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DEPARTMENT OF JUSTICE AUTHORIZATION  
REQUEST FOR FISCAL YEAR 1982

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HEARING  
BEFORE THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
NINETY-SEVENTH CONGRESS  
FIRST SESSION  
ON  
THE AUTHORIZATION REQUEST OF THE U.S. DEPARTMENT  
OF JUSTICE FOR FISCAL YEAR 1982

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MARCH 26, 1981

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## DEPARTMENT OF JUSTICE AUTHORIZATION REQUEST FOR FISCAL YEAR 1982

THURSDAY, MARCH 26, 1981

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:15 a.m., in room 2228, Dirksen Senate Office Building, Senator Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Simpson, Grassley, Specter, DeConcini, and Leahy.

Staff present: Emory Sneed, chief counsel; Quentin Crommelin, Jr., staff director; and Duke Short, chief investigator.

The CHAIRMAN. The committee will come to order.

This morning the committee is pleased to welcome the Honorable Attorney General of the United States, Mr. William French Smith, to present the fiscal year 1982 authorization request of the Department of Justice.

Mr. Attorney General, we are pleased to have you with us. Attorney General SMITH. Thank you.

### OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The authorization process, as in prior years, has always been an important function for the Judiciary Committee. It is even more important this year because of the emphasis of the Reagan administration to make cuts in Federal spending wherever possible.

The Justice Department has not been immune from the budget reductions recommended by the President. The request before the committee is \$9,935,000 and 3,023 positions less than the levels anticipated in 1981. Although this may not seem to be as large a cut as other agencies and departments have been asked to absorb, there is a good reason for it.

The Department of Justice is a people-intensive department. Unlike many other Federal agencies, there are no large grant-in-aid or discretionary programs to be cut. When there are reductions in the Justice Department, personnel numbers must be reduced. This does not mean, however, that the Justice Department should not bear its fair share of budget reductions.

We must also remember that the principal functions of the Justice Department are the investigation and prosecution of Federal crimes. The Federal law enforcement responsibilities of the Justice Department are crucial to all our citizens. We must be careful to weigh budget cuts in light of the impact such cuts will have in areas like drug trafficking, terrorism, foreign counterintelligence,

antitrust enforcement, tax cases, immigration and naturalization, civil rights, environmental matters, and numerous other areas where the Department is charged with enforcing the laws of the United States. Priorities must be determined and then resources allocated accordingly.

Today we will be looking at the overall request of the Justice Department. Other hearings will be held by various subcommittees of the Judiciary Committee on special areas of the Department such as the FBI, the Immigration and Naturalization Service, and the Drug Enforcement Administration. Once the hearings have been completed, the committee will be in a position to mark up and approve a final bill by May 15, 1981.

Senator Biden is unable to attend today's hearing but has a statement he would like entered in the record. I would ask unanimous consent that his statement be inserted at this point in the record.

Hearing no objection, it is so ordered.

[Material follows:]

## OPENING STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

I WOULD LIKE TO WELCOME ATTORNEY GENERAL SMITH TODAY FOR THIS FIRST HEARING WE WILL BE HAVING ON THE DEPARTMENT OF JUSTICE AUTHORIZATION FOR FY-82. I LOOK FORWARD TO EXPLORING THE PROPOSALS YOU AND YOUR OTHER DEPARTMENT OFFICIALS HAVE MADE IN PREPARING THIS BUDGET.

I WILL BE INTERESTED IN THE GOALS THE DEPARTMENT OF JUSTICE WILL BE STRIVING TO ACHIEVE DURING THIS NEXT YEAR. I WILL ALSO WANT TO MAKE CERTAIN THAT IN THIS TIME OF BUDGET TIGHTENING THERE ARE ADEQUATE RESOURCES TO CARRY OUT THESE GOALS.

I RECOGNIZE THAT THE 232 MILLION DOLLAR BUDGET CUT YOU WILL ABSORB IN FY-82 IS SMALL IN COMPARISON TO OTHER DEPARTMENTS IN THE FEDERAL GOVERNMENT. I AM QUITE AWARE OF THIS AFTER MY SESSION IN THE BUDGET COMMITTEE LAST WEEK.

BUT MAYBE NO CUTS ARE WARRANTED TO THE DEPARTMENT OF JUSTICE? IN SOME AREAS THAT ARE INTIMATELY RELATED TO THE RECENT INCREASES IN STREET CRIME, LIKE DRUG ENFORCEMENT; OR ARE COST EFFECTIVE AREAS LIKE CIVIL LITIGATION, MAYBE INCREASES SHOULD BE CONSIDERED?

AS YOU ARE AWARE MR. ATTORNEY GENERAL, THE AMERICAN PEOPLE ARE OUTRAGED BY OUR CRIME SITUATION. CRIME IS ONE OF THE FEW AREAS, OTHER THAN DEFENSE, THAT AMERICANS SUPPORT ADDITIONAL FUNDING AND SEVERAL NOTABLE SURVEYS, HAVE ACTUALLY INDICATED A PUBLIC WILLINGNESS TO SPEND MORE TAXES TO ADDRESS THIS PROBLEM.

THERE ARE A NUMBER OF IMPORTANT AREAS THAT I WOULD LIKE TO ADDRESS TODAY, BUT THE ONE OF MOST INTEREST TO

ME IS DRUG ENFORCEMENT. THERE IS NOTHING THAT HAS BEEN SHOWN TO INFLUENCE CRIME MORE THAN DRUG ADDICTION. A RECENT STUDY OF HEROIN ADDICTS IN BALTIMORE INDICATED THAT THE TEST POPULATION OF 243 ADDICTS WAS RESPONSIBLE FOR OVER 500,000 CRIMES DURING AN ELEVEN YEAR PERIOD. IT WAS ALSO SHOWN THAT DURING PERIODS WHEN THESE ADDICTS WERE NOT DEPENDENT ON HEROIN THERE WAS AN 84% DECREASE IN CRIMINALITY. THIS STUDY CLEARLY DOCUMENTS WHAT POLICE OFFICERS HAVE SAID FOR YEARS; HEROIN ADDICTION AND CRIMINALITY ARE CLOSELY ASSOCIATED.

THE DRUG PROBLEM IS ONE AREA THAT THE FEDERAL GOVERNMENT CAN HAVE AN IMPACT ON CRIME. THROUGH THE AGENCIES IN THE DEPARTMENT OF JUSTICE, TREASURY, AND COAST GUARD THE FEDERAL GOVERNMENT IS VERY INVOLVED IN DRUG ENFORCEMENT. ALSO, IN THE AREA OF COORDINATING DRUG ENFORCEMENT WITH STATE AND LOCAL DEPARTMENTS THE FEDERAL ROLE CAN PLAY A USEFUL ROLE.

I AM DISAPPOINTED WITH THE PRESIDENT'S POSITION SO FAR ON THE DRUG PROBLEM. I UNDERSTAND THAT ENFORCEMENT EFFORTS ACROSS THE BOARD ARE BEING CUT, AND TREATMENT AND RESEARCH IN THE DRUG AREA ARE ALSO BEING CUT. I HOPE THAT THE ATTORNEY GENERAL TODAY WILL BE ABLE TO EXPLAIN, FROM HIS PERSPECTIVE, WHAT THE REAGAN ADMINISTRATION POLICY WILL BE IN THE DRUG AREA.

THE DRUG PROBLEM IS AN AREA THE FEDERAL GOVERNMENT CAN HELP IN THE FIGHT AGAINST VIOLENT STREET CRIME. I'M NOT SURE HOW MUCH ADDITIONAL HELP THE FEDERAL GOVERNMENT CAN PROVIDE IN ADDRESSING STREET CRIME.

VIOLENT STREET CRIME IS, AND SHOULD BE, PRIMARILY A

STATE AND LOCAL MATTER. THE FEDERAL GOVERNMENT SHOULD PROVIDE LEADERSHIP AND ASSISTANCE IN RESEARCH AND DEVELOPMENT OF NEW CRIME FIGHTING APPROACHES. THE FEDERAL GOVERNMENT SHOULD NOT TRY TO SUBSIDIZE STATE AND LOCAL ENFORCEMENT EFFORTS, BECAUSE THERE ARE NOT SUFFICIENT RESOURCES AT THE LEVEL THAT WOULD BE NECESSARY TO EVER HAVE AN IMPACT.

I AM HOPEFUL YOUR VIOLENT CRIME TASK FORCE WILL CONSIDER THESE FACTS WHEN RECOMMENDING A NEW COURSE FOR THE FEDERAL GOVERNMENT IN THE CRIME AREA.

ONE FINAL POINT, IS THAT I HOPE THAT IN ORDER TO IMPLEMENT THE REAGAN BUDGET CUTS THAT THE DEPARTMENT OF JUSTICE WORKED FROM A SYSTEMS PERSPECTIVE AND NOT A LINE ITEM BUDGET APPROACH. IN OTHER WORDS, I HOPE THAT THE OVERALL GOAL STATEMENTS, IF YOU WILL, THE BIG PICTURE, WAS CONSIDERED WHEN CUTS WERE PROPOSED. ONE OF THE THINGS WE LEARNED IN THE DIVIDING OF LEAA MONIES AT THE STATE AND LOCAL LEVEL WAS THAT IF INCREASES WERE MADE TO ONE AREA OF THE CRIMINAL JUSTICE PROCESS, SAY ENFORCEMENT BUT NOT TO ANOTHER, SAY PROSECUTION, THE ADDITIONAL RESOURCES WERE OFTEN WASTED BECAUSE OF AN IMBALANCE IN WORKLOAD. WE LEARNED THAT THE ADDITIONAL CASES PRODUCED BY LAW ENFORCEMENT ENDED UP BEING SCREENED OUT BY PROSECUTION BECAUSE OF WORKLOAD LIMITATIONS. THE END RESULT BEING NO IMPROVEMENT.

I WOULD HOPE THESE KINDS OF PROBLEMS WILL NOT OCCUR IN THE DEPARTMENT OF JUSTICE BECAUSE OF A NEED TO FIND BUDGET CUTS. BECAUSE IF THIS IS TRUE, THE END RESULT MAY COST US MORE THAN WHAT WAS SAVED BY THE CUTS.



The CHAIRMAN. Mr. Attorney General, I appreciate your taking the time to be with us this morning. Your testimony will be most helpful to us in our consideration of this authorization request. You may proceed at this time.

**TESTIMONY OF HON. WILLIAM FRENCH SMITH, ATTORNEY  
GENERAL OF THE UNITED STATES**

Attorney General SMITH. Thank you very much, Mr. Chairman.

First, I would like to thank you and the members of the committee for expediting the confirmation process of the President's nominees for top positions in the Department of Justice. We appreciate that very much.

The CHAIRMAN. Excuse me, Mr. Attorney General.

Senator Grassley, do you have opening remarks?

Senator GRASSLEY. No. I have some questions but no opening remarks.

The CHAIRMAN. You may proceed, Mr. Attorney General.

Attorney General SMITH. I am pleased to appear before you today to discuss the 1982 authorization for the Department of Justice. As you know, this is my first opportunity to testify before this committee as Attorney General, and I look forward to working with you, Mr. Chairman, and the other members of the committee in the years ahead.

We have already submitted supporting data and material to the committee to assist you in your deliberations. In addition, we have provided you with the Department's fiscal year 1982 authorization bill. This bill reflects the President's recent decisions as they affect the Department of Justice.

The opportunity for a detailed discussion of the Department's programs and resource requirements will be presented when our divisions and bureaus appear before you within the next few weeks. For my part, I will today provide an overview of the administration's decisions affecting our authorization.

The total fiscal year 1982 authorization request of approximately \$2.3 billion and 52,655 positions represents a decrease of \$231 million and 2,114 positions from the fiscal year 1982 request submitted by the previous administration.

Our request is founded on commitments of this administration:

First, Federal spending must be reduced in order to minimize inflation, insure the Nation's economic recovery, and balance the budget in 1984.

Second, essential to these economic efforts is a reduction of the Federal work force, where possible, and an increase in productivity to maintain the effective execution of Federal programs.

Third, every Federal agency must share in the necessary reductions, consistent with its mission and program responsibilities.

Fourth, Federal enforcement priority will be given to such areas as organized crime, white-collar crime and narcotics trafficking.

As you know, I recently announced the formation of an Attorney General's task force to assist me in formulating strategies in the extremely critical area of violent crime.

And, fifth, Federal justice subsidies to State and local criminal justice programs should be reduced or eliminated where State and local agencies are capable of assuming greater responsibility. Need-

less to say, Mr. Chairman, the establishment of priorities often demands that hard choices and difficult tradeoffs be made. I believe our request reflects those choices.

Our 1982 request represents a decrease in resources. However, I believe that it does not jeopardize the essential missions of this Department. This administration is as firmly committed to an effective Federal criminal and civil justice effort as it is to improving this Nation's defense capability.

Despite the need for budget stringency, we are maintaining or enhancing those programs of highest priority to the Department. In the law enforcement and criminal prosecution area, we are maintaining the fight against organized crime and white-collar crime and, in certain instances, we are increasing resources for these programs. We are also increasing our resources to conduct foreign counterintelligence and combat high level narcotics trafficking.

In other areas, there will, of course, be reductions. In Corrections, for example, the increase in population caused by the Cuban entrants has necessitated a delay in the closing of the facilities at McNeil Island and Atlanta. I do, however, intend to continue the phasedown of those institutions.

There are also programs for which we are not requesting resources in this authorization. We will no longer have the funds to continue the U.S. trustees' program and the juvenile justice program. I shall address those in more detail later on.

I shall now briefly outline our decisions for you.

#### LITIGATION

With regard to litigation, our request for general legal activities represents an 8-percent reduction in authorized positions from the previous administration's request. However, the effect of this decrease will not be nearly as adverse as the magnitude of the numbers suggested.

First, the new position level reflects the current onboard strength of the legal activities. Neither the quality nor quantity of our current litigative efforts should suffer.

Second, the President's policy on reducing the role of the Federal Government in a number of social, economic, and regulatory programs may in the long run lighten the Department's civil litigation workload arising from those programs.

Third, I believe the current level of criminal litigation resources is sufficient to meet our priorities.

With more efficient use of our criminal prosecutors and support staff, we will continue to emphasize these priorities.

Finally, increased application of modern technology to the management of the Department's litigation will produce savings and efficiencies. Therefore, our request includes a \$1.2 million increase for our litigation support activities.

The fiscal year 1982 request for the Antitrust Division will remain unchanged. This administration is, as you know, strongly committed to the integrity of the free enterprise system and, therefore, to the vigorous enforcement of antitrust laws. By not imposing reductions here, we will maintain an appropriate level of Federal activity in this area. In addition, we have proposed in the

authorization bill pending before your committee that the Anti-trust Division appropriation be merged into the general legal activities appropriation to provide maximum flexibility in utilizing our litigation resources.

The administration also has proposed the elimination of the U.S. Trustees in the Department of Justice program at the end of fiscal year 1982. The allocation of Department of Justice resources to this program has not been accompanied by a decrease in resources in this area by the Federal judiciary. Since the relationship between the Department and the judiciary is unique, I have scheduled a meeting with the Chief Justice to discuss ways to work out any difficulties which may result from a failure to fund the Trustees program in the Department.

We are requesting a modest reduction in authorized positions for the U.S. attorneys. As with the legal divisions, the reduction should have minimal effect on the U.S. attorneys' effectiveness, since the 1982 position levels would be about the same as the current on-board employment level.

The Carter administration proposed the establishment of an autonomous judicial system in the government of the District of Columbia. It called for full authority by the District Government in prosecuting violations of laws of the District of Columbia, the custody of prisoners convicted of local violations, and the security of the District of Columbia Superior Court.

I am reviewing this request made by the previous administration, but I have a particular concern that every possible issue regarding the transfer of the U.S. attorney's responsibility and authority for the prosecution of all District of Columbia felony offenses and the most serious misdemeanors be fully considered. If we are satisfied that such a comprehensive review supports the transfer of these functions, we shall propose the necessary legislation to the Congress.

Finally, I would be remiss in my discussion of the Department's litigation responsibilities if I did not mention our continuing concern about the trend toward statutory dispersion of the Department's litigation authority. Like my predecessors, I am committed firmly to the principle that the Attorney General should represent the United States and all of its executive branch departments and agencies in any litigation in which the United States is a party or has an interest.

I believe that the only effective way to coordinate and manage Federal Government litigation is to make the Attorney General responsible for it. This would allow this committee, Mr. Chairman, to exercise its responsibilities with respect to all Federal litigation through its oversight of the Department of Justice.

#### LAW ENFORCEMENT

With regard to law enforcement, the Department's request for the Federal Bureau of Investigation demonstrates a strong administration commitment to our law enforcement priorities. For 1982, we are asking for additional resources for the FBI's foreign counterintelligence program.

The foreign counterintelligence program directly affects this Nation's security and the requested increase conforms with the ad-

ministration's overall policy to improve national security. In addition, funding for undercover and aircraft operations is requested. These increases will do much to facilitate the investigation, prosecution, and conviction of major offenders in high priority programs.

Increased resources are being requested to improve the FBI's field investigative capabilities, to provide for a substantial acquisition of automated data processing and telecommunications equipment, to modernize and improve the FBI's information and communications systems, and to purchase automobiles in need of replacement. To some extent, the proposed increases are offset by decreases in lower priority field investigative programs.

For the Drug Enforcement Administration, we are requesting increases in the domestic enforcement and foreign cooperative investigations programs to bring greater resources to bear on the Southwest Asian heroin problem and against the financial assets of major narcotics traffickers. Increased resources are also requested for the aircraft and vehicle replacement program, and to provide security for DEA radio transmission and wire communication. Each of these increases is needed to improve both operational readiness and agent safety.

While the authorization request for DEA reflects some personnel reductions in nearly every program, this will result in reduced activity only in low priority and regulatory programs. Only the diversion investigative units program would be eliminated.

The authorization request for the U.S. Marshals Service includes a modest increase in the area of automated data processing. This will enable the Marshals Service to develop a multipurpose ADP system to improve information available to the Marshals Service's management and, also, enhance the computerized records systems of the witness security program.

In addition, a funding level increase of \$1 million is requested to expand the prisoner movement capacity of the National Prisoner Transportation System. Increased resources are also requested for the replacement and upgrading of communications equipment and the establishment, on a pilot basis, of an informant fund. The latter is related to the U.S. marshals' increased involvement in the location of Federal fugitives.

Offsetting these increases are reductions associated with the continued phaseout of personnel associated with the service of private process. A second area of reduction is in the court security program. Court security is currently provided to the Federal judiciary in civil and criminal proceedings. We believe it is not necessary to provide additional security during nondangerous civil proceedings.

Although the Congress reduced resources for the service of private process in 1981, the Congress did not change the substantive law which requires the U.S. marshals to serve private process. Again this year the Department is requesting that a substantive change to the law be made to relieve the U.S. marshals from that responsibility. We included a section in the fiscal year 1982 authorization bill to accomplish this.

With regard to the security functions of the U.S. Marshals Service, the marshals are currently under court order in 78 Federal judicial districts to provide deputies in the courtroom for all pro-

ceedings, whether civil or criminal. I will be discussing the service of process and court security issues with the Chief Justice.

The third area of reduction in the Marshals Service relates to the legislative proposal which would remove the responsibility of the marshals for providing "sherifflike" support to the District of Columbia Superior Court. Under this proposal the District of Columbia Government would accept full authority over the handling of prisoners convicted of local violations and would be responsible for providing security to the District of Columbia Superior Court. This change would be part of the possible legislative proposal to which I referred earlier.

In the area of immigration, the administration believes that there are a number of major issues to be examined before any initiatives are proposed in the budget. There is, for example, reasonable cause to believe that many immigration problems will not respond simply to increased resources. In some cases, decisions concerning the management of current resources may be of greater significance. We would like to allow the new Commissioner of the Immigration and Naturalization Service to have an opportunity to consider carefully all of the available options. Of course, the final recommendations of the Select Commission on Immigration and Refugee Policy must be thoroughly reviewed, and policy recommendations made to the President. This, as you know, will be the focus of a special interagency task force established by the President. I Chair that task force, and we will report our recommendations to the President in early May.

Therefore, the request for INS represents no new policy initiatives. About half of the requested decrease of 1,355 positions reflects our decision not to fill vacant positions which are currently authorized. In those instances where the reductions may affect onboard employment levels, normal attrition should minimize the potential for a reduction in force.

In the aggregate, I do not believe the reductions proposed for INS are severe. Our overall employment target for INS in 1982 calls for a net reduction of just over 300 people compared to current onboard levels. In fact, certain INS enforcement programs could actually gain in employment strength—for example, border patrol and antismuggling—while we achieve the overall planned reduction in programs delivering lesser benefits.

For example, relatively few apprehensions and deportations result from the activities of the programs targeted for reduction, given the current staffing and funding levels being devoted to these programs. It is my intention to review closely with the new Commissioner the most effective way to allocate the new resource levels for INS.

Since some programs in INS are to be allowed some growth in our proposal, I believe we will have considerable flexibility. The budget for INS does include a program increase of about \$5 million for automated data systems, operation of a service processing facility in Miami for Haitian refugees, and repair and alteration of several INS facilities.

Finally, Mr. Chairman, I have, as you know, just announced the formation of a task force on violent crime, composed of individuals with distinguished backgrounds in criminal justice. I have created

this new advisory body because of the conviction of this administration that the problem of violent crime, although primarily falling within the jurisdiction of State and local law enforcement agencies, has now reached such an alarming level that leadership on the part of the Federal Government is both desirable and necessary.

The new task force will be considering and recommending ways in which the Department of Justice can appropriately exercise that kind of leadership and provide assistance in this area of critical importance to the American people. I look forward to working with this committee as we begin to address, through this task force and through subsequent efforts, the debilitating problem of violent crime.

#### CORRECTIONS

With regard to corrections, except for the influx of approximately 1,700 Cubans in the spring of 1980, the Federal prison population has stabilized. This increase in population caused by the Cuban entrants has resulted in the delayed closing of the McNeil Island, Wash., facility and has slowed the phasedown of the Atlanta, Ga., penitentiary. McNeil Island will be leased to the State of Washington for housing of its prisoners beginning this summer. To ameliorate regional overcrowding conditions in the detention area, additional resources are requested to activate a Federal Detention Center in Tucson, Ariz.

For the buildings and facilities program, increases are requested to begin implementing both departmental and American Correctional Association standards; continue energy conservation activities; convert the Leavenworth, Kans., penitentiary to a smaller, more modern correctional facility; and undertake and/or complete essential rehabilitation and renovation projects at various Federal facilities.

#### STATE AND LOCAL ASSISTANCE

With regard to State and local assistance, the Department's budget request for the Office of Justice Assistance, Research and Statistics, requires that funds for the juvenile justice program be eliminated. I recognize that the authorization for the Office of Justice Assistance Research and Statistics and the juvenile justice and delinquency prevention program is provided through separate legislation. However, I do wish to discuss our actions regarding these activities.

The Department's initial request would have provided \$136 million for the juvenile justice program. We propose to eliminate this entire amount. This does not mean that the administration believes that the juvenile justice program was not a worthwhile effort. We believe that the juvenile justice program is primarily designed to insure that juveniles are not forced, through a variety of circumstances, into a criminal justice system in which they do not belong. Such objectives can, and should, be met through block grant programs administered by the Department of Health and Human Services and through efforts at the State and local level.

#### OTHER DEPARTMENTAL REQUIREMENTS

With regard to other departmental requirements, in conclusion, the authorization request reflects some reductions in resource

levels for the staff offices of the Department. The general administration request includes the elimination of the State and local drug grant program and the elimination of \$1.3 million for a series of special studies. It also provides for the transfer of the Office of Justice Assistance, Research, and Statistics' audit functions to the Department, consistent with the phasing out of the Law Enforcement Assistance Administration.

Finally, the request also reflects my decision to reorganize the Department to improve its efficiency and the overall coordination of Department policy. In reducing overhead, we have proposed the elimination of 58 positions in the general administration area.

Thank you, Mr. Chairman, for the opportunity to discuss with the committee my plans for the Department of Justice. At this point, I am available to answer any questions you or members of the committee may have.

The CHAIRMAN. Thank you, Mr. Attorney General.

I have a few questions and then we will pass on to other members.

Mr. Attorney General, you indicated in your statement that the administration is proposing to transfer the responsibilities of U.S. Marshals and U.S. attorneys for the District of Columbia Superior Court elsewhere. Where would these responsibilities go? Do you believe this proposal is sound?

Attorney General SMITH. We have not come to any conclusion on that subject, Mr. Chairman. It is a matter that I know has been under rather considerable study and perhaps some preliminary conclusions were made by the previous administration.

We are going to take a hard look at that. However, as of now, we have not arrived at any conclusions.

The CHAIRMAN. Within the category of general legal activities, the largest cut in positions is in the Criminal Division. What is the reason for such large cuts in this area?

Attorney General SMITH. Actually, Mr. Chairman, the cuts are in authorized positions. We think with respect to all of our litigation functions, including criminal, that the onboard number of people will continue as before so there should be no significant change either in our efforts as far as the Criminal Division is concerned nor in any of the efforts of the other litigating divisions.

The CHAIRMAN. The Antitrust Division has been cut overall by 42 positions, but the areas of judicial enforcement, conspiracy, monopolies, and consumer protection were not cut. Is that related to the administration's proposal to cut the budget of the Bureau of Competition in the Federal Trade Commission?

Attorney General SMITH. To a certain extent it is, yes.

The CHAIRMAN. The U.S. Marshals Service has been cut by 297 positions. What was the basis for these cuts and can the Service get by with these reductions?

Attorney General SMITH. Once again, there have been cuts in authorized positions, but as far as onboard is concerned we think that the numbers are such that there should be no significant change in the services rendered by the U.S. marshals.

## TO DISCONTINUE PROCESS SERVING

The CHAIRMAN. Will U.S. marshals be prohibited from serving civil process under these budget and authorization requests?

Attorney General SMITH. This is an area where we think that substantial savings can and should be made. We will propose—indeed, this budget does propose in effect—that this function of the U.S. marshals be discontinued.

The CHAIRMAN. Are there any alternatives to eliminating civil process altogether?

Attorney General SMITH. I am sure that private process services would spring into position as soon as it became profitable for them to do so. It is an activity that is handled by private process services throughout the State operations and we see no reason why the same thing could not be done in the Federal jurisdiction.

The CHAIRMAN. As a matter of fact, in serving civil process a man does not even have to be an officer, does he? Anyone can serve a civil process?

Attorney General SMITH. Yes, sir.

The CHAIRMAN. You feel that agencies would spring up that would be available to serve those civil processes?

Attorney General SMITH. Yes.

The CHAIRMAN. The administration is recommending the phase-out of the U.S. trustees pilot program. This program was originally authorized to streamline bankruptcy cases. Is there evidence to indicate that it has not worked and can bankruptcy judges handle these case themselves?

Attorney General SMITH. Actually, Mr. Chairman, the action taken here is not designed to reflect on whether the trustees have performed or not performed. It is just one of those hard choices. We think this is an area where a reduction can be made. We have noted there has not been any decrease in the judiciary's budget with the addition of this new service to the Department of Justice.

I do intend, as I indicated in my opening statement, to discuss this matter with the Chief Justice to see how it can be worked out.

The CHAIRMAN. I note that the Immigration and Naturalization Service has been cut substantially in both positions and program funds. Could you highlight some of these reductions and explain the administration's reasons for them?

Attorney General SMITH. The actual number of onboard reductions should be in the neighborhood of 300. We think that the reductions are being made in areas where the services which are now performed are not performed with maximum effectiveness. For example, I refer to the inspections, adjudications, and investigations programs. It is in those areas, which I think could be called the soft areas in INS, where the reductions are proposed.

As far as the Border Patrol is concerned, there is actually a possibility to increase the authorized number of border patrolmen in addition to those currently onboard. I think the increase is in the area of 112 above the Border Patrol's on-duty strength at the end of February 1981.

We think as a result of our decisions that, although there may be some dislocations in certain programs as a result of these reductions, the essential functions will not be adversely affected.



The CHAIRMAN. Are the reductions in the Border Patrol program consistent with efforts to deter future illegal aliens from entering the United States?

Attorney General SMITH. The intent is, first, not to weaken the Border Patrol, but, perhaps, to enhance it. Insofar as policy is concerned, we intend to await the outcome of the conclusions of the task force before making any determinations in those areas.

The CHAIRMAN. One expense of the Immigration Service's overtime was authorized under the 1931 law. Is there any proposal to change that law?

Attorney General SMITH. The proposal is to go to the 1945 act; that is, we propose to have the Immigration Service covered by the overtime requirements of the 1945 act. Such a change would provide a substantial savings. It is included within our budget request.

The CHAIRMAN. The Office of Juvenile Justice and Delinquency Prevention has been scheduled for phaseout with no funds authorized for grant programs. Is this going to be a position taken by the administration in other categorical aid programs? In other words, let the States pick up the costs of these programs?

Attorney General SMITH. Yes. Here again, this is an area where the elimination of the program is not intended to reflect upon whether it is a good or bad program or whether it has or has not been effective. It is an area where we have just made a hard choice. We think that the activities, to the extent they have been effective in the past, can be handled now through Department of Health and Human Services block grants, to the States or through private resources at the State level.

The CHAIRMAN. In other words, you feel that block grants through the Health and Human Services Department can handle this program within the States?

Attorney General SMITH. Yes.

The CHAIRMAN. They would still be getting Federal funds through that agency, but you are eliminating here what you assume is a duplication, I presume?

Attorney General SMITH. Yes.

The CHAIRMAN. What kind of response do you believe the administration will make in an effort to address so-called violent crimes, and will it require more Federal funds or will there be other approaches to this problem?

Attorney General SMITH. As you know, we have established the task force on violent crime. The task force, as part of its charter, is to report within 60 days on those areas which involve violent crime especially where the Federal Government should become involved. First, the task force will report on the Federal Government's possible involvement within existing statutory provisions and existing resources, and then, in the second phase, make recommendations with respect to any changes in laws which it feels should be made and any supplemental requests for resources which it thinks would be appropriate.

#### CUBAN AND HAITIAN SITUATION IN FLORIDA

The CHAIRMAN. What is the current situation in south Florida with regard to the cost of detaining, processing, and adjudicating

Cubans and Haitians who have entered the United States illegally? Are these costs provided for in this request?

Attorney General SMITH. That is an extremely difficult situation. We don't have any answer at the present time. However, the interagency task force on this subject is due to report in early May. One of the first problems that task force will address will be the Cuban and Haitian situation in Florida.

#### CRIMINAL CODE

The CHAIRMAN. Mr. Attorney General, I do not know whether you have had a chance yet to study the question of the criminal code. For many years, Congress has worked on the criminal code. Many people have worked on this.

Last year we passed this code through the Committee and reported it to the Senate but did not get it through the House. It was more or less a compromise in some respects. I favored putting certain things in which were not in and permitting others which were. Senator Kennedy felt the same way. He favored certain positions but opposed others.

However, the committee as a whole approved it. The House never did act upon it.

I think most people feel we need a criminal code. We have never had one. I hope you will study this question. I do not know whether you are in a position now to express yourself on this or not, and to express yourself on the particular code that was approved by the Committee last year.

Would you study this matter and give us your views and what changes you feel should be made, if any, in the code which the Senate passed last year?

Attorney General SMITH. We will certainly do so, Mr. Chairman. I can state now that we certainly are very supportive of the concept of a criminal code and hope that we can be of assistance in accomplishing that result during our tenure.

The CHAIRMAN. As quickly as your people can study that code and give us your recommended changes, it would be helpful so that we can proceed with it.

Attorney General SMITH. We certainly intend to do that.

The CHAIRMAN. Thank you very much.

Senator Simpson?

Senator SIMPSON. Thank you, Mr. Chairman.

It is good to see you here this morning, Mr. Attorney General.

Attorney General SMITH. Thank you.

#### IMMIGRATION POLICY

Senator SIMPSON. I want to express my appreciation to you not only for your presence here today, but for your fine assistance as offered to me as I embark upon a rather perilous mine field of being the chairman of the Subcommittee on Immigration and Refugee Policy. We will be working closely with the Justice Department during that entire deliberation and through the hearing process. I think that is very critical.

It is interesting to me to see the reductions which are proposed for the INS. As chairman of the subcommittee, I am very con-

cerned about the impact of the budget cuts and what that will do to the ability of the INS to effectively fulfill its duties.

During the 12 regional public hearings which were held by the Select Commission—one I chaired and several I attended—I think we all became very well aware, perhaps too aware, of the strong feelings of public sentiment in this country that our immigration policies are absolutely out of control and that our immigration policies are actually dictated by countries other than ourselves, when they wish to do it and at whatever whim they wish to engage in.

The Federal Government is failing in its mission to enforce our immigration laws which in effect lead to so many obvious conditions of despair and degradation of our law enforcement system.

I am fully aware, too, that any so-called sealing off of our borders and our coastlines is not only impractical and inadvisable, but also absurd. However, I am convinced that illegal immigration must be addressed and must be on the road toward being resolved during this administration. I feel this administration is committed to that. Can you confirm that for me?

Attorney General SMITH. Very much so, Senator Simpson. Actually, in the 2 months that I have been here I think I would have to say that probably this area is one of the most important areas we will have to address and one of the most difficult, if not the most difficult.

In addition to that, we are confronted with a situation where the INS itself has been neglected for a long, long time in terms not only of policy formulation but organization.

As you have indicated, we are working now on that very subject and we consider it to be a matter of top priority in the Department.

Senator SIMPSON. You have confirmed that to me privately and now again publicly. I am most appreciative of that. I guess all subcommittee chairmen fall for the great ploy that their work, of course, is the premium agenda item on the national plate. That may be. However, I am just convinced that this is an issue which, when you are out in America, this is what people are talking about—the economy, and then what are we going to do about immigration.

You know, in your liaison with our office and with the Judiciary Committee you know that during the course of the subcommittee's work we intend to examine a variety of measures other than just beefing up the enforcement, which I think as you reviewed the Select Commission report is quite spirited in what we say there regarding enforcement and beefing it up.

We will go into these other measures of employer sanctions and legalization alternatives and identification and trying to get a comprehensive package for reform.

You may decline to answer this. I am not trying to probe. About when do you think you would have a Commissioner on board? Have you any idea when that might be?

Attorney General SMITH. I wish I could answer that question. We are working hard on it. We are talking to a lot of people.

As I have indicated before, we think one of the major requirements for that position is managerial talent and organizational

ability. We are placing heavy emphasis on that aspect. We are most anxious to fill that position.

Senator SIMPSON. I think that is the response I would have hoped for. You are hoping to find a person of rare managerial talents.

Attorney General SMITH. Yes.

Senator SIMPSON. I realize that when that person is on board you will have a better opportunity to respond to these questions, but what will be some of your intentions with regard to consolidating the massive paperwork flow of this agency, the tremendous amount of wasted handwork, if you will, which is done, the loss of files and things which were unable to be resolved by the best-intentioned people?

After getting an appropriate commissioner on stream, how long do you think it will be before we can show some significant results in terms of improved efficiency and shorter backlogs?

If you care to respond, what might you have to say with regard to a form of the efficiency act or the efficiency bill which perished in the last days of the dying duck or dead duck session?

Attorney General SMITH. Part of trying to turn an organization around, of course, would be to upgrade its data processing systems along with all of the actions which have to be taken to streamline its organization. I do not think that can be done overnight. However, I think if we bring on board a very strong manager, it can be done much more quickly.

In any case, we have to do it. We intend to do it. We are on that track.

A parallel track, of course, is to develop a consistent immigration policy. As you indicate, we have to move along not only in restructuring the organization, but also in developing a policy so that once an effective organization is in place it can start implementing that policy. That policy very likely, will be the result of our ongoing effort with the task force.

#### BORDER PATROL PROGRAM

Senator SIMPSON. In your own personal review of this budget during your time on board, do you feel that your most significant increases, your most significant interest was in this area of the program of the Border Patrol?

Attorney General SMITH. I think I have to say, Senator Simpson—and this is just a plain impression and not the result of any detailed analysis or diagnosis—that I am not sure money is the problem. As I indicated in my opening statement, it seems to me that the problems here are somewhat larger than resources.

In any case, I am sure that once we get the organization in place and we get meaningful policies developed that additional resources, should they be necessary to implement those policies, can be requested through a supplemental. We can certainly be back here with a supplemental request. I am hoping that will not be the case.

Senator SIMPSON. I do not want to preclude my fellow members from their questioning. However, it seems to me in reviewing these line item budgets with the fiscal year 1981 and the Border Patrol figures—and then you indicated, quite correctly, that you are up 112 personnel on board to the fiscal year 1982 employment ceiling—I think that is one of the things that came up clearly and

perhaps why the Select Commission was so strong on the issue of enforcement.

When we get down simply to numbers of 3 to 6 million illegal aliens here, 16 million people ranging the Earth just looking for a slot right now, refugees, where we are with the definition of refugee under the 1980 act, where we are with the issue of asylees and refugees, you know those things, too.

I guess the real problem—and the very essence of it is just figures—is a 2,000-mile border with about 400-plus on shift during any 8 hours, which is about one-third the size of the Capitol Police Force right here in this small complex, to patrol that border.

I would hope, then, that your emphasis is indeed—and you have told me and I have no reason but to accept it, knowing you as I do, and I do so because it makes me feel comfortable—I hope that will continue.

I don't know whether to congratulate you or to console you on your appointment as chairman of the interagency task force charged with developing the comprehensive policies and also going through the Select Commission report, of which you were not part of the formation and deliberations.

I am looking forward to working with you. Again, I hear so clearly your commitment to doing something appropriate about this country's immigration and refugee policy. I look forward to working very closely with the Department and with the chairman of the Judiciary Committee, who is also a member of the subcommittee which I chair.

Thank you very much.

Attorney General SMITH. At least we can commiserate together.

Senator SIMPSON. Yes, we can. That is for sure.

Senator GRASSLEY. Mr. Smith, I do have several questions relative to your budget request.

First, I want to thank you and to compliment you for your recent statement in response to an inquiry from the New York Times relative to your position on the legislative veto.

I noted you maintained your same open mind on this issue in your first public statement since taking office as you did before this committee during your confirmation hearings, at which time you promised me and the committee to look at any proposed legislation on its merits concerning the congressional veto.

I want you to know that your statement is a refreshing departure from the blanket statements of condemnation issued by past Attorneys General. Once again we have proof that this is not a business-as-usual administration.

As you know, I am chairman of the Subcommittee on Agency Administration, which has jurisdiction over this issue in the Senate. In a few days I will be announcing a schedule of hearings on the various legislative veto bills before my subcommittee, and I would like to know if you would be willing to appear personally to testify on this issue, as did your predecessor, Griffin Bell.

Attorney General SMITH. I would hope to do so.

Senator GRASSLEY. Thank you very much. We will be sending you an invitation.

In regard to the——

Attorney General SMITH. I am a little wary about making commitments.

Senator GRASSLEY. We appreciate your openness.

There are some areas of judicial overlap between the Department of Justice Antitrust Division and the enforcement arm of the FTC, like reductions of private conspiratorial conduct, reduction of oligopoly and monopoly, antitrust litigation for consumer protection. Was the decision not to cut back for those areas made before or after the administration's decision to maintain funding for the antitrust enforcement branch of the FTC?

Attorney General SMITH. Senator Grassley, I am not sure I can answer that question.

Senator GRASSLEY. Could you answer it in writing then?

Attorney General SMITH. I cannot offhand tell you what the sequence was, but I certainly could find out. I would be glad to do that.

Senator GRASSLEY. I would appreciate that answer in writing. Then I guess I would like your personal opinion on whether or not two antitrust divisions are necessary for adequate law enforcement.

[Material was subsequently supplied for the record:]

I see no significant benefits to be had from continuation of the dual antitrust jurisdiction of the Antitrust Division and of the Federal Trade Commission; rather, I see only a number of disadvantages that flow from that continuation.

It is instructive, I think, in the present context, to look at the arguments advanced by the proponents of continued jurisdiction. We are told that in the many years of dual enforcement that there have not been any significant conflicts between the two bodies—that is, there have been no instances when both bodies openly insisted on pursuing the same investigation or filing complaints with reference to the same episode.

While I do not challenge the accuracy of that assertion, it does not seem to me to constitute a ringing endorsement. It does not assert the existence of any benefit; it merely assures us that the costs have not been as high as might have been feared. The fact is that, with dual enforcement, a bargained allocation of responsibility is necessary. The costs of this coordination are not trivial. Representatives of the two agencies meet periodically, usually weekly, for the purpose of working out an agreed division of turf. The process is not always harmonious, and it routinely consumes about 15 hours per week of the time of high level employees of the two agencies, 60-70 hours of clerical time and occasionally much more of each.

The system of dual enforcement is often discussed in terms which are intended to capture the emotional commitment of antitrust lawyers to free markets and to the process of competition. Thus, it is said that there is a rivalry between the Department of Justice and the Federal Trade Commission, and that such competition is healthy. Mere seconds of thought reveal that this analogy is false and misleading. The rivalry that is involved here is not of the type that requires either agency to improve its service or to reduce its cost in order to make the service more attractive to those upon whom it will be visited. Indeed, these antitrust services are delivered to recipients of the service not by appeal to their free choice but through the coercive power of government.

It is true that the dual enforcement system creates a situation of rivalry between the two enforcement agencies, but the realities of that rivalry are very different than is suggested by the competitive analogy. The reality is that when there is an insufficient number of soundly based antitrust cases to keep both agencies fully occupied, and all must agree that that is the state of events at least from time to time, each agency is under substantial pressure, in order to occupy its employees and to justify its budgets, to bring trivial cases. And should cases which are merely trivial be exhausted cases which are totally frivolous or anticompetitive may be pressed into service as well.

A further cost of the dual enforcement system is that of needlessly increased uncertainty. As important as antitrust law is, and I think it is very important at its core of prohibitions against cartel activities, it is necessarily somewhat vague in its applications to many industrial and commercial practices. This is particularly true with respect to new industries and to new forms of business organization. Neither business managers nor investors like uncertainty, and hence this inescapable fea-

ture of antitrust acts as a kind of excise tax upon and deterrent to both innovative business practices and, indirectly, to technological change since such change is likely to be accompanied by new business organizations and practices.

While a certain amount of uncertainty must be accepted if we are to have antitrust enforcement at all, the dual enforcement system needlessly increases the amount of that uncertainty. Two enforcement agencies inevitably mean two policies, two bodies of doctrine, and two directions of emphasis. That much increase in uncertainty is the inevitable consequence of dual enforcement: the uncertainty is escalated to an even greater extent when fanciful theories of competition must be invented in order to find sufficient numbers of cases to justify budgetary aspirations.

It has been and will be said that the Federal Trade Commission is a specialized agency, a repository of great expertise. Such was the aspiration. But it is widely perceived that the reality is otherwise. From time to time the Federal Trade Commission, like many other agencies, has been able to attract, and to hold for a while, individuals of great talent and ability. But year in and year out such people represent the exception rather than the rule. For a variety of reasons including salary levels and institutional structure, the Commission has had great difficulty attracting and holding highly qualified personnel.

Institutional structure has given rise to other serious problems. To play the combined roles of investigator, prosecutor and judge inevitably generates perceptions of unfairness and prejudgement; proof is difficult, but I find it unlikely that those perceptions are entirely wrong. Rather than representing an agency with a comparative advantage for the enforcement of this complex and uncertain body of law, the agency has proved to be relatively unsuited.

The Federal Trade Commission has a valuable role to play as a consumer protection agency. Its consumer protection role should be preserved. Congress may wish to consider the advisability of combining the Consumer Product Safety Commission with the Federal Trade Commission and of transferring from the Justice Department to the Federal Trade Commission enforcement responsibility with respect to a variety of consumer protection laws now enforced in the courts by the Division. But the antitrust laws are too important to the efficient functioning and organization of our industrial economy to be left subject to the stresses and uncertainties that derive from dual enforcement. The time has come to create a single, centralized, politically responsible focal point for the formation and enforcement of antitrust policy.

Attorney General SMITH. On that subject, we are quite confident in the Department of Justice that we can handle all of the antitrust enforcement activities that need to be handled. I am not sure that I have the expertise to know the reasons for the fact that the antitrust enforcement function has been split into two sections.

It would seem to me a more orderly approach would be to have all antitrust activities taken care of by one agency, one branch. However, I cannot say that is a final conclusion because, although we have intended to look into it, as of now the occasion has not been there to make it a priority item. Therefore, we have not. My initial reaction is that it would make more sense to have it in one place.

Senator GRASSLEY. My second question on your budget and authorization: I understand that your Office of Legal Counsel is in the process of drafting an opinion regarding the funding of the Equal Access to Justice Act. Could you comment on that opinion?

Attorney General SMITH. We are looking into that, but we have not come to any conclusion as yet. As soon as we have, I will be glad to—

Senator GRASSLEY. In regard to my support of this legislation in the House—and I was not in the middle of the legislation so I do not feel as though I am a main sponsor or anything—I do have an interest in making the bureaucracy responsible. You have heard me speak to that regarding the congressional veto.

Attorney General SMITH. Yes.

Senator GRASSLEY. I personally feel that the Equal Access to Justice Act is part and parcel of giving the average citizen an opportunity to challenge and confront bureaucracy if he feels as though he has been unjustly treated by them. I hope you will give the history and background of that legislation as much consideration as the exact wording of the legislation, and try to preserve it to the greatest extent possible.

Attorney General SMITH. Actually, Senator Grassley, that entire problem might be more one of budget than it is of legality or legal considerations. As you know, it involves rather substantial allocation of resources. I would suspect that perhaps the pros and cons will be debated more on that issue than as to the legal aspects.

Senator GRASSLEY. That may be, but the whole point of it was to have the legal fees paid from the budget of the agency which had been successfully challenged, the whole point being to make that agency responsible in how it spends the taxpayers' money so that it only spends it on those things that they can legally pursue.

My last question is in regard to the Bankruptcy Act of 1978. That act created a position for the 10th Assistant Attorney General in order more effectively to coordinate some of the smaller offices in the Department of Justice which now report to the Deputy Attorney General.

Are there plans to fill this position?

Attorney General SMITH. I am afraid I did not catch that question.

Senator GRASSLEY. The Bankruptcy Act of 1978—and I cannot give you any explanation as to why it was part of the Bankruptcy Act of 1978—created a 10th Assistant Attorney General. It is my understanding that position was to more effectively coordinate some of the smaller offices or divisions within the Department of Justice. Previously these had reported to the Deputy Attorney General. I assume this was to give some coordination to those.

My question is this: The position has been unfilled since 1978. This 10th Assistant Attorney General has never been appointed. Are you thinking about filling the position?

Attorney General SMITH. I think that is correct.

What we have done is to establish an Office of Legal Policy which, if I understand that act correctly, would encompass the type of thing you are talking about. The Office of Legal Policy would succeed the Office for the Improvement of the Administration of Justice and would, in effect, have a different, although similar, function. It would be designed to study and develop policy with respect to programs and procedures within the Department of Justice rather than the more broad areas which were covered previously.

It would also make recommendations with respect to various areas requiring consideration, such as improvements in the Freedom of Information Act. In addition to that, it would become involved somewhat in the judicial selection process. In sum, it brings together various functions and activities. However, this office would not require the creation of an additional Assistant Attorney General.

Senator GRASSLEY. I have to remind you that it is my understanding this legislation specifically added another slot of Assistant



Attorney General. It is my understanding it is a 10th Assistant Attorney General.

This can be answered in writing.

Attorney General SMITH. I think I now have the answer. This would save my sending a letter.

The Assistant Attorney General position to which you refer was designed to head up the executive office of the U.S. attorneys. In the previous administration, it was determined that was not necessary. We also have not found it necessary because the Associate Attorney General will be in effect handling that responsibility. There really is no need for that position.

Senator GRASSLEY. I am not in a position today to say whether or not it ought to be filled, but I am interested in——

Attorney General SMITH. You are interested in whether or not it is a legal requirement.

Senator GRASSLEY. That is something we may all have to answer. Just because we create a position, I don't know whether or not constitutionally it has to be filled. That is a whole separate issue.

My point in asking the question now is whether you anticipate filling it. I think the answer I got was that you do not see that it needs to be filled now.

Attorney General SMITH. We certainly would not fill it unless we felt a need for it or unless there was some legal requirement of which I am unaware.

On the contrary, we are going in the other direction because we have in fact eliminated some 58 positions in the general administration area of the Department. That is the trend we like.

Senator GRASSLEY. Thank you, Mr. Smith. Those are all the questions I have.

Senator SIMPSON. Thank you, Senator Grassley.

I have one further question, Mr. Attorney General, before I go back to the real chairman of the committee.

I know you have been asked this before, but now that you have had a little more time to mull this over, what are your feelings about going forward with an FBI charter, just in a general type of response?

Attorney General SMITH. We concur with that approach. We think that there is a place for an FBI charter. I have discussed that with Judge Webster and he concurs.

Senator SIMPSON. I remember having some good visits with Judge Webster about that. I think in this town we often get into a spirit of competition with who puts in what bill. I think there may be one version of the FBI charter put in, perhaps two versions. Yours will be very important.

Do you believe that we can sit down and meld and work on two or three different versions of the FBI charter and hope to come up with something?

Attorney General SMITH. I am sure we can.

Senator SIMPSON. Good. I feel that is important to do—for the Bureau, for the Department, for law enforcement, and for the public.

Attorney General SMITH. Indeed.

Senator SIMPSON. Thank you very much.

Thank you, Mr. Chairman. I will hereby relinquish the chair.

The CHAIRMAN. Thank you very much, Senator. Senator DeConcini?

Senator DECONCINI. Thank you.

Mr. Attorney General, I regret I was not here earlier. The Secretary of State was right below you comports himself very well.

I do want to ask a question. I notice in the budget proposals for the Department of Justice that an item in the previous administration for multi-State intelligence projects has been eliminated completely. Under the reconciliation it had been reduced from \$9 million to \$3-something million, and now before us is the total elimination of that funding.

When you were here for your confirmation I asked you some questions about it, as I did Mr. Schmuts. You agreed at the time, to my recollection, that you certainly were not committed one way or the other, that you would review it carefully, and even consider meeting with the heads of those existing agencies.

I wonder what steps you did take in coming to a conclusion other than that you would like to save \$6 or \$9 million, and I realize that may be a valid total conclusion. What other steps did you take before reaching the conclusion that there should be no Federal participation with those multi-State projects?

Attorney General SMITH. As you indicate, Senator, we did meet with the heads of most, if not all, of those groups. The Deputy Attorney General met with most, if not all, of them. This was, again, one of those hard choices which had to be made as to where we pull back. It is no reflection on the effectiveness of those groups, although we have had some question and some criticism as to whether or not they were as effective as they might otherwise be.

However, that was not the basis upon which the decisions were made. The decisions really were made on the basis of just plain hard fiscal choices.

Senator DECONCINI. Let me first say thank you for filling that commitment and Mr. Schmuts' meeting with them, also. I think it was helpful. I have met with Mr. Schmuts since then.

I must say, Mr. Attorney General, with your strong position on combating violent and street crime, I have to question that choice when you are dealing with a coordinated effort of multi-States attempting to share intelligence that deals with narcotics and organized crime, and obviously that has a forerunner in that street and violent crime.

#### IMMIGRATION AND REFUGEE POLICY

Let me turn to another question. Mr. Attorney General, you were part of a task force appointed by the President, I understand, to assess and give advice and recommendations regarding the immigration and refugee policy and the Select Commission's report. Can you give us any update as to how those meetings are progressing and what your date of final report to the President might be?

Attorney General SMITH. We are making very good progress. It is our intent to report to the President by May 4.

Senator DECONCINI. By May 4?

Attorney General SMITH. Yes.

Senator DECONCINI. Are you at liberty to disclose to us whether your process includes concurring with part or all of the Select Commission's report?

Attorney General SMITH. Needless to say, that report provides a substantial resource for this task force in doing its work. I am sure that not only its factual data but also its conclusions will be weighed heavily by this task force.

#### REDUCTION OF STAFF IN THE CRIMINAL DIVISION

Senator DECONCINI. I notice by the significant areas of reduction in your budget, I believe, if I read this correctly, you are eliminating some 65 positions in the Criminal Division. Is that correct with regard to the U.S. attorneys?

Attorney General SMITH. There will be substantially no change in the onboard numbers of people. We anticipate there will be no significant change at all in the criminal effort between last year's budget and this year's budget. That is true, generally speaking, with all of our litigating divisions.

Senator DECONCINI. So the positions will not actually be—

Attorney General SMITH. Will not be significantly reduced.

Senator DECONCINI. Is 65 an accurate number?

Attorney General SMITH. That sounds about right. I think those are 64 authorized positions.

Senator DECONCINI. That is not considered significant in your judgment? I would like to give them back to you, if there is a possible way, if you need them and if anybody has twisted your arm, and perhaps they have not.

Attorney General SMITH. I think I can say with some confidence that both with respect to the Criminal Division and the other litigating divisions and for the law enforcement effort that we can carry on without any diminished effectiveness because the onboard people will not significantly change.

#### ELIMINATION OF U.S. TRUSTEES

Senator DECONCINI. Mr. Attorney General, let me turn to the U.S. trustees. I notice there is a total elimination of that program.

Attorney General SMITH. Yes.

Senator DECONCINI. Perhaps you can enlighten me. Was that done primarily for monetary reasons or do you know?

Attorney General SMITH. Yes, primarily for monetary reasons, although we did note that there has not been any reduction in the judiciary budget with the addition of this effort to the Departments activities. Also, there is a certain feeling that this kind of thing really should be in the Judiciary and not in the Department of Justice. However, neither of those was the principal reason.

Senator DECONCINI. Mr. Attorney General, I am not adverse to possibly coming to that same conclusion because it was put in there as a pilot project, not something that was supposed to be in concrete. It only has been in operation for a little over a year now. I wondered if it was a fair amount of time to make a judgment. I have gotten some positive reports and some negative reports on it. Was any study or analysis made or was it purely an economic decision?

Attorney General SMITH. The principal basis was strictly a budget decision. There was no intent or effort to cast a judgment as to whether it was a good program or a bad program.

#### IMMIGRATION AND NATURALIZATION SERVICE BUDGET CUTS

Senator DECONCINI. My final question is this, Mr. Attorney General: In the Immigration and Naturalization Service I observe a substantial cut in positions over the Carter budget. I just wonder how your Department, and you as Attorney General, can justify any reduction in the INS and the Border Patrol and the border enforcement in this country when it seems to be to me one of the forgotten subagencies or departments of the Justice Department that you now head.

How can there be any rationale to reduce the law enforcement arm and the processing arm of the Immigration and Naturalization Service? Can you give us any reason why you can do this other than monetary? If it is only monetary, isn't it worth saving and doing something for that agency?

Attorney General SMITH. There are two responses to that. First, there does not appear to be any necessary correlation between the amount of resources available and effectiveness. For example, in those areas where we have cut—investigations, for example—there is no indication that the resources which are currently there are being effectively utilized. We think what we have done is to cut in those areas where there is softness and not to cut in areas where we think there is necessary strength, as, for example, in the Border Patrol. We not only did not cut there, but we can increase the number of border patrolmen by about 112 in addition to those on board at the end of February 1981.

However, the way we look at it, we have first—as we discussed here earlier—to reorganize that department completely. It has been leaderless now for far too long.

We also have to develop consistent policy for the organization to enforce. We are in the process of doing that in connection with this task force.

Once those two jobs are done and, if additional resources appear to be desirable in order to accomplish any particular aspect, we would be here with a request. As of right now, we are not really disturbed by these reductions because we just do not think that if they are there they are producing—

Senator DECONCINI. Mr. Attorney General, did I understand you that you are asking for an increase in Border Patrol?

Attorney General SMITH. Yes, the end of year employment ceiling goes up by 112.

Senator DECONCINI. I had incorrect information then from the Appropriations Committee hearing which we had.

Attorney General SMITH. No.

Senator DECONCINI. I thought there was a reduction of about 160. I could be mistaken.

Attorney General SMITH. No. To put it another way, the actual on-board can go up.

Senator DECONCINI. The total authorized positions are lowered; is that correct?

Attorney General SMITH. That is right.

Senator DECONCINI. So, in essence, the authorization is less but you are going to hire some of the people.

Attorney General SMITH. Hire onboard; exactly.

Senator DECONCINI. Thank you, Mr. Attorney General.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Specter?

Senator SPECTER. Thank you very much, Mr. Chairman.

Mr. Attorney General, I regret my late arrival here. We had Secretary Haig in the Foreign Operations Subcommittee. Senators Leahy and Senator DeConcini and I were there. I am sorry to have missed your testimony because I am very much concerned about the Justice Department.

I would like to ask you about the elimination of the Office of Juvenile Justice and Delinquency Prevention from the budget. I have noted in your prepared remarks that your proposal to eliminate that entire amount does not mean that you do not believe that the juvenile justice program was not a worthwhile event and that you are hopeful the program will be taken up with block grants and perhaps by Health and Human Services.

Attorney General SMITH. Yes.

The CHAIRMAN. Excuse me, Senator Specter. That is the 5-minute bell. We have to vote at this time.

Have you voted yet?

Senator SPECTER. I have not.

The CHAIRMAN. Do you want to question now or do you want to return after your vote?

Senator SPECTER. After I vote.

The CHAIRMAN. I want to say, too, that without objection any Senator who has questions may submit them for the record for the Attorney General to answer, if they prefer to do that.

I understand many of the Democrats have been in caucus this morning and were unable to be here. They will have a chance to submit questions if they wish to do so.

Would you like to submit questions or do you want to come back in person?

Senator SPECTER. It depends upon the Attorney General's schedule. I will be back within about 8 minutes. I would like to do that.

The CHAIRMAN. Come back after you vote and ask questions at that time.

Mr. Attorney General, we will take about a 10-minute recess to give the Senators an opportunity to vote.

Attorney General SMITH. Very well. Thank you.

[Recess taken.]

Senator SPECTER [acting chairman]. I have been informed by staff that it would be appropriate for us to proceed despite the chairman's absence.

I appreciate your staying, Mr. Attorney General. I know how busy you are. I had asked that you wait these 10 minutes or so because I know when written questions are submitted they cannot possibly get the same level of attention that a dialog can.

I consider the subject of the Office of Juvenile Justice and Delinquency Prevention to be a very important one. We are having hearings on the subject on April 1 where we have a number of

people who will be given an opportunity to testify about the program.

I have found there has been a tremendous response by people interested in the juvenile justice system across the country—representatives of police associations, prosecutors' associations, the governors' association, courts' associations—who are very much concerned about the elimination of this particular line in the budget because of their very high regard for the work that it has done in the past and because of the importance of juvenile crime.

I want to take this opportunity to raise with you the possibility of some revision in the Justice Department budget as it relates to this particular item. I do so, Mr. Attorney General, because I know from the meeting which you and I had prior to your confirmation hearing and your testimony at your confirmation hearing, as well as your subsequent action in designating a group to study the problem of violent crime, that that is a matter of great concern on your mind.

Statistics show that for those 18 years and under there are some 20.1 percent of all arrests for violent crime and 43.5 percent arrests for property offenses, so that it is a very significant factor on the panorama of violent crime today, and based upon my own experience on the criminal law field and criminal justice field I believe it is really the starting point and the critical aspect of the entire picture of violent crime.

Having had the opportunity to discuss this with you, I ask you whether there is any possibility that we might be able to make some modifications to come up with the money for this particular item.

Attorney General SMITH. First, let me say, Senator, that this is probably the classic example in our budget of the hard choice. There is no indication whatever in that because this budgetary decision has been made that this program is not a desirable program. On the contrary, the effort is not to discontinue the program but to carry it on through the HHS block grants and through participation of State and local governments.

Our problem is that if we were to continue this program it would cost us some 3,000 positions in areas such as law enforcement and in our litigation areas. I think we would all agree we just cannot possibly take a cut of 3,000 positions in areas of law enforcement or our litigating capability. It really boils down to just a question of hard choice.

As we did discuss earlier, I think that efforts in the juvenile justice programs are very important. Although I certainly don't know as much about that as you do, nevertheless, I think it is important that there be ongoing programs in that area.

However, insofar as our budget is concerned, this was the hard choice that was made. I really cannot hold out much hope for change in our position. This is our recommendation.

Senator SPECTER. I think the reality is that when it comes to the block grant program, or Health and Human Services, the funds are not going to be there. I say that having attended several dozen hearings from the Subcommittee on Health and Human Services of the Appropriations Committee. I have seen the long list of people who have come in from that agency and the 25-percent cut which

the President has carried forward with the hope that it will be picked up with block grants. That is going to be an extraordinarily difficult field.

Perhaps what we can do on this committee is to look at the overall budget, perhaps work with someone on your staff, to see whether it might be possible to make some accommodations.

I appreciate the hard choice issue. I am surprised, frankly, to hear that it would be a loss of some 3,000 positions. Perhaps it is possible to make some accommodations that we might suggest to you. I have some familiarity with the priorities which you attach.

We will look at the budget. To whom should we talk on your staff on this subject?

Attorney General SMITH. I can designate somebody who would be the most appropriate.

Senator SPECTER. I would appreciate it if you would. We will withhold any effort along this line until we have had our own hearings and have heard from representatives of your Department who will focus specifically on this area.

Attorney General SMITH. Fine.

Senator SPECTER. I appreciate the difficulties and constraints on your own time. They can give us a better idea of the priorities which have been attached on staff work. We will hear from the other people. It may well be that we will have a roomful of witnesses on the 1st who will say it was a wise choice in a budget cut. I doubt that very much after hearing people who have come forward and who have been asking for time.

One of the things that concerns me, frankly, is to bring somebody long distances to come to Washington for hearings where there is virtually no time. We have five panels of people crowding to get in and anxious to come to talk for 5 minutes, coming great distances.

Therefore, I doubt I will be surprised in my evaluation that there is a large group of people in this field who are very, very concerned about this.

Attorney General SMITH. Yes.

Senator SPECTER. Of course, that is what the hearing process is for. I know that will be of some influence in your own decision.

We will have those hearings. If you would designate someone for us to deal with, we will come back to make our own recommendations to you.

Attorney General SMITH. We will be glad to do it.

Senator SPECTER. Senator Thurmond has asked me to announce that if there are further statements to be presented for the record, he would like those statements submitted between now and 12 o'clock next Monday.

I think, in the absence of any other Senator and with the hour approaching noon, that I will call the hearing adjourned subject to the call of the Chair.

Attorney General SMITH. Thank you very much.

[Whereupon, at 11:55 a.m., the committee adjourned, to reconvene at the call of the Chair.]

[Responses to followup questions posed by committee members follow:]

## RESPONSES TO QUESTIONS FROM SENATOR LEAHY ON INTELLIGENCE ISSUES

1. Over a period of years, both Congress and the Executive branch have reached the conclusion that it should be the Justice Department that decides whether a given violation of federal law should be prosecuted. This sense is reflected in the Classified Information Procedures Act, passed by Congress last year. It is also reflected in Executive Order 12036, which states that the Department is to learn of illegal activities that come to the knowledge of intelligence agents so that it can decide whether to prosecute.

-- Is it the Administration's policy that the Department of Justice should learn of crimes uncovered by intelligence agents and that the Department of Justice should make the decision as to whether to prosecute a given case?

Section 1-706 of Executive Order 12036 directs senior officials of each of the agencies within the Intelligence Community to "[r]eport to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General. . . ." The various intelligence components of the government should continue to report evidence of possible violations of federal criminal law to the Attorney General in compliance with procedures agreed to by the Attorney General and the head of the agency concerned. The Attorney General and the Department, as the principal law enforcement arms of the Executive Branch, have the ultimate responsibility to decide the course of law enforcement investigations and to make decisions concerning whether to prosecute in particular cases. Attorney General guidelines in furtherance of section 1-706 of Executive Order 12036 require the Department to consult with the relevant intelligence agency in the course of making investigative or prosecutorial decisions in which intelligence information is involved in order to ensure that unwarranted disclosure of intelligence sources and methods is avoided. This policy of consultation will continue to be an essential principle in any new guidelines of this type that may be adopted under a revised Executive Order. At the same time, the Attorney General and the Department of Justice do not intend to abdicate their ultimate responsibility for prosecutorial decisions.

2. Currently, under Executive Order 12036 the Attorney General has a role in formulating policy relating to intrusions on the privacy of persons inside the United States or United States citizens abroad.

-- Do you plan to continue to have such a role in formulating this policy or is it the Administration's plan to leave these decisions strictly up to CIA, FBI, and other intelligence agencies?

Under sections 2-201(a) and 3-305 of Executive Order 12036,



the Attorney General is given the responsibility of approving procedures pursuant to which intelligence activities involving electronic surveillance, other monitoring, physical searches, mail surveillance, physical surveillance, undisclosed participation in organizations, and collection and use of nonpublic information may be undertaken. These procedures are required to be designed to protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of intelligence information to lawful governmental purposes. The Attorney General is the principal legal advisor to the President and the Executive Branch, the chief law enforcement officer of the United States, and the Cabinet member responsible for supervision of the intelligence activities of the FBI. This variety of responsibilities results in his bringing a perspective to the intelligence process that is not shared by any other Cabinet or sub-Cabinet official. Although the review of Executive Order 12036 has not been completed, the Attorney General will continue to participate in the development of procedures governing intelligence activities that may result in intrusions into the privacy of persons in the United States or United States citizens abroad.

3. Under the procedures followed in the last Administration, the Attorney General sat on the Special Coordination Committee of the National Security Council that decided questions relating to collection of foreign intelligence, counterintelligence matters, and special activities.

-- Will you be sitting on the equivalent committees in the future?

The precise structure of the interagency groups responsible for the development of intelligence policy below the National Security Council level has not yet been determined by the President.

4. According to newspaper reports, the Central Intelligence Agency wishes to have authority to look into so-called sources and methods leaks inside the United States. Under current regulations, CIA may only investigate employees and contractors for such leaks.

-- Do you feel CIA should be able to target investigations against any person on the basis of leaks of sources and methods?

-- If the CIA should not be looking into leaks, who should?

Section 102(d)(3) of the National Security Act of 1947 limits the CIA's involvement in law enforcement and domestic security matters but at the same time authorizes the Agency to protect its sources and methods. That provision states that the CIA shall "have no police, subpoena, law-enforcement powers, or internal-security functions: . . . Provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." The Act does not state what steps the Director of Central Intelligence may take to protect sources and methods, nor does the statutory language provide real guidance concerning the distinction between permissible steps to prevent illegal disclosure of classified sources and methods, on one hand, and unlawful law enforcement activities, on the other.

In light of the responsibility to protect sources and methods given to the Director of Central Intelligence under section 102(d)(3) and the general authority vested in the head of any agency, it is reasonable for the CIA to conduct certain limited inquiries for the purpose of protecting sources and methods. At the same time, given the statutory restrictions on the CIA's involvement in law enforcement and domestic security matters, such investigations, particularly those conducted within the United States, should be carefully circumscribed. Relevant provisions of Executive Order 12036, such as sections 1-811, 2-206(c) and 2-208(c), represent an attempt to balance these competing interests. While this may not be the best balance possible and may be subject to some refinement with an eye toward allowing CIA to inquire further within the Executive Branch concerning disclosures of its information, a balance must nonetheless be maintained. We are currently discussing these matters with CIA.

The FBI has the authority to investigate unlawful disclosures of classified information. See, e.g., 28 U.S.C. § 535, 18 U.S.C. § 793. The Bureau is not encumbered by such legal restrictions as are imposed on CIA by the National Security Act. All domestic investigations of unlawful disclosures of classified sources and methods should be conducted by the FBI where a determination of prosecutive merit is required. We are also currently discussing with CIA various questions relating to unauthorized disclosures where there is no contemplation of prosecution.

5. What, in general, should CIA's role be inside the United States?

-- Should its agents be permitted to infiltrate domestic organizations?

Section 102(d) of the National Security Act of 1947 authorizes the CIA "to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government" and "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." With regard to CIA's coordination and collection functions Congress contemplated that the focus of the Agency would be on foreign intelligence and activities abroad. Consistent with the legislative intent underlying the Act, the National Security Council has tasked the CIA with the responsibility to collect foreign intelligence information.

Congress nonetheless understood that some of the CIA's activities would be conducted within the United States. The CIA necessarily maintains its headquarters here, procures logistical support, recruits and trains employees, tests equipment, and conducts other domestic activities in support of its foreign intelligence mission. It makes necessary investigations in the United States to maintain the security of its facilities and personnel. Additionally, it has been understood from the time of CIA's creation that the Agency is permitted to collect foreign intelligence -- that is information concerning foreign capabilities, intentions, and activities -- from American citizens within this country by overt means. There is also a recognized need to collect foreign intelligence from and about foreign persons in the United States.

Determining the legality of domestic activities undertaken by the CIA, such as undisclosed participation in organizations in the United States, requires interpretation of various consti-

tutional and statutory provisions as applied to the particular facts involved. Among the relevant constitutional provisions is the First Amendment, which protects freedom of speech, of the press, and of peaceable assembly. Among the statutory provisions are those contained in the National Security Act of 1947, that prohibit the CIA from exercising law enforcement powers or internal security functions. In general, such activities by CIA should only be undertaken for a lawful foreign intelligence purpose and conducted in a manner that does not intrude upon protected First Amendment activities or violate the provisions of the National Security Act. These lines are not easily drawn. Thus, undisclosed participation by the CIA in domestic organizations composed primarily of U.S. persons should continue to be undertaken only pursuant to guidelines developed by the agency head and the Attorney General.

#### RESPONSES TO QUESTIONS FROM SENATOR DOLE

1. Mr. Attorney General, if the Department had to cut another 115 to 125 million dollars from its current proposals to Congress, where would these cuts come from?

In order to reduce another 115 to 125 million dollars from the Department's current request would require that some 3,000 positions be eliminated in areas such as law enforcement and litigation. As I am sure you are aware, the Department's remaining programs are personnel intensive which makes it necessary to reduce employment if significant dollar reductions are to be accomplished. An employment reduction in this magnitude would seriously undercut the Department's ability to meet its requirement in the law enforcement and litigation areas.

2. You testified in your confirmation hearings, and subsequently have reaffirmed your strong interest in establishing a high priority for a violent crime reduction program. A Task Force is now at work exploring options. Do you have any indication of the areas that the group is exploring? Does it include a gun control initiative? How about narcotics enforcement? Juvenile crime? Other areas?

The work of the Attorney General's Task Force on Violent Crime is well underway. Its work will no doubt take it into numerous areas of crime and criminal law enforcement. While it would be premature to attempt to list those areas, it seems inevitable that it will explore the areas of narcotics enforcement, juvenile crime and penalties for illegal possession of guns. It would be premature to go into any more detail at this time, but I understand that the Task Force intends to explore the possibility of stronger sentences for the illegal use of handguns and the possibility of broader federal jurisdiction over crimes committed with handguns.

3. In the FY 1981 Department of Justice authorization bill which passed the Senate a year ago but never became law, there was an amendment which I strongly supported that would have authorized a study commission to look at the long simmering controversy as to whether or not the Federal Bureau of Investigation's National Crime Information Center (NCIC) should be "upgraded" to authorize message switching. Have you had a chance to focus on this issue yet? What would your view be if an attempt were made to add similar amendment to your 1982 authorization bill or whatever emerges from the Congress this spring for an authorization for the balance of FY 1981?

The National Crime Information Center (NCIC) provides a valuable service to state and local law enforcement agencies. I understand that, over the past year, the FBI has improved the NCIC response rate

tremendously through the acquisition of new equipment without "message switching" capabilities. This has substantially alleviated previous problems experienced by NCIC users. When a study of NCIC is conducted, as it must be sooner or later, I anticipate that such a study will re-examine the whole NCIC issue. I would like to see a new conceptual approach which would identify functions which the system should perform to meet the present and projected needs of the criminal justice community for the entire life of the system. If this is not done, we very likely will continue to incur excessive costs because of outdated software, or expend substantial resources in rewriting existing software.

4. Your prepared statement suggests that although the Justice Department's Juvenile Justice Assistance program would be "zeroed out" there would be some form of Federal assistance to states through block grants from the Department of Health and Human Services. Do you know of any specific amount that would be earmarked for this purpose? If so, what is it?

No specific amount would be earmarked.

5. Your statement indicates that organized crime will be a top priority. What does this mean in terms of the status of the Organized Crime Strike Forces? Do you contemplate any expansion or, really in other words, reestablishment of several that were deactivated during the Carter Administration?

Strike Forces will be deployed or disbanded, augmented or diminished, as needs and budgetary limitations dictate. The number and size of the Strike Forces and their field offices have always been in a state of flux due to the constantly changing organized crime situation.

At present, we contemplate closing a one-man Strike Force in Dallas, Texas. Since the last administration did not close any Strike Forces, there are none to reopen. Since January, we have opened a one-man field office in Milwaukee, Wisconsin. It is possible that one or two-man shifts in present personnel may take place in the future. To the extent that one man is taken from a one-man field office, that would mean closing that office. There is nothing contemplated beyond these normal personnel allocations, however.

6. The Director of the FBI recently announced publicly that the Bureau was going to get into the narcotics control field. If so, how does this square with the responsibilities of the DEA?

I do not anticipate a conflict between the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) in our efforts to control the availability of illicit drugs. Organizations which traffic in drugs are often engaged in illegal activities which fall under the purview of the FBI. In recognition of this potential inter-relationship, the Director of the FBI and the Administrator of the DEA met to discuss ways in which each agency could better complement the efforts of the other. They explored the feasibility of increasing joint investigations, conducting mutual debriefings of informants and suspects, and conducting intelligence activities in a manner which would be beneficial to both agencies. Subsequent to this interchange, the Director of the FBI made the announcement referenced in your question. This announcement signifies a stronger

interagency cooperative posture which I believe will improve the effectiveness of both the DEA and the FBI. We are continuing actively to evaluate means by which to increase the cooperation of DEA and FBI in the fight against illicit drugs.

As an example of the joint efforts which are already underway, FBI field offices throughout the country, in cooperation with DEA, have initiated numerous investigations involving violations of narcotics laws. These investigations have been conducted under the Racketeer Influenced and Corrupt Organizations statute in which a narcotics violation is used as one of the predicate offenses. As a result of some of these cases, informal task forces with DEA and other federal, state and local agencies have been established.

7. Your statement indicates that you are requesting a "modest reduction" in the authorized positions for U.S. Attorneys. From your justification material, it appears this is a cut of 112 positions including 65 prosecutors. How will these cuts impact on the ability of the U.S. Attorney's offices to meet their current enforcement priorities, let alone any new priorities such as violent crime that may be imposed by your office?

The reduction of 65 positions for criminal litigation consists of 33 attorneys and 32 support positions. This reduction, along with the reductions for civil litigation and appellate activity, will be allocated among the 95 judicial districts. One of the considerations in assigning these reductions to the districts, will be the level of priority cases conducted by the U.S. Attorney. After the district staffing levels are revised, each U.S. Attorney will then be responsible for revising local enforcement priorities so as to correspond with the new level of staffing. The general enforcement priorities of the department will of course take precedent but each U.S. Attorney should also take into consideration the capabilities of other law enforcement authorities within his/her district, problems of regional significance, and other factors which may apply to the establishment of law enforcement priorities within his/her district.

8. Your statement indicates that you contemplate a reduction in the U.S. Marshals Service for the Court Security program. Has this proposed cut been discussed with the Administrative Office of the U.S. Courts? What does the federal judiciary think about this proposal?

Yes, there have been discussions between the Department of Justice, the United States Marshals Service and the Administrative Office of the U.S. Courts on the Court on the Court Security program. On May 5, 1981, I also discussed the issue with the Chief Justice. As a result of that meeting, the Department of Justice will try to aid the judicial branch in its desire to conduct a comprehensive review of court security needs, i.e., both physical and personal security needs. Once this review is completed, the Department of Justice will work with the judicial branch in the development of a strategy to effect the changes needed to improve any deficiencies found in the security provided the courts. In part, this strategy would include the securing of funding and staffing resources needed by either the judicial branch or the Department of Justice.

9. Earlier this year I introduced S. 186, a bill to provide Federal Financial and Technical Assistance to State and Local Criminal Justice Jurisdictions for the construction of criminal justice facilities, primarily prisons and jails. Have you had a chance to look at this proposal yet? If so, what do you think of it?

Many if not most jurisdictions are facing severe overcrowding conditions and are under federal court order to alleviate the overcrowding. In a growing number of these cases, the Justice Department has actively intervened or brought suit against State and Local jurisdictions. In addition, Mr. Civiletti, shortly before he left office, issued a set of federal standards and guidelines for state and local institutions. It seems like at the present time, there are plenty of federal "sticks" available to apply pressure to the states for prison reform, but no "carrots." Despite the various cuts there is still close to \$100 billion in Federal Assistance to State and Local Governments for various assistance including many, many billions for construction. Would you favor a reordering of federal priorities so that funds can be made available to assist criminal justice agencies?

I have not yet had an opportunity to review that specific legislation. However, I believe that the construction of new prisons and jails should be a top priority for state and local criminal justice systems. There is simply not enough prison space to house all the criminals who should be imprisoned. The principal burden should and must fall on state and local governments. They must be prepared to devote a larger percentage of their funds to the construction of prisons in particular.

This is not to say, however, that the federal government has no role in assisting state and local governments in handling this serious problem. The enforcement of the law and the incarceration of criminals, particularly violent criminals, are fundamental obligations of government at all levels. More discretionary spending programs should be curtailed in order to fulfill such fundamental obligations.

10. The FY 1982 budget proposed a very substantial cutback, more than 1,300 positions, for the Immigration Service. Your statement indicates that the new Commissioner ought to have the opportunity to consider available options to deal with the many immigration problems. Won't it be difficult to "consider carefully" the options in the face of very significant cutbacks?

No, I don't believe that the proposed cutbacks in authorized positions will affect the new Commissioner's ability to consider different options to improve I&NS' operations; in fact, the majority of these positions are currently unfilled. Furthermore, there is reasonable cause to believe that many immigration problems will not respond simply to increased resources but, that decisions concerning the management of current resources may be more important. Further, a special Interagency Task Force established by the President, which I chair, has been reviewing the recommendations of the Select Commission on Immigration and Refugee Policy in the next few weeks and will soon report its recommendations on immigration and refugee policy to the President.

#### RESPONSES TO QUESTIONS FROM SENATOR DENTON

1. Given the Administration's emphasis on terrorism and national security and the creation by the Judiciary Committee of the new Subcommittee on Security and Terrorism, which has been assigned the primary responsibility of handling these areas, do you see a need to similarly focus prosecution and supervisory responsibility for related crimes and investigations within the Department of Justice in a National Security Division?

Preliminarily, I believe the proposal should be carefully reviewed. The decision should turn on whether the extent and number of prosecutions and investigations, as well as their specialized or sensitive nature, are such that a separate National Security Division would be warranted. If not, the Department could consider other alternatives to enhance our response, if that proves to be necessary.

2. In your prepared statement (p. 2), you indicate that white collar crime and organized crime are top priorities. Foreign counterintelligence investigations and efforts to combat international traffic in narcotics will receive increased resources.

- a. How will these resources be utilized in increasing your efforts in these two important areas?

- b. Do you feel that resources beyond those which you have requested would be required? If so, what types of resources?

- a. The Department's major priorities will continue to be foreign counterintelligence, organized crime, white-collar crime and narcotics abuse. The resource increases requested for the FBI's white-collar and organized crime programs is to provide funding for additional undercover projects, informants and aircraft surveillance all of which have proved to be highly successful investigative techniques. Specifically, the FBI's investigative efforts in organized crime will be directed against those activities which are the principal sources of revenue for organized criminal element; these activities include labor racketeering, loansharking, illegal gambling, and pornography. The FBI's white-collar crime efforts are directed against corrupt public officials and major white-collar crime perpetrators. The requested increase would provide the FBI with an adequate response to current investigative needs and would save manpower and vehicle costs involved in physical surveillances.

The increase for the foreign counterintelligence program cannot be addressed in this forum. However, detailed information can be provided under separate cover or in closed session, if so desired.

To combat international trafficking in illicit drugs, we are requesting additional resources for the Foreign Cooperative Investigations efforts of the Drug Enforcement Administration (DEA). The principal element of the request is for seven special agents and three intelligence analysts who will be involved in investigative efforts against major Southwest Asian heroin trafficking organizations in Europe and the Middle East. These personnel will also contribute to our efforts to improve cooperative relationships with various source and transit countries. The request also includes \$300,000 to enhance field intelligence collection efforts and \$150,000 to extend the DEA Automated Teleprocessing System (DATS) to additional overseas offices. Further, we expect that our request for 26 special agents accountants to develop the financial aspects of investigations involving major domestic trafficking organizations will provide intelligence for use against international trafficking organizations and will have a direct impact upon the assets of those organizations.

- b. All of the heroin and cocaine and 90 percent of the marijuana available in this country originates in foreign countries. If we are to be successful in controlling the supply of these substances, I believe we must make every reasonable effort to improve the

effectiveness of our current activities to control the cultivation of illicit drugs in the source countries and to identify and disrupt the production and shipment sites of these drugs. Although this effort may require additional resources for the DEA in the future, there are actions which the Congress can take now which will contribute to the success of current efforts to control the supply of illicit drugs. Our experience with the Mexican Government indicates that crop eradication programs are a cost effective way to control illicit cultivation in source countries. However, the current statutory impediments of the use of foreign aid to fund the use of certain herbicides, such as paraquat, is severely limiting our attempts to expand crop eradication programs. If we expect the cooperation of foreign governments in the control of illicit crop cultivation, we must be prepared to provide them with the means to accomplish the task. Another way the Congress can aid the effort against international drug trafficking is to authorize the military services to share intelligence information concerning suspected drug trafficking activities with law enforcement agencies. With these legislative changes, the effectiveness of existing law enforcement resources will be improved, thus reducing any future need for additional resources.

3. Recently, President Reagan has discussed the possibility of opening our border with Mexico to free movement of citizens between the two countries. What is your assessment of the effect such an act would have on the flow of drugs across our border? And how could we maintain effective drug enforcement in this area?

The President has recently established a special Interagency Task Force on Immigration to review the many problems facing this country with respect to the management of our borders. I am chairing the Task Force. We have reported our recommendations to the President. After the Cabinet has had the opportunity to review our recommendations, the President will present his proposals to the Congress.

An open border policy is only one option which deserves consideration. Any plan to relax the movement of people between Mexico and the United States must address the problems which law enforcement agencies face with respect to the interdiction of illicit drugs, as well as other contraband. Even if a new plan is not intended to reduce the resources of the U.S. Customs Service, the U.S. Border Patrol and the Drug Enforcement Administration in these areas, increased numbers of travelers will place additional pressure on the inspection process and may result in less effective screening. Contraband such as heroin and cocaine which is concealed in luggage or body-carried and contraband such as methaqualone and marijuana which is concealed in vehicles are less apt to be detected.

As this becomes apparent, traffickers will be encouraged to make greater use of Mexico as a transshipment country for these drugs. This is especially true if the Federal Government is successful in increasing the effectiveness of operations against trafficking in the Caribbean. Traffickers will continuously attempt to seek out the weakest link in our defense against their smuggling efforts. Even now, there is evidence of growing use of Mexico as a transshipment country for heroin and cocaine. We must be prepared to deal with this eventuality.

Nevertheless, we must decide where our resources will produce the greatest results. We can take action to increase our efforts to interdict the flow of illicit drugs across our southern borders. However, as we have said many times in the past, border interdiction efforts are not the key to effective drug law enforcement. We must intensify our efforts to control the production of illicit drugs in the first instance. We must attack opium, coca and marijuana cultivation at the source. In addition, we must attack the points at which these raw materials are converted into finished drugs and the points at which these drugs are staged for shipment to this country. Neither of these high return strategies are advanced by



committing additional resources to the interdiction of illicit drug shipments at our borders.

Certainly, we cannot encourage traffickers by relaxing existing interdiction efforts. But, as the FY 1982 request for the Drug Enforcement Administration makes clear, the greatest chances for success lie in our efforts to improve our cooperative efforts with foreign governments and our efforts to identify, infiltrate and destroy major trafficking organizations.

- 4a. Recognizing, as you do on page 9 of your prepared statement, the conviction of this Administration that the problem of violent crime, although primarily falling within the jurisdiction of state and local law enforcement agencies, has reached such an alarming level that leadership on the part of the Federal government is both desirable and necessary, and recognizing that a large and rapidly increasing portion of such crime, more than 50% in many areas, is committed by juveniles under the age of 18, what is the Department of Justice's justification for requesting that all funds for the federal juvenile justice programs be eliminated?

Juvenile justice programs have achieved remarkable results in reducing the number of status offenders in institutions and the number of juvenile offenders confined with adults. Many other excellent improvements have been made to the juvenile justice systems throughout the country. The Administration believes that the program has gone a long way in achieving its objectives and has amply demonstrated that the goals of the authorizing legislation are attainable. However, the Administration also believes that the burden of funding the various juvenile justice programs should be shifted to the State and local levels where responsibility lies for public safety. We know that many of the states have institutionalized programs begun with Federal funds provided by this program and we believe that many more will follow suit because many of the programs have proven successful. We also believe that the objectives of programs such as this should be met through block grant programs administered by the Department of Health and Human Services.

- 4b. In what ways (or why) is the Department of Health and Human Resources, a social agency, better able to administer the federal juvenile justice effort, the majority of which involves crimes committed by children under 18 years of age, than the Department of Justice which has primary federal responsibility in the criminal law area?

The primary goal of the juvenile justice program is to remove status offenders from secure facilities. A status offender is a youth who is detained for a crime that if the individual was an adult would not be a crime, e.g. runaway, truancy etc.. Most of these juvenile status offenders are not criminals but need some other type of social service other than what is normally available to them in the criminal justice system.

Through the Health and Human Services block grant approach, State and local communities can design programs that can effectively meet the social service needs of their community. Under the President's proposal, the Department of Justice's juvenile justice programs will be merged into this block grant program. Since many of the problems facing status offenders can be better addressed through social service programs, the Health and Human Services block grant approach will enable a community to address the individual needs of the community with less Federal intervention.

5. With respect to the Witness Security Program presently administered by the U.S. Marshals, would there be advantages if each agency (FBI, DEA, etc.) were responsible for the security of its own witnesses?

This is also an issue that deserves serious consideration. On the one hand, there are definite economies and efficiencies resulting from having the program for all protected witnesses run by one agency. On the other hand, there is more of a vested interest in handling a witness who has supplied information of value to a particular agency. I would be happy to discuss the matter in greater detail with you at your convenience.

6. The Criminal Division has the most sensitive and important work in the Department of Justice. Mr. Guilliani is the only senior official with extensive Federal criminal justice experience and I note that he has under his supervision the Criminal Division and the DEA while the FBI and the Office of Intelligence Policy and Review report to you.

How do you propose to integrate policy litigation and administrative matters in order to avoid the possibility that segments not under Mr. Guilliani's supervision might overlap or conflict with his efforts?

I believe that policy, litigation and administrative matters will be properly coordinated. While the Director of the FBI will report to me, other Bureau personnel will often necessarily report to the Associate Attorney General on specific matters. The Associate Attorney General also works closely with the Office of Intelligence Policy and Review. Accordingly, duplication and overlap will be avoided.

#### RESPONSES TO QUESTIONS FROM SENATOR BIDEN

1. Drug Area

I am concerned about the budget cuts President Reagan has made to the Departments of Justice and Treasury that relate to drug enforcement activities.

Wouldn't you agree that drugs are a major contributor to crime?

I believe that drug abuse is directly and indirectly related to many types of crime. It is the cause of gang-style warfare between competing trafficking organizations. The proceeds of drug trafficking are used to bribe both private and public officials into aiding trafficking activities. This weakens our political and economic institutions. We find people under the influence of drugs committing senseless acts of violence and killing or maiming innocent victims on our highways. A recent study has documented the relationship between heroin addiction and the commission of property crimes to obtain money to support the drug habit. Even where physically addictive drugs are not involved, common sense indicates that a significant portion of the billions of dollars spent each year on marijuana and cocaine

are derived illegally. We see pharmacies and manufacturer storage facilities burglarized to obtain large quantities of dangerous drugs or the chemicals from which they are manufactured. We must admit that the lure of large profits has corrupted physicians, pharmacists, and other law abiding citizens into entering the illicit drug business. It is suspected that many of the disappearances of pleasure craft in the so-called Devil's Triangle area of the Caribbean are the result of hijackings where traffickers murder the crew and passengers to obtain the boat for use in the drug trade. The list goes on. There can be no doubt that drugs are a major contributor to crime.

Wouldn't you agree that the drug area is one place the Federal Government can make a contribution to state and local enforcement agencies?

Over the last several years, the Department has invested many millions of dollars in the training of state and local law enforcement officers and in cooperative enforcement activities such as state and local task forces. To a large extent, this investment has proven successful. Although these activities have improved the capability of state and local law enforcement agencies to participate in the effort against illicit drugs, the impact of their efforts is necessarily limited to activities of primarily local concern. The most significant gains made against drug trafficking in recent years have occurred in areas of primary federal responsibility. Most major trafficking organizations operate across state boundaries as well as internationally. The majority of illicit drug cultivation and production occurs in foreign countries. As such, these activities are beyond the jurisdiction of state and local governments. We must decide where our resources will produce the greatest benefit for our country. It should be recognized that if the Drug Enforcement Administration (DEA) can improve the effectiveness of its efforts overseas to control cultivation and production and its efforts against major trafficking organizations, this will, in turn, reduce the pressure on state and local governments across our country.

How do you justify budget cuts in the drug enforcement area and then substantiate a committed effort to doing something about street crime?

The primary goal of this Administration is to control inflation, balance the budget by 1984, and ensure the economic recovery of our Nation. To accomplish this, we are committed to our initiatives to reduce federal expenditures, reduce the size of the workforce, increase productivity and eliminate waste and fraud in the Federal Government. This is a problem of government-wide concern. Every federal agency is expected to share in the necessary reductions, consistent with its mission and program responsibilities. The Department of Justice is not an exception to these expectations.

Within this framework, the Administration is pursuing other important policy concerns. As you have noted, violent crime is one of our major concerns. I have established a Task Force on Violent Crime to study what role the Federal Government should assume in the national effort to reduce violent crime in our streets. If it is determined that the Department should undertake a greater effort in this area, the task force will consider resource issues. We must recognize that, under the Constitution, this area is one in which state and local governments have primary responsibility. As such, it is uncertain that a redefinition of the proper federal role will result in a need for significant additional federal program resources. The answer may lie in the reordering of federal program emphasis. For this reason, I am deferring a decision on

any potential program increases to combat violent crime until I receive the task force reports.

In the interim, we are reviewing our existing programs, and identifying areas where resource reductions will, in our opinion, have only a marginal adverse impact upon our major policy objectives. Many of the positions we have eliminated were unfilled. A significant segment of the program reductions were in support programs or in programs whose impact, measured against federal policy priorities, was less than that of other programs we chose to protect. This is not to say that the programs which were reduced were unproductive or had little merit. The programs are valuable. However, under conditions where a reduction must be made for the good of our country, we must make difficult decisions regarding the relative merit of alternative investment choices. The revised budget request reflects the results of these decisions.

I understand DEA currently has 4,000 people on-board. You plan to reduce your strength to 3,897 in FY 1982. Will this require reduction in force procedures?

At this time, we do not anticipate the need for reduction in force procedures.

What really is going to be this Administration's federal policy in the drug area and have you participated in discussions in which a federal drug strategy for this Administration is being considered? What agencies under your direction and outside in other departments are working on the Reagan policy for drug enforcement and treatment?

On several occasions, the President has spoken out against the problem of drug abuse and its relationship to crime in America. He has pointed out that we need to maintain a strong enforcement posture while we place increased emphasis upon reducing the demand for illicit drugs. Discussions of these issues are occurring throughout the government. The Administrator of DEA has met with the heads of the Federal Bureau of Investigation, the Office of International Narcotics Matters, the Agency for International Development, the Central Intelligence Agency, the Internal Revenue Service and the U.S. Customs Service to identify areas in which past policies and working relationships have been successful and areas in which additional help is needed. I have been kept apprised of these efforts and am encouraged by a broad commitment to improve communications and enhance coordinated action against the drug problem. I believe an improvement in interagency relationships will improve the effectiveness of resources already committed to this area.

These discussions have also identified areas in which the Congress can be of assistance in this struggle. Our experience with the Government of Mexico underlines the importance of crop eradication programs to the control of illicit crop cultivation. However, due to statutory limitations on the use of foreign aid to fund the use of certain herbicides such as paraquat, our attempt to expand crop eradication programs is severely restricted. Further, statutory limitations on the ability of the military services to cooperate with law enforcement agencies is denying these agencies significant available intelligence on suspected trafficking activities. Information available to the military services could directly improve the effectiveness of our efforts against major

trafficking organizations. In related areas, we are considering the need for legislation to amend the Tax Reform Act of 1976 and the Controlled Substances Act. In the first case, we are considering an amendment which will allow the Internal Revenue Service to share information, other than tax returns, on suspected drug trafficking activities with the DEA. In the second case, we are considering an amendment which will lengthen the interval at which individuals and organizations dealing with controlled substances are required to register with DEA and provide clear authority for the DEA to target resources at major retail level diverters of controlled substances.

The Administration's integrated drug enforcement and prevention strategy may request legislative action in these areas. A specific strategy has not yet been officially adopted. However, I expect that a formal strategy will be available before the end of the year. In the interim, I believe it is far better to take the time to develop a well conceived policy which is achievable than to take hasty ad hoc action which may prove ineffectual or counterproductive.

Do you foresee the FBI playing a larger role in the drug enforcement area?

I expect the Federal Bureau of Investigation (FBI) to become more involved in the drug enforcement area. Organizations which traffic in drugs often are engaged in illegal activities which fall under the purview of the FBI. In recognition of this potential interrelationship, the Director of the FBI and the Administrator of DEA met to discuss ways in which each agency could better compliment the efforts of the other. They explored the feasibility of increasing joint investigations, conducting mutual debriefings of informants and suspects, and conducting intelligence activities in a manner which would be beneficial to both agencies. However, we are moving toward a stronger interagency cooperative posture which I believe will improve the effectiveness of both DEA and the FBI.

## 2. Violent Crime

When can we expect to see the recommendations of your Violent Crime Task Force? If the Task Force recommended recreating a block grant program that focused on street crime issues, would the Administration support the funding needed to subsidize such a program? Would the Administration support a state and local grant program similar to the old LEAA program? How do you feel about the Federal role in the crime area being primarily a research and development program?

Recommendations resulting from the first phase of the Task Force's work, i.e., what can be achieved with currently available resources, has been delivered to me. Recommendations concerning the second phase of inquiry--necessary changes in law and additional federal resources necessary, if any--should be ready by mid-August 1981.

Do you support a Federal effort that would focus on providing State and local government with technical assistance in setting up programs of proven effectiveness and also conducting research and testing of new approaches that address violent crime?

As I have stated previously, federal assistance to State and local govern-

ments should be reduced or eliminated where those jurisdictions are themselves capable of assuming greater responsibility in the criminal justice area. It is quite possible, however, that the Task Force on Violent Crime could identify certain assistance programs that have proven successful and recommend similar programs which would involve specifically targeted efforts and objectives against violent crime.

You mentioned in your statement that the federal role should be one of leadership.

Why are you cutting such programs as the DEA task forces, the state and local drug enforcement grant program, and the 37 positions and 1.8 million dollar increase President Carter proposed in the FBI State and Local Training program? Aren't these examples of Federal leadership and cooperative enforcement programs with State and local agencies that do not require major budget outlays for the Federal government?

As I mentioned earlier, the Department has invested millions of dollars over the last decade in state and local task forces directed at drug trafficking. The original objective of this program was to provide selected state and local officials with practical experience in conducting professional drug enforcement investigations. This experience could then be used to instruct others and to develop and manage state and local drug law enforcement programs. To date, hundreds of state and local law enforcement officers have participated in task force operations in major cities across the nation. Although certain of these task forces have established themselves as effective operational enforcement units by consistently contributing to the investigation and arrest of high level violators, that has not been our experience with the majority of task forces. However, most task forces have been successful in providing meaningful practical experience to many state and local law enforcement officers.

The reductions planned in 1981 and 1982 reflect this Administration's belief that several task forces can be closed without a significant adverse impact upon our efforts against major drug traffickers. It should be recognized that the task forces are not the only manner in which the DEA provides direct investigative support to state and local jurisdictions. Although the task forces have been the most visible example of cooperation, it also has been DEA's practice to work with state and local jurisdictions on a case-by-case basis whenever the nature of the particular case warrants federal participation. These cooperative investigative efforts not only have produced results comparable to those of most task forces, but also have achieved these results at a lower cost to the American taxpayer. Limiting federal involvement in most jurisdictions to situations where state and local officials request support is consistent with the proper allocation of police power under the Constitution and allows the DEA to redirect professional investigators to major cases of federal importance.

The decision was made to reduce the enhancement originally requested for the FBI's General Law Enforcement Training program in order to provide additional personnel in the Foreign Counterintelligence program. The remaining enhancement, though smaller, will permit the FBI to perform a nation-wide assessment of the training needs of state and local law enforcement personnel. The results from this needs assessment will provide the FBI and other organizations of the Department of Justice with a valuable tool for use in planning for the most effective and beneficial allocation of existing training resources. Therefore, although state and local training will not be increased in FY 1982, in subsequent years federal training will be tailored to meet the areas of greatest need of the users of these services.

I would also like to point out that in FY 1982 the Department has requested additional funding for equipment for the Forensic Sciences

Research and Training Center which has opened at the FBI Academy in Quantico, Virginia. These funds will enable the FBI to offer highly specialized forensic science courses to state and local laboratory personnel which should aid immeasurably the detection, prosecution and conviction of violent crime offenders. Further, by expanding research in criminal forensics the FBI will continue its leadership role in this area to the benefit of the entire law enforcement community. The area of forensic sciences is one in which we feel the Federal Government should retain a leadership role; our commitment is demonstrated in the request for resources for research and training at the FSRTC.

### 3. Cutting into Cost Effective Program

I am concerned about personnel and budget cuts in areas which are generally considered cost effective or revenue producing. In the Tax Division this FY 1982 budget will cut 33 positions, although the Tax Division has a history of producing tax revenues that far exceed their budget of 22.7 million dollars.

Will these cuts have any impact on the ability of the Tax Division to pursue commercial and individual taxpayer fraud?

I do not believe the reduction in FY 1982 positions for the Tax Division will have any adverse impact on our ability to pursue commercial and individual taxpayer fraud. Our Criminal Section, which will absorb 7 of the 33 positions cut, recently underwent a program reorganization which we feel better utilizes our existing resources to prosecute fraudulent activity of the type described. Under the new system, cases received from the Internal Revenue Service with recommendations for prosecution are divided into routine and nonroutine classification, based on previously defined criteria. The routine cases are expeditiously sent on to the United States Attorney's office after very limited review by our Criminal Section staff. This allows more time, and hence more resources, to be devoted to analysis and development of the more important (i.e., nonroutine) cases which present the type of illegal activity which should be promptly and severely punished. This new system with its attendant shift of focus to, if you will, "white collar crime" will allow the Division to use its resources in the most effective way and pursue commercial fraud vigorously.

Are these position cuts based on your intent to rely more on the United States Attorneys to handle civil litigation such as tax evasion and commercial matters, with less assistance from general legal activities in Washington?

Because of the highly technical nature of our work and the need for uniform treatment of all taxpayers, the Tax Division has traditionally not relied on the United States Attorneys for much assistance in the civil area. We intend to continue this course of conduct in the future. While the budget cuts will, of course, call for some belt tightening, we still feel confident that we can carry out our assigned task of representing the Government in civil tax litigation in a fair yet vigorous manner.

On the Criminal side, the majority of criminal trials and grand jury presentations have traditionally been handled by the 95 United States Attorneys' offices and it is anticipated that this division of workload will continue. However, requests for assistance from the United States Attorneys have become more frequent, especially of late, so the new criminal case processing procedure as outlined in our answer to the first question should help us to be able to honor these requests.

Can you please explain to me why you will cut Civil Attorney positions in the U.S. Attorneys Offices by 37 positions after the Carter budget for FY 1982 called for an increase of 63 positions?

The 63 positions requested in the Carter budget were for collections activities. There were no additional attorney positions included in that request and none of the additional positions would have been assigned to litigation activities--except for litigation activities directly related to the collection of debts owed to the government.

The decrease of 37 authorized positions, of which only 14 are attorney positions, will be absorbed in such a manner so as to minimize any harm to the public.

Can you assure us that these complex and often prolonged civil cases that often involve millions of dollars will be effectively litigated in the future, under this new budget scheme?

The Tax Division uses two methods in an effort to meet the demands placed upon us by complex litigation. First, we have six Special Litigation Counsel whose principal if not sole function is to prepare and litigate large, complicated cases in either the civil or criminal area. Secondly, use of the "team" concept whereby more than one attorney is assigned to the largest cases helps to insure that the Government is fully represented in complex litigation. Under our proposed FY 1982 budget, we do not anticipate any cutback in the use of either of these two methods. Our reduction in resources will impact on the small, routine litigation where an adverse decision will not produce dire consequences beyond the framework of the case itself.

While it is virtually impossible to assure that all large cases will be effectively litigated, we can confidently represent to this Committee that our complex cases will be fully staffed and vigorously litigated.

#### 4. Systematic Approach to Budget Cuts

I am concerned that in an effort to spread cuts across the board and perhaps focusing narrowly on each individual program category, it is easy to lose sight of the big picture.

Was there a systems overview concept used in considering DOJ reductions that accounted for the impact that adjusting one area, say enforcement, may have on another, say prosecution? Were there goals stated from which budget adjustments were developed? For example the goal being forfeiture of assets of narcotics traffickers and then considering all phases from enforcement through prosecution and conviction? What were the major goals set up in considering DOJ activities for this authorization?

The resource allocation decisions we made in the Department of Justice in response to the President's Program for Economic Recovery, although constrained by reductions, were made to a very great extent on a systematic basis. We kept very much in mind the Department's goals and priorities; the cuts were not automatically spread across the board. As I have previously stated, despite the need for budget stringency, we are continuing to maintain the fight against organized crime and white collar crime and ever increasing resources in the foreign counterintelligence and major narcotics trafficking programs. Although the 1982 request represents an overall decrease in resources, I am convinced that the requested levels do not jeopardize the essential missions and goals of the Department.

Regarding your specific examples, I do not think that the requests for the enforcement programs and prosecution programs reflect any disparity or inconsistency. Although the requests for the Criminal Division and the U.S. Attorneys, for example, show a reduction in authorized positions, neither of these organizations will experience a reduction in actual, on-



board personnel; in fact, the U.S. Attorneys current on-board strength is below even the newly reduced levels. As regards the systemic relationships in resources allocated among enforcement, prosecution and corrections programs, these are very difficult and complex factors to take into consideration; it is virtually impossible to predict the long-term effects of many of these relatively short-term resource-allocation decisions made within the time frame and under the budgetary constraints we faced.

Can you explain the logic behind:

Increasing 26 positions in DEA for agents to focus on financial assets of major drug cases but reducing by 11% the authorization for the special attorneys in the Narcotic and Dangerous Drug program in the Criminal Division and reducing by 2.6% (65 positions) the authorized attorneys in the U.S. Attorneys offices that would prosecute these cases?

As I suggested in my response to the previous question, the current on-board strengths of the Criminal Division and the U.S. Attorneys are not being reduced. Although the Department's 1982 request shows a reduction of authorized positions, the lower levels should not have an adverse effect on the quality or quantity of our criminal prosecution programs.

(If the FBI field personnel are increased by 97 positions), will there be sufficient resources in the general legal area and U.S. Attorneys to prosecute the expected increase caseload, without having to screen out certain cases because of Speedy Trial rules?

If the proposed staffing increases for the FBI are appropriated for FY 1982, the Criminal Division will have sufficient resources to prosecute meritorious referrals without seeking dismissals due to Speedy Trial considerations. The reductions to the Criminal Division's workyears will total 17, only 10 of which will be in prosecution programs.

Why are you proposing to cut 17 positions in the Criminal Division's Organized Crime program when organized crime is supposed to be of such a high priority?

While a reduction of 17 positions is proposed for the Organized Crime and Racketeering Prosecution program in FY 1982, a reduction of only one workyear is proposed. The combined effect is to bring into closer alignment the number of authorized positions with the number of workyears actually affordable. The priority of the Organized Crime program remains high in the Department. This single workyear reduction will have a negligible impact upon the FY 1982 program.

Were changes in enforcement and prosecutorial policy considered when reductions in the Federal Bureau of Prisons budget were developed and based on the assumption that reductions in prison population would continue?

The initial FY 1982 budget reductions directed by the Office of Management and Budget were much higher than the reductions finally proposed in the President's Revised Budget for the Bureau of Prisons. The principal reason that the Attorney General modified the reductions was because of potential changes in enforcement and prosecutorial policy which could have the possible impact of increasing the Federal Prison population from the current level.

Can you please provide me a copy of the rank order of priorities for programs in your Department submitted to OMB and if changed since, the latest ranking?

The Department's FY 1982 authorization submission to the Committee provides a rank order or priorities by organization for each program within that

organization (note for example, I&NS submission pg. 62). These rankings have not been revised at this time. The Department intends to address the priority rankings again for the FY 1983 authorization cycle.

#### RESPONSES TO QUESTIONS FROM SENATOR METZENBAUM

1. It has been reported that the Civil Division is so tight on travel funds that important cases involving millions of dollars are being inadequately litigated because Justice Department lawyers cannot take the depositions themselves.

-- Has this matter been brought to your attention? If the reports are correct, please inform the Committee whether or not you plan to remedy what would seem to be a short-sighted economy measure?

As you are aware, the Carter Administration imposed reductions in travel fund allowances available to the Department. The Reagan Administration proposed a further fifteen percent reduction to these previous reductions. The Department successfully appealed this additional cut to the Office of Management and Budget and travel funds for all elements of the Department including the Civil Division were not subjected to the fifteen percent reduction.

I am aware of the detrimental effects that limitations on essential travel has on litigation activities. Therefore, I fully support the Division's efforts to carefully monitor their travel funding requirements, implement restraint mechanisms to reduce any travel which is not absolutely essential and reprogram funds within the Division to insure that important cases involving substantial sums of money and/or national significance are adequately litigated by Division participation in all necessary litigative activities including depositions.

2. I have been informed that the Civil Rights Division was significantly understaffed at the close of the Carter Administration. To remedy this, that Administration was planning to seek 454 positions in 1981. You have cut that down to 436 in Fiscal Year 1981 and 390 in 1982, a drop of 64 positions from the Carter Fiscal Year 1981 proposal, which is 14 percent, almost the highest percentage cut of any of the general legal activities.

-- Why was this Division singled out for such a sharp cut?

-- Won't so sharp a cut severely inhibit civil rights enforcement?

-- Are there any specific civil rights areas or activities that you contemplate cutting back?

The original Congressional Budget Submission sought 454 ftp positions for FY 81 for the Civil Rights Division. Congress reduced this figure by 18 or to 436, which figure reflected the FY 80 authorized level for the Civil Rights Division. The original Congressional Budget Submission for FY 82 for the Civil Rights Division sought 445 ftp positions for an increase of approximately 9 positions over authorized levels for FY 81. The Amendment to the original Congressional Budget Submission for FY 82 seeks 390 ftp positions, which is the approximate equivalent of the freeze level imposed upon the Civil Rights Division in December 1980 by the former Administration. The new Administration used the former Administra-

tion's freeze level of 390 (December 1980) as a point of departure for the FY 82 budget. Thus, the FY 82 Amended Congressional Budget Submission merely reflects the level for the Civil Rights Division set by the prior Administration. To summarize, the paper decrease of 64 positions, as referenced in the question, flows from (a) Congressional action in reducing the Civil Rights Division authorization for FY 81 by 18 ftp positions; and (b) the freeze level decrease of 46 ftp positions set for the Civil Rights Division by the prior Administration.

The overall FY 82 reduction of 46 top positions for the Civil Rights Division is basically a paper reduction. The Civil Rights Division will function in FY 82 at basically its current on board strength level. As of March 1981, there were approximately 393 ftp staff on board. Thus, I cannot foresee any substantial reductions in the present work level of the Civil Rights Division.

All of the litigating Divisions in the Department of Justice have sustained reductions in varying degrees of magnitude and the Civil Rights Division was not, in this sense, singled out for any significantly disparate reductions. However, should the Civil Rights Division have any emergent needs for resources which must be met, those needs can be filled through the hiring of temporary employees, reprogramming of resources within the Division, and detailing and reprogramming of personnel from other parts of the Department. Specifics in this respect will await the advice of the new Assistant Attorney General for the Civil Rights Division.

3. The Community Relations Service has played a vital role in calming racial tensions and preventing outbreaks of violence. This very small but valuable unit had only 111 people on board in Fiscal Year 1981. Your (the Department's) 1982 proposal cuts it to 88, or 21 percent, one of the highest cuts in the Department.

--Together with the Civil Rights Division cut, won't that significantly weaken the Department's civil rights enforcement activities?

Decreases in the Community Relations Service budget will have minimal impact on the enforcement activities of the Civil Rights Division. While Civil Rights will have to make some adjustments in issues of joint interest, we can continue to have a viable enforcement program through more selective utilization of the Community Relations Service and through implementation of other cost-effective measures.

The Community Relations Service believes that while the need to accept its share of the Federal workforce reduction will require hard choices, it hopes that appropriate adjustments in its case selection priorities will permit it to minimize reduction in service to the areas of greatest need. For example, crisis response will be favored over crisis prevention activities. While no problem area will be neglected with respect to crisis response, less attention is likely to be paid to such areas as school desegregation where the tension level of previous years has subsided. Moreover, for the past three years CRS has engaged in a management improvement program which has succeeded in its aim of increasing productivity; further increases in productivity will minimize the reduction of service.

4. The Office of Special Investigations was established to locate ex-Nazis in this country. It has been a very successful operation. The Reagan Adminis-

tration's budget for Fiscal Year 1982 shows a cut from the projected budget of \$2.6 million and a decline in personnel from 50 to 45 positions. This cut will seriously hamper the operations of that office just when it is getting underway.

-- Why is this cut being recommended since the savings would be very small but the personnel cutback would be 10 percent?

The FY 1982 request for the Criminal Division's Office of Special Investigations (OSI) is 45 positions and \$2,482,000, a requested decrease of 5 positions, one workyear, and a \$7,000 increase in funds for uncontrollable costs. The Congress appropriated \$2,399,000 in FY 1980 and \$2,475,000 is anticipated for FY 1981.

The reduction of 5 positions brings into closer alignment the number of positions with those workyears actually affordable in the Criminal Division (64 positions are to be reduced with a companion decrease of 17 workyears). The real decrease for OSI is one workyear (3 per cent) OSI and reflects the Department's decision to spread equitably the workyear reduction over all the Divisions programs. This small decrease is not expected to hamper OSI's operations in any significant way. The program has been in operation in this Division more than two years, since May 6, 1979.

#### RESPONSES TO QUESTIONS FROM SENATOR LEAHY

##### Judicial Selection

1. What are some of the alternative mechanisms you would recommend for screening judicial candidates?

As I noted in my memorandum setting forth procedures for selection of Federal District Judges, I encourage the employment of screening mechanisms to aid in the identity of highly qualified candidates. Those mechanisms include, but are not limited to, advisory groups and commissions to assist in the selection of highly qualified candidates.

2. Do you intend to issue more specific guidelines for selecting District Court Judges, guidelines which explain those alternatives and set out clear and specific selection standards similar to the qualification guidelines you have prepared for selecting U.S. Attorneys?

At Present, the guidelines which I have disseminated for selecting District Court Judges has worked well and there appears no need currently to provide more specific guidance.

3. During your confirmation hearing you also affirmed your commitment to seek out qualified women and minorities for the Federal bench. What have you done to accomplish this goal and what procedures would you recommend Senators use in seeking women and minorities as judicial candidates?

The various procedures that have been recommended to identify highly qualified candidates for Federal District Court Judgeships will necessarily include a search for highly qualified women and minorities. In addition, the Department welcomes the receipt of names from any person or group recommending women or minorities for the Federal bench.

##### Land and Natural Resources Division/Environmental Protection

I note in the Fiscal Year 1981 Budget Proposal for the Land and Natural Resources Division you have recommended a reduction in personnel of 47, 14 in the Environmental Protection area.

The number of criminal case referrals from the Environmental Protection Agency to the Department has increased steadily in the last few years, particularly since the enactment of clear air and water legislation in 1977. Litigation has become a necessary tool for effective enforcement of these statutes. I believe these areas are sufficiently important that the level of enforcement should not suffer because of this reduction in personnel.

You should not lose sight of the fact that litigation involving pollution control, pesticides, and toxic substances necessitates the utilization of complex scientific data, that toxic waste control requires special investigative techniques to halt surreptitious discharges, or that the Department is uniquely equipped to deal with pollution problems like acid rain, which go beyond the ability of state, and local, or even regional agencies to handle adequately.

You will be asking the U.S. Attorneys Offices to pick up slack which is really bigger than an 11 or 12% reduction in personnel. Will they have the resources to deal with these problems effectively? What steps have you taken to ensure the Land Division's ability to maintain the level of enforcement it has demonstrated in the past with fewer people to do its job?

The Division has taken steps to assure that the reduction in personnel of 47 does not reduce its capability to effectively handle its cases in the environmental protection area wherein the health and welfare of the public is in jeopardy. This is evidenced in its revised budget submissions for 1981 and 1982 by the positions allotted to the Division's Pollution Control, Hazardous Waste and Environmental Enforcement Sections which, through internal reallocation, have maintained on-board strengths of 27, 33 and 26 positions respectively. The Division, therefore, is in a position to handle high priority cases of a criminal and civil nature and cases of first impression that require the particular expertise of the Division. Additional assignments to various United States Attorney's offices will be made after taking into consideration the resources of the United States Attorney's offices. Further, to the extent of available funds, the Division is increasing its computerized litigation support in order to increase the production capability of its attorneys and to more effectively handle its complex cases. The Division is also working very closely at the early stage of the litigation with the client agency even prior to case referral in order that litigation can be handled more effectively and more efficiently.

#### Terrorism

During the Security and Terrorism Subcommittee's hearing on the FBI authorization I raised some questions about the resources you will devote to combatting terrorism.

You consider terrorism an important national priority. In fact, it continues to be listed as FBI's fourth highest priority. Yet according to your budget proposal, this program will still have to absorb one of the largest personnel cuts at the Bureau--21 permanent positions.

1. How do you reconcile your stated priorities with these deep personnel cuts?

The reduction to the Terrorism program in no way reflects a lessening of the Department's commitment in this vital program. Rather, this reduction in manpower is a recognition of the FBI's success in combatting domestic terrorist activity. That is to say, the level of terrorism from domestic groups has declined to the extent that the FBI has not needed all the resources previously authorized for this program. The 21 positions which

were cut represent personnel who were not being utilized for investigations of terrorist activity. It is my understanding that this trend is continuing during the current fiscal year which is further indication that the cut is appropriate.

You may rest assured that the Department is firm in its resolve to support additional resources for the FBI's Terrorism program should future circumstances warrants.

2. What plans do you have to increase the Bureau's capacity to analyze terrorist organizations and activity?

The Department of Justice supported the FBI's request to establish a Terrorist Bomb Data at Research Unit in FY 1981. This has not been accomplished. In addition, I understand that the FBI has established a file containing data on terrorist organizations and activities in one of its information systems. These new initiatives should enhance the FBI's ability to monitor any developments in this field.

#### ADP-FBI

The last Administration made updating the FBI's Advanced Data Processing systems its number one priority for increased funding in Fiscal Year 1982. You have chosen to defer some of the money necessary to update the FBI's computers. What will the impact of that deferral be on the Bureau's ability to analyze crime data and track down offenders?

The resources requested for the FBI's automated data processing activities constitute a major priority enhancement for the FBI in FY 1982, despite the deferral of a portion of this increase. The \$9,012,000 requested will allow the FBI to make major expansions of its automated systems including the Investigative Support Information System, the Organized Crime System and the Intelligence Information System. In addition, the FBI will initiate the conversion of their existing telecommunications system to the Department of Defense's AUTODIN communications system. The systems which I have named are primarily investigative and, therefore, I do not expect any undesirable impact on these kinds of activities as a result of the deferral of some of the FBI's ADP resources.

#### Crime and Violent Crimes

Mr. Smith. I would like to turn your attention to the area of criminal enforcement.

In your opening statement you indicate that organized crime, white-collar crime and narcotics trafficking will be federal enforcement priorities.

1. Yet one of the largest cuts you make in the proposal submitted by the last Administration is in the Criminal Division.

By the end of Fiscal Year 1982 you are requesting more than 10 percent fewer permanent positions than those requested by President Carter. How does that square with your stated priorities?

While a reduction of 64 positions is proposed for the Criminal Division for FY 1982, it is accompanied by a reduction of only 17 workyears. This would bring into closer alignment the number of positions with the number of positions with the number of workyears actually affordable. The resource impact on the Criminal Division is expected to be minimal and reflects no de-emphasis of Criminal prosecution priorities.

2. When representatives of the FBI testified before the Security and Terrorism Subcommittee they stated that 65 percent of the Bureau's investigative resources will be devoted to organized crime, white-collar crime and foreign counterintelligence. What do you anticipate will be the effect on investigative resources of making violent street crime a new priority of the Justice Department?

As the Committee is aware, the majority of violent street crime falls within the jurisdiction of local and state law enforcement authorities. However, those investigative areas in which the FBI has jurisdiction which directly impact on violent street crime will be given all possible attention consistent with available manpower.

#### Local Law Enforcement Training

The FBI plans a critical role in training state and local law enforcement officials through its programs at the FBI Academy and its Field Training program.

1. The Carter Administration's 1982 request for the General Law Enforcement Training program contained 36 new permanent positions which was one of the sharpest increases in new personnel for the Bureau. With the Reagan Administration's emphasis on combatting violent crimes, why did the new Administration decide to eliminate the requested increase?

The reduction to the General Law Enforcement Training program was made during the early stages of revising the FY 1982 budget. This particular reduction was not appealed to the Office of Management and Budget because it was believed that the Department of Justice and the FBI should assist the President in meeting his goals of reducing the federal budget. Ultimately, however, these positions were restored to the FBI as an enhancement to a higher priority field investigative program.

In the FY 1982 budget, modest increases are requested for the General Law Enforcement Training program. If approved these positions would enable the FBI to establish a unit to assess the training needs of state and local law enforcement personnel. Once these needs are accurately identified, existing training resources can be more effectively utilized.

## Agent Training

The Department is seeking a \$1,363,000 increase in the FBI's training line, a substantial portion of that is directed at the in-service training of special agents at the FBI Academy. The last Administration's budget justification cited a dire need to train special agents in white-collar crime investigative techniques. When you first testified before the committee, you seemed to place less emphasis on white-collar crime as a Department priority. Has your thinking changed in this regard and do you anticipate using the training funds in the same way as the last Administration?

The request for a \$1,363,000 increase in funds encompasses all enhancements in the FBI training effort. That portion of the request which involves white-collar crime matters is limited to the need for only two additional Special Agent instructors to support the six currently committed. As noted, specialized training by FBI Academy instructors is offered in the field when this method is cost effective or responds to particular field office needs. These added instructors will improve this limited capability, as well as provide the resources to research and structure programs to improve sophisticated undercover cases, and new and developing areas of computer-related crimes, governmental fraud programs, labor matters and public corruption. Additionally, these instructors provide all white-collar crime training to state and local law enforcement agencies based on requests which have not been able to be honored in the past.

Absent new directives by the Administration, it is our understanding that white-collar crime investigations remain a top priority and that the area of violent crimes is being elevated in priority.

2. The programs available to local criminal justice personnel at the FBI Academy are offered at no charge. Given the serious constraints on the federal budget, have you considered requiring local personnel to begin paying a portion of the costs of their training?

The FBI has historically provided cost-free training as a cooperative law enforcement effort since the 1930's. Based on the following factors, a change in this policy would result in a dramatic reduction or elimination of training assistance.

Many state and local jurisdictions, as well as individual police officers, would be unable to afford any portion of the costs of training provided by the FBI. This would have immediate impact on the larger metropolitan departments in large eastern and mid-western cities which are suffering a declining tax base and a shrinking budget, as well as the small rural law enforcement agencies which have no funds available for training. It should be noted that due to the present economic conditions, New York City police officers are prohibited from receiving any external training in which a fee is levied against the city.

A program in which the Bureau would charge for its training would result in a unequal distribution of training and place, for example, West Coast jurisdictions at a distinct disadvantage in utilizing Quantico-based training resources.

A program in which the Bureau requires reimbursement for portions of its training could also place the Bureau in the position of being in direct commercial competition with private sector organizations, which raises both ethical and legal



questions. Such a reimbursement plan could also result in the development of a training program which is financially attractive rather than programs specifically designed to address the demonstrated training needs of the general law enforcement community.

The Bureau's primary function continues to be investigative in nature. In support of this function, field police training has been provided on a part-time basis by our investigators according to their availability. As such, the FBI does not desire to be in a position in which a contractual training obligation could not be fulfilled due to an emergency or high-priority investigation requiring the reprogramming of personnel and resources from training to investigative operations.

#### RESPONSES TO QUESTIONS FROM SENATOR BAUCUS

##### Land and Natural Resources Division

1. At the authorization hearings for the Land and Natural Resources Division two years ago, Senator Thurmond, referring to statutes dealing with the environment, public health and Federal lands said, "It is imperative that the Land and Natural Resources Division has sufficient staff and funding to handle these cases promptly and efficiently. By doing so, the Division can reduce costs not only for its opponent in a particular case but also for the American taxpayer." Do you agree with that statement?

Yes.

2. The previous administration had asked for an increase of 47 positions to handle an increasing workload. President Reagan has removed that request. Why?

This action was taken by the Department in support of President Reagan's commitment to reduce federal spending and limit federal employment, and internal reprogramming has maintained viable units within the Division as aforementioned.

3. How will the Lands Division be able to handle an increasing number of cases "promptly and efficiently" without an increase in attorneys? How do you plan to make the Division more effective?

Wherever possible, the Division will be delegating appropriate cases to United States Attorneys. The Division, through its automated administrative systems, i.e., the Lands Docket Tracking System, Attorney Time System, and computerized litigation support will be striving to more efficiently use the attorney resources it has available.

4. As I am sure you are aware, Congress recently passed Superfund legislation to provide for cleaning up major environmental disasters. Are there adequate resources in the Lands Division to vigorously enforce the Superfund statute?

The department presently has under consideration the question of what additional resources the Division may need for expected Superfund litigation.

5. What is the Department doing to make sure there is vigorous criminal prosecution of persons or corporations that violate toxic waste dumping laws?

The investigation and referral of criminal cases is initially the responsibility of the Environmental Protection Agency. EPA's past enforcement effort has concentrated almost exclusively on the use of civil process to obtain compliance with environmental statutes. Since FY '77, EPA has referred approximately 850 enforcement cases to the Department of which only 125 were criminal referrals. Until this year, the Environmental Protection Agency has not had a criminal investigative capacity.<sup>1/</sup> As a result, the referral of criminal cases has not been a large part of our mutual enforcement docket. As EPA increases its investigation of criminal cases, undoubtedly referrals will increase.

Within the Land and Natural Resources Division, responsibility for supervision and prosecution of criminal cases is vested in the Environmental Enforcement Section which has a criminal unit comprised of six attorneys with both environmental and criminal law experience.<sup>2/</sup> They monitor environmental criminal cases which the Government prosecutes and become directly involved in cases (a) of national importance; (b) of unusual factual or legal complexity; (c) which require resources beyond the capacity of the United States Attorney;<sup>3/</sup> or (d) from which the United States Attorney may be disqualified.

I firmly believe that investigation and prosecution of serious environmental crimes is an important part of the Land and Natural Resources Division's responsibility to enforce environmental laws. I intend to see that meritorious cases are vigorously prosecuted. To this end, the Land and Natural Resources Division must have experienced staff to insure that criminal prosecutions for violations of environmental statutes receive a high priority. At this time I believe that the Department has adequate resources to accomplish this important task.

6. The Land and Natural Resources Division will be asking the U.S. Attorneys offices to pick up slack which is really bigger than an 11 or 12% reduction in personnel. Will the U.S. Attorneys have the resources to deal with these problems effectively?

- 1/ The Department has assisted EPA in development of its program for criminal investigations by detailing staff to evaluate past efforts and develop a plan for implementation of an agency-wide investigative staff.
- 2/ The Land and Natural Resources Division also regularly consults with the Criminal Division about environmental criminal cases. The two divisions work in concert and maximize resource use and avoid duplication of effort.
- 3/ Successful examples of this are United States v. Wes-Con Corp. (80-10040 D. Idaho 1981) - criminal conviction of land fill for violations of PCB regulation; United States v. Distler - (W.D. Ky. 1979) criminal conviction of individual for dumping toxic chemicals into Louisville, Kentucky sewer system; United States v. Olin Corp. 465 F. Supp. 1120 (W.D. NY 1979) - criminal convictions of corporation and corporate officers for false reporting on effluent monitoring reports required by NPDES permit under the Clean Water Act.

The level of work performed by U.S. Attorneys on environmental protection cases represents such a small proportion of their overall workload that the proposed reduction is not likely to have any impact on their attention to environmental litigation. Among the 28,288 criminal cases filed in 1980, there were only 6 pesticide control offenses and 1 toxic substance offense. Of 67,085 civil cases filed and 101,382 civil matters received, there were only 234 environmental cases filed and 304 environmental matters received by the U.S. Attorneys in 1980. Although the volume of cases and matters is low, the relative importance of environmental litigation is high. The decreases proposed for 1980 will be absorbed by the U.S. Attorneys in other areas of their workload.

#### Fraud Prosecution

1. Much has been said in recent months by President Reagan about stepping up efforts to eliminate fraud in government. Obviously, the Department of Justice will have to play a key role in such efforts. What specific actions have you taken to beef up civil and criminal fraud prosecution?

The Department of Justice plays an active role in the President's Council on Integrity and Efficiency, as well as other interagency task forces created to curb fraud and waste in government. For example, the recently formed Interagency Task Force on Debarment and Suspension. This Task Force is formulating recommendations to enhance the Federal Government's ability to detect fraudulent procurement practices and to take action against contractors who engage in such fraudulent practices.

At the Department level, I expect the Criminal and Civil Divisions and the U.S. Attorneys to continue engaging in significant numbers of investigations and prosecutions of fraud against the government, resulting in the recovery of substantial amounts of fraudulently obtained funds. We anticipate these actions will meaningfully deter the occurrence of such frauds. Fraud against the government, both by private citizens and government employees, is one of the Department's top priorities in the White Collar Crime area. To ensure effective investigation and prosecution of fraud against the government, we have initiated an extensive educational program to assist government agencies in preventing fraud while improving the timeliness and quality of fraud referrals. Seminars for Justice Department personnel have been held on both the substantive aspects of civil fraud law and on the coordination of civil and criminal proceedings. Fraud, waste and abuse in government programs are a major law enforcement priority in the Department of Justice. We will continue to work toward detecting and minimizing opportunities for fraud in a comprehensive manner.

2, 3,

- & 4. Have you increased or do you plan to increase the number of attorneys working on criminal and civil fraud cases? Do you expect the U.S. Attorneys to increase their efforts on prosecuting criminal and civil fraud cases? Have you increased the resources of the U.S. Attorneys so that they can increase their criminal and civil fraud prosecutions?

We are examining the level of resources devoted to fraud cases and various approaches to enhance the productivity of existent resources. For example, in recent months, the backlog of unscreened civil fraud files has been eliminated. This was accomplished by assigning screening tasks to 16 supervisors, as opposed to only the four supervisors who normally work in the civil fraud area. To handle the increased number of cases which were then ready for attorney assignment, all attorneys (approximately 100) in the Commercial Litigation Branch were assigned one or more civil fraud cases. Previously, only a core staff of 15 to 20 attorneys handled these cases.

In addition, we have eliminated several steps in the processing of FBI reports so that they are more timely received in the Civil Division.

Fraud cases are of sufficiently high priority that they should not be effected by the resource reductions.

#### False Claims Act

- 1, 2,
- & 3. Last Congress, the Department of Justice strongly supported changes in the False Claims Act. Those changes would greatly improve the government's position in prosecuting those individuals and corporations that defraud the government. Given President Reagan's many statements about declaring all out war on fraud in the government, do you plan to support changes in the False Claims Act? What type of changes will you support? When can we expect your proposed changes?

The amendments to the False Claims Act to which you refer were addressed solely to the civil remedy and did not cover criminal prosecution. We are presently developing a major legislative proposal to create an administrative civil penalty mechanism to address false claims under \$50,000. Because the amendments to the False Claims Act previously endorsed by the Department met with strong opposition, we must determine what changes would meet with success before taking further action. Therefore, after the Administration has had an opportunity to examine the new legislation, the proposed False Claims Act amendments and other administrative and legislative improvements directed at fraud in the government, an overall strategy to deal with this serious problem will be developed. The Department and the President's Council on Integrity and Efficiency will play a major role in this process.

#### WASTE AND MISMANAGEMENT AT JUSTICE

##### OFFICE OF AUDIT

1. Eliminating waste and mismanagement from the Department of Justice should be one of your top priorities. Internal Auditors who analyze agency work and recommend ways to make it more efficient are an essential tool in this effort. We in Congress have recognized the importance of auditing and have instituted strong, independent and centralized auditing functions in most federal agencies. Currently there is no such auditing function at Justice.

-- At Justice there is only one small audit staff tucked away in the Budget Office at the Management Division. Do you believe that the Department of Justice needs a strong, independent and centralized Office of Audit?

I am fully committed to insuring that appropriate mechanisms are in place to foster the most efficient utilization of resources. I am evaluating the present procedures as to whether they provide the best means for meeting this goal.

##### OFFICE OF PROFESSIONAL RESPONSIBILITY

1. A companion office to an audit function at Justice is the Office of Professional Responsibility (OPR). Currently at Justice this office investigates allegations of employee misconduct.

-- Do you have any plans to change the Office of Professional Responsibility?

The Counsel for the Office of Professional Responsibility has exclusive responsibility to investigate fraud and misconduct throughout the Department. I do not anticipate any change in the Counsel's role.

2. During hearings that I chaired last year on the Office of Professional Responsibility testimony was given that stated that the lack of statutory protection for the Office was a major problem. Witnesses testified that because the office was established only by federal regulations, it could easily be modified or abolished.

-- Conceivably, such changes could be initiated by the same officials who were subjects of an investigation by OPR. Do you support Congress' attempts to establish a statutory charter which would protect and increase the powers of the Office of Professional Responsibility?

I am reluctant to endorse any statutory mandated organization within the Department. Such will only limit the necessary flexibility of a unit when circumstances demand some adjustment. None of the litigating divisions in the Department are chartered by statute. There is no implication that they will be easily modified or abolished. Nor would a statutory charter increase or protect their authority. This same reasoning applies to the Office of Professional Responsibility.

OBLIGATION TO DEFEND CONSTITUTIONALITY OF CONGRESSIONAL STATUTES

1. Do you agree that it is the responsibility of the Department of Justice to defend the constitutionality of laws passed by Congress?

I believe that the Department of Justice should contest or refrain from defending acts of Congress only in exceptional circumstances, such as when no colorable argument supports the Act in issue, or when the enforcement and defense of the Act would itself disrupt the equilibrium established by the Constitution among the three branches of government.

2. Would you adhere to procedures that required you to issue a report to Congress whenever the Department of Justice planned not to defend the constitutionality of a statute?

I have no objection to informing the Congress of those rare cases in which it is decided that the Department, on constitutional grounds, will not defend an enactment of Congress. }

ENFORCEMENT PRIORITIES REARRANGED AT JUSTICE

STREET CRIME

1. You have identified street crimes as a top priority of your Department. How vigorous will investigations and prosecutions of street crimes be on the Federal level?

2. Prosecution of street crime is traditionally a function of State and local governments. How will the Department of Justice involve itself in local investigation and local prosecution of street crime?

The primary responsibility of the Task Force on Violent Crime which I recently established will be to address both of these questions. The Task Force will clarify and develop what the appropriate role of the Federal Government should be, vis-a-vis State and local authorities, in the area of street crime. If it is determined that the Department of Justice should have a greater role, the Task Force will then address the questions of requisite legislative authority and budgetary resources to implement the recommendations. State and local governments will continue to have primary responsibility in this area of criminal enforcement, of course, but the Federal Government's leadership role can possibly be strengthened. The Federal Government has the responsibility to ensure domestic tranquility, and I believe it can do more.

3. The Administration is currently involved in cutting the Federal budget. Isn't it true that you've proposed budget cuts for programs such as LEAA that provide assistance to local governments in combating street crime?

The Law Enforcement Administration (LEAA) major grant programs were eliminated as part of President Carter's FY 1981 revised budget request. The revised FY 1982 budget does not restore the reductions in LEAA. Hopefully, state and local criminal justice agencies will be able to continue those programs that in the past have proven to be successful.

4. The Federal Government traditionally concentrates on crimes that are interstate in scope such as white collar crime, organized crime and drug trafficking. Will the new emphasis on street crime distract attention and resources away from the current level of prosecution of interstate crime?

The control of violent crime is a key priority for the Justice Department; however, we will continue to give high priority to national and interstate crimes such as white collar crime, organized crime and drug trafficking. In fact, we are requesting increased resources for these programs in some instances, because many such offenses, especially narcotics and organized crime, contribute heavily to violent street crime. I do not expect any diversion of the Department's attention of resources away from these programs as a result of any initiatives that might develop out of the recommendations of the Task Force on Violent Crime. It is premature to speculate at this time on whether or not a redefinition of the Federal role in addressing violent crime will result in a need for additional resources for the Department of Justice.

5. Experts estimate that white collar crime costs the economy as much as \$100 billion per year. Do you believe that white collar crime should be vigorously investigated and prosecuted?
6. In previous administrations, the Department of Justice began to lay the groundwork for an intense investigative and prosecutorial effort against white collar crime. Are you continuing that effort?

I will certainly regard the investigation and prosecution of white collar crime as a high priority. The allocation of the resources in the Federal Bureau of Investigation, the Criminal Division and other legal divisions, and the U.S. Attorneys continues to reflect the emphasis the Federal Government places on the seriousness and pervasiveness of such crimes.

CASE MANAGEMENT AND TRACKING

1. Currently, the Department is unable to give this Committee lists of cases referred to it and to identify which agencies referred the cases. What are you doing to improve the Department's ability to manage its filing system?

The Department recently established the Justice Information Systems Center to oversee and coordinate the development and implementation of Department-wide and government-wide information systems in support of litigation and case management activities, including a system for the Department which will aggregate, analyze and report data developed by the litigating divisions and the United States Attorneys' Offices for such purposes as may properly be required by the Congress, the Office of Management and Budget, and Departmental management. As a first step toward developing a centralized system, the Center has received information on 25,000 cases filed by the Department since October 1, 1981, in the format prescribed for a Department-wide system, and is in the process of making this data searchable through remote terminals. Over 90% of these case data submissions include a field which identifies which agency referred a particular case. The Center will be requiring this data from all department litigating offices, along with other data which has not been requested for the initial phase of data base development. The ability to provide lists of cases referred to the Department and to identify which agencies referred the cases will be possible for 90% of the cases by the end of April, 1981.

Since it was established, the Justice Information Systems Center has made significant progress toward the goal of implementing a Department-level caseload management reporting capability.

- (1) Common data elements have been specified which each Division and the U.S. Attorneys Offices must report on each case filed since October 1, 1980.
- (2) Detailed rules have been developed for submission of caseload data in a computer-readable format. The caseload data will be extracted from existing Divisions and U.S. Attorney case management systems.
- (3) Computer programming tasks are underway for aggregation of total Department caseload information into one data base.
- (4) The problem of duplicate reporting of cases has been analyzed and an interim solution has been devised.
- (5) The initial submission of 25,000 cases in the prescribed format for the first half of FY 1981, has been accomplished.
- (6) Initial plans have been developed to place all cases in a special file accessible via the Justice Retrieval and Inquiry System (JURIS) computer programs.

The actions remaining to implement a basic Department-wide case management system are as follows:

- (1) Complete computer programming for data aggregation.
- (2) Impose strict use of the Court Docket Number to identify a given case. This approach will eliminate duplicate case counts.
- (3) Develop system specifications to address the reporting needs of Congress, the Office of Management and Budget and Departmental management.

- (4) Establish and initiate a process for capturing additional data required to meet reporting specifications.
  - (5) Design and develop computer programs for the systematic satisfaction of reporting needs.
2. Do you plan to employ non-lawyer management experts to implement the streamlining and modernization of the Department?

The Justice Information Systems Center staff is well-versed in all aspects of computer science. Its members have many years of experience in the design and development of large-scale information systems. Several staff members hold law degrees, as well, and can, therefore, relate to information systems requirements in a legal environment.

3. When will you be able to report back to this Committee on your overall plan for modernizing the information systems within the Department?

It is anticipated that an overall plan for modernizing case management information systems within the Department will be completed by July 31, 1981. An initial plan was submitted to the Congress on April 15, 1980, which was more in the nature of a progress report. The Justice Information Systems Center has been charged with the responsibility to develop an overall plan based on a study of existing capabilities under development in the legal divisions and the Executive Office for U.S. Attorneys, and on a determination of requirements for centralizing summary reporting and for effecting timely responses to case specific queries. While this plan is being developed, an interim capability is near completion for responding to ad hoc case management information requests based on the case data in the initial data base.