reasonable share of the market for any specific product, it has done so repeatedly as this list shows. How? Because there is no clear definition of “reasonable” or “specific product.” FPI often measures its expansion plans by looking at the entire industry—both commercial and military. Such analyses overstate the size of a particular market and, in so doing, mask the damage FPI does to government contractors.

Like the proverbial camel's nose under the tent, the other mandates fall in quick succession. As it consumes such high percentages of the market share of specific products, FPI is also clearly failing to diversify its industries. In many cases, it is far easier to consume a larger share of an existing product than expand production into completely new areas. Again, with no guidelines on reasonable market share, FPI finds it relatively easy to ignore its diversification mandate as well.

Finally, by concentrating in existing industries and certain product lines, FPI finds itself unable to minimize competition with the private sector. This is especially true when you remember that some of these contractors produce only one or two distinct products. By consuming one hundred percent of a specific product, FPI may force three of the firms that manufacture that product to close entirely and two others to fire half their production staff.

We believe FPI has been able to disregard these mandates because of two fatal flaws built into the FPI system itself. First, FPI enjoys incredible power as an unlimited mandatory source provider to the Federal Government. Quite simply, FPI has the ability to take practically any federal contract it wants. This is a power that is all too easy to abuse—especially when FPI is under pressure to expand its operations to absorb new inmates. Because its mandates on not competing with the private sector are so loosely worded, FPI has little incentive to NOT use this mandatory source power.

Second, there is little institutional oversight to restrict FPI's activities. In many respects, it seems as if FPI answers to no one—not Congress, not its Federal customers and certainly not private industry. From our experience, its public decision-making process appears largely designed to ratify previously approved decisions. Nor are we convinced that the Board exercises any oversight or independence. Several years ago, for example, we negotiated with the FPI Board to secure specific limits on future expansion in the battle dress uniforms (BDUs). Several weeks later, those limits were disregarded when FPI staff went forward with a dramatic increase in the expansion anyway.

FPI also uses its role as a quasi-public agency to maximize its power and minimize its restrictions. For example, it claims status as a federal agency to exempt itself from Federal Acquisition Regulations (FAR) provisions governing purchases from the private sector. Yet it claims status as a private corporation to justify the fact that, after 65 years of operation, it is only now attempting to codify its rules of operation. While we have considerable disagreement over the substance of these rules, we find it incredible that it has taken so long for FPI to even issue such guidelines.

RECOMMENDATIONS

As mentioned before, we believe there are two principles that would help rectify the current situation while ensuring smooth operations in the future. We believe these principles should be at the heart of any reform proposal.

1. *Require FPI to live within the confines of its statutory authorities regarding competition with the private sector.* FPI should be compelled to refrain from taking more than a "reasonable share" of any "specific product" as required by 18 USC 4122(b)(2). Since FPI has shown it is incapable of establishing limits for these two phrases, we would propose Congress perform this task. A reasonable market share should be defined as 10 percent. That is, FPI can either exercise its mandatory source or compete, but only up to a 10 percent limit of a specific product. The term "specific products" in turn should be narrowly defined to refer to actual, specific items not generic product groupings or dollar amounts. Finally, FPI should be compelled to rollback its existing production so that it meets these newly articulated guidelines.

We also strongly support language (Section 806) in the Senate Armed Services Committee version of the fiscal year 2000 Defense Authorization Bill that limits FPI by empowering the Defense Department to void mandatory source in cases where FPI products do not compare with private sector products in terms of price, quality, and delivery time. We see this as an important first step in asserting limitations over FPI's operations.

2. *Improve oversight of FPI activities to prevent undue burden to private sector.* To ensure that FPI lives up to its statutory requirements, Congress should establish more effective oversight over FPI operations. Such oversight could include submission of annual statements to assess FPI's impact on the private sector, Senate confirmation of FPI Board members, and establishment of penalties if FPI exceeds its authorization in the future.

UNICOR GENERIC ITEMS—100 PERCENT AUTHORIZED

1. Bag, Flyer's Helmet 2. Bag, Mail 3. BDU Coat (all types) 4. BDU Coat, Camouflage, Woodland 5. BDU Trousers (all types) 6. BDU Trousers, Camouflage, Wood 7. BDU Trousers, Camouflage, Wood 8. Blanket, Disaster 9. Body Armor, Fragmentation Vest 10. Case, Flag 11. Case, Small Arms Ammunition 12. Cloth, Terry 13. Coat, Aircrew BDU, Tan 14. Coat, Aircrew BDU, Woodland 15. Coat, Combat, Black, 357, Type VIII 16. Coat, Combat, Desert Camouflage 17. Cover, Bivy 18. Cover, Body Armor, Fragmentation 19. Cover, Field Pack 20. Cover, Individual, Desert Camouflage 21. Cover, Individual, Snow, Camouflage 22. Cover, Individual Woodland Camo 23. Cover, Water Canteen (2-quart) 24. Cover, Water Canteen, 2 quart 25. Gaiter, Neck 26. Glove Insert, Chem Prot (LGE) 27. Glove Insert, Chem Prot (MED) 28. Glove Insert, Radioactive Cont 29. Gloves, Anti-Flash 30. Gloves, Anti-Flash, Flame Resi 31. Gloves, Cloth, Flannel 32. Gloves, Cloth, Leather Palm 33. Gloves, Cloth, Work, Leather P 34. Gloves, Driver, Work, All Leather 35. Gloves, Heavy Duty Cattlehide 36. Gloves, Leather, Anti-Contact 37. Gloves, Leather, Work 38. Gloves, Men's 39. Gloves, Men's and Women's, Leather 40. Gloves, Men's/Women's Light Du 41. Gloves, Work, All Leather 42. Helmet Shell, CVC 43. Helmet, Combat Vehicle Crewman 44. Helmet, Pasgt (Kevlar) 45. Helmet, Phonetalker, Navy 46. Helmet, Shipboard Battle 47. Jacket, Man's Utility 48. Jacket, Utility, Unisex 49. Jacket, Utility, Unisex, Coast Guard 50. Jacket, Woman's Utility 51. Liner, Coat, Cold Weather 52. Pillowcase, Fire Retardant 53. Screen, Latrine W/Cover, Pins 54. Sheet, Muslin, White 55. Shirt, Cold Weather (ECWCS) 56. Shirt, Man's 57. Shirt, Man's Ctn/Ply, Poplin 58. Shirt, Man's Enlisted, Blue 59. Shirt, Man's Navy White 60. Shirt, Man's P/W, Long Sleeve 61. Shirt, Man's Short Sleeve 62. Shirt, Man's Utility, Ctn/Poly 63. Shirt, Man's, Enlisted, Navy W 64. Shirt, Man's, L/S, Utility 65. Shirt, Man's, Officer, Navy Wh 66. Shirt, Man's, S/S, Utility 67. Shirt, Qtr Length Sleeve 68. Shirt, Woman's 69. Shirt, Woman's Long Sleeve, PO 70. Shirt, Woman's Tuck-in, L/S 71. Shirt, Woman's Tuck-in, S/S 72. Shirt, Woman's Type I Khaki 73. Shirt, Woman's Utility 74. Shirt, Woman's Utility, Frt 75. Shirt, Woman's, L/S, Utility 76. Shirt, Woman's, S/S, Utility 77. Smock, General Purpose 78. Suspension Assembly 79. Sweatpants 80. T-Shirt 81. T-Shirt, PCU 82. T-Shirt, PFU 83. Tarpaulin 84. Tarpaulin, Laminated, Blu/Wh 85. Towel, Bath, Cotton Terry, BR 86. Towel, Bath, Cotton Type 1, W 87. Towel, Bath, Cotton/Poly, Whit 88. Trousers, Aircrew BDU, Tan 89. Trousers, Aircrew BDU, Woodland 90. Trousers, BDU 91. Trousers, Combat, Black, 357, Type 92. Trousers, Combat, Hot Weather 93. Trousers, ECWCS 94. Trousers, Men's Medical Assistant 95. Trousers, Woodland Camouflage 96. Trunks, General Purpose 97. Trunks, General Purpose (MC) 98. Trunks, PCU 99. Trunks, PFU 100. Trunks, Swim 101. Undershirt, Man's Brown 102. Undershirt, Man's Crewneck 103. Undershirt, Man's White Crew N 104. Undershirt, Man's, White Crew 105. Undershirt, Man's, White V-Nec 106. Washcloth, Terry, White

Source: DSCP

U.S. SENATE,

Washington, DC, May 21, 1999.

DEAR COLLEAGUE: S. 1059, the fiscal year 2000 Defense Authorization bill, contains a provision which would destroy the ability of the Federal Bureau of Prisons to keep inmates engaged in constructive work and vocational training.

Section 806 of the bill, sponsored by Senator Levin, would undermine federal inmate labor activities by carving out for the Department of Defense (DoD) special exemptions to the current statutory requirement that Federal agencies, including DoD, purchase the products of the Federal Prison Industries when such goods meet the needs and specifications of the agency. For 65 years, this program has played a key role in the safe and effective administration of the federal prison system, and has dramatically reduced the recidivism rate among those federal prisoners who work while in prison.

Two years ago, you joined us in soundly defeating a similar amendment to the fiscal year 1998 Defense Authorization bill. At that time, we directed the Defense Department and the Federal Prison Industries to undertake a joint study of the policies and regulations that govern their procurement transactions and how they could be improved. Last month, Congress received the results of that lengthy and exhaustive review.

In their summary of the study's results, David R. Oliver, Jr., Principal Deputy Under Secretary of Defense (Acquisition and Technology), and Kathleen Hawk Sawyer, Director of the Federal Bureau of Prisons and Chief Executive Officer of Federal Prison Industries, stated that " * * the study has afforded us the opportunity

to fully explore the issues involved and offer viable recommendations that will improve the efficiency and reduce the cost of procurement transactions between the two agencies. *The recommendations proposed herein can be accomplished within existing statutory authority and do not require legislative action.*" (emphasis added)

Clearly, there is no reason to reduce the size of the only market in which prison-made goods are permitted to be sold in America. The Levin amendment threatens to idle over 8,000 inmates, or more than 40 percent of those now employed in a productive capacity. Restitution payments to victims of crime would be dramatically reduced and, as the Federal Prison Industries lose revenue, the taxpayer would be forced to bear a greater burden of prison operating costs.

When the fiscal year 2000 Defense Authorization bill is considered by the Senate next week, we once again intend to oppose the Levin language. With your help, we defeated the amendment two years ago by a vote of 62 to 37. We ask for your continued support in the effort to ensure that inmates continue to work and build the skills that will allow them to lead productive lives outside prison.

If you have any questions, please call us or have your staff contact Pete Olson in Senator Gramm's office at 4-0715.

Yours respectfully,

PHIL GRAMM,
ORRIN HATCH,
STROM THURMOND.

