

DEPARTMENT OF JUSTICE: CRIMINAL DIVISION AND
DRUG ENFORCEMENT ADMINISTRATION

OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS

SECOND SESSION

ON

DEPARTMENT OF JUSTICE: CRIMINAL DIVISION AND DRUG
ENFORCEMENT ADMINISTRATION

MARCH 19, 1980

Serial No. 81



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1981

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CRIMINAL DIVISION AND DRUG ENFORCEMENT ADMINISTRATION

WEDNESDAY, MARCH 19, 1960

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 11 a.m. in room 2237 of the Rayburn House Office Building, the Honorable Robert F. Drinan, chairman of the subcommittee, presiding.

Present: Representatives Drinan, Hall, Gudger, Conyers, Kindness, Sawyer, and Lungren.

Staff present: Joseph L. Nellis, General Counsel; Thomas W. Hutchison, counsel, Eric E. Sterling and David W. Beier III, assistant counsel; and Raymond V. Smietanka, associate counsel.

Mr. DRINAN. The committee will come to order.

We welcome this morning Mr. Philip Heymann, and his colleagues. This is an ordinary hearing in the process of authorization and we will report to the full committee the conclusions that we have made.

The subcommittee and staff, Mr. Heymann, have your statement; you may proceed in any way you desire.

TESTIMONY OF PHILIP B. HEYMANN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY MARK M. RICHARD, JAMES W. MUSKETT, AND STEPHEN B. HITCHNER, JR.

Mr. HEYMANN. Mr. Chairman, I think you have had the opportunity of looking the statement over; and on that basis it may simply be printed in the record. I will be extremely brief so that we may go directly to questions and answers.

Mr. DRINAN. Without objection.

[The full statement follows:]

STATEMENT OF PHILIP B. HEYMANN, ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION

Mr. Chairman and Members of the Subcommittee: I am Philip B. Heymann, Assistant Attorney General in charge of the Criminal Division. With me are Mark M. Richard, Deputy Assistant Attorney General, James W. Muskett, Director, Office of Administration, and Stephen B. Hitchner, Jr., Director, Office of Policy and Management Analysis. Among us we hope to be able to answer any questions which you may have on our programs, and we would be pleased to provide any additional material which you may need.

The mission of the Criminal Division is to serve the public interest through the development and enforcement of criminal statutes in a vigorous, fair, and effective manner. This mission involves the performance of six fundamental functions:

1. Leadership in the litigation of certain large or complex criminal cases in federal priority areas;
2. Guidance in the development and refinement of prosecutorial enforcement strategies, including a determination of the types of cases to emphasize in each federal priority enforcement area;
3. Support for U.S. Attorney Offices—including participation in cases on appeal, the provision of advice on all federal criminal statutes, the supply of temporary supplementary prosecutorial personnel, and the preparation of civil litigation which arises from criminal enforcement.
4. Participation in the evaluation and development of administrative policy and federal legislation for the criminal justice system;
5. Leadership in the enforcement of a limited number of statutes for which considerations of logistics, efficiency, or uniformity of treatment require centralization; and
6. Participation in criminal justice activities involving foreign parties where a centralized national approach is desirable.

Last year, the Division was reorganized to more closely align its internal structure with the requirements of its mission. Because we have concentrated our analytical resources on substantive program areas, a formal evaluation of the new organizational structure has not been conducted. I believe, however, that a brief summary of our experience since the reorganization will sufficiently reflect the merits of the new structure, and will serve the further purpose of affording some insight into the operations of the Division.

The Division's responsibilities for enforcement, legal support, and policy guidance are made operational through the activities of seven line sections and seven staff offices. Each of these components is structured in a functional pattern designed to emphasize the different nature of its responsibilities, the varied professional requirements of the personnel, and the importance of each element to the Division's compound role.

In terms of resources, the Division's enforcement activities remain of central importance. Cumulatively, enforcement activities account for approximately three-quarters of the Division's total fiscal year 1981 budget request.

The Criminal Division's enforcement focus includes the Department's priority areas of white collar crime, political corruption, organized crime, and trafficking in narcotics and dangerous drugs. The Division is also deeply committed to the effective handling of internal security matters, and the prosecution of life endangering regulatory violators. Finally, the Department is affording priority attention to the just disposition of some hundreds of allegations involving suspected Nazi war criminals illegally taking refuge in this country.

The General Litigation and Legal Advice Section represents an innovative development in the enforcement arena that is worth special note. It was created from a merger of the former General Crimes Section, the former Special Litigation Section and the Government Regulations part of the former Government Regulations and Labor Section. Its responsibilities encompass violations of the immigration and nationality laws, the customs laws, the Federal obscenity laws, the Export Control Act, the Federal copyright laws and violations of those regulations designed to protect the health, safety and welfare of workers and the American public. Further, the new section defends civil actions arising out of criminal justice activities and prosecutes selected cases which are of national significance, present unusual difficulties, or which require a high degree of central coordination at the national level. The section is also responsible for civil penalties and forfeitures related to the foregoing, and serves as a primary staff resource in facilitating the Department's Federal-State-Local cooperative law enforcement efforts.

Of all our enforcement activities, our greatest resource needs remain in the area of white collar crime. The Division's only personnel increase is requested for this area, and if appropriated, will be used to augment the recently created Office of Economic Crime Enforcement.

Since this is a new initiative, in need of more resources and perhaps not fully familiar to the members of this Committee, I would like to provide additional details on this component of the Division.

Local U.S. Attorneys and line Criminal Division fraud prosecutors, besieged by rising caseloads, have been unable to provide the degree of information assessment, investigative coordination, and inter-agency liaison required to adequately address the problem of white collar crime. The Office of Economic Crime Enforcement was established to help fill this void. Its mission is to handle jurisdictional conflicts, coordinate intelligence, and focus specialized resources on all field aspects of white collar crime enforcement.

This mission is carried out through strategically located Economic Crime Field Units. Physically housed in the U.S. Attorneys' offices, each of these units joins Criminal Division economic crime specialists with Assistant United States Attorneys in a five point program of white collar crime prevention, detection, investigation, prosecution, and sentencing.

To date, Economic Crime Field Units have been established in only 13 Districts. Approximately 17 additional units are needed to address the national scope required of the program. Once the program is fully staffed and operational, much of the country will hopefully be covered.

Each of the Economic Crime Field Units will have similar responsibilities with respect to the districts they cover. Operations in all of the units will generally include:

- (1) Conducting assessments of emerging white collar crime trends to determine the level, scope, and nature of the problem in each area serviced by the program. To facilitate this function, attorneys from each unit meet with federal, state, and local program agencies; investigators and prosecutors; representatives from business, industry, the news media, and the public.

- (2) Establishing local enforcement priorities on the basis of crime incidence and trend and demographic data thus obtained. Each unit is responsible for assuring consistency with national priorities, and is further charged with helping develop the more consistent criteria for the acceptance or rejection of white collar criminal matters by the federal justice system.

- (3) Improving the government's ability to identify potential criminal activities, investigate and, where necessary, prosecute or take some other form of meaningful corrective action. Work is also directed towards developing methods and techniques for preventing economic crime.

- (4) Identifying those cases that fit within the established priorities and facilitating their appropriate resolution. In performing this function, each unit is responsible for preparing case initiation reports which contain brief factual summaries, descriptions of possible subjects and victims, and assessments of how the proposed investigation would fit within the framework of national and local priorities. Although unit attorneys will participate in and coordinate task force efforts established in response to particularly large, complex, or difficult cases, their major role will be to track, analyze, and facilitate a balanced application of enforcement resources in all instances of white collar crime occurring within their areas.

As I indicated earlier, no personnel increases are sought for the remainder of the Division. We believe that our new organizational structure will enable the other programs to achieve substantial results at current staffing levels. This is due, in large part, to the effectiveness of our legal support and policy guidance operations.

In the Appellate Section, for example, we have improved the timeliness of our submissions to the Solicitor General, have increased our Court of Appeals workload by approximately 14 percent, and have maintained last year's volume in all other workload categories.

Our Office of Legal Support Services has consolidated many of the functions once carried out by the enforcement sections. The processing of such items as witness immunity requests, tax disclosure requests, and Freedom of Information inquiries not only relieves the rest of the Division of what had been a "secondary burden," but also affords consistency in approach to what are often critical issues of procedural law and Department policy.

The Office of Enforcement operations centralized the approval process, oversight, and evaluation of the Government's most sensitive investigative tools. Devices such as Title III and consensual wiretaps, witness protection, and hypnosis in the interrogation of witnesses are now subject to an enhanced degree of legal guidance and managerial coordination. In addition to insuring that the use of these devices conforms with law and Department policy, the program monitors each utilization to assure consistency with the Division's enforcement

priorities, and cost-effectiveness with regard to the investigative objectives of each case in which such tools are used.

The Division's new Office of International Affairs has taken its place as the Department's leading edge in the emerging area of international criminal law. Since its creation in February, 1979, it has facilitated the international transfer of over 200 prisoners, has represented the United States extensively in numerous extradition, mutual assistance, and property recovery treaties, and has assumed from the State Department prime responsibility for processing state extradition requests.

With respect to the Division's policy guidance role, our new Office of Policy and Management Analysis is successfully implementing an interdisciplinary approach to decision making and problem solving. Its professional staff includes attorneys, program analysts, and management analysts with expertise in such areas as public and business administration, economics, criminology, program evaluation, data processing, statistical methods, and operation research.

Examples of projects in which this Office has played a major role include the analysis of proposed federal actions to combat a threatened increase in heroin importation; the development of a case management information system for the Division's litigating sections; the initiation of a Division-wide management review process; the design of a research program to assess federal efforts in combatting organized crime; and the review of United States Attorneys' policies for declining to prosecute certain categories of offenses.

A full description of the activities conducted by each of the Division's programs, together with information about their responsibilities and objectives, is set forth at length in the Activity and Program Narrative Section of the authorization submission previously provided.

With regard to the Division's reorganization, it should be pointed out that our new organizational structure has more closely aligned our programs to the functions we must perform; has improved supervision through the advent of a fourth Deputy Assistant Attorney General; has streamlined field support in areas such as immunity processing, wiretap requests, and witness protection; and, perhaps most significantly, has committed resources to the development of a comprehensive policy analysis and management planning capability.

In closing, I would like to emphasize that the Division has been assuming more of a leadership role in the criminal justice system. Our management team is generally young but experienced. It is pursuing a quite energetic and aggressive tack towards the discharge of our law enforcement mandate. In areas such as litigation, Federal-State-local prosecutorial relations, LEAA grant review, and Inspectors General support, the Division has and will continue to seek to provide a significant degree of national impetus and coordination.

During fiscal year 1981, the Division will maintain these thrusts, and will also continue its efforts to provide leadership, coordination, oversight, and direct litigatory participation in each of the Department's high priority programs against white-collar crime, public and corporate corruption, organized crime, and trafficking in narcotics and dangerous drugs, as well as in the Anti-Nazi unit. The Division will continue to enhance its support for U.S. Attorney personnel, and will make further strides in the evaluation and development of public policy and federal legislation for the criminal justice system.

This concludes my statement, Mr. Chairman. I shall be happy to answer any questions you or other members of the Subcommittee may have.

Mr. HEYMANN. The statement, once again as last year's, talks in terms of the reorganized structure of the Criminal Division as a vehicle for saying what we try to do in the Criminal Division.

What we are trying to do, Mr. Chairman, fits into a set of categories. I will sum them up in very short form, but the heart of the matter is that we exist, as this committee pointed out in a study of the criminal code, in the midst of a world that is largely populated with State and local prosecutors; they have the front-line responsibility.

We exist in a world that has 94 U.S. attorneys with perhaps 2,200—I think you know better than I do—prosecutors or prospective prosecutors out there around the country; and we number about 400 prosecutors. The 2,200 spend perhaps more than one-half, and somewhat less than two-thirds, of their time on criminal matters.

Our job as I see it is to fill the gaps in the system of State and Federal prosecution—that system is much larger than us—and to do what has to be done to make the system work together.

That is the way I define the Criminal Division's responsibilities.

We take, as you know, a lead litigating responsibility in a handful of areas. The most important, by number, is the organized crime problem. We have perhaps 150 attorney positions there—I will frequently talk in terms of attorney positions—there are, of course, a number of staff positions with them. That is a larger prosecutorial force than any U.S. attorney's office can put together, scattered across the country. As you gentlemen know, it is justified by the seriousness with which we, Congress, and the American people take the problem of any criminal organization which looks like it may be able to escape normal law enforcement efforts because of its control of violence, public corruption, obstruction of justice, and intimidation of witnesses.

It would be very serious if there were organizations out there that State and local police and U.S. attorneys could not handle, and who were well organized and well financed. There are such, but we also have a substantial program addressed to deal with them.

Other areas where we take a lead in litigation responsibilities are areas that involve foreign policy and illegal foreign payments. We still do most of those cases, if not all of them.

In national security matters we play a major role because of their complexity. Rarely they arise with regard to any individual U.S. attorney because of the need for dealing with the CIA, the Department of Defense, and the Department of State in Washington.

Besides those litigating responsibilities in certain, well-chosen areas, we have other gap-filling responsibilities.

We have to take a lead—and have been encouraged by this committee to take the lead—in the development and refinement of prosecutorial enforcement strategies, ones that help to keep the entire Federal operation where it should be and out of the area where States should be, and ones that at the same time focus us as effectively as we can be.

We have to support the U.S. attorneys in a variety of ways. I want to increase our support in the field.

There are areas of expertise where we have to and should be the fundamental resource the U.S. attorneys can turn to. We help with civil litigation arising from criminal matters. We help by providing backup personnel when a U.S. attorney's office suddenly finds itself swamped with a major or difficult case; we will call on our fraud section, our public integrity section, or our narcotics section to help.

A dramatic example of that is the *Black Tuna* cases out of Florida—mammoth controlled substances, large cocaine smuggling cases, absolutely mammoth; we played an important if not exclusive role in staffing those cases from Washington. They were too big for the U.S. attorney's office in Miami to handle with its other demands.

We have a role to play in this entire system in dealing with questions of Federal legislation, fraud, prosecutorial policies, questions such as those that gave rise to our grand jury guidelines; and, finally, we have a special role to play in negotiating treaties dealing with foreign governments.

I may have left out some. The idea I want to leave with you is that we are conscious of two facts: One, that the overwhelming prosecu-

torial burden in the country as a whole is on the States and localities and, secondarily, on the U.S. attorneys; and two, that the system badly needs a headquarters function to do a variety of things. And we define our task as doing those things, as well as the few areas where we assume the major litigating responsibility.

Needless to say, we have, in addition to what I described, assumed a major responsibility with the Office of Special Investigations, the anti-Nazi unit, the one that Ms. Holtzman and Mr. Gudger and others have been so active in. This is now a large time consumer, a large energy consumer, and a function in which we intend to do very, very well.

We are engaging in a number of important and interesting assessments of what the Federal Government is doing. A number of them have been stimulated by this committee. But I think I can rely on the question and answer period as an occasion when I will be bringing those out.

The Criminal Division seems to me to have a fine cadre of lawyers. I am a little bit biased in describing the leadership cadre, because by now I have pretty well assembled it myself; but I think it is outstanding.

The Division is asserting itself in what I hope is not too muscular a way, but a quite vigorous way across the law enforcement world.

And with that little bit of self-pumping for the Division, I think I will leave it to you, Mr. Chairman, and the members of the committee and counsel, to ask whatever questions they would like.

Mr. DRINAN. All right. I thank you very much, Mr. Heymann.

Did you want to introduce for the record your associates—Mr. Mark M. Richard, the Deputy Assistant Attorney General, and Mr. James W. Muskett, the Director of the Office of Administration—and is Mr. Stephen B. Hitchner here?

Mr. HEYMANN. Yes, he's right behind me.

Mr. DRINAN. I wonder, Mr. Heymann, whether any of your associates would want to add anything.

Mr. RICHARDS. No, sir, not at this time.

Mr. MUSKETT. No, sir.

Mr. DRINAN. All right.

Why don't I yield to the gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Well, first of all I want to welcome Phil Heymann and his associates to the subcommittee. They have been very helpful in working on revisions in the so-called Miller bill to deal with coverup and to make that kind of legislation strong enough. They've been working on aspects of white-collar crime provisions in the criminal code. We have also enjoyed their cooperation in the oil fraud hearings in conjunction with another subcommittee.

We are also very concerned about the formation of the white-collar crime unit, and the fact that OMB has in effect reduced the request for a number of additional lawyers to about 20.

Can you make a comment about the white-collar crime unit and how it operates?

Mr. HEYMANN. I would be happy to, Mr. Conyers.

I am not sure—my colleagues can correct me—that we ever requested from OMB anything like 100 lawyers. By the end of fiscal year 1981, 18 months from now, we wanted to have 150 attorneys throughout the country committed to economic crime units.

They were to come from two places: somewhere between 90 and perhaps 110 of them were to come from U.S. Attorneys' offices. There they were to be in special units wholly committed to major white-collar crimes and public-integrity cases. The rest, between 40 and 60, were to be on the Criminal Division's payroll, and were to go out in the field to play a rather new role.

The answer to your question—how are we coming on that?—is that we are programed to go up to about 25 by the end of this fiscal year, and that we have 11 or 12 out there now. We can tell you where they are without any trouble if you'd like to know. Next year we would like to take that number from 25 to 45. We've asked for 20 additional slots for that.

The process of recruiting economic crime specialists is a very slow process because an economic crime specialist is a rather rare bird; he or she does not perform an ordinary lawyer's function.

The notion for the economic crime specialist is as follows: In deference to the chairman, why don't we take Boston as an example—I know that Boston is not within your district, Mr. Chairman; but it's close. In the Boston area there are always groups that are doing one thing or another with regard to white-collar crime and making it their business. There is the U.S. attorney. There is the FBI staff office there. There are Customs, Secret Service, and postal inspectors, all of whom play a major role. There are perhaps two or three other Federal investigative agencies. There are State and local agencies. In the Boston area there would be representatives of a number of the 15 program departments that have inspectors general. There are local businesses, chambers of commerce and citizens groups which are the victims of white collar crime.

The U.S. attorney simply does not have the time or the capacity with his ordinary staff to go out and talk to these people, find out what the problems are, what the major issues of white-collar crime are, find out what the investigative agencies are doing, see if they are overlapping, try to set priorities that cover the investigative agencies and the prosecutors so that they are investigating what we want to prosecute—a subject that has concerned you in the past, Mr. Conyers—and so that we don't decline too many cases after they have been investigated.

The economic crime specialists do all of those things.

Mr. CONYERS. Is there any way we can get a report for myself and the subcommittee in this hearing, a record of the economic crime unit's progress thus far?

Mr. HEYMANN. Yes. What I would like to do is to give you one or two of the reports that have come in after 6 months—one from Portland and one from Philadelphia—where the persons who are the specialists tell us what they have been doing and what they have discovered. (See app. 1 at p. 63.)

Mr. CONYERS. What I need to know, and I am reflecting on the New York Times from last summer, just prior to the Attorney General's appointment, where the sum of an investigation on their part showed there was hardly any Justice Department prosecution of major corporations; and that the Securities and Exchange Commission had referred 420 cases involving overseas bribery involving major U.S. corporations; 10 resulted in guilty pleas and only 30 are under investigation, and the rest have been dropped.

And in the areas of major air pollution and water pollution violations, EPA has referred 130 criminal cases, 6 involving major corporations again; and the Justice Department again has only 1.

So how are we doing with the big multinational violators in these very complex cases for which I thought the economic crimes enforcement unit was geared for?

Mr. HEYMANN. I would be happy to give you an answer, Mr. Conyers.

I would like to say something quickly on it right now, though: The major areas where I think you are going to find large corporations engaged in criminal conduct are the areas you mentioned. We don't find an awful lot of fraud by large powerful, successful corporations. You have to be, I think, a rather foolish chairman of the board or president to think that that would be a very sensible path to follow.

Foreign corrupt payments is an area you mentioned, it's an area where large corporations are and have been involved. On the basis of our greater criminal experience, we want to accept (and we hope your people will encourage) environmental matters of the sort you have referenced which have traditionally gone to the lands division.

You gave a third category. But those are almost the only categories in which we will find with any regularity major corporations involved in substantial white-collar crime.

We may find campaign violations, things like that.

That tends to point out the importance of the bill that you described at the beginning, and of our reckless endangerment provisions which I know the chairman is going to be pushing vigorously in the full committee.

Mr. CONYERS. You know, one member of the Fortune 500 has admitted engaging in some type of criminal activity—bribery; there is now great pressure to relax the bribery law of 1977. So I would exercise restraint in saying they aren't doing anything wrong.

It looks to me, from my perspective, that many of them are committing a lot more offenses than I had been aware of.

Mr. HEYMANN. I would like to include antitrust. If you put antitrust, foreign bribery and environmental-type offenses or worker-related offenses of the sort that your bill would cover, I think you would be talking about a very large percentage of what we are likely to find.

I didn't mean to say that that was rare for the Fortune 500. I meant to say that those are the categories where you will find cases, or where we are finding cases.

Mr. DRINAN. The time of the gentleman has expired.

I recognize the gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. On this foreign bribery, of course, we all recognize that there's an inherent problem in the situation. In some foreign countries, unfortunately, they do business that way; it's almost a way of life. And it's a question of whether we are going to let our companies or multinationals overseas be immoral or whether we are going to lose the business, the export business. So this is a tough question, and I recognize it.

One thing that caught my eye in the budget is the, what seems to me, the inordinate amount of money you are proposing on this anti-Nazi war criminal situation.

It's the third biggest item in your budget. You've allocated considerably more to it than you have, for example, for public corruption

in this country; more than for fraud and more than for narcotics and drug prosecution; in fact, as I said, it's the third biggest item in your budget.

And while I recognize there's some merit to it, that rather smacks of politics to me, as opposed to what the priorities are.

Do you wish to comment on that?

Mr. HEYMANN. To me, our Nazi war crimes unit, Mr. Sawyer, the Office of Special Investigations, has a different character than any of the others; and it's easy to miss that.

It has the character of a capital expenditure rather than an ongoing program.

The Congress has said—and I think it's a wise decision—that once and for all it would like us to dispose of the problem of Nazi war criminals. It has festered in the United States since the early fifties, often probably mishandled over that period of time by the executive branch; and it has gotten to the place where it has become something of a national scandal.

It isn't a program that will go away next year or the year after; but it isn't a program like public integrity which is something we will have for as long as you and I will be around—and I hope you're around longer than I am. It is a program that is meant to dip into a historic residue of a Second World War problem—a very tragic one—and simply disperse with it once and for all.

Having said that, I think two things: One, I think it is justified and wise. As for the amount of resources, we can't do it with less. But with those resources in a very few years—if not 1 or 2, in 3 or 4—we can lay that period of our history behind us. And I think it's worth doing.

The second thing is the reason that it takes 3 or 4 years instead of 1 or 2. As soon as we got into it we suddenly found that with a few reasonable steps we ought to increase the category of suspects—and we did increase the category of people who are likely, whom we ought to be looking at—by a few hundred.

Mr. SAWYER. Well, except, you know, the next 3 years—we are looking out now to 1981, 1982, so forth—it's an increasing amount; and it gets considerably more in your spending, as I say, than fraud, public corruption, and narcotics enforcement; you know, for whatever the merit, it's kind of a dead horse problem as opposed to something that impacts the life of the people here in the United States at this time.

Now, I'm not saying or suggesting you ought to ignore it, but it just seems to me from a priority point of view, being the third largest item in your budget, extending out over as far as you've made your projection into the future, it just looks to me like it has a political taint to it as opposed to being where the Department's priorities ought to be.

Mr. HEYMANN. There's no question that it has strong political support, Mr. Sawyer; but my initial doubts as to whether it was worthwhile have completely disappeared. And I'll tell you what makes them disappear.

It's said in a few words, and that is the cases we end up proceeding with, which may end up being 25 or 30 total, are cases where you're dealing with people who may have killed thousands, may have caused the deaths of sometimes tens of thousands; or personally—I've seen this in terms of our files—walked up to a mother and a child, sep-

arated the child from the mother, taken a rifle butt and knocked the 6-year-old daughter's brains out onto the street in front of the mother, and then walked off.

Things like that, when you see them, seem to me to elicit a need for investigation and fair trial and retribution, and I mean retribution even 35 or 40 years later. And I think we ought to go through that trial.

By the end of this year there'll be 200, 300, or 400 folders; and I think we ought to go through them. I think we ought to dispense with the ones that aren't terrible or can't be proved, and I think we ought to act on the others.

And I think we will be pained and you will be pained only a few millions of dollars to do justice with regard to what has been a historic injustice.

Mr. SAWYER. But do you consider this to be prioritized or more important to the American people than devoting your resources to public corruption in the United States, the ABSCAM-type thing, and/or narcotics control?

That's where you have it. And there are ongoing things happening right in this country today, right now, not something that happened in Nazi Germany 35 years ago.

Mr. HEYMANN. Number one, I don't really think the moneys ought to be thought of as competing, Mr. Sawyer. I think Congress established the program. It established a program to deal with the subject of ex-war criminals in the United States. It was initially located outside the Criminal Division and it was then moved into the Criminal Division.

I don't think of it as competing with the public integrity—

Mr. SAWYER. They are competing with each other, because we have a limited amount, and from what the administration is suggesting, we'll have an even more limited amount. So you have to prioritize where you are spending the dollars.

And I am just saying that it somewhat amazes me that you have this the third item ahead of corruption or narcotics which are impacting people's lives every day.

Mr. HEYMANN. The numbers are also a little deceptive, depending on where you end up when you straighten them all out.

Mr. SAWYER. They are "deceptive"?

Mr. HEYMANN. Well, they are in this sense: Remember, we are talking about the Criminal Division budget, Mr. Sawyer; we are doing everything in the war criminal category; but when you look at narcotics, which is the best example, 30 percent of the caseload of 2,000 prosecutors, Federal prosecutors, plus massive amounts of State and local prosecutorial dollars and time, go into prosecuting narcotics.

You look at Criminal Division and you look at 25 to 30 attorneys, but when you really look at what's going on in the Federal system with regard to narcotics, it doesn't show up on the figures you have before you. You are talking about hundreds and hundreds of Federal prosecutors; and if you include what the States and locals are doing, you are talking about thousands of prosecutors compared—that would be the realistic comparison—with the 20 attorneys, 17 now, I think, doing the Nazi work.

You are really comparing thousands with 20. But everything done on the Nazi work is done on one payroll.

Mr. SAWYER. You are saying, though, that the high amount relative to other things is not from any political concerns?

Mr. HEYMANN. It's not political with me. And it's not political with us.

If I were—I don't have any doubt in the projection of the actions of Congress, Mr. Sawyer, that even if I thought that that amount of money should be \$1 million instead of \$2.2 million—there would be a substantial and likely successful move in both Houses of Congress to insist that the operation once and for all spend the money necessary to clean up that backlog and lay the question behind us.

And that's what my prediction would be. There is such a strong feeling among the Jewish groups, among a number of Congressmen and Senators—that that would happen. And I happen to agree with them.

And I think we ought to just get it done, get it behind us.

I think the size of the outlay was picked by Congress presumably in a somewhat arbitrary way, \$2 million, \$2.2 million; but we are borrowing to feed that unit.

I perhaps shouldn't tell you, Mr. Sawyer, but I would send some other people in there off of my staff, young honors graduates, just out of law school, to spend some time helping out.

The FBI will contribute some agents' time as well because we want to do the job, do it well, do it accurately, do it fairly—because it's a terrible place to make a mistake—and then get it behind the country.

Mr. DRINAN. The gentleman from North Carolina, Mr. Gudger?

Mr. GUDGER. Thank you, Mr. Chairman.

I want to commend the explanation which has been afforded on the Nazi war crimes issue, a matter of considerable concern to me. I have supported this endeavor quite earnestly because it was a short-term investment, and one that needed to be fully discharged and then finally reported, and gotten behind us.

And I commend the Department on what you have been doing in that regard; and I will be relieved and I am sure you will be relieved when the final page of this sad history is past us.

I want to address a certain point of concern.

In the first place, I come from a State where all appellate work is handled by the attorney general of the State. That differs of course from the general practice in the Federal system where the U.S. attorney takes a case up in the ordinary circumstances to the court of appeals.

As I look at your justification on the authorization request, on appellate work, I see you are virtually holding present levels and with not much expansion. And yet I see your authorization request pointing up your positive interest in getting to more sophisticated crime and that sort of thing.

Don't you foresee that as the nature of prosecutions at the trial level moves into the white-collar classification, syndicated-type crime, and racketeering, that the form of the appellate level function is going to become more and more expanded, and particularly more demanding at the Department of Justice level, rather than the U.S. attorney level.

Would you comment on that very briefly?

I realize how you have done it in this budget and I realize there's probably not going to be an immediate result; but what do you see down the road?

Mr. HEYMANN. I see down the road exactly what you just foresaw, Mr. Gudger.

I began my statement talking about a world of U.S. attorneys and State and local prosecutors, and what is the essential function for a headquarters operation.

One of the special functions is to handle major appellate matters which affect a number of districts.

I forget the U.S. attorney in your district, Mr. Gudger, but the entire fifth circuit, which must have somewhere between 15 and 25 U.S. attorneys in it, is affected by the position that the U.S. attorney takes on appeals.

On major appeals we have to take a stronger central hand.

It happens that we have a near-famous prodigy as head of the appellate section. I would like to claim credit for that. His name is Bill Bryson. He is a fabulous lawyer; he only works about 120 hours a week. And he's getting known throughout the U.S. attorneys' world. And they want to bring him work.

I am going to start staffing him with some of the best young attorneys that anybody has seen. The Attorney General is going to be envious when he sees it.

And it's going to be relatively small. Most of the appeals, overwhelmingly, ought to be handled in the field. But in a major matter like the *Dresser* case in the District of Columbia, and the *Sutton* case in the sixth circuit, these are a number of cases that are major to the Federal system.

I am going to exercise a stronger and stronger hand through Bryson and that group.

Mr. GUDGER. I fully sympathize with that objective, and I am delighted to hear you declare it, although I certainly realize that in the routine case the trial attorney must appear before the appellate court because he knows what the case is about.

But in the more sophisticated crimes I certainly can see the Department of Justice acting to structure the law for future appellate cases.

May I just ask one more question?

I am delighted to see the emphasis being given to State-Federal cooperation and coordination, and I am pleased that you have completed this study and provided guidelines for declination of alleged violation of Federal criminal laws. I image it addresses not just the routine declinations, because you don't have the subject's name, or you don't have certain elements of information; but there must be some discretionary guidelines involved in this study.

Is that correct?

Mr. HEYMANN. I actually have a right to be a little bit embarrassed before this committee on the declination study; and I also have an awfully good explanation.

This committee, Mr. Gudger, asked for a study of declination guidelines and policies throughout the Federal system since there are 94 U.S. attorneys with guidelines saying we won't prosecute for less than this or that.

And it's only the first stage of that study that we sent you. The first stage of that study tells you in this form, what it looks like across the country. (See app. 2 at p. 185.)

There is a second stage to take place, and that is to tell you what the procedures are by which prosecutors decline cases either on an individual basis or on a broader basis; and who they tell about their declination guidelines. We will also tell you what we can from a massive review of individual cases that we undertook—some 14,000 individual cases; something that was quite massive for us to do.

As we do that, we are going to be able to bring in still another input that will be very interesting to the committee. We have gone around the country in the area of white-collar crime, including public corruption. We have asked some 240 Federal investigative and prosecutorial units to give us a rather detailed description of what they see as the problems of white-collar crime in their area. (See app. 4 at p. 365.)

I made a prediction to Mr. Conyers that large corporations would only be in certain areas; well, that was a guess on my part.

We are very shortly going to be able to give you at least the intelligent estimates of a massive array of Federal investigative and prosecutorial arms.

When we do that, then we will be able to come back to you and say, "Here's what going on, and here are the declinations; they do or don't make sense in terms of what's going on, what the investigators think is going on out there; here's what we got from our 14,000 sample cases; and here's the way it's handled." (See app. 3 at p. 303.)

Mr. GUDGER. This leads me to one final question.

We have been impressed with the priority you have given to narcotics and drugs investigation and prosecution; and some of us have thought that perhaps the drugstore robbery jurisdiction ought to be given to the Department of Justice in a pattern situation, and there, of course, you could decline to prosecute these cases where there is a parallel State jurisdiction.

I wonder if this is a logical thought, if there should be areas in which there may be cases with hints or suggestions pointing to various racketeering involvement—where there is merely a suggestion of this—should there be Federal jurisdiction so you can move if you think the move will help you with your investigation and the discharge of your priorities?

Or, should you be forced, because of our not giving you that authority, to decline all prosecutions in this area of drugstore robberies?

Mr. HEYMANN. I guess I don't have a sense, Mr. Gudger, and I'd want to talk to Peter Bensinger about whether it looks to them like a major problem.

I can express to the committee my own sense that where there's some legitimate basis for believing that, maybe the Federal Government ought to be in there. It's a wise idea to have Federal power and to rely on the mechanisms of State-Federal coordination that we've set up, to keep us from doing what we shouldn't and don't have the resources to do.

In this particular area, I don't have a sense as to whether it's a big problem or a little problem. We'd be happy to respond.

I would like to talk to DEA on it.

Mr. DRINAN. If the gentleman from North Carolina would yield for a moment?

Mr. GUDGER. Yes, Mr. Chairman.

Mr. DRINAN. We will have Mr. Bensingler to testify here at 1 o'clock today; and in his statement he talks about a task force that he has organized that exists in several States and it has sharply curtailed break-ins and robberies of pharmacies.

Mr. GUDGER. Yes; may I pass that up for just one other question:

One of the cases I tried about 6, 7 years ago, involved 25, or, around 30 automobile larcenies, involving Virginia, North Carolina, and Tennessee—several States—in the conspiracy. The acts involving furtherance of the conspiracy indicated that Federal prosecution was proper.

And yet each of those separate instances would have been more likely candidates for State prosecution even though State lines had been crossed.

Would you undertake to talk on that area of concern, and just briefly, do you see that these types of prosecutions should be passed on to the States, even though the Federal element is there? We don't want to clutter up the courts with trivialities.

Mr. HEYMANN. I couldn't tell, Mr. Gudger, whether your example had a single outfit engaged in a number of larcenies.

I think there's a legitimate Federal role, and we assume it, to tell you the truth, using the RICO statutes, whenever you find a single outfit with 5, 6, 8 people engaged in a system of larcenies, robberies, going across State lines—we assume the role.

And that doesn't mean to the exclusion of the States.

I don't think we ought to do a single larceny. We practically never do a single robbery.

But if you have an organization that's doing it wholesale, doing robberies, we get into it; and I think we should.

Mr. GUDGER. This of course is where you have a larceny situation that occurs in Norfolk or Richmond, and then it's carried on to North Carolina and Tennessee and South Carolina.

Otherwise it would not make sense.

But what I was trying to draw was the distinction between the single case which may have all the Federal elements, but lacks the element of conspiracy or multistate involvement.

Mr. HEYMANN. Once again, I agree with you 100 percent, Mr. Gudger.

I don't think it makes a lot of difference if the crime crosses State lines. It makes a difference constitutionally, because it's often the handle on which Federal authority is hung.

But simply crossing a State line isn't a good enough reason to take it away from State law enforcement. It ought to be a State law enforcement matter in most cases if that's all that happened.

If it's a sizable organization, one that is somewhat sophisticated, difficult to prosecute, difficult to investigate because it's in several States—that's a Federal job.

Mr. GUDGER. May I make one comment:

I like that concept in view of an occurrence in my own State of PCB wastes being actually thrown on the highway down in North Carolina. This sort of thing, of course, comes out of an industrial plant, and you don't know just where. Then it is discharged into fields and gorges and that sort of thing all over the Southeast.

I see this as an area in which you might want to proceed, but you might not want to proceed in an isolated case, but in the multiple case where there is serious involvement perhaps perpetrated by a group of individuals.

Do you see this as a justification for moving into this area, with restraint where you are not going to deal with each and every issue?

Mr. HEYMANN. We have to be very restrained in using the "reckless endangerment" offense. I think we should treat the question of toxic wastes, if it ever develops as an illegal and substantially organized activity, as an item of major Federal concern.

We are waiting for those cases. We have some and we are looking for more.

Mr. DRINAN. Thank you, Mr. Heymann.

I have just a couple of questions, then I will yield to Mr. Lungren and Mr. Hall.

On page 4 of your testimony, you speak of the economic crimes field unit; is that economic crimes unit synonymous with white-collar crimes?

Mr. HEYMANN. Yes; it is, Mr. Chairman. I don't know of any distinction that I could think of.

By economic crime, we simply mean public corruption and white-collar crimes in the same double scope. As I told Mr. Conyers, I shall submit a report on these units. (See app. 1 at p. 63.)

Mr. DRINAN. Tell us about the approximately 17 additional units that are needed. Have the places they would go been designated? If not, what are the norms by which these 17 units are added to the 13 units now set up?

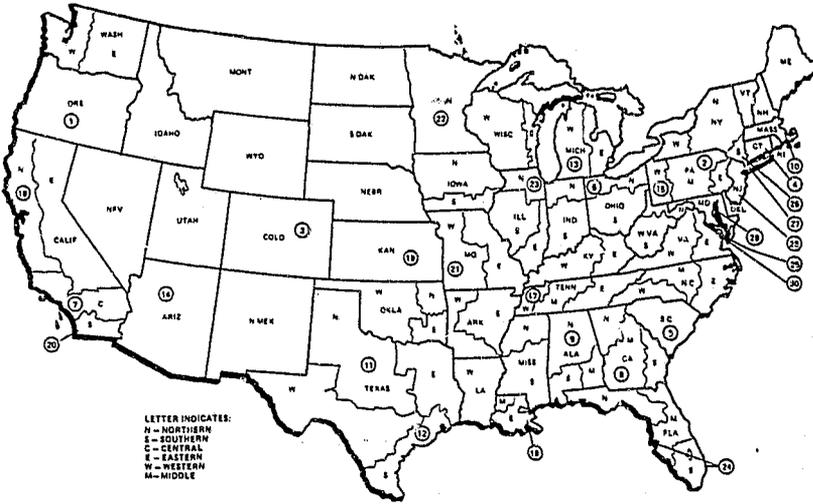
Mr. HEYMANN. I think we have a tentative designation, but I will turn it over to Mr. Richard, as to the designation and the status.

Mr. RICHARD. As Mr. Heymann indicated, we project approximately 27 or so of these units established across the Nation. The units are staffed with economic-crimes specialists who have jurisdiction over more than one State.

At the present time we have 13 units in place. I can provide the committee with a list of those 13 jurisdictions and a list of our implementation plans for the balance of these units, specifying the locations. (Exhibit 1)

Mr. DRINAN. I would appreciate it if you would supply that for the record. I think it would be very helpful.

EXHIBIT 1



LIST OF FIRST 7 ECE UNITS

1. PORTLAND, OREGON
2. PHILADELPHIA, PENNSYLVANIA
3. DENVER, COLORADO
4. NEW HAVEN, CONNECTICUT
5. COLUMBIA, SOUTH CAROLINA
6. CLEVELAND/TOLEDO, OHIO
7. LOS ANGELES, CALIFORNIA

OTHER EXISTING ECE UNITS

8. ATLANTA, GEORGIA
9. BIRMINGHAM, ALABAMA
10. BOSTON, MASSACHUSETTS
11. DALLAS, TEXAS
12. HOUSTON, TEXAS
13. DETROIT, MICHIGAN
14. PHOENIX, ARIZONIA
15. PITTSBURGH, PENNSYLVANIA
16. SAN FRANCISCO, CALIFORNIA
17. MEMPHIS, TENNESSEE

12 PROPOSED ECE UNITS

19. WICHITA, KANSAS
20. SAN DIEGO, CALIFORNIA
21. KANSAS CITY OR
ST. LOUIS, MISSOURI
22. MINNEAPOLIS, MINNESOTA
23. CHICAGO, ILLINOIS
24. MIAMI/TAMPA, FLORIDA
25. WASHINGTON, D.C.
26. NEW YORK, NEW YORK
27. BROOKLYN, NEW YORK
28. NEWARK, NEW JERSEY
29. BALTIMORE, MARYLAND
30. ALEXANDRIA, VIRGINIA

One other question before I yield to my colleagues:

Mr. Heymann, we are having for the first time at 1 o'clock, as I mentioned, an oversight hearing on the DEA—we just recently acquired oversight on that agency—and their budget is almost ten times over yours, over \$200 million. I wonder if you could give us any suggestions as to what we should be looking for as we exercise our oversight and authorizing function?

I know that's a very broad question, but it is the first time we have done that; and I know from talking with Mr. Bensinger that he works closely with the Department of Justice.

But I wonder if you would give us any norms or suggestions as to how we could best help the DEA and Justice in our role?

Mr. HEYMANN. The only thing I am tempted to say, Mr. Chairman—I think you people are probably familiar with—if I was sitting where you are sitting, and reviewing the budget activities of DEA, I would want to look at the division of what they do in two different ways, two crosscuts:

One, being careful to distinguish between and among drugs: heroin and some of the artificial drugs, such as PCP, being presumably somewhat more serious than cocaine and marihuana, as you go down the line. Although the evidence coming in on marihuana is that marihuana looks dangerous, but not in the same category as heroin—I want to distinguish it that way.

Then I would want to distinguish the type of activity. An important drug policy, as Mr. Bensinger will tell you, has to be a combination, first, of foreign affairs, that is, crop disruption. Disruption in Mexico was successful; Turkey also had a successful operation. And second, interdiction at the borders by the use of the Coast Guard, Customs, and DEA to try to prevent drugs from coming into the United States. Obviously it varies immensely among drugs. Marihuana comes in by the multiton; heroin comes in by the gram or pound.

But other than this, I have nothing else to add, Mr. Chairman, except I think you have bought yourself a difficult and interesting jurisdiction.

Mr. DRINAN. I thank you.

The gentleman from California, Mr. Lungren?

Mr. LUNGREN. Thank you.

Sir, I am sorry I missed the first part of your presentation; and I hope I am not going over ground that's already been covered.

I would be interested in a subject you've probably heard a great deal of: that is the ABSCAM. What are the efforts of the Department to seek out those people who either intentionally or unintentionally released information on that investigation?

Mr. HEYMANN. I am not—I don't make any effort to keep some kind of daily or weekly awareness of what Mr. Blumenthal is doing. He's not working under me. I know him well personally, I talk to him, giving him my suggestions.

I do not know what success he is having or not having. It is extremely difficult to track down leaks; that is my business in the national security area.

We have perhaps 15 to 30 occasions a year; we are notoriously unsuccessful at it in the national security area. I give him a little bit more prospect for success than I give us, for three reasons:

One, he is going at it with an unlimited commitment; if it requires interviewing 300 to 400 people, they will do it.

Two, I think he is going at it in a muscular way, which I approve of. He's coming on hard; and I think that is wise.

Three, he has got the manpower, which is perhaps the same as number one to spread out; and he has them on leaks in ABSCAM, BRILAB, and Pendorf, which were the three major leaks all taking place at the same time.

It's a very hard thing to succeed in.

All I can tell you without being up to date on it—and I don't want to be up to date, as I don't want Criminal Division treated differently, we are one of the groups—all I can tell you is it looks to me like a very efficient and energetic operation.

Mr. LUNGREN. I know it's not in your control. Obviously as one of those who supports the Justice Department's efforts, and I think who believes the Department ought to be commended for a program which happened to come up against Members of Congress allegedly involved in this, I do think it is important that the whole question of the leaks be put on a priority basis.

Because I think that is the one major area where the administration, where the Department, can be criticized. To the extent that it hangs over the head of the Department it interferes in some way with whatever future investigations you have.

I think it clouds somewhat the confidence the Members of Congress may have in the Department.

Mr. HEYMANN. I think so.

Mr. LUNGREN. I have a question—again I am not sure if this is strictly within your bailiwick.

I notice in your statement you mention in areas such as litigation, State-Federal-local prosecutorial relations, LEAA grant review, you are providing leadership.

In an area that is just outside my district, but one which I have a great deal of concern about—Los Angeles Police Department—they have recently, I understand, had to cancel a new class of recruits for the LAPD because of the fact that they are in a rut where the DOJ had a lawsuit over its insistence on certain levels of minority participation in the Department—and they also include women in that definition of minority.

Is that something in your division under LEAA grant review process?

Mr. HEYMANN. No; I am pleased to say it is not, Mr. Lungren, because it must be a terribly difficult area. [Laughter.]

Mr. LUNGREN. I had a whole series of questions for you on that. [Laughter.]

Mr. HEYMANN. What we do on the LEAA review is with regard to new clients in most categories. Mr. Dogin has offered and I have readily accepted—and there's always Mr. Richard secretly in the background as the broker of this type of deal—that we have a system where we sit down with them and suggest, would this be a sensible grant? We are in an advisory role. We don't get into what you've just described.

Mr. LUNGREN. I was very concerned with the withholding of Federal moneys to the Los Angeles Police Department, because the

DOJ feels they are not matching up to certain standards that have been set back here. I see that is a difficulty we have when there are national grants and all of a sudden we make decisions back here as to what the makeup of the Department should be; and if the Department doesn't come up with those standards, they lose the grant moneys they depend on.

So I am sorry I don't have the person I can ask about that.

I would be happy to yield back the balance of my time.

Mr. DRINAN. The gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman.

Mr. Heymann, I would like to go to, as deeply as we can, page 2 where you indicate the Department is committed to effective handling of internal security matters.

I have a strong concern given the Iranians that are coming into this country since the problem we are having with that country, and the KGB agents we understand are proliferating in the Washington area, the New York area, and I am sure other areas in the United States: Are we giving proper financial resources for the internal security of this Nation to be protected?

Are we adequately on top of these, what I consider to be very big problems facing us, facing the country?

Mr. HEYMAN. Mr. Hall, I have to answer you the same way I answered Mr. Lungren, and that is, although it looks like it is in my area, it isn't in my area.

The FBI has four crime units. Three of its priorities overlap with me. Those are: organized crime, fraud, and public integrity. Their fourth is counterintelligence.

You are really asking your question about the counterintelligence function of the FBI.

And a very small part of that function, and it's a priority area for the FBI, interfaces or meets my internal security section.

My internal security section is about 17 attorneys. Whenever it is within the capacity and desire of the FBI counterintelligence operation to invite a prosecution, and we have had a series of very successful ones over the last 2 or 3 years, they will refer a matter to my internal security section.

And we will prosecute it. And again, we have been very successful. We have had, I guess, somewhere between 8 and 12 successful prosecutions; but that is a tiny tip of the iceberg. Counterintelligence is the FBI's responsibility. And I honestly don't know enough to answer your question as to whether they feel it is adequately staffed.

I know I am adequately staffed to handle any FBI case they send to us. We have enough people for that. But those are a very small part of the total program.

Mr. HALL. Well, I'm not quite sure what your statement means when it says, "The Division"—which means Criminal Division, which you are currently in charge of—

Mr. HEYMAN. Yes.

Mr. HALL [continuing]. "Is also deeply committed to the effective handling of internal security matters."

You say if you have the capacity and the desire you would get involved in these matters that are referred to you by some other arm of government.

Mr. HEYMANN. If I said that, I said it wrong, Mr. Hall.

What I wanted to suggest was that of all the counterintelligence dealing with any foreign intelligence agency that the FBI is engaged in, on many occasions they may not be able to make out an espionage case for prosecution. They may be doing very important counterintelligence work for the country, and yet not be able to make out a case for prosecution.

And in some cases they may not want to prosecute, if they have identified an agent of a foreign government, they may be much more anxious to see who the agent is dealing with in the United States than to prosecute the agent.

Mr. HALL. Well, at what stage of these proceedings would your Division become involved?

Mr. HEYMANN. Only when the FBI decided that, yes, they have the evidence, which we would check through to see that they have it and it is consistent with our counterintelligence program to prosecute. Kampiles, Madsen, Truong & Humphrey, Enger & Chernyayev—a long list; but the long list is 16 people, something like that, that have been prosecuted.

Mr. HALL. All the prosecutions would eventually end up in your Division?

Mr. HEYMANN. That is correct.

We usually prosecute about 3 to 6 cases a year.

Mr. HALL. Your Division, as I understand it, does no initial investigation on any of these people whose names you have just mentioned?

Mr. HEYMANN. That is correct. They all would have been investigated as part of an ongoing counterintelligence program of the FBI, which is as large as any other activity.

Mr. HALL. Well, would the CIA function in the same way as the FBI functions on referring these internal security matters to your Division for prosecution—if that area or arm of government felt there should be prosecution?

Mr. HEYMANN. The CIA does not, as I understand it, conduct an ongoing counterintelligence program domestically. I think that would violate their functions, as the Congress understands them.

But if they come upon a spy ring within the CIA, and that has happened—Kampiles was a CIA employee who left the CIA—they will refer him to us for investigation and prosecution.

In other words, keeping track of Soviet agents is the business of the FBI; the CIA would propose something to us only if they found a CIA official was somehow or other engaged in the espionage.

Mr. HALL. Do you believe that the 17 attorneys you have in your division is an adequate number?

Mr. HEYMANN. Yes. It does not even take the 17 to handle the flow of espionage cases. A lot of the time of the 17 is spent on the Foreign Agent Registration Act. With the attorneys we have, we have ample resources to handle every espionage case that the FBI or CIA or Defense sends us, because they are quite rare.

When I say quite rare, however, I think it is much more frequent in the last 2 or 3 years than ever before.

Mr. HALL. I yield back the balance of my time.

Mr. DRINAN. Counsel, Mr. Nellis has questions.

Mr. NELLIS. Thank you, Mr. Chairman.

Mr. Heymann, as you probably know, I just returned from a visit to the U.S. attorneys in San Diego, Los Angeles, and San Francisco. They have some problems internally.

I would like to discuss with you briefly, first of all, San Francisco, where they have had difficulty in attracting and recruiting lawyers, since private practice there is so much more lucrative. They have a program whereby they contact the local law schools and bring in first- and second-year students and teach them the research work which ordinarily the attorneys do.

Now, they get credit in the law school for what they do in the U.S. attorney's office. Additionally, they are paid some modest stipend.

I am told by the assistant U.S. attorney in San Francisco that this is one of the most progressive and useful programs that they have ever undertaken. I am sure you are aware of it.

Could this be done on a national basis? I believe, on the basis of my recent visit that U.S. attorneys' offices are understaffed and overworked—they can't get secretaries and have very serious problems?

Mr. HEYMANN. I have asked that question, too; and either Mr. Muskett or Mr. Richard always says to me: "It can't be done."

I can't figure out why it can't be done, Mr. Nellis, so why don't we see which of them says it can't be done and why?

Mr. NELLIS. I can only assure you it is being done in San Francisco.

Mr. MUSKETT. The work-study program is operated in conjunction with the local law schools, and we pay 20-percent reimbursement to the universities.

There are problems in the criminal division utilizing such people, in that we have very little public domain information. Most of our material is derived from investigations. These people don't have investigative clearances. And it's not worth the \$1,000 to have a complete FBI investigation if they should only be staying 3 or 4 months.

Security is the prime reason.

In our strike forces they don't handle as many appeals as the U.S. attorneys do, and it is ideal for these young people to handle appeal matters. In a strike force they are all concerned with investigations; and we don't handle that large a number of trials. That is normally the function of the U.S. attorney.

Mr. NELLIS. In the case I am referring to, law clerks are working in the library; they are not assigned to the strike force; and they are turning out excellent work.

I don't want to belabor the point, but believe me, I am told out there by Lou Hunter, who is an excellent man whom I've known for some time, that without these people they would be in much worse shape than they are.

So, if there is anything that can be done to adopt that kind of approach in U.S. attorneys' offices, I wished to bring it to your attention.

Mr. HEYMANN. We do employ a number of law students in Washington in the Government division. Do you have any idea how many?

Mr. RICHARDS. No.

Mr. NELLIS. They are useful?

Mr. RICHARD. Yes. We had been seeking to expand our use of these students. To deal with the problems we have encountered, the ones

described by Mr. Muskett, we have been exploring with a variety of strike forces ways to use students in that capacity. They can be used in a variety of functions.

Mr. NELLIS. Thank you.

Mr. Heymann, finally I would like to ask you about this:

As you know the Department has been asking this committee in connection with the criminal code to provide provisions for uniform sentencing, particularly in drug cases, and various other types of major crime.

Now, how can a national uniform sentencing policy exist—this is the threshold question—when the decision to prosecute is subject to tremendous variations between districts?

I know between San Diego and Los Angeles, for example, on the one hand, the prosecutorial discretion is different, and on the other hand, they are different in sentencing.

What is your comment on that?

Mr. HEYMANN. I am not sure, Mr. Nellis, what aspect of the problem you focus on. It is certainly true as the system now stands, in San Diego, they could follow guidelines in certain narcotics cases which they would take. We are and have reviewed all the declination guidelines for the U.S. attorneys' office just to see if they looked desirable to us; and it might be that Los Angeles would decline what San Diego would take. (See app. 2 at p. 185)

Of course, that may be caused by the availability of State prosecution; it may just result in State prosecution. And even if it does, we still has your question:

If a State judge and Federal judge in the same place impose similar sentences, in the example, Los Angeles judges impose different sentences than the federal judges in San Diego and you are going to have some disparity.

Mr. NELLIS. I think the problem really is in terms of decisions by assistant U.S. attorneys—that is the major source, I would guess, of disparity within the system, not the universal guidelines for a whole district.

Mr. HEYMANN. As to that, my own rather strongly held view is that the only right answer is something we are doing now; that is, pressing that all the important bargaining decisions or declination decisions, in individual cases, be elevated in the U.S. attorney's office to the level of the U.S. attorney or his or her first assistant.

I don't have much hope that there will ever be created by man a set of policies and guidelines that would uniformly lead an assistant in Los Angeles to recommend the same thing as another assistant in Los Angeles, let alone in Boston.

I think what we have to do is make sure that each office has a center of responsibility, a U.S. attorney who takes the rap—because I can't do it. There are too many cases out there, 30,000 cases; it can't be me. It's got to be someone out there who takes the rap for these important decisions; they should not be dispersed widely among the 2,200 assistants.

I think we need 94 people out there who are held responsible for the decisions.

Mr. NELLIS. Thank you.

Mr. DRINAN. Thank you very much, Mr. Heymann. I hope we haven't kept you beyond the designated hour. This testimony has been very

helpful. I thank you and your assistants. I know you will be in touch with us.

The committee stands adjourned until 1 o'clock.

[Whereupon, at 12:17 p.m., the hearing was recessed, to reconvene at 1 p.m., the same day at the same place.]

AFTERNOON SESSION

Mr. DRINAN. The subcommittee will come to order.

Mr. Bensinger, come forward, if you would.

We welcome you this afternoon, Mr. Bensinger, because the role of the DEA is an important one in the effort to combat trafficking in narcotics and dangerous drugs. The lead taken by the DEA as the lead Federal enforcement agency is a good lead.

This is the first opportunity that the Subcommittee on Criminal Justice has had to oversee the work of the DEA. DEA has very sensitive responsibilities. It works with many informants to obtain information about people. It has an elaborate communications system to communicate with hundreds of law enforcement agencies.

DEA works overseas in many of the countries around the world. It is combating criminal forces that have millions of dollars of resources and which use sophisticated electronic equipment. The enormous sums of money lead to many crimes of violence and death.

We are concerned that the resources of DEA be used as effectively as possible. We are concerned that its sensitive relationships not be adversely affected. We are concerned that the relationship of the DEA to thousands of pharmacies and pharmacists and doctors in the need to control the flow of dangerous drugs diverted from legitimate sources continues.

Thank you, Mr. Bensinger for taking time out of your busy schedule today to be with us this afternoon. Please introduce your colleagues if you will, and proceed as you see fit.

TESTIMONY OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE

Mr. BENSINGER. Thank you very much, Chairman Drinan.

I would like to introduce the Deputy Administrator of the Drug Enforcement Administration, Mr. Frederick Rody; Mr. Marion Hambrick, Assistant Administrator for Enforcement; Mr. Gordon Fink, Assistant Administrator for Intelligence; DEA's Chief Inspector, Joe Krueger; finally, our Chief Counsel, Bill Lenck.

I would also add, Mr. Chairman, the statement I prepared, I think is perhaps more lengthy than what might be most effectively represented by me in this hearing; and I would attempt to summarize it, and then be available with my colleagues to answer any questions.

Mr. DRINAN. Without objection, it will be made a part of the record.

[The full statement follows:]

STATEMENT OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE

Good morning, Mr. Chairman. It is a pleasure to be here this morning to bring the Judiciary Committee up to date on the major issues and situations confronting the Drug Enforcement Administration. I am delighted to have this forum because over the past year there have been changes in the patterns of drug

production and trafficking and I think the Congress needs to know exactly what we are seeing.

In many respects, DEA has seen considerable progress. Several major cases with international implications have been brought to fruition. We have accelerated the use of money-flow investigations; we are now hitting the traffickers where it hurts the most—in their wallets. Many of our foreign counterparts have intensified their commitment and efforts against drug trafficking. There has been a marked decline in the number of clandestine phenylethylamine laboratories as a result of the Congressionally enacted controls on piperidine.

But the instabilities of the governments of Southwest Asia are having a dramatic adverse impact on the dimensions of the world drug situation. This area—Iran, Afghanistan and Pakistan—is capable of producing many times over the amount of opium needed to satisfy world demand.

In order to appreciate more fully implications of this Southwest Asian opium production capability, I think it important to reflect on the background of the heroin situation.

Since 1976, all of the indicators we use to trend heroin availability have consistently reflected a downward trend. The purity methodically fell from 6.6 percent and stabilized at 3.5 percent before beginning a slight upward turn during the third and fourth quarters of 1979, when it rose to 3.7 and 3.8 percent, respectively. The price per milligram of pure heroin has risen consistently from \$1.26 in 1976 to \$2.29 as of the end of 1979.

Medical examiner and emergency room reports are collected from 24 metropolitan areas participating in the Drug Abuse Warning Network (DAWN). Significantly, at the present time, DAWN is recording approximately 35 heroin-related deaths per month in contrast to the 150 per month in 1976. According to DAWN, the number of heroin-related injuries has been declining steadily and since 1978 has returned to the low levels of 1973. The average number of heroin-related injuries per quarter for 1979 is consistent with the average per quarter in the preceding year.

From the data we have accumulated thus far, the national indicators are now showing some increases in heroin availability. The situation is clearer on a regional level. For example, the East Coast cities in particular are reporting purities well above average for those areas. During the same 12-month period in which average retail purity on the East Coast rose from 2.8 to 3.7 percent, heroin-related injuries rose 26 percent. Other indicators such as heroin treatment admissions, retail pharmacy thefts, treatment admissions for heroin substitutes, and overdose injuries and deaths related to heroin analogs all suggest a gradual increase in heroin availability and abuse on the East Coast. The picture remains mixed when one examines the trends in any one metropolitan area. An extended period of increased availability in more than one geographic area would have a more profound impact on national indicators.

In addition to using the above mentioned indicators to measure availability, we use the National Narcotics Intelligence Consumers Committee (NNICC), which is chaired by DEA, to analyze the volume of drugs in the country. NNICC has done a thorough analysis of estimated supplies of heroin coming into this country from 1975-1978. According to the NNICC study, total heroin imports are down from 7.5 metric tons in 1975 to between 3.7 and 4.5 metric tons in 1978. From 1977 to 1978 alone, heroin imports into the United States declined 25 percent.

The study also has analyzed the volume of heroin emanating from principal foreign sources and, in doing so, has clearly highlighted the changing dynamics of the heroin situation.

ESTIMATED SUPPLY OF HEROIN TO THE UNITED STATES FROM PRINCIPAL FOREIGN SOURCES, 1975-78

	1975		1976		1977		1978	
	Metric tons	Percent						
Mexico.....	6.5	87	4.0	67	3.1	56	1.7-2.0	45
Southeast Asia.....	1.0	13	2.0	33	2.0	36	1.4-1.7	38
Southwest Asia.....	(1)	0	(1)	0	.4	8	.6-.8	17
Total.....	7.5	100	6.0	100	5.5	(100)	3.7-4.5	100

¹ Negligible.

Substantially as a result of the continued eradication efforts of the Government of Mexico, joint United States/Mexican operations, and to some extent as a consequence of an unusually severe drought in late 1977/early 1978 in the northwestern part of the country, Mexico's share of the U.S. heroin market has diminished significantly. The Government of Mexico is to be commended for its dedication to the opium poppy eradication effort.

SOUTHEAST ASIA HEROIN

When I appeared here last year, I expressed optimism regarding the progress in Mexico and I expressed concern about Southeast Asia and the potential of Afghanistan and Pakistan.

Drought conditions directly affected opium production in the Southeast Asian/Golden Triangle area. In a typical growing season, the Golden Triangle can produce between 450-500 tons of opium. As a result of a drought, the 1978-79 growing season yielded only between 160-170 tons of opium. Consequently, estimated shipments of Southeast Asian heroin to the United States dropped about 15-30 percent from 1977 to 1978, and another decline occurred in 1979. The climatic conditions have not improved considerably and so to compensate for the poor yield of the prior season, the opium farmers have planted more. Based on field reporting, DEA estimates that the increased planting will produce between a minimum of 215-240 tons of opium after the 1980 harvest, which is now being completed.

Several factors have had an impact on the trafficking of Southeast Asian heroin. Two of the largest Southeast Asian heroin trafficking networks, the Ah Kong Syndicate and the Li Ming Siu organization were immobilized as a result of international enforcement efforts. Additionally, DEA implemented the Special Action Office/Southeast Asian Heroin (SAO/SEA) to direct its enforcement, international assistance, and intelligence efforts against Southeast Asian heroin. These actions in concert with many others, led to reduced availability of Southeast Asian heroin.

SOUTHWEST ASIA HEROIN

Another part of Asia—Southwest Asia—gives me cause for grave concern. The consequences of excessive opium production have been experienced in Europe, and, now in the United States as well.

It is estimated that in 1978 Afghanistan produced 300 metric tons of opium and Pakistan produced approximately 400 metric tons, for a regional total of about 700 metric tons. Iran cannot be included in this total because at that time, opium cultivation in Iran was legal and controlled. In 1979, opium production in all three of these countries in Southwest Asia is believed to have increased to a maximum of 1,600 metric tons.

Of course, these are "guesstimates". As you can well imagine, intelligence gathering in that part of the world is, at best, very difficult. Our agents stationed abroad are our primary intelligence source. However, DEA has had to close its offices in Iran and Afghanistan. Our efforts in Pakistan were disrupted extensively, albeit temporarily, and still have not returned to the levels of previous years.

Foreign governments are often a secondary intelligence source, but we do not have ongoing enforcement and intelligence exchange in Iran and Afghanistan and the countries have lost a number of their career drug law enforcement officials.

The high quality and availability of Southwest Asian heroin has made it a very marketable commodity. By mid-1977, West Germany was inundated with this high-quality Southwest Asian heroin. The problem has since spread to other West European markets which traditionally have been and continue to be outlets for Southeast Asian heroin. Despite sincere attempts by European governments to control the narcotics addiction problem, the situation has continued to worsen.

Throughout 1979, Western Europe served as a "sponge," absorbing the increased Southwest Asian heroin production. Approximately 2.5 metric tons of heroin were consumed in Western Europe that year. By way of contrast, the NNICO study estimates that in 1978 Southwest Asia supplied 0.6 to 0.8 metric tons of Southwest Asian heroin, representing 17 percent of the total market, [that] entered the United States. I expect that proportion to have doubled during 1979.

Although the heroin picture in Western Europe may be stabilizing, the situation still is not good. Drug overdose deaths in West Germany, for example, are almost double those of this country and yet their population is one-fourth of ours. In West Germany, street-level purity is currently between 20 and 40 percent and prices

in some European cities have dropped to as low as \$25,000-\$35,000 per kilogram. According to our latest figures, that same kilogram would sell for about six times as much in New York City.

DEA intelligence reflects that some Iranian citizens, unable to move cash out of that country because of the currency regulations, have "converted" their cash to narcotics and have smuggled their assets out in that fashion. The profit motive has enticed numerous black, Hispanic, Italian, Iranian and other traffickers to enter the Southwest Asian heroin trade in the United States. Although at present this trade should best be characterized as fragmented, there are indications that in the future it will be dominated increasingly by cohesive criminal groups.

Over the past two years, there have been a rising number of seizures and resulting investigations. During 1977 and 1978, small quantities of Southwest Asian heroin appeared in the United States and were confined to the New York/Washington, D.C. corridor. Since then, undercover purchases of Southwest Asian heroin also have been made in Chicago, Detroit, San Francisco and Los Angeles.

DEA "Daily Enforcement Reports" document seizures of Southwest Asian heroin which were made both here in the United States and across Europe. For example, recently on the same day, two unrelated seizures each of three kilograms of exceptionally high purity Southwest Asian heroin were made in Texas and here in Washington, D.C. Seizures of heroin in this quantity and purity have not been experienced in several years.

It is important for DEA to be able to have an idea of the extent to which heroin from Southwest Asia is reaching the retail level here in this country. Consequently, in conjunction with State and local enforcement officials, the DEA New York District Office ran a special street-level buy operation to determine the extent of the retail heroin problem. New York was selected because we believe it to be a primary entry point for Southwest Asian heroin. The first phase of the operation, conducted this past summer in Harlem, found that the average retail purity was 3.0 percent. Based on the results of heroin signature examination, 42 percent of the exhibits collected in this phase were identified as being of the "European/Near Eastern" or "Middle Eastern" type heroin. In this project, these types of heroin are now being referred to as Southwest Asian, that is heroin converted from opium produced in Southwest Asia. The second phase of the operation, conducted in the fall on the Lower East Side, determined that 60 percent of the samples were of Southwest Asian origin. In this phase of the operation, the average purity of the heroin samples was 8.5 percent and some of the exhibits were as much as 20 percent pure.

HEROIN TRAFFICKING INITIATIVES

Given the magnitude of recent developments, the question then becomes, "What plans are there for coping with this new presence and accelerating problem?" Unfortunately, there are no easy answers.

The United States Government has developed initiatives to attack the Southwest Asian heroin problem. The Administration is making the Southwest Asian heroin effort a high priority and is coordinating efforts of the Departments of Justice, State, Treasury, Defense and Health, Education and Welfare.

The Department of State is seeking international cooperation, not only through contacts with individual nations, but also by raising the issue in international forums such as NATO. We are accelerating the enforcement activities of the U.S. Customs Service and DEA both in the United States and abroad. Additionally, New York, Philadelphia, Boston, Newark, Baltimore and Washington are being designated target cities where major efforts are needed most to fight the flow of Southwest Asian heroin. The State and local law enforcement agencies are being involved in the anti-heroin effort to the maximum extent. As you can see the Drug Enforcement Administration is involved in the forefront of this action plan.

On February 28, 1980, President Carter and Attorney General Civiletti hosted approximately 120 law enforcement officials including all State Attorneys General and several police chiefs and prosecutors. At this meeting, the five point program to discuss the threat of Southwest Asian heroin was discussed with these enforcement officials and their cooperation and participation were encouraged.

Both Attorney General Civiletti and I have met with the Italian Prime Minister and the Minister of the Interior of the Federal Republic of Germany to discuss mutual concerns regarding the Southwest Asian heroin problem. We intend

to continue to assist foreign law enforcement agencies with support services directed at identifying and immobilizing major drug trafficking networks.

In all cases, our preference is to work as close to the source as possible; but, in the case of Southwest Asia, that door has virtually been slammed shut. Consequently, we have accelerated our efforts as close to the source as we can get—through our agents and country attaches stationed along the transshipment and destination corridor in Western Europe. Additionally, the State Department has approved a Special Agent position and an Intelligence Analyst position for Frankfurt, Germany, and an additional Special Agent position for Turkey.

DEA has recently established the Special Action Office/Southwest Asian Heroin. SAO/SWA, as this office is known, was established to meet the imposing threat of renewed heroin production, transshipment and trafficking in and from Europe, the Middle East and parts of Southwest Asia's opium producing countries. SAO/SWA will address this serious situation on both the European and North American continents in a coordinated, directed high-priority enforcement effort.

Specifically, the DEA Headquarters SAO/SWA program managers are working to insure that all priority investigations are coordinated and receive sufficient resources. These managers must evaluate all types of investigations and, when needed, shift resources from lower priority areas to significant cases that will have an impact on Southwest Asian heroin. In that same vein, they are making certain that field operations receive supplemental funding to continue and accelerate investigations that have a direct impact on Southwest Asian heroin.

Another important facet of SAO/SWA is the intensifying of the State and local law enforcement officials' awareness of the potential and existing threat of Southwest Asian heroin in the major cities. We are enlisting their intelligence, scientific and enforcement resources for use in conjunction with the Federal effort. The DEA Office of Science and Technology is beginning a program to direct scientific data to State and local laboratories that will assist them with the identification of the components of heroin that originated from Southwest Asian opium.

The DEA Office of Intelligence is intensifying its field intelligence exchange among the various foreign, Federal, State and local participants to ensure that there is maximum development and distribution of available information regarding Southwest Asian heroin organizations and traffickers. Furthermore, in cooperation with the U.S. Customs Service, we are redirecting and intensifying the airport/port of entry program to provide better input to the U.S. Customs Service to obtain maximum efficiency from the "interdiction mode". We are developing specific trafficker/cargo profiles for each of the primary Southwest Asian heroin arrival locales.

All of these actions are designed to counter the increasing availability that could cause Southwest Asian heroin to reach epidemic proportions. I believe that, for the present, our initial measures will blunt to the best extent possible the Southwest Asian heroin threat.

Of course, while we accelerate our momentum against Southwest Asian heroin we must take care to ensure that our efforts to meet the challenge of increasing cocaine, dangerous drugs and marijuana trafficking are not diminished.

COCAINE

Cocaine continues to be widely abused and, according to all available indicators, its popularity is continuing. In 1979, DAWN emergency room mentions averaged 629 per quarter which is in sharp contrast to quarterly averages of 479, in 1978, 397 in 1977, and 312 in 1976. It is significant to note that these long-range increases are not limited to a few areas, but have been reported in the vast majority of cities from which data is available. Cocaine is readily available in pound quantities in just about every major metropolitan area. There has also been an increased demand for cocaine in Spain, Italy, France, West Germany and the United Kingdom.

NNICC estimates that in 1978, approximately 19-25 metric tons of cocaine were smuggled into the United States which was a five percent increase from 1977. The trend for 1979 is in the same direction.

Over the past several years, there has been no statistically significant change in the retail-level price/purity of cocaine. Within each DEA region, price has remained fairly stable; ranging from \$1,200 to \$3,100 per ounce (depending on the purity and the particular area). In and of itself, this stability indicates that traffickers have been able to consistently meet a rising demand for the drug.

Nearly all of the cocaine in the world is processed from leaves harvested from coca plants grown in Bolivia and Peru. There have been reports in recent years of expanded coca cultivation in these countries and possible expanded cultivation in Colombia. Over half the cocaine that reaches the United States is converted from coca paste to base and then to cocaine hydrochloride in Colombia, from where it is transshipped. The remainder comes directly from Peru, Bolivia and other South American countries. Colombia will probably remain the single most important smuggling point for cocaine imported into the United States.

MARIHUANA

Marihuana is an enforcement priority because of the extensive criminal organized networks involved in its distribution and because of the financial implications associated with its trafficking. Furthermore, our growing body of knowledge regarding the health hazards associated with marihuana use gives us cause for concern.

In 1978, approximately 10,700—16,400 metric tons of marihuana were imported into this country, generating a retail market worth \$15-23 billion. The U.S. marihuana market has changed radically in recent years. The number of users has expanded and new sources areas have emerged. Prior to the mid-1970's, Mexico supplied almost all the marihuana consumed in the United States; the remainder was from Jamaica. The balance has swung, however, and now Colombia is the primary source country. This shift is most directly attributable to the success of the Mexican Government's marihuana eradication program. The herbicidal spraying of marihuana fields has reduced production.

I anticipate that the heavy sea and air trafficking of these illicit substances from Colombia will continue. As a result of the large volume of seizures made in the last several years, smugglers have modified their operations. We are seeing continued maritime smuggling not only around Florida, but also north along the Atlantic Coast and along the Gulf Coast. To a much lesser degree, but no less alarming, is the deployment of motherships from Colombia's Pacific coast to the U.S. West Coast.

Patterns in smuggling by air are also changing. The utilization of long-range aircraft is becoming a more distinct trend. Thus, other areas in the United States besides Florida and the Southeast Coast/Gulf Coast areas are beginning to feel the impact of drug trafficking.

Our greatest hope for control of the cocaine and marihuana problems rests in the drug source countries. I believe that crop eradication is one of the most effective methods of control. We need to help the Governments of Bolivia, Peru and Colombia turn off the faucets of cocaine and marihuana.

DANGEROUS DRUGS

Thus far this afternoon, I have addressed myself only to the changing heroin, cocaine and marihuana trafficking picture. The dangerous drug situation deserves attention. This facet of drug law enforcement needs to be handled differently however, because for the most part, the United States is its own source country. Although there is substantial clandestine manufacturing activity, most of these drug substances are already subject to control from manufacture through distribution via the mechanics of the Controlled Substances Act (CSA).

There are 20,000 drug products under CSA control. Each year over 20 billion dosage units of these products flow through the distribution chain, which consists of approximately 600,000 registrants. The vast majority of registrants, are practitioners; the balance are manufacturers and wholesalers.

Conservatively, we estimate that each year 250-300 million of the dosage units manufactured legally are diverted. The current value of street sales of diverted drugs is thought to be over \$1 billion a year. This is easy to visualize when you consider, for example, a single dosage unit of Dilaudid (hydromorphone), which can be purchased retail for about 17 cents, can be resold on the street for up to \$60. In addition to the profit motive, reduced heroin availability contributes to the demand for diverted drugs. Supplements are needed for nonexistent or poor quality heroin.

The CSA provides for a "closed" or controlled distribution system from manufacture to use. The system is designed to ensure that there is an adequate supply of controlled substances for legitimate medical, research and industrial needs, while at the same time reduce the diversion of drugs from legitimate channels into the illicit market.

Under the Controlled Substances Act, DEA has clear authority to monitor activities at the manufacturing/distribution levels. And, we have been very successful at reducing diversion at this level. It is at the retail level where 80 to 90 percent of all drug diversion occurs. Most commonly, this diversion is accomplished via indiscriminate prescribing, forged prescriptions, thefts and the illegal sale of drugs by registrants. Additionally, individuals who obtain prescriptions and controlled substances by feigning medical need or who obtain multiple prescriptions from different physicians are also responsible for diversion at the retail level.

DEA statutory authority to regulate at the retail level is limited and, consequently, the primary responsibility for enforcement at this level has been left to the States. The general acceptance of this division of responsibility is demonstrated by the fact that 45 States and the District of Columbia have signed Memoranda of Understanding to that effect.

It has been and continues to be DEA's policy to support the States in their efforts to control retail diversion. This support takes many forms and includes both enforcement and nonenforcement initiatives.

DIVERSION INVESTIGATION UNITS

The most substantial state assistance effort has been the establishment of the Diversion Investigation Units—DIU's. Through this program DEA acts as the catalyst to coordinate funding, manpower expertise, and various enforcement units into a cohesive state effort. DIU's are manned and managed by state authorities, although a DEA representative is assigned on a full-time basis for coordination and support. Our objective is to launch the participating state on a sound start by providing direct Federal funding and support and, ultimately, to have a state-sustained, permanent DIU-type program.

DIU's were initiated on a pilot basis by Texas, Michigan and Alabama in 1972. All three pilot States have endorsed the program and are funding their DIU's, as are California, Georgia, Illinois, Massachusetts, Nevada, New Hampshire, New Jersey, North Carolina, and Pennsylvania. DEA still is providing grants to Maine, Washington, Hawaii, Oklahoma, Utah, New Mexico, the District of Columbia, and the newest DIU, Arkansas. Thus far, only one State has declined to support the program at the conclusion of Federal funding. We anticipate that two additional units will be brought on board this fiscal year.

In response to the growing threat of retail diversion, six months ago DEA initiated Operation Script. This project supplements existing efforts and concentrates our resources toward specific retail problems. DEA's technical, investigative, intelligence and legal resources are being channeled to focus on high impact/high visibility investigations of 94 pre-selected targets in 24 cities. Operation goals include:

- decreasing diversion at the retail level;
- demonstrating the Federal Government's concern;
- increasing public and professional awareness of the diversion and abuse of legitimately manufactured controlled substances;
- encouraging more states to take action against practitioner and pharmacy diversion;
- demonstrating the need for and continuation of DIU's;
- supporting possible FDA actions regarding the indications and use of controlled substances;
- obtaining additional information which may be used in establishing or decreasing quotas and/or restricting imports of controlled substances.

Although thus far I have directed all my comments toward enforcement approaches to minimize retail-level diversion, a major thrust of our efforts are directed at non-enforcement initiatives. For example, DEA participates in four informal "working committees" which are designed to improve communication with health care professionals and the related industry.

PHARMACY THEFT PREVENTION

The Pharmacy Theft Prevention (PTP) project is a nonenforcement directed endeavor with proven results. Over the past two years, programs have been established in 18 cities. PTP is an approach wherein pharmacists, police, government and media work together in a joint community action effort directed at reducing pharmacy thefts. In this area, DEA's job is basic and inexpensive—we are the catalyst that gets the community going. Statistics show that since the initiation of the program, pharmacy thefts increased nationwide, while thefts in PTP cities declined.

In addition to the above noted programs, DEA is developing a legislative proposal that will allow us to pursue new avenues. We are currently in the process of looking toward revisions of the Controlled Substances Act in order to enhance DEA's ability to combat retail diversion.

* * * * *

I have discussed only several of our key program elements: those which have an impact on heroin availability and those which effect the control of licit drugs. The other program elements are no less important. Rather than elaborate extensively on each of these operations, I have attached an appendix to my formal statement which details some of DEA's program goals and accomplishments.

For all our accomplishments, we still have tasks of considerable magnitude facing us. The potential of Southwest Asia to flood this country with high-quality heroin is very real. I believe that the five point program outlined earlier will represent a strong U.S. Government response.

Our Federal interagency cooperation is at a high level, and as a result, I believe we will see strong government programs in force. There is also an important role for the Congress as well.

PENALTIES

I think the penalty structure needs careful examination with an eye toward revision. The vast majority of illicit drug money comes from marijuana and cocaine. Yet, what penalties do marijuana traffickers face if convicted? At present, the maximum is five years, but the average sentence is three years. And over half the convicted marijuana traffickers do not go to prison at all. The Subcommittee on Criminal Justice has recommended doubling the penalty for large-scale marijuana traffickers, those who are moving 1,000 pounds or more. I strongly endorse that proposal.

BAIL

Another aspect of the problem we face for which there is legislative remedy is bail. I again recommend to the Congress that a procedure be implemented whereby a judge or magistrate would preside over a hearing in which the government would be afforded the opportunity to represent that the defendant was a threat to the community, or was likely to jeopardize a witness or evidence, or was likely to flee the jurisdiction of the court. With a procedure of this type in force, I believe that we would see a marked decline in the excessive number of fugitives we now carry on the books.

The present bail system is not a deterrent. Bail is merely another business expense—and a ticket to freedom. We recently apprehended a DEA fugitive, Jimmy Chagra. At the time he fled the jurisdiction of the court, he had been convicted of conducting a continuing criminal enterprise and numerous drug trafficking violations. Although his bail had been set at \$400,000—he took off. At the time of his re-arrest, Chagra had \$186,000 in cash in his car.

Mr. Chairman, I realize that there is much to be done. We, in DEA, have a responsibility to minimize the impact of the Southwest Asian heroin problem. With respect to marijuana and cocaine, without control at the source, it is as though we are working with one hand tied behind our back. Nonetheless we will continue to direct our efforts at Class I & II violators. We need the support of the Congress and are available to assist you in whatever fashion may be required. Thank you for your interest and support of our mission.

APPENDIX

DOMESTIC ENFORCEMENT PROGRAM

In order to reduce the domestic supply of illicit drugs of abuse to a level with which our society and institutions can reasonably cope, this program encompasses: investigation and preparation for prosecution of major violators of controlled substances laws; cooperation with other Federal law enforcement agencies to fully immobilize drug traffickers through the prosecution of Federal drug offenses; and utilization of those State and local cooperative investigations which surface trafficking situations of interstate scope.

Anticipated accomplishments in fiscal year 1981:

Maintain recruitment and utilization of knowledgeable informants and the use of innovative undercover approaches.

Continue development of conspiracy cases and immobilization of major traffickers insulated from routine trafficking operations.

Continue the selective use of Mobile Task Forces combining the knowledge of DEA and other law enforcement organizations.

Continue to provide other Federal agencies with information on non-drug violators of Federal statutes to facilitate prosecution and immobilization of major drug traffickers less vulnerable to prosecution under drug statutes.

Enforce effectively and efficiently the Controlled Substances Act and the Controlled Substances Import and Export Act.

Direct enforcement efforts primarily against large volume interstate drug traffickers.

Expand the use of financial investigative techniques to a broader spectrum of DEA investigations.

Maintain balanced pressure to immobilize clandestine laboratories.

Maintain a viable telecommunications capability by expanding the secure teletypewriter system and replacing obsolete equipment.

Improve and redesign the Narcotics and Dangerous Drugs Information System (NADDIS) to provide varied inquiry capability, quicker response time, and enlarge data storage capability.

Program outputs include the following :

DEA initiated arrests :

1979 actual.....	5, 306
1980 estimated.....	5, 300
1981 estimated.....	5, 350

Other Federal referral arrests :

1979 actual.....	864
1980 estimated.....	900
1981 estimated.....	900

TASK FORCE PROGRAM

The Task Forces program is operated under DEA direction to stimulate and provide support to State and local governments in investigations and prosecutions of drug violator cases.

On-the-job training in proven enforcement techniques is provided to State and local officers, and the exchange of drug intelligence between Federal, State, and local enforcement agencies is promoted.

Anticipated Accomplishments in fiscal year 1981 :

Develop in each task force jurisdiction an effective cadre of State and local officers thoroughly trained and experienced in proven drug enforcement techniques.

Focus the task force investigative efforts on all levels of violators of the priority drugs of abuse.

Increase the number of State and local officers with on-the-job training through rotation of personnel assigned to task forces.

Provide actionable intelligence to task force participants.

Develop a structured intelligence exchange mechanism with minimum DEA participation that will be (1) implemented in task force cities once basic task force objectives in the area are accomplished, and (2) established in selected jurisdictions where DEA resources preclude establishment of a State and local task force.

Encourage and motivate State and local agencies to plan, program, and budget for greater proportion of support cost for task forces.

Program outputs include the following :

State and local initiated arrests :

1979 actual.....	1, 592
1980 estimated.....	1, 850
1981 estimated.....	1, 600

Federal initiated arrests :

1979 actual.....	2, 560
1980 estimated.....	2, 400
1981 estimated.....	2, 000

FOREIGN COOPERATIVE INVESTIGATIONS PROGRAM

This program is responsible for : efforts to reduce illicit opium production and the supply of heroin ; efforts to curtail the supply of illicitly produced dangerous drugs, cocaine, hashish, and marihuana ; monitoring the diversion of controlled substances legally produced in foreign countries ; the collection and dissemination of tactical/operational and strategic intelligence ; and advising and assisting

foreign governments on the creation or improvement of their drug enforcement efforts.

Anticipated accomplishments in fiscal year 1981 :

Encourage, advise, and assist host countries in the development and implementation of effective measures to control licit drug crops, disrupt illicit cultivation and conversion, and interdict in-country staging areas and trafficking routes for movement of drugs into the international smuggling channels.

Encourage and assist host countries to establish and support effective drug intelligence agencies and promote intergovernmental enforcement cooperation and intelligence exchanges.

Promote, advise, and assist source countries in the planning and implementation of effective programs for eradication of illicit opium, coca and marihuana crops ; encourage vigorous control of licit cultivation.

Cooperate with foreign governments in joint prosecution of major violators of mutual concern.

Maintain balanced investigative pressure to contain the influx of Mexican heroin.

Direct within the framework of drug priorities increased effort against major suppliers of Southeast Asian heroin now appearing in the retail market and potential increased supplies of Southwest Asian heroin.

Encourage development of essential chemicals program to identify laboratory operations and restrict trafficking in essential chemicals destined for illicit use.

Support host country institution building process through DEA training of cadres for establishment and operation of cooperative and effective drug enforcement agencies.

Promote the adoption of crop substitution and alternate income producing programs.

Increase joint investigation and prosecution of international traffickers.

Increase efforts to collect money-flow documentation to support joint prosecutive efforts.

Interface South American operational efforts with domestic DEA operations and ongoing U.S. Coast Guard and U.S. Customs Service efforts directed towards drug interdiction at sea.

Program outputs include the following :

	1979 actual	1980 estimate	1981 estimate
Foreign cooperative arrests.....	1,130	1,100	1,100
Trafficking networks developed.....	28	32	32
Trafficker profiles completed.....	152	265	300
Enforcement targets identified.....	1,627	2,000	3,000
Trainee-days.....	13,667	14,000	14,000

COMPLIANCE AND REGULATION PROGRAM

This program involves the regulation of the legal trade in narcotics and dangerous drugs. By authority of the Controlled Substances Act this activity includes the scheduling and classifying of controlled drugs ; establishing import, export, and manufacturing quotas for controlled drugs ; registering manufacturers, handlers, and dispensers of controlled drugs ; and investigating and determining points of diversion into the illicit market.

Anticipated accomplishments in fiscal year 1981 :

Properly schedule all substances with abuse potential, establish annual production quotas for Schedule I and II substances, and provide required statistical data to the United Nations. Ensure that every registrant adheres to the Controlled Substances Act (CSA) and its implementing regulations through :

Annual registration of all legitimate handlers of controlled substances.

Annual investigations of bulk manufacturers of Schedule I and II controlled substances.

Cyclic investigations once every three years of all other distributors of controlled substances listed in Schedules I and V, and manufacturers of controlled substances listed in Schedules II and V.

Complaint investigations targeted against registrants whose activities

indicate actual or suspected diversion.

Pre-registrant investigations of all new manufacturers, distributors, importers, and exporters of controlled substances.

Development of a closed system of drug destruction.

Assist states and industries in their regulatory and compliance efforts and promote the Pharmacy Theft Prevention program and State mini-DAWN systems.

Identify and evaluate the scope and magnitude of drug abuse in the United States.

Maintain information systems that monitor the manufacture, distribution, and inventory levels of controlled substances.

Maintain liaison with registrant groups through active meetings and exhibits program.

Program outputs include the following:

	1979 actual	1980 estimate	1981 estimate
Investigation:			
Regulatory.....	1,120	1,120	1,370
Complaint.....	300	300	150
Preregistrant (non-practitioner).....	1,300	1,320	1,350

DIVERSION INVESTIGATIVE UNIT (DIU) PROGRAM

The purpose of the Diversion Investigation Unit (DIU) program is to coordinate a national program to reduce diversion of controlled substances through the provision of investigative and administrative support to the operating units; conduct liaison activities before, during, and after installation of each DIU to enhance its probability of success; and conduct negotiations within the State milieu leading to the installation of these units.

Anticipated accomplishments in fiscal year 1981:

Establish new DIU's in three states.

Maintain the level of activity in existing units through coordinated national program.

Program outputs from July 1978 through June 1979:

Arrests:

Registrant Related.....	247
Nonregistrant Related.....	160
Total	407

Amount of legitimate drugs removed from traffic as reported by DIU states was 736,309 dosage units of controlled substances.

INTELLIGENCE PROGRAM

The purpose of the Intelligence program is to provide a variety of criminal intelligence support to the narcotics enforcement community. This includes the collection, analysis, production, and dissemination of intelligence data; and the development of the PATHFINDER and El Paso Intelligence Center (EPIC) capabilities.

The underlying rationale of the Intelligence program is to provide support that will promote the most effective use of Federal drug control resources.

Anticipated accomplishments in fiscal year 1981:

Support DEA, other Federal, State and local drug investigative agencies with tactical and operational intelligence designed to immobilize major drug trafficking networks and subjects through conspiracy, Racketeer Influenced Corrupt Organization (RICO) and other applicable statutes.

Collect, analyze, and interpret all source intelligence concerning organized crime's involvement in narcotics trafficking.

Continue the El Paso Intelligence Center (EPIC) as a vehicle for exchange of drug intelligence with other Federal, State, and local enforcement agencies.

Identify major PCP laboratory operators and traffickers.

Disseminate intelligence on the magnitude and direction of the drug threat, and identify major changes in world-wide trafficking patterns.

Continue to conduct Special Field Intelligence Programs (SFIP).

Continue efforts to fully use the Drug Abuse Warning Network (DAWN). Analysis of DAWN statistics provides trend information on abuse levels and availability in various areas of the United States. Continue analysis on other information systems such as the System to Retrieve Information from Drug Evidence (STRIDE) and the Offender Based Transaction System.

Collect, collate, and evaluate statistical information on DEA operations to assess the drug problem, DEA's impact on it, and trafficking patterns and enforcement activities internationally and domestically.

Continue to expand DEA's automated intelligence capabilities via Pathfinder.

Program outputs include the following:

	1979 actual	1980 estimate	1981 estimate
Trafficking networks developed.....	200	185	160
Trafficker profiles completed.....	2,285	2,305	2,350
Enforcement targets identified.....	23,641	27,187	33,000
El Paso Intelligence Center (EPIC) watch transactions.....	120,000	140,000	160,000

TRAINING PROGRAM

The Training program provides entry level training for special agents, compliance investigators, and intelligence analysts; in-service videotape and sound/slide training programs for use throughout DEA; supervisory and mid-level management training programs for appropriate personnel of all disciplines within the agency; and a variety of advanced and special skills programs such as conspiracy investigations, financial investigations and intelligence collection to improve and update capabilities of the work force.

Anticipated accomplishments in fiscal year 1981:

Continue to provide necessary entry level training for DEA personnel.

Provide in-service videotape and sound/slide programs for use by all disciplines within DEA.

Continue to provide necessary supervisory and mid-level management, and executive training to enhance management skills.

Continue to provide advanced investigative and specialized skills to promote effective and efficient drug law enforcement.

Program outputs include the following:

Trainee days:

1979 actual.....	18,258
1980 estimated.....	18,000
1981 estimated.....	18,000

DRUG LAW ENFORCEMENT TRAINING PROGRAM

The purpose of the Drug Law Enforcement Training program is to expand DEA's enforcement and suppression efforts by increasing the cooperation between law enforcement agencies at all levels of government in the United States and convey changes in national priorities and strategies to all levels of drug law enforcement effort; develop required training programs and determine resource requirements to provide increased skills to Federal, State, and local police agencies; and utilize all available resources where appropriate to gain the benefits from greater expertise and prevent duplication of effort.

Anticipated accomplishments in fiscal year 1981:

Provide training in basic drug law investigative techniques and methodologies plus advanced and specialized skills to State, municipal, military, and other Federal police officers and chemists.

Provide training in management, leadership, and training of drug law investigative units for mid-level management to State, municipal, military, and other Federal police professionals.

Provide information, publications, films, other materials, and displays on controlled substances, drug abuse, and its problems to the public, community leaders, criminal justice agencies and associations, Controlled Substances Act registrants, and educational and health professions.

Program outputs include the following :

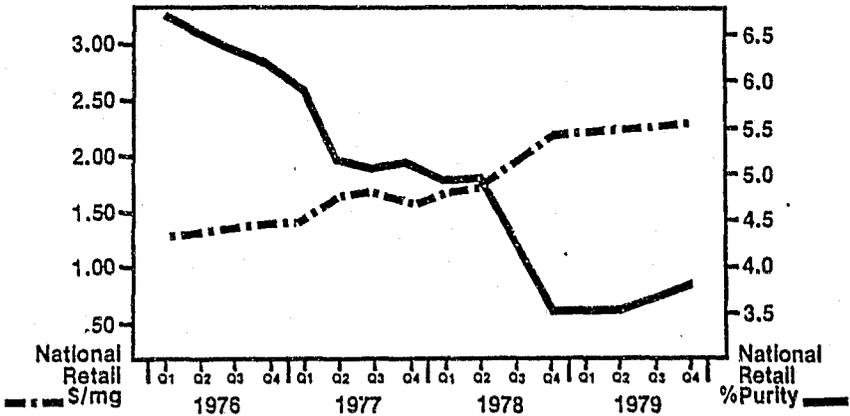
	Number of Students		
	1979 actual	1980 estimate	1981 estimate
Drug Enforcement Officers Academy (8 weeks).....	43	50	50
Law Enforcement Training School (2 weeks).....	3,172	3,000	3,000
Forensic chemist seminar (1 week).....	62	70	70
Diverson investigations (1 week).....	21	60	60
Conspiracy Investigations (3 days).....	434	500	500
U.S. Army C.I.D. (5 days).....	144	150	150
Other training seminars (1-5 days).....	2,702	3,000	3,000

Mr. BENSINGER. I want to thank you and the staff and members for the assistance you provided us in advance of this testimony ; it has been helpful to us to anticipate the areas you are interested in.

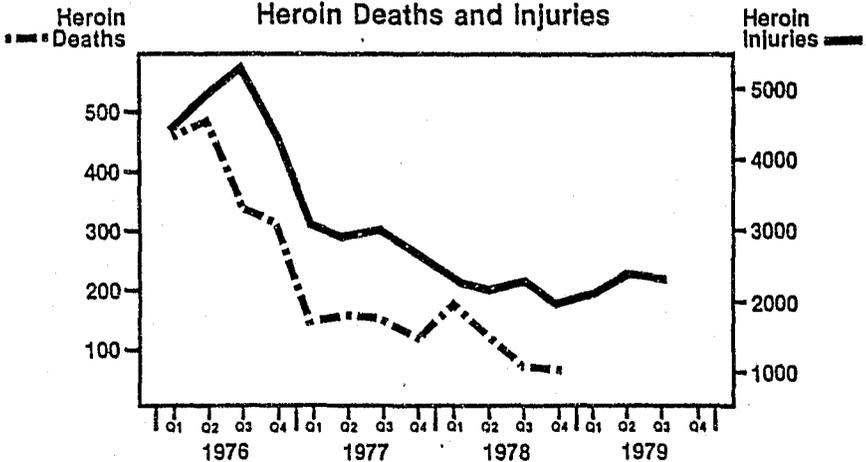
We have, as the lead agency in drug investigation, noted a continuing reduction in the availability or heroin in the United States. The price-purity chart on my left reflects a decrease in injuries and over-

Heroin Availability Indicators

Retail Heroin Purity and Price



Heroin Deaths and Injuries



dose deaths over the last 4 years of considerable significance. The overdose deaths decreased from 150 a month in this country to 35 or less a month at the present time.

The injuries decreased from 1,500 a month to approximately 700.

The purity decreased from 6.6 percent to 3.5 percent, and the sum is now showing a slight increase; and the most recent quarter indicates a 3.8 percent of heroin purity.

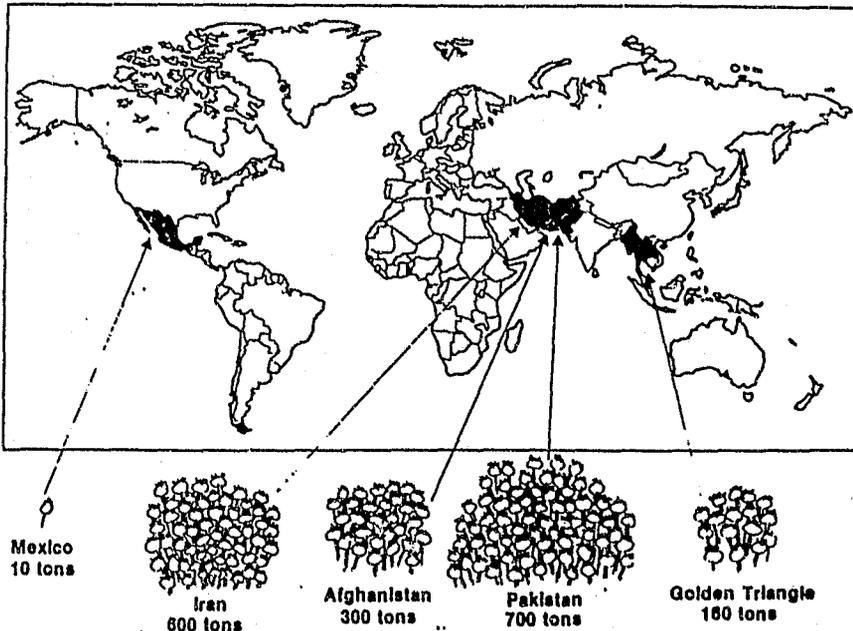
We do see changes in these sources of opium which is required to produce heroin. The chart here reflects principal opium-producing countries some five years ago, when Mexico was producing within its boundaries by illegal traffic some 70 tons; Afghanistan, 150; Pakistan, 200; and the Golden Triangle, 450 tons of raw opium.

In the Golden Triangle, much of that was consumed in Thailand, Burma, Laos, and Southeast Asia. Some of it was shipped to the United States and Western Europe. And in Afghanistan, Pakistan and Iran at that time, most of the opium was consumed by the addict populations of those countries.

Mexico—the 70 tons converted into somewhere between 5 to 6 tons of heroin that came into the United States in 1975-76—that was the principal source country; now the Government of Mexico has done an outstanding job of decreasing heroin availability within their borders and into our borders.

They embarked upon a program to storm the poppies and the poppy fields before the opium gum could be collected and heroin conversion could take place.

(Estimated)
1979 Illicit Opium Production



Recently—in the most recent analysis, 1979—we have seen the results of the Mexicans' eradication program, so that perhaps only 10 tons of illegal opium were produced in that entire country, and those are in small fields and canyons, at times masked with—camouflaged—with other crops. A tremendous change.

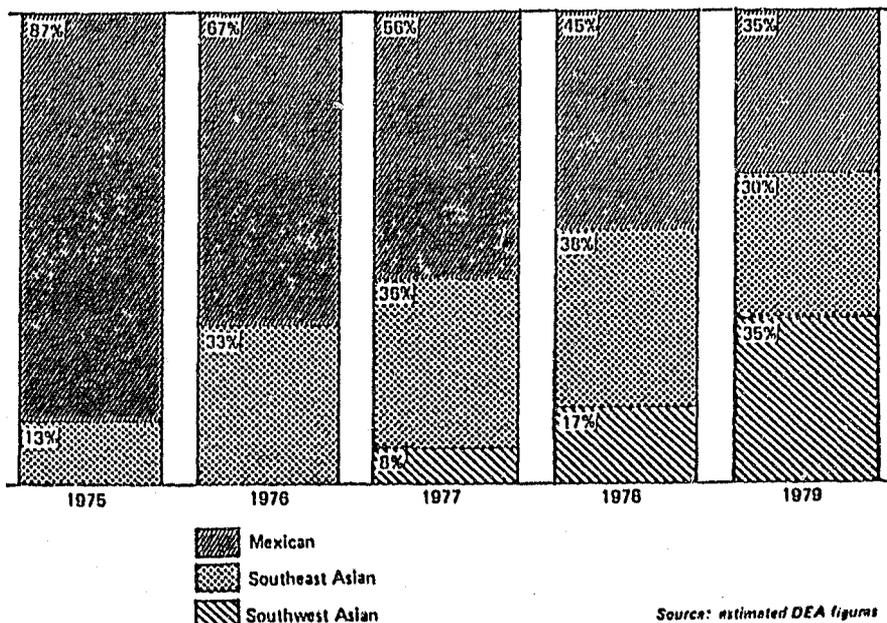
The Mexicans' eradication program has been, more than any other single factor, the reason we have fewer people dying in the United States from heroin.

We have had good investigative efforts by our agents and State and local law enforcement, by Customs, and other Federal and State investigative agents with interdiction responsibilities; but, Mexico is stopping the drugs at the source and that is the key.

In Iran, Afghanistan, Pakistan, however, we have seen a bumper crop last year. The instability of those countries has added increased fuel to this fire, and we are very concerned that the very large scale production of opium in these countries will not only inundate Europe, but the overflow will come into the United States.

Perhaps 2 years ago, no more than 8 percent of the heroin was from the Southwest Asian countries identified here. Last year, 17 percent as estimated by the National Narcotics Intelligence Consumers Committee; this year, perhaps 35 percent will be from this part of the world.

Estimated Sources of Supply of Heroin to the United States 1975-1979



Source: estimated DEA figures

We have lost two listening posts in that part of the world, and liaison officers in Teheran—Jack Greene, was stationed in Iran for some time—our agent that was in charge of that office, along with other personnel from DEA, have had to leave that country as the liaison point for narcotic purposes. Our office in Afghanistan, also, was closed in December.

So we are not in direct liaison with the governments of either country, nor collecting firsthand intelligence, nor exchanging the type of training programs that were possible heretofore.

In Europe a year ago, most of the heroin traffic was from Southeast Asia, 75 to 80 percent of it was Southeast Asian. The traffic was by ethnic Chinese and other organizations. In the last year, the Southwest Asian heroin has dominated the market in Western Europe. Over 85 percent of the heroin that is sold in Western Germany and other European countries, Italy, the United Kingdom, and France, derives from the Southwest Asian raw opium.

The overdose deaths in Western Germany are twice that of the United States, and they have 25 percent of our population.

The involvement of some Iranians has been noted. They have entered the United States and ports of entry in Europe with both raw opium and refined heroin. We have embarked, with local law enforcement, to monitor this situation, particularly in New York where we have seen a number of retail purchases of heroin reflect not Mexican brown or Southeast Asian, but Southwest Asian signatures.

The U.S. Government has taken a number of initiatives and Attorney General Civiletti, I think, should be commended for his personal involvement in seeing that we have a Government-wide program. In conjunction with President Carter in February of this year, he held a national briefing for State and local law enforcement officials and each State attorney general telling them: "We are not flooded with Southwest Asian heroin; we may never be; but we do have a serious threat; and here's what the administration is going to do."

We are going to have Cabinet-level attention to the problem. We are utilizing the State Department's ability to participate in international forums and to increase heroin as a priority on our missions to Germany and Turkey and Pakistan. The United States Customs Service and DEA are increasing their efforts at ports of entry. We have targeted six cities where we believe the Southwest Asian heroin will first arrive—New York, Philadelphia, Newark, Boston, Baltimore, and Washington, D.C.—and we are also monitoring an additional number of cities in the southern, central, southwestern and far western parts of the United States.

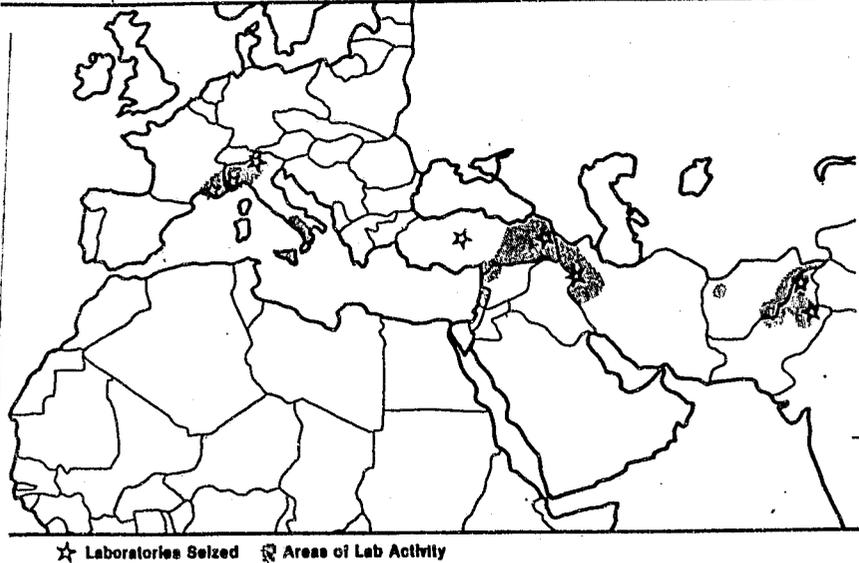
We are increasing our representation in Europe with two new positions in Frankfurt, Germany, and one in Turkey; and we are trying to increase the interdiction capacity of our agency, since we are not able to work at the principal source location.

Mr. DRINAN. Would you point out the seizure locations on the map? I don't see those.

Mr. BENSINGER. I'd be happy to.

We may have a chart on the seizures; if we don't, I think my memory will serve:

Heroin Laboratory Activity 1979-1980



Using this chart, the last seizures that have been made of heroin actually converted in Europe would include two principal laboratories in Italy—Milan, and one right by the French border; seizures in Turkey which have been identified in the northeast part of the country; in Pakistan, up at the northwest frontier; and in Iran where there has been a seizure of a heroin laboratory. We have intelligence reports of heroin labs in the Afghanistan-Pakistan border and in the northwest frontier provinces, in the western-northwestern part of Iran, and the northeastern part of Turkey.

We have intelligence that indicates there is the likelihood of a heroin lab in Sicily. This information comes from precursors as well as raw materials for heroin laboratories having been identified in southern France.

Today there was a seizure in Milan of 87 pounds of Southwest Asian heroin destined for the New York area and a number of arrests were made in Italy and in New York within the last 24 hours.

Southwest Asian Heroin Smuggling Routes and U.S. Seizure Locations



So these [indicating on map 5] are lab locations. And the seizures that have been made, in addition to the laboratories, would have been in perhaps a dozen cities in Germany; a number of seizures in Paris and in London.

Mr. DRINAN. What agencies there would have acted?

Mr. BENSINGER. In West Germany the BKA is the principal criminal agency; in France, it would be the Police Judiciare; in England, both Her Majesty's Customs and the Home Office would be making the seizures.

In the United States, we have had seizures of Southwestern Asian heroin in Boston, in New York, in Dallas, and in Los Angeles; we've had samples and seizures. A significant one was in Washington, D.C.—7 pounds of 80 to 85 percent pure heroin from a large trafficking organization in Washington.

So, we are working with our associates along the trafficking route. We are not able to work effectively in the source countries.

We do have a special action program with moneys set aside for the purchase of evidence and information, utilization of the language capabilities of agents trained in Urdu and Farsi and other languages of Middle Eastern trafficking organizations; and increases in intelligence both strategic and operational, which can impact on this problem.

The other major drugs of abuse I'd like to comment on, before we discuss the retail diversion problem, would be the cocaine and marihuana situation.

We've seen a good reduction in heroin availability, clear, uncontested, demonstrated and tracked by price, by purity, by fatalities, and by State and local law enforcement.

We don't have the same report to give you on marihuana and on cocaine.

Some 25 metric tons of cocaine have been coming into the United States; between 10,000 to 16,000 tons of marihuana.

Over half of the cocaine is coming in a final form from Colombia. Colombia is a country which has some raw coca leaf production, but most of the cocaine coming from Colombia is derived from leaves produced in Bolivia and Peru, and in some instances Ecuador.

And in some cases the raw leaves are shipped to Colombia, where it is transformed in clandestine laboratories into cocaine hydrochloride. It comes into the United States by air, generally; it can come by sea. It can come, in many cases, by vehicle through shipments to Mexico or the Caribbean or other locations, and then be transhipped into the United States.

Cocaine traffic has continued, and countries in Latin America are producing—in the case of Bolivia and Peru—about 10 times as much leaf, raw leaf production, as needed for licit or native population chewing; and that represents, I guess, a continuing problem for us until those countries have a method of crop substitution and a system of crop control to balance the raw material production with the medical and legal needs and requirements.

The diversion problem in the United States is a problem which at the Federal level we focus on with the manufacturers and wholesalers. But retail diversion does exist. And by "diversion" I mean drugs that are made available to users and abusers from pharmacies and doctors, rather than from medical companies that are shipping to retail outlets.

The Drug Enforcement Administration has approximately 220 compliance investigators, 226 is our ceiling; these are investigators working to audit the manufacturers and wholesale distributors of some 20 billion dosage units of controlled substances, involving 20,000 products that are distributed through 600,000 points.

But at the retail level, it is the State and local enforcement agencies that have to make certain that the drugs are made available to patients and those who are sick and in need of treatment, and who get a legitimate medical prescription, but that such medications are not available to others. Perhaps a billion dollars of diversion exists.

Diversion methods include indiscriminate prescriptions, where doctors just write out "scripts" to make money, rather than to treat a patient. I wouldn't indict the medical profession, but there are some doctors that do that.

There have been forged "scripts," where individuals steal a pad, or forge a pad with the doctor's name.

There have been illegal sales. There have been some people who feign medical needs, line up so-called credits, just to get drugs for 25 cents and sell them for 45 cents on the street. And there is pharmacy theft as well.

We have embarked upon a number of new programs in the last several years. One of them started before my time. It was the Diversion Investigation Unit, the so-called DIU, which provides the expertise of a DEA agent and some initial seed funding; and we have some 19 States and the District of Columbia now in statewide diversion investigation units.

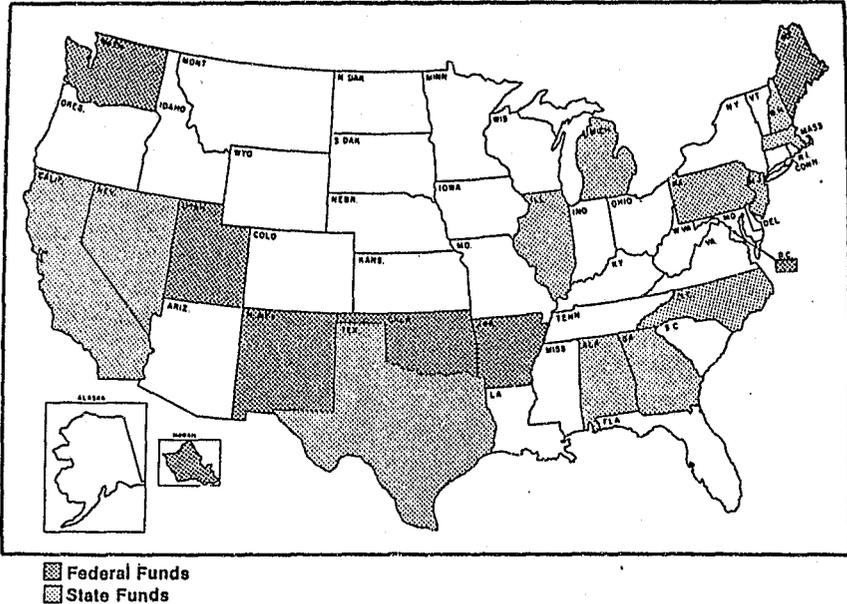
They have made over 2,600 arrests and seized some 10.8 million dosage units.

Another program which is new this year is an operation called Operation Script, which has 24 target areas in cities and major metropolitan locations. Operation Script is designed to identify targets who have demonstrated repetitive negligence, criminal activity, and failure to follow regulations at the State and Federal level. We will be taking a number of important cases. It will demonstrate Federal concern, increase public and professional awareness, hopefully encourage the individual States to take more action, and to lift up a rock, under which I think there's a pretty serious lizard located.

It's the tip of an iceberg, really, in this diversion area.

Mr. DRINAN. Could you explain the chart here how some have State funds and some have Federal funds? How is that arrived at?

DIVERSION INVESTIGATION UNITS



Mr. BENSINGER. With our diversion investigation unit, Mr. Chairman, we take the position that we have to provide initial expertise and funding to get the State off the ground.

But after a period of no more than 3 years the States pick up the responsibility themselves.

And that has been the case in 14 States, which reflects, I think, that the program works; that the States themselves are willing to pay the price for continuation of the program; and the Federal Government in this program seems to be accomplishing a major contribution in setting the standards, developing the training, setting a tone, and then being able to move out and work in additional States.

We hope to have about 40 diversion investigation units developed within the next 4 to 5 years, depending on the funding levels that the Congress provides.

Mr. DRINAN. I assume you are working on something for New York State?

Mr. BENSINGER. Yes, sir. We have an active program for New York State. Our discussions with the New York State Superintendent of the State Police and with another unit involved in New York State, have continued. It's really up to the Governor of the State to identify who he thinks should be the lead unit for the DIU program.

We don't put ourselves out into the position of being judge of how a State should proceed. In some cases that takes some time to work out at the State level. But we are certainly looking forward to their joining in this effort.

Mr. DRINAN. I gather from the chart there's no problem at all in Ohio?

Mr. BENSINGER. I have a question whether that would be an accurate representation. But I do have the answer in the room in the form of Al Russell.

Al Russell, who wisely sat in the second row, do you want to tell us what's the story in Ohio?

Mr. DRINAN. I think Congressman Kindness wants to hear.

Mr. BENSINGER. What is the story in Ohio, Al?

Mr. RUSSELL. We are talking to the State agency and have provided them with information on the retail division problem.

Mr. DRINAN. Thank you very much.

Proceed, Mr. Bensinger.

Mr. BENSINGER. Very good.

There's one other nonenforcement approach which is significant, and it doesn't cost a lot of money; but it does cost the commitment of the officials concerned. And that is the pharmacy theft program.

We have 18 pharmacy theft programs that have been set up with local representatives working with pharmaceutical associations, the mayor, the police in that particular city or jurisdiction, to develop an increased awareness program, to give advice, "do's and don'ts."

Now, where we have developed pharmacy theft programs we have seen the pharmacy thefts go down, although pharmacy thefts nationally have gone up 90 percent. I would not recommend that the Drug Enforcement Administration take on the responsibility of responding to each and every pharmacy theft.

The DEA doesn't today have the sense of accomplishment to be able to bring the resources and immediate cure to this problem.

The Los Angeles Police Department studied this problem and discovered the following correlations between response time and apprehension:

If a law enforcement unit could respond within 30 seconds of pharmacy theft, the apprehension rate was 100 percent; within 1 minute, 90 percent; within 2 minutes it was 75 percent; within 4 minutes, 50 percent; and within 10 minutes, 20 percent.

So the real key to having a successful apprehension from a pharmacy theft standpoint clearly seems to be local law enforcement,

where they can respond on a precinct basis. The Federal agency may be 10 miles away from the theft at the time.

We feel that the pharmacy theft responsibility appropriately is vested in State law enforcement. We think we can help through our DIU's, through pharmacy theft programs, through training, which we embark upon extensively.

In addition, we think the Controlled Substances Act, which is the framework for our investigative responsibility, may need to get looked at since it's been in effect for over 10 years.

Areas in which we have problems include a continuing increase in the trafficking of marihuana; and we would endorse the Subcommittee on Criminal Justice's proposal that would double the penalties for trafficking in 10,000 pounds of marihuana or more.

Right now the average sentence is approximately 3 years for a marihuana trafficker—who literally is in business to make millions—compared to a heroin trafficker who will get between a 10- and 12-year sentence.

Mr. DRINAN. May I interrupt once again, Mr. Bensinger?

I want to commend you for your leadership and your direction with regard to increasing the penalties for trafficking. And the subcommittee, as you know, has incorporated your suggestion into its draft bill.

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

Bail—a sensitive issue, in which the public, the legal community, the Government, and the courts want to insure that constitutional procedures are followed, protection of the innocent is assured—and I subscribe fully to both principles.

The problem I have and that the agency has is that we have more individuals out on bail than we have agents to investigate. We have some 2,700 fugitives. We have a number of individuals who treat the posting of bail as a parking ticket or a business expense; 71 percent of our class 1 violators and class 2 violators have received bail of \$10,000 or less.

Many of them have fled the jurisdiction of the court, posed a threat to witnesses, and at times have continued trafficking in the narcotics.

There is no easy answer to the problem. But there is a proposal that would grant judges and magistrates the right to have a hearing, and the requirement that we as the Government and the U.S. attorney make a representation to the court when any individual would be a threat to evidence or to a witness or to the community or that he would leave the jurisdiction of the court.

And we would just suggest that this possibility gets full attention.

With respect to other matters, Mr. Chairman, I defer to you and members of the committee, who may have questions. I assure you of our interest in fully upholding the law, the statutory responsibilities which we hold and which I hold personally.

And I want to express our appreciation for the opportunity of sharing with you and appearing before you and this committee.

Mr. DRINAN. Thank you very much, Mr. Bensinger.

I have just one question before I yield to Mr. Kindness: And I am quoting from a GAO study of October last year, 3 or 4 months ago, where it has an overall review of this topic.

The title begins, "Gains made in controlling illegal drugs—" and it says that the United States must take a much tougher, consistent stance to make real gains in reducing the availability of illicit drugs.

Now in my judgment it doesn't really spell out what that tougher stance might be. But it makes this proposal:

It says that the executive and legislative branches must form a partnership to agree upon and confirm a national policy for dealing with drug abuse and afford necessary legislation. A joint commission could be formed to accomplish this and to recommend courses of action to promote vigorous implementation of the agreed policy.

A broad question, as this subcommittee begins its oversight function, I wonder if you have any thought as to where this partnership that they talk about between the executive and legislative branches could be strengthened? Or what additional legislation might be necessary? Or would you have any thoughts on a joint commission as is suggested by the GAO study?

Mr. BENSINGER. That's a broad question, and one that is most welcome and most appreciated. Because oftentimes committees are not always ready to engage in joint determinations of what really needs to be done.

I think whether it's a joint commission or separate legislative and administrative or executive action taken in concert, there are areas of inconsistency in policy; inconsistencies both internationally and domestically.

We can take them separately: If our objective is to reduce the availability of drugs—there's no question of the President's objective and the Department of Justice's—but what is yours and mine?

We look to the drug, marihuana, which is the most widely abused drug used in the United States. In fact, it probably has the most controversial implications in the level of inconsistent policy.

The best way to stop drugs from being imported into the United States is to stop them at the source. And we've seen with respect to Mexican Government's program against crops in that country—it has had unqualified success, both with respect to opium and with respect to marihuana through spraying those fields with paraquat in Mexico. Before spraying perhaps 75 percent of the marihuana coming to the United States was from Mexico, which has been reduced to perhaps less than 20 percent today.

It seems to me that Congress ought to look, or with the executive branch, at the implications of the present restriction in the Foreign Assistance Act on paraquat being sprayed on marihuana.

There have been no cases to my knowledge reported to the Atlanta Center for Disease Control of paraquat poisoning. And the Director of the National Institute of Drug Abuse advised me that if we did an incremental study on health hazards from paraquat sprayed marihuana compared to health hazards for users of marihuana, the in-

cremental increase of health hazard from marihuana sprayed with paraquat might not be significant.

I am not a doctor, and I am not here to advise you to neglect following the law. The Secretary of State should provide funds for paraquat, but the Secretary of HEW finds that maybe there's some potential hazard to users. I think we have to place congressional action—which took place several years ago—in the framework of comparing the relative harm that is caused to any one user and the fact that the United States is prevented from giving the most meaningful assistance to a foreign government like Colombia.

Another area where you have a need for a partnership between our two branches of Government is on bail; and it relates particularly to marihuana and cocaine.

The GAO rightly focuses on both of these areas. And I think the action taken by this subcommittee already with respect to marihuana sentencing is commendable, needed and overdue.

I think another area is to take a long-range approach to our foreign assistance programs in general. President Carter has suggested and directed that the International American Fund and AID programs embark upon narcotic awareness and narcotic provisions within the long-range aid programs.

I would hope that the Congress in the Foreign Affairs and Foreign Relations Committees of both Houses would look favorably on that type initiative and maybe even look toward a longer range commitment to countries that need help, like Peru and Bolivia and Ecuador and Colombia, which are facing a very difficult problem of narcotics in their own countries.

We hope the committee will have an opportunity to visit some of these countries firsthand, enter into a dialog with the heads of state and the leaders in those countries, and view their problems; because when a foreign source country does get the encouragement and has the assistance of the United States as Mexico did, we have seen dramatic results.

I am hopeful that the committee will consider a visit to Colombia or to engage in dialog with the executive branch agencies dealing with that country to better understand how we could help them.

Mr. DRINAN. I thank you for that answer. I think we should visit those nations and talk to those people.

And then I suggest, Mr. Bensinger, that you should feel free to submit to the subcommittee all of the legislation that you feel is needed.

It seems to me that if the Select Committee on Narcotics is going out of business at the end of this Congress, that this particular subcommittee should be the lead agency in this area. After all, the DEA is in the Justice Department, the Judiciary Committee of the House has oversight on Justice Department; and we should take the recommendations that you give us, analyze them, have hearings on them; and then make recommendations to other committees to take appropriate action. The committee chaired by Henry Waxman of California, will retain jurisdiction over the scientific aspects of the controlled substances law and their definition; but it is agreed that the entire law enforcement area of the DEA should be reviewed by this committee and done so very systematically.

So I contemplate that this subcommittee would be the lead agency in the Congress, just as you people are the lead agency in the executive branch.

I am happy to yield to my colleague from Ohio, Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

Thank you, Mr. Bensinger. I apologize for being late, I was held up on another committee.

I would like to ask a couple of questions concerning the changes from current fiscal year to fiscal year 1981 in terms of changes in programs.

As I understand it, there is about \$4 million associated with expansion of the number of domestic agents, 30 agents?

Mr. BENSINGER. Thirty agents and eight clerical support personnel; that's correct.

Mr. KINDNESS. I was concerned about the cost of eight positions and if there was something about that figure that required some further explanation?

Mr. BENSINGER. The figure for increase in investigative operations, domestic investigative operations, is about \$1,800,000. This would reflect the increase of 30 special agents; and the agent's salary will average about \$25,000-\$28,000. Some have started, they have just recently hired at a slightly lower level.

There will also be the requirement of physical, administrative support for that agent and the clerical personnel required.

The feeling that we have is that our special agent work force, which is our primary corps of our mission—almost 50 percent of all our employees—has got to be strongly maintained.

We've seen a reduction in DEA agent strength over the last several years, going back to 1975, of several hundred agents. We want to maintain a strong investigative capacity.

That program would be closer to \$1,800,000 for those 38 positions.

Mr. KINDNESS. Do you have a figure for vacancies you could cite for agent's positions?

Mr. BENSINGER. We have a ceiling for agent positions, 1,950, approximately and 1,922 on board. A week from Friday, we will be graduating 38 special agents.

We will have some attrition, and our budget and management personnel will review this very carefully; and we in turn will present it to the Justice Department and OMB.

So, we do have an anticipation of when there will be vacancies and we can program new agent schools to fill them.

We will also change our deployment of personnel when the need arises. We did so when we saw an increased threat in the Southeastern part of the United States as a result of air traffic from Latin America into States on the Atlantic frontier—or 4 or 5 years ago one of my predecessors saw the dramatic increase in Mexican heroin and marijuana and agent resources were also redeployed.

We do have permanent change of station programs, and we will respond both nationally and internationally when conditions so require.

We have doubled the number of agents in Germany, and doubled the number of agents in Colombia in the last 2 years.

Mr. KINDNESS. Is there a rule of thumb that you would apply to the cost per agent—for example, travel and administrative support—all of that would at least double the salary figure?

Mr. BENSINGER. That's correct.

So that the figure of, say, 30 special agents, a \$50,000 figure per agent would come out at \$1,500,000; this is operating cost, the cost of the work that would be produced by that agent, investigative reports, responses, telephones—the entire overhead.

So that figure you suggest is not out of line, it could be somewhat higher.

Mr. KINDNESS. Presumably it would be higher, I would think.

Would you describe for us what your situation is with respect to agent's time in court?

Mr. BENSINGER. Yes.

Let me give you an assessment as to how I go about being accountable for the work done by the agents.

We have broken up our jurisdictions from a geographical point of view into five regions. But in those regions there are district offices, a district office, for example, in a major metropolitan area—Houston, or El Paso, Milwaukee, Philadelphia, Pittsburgh, Cleveland.

At least once a year I personally, with the Deputy Administrator and the heads of Enforcement and Intelligence, assess every single district office; we look at the number of man-hours, man-years spent, on each type of drug, each level of investigation. Are we impacting on the class 1 traffic, class 2 traffic?

How much time is spent in liaison training? How much percentage of our manpower is spent in administrative work compared to investigative work?

We break this down by office. We can do that in turn by agent. We select on a regular weekly basis the model investigative time that is spent by drug and by classification of drug.

I am not here to tell you I want to have our agents judged just on the number of arrests, rather it is the kinds of cases and who gets arrested.

Two individuals in New York recently were arrested and Joe and Rosario Gambino were just arrested within the last several hours; they will be arraigned for participation in an importation ring involving up to 40 kilos of Southwest Asian heroin.

Those numbers themselves, four people in this particular apprehension, in and of themselves may not appear to weigh any more significantly than any four people that may be arrested in Des Moines or in another location in the United States.

But the classification of that case, the potential of supplying, regularly, multikilo quantities of heroin, makes that investigation more valuable, that we should spend more manpower, more time, in developing that case.

I might add the Italian national police did an outstanding job in working with us both in Milan, Rome, and in New York to assist in that investigation.

So it really is the responsibility of each agent who works for us to meet our overall policy guidelines. And an arrest, whether it's for marihuana, for cocaine, for PCP, for dangerous drugs, barbiturates, is judged on the level and what impact it has on the traffic.

Mr. KINDNESS. Let me clarify what I am getting at.

If there is a large percent of agent's time being spent in court, and if there is an area of improvement in a court procedure that somehow hasn't been taken into account by the Judiciary Committee, I would like to identify it.

Is it a problem concerning the percentage of time of an agent's that is used up by—

Mr. BENSINGER. In actual court appearances?

The Assistant Administrator for Enforcement, Mr. Hambrick is here. He could address that.

I would say it would be less than 10 percent of their overall time. And I would not represent to you and the committee my opinion that time in court represents—for the investigators—a real demand.

One of the problems we do have, though, is that that same investigator's or someone else's time is taken up after an arrest, when the individual arrested is out on bail and continuing the offense or fleeing the jurisdiction of the court. We've got to arrest that same person again and again.

So our problem, if you want to comment on the criminal justice system, is more in doing the work several times over, rather than having agents testify in court.

We only have 147 chemists in our whole agency. They must represent to the court that the evidence seized did in fact contain heroin, cocaine, or an illegal substance. Generally, they are called upon by the assistant U.S. attorney to represent in court that this package was analyzed by me, the chemist, on such-and-such a day, and here is my official scientific finding.

Generally, chemists' testimony not only is very clear and accurate, but very helpful to the prosecution. And it takes a day for our chemist in San Diego to travel to Tucson or to Los Angeles and wait around to get introduced in a trial, or have that postponed; he may or she may—we have a number of female chemists—spend 2 or 3 days making that representation on the stand which may take a total of 30 minutes.

My suggestion would be to use affidavits, and we are working with the Criminal Division on this, but the defense attorney sometimes would object to accepting an affidavit on the actual scientific findings of our chemist; there you would find a savings of time, manpower and money.

Regarding the agent, I think, it is important for the judge and jury to hear firsthand what that criminal investigator saw and did. And I don't think I would recommend to you that we enter into an affidavit-type of representation.

I think, for the chemist, yes. But I'll give your question further thought; and, if there are areas that we feel the committee could address from the standpoint of court time or court procedures, I'll accept Chairman Drinan's and your invitation to respond with full encouragement.

Mr. KINDNESS. So you are not identifying court time as a problem, other than for the chemists, as you say?

Mr. BENSINGER. No; we feel time is wasted to the extent that we feel at times our appearances at arraignment and in court don't develop the kind of bail the public and people deserve—by having the defendants back out on the street and we have to rearrest them.

Mr. KINDNESS. In your request there is some \$300,000 associated with establishing data transmission capability to South America.

I am wondering if you could describe that?

Mr. BENSINGER. I'd be happy to.

What we have proposed is a \$300,000 program initiative for DATS data systems to be extended overseas. Right now our office in Bogota, Colombia, is a very important office, and for that matter, Rome, Italy is becoming increasingly important. DATS gives access to domestic agents on vehicles, vessels, organizations with an immediate response.

A telex can be sent, you can pick up the phone—neither of which provide the kind of immediate response that is required.

Suppose an official in Bogota, Colombia, comes upon a situation at the airport which may involve someone who could be a narcotics trafficker, or associated with an aircraft which previously had been involved in a large-scale smuggling of cocaine into the United States.

Now, it would be helpful to get immediate data on that plane or person; that would be helpful.

Mr. KINDNESS. Are you encountering any problems, any barriers there in developing transmission capability for that?

Mr. BENSINGER. No; we are not.

We have had this approved by the Department of Justice and OMB; they will provide us with five terminals that would be set up in our overseas offices.

Mr. KINDNESS. I mean according to the other nations?

Mr. BENSINGER. No; we have not.

And we don't do anything in a foreign country in the way of investigative work, personnel, equipment, that is not approved by the host government.

Mr. KINDNESS. The reason I asked is in another committee we are concerned with—

Mr. BENSINGER. High technology—

Mr. KINDNESS [continuing]. The transfer of such matter across boundaries; that is rapidly becoming something of a problem for non-governmental entities.

I wondered if you had encountered that?

Mr. BENSINGER. We have not.

Mr. KINDNESS. Could you tell us about the voice privacy project; describe what that means?

Mr. BENSINGER. I certainly could.

This project in our request is for \$1 million for the development and acquisition of equipment that I think is vitally needed. The equipment would provide communications for our agents in vehicles in an ongoing investigation, between themselves, and to a base station that would not be capable of being intercepted and listened to.

Right now we have had a number of instances where the traffickers themselves were listening in to DEA agents discuss their investigations where traffickers have offered money to sell their service to other traffickers who might want to audit DEA frequencies.

We've had individuals shot at, and individual cases directly impeded as a result of our transmissions being overheard.

I have personally reviewed this program with several other agencies and have monitored the development of the proposed voice privacy program. I discussed it with the Attorney General, the Deputy Attor-

ney General, the White House, the Office of Management and Budget staff and GAO. We think voice privacy is essential, not only for the safety of our agents, the safety of the public, but also the protection of the integrity of the case.

Mr. KINDNESS. I certainly wouldn't question that. I was not aware there had been a system developed that was not subject to being overcome by other electronic means. But there is something?

Mr. BENSINGER. I represent to you and the members of the committee that the program we are proposing is not hypothetical. It's real. We are having field tests done. And it is of a nature that we do not in real time terms think the trafficking organization—as sophisticated as they can be—can hear, translate, and interpret the communications affected.

We have a system—we actually have a daily change of codes in our transmissions. Even if an apparatus were stolen or acquired in a typical shootout, we'd still have the capacity to change that transmission within the next several minutes.

Mr. KINDNESS. Thank you.

Mr. DRINAN. The gentleman from California, Mr. Lungren?

Mr. LUNGREN. Thank you.

Mr. Bensinger, in going through your statement, I take it you don't support the effort to bring within the Federal purview robbery of pharmacies where the intent is to steal narcotics?

I am supportive of that position, but my question is: Are there areas where you believe you need increased legislative response to assist you in your department?

Mr. BENSINGER. Yes.

We have submitted to the Department of Justice and I have discussed with Chairman Drinan some potential revisions to the Controlled Substances Act that would provide us with an opportunity to close some loopholes that presently exist, increasing penalties, providing I think increased opportunities for diversion investigation units that we have done before, particularly in the retail practitioner pharmacy and physician area, to provide greater assistance to States and local law enforcement in that particular area.

From the standpoint of legislative initiative, the initiatives that the committee has already undertaken to increase the marihuana penalties are absolutely on target.

And I don't want to repeat myself on bail and on other issues, such as the paraquat in the Foreign Assistance Act. But the more we can do to stop the drug at the source, the far more economical, effective, and health protective we will be in our own population.

Mr. DRINAN. Would the gentleman yield for a moment?

Mr. LUNGREN. Yes, sir.

Mr. DRINAN. How much would it cost to have the DIU's [sic] expanded so that they are effective in every large metropolitan area? You need not supply this now, but if you could supply it for the record, I think it would be very helpful. Your testimony is that they are very effective, even more effective as I understand it than would be the extension of Federal jurisdiction to the robbery of local pharmacies.

And that information would be very, very helpful to the subcommittee.

I thank the gentleman for yielding.

Mr. BENSINGER. Chairman Drinan, you are absolutely right. I think the pharmacy theft programs we have in 18 cities expanded to a much larger basis would do far more to reduce the number of pharmacy thefts than assigning a jurisdictional responsibility which we really couldn't perform.

And we will provide that additional information.

Mr. DRINAN. You will supply the estimate prior to the time that the full Judiciary Committee passes on the authorization? Then I would make every effort, if it is a reasonable figure, to get it in the program for this year.

Mr. BENSINGER. We will provide to you both an assessment as well as a cost estimate.

Mr. DRINAN. Thank you very much.

Mr. LUNGREN. Sir, you have referred a couple of times to the fact that you are aware of the subcommittee's action increasing the penalty for marihuana trafficking; and I think we have pretty close to unanimity on that in the subcommittee.

At the same time we also have voted for reduction in penalty for possession of marihuana offenses; and although it apparently would have no actual effect on the prosecutive or investigative forces of DEA or DOJ, do you think there is a potential problem in that it might give a signal that somehow we are approving the use of marihuana?

Mr. BENSINGER. Possibly, although it is still retained as a criminal infraction in the law. As you correctly report that it does not have an impact on investigations, because we are not operating at that level in the first place.

I think it's how it's presented, and how the Congress, the administration, the Surgeon General, particularly, represents marihuana.

I see increasingly clear evidence that it is clearly harmful. There isn't a debate as to whether it is a drug that is good or couldn't or shouldn't be used by the general public and in particular by adolescents.

But I don't see an effort on the part of the administration to make such a representation. I see the contrary. I see the White House developing films for parents only; I see the Director of the National Institute of Drug Abuse talking about the health hazards of marihuana.

I think it's just a question as to the interpretation in the eye of the beholder.

Mr. LUNGREN. Thank you. The concern I have in the area of marihuana is what seems to be its proliferating influence throughout the school systems, as low as grammar schools.

Mr. BENSINGER. I think you are right.

Mr. LUNGREN. And if that drug culture extends to that degree. I think we will see some major problems in the future that may make what problems we have today look small.

One of the things I have particular concern about is the use of PCP. I offered an amendment in the subcommittee which was adopted to upgrade the penalties with respect to PCP; due to the fact that in southern California it's become a major problem.

Some other members had questions as to whether PCP was a problem nationwide, or whether it just happened to be in California—a State which in some cases sets trends for good or for ill.

Could you comment on what the Department sees as the present problem of PCP, the growth of it as a drug, and the potential problem it presents?

Mr. BENSINGER. I think I can, sir.

You are correct in the sense that the western part of the United States has had the majority of the more spectacular feats.

In 1977, there were 67 lab seizures of PCP. In 1978 there were 79. In 1979, after the PCP penalty increase, as well as the lead in the precursors, we saw a 35.4-percent decrease in the number of labs, down to 51.

We see a leveling off nationally of PCP abuse. This is because Congress responded immediately to this threat. It did an outstanding job, talking about "angel dust, angel death," because law enforcement was able to come up to you and say, "We need two things, these precursors are available and we'd like to have them scheduled as analogs; and we'd like to double the penalty for PCP traffickers."

Now, the lab seizures, Mr. Lungren—the PCP are in orange up here [indicating chart]. In San Diego Valley, we had one with 28 pounds of PCP, and 700 pounds of precursor shipped all the way from Rochester, N.Y. Steve Austin, the agent who made that case was given a Distinguished Service Award by DOJ. He was 1 year out of basic agent's school. Other labs: Seattle, Oregon, western Pennsylvania [indicating], Michigan, Fairfax County, Montgomery County [indicating]—heavy PCP—Texas [indicating].

It has varied by region. In the Northeast we've had only 5 labs, Southeast 13, north central 13, south central 8, and the western area 12, but almost all of them in the State of California.

Mr. LUNGREN. It does not appear to be essentially a California problem.

Mr. BENSINGER. It isn't but California has been an area with a great deal of the raw material manufacturing taking place.

Mr. LUNGREN. This may be a very general question. I sit on the Subcommittee on Immigration. Every year, unfortunately, I think I get a little more depressed realizing perhaps we have a problem we really can't deal with—the question of illegal aliens.

I would like to have a general statement from you regarding controlling abuse of drugs. Do you think we are making a dent? Do you think we are really doing something effective overall when you take into consideration the almost overwhelming amount of the problem that you are dealing with here?

You tell us you've managed to do a pretty good job in stopping drugs from coming from Mexico, and all of a sudden it's like something popped up somewhere else—from Southeast Asia; you do a good job there and now instead of oil we get drugs from Iran.

Are we making some progress? Is it significant progress? Or is it just going to continue to be a holding action? What's the status?

Mr. BENSINGER. There can be no question of the progress that has been made in the control of the principal drugs of abuse identified by this and previous administrations.

There is a decrease in availability, that is clear and unquestioned, and it has continued over a number of years.

It has been made despite the odds that favor the trafficking organizations, the money and the influence, and despite the fact that it

is not a problem—you are right—that is solely within our borders. We have to work with the foreign countries.

But, I think, the United States has proven that by working with Mexico and foreign governments to reduce availability of heroin, that it has had considerable success.

I think the GAO report will recognize that and recognize the gains made.

In barbiturate abuse we've seen a 23-percent decrease in the injuries and fatalities related to that through closer quota control.

I think the Government is also in the midst of turning the investigative system of traditional drug cases from just making drug seizures and arresting people to seizure and forfeiting assets. We have now over \$400 million of assets under investigation as a result of congressional action in one statute so that money derived from illegal narcotic transactions is subject to forfeiture with judicial review. Funds derived from and intended to be used for violations of the Controlled Substances Act are rendered to the Government and the people: the illegal moneys, the assets, buildings, properties, bank accounts that derive from the pain and suffering of the addiction of people who were sold illegal drugs.

That, plus the clearly demonstrated gain against heroin indicates to me this isn't hopeless. There has been success, and it can be continued.

I think we need, as Chairman Drinan says, a good joint effort so that Congress and the executive branch don't work at cross-purposes, or in different directions.

I am appreciative not only of the tenor of this hearing, but also of the support of Members of Congress who work in that direction.

I think, in terms of injuries sustained, you've got to feel good about the fact that instead of 5,000 injuries every quarter from heroin, we are down to 2,200. In 1979 PCP injuries in emergency rooms and hospitals were at the rate of 500 a month; in December it was 221. That is significant progress on PCP—not without some pain.

Also we were able to close down the Mexican connection and there was not an automatic source to fill its place. We didn't see southeastern or southwestern Asian heroin flood in immediately; in fact, it's not flooding in today.

And for a change we are working on the problem before it becomes a crisis instead of after the fact, as was the case in the French connection and the Mexican connection.

No, I feel good about what's being done. I feel good about what our agency is doing. And I think we can stand with some confidence on our record, aware of the difficulties, the complexities of the problem we face—particularly regarding the drugs that don't have the same level of universal support for enforcement in terms of penalties or in terms of eradication, namely marihuana and cocaine.

Mr. DRINAN. Mr. Nellis?

Mr. NELLIS. Thank you, Mr. Chairman.

Mr. Bensinger, you and I have had many discussions about this problem in the past.

I first want to tell you that Dan Addario in San Francisco whom I visited—Mr. Addario is a special agent in the DEA office there I visited last week—is in the midst of one of the most incredible drug conspiracy cases I have ever encountered—with the Hell's Angels.

And after exposure to that I want to commend you and Mr. Addario for bringing these nasty individuals to trial.

Mr. Bensinger, I am very much interested—always have been—in the extent to which DEA makes good financial cases, particularly now that the problem of privacy disclosure is present.

What progress has been made by DEA in digging up the financial staff to analyze money flow to determine where the traffickers are putting their money?

Mr. BENSINGER. Considerable progress has been made and is needed to be made in this area.

We have in the Office of Enforcement a financial investigative unit. Initially, 1 year ago, this was in the Office of Intelligence and studied where money was strategically moving. We did not feel we were getting the immediate technical benefit of that team, so now it is in the Office of Enforcement.

Last week we had 55 of our most senior managers in the field, special agents in charge, regional agents in charge, and in some cases country attachés come to Washington—and these 55 individual managers went through an extensive 5-day in-depth review of the log of individual cases. Other agencies, IRS, Customs, as well as our own in-house people provided in-depth information. DEA's Chief Counsel's office provided an in-depth assessment of how to really use the law.

Those supervisors are not the only individuals getting exposed to financial investigation. We trained over 150 group supervisors and team leaders. We have insisted that we have everyone read the "same sheet of music," we don't just have our regional directors make financial cases without providing to agents in charge, group supervisors, team leaders, and the agents themselves that information.

We have extended our basic agent training period from 10 weeks to 12 weeks to guarantee that we have more time to cover conspiracy investigation and financial investigations; and we have the FBI and Customs and Treasury Department assist us in the jurisdictional reviews and responsibilities that they may have.

The committee will hear, I hope, from the administration that there should be attention to the financial right of privacy in tax reform. In DOJ—Irv Nathan, who is the Deputy Assistant Attorney General, Criminal Division, and Phil Heymann, have taken a position with respect to the present status of the law and IRS' interpretation.

They will represent the Department in testimony which has been submitted to the Senate Permanent Subcommittee on Government Operations. We hope this gets clarified both from the standpoint of Department of Treasury, as well as Department of Justice.

But we are training our agents, training our supervisors, enlisting teams with other agencies to go after the money.

And the amount of money that is being seized on a daily basis today is in the hundreds of thousands of dollars.

Mr. NELLIS. Are you aware whether or not there has been any change in customs declarations regarding the \$5,000 declaration disclosure and the \$10,000 disclosure? As I remember, if I don't know the regulation exists, I don't have to fill out the form. On that basis, as you may recall, much of the money, ill-gotten gains, was moved out of the United States.

Mr. BENSINGER, Chief Counsel, I think you are right and the U.S. Customs Service has proposed legislation which, would make those attempts a crime and to give them authority to investigate a violation of that customs declaration. We think it is needed, because we have seen cases where a person didn't fill out the form, and went out with great sums of money, and no case could be brought.

Mr. NELLIS. I have a question about the marihuana traffic. Out in California and Oregon and various other remote regions of the Great Northwest there seems to be a number of amateur entrepreneurs who are doing very well growing domestic marihuana. Now, when we talk about eradicating marihuana in Mexico and other countries, what can we do in Oregon and in California, where, I am told, marihuana worth hundreds of millions of dollars annually is grown?

Is that a correct statement?

Mr. BENSINGER. I think your representation is accurate, and I think the thrust of your question should be addressed in general and in specific terms.

Over 90 percent of the marihuana consumed and trafficked in the United States is imported still, the majority of it from Colombia. However, Hawaii and northern California are the two largest marihuana-growing States.

In Hawaii they have taken very specific action called "green harvest" in which the chiefs of police of the islands, in connection with other chiefs, have mounted a program to seize illegal marihuana being grown, sometimes in greenhouses as well as in primitive locations.

The DEA, U.S. Customs, and the Coast Guard, have assisted them through a mobile task force type approach. The National Guard of Hawaii has contributed helicopters and support from the Governor's office, and they have had a successful effort seizing, for the first time, tonnage quantities of marihuana.

That is my information. I talked to the chief last week and they anticipate a similar program—without giving the date ahead of time—next year.

Mr. NELLIS. Some of the traffic has been put out in the Northwest and Hawaii?

Mr. BENSINGER. Some have. If you recall the hearings we had on Guam, Santos, one of the major traffickers, is now in the Federal penitentiary convicted of major conspiracies. We've got some ongoing investigations in California.

In northern California the situation is slightly different. The principal counties really are being looked into in a number of areas to get the trafficking organizations. They are not just individuals. They are larger groups getting together.

The California State Bureau of Narcotics, the State law enforcement officials, under the direction of the attorney general, last year mounted a significant program in which we also participated that struck at some of the illicit marihuana grown.

But there is not, in some parts of California, the local community law enforcement control that is required. There is marihuana growing in some parts of California; it is not a secret. And it is requiring at times the Federal Government to go in and enforce what is basically a local situation.

Mr. NELLIS. Thank you.

I have one final question :

I have knowledge there are four or five major computer establishments in the Federal law enforcement community. I am talking about EPIC, TECS.

Unfortunately there are some agencies that still operate the way they did back in the thirties. At one station I observed officers still trying to match photographs and to identify fingerprints with a magnifier.

When I asked why that information couldn't be put on computer systems to encompass more information, the answer was they thought Congress was perhaps leery of putting everything into one system because of the Privacy Act.

But what is your feeling about how many millions of dollars we might save if the systems were combined in perhaps two or three law enforcement computer systems combined?

Mr. BENSINGER. I am not sure I would testify in favor of that. In fact, I probably would not.

I think what is important is to insure that the agencies with separate jurisdictions have the opportunity to exchange properly, criminal investigative information.

Mr. NELLIS. Are you saying some of these systems are interchangeable?

Mr. BENSINGER. No; we are saying a team of 12 customs officials in place would have the opportunity to ask the data base for interdiction-related information. I think there is legitimacy for sharing this information.

But I think your question is if you can have a cost breakdown?

Mr. NELLIS. That's the question.

Mr. BENSINGER. I will ask our people to look at this. There are some graphic displays that can be available both for print, I believe, and for other imagery with costs and equipment modification.

But, I wouldn't want to take over an EPIC nor do I think the FBI Director in Washington would want to take over law enforcement computers for all of the investigative agencies. We are not proposing that; I wouldn't support it.

Mr. NELLIS. Thank you.

Mr. DRINAN. Counsel I think has a question, then there's a question or two from a member who could not be here, and if counsel is agreeable, you can respond in writing later on.

Mr. STERLING. Thank you.

I have been asked by Congressman Gudger from North Carolina to inquire whether or not the pharmacy theft prevention program is essentially a robbery prevention program?

Mr. BENSINGER. Yes; I would say the pharmacy prevention theft program is designed to suppress, to prevent robberies of pharmacies.

Mr. STERLING. I have a question from Congressman Conyers. He reprinted a magazine article in the Congressional Record on February 26 which claims there are approximately 570,000 individuals listed in the NADDIS system—is that correct?

Mr. DRINAN. Maybe Mr. Bensinger could respond in writing.

Mr. BENSINGER. Yes.

Mr. STERLING. Very well. Mr. Conyer's staff will take care of that, I'm sure.

My question is, you mentioned individuals arrested in Europe today in the Gambino case; is there any way those individuals could be prosecuted in U.S. courts using extraterritorial jurisdiction that exists?

Mr. BENSINGER. There have been instances where individuals in foreign countries have been indicted in the United States and prosecuted in the United States for participating in a conspiracy to violate U.S. laws.

Mr. STERLING. Are there sufficient extradition treaties in order to bring those persons to the United States for prosecution?

Mr. BENSINGER. I would like to study this more closely with Mr. Heymann and his staff, in order to recommend additional countries with which extradition treaties would be productive. And I would be pleased to just recognize that Colombia has had an extradition treaty with the United States concluded.

And that's a very important step in the right direction. There are a number of countries in other parts of the world with which we would benefit from extradition treaties as well.

Mr. STERLING. Thank you.

Mr. DRINAN. Thank you, Mr. Bensinger. I am certain that this is the beginning of a long and, I think, fruitful relationship between the executive and legislative branches.

Thank you very much.

The committee stands adjourned.

[Whereupon, at 2:30 p.m., the committee was adjourned.]

APPENDIXES

APPENDIX 1

U.S. Department of Justice
Justice Management Division

**An Implementation Study
of the Department of Justice
Economic Crime
Enforcement Program**

December 1980

Prepared by:
Evaluation Staff
Justice Management Division

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EXECUTIVE SUMMARY

The Economic Crime Enforcement (ECE) Program represents a major initiative of the Department of Justice (DOJ) to attack nationwide the problem of white-collar crime. Formulated as a direct response to two of the Department's four law enforcement priorities, fraud and public corruption, the ECE program was formally established on February 8, 1979, by Attorney General Order 817-79. The Order provided for the formation of ECE Units in selected Offices of the U.S. Attorneys (OUSAs), and for the program to be administered by the Office of Economic Crime Enforcement (OECE), Criminal Division (CRM). The program's overall goal is the enhancement of the Department's capability to combat white-collar crime through the efficient utilization of personnel in the prevention, detention, investigation and prosecution of white-collar crime offenders. The underlying rationale for creating this program emerged, in part, from a recognition of certain obstacles to effective economic crime enforcement, i.e., the deceptive nature of white-collar crime, the attitudes of the general public and victims toward white-collar crime, the multiplicity of agencies involved in the investigation of white-collar crimes as well as the decentralized Federal prosecutive system; and the type of sanctions imposed against the white-collar criminal.

Organizationally, each unit is formed by the U.S. Attorney to consist of at least three, full-time Assistant U.S. Attorneys (AUSAs) and an ECE Specialist employed by the CRM. The focal point in the program for accomplishing program goals is the Specialist, who serves as an information resource, a program developer and coordinator, and a catalyst for effecting a new approach to the investigation and prosecution of white-collar crime. This new approach is intended to bring investigators and prosecutors together early in the case development process in order to assess the potential merits of a case, develop investigative and prosecutive strategies, provide for review of case progress and finally to bring complex, sophisticated white-collar crime cases to completion. This approach requires the Specialist to facilitate the development of an adequate information base, and cooperation among the various investigative agents as well as between investigators and prosecutors. Hence, the ECE program involves both a process -- detecting, investigating and preparing prosecutable cases, coordinating the various interests and efforts of Federal law enforcement agencies, educating business groups and the general public; and a product -- the prevention and successful prosecution of the white-collar crime offender.

Since the program's creation in February 1979, 18 ECE units have been established in OUSAs. To meet the objective of establishing a national program covering the 50 States, the District of Columbia and Puerto Rico, OECE plans to establish 12 additional units by October 1982, and staff the units with one or two Specialists. In addition to establishing 30 units, OECE plans to provide program services to the 63 non-unit Federal judicial districts.

Prior to further expansion of the program, the Office of Management and Budget (OMB) requested the Department to conduct an evaluation of the effectiveness of the ECE program. In recognition of the recent creation of the program

and the progressive development of the ECE units' operation, it was the view of the OECE and the study team that the program had not been functioning for a sufficient period of time to be the subject of a formal evaluation study. Therefore, it was determined that a program implementation study would satisfy the OMB request and provide the basis for developing a study design and methodology for evaluating the effectiveness of the ECE program in the future.

The study was conducted by the Evaluation Staff, Justice Management Division (JMD), with the assistance of the Office of Policy and Management Analysis, CRM. The study focused on the concept of the program, the organizational structure, staffing and operational framework of the ECE units, and the process by which program goals and objectives are achieved. The study team visited the seven units established in FY 1979 and interviewed personnel within the OUSA, ECE unit staff, and agents from various Federal investigative and program agencies who handle white-collar crime cases, for the purpose of documenting the manner in which the underlying rationale was translated into program operations and identifying preliminary indicators of program strengths and weaknesses. From this process, the study team was able to make general conclusions regarding the program's likelihood for success. The recommendations from these conclusions will strengthen the effectiveness and efficiency of the program if applied consistently with the program's design -- to give the local level responsibility for establishing the means to accomplish program goals and objectives.

CONCLUSIONS

- That the goals and objectives of the ECE program provide an adequate rationale for the structure of the program and the function of the ECE units;
- That the organizational and operational collaboration of OUSA and CRM with respect to the ECE program provides an effective strategy for addressing the problems of economic crime enforcement and for utilizing available resources in a more efficient and accountable manner;
- That the ECE program's national scope will be limited to the total number of ECE units until the relationship and role of the Specialist to the 63 non-unit Federal judicial districts is defined;
- That there is a need to better define the role and function of a second Specialist within an ECE region and/or ECE unit district;
- That the ECE units studied generally conform to the program's conceptual design and organizational structure;
- That implementation of the ECE program and achievement of program goals and objectives are affected, in large part, by the organizational relationship of the Specialist to the ECE unit, and by the acceptance of the role and function of the Specialist by the U.S. Attorney;

- ° That where the Specialist is structured as an integral part of the ECE unit, the program becomes a vital part of the OUSA, and program objectives are accomplished more efficiently and effectively; and
- ° That there is a need to better define the functions of the Specialist with respect to: the selection, assignment and continuing oversight of white-collar crime cases; the development of targeted investigations involving two or more investigative agencies; the agencies; and prosecution of white-collar criminal cases.

RECOMMENDATIONS

- ° That CRM, define the organizational relationship of the Specialist to the OUSA in non-unit districts, and delineate his responsibilities to those non-unit districts;
- ° That CRM conduct a needs assessment to determine if and how a second Specialist could be used in an ECE region;
- ° That CRM establish basic policy guidelines for the reallocation of CRM resources;
- ° That CRM in establishing new ECE units ensure that the Specialist will be organizationally and functionally structured into the OUSA as an integral member of the ECE unit;
- ° That CRM specifically define the function of the Specialist in the selection, assignment and continuing oversight of white-collar crime cases;
- ° That each OUSA establish a formal procedure which allows the Specialist the opportunity to participate in the review process of white-collar crime cases;
- ° That CRM define the Specialist's role in developing targeted investigations involving two or more investigative agencies; and
- ° That the Specialist be given a definite, but limited role in the prosecution of white-collar crime cases.

INTRODUCTION

A growing realization of the magnitude of white-collar criminal activities and the costs these activities exact upon the public good, prompted the Department of Justice (DOJ), in early 1979, to focus its attention, channel its resources, and define its strategy for combatting the problem of white-collar crime nationally. Part of the Department's response to the nationwide problem was the establishment of the Economic Crime Enforcement (ECE) Program within the Criminal Division (CRM), a five point program of prevention, detection, investigation, prosecution and sentence enhancement.

Since the establishment of the Office of Economic Crime Enforcement (OECE) on February 8, 1979, 18 ECE units have been established within U.S. Attorneys' Offices in various parts of the country. The program's national goal of 30 field units covering the 50 States, the District of Columbia and Puerto Rico, may be realized if the Department's FY 1981 budget is enacted as requested. The Department's FY 1982 budget request includes a proposal for 20 additional positions, which would allow CRM to complete its plan of expanding some units, to include two ECE Specialists.

To assess the proposed expansion of the ECE program, the Office of Management and Budget (OMB) requested an evaluation of the effectiveness of the ECE units prior to submission of the 1982 budget request. However, in view of the recent establishment of the program, its four year implementation schedule and the fact that only seven of the 18 existing units have been operational for more than a year, it was determined that an implementation study would be the more appropriate response to the OMB request. It was felt that a

formal evaluation of the program should be deferred until the units could reasonably be expected to have implemented the program's first and second year objectives.

The seven units established in FY 1979 provided the framework within which the study was conducted, since they could reasonably be expected to have implemented the program's first year objectives. The study was designed to examine the ECE program's implementation - how the program operates, its critical elements, its variations, and its accomplishments - and to produce a report which documents the concepts and practices of the program, assesses its general effectiveness, identifies potential problems and provides recommendations to CRM management for program improvements. Specifically, the objectives of the study were:

- ° To determine if program goals and objectives, as designed, can be expected to address the obstacles to effective economic crime enforcement, thus providing an adequate rationale for the program structure and functions;
- ° To examine the mission and function of the OECE in order to determine the manner in which the OECE relates organizationally and functionally to the field units, and to identify specific accomplishments with respect to OECE stated objectives;
- ° To examine the organizational structure and staffing of each of the seven initial ECE units within their respective OUSAs and each unit's operations in relation to established program objectives

in order to determine if each unit is functioning within program guidelines, and to identify unit accomplishments;

- ° To identify programmatic and organizational issues which influence the achievement of program goals, including the effect of the varying ECE unit models on the achievement of program objectives; to analyze study findings in order to identify those factors which ought to exist for an ECE unit to operate effectively in an Office of the U.S. Attorney (OUSA); and to develop recommendations for improving management of the program.

The study team, consisting of three analysts from the Evaluation Staff, Justice Management Division (JMD) and two analysts from the Office of Policy and Management Analysis, CRM, conducted on-site visits to the U.S. Attorneys' Offices in Philadelphia, Pennsylvania; Cleveland, Ohio; Denver, Colorado; Portland, Oregon; Los Angeles, California; New Haven, Connecticut; and Columbia, South Carolina. For data gathering purposes, an interview questionnaire was developed and reports were prepared to document each interview. Interview sessions at most locations were held with the U.S. Attorney, the First Assistant, Chief of the Criminal Section, Assistant U.S. Attorneys (AUSA) assigned to or working with the ECE unit, the ECE Unit Chief, the ECE Specialist, a special agent from the Federal Bureau of Investigation (FBI), agents from other major investigating agencies, and managerial and agent personnel from various Offices of the Inspectors General (OIG). The District Reports, formal six month reports of each unit prepared by the Specialist and submitted to the OECE, provided background data on unit developments, problems and accomplishments.

This report contains two principal parts: the first part sets forth an explanation of the program's rationale, a discussion of the design and development of the organizational and operational concepts of the ECE program, and a description of program achievements to date (Chapters I, II, and III), while the second part is a discussion of issues affecting program implementation (Chapter IV).

The ECE program design is flexible, allowing the Specialist to adapt program implementation to the individuality of his OUSA in order to address its characteristics, conditions and needs. Each Specialist may stress different objectives at varying stages of unit and program development, even though all Specialists are working toward, and prospectively achieving, the same goals. This led the study team to the conclusion that, at this time, a unit-by-unit comparison is inappropriate. To avoid the indiscriminate comparisons of the seven units which might occur if reported separately, the findings of this study are reported in an aggregate fashion.

In many interview situations, references were made to specific active and completed criminal cases in order to illustrate specific program features, activities and accomplishments. While an analysis of specific white-collar crime cases was not within the formal scope of this study, case accomplishments are reflected in many of the program accomplishments discussed in this report.

The subject and scope of white-collar crime embraces a number of terms which are frequently used interchangeably while evoking different connotations, for

example, economic crime, fraud, and public corruption. The nature and scope of criminal activities often associated with these terms unfortunately does not permit the formulation of neat, precise definitions. To be consistent, the study team has chosen to use the term "white-collar crime" throughout this report, when speaking to the subject matter of the ECE program. Also for purposes of this report, a glossary of terms is provided in Appendix I; these terms are intended to be general working definitions, applicable to the context of the study, rather than standard definitions.

Finally, the study team recognizes that many AUSAs, several Specialists, and a few U.S. Attorneys, are women. For purposes of the report narrative, however, the decision was made to use the term "he," generally to refer to both men and women in these positions, rather than "he/she" terminology or other variations of this structure. This is done solely to make the report narrative more readable.

BACKGROUND

The ECE program was formally established on February 8, 1979 by Attorney General Order 817-79 (Appendix II) which established OECE in CRM and provided for the creation of ECE units within selected OUSAs. The development of this program was preceded by a series of related events, activities and studies generated by private and public organizations which helped to enunciate the scope and magnitude of the nation's white-collar crime problem. Among these organizations were the American Bar Association (ABA), the Chamber of Commerce, the National District Attorneys Association (NDAA), the General Accounting Office (GAO) and the U.S. Congress. Some of the more notable events that heightened an awareness of the need for a more structured approach to address the white-collar crime problem nationally were:

- 1975 Attorney General Levi formed a White-Collar Crime Committee, composed of Federal investigators and prosecutors, to examine the problem of white-collar crime and the Federal response. The Committee found the response inadequate (1975-1976).
- 1977 ABA's Committee on Economic Offenses 1977 Report concluded that the Federal effort toward white-collar crime was "underfunded, undirected, and uncoordinated," and where resources existed, they were either "underutilized, or frustrated by jurisdictional considerations." (Economic Offenses. Section on Criminal Justice, Committee on Economic Offenses, Washington, D.C.).
- 1977 Attorney General Bell declared fraud and public corruption to be two of the Department's four major law enforcement priorities.

- ° 1978 Congress passed the Inspector General Act, mandating the establishment of Inspectors General offices in major Federal departments and agencies,* "to conduct and supervise audits and investigations relating to programs and operations" as well as: (A) to promote economy, efficiency and effectiveness in the administration of [such programs and operations]; and (B) to prevent and detect fraud and abuse in such programs and operations."
- ° 1978 GAO initiated a review of the Department's efforts in attacking public corruption. This report, issued in 1980, found the current efforts to be inadequate, but indicated that a recently developed program (the ECE program) may provide the basis to adequately centralize, prioritize and focus the Department's efforts. (GAO Report: Justice Needs to Better Manage Its Fight Against Public Corruption, July 24, 1980.)
- ° 1979 President Carter established an Executive Group to Combat Fraud, Waste and Abuse in Government, chaired by the Deputy Attorney General, with responsibility to provide leadership and formulate policy and operational guidance to the Inspectors General and other offices of the Executive Branch in combatting fraud, waste and abuse in government programs.

* Prior to the Inspector General Act of 1978, many of the major Federal departments and agencies had, in part, an analogous Inspector General function which was administered through their respective offices of inspection or audit or investigation. [P.L. 95-452 Section 9(a)]

- 1979 Attorney General Bell authorized the establishment of the ECE program and mandated the establishment of national and district priorities for the investigation and prosecution of white-collar crime.

After announcing his four priority areas of law enforcement for the Department, Attorney General Bell encouraged the OUSAs to establish specialized units to address these priorities. In response, approximately 25 units were developed locally to eliminate backlogs and prosecute new cases when they were presented to the OUSA. As the smaller offices eliminated their backlogs and found few priority cases being developed, they disbanded their units. Thus, within a year only 11 units, in large OUSAs with heavy caseloads in priority areas, continued to exist.

To ensure an effective, coordinated approach to white-collar crime enforcement, it was necessary to design a program with overall guidance and direction. To make the program responsive to the individual needs of an OUSA's district, however, elements of flexibility and adaptability were required. Hence, the ECE program, with dual levels of responsibility and operation, was developed.

In formulating the organizational framework for the ECE program, DOJ reviewed the experience and practice of two of its ongoing program initiatives: the Organized Crime and Racketeering (OCR) Strike Forces, developed in 1967 to focus departmental efforts on organized crime; and the Controlled Substances Units (CSU),* designed in 1975 to direct departmental resources for controlling

* The program name has subsequently been changed to the Major Drug Traffickers Prosecution Program.

narcotics trafficking.* The Strike Forces are composed of CRM attorneys and operate separately from the OUSA, while the CSUs are comprised of AUSAs designated to prosecute major drug cases exclusively and function as a part of the OUSA. However, in the ECE program the U.S. Attorney forms the ECE unit consisting of experienced AUSAs and CRM provides an ECE Specialist, an attorney who works with the unit to assist in setting district priorities, to develop methods of preventing white-collar crimes, and to improve the capability of the unit to identify, investigate and prosecute white-collar crime offenders. This collaboration of the OUSA and CRM is intended to bring together the complementary characteristics of two departmental components having concurrent responsibilities: the expertise and experience of a large decentralized network of prosecutorial resources (within the 95 districts of the U.S. Attorneys), and the centralized program oversight and coordination of the OECE. This collaboration, if successful, is expected to effectively address a national law enforcement problem and utilize available resources in a more efficient and accountable manner.

Full implementation of the ECE program will include 30 ECE regions covering the 50 States, the District of Columbia and Puerto Rico. Each region will consist of one unit district and one or more non-unit districts. The national composition of the program is to have 30 ECE unit districts and 63 non-unit districts, covering all the Federal judicial districts except Guam and North Marianna. The initial plan for establishing units is outlined in the Deputy

* A comparison of these two programs and the ECE program is beyond the scope of this study, and, will not be addressed in this report.

Attorney General's memorandum dated March 26, 1979 (Appendix III), and is contingent upon approval of CRM's budget request for the fiscal years covered by the implementation plan.

- FY 1979 - Establish seven offices covering 21 Federal districts and link the 16 pre-existing specialized prosecution units in other OUSAs with the program;
- FY 1980 - Place ECE Specialists in an additional 12 units;
- FY 1981 - Locate ECE Specialists in an additional five units;
- FY 1982 - Add a second Specialist, as resources become available, to cover all districts within a Specialist's region while working through their unit district.

Although the total number of units has been expanded to 30, there has been very little modification in the first two phases of the implementation plan. The following chart shows the establishment of ECE units during FY 1979 and FY 1980, and the location of the 18 existing units and 12 proposed units are illustrated on the map on page 101 (Appendix IV).

CHAPTER I
RATIONALE OF THE ECONOMIC CRIME ENFORCEMENT PROGRAM

OBSTACLES TO EFFECTIVE WHITE-COLLAR CRIME ENFORCEMENT

The ECE program was developed as a strategy to combat white-collar criminal activities, which have a deleterious effect upon the nation's economy and upon the general public good. The concept of the program, its organizational structure, staffing, operational framework, goals and objectives are designed to address major obstacles to effective economic crime enforcement. The nature and extent of these obstacles illuminate the difficulties experienced in combatting white-collar crime, and the necessity for cohesive enforcement effort. At the same time, they distinguish white-collar crime from other areas of criminal activity, e.g., narcotics or organized crime. These obstacles are:

- The nature of white-collar crime;
- The general public's and victims' attitudes toward white-collar crime;
- The characteristics of the Federal investigative system, the multiplicity of agencies and their relationships to one another;
- The characteristics of the Federal prosecutive system, and its relationship to the investigative agencies;
- The State and local prosecutive and investigative agencies' relationship to the Federal enforcement system, including problems of concurrent jurisdiction; and
- The sanctions available and/or imposed against the white-collar criminal.

To provide an effective strategy for attacking white-collar crime, it should be recognized that these obstacles, their attendant problems, and the enforcement

needs created, have to be addressed. The Department has some direct control over only the third and fourth obstacles--the others can be affected only through influence and/or mutual understanding. Hence, the major thrust of a DOJ program to address white-collar crime could reasonably be expected to concentrate on the enhancement of investigative and prosecutive capabilities.

Nature and Characteristics of White-Collar Crime Cases. White-collar crimes involve numerous and varied offenses, including: consumer and investor fraud, government program fraud, regulatory violations and public corruption. These crimes are generally perpetrated through concealment and deception and often involve complicated and/or sophisticated schemes. Because many fraudulent schemes can be operated simply by using a post office box or a telephone, they tend to have a high degree of mobility and can be perpetrated simultaneously or successively in several districts. Finally, white-collar criminal activities may violate a multiplicity of statutes, or not correspond to any one statute. Thus a versatility of expertise is required to adequately respond to the criminal activity.

By their very nature, white-collar crimes are often difficult and time-consuming to detect, investigate, and prosecute. Generally, the investigative agencies rely on the victim or a witness to detect the crime, and investigate only after a complaint or allegation has been received. Once an investigation commences--which can be long after the crime has allegedly been committed--it can take many investigators working several months to amass evidence, and reconstruct events and transactions. Then, auditors and/or accountants may

be required to sort through voluminous amounts of evidentiary materials. When the case goes to trial, litigation is often lengthy because of the necessity to document clearly all that transpired in a manner understandable to a jury. Furthermore, since fraud often is detected and/or investigated years after the fact, prosecution may be hampered by loss of testimonial or documentary evidence, or barred by statutes of limitation. Finally, even when the prosecution is successful, the sanctions imposed are frequently light considering the gravity and magnitude of many of the offenses.

The General Public's and Victims' Attitudes. To further complicate the problem of preventing and/or detecting these crimes, the public, business communities, and governmental program agencies in many areas have little understanding of the nature and scope of white-collar crime. Without this awareness, they cannot be expected to design systems of operation which prevent crime, to correct program and operational deficiencies in order to reduce the opportunities to commit these crimes, or to establish a system of checks and balances which would lead to earlier detection of such crimes.

Even with this a general understanding of white-collar crime, victims cannot always be relied upon to identify their occurrences because of the complex nature or extent of the crime, or the effect it may have upon the victim.

For example:

- ° Knowing victims may be unwilling or too embarrassed to report an incident, such as a private institution concerned about adverse publicity;

- ° No one individual recognizes that he is a victim if losses are spread over a large group, such as consumers or taxpayers; or
- ° Victims cannot easily discern losses because they involve a series of complex financial transactions which can easily conceal the losses; e.g., stock manipulation; these victims are often large groups or private institutions.

Furthermore, there can be an enormous social cost in the erosion of public confidence which results from breaches of public trust.

Characteristics of the Federal Investigative System. There are a multiplicity of Federal agencies responsible for investigating individual violations of specific Federal statutes and regulations generically classified as white-collar crime. These agencies include: the traditional investigative agencies, such as FBI, Postal Inspection Service, Internal Revenue Service (IRS), Customs Service, Secret Service, and the Bureau of Alcohol, Tobacco and Firearms; the relatively new OIGs in Executive departments and agencies and their equivalents in the Department of Defense; and the quasi-independent or regulatory agencies, such as the Securities and Exchange Commission, and the Commodities Futures Trading Commission. The enforcement activities of any of these groups may reveal criminal offenses violating statutory responsibilities of their own and/or other agencies.

Despite statutory jurisdictions, responsibilities for the investigation of white-collar offenses are not neatly allocated among the investigative agencies, primarily because there is not always a one-to-one correspondence between a

particular offense and a statute. A single case of consumer fraud, for example, could be prosecuted under the mail fraud statute (traditionally investigated by the Postal Service) or wire fraud statute (traditionally investigated by the FBI), or both. In some instances, two agencies may have jurisdiction over the same statute and, thus, may investigate the same offense. More frequently, two or more agencies investigate an alleged offense because it encompasses violations of more than one statute. The division of responsibilities among the agencies has, over the years, engendered independent investigations with little communication between agencies, and thus has usually resulted in a fragmented and sometimes overlapping approach to addressing white-collar crime.

Contributing to this fragmentation is the fact that each agency has its own objectives and incentives to carry out its mission and to work a maximum number of cases. The major incentive for working with a high volume of cases is the traditional investigative reward system, based on the quantity of matters or cases investigated, and not necessarily on their quality. This reward structure frequently encourages investigators to take the reactive approach to law enforcement because it generally allows them to develop more cases more quickly than a proactive approach. The reward structure may also foster a territorial attitude, i.e., one agency not always wanting to share their "statistics" with another agency, so that it would be unusual for an agency to seek actively or routinely the assistance or collaboration of another agency on a particular case. This attitude often results in a duplication of effort or work performed at cross-purposes and prevents one agency from benefiting from the expertise of another agency. There have been instances,

for example, where the subject of one agency's investigation was cooperating with another agency in exchange for immunity or reduced charges, or where two different agencies requested subpoenas for identical documents, significantly jeopardizing the cases involved.

By restructuring objectives and incentives, a proactive approach--that is, one in which the investigating agency actively seeks to identify or detect the crime with the assistance of other investigators and prosecutors--becomes more feasible. Since investigative agencies vary in terms of experience, traditional areas of specialization, methods of operation, and the background of their personnel, they also vary in the expertise and sophistication they bring to an investigation. These differing perspectives can greatly enhance an investigation, when they are properly utilized and coordinated.

The Federal Prosecutive System and Its Relationship to the Investigative Agencies.

The Federal system for prosecuting Federal crime is decentralized, comprised of numerous litigating divisions within DOJ and the 95 OUSAs. In general, the OUSAs operate autonomously, handling those cases they select as most important for prosecution in their district. Where a particular criminal operation crosses jurisdictional lines, a lack of communication between OUSAs can result in two or more offices either proceeding independently, without knowledge of the other's involvement, or disagreeing as to how they should proceed. Additionally, each U.S. Attorney has differing amounts of resources devoted to and expertise about white-collar crime, reflecting either the actual or perceived extent and nature of white-collar crime in each district. As described earlier,

white-collar crime cases often consume time and resources because of their complexity; hence, in offices where the AUSAs carry heavy caseloads, it is difficult to devote the resources necessary to prosecute many of these cases. Furthermore, where the prevailing view is to measure success by the quantity of cases prosecuted, rather than by the quality of those cases, then the pursuit of the complex or sophisticated case becomes less likely. This situation is reinforced by the fact that the investigators have historically taken a reactive approach to white-collar crime, interacting with prosecutors only upon completion of the investigation.

Although experience has shown that the relationship between the prosecutors and investigators is an important one, this relationship is often not fully developed. Successful investigations and subsequent prosecutions are enhanced when investigators work with prosecutors early in the investigative stages of a case because it coordinates their two viewpoints. For example, as agents work with prosecutors more closely, their awareness of OUSA prosecutive priorities increase, so that their cases are selected more in line with those priorities. Additionally, many white-collar investigations rely on the investigative grand jury for obtaining information, necessitating early interaction between investigators and prosecutors.

The heavy caseloads experienced by many AUSAs, however, do not always make it possible for prosecutors to interact closely with investigators through a long or complex case; where this is true, the prosecutorial approach to white-collar crime is also reactive.

State and Local Investigative and Prosecutive Agencies. At the State and local levels there are thousands of investigators and prosecutors who have jurisdiction over many offenses that can also be prosecuted as Federal crimes. Problems at these levels are similar to those associated with the multiplicity of Federal agencies, namely, duplication of effort, work performed at cross-purposes, or a lack of coordination on cases. Concurrent jurisdiction, however, adds another dimension to the difficulty of solidifying efforts, since each level of government brings special capabilities to the investigation and prosecution of white-collar crime cases. One level of government can be more effective than another depending upon the strength of the jurisdiction's interest, its ability and willingness to prosecute effectively, and the probable sentence upon conviction. Sometimes the available sanctions for an offense and the expected sentence upon successful prosecution are different. For example, where a State statute carries a stiffer penalty than the parallel Federal law -- and it can be reasonably expected that such penalty will be imposed -- it may be more effective to prosecute at the State level. However, there are no general rules delineating which level of government investigates or prosecutes a particular type of offense.

Sanctions Available or Imposed. A final aspect to a comprehensive program to effectively address white-collar crime is to ensure the effective sentencing of the white-collar criminal.

Traditional notions of the objectives of sentencing the criminal offender have included: recompensing society for the wrong committed, rehabilitating the offender, and deterring other possible offenders. If sanctions are

appropriate for the offense committed, it is expected that crime should be reduced. Currently, however, sanctions imposed do not always achieve these objectives. The criminal takes minimal risks for the benefit he derives from his crime; thus, there is little compensation, rehabilitation or deterrence, and enforcement personnel become increasingly overburdened with the volume of white-collar criminal activities.

THE NEED FOR COORDINATION AND A FORMALIZED STRUCTURE TO ADDRESS EFFECTIVELY THE ECONOMIC CRIME PROBLEM

The preceding discussion depicts a large, complex system of numerous, decentralized and reactive investigative and prosecutive agencies, loosely linked together. These agencies respond to numerous and diverse schemes that are difficult and time-consuming to detect, investigate, and prosecute. Finally, even where the efforts are successful, there is no assurance that there will be an appropriate sanction. From analysis of this situation, several needs emerged in formulating a national strategy to respond effectively to the problem of white-collar crime:

- Need to educate the general public, business communities and governmental agencies as to the nature, scope and impact of white-collar criminal activities;
- Need to heighten public awareness as to the methods of preventing crimes and recognizing those that do occur, through the dissemination of public information;
- Need to foster cooperation and communication among the agencies and offices;

- Need to establish focal points within the loosely associated, but relatively independent members of the law enforcement system to maintain a national perspective of the white-collar crime problem;
- Need to establish an information system whereby national trends and patterns can be identified;
- Need to encourage investigators and prosecutors to work closely together and to foster those relationships;
- Need to reach an understanding concerning the types of matters the investigating agencies will pursue, and the OUSA will prosecute;
- Need to focus resources on quality cases and develop proactive approaches to investigate them;
- Need to identify successful techniques in investigating and prosecuting white-collar crimes;
- Need to provide training to some agency investigative personnel and prosecutors in order to utilize effectively new investigative and prosecutive techniques; and
- Need to address the problem of inadequate sanctions, either available or imposed, including the need to acquire legislative changes as appropriate.

The ECE program was developed to meet the needs outlined above, and in so doing, to improve the overall effectiveness and efficiency of the white-collar crime law enforcement system. Based on the above discussion, the study team prepared the chart in Appendix V to demonstrate the manner in which program goals and objectives address the needs resulting from the indicated obstacles

to effective law enforcement. In addition, the chart outlines the national and local responsibilities for accomplishing the program's goals and objectives.

PROGRAM GOALS AND OBJECTIVES

The ECE program, encompassing two of the Attorney General's four enforcement priorities, was developed to focus attention on white-collar crime, emphasize its effect upon all citizens individually and the public good generally, and coordinate governmental efforts in attacking white-collar crime. The program's overall goal is to enhance the Department's ability to prevent, detect, investigate, prosecute and obtain greater sentences against significant criminal offenders. The program's implementing order and other background materials established end objectives* for attaining the Department's goal** of enhanced capabilities, but allowed the individual districts to develop the mean objectives,*** thus setting a uniform scope for the program, while retaining an aspect of local flexibility to account for individual district characteristics. The end objectives for enhancing the Department's capabilities in this program, listed below, are separated into the enhancement goals they are designed to achieve. The fact that some objectives appear under more than one goal is indicative of the overlapping nature of the obstacles to effective white-collar crime law enforcement, and to the needs, objectives and goals of the ECE program.

* End Objectives - those objectives which, if accomplished, should result in meeting the program's goals.

** Goals - the end toward which all efforts are directed.

*** Mean Objectives - those procedures or methods designed to reach the end objectives.

(1) Investigation:

- To develop an inventory of current or past white-collar crime investigations to establish an information base and locate duplications of effort;
- To establish priorities in an effort to focus investigative attention on significant district problems and characterize the types of cases the OUSA will prosecute;
- To coordinate and consolidate the various investigative agencies' efforts in order to eliminate duplication of effort and maximize utilization of varying expertise;
- To establish liaison between the investigative agencies and the OUSA so that major investigative activities will be brought to the attention of the OUSA early in the investigative process; and
- To provide seminars and conferences for investigative agencies to present information on specific subjects, e.g., investigative auditing, exchange ideas concerning new investigative techniques, and increase each agency's awareness of the other's roles and expertise in the effort against white-collar crime.

(2) Prosecution:

- To inventory current or past white-collar crime cases to gain an understanding of white-collar crime in the district, establish an information base, and locate duplications of effort or cases which would be better consolidated;

- To establish district priorities to identify unit cases and focus investigative/prosecutive efforts on priority cases, and place significant cases with experienced prosecutors;
- To coordinate the investigative agencies and the OUSA early in an investigation to develop the strongest case possible and to completely familiarize the prosecutor with the case; and
- To provide conferences and seminars, or documentation for the AUSAs to present information on new cases, new prosecutive approaches and specific subjects, e.g., the investigative grand jury; exchange experiences; and establish a network of communication among AUSAs and OUSAs.

(3) Detection:

- To establish an information base from which white-collar crime patterns and trends can be identified;
- To establish district priorities, within the framework of national priorities. These priorities will highlight programs or operations which are susceptible to white-collar crime, thereby focusing on these areas; and
- To disseminate information to those persons in a position to locate white-collar criminal activities, e.g., auditors or consumers, on how to recognize white-collar crime indicators.

(4) Prevention:

- To create an awareness of the extent and nature of white-collar crime in the business community and in the general public, thus reducing the opportunity for the commission of such crimes;

- To enhance the capabilities of the general public, business community and the government to detect criminal activities, thereby resulting in a greater number of apprehensions;
 - To enhance the government's ability to investigate and prosecute white-collar crime, resulting in a stronger overall effort to control such crime;
 - To obtain more appropriate sanctions, thereby deterring other possible criminal activities; and
 - To identify and correct program or operational weaknesses or deficiencies in agencies or businesses, making it more difficult for potential offenders to execute fraudulent schemes.
- (5) Sentence Enhancement:
- To increase the prosecutor's awareness of the importance of sentencing, and the prosecutor's role in sentencing; and
 - To improve the prosecutor's sentencing skills and techniques.

This program consists of both a national and local aspect; its various objectives being implemented on a continuum at the appropriate time and level. To date, national efforts have been directed to selecting unit sites and Specialists, developing lines of communication within the program and establishing liaison with participating agencies and organizations, while the efforts by the units have concentrated on enhancing investigative and prosecutive capabilities. This is to be expected, since enhanced capabilities in detection, prevention and obtainment of appropriate sanctions result, to some extent, from better investigations and prosecutions.

In subsequent chapters a more detailed description of the program's organization and structure and its efforts in meeting program goals is presented. Achievements at both the national and district levels are noted and issues affecting the program's continued success are discussed.

CHAPTER II
NATIONAL PROGRAM RESPONSIBILITIES AND
OPERATIONAL FRAMEWORK FOR THE OFFICE OF ECONOMIC CRIME ENFORCEMENT

NATIONAL PROGRAM RESPONSIBILITIES AND ORGANIZATION

In establishing the ECE program, Attorney General Order 817-79 provided for the creation of OECE within CRM to administer the provisions of the Order. Located in Washington, D.C., OECE is the headquarters of the program, responsible for overall program implementation and administration. Presently, it is staffed by a Director, a Deputy Director (as of July 1, 1980), an Information Specialist and a secretary. The Director currently carries major responsibility for establishing new ECE units, staffing each unit with a Specialist, providing supervision and guidance in implementing the program at the unit level, training, maintaining liaison with prosecution, enforcement, program and other agencies' headquarters personnel, analyzing white-collar crime information, and preparing program reports. The burden of these responsibilities has been eased somewhat with the addition of the Deputy Director.

Within the current organization structure of CRM, OECE forms a bridge between the Fraud Section and the Public Integrity Section of CRM (See Appendix VI). This initial arrangement was partially the result of budgetary considerations and the notion that OECE had its major, practical responsibilities in the areas of fraud and public corruption. This arrangement does, however, create an ambiguous reporting responsibility for the Director of OECE. Although the Office is planned as a separate decision unit for purposes of the FY 1982 budget, this will not in itself clarify the line reporting relationship of OECE within CRM. Therefore, the need for CRM management to clarify OECE's reporting responsibilities continues to exist.

The national program responsibilities, performed by OECE with the assistance of other sections of CRM, include the following major functions:

- To create 30 ECE geographic regions for the program's national scope;
- To select site locations and Specialists for the ECE units;
- To coordinate the ECE program activities in all Federal judicial districts and CRM through the ECE Specialist and their units;
- To establish a reporting system including specific information regarding investigative and litigative activities of the units;
- To publish an ECE Bulletin describing: newly developed techniques in the areas of prevention, detection, investigation, prosecution and sentencing; significant cases; and relevant changes within the investigative and regulatory agencies;
- To arrange training for investigative, program and prosecution personnel in the most recent developments in the investigation and prosecution of white-collar crimes;
- To maintain effective liaison with the appropriate prosecutive, investigative, program and other agencies regarding program developments and goals;
- To collect and maintain relevant statistical data on the performance of the program in fraud and corruption matters in order to develop a white-collar crime information system, and indicate areas for priority treatment;
- To prepare periodic reports to the Attorney General including an annual overall report of the program; and

- ° To obtain additional prosecutorial resources from the Department, as available, to assist with the complex, quality cases developed at the district level.

NATIONAL ACCOMPLISHMENTS

During the past 19 months (February 9, 1979 through September 1, 1980), OECE has made substantial progress in fulfilling its responsibilities to implement an effective ECE program. In support of this conclusion, there are described below some of the major achievements at the national level:

Selecting ECE Units: Following the formal creation of the ECE program the OECE engaged in a two pronged effort -- establishing ECE Units and implementing program objectives. The first phase of the OECE implementation plan was initiated by establishing seven ECE units between April and July 1979.

The process of selecting Federal districts within which to establish the initial seven ECE units focused on medium sized OUSAs* (determined by the number of AUSAs and overall caseload), considered the history of the OUSA's approach to white-collar crime, and took into account the economic conditions and flow of trade in multi-district regions.

In addition, it was designed to limit the Specialist's ECE region to Federal judicial districts in not more than two States. Finally, establishment of the

* California was selected in order to assess the differing needs and approaches of operating an ECE unit in a large OUSA, which had an existing special unit prosecuting white-collar crimes.

units was contingent on the U.S. Attorney's support and adoption of the program's concept, goals and objectives, operational methodology, and district priorities.

The following chart identifies the number of districts, the States within which the ECE Specialist is to operate, and the relative size of each OUSA in terms of AUSAs and caseload for the initial seven ECE units.

CHART III

OUSA	No. of Districts	States Covered by ECE Unit	AUSA's Allotted to OUSA	Case-load ***
CLEVELAND, OH	4	Ohio Indiana	33	1,858
COLUMBIA, SC	4	North Carolina South Carolina	22	1,563
DENVER, CO*	5	Colorado, Wyoming, Utah, Montana, Idaho	22	1,589
LOS ANGELES, CA	2	California (CD) Nevada	96	3,266
NEW HAVEN, CT	2	Connecticut Rhode Island	17	1,001
PHILADELPHIA, PA**	2	Pennsylvania (ED,MD)	50	1,681
PORTLAND, OR	3	Washington Oregon	16	694

* Originally, the ECE unit in Denver was to cover Colorado and New Mexico, but the consideration of other factors led to a decision to restructure its geographic area.

** Philadelphia, Pennsylvania was selected to replace the Birmingham, Alabama site in the original plan until a Specialist could be found for that unit.

*** Criminal and civil cases filed by the OUSA for FY 1979. These figures are provided to show the relative size of the caseload for the selected OUSAs and do not consider the quality of the cases filed.

At present, OECE has 18 ECE units operating, the original seven, and 11 additional units in: Boston, Massachusetts; Houston, Texas; Detroit, Michigan; Atlanta, Georgia; Pittsburgh, Pennsylvania; San Francisco, California; Dallas, Texas; Birmingham, Alabama; Phoenix, Arizona; Memphis, Tennessee; and New Orleans, Louisiana.

Selecting ECE Specialists: The staffing requirements of an ECE Unit is specified in the Attorney General Order. CRM is to employ the ECE Specialist and the U.S. Attorney is to assign at least three AUSAs full time to the unit for a minimum of 18 months.

Selecting an ECE Specialist is based upon the candidate's professional experience and proficiency, interest and expertise in the specialized area of white-collar crime, and personal attributes that could foster the development of professional working relationships among many agencies and groups.

Other factors in the selection process include: the willingness of the Specialist to assume a new role in and a new approach to investigations and prosecutions, including a willingness to perform functions not traditionally performed by a prosecutor; and the willingness of the Specialist to relocate to another geographical area. Finally, the appointment of the Specialist was subject to the joint approval of the Assistant Attorney General, CRM, and the relevant U.S. Attorney. Four of the first seven Specialists were hired from CRM, two from the Antitrust Division and one from an OUSA.

Reporting System: Consistent with the Attorney General Order, a comprehensive reporting system has been developed and implemented. This system, designed to facilitate CRM's responsibilities in coordinating and monitoring the activities of the ECE units, has recently been adjusted and standardized to acquire more effectively information about unit activities. The required reports include specific information regarding investigative and litigative activities of the units. This information forms part of a national information base to develop trends and patterns in criminal activity and identify multi-district cases so that OECE may ensure their proper coordination.

ECE Bulletin: A bi-monthly publication of the ECE Bulletin commenced in October 1979. In the survey of the seven ECE units, this publication generally received positive reaction from the AUSAs and the Specialists. The Bulletin focuses on substantive legal developments in the area of white-collar crime, and has helped to establish a stronger network of communication among the units.

National ECE Conferences: OECE has sponsored two national conferences to date: November 1979 in Washington, D.C., and May 1980 in Boston, Massachusetts. Among those attending the conferences were ECE Specialists, AUSAs, representatives of the OIGs, and other members of the law enforcement community. Conferences dealt with substantive legal questions and issues, and provided opportunities for round-table discussions of program problems and achievements. Most Specialists indicated that the conferences were an important part of the program's development. In particular, the conferences provided an opportunity to share experiences, develop personal contacts, and strengthen the coordination of inter-district matters.

Liaison with other Agencies and Organizations: OECE has established contact with the investigative, program and regulatory agencies, the Executive Group to Combat Fraud, Waste and Abuse in Government, and the NDAA to explain program goals and operations and to establish working relationships that will further effect an open, cooperative endeavor in combatting white-collar crime. As an example of OECE's liaison role, a Specialist was recently involved in a joint case investigation by the FBI and an OIG field office. As the case developed, differing disclosure regulations between the FBI and the OIG threatened to damage the case -- as a result of pre-trial discovery motions made by the defense. The Specialist informed the OECE Director of this problem, who apprised the Executive Group Staff Director of the situation. Steps are now being taken to standardize and tighten the various OIG disclosure regulations to avoid this potentially destructive problem in the future.

National and District Priorities: The national white-collar crime priorities form the parameters within which Federal investigators and prosecutors are to focus their efforts. The Attorney General issued these priorities in a report entitled the National Priorities for the Investigation and Prosecution of White-Collar Crime on September 9, 1980. The priorities are the result of an extensive survey undertaken by CRM to supplement existing information with current and more comprehensive data on white-collar crime. The report was formulated on the basis of information provided by representatives of the major Federal agencies and departments involved in the investigation and prosecution of white-collar crime, including those ECE Specialists who were then in place. In general, the priorities cover the broad areas of

fraud, corruption and certain regulatory violations, and are divided into seven categories reflecting broad groups of institutions and individuals victimized by white-collar crimes. The categories are:

- Crimes against the government by public officials, including Federal, State and local corruption;
- Crimes against the government by private citizens, including tax fraud, procurement fraud, program related fraud, counterfeiting and customs violations;
- Crimes against business, including embezzlement and bank fraud, insurance fraud, bankruptcy fraud, advance fee schemes and labor racketeering;
- Crimes against consumers, including defrauding of customers, antitrust violations, energy pricing violations and related illegalities;
- Crimes against investors, including securities and commodities fraud and real estate swindles;
- Crimes against employees, including life-endangering health and safety violations and corruption by union officials, and
- Crimes affecting the health and safety of the general public, including the illegal discharge of toxic, hazardous, or carcinogenic waste.

From the framework of national priorities each U.S. Attorney, with the concurrence of the Assistant Attorney General, CRM, is to select specific priorities that are particular to his Federal district. The district priorities will be reviewed at least once a year.

Program Evaluation: The Attorney General's Order requires continued program evaluation, so that appropriate program adjustments can be made when deemed necessary. Although the program is not at a stage where formal evaluation is possible, review of the program and an informal assessment of its problems are reflected in the district annual reports, and also are undertaken by the Director and Deputy Director in their field visits.

FUTURE ACTIVITIES

To further implement program objectives, OECE plans to expand its role into the following program areas:

ECE Units: Over the next year OECE, if given the resources requested in the FY 1981 budget, will complete ECE unit site selections and Specialist selections, with an additional 12 units targeted for: New York, New York; Brooklyn, New York; Newark, New Jersey; Washington, D.C.; Miami, Florida; San Diego, California, Chicago, Illinois; Minneapolis, Minnesota; Wichita, Kansas; Alexandria, Virginia; Baltimore, Maryland; and St. Louis/Kansas City, Missouri.*

Enhanced Analytical Capability: A major aspect of the program encompasses gathering district-level information regarding the nature and magnitude of white-collar crime, compiling and analyzing the data in order to develop a national picture, and identifying trends within the scope of white-collar crime activities.

* The location within Missouri has not yet been determined.

In the FY 1982 budget, OECE is requesting two program analysts to meet this objective, and two accountant-advisors to be available to ECE units and CRM for expert assistance in sophisticated white-collar crime cases, and to supplement the audit capability of other program agencies.

Increased Contact with Agency Headquarters: In order to strengthen the relationship of OECE with prosecutive, investigative and program agencies and build effective communication links between Specialists and corresponding agency field offices, OECE plans to increase its liaison with headquarters personnel.

Regional Conferences: In accordance with the purpose of arranging training for investigative, program and prosecutive personnel, OECE plans to conduct regional conferences in addition to the national ECE conferences. As the ECE program develops, the national and regional conferences will focus on advanced investigative and litigative skills, thus necessitating that OECE commit resources to undertake the development and formulation of these advanced techniques.

OECE's current responsibilities will expand as the program reaches full implementation, and new responsibilities will be assumed when the program, as a whole, becomes operational. It is expected, therefore, that OECE will become increasingly involved in the aforementioned activities, while undertaking a role in the procurement of additional resources for the prosecution of significant cases and the formal evaluation of program operations.

The above narrative describes OECE's organizational relationship with to the Department and the ECE units, and its responsibilities to the ECE program; it highlights achievements to date and provides a perspective for future activities. At the same time, the above discussion, together with the following chapter, raises some programmatic and organizational issues, which, in the judgment of the study team, can affect the future development of the ECE program. These issues are presented in Chapter IV.

CHAPTER III
OPERATIONAL FRAMEWORK FOR
THE ECONOMIC CRIME ENFORCEMENT UNITS

The ECE program encompasses both a national aspect, administered by OECE, and a district aspect, directed by OUSA. This program design is predicated on the notion that CRM and the OUSAs, overall, have similar interests. The program is expected to realize national objectives, while recognizing the needs and interests of the individual districts. The Specialist, a CRM employee operating within a participating OUSA, is the critical link between these two aspects. He provides support for and reports to both organizations and, when necessary, balances their individual interests.

At the district level, program responsibilities to be administered by the Specialist and accomplished through the ECE unit, are designed to bring a new and unified emphasis to the prevention, detection, investigation and prosecution of white-collar crime. These responsibilities are:

- ° To compile and analyze information on the district's white-collar crime problem to form part of a national information system, and establish local priorities to focus investigative and prosecutive resources on the district's major problems;
- ° To align the interests and coordinate the efforts of a multitude of organizations involved in detecting, investigating and prosecuting white-collar crime;
- ° To focus local attention on the magnitude of white-collar crime, its costs, and the lack of adequate sanctions against white-collar crime offenders;

- ° To conduct or organize conferences and seminars to present information, exchange ideas, and encourage the various participants in the law enforcement effort to cooperate with one another;
- ° To assist investigators and prosecutors in the development and preparation of significant white-collar crime cases by suggesting new investigative techniques and prosecutive approaches, and assisting, when appropriate, in the preparation of briefs, motions and memoranda;
- ° To oversee case development, and coordinate investigative and prosecutive efforts in white-collar crime cases; and
- ° To prosecute significant white-collar crime offenders.

To accomplish these tasks, the Specialist must serve as an information source, advisor, coordinator, and prosecutor. Although he has primary responsibility for ensuring the attainment of program goals and objectives, the Specialist is dependent upon the ECE unit to assist in his efforts, especially in the prosecution of significant white-collar crime cases.

INTERNAL ORGANIZATION AND OPERATIONAL RELATIONSHIPS

In forming ECE units in the various OUSAs, CRM was to provide the Office with an experienced attorney, to serve as the Specialist, while the Office was to establish a separate unit to specialize in white-collar crime. Organizational formation of the unit within the OUSA was left to the discretion of the individual U.S. Attorneys. As a result, several different configurations have been developed for the units' organization, the Specialist's relationship to the unit, and the placement of each within the OUSA. (See Unit Profiles, Appendix VI.)

Office Organization: These unit configurations are derived from the overall office structure (including the presence of pre-existing units), the nature and scope of the white-collar crime problem, the organization of the Federal judiciary, and the U.S. Attorney's perception of the program and the Specialist's role. The office and unit organization may be described as structured or flexible, and the Specialist's relationship to the unit as integral or adjunctive.

Generally, the study team found the larger the office, the higher the degree of specialization among the AUSAs within the office, and therefore, the more structured the organization of the OUSA. In contrast, the smaller offices, having fewer resources, usually remain more flexible in order to meet the demands of their responsibilities in numerous cases and matters. Their attorneys are, for the most part, generalists.

The Attorney General's Order establishing the units outlined a structure for these units: three experienced AUSAs (unless otherwise agreed to by the Deputy Attorney General), assigned to the unit full-time for at least 18 months. The intent of this directive was to provide continuity and specialization in the prosecution of white-collar crime cases, and to ensure the availability of adequate prosecutive resources. Although all the OUSAs visited had established separate units, the larger offices were better able to meet these specifications in form, while the smaller offices had difficulty in attaining the structured unit format. In general, the latter offices were unable either to designate the minimum number of attorneys or to devote their resources full-time to the ECE unit.

The following examples illustrate how the above factors affect unit organization. In one district, where there was a history of public corruption, a Special Prosecutions Division was established prior to the implementation of the ECE program. The U.S. Attorney's perceived need was to expand his office's capabilities in the area of fraud prosecutions. Thus, the Specialist was to work in conjunction with the Special Prosecutions Division, concentrate on fraud matters, and draw on that Division's manpower as necessary. Another U.S. Attorney split his unit to cover the main office and two staffed branch offices so as to provide better service for the judges sitting in those three locations. A third district had a rather low level of awareness of white-collar crime, and most AUSAs had little experience prosecuting significant white-collar cases. The U.S. Attorney required overall assistance in developing enforcement efforts, had few AUSAs, and a very informal office structure. Therefore, the Specialist was brought in as the Unit Chief, and the OUSA assigned two full-time AUSAs for an ECE unit.

Assistant U.S. Attorney: Assigning AUSAs to the ECE unit is the prerogative of the U.S. Attorney. In general, the assigned unit Attorneys are experienced prosecutors, either as AUSAs, State or private attorneys; many have prior experience in the area of white-collar crime. While the minimum number of AUSAs to be assigned to a unit is set at three, at the time of this study, the number of AUSAs assigned to each of the seven ECE units ranged from one to 13, as follows:

CHART IV

ECE UNITS	Number of Criminal Section AUSAs	No. of AUSAs Full-Time in ECE Unit
CLEVELAND, OH	15	5
COLUMBIA, SC	7	1
DENVER, CO	10	3
LOS ANGELES, CA*	60	6
NEW HAVEN, CT	11	5
PHILADELPHIA, PA*	30	13
PORTLAND, OR	No Sections per se	2

* In these OUSAs, the ECE unit is nominally referred to as a Special Prosecution Unit or Division. It functions as an ECE unit, although the AUSAs will be involved in prosecuting other major cases in addition to white-collar crime cases.

Although some units do not have the minimum number of AUSAs assigned full-time to the ECE unit, it is important to note that there are other experienced AUSAs who work part-time with the unit in prosecuting white-collar crime cases.

The units' caseloads are predominately white-collar crimes, however, some of these units do handle non-white-collar crime cases. This has resulted from program and unit design as well as the phase of implementation currently in progress. Some of the pre-existing units were designated as Special Prosecution Units, to handle significant cases; thus, some of the office's best prosecutors are in this unit, and their expertise may be necessary to handle significant non-white-collar crime cases. Additionally, where the program is just being implemented, it is likely that fewer significant cases exist, so that prosecutive expertise might be idle, if not handling non-unit cases.

Unit Chief: All units visited have a designated Unit Chief, either the Specialist, an AUSA, or in one instance, the U.S. Attorney; this individual may be responsible for reporting to the Chief of the Criminal Section, the First Assistant, and/or the U.S. Attorney, according to the office organization. Where the Specialist is the Unit Chief, he reports not only to the OECE, but also to the OUSA, as a part of line management. While this situation intensifies the difficulties in reporting to two organizations, it also makes the Specialist a component of the OUSA management. This inclusion may give the Specialist a more active part in shaping the unit's role and direction, because he participates in management decisions. For example, where the Unit Chief participates in the selection and assignment of cases, he has much influence in shaping the direction and impact of the unit. However, he may then become burdened by having to perform management tasks, e.g., attending case selection meetings, in addition to his responsibilities for OECE, and thus, have less time to devote to his primary duties.

The Specialist was designated as the Unit Chief at two of the seven locations visited, both were smaller offices, with less formalized organizational structures. It was the study team's observation that the Specialists were operating well in the situation and, to date, did not appear to have any major difficulties in executing their primary duties, while functioning as a part of OUSA management. The study team was unable to assess the feasibility of this arrangement for a large OUSA because the Specialist was not the Unit Chief in either of the two large offices visited.

The Specialist: The Attorney General's Order did not specify the position of the Specialist relative to the unit. Therefore, the U.S. Attorney's perception of the program in relation to his office's operations has determined, in part, whether the Specialist's position is integrated or adjunctive.* In theory, a hybrid position may be best; in practice the positions tend, organizationally, to be either line or staff.**

For example, one of the Specialists, designated as a Special Assistant to the U.S. Attorney, works in a large OUSA with a pre-existing Special Prosecutions Unit, and acts primarily in an advisory capacity; his role is adjunctive. Another Specialist designated as the Unit Chief, works in a small office and is actively involved in decisions concerning the unit's role and function in the OUSA, e.g., case selection for the unit; his role is integral.***

Based on the study team's findings, in an integrated position, the Specialist generally has: a greater voice in the management of the unit (including case selection), a greater degree of acceptance in the office, and better

* These terms refer to the Specialist's overall relationship to the office and include such matters as organizational relationships, support requirements, and duties assigned.

** Line office members are those employees who are responsible for some part of the direct operation of the office, while staff implies a supportive position; e.g., in an OUSA, an AUSA would be a line position, while an advisor is a staff position.

*** Although this example of an integral role within the unit is one in which he is the Unit Chief, it is not intended to indicate that this is the only organizational structure that will allow the Specialist to be an integral part of the unit.

clerical support and accommodations. These latter advantages are in comparison to the three cities where the Specialist was in an adjunctive role; in these three offices one Specialist was not located with the unit, one worked in an open office arrangement, and two had no clerical assistance. In contrast, an adjunctive role usually gives the Specialist greater independence and a more direct channel to top management, while relieving him of managerial burdens.

Whatever his organizational relationship to the OUSA, the Specialist should serve as a focal point for information, given: his knowledge of the white-collar criminal activity in his district; his awareness of the national dimensions of the problem; his contacts with local investigative agencies, other prosecutorial offices, various interest groups, other Specialists and the Department; and his prior experience as a prosecutor. In addition, several OUSAs noted that the Specialist was in a position to bring a fresh perspective to pending cases in terms of new investigative techniques and prosecutorial approaches, because he is not overburdened with a normal caseload. For example, one Specialist revived a major case which had languished for two years because the investigators and the OUSA had not yet developed evidence of intent. He set up a conference to show the investigators how they could prove intent. Following his instructions, the investigators completed the case, and recently, the subject was indicted.

EXTERNAL OPERATIONS AND RELATIONSHIPS

Beyond his relationships and responsibilities within the OUSA, the Specialist interacts with a multitude of organizations having varying responsibilities in white-collar crime enforcement: OECE, the Fraud and Public Integrity Sections, CRM; traditional Federal investigative agencies, OIGs and Federal regulatory agencies; and State and local investigative and prosecutive offices. The Specialist also interrelates with other groups interested in white-collar crime enforcement: interest and advisory groups; professional and business organizations; and the general public.

OECE: As an employee of CRM, the Specialist reports directly to OECE, and channels information between OECE and OUSA. This communication is the basis of a planned information network, to be organized by OECE, developed through the Specialists, and utilized by the OUSAs. It will connect the ECE regions, their respective OUSAs and the Department, so that the Department may make a concerted effort against white-collar crime.

This information network, bolstered by the interaction of program participants at the national conferences and various district seminars, has already proven to be valuable in providing participants with referrals to other individuals versed in problems or cases similar to those they currently face. In addition to the transfer of this case-specific information, many AUSAs noted that the general exchange of anecdotal case experience was also useful. Criminal patterns and trends in white-collar crime have already been discovered. For instance, a pattern of low level corruption led an OIG investigator--with

the advice of a Specialist--into a significant program fraud case; a successful Medicare/Medicaid investigation in one jurisdiction led to the discovery of similar activities in other jurisdictions.

When these trends and patterns are established, successful investigative techniques and prosecutive approaches may be relayed to other districts and adopted, as appropriate. As the program reaches full implementation, the impact of this network should increase greatly; once the network is complete, a national overview of white-collar crime should exist. This complete information base will identify duplications of effort and gaps in enforcement, and allow the Specialist to consolidate and coordinate these efforts.

Fraud and Public Integrity: For additional expertise and assistance, the Specialist may call upon attorneys in the Fraud and Public Integrity Sections, CRM. Where an OUSA cannot handle a significant and complex white-collar crime case due to a lack of sufficient prosecutive resources, these two sections may be able, in some instances, to assign an attorney to that office in order to alleviate the problem. In addition, the Public Integrity Section plans to assign their section attorneys responsibility for specific geographic areas, thus providing a ready contact for the Specialist.

Federal Agencies: An important part of the Specialist's role, and a major factor for ensuring the success of the program, is his interaction with the investigative and program agencies, including the coordination of their efforts among themselves and with the OUSA. Initially, the Specialist acts as a liaison for the program: directly communicating with agency personnel

about program goals, eliciting their participation in achieving program objectives and laying the foundation for his involvement with investigators and AUSAs on major white-collar crime cases. This involvement may require his consultation, direction or oversight of the progress of the case. He encourages the agents to develop significant cases with the participation of the OUSA at the beginning of the investigation.

Although several OUSAs have noted that they cannot force the agencies to develop significant cases, they can bring about positive change in the quality of cases by clearly communicating their policies to the agencies, and, if necessary, exercising their declination authority. When this latter method is used in conjunction with a detailed explanation of why the case is being declined, the agency can begin to develop a clearer understanding of what is required for OUSA acceptance. Thus, OUSA interest, the Specialist's mission and the agencies' desire to have their cases prosecuted, should provide local investigative personnel with an incentive to develop cases within the scope of district and national priorities. However, until the agencies' methods of measuring achievements reflect the new emphasis on quality over quantity in law enforcement, there will continue to be a major disincentive to the reorientation of investigations and, therefore, prosecutions in the area of white-collar crime.

The OUSA's early involvement in the investigative process is the key to better cases better prosecuted, and accrues to the benefit of both the agents assigned to an investigation and the unit AUSA designated to prosecute the completed

case. The agent is assured of having a contact, the Specialist or an AUSA, within OUSA. The contact's familiarity with the developing investigation allows him to answer questions efficiently and knowledgeably, and, when required, to suggest other possible methods of developing a solid case. This familiarity may be essential to the AUSA's later successful prosecution of the case and helps the AUSA to ensure that the case will be complete and prosecutable. Both gain the mutual confidence and respect for each other which develops through a close working relationship. For example, confidence and respect are displayed by the agents' desire, at most sites, to obtain the Specialist's opinion early in the investigation because they believe it allows them to develop stronger, more complex or sophisticated cases, which the OUSA would be willing and able to prosecute successfully. Equally as important as the individual benefits is the enhancement of the overall quality of cases prepared for prosecution because the joint effort combines the investigative and prosecutive expertise to develop a strategy for apprehending and prosecuting white-collar criminals.

By having the OUSA as a focal point for pending investigations, the probability of locating and coordinating duplicative investigations is greatly increased. Furthermore, consolidation of several smaller investigations can often result in a case more significant than the sum of its parts. Coordinating the various agency interests and talents requires a certain degree of diplomacy, understanding, patience and impartiality. In many instances, the agencies have expressed their willingness and the desirability of having the Specialist fulfill the mediator's role because of his unique location within the enforcement community.

In fact, the Specialist's ability to settle disputes and coordinate investigations was often cited by the agents interviewed as one of the Specialist's most important functions.

While assisting in the development of cases, the Specialist acquires an understanding of the various agencies' program operations. In reviewing case evidence, he can discover program practices which may make the prosecution, prevention or detection of white-collar crime more difficult. He can then make recommendations to correct such problems, sometimes a relatively simple matter. For example, one Specialist noted that employees of a particular program were filling in application forms for the applicant. Since the applicant's handwriting was not on the form, it became more difficult to show his understanding of the application and thereby prove an intent to defraud. This was easily corrected by requiring the applicant to personally complete the forms.

Another aspect of this greater involvement of the OUSA with its client-agencies is the dissemination of general information through training, seminars and conferences. Generally, the Specialists preferred the informal methods of presenting information on specific subjects, i.e., seminars and conferences, indicating that formal training was more properly the responsibility of the agency. Depending on his knowledge of the subject matter, the Specialist may conduct the session himself or arrange for someone else to present it. Examples of seminar topics are investigative auditing, how to document a trail of evidence and the use and function of the investigative grand jury. These sessions have been attended by agents and AUSAs; generally, they have

met with a favorable response. Besides being a method of transferring knowledge, these seminars serve an important role in providing an opportunity for AUSAs and agents to become acquainted, leading to closer professional relationships and increased coordinative efforts.

State and Local Investigative and Prosecutive Agencies: As the program develops, expanding its scope to include the State and local levels, the Specialist may become involved in establishing a cooperative working relationship between all levels of government. Coordinated efforts here could give both the Federal and State governments access to additional investigative and prosecutive resources, better and more complete information, and more experience to utilize. A sharing of information could eliminate duplication, and establish connections or links in investigations.

In addition, it is expected that the Federal emphasis on white-collar crime will, in many instances, produce more cases than the OUSA will be able to prosecute effectively. In light of the national priorities, it will be necessary to develop an understanding with the State and local prosecutive agencies to have State and/or local attorneys further assist in the white-collar crime enforcement effort by prosecuting many of the cases over which they have jurisdiction.

Advisory and Interest Groups, Business Organizations, and the General Public: As the program develops, the Specialist should begin to establish liaison with interest and advisory groups to help further the gathering and analysis of white-collar crime information. Included in this effort is the development

of information on methods of preventing and detecting these crimes and the dissemination of this information to possible victims, e.g., businesses and the general public. The program hopes not only to develop new sources for leads or information on these crimes, but also ultimately to limit their occurrence by increasing the public's knowledge of prevention measures. Moreover, public awareness of detection devices, and the authorities responsible for addressing these activities will improve law enforcement efforts. Additionally, raising the public's awareness of white-collar crime, its cost, and the minimal risks taken by the criminal for maximal rewards, may help to bring about increased pressure for stricter sanctions against offenders.

DEVELOPMENTAL STAGES OF ESTABLISHING AND IMPLEMENTING AN ECE UNIT

Once the Specialist is acclimated to his new role, four general phases of implementation, each an accession to the previous one, are undertaken: (1) accumulating and analyzing white-collar crime data; (2) communicating with district organizations involved or interested in white-collar crime enforcement; (3) coordinating efforts in the prevention, detection, investigation and prosecution of white-collar crime; and (4) prosecuting significant white-collar crime cases.

Prior to implementing this program, however, several activities must take place: unit site-selection, Specialist selection, administrative preparation (prior to the Specialist's entry on duty), and orientation (subsequent to the Specialist's arrival in the OUSA).

Upon his arrival--which may be several months from the time of his selection--the Specialist goes through an orientation period, becoming familiar with his environment and making arrangements for any other materials or support he may require. During this time, the Specialist may have to complete cases carried over from his previous position. In certain instances, the Specialist has taken the state bar examination or done some minor casework to obtain court exposure, thereby gaining acceptance within the Federal judiciary. This also gives him some time to become known in the OUSA and within the enforcement community. Once settled in the OUSA, the Specialist is prepared to begin implementing the ECE program.

Accumulate and Analyze Data. The Specialist's first objective in implementing the program is to obtain an overall picture of his district, the nature and scope of its white-collar crime problem, and the resources available to combat this problem. To complete this undertaking, the Specialist obtains: from investigating agencies, an inventory of active white-collar crime cases; from prosecutors, data on the impact and magnitude of pending and closed cases; and from various business organizations, consumer groups and State agencies, demographic information, statistical data on economic conditions, and perceptions of the areas in white-collar crime problems. This research effort is accomplished at the discretion of the Specialist and may involve interviews, survey questionnaires developed by each Specialist, and an analysis of relevant reports, caseloads of the OUSA, and record systems of various agencies, e.g., investigative files. This endeavor indicates the nature and scope of the district's white-collar crime problem, forms the basis upon which district

priorities are selected, and introduces the program and the Specialist to the business and enforcement communities. This activity, which is estimated to take six months, culminates in the submission of a district report to OECE.

Communicate with the District. After the Specialist has acquired an understanding of the nature of his district's problem, he is prepared to adapt program features which best address those problems, and to explain to the various enforcement and interest organizations how the program is expected to benefit them. This liaison role and function of the Specialist is a key factor in achieving the objectives of maximizing the efficient use of law enforcement and prosecutorial resources in combatting white-collar crime. The Specialist generally begins with the Federal enforcement agencies as a promoter for the program; he creates an interest, on the part of the agents, in participating in the program and encourages them to bring the OUSA potential criminal matters which they believe merit a joint investigator/prosecutor effort. When cases are brought to the attention of the Specialist, he reviews them, and in many instances, gives the agent his detailed analysis, suggesting how the case can be made stronger and/or more complete, by gathering more or different types of information, linking existing evidence or utilizing different methods of obtaining evidence. This is also the stage in which the Specialist can begin to expand the agent's awareness of other avenues of pursuit, either civil or administrative remedies, to address activities which do not warrant criminal prosecution. As the agent's understanding increases, the leads developed and cases brought to the OUSA should be stronger, and the Specialist should begin to coordinate specific case efforts, thus moving into the third phase of implementation.

While coordinating Federal investigative efforts, the Specialist should continue to expand his activities within his district. The study team found that this expansion is generally conceived to include:

- State and local investigative and prosecutive offices: to foster an atmosphere of cooperation and to delineate responsibilities for avoiding duplication of effort or forfeiture of good cases due to a lack of coordination;
- Interest and advisory groups: to utilize most effectively resources to develop and disseminate information concerning white-collar crime; and
- Professional and business organizations and the general public: to increase their awareness of the magnitude of the white-collar crime problem and to educate them as to methods of preventing and detecting possible criminal activities.

Once this effort is complete, it is expected that the Specialist would expand his efforts into other districts in his region. (The Specialist's role in other districts is discussed in detail in Chapter IV.)

Coordinate Efforts. This phase marks the beginning of the Specialist's case specific activities. Once a specific criminal activity has been targeted, the Specialist (and/or an ECE Unit AUSA) and the agents must develop a strategy which will result in the apprehension of the most significant criminal offenders and the strongest possible prosecution. This often requires the assistance of a multiplicity of investigative agencies to develop different angles to the case under the various criminal statutes they have traditionally investigated.

Combining investigative resources brings together differing expertise and expands the scope of possible techniques that may be employed. It also provides an informal cross-training procedure, which results in the agents being able to recognize areas where another's skills or expertise would benefit an investigation.

The Specialist's role in these large complex cases is to provide guidance for the investigative efforts. He assists in the selection of the major path of the investigation and identifies "spin-off" cases to be further investigated by new teams or prosecuted by Unit AUSAs. In the main investigation, the Specialist also acts as a mediator between conflicting interests, when they arise, thus preserving the coordinative efforts. At the completion of the investigation, the Specialist should have a solid, well-planned case, against significant criminal offenders or activities ready for prosecution.

Prosecution of Significant White-Collar Cases: The prosecutorial work of the ECE unit involves a departure from the traditional, reactive approach to a more proactive approach, focusing on major/complex cases. Insofar as this shift requires a period of transition, during which the Specialist lays the foundation for achieving the program's prosecutorial goals, the prosecution of major white-collar crime cases is generally viewed as a second year objective. This is based on the expectation that in the first year, the unit will establish: an effective working relationship with the appropriate agencies; a sound, reliable information system for district priorities; a policy for determining what is a major case; and will have available, experienced AUSAs to prosecute those major white-collar crime cases.

When the program reaches this stage--and a case, developed with the investigative agencies through the Specialists efforts, it is ready for prosecution--the Specialist, because of his substantial involvement in the investigation, should, in most instances, participate in the litigation. This role could be that of the lead attorney, co-counsel, or an advisor/director. His participation should be premised on some notion of case significance, be it: the prominence or culpability of the offender, the complexity, uniqueness or cost of the criminal activity, the uniqueness of the prosecutive approach, or the necessity of maintaining the investigative agencies' confidence in the program.

UNIT ACHIEVEMENTS

Each of the seven units surveyed demonstrated significant achievements of program objectives. In reporting these achievements, it was the position of the study team that, since the seven units were still in various stages of program implementation, it would be better to report accomplishments in an aggregate manner to avoid unit-by-unit comparisons that might not adequately account for the important differences of each unit, or represent the individual characteristics, needs and conditions of each unit from which program objectives were accomplished. Due to the flexible and adaptable nature of the program, the individuality of each OUSA, and the scope of the study, it is not possible to report these achievements in measurable terms of significance. For example, the environment in one Federal district would make the

establishment of a cooperative working relationship with various Federal agencies by the Specialist more significant than it would be in a district where the practice was more traditional and commonplace.

Since the ECE program is a five point program designed to enhance the Department's ability to detect, prevent, investigate, prosecute and sentence the white-collar criminal, the program accomplishments are reported under each of the five program areas to which they are most germane. As noted earlier in the report, the ECE units have concentrated their efforts on the enhancement of investigative and prosecutive capabilities, since achievements in these areas will enhance, to some extent, capabilities in detection, prevention and obtainment of appropriate sanctions. In fact, with respect to the last enhancement goal, most program participants in the field thought it was a totally resultant goal, and did not mention any positive steps they could take towards enhanced capabilities in this area. Thus, the unit's achievements reflect the developmental nature of the program and the emphasis which must be given to the program's investigative and prosecutive objectives. These unit achievements are examples along the continuum of program implementation, illustrative of program implementation and effectiveness, and are not intended to be an exhaustive list of achievements to date.

INVESTIGATION

General Achievements:

- ° Developed and established a district white-collar crime information system.

- Developed an informal method for coordination of investigators in multi-jurisdictional cases.
- Established working relationship with Federal investigative agencies.
- Held meetings and conferences for program and investigative agencies, facilitating the discussion of developing cases, techniques, and strategies for combatting white-collar crime.
- Encouraged several regional Inspectors General to develop quality cases for referral to OUSAs.
- Established liaison with State and local agencies.

Selected Specific Achievements:

- The coordinative work of one Specialist led to the discovery of connections between several apparently unrelated corporations, each being investigated by a different investigative agency. The Specialist then formulated an investigative strategy which allowed the agencies to continue their work, while avoiding the problems arising from parallel proceedings.
- One Specialist coordinated the joint investigation of a large, complex vote buying scandal. The Specialist worked to facilitate cooperation between the OUSA and the relevant State's law enforcement division. The matter has already resulted in several indictments.
- Additionally, Specialists have been involved in coordinating and/or directing major, joint investigations including: an FBI-Housing and Urban Development team to study the illegal activities of a State agency, an FBI-Health and Human Services team to examine specific

areas of Medicare/Medicaid fraud and an FBI-Insurance Crime Prevention Institute team to investigate attorney-doctor phony accident schemes.

PROSECUTION

General Achievements:

- Identified district priorities.
- Sponsored seminars on the use of various prosecutive techniques.
- Identified cases for State and local prosecution.
- Established new declination guidelines for white-collar crime cases.
- Provided direction, guidance, and oversight for the prosecution of specific, complex white-collar crime cases.
- Acted as lead attorney or co-counsel on various white-collar crime cases.

Selected Specific Achievements:

- One Specialist found that a potentially major nursing home fraud case had languished for two years because of a lack of evidence of intent. The Specialist created a joint FBI-program agency task force to pursue the case and explained what additional evidence was required. An indictment was returned, and the case is to go to trial shortly.
- The Specialist in one location, recognizing the need for greater prosecutorial knowledge of accounting, helped arrange an IRS sponsored seminar for AUSAs. The seminar dealt with: (a) education in the area of basic accounting principles; (b) accounting principles frequently encountered in white-collar crime cases; and (c) hypothetical application of these principles in specific types of white-collar crime. In

another district, a Specialist discovered that a regional OIG needed training in financial investigation techniques, and arranged for a similar IRS sponsored course.

- A Specialist aided in the successful prosecution of two major recipient fraud cases, one involving Farmers Home Mortgage Administration, U.S. Department of Agriculture and one involving the Veteran's Administration. One was developed into a significant public corruption case through the combined effort of the IRS, a regional OIG, and other agencies coordinated by the Specialist. Both cases resulted in constructive suggestions for changes in the recipient verification methods to the headquarters of the program agencies.
- In a similar development, a Specialist observed systematic difficulties in prosecuting a certain form of recipient fraud. The Specialist then developed a series of recommendations for the relevant OIG to increase recipient accountability (e.g., requiring recipient signatures, etc.).

DETECTION

General Achievements:

- Established an inventory of ongoing white-collar criminal investigations.
- Identified patterns of fraud and abuse in the ECE districts.
- Sponsored seminars on methods of detection.

Selected Specific Achievements:

- The Specialist in one district developed a series of indicators for detecting toxic waste violations in the transportation industry.

PREVENTION

General Achievements:

- Provided suggestions for legislative changes at the Federal and State levels.
- Gave lectures on the subject of white-collar crime and methods of detecting and preventing its occurrence to local interest and business groups.

Selected Specific Achievements:

- The Specialist coordinated a multi-agency arson/insurance fraud task force in his district because arson is a particularly egregious problem.
- A unit attorney, with expertise in arson cases, testified before Congress on current efforts to combat arson for profit.
- It was determined that the prevention of illegal dumping of toxic wastes into public waterways was a high priority in two districts as a result of local concern and identification of the magnitude of the problem.
- One Specialist found that the business community had a low level of awareness of the white-collar crime problem, and is, therefore, working with them to heighten their knowledge of available self-help techniques to reduce workplace crime.

SENTENCING ENHANCEMENT

General Achievements:

- Developed an inventory of sentences pertaining to recently completed white-collar crime cases.
- Added particularly relevant sentencing memoranda or studies to the information network.

Selected Specific Achievements:

- The Specialist in one district, after studying and developing a series of sentencing memoranda, produced a study on the use of the Dangerous Special Offender Statute in white-collar crime cases.

The above narrative has described the internal and external organization and operation of the ECE units, the developmental stages that are characteristic of establishing and implementing a unit, and has identified some unit achievements which highlight, to some extent, the initial effectiveness of the ECE program. Together with the first two chapters, this report has documented the operation of the OECE and the initial seven ECE units in terms of program structure and rationale, thus, fulfilling three objectives of the study and providing the basis for meeting its fourth purpose - developing recommendations for improving management of the program.

CHAPTER IV
ISSUES IMPACTING UPON THE ESTABLISHMENT AND IMPLEMENTATION
OF THE ECONOMIC CRIME ENFORCEMENT PROGRAM AND UNITS

The preceding chapters of the report have, while presenting a description of the ECE program, noted specific observations and findings about various aspects of the program. The first chapter examined program design and determined that, theoretically, the program could accomplish its objectives. The next two chapters considered current program operations for indications that the program is working as contemplated and would, therefore, be able to achieve its objectives. Together, however, these chapters form the foundation for raising some important program-wide issues that have the potential to limit the effectiveness and efficiency of the program. These issues, although discussed separately, are interrelated, focusing primarily on the role of the Specialist and his ability, as a CRM employee, to function as a change agent in the decentralized activities of the 95 OUSAs. Specifically, the issues to be discussed are:

- The ECE program is based, in large part, upon the Specialist's ability to balance the various expectations of program participants, while acting as a catalyst to unify the enforcement efforts of 93 judicial districts through 30 OUSAs, thus giving the program a national scope. Can the ECE program design achieve this objective of national coverage?
- What particular environment is necessary in a district to ensure the successful initiation of an ECE unit?

- ° What attributes of and role for the Specialist in his ECE region will best ensure the effective and efficient utilization of CRM resources?

These issues are addressed from a management perspective, with the purpose of providing recommendations to CRM management to improve and clarify the ECE program as they formulate plans to expand, modify and evaluate it. They are discussed within the context of the program's objective "to enhance the capabilities and capacities of the Department to prevent, detect, investigate and prosecute the economic crime offender nationally"* and in light of the program's design to have ECE units operate "... in the U.S. Attorneys' Offices and within the Criminal Division of the Department of Justice with the goal of directing investigative and prosecutive resources for two of the Department's top enforcement priorities: fraud and public corruption."* In addition, the discussion is presented in view of the Attorney General Order's further purpose "to mandate maximum efficiency in the utilization of personnel in the prevention, detection, investigation and prosecution of economic crime offenders."*

Finally, it is recognized that there is no one solution to address all variations of the particular situation in a specific OUSA. Indeed, the ECE program was developed with the understanding that there are innumerable variables that affect a program of this nature, and the preferred method of handling the variables is through flexibility in the program design. Therefore, the conclusions and recommendations in this chapter, while based on sound principles of

* Attorney General Order 817-79

management, are meant to be used as general guidelines to enhance the effectiveness and efficiency of the program, rather than as ironclad rules which must be followed without regard to the particular circumstances of a given situation.

Conclusions

- That the goals and objectives of the ECE program provide an adequate rationale for the structure of the program and the function of the ECE units;
- That the organizational and operational collaboration of OUSA and CRM with respect to the ECE program provides an effective strategy for addressing the problems of economic crime enforcement and for utilizing available resources in a more efficient and accountable manner; and
- That the ECE units studied generally conform to the program's conceptual design and organizational structure.

CAN THE PROGRAM, AS DESIGNED, ACCOMPLISH THE OBJECTIVE OF GIVING THE PROGRAM A NATIONAL SCOPE?

The ECE program was created as a national response to white-collar crime. It places a strong emphasis on white-collar crime enforcement and seeks to enhance the Department's effectiveness in this priority area by increasing the coordination and information flow between all parties interested or involved in the enforcement effort. The subjects discussed in the first three chapters make it evident that this program can, and will accomplish this goal; however,

consideration of the issues discussed in this chapter and the incorporation of their respective recommendations can further enhance the efficiency and effectiveness the Department can achieve in this program initiative.

The Effect of the Design and Location of the 30 ECE Units on the National Scope of the Program. In establishing the ECE program, it was CRM's intention to create a national program to combat a national problem by locating 30 ECE units, with one or two ECE Specialists, in selected OUSAs to cover the 50 States, the District of Columbia and Puerto Rico. This national focus requires that most of the existing and proposed ECE units' regions cover more than one Federal judicial district, thereby creating in most regions a district ECE unit and one or more non-unit districts. According to plan, full implementation of the program will result in Specialists covering 30 unit districts and 63 non-unit districts.

To ensure the program's national focus, the Deputy Attorney General's implementing memorandum provided for the Specialist to service non-unit districts as follows:

"...all districts will essentially be included within a region serviced by a Criminal Division Economic Crime Enforcement Specialist...[who] will provide an intelligence source for the United States Attorney and personnel in handling economic crime matters, and provide guidance for drafting indictments and motions. When performing services for the non-unit offices, the Specialist or any other Criminal Division Attorney will report only to the Criminal Division and the United States Attorney for that non-unit district. The handling of each district's economic

crime cases will be the responsibility of each district's United States Attorney. The coordination of efforts made by each unit or non-unit office within a region will be the responsibility of the Economic Crime Enforcement Specialist."

While the implementing memorandum provided for the functional relationship of the Specialist to the non-unit district, it did not specify the relationship of the Specialist to the U.S. Attorney or to the AUSAs in non-unit districts. This lack of a definitive organizational relationship between the Specialist and his non-unit districts could present a dilemma for the Specialist attempting to effect change in the non-unit OUSA's prosecution of white-collar crime cases.

In addition, it can reasonably be inferred from the Deputy Attorney General's implementing memorandum (Appendix III) that the Specialist is to serve the non-unit districts in the same or similar capacity as the unit district. However, given the practical considerations of travel, time, and expense, a question arises as to whether the Specialist can effectively serve more than one district. The Specialist's role and scope of activity, budget limitations and demands on his time suggest that substantial service to non-unit districts simultaneously within a unit district cannot be achieved as efficaciously as would service restricted primarily to the unit district with limited participation in non-unit districts.

Another factor to be considered in assessing the national scope of the program is the relative size of OUSAs in unit and non-unit districts and their relationship to program design. As noted earlier, the initial seven unit locations

were selected, in part, on the basis of office size -- OECE initially chose medium sized offices as their target, but added one large office to assess its adaptability to the ECE program. A comparison of the staffing allocations of the 93 program OUSAs to the 30 selected sites, shows that the primary target for ECE units continued to be large and medium sized offices, (see Chart V below) thus reinforcing a design focused on larger OUSAs.

CHART V*

NUMBER OF ALLOTTED AUSAs	TOTAL NUMBER OF OUSAs WITHIN SIZE RANGE	NUMBER OF OUSAs HAVING OR PROJECTED TO HAVE A SPECIALIST	% OF TOTAL HAVING OR PROJECTED TO HAVE A SPECIALIST
50 or More	7	7	100
30 to 49	11	10	90.9
20 to 29	12	8	66.7
15 to 19	9	4	44.4
10 to 14	17	1	5.8
Less than 10	39	0	0

The program design for the location of the 30 ECE units incorporates an implicit recognition that small offices could not effectively participate in the unit plan, since such full participation in the program would significantly reduce their ability to discharge other prosecutorial duties. It would appear, therefore, that the relationship of the Specialist and the ECE program to the 53 small non-unit offices would necessarily need to be different than it would be for the large or medium size unit and non-unit districts. As noted, white-collar crime cases can be complex and time-consuming. The

* For a complete breakdown of figures see Appendix VI.

limited resources both of the program and of the smaller OUSAs generally do not allow full coverage of the program in the smaller offices. One method of bringing these small offices into the program is to have the Specialist assist on a case-by-case basis. He could compile an initial survey for the OUSA to identify those areas of white-collar crime which appear to be a significant problem in that district. When a sizeable case in those priority areas is brought to the OUSA, the Specialist could review the case, and provide the OUSA guidance as to the manner in which they should proceed.

Therefore, while the program is designed to have a national focus, the national dimensions of the program can be affected by: the allocation of prosecutive resources among the large, medium and small OUSAs; the relationship of the Specialist to non-unit districts; the practical limitations of time, distance and budget imposed on a Specialist working within a multi-district region; and the willingness of the U.S. Attorney to accept and support the ECE program in his district. While the ECE program deals with a national problem, in effect, the program's national scope will be limited primarily to 30 unit districts until an adequate plan for addressing the functions and operations of the non-unit districts and their relationship to the unit districts is developed.

The Utilization of the Two Specialist Concept. Interrelated with the issue of whether 30 units can effect a national program is the question of how to best utilize CRM's Specialists to ensure this coverage. CRM's plan is to have two Specialists in most of the 30 ECE regions. This plan allows for three possible arrangements for locating the second Specialist within the region:

- ° place him in the same office as the first Specialist, thus having both Specialists primarily working for the same U.S. Attorney and the same community;
- ° locate the second Specialist in the same district as the first Specialist, but in a field office of the OUSA, thereby having both Specialists reporting to the same U.S. Attorney, but servicing separate communities; or
- ° situate the second Specialist in a separate district within the ECE region, and in this way have each Specialist support different U.S. Attorneys and communities.

In establishing the first seven units, only one unit was staffed with two Specialists, the second Specialist having been employed only a few months prior to the initiation of the study team's field work. Thus, there was insufficient evidence for the study team to fully assess the advantages of two Specialists in one region. However, the following observations, based on the study team's review of the operations of one Specialist in a region, should be considered by CRM management in the process of making decisions regarding the three alternative locations.

Located in the Same Office. Where two Specialists are located in the same district, further expansion of the program in that district, e.g., greater involvement at the State and local levels, or the initiation of coordination with the business community, can be undertaken. In addition, with the collocation of the two Specialists, a closer coordination of their program efforts is possible. However, one possible problem from further expansion in a

district is that it may overextend the OUSA's resources, thus creating an undesirable imbalance in the resource commitments of both the OUSA and the program. Overextending the OUSA's resources could lead to a problem of unduly raising the expectations for the program held by investigative agencies, thus, hindering the Specialist's attempts to gain the cooperation and confidence of these agencies. Having both Specialists in one district also fails to eliminate the difficulties that arise from the practical considerations of one Specialist serving non-unit districts such as travel and expense; nor does it reduce the multiplicity of reporting requirements for the Specialists: to CRM, to the district U.S. Attorney, and, in some capacity, to one, two, three, or four non-unit district U.S. Attorneys, depending on the ECE region.

Located in the Same District but Separate Offices. The location of the two Specialists in separate offices allows for a more substantial involvement in a second community, thus, broadening the program's area of influence. By working in the same district, however, the Specialists are still primarily a catalyst for change in the operations of only one U.S. Attorney, and before they can expand their activities in this respect, they will have to overcome the practical considerations involved in serving the non-unit districts.

Located in Separate Districts. In separate districts, the Specialists should be able to effect a greater expansion into the region, e.g., acting as change-agents in two separate OUSAs, or developing a greater understanding of program objectives within Federal enforcement agencies in two districts on a "full-time" basis. The use of two Specialists in this manner creates a national

program which has a broad scope of less intensive activities rather than the concentration of activities that can be developed with two Specialists in one location. This arrangement can also streamline the Specialists' reporting relationships to the regional U.S. Attorneys. The drawbacks to this approach include: the lack of collocation which can enhance the Specialists' ability to closely coordinate their activities and the increase in lag time for program development which results from having more OUSAs requiring a period of adjustment to program objectives.

Given the above considerations, CRM, in deciding where to place the second Specialist, needs to assess the possible impact the Specialist may have on the ECE region through the various locations. In a region comprised primarily of a larger OUSA, e.g., the region covered by the Philadelphia, Pennsylvania office, where a greater number of resources within that office can perhaps be made available on a full-time basis for white-collar crime enforcement, further expansion of the program through that office may be desirable. In other regions composed of two or more medium sized offices, e.g., Portland, Oregon region, consideration of the problems associated with serving non-unit offices, and the limited amount of OUSA resources in any one office that can be devoted to white-collar crime, may make it more effective to locate the second Specialist in another district within the region, Seattle, Washington, with some provision for the coordination of efforts between the two regional Specialists.

The Reallocation of Resources. The selection of an OUSA to house an ECE unit was based upon several criteria. The most important consideration was the

willingness of the U.S. Attorney to have such a unit in his district and to accept the role and function of the Specialist within the unit. In addition, there was a consideration of the perceived magnitude of the district's white-collar crime problem, which was based on the best current information about that problem.

As the response of the law enforcement community in a district to the ECE program can be assessed and as information improves concerning the district's white-collar crime problem, CRM management may have to make decisions about resource reallocation. Where the law enforcement agencies resist any necessary shift in emphasis toward white-collar crime, or where improved information indicates that the white-collar crime problems in other districts may be more pressing, the continued resource allocation to that district may be undesirable. To effect a smooth transition in such cases, CRM management should develop a policy for the reallocation of CRM resources.

Conclusions

- That the ECE program's national scope will be limited to the total number of ECE units until the relationship and role of the Specialist to the 63 non-unit Federal judicial districts is defined; and
- That there is a need to better define the role and function of a second Specialist within an ECE region and/or ECE unit district.

Recommendations

- That CRM define the organizational relationship of the Specialist to the OUSA in non-unit districts, and delineate his responsibilities to those non-unit districts;

- That CRM conduct a needs assessment to determine if and how a second Specialist could be used in an ECE region; and
- That CRM establish basic policy guidelines for the reallocation of CRM resources.

WHAT PARTICULAR ENVIRONMENT IS NECESSARY IN A DISTRICT TO ENSURE THE SUCCESSFUL INITIATION OF AN ECE UNIT?

A review of the initial seven locations indicated that varying forms of organizational relationships between and among ECE program participants have achieved some measure of success in meeting program objectives. An analysis of the study's findings, however, reveals a number of factors or conditions that affect the success a Specialist can have in program implementation and the achievement of program objectives. The primary factors affecting this success are related to the degree of acceptance of the Specialist and his assimilation into the OUSA, and include:

- the degree of acceptance by the U.S. Attorney of the goals and objectives of the program;
- the degree of acceptance, by the U.S. Attorney, the Unit Chief, the AUSAs assigned to the unit and other professional staff in the OUSA, of the Specialist, his position, role and function;
- the location of the Specialist's office in relationship to the ECE unit;
- the support the Specialist receives, i.e., the clerical assistance, equipment and supplies provided for him;

- the declination policies pertaining to the unit objectives of prosecuting quality cases; and
- the organizational relationship of the Specialist to the ECE unit (i.e., integrated or adjunctive).

Additional factors which may affect the degree of success the Specialist has in implementing the Program include the OUSA's attitude toward DOJ and the investigative agencies, and the investigative agencies' attitude toward the OUSA and each other. These factors and conditions have an affect upon the working environment in which the program operates, and in turn, they affect the ability of the Specialist to successfully implement the program in a particular district.

The U.S. Attorney's acceptance of the ECE program, its goals and objectives are reflected in the organizational position, support, authority and credence he gives the Specialist. It is the U.S. Attorney who determines the Specialist's relationship to the unit and the support the Specialist receives. To an extent, the U.S. Attorney also influences the Specialist's acceptance by other office members and their perception of the Specialist's position, role and function in their district, through his exercise of operational control over the unit. Certainly, a major factor in the Specialist's acceptance within the OUSA is his credibility. Given the U.S. Attorney's role in the selection of the Specialist -- his absolute veto power -- the Specialist's qualifications must be acceptable to him. However, the U.S. Attorney may then take actions which can inadvertently impinge upon the Specialist's acceptance

and position in the office, thereby affecting the Specialist's ability to execute completely the objectives of the program. For example, the U.S. Attorney is to provide support and an office location for the Specialist. The study team found that the Specialist's office location can affect the attitudes of the persons with whom he works and his ability to execute his responsibilities:

- if the Specialist's office is not colocated with the unit, there is a tendency for some personnel, both internal and external to the OUSA, to view him as not a part of the ECE unit;
- if the Specialist's office is not private, then an atmosphere which will foster a free, professional exchange of information between himself and other program participants is made more difficult; and/or
- if the Specialist is not provided adequate clerical support, it has an adverse affect on those program activities which require such support, such as his reporting requirements to OECE.

By giving the Specialist private, colocated office space and adequate clerical support, the U.S. Attorney alleviates the effects caused by these problems and creates an atmosphere that can foster acceptance and cooperation, and allows the Specialist to complete his work more efficiently.

The Specialist, as a representative of the Department, working through the OUSA to enhance their white-collar crime enforcement efforts, can have a positive impact upon the OUSA's perception of the Department. By providing the OUSA with assistance in enhancing the prosecutive goals of the Department, without

assuming responsibilities traditionally considered those of the U.S. Attorney, a closer working relationship can be established between CRM and the OUSA.

Where the internal factors affecting program success are favorable, and there exists an atmosphere conducive to the Specialist acting as a change-agent, he should be able to enhance the relationship the OUSAs, CRM and the investigative agencies. The support and acceptance of the Specialist by the OUSA, including a supportive use of the office's declination policies, will assist the Specialist in promoting the program within the investigative agencies, since they rely on the OUSA to prosecute their cases. If they feel the Specialist speaks for the U.S. Attorney, they should be willing to work toward the program objectives. This, in turn, should have a positive affect on the OUSA's attitude toward the investigative agencies, since the cases they present to the OUSA should be stronger, more significant and complete than prior to the program.

The U.S. Attorney, in forming an ECE unit, determines the Specialist's position organizationally within the OUSA: whether he will be structured as an integral part of the unit or serve as an adjunct to the unit. This organizational structure - integral or adjunct - is determined, in large part, by the functions of the Specialist as authorized by the U.S. Attorney. In the seven sites surveyed, it was the view of the study team that four of the Specialists functioned as an integral part of the ECE unit and three Specialists functioned in an adjunct capacity. In the adjunct position, the Specialist's scope of activity was generally limited to the following: preparing district reports and gathering white-collar crime information; encouraging the investigating

agencies to pursue major white-collar cases; developing the general public's awareness of the white-collar crime problem; and educating them in methods of detection and prevention. However, once the Specialist is armed with information and contacts, he is prepared to act as a catalyst for implementing a new approach to the investigative/prosecutive aspects of white-collar crime cases as well as ensuring that district priority cases become the major emphasis of the unit. At this point it becomes more valuable for the Specialist to be in an integrated position, in which the Specialist is involved in such activities as: policy decisions concerning white-collar crime case selection and assignments; coordination of major cases with AUSAs and investigating agents; review and approval of documents prepared for court; and prosecution of selected cases.

The integrated position provides the Specialist with greater acceptance in the OUSA and assists him in implementing program objectives because he directly participates in those activities which produce positive changes in the investigation and prosecution of white-collar crime cases.

The study findings indicate that in offices where the Specialist functioned in an adjunct position to the unit, it was due to a number of factors, some arising from the OUSAs views of or prior experience with the Department, other factors being contingent upon the OUSA's expectations of the Specialist. Some of these factors are:

- ° the perception within the office that the Specialist was there as a "copy" for the Department;

- the view that personnel from the Department will "interfere or take over" certain OUSA operations or cases;
- the unwillingness AUSAs to accept the Specialist as having expertise in white-collar crime matters;
- the unwillingness of the supervisory personnel of the OUSA to accept the concept of the program or the role and function of the Specialists; and/or
- the OUSA's perception of the Specialist as an additional line prosecutor rather than primarily as a change-agent.

On the other hand, in offices where the Specialist's functions are integral to the unit, the U.S. Attorneys have become aware of the worth of the Specialist and the differences between this program and other CRM initiatives (e.g., Strike Force). These U.S. Attorneys could be a valuable resource to CRM in promoting the program in other offices.

It is recognized that during the implementation phase of the ECE program, it was appropriate to allow for the emergence of different patterns of structuring the relationship of the Specialist to the ECE unit, for this provided an opportunity for the U.S. Attorney to form the unit on the basis of his perceived needs, his understanding and expectations of the program, and for CRM to assess the effect that varying organizational models have upon achievement of program objectives. Based upon the study of the seven ECE units and recognizing the importance of the Specialist as a change-agent, it is the professional judgment of the study team that where the Specialist is structured as an integral part of the ECE unit, the program becomes a vital part of the

OUSA, the sequence of implementing program activities and objectives is accomplished more efficiently and effectively, and that this structure is, therefore, the more desirable one.

Conclusions

- ° That the implementation of the ECE program and achievement of program goals and objectives are affected, in large part, by the organizational relationship of the Specialist to the ECE unit, and by the acceptance of the role and function of the Specialist by the U.S. Attorney; and
- ° That where the Specialist is structured as an integral part of the ECE unit, the program becomes a vital part of the OUSA, and program objectives are accomplished more efficiently and effectively.

Recommendation

- ° That CRM, in establishing new ECE units, ensure that Specialists will be organizationally and functionally structured into the OUSA as an integral member of the ECE unit.

WHAT ATTRIBUTES OF AND ROLE FOR THE SPECIALIST IN HIS ECE REGION WILL BEST ENSURE THE EFFECTIVE AND EFFICIENT UTILIZATION OF CRM RESOURCES?

The Specialist's role requires him to interact with numerous persons on various aspects of white-collar crime enforcement. Given an environment receptive to the ECE program, he is the key to the success or failure of the program in his district. Therefore, the careful and considered selection of the Specialist can be critical to the ultimate success of the program.

From the study team's discussions with CRM employees, the following attributes were found to be important or beneficial to the selection of the Specialist:

- ° trial experience, especially within the Federal prosecutive system and hopefully, in fraud and public corruption;
- ° diplomacy, an ability to get along with people, to develop their interest and cooperative participation in the program;
- ° an ability to organize and an understanding of management;
- ° a knowledge of the law and available legal procedures in white-collar crime, and a knowledge of the district to which he is assigned; and
- ° an interest in the ECE program.

Although the study team did not review the Specialists' backgrounds and expertise in any depth, in general, they appeared to be well qualified to discharge their program responsibilities. However, there is the potential for future difficulties in program progress because certain functions of the Specialist's role have not been well defined. These functions include the Specialist's role in:

- ° the selection, assignment and continuing oversight of white-collar crime cases;
- ° the development of targeted investigations, especially when they involve the participation of two or more investigative agencies; and
- ° the prosecution of white-collar criminal cases.

Clarification of the Specialist's role in these functions will give law enforcement personnel a better understanding of the program's objectives and will help to unify the expectations of all program participants. The discussion below explains why some role in each function is necessary, and suggests limits within which the Specialist should operate.

The Selection, Assignment and Continuing Oversight of White-Collar Crime

Cases. The ability of the Specialist to produce a comprehensive district report, to gather white-collar information, and to coordinate activities of investigators and prosecutors, will rest, in large part, on his familiarity with, knowledge of, and access to the district's white-collar crime cases. While the volume of white-collar cases, the classification of cases (major/minor) and the policy or practice concerning assignment of cases in OUSAs will vary from district-to-district, the organizational relationship of the Specialist to the ECE unit will, in great part, determine the level of his involvement in the review of the OUSAs white-collar crime cases that are presented to and accepted by the OUSA for prosecution.

The ability of the Specialist to review case information is important, for: it provides for the ongoing review of district priorities; it enables the Specialist to subsequently track priority cases; and it helps the Specialist to coordinate with relevant investigative agencies in specific case matters.

Clearly, it is neither useful nor possible in larger offices for the Specialist to review all incoming white-collar crime cases, but it is crucial that the Specialist at least participate in the process of reviewing cases, and this situation does not currently exist in some offices.

The Development of Targeted Investigations. A major aim of the ECE program is to develop and coordinate complex or sophisticated cases against significant white-collar offenders. Such a task will involve the commitment of considerable time and resources by the investigating agencies, the OUSA and CRM. It is important, therefore, to have a good understanding of the role of each party in this joint effort. Simplistically, it is the AUSAs' responsibility to prosecute and the investigators' role to investigate; unfortunately, there is no easy way to define the role of the Specialist (or the AUSA, acting in the Specialist's capacity) or the interrelationship of these three parties during the development of a major, complex case.

Once the Specialist, working with the investigative agencies, selects a target for investigative efforts, he establishes his role in the development of the investigation. This role may take several forms ranging from passive to active. On the passive end of the spectrum, the Specialist may give oversight to the investigation, making suggestions as to possible avenues of pursuit on an as-requested basis. More actively, the Specialist might participate in developing strategies for an investigation, directing the investigation or actually participating in the investigation. Any of the roles may be desirable and, at times, necessary, as the amount of guidance required will depend on the expertise and the cooperation of the investigative agencies, but in the more active role, the Specialist should exercise caution so as not to assume responsibilities more appropriately handled by the investigator. For example, when it is necessary to conduct an initial interview with a potential witness, and the information required is very specific, it might

be appropriate for the Specialist to assist the investigator in organizing his interview and drafting the questions; he should not, however, assume the investigator's responsibilities.

Presently, many OUSAs encourage the agents to present their investigations during the case's inception, and to contact the OUSA periodically as to the case's status or to obtain advice for case development. This provides for the OUSAs early involvement in a case, but does not clarify the extent of that involvement.

Once a case requiring the work of several agencies is targeted, there needs to be a method for determining which agency shall take the lead and for settling disputes among the agencies. Many agency personnel believed that this decision-making rests with the Specialist and was one of his most important functions. At least one Specialist, however, felt that the Specialist should not have to settle disputes, but that the agencies should be able to work it out among themselves.

Varying perceptions of the Specialist's role in the development of a targeted investigation could be clarified by defining the limits of his role. This clarification could occur through the development of a program guide issued by the OECE.

The Prosecution of White-Collar Criminal Activities. Like other developmental factors in the program, the extent to which a Specialist would engage in prosecutorial activity was not a predetermined feature of the ECE program, but was to receive clarity as it emerged in the course of implementing program

objectives. Some Specialists had received instructions not to do any case work for their first six months within the OUSA. In general, this limitation was viewed as beneficial because it allowed time for the Specialist to complete his first six months' objective, the District Report, and for the U.S. Attorney to become accustomed to having a non-line prosecutor in his office.

That the Specialist would be involved in some prosecutorial activity is implied in the Attorney General Order by designating the Specialist as a Special AUSA. In the seven units surveyed, the amount of prosecution and direct case-related activity performed by the Specialist varied, but there was a general consensus among the Specialists that they should be involved in case prosecution. The difference that emerged was the extent of that involvement. Factors supporting a Specialist's involvement in the litigation of white-collar crime cases include the following facts:

- that the Specialist is an attorney, operating in an OUSA, where the major emphasis is on prosecution. To maintain his credibility with his co-workers (the AUSAs) and the investigative agencies, his proficiency, and his interest in the program, he must do some prosecutive work;
- that one of the program's objectives is to provide a continuity to the joint investigative-prosecutive effort. If the Specialist is to provide that continuity, working through the case development process, he should prosecute the case in order to achieve this objective and assure continued participation in the program by the investigative agencies;

- that the Specialist may have a particular expertise which would dictate his prosecuting a particular case; and/or
- that the OUSAs resources may be limited at a particular time, and a case may require immediate attention, so that the Specialist should assist on an as-needed basis.

Balancing these considerations are: (1) the need for the Specialist to provide a continuing emphasis on the coordinative, advisory, and monitoring aspects of prosecutorial activities, and (2) the recognition that he is a CRM employee in the OUSA, to further the ECE program, not an AUSA there primarily to litigate cases.

Conclusions

- That there is a need to better define the functions of the Specialist with respect to: the selection, assignment and continuing oversight of white-collar crime cases; the development of targeted investigations involving two or more investigative agencies; and the prosecution of white-collar criminal cases.

Recommendations

- That CRM specifically define the function of the Specialist in the selection, assignment and continuing oversight of white-collar crime cases;
- That each OUSA establish a formal procedure which allows the Specialist the opportunity to participate in the review process of white-collar crime cases;

- That CRM define the Specialist's role in developing target investigations involving two or more investigative agencies; and
- That the Specialist be given a definite, but limited role in the prosecution of white-collar crime cases.

CONCLUSION

This study of the ECE program was essentially process-oriented, focusing attention on the initial implementation of the program, since it was determined that a formal program evaluation would be appropriate only after the ECE units had implemented the program's second year objectives, including the prosecution of major, complex white-collar crime cases.

While reporting on the program organization, operation and achievements, the study identified some of the significant program events or phenomena which operate within the conceptual framework of the program, identified the network of actors and groups interacting within the system and the impact the interaction and interrelationship of these groups is intended to have upon program goals.

While this study concludes that the program has implemented a process which can effectively address the problem of white-collar crime, it will be necessary for a formal evaluation study to be conducted in order to define and scale the level of effectiveness of the ECE program. The broad aims of the program, the emphasis on the qualitative aspects of developing prosecutable cases, and the variability of program operations among the established units create a challenge for CRM in developing an adequate research design to evaluate

this program. Evaluation of the effectiveness of the program will need to be viewed not only in terms of process, but also in terms of impact, because the changes and innovations that the program introduces into the OUSA have a direct consequential impact upon the utilization and efficiency of the investigative and prosecutive system. Hence, it would be desirable for the evaluation to focus on the achievement of unit goals and mean objectives, the coordination of the program subgroups, the acquisition and maintenance of necessary program resources, and the adaptation of the program to the environment in which it operates. While there are many approaches to an evaluation of this type of program, it is proposed that CRM consider the case study approach as an appropriate model for developing an evaluation design. Such an approach would evaluate a small number of units (each unit comprising a case) as a basis for generalizing about all units. Such a study would describe the prosecutorial system before the establishment of the ECE units, the process adopted by the new unit, the new prosecutorial system which the unit incorporates as a constituent part of the OUSA and the impact this has upon the program's goal - the prevention and prosecution of white-collar crime offenders. Thus, the study team concludes that the program is a promising approach to the challenge of white-collar crime enforcement. It is recommended therefore, that CRM now initiate the development of an evaluation design for the ECE program and establish an appropriate date for conducting the evaluation of the ECE program, so that, as the program develops, data necessary to a proper evaluation can be maintained.

GLOSSARY OF TERMS

- ECONOMIC CRIME - Economic crime is used synonymously with white-collar crime.
- PUBLIC OR OFFICIAL CORRUPTION - Misuse in, or misuse of, office by public officials who hold positions of responsibility or trust.
- PROACTIVE - In contrast to the traditional investigative approach, this implies that the investigative agency actively seeks to identify and detect criminal activity through such methods as undercover operations or the use of informants.
- REACTIVE - In the content of investigative procedures, this implies the traditional law enforcement approach, where matters are investigated only after someone makes or files a complaint or allegation of criminal activity.
- WHITE-COLLAR CRIME - "White-collar offenses shall constitute those classes of non-violent illegal activities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention." (Interim Report of the Attorney General's White-Collar Crime Committee, January 1977, page 6)

DEPARTMENT
OF JUSTICE

Order

A.G. Order 817-79

Feb. 8, 1979

Subject: ECONOMIC CRIME ENFORCEMENT UNITS

1. Purpose. This order establishes the concept and guidelines for the operation of specialized Economic Crime Enforcement Units in United States Attorneys offices and within the Criminal Division of the Department of Justice with the goal of directing investigative and prosecutive resources for two of the Department's top enforcement priorities: fraud and corruption. It is the further purpose of this order to mandate maximum efficiency in the utilization of personnel in the prevention, detection, investigation and prosecution of economic crime offenders. These units coordinate and serve the field and regional offices of the government's departments, agencies, and bureaus.
2. Scope. This order applies Department-wide.
3. Objective. The objective of the Economic Crime Enforcement Unit program is to enhance the capabilities and capacities of the Department to prevent, detect, investigate and prosecute the economic crime offender nationally.
4. Policy. The objective shall be carried out by the concentrated effort of Economic Crime Enforcement Units in the offices of designated United States Attorneys and the Criminal Division through adherence to the identified priorities of the Department of Justice and of each federal district.
5. Establishment of Economic Crime Enforcement Units.
 - a. Each of the designated United States Attorneys shall form Economic Crime Enforcement Units consisting of

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A.G. Order No. 817-79

Feb. 8, 1979

experienced Assistant United States Attorneys assigned on a full-time basis to these units for a minimum period of eighteen months. The number of attorneys to be assigned to each unit shall be determined by the United States Attorney after consultation with the Assistant Attorney General for United States Attorneys and Trial Advocacy, but shall in each case be at least three unless otherwise agreed to by the Deputy Attorney General.

b. Each Assistant United States Attorney assigned to a unit shall be free from all other duties to concentrate on unit activity.

6. Priorities.

a. The national, regional and district priorities in the broad areas of fraud and corruption shall be approved and set by the Deputy Attorney General. The Assistant Attorney General in charge of the Criminal Division, with the advice and recommendations of the United States Attorneys and of the Assistant Attorney General for United States Attorneys and Trial Advocacy, shall develop proposals for national and regional priorities. Each United States Attorney shall select specific priorities within the national policy that are particular to their federal districts, with the concurrence of the Assistant Attorney General in charge of the Criminal Division.

b. Each participating United States Attorney shall have operational control over unit activity, subject to overall Department policy guidance, including adherence to the agreed priorities in that district and the continuing approval of the Assistant Attorney General in charge of the Criminal Division.

7. Economic Crime Enforcement Specialists. The Criminal Division shall provide an Economic Crime Enforcement Specialist to each designated district. Such person's appointment, as a Special Assistant United States Attorney, shall be subject to the joint approval of the Assistant Attorney General in charge of the Criminal Division, and the relevant United States Attorney(s). This specialist will work with the District's Economic Crime Enforcement Unit, as well as designated United States

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Attorneys offices in other districts, to assist in setting priorities to develop methods of preventing economic crime, and to improve the capability to identify, investigate and prosecute potential criminal activities. As additional Criminal Division positions become available, they will be similarly assigned to assist the Economic Crime Enforcement Units as well as to provide additional operational litigation support to the United States Attorneys offices in each region.

8. Evaluation and Reports.

a. The Criminal Division shall periodically, but not less than once a year, prepare for the Attorney General an overall evaluation of this program.

b. The Criminal Division shall exercise program responsibility in coordinating and monitoring the activities of the Economic Crime Enforcement Units. A monthly reporting system shall be established by the Criminal Division to facilitate this effort. It shall include specific information regarding investigative and litigative activity of the units.

c. The Criminal Division shall be responsible for reviewing and evaluating the Economic Crime Enforcement Unit activities and shall advise each Economic Crime Enforcement Unit of needed improvements and modifications in unit operations. Each Economic Crime Enforcement Unit shall promptly notify the Assistant Attorney General in charge of the Criminal Division of the corrective action taken.

9. Staffing. The Assistant Attorney General for United States Attorneys and Trial Advocacy shall give due consideration to the suggestions of the Criminal Division in its recommendations for the allotment of Assistant United States Attorney positions.

10. Training. The Criminal Division and the Office for United States Attorneys and Trial Advocacy shall establish an on-going training program for enforcement and prosecution personnel which will provide training in the most recent developments in the investigation and prosecution of

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Feb. 8, 1979

economic crime cases.

11. Office of Economic Crime Enforcement. There is hereby established within the Criminal Division an Office of Economic Crime Enforcement to carry out the provisions of this Order. This Office shall be staffed by a Director and such other personnel as the Assistant Attorney General designates.
12. Responsibility for Compliance. It is the responsibility of the Deputy Attorney General to ensure compliance with this Order.

Date: 2/8/79

Griffin B. Bell

Griffin B. Bell
Attorney General

APPENDIX III

UNITED STATES GOVERNMENT

memorandum

DATE:

1/27

REPLY TO: BRC:PBH:JCK:DF:kat
ATTN:OP:SUBJECT: Economic Crime Enforcement Units

BRE

TO: All United States Attorneys

On February 8, 1979 Attorney General Bell signed a Departmental Order establishing Economic Crime Enforcement Units in United States Attorney's offices and within the Criminal Division. A copy of the Order is enclosed although it has also been distributed generally. You will recall that this concept was discussed at the three United States Attorney meetings in 1978 and has also been the subject of discussion of several United States Attorney Advisory Committee meetings.

We plan to have a conference for the United States Attorney offices involved in the early stages. This memorandum will serve to give to you additional information in advance of that time and the direct involvement of all offices.

To begin the implementation of the Economic Crime Enforcement Units there must be a recognition of the generally excellent work being done in the area of fraud and corruption by the United States Attorneys and the Criminal Division. There must also be a recognition that this program is not intended to be an overstated, high visibility, cosmetic action that unfairly raises expectations. Great care must be taken to avoid a supervisory or management role in this program that diverts energy, attention and manpower from sound investigation, thorough analysis, and good prosecution. There is, however, a clear need for more to be done about fraud and corruption by the Federal government and in a coordinated fashion.

This program is a recognized departure from the historical manner of functioning by the Department. There is no intention of establishing separate entities such as the Strike Forces or other Division's Regional offices. This is a Department wide step to address the problem of fraud and corruption with a forthright and consistent approach.

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The proper balance between the Criminal Division and the United States Attorney's efforts requires having an overall mission and an objective approach to ensure that national priorities are established by the Department for all Federal law enforcement agencies and are being fully implemented. The mission of this program is to maximize the efficient utilization of personnel in the prevention, detection, investigation, and prosecution of economic crime offenders by first identifying and articulating national and local priorities for each Federal judicial district and by then focusing on those identified priorities. Within the broad areas of public corruption and white-collar crime it is expected that each Federal judicial district will find differences in priorities and in needed approaches and that they will change from time to time.

Each designated United States Attorney shall form an Economic Crime Enforcement Unit consisting of experienced Assistant United States Attorneys assigned on a full-time basis to the unit for a minimum period of eighteen months. The number of attorneys to be assigned to each unit shall be determined by the United States Attorney after consultation with the Assistant Attorney General, United States Attorneys and Trial Advocacy, but shall in each case be at least three unless otherwise agreed to by the Deputy Attorney General. The Criminal Division will provide an Economic Crime Enforcement Specialist to work in the designated United States Attorneys offices and such other positions as they become available. All Criminal Division personnel assigned to the units will be appointed as Special Assistant United States Attorneys, such appointments being subject to the joint approval of the United States Attorney for the relevant district and the Assistant Attorney General, Criminal Division.

The intent of the program is to provide a national focus by allocating approximately 150 attorneys over the next two years in twenty-seven offices that will cover the 50 states and the District of Columbia. However, in light of the present budgetary constraints it is possible to begin the program only through reallocation within the Criminal Division of 10 attorney positions to the newly created Office of Economic Crime Enforcement, seven of which will be housed in United States Attorney offices.

To avoid having too much territory to cover or being subsumed in the largest offices, the initial selection of Federal districts focuses on the medium sized office, with each Economic Crime Enforcement Specialist operating in a maximum of two states. The initial areas are: Washington-Oregon (3 districts); Mississippi-Alabama (5 districts); Colorado-New Mexico (2 districts); Indiana-Ohio (4 districts); Connecticut-Rhode Island (2 districts); North Carolina-South Carolina (4 districts); and Central District of California. The specific intent in the initial selection process was to avoid an office with an existing special unit and to achieve a geographic spread. The exception to this is of course the Central District of California. One large office with an existing-special unit was selected to assess the differing needs or approaches in such an office.

In addition there are Fraud, Corruption, or Special Prosecution Units presently existing in 16 United States Attorney offices. These will be linked with the Criminal Divisions' Office of Economic Crime Enforcement and the new ECE Units through the establishment of national priorities, periodic enforcement conferences and the use of direct liaison between the Washington office and regional investigative offices of key agencies. Units have been identified as existing during December, 1978 in the following United States Attorney offices: Massachusetts, Southern District of New York, Eastern District of New York, Eastern District of Pennsylvania, New Jersey, Maryland, District of Columbia, Eastern District of Virginia, Southern District of Florida, Eastern District of Michigan, Northern District of Illinois, Eastern District of Louisiana, Arizona, Central District of California, Southern District of California, and Western District of Texas.

The next phase, to be implemented as resources are available, will involve placing Economic Crime Enforcement Specialists in the following districts: Southern District of California, Arizona, Northern District of Texas, Illinois (3 districts), Michigan (2 districts), Georgia (3 districts), Florida (3 districts), Eastern and Middle Districts of Pennsylvania, New Jersey, Southern District of New York, Eastern District of New York, and Massachusetts. The third phase will involve placing Specialists in the Northern and Eastern Districts of California, Southern and Eastern District of Texas, Missouri (2 districts), Louisiana (3 districts), and one for the area including the Western District of Pennsylvania, West Virginia (2 districts), and the Western District of Virginia. The fourth phase will involve additional Specialists branching out into other districts not yet covered for a servicing and coordination role, but remaining in their home districts. Due to the unique roles the Districts of Columbia, Maryland and Eastern Virginia play in relation to the national scene a special arrangement will be made between those offices and the Criminal Division during the second phase.

The Economic Crime Enforcement Specialists will engage in a series of on-sight visits to assist in recommending the priorities of the Department and the designated districts. The initial visits will be in the nature of intelligence sweeps to determine the nature of activity and the scope of the economic crime problems by meeting on the Federal, state and local level with program agencies, enforcement offices, prosecutors offices, and with representatives from business and industry. The Specialists shall also gather factual and demographic data about the districts as required. The national priorities shall be set for the United States Attorneys and the Criminal Division by the Deputy Attorney General. Supplemental priority matters may be set for a district by the appropriate United States Attorney with the concurrence of the Assistant Attorney General, Criminal Division.

Once the priorities are adopted, the Specialists will work with the Federal, state and local prosecutors, enforcement personnel, and program representatives to improve their capabilities to identify potential criminal activities, investigate and, where necessary, prosecute or take some other form of meaningful corrective action. The Specialists shall also work with agencies and others to develop methods and techniques for preventing these crimes. The Specialists will act as catalysts to stimulate the agencies, investigators, and prosecutors on all levels to perform in a more efficient manner. The Specialists will be located in the United States Attorney's office within the areas served to insure input and participation by the United States Attorneys.

The Criminal Division, through its Office of Economic Crime Enforcement, will be responsible for:

- a. Coordinating the Economic Crime Enforcement activities of all Federal judicial districts and the Criminal Division;
- b. Collecting and maintaining relevant statistical data on the performance of this program and related fraud and corruption matters;
- c. Maintaining effective liaison with the appropriate prosecutive, enforcement, program and other agencies;
- d. Arranging for training for enforcement, program and prosecution personnel;
- e. Making recommendations to the Assistant Attorney General, Criminal Division, concerning the allocation of Division personnel to the Economic Crime Enforcement Units;

- f. Preparing for submission to the Attorney General periodic reports on the program;
- g. Publishing on a restricted circulation basis an Economic Crime Enforcement Bulletin describing all newly developed techniques in the areas of prevention, detection, investigation, prosecution and sentencing, all emerging economic crime schemes, all significant cases, and all relevant changes within the investigative and regulatory agencies;
- h. Arranging supplemental staffing in appropriate priority matters handled by the units or by other United States Attorney offices.

The Economic Crime Enforcement Units shall:

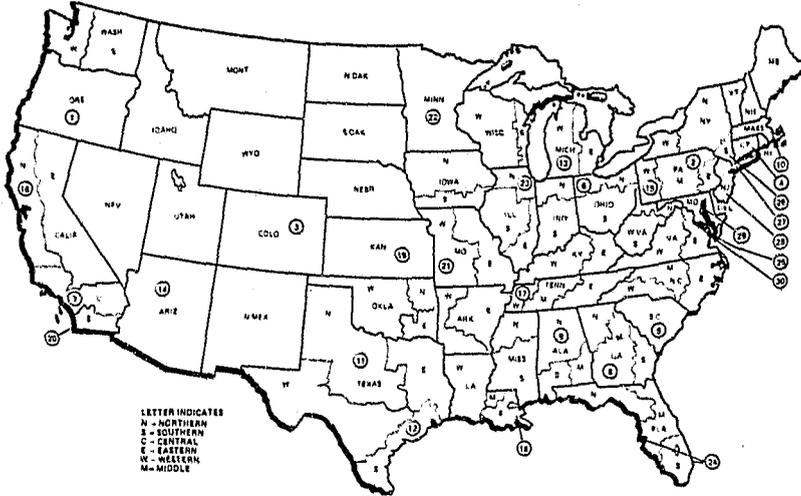
- a. Submit for approval of the appropriate United States Attorney and the Assistant Attorney General, Criminal Division, the proposed priorities for their districts, said report to reflect the problems being encountered in the district, the specific nature of the suspected criminal activity, the general sources of information, and, where known, the likely targets. District priorities shall be reviewed not less than once a year;
- b. Handle only national or local priority economic crime investigations and cases within the jurisdiction of the Federal districts served (unless otherwise approved by the Assistant Attorney General, Criminal Division), and are not intended to handle all fraud and corruption cases within an office;
- c. Provide for national coordination and ensure appropriate focus on significant cases by each unit chief preparing and submitting to the Director of the Economic Crime Enforcement Office of the Criminal Division a case initiation report providing a brief summary of the facts, a description of possible subjects and victims of the offense, and a projected time for completion of the inquiry.

Each relevant investigative agency will be asked to designate an experienced and senior official to serve as liaison officer with each unit and to coordinate the utilization of the agency's investigative resources with the Economic Crime Enforcement Specialists and the United States Attorneys. In addition, selective investigative agencies will be requested to assign personnel on a full-time basis to a unit. Additional investigative personnel will continue to work with the office of the United States Attorney as required, but not necessarily on a direct assignment.

To ensure that the Department maintains a capability of handling complex economic crime cases, all districts will eventually be included within a region serviced by a Criminal Division Economic Crime Enforcement Specialist as outlined above. The Specialist will provide an intelligence source for the United States Attorney and the Criminal Division in each district, arrange the training of non-unit personnel in handling economic crime matters, and provide guidance for drafting indictments and motions. When performing services to the non-unit offices, the Specialist or any other Criminal Division attorney will report only to the Criminal Division and the United States Attorney for that non-unit district. The handling of each district's economic crime cases will be the responsibility of each district's United States Attorney. The coordination of efforts made by each unit or non-unit office within a region will be the responsibility of the Economic Crime Enforcement Specialist.

Benjamin R. Civiletti
Deputy Attorney General

APPENDIX IV



LIST OF FIRST 7 ECE UNITS

1. PORTLAND, OREGON
2. PHILADELPHIA, PENNSYLVANIA
3. DENVER, COLORADO
4. NEW HAVEN, CONNECTICUT
5. COLUMBIA, SOUTH CAROLINA
6. CLEVELAND/TOLEDO, OHIO
7. LOS ANGELES, CALIFORNIA

OTHER EXISTING ECE UNITS

8. ATLANTA, GEORGIA
9. BIRMINGHAM, ALABAMA
10. BOSTON, MASSACHUSETTS
11. DALLAS, TEXAS
12. HOUSTON, TEXAS
13. DETROIT, MICHIGAN
14. PHOENIX, ARIZONA
15. PITTSBURGH, PENNSYLVANIA
16. SAN FRANCISCO, CALIFORNIA
17. MEMPHIS, TENNESSEE

12 PROPOSED ECE UNITS

19. WICHITA, KANSAS
20. SAN DIEGO, CALIFORNIA
21. KANSAS CITY OR
ST. LOUIS, MISSOURI
22. MINNEAPOLIS, MINNESOTA
23. CHICAGO, ILLINOIS
24. MIAMI/TAMPA, FLORIDA
25. WASHINGTON, D.C.
26. NEW YORK, NEW YORK
27. BROOKLYN, NEW JERSEY
28. NEWARK, NEW JERSEY
29. BALTIMORE, MARYLAND
30. ALEXANDRIA, VIRGINIA

APPENDIX V
RELATIONSHIP OF THE ECE PROGRAM OBJECTIVES TO THE OBSTACLES TO EFFECTIVE CONTROL OF
WHITE-COLLAR CRIME, AND THE GENERAL RESPONSIBILITIES AT THE NATIONAL AND DISTRICT LEVELS

OBSTACLE TO THE EFFECTIVE CONTROL OF WHITE-COLLAR CRIME (Chapter I)	PROBLEMS WHICH ARISE FROM THE OBSTACLES (Chapter I)	NEEDS THAT ARISE FROM THE PROBLEMS (Chapter I)	PROGRAM OBJECTIVES DESIGNED TO ADDRESS THE NEEDS (Chapter I)	NATIONAL RESPONSIBILITY FOR MEETING OBJECTIVES (Chapter II)	DISTRICT RESPONSIBILITY FOR MEETING OBJECTIVES (CHAPTER III)
<ul style="list-style-type: none"> ° THE NATURE OF WHITE-COLLAR CRIME (WCC): 			PREVENTION, DETECTION, INVESTIGATION AND PROSECUTION		
<ul style="list-style-type: none"> ° diversity of term, numerous crimes 	<ul style="list-style-type: none"> ° lack of understanding as to what's being covered 	<ul style="list-style-type: none"> ° to delineate the scope of problem 	<ul style="list-style-type: none"> ° to develop an information system ° to set national and district priorities 	<ul style="list-style-type: none"> ° compile reports received ° set national priorities 	<ul style="list-style-type: none"> ° district quarterly, monthly reports ° set district priorities
<ul style="list-style-type: none"> ° often involves complex and/or sophisticated schemes 	<ul style="list-style-type: none"> ° difficult to detect ° difficult to investigate ° difficult to prosecute ° evidence can be massive or difficult to understand ° difficult to convict ° time-consuming to investigate and prosecute 	<ul style="list-style-type: none"> ° to develop better methods to detect, investigate, and prosecute ° to develop new prosecutive approaches ° to increase resources and efficiency 	<ul style="list-style-type: none"> ° to develop information system to relay effective methods and provide training ° to collect and disseminate case information reflecting successful prosecutive approaches to WCC ° to train prosecutors and investigators in areas of WCC 	<ul style="list-style-type: none"> ° compile reports, distribute the ECE Bulletin ° develop training information and locate sources of training 	<ul style="list-style-type: none"> ° prepare reports on ECE unit activities ° establish communication with other Specialists and OECE ° provide seminars for investigators and AUSAs
<ul style="list-style-type: none"> ° often done thru concealment or deception; takes time to uncover 	<ul style="list-style-type: none"> ° difficult to detect ° victim may be unaware that he is a victim ° may lose documentary or testimonial evidence ° may be barred by statute of limitations 	<ul style="list-style-type: none"> ° to increase victims awareness ° to develop better detection methods so violations will be found early 	<ul style="list-style-type: none"> ° to educate interest groups on detection and prevention of WCC ° to develop new sources of leads thru businesses and the public and to train investigators in new techniques of detection 	<ul style="list-style-type: none"> ° collect and/or develop information for interest groups ° collect and develop new methods of detecting criminal activities and disseminate information 	<ul style="list-style-type: none"> ° speak to various interest groups ° collect and disseminate information concerning the detection and prevention of WCC

OBSTACLE TO THE EFFECTIVE CONTROL OF WHITE-COLLAR CRIME (CHAPTER I)	PROBLEMS WHICH ARISE FROM THE OBSTACLES (CHAPTER I)	NEEDS THAT ARISE FROM THE PROBLEMS (Chapter I)	PROGRAM OBJECTIVES DESIGNED TO ADDRESS THE NEEDS (Chapter I)	NATIONAL RESPONSIBILITY FOR MEETING OBJECTIVES (Chapter II)	DISTRICT RESPONSIBILITY FOR MEETING OBJECTIVES (Chapter III)
<ul style="list-style-type: none"> °highly mobile and/or can be conducted simultaneously in multiple jurisdictions 	<ul style="list-style-type: none"> °difficult to apprehend offenders before they move to a new jurisdiction °difficult to track the offenders or schemes 	<ul style="list-style-type: none"> °to develop a better information network °to develop a national data base 	<ul style="list-style-type: none"> °to collect and analyze WCC data, establish units with Specialists to act as conduits of information °to hold regional and national conferences to encourage communications 	<ul style="list-style-type: none"> °analyze district reports to establish criminal trends and patterns °hold national conferences 	<ul style="list-style-type: none"> °relay information to DECE and other districts as appropriate
<ul style="list-style-type: none"> °multiplicity of statutes may cover the same criminal activity <u>1/</u> 	<ul style="list-style-type: none"> °multiple investigative and prosecutive agencies involved in controlling the activity 	<ul style="list-style-type: none"> °to coordinate efforts in investigations 	<ul style="list-style-type: none"> °to encourage investigators to contact AUSAs early °to coordinate and consolidate investigative efforts, making maximum use of available expertise 	<ul style="list-style-type: none"> °establish liaison with agencies' headquarters °establish a cooperative working relationship at the national level 	<ul style="list-style-type: none"> °establish liaison with regional offices of investigative agencies, encouraging participation in the program
<ul style="list-style-type: none"> ° THE VICTIMS' ATTITUDE °unawareness of the nature and scope of white-collar crime 	<ul style="list-style-type: none"> °lack of ability to take adequate preventive or detective measures to protect himself 	<ul style="list-style-type: none"> °to increase awareness °to become proactive 	<p style="text-align: center;">PREVENTION AND DETECTION</p> <ul style="list-style-type: none"> °to increase capabilities of the public to prevent and detect criminal activities 	<ul style="list-style-type: none"> °develop and disseminate information concerning white-collar crime 	<ul style="list-style-type: none"> °speak to local groups on the effect of white-collar crime

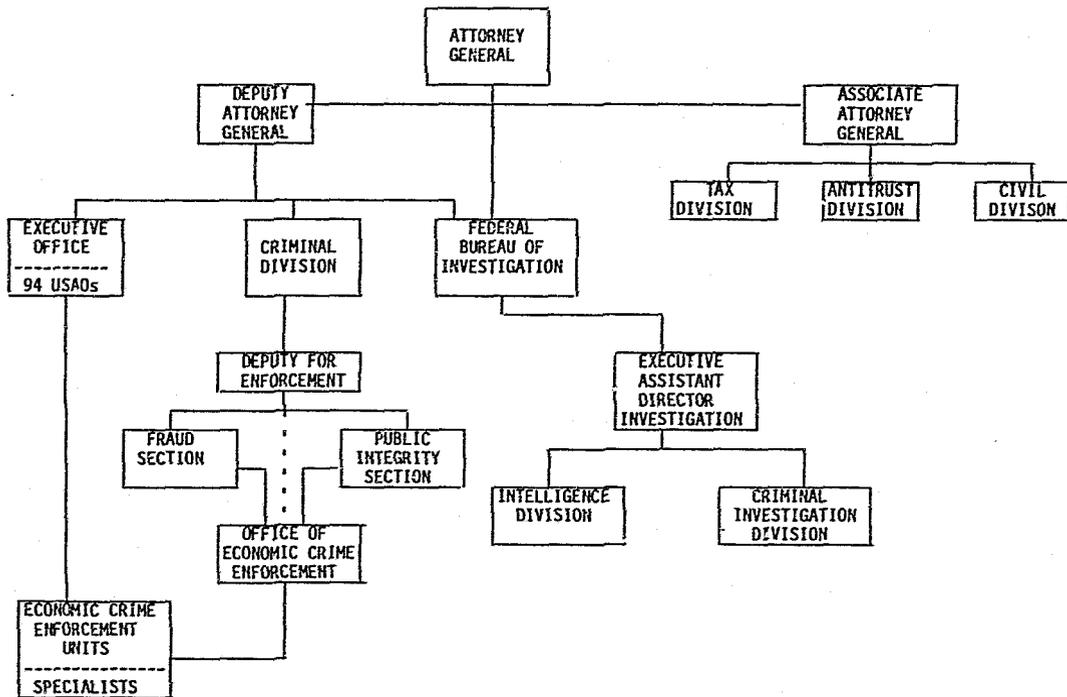
1/ if properly handled, this can be a benefit in that it may provide stronger prosecution.

OBSTACLE TO THE EFFECTIVE CONTROL OF WHITE-COLLAR CRIME (Chapter I)	PROBLEMS WHICH ARISE FROM THE OBSTACLES (Chapter I)	NEEDS THAT ARISE FROM THE PROBLEMS (Chapter I)	PROGRAM OBJECTIVES DESIGNED TO ADDRESS THE NEEDS (Chapter I)	NATIONAL RESPONSIBILITY FOR MEETING OBJECTIVES (Chapter II)	DISTRICT RESPONSIBILITY FOR MEETING OBJECTIVES (CHAPTER III)
°unwillingness to report crimes	°lack of leads or information necessary for investigation or prosecution	°to change attitude thru better understanding	°to identify weaknesses or deficiencies in operations and show how to correct them	°identify common program deficiencies and develop corrective action	°identify specific program or operational flaws for managers
°unawareness of the fact he is a victim	°he is unable to report crimes to proper authorities	°to increase victim awareness	°to increase public awareness of the nature and scope of white-collar crime	°develop ways for victims to identify WCC	°increase victims' ability to detect WCC thru contact
°MULTIPLICITY OF FEDERAL AGENCIES INVOLVED IN INVESTIGATING WHITE-COLLAR CRIME			INVESTIGATION		
°overlapping responsibilities among the agencies investigating white-collar crime	°duplication of effort °working at cross-purposes °jurisdictional jealousies and lack of communication	°to coordinate efforts, thru cooperation and communication	°to coordinate and consolidate agencies' efforts and maximize utilization of expertise °to establish an information base	°maintain liaison with national offices for investigative agencies	°maintain liaison with agencies and coordinate case specific efforts
°lack of the necessary experience and skill or expertise	°incomplete or poor quality cases	°to provide training for investigators, and provide information on specific white-collar crime topics	°to provide agents with training °to increase agents awareness of other agencies' expertise	°publish information on cases which successfully utilized various expertise or investigative techniques	°present seminars °encourage interaction between agencies

OBSTACLES TO THE EFFECTIVE CONTROL OF WHITE-COLLAR CRIME (Chapter I)	PROBLEMS WHICH ARISE FROM THE OBSTACLES (Chapter I)	NEEDS THAT ARISE FROM THE PROBLEMS (Chapter I)	PROGRAM OBJECTIVES DESIGNED TO ADDRESS THE NEEDS (Chapter I)	NATIONAL RESPONSIBILITY FOR MEETING OBJECTIVES (Chapter II)	DISTRICT RESPONSIBILITY FOR MEETING OBJECTIVES (CHAPTER III)
<ul style="list-style-type: none"> ° methods of measuring agent's achievements in terms of quantity 	<ul style="list-style-type: none"> ° cases are often small, insignificant 	<ul style="list-style-type: none"> ° to modify measurement system 	<ul style="list-style-type: none"> ° to establish case priorities ° to establish liaison between OUSA and agencies 	<ul style="list-style-type: none"> ° set national priorities 	<ul style="list-style-type: none"> ° set district priorities ° communicate OUSAs expectations and desires to agencies
<ul style="list-style-type: none"> ° NATURE OF THE FEDERAL PROSECUTIVE SYSTEM 			<p style="text-align: center;">PROSECUTION</p>		
<ul style="list-style-type: none"> ° the prosecutive system is decentralized 	<ul style="list-style-type: none"> ° lack of communication between offices 	<ul style="list-style-type: none"> ° to develop better lines of communication 	<ul style="list-style-type: none"> ° to develop a network between attorneys 	<ul style="list-style-type: none"> ° link Specialists thru dissemination of information 	<ul style="list-style-type: none"> ° establish contacts with other Specialists
<ul style="list-style-type: none"> ° reactive approach to a substantial caseload; failure to be involved 	<ul style="list-style-type: none"> ° lack of familiarity with the case ° possibility of receiving incomplete or unprosecutable cases 	<ul style="list-style-type: none"> ° to develop a proactive approach ° to become involved early in the case development process 	<ul style="list-style-type: none"> ° to become involved early in the investigation, become familiar with the case and monitor development 	<ul style="list-style-type: none"> ° coordinate with agencies' headquarters to gain acceptance of the team concept 	<ul style="list-style-type: none"> ° encourage agents to present cases to OUSA early, review, and suggest methods of approaching investigation
<ul style="list-style-type: none"> ° inadequate prosecutive resources to handle all cases 	<ul style="list-style-type: none"> ° overburdened prosecutors ° declinations of cases ° referrals to other offices 	<ul style="list-style-type: none"> ° to focus on quality of case ° to utilize resources efficiently 	<ul style="list-style-type: none"> ° to identify priority cases ° to utilize experienced skilled and specialized prosecutors 	<ul style="list-style-type: none"> ° set national priorities 	<ul style="list-style-type: none"> ° identify cases within the district priorities for unit processing
<ul style="list-style-type: none"> ° lack of expertise in some offices 	<ul style="list-style-type: none"> ° failure of investigators to bring cases to OUSA ° failure to prosecute major cases efficiently or effectively 	<ul style="list-style-type: none"> ° to develop expertise thru training ° to transfer successful approaches 	<ul style="list-style-type: none"> ° to provide conferences and seminars to spread information ° to distribute successful investigative techniques and prosecutive approaches 	<ul style="list-style-type: none"> ° present regional conferences ° publish ECE Bulletin 	<ul style="list-style-type: none"> ° present seminars and provide training ° channel successful approaches to OECE

OBSTACLES TO THE EFFECTIVE CONTROL OF WHITE-COLLAR CRIME (Chapter I)	PROBLEMS WHICH ARISE FROM THE OBSTACLES (Chapter I)	NEEDS THAT ARISE FROM THE PROBLEMS (Chapter I)	PROGRAM OBJECTIVES DESIGNED TO ADDRESS THE NEEDS (Chapter I)	NATIONAL RESPONSIBILITY FOR MEETING OBJECTIVES (Chapter II)	DISTRICT RESPONSIBILITY FOR MEETING OBJECTIVES (Chapter III)
<ul style="list-style-type: none"> ° MULTIPLICITY OF STATE AND LOCAL AGENCIES RESPONSIBLE FOR ECONOMIC CRIME ENFORCEMENT 			DETECTION, INVESTIGATION AND PROSECUTION		
<ul style="list-style-type: none"> ° concurrent jurisdiction in many matters 	<ul style="list-style-type: none"> ° duplication of efforts ° working at cross-purposes ° jurisdictional jealousies ° lack of communication 	<ul style="list-style-type: none"> ° to coordinate efforts ° to delineate roles in economic crime enforcement 	<ul style="list-style-type: none"> ° to coordinate with Federal efforts ° to delineate roles in the enforcement effort 	<ul style="list-style-type: none"> ° work with national associations of State and local enforcement personnel 	<ul style="list-style-type: none"> ° act as a liaison with state and local agencies to increase cooperation
<ul style="list-style-type: none"> ° SANCTIONS 			SENTENCE ENHANCEMENT		
<ul style="list-style-type: none"> ° lack of adequate fines and sentences or failure to impose adequate fines and sentences 	<ul style="list-style-type: none"> ° suggests "crime pays" ° failure to deter would-be offenders 	<ul style="list-style-type: none"> ° to enhance available sanctions ° to enhance sanctions imposed 	<ul style="list-style-type: none"> ° to develop better investigations and prosecutive work ° to develop and/or utilize better sentencing memoranda, and stronger sentencing provisions 	<ul style="list-style-type: none"> ° keep abreast of and disseminate successful approaches to sentencing and good sentencing memoranda 	<ul style="list-style-type: none"> ° develop better skills and understanding thru training

APPENDIX VI
 RELATIONSHIPS OF THE MAJOR DEPARTMENT ORGANIZATIONS RESPONSIBLE
 FOR ONE OR MORE ASPECTS OF WHITE-COLLAR CRIME ENFORCEMENT

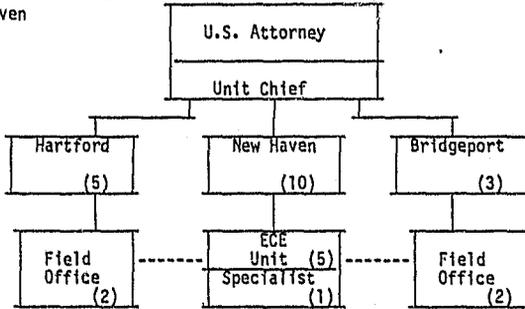


APPENDIX VII

OFFICE OF THE U.S. ATTORNEY
 NEW HAVEN, CONNECTICUT
 U.S. ATTORNEY - Richard Blumenthal
 ECE UNIT CHIEF - Richard Blumenthal
 ECE SPECIALIST - Calvin Kurimai



UNIT RELATIONSHIP TO THE OUSA



July 1979 - ECE Specialist entered duty with
 the OECE Criminal Division

Size of Region - 6223
 sq. miles

Regional Population - *3,981,940

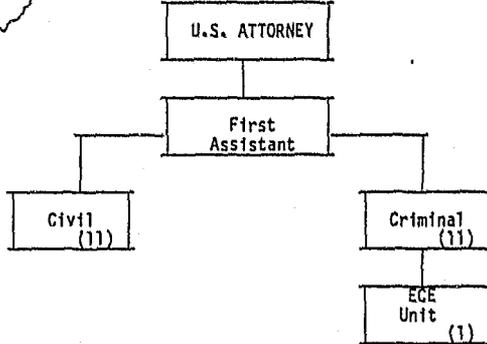
<u>OUSA Location</u>	<u>FIELD OFFICE(s)</u>
New Haven, CN	Bridgeport, CT Hartford, CT
Providence, RI	

* 1970 Census

OFFICE OF THE U.S. ATTORNEY
 COLUMBIA, SOUTH CAROLINA
 U.S. ATTORNEY - Tom Lydon
 ECE UNIT CHIEF - David Slattery
 ECE SPECIALIST - David Slattery



UNIT RELATIONSHIP TO THE OUSA



July 1979 - ECE Specialist entered duty with the OECE Criminal Division

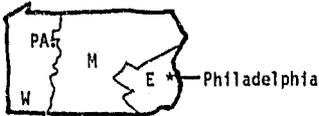
Size of Region - 79,860 sq. miles

Regional Population - *7,672,575

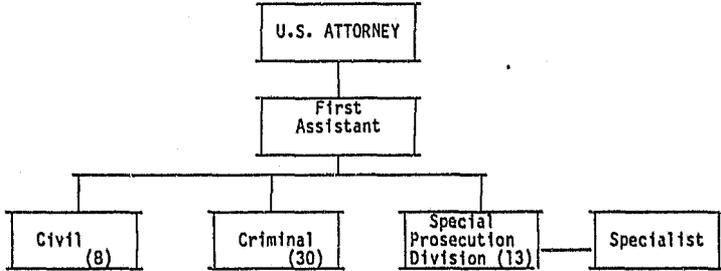
<u>DISTRICT</u>	<u>OUSA Location</u>	<u>FIELD OFFICE(s)</u>
District	Columbia, SC	Charleston, SC
Eastern District	Raleigh, NC	Greenville, SC
Middle District	Greensboro, NC	
Western District	Asheville, NC	

* 1970 Census

OFFICE OF THE U.S. ATTORNEY
 PHILADELPHIA, PENNSYLVANIA
 U.S. ATTORNEY - Peter Vaira
 ECE UNIT CHIEF - Peter Smith
 ECE SPECIALIST - Gerard Egan



UNIT RELATIONSHIP TO THE OUSA



July 1979 - ECE Specialist entered duty with the OECE Criminal Division

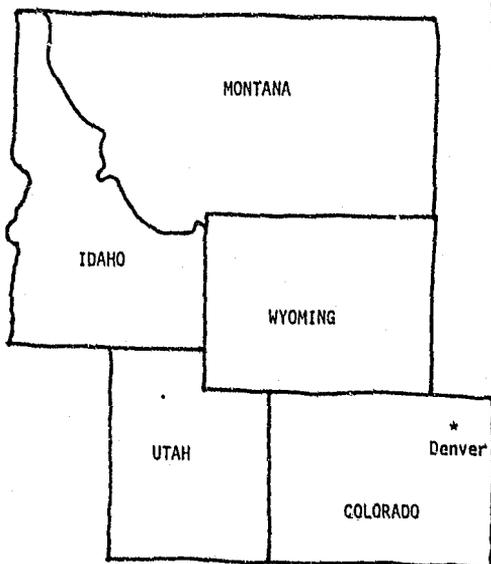
Size of Region - 25,899 sq. miles

Regional Population - *7,537,475

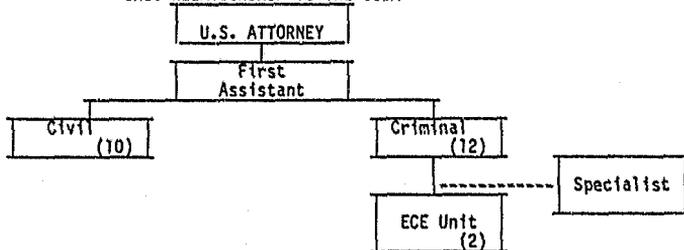
<u>DISTRICT</u>	<u>OUSA LOCATION</u>	<u>FIELD OFFICE(S)</u>
<u>EASTERN DISTRICT</u>	- Philadelphia, PA	-
<u>MIDDLE DISTRICT</u>	- Scranton, PA	Harrisburg, PA Lewisburg, PA

* 1970 Census

OFFICE OF THE U.S. ATTORNEY
 DENVER, COLORADO
 U.S. ATTORNEY - Joseph Dolan
 ECE UNIT CHIEF - Frank Kennedy
 ECE SPECIALIST - Joen Grant



UNIT RELATIONSHIP TO THE OUSA



April 1979 - Specialist entered duty with the OECE Criminal Division

Size of Region - 454,023 sq. miles

Regional Population - **5,006,365

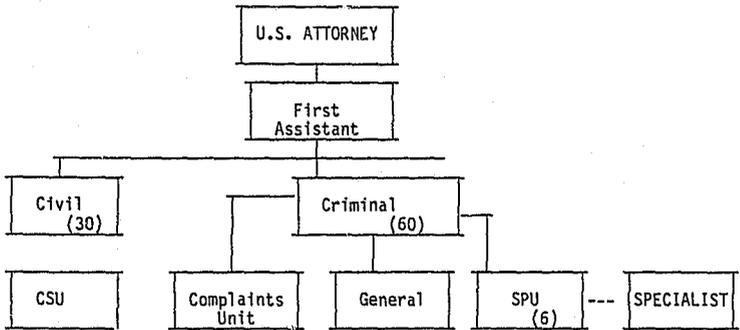
<u>DISTRICT</u>	<u>OUSA LOCATION</u>	<u>FIELD OFFICE(s)</u>
Colorado	- Denver, CO	
Utah	- Salt Lake City, UT	
Wyoming	- Cheyenne, WY	
Montana	- Butte, MT	Billings, MT
Idaho	- Boise, ID	

* 1970 Census

OFFICE OF THE U.S. ATTORNEY
 LOS ANGELES, CALIFORNIA
 U.S. ATTORNEY - Andrea Ordin
 SPECIAL PROSECUTIONS UNIT
 CHIEF - Dean Allison
 ECE SPECIALIST - Dwight Moore



UNIT RELATIONSHIP TO THE OUSA



July 1979 - Specialist entered duty with the OECE Criminal Division

Size of Region- 150,467 sq. miles

Regional Population - *10,353,031

<u>DISTRICT</u>	<u>OUSA LOCATION</u>
Central District -	Los Angeles, CA
District -	Las Vegas, NV

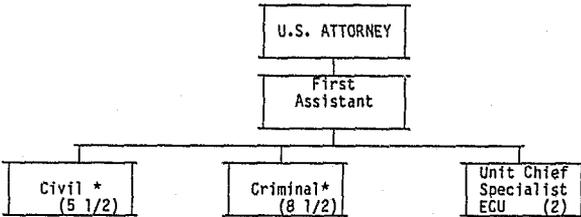
FIELD OFFICE(s)
 Reno, NV

* 1970 Census

OFFICE OF THE U.S. ATTORNEY
 PORTLAND, OREGON
 U.S. ATTORNEY - Sidney Lezak
 ECE UNIT CHIEF - Robert Weaver
 ECE SPECIALIST - Robert Weaver



UNIT RELATIONSHIP TO THE OUSA



April 1979 - Specialist entered duty with the JECE Criminal Division

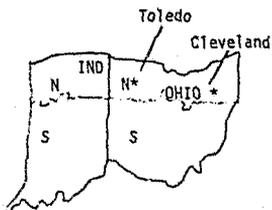
Size of Region - 163,646 sq. mile

Regional Population - **5,500,544

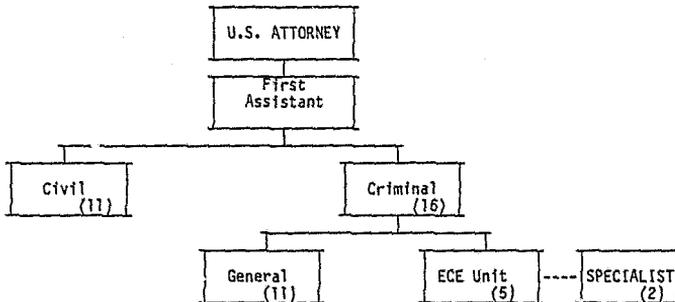
<u>DISTRICT</u>	<u>OUSA LOCATION</u>	<u>FIELD OFFICE (s)</u>
District -	Portland, OR	Eugene, OR
Eastern District -	Spokane, WA	Yakima, WA
Western District -	Seattle, WA	Tacoma, WA

* No civil or criminal sections, per se
 ** 1970 Census

OFFICE OF THE U.S. ATTORNEY
 CLEVELAND, OHIO
 U.S. ATTORNEY - James R. Williams
 ECE UNIT CHIEF - Ralph Cascarilla
 ECE SPECIALIST - David Everett
 (Cleveland)
 ECE SPECIALIST - Paul Gorman
 (Toledo)



UNIT RELATIONSHIP TO THE OUSA



June 1979 - Specialist entered duty with the OECE Criminal Division

Size of Region - 77,081 sq. miles

Regional Population - 15,845,686

<u>DISTRICT</u>	<u>OUSA LOCATION</u>	<u>FIELD OFFICE(s)</u>
<u>Northern District</u> -	Cleveland, OH	Toledo, OH
<u>Southern District</u> -	Cincinnati, OH	Columbus, OH
		Dayton, OH
<u>Northern District</u> -	South Bend, IN	Ft. Wayne, IN
<u>Southern District</u> -	Indianapolis, IN	
	Hammond, IN	

* 1970 Census

APPENDIX VIII
TABLE OF ALL JUDICIAL DISTRICTS
RANKED IN SIZE BY NUMBER OF ALLOTTED AUSAs,
SHOWING PRINCIPAL OFFICE LOCATIONS AND NUMBER OF STAFFED BRANCH OFFICES

CE a/ nit	JUDICIAL DISTRICT	AUSAs b/ ALLOTTED	PRINCIPAL OFFICE c/	NUMBER OF STAFFED BRANCH OFFICES c/
**	District of Columbia	163	Washington, D.C.	
**	New York, SD	116	Manhattan, NY	
*	California, CD	96	Los Angeles, CA	
**	Illinois, ND	82	Chicago, IL	
**	New York, ED	61(2)	Brooklyn, NY	
**	New Jersey	61	Newark, NJ	2
*	Pennsylvania, ED	50	Philadelphia, PA	
* *	California, ND	47	San Francisco, CA	1
*	Michigan, ED	47	Detroit, MI	2
**1/	Florida, SD	46	Miami, FL	
* *	Texas, SD	43	Houston, TX	3
**	California, SD	41	San Diego, CA	
*	Arizona	41	Phoenix, AZ	1
*	Ohio, ND	33	Cleveland, OH	2
*2/	Texas, ND	33	Fort Worth, TX	2
*	Florida, MD	32	Jacksonville/Tampa, FL	1
*	Georgia, ND	32	Atlanta, GA	
*	Massachusetts	32	Boston, MA	
**	Maryland	29	Baltimore, MD	
*	Louisiana, ED	28	New Orleans, LA	
*	Texas, WD	26	San Antonio, TX	2
**	Virginia, ED	26	Alexandria, VA	2
*	Ohio, SD	25	Cincinnati, OH	2 6/
*	Pennsylvania, WD	25	Pittsburgh, PA	1
*	Washington, WD	25	Seattle/Takoma, WA	
*	Colorado	22	Denver, CO	
**4/	Missouri, WD	22	Kansas City, MO	1
*	South Carolina	22	Columbia, SC	2
*	Missouri, ED	21	St. Louis, MO	
*	Alabama, ND	20	Birmingham, AL	
*	California, ED	18	Sacramento, CA	1
*	Connecticut	17	New Haven, CT	1 3/
**	Minnesota	17	Minneapolis, MN	1
*	Oregon	16(2)	Portland, OR	1
*	Kentucky, ED	16	Lexington, KY	
*	New Mexico	16	Albuquerque, NM	
**5/	Kansas	15	Topeka/Kansas City, KS	1
*	Louisiana, WD	15	Shreveport, LA	
*	Wisconsin, ED	15	Milwaukee, WI	

AGENCY a/ Init	JUDICIAL DISTRICT	AUSAs b/ ALLOTTED	PRINCIPAL OFFICE	NUMBER OF STAFFED BRANCH OFFICES c/
	Arkansas, ED	14	Little Rock, AR	
	New York, WD	14	Buffalo, NY	1
	Illinois, CD	13	Springfield, IL	2
	Indiana, SD	13	Indianapolis, IN	
	Oklahoma, WD	13	Oklahoma City, WD	
	West Virginia, SC	13	Charleston, WV	1
	Indiana, ND	12	South Bend/Hammond, IN	1
	Tennessee, WD	12	Memphis, TN	
	Georgia, SD	11	Savannah, GA	1
	Pennsylvania, MD	11	Scranton, PA	2
	Puerto Rico	11	Hato Rey, PR	
	Texas, ED	11	Tyler, TX	1
	Utah	11	Salt Lake City, UT	
	Nevada	10	Las Vegas, NV	1
	New York, MD	10	Syracuse, NY	1
	Tennessee, ED	10	Knoxville, TN	2
	Tennessee, MD	10	Nashville, TN	
	Alabama, MD	9	Montgomery, AL	
	Kentucky, WD	9	Louisville, KY	
	Michigan, WD	9	Grand Rapids, MI	
	Nebraska, WD	9	Omaha, NE	1
	North Carolina, ED	9	Raleigh, NC	
	South Dakota	9	Sioux Falls, SD	2
	Virginia, WD	9	Roanoke, VA	
	Florida, ND	8	Pensacola, FL	1
	Georgia, MD	8	Macon, GA	
	Iowa, SD	8	Des Moines, IA	
	Alaska	7	Anchorage, AK	1
	Illinois, SD	7	East St. Louis, IL	
	Louisiana, MD	7	Baton Rouge, LA	
	Mississippi, ND	7	Oxford, MS	
	Mississippi, SD	7	Jackson, MS	
	North Carolina, MD	7	Greensboro, NC	
	Oklahoma, ND	7	Tulsa, OK	
	Wisconsin, WD	7	Madison, WI	
	Idaho	6	Boise, ID	
	Maine	6	Portland, MA	1
	Montana	6	Butte, MT	1
	North Carolina, WD	6	Ashville, NC	1
	Vermont	6	Burlington, VT	1
	Virgin Islands	6	St. Thomas, VI	1
	Washington, ED	6	Spokane, WA	1

ECE a/ UNIT	JUDICIAL DISTRICT	AUSAs b/ ALLOTTED	PRINCIPAL OFFICE	NUMBER OF STAFFED BRANCH OFFICE c/
	Alabama, SD	5	Mobile, AL	
	Delaware	5	Wilmington, DE	
	Hawaii	5	Honolulu, HI	
	New Hampshire	5	Concord, NH	
	Rhode Island	5	Providence, RI	
	Arkansas, WD	4	Fort Smith, AR	
	Iowa, ND	4	Cedar Rapids, IA	1
	North Dakota	4	Fargo, ND	1
	Oklahoma, ED	4	Muskogee, OK	
	West Virginia, ND	3	Wheeling, WV	1
	Canal Zone	2	Miami, FL	
	Guam	2	Agana	
	Wyoming	2	Cheyenne, WY	
	North Mariana	0		

a/ Information from OECE.

b/ Information from the Executive Office for U.S. Attorneys

c/ Information from the Justice Telephone Directory

* Indicates it was one of the first seven units.

** Units in operation in addition to the initial seven units.

*** Proposed units.

1/ Unit proposed for this Office or the Tampa OUSA (MD FL).

2/ Unit established in Dallas, TX.

3/ The study team's visit to New Haven, CT, found two staffed branch offices.

4/ Location within Missouri is undecided.

5/ Unit proposed for Wichita, KS.

6/ Listed as three staffed branch offices, with no principal office.

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APPENDIX 2

U.S. Department of Justice



**United States Attorneys'
Written Guidelines for the Declination of
Alleged Violations of Federal
Criminal Laws**

A Report to the
United States Congress

Washington, D. C.
November 1979

Executive Summary

This report examines the written guidelines issued by various United States Attorneys concerning the types of alleged violations of federal criminal laws they will normally decline to prosecute. This examination of written guidelines is part of a larger study of declination policies and practices currently being conducted by the Department of Justice.

Written declination guidelines exist for a large number of federal criminal offenses. They are promulgated by United States Attorneys, with the Department's knowledge and encouragement, as a means of formalizing and crystallizing prosecutorial priorities, thereby increasing the effectiveness of limited prosecutorial and investigative resources. Written guidelines represent United States Attorneys' attempts to respond to local demands and circumstances within the context of national law enforcement priorities. They are typically formulated after consideration of Department policies and consultation with federal investigative agencies.

A number of factors are taken into account in defining specific declination guidelines, including the following:

- The availability of alternatives to federal prosecution, including prosecution at the state or local level
- The seriousness of the crime, usually measured by the injury or loss involved
- The defendant's history and personal circumstances, including any criminal record, serious mental or physical disabilities, and age.

- The existence and strength of evidence to prove the requisite elements of proof for the criminal offense involved

Although written declination guidelines are sometimes referred to as "blanket" declinations, they are, either explicitly or implicitly, made subject to the caveat that unusual or aggravating circumstances should always be considered before any complaint is declined. Decisions to decline cases pursuant to written guidelines are also typically subject to reconsideration, for example, if matters are referred to state and local prosecutors and declined or not pursued by them. In addition, alleged offenses that would otherwise be subject to the guidelines may be prosecuted in clusters at a later date if enough similar offenses accumulate and prosecution would have a significant deterrent impact.

Written declination guidelines are applied with varying degrees of frequency to different categories of federal criminal offenses. The types of offenses most frequently subject to written guidelines in some form are listed below. The number of districts having guidelines for each offense is shown in parentheses:

- Theft from Interstate Shipment (61)
- Interstate Transportation of Stolen Property (51)
- Bank Fraud and Embezzlement (51)
- Forgery of U.S. Treasury Checks (51)
- Theft of Government Property (48)
- Interstate Transportation of Stolen Vehicles (45)

- Crimes on Government Reservations (36)
- Bank Robbery and Related Offenses (33)
- Fraud Against the Government (28)
- Drug Offenses (24)
- Immigration & Naturalization (24)

Written guidelines are usually expressed in terms of the amount of money or value of property involved, whether the offense appears to be connected with other criminal activity, or other similar factors. The ranges and distributions of declination "cut-off points" vary across districts. For some offenses, the declination cut-off points of the various districts congregate around similar values and factors, while for others, the declination guidelines show considerable variation among districts.

The Department of Justice is aware of and has encouraged the practice of United States Attorneys' issuing written guidelines. None of the information gathered to date by the Department suggests that written guidelines are being used inappropriately. To the contrary, existing written declination guidelines appear to be accomplishing effectively their intended purpose of allocating limited investigative and prosecutorial resources in an efficient manner.

Of course, the Department, through the Criminal Division and Executive Office of United States Attorneys, will continue to monitor written guidelines on a regular

basis to make certain that none of them is inconsistent with national law enforcement priorities or otherwise inappropriate. Additional information regarding both written and unwritten declination policies and practices is currently being received and analyzed. That information and analysis will be presented in the Department's final report.

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INTRODUCTION

This report examines the written guidelines issued by United States Attorneys concerning the types of criminal complaints they will normally decline to prosecute. The information contained in this report was provided by United States Attorney's offices across the country in response to a request from the Assistant Attorney General in charge of the Criminal Division of the Department of Justice. Of the 94 United States Attorney's offices, 83 reported written declination guidelines in some form. The remaining 11 offices reported that they did not have written guidelines, but instead made all declination decisions on a case-by-case basis.

This report is part of a larger study of declination policies and practices currently being conducted by the Department of Justice. The overall study was prompted by a provision in Section 17 of the Department's Appropriation Authorization Act for Fiscal Year 1979, directing the Attorney General to:

undertake a study of the extent to which complaints of violations of Federal criminal laws are not prosecuted and ... make recommendations for improving the percentage of such complaints which are prosecuted by the Department. The study shall also analyze the cases that have not been prosecuted and make recommendations to assure that the decisions not to prosecute are in accordance with national policy.

Pursuant to this Congressional mandate and with a particular awareness of the concerns expressed in two General Accounting

Office reports on the subject of declination policies 1/, the Department undertook a thorough study of existing policies and practices with respect to the declination of complaints alleging violations of federal criminal laws. The information contained in this report concerning written declination guidelines is a major part of the Department's research effort. Additional information regarding informal declination policies and practices and actual case histories is currently being received and analyzed and will be presented in a future report. Once all pertinent information is received, the Department will evaluate its existing policies, make whatever policy changes seem appropriate, and recommend new legislation, if necessary, to the Congress.

A number of important questions must be addressed in examining written declination guidelines. These include the following:

1. What written declination guidelines currently exist?
 - . What declination-determining factors are specified?
 - . For what criminal offenses do they exist?
 - . What variations exist in written guidelines from district to district and from offense to offense?
 - . Do the guidelines provide for exceptions in unusual circumstances?
2. What role do written declination guidelines play in the law enforcement process?
 - . What are the origins of written guidelines?

1/ "U.S. Attorneys Do Not Prosecute Many Suspected Violators of Federal Law", Report To The Congress By The Comptroller General, February 27, 1978; "Reducing Federal Judicial Sentencing and Prosecuting Disparities; A Systemwide Approach Needed", Report To The Congress By The Comptroller General, March 19, 1979.

- . What purpose are written guidelines intended to serve?
3. What factors are taken into account in formulating written declination guidelines?
 - . Who is involved in the formulation of written guidelines?
 - . What declination-determining factors are most often mentioned by districts having general written declination guidelines?
 - . Are different factors considered by different districts?
 4. How are written declination guidelines applied in practice?
 - . Are guidelines strictly applied?
 - . Are decisions to decline based on written guidelines subject to reconsideration and reversal?
 - . Are de minimus cases that are declined pursuant to written guidelines ever prosecuted?
 5. Are existing written declination guidelines consistent with national law enforcement policy?
 - . What law enforcement and national policy interests are involved in evaluating written declination guidelines?
 - . What differing local circumstances exist across federal districts that affect written declination guidelines?
 - . What variations in written declination guidelines across districts are acceptable and consistent with national policy?
 - . If written declination guidelines are in any way inconsistent with national policy or national priorities, what changes can and should be made in those guidelines or in the Department's policies and procedures with respect to those guidelines?

The first question listed above and its subquestions are addressed in Section I of the report and also in the Appendix. Questions 2 through 4 are the subjects of Section II. The fifth question will be addressed in the Department's final report.

As the following discussion indicates, declination policies are a crucial part of the investigative and prosecutorial system. Investigators and prosecutors alike rely upon such policies to help channel limited law enforcement resources toward their most productive uses. Indeed, since law enforcement resources are limited, it is clearly impossible to investigate and prosecute every alleged criminal violation. Some priorities are required to reduce wastage and to increase the effective deployment of scarce investigative and prosecutorial time and effort.

A large number of factors are taken into account in formulating written declination guidelines, including the availability and likelihood of State or local prosecution, the seriousness of the crime and the injury or loss involved, the defendant's prior involvement in criminal activity, and the strength and sufficiency of the Government's evidence. While issued by United States Attorneys, written guidelines are usually the result of consultation between United States Attorney's offices and federal investigative agencies. In many instances, State and local law enforcement officials are also consulted. Unusual or aggravating circumstances are always taken into account in determining whether written guidelines should be applied to particular situations.

The information contained in this report demonstrates both notable similarities and striking differences across the various United States Attorney's offices with respect to written

declination policies. Whether the existing degree of uniformity or diversity is proper requires a careful and thorough analysis of the circumstances confronting each United States Attorney's office and of the various national policy interests. Obviously, difficult policy issues concerning effective law enforcement, fairness and competing national objectives are involved in evaluating the existing written and unwritten declination policies and practices and the Department's proper role in defining and monitoring them. Those issues will be considered at length in the Department's final report. This initial report addresses a limited, but important piece of the overall declination picture -- written declination guidelines -- and attempts to provide answers to a similarly limited, but important set of questions.

I. WRITTEN DECLINATION GUIDELINES CURRENTLY
IN USE BY UNITED STATES ATTORNEYS

The specific written declination guidelines supplied by U.S. Attorneys were applicable to 42 categories of criminal offenses. These written guidelines are described by type of offense in the Appendix to this report. As that lengthy description demonstrates, for a number of categories of offenses, only a few districts have written declination guidelines. For other types of offenses, written guidelines are very frequently in force.

The following eleven categories of offense are the ones most frequently made subject to written guidelines by U.S. Attorneys:

Table 1

Categories of Criminal Offenses Most
Frequently Subject to Written Declination Guidelines

<u>Category of Offense</u>	<u>Number of Districts with Written Declination Policies</u>
1. Theft from Interstate Shipment (18 U.S.C. Section 659)	61
2. Interstate Transportation of Stolen Property (18 U.S.C. Section 2314)	51
3. Bank Fraud and Embezzlement (18 U.S.C. Sections 656, 657)	51
4. Forgery of U.S. Treasury Checks (18 U.S.C. Section 471)	51
5. Theft of Government Property (18 U.S.C. Section 641)	48
6. Dyer Act: Interstate Transportation of a Stolen Vehicle (18 U.S.C. Section 2312)	45

<u>Category of offense</u>	<u>Number of Districts with Written Declination Policies</u>
7. Crimes on Government Reservations (18 U.S.C. Section 7, 13, 661, <u>et al.</u>)	36
8. Bank Robbery and Related Offenses (18 U.S.C. Section 2113)	33
9. Fraud Against the Government (18 U.S.C. Section 287, 641 <u>et al.</u> ; 42 U.S.C. Section 408; 45 U.S.C. Section 359)	28
10. Drug Offenses (21 U.S.C. Section 801 <u>et seq.</u>)	24
11. Immigration and Naturalization - Illegal Aliens (18 U.S.C. Section 1282, 1306, 1324 <u>et seq.</u> ; 18 U.S.C. Sections 911, 1001, 1426, 1546)	24

A review of the written declination policies for various offenses indicates a number of general characteristics:

- Written guidelines are typically categorized by the type of criminal offense or the statutory provisions involved, as they are presented in the Appendix to this report.
- Written guidelines are more prevalent for non-violent criminal offenses, though some exist for violent crimes.
- Written guidelines are usually expressed in terms of the gravity of the alleged offense, the history and circumstances of the defendant involved, and the connection of the alleged offense to a pattern of illegal activity.
- Other frequently-mentioned declination determining factors include the sufficiency and strength of the Government's evidence and the availability of alternatives to federal prosecution.

The most frequently used measurement of the gravity of the offense is the value of property or loss involved. Using Theft from Interstate Shipment as an example, the value

of property involved is used by 52 of 61 districts as a declination-determining factor. This is shown in the summary of written declination policies for Theft from Interstate Shipment presented on the following page as Table 2.

The history and circumstances of the defendant includes the defendant's past involvement in criminal activity, his or her possible connections with other alleged criminal offenders or offenses, and his or her age, health and mental capacity. The availability of alternatives to federal prosecution usually means State or local prosecution, but may also include pre-trial diversion and civil enforcement proceedings. Some of these factors are illustrated in the summary for Theft from Interstate Shipment shown in Table 2.

Written declination guidelines demonstrate differing degrees of variation in the ranges and distributions of declination cut-off points (e.g., monetary value, quantity of drugs) from district to district and from offense to offense. The variation among districts is illustrated again by the policies with respect to Theft from Interstate Shipment. As Table 2 shows, the range of declination cut-off points goes from \$100 to \$5,000 in property value, with many districts clustered around \$500 (15 districts), \$1,000 (11 districts), and \$5,000 (10 districts). The declination cut-off points for other offenses are differently distributed across ranges of differing size. These variations across districts and across offenses are easily seen by reviewing Tables 3 through 12 on the following pages. These Tables summarize the written

TABLE 2
THEFT FROM INTERSTATE SHIPMENT (18 U.S.C. § 659)
Summary of Written Declination Policies

Total Number of Districts with Written Policies: 61

PRIMARY REASONS FOR DECLINING PROSECUTION

	<u>Number of districts</u>	<u>Cumulative total^{1/}</u>
1. Property value less than:		
\$5,000	10	10
3,000	1	11
2,500	2	13
2,000	1	14
1,500	4	18
1,000	11	29
600	1	30
500	15	45
300	3	48
200	3	51
100	1	52
2. No known suspect plus property value less than:		
\$5,000	3	3
3,000	1	4
2,500	1	5
1,000	2	7
750	1	8
3. No known suspect, regard- less of property value:	10	10
4. Inability to identify stolen merchandise:	17	17
5. Absence of a pattern or series of thefts by an indiv- idual or organized group	6	6
6. Deference to local prosecution	4	4

^{1/} This figure reflects the total number of districts where such a case may be declined according to written guidelines.

declination policies for the other ten offenses listed above -- those most frequently subject to written declination guidelines.

One other important general characteristic of written declination guidelines must be understood in reviewing them and evaluating their significance. Despite the fact that they are sometimes called "blanket" guidelines, they are not iron-clad nor are they mechanically applied. This common trait is discussed in greater detail in a subsequent section of this report. The significant fact is that written guidelines, either explicitly or implicitly, require that unusual or aggravating circumstances be considered before any alleged criminal offense is not prosecuted.

TABLE 3
INTERSTATE TRANSPORTATION OF STOLEN PROPERTY (18 U.S.C. §2314)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 51

PRIMARY REASONS FOR DECLINING PROSECUTION BY TYPE OF OFFENSE

	<u>Number of districts</u>	<u>Cumulative total/</u>
<u>General Stolen Property</u>		
1. Property value less than:		
\$50,000 ^{2/}	2	2
5,000	12	14
2,500	2	16
2,000	1	17
1,000	1	18
500	1	19
<u>Checks or Money Orders</u>		
1. Value less than:		
\$ 5,000	5	5
3,000	1	6
2,000	2	8
1,000	10	18
500	8	26
300	5	31
250	1	32
2. Value and/or number of checks less than:		
\$ 2,000 or 5 checks	1	NA
1,500 or 6 checks	1	NA
1,000 or 10 checks	1	NA
1,000 or 5 checks	2	NA
500 or 5 checks	1	NA
500 and 2 checks	1	NA
<u>Securities</u>		
1. Total value of securities less than:		
\$ 5,000	4	4
1,000	5	9
500	6	15

^{1/} This figure reflects the total number of districts where such a case may be declined according to written guidelines.

^{2/} If unknown suspect.

TABLE 4
BANK FRAUD AND EMBEZZLEMENT (18 U.S.C. §§ 656, 657)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 51

PRIMARY REASONS FOR DECLINING PROSECUTION

	<u>Number of districts</u>	<u>Cumulative total^{1/}</u>
1. Amount of money less than:		
\$ 5,000	2	2
4,000	1	3
2,500	5	8
2,000	1	9
1,500	7	16
1,000	10	26
500	3	29
2. Known suspect and amount of money less than:		
\$ 5,000	<u>1^{2/}</u>	1
1,500	3	4
1,000	1	5
500	11	16
250	6	22
100	1	23
3. Unknown suspect and amount of money less than:		
\$ 5,000	3	3
3,000	1	4
1,500	4	8
1,000	13	21
500	4	25
4. Single transaction/no evidence of on-going scheme:		
	20	20
5. Perpetrator made restitution:		
	9	9

^{1/} This figure reflects the total number of districts where such a case may be declined according to written guidelines.

^{2/} Where "single teller" involved and prosecution deferrable to local District Attorney.

6. Employee-perpetrator was dismissed:	8	8
7. Loss caused by mistake/ no reason to suspect dishonesty:	7	7

TABLE 5
FORGERY OF U.S. TREASURY CHECKS (18 U.S.C. § 471)
Summary of Written Declination Policies

Total number of Districts with Written Declination Policies: 51

PRIMARY REASONS FOR DECLINING PROSECUTION

	<u>Number of districts</u>
1. Checks received in error with names the same as, or similar to, that of person cashing them	39
2. Co-payee checks where one spouse forged the signature of the other	39
3. Checks made payable to deceased person and cashed by member of immediate family for legally-appointed fiduciary	34
4. Checks cashed by member of the immediate family of the payee	34
5. Payee of check willing to waive claim against Government and executive release	17
6. No intent to defraud evident	15
7. Value and/or number of checks less than:	
\$ 1,500 and 5 checks	1 ¹ / ₁
1,000	5 ¹ / ₂
250	2
3 checks	2
2 checks	1

¹/₁ Three districts' policies contingent on defendant's prior record.

TABLE 6
THEFT OF GOVERNMENT PROPERTY (18 U.S.C. § 641)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 48

PRIMARY REASONS FOR DECLINING PROSECUTION

	<u>Number of districts</u>
1. Amount of money involved, status of known subject (Federal or non-Federal employee), aggravating circumstances	42
2. No series of such incidents indicating a pattern	6

TABLE 7
DYER ACT: INTERSTATE TRANSPORTATION
OF A STOLEN VEHICLE (18 U.S.C. §2312)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 45

PRIMARY REASONS FOR DECLINING PROSECUTION

	<u>Number of districts</u>
1. Theft is not part of organized ring or multitheft operation ^{1/}	45
2. Defendant is juvenile with no aggravating circumstances	18
3. Offense involves joyriding	12
4. Local prosecution has begun	6

^{1/} Single-vehicle thefts may be prosecuted according to written guidelines if:

- a) defendant has prior Dyer Act or other felony conviction (13 districts)
- b) crime represents a pattern of conduct (10)
- c) theft ties in with other crimes (9)
- d) vehicle was demolished, sold or stripped (7).

TABLE 8
CRIMES ON GOVERNMENT RESERVATIONS (18 U.S.C. §§ 7, 13, 66 et al.)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 36

PRIMARY REASONS FOR DECLINING PROSECUTION BY TYPE OF OFFENSE

	<u>Number of districts</u>	<u>Cumulative total^{1/}</u>
<u>General Property Crimes</u>		
1. Property Value less than:		
\$ 5,000	2	2
4,000	1	3
2,500	1	4
1,500	3	7
1,000	8	15
600	1	16
500	3	19
250	2	21
200	3	24
2. Property value plus other factors: (exclusive federal jurisdiction, identifiable property, whether government employee)		
	11	11
<u>Fraudulently Cashed Checks</u>		
1. General declination:		
	3	3
2. Value less than:		
\$ 1,000	2	2
500	1	3
250	2	5
200	1	6
100	1	7

^{1/} This figure reflects the total number of districts where such a case may be declined according to written guidelines.

Fraudulent Use of Credit Cards

1. General declination:	6	6
2. Theft less than \$1,000:	1	1

Vandalism

1. General declination unless significant destruction:	6	6
2. Property value less than:		
\$ 600	1	1
100	1	2

Narcotics

1. All simple possession cases:	1	1
2. Misdemeanor cases:	1	1
3. Amount of drug possessed less than:		
500 units LSD	1	NA
1 oz. Cocaine or Amph.	1	NA
5 oz. Marijuana	1	NA
1 oz. Marijuana	3	NA

Breaking and entering

1. General declination:	4	4
2. Damage less than \$1,000 and/or concurrent state jurisdiction:	3	3

TABLE 9
BANK ROBBERY AND RELATED OFFENSES (18 U.S.C. §2113)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 33

PRIMARY REASONS FOR DECLINING PROSECUTION

	<u>Number of districts</u>
1. State and local authorities willing and able to prosecute case effectively	18
2. Minimal federal investigative involvement	16
3. No use of firearms or other dangerous weapons	14
4. No interstate or multi-state activity involved	13
5. Not part of a string of multiple occurrences	10
6. Murder, kidnapping or other crimes involving violence not committed during robbery	9
7. No professional group or organized crime ring involved	4
8. Subjects committed no prior similar offenses	4
9. Juveniles involved in commission of robbery	4
10. Amount of money less than:	
\$ 2,500	21/
1,000	32/

1/ Bank robberies
2/ Larcenies

TABLE 10
FRAUD AGAINST THE GOVERNMENT (18 U.S.C. §§ 287, 641,
1001, 1003, 1014; 42 U.S.C. §408; 45 U.S.C. §359)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 28

PRIMARY REASONS FOR DECLINING PROSECUTION BY TYPE OF OFFENSE

	<u>Number of</u> <u>districts</u>	<u>Cumulative</u> <u>total</u> ^{1/}
<u>False statements on applications for</u> <u>loan from bank or other federally-</u> <u>insured institution (18 U.S.C. §1014)</u>		
1. Amount of loss less than:		
\$10,000	1	1
5,000	3	4
1,500	1	5
1,000	1	6
2. No evidence of organized activity/single bank involved		
	4	4
<u>False statements on applications for</u> <u>federal employment (18 U.S.C. §1001)</u>		
1. Person not employed as a result of false statement/unreported minor criminal violations		
	5	5
<u>Fraud involving HUD</u>		
1. Single false statement/ no pattern or practice of wrongdoing		
	4	4
<u>Fraud involving Veterans' Administration</u>		
1. Amount less than:		
\$ 5,000	1	1
1,500	1	2
1,000	2	4

^{1/} This figure reflects the total number of districts where such a case may be declined according to written guidelines.

Fraud involving other federal agencies (DOD, DOL, DOT, EPA, FHA, GSA, HEW, SBA)

1. Amount less than:

\$5,000 ^{2/}	1	1
2,500	1	2
1,500	1	3
1,000	4	7
500	1	8

² If federal employee not involved.

TABLE 11
DRUG OFFENSES (21 U.S.C. §§801 et seq.)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 24

PRIMARY REASONS FOR DECLINING PROSECUTION BY TYPE OF DRUG

	<u>Number of districts</u>	<u>Cumulative total^{1/}</u>
<u>Marijuana</u>		
1. Amount less than:		
1,000 lbs.	4	4
500 lbs.	2	6
200 lbs.	1	7
100 lbs.	1	8
50 lbs.	2	10
10 lbs.	4	14
2 lbs.	2	16
1 lb.	1	17
2. Other factors: (whether sold to school children, intent to distri- bute, amount sig- nificant in context of community)		
	2	2
<u>Hashish</u>		
1. Amount less than:		
100 lbs.	2	2
50 lbs.	2	4
10 lbs.	1	5
5 lbs.	3	8
2 lbs.	1	9
1/2 lb.	1	10
<u>Cocaine</u>		
1. Amount less than:		
2.2 lbs.	1	1
9 oz.	1	2
8 oz.	1	3

^{1/} This figure reflects the total number of districts where such a case may be declined according to written guidelines.

3 oz.	2	5
2 oz.	1	6
1 oz.	7	13
1/4 oz.	2	15
"small amounts" ^{2/}	1	NA

Heroin

1. Amount less than:

1.1 lbs.	1	1
4 1/2 oz.	2	3
2 oz.	1	4
1 oz.	9	13
1/4 oz.	2	15
"small amounts"	1	NA

Amphetamines and Barbituates

1. Amount less than:

20,000 dosage units (d.u.)	1	1
10,000 d.u.	2	3
5,000 d.u.	1	4
2,500 d.u.	1	5
1,000 d.u.	23/	7
500 d.u.	14/	8

Hallucinogens1. Amount less than:^{5/}

1 lb.	1	NA
1/2 lb.	1	NA
2 oz.	1	NA
500 d.u.	2	NA
100 d.u.	1	NA
10 d.u.	1	NA
\$100	1	NA

^{2/} Small amounts not specifically defined.^{3/} Barbituates only.^{4/} Amphetamines only.^{5/} Figures are for various hallucinogens including LSD, peyote, and PCP.

Other factors taken into account

1. Offender is not a dealer, distributor or part of a conspiracy	13	13
2. Small amount of drugs for personal use	4	4
3. Single sale of drugs	2	2

TABLE 12
IMMIGRATION AND NATURALIZATION - ILLEGAL ALIENS
 (18 U.S.C. §§1282, 1306, 1324 et seq.; 18 U.S.C. §§911, 1001, 1426, 1546)
Summary of Written Declination Policies

Total Number of Districts with Written Declination Policies: 24

TYPES OF DECLINATION POLICIES

	<u>Number of districts</u>
1. Blanket Declination for Illegal Aliens Under Titles 8 and 18	11
2. Specific guidelines for certain Title 8 offenses	8
3. Specific guidelines for certain Title 18 offenses (e.g., stowaways)	3
4. Various factors (e.g., whether first offender)	3
5. Specific "no-declination" or "prosecute-all" policy	1

II. THE DEVELOPMENT AND APPLICATION
OF WRITTEN DECLINATION GUIDELINES

In response to the Assistant Attorney General's request for written declination guidelines, United States Attorneys frequently sent not only the guidelines themselves, but copies of correspondence with investigative agencies and other material relating to the formulation and application of the guidelines. This material, along with the written guidelines themselves, provides the basis for the following discussion.

A. The Need for Written Declination Guidelines

Since law enforcement first began, law enforcement officials have had to make choices concerning which possible criminal offenses they were going to investigate and prosecute. If different people or agencies had investigative and prosecutorial responsibilities, there had to be coordination between them so that there was some compatibility between investigative and prosecutorial priorities.

When society was less complex, informal, unwritten understandings between investigator and prosecutor were adequate. The number of people and agencies involved was relatively small, so that oral declination guidelines provided sufficient guidance. Indeed, in some federal districts, typically the less populated ones, oral declination guidelines are still the rule. In other districts, correspondence between U.S. Attorneys and investigative agencies sometimes makes reference to "traditional oral

declinations" which are now "reduced to writing." Written declination guidelines are thus, in most cases, the response of prosecutors to the perceived need to reduce to writing what had been informal, verbally communicated understandings. They promote continuity and consistency over time. Written guidelines, moreover, do not by themselves increase the number of complaints declined. They merely spell out in concrete terms existing declination policies, which are based on a district's past experience. Stated otherwise, without written guidelines, the same types and numbers of cases would likely be declined, but with much less efficiency.

In some instances, written guidelines are the result of requests by investigative agencies for more clarity regarding prosecutorial priorities. For example, a letter from an FBI field office to a U.S. Attorney, attached to the U.S. Attorney's response, contained the following history of particular written guidelines:

As you are aware, the vast majority of cases in these categories (Theft from Interstate Shipment, Theft of Government Property, Crime on Government Reservations) referred to (us) . . . are petty or minor in nature. In the past, and in keeping with the Bureau's policy, when such a case is received by the FBI and there are no unusual or aggravating circumstances, no investigation is undertaken and the facts of the case are immediately presented to your office for a prosecutive opinion. This procedure, however, by virtue of the volume of cases involved in the above categories, expends substantial manpower in the mere administration of the cases. In this regard, you advised that henceforth you would decline prosecution of (the above-cited offenses) where loss is not greater than \$1,000 and where there are no unusual or aggravating circumstances

In this particular case, the written guidelines were the result of both the investigative agency and the U.S. Attorney seeking to avoid the loss of valuable resources on alleged offenses of relatively minor significance. Other evidence suggests the same rationale for written guidelines: an attempt to clarify and formalize prosecutorial priorities in order to make the most effective use of limited resources.

B. The Formulation of Written Declination Guidelines

The written declination guidelines submitted by United States Attorneys provide some important insights into the factors that are most often taken into account in deciding whether to decline to prosecute an alleged criminal offense. ^{2/} For example, twenty-two of the eighty-three districts with written guidelines indicated that they have established general overall declination guidelines, often in addition to more specific policies for dealing with specific criminal offenses. These general guidelines consist, for the most part, of a list of factors that the U.S. Attorney's office takes into consideration in deciding whether to prosecute a particular case. The most-mentioned factors, listed in order of how often they were mentioned, are as follows:

^{2/} More detailed information concerning the relative importance of various factors is currently being received from a sample of twelve United States Attorney's offices.

Table 13Factors Listed By Districts Having
General Written Declination Guidelines

<u>Factors</u>	<u>Number of Districts Listing Factors</u>
1. Whether the offense will be adequately prosecuted at the State or local level or by another federal district.	15
2. The seriousness of the crime and the injury or loss involved.	11
3. Whether the defendant has a prior record.	11
4. The strength and sufficiency of evidence possessed by the Government	9
5. The defendant's mental capacity.	9
6. The defendant's age, intelligence, experience and education.	8
7. The defendant's wilfulness in committing the crime.	7
8. Whether there are pending charges or sentences against the defendant.	7
9. Whether the prosecution will have a significant deterrent effect.	7
10. Whether administrative or civil remedies exist.	6
11. Any existing legal impediments to prosecution.	6

Beyond the factors listed above, the material supplied by the U.S. Attorneys indicates that U.S. Attorneys' declination guidelines are significantly influenced by national law enforcement priorities. These priorities are communicated to U.S. Attorneys by Department officials in a number of ways: the U.S. Attorney's Manual, Department memoranda, bulletins and letters,

U. S. Attorneys' Conferences, meetings with individual U.S. Attorneys and their staffs, and meetings with the U.S. Attorneys' Advisory Committee. 3/

The formulation of written declination guidelines is also a cooperative process between the U.S. Attorney and the various investigative agencies. Sometimes the U.S. Attorney will ask for investigative agency recommendations on guidelines. Sometimes they are offered unsolicited. The investigative agency recommendations are sometimes followed, often modified. Many U.S. Attorney's offices appear to initiate proposed guidelines and seek agency comment.

Written declination guidelines are thus the result of a large number of opinions and factors. They represent, in essence, the local prosecutors' attempts to carry out national law enforcement priorities within the context of local demands and circumstances, which may vary in many important respects from one District to the next.

3/ In a few cases, the Department of Justice has reached agreement with other federal agencies and departments regarding what types of alleged offenses should be submitted to the Department or to United States Attorneys for investigation or prosecution and which should be handled internally or administratively by respective agencies and departments. These inter-agency agreements are usually reduced to "Memoranda of Understanding" which are then communicated to United States Attorneys. The agreements thus serve as national declination guidelines which affect, sometimes directly, United States Attorneys' policies.

C. The Application of Written Declination Guidelines

Three important general points regarding the application of written declination guidelines should be noted. First, as mentioned earlier in this report, although written guidelines are sometimes referred to as "blanket" guidelines, they are by no means hard-and-fast rules. Without exception, the written guidelines supplied by U.S. Attorneys make it very clear that specific circumstances will and should always be taken into account in applying the written guidelines.

This is expressed in different ways. The following examples are taken from various United States Attorney's written guidelines:

Example #1

Guidelines are only guidelines; they are meant to be a flexible set of criteria to be used by attorneys in this office in deciding whether or not to prosecute. No set of guidelines can attempt to anticipate every circumstances.

Example #2

In addition to the principles utilized here, each Assistant U.S. Attorney shall take into consideration extenuating or aggravating facts in an individual case and should apply these principles with good legal judgement and common sense. These guidelines are to be applied in accordance with the Department of Justice general guidelines governing the exercise of prosecutorial discretion.

Example #3

This is a general understanding, and you (the investigating agency) should know that we will be willing to consider prosecution of any individual should there be aggravating circumstances that would warrant further consideration, notwithstanding this letter. (emphasis in original)

Written guidelines are thus not iron-clad. They are instead general rules designed for ordinary situations but adaptable to extraordinary conditions.

The second major point to be understood is that decisions to decline prosecution based on written declination guidelines are typically subject to reconsideration. Such decisions, if made by the Assistant United States Attorney to whom a case is referred, may be appealed by the investigative agency to the United States Attorney. United States Attorneys' decisions, in extreme cases, may be appealed to Department officials. In addition, declinations are also often made contingent upon the outcome of referral to State or local prosecutors. One set of declination guidelines suggests referral of certain types of cases to State or local prosecutors, but also provides that if those prosecutors "do not proceed, cases are reactivated and reevaluated." Other guidelines contain similar provisions.

Finally, it is important to note that while individual alleged de minimus offenses may be declined for immediate prosecution, records of those alleged offenses are kept.

If enough such offenses accumulate, the United States Attorney may decide to prosecute them in clusters. This clustering or "blitz" technique has been used in a number of circumstances, for example, with clusters of unemployment insurance fraud cases and, most recently, with multiple student loan defaults.

Such prosecutions of large numbers of individual de minimus cases are initiated with the intent of receiving widespread publicity, thereby deterring large numbers of similar offenses. The important point for purposes of this report is, however, that relatively minor offenses not initially prosecuted because of written declination policies are sometimes simply deferred until a significant number of similar cases accumulate.

In summary, the written declination guidelines described in this report should be examined in light of their origins and their actual application. They describe the rough contours of the landscape, but they do not define its precise details. Further information on how written declination guidelines are applied in practice will be contained in the Department's final report.

III. FINDINGS AND CONCLUSIONS

This study has examined the written declination guidelines and related material provided by United States Attorneys. Among the principal findings and conclusions of the study are the following:

- Written declination guidelines of some description are currently being used by 83 U.S. Attorney's offices.
- Written declination guidelines are promulgated in order to channel investigative and prosecutorial resources into high priority activities and away from low priority areas and they appear to be performing that useful function effectively.
- Written declination guidelines are typically prepared by U.S. Attorneys after consultation with federal investigative agencies.
- Many specific factors are taken into account in formulating and applying written declination guidelines, including the following:
 - the availability and likelihood of State or local prosecution;
 - the seriousness of the crime and the injury or loss involved;
 - the defendant's prior record;
 - the strength and sufficiency of the Government's evidence.
- Written declination guidelines exist for over forty categories of criminal offenses and are most frequently applied to the following categories of offenses:
 - Theft from Interstate Shipment
 - Interstate Transportation of Stolen Property
 - Bank Fraud and Embezzlement
 - Forgery of U.S. Treasury Checks
 - Theft of Government Property
 - Interstate Transportation of Stolen Vehicle
 - Crimes on Government Reservations
 - Fraud Against the Government
 - Bank Robbery and Related Offenses
 - Drug Offenses
 - Immigration and Naturalization Offenses

- . The degree of diversity among the written declination policies of different districts varies from one category of offense to another; for some offenses, written declination policies are very similar, while for others, declination cut-off points in terms of property value or other factors are widely distributed.
- . Without exception, written declination guidelines provide that unusual or aggravating circumstances should be considered before any complaint alleging a criminal offense is declined.

These findings and conclusions may be supplemented or qualified by the additional data which the Department is currently collecting and analyzing. The Department, through the Criminal Division and the Executive Office of United States Attorneys, will continue to monitor written declination guidelines on a regular basis. Additional Departmental actions will be considered as additional information concerning declination policies and practices is received and analyzed.

APPENDIX

SUMMARY OF WRITTEN DECLINATION
GUIDELINES BY CATEGORY OF OFFENSE

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AppendixSummary of Written Declination
Guidelines By Category of Offense1. Aircraft and Airport Offenses

(49 U.S.C. Section 1472)

Thirteen federal districts have policies dealing with offenses committed aboard airplanes or at airports. Discussion of particular policies as they pertain to particular violations follows:

(a) False Information to Airline

Occasionally a prospective airline passenger jokingly indicates he has a bomb, gun, or knife on him or in his luggage. The seven Districts that have a policy on this agree that unless the passenger actually has a weapon, they will not prosecute these poor attempts at humor. 1/

(b) Weapon Seizures at Airports

Cases involving attempts to introduce weapons or destructive devices aboard commercial aircraft are dealt with in various ways. In two Districts such matters are generally declined in favor of local prosecution or citation by FAA authorities. The guidelines of two Offices state that there should be prosecutions when an individual has endeavored by obvious deliberate measures to preclude detection of a weapon on his person or in his carry-on

1/ One District does not want the FBI to present for prosecutive opinion cases wherein the individual is so intoxicated as to be not taken seriously.

baggage. If the individual in question is a non-law enforcement person but possesses a valid permit to carry a weapon, or if the individual has sufficient identification and no prior criminal record, these Offices will decline to prosecute. In one District, the policy is to defer to local prosecutors airport security violations involving no guns or other weapons.

(c) On Craft Violations

All the Offices that have guidelines concerning aircraft offenses have stated that they will not automatically decline to prosecute cases when an individual boards an aircraft with a weapon, or attempts to carry out or does carry out an actual hijacking. Because of the seriousness of hijacking offenses, as well as incidents involving the use of a deadly weapon to interfere with flight, the United States Attorneys' policy is to prosecute these cases vigorously. 2/

2/ As far as destruction of aircraft or motor vehicles is concerned, one District has a blanket declination policy and approves of the FBI's policy of investigating cases only if the value of the destroyed property exceeds \$500. See 18 U.S.C. Sections 32, 33.

2. Assaults on Federal Officers

(18 U.S.C. Sections 111, 1114)

Four Districts have a policy concerning assaults on federal officers. Two Districts decline to prosecute violations of 18 U.S.C. Section 111 unless an actual assault occurred -- that is, a threat of bodily harm to the officer or agent coupled with the present ability to inflict harm. As for 18 U.S.C. Section 1114, one District will decline to prosecute the assault of an agent during an arrest if the agent is not injured. One District's general policy is to decline all assault prosecutions except forcible assaults on those federal employees who have law enforcement duties which regularly expose them to the public (e.g., agents of the FBI, DEA, ATF, Secret Service, etc.). The District refers assaults against other types of federal employees to local prosecutors. Also, among the factors which will be considered in determining whether to prosecute a forcible assault against a federal law enforcement agent are: (a) the extent of injury, if any, suffered by the victim; (b) whether a weapon was used by the person committing the assault and if so, what kind; (c) premeditation; and (d) provocation.

3. Bank Fraud and Embezzlement

(18 U.S.C. Sections 656, 657)

Most USAs' written declination guidelines are based on the amount of money involved: three Districts decline cases involving less than \$500; ten less than \$1,000; seven less than \$1,500; one less than \$2,000; five less than \$2,500 1/; one less than \$4,000; two less than \$5,000.

Some Districts, in addition to declining cases on the basis of the amount of money involved, vary their policy according to whether the subject is known or unknown.

a. Known subject cases:

One District declines these cases if the amount involved is less than \$100; six less than \$250 2/; eleven less than \$500 3/; one less than \$1,000; three less than \$1,500. In one District, the U.S. Attorney will not prosecute cases involving "single-teller" bank embezzlement not exceeding \$5,000, where the investigation has been substantially completed by the internal audit department of the bank, but

1/ Two decline if only the teller is involved and two decline if the subject is not an officer of the bank.

2/ Two Districts also used deferred prosecution or reduction to misdemeanor as alternatives and one District deferred prosecution if the defendant was a first offender.

3/ Four Districts used reduction to a misdemeanor if it involved only a single transaction; two declined if a Federal Reserve Bank employee was involved and four declined if it involved a total of \$500 not taken on 3 or more occasions.

will defer prosecution to the local District Attorney. In these cases, the banks will be advised to notify the local police and not the FBI. In all other bank embezzlement cases, the FBI will conduct the investigation and refer the case to the U.S. Attorney's Office for prosecutive decision.

b. Unknown subject cases

Four Districts decline these cases if the amount involved is less than \$500; thirteen if the amount is less than \$1,000; four if less than \$1,500; one if less than \$3,000; three if less than \$5,000.

The declination policy in the various Districts is based on many factors. Twenty Districts decline prosecution if only a single transaction is involved in the absence of evidence of an ongoing scheme. Nine Districts decline cases if the perpetrator makes restitution. Eight Districts decline cases if the employee-perpetrator is dismissed. One District declines cases if bank officials think that such dismissal is unwarranted.

Seven Districts decline cases if the loss is caused by mistake or if there is no reason to suspect dishonesty. Three Districts decline cases which are being locally prosecuted. Two Districts decline cases which are declined by the state or local prosecutors. One District declines cases if another authorized law enforcement agency has already investigated or or is about to commence an investigation. Two Districts decline

prosecution if the loss is unreported for a substantial period of time after discovery. 4/ One District declines cases where the perpetrator is not an employee of the bank. The rationale is that federal jurisdiction is predicated on the subject's status as a bank employee and the bank's status as being federally insured. Thus, there is no embezzlement under federal law due to the subject's nonemployee status.

4/ One District defines "substantial period" as three months or more.

4. Bank Robbery and Related Offenses

(18 U.S.C. Section 2113)

Several Districts follow established declination guidelines. The more widely recognized practices are as follows: Eighteen Districts routinely decline prosecutions if the state and local authorities are willing and able to prosecute the case effectively. Sixteen Districts decline prosecutions if there is only a minimum of federal investigative involvement. Fourteen Districts decline prosecution if there were no firearms or other dangerous weapons involved in the robbery. Thirteen Districts decline prosecution if no interstate or multi-state activity is involved. Ten Districts decline prosecution if the robbery is not part of a string of multiple occurrences. Nine Districts decline prosecutions if murder, kidnapping or other crimes involving violence or resulting in injuries are not committed during the robbery. In one District, however, the policy is to decline prosecution if a death occurs during the course of the robbery.

Four Districts decline prosecution if no professional type group or organized crime ring is involved. Four Districts decline prosecution if the subjects committed no prior similar offenses. Four Districts decline prosecution if juveniles are involved in the commission of the robbery.

There are a number of less popular practices: Three Districts decline to prosecute larcenies or circumstances wherein the amount stolen is less than \$1,000.

Two Districts decline to prosecute in bank robberies where the amount stolen is less than \$2,500. One District declines prosecution in all cases involving burglaries while one District declines to prosecute burglaries where entry is not successful or damage is only minimal. Two Districts decline to prosecute "note jobs" or cases wherein only an oral demand is made unless there are multiple violations or other existing aggravating circumstances such as accomplices, prior records, firearm displayed or injuries. The policy in one District is to decline prosecution if there is a backlog in federal cases awaiting trial or if the relative sentences imposed in the federal and state or local courts are unacceptable. One District declines prosecution if there is no need for the use of a grand jury or granting of witness immunity. One District declines prosecution if the robbery is not provable and one District declines if there has been no attempt to enter the bank's vault or case drawers.

5. Bankruptcy(18 U.S.C. Sections 151 et seq.)

Only three Districts have a bankruptcy declination policy. Two Districts have the same policy, which is:

The Department of Justice has the sole authority to decline bankruptcy cases.

(a) We (USA's office) will recommend declination of offenses originating in a legitimate bankruptcy through carelessness or ignorance;

(b) We will recommend that prosecution be authorized in cases in which there was a criminal intent to defraud creditors prior to the actual institution of bankruptcy proceedings;

(c) We will strongly consider recommending prosecution of violations of the NBA by trustees, attorneys or other officials involved in the adjudication of NBA matters.

In the other District prosecution of National Bankruptcy Act violations involving concealment of assets, false claims, or receipt of assets from a bankruptcy subsequent to bankruptcy proceedings are declined unless the value of the property concealed, hidden, or received exceeds \$10,000. Prosecution in National Bankruptcy Act cases involving false oath, withholding of documents from an officer of the court, and destruction, mutilation, or falsification of any document of a bankruptcy estate are considered on a case-by-case basis. 1/

1/ In drafting its guidelines, the District took into consideration the various civil remedies available to the Bankruptcy Court when confronted with violations of the Act.

6. Bond Default: Penalties for Failure to Appear in Court

(18 U.S.C. Section 3150)

Only one District has a declination policy concerning bond default matters. The District's policy is to decline to refer such matters to the FBI for assistance and investigation unless:

- (a) the subject is wanted for a crime of violence against the person such as murder, manslaughter, forcible rape, robbery, or aggravated assault;
- (b) the subject has been convicted of a crime such as described in (a) within the past five years or has been incarcerated after conviction for a crime of violence and escapes from custody or supervision prior to the completion of the sentence or term of supervision;
- (c) the subject is wanted for a crime involving the loss or destruction of property in excess of \$25,000;
- (d) the suspect is being sought for criminal charges involving an excess of two ounces of heroin or cocaine, 1,000 packets of marijuana, or 10,000 dosage units of clandestinely manufactured dangerous drugs;
- (e) the subject has been convicted of an offense described in (c) and (d) within the past five years or has been incarcerated after conviction for such offenses and escapes from custody or supervision prior to completion of the sentence or term of supervision;
- (f) the suspect is being sought by a local jurisdiction for a significant aggravated felony.

7. Copyright Matters - "Tape Pirating"

(17 U.S.C. Sections 506(A), 1104)

Four Districts have declination policies concerning copyright matters. Three of the Districts direct their prosecutive efforts at major manufacturers and distributors of pirated sound recordings and motion pictures. ^{1/} Retailers and individual dealers are not prosecuted in one District, and in one District those who operate at swap meets or flea markets are warned and advised to discontinue the sale of pirated tapes. If, upon a second contact, such sales have been discontinued, a blanket declination of prosecution is granted. If such sales continue after warnings, the matter will be presented for a prosecutive decision.

One District's position regarding violation of the copyright statute where motion pictures are involved is that prosecution should be considered in any case where individuals are engaged in the unauthorized renting, selling or manufacturing for profit of any copyrighted motion picture which has not been subject to "First Sale."

One District automatically declines cases where the subject is a first offender, the value of the seized pirated material is less than \$3,000, and the subject has been duly warned that his activities are in violation of copyright statutes.

^{1/} One District's policy is that cases involving less than \$2,000 (retail value) should be declined.

8. Counterfeiting(18 U.S.C. Sections 471 et seq.)

Fourteen Districts have a declination policy concerning counterfeiting offenses. The policies of three Offices are based essentially on the amount of money involved 1/ and nine Offices decline counterfeiting cases where a small number of bills is involved.

Two Districts decline cases that are being prosecuted by local authorities and one District declines prosecution for lack of fraudulent intent.

Seven Districts examine a variety of factors to determine whether federal prosecution is warranted, e.g., amount of money involved, the role the offender played in the scheme, whether this prosecution will produce leads to other violations, whether this offense can be tried with a companion case, and the prior record of the offender on related crimes.

1/ One District declines cases involving less than \$100 and two Districts decline forgery cases involving less than \$250.

9. Crimes on Government Reservations

(18 U.S.C. Sections 7, 13, 661 et al.)

Thirty-six Districts have established guidelines for dealing with crimes committed on Government reservations. They can best be presented by category of offense as follows:

a. General Property Crimes. Thirty-five Districts have established dollar amounts below which prosecution of property offenses are generally declined. Nine Districts decline prosecutions if the property value is below \$1,000 1/; five below \$500 2/; three below \$1,500; and three below \$200. Two Districts decline below \$5,000, two below \$250; and one each below \$4,000, \$2,500, and \$600.

Two Districts set a limit of \$500 for thefts from interstate shipment and \$250 for destruction of Government property. Two Districts decline all prosecution if the property is not identifiable and set the limit on other prosecutions at \$200. One District also declines cases where the goods are unidentifiable and otherwise sets the limit at \$500. One District declines concurrent jurisdiction cases below \$1,000 and exclusive jurisdiction cases below \$500. One District declines cases of theft by a Government employee

1/ Four decline if exclusive jurisdiction cases.

2/ Two decline if exclusive jurisdiction cases.

of less than \$500. If the subject is not a Government employee, the limit is \$250. One District declines unknown subject cases where the amount involved is less than \$1,000 and known subject cases under \$500.

Several Districts make exceptions to these strict dollar amounts if the theft involved firearms (4) or drugs (3) or if a crime against a person was committed (2).

b. Fraudulently Cashd Checks or Insufficient Funds Cases. Three Districts decline prosecution of all insufficient funds cases. Two Districts decline prosecution when the amount of the checks is below \$1,000; two Offices decline cases below \$250; and one each below \$500, \$200, and \$100.

c. Fraudulent Use of Credit Cards. Six Districts decline all prosecution of these cases and one District foregoes prosecutions if the amount of the theft is less than \$1,000.

d. Vandalism. Six Districts decline prosecution in vandalism cases unless there was "significant destruction." One District declines prosecution if the damage was less than \$600 and one District declines if the damage done was under \$100.

e. Narcotics. Three Districts decline prosecution of marijuana possession cases involving less than one ounce of narcotics. One District declines possession cases for misdemeanor amounts and one District declines all simple possession cases. One District declines simple possession cases of five ounces or less of marijuana, one ounce or less of heroin, cocaine or amphetamines and 500 units or less of LSD.

f. Breaking and Entering. Four Districts generally decline prosecution of breaking and entering charges. Two Districts decline if the amount of loss or damage is under \$1,000. One District declines if there is concurrent jurisdiction with the state and the amount of loss is under \$1,000.

g. Auto Theft. Four Districts decline to prosecute thefts of automobiles when the subject initially had permission to use the vehicle.

h. Robbery. One District declines prosecution of robbery cases if the amount taken was below \$500 and there is concurrent jurisdiction with the state. It declines cases below \$100 when the Federal Government has exclusive jurisdiction.

10. Crime on the High Seas(18 U.S.C. Sections 1651 et seq.)

One District's policy for crimes on the high seas is to decline property crimes involving less than \$5,000, and to consider for prosecution only serious personal crimes (i.e., murder, kidnapping, rape) that have been investigated by the FBI. One District's policy is to decline cases involving stowaways in which the subject is an alien. These cases are referred to the Immigration and Naturalization Service for deportation.

11. Dealing in Firearms Without a License

(18 U.S.C. Section 922(a))

Eight Districts have a declination policy concerning firearms violations involving dealing without a license. The general rule in seven Districts is to decline cases where a collector or beneficiary engages in an occasional sale or trade transaction to dispose of a collection or inheritance. All seven Districts also decline cases on the basis of the number of sales involved. 1/ Six Districts are more disposed to decline cases if the firearms being sold were primarily handguns. All eight Districts decline cases where it can be shown that the dealer had no reason to believe that the purchaser intended to use the firearm in a criminal venture. One District, in addition, declines cases where it can be established that the dealer did not offer for sale all of the firearms in his or her possession. Two Districts decline cases where an agent in any undercover purchase has not officially advised the dealer that dealing in firearms without a license is illegal. One District declines cases where the transfers are made to informants and not agents.

1/ One District sets the minimum at three separate transfers on three separate occasions and one District sets it at five separate transactions that involve a total of ten or more guns.

12. Drug Offenses(21 U.S.C. Sections 801 et seq.)

The majority of United States Attorneys' Offices which have a formal or informal declination policy or understanding concerning drug violations decline cases primarily on the basis of the amount of a particular drug involved. The amount varies according to District and drug:

a. Marijuana. One District declines cases involving less than amounts of marijuana which are clearly significant within the context of the community in which the marijuana is located, if possession of such marijuana is not in an obviously commercial setting or is not discovered in conjunction with amounts of other controlled substances. One District declines cases involving one pound of marijuana. One District declines cases involving a single sale of marijuana in the absence of extraordinary circumstances, one of which may be a sale to school children, particularly on school grounds. That District's United States Attorney also declines prosecution for possession with intent to distribute marijuana under the Controlled Substances Act (21 U.S.C. Section 841(a)(1)) if the amount seized is less than two pounds. One District also declines cases involving less than two pounds. Four Districts decline cases involving less than ten pounds; two less than 50 pounds; one less than 100 pounds; one less than 200 pounds; two less than 400 pounds; and four less than 1,000 pounds.

b. Hashish. One District declines prosecution if the amount involved is less than one-half pound; one less than two pounds; three less than five pounds; and one less than ten pounds. One District evaluates on a case-by-case basis but generally declines those cases involving less than 50 pounds as does one other District. Two Districts decline cases involving less than 100 pounds. 1/

c. Cocaine and Heroin. Fifteen Districts report a blanket declination policy for cases involving cocaine and heroin where the amounts involved are under a certain quantity. E.g., two Districts decline cases involving less than 1/4 ounce; seven less than one ounce 2/; one less than two ounces; two less than three ounces of cocaine 3/. One District declines cases involving 4-1/2 ounces of heroin (125 grams) and nine ounces of cocaine (250 grams). One District declines less than one and one-half pound of cocaine. One District declines cases involving less than 2.2 pounds (one kilo) of cocaine but less than 1.1 pounds (500 grams) of heroin. One District declines cases involving single sales of small amounts 4/ of

1/ 50 kilos.

2/ Additionally, two Districts decline cases involving less than one ounce of heroin although the amounts differ for cocaine.

3/ One of those Districts declines four ounces of heroin.

4/ There are no hard and fast rules to determine what is a small amount but the District typically declines cases which involve a "sizeable quantity."

street level 5/ heroin or cocaine. In addition, the District's United States Attorney declines felony prosecutions of addicts or users of heroin or cocaine under 21 U.S.C. Section 841(a) (Possession with Intent to Distribute) if the amount possessed is worth less than \$75 (heroin) or \$100 (cocaine) and there is no strong evidence of the necessary intent to distribute. For non-users and non-addicts, prosecution is declined if value is less than \$50 (heroin) or less than \$100 (cocaine) and no evidence of intent to distribute as referred to above (e.g., packaging, high percentage of drug, seizure of cutting materials or admissible evidence of other transactions involving the defendants).

d. Amphetamines and Barbiturates. Two Districts decline cases involving less than 1,000 dosage units of barbiturates. While one of the Districts also declines cases involving less than 500 dosage units of amphetamines, the other District appears to have no blanket declination policy concerning these drugs. One District declines cases involving less than 2,500 dosage units of amphetamines or barbiturates; one declines cases involving less than 5,000 dosage units; two decline cases involving less than 10,000 dosage units of either drug; and one declines cases involving less than a total of 20,000 dosage units. One District declines cases where the potential defendant possesses a quantity of the

5/ "Street level" refers to the street level at the time of the sale.

drugs which does not exceed the normal prescription amount, or where there is a single illegal sale of a quantity worth less than \$100 in the absence of aggravating circumstances where there is not "possession with intent to distribute" the drugs.

e. Hallucinogens. This group of drugs includes, among others, LSD, PCP and peyote. Seven Districts report a blanket declination policy concerning this group when the quantity seized is under a certain set amount. E.g., one District declines cases involving less than two ounces of PCP; one declines prosecution in cases involving less than \$75 worth of LSD or \$100 worth of PCP; one declines cases involving less than 10 dosage units of LSD, less than one pound of peyote or less than one-half pound of any other hallucinogen; two decline cases involving less than 100 dosage units of any hallucinogens; and two decline cases involving less than 500 dosage units.

f. Other Dangerous Drugs. Eleven Districts report a blanket declination policy concerning certain amounts of a variety of other dangerous drugs. One District declines cases involving less than 100 milliliters of hashish oil; one declines cases involving less than two ounces of methamphetamine or 250 dosage units of any other dangerous drugs; two decline any case involving less than 100 dosage units of any dangerous drugs; one declines prosecution in any cases involving less than five ounces of hashish oil or less than 1,000 dosage units

of any other dangerous drugs; one declines prosecution in cases involving less than one liter of hashish oil or less than 1.1 pounds (500 grams) of any morphine based drugs; one declines cases involving less than two ounces of any dangerous drug; one declines cases involving less than 10,000 dosage units; two decline cases involving less than 25,000 dosage units and one declines cases involving less than 100,000 dosage units.

g. Other Bases for Automatic Declination. Thirteen Districts decline cases if the offender is not a dealer, distributor or part of a conspiracy and is unable to provide information leading to the arrest and conviction of dealers or distributors (Class I or Class II violators). Four Districts decline cases involving possession of a small amount of drugs for personal use. Two Districts typically decline cases involving a single sale of drugs absent aggravating circumstances. Finally, one District declines cases which do not fall within the guidelines issued by the Drug Enforcement Administration and do not involve any aggravating circumstances which would otherwise warrant attention.

13. Dyer Act: Interstate Transportation of a Stolen Vehicle
(18 U.S.C. Section 2312)

Of the 45 Districts with declination policies concerning interstate transportation of stolen motor vehicles, all generally decline prosecution unless an organized ring or a multitheft operation is involved. Exceptions to this general policy, allowing prosecution in single-theft cases, are made under various circumstances in the different Districts. Thirteen Districts will prosecute if the defendant has prior Dyer Act or other felony convictions. Ten Offices prosecute if the crime represents a pattern of conduct. Nine Districts will prosecute if the auto theft ties in with other crimes. Some districts will prosecute if the car was demolished, sold or stripped (7), if the theft involved commercial equipment (4), if the defendant is a "runner" or driver of a theft ring (2), or if the theft involved violence (2). One District also recommends prosecution if, on prosecution, the defendant is likely to testify against members of an organized theft ring.

The guidelines of 18 Districts indicate that prosecution is specifically declined if the defendant is a juvenile and no aggravating circumstances are present. Twelve Offices decline prosecution when the offense involves joyriding. Various Districts also decline prosecution from a family member (4), a defendant with no prior felony convictions (4), or when a local prosecution has begun (6).

14. Extortion

(18 U.S.C. Sections 871 et seq.)

Only one District has a declination policy concerning extortion. In that District, the policy is to decline extortion cases in favor of local prosecution unless: (a) the investigation was initiated by federal authorities, or begun by them at the request of local authorities; and (b) there is evidence of significant use of instrumentalities of interstate commerce, and such use is central to the carrying out of the extortionate scheme; or (c) where organized crime or public figures are involved.

15. Fish and Wildlife Matters(18 U.S.C. Sections 41-47 et al.)

Only one District has a declination policy regarding fish and wildlife offenses. Such offenses are evaluated on a case-by-case basis in conformity with the Office's general prosecution-declination guidelines. Violations involving petty offenses or other violations handled by citation are treated in the same manner as other categories of offenses for which citations are issued, and no review or evaluation of such cases is normally made by the Office prior to the filing of the citation with the United States Magistrate.

16. Forgery of U.S. Treasury Checks

(18 U.S.C. Section 471)

Fifty-one Districts have declination policies concerning forgery of U.S. Treasury checks.

Thirty-nine Districts decline cases involving checks received in error with names the same as, or similar to, that of the person cashing them; thirty-four Districts decline cases involving checks made payable to a deceased person and forged and cashed by a member of the immediate family for a legally appointed fiduciary; thirty-nine Districts decline cases involving co-payee checks where one spouse forges the signature of the other; thirty-four Districts decline cases involving checks cashed by a member of the immediate family of the payee; five Districts decline cases involving a claim of non-receipt of a Treasury check resulting in the issuance of a replacement check, in which the investigation reveals that both the original and replacement check were received and negotiated by the claimant, provided that the claimant has made the necessary restitution of the required amount; seventeen Districts decline cases in which the payee of a check desires to waive his claim against the Government and executes a release relinquishing his claim; fifteen Districts decline cases in which no intent to defraud is evident; six

Districts decline cases which are being prosecuted on the local level; nine Districts decline cases in which the forgery of the Treasury check by a multiple forger was committed prior to the date of his arrest on related charges, but was not associated with the forger until after his arrest or conviction.

The total value of the Treasury checks involved is relevant to declination of prosecution in 11 Districts: two if fewer than three checks are involved; one if only one check; two if less than \$1,000 and defendant has few prior convictions; one if less than \$1,000 and defendant has no prior record; one if less than \$250; two if less than \$1,000; one if less than \$1,500 and fewer than five checks; and one if less than \$250.

Four Districts decline cases in which the defendant is a juvenile. One District considers several factors to determine whether prosecution should be declined: whether the checks were part of a bulk theft, the amount stolen, and whether an organized criminal ring was involved.

17. Fraud Against the Government

(18 U.S.C. Sections 287, 641, 1001, 1003, 1014;
42 U.S.C. Section 408; 45 U.S.C. Section 359)

There is no single crime of Fraud Against the Government.

The term is used to describe a number of offenses involving fraudulent representation made in order to obtain direct or indirect Federal benefits. Relevant offenses are: false statements to obtain Federal employment, benefits from Federal agencies or loans and credit from a bank or other Federally insured institutions.

a. False Statements on Applications for Federal Employment (18 U.S.C. Section 1001). Eight Districts have a declination policy concerning offenses in this area. One District makes declinations on a case-by-case basis but, in general, declines cases where the false statement was not made under oath by an individual to an investigative agent upon questioning in the normal course of an investigation. One District declines cases which involve no obvious fraudulent intent of a serious nature or other aggravated circumstances. Two Districts decline any case wherein a prospective employee falsifies his/her past criminal record provided that the person has not been employed by the Government as a result of the false statement or did not apply for a position calling for confidential, secret or top secret clearance. Two Districts decline cases wherein the false statement is a denial of a prior arrest for a misdemeanor. One District declines cases wherein Postal Service job applicants fail to report a prior

criminal conviction and one District declines cases wherein prosecution is not in the best interest of the United States.

b. Fraud Involving HUD (18 U.S.C. Sections 287, 641, 1003; 42 U.S.C. Section 408; 45 U.S.C. Section 359; making false claims and receiving benefits, including unemployment insurance, under false pretenses). Five Offices have policies dealing with fraud in HUD matters (i.e., persons making false statements on HUD loan applications). Basically, the policies of three Offices are to decline "single false statement" cases. One Office's policy is to decline no FHA fraud case except single false statement cases involving one mortgator (or husband or wife) and one FHA-insured loan. Another Office essentially follows this policy, and advises HUD to seek administrative or civil action if the Department feels it has suffered damages as a result of such single false statement cases. 1/ One District's policy is to focus its efforts on housing fraud cases that involve "a pattern or practice of wrongdoing." 2/ However, the Office does not apply this policy to cases involving: (1) licensed real estate brokers or sale people; (2) other licensed professionals,

1/ The District's position appears to be that in isolated transactions it would be impossible to prove beyond a reasonable doubt a mortgagor's frame of mind as to his intent at the time he signed an allegedly false mortgage application.

2/ For the purpose of its guidelines, this District defines this term to mean three or more repeated instances of clearly fraudulent activity carried out in a fashion that suggests commercial profit as a principal motive.

such as lawyers or certified public accountants; (3) employees of state or Federal government; or (4) officers or employees of title companies or title insurance companies.

One District does not have a declination policy with respect to private individuals accused of crimes such as making false statements on HUD loan applications. Rather, in deciding whether to prosecute, the District considers the following factors:

1. Whether the offense is part of a pattern or sophisticated scheme (and whether the suspect is acting alone or with the advice of others);
2. The amount of money involved (and the loss or windfall to any individual);
3. The personal circumstances of the potential defendant (e.g., age, health, emotional stability, financial status, educational background, criminal record, employment history, etc.) and any other mitigating conditions he/she may claim;
4. Evidence as to willfulness - necessity of affirmative steps to initiate or perpetuate the fraud; and
5. Whether the agency has pursued all appropriate administrative remedies or considered civil action.

This District's position is to seek an indictment as soon as possible in cases involving white collar criminals. 3/ One District declines these cases if the amount involved is less than \$5,000.

3/ Consonant with its white collar crime priorities, the District's position is that persons accused in such cases will not be considered eligible for any pretrial diversion programs.

c. Fraud Involving the Veterans' Administration (VA).

One District has authorized the FBI to decline investigation of VA matters involving less than \$1,000 unless unusual circumstances are present. Another District has the same policy and also declines cases where there is no monetary loss or where a civil remedy is available. In addition, the FBI in that District has been instructed to keep files on these cases to insure the possibility of identifying multiple offenders who could be prosecuted as "aggravated cases." One District declines cases involving false applications for VA hospitalization which resulted in improper receipt of benefits under \$1,500 in value and one District declines VA cases where the amount is less than \$5,000.

d. Fraud Involving Other Federal Agencies (DOD, DOL, DOT, EPA, FHA, GSA, HEW, SBA). Nine Districts report a declination policy concerning fraud cases which are remedial through civil remedies or magistrate court actions, where an individual incident does not exceed \$500 and where no aggravated circumstances exist. Four Districts decline cases involving less than \$1,000. In addition, one District declines cases involving false claims for unemployment compensation if less than ten weeks (five visits) of fraudulent checks are issued and the actual earnings of the prospective defendant is at least 1 1/2 times his/her received benefits. One District

generally applies the \$1,000 as the maximum for declining cases but also makes evaluations on a case-by-case basis with a view to applying appropriate misdemeanor statutes. One District declines cases involving less than \$1,500. The policy in another District is to decline those cases involving less than \$2,500 if no appropriate misdemeanor statute is available. One District declines cases involving less than \$5,000 if a Federal employee is not involved in the fraudulent scheme. Finally, one District declines all cases involving false statements to obtain unemployment compensation.

e. 18 U.S.C. Section 1014 (False statements made in connection with an application for credit or a loan from a bank or other Federally insured institution). Twelve Districts report a declination policy concerning false credit and loan applications.

The policy in one District is to decline cases involving fraudulent applications for credit made in connection with the purchase of vehicles which do not meet the following conditions:

1. the loss to the lending institution is substantial;
2. the loss is generated by organized, ringtype activity;
3. the application for credit is made with the knowledge that it will be submitted to a Federally insured lending institution;

4. the application need not appear on lending institution letterhead, stationery, etc., and the application need not contain a caution statement that false statements on the form may be in violation of Federal statute;
5. such investigations will concern multiple transactions involving material false statements.

One District declines cases wherein the bank does not protect its own interest. 1/ One District declines prosecution where a false application is made to one bank only, where the loss sustained is less than \$1,000 or where the misstatement is not material enough to induce the bank to extend credit which it would otherwise not have done had the applicant's true and accurate background been disclosed. One District has an additional policy of declining cases which cannot be utilized in uncovering other Federal and/or state crimes.

One District declines cases wherein no material misrepresentation is made. 2/ One District declines cases

1/ Examples of this are where loan officers acknowledge or notarize signatures which they do not witness or negligently or knowingly loan money to poor risks.

2/ Materiality arises when non-existent assets are listed, mortgaged property liability is omitted or values are grossly inflated. As a general rule the case is declined if the decision maker on the loan is not willing to testify that he would not have approved the loan based on a truthful application.

wherein the victim banks may seek local prosecution and/or the violation is not part of an overall fraud scheme. One District utilized a blanket declination policy in cases which involve the concealment of less than \$3,000 in debts with a resultant loss of less than \$1,500. Three Districts decline cases involving a loss of less than \$5,000 and two Districts decline those involving less than \$10,000. In one of those Districts where the principal collateral for the underlying loan was automobiles, household furnishings, etc., cases are automatically declined if they do not meet the following standards:

1. the subject loan was made, principally, in reliance upon the collateral allegedly furnished by the subject of the investigation;
2. the collateral was either clearly not owned by the alleged subject at the time it was pledged, or was disposed of reasonably soon after the pledge;
3. the alleged subject made little or no attempt to make payments on the loan;
4. the lender utilized sound and customary lending practices and procedures in making the loan; and
5. the national bank or Federally insured institution sustained an actual loss, equal to a significant portion of the loan made.

18. Fraudulent Use of Credit Cards

(15 U.S.C. Section 1644)

Only one District has a policy concerning this offense.
It automatically declines all cases involving less than
\$2,500.

19. Fugitives from Justice

(18 U.S.C. Sections 1073, 1074)

Four Districts have formulated policies dealing with unlawful flights to avoid prosecution unless the subject is accused of a violent crime or a major property crime, or a child is subject to violence. One District prosecutes only in instances where a capital offense is involved. One District declines prosecution unless: (1) the subject is wanted for a crime of violence, a crime involving property loss in excess of \$25,000, or a crime involving a large amount of illegal narcotics; or (2) has been recently convicted of one of these offenses or (3) escapes from custody while serving a sentence for one of these crimes.

20. Illegal Gambling

(18 U.S.C. Section 1955)

Four Districts have developed guidelines concerning prosecution of gambling offenses. Two Districts decline prosecution unless there is evidence of organized crime activity with multi-state impact, or there is a written request from the local prosecuting attorney asking for assistance, or there is evidence of a substantial nature that elected officials or persons holding a public trust are directly involved. One District declines prosecution unless there are organized crime figures involved or the gambling is connected to separate federal offenses. One District prosecutes only if the activities are commercial or of an established and ongoing nature and they are incapable of being adequately controlled by state or local prosecutors.

21. Immigration and Naturalization
Illegal Aliens

(8 U.S.C. Sections 1282, 1306, 1324 et seq.; 18 U.S.C. Sections 911, 1001, 1426, 1546)

Twenty-four Districts have a declination policy concerning illegal aliens. While these Districts acknowledge general guidelines concerning declination of prosecution of illegal aliens as suggested by the Immigration and Naturalization Service (INS), their individual declination policies appear to be limited to specific statutes.

Accordingly, 11 Districts have a blanket declination policy concerning illegal aliens as encompassed by Titles 8 and 18 of the United States Code.

The declination policy followed in one District pertains only to first offenders. The policies of two Districts provide for discretionary determinations by the USAs. Two Districts employ a case-by-case approach in matters arising under 8 U.S.C. Sections 1325, 1326 and 1324, respectively, while following the general INS guidelines in matters arising under other applicable illegal alien status. One Office's policy pertains only as to 8 U.S.C. Sections 1282(c) and 1325. The focus of the policy followed in one Office is on 8 U.S.C. Section 1326 while the policy of another focuses upon 8 U.S.C. Sections 1324 and 1325. One Office emphasizes 8 U.S.C. Section 1326 in its declination policy and retains jurisdiction to prosecute

violations arising under 18 U.S.C. Sections 911, 1001, 1426 and 1546. The declination policies of three Districts focus primarily on "stowaways" as provided for by 18 U.S.C. Section 2199. The policy of one District pertains to 8 U.S.C. Sections 1282 and 1325 while another District declines prosecution of an 8 U.S.C. Section 1326 violation only where the defendant waives venue on the record through a translator and enters a guilty plea to an 8 U.S.C. Section 1325 misdemeanor charge. Although the declination policies in these 25 Districts vary as to applicable statutes, each district retains jurisdiction to prosecute where there are "aggravating, compelling, complex or unusual circumstances."

Finally, one District prosecutes all cases arising out of violations of the applicable illegal aliens statutes.

22. Impersonation of a Government Employee

(18 U.S.C. Section 912, 913)

Six Offices have policies dealing with cases involving the impersonation of a government employee or officer. Generally, these Offices prefer to decline automatically such cases unless something of value has been obtained as a result of the impersonation, and one District declines these cases unless more than \$500 was obtained and the impersonator is known. That District also declines cases where an unknown impersonator contacts the victim by phone, and one District declines all impersonating by telephone cases. However, the former District's understanding with the FBI is that all matters involving the alleged impersonation of a federal judge, a federal magistrate, a United States Attorney, an Assistant United States Attorney, or an FBI Agent are to be presented for prosecutive consideration.

Two Districts maintain files to identify problem areas that might necessitate additional consideration or investigation.

23. Interception of Communications

(18 U.S.C. Section 2511)

Three USA's Offices have a declination policy concerning interception of communications cases. They ordinarily decline offenses involving a domestic relations dispute (i.e., where one spouse, due to a pending divorce or suspected infidelity on the part of the other spouse, initiates the interception of conversations of the other spouse without the assistance of any third party). However, it is one District's policy to vigorously pursue prosecutions of any cases involving law enforcement officials or officers, individuals enjoying a quasi-law enforcement status (i.e., private detectives).

24. Interstate Commerce Commission Offenses

(49 U.S.C. Sections 20(7), 46, 322)

One District has a declination policy dealing with all cases presented by the Interstate Commerce Commission (ICC) for prosecution. The Office will take the following factors into consideration in determining whether to decline prosecution:

1. Whether all administrative and civil remedies have been exhausted, including the collection of affidavits for immediate applications for Temporary Restraining Orders where warranted (except cases where imprisonment is an appropriate possibility);
2. In cases where a situation is called to the attention of ICC investigators in which an individual(s) is substantially in direct violation of a court order, contempt proceedings will be initiated as soon as possible, without taking the time to document several instances;
3. When routine investigation reveals violations which occurred more than one year ago, a supplemental inspection will be conducted to ascertain whether the proposed criminal defendant continued to flout the law;
4. Despite agency regulations which may require documentation of several criminal acts as evidence of severe economic impact on interstate commerce this office will not file information which contains more than five (5) counts, the last of which charges a violation which occurred no later than nine (9) months before the date of filing. Of course, in cases where there are exceptionally aggravating circumstances and reasonable cause for a delay beyond nine months, this office will consider extending the terms of this last requirement.

25. Interstate Transportation of Stolen Property

(18 U.S.C. Section 2314)

Fifty-one Districts have declination policies with respect to the interstate transportation of stolen property as follows:

a. Stolen Property. Sixteen Districts have declination guidelines for prosecution of general stolen property offenses. Twelve of these Offices decline prosecution where the value of the property is under 5,000. Two forego prosecution if the value is less than \$2,500. One does not prosecute if the property value is less than \$2,000; one declines cases under \$1,000; and one declines those under \$500. In addition, two do not actively investigate cases with an unknown subject if the property value is under \$50,000.

b. Checks or Money Orders. Most Districts have set straight dollar limits on the offenses they will prosecute. Ten Districts decline cases where the amount of the check or checks is less than \$1,000. Eight Districts set the limit at \$500, five Offices at \$5,000, five at \$300, two at \$2,000, one at \$3,000, and one at \$250.

Two Districts decline prosecutions if the amount involved is less than \$1,000 or there are fewer than five checks stolen. One District declines cases unless the amount equals \$1,000 or more than 10 checks were stolen; one sets its limits at \$2,000 or five checks

stolen; one at \$1,500 or six checks stolen; one at \$500 or five checks; one District declines prosecution of single check cases if the amount is less than \$500, multiple check cases if the amount is below \$1,000; one District declines cases below \$5,000 and generally prosecutes no single check cases; one declines cases below \$1,000, or \$1,500 if the subject is unknown; and one generally declines all cases and defers to local authorities.

c. Securities. Six Districts decline prosecution if the value of the securities is under \$500; five Districts decline if the value is less than \$1,000; and four decline amounts under \$5,000. Two Districts do not prosecute cases where the loss on a specific security is under \$1,000 or the loss on a type of forged security is under \$5,000. One sets similar limits of \$500 on the specific security and \$1,000 on the type. One District foregoes prosecution unless the loss on a specific security is \$1,000 or loss on a type of security is \$2,500. One District generally defers to local authorities in these securities theft cases.

d. Exceptions. Exceptions to the above categories of dollar limits are generally made in the various Districts if the subject is involved in an ongoing scheme or check ring (14), if there is organized crime involvement (2), if the subject is a recidivist (3), or if the offense is part of a multistate scheme (4).

26. Kidnapping

(18 U.S.C. Section 1201)

Two Districts have policies concerning kidnapping. One District's policy is generally to prosecute all Federal kidnapping cases. In the other District, unless the kidnapping is connected to a separate Federal criminal offense, cases are presented for local prosecution, especially those involving: (a) substantial investigative effort by state or local authorities; or (b) a matter arising out of a domestic dispute; or (c) a matter of purely local impact.

27. Labor Violations
(29 U.S.C. Sections 141 et seq.;
29 U.S.C. Sections 401-531)

Three Districts have declination policies regarding violations of labor laws. One District bases its decision on the extent of public interest and the quality of each case. In one District, the policy is normally to initiate prosecution upon receipt of an investigative report from Labor Department Compliance Officers and a recommendation for prosecution from the Labor Department. However, in labor cases investigated by the FBI, that District's policy is to consider such investigations on a case-by-case basis. And in one District, although there is no declination policy per se, there is a jurisdictional-referral policy; namely that all labor racketeering cases, regardless of the Union involved, are referred to the USA's office, except those clearly involving organized crime, which are sent to the Strike Force. 1/

1/ At the time the USA issued this policy (November 1978), he stated that it was his understanding that such a policy was the uniform practice between USA and Strike Forces.

28. Liquor Offenses(26 U.S.C. Sections 5601 et seq.)

Only three Districts have a declination policy concerning liquor law violations. These three Districts generally decline such cases if the offender is not "a significant criminal."

29. Obscenity

(18 U.S.C. Sections 1461-1465)

Twelve Districts have declination policies concerning violations of the obscenity laws. 1/ The general policy among these Districts is to defer pornography cases to state or local prosecutions. However, if the case involves children, "hard core" material, organized crime or unusually large interstate activity, then the Districts will consider such cases for prosecution. 2/

Five Districts have a policy dealing with the broadcast of obscene material (18 U.S.C. Section 1464). The consensus here is to decline cases (i.e., where obscene material is allegedly transmitted by CB radio) which involve onetime, random or infrequent violations. In addition, one District's policy is not to prosecute cases where investigation shows that the frequent abuse which occurred has ceased. Three Districts maintain that the responsibility for handling these complaints should rest primarily with the FCC which can utilize the administrative remedies it has under existing communications law.

1/ Four Districts only have a policy dealing with 18 U.S.C. Section 1464.

2/ One Office also considers prosecuting all cases involving corrupt government officials.

30. Offenses by Juveniles(18 U.S.C. Sections 5031 et seq.)

Eight Districts have declination policies relating to criminal offenses committed by juveniles. 18 U.S.C. Sections 5031 et seq. require the federal government to refer all offenses involving juveniles to state authorities unless an offense is committed in an area of exclusive federal jurisdiction or the state does not have available programs and services adequate for the needs of juveniles. Accordingly, the declination policies of these eight Districts reflect the statutory requirement and state that juvenile matters are to be handled by the states. 1/

As far as specific offenses are concerned, two Districts have a policy dealing with treasury checks. If local officials do not prosecute juveniles for such offenses, then the Secret Service in these Districts discusses the case with the juvenile's parents or guardians with a view toward cautioning against additional violations. As for offenses on government reservations, one

1/ Since 18 U.S.C. Sections 5031 et seq. require the Federal government not to prosecute nearly all offenses committed by juveniles, the small number of written guidelines in this area should not be interpreted to indicate that 86 USAs have juvenile declination-prosecution policies that differ from the statutory requirements.

Office will not prosecute juveniles unless there is no jurisdiction for state or local prosecution of such offenses, or unless state officials communicate a written declination to the USA. In one District, the policy is to decline prosecution and to refer to state authorities violations by juveniles of National Forest laws and regulations that constitute petty offenses. Finally, in one District the USA has an agreement with an Indian tribe that he will prosecute only serious cases in which the tribe has absolutely exhausted all remedies and the local prosecutors will not or cannot handle. 2/

2/ The Office takes about one such case per year.

31. Offenses Committed in Indian Country(18 U.S.C. Sections 661, 1153-1156, 1163 et al.)

Seven Districts have declination guidelines relating to offenses committed in Indian Country. The guidelines are generally offense specific:

a. Burglary and Larceny. Two Districts decline prosecution of amounts less than \$2,000; one does not prosecute amounts under \$500; one has set a limit of \$250; and two will only prosecute amounts over \$100.

b. Embezzlement. One District declines prosecution of amounts under \$100. Two will prosecute any embezzlement of tribal funds, regardless of amount.

c. Welfare Fraud. Two Districts generally decline prosecution if the amount in question is under \$1,000. One of them, however, will prosecute even in those instances if the crime is a repeat offense or involves a knowing false statement or if there has been a pattern of such abuse in the reservation. With respect to the failure to report employment, the District will not prosecute unless the amount exceeds \$2,000.

d. Alcohol. Two Districts decline to prosecute general possession offenses unless there is evidence of an ongoing criminal enterprise. One District declines to prosecute Indians for sale offenses unless they have had more than five convictions in three years. Non-Indians are prosecuted if they are caught with more than one case in their

possession. In general, that District does not prosecute general possession offenses.

e. Traffic: One District generally declines to prosecute traffic offenses unless the conduct involves a threat to Indian persons or property.

f. Destruction of Boundary or Warning Signs: One District foregoes prosecution unless the loss involved is greater than \$500.

32. Possession or Receipt of Firearms by Convicted
Felon and False Statement in Purchase of Firearm

(18 U.S.C. Section 922(h); 18 U.S.C. Section 1202;
18 U.S.C. Section 922(a)(b))

Nine Districts have a formal declination policy concerning cases dealing with possession or receipt of firearms by a convicted felon. The United States Attorney's Office in one District declines all such cases and merely refers them to local authorities for their prosecutorial determination. In two Districts, the policy is to decline routinely cases involving possession of a firearm by a convicted felon where the underlying felony conviction is more than ten (10) years old and/or does not involve violence. In addition, one of those Districts declines these cases where the violation involves a simple possession of a hunting weapon. The general policy in five of the six remaining Districts is essentially the same. All five decline cases which do not involve a conviction or release from confinement within the past five years for a violent crime or burglary, or cases in which other related state or Federal charges are pending or completed against the offender that could form the basis of a satisfactory disposition. The remaining District declines cases where the subject possesses a State Firearm Owners ID card or, where the subject does not possess the required ID card but has been put on notice and has been given the opportunity to surrender the weapon and does so.

Five Districts decline cases involving possession of a hand gun. All of these, excluding one, decline cases where the offender used his true name and address on the application for a firearm. Five Districts decline cases where the offender has either no substantial criminal conviction record or no prior record for violent crimes. These same five Districts also decline to prosecute false statement violations if there is no clear evidence concerning whether the offender knew he could not possess a firearm or whether the offender could read or otherwise know he was making a false statement on the application for a firearm.

The Bureau of Alcohol, Tobacco and Firearms, an agency of the Treasury Department, has developed its own guidelines on declination which have resulted in its not presenting any more individual violations of the Gun Act of 1968 involving purchasing single guns by previously convicted felons. In keeping with this guideline at least six Districts have adopted the policy of declining cases which involve a single firearm or a single episode of illegal use or possession of a firearm in the absence of aggravating circumstances.

33. Postal Offenses

(18 U.S.C. Sections 1341, 1701 et seq.)

Fourteen Districts have established explicit declination policies for mail fraud, mail theft and other postal offense cases.

a. Theft from Mails. Six Districts decline prosecution when the stolen check is issued to a relative or someone with a similar name. Three Offices decline prosecution for the theft of checks issued by a state authority. Two Districts set dollar amount limits on theft prosecutions (one at \$200; one at \$2,500), and one District will not prosecute unless five or more checks were stolen. Four Districts generally take into account the amount and number of checks stolen, the prior record of the defendant, and whether the theft is part of an organized ring in making a decision whether or not to prosecute. Two Districts decide each case on an individual basis.

One District will not prosecute under 18 U.S.C. Section 495 unless more than one check is involved or the defendant has a prior felony conviction. One District will not prosecute one or two check cases unless there is a high degree of proof. One does not prosecute minor offenses or first offenders. One District defers to state prosecution unless the theft is from a Federal facility, a mail vehicle, carrier, or postman, or the subjects comprise a theft ring, or the subject is in the business of stealing from the mails.

b. Obstruction of the Mails. Two Districts do not prosecute postal employees for discarding third class mail in the absence of repeated violations.

c. Mail Fraud. Three Districts decline to prosecute mail fraud offenses below a certain dollar amount (\$500; \$1,000; \$2,500).

d. Thefts from Mails by Postal Employees. In general, the various districts prosecute all thefts from the mails by postal employees. Eight Districts have established guidelines dealing with whether the offense should be prosecuted as a felony or a misdemeanor.

34. Prison Offenses(18 U.S.C. Sections 1792 et al.)

Fifteen Districts have formulated guidelines for dealing with escapes from penal institutions and other offenses committed within the institutions themselves. These policies have been broken down into major categories as follows:

a. Contraband. Three Districts decline prosecutions for possession of contraband narcotics if for personal use. One District declines prosecution of contraband money in amounts under \$20.

b. Escapes. Three Districts generally decline prosecution of escapes from halfway houses, work release programs, furloughs, and minimum security institutions. Two Districts follow the same policy provided the escapee does not commit additional crimes. One District foregoes prosecution of such escapes provided the escapee voluntarily surrenders. One District declines prosecution in these escapes unless the escapee remains at large for over six months or commits another crime.

One District declines prosecution of all escapes if the offense was effected without violence and the escapee surrenders within 48 hours. Two Districts consider each prosecution on a case-by-case basis, considering, inter alia, whether the offender voluntarily surrenders after a short period of time, whether the offender was on medication, and the motivation for the offense.

c. Assault. Four Districts determine whether to prosecute on a case-by-case basis, considering the following factors: premeditation; provocation; use of a weapon; extent of any injury; and availability of administrative punishment. One District declines prosecution of assaults on prisoners unless a dangerous weapon was used. Assaults on correctional officers are prosecuted only if a battery occurs. One District foregoes prosecution of assaults on prisoners unless a serious injury results from the use of a weapon. Assaults on prison officials are all prosecuted.

d. Transporting Weapons into Prisons. Only two Districts appear to have a declination policy concerning cases involving the transportation of weapons. These two Districts decline cases involving transportation of a knife in the absence of an assault or other aggravating circumstances, if the offender has no prior record of violence or if administrative punishment was administered or is available.

35. Smuggling Offenses

(18 U.S.C. Sections 542, 545;
31 U.S.C. Sections 1101, 1058(b))

Three Districts have policies concerning matters involving the smuggling of money and other property.

The policies of the three Districts are:

(1) Cases involving currency violations and smuggling of non-controlled substances are evaluated on a case-by-case basis.

(2) In cases involving failure to declare currency on entering or leaving the country (31 U.S.C. Sections 1101, 1058(b)), this Office declines cases where the amount which was not declared is under \$20,000, and there is no evidence of underlying criminality. Also, this Office, because it maintains that there are adequate civil remedies in such cases, declines cases involving smuggling jewelry when the loss of duty to the United States is under \$1,000.

(3) This Office does not have any set declination policies concerning smuggling offenses. Rather, the following criteria are guidelines for determining whether the Office will prosecute a matter involving smuggling or attempted smuggling of goods into the United States:

- (a) the nature and amount of goods involved;
- (b) the amount, if any, of duty owed on the goods smuggled or attempted to be smuggled;

- (c) whether there is evidence of substantial planning of the offense, such as use of false documents relative to the goods or unusual efforts to conceal the goods;
- (d) whether the suspect had particular knowledge of customs requirements;
- (e) whether the suspect has a previous record of convictions, particularly a record for customs-related offenses; and
- (f) the sufficiency of administrative and civil remedies (such as forfeiture of the goods and fines) in particular cases.

36. Theft from Interstate Shipment

(18 U.S.C. Section 659)

Sixty-one Districts have a declination policy concerning theft from interstate shipments. The policies of 52 Offices are based essentially on the value of the stolen property: ten Districts decline cases involving less than \$5,000 1/; one District declines cases involving less than \$2,500 2/; one District declines cases involving less than \$2,000 3/; four Districts decline cases involving less than \$1,500; eleven Districts decline cases involving less than \$1,000; one District declines cases involving less than \$600. Fifteen Districts decline cases involving less than \$500 4/; three Districts decline cases involving less than \$300; three Districts decline cases involving less than \$200; one District declines cases involving less than \$100.

Nine Districts distinguish between cases in which a suspect exists, and those in which no suspect exists and there is no likelihood of developing a suspect: one declines

1/ One District will prosecute cases involving a theft of \$1,000 on a specified forged security or \$5,000 on a type of forged security.

2/ One District will prosecute cases involving a theft of \$1,000 on a specific forged security or \$2,500 on a type of forged security.

3/ However, the Office will prosecute cases involving a theft of \$500 on a specific forged security or \$1,000 on a type of forged security.

4/ One District's policy applies to Section 660 cases also.

known suspect cases involving less than \$1,000 and unknown suspect cases involving less than \$5,000; one declines unknown suspect cases involving less than \$3,000; one declines unknown suspect cases involving less than \$5,000 and known suspect cases involving less than \$5,000 are within the discretion of the prosecutor; one declines known suspect cases involving less than \$2,500 and unknown suspect cases involving less than \$5,000; one declines unknown suspect cases involving less than \$2,500; one declines unknown suspect cases involving less than \$750; one declines known suspect cases involving less than \$2,500; two decline unknown suspect cases involving less than \$1,000. Unknown suspect cases are declined by ten Districts regardless of the amount involved. Other grounds for declining prosecution are inability to identify the stolen merchandise (17), time lapse between theft and discovery of the loss (2), deference to local prosecution (4), prior declination by local or Federal authorities (1), mysterious nature of the loss and absence of any reason to believe a crime was committed (1), absence of a pattern or series of thefts by an individual or an organized group (6), and the juvenile status of the offender (1).

Four Districts employ, in addition to other grounds for declination, a factor test in which various criteria are considered to determine whether prosecution should be declined. Factors considered include participation of the offender as

a thief or as a receiver, whether the property within Federal jurisdiction is only part of a larger cache of recovered stolen property, and whether the offender is a part of an interstate ring.

Twenty-eight Districts make exceptions to their general declination policy and will prosecute cases for the following reasons: the theft was from a stolen vehicle and the suspect is known (1), there is reason to believe that organized crime figures were involved in the theft (3), a series of criminal acts were committed by the same individual (7), the suspect is an employee of a transportation company (2), weapons or narcotics were involved in the theft (1), or aggravating circumstances exist (24).

37. Theft of Government Property

(18 U.S.C. Section 641)

Forty-eight Districts have a declination policy concerning theft of Government property. Three Districts consider theft of Government property on a case-by-case basis where the theft or destruction exceeds the pre-determined jurisdiction amount, the subject is known or firearms or narcotics were stolen. Six Districts consider theft of Government property on a case-by-case basis where a series of such incidents indicates a pattern. The policies of 39 Districts are based essentially on 1) the amount of money involved, 2) the status of the known subject, i.e., Federal or non-Federal employee (3), and 3) the absence or presence of aggravating or unusual circumstances (9), including (a) theft of weapons or narcotics (3), (b) involvement by organized crime (1), (c) interstate commerce connection (2), (d) theft from a military reservation (2) and (e) fleeing the jurisdiction following embezzlement or bank robbery (1). In addition, the majority of Districts will decline to prosecute thefts of Government property where the perpetrator is identified and prosecution is instituted by state authorities, if there are no aggravating circumstances.

38. Threats Against the President

(18 U.S.C. Section 871)

Five Districts have a declination policy concerning violations of this statute. One District's stated policy is to prosecute all such cases. Three Districts simply consider these matters on a case-by-case basis. One Office has specific guidelines and its policy, which varies based on the type of threat involved, is as follows:

1. Clear out threats against or attempts to assassinate the President by person with present ability to carry them out. We should not hesitate to handle these even though a psychiatric defense is obvious. Arrest, if necessary, on the spot.

2. Threats, etc., by person with no present ability to carry them out. These are generally people with obvious mental problems. These cases can't be ignored, but the agency should make every effort to handle the matter through the appropriate county probate court before they bring the case to us. No arrests should be made in this case without first checking with this office unless absolutely necessary.

3. Political puffing cases. Those cases which are merely overstepping of First Amendment rights during the course of political discussions. These should, again, not be ignored, but the proper way to handle them is to warn the person that such comments are against the law. These should be handled like the joking bomb threats made by people waiting in line to have luggage checked at airports. A little detention and the scare at being talked to by Federal agents is usually enough to stop the conduct. Don't arrest.

1/ The guidelines apply to 18 U.S.C. Section 1751 as well (Presidential assassinations, kidnapping, and assault).

4. Persons who make threats to have what could be conceivably dangerous instrumentalities with them at the scene of presidential visits or visits of political figures being guarded by Secret Service. These cases occasionally occur at times of presidential visits or during political campaigns. Secret Service has no choice but to get the person out of the area and to check the potentially dangerous material, i.e., bag, box, briefcase, etc., and we have no choice but to back them up. They should call us to advise or seek out advice when at all possible. Don't arrest unless necessary.

39. Unregistered Firearms

(26 U.S.C. Section 5861)

Eleven Districts have a declination policy concerning cases which involve the possession or use of unregistered firearms. One District declines cases where it cannot be established that the offender has at least offered to procure other Title II firearms, i.e., machine guns, silencers, bombs or sawed-off shotguns. One District declines cases involving sawed-off shotguns where the facts indicate that the offender's possession was accidental or where the circumstances in the case warrant prosecution for a lesser offense. One declines cases involving "technical" violations of reporting requirements. Two decline cases on the basis of whether or not the offender possesses a prior record for a violent crime. Three Districts consider the intended use of the unregistered firearm. One declines prosecution in sawed-off shotgun cases where it appears clear that the sole intended use was for protection against bears in the wilderness. One declines cases where the offender has an innocent purpose for possession, has no prior criminal record and does not intend to sell or trade the firearm provided that he or she agrees, in writing, to forfeit or release the firearms to the Bureau of Alcohol, Tobacco and Firearms. In addition to considering intended use, one District declines cases if there exists an appropriate state remedy. Three Districts decline all cases involving sawed-off shotguns.

40. Vandalism of HUD Housing

Two Districts have policies concerning vandalism of HUD housing. One District's routine policy is to decline cases involving vandalism of HUD housing. In other District, vandalism or petty thefts from houses or buildings that have been repossessed by HUD or other agencies are declined in favor of local prosecution unless the crime involves a major appliance of substantial value that can be readily identified as Government property.

41. White Slave Traffic(18 U.S.C. Sections 2421 et seq.)

Thirteen Districts have explicit declination policies with respect to White Slave Traffic, or Mann Act, prosecutions. In general, prosecutions are declined unless the crime is perpetrated by major traffickers or a large scale commercial ring (9), or there is organized crime involvement (6), or there is evidence incriminating a public official (3). Seven Districts will prosecute if the offense involves a juvenile. Four Districts prosecute offenses in which physical violence, force, or threats were used. One District also prosecutes cases in which drugs or extortion was used or where the defendant has a prior criminal record.

42. Wire Fraud

(18 U.S.C. Section 1343)

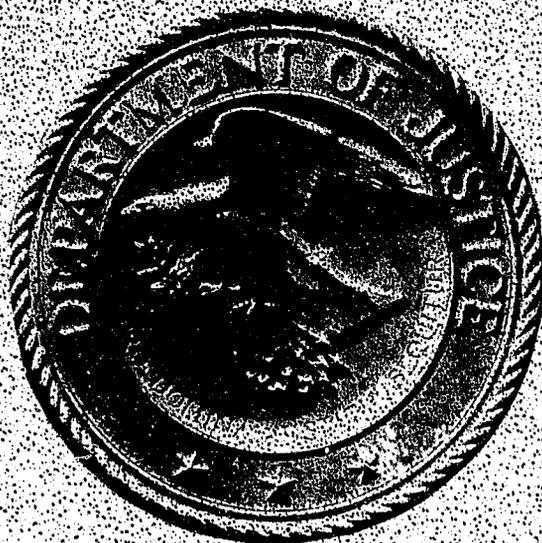
Nine Districts have a declination policy concerning wire fraud violations. Four Districts consider wire fraud cases on a case-by-case basis. One District also employs a case-by-case basis, but with the understanding that cases involving less than \$5,000 will generally be declined. The policies of three Offices are based essentially on the amount of money involved: (1) one declines cases involving less than \$1,000; (2) one declines cases involving less than \$2,500; and (3) one declines cases where the attempted fraud involves less than \$50,000. One District declines cases where the value of the fraud is under \$2,000 and the perpetrator is unknown. In addition, that District will decline to prosecute frauds involving less than \$2,000 even if the perpetrator is identified or in local custody, unless there are aggravating circumstances. 1/

1/ In regard to this offense, the District's policy is that a single prior felony conviction is not regarded as an aggravating circumstance. An example of such circumstances would be a violation involving less than \$2,000 which is believed to be perpetrated by a member of an organized group of individuals engaged in the activity on a continuous basis.

APPENDIX 3

U.S. Department of Justice

Principles of Federal Prosecution



PRINCIPLES OF FEDERAL PROSECUTION

United States Department of Justice
July 1980

PREFACE

The publication of these Principles of Federal Prosecution is a significant event in the history of federal criminal justice. It provides to federal prosecutors, for the first time in a single authoritative source, a statement of sound prosecutorial policies and practices for particularly important areas of their work. As such, it should promote the reasoned exercise of prosecutorial authority, and contribute to the fair, evenhanded administration of the federal criminal laws.

The manner in which federal prosecutors exercise their decision-making authority has far-reaching implications, both in terms of justice and effectiveness in law enforcement and in terms of the consequences for individual citizens. A determination to prosecute represents a policy judgment that the fundamental interests of society require the application of the criminal laws to a particular set of circumstances—recognizing both that serious violations of federal law must be prosecuted, and that prosecution entails profound consequences for the accused and the family of the accused whether or not a conviction ultimately results. Other prosecutorial decisions can be equally significant. Decisions, for example, regarding the specific charges to be brought, or concerning plea dispositions, effectively determine the range of sanctions that may be imposed for criminal conduct. Consent to pleas of *nolo contendere* may affect the success of related civil suits for recovery of damages. Also, the government's contribution during the sentencing process may assist the court in imposing a sentence that fairly accommodates the interests of society with those of convicted individuals.

These Principles of Federal Prosecution have been designed to assist in structuring the decision-making process of attorneys for the government. For the most part, they have been cast in general terms with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, to prevent unwarranted disparity without sacrificing flexibility.

The availability of this statement of Principles to federal law enforcement officials and to the public should serve two important purposes: ensuring the fair and effective exercise of prosecutorial responsibility by attorneys for the government, and promoting confidence on the part of the public and individual defendants that

important prosecutorial decisions will be made rationally and objectively on the merits of each case. The Principles will provide convenient reference points for the process of making prosecutorial decisions; they will facilitate the task of training new attorneys in the proper discharge of their duties; they will contribute to more effective management of the government's limited prosecutorial resources by promoting greater consistency among the prosecutorial activities of the 95 United States Attorneys' offices and between their activities and the Department's law enforcement priorities; they will make possible better coordination of investigative and prosecutorial activity by enhancing the understanding of investigating departments and agencies of the considerations underlying prosecutorial decisions by the Department; and they will inform the public of the careful process by which prosecutorial decisions are made.

Important though these Principles are to the proper operation of our federal prosecutorial system, the success of that system must rely ultimately on the character, integrity, sensitivity, and competence of those men and women who are selected to represent the public interest in the federal criminal justice process. It is with their help that these principles have been prepared, and it is with their efforts that the purposes of these principles will be achieved.

A handwritten signature in black ink, reading "Benjamin R. Civiletti". The signature is written in a cursive style with a large initial "B" and a period at the end.

Benjamin R. Civiletti
Attorney General

July 28, 1980

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PART A. GENERAL PROVISIONS

1. The principles of federal prosecution set forth herein are intended to promote the reasoned exercise of prosecutorial discretion by attorneys for the government with respect to:

- (a) initiating and declining prosecution;
- (b) selecting charges;
- (c) entering into plea agreements;
- (d) opposing offers to plead *nolo contendere*;
- (e) entering into non-prosecution agreements in return for cooperation; and
- (f) participating in sentencing.

Comment

Under the federal criminal justice system, the prosecutor has wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of federal criminal law. The prosecutor's broad discretion in such areas as initiating or foregoing prosecutions, selecting or recommending specific charges, and terminating prosecutions by accepting guilty pleas has been recognized on numerous occasions by the courts. See, e.g., *Oyler v. Boles*, 368 U.S. 448 (1962); *Newman v. United States*, 382 F.2d 479 (D.C. Cir. 1967); *Powell v. Katzenbach*, 359 F.2d 234 (D.C. Cir. 1965), *cert. denied*, 384 U.S. 906 (1966). This discretion exists by virtue of his status as a member of the Executive Branch, which is charged under the Constitution with ensuring that the laws of the United States be "faithfully executed." U.S. CONST. art. II, § 3. See *Nader v. Saxbe*, 497 F.2d 676, 679 n.18 (D.C. Cir. 1974).

Since federal prosecutors have great latitude in making crucial decisions concerning enforcement of a nationwide system of criminal justice, it is desirable, in the interest of the fair and effective administration of justice in the federal system, that all federal prosecutors be guided by a general statement of principles that summarizes appropriate considerations to be weighed, and desirable practices to be followed, in discharging their prosecutorial responsibilities. Although these principles deal with the specific situations

indicated, they should be read in the broader context of the basic responsibilities of federal attorneys: making certain that the general purposes of the criminal law—assurance of warranted punishment, deterrence of further criminal conduct, protection of the public from dangerous offenders, and rehabilitation of offenders—are adequately met, while making certain also that the rights of individuals are scrupulously protected.

2. In carrying out criminal law enforcement responsibilities, each Department of Justice attorney should be guided by the principles set forth herein, and each United States Attorney and each Assistant Attorney General should ensure that such principles are communicated to the attorneys who exercise prosecutorial responsibility within his office or under his direction or supervision.

Comment

It is expected that each federal prosecutor will be guided by these principles in carrying out his criminal law enforcement responsibilities unless a modification of, or departure from, these principles has been authorized pursuant to paragraph 4 below. However, it is not intended that reference to these principles will require a particular prosecutorial decision in any given case. Rather, these principles are set forth solely for the purpose of assisting attorneys for the government in determining how best to exercise their authority in the performance of their duties.

3. Each United States Attorney and responsible Assistant Attorney General should establish internal office procedures to ensure:

- (a) that prosecutorial decisions are made at an appropriate level of responsibility, and are made consistent with these principles; and
- (b) that serious, unjustified departures from the principles set forth herein are followed by such remedial action, including the imposition of disciplinary sanctions when warranted, as are deemed appropriate.

Comment

Each United States Attorney and each Assistant Attorney General responsible for the enforcement of federal criminal law should supplement the guidance provided by the principles set forth herein by establishing appropriate internal procedures for his office. One purpose of such procedures should be to ensure consistency in the decisions within each office by regularizing the decision making process so that decisions are made at the appropriate level of responsibility. A second purpose, equally important, is to provide appropriate remedies for serious, unjustified departures from sound prosecutorial principles. The United States Attorney or Assistant Attorney General may also wish to establish internal procedures for appropriate review and documentation of decisions.

4. A United States Attorney may modify or depart from the principles set forth herein as necessary in the interests of fair and effective law enforcement within the district. Any significant modification or departure contemplated as a matter of policy or regular practice must be approved by the appropriate Assistant Attorney General and the Deputy Attorney General.

Comment

Although these materials are designed to promote consistency in the application of federal criminal laws, they are not intended to produce rigid uniformity among federal prosecutors in all areas of the country at the expense of the fair administration of justice. Different offices face different conditions and have different requirements. In recognition of these realities, and in order to maintain the flexibility necessary to respond fairly and effectively to local conditions, each United States Attorney is specifically authorized to modify or depart from the principles set forth herein, as necessary in the interests of fair and effective law enforcement within the district. In situations in which a modification or departure is contemplated as a matter of policy or regular practice, the appropriate Assistant Attorney General and the Deputy Attorney General must approve the action before it is adopted.

5. The principles set forth herein, and internal office procedures adopted pursuant hereto, are intended solely for the guidance of attorneys for the government. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States.

Comment

This statement of principles has been developed purely as a matter of internal Departmental policy and is being provided to federal prosecutors solely for their own guidance in performing their duties. Neither this statement of principles nor any internal procedures adopted by individual offices pursuant hereto creates any rights or benefits. By setting forth this fact explicitly, paragraph 5 is intended to foreclose efforts to litigate the validity of prosecutorial actions alleged to be at variance with these principles or not in compliance with internal office procedures that may be adopted pursuant hereto. In the event that an attempt is made to litigate any aspect of these principles, or to litigate any internal office procedures adopted pursuant to these materials, or to litigate the applicability of such principles or procedures to a particular case, the United States Attorney concerned should oppose the attempt and should notify the Department immediately.

PART B. INITIATING AND DECLINING PROSECUTION

1. If the attorney for the government has probable cause to believe that a person has committed a federal offense within his jurisdiction, he should consider whether to:

- (a) request or conduct further investigation;
- (b) commence or recommend prosecution;
- (c) decline prosecution and refer the matter for prosecutorial consideration in another jurisdiction;
- (d) decline prosecution and initiate or recommend pretrial diversion or other non-criminal disposition; or
- (e) decline prosecution without taking other action.

Comment

Paragraph 1 sets forth the courses of action available to the attorney for the government once he has probable cause to believe that a person has committed a federal offense within his jurisdiction. The probable cause standard is the same standard as that required for the issuance of an arrest warrant or a summons upon a complaint (see Rule 4(a), F.R.Cr.P.), for a magistrate's decision to hold a defendant to answer in the district court (see Rule 5.1(a), F.R.Cr.P.), and is the minimal requirement for indictment by a grand jury (see *Branzburg v. Hayes*, 408 U.S. 665, 686 (1972)). This is, of course a threshold consideration only. Merely because this requirement can be met in a given case does not automatically warrant prosecution; further investigation may be warranted, and the prosecutor should still take into account all relevant considerations, including those described in the following provisions, in deciding upon his course of action. On the other hand, failure to meet the minimal requirement of probable cause is an absolute bar to initiating a federal prosecution, and in some circumstances may preclude reference to other prosecuting authorities or recourse to non-criminal sanctions as well.

2. The attorney for the government should commence or recommend federal prosecution if he believes that the person's conduct

constitutes a federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless, in his judgment, prosecution should be declined because:

- (a) no substantial federal interest would be served by prosecution;
- (b) the person is subject to effective prosecution in another jurisdiction; or
- (c) there exists an adequate non-criminal alternative to prosecution.

Comment

Paragraph 2 expresses the principle that, ordinarily, the attorney for the government should initiate or recommend federal prosecution if he believes that the person's conduct constitutes a federal offense and that the admissible evidence probably will be sufficient to obtain and sustain a conviction. Evidence sufficient to sustain a conviction is required under Rule 29(a), F.R.Cr.P., to avoid a judgment of acquittal. Moreover both as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the government believes that the person probably will be found guilty by an unbiased trier of fact. In this connection, it should be noted that, when deciding whether to prosecute, the government attorney need not have in hand all the evidence upon which he intends to rely at trial; it is sufficient that he have a reasonable belief that such evidence will be available and admissible at the time of trial. Thus, for example, it would be proper to commence a prosecution though a key witness is out of the country, so long as the witness's presence at trial could be expected with reasonable certainty.

The potential that—despite the law and the facts that create a sound, prosecutable case—the fact-finder is likely to acquit the defendant because of the unpopularity of some factor involved in the prosecution or because of the overwhelming popularity of the defendant or his or her cause, is not a factor prohibiting prosecution. For example, in a civil rights case or a case involving an extremely popular political figure, it might be clear that the evidence of guilt—viewed objectively by an unbiased fact-finder—would be sufficient to obtain and sustain a conviction, yet the prosecutor might reasonably doubt whether the jury would convict. In such a

case, despite his negative assessment of the likelihood of a guilty verdict (based on factors extraneous to an objective view of the law and the facts), the prosecutor may properly conclude that it is necessary and desirable to commence or recommend prosecution and allow the criminal process to operate in accordance with its principles.

Merely because the attorney for the government believes that a person's conduct constitutes a federal offense and that the admissible evidence will be sufficient to obtain and sustain a conviction, does not mean that he necessarily should initiate or recommend prosecution; paragraph 2 notes three situations in which the prosecutor may properly decline to take action nonetheless: when no substantial federal interest would be served by prosecution; when the person is subject to effective prosecution in another jurisdiction; and when there exists an adequate non-criminal alternative to prosecution. It is left to the judgment of the attorney for the government whether such a situation exists. In exercising that judgment, the attorney for the government should consult one of the following three paragraphs of Part B as appropriate.

Comment

Paragraph 3 lists factors that may be relevant in determining whether prosecution should be declined because no substantial federal interest would be served by prosecution in a case in which the person is believed to have committed a federal offense and the admissible evidence is expected to be sufficient to obtain and sustain

a conviction. The list of relevant considerations is not intended to be all-inclusive. Obviously, not all of the factors listed will be applicable to every case, and in any particular case one factor may deserve more weight than it might in another case.

(a) **Federal law enforcement priorities**—Federal law enforcement resources and federal judicial resources are not sufficient to permit prosecution of every alleged offense over which federal jurisdiction exists. Accordingly, in the interest of allocating its limited resources so as to achieve an effective nationwide law enforcement program, from time to time the Department establishes national investigative and prosecutorial priorities. These priorities are designed to focus federal law enforcement efforts on those matters within the federal jurisdiction that are most deserving of federal attention and are most likely to be handled effectively at the federal level. In addition, individual United States Attorneys may establish their own priorities, within the national priorities, in order to concentrate their resources on problems of particular local or regional significance. In weighing the federal interest in a particular prosecution, the attorney for the government should give careful consideration to the extent to which prosecution would accord with established priorities.

(b) **Nature and seriousness of offense**—It is important that limited federal resources not be wasted in prosecuting inconsequential cases or cases in which the violation is only technical. Thus, in determining whether a substantial federal interest exists that requires prosecution, the attorney for the government should consider the nature and seriousness of the offense involved. A number of factors may be relevant. One factor that is obviously of primary importance is the actual or potential impact of the offense on the community and on the victim.

The impact of an offense on the community in which it is committed can be measured in several ways: in terms of economic harm done to community interests; in terms of physical danger to the citizens or damage to public property; and in terms of erosion of the inhabitants' peace of mind and sense of security. In assessing the seriousness of the offense in these terms, the prosecutor may properly weigh such questions as whether the violation is technical or relatively inconsequential in nature, and what the public attitude is toward prosecution under the circumstances of the case. The public may be indifferent, or even opposed, to enforcement of the controlling statute, whether on substantive grounds, or because of a history of non-enforcement, or because the offense involves essentially a minor matter of private concern and the victim is

disinterested in having it pursued. On the other hand, the nature and circumstances of the offense, the identity of the offender or the victim, or the attendant publicity, may be such as to create strong public sentiment in favor of prosecution. While public interest, or lack thereof, deserves the prosecutor's careful attention, it should not be used to justify a decision to prosecute, or to take other action, that cannot be supported on other grounds. Public and professional responsibility sometimes will require the choosing of a particularly unpopular course.

Economic, physical, and psychological considerations are also important in assessing the impact of the offense on the victim. In this connection, it is appropriate for the prosecutor to take into account such matters as the victim's age or health, and whether full or partial restitution has been made. Care should be taken in weighing the matter of restitution, however, to ensure against contributing to an impression that an offender can escape prosecution merely by returning the spoils of his crime.

(c) **Deterrent effect of prosecution**—Deterrence of criminal conduct, whether it be criminal activity generally or a specific type of criminal conduct, is one of the primary goals of the criminal law. This purpose should be kept in mind, particularly when deciding whether a prosecution is warranted for an offense that appears to be relatively minor; some offenses, although seemingly not of great importance by themselves, if commonly committed would have a substantial cumulative impact on the community.

(d) **The person's culpability**—Although the prosecutor has sufficient evidence of guilt, it is nevertheless appropriate for him to give consideration to the degree of the person's culpability in connection with the offense, both in the abstract and in comparison with any others involved in the offense. If, for example, the person was a relatively minor participant in a criminal enterprise conducted by others, or his motive was worthy, and no other circumstances require prosecution, the prosecutor might reasonably conclude that some course other than prosecution would be appropriate.

(e) **The person's criminal history**—If a person is known to have a prior conviction or is reasonably believed to have engaged in criminal activity at an earlier time, this should be considered in determining whether to initiate or recommend federal prosecution. In this connection, particular attention should be given to the nature of the person's prior criminal involvement, when it occurred, its relationship if any to the present offense, and whether he previously avoided prosecution as a result of an agreement not to prosecute in return for

cooperation or as a result of an order compelling his testimony. By the same token, a person's lack of prior criminal involvement or his previous cooperation with the law enforcement officials should be given due consideration in appropriate cases.

(f) **The person's willingness to cooperate**—A person's willingness to cooperate in the investigation or prosecution of others is another appropriate consideration in the determination whether a federal prosecution should be undertaken. Generally speaking, a willingness to cooperate should not, by itself, relieve a person of criminal liability. There may be some cases, however, in which the value of a person's cooperation clearly outweighs the federal interest in prosecuting him. These matters are discussed more fully below, in connection with plea agreements and non-prosecution agreements in return for cooperation.

(g) **The person's personal circumstances**—In some cases, the personal circumstances of an accused may be relevant in determining whether to prosecute or to take other action. Some circumstances peculiar to the accused, such as extreme youth, advanced age, or mental or physical impairment, may suggest that prosecution is not the most appropriate response to his offense; other circumstances, such as the fact that the accused occupied a position of trust or responsibility which he violated in committing the offense, might weigh in favor of prosecution.

(h) **The probable sentence**—In assessing the strength of the federal interest in prosecution, the attorney for the government should consider the sentence, or other consequence, that is likely to be imposed if prosecution is successful, and whether such a sentence or other consequence would justify the time and effort of prosecution. If the offender is already subject to a substantial sentence, or is already incarcerated, as a result of a conviction for another offense, the prosecutor should weigh the likelihood that another conviction will result in a meaningful addition to his sentence, might otherwise have a deterrent effect, or is necessary to ensure that the offender's record accurately reflects the extent of his criminal conduct. For example, it might be desirable to commence a bail-jumping prosecution against a person who already has been convicted of another offense so that law enforcement personnel and judicial officers who encounter him in the future will be aware of the risk of releasing him on bail. On the other hand, if the person is on probation or parole as a result of an earlier conviction, the prosecutor should consider whether the public interest might better be served by instituting a proceeding for violation of probation or revocation of parole, than

by commencing a new prosecution. The prosecutor should also be alert to the desirability of instituting prosecution to prevent the running of the statute of limitations and to preserve the availability of a basis for an adequate sentence if there appears to be a chance that an offender's prior conviction may be reversed on appeal or collateral attack. Finally, if a person previously has been prosecuted in another jurisdiction for the same offense or a closely related offense, the attorney for the government should consult existing departmental policy statements on the subject of "successive prosecution" or "dual prosecution", depending on whether the earlier prosecution was federal or nonfederal (see U.S. Attorney's Manual, 9-2.142).

* * *

Just as there are factors that it is appropriate to consider in determining whether a substantial federal interest would be served by prosecution in a particular case, there are considerations that deserve no weight and should not influence the decision. These include the time and resources expended in federal investigation of the case. No amount of investigative effort warrants commencing a federal prosecution that is not fully justified on other grounds.

4. In determining whether prosecution should be declined because the person is subject to effective prosecution in another jurisdiction, the attorney for the government should weigh all relevant considerations, including:

- (a) the strength of the other jurisdiction's interest in prosecution;
- (b) the other jurisdiction's ability and willingness to prosecute effectively; and
- (c) the probable sentence or other consequences if the person is convicted in the other jurisdiction.

Comment

In many instances, it may be possible to prosecute criminal conduct in more than one jurisdiction. Although there may be instances in which a federal prosecutor may wish to consider deferring to prosecution in another federal district, in most instances

the choice will probably be between federal prosecution and prosecution by state or local authorities. Paragraph 4 sets forth three general considerations to be taken into account in determining whether a person is likely to be prosecuted effectively in another jurisdiction: the strength of the jurisdiction's interest in prosecution; its ability and willingness to prosecute effectively; and the probable sentence or other consequences if the person is convicted. As indicated with respect to the considerations listed in paragraph 3, these factors are illustrative only, and the attorney for the government should also consider any others that appear relevant to him in a particular case.

(a) **The strength of the jurisdiction's interest**—The attorney for the government should consider the relative federal and state characteristics of the criminal conduct involved. Some offenses, even though in violation of federal law, are of particularly strong interest to the authorities of the state or local jurisdiction in which they occur, either because of the nature of the offense, the identity of the offender or victim, the fact that the investigation was conducted primarily by state or local investigators, or some other circumstance. Whatever the reason, when it appears that the federal interest in prosecution is less substantial than the interest of state or local authorities, consideration should be given to referring the case to those authorities rather than commencing or recommending a federal prosecution.

(b) **Ability and willingness to prosecute effectively**—In assessing the likelihood of effective prosecution in another jurisdiction, the attorney for the government should also consider the intent of the authorities in that jurisdiction and whether that jurisdiction has the prosecutorial and judicial resources necessary to undertake prosecution promptly and effectively. Other relevant factors might be legal or evidentiary problems that might attend prosecution in the other jurisdiction. In addition, the federal prosecutor should be alert to any local conditions, attitudes, relationships, or other circumstances that might cast doubt on the likelihood of the state or local authorities conducting a thorough and successful prosecution.

(c) **Probable sentence upon conviction**—The ultimate measure of the potential for effective prosecution in another jurisdiction is the sentence, or other consequence, that is likely to be imposed if the person is convicted. In considering this factor, the attorney for the government should bear in mind not only the statutory penalties in the jurisdiction and sentencing patterns in similar cases, but also the particular characteristics of the offense or of the offender that might

be relevant to sentencing. He should also be alert to the possibility that a conviction under state law may in some cases result in collateral consequences for the defendant, such as disbarment, that might not follow upon a conviction under federal law.

5. In determining whether prosecution should be declined because there exists an adequate non-criminal alternative to prosecution, the attorney for the government should consider all relevant factors, including:

- (a) the sanctions available under the alternative means of disposition;
- (b) the likelihood that an appropriate sanction will be imposed; and
- (c) the effect of non-criminal disposition on federal law enforcement interests.

Comment

When a person has committed a federal offense, it is important that the law respond promptly, fairly, and effectively. This does not mean, however, that a criminal prosecution must be initiated. In recognition of the fact that resort to the criminal process is not necessarily the only appropriate response to serious forms of antisocial activity, Congress and state legislatures have provided civil and administrative remedies for many types of conduct that may also be subject to criminal sanction. Examples of such non-criminal approaches include civil tax proceedings; civil actions under the securities, customs, antitrust, or other regulatory laws; and reference of complaints to licensing authorities or to professional organizations such as bar associations. Another potentially useful alternative to prosecution in some cases is pretrial diversion (see U.S. Attorney's Manual, 1-12.000).

Attorneys for the government should familiarize themselves with these alternatives and should consider pursuing them if they are available in a particular case. Although on some occasions they should be pursued in addition to the criminal law procedures, on other occasions they can be expected to provide an effective substitute for criminal prosecution. In weighing the adequacy of such an alternative in a particular case, the prosecutor should consider the nature and severity of the sanctions that could be imposed, the likelihood that

an adequate sanction would in fact be imposed, and the effect of such a non-criminal disposition on federal law enforcement interests. It should be noted that referrals for non-criminal disposition, other than to Civil Division attorneys or other attorneys for the government, may not include the transfer of grand jury material unless an order under Rule 6(e), F.R.Cr.P., has been obtained.

6. In determining whether to commence or recommend prosecution or take other action, the attorney for the government should not be influenced by:

- (a) the person's race; religion; sex; national origin; or political association, activities, or beliefs;
- (b) his own personal feelings concerning the person, the person's associates, or the victim; or
- (c) the possible effect of his decision on his own professional or personal circumstances.

Comment

Paragraph 6 sets forth various matters that plainly should not influence the determination whether to initiate or recommend prosecution or take other action. They are listed here not because it is anticipated that any attorney for the government might allow them to affect his judgment, but in order to make clear that federal prosecutors will not be influenced by such improper considerations. Of course, in a case in which a particular characteristic listed in subparagraph (a) is pertinent to the offense (for example, in an immigration case the fact that the offender is not a United States national, or in a civil rights case the fact that the victim and the offender are of different races), the provision would not prohibit the prosecutor from considering it for the purpose intended by the Congress.

7. Whenever the attorney for the government declines to commence or recommend federal prosecution, he should ensure that his decision and the reasons therefor are communicated to the investigating agency involved and to any other interested agency, and are reflected in the files of his office.

Comment

Paragraph 7 is intended primarily to ensure an adequate record of disposition of matters that are brought to the attention of the government attorney for possible criminal prosecution, but that do not result in federal prosecution. When prosecution is declined in serious cases on the understanding that action will be taken by other authorities, appropriate steps should be taken to ensure that the matter receives their attention and to ensure coordination or follow-up. This might be done, for example, through the appropriate Federal-State Law Enforcement Committee.

PART C. SELECTING CHARGES

1. Except as hereafter provided, the attorney for the government should charge, or should recommend that the grand jury charge, the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction.

Comment

Once it has been determined to initiate prosecution, either by filing a complaint or an information, or by seeking an indictment from the grand jury, the attorney for the government must determine what charges to file or recommend. When the conduct in question consists of a single criminal act, or when there is only one applicable statute, this is not a difficult task. Typically, however, a defendant will have committed more than one criminal act and his conduct may be prosecuted under more than one statute. Moreover, selection of charges may be complicated further by the fact that different statutes have different proof requirements and provide substantially different penalties. In such cases, considerable care is required to ensure selection of the proper charge or charges. In addition to reviewing the concerns that prompted the decision to prosecute in the first instance, particular attention should be given to the need to ensure that the prosecution will be both fair and effective.

At the outset, the attorney for the government should bear in mind that at trial he will have to produce admissible evidence sufficient to obtain and sustain a conviction, or else the government will suffer a dismissal. For this reason, he should not include in an information or recommend in an indictment charges that he cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient evidence at trial.

In connection with the evidentiary basis for the charges selected, the prosecutor should also be particularly mindful of the different requirements of proof under different statutes covering similar conduct. For example, the bribery provisions of 18 U.S.C. 201

require proof of "corrupt intent," while the "gratuity" provisions do not. Similarly, the "two witness" rule applies to perjury prosecutions under 18 U.S.C. 1621 but not under 18 U.S.C. 1623.

Paragraph 1 of Part C expresses the principle that the defendant should be charged with the most serious offense that is encompassed by his conduct and that is likely to result in a sustainable conviction. Ordinarily, this will be the offense for which the most severe penalty is provided by law. This principle provides the framework for ensuring equal justice in the prosecution of federal criminal offenders. It guarantees that every defendant will start from the same position, charged with the most serious criminal act he commits. Of course, he may also be charged with other criminal acts (as provided in paragraph 2), if the proof and the government's legitimate law enforcement objectives warrant additional charges.

In assessing the likelihood that a charge of the most serious offense will result in a sustainable conviction, the attorney for the government should bear in mind some of the less predictable attributes of those rare federal offenses that carry a mandatory, minimum term of imprisonment. In many instances, the term the legislature has specified certainly would not be viewed as inappropriate. In other instance, however, unusually mitigating circumstances may make the specified penalty appear so out of proportion to the seriousness of defendant's conduct that the jury or judge in assessing guilt, or the judge in ruling on the admissibility of evidence, may be influenced by the inevitable consequence of conviction. In such cases, the attorney for the government should consider whether charging a different offense that reaches the same conduct, but that does not carry a mandatory penalty, might not be more appropriate under the circumstances.

The exception noted at the beginning of paragraph 1 refers to pre-charge plea agreements provided for in paragraph 3 below.

2. Except as hereafter provided, the attorney for the government should also charge, or recommend that the grand jury charge, other offenses only when, in his judgment, additional charges:

(a) are necessary to ensure that the information or indictment:

- (i) adequately reflects the nature and extent of the criminal conduct involved; and
- (ii) provides the basis for an appropriate sentence under all the circumstances of the case; or

- (b) will significantly enhance the strength of the government's case against the defendant or a codefendant.

Comment

It is important to the fair and efficient administration of justice in the federal system that the government bring as few charges as are necessary to ensure that justice is done. The bringing of unnecessary charges not only complicates and prolongs trials, it constitutes an excessive--and potentially unfair--exercise of power. To ensure appropriately limited exercises of the charging power, paragraph 2 outlines three general situations in which additional charges may be brought: when necessary adequately to reflect the nature and extent of the criminal conduct involved; when necessary to provide the basis for an appropriate sentence under all the circumstances of the case; and when an additional charge or charges would significantly strengthen the case against the defendant or a codefendant.

(a) **Nature and extent of criminal conduct**--Apart from evidentiary considerations, the prosecutor's initial concern should be to select charges that adequately reflect the nature and extent of the criminal conduct involved. This means that the charges selected should fairly describe both the kind and scope of unlawful activity; should be legally sufficient; should provide notice to the public of the seriousness of the conduct involved; and should negate any impression that, after committing one offense, an offender can commit others with impunity.

(b) **Basis for sentencing**--Proper charge selection also requires consideration of the end result of successful prosecution--the imposition of an appropriate sentence under all the circumstances of the case. In order to achieve this result, it ordinarily should not be necessary to charge a person with every offense for which he may technically be liable (indeed, charging every such offense may in some cases be perceived as an unfair attempt to induce a guilty plea). What is important is that the person be charged in such a manner that, if he is convicted, the court may impose an appropriate sentence. The phrase "all the circumstances of the case" is intended to include any factors that may be relevant to the sentencing decision. Examples of such factors are the basic purposes of sentencing (deterrence, protection of the public, just punishment, and rehabilitation); the penalty provisions of the applicable statutes; the gravity of the offense in terms of its actual or potential impact, or in terms of the defendant's motive; mitigating or aggravating

factors such as age, health, restitution, prior criminal activity, and cooperation with law enforcement officials; and any other legitimate legislative, judicial, prosecutorial, or penal or correctional concern, including special sentencing provisions for certain classes of offenders and other post-conviction consequences such as disbarment or disqualification from public office or private position.

(c) **Effect on government's case**—When considering whether to include a particular charge in the indictment or information, the attorney for the government should bear in mind the possible effects of inclusion or exclusion of the charge on the government's case against the defendant or a codefendant. If the evidence is available, it is proper to consider the tactical advantages of bringing certain charges. For example, in a case in which a substantive offense was committed pursuant to an unlawful agreement, inclusion of a conspiracy count is permissible and may be desirable to ensure the introduction of all relevant evidence at trial. Similarly, it might be important to include a perjury or false statement count in an indictment charging other offenses, in order to give the jury a complete picture of the defendant's criminal conduct. Failure to include appropriate charges for which the proof is sufficient may not only result in the exclusion of relevant evidence, but may impair the prosecutor's ability to prove a coherent case, and lead to jury confusion as well. In this connection, it is important to remember that, in multi-defendant cases, the presence or absence of a particular charge against one defendant may affect the strength of the case against another defendant.

In short, when the evidence exists, the charges should be structured so as to permit proof of the strongest case possible without undue burden on the administration of justice.

3. The attorney for the government may file or recommend a charge or charges without regard to the provisions of paragraphs 1 and 2, if such charge or charges are the subject of a pre-charge plea agreement entered into under the provisions of Part D of this statement of principles.

Comment

Paragraph 3 of Part C addresses the situation in which there is a pre-charge agreement with the defendant that he will plead guilty to a certain agreed-upon charge or charges. In such a situation, the charge or charges to be filed or recommended to the grand jury may

be selected without regard to the provisions of paragraphs 1 and 2 of Part C. Before filing or recommending charges pursuant to a pre-charge plea agreement, the attorney for the government should consult the plea agreement provisions of Part D, and should give special attention to paragraph 3 thereof, relating to the selection of charges to which a defendant should be required to plead guilty.

PART D. ENTERING INTO PLEA AGREEMENTS

1. The attorney for the government may, in an appropriate case, enter into an agreement with a defendant that, upon the defendant's plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, he will move for dismissal of other charges, take a certain position with respect to the sentence to be imposed, or take other action.

Comment

Paragraph 1 permits, in appropriate cases, the disposition of federal criminal charges pursuant to plea agreements between defendants and government attorneys. Such negotiated dispositions should be distinguished from situations in which a defendant pleads guilty or nolo contendere to fewer than all counts of an information or indictment in the absence of any agreement with the government. Only the former type of disposition is covered by the provisions of Part D.

Negotiated plea dispositions are explicitly sanctioned by Rule 11 (e) (1), F.R.Cr.P., which provides that:

The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

- (A) move for dismissal of other charges; or
- (B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or
- (C) agree that a specific sentence is the appropriate disposition of the case.

Three types of plea agreements are encompassed by the language of paragraph 1: agreements whereby, in return for the defendant's plea

to a charged offense or to a lesser or related offense, other charges are dismissed ("charge agreements"); agreements pursuant to which the government takes a certain position regarding the sentence to be imposed ("sentence agreements"); and agreements that combine a plea with a dismissal of charges and an undertaking by the prosecutor concerning the government's position at sentencing ("mixed agreements").

It should be noted that the provision relating to "charge agreements" is not limited to situations in which the defendant is the subject of charges to be dismissed. Although this will usually be the case, there may be situations in which a third party would be the beneficiary of the dismissal of charges. For example, one family member may offer to plead guilty in return for the termination of a prosecution pending against another family member, or a corporation may tender a plea in satisfaction of its own liability as well as that of one of its officers. Although plea agreements of this sort are permitted under paragraph 1 they can easily be misunderstood as manifestations of a double standard of justice. Accordingly, they should not be entered into routinely, but only after careful consideration of all relevant factors, including those specifically set forth in paragraph 2 below.

The language of paragraph 1 with respect to "sentence agreements" is intended to cover the entire range of positions that the government might wish to take at the time of sentencing. Among the options are: taking no position regarding the sentence; not opposing the defendant's request; requesting a specific type of sentence (e.g., a fine, probation, or sentencing under a specific statute such as the Youth Corrections Act), a specific fine or term of imprisonment, or not more than a specific fine or term of imprisonment; and requesting concurrent rather than consecutive sentences.

The concession required by the government as part of a plea agreement, whether it be a "charge agreement," a "sentence agreement," or a "mixed agreement," should be weighed by the responsible government attorney in the light of the probable advantages and disadvantages of the plea disposition proposed in the particular case. Particular care should be exercised in considering whether to enter into a plea agreement pursuant to which the defendant will enter a *nolo contendere* plea. As discussed in Part D below, there are serious objections to such pleas and they should be opposed unless the responsible Assistant Attorney General concludes that the circumstances are so unusual that acceptance of such a plea would be in the public interest.

2. In determining whether it would be appropriate to enter into a plea agreement, the attorney for the government should weigh all relevant considerations, including:

- (a) the defendant's willingness to cooperate in the investigation or prosecution of others;
- (b) the defendant's history with respect to criminal activity;
- (c) the nature and seriousness of the offense or offenses charged;
- (d) the defendant's remorse or contrition and his willingness to assume responsibility for his conduct;
- (e) the desirability of prompt and certain disposition of the case;
- (f) the likelihood of obtaining a conviction at trial;
- (g) the probable effect on witnesses;
- (h) the probable sentence or other consequences if the defendant is convicted;
- (i) the public interest in having the case tried rather than disposed of by a guilty plea;
- (j) the expense of trial and appeal; and
- (k) the need to avoid delay in the disposition of other pending cases.

Comment

Paragraph 2 sets forth some of the appropriate considerations to be weighed by the attorney for the government in deciding whether to enter into a plea agreement with a defendant pursuant to the provisions of Rule 11 (e), F.R.Cr.P. The provision is not intended to suggest the desirability or lack of desirability of a plea agreement in any particular case or to be construed as a reflection on the merits of any plea agreement that actually may be reached; its purpose is solely to assist attorneys for the government in exercising their judgment as to whether some sort of plea agreement would be appropriate in a particular case. Government attorneys should consult the investigating agency involved in any case in which it would be helpful to have its views concerning the relevance of particular factors or the weight they deserve.

(a) **Defendant's cooperation**—The defendant's willingness to provide timely and useful cooperation as part of his plea agreement should be given serious consideration. The weight it deserves will vary, of course, depending on the nature and value of the cooperation offered and whether the same benefit can be obtained

without having to make the charge or sentence concession that would be involved in a plea agreement. In many situations, for example, all necessary cooperation in the form of testimony can be obtained through a compulsion order under Title 18, U.S.C. 6001-6003. In such cases, that approach should be attempted unless, under the circumstances, it would seriously interfere with securing the person's conviction.

(b) Defendant's criminal history—One of the principal arguments against the practice of plea-bargaining is that it results in leniency that reduces the deterrent impact of the law and leads to recidivism on the part of some offenders. Although this concern is probably most relevant in non-federal jurisdictions that must dispose of large volumes of routine cases with inadequate resources, nevertheless it should be kept in mind by federal prosecutors, especially when dealing with repeat offenders or "career criminals". Particular care should be taken in the case of a defendant with a prior criminal record to ensure that society's need for protection is not sacrificed in the process of arriving at a plea disposition. In this connection, it is proper for the government attorney to consider not only the defendant's past convictions, but also facts of other criminal involvement not resulting in conviction. By the same token, of course, it is also proper to consider a defendant's absence of past criminal involvement and his past cooperation with law enforcement officials.

(c) Nature and seriousness of offense charged—Important considerations in determining whether to enter into a plea agreement may be the nature and seriousness of the offense or offenses charged. In weighing these factors, the attorney for the government should bear in mind the interests sought to be protected by the statute defining the offense (e.g., the national defense, constitutional rights, the governmental process, personal safety, public welfare, or property), as well as nature and degree of harm caused or threatened to those interests and any attendant circumstances that aggravate or mitigate the seriousness of the offense in the particular case.

(d) Defendant's attitude—A defendant may demonstrate apparently genuine remorse or contrition, and a willingness to take responsibility for his criminal conduct by, for example, efforts to compensate the victim for injury or loss, or otherwise to ameliorate the consequences of his acts. These are factors that bear upon the likelihood of his repetition of the conduct involved and that may properly be considered in deciding whether a plea agreement would be appropriate.

It is particularly important that the defendant not be permitted to enter a guilty plea under circumstances that will allow him later to proclaim lack of culpability or even complete innocence. Such consequences can be avoided only if the court and the public are adequately informed of the nature and scope of the illegal activity and of the defendant's complicity and culpability. To this end, the attorney for the government is strongly encouraged to enter into a plea agreement only with the defendant's assurance that he will admit the facts of the offense and of his culpable participation therein. A plea agreement may be entered into in the absence of such an assurance, but only if the defendant is willing to accept without contest a statement by the government in open court of the facts it could prove to demonstrate his guilt beyond a reasonable doubt. Except as provided in paragraph 4 below, the attorney for the government should not enter into a plea agreement with a defendant who admits his guilt but disputes an essential element of the government's case.

(e) **Prompt disposition**—In assessing the value of prompt disposition of a criminal case, the attorney for the government should consider the timing of a proffered plea. A plea offer by a defendant on the eve of trial after the case has been fully prepared is hardly as advantageous from the standpoint of reducing public expense as one offered months or weeks earlier. In addition, a last-minute plea adds to the difficulty of scheduling cases efficiently and may even result in wasting the prosecutorial and judicial time reserved for the aborted trial. For these reasons, government attorneys should make clear to defense counsel at an early stage in the proceedings that, if there are to be any plea discussions, they must be concluded prior to a certain date well in advance of the trial date. However, avoidance of unnecessary trial preparation and scheduling disruptions are not the only benefits to be gained from prompt disposition of a case by means of a guilty plea. Such a disposition also saves the government and the court the time and expense of trial and appeal. In addition, a plea agreement facilitates prompt imposition of sentence, thereby promoting the overall goals of the criminal justice system. Thus, occasionally it may be appropriate to enter into a plea agreement even after the usual time for making such agreements has passed.

(f) **Likelihood of conviction**—The trial of a criminal case inevitably involves risks and uncertainties, both for the prosecution and for the defense. Many factors, not all of which can be anticipated, can affect the outcome. To the extent that these factors can be identified, they should be considered in deciding whether to accept a plea or go to trial. In this connection, the prosecutor should weigh

the strength of the government's case relative to the anticipated defense case, bearing in mind legal and evidentiary problems that might be expected, as well as the importance of the credibility of witnesses. However, although it is proper to consider factors bearing upon the likelihood of conviction in deciding whether to enter into a plea agreement, it obviously is improper for the prosecutor to attempt to dispose of a case by means of a plea agreement if he is not satisfied that the legal standards for guilt are met.

(g) **Effect on witnesses**—Although the public has “the right to every man's evidence,” attorneys for the government should bear in mind that it is often burdensome for witnesses to appear at trial and that, sometimes, to do so may cause them serious embarrassment or even place them in jeopardy of physical or economic retaliation. The possibility of such adverse consequences to witnesses should not be overlooked in determining whether to go to trial or attempt to reach a plea agreement. Another possibility that may have to be considered is revealing the identity of informants. When an informant testifies at trial, his identity and relationship to the government become matters of public record. As a result, in addition to possible adverse consequences to the informant, there is a strong likelihood that the informant's usefulness in other investigations will be seriously diminished or destroyed. These are considerations that should be discussed with the investigating agency involved, as well as with any other agencies known to have an interest in using the informant in their investigations.

(h) **Probable sentence**—In determining whether to enter into a plea agreement, the attorney for the government may properly consider the probable outcome of the prosecution in terms of the sentence or other consequences for the defendant in the event that a plea agreement is reached. If the proposed agreement is a “sentence agreement” or a “mixed agreement”, the prosecutor should realize that the position he agrees to take with respect to sentencing may have a significant effect on the sentence that is actually imposed. If the proposed agreement is a “charge agreement,” the prosecutor should bear in mind the extent to which a plea to fewer or lesser offenses may reduce the sentence that otherwise could be imposed. In either event, it is important that the attorney for the government be aware of the need to preserve the basis for an appropriate sentence under all the circumstances of the case.

(i) **Trial rather than plea**—There may be situations in which the public interest might better be served by having a case tried rather than by having it disposed of by means of a guilty plea. These include situations in which it is particularly important to permit a

clear public understanding that "justice is done" through exposing the exact nature of the defendant's wrong-doing at trial, or in which a plea agreement might be misconstrued to the detriment of public confidence in the criminal justice system. For this reason, the prosecutor should be careful not to place undue emphasis on factors which favor disposition of a case pursuant to a plea agreement.

(j) **Expense of trial and appeal**--In assessing the expense of trial and appeal that would be saved by a plea disposition, the attorney for the government should consider not only such monetary costs as juror and witness fees, but also the time spent by judges, prosecutors, and law enforcement personnel who may be needed to testify or provide other assistance at trial. In this connection, the prosecutor should bear in mind the complexity of the case, the number of trial days and witnesses required, and any extraordinary expenses that might be incurred such as the cost of sequestering the jury.

(k) **Prompt disposition of other cases**--A plea disposition in one case may facilitate the prompt disposition of other cases, including cases in which prosecution might otherwise be declined. This may occur simply because prosecutorial, judicial, or defense resources will become available for use in other cases, or because a plea by one of several defendants may have a "domino effect," leading to pleas by other defendants. In weighing the importance of these possible consequences, the attorney for the government should consider the state of the criminal docket and the speedy trial requirements in the district, the desirability of handling a larger volume of criminal cases, and the workloads of prosecutors, judges, and defense attorneys in the district.

3. If a prosecution is to be concluded pursuant to a plea agreement, the defendant should be required to plead to a charge or charges:

- (a) that bears a reasonable relationship to the nature and extent of his criminal conduct;
- (b) that has an adequate factual basis;
- (c) that makes likely the imposition of an appropriate sentence under all the circumstances of the case; and
- (d) that does not adversely affect the investigation or prosecution of others.

Comment

Paragraph 3 sets forth the considerations that should be taken into account in selecting the charge or charges to which a defendant

should be required to plead guilty once it has been decided to dispose of the case pursuant to a plea agreement. The considerations are essentially the same as those governing the selection of charges to be included in the original indictment or information.

(a) **Relationship to criminal conduct**—The charge or charges to which a defendant pleads guilty should bear a reasonable relationship to the defendant's criminal conduct, both in nature and in scope. This principle covers such matters as the seriousness of the offense (as measured by its impact upon the community and the victim), not only in terms of the defendant's own conduct but also in terms of similar conduct by others, as well as the number of counts to which a plea should be required in cases involving offenses different in nature or in cases involving a series of similar offenses. In regard to the seriousness of the offense, the guilty plea should assure that the public record of conviction provides an adequate indication of the defendant's conduct. In many cases, this will probably require that the defendant plead to the most serious offense charged. With respect to the number of counts, the prosecutor should take care to assure that no impression is given that multiple offenses are likely to result in no greater a potential penalty than is a single offense.

The requirement that a defendant plead to a charge that bears a reasonable relationship to the nature and extent of his criminal conduct is not inflexible. There may be situations involving cooperating defendants in which considerations such as those discussed in Part F take precedence. Such situations should be approached cautiously, however. Unless the government has strong corroboration for the cooperating defendant's testimony, his credibility may be subject to successful impeachment if he is permitted to plead to an offense that appears unrelated in seriousness or scope to the charges against the defendants on trial. It is also doubly important in such situations for the prosecutor to ensure that the public record of the plea demonstrates the full extent of the defendant's involvement in the criminal activity giving rise to the prosecution.

(b) **Factual basis**—The attorney for the government should also bear in mind the legal requirement that there be a factual basis for the charge or charges to which a guilty plea is entered. This requirement is intended to assure against conviction after a guilty plea of a person who is not in fact guilty. Moreover, under Rule 11 (f), F.R.Cr.P., a court may not enter a judgment upon a guilty plea "without making such inquiry as shall satisfy it that there is a factual basis for the plea." For this reason, it is essential that the charge or charges selected as the subject of a plea agreement be such as could

be prosecuted independently of the plea under these principles. However, as noted below, in cases in which *Alford* or nolo contendere pleas are tendered, the attorney for the government may wish to make a stronger factual showing. In such cases there may remain some doubt as to the defendant's guilt even after the entry of his plea. Consequently, in order to avoid such a misleading impression, the government should ask leave of the court to make a proffer of the facts available to it that show the defendant's guilt beyond a reasonable doubt.

(c) **Basis for sentencing**—In order to guard against inappropriate restriction of the court's sentencing options, the plea agreement should provide adequate scope for sentencing under all the circumstances of the case. To the extent that the plea agreement requires the government to take a position with respect to the sentence to be imposed, there should be little danger since the court will not be bound by the government's position. When a "charge agreement" is involved, however, the court will be limited to imposing the maximum term authorized by statute for the offense to which the guilty plea is entered. Thus, the prosecutor should take care to avoid a "charge agreement" that would unduly restrict the court's sentencing authority. In this connection, as in the initial selection of charges, the prosecutor should take into account the purposes of sentencing, the penalties provided in the applicable statutes, the gravity of the offense, any aggravating or mitigating factors, and any post conviction consequences to which the defendant may be subject. In addition, if restitution is appropriate under the circumstances of the case, a sufficient number of counts should be retained under the agreement to provide a basis for an adequate restitution order, since the court's authority to order restitution as part of the sentence it imposes is limited to the offenses for which the defendant is convicted, as opposed to all offenses that were committed. See 18 U.S.C. 3651; *United States v. Buechler*, 557 F.2d 1002, 1007 (3rd Cir. 1977); U.S. Attorney's Manual, 9-16.210.

(d) **Effect on other cases**—In a multiple-defendant case, care must be taken to ensure that the disposition of the charges against one defendant does not adversely affect the investigation or prosecution of co-defendants. Among the possible adverse consequences to be avoided are the negative jury appeal that may result when relatively less culpable defendants are tried in the absence of a more culpable defendant or when a principal prosecution witness appears to be equally culpable as the defendants but has been permitted to plead to a significantly less serious offense; the possibility that one defendant's absence from the case will render useful evidence

inadmissible at the trial of co-defendants; and the giving of questionable exculpatory testimony on behalf of the other defendants by the defendant who has pled guilty.

4. The attorney for the government should not, except with the approval of the Assistant Attorney General with supervisory responsibility over the subject matter, enter into a plea agreement if the defendant maintains his innocence with respect to the charge or charges to which he offers to plead guilty. In a case in which the defendant tenders a plea of guilty but denies that he has in fact committed the offense to which he offers to plead guilty, the attorney for the government should make an offer of proof of all facts known to the government to support the conclusion that the defendant is in fact guilty.

Comment

Paragraph 4 concerns plea agreements involving "*Alford*" pleas—guilty pleas entered by defendants who nevertheless claim to be innocent. In *North Carolina v. Alford*, 400 U.S. 25 (1970), the Supreme Court held that the Constitution does not prohibit a court from accepting a guilty plea from a defendant who simultaneously maintains his innocence, so long as the plea is entered voluntarily and intelligently and there is a strong factual basis for it. The Court reasoned that there is no material difference between a plea of *nolo contendere*, where the defendant does not expressly admit his guilt, and a plea of guilty by a defendant who affirmatively denies his guilt.

Despite the constitutional validity of *Alford* pleas, such pleas should be avoided except in the most unusual circumstances, even if no plea agreement is involved and the plea would cover all pending charges. Such pleas are particularly undesirable when entered as part of an agreement with the government. Involvement by attorneys for the government in the inducement of guilty pleas by defendants who protest their innocence may create an appearance of prosecutorial overreaching. As one court put it, "the public might well not understand or accept the fact that a defendant who denied his guilt was nonetheless placed in a position of pleading guilty and going to jail." *United States v. Bednarski*, 445 F.2d 364, 366 (1st Cir. 1971). Consequently, it is preferable to have a jury resolve the factual and legal dispute between the government and the defendant, rather than have government attorneys encourage defendants to plead guilty under circumstances that the public might regard as questionable or

unfair. For this reason, government attorneys should not enter into *Alford* plea agreements without the approval of the responsible Assistant Attorney General.

Apart from refusing to enter into a plea agreement, however, the degree to which the Department can express its opposition to *Alford* pleas may be limited. Although a court may accept a proffered plea of *nolo contendere* "only after due consideration of the views of the parties and the interest of the public in the effective administration of justice" (Rule 11 (b), F.R.Cr.P.), at least one court has concluded that it is an abuse of discretion to refuse to accept a guilty plea "solely because the defendant does not admit the alleged facts of the crime." *United States v. Gaskins*, 485 F.2d 1046, 1048 (D.C. Cir. 1973); but see *United States v. Bednarski*, 445 F.2d 364 (1st Cir. 1971); *United States v. Biscoe*, 518 F.2d 95 (1st Cir. 1975). Nevertheless, government attorneys can and should discourage *Alford* pleas by refusing to agree to terminate prosecutions where an *Alford* plea is proffered to fewer than all of the charges pending. As is the case with guilty pleas generally, if such a plea to fewer than all the charges is tendered and accepted over the government's objection, the attorney for the government should proceed to trial on any remaining charges not barred on double jeopardy grounds unless the United States Attorney or, in cases handled by departmental attorneys, the responsible Assistant Attorney General, approves dismissal of those charges.

Government attorneys should also take full advantage of the opportunity afforded by Rule 11 (f) in an *Alford* case to thwart the defendant's efforts to project a public image of innocence. Under Rule 11 (f), the court must be satisfied that there is "a factual basis" for a guilty plea. However, the Rule does not require that the factual basis for the plea be provided only by the defendant. *United States v. Navedo*, 516 F.2d 293 (2d Cir. 1975); *Irizarry v. United States*, 508 F.2d 960 (2d Cir. 1974); *United States v. Davis*, 516 F.2d 574 (7th Cir. 1975). Accordingly, attorneys for the government in *Alford* cases should endeavor to establish as strong a factual basis for the plea as possible not only to satisfy the requirement of Rule 11 (f), but also to minimize the adverse effects of *Alford* pleas on public perceptions of the administration of justice.

5. If a prosecution is to be terminated pursuant to a plea agreement, the attorney for the government should ensure that the case file contains a record of the agreed disposition, signed or initialed by the defendant or his attorney.

Comment

Paragraph 5 is intended to facilitate compliance with Rule 11, F.R.Cr.P., and to provide a safeguard against misunderstandings that might arise concerning the terms of a plea agreement. Rule 11 (e) (2) requires that a plea agreement be disclosed in open court (except upon a showing of good cause, in which case disclosure may be made in camera), while Rule 11 (e) (3) requires that the disposition provided for in the agreement be embodied in the judgment and sentence. Compliance with these requirements will be facilitated if the agreement has been reduced to writing in advance, and the defendant will be precluded from successfully contesting the terms of the agreement at the time he pleads guilty, or at the time of sentencing, or at a later date. If time does not permit the preparation of a record of the plea agreement in advance, as when the plea disposition is agreed to on the morning of arraignment or trial, the attorney for the government should subsequently include in the case file a brief notation concerning the fact and terms of the agreement.

PART E. OPPOSING OFFERS TO PLEAD NOLO CONTENDERE

1. The attorney for the government should oppose the acceptance of a plea of nolo contendere unless the Assistant Attorney General with supervisory responsibility over the subject matter concludes that the circumstances of the case are so unusual that acceptance of such a plea would be in the public interest.

Comment

Rule 11(b), F.R.Cr.P., requires the court to consider "the views of the parties and the interest of the public in the effective administration of justice" before it accepts a plea of nolo contendere. Thus, it is clear that a criminal defendant has no absolute right to enter a nolo contendere plea. The Department has long attempted to discourage the disposition of criminal cases by means of nolo pleas. The basic objections to nolo pleas were expressed by Attorney General Herbert Brownell, Jr., in a departmental directive in 1953:

"One of the factors which has tended to breed contempt for federal law enforcement in recent times has been the practice of permitting as a matter of course in many criminal indictments the plea of nolo contendere. While it may serve a legitimate purpose in a few extraordinary situations and where civil litigation is also pending, I can see no justification for it as an everyday practice, particularly where it is used to avoid certain indirect consequences of pleading guilty, such as loss of license or sentencing as a multiple offender. Uncontrolled use of the plea has led to shockingly low sentences and insignificant fines which are no deterrent to crime. As a practical matter it accomplishes little that is useful even where the Government has civil litigation pending. Moreover, a person permitted to plead nolo contendere admits his guilt for the purpose of imposing punishment for his acts and yet, for all other purposes, and as far as the public is concerned, persists in his denial of wrongdoing. It is no wonder that the public regards consent to such a plea by the Government as an admission that it has only a technical case at most and that the whole proceeding was just a fiasco."

For these reasons, government attorneys have been instructed for more than twenty-five years not to consent to nolo pleas except in the most unusual circumstances, and to do so then only with departmental approval. However, despite continuing adherence to this policy by attorneys for the government, and despite the continuing validity of the policy's rationale, the federal criminal justice system continues to suffer from misuse of nolo contendere pleas, particularly in white collar crime cases.

As federal prosecutors focus more of their attention on white collar crime activities, greater numbers of defendants seek to dispose of the charges against them by means of nolo pleas, and the frequency with which such pleas are accepted by the courts is increasing. The acceptance of nolo pleas from affluent white collar defendants, as opposed to other types of defendants, lends credence to the view that a double standard of justice exists. Moreover, even though a white collar defendant whose nolo plea is accepted may not be sentenced more leniently than one who is required to plead guilty, such a defendant often persists in his protestations of innocence, maintaining that his plea was entered solely to avoid litigation and save business expense.

The continued adverse consequences to the criminal justice system of the misuse of nolo pleas—diminished respect for law, impairment of law enforcement efforts, and reduced deterrence—warrant re-examination of the government's response to such pleas. Heretofore, it was believed that a posture of non-consent by government attorneys would prevent the acceptance of nolo pleas except in extraordinary cases. Now the forthright expression of opposition is required. Accordingly, as stated in paragraph 1 above, federal prosecutors should henceforth oppose the acceptance of a nolo plea, unless the responsible Assistant Attorney General concludes that the circumstances are so unusual that acceptance of the plea would be in the public interest. Such a determination might be made, for example, in an unusually complex antitrust case if the only alternative to a protracted trial is acceptance of a nolo plea.

2. In any case in which a defendant seeks to enter a plea of nolo contendere, the attorney for the government should make an offer of proof of the facts known to the government to support the conclusion that the defendant has in fact committed the offense charged.

Comment

If a defendant seeks to avoid admitting guilt by offering to plead *nolo contendere*, the attorney for the government should make an offer of proof of the facts known to the government to support the conclusion that the defendant has in fact committed the offense charged. This should be done even in the rare case in which the government does not oppose the entry of a *nolo* plea. In addition, as is the case with respect to guilty pleas, the attorney for the government should urge the court to require the defendant to admit publicly the facts underlying the criminal charges. These precautions should minimize the effectiveness of any subsequent efforts by the defendant to portray himself as technically liable perhaps, but not seriously culpable.

3. If a plea of *nolo contendere* is offered over the government's objection, the attorney for the government should state for the record why acceptance of the plea would not be in the public interest; and should oppose the dismissal of any charges to which the defendant does not plead *nolo contendere*.

Comment

When a plea of *nolo contendere* is offered over the government's objection, the prosecutor should take full advantage of Rule 11(b) to state for the record why acceptance of the plea would not be in the public interest. In addition to reciting the facts that could be proved to show the defendant's guilt, the prosecutor should bring to the court's attention whatever arguments exist for rejecting the plea. At the very least, such a forceful presentation should make it clear to the public that the government is unwilling to condone the entry of a special plea that may help the defendant avoid legitimate consequences of his guilt. If the *nolo* plea is offered to fewer than all charges, the prosecutor should also oppose the dismissal of the remaining charges.

PART F. ENTERING INTO NON-PROSECUTION AGREEMENTS IN RETURN FOR COOPERATION

1. Except as hereafter provided, the attorney for the government may, with supervisory approval, enter into a non-prosecution agreement in exchange for a person's cooperation when, in his judgment, the person's timely cooperation appears to be necessary to the public interest and other means of obtaining the desired cooperation are unavailable or would not be effective.

Comment

In many cases, it may be important to the success of an investigation or prosecution to obtain the testimonial or other cooperation of a person who is himself implicated in the criminal conduct being investigated or prosecuted. However, because of his involvement, the person may refuse to cooperate on the basis of his Fifth Amendment privilege against compulsory self-incrimination. In this situation, there are several possible approaches the prosecutor can take to render the privilege inapplicable or to induce its waiver.

First, if time permits, the person may be charged, tried, and convicted before his cooperation is sought in the investigation or prosecution of others. Having already been convicted himself, the person ordinarily will no longer have a valid privilege to refuse to testify, and will have a strong incentive to reveal the truth in order to induce the sentencing judge to impose a lesser sentence than that which otherwise might be found appropriate.

Second, the person may be willing to cooperate if the charges or potential charges against him are reduced in number or degree in return for his cooperation and his entry of a guilty plea to the remaining charges. Usually such a concession by the government will be all that is necessary, or warranted, to secure the cooperation sought. Since it is certainly desirable as a matter of policy that an offender be required to incur at least some liability for his criminal conduct, government attorneys should attempt to secure this result in all appropriate cases, following the principles set forth in paragraph 3 of Part D to the extent practicable.

The third method for securing the cooperation of a potential defendant is by means of a court order under sections 6001-6003 of Title 18, United States Code. Those statutory provisions govern the

conditions under which uncooperative witnesses may be compelled to testify or provide information notwithstanding their invocation of the privilege against compulsory self-incrimination. In brief, under the so-called "use immunity" provisions of those statutes, the court may order the person to testify or provide other information, but neither his testimony nor the information he provides may be used against him, directly or indirectly, in any criminal case except a prosecution for perjury or other failure to comply with the order. Ordinarily, these "use immunity" provisions should be relied on in cases in which attorneys for the government need to obtain sworn testimony or the production of information before a grand jury or at trial, and in which there is reason to believe that the person will refuse to testify or provide the information on the basis of his privilege against compulsory self-incrimination. (See U.S. Attorney's Manual, 1-11.000).

Finally, there may be cases in which it is impossible or impractical to employ the methods described above to secure the necessary information or other assistance, and in which the person is willing to cooperate only in return for an agreement that he will not be prosecuted at all for what he has done. The provisions set forth hereafter describe the conditions that should be met before such an agreement is made, as well as the procedures recommended for such cases.

It is important to note that these provisions apply only if the case involves an agreement with a person who might otherwise be prosecuted. If the person reasonably is viewed only as a potential witness rather than a potential defendant, and the person is willing to cooperate, there is no need to consult these provisions.

Paragraph 1 of Part F describes three circumstances that should exist before government attorneys enter into non-prosecution agreements in return for cooperation: the unavailability or ineffectiveness of other means of obtaining the desired cooperation; the apparent necessity of the cooperation to the public interest; and the approval of such a course of action by an appropriate supervisory official.

(a) **Unavailability or ineffectiveness of other means**—As indicated above, non-prosecution agreements are only one of several methods by which the prosecutor can obtain the cooperation of a person whose criminal involvement makes him a potential subject of prosecution. Each of the other methods—seeking cooperation after trial and conviction, bargaining for cooperation as part of a plea agreement, and compelling cooperation under a "use immunity" order—involves prosecuting the person or, at least, leaving open the possibility of prosecuting him on the basis of independently obtained

evidence. Since these outcomes are clearly preferable to permitting an offender to avoid any liability for his conduct, the possible use of an alternative to a non-prosecution agreement should be given serious consideration in the first instance.

Another reason for using an alternative to a non-prosecution agreement to obtain cooperation concerns the practical advantage in terms of the person's credibility if he testifies at trial. If the person already has been convicted, either after trial or upon a guilty plea, for participating in the events about which he testifies, his testimony is apt to be far more credible than if it appears to the trier of fact that he is getting off "scot free". Similarly, if his testimony is compelled by a court order, he cannot properly be portrayed by the defense as a person who has made a "deal" with the government and whose testimony is, therefore, suspect; his testimony will have been forced from him, not bargained for.

In some cases, however, there may be no effective means of obtaining the person's timely cooperation short of entering into a non-prosecution agreement. The person may be unwilling to cooperate fully in return for a reduction of charges, the delay involved in bringing him to trial might prejudice the investigation or prosecution in connection with which his cooperation is sought, and it may be impossible or impractical to rely on the statutory provisions for compulsion of testimony or production of evidence. One example of the latter situation is a case in which the cooperation needed does not consist of testimony under oath or the production of information before a grand jury or at trial. Other examples are cases in which time is critical, as where use of the procedures of 18 U.S.C. 6001-6003 would unreasonably disrupt the presentation of evidence to the grand jury or the expeditious development of an investigation, or where compliance with the statute of limitations or the Speedy Trial Act precludes timely application for a court order.

Only when it appears that the person's timely cooperation cannot be obtained by other means, or cannot be obtained effectively, should the attorney for the government consider entering into a non-prosecution agreement.

(b) **Public Interest**—If he concludes that a non-prosecution agreement would be the only effective method for obtaining cooperation, the attorney for the government should consider whether, balancing the cost of foregoing prosecution against the potential benefit of the person's cooperation, the cooperation sought appears necessary to the public interest. This "public interest" determination is one of the conditions precedent to an application

under 18 U.S.C. 6003 for a court order compelling testimony. Like a compulsion order, a non-prosecution agreement limits the government's ability to undertake a subsequent prosecution of the witness. Accordingly, the same "public interest" test should be applied in this situation as well. Some of the considerations that may be relevant to the application of this test are set forth in paragraph 2 below.

(c) **Supervisory approval**—Finally the prosecutor should secure supervisory approval before entering into a non-prosecution agreement. Prosecutors working under the direction of a United States Attorney must seek the approval of the United States Attorney or a supervisory Assistant United States Attorney. Departmental attorneys not supervised by a United States Attorney should obtain the approval of the appropriate Assistant Attorney General or his designee, and should notify the United States Attorney or Attorneys concerned. The requirement of approval by a superior is designed to provide review by an attorney experienced in such matters, and to ensure uniformity of policy and practice with respect to such agreements. This section should be read in conjunction with paragraph 4 below concerning particular types of cases in which an Assistant Attorney General or his designee must concur in or approve an agreement not to prosecute in return for cooperation.

2. In determining whether a person's cooperation may be necessary to the public interest, the attorney for the government, and those whose approval is necessary, should weigh all relevant considerations, including:

- (a) the importance of the investigation or prosecution to an effective program of law enforcement;
- (b) the value of the person's cooperation to the investigation or prosecution; and
- (c) the person's relative culpability in connection with the offense or offenses being investigated or prosecuted and his history with respect to criminal activity.

Comment

This paragraph is intended to assist federal prosecutors, and those whose approval they must secure, in deciding whether a person's cooperation appears to be necessary to the public interest. The considerations listed here are not intended to be all-inclusive or to require a particular decision in a particular case. Rather, they are

meant to focus the decision-maker's attention on factors that probably will be controlling in the majority of cases.

(a) **Importance of case**—Since the primary function of a federal prosecutor is to enforce the criminal law, he should not routinely or indiscriminately enter into non-prosecution agreements, which are, in essence, agreements not to enforce the law under particular conditions. Rather, he should reserve the use of such agreements for cases in which the cooperation sought concerns the commission of a serious offense or in which successful prosecution is otherwise important in achieving effective enforcement of the criminal laws. The relative importance or unimportance of the contemplated case is therefore a significant threshold consideration.

(b) **Value of cooperation**—An agreement not to prosecute in return for a person's cooperation binds the government to the extent that the person carries out his part of the bargain. *United States v. Carter*, 454 F.2d 426 (4th Cir. 1972); cf; *Santobello v. New York*, 404 U.S. 257 (1971). Since such an agreement forecloses enforcement of the criminal law against a person who otherwise may be liable to prosecution, it should not be entered into without a clear understanding of the nature of the quid pro quo and a careful assessment of its probable value to the government. In order to be in a position adequately to assess the potential value of a person's cooperation, the prosecutor should insist on an "offer of proof" or its equivalent from the person or his attorney. The prosecutor can then weigh the offer in terms of the investigation or prosecution in connection with which the cooperation is sought. In doing so, he should consider such questions as whether the cooperation will in fact be forthcoming, whether the testimony or other information provided will be credible, whether it can be corroborated by other evidence, whether it will materially assist the investigation or prosecution, and whether substantially the same benefit can be obtained from someone else without an agreement not to prosecute. After assessing all of these factors, together with any others that may be relevant, the prosecutor can judge the strength of his case with and without the person's cooperation, and determine whether it may be in the public interest to agree to forego prosecution under the circumstances.

(c) **Relative culpability and criminal history**—In determining whether it may be necessary to the public interest to agree to forego prosecution of a person who may have violated the law, in return for that person's cooperation, it is also important to consider the degree of his apparent culpability relative to others who are subjects of the

investigation or prosecution, as well as his history of criminal involvement. Of course, it would not be in the public interest to forego prosecution of a high-ranking member of a criminal enterprise in exchange for his cooperation against one of his subordinates, nor would the public interest be served by bargaining away the opportunity to prosecute a person with a long history of serious criminal involvement in order to obtain the conviction of someone else on less serious charges. These are matters with regard to which the attorney for the government may find it helpful to consult with the investigating agency or with other prosecuting authorities who may have an interest in the person or his associates.

It is also important to consider whether the person has a background of cooperation with law enforcement officials, either as a witness or an informant, and whether he has previously been the subject of a compulsion order under 18 U.S.C. 6001-6003 or has escaped prosecution by virtue of an agreement not to prosecute. The latter information may be available by telephone from the Witness Records Unit of the Criminal Division.

3. In entering into a non-prosecution agreement, the attorney for the government should, if practicable, explicitly limit the scope of the government's commitment to:

- (a) non-prosecution based directly or indirectly on the testimony or other information provided; or
- (b) non-prosecution within his district with respect to a pending charge or to a specific offense then known to have been committed by the person.

Comment

The attorney for the government should exercise extreme caution to ensure that his non-prosecution agreement does not confer "blanket" immunity on the witness. To this end, he should, in the first instance, attempt to limit his agreement to non-prosecution based on the testimony or information provided. Such an "informal use immunity" agreement has two advantages over an agreement not to prosecute the person in connection with a particular transaction: first, it preserves the prosecutor's option to prosecute on the basis of independently obtained evidence if it later appears that the person's criminal involvement was more serious than it originally appeared to be; second, it encourages the witness to be as forthright as possible

since the more he reveals the more protection he will have against a future prosecution. To further encourage full disclosure by the witness, it should be made clear in the agreement that the government's forbearance from prosecution is conditioned upon the witness's testimony or production of information being complete and truthful, and that failure to testify truthfully may result in a perjury prosecution.

Even if it is not practicable to obtain the desired cooperation pursuant to an "informal use immunity" agreement, the attorney for the government should attempt to limit the scope of the agreement in terms of the testimony and transactions covered, bearing in mind the possible effect of his agreement on prosecutions in other districts. In *United States v. Carter*, 454 F.2d 426 (4th Cir. 1972), the court held that a conviction in the Eastern District of Virginia on charges of forgery and conspiracy involving stolen Treasury checks must be vacated and the case remanded for an evidentiary hearing to determine whether, in a prior related investigation and prosecution in the District of Columbia involving stolen government checks, a promise had been made to the defendant by an Assistant United States Attorney for the District of Columbia that he would not be prosecuted in that district or elsewhere for any related offense if he would plead guilty to one misdemeanor count and cooperate with federal investigators in naming his accomplices. The court indicated that if the facts were as the defendant contended, then the conviction in the Virginia district would have to be reversed and the indictment dismissed. No issue of double jeopardy was involved. The effect of this decision is that a non-prosecution agreement by a government attorney in one district may be binding in other judicial districts even though the United States Attorneys in the other districts are not privy to, or aware of, the agreement.

In view of the *Carter* decision, it is important that non-prosecution agreements be drawn in terms that will not bind other federal prosecutors without their consent. Thus, if practicable, the attorney for the government should explicitly limit the scope of his agreement to non-prosecution within his district. If such a limitation is not practicable and it can reasonably be anticipated that the agreement may affect prosecution of the person in other districts, the attorney for the government contemplating such an agreement should communicate the relevant facts to the Assistant Attorney General with supervisory responsibility for the subject matter.

Finally, the attorney for the government should make it clear that his agreement relates only to non-prosecution and that he has no

independent authority to promise that the witness will be admitted into the Department's Witness Security program or that the Marshal's Service will provide any benefits to the witness in exchange for his cooperation. This does not mean, of course, that the prosecutor should not cooperate in making arrangements with the Marshal's Service necessary for the protection of the witness in appropriate cases. The procedures to be followed in such cases are set forth in Chapter 9-21 of the U.S. Attorney's Manual.

4. The attorney for the government should not enter into a non-prosecution agreement in exchange for a person's cooperation without first obtaining the approval of the Assistant Attorney General with supervisory responsibility over the subject matter, or his designee, when:

- (a) prior consultation or approval would be required by a statute or by Departmental policy for a declination of prosecution or dismissal of a charge with regard to which the agreement is to be made; or
- (b) the person is:
 - (i) a high-level federal, state, or local official;
 - (ii) an official or agent of a federal investigative or law enforcement agency; or
 - (iii) a person who otherwise is, or is likely to become, of major public interest.

Comment

Paragraph 4 sets forth special cases that require approval of non-prosecution agreements by the responsible Assistant Attorney General or his designee. Subparagraph (a) covers cases in which existing statutory provisions and departmental policies require that, with respect to certain types of offenses, the Attorney General or an Assistant Attorney General be consulted or give his approval before prosecution is declined or charges are dismissed. See U.S. Attorney's Manual, 6-2.410, 6-2.420 (tax offenses); 9-2.111 (bankruptcy frauds); 9-2.132, 9-2.146 (internal security offenses); and 9-2.158(5) (air piracy). An agreement not to prosecute resembles a declination of prosecution or the dismissal of a charge in that the end result in each case is similar: a person who has engaged in criminal activity is not prosecuted or is not prosecuted fully for his offense. Accordingly, attorneys for the government should obtain the approval of

the appropriate Assistant Attorney General, or his designee, before agreeing not to prosecute in any case in which consultation or approval would be required for a declination of prosecution or dismissal of a charge.

Subparagraph (b) sets forth other situations in which the attorney for the government should obtain the approval of an Assistant Attorney General, or his designee, of a proposed agreement not to prosecute in exchange for cooperation. Generally speaking, the situations described will be cases of an exceptional or extremely sensitive nature, or cases involving individuals or matters of major public interest. In a case covered by this provision that appears to be of an especially sensitive nature, the Assistant Attorney General should, in turn, consider whether it would be appropriate to notify the Attorney General or the Deputy Attorney General.

5. In a case in which a non-prosecution agreement is reached in return for a person's cooperation, the attorney for the government should ensure that the case file contains a memorandum or other written record setting forth the terms of the agreement. The memorandum or record should be signed or initialed by the person with whom the agreement is made or his attorney, and a copy should be forwarded to the Witness Records Unit of the Criminal Division.

Comment

The provisions of this section are intended to serve two purposes. First, it is important to have a written record in the event that questions arise concerning the nature or scope of the agreement. Such questions are certain to arise during cross-examination of the witness, particularly if the existence of the agreement has been disclosed to defense counsel pursuant to the requirements of *Brady v. Maryland*, 373 U.S. 83 (1965) and *Giglio v. United States*, 405 U.S. 150 (1972). The exact terms of the agreement may also become relevant if the government attempts to prosecute the witness for some offense in the future. Second, such a record will facilitate identification by government attorneys (in the course of weighing future agreements not to prosecute, plea agreements, pre-trial diversion, and other discretionary actions) of persons whom the government has agreed not to prosecute.

The principal requirements of the written record are that it be sufficiently detailed that it leaves no doubt as to the obligations of the parties to the agreement, and that it be signed or initialed by the

person with whom the agreement is made and his attorney, or at least by one of them.

A copy of each non-prosecution agreement should be sent to the Criminal Division's Witness Records Unit. The Witness Records Unit will then be able to identify persons who have been the subject of such agreements, as well as to provide federal prosecutors, on request, with copies of the types of agreements used in the past.

PART G. PARTICIPATING IN SENTENCING

1. During the sentencing phase of a federal criminal case, and the initial parole hearing phase, the attorney for the government should assist the sentencing court and the Parole Commission by:

- (a) attempting to ensure that the relevant facts are brought to their attention fully and accurately; and
- (b) making sentencing and parole release recommendations in appropriate cases.

Comment

Sentencing in federal criminal cases is primarily the function and responsibility of the court. This does not mean, however, that the prosecutor's responsibility in connection with a criminal case ceases upon the return of a guilty verdict or the entry of a guilty plea; to the contrary, the attorney for the government has a continuing obligation to assist the court in its determination of the sentence to be imposed and to aid the Parole Commission in its determination of a release date for a prisoner within its jurisdiction. In discharging these duties, the attorney for the government should, as provided in paragraphs 2 and 6 below, endeavor to ensure the accuracy and completeness of the information upon which the sentencing and release decisions will be based. In addition, as provided in paragraphs 3 and 6 below, in appropriate cases the prosecutor should offer recommendations with respect to the sentence to be imposed and with respect to the granting of parole.

2. In order to ensure that the relevant facts are brought to the attention of the sentencing court fully and accurately, the attorney for the government should:

- (a) cooperate with the Probation Service in its preparation of the presentence investigation report;
- (b) review material in the presentence investigation report that is disclosed by the court to the defendant or his attorney;
- (c) make a factual presentation to the court when:
 - (i) sentence is imposed without a presentence investigation and report;

- (ii) it is necessary to supplement or correct the presentence investigation report;
 - (iii) it is necessary in light of the defense presentation to the court; or
 - (iv) it is requested by the court; and
- (d) be prepared to substantiate significant factual allegations disputed by the defense.

Comment

(a) **Cooperation with Probation Service**—To begin with, if sentence is to be imposed following a presentence investigation and report, the prosecutor should cooperate with the Probation Service in its preparation of the presentence report for the court. Under Rule 32(c)(2), F.R.Cr.P., the report should contain “any criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.” While much of this information may be available to the Probation Service from sources other than the government, some of it may be obtainable only from prosecutorial or investigative files to which probation officers do not have access. For this reason, it is important that the attorney for the government respond promptly to Probation Service requests by providing the requested information whenever possible. The attorney for the government should also recognize the occasional desirability of volunteering information to the Probation Service; especially in a district where the Probation Office is overburdened, this may be the best way to ensure that important facts about the defendant come to its attention. In addition, the prosecutor should be particularly alert to the need to volunteer relevant information to the Probation Service in complex cases, since it cannot be expected that probation officers will obtain a full understanding of the facts of such cases simply by questioning the prosecutor or examining his files.

The relevant information can be communicated orally, or by making portions of the case file available to the probation officer, or by submitting a sentencing memorandum or other written presentation for inclusion in the presentence report. Whatever method he uses, however, the attorney for the government should bear in mind that since portions of the report may be shown to the defendant or defense counsel, care should be taken to prevent disclosures that might be harmful to law enforcement interests.

(b) **Review of presentence report**--Rule 32(c)(3)(A), F.R.Cr.P., requires the court, upon request, to permit the defendant or his counsel to read and comment upon such portions of the presentence report as do not reveal diagnostic opinion, confidential sources of information, or information which if disclosed might result in harm to the defendant or others. Pursuant to section (c)(3)(C) of the Rule, any material disclosed to the defendant or his counsel must also be disclosed to the attorney for the government. Consequently, if the defense inspects portions of the presentence report, the attorney for the government should not forego his opportunity to examine the same material. Such examination may reveal factual inaccuracies in, or omissions from, the report that should be corrected. And even if no inaccuracies or omissions appear, such an examination will enable the attorney for the government to assess the validity of any comments made by the defense and, under Rule 32(a)(1), F.R.Cr.P., to respond appropriately.

(c) **Factual presentation to court**--In addition to assisting the Probation Service with its presentence investigation and reviewing the portions of the presentence report disclosed to the defense, the attorney for the government may find it necessary in some cases to make a factual presentation directly to the court. Such a presentation is authorized by Rule 32(a)(1), F.R.Cr.P., which permits the defendant and his counsel to address the court and states that "[t]he attorney for the government shall have an equivalent opportunity to speak to the court." It has been suggested that failure to permit the government to address the court after the defense presentation may necessitate a remand for resentencing in order to afford the government its opportunity to speak to the court. See *United States v. Jackson*, 563 F.2d 1145, 1148 (4th Cir. 1977).

The need to address the court concerning the facts relevant to sentencing may arise in four situations: (1) when sentence is imposed without a presentence investigation and report; (2) when necessary to correct or supplement the presentence report; (3) when necessary in light of the defense presentation to the court; and (4) when requested by the court.

(i) **Furnishing information in absence of presentence report**--Rule 32(c)(1), F.R.Cr.P., authorizes the imposition of sentence without a presentence investigation and report, if the defendant consents or if the court finds that the record contains sufficient information to permit the meaningful exercise of sentencing discretion. Imposition of sentence pursuant to this provision usually occurs when the defendant has been found guilty by the court after a non-jury trial, when the case is relatively simple and straightforward,

when the defendant has taken the stand and has been cross-examined, and when it is the court's intention not to impose a prison sentence. In such cases, and any others in which sentence is to be imposed without benefit of a presentence investigation and report (such as where a report on the defendant has recently been prepared in connection with another case), it may be particularly important that the attorney for the government take advantage of the opportunity afforded by Rule 32(a)(1) to address the court, since there will be no later opportunity to correct or supplement the record. Moreover, even if government counsel is satisfied that all facts relevant to the sentencing decision are already before the court, he may wish to make a factual presentation for the record that makes clear the government's view of the defendant, the offense, or both.

(ii) **Correcting or supplementing presentence report**—As noted above, whenever portions of the presentence report are shown to the defense, the attorney for the government should take advantage of his opportunity to examine the same material. If he discovers any significant inaccuracies or omissions, he should bring them to the court's attention at the sentencing hearing, together with the correct or complete information.

(iii) **Responding to defense assertions**—Having read the presentence report prior to the sentencing hearing, the defendant or his attorney may dispute specific factual statements made therein. More likely, without directly challenging the accuracy of the report, the defense presentation at the hearing may omit reference to the derogatory information in the report, while stressing any favorable information and drawing all inferences beneficial to the defendant. Some degree of selectivity in the defense presentation is probably to be expected, and will be recognized by the court. There may be instances, however, in which the defense presentation, if not challenged, will leave the court with a view of the defendant or of the offense significantly different from that appearing in the presentence report. If this appears to be a possibility, the attorney for the government should respond by correcting factual errors in the defense presentation, pointing out facts and inferences ignored by the defense, and generally reinforcing the objective view of the defendant and his offense expressed in the presentence report.

(iv) **Responding to court's requests**—There may be occasions when the court will request specific information from government counsel at the sentencing hearing (as opposed to asking generally whether the government wishes to be heard). When this occurs, the attorney for the government should, of course, furnish the requested

information if it is readily available and no prejudice to law enforcement interests is likely to result from its disclosure.

(d) **Substantiation of disputed facts**—In addition to providing the court with relevant factual material at the sentencing hearing when necessary, the attorney for the government should be prepared to substantiate significant factual allegations disputed by the defense. This can be done by making the source of the information available for cross-examination or, if there is good cause for nondisclosure of his identity, by presenting the information as hearsay and providing other guarantees of its reliability, such as corroborating testimony by others. See *United States v. Fatco*, 579 F.2d 707, 713 (2d Cir. 1978).

3. The attorney for the government should make a recommendation with respect to the sentence to be imposed when:

- (a) the terms of a plea agreement require him to do so; or
- (b) the public interest warrants an expression of the government's view concerning the appropriate sentence.

Comment

Paragraph 3 describes two situations in which an attorney for the government should make a recommendation with respect to the sentence to be imposed: when the terms of a plea agreement require him to do so, and when the public interest warrants an expression of the government's view concerning the appropriate sentence. The phrase "make a recommendation with respect to the sentence to be imposed" is intended to cover tacit recommendations (i.e., agreeing to the defendant's request or not opposing the defendant's request) as well as explicit recommendations for a specific type of sentence (e.g., probation, a fine, incarceration); for imposition of sentence under a specific statute (e.g., the Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, or the Narcotic Addict Rehabilitation Act, 18 U.S.C. 4251 *et seq.*); for a specific condition of probation, a specific fine, or a specific term of imprisonment; and for concurrent or consecutive sentences.

The attorney for the government should be guided by the circumstances of the case and the wishes of the court concerning the manner and form in which sentencing recommendations are made. If the government's position with respect to the sentence to be imposed is related to a plea agreement with the defendant, that position must be made known to the court at the time the plea is entered. In other

situations, the government's position might be conveyed to the probation officer, orally or in writing, during the presentence investigation; to the court in the form of a sentencing memorandum filed in advance of the sentencing hearing; or to the court orally at the time of the hearing.

(a) **Recommendations required by plea agreement**--Rule 11(e)(1), F.R.Cr.P., authorizing plea negotiations, implicitly permits the prosecutor, pursuant to a plea agreement, to make a sentence recommendation, agree not to oppose the defendant's request for a specific sentence, or agree that a specific sentence is the appropriate disposition of the case. If the prosecutor has entered into a plea agreement calling for the government to take a certain position with respect to the sentence to be imposed, and the defendant has entered a guilty plea in accordance with the terms of the agreement, the prosecutor must perform his part of the bargain or risk having the plea invalidated. See *Machibroda v. United States*, 368 U.S. 487, 493 (1962); *Santobello v. United States*, 404 U.S. 257, 262 (1971).

(b) **Recommendations warranted by the public interest**--From time to time, unusual cases may arise in which the public interest warrants an expression of the government's view concerning the appropriate sentence, irrespective of the absence of a plea agreement. In some such cases, the court may invite or request a recommendation by the prosecutor, while in others the court may not wish to have a sentencing recommendation from the government. In either event, whether the public interest requires an expression of the government's view concerning the appropriate sentence in a particular case is a matter to be determined with care, preferably after consultation between the prosecutor handling the case and his supervisor--the United States Attorney or a supervisory Assistant United States Attorney, or the responsible Assistant Attorney General or his designee.

In considering the public interest question, the prosecutor should bear in mind the attitude of the court towards sentencing recommendations by the government, and should weigh the desirability of maintaining a clear separation of judicial and prosecutorial responsibilities against the likely consequences of making no recommendation. If he has good reason to anticipate the imposition of a sanction that would be unfair to the defendant or inadequate in terms of society's needs, he may conclude that it would be in the public interest to attempt to avert such an outcome by offering a sentencing recommendation. For example, if the case is one in which the imposition of a term of imprisonment plainly would be inappropriate, and the court has requested the government's view, the

prosecutor should not hesitate to recommend or agree to the imposition of probation. On the other hand, if the responsible government attorney believes that a term of imprisonment is plainly warranted and that, under all the circumstances the public interest would be served by his making a recommendation to that effect, he should make such a recommendation even though the court has not invited or requested him to do so. Recognizing, however, that the primary responsibility for sentencing lies with the judiciary, government attorneys should avoid routinely taking positions with respect to sentencing, reserving their recommendations instead for those unusual cases in which the public interest warrants an expression of the government's view.

In connection with sentencing recommendations, the prosecutor should also bear in mind the potential value in some cases of the imposition of innovative conditions of probation. For example, in a case in which a sentencing recommendation would be appropriate and in which it can be anticipated that a term of probation will be imposed, the responsible government attorney may conclude that it would be appropriate to recommend, as a specific condition of probation, that the defendant make full restitution for actual damage or loss caused by the offense of which he was convicted, that he participate in community service activities, or that he desist from engaging in a particular type of business.

4. In determining what recommendation to make with respect to the sentence to be imposed, the attorney for the government should weigh all relevant considerations, including:

- (a) the seriousness of the defendant's conduct;**
- (b) the defendant's background and personal circumstances;**
- (c) the purpose or purposes of sentencing applicable to the case; and**
- (d) the extent to which a particular sentence would serve such purpose or purposes.**

Comment

When a sentencing recommendation is to be made by the government—whether as part of a plea agreement or as otherwise warranted in the public interest—the recommendation should reflect the best judgment of the prosecutor as to what would constitute an appropriate sentence under all the circumstances of the case. In making this judgment, the attorney for the government should

consider any factors that he believes to be relevant, with particular emphasis on the four considerations specifically set forth in paragraph 4: the seriousness of the defendant's conduct; the defendant's background and personal circumstances; the purpose or purposes of sentencing applicable to the particular case; and the extent to which a particular sentence would serve such purpose or purposes. In this connection, the prosecutor should bear in mind that, by offering a recommendation, he shares with the court the responsibility for avoiding unwarranted sentence disparities among defendants with similar backgrounds who have been found guilty of similar conduct.

(a) **Seriousness of defendant's conduct**—The seriousness of the defendant's conduct should be assessed not only with reference to the type of crime committed and the penalty provided for the offense in the abstract, but also in terms of factors peculiar to the commission of the offense in the particular case. Among such factors might be circumstances attending the commission of the offense that aggravate or mitigate its seriousness, such as: the age of the victim; the number of victims; the defendant's motivation and culpability; the nature and degree of harm caused or threatened by the offense, including the reparability or irreparability of any damage caused; the extent to which the defendant profited from the offense; the degree to which the offense involved a breach of special trust, particularly public trust; the complicity of the victim; and public concern generated by the offense.

(b) **Defendant's background and personal circumstances**—In formulating a sentence recommendation, the attorney for the government should always consider the defendant's criminal history, the degree of his dependence on criminal activity for a livelihood, and his timely cooperation in the investigation or prosecution of others. Beyond these factors, it may also be appropriate to consider the defendant's age, education, mental and physical condition (including drug dependence), vocational skills, employment record, family ties and responsibilities, roots in the community, remorse or contrition, and willingness to assume responsibility for his conduct.

(c) **Applicable sentencing purposes**—The attorney for the government should consider the seriousness of the defendant's conduct, and his background and personal circumstances, in the light of the four purposes or objectives of the imposition of criminal sanctions: (1) to deter the defendant and others from committing crime; (2) to protect the public from further offenses by the defendant; (3) to assure just punishment for the defendant's conduct; and (4) to promote the correction and rehabilitation of the defendant. The

attorney for the government should recognize that not all of these objectives may be relevant in every case and that, for a particular offense committed by a particular offender, one of the purposes, or a combination of purposes, may be of overriding importance. For example, in the case of a young first offender who commits a non-violent offense, the primary or sole purpose of sentencing might be rehabilitation. On the other hand, the primary purpose of sentencing a repeat violent offender might be to protect the public, and the perpetrator of a massive fraud might be sentenced primarily to deter others from engaging in similar conduct.

(d) **Relationship between sentence and purpose of sentencing**—Having in mind the purpose or purposes sought to be achieved by sentencing in a particular case, the attorney for the government should consider the available sentencing alternatives in terms of the extent to which they are likely to serve such purpose or purposes. For example, if the prosecutor believes that the primary objective of the sentence should be to encourage the rehabilitation of the defendant, he may conclude that a term of imprisonment would not be appropriate. If, on the other hand, the primary purpose of the sentence is to incapacitate the defendant from committing additional crimes, then a substantial term of imprisonment might be warranted. And, in a case involving neither the need for rehabilitation nor for protection of the public from further criminal acts by the defendant, the objectives of deterrence and just punishment might best be achieved by a substantial fine, with or without a short period of imprisonment.

5. The attorney for the government should disclose to defense counsel, reasonably in advance of the sentencing hearing, any factual material not reflected in the presentence investigation report that he intends to bring to the attention of the court.

Comment

Due process requires that the sentence in a criminal case be based on accurate information. See, e.g., *Moore v. United States*, 571 F.2d 179, 182-184 (3rd Cir. 1978). Accordingly, the defense should have access to all material relied upon by the sentencing judge, including memoranda from the prosecution (to the extent that considerations of informant safety permit), as well as sufficient time to review such material and an opportunity to present any refutation that can be mustered. See, e.g., *United States v. Perri*, 513 F.2d 572, 575 (9th Cir. 1975); *United States v. Rosner*, 485 F.2d 1213, 1229-30 (2d Cir.

1973), *cert. denied*, 417 U.S. 950 (1974); *United States v. Robin*, 545 F.2d 775 (2d Cir. 1976). Paragraph 5 is intended to facilitate satisfaction of these requirements by providing the defendant with notice of information not contained in the presentence report that the government plans to bring to the attention of the sentencing court.

6. If the sentence imposed includes a term of confinement that subjects the defendant to the jurisdiction of the Parole Commission, the attorney for the government should:

- (a) forward to the Commission information necessary to ensure the proper application of the Commission's parole guidelines; and
- (b) make a recommendation with respect to parole if required to do so by the terms of a plea agreement, or if there exist particularly aggravating or mitigating circumstances that justify a period of confinement different from that recommended in the parole guidelines.

Comment

The Parole Commission has authority to set release dates for federal prisoners who have been sentenced to a term of imprisonment for more than one year or who have been incarcerated pursuant to the Narcotic Addict Rehabilitation Act (18 U.S.C. 4251 *et seq.*) or the Youth Corrections Act (18 U.S.C. 5005 *et seq.*). The Commission's determination in a particular case is made with reference to parole guidelines that "indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics." 28 C.F.R. 2.20(b).

The information necessary to determine a prisoner's offense and offender characteristics may be available to the Commission through the presentence report. In some cases there may be no presentence report, however. In other cases the report may not reflect all the facts about the offender or the offense that the prosecutor believes are necessary to the informed application of the Parole Commission's guidelines. For example, the report may not contain an adequate description of the defendant's cooperation with the government, or it may omit information relating to charges that have been or will be dropped as part of a plea agreement. There may also be cases in which the attorney for the government does not have

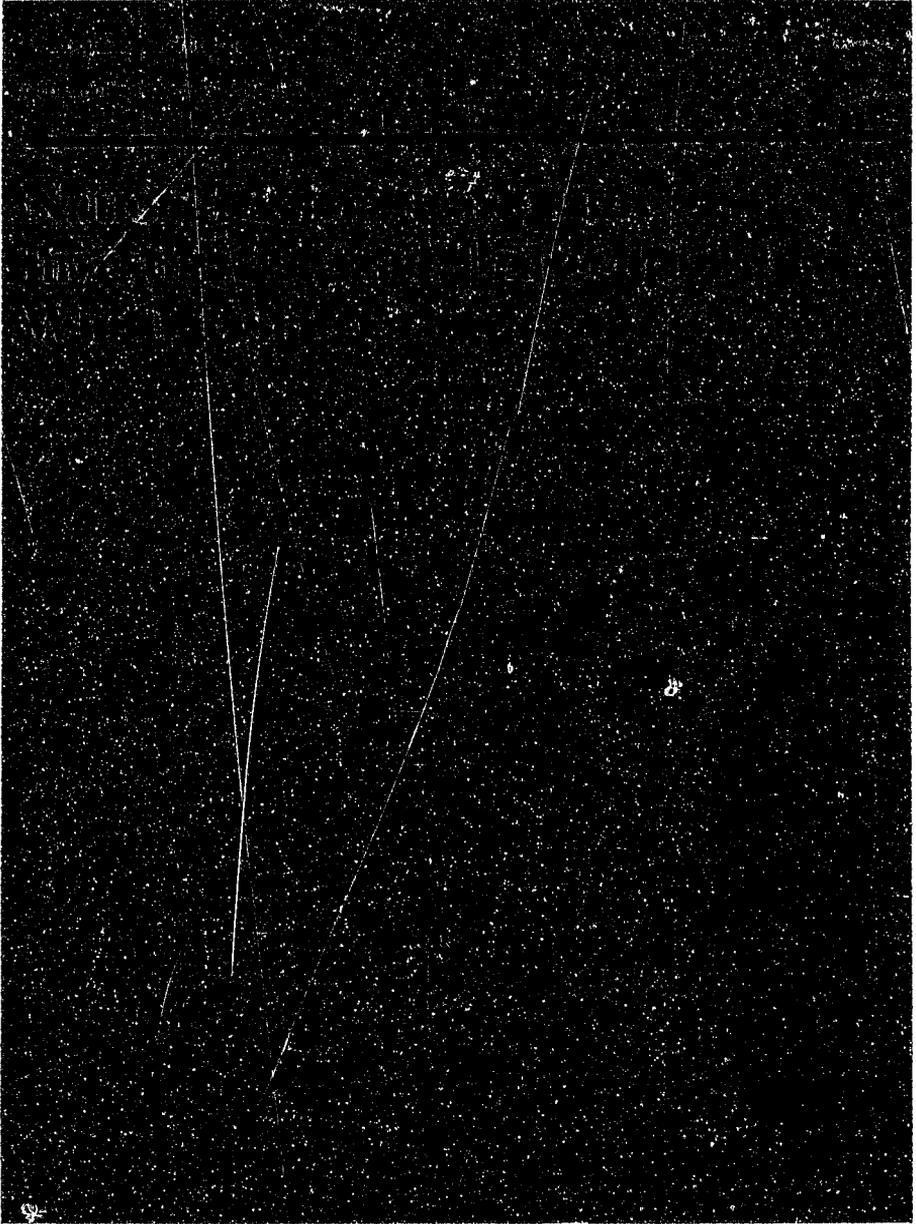
access to the presentence report and, consequently, cannot judge its adequacy in terms of the Parole Commission's requirements. Moreover, the prosecutor should bear in mind that the Parole Commission will not know what took place at the sentencing hearing unless one of the parties provides it with a transcript of the proceedings. Finally, if the defendant is released on bail pending appeal, the attorney for the government should bear in mind the possibility that the defendant's post-sentence conduct may be pertinent to the Parole Commission's determination.

To ensure that the Parole Commission has all the information it needs, the attorney for the government should forward to the Chief Executive Officer of the institution to which the defendant will be committed U.S.A. Form 792 ("Report on Convicted Prisoner"), setting forth such information as he believes is necessary to ensure the proper application of the parole guidelines (see U.S. Attorney's Manual, 9-34.220, 9-34.221). The Form 792 submission should be made promptly after the sentencing hearing, and may be supplemented thereafter if necessary, since the Commission's initial parole determination ordinarily will be made within a short time after the defendant's incarceration.

In supplying information to the Parole Commission, the prosecutor should bear in mind that the Commission, like the sentencing judge, is permitted to consider unadjudicated charges in assessing the seriousness of an individual's criminal behavior. *Billiteri v. United States Board of Parole*, 541 F.2d 938, 944-945 (2d Cir. 1976). Accordingly, the information supplied need not be related solely to the offense or offenses for which the person was convicted, but should reflect the full range and seriousness of the conduct that could have been charged and proved. On the other hand, Commission regulations require that the information it considers meet "a threshold test of reliability." 44 Fed. Reg. 12692-93 (March 8, 1979). Thus, the same standard should be applied to Form 792 submissions as is applied to factual presentations at judicial sentencing hearings and, with respect to contested facts, there should be included a summary of corroborating information sufficient to overcome a denial by the prisoner.

Recommendations by the prosecutor concerning parole should be made when, as a part of a plea agreement, the prosecutor has agreed to make a recommendation, or when the prosecutor concludes, preferably after consultation with his supervisor, that the period of confinement recommended in the parole guidelines would be inappropriate in light of particularly aggravating or mitigating circumstances of the case. In the latter situation, the recommendation should be accompanied by a statement of the aggravating or mitigating circumstances and, if the severity rating of the criminal conduct involved is at issue, should specify the severity rating that the prosecutor believes to be applicable.

APPENDIX 4



EXECUTIVE SUMMARY

This report describes the work of the United States Department of Justice during the period October 1979 through June 1980 in connection with the formulation of national white collar crime law enforcement priorities. Defining such priorities has been a matter of considerable interest within the Department for years. The Attorney General's order establishing the Economic Crime Enforcement Units (A.G. Order No. 817-79) directed the Assistant Attorney General in charge of the Criminal Division to develop proposals for national white collar crime law enforcement priorities to be submitted for approval to the Deputy Attorney General and the Attorney General. In furtherance of the Attorney General's order, the Criminal Division prepared and submitted an extensive report and specific recommendations on white collar crime law enforcement priorities, which serve as the basis for this report.

The national white collar crime law enforcement priorities, and the district priorities that will subsequently be established in a number of federal districts, constitute a major step forward in enhancing our efforts to combat white collar crime. They will serve several important purposes, including the following:

1. Improved coordination and allocation of limited federal investigative and prosecutive resources on both the national and district level;
2. Better coordination of federal, state and local law enforcement efforts directed toward white collar crime;
3. More comprehensive and timely identification of trends or patterns in white collar crime requiring legislative initiatives or special emphasis in the areas of prevention, detection, investigation or prosecution;
4. Expeditious development of new and more effective investigative techniques, prosecution practices, and training programs in white collar crime law enforcement;
5. Furtherance of consistency and equal justice in federal law enforcement, in conjunction with prosecutive guidelines for United States Attorneys; and
6. Improved communication between and among law enforcement officials, Congress, the business community and members of the general public concerning white collar crime problems, their impact on society, and appropriate public and private measures for dealing with them.

To supplement existing information with more current and more comprehensive data on white collar crime and corruption activity, the Criminal Division designed a lengthy White Collar Crime Information Request that was distributed to the major federal agencies and departments involved in the investigation and prosecution of white collar crime. The same Information Request was distributed to Department of Justice personnel directly involved in white collar crime matters, including the existing Economic Crime Unit Specialists in the field, Special Fraud or Corruption Units in United States Attorney offices, the Immigration and Naturalization Service, the Tax Division, and the Land and Natural Resources Division. All told, 240 respondents in 21 federal departments and agencies provided information concerning known or suspected white collar crime activity in every region of the country, along with their respective views on which deserved to have priority status. The FBI provided information concerning white collar crime activity from a Fiscal Year 1979 survey of all its field offices. The Bureau updated that information with additional data

collected in a February 1980 survey. Most of the information serving as the basis for this report was provided during the months of January and February 1980.

In analyzing the massive amount of information gathered, the Criminal Division assumed the following to be the broad, underlying objectives of federal law enforcement efforts directed at combatting white collar crime (no ranking implied):

1. The protection and enhancement of the integrity of governmental institutions and processes;
2. The protection and enhancement of the integrity of the free enterprise system, the competitive marketplace and the nation's economy generally;
3. The protection and enhancement of the well-being of the individual citizen, including his or her health, safety, physical environment and opportunities to exercise political, economic and other fundamental rights; and
4. The enhancement of the public's respect for and compliance with the nation's laws generally.

In assessing the significance of various white collar crime problems and in defining white collar crime priorities, the following attributes of each criminal activity were studied:

1. Its scope and frequency;
2. The immediate victims and their losses;
3. The secondary victims and their losses;
4. The individuals and institutions involved as perpetrators and accomplices;
5. Any connection with organized crime or other criminal activity¹;
6. The availability and feasibility of prevention or self-protection by the victims;
7. The need for federal law enforcement involvement;
8. Problems and obstacles confronting increased federal emphasis;
9. The benefits and costs likely to result from increased federal emphasis; and
10. Any other important factors.

With the above-mentioned objectives and decision-making factors in mind, white collar crime activity was divided into seven broad categories. These categories reflect the different, broad groups of institutions and individuals victimized by white collar crime: 1) Government institutions and

¹The participation of traditional organized crime figures in white collar crime matters may make those matters organized crime law enforcement priorities, regardless of the presence or absence of other attributes; some white collar crime matters, however, involve non-traditional organized crime or other "organized" criminal activity. The presence of this type of activity is a factor to be considered in determining the relative significance of white collar crime problems.

processes; 2) Government treasuries and taxpayers; 3) Private institutions; 4) Consumers; 5) Investors; 6) Employees; and 7) Members of the public generally.

Based on the factors listed above and all information available, and after consultation with each of the federal departments and agencies involved, the following criminal offenses within each major category of white collar crime are designated as national law enforcement priorities:

NATIONAL WHITE COLLAR CRIME PRIORITIES

A. Crimes Against Federal, State or Local Government By Public Officials

Federal corruption -- procurement²

Federal corruption -- programs²

Federal corruption -- law enforcement²

Federal corruption - other²

State corruption -- major officials³; other employees where corruption is systemic

Local corruption -- major officials⁴; other employees where corruption is systemic

B. Crimes Against the Government By Private Citizens

Federal procurement fraud, non-corruption -- \$25,000 or more in aggregate losses

Federal program fraud, non-corruption -- \$25,000 or more in aggregate losses

Counterfeiting of U.S. currency or securities

Customs violations - duty violations, \$25,000 or more in tax revenue losses, one transaction, or \$50,000 or more in tax revenue losses, multiple transactions; currency violations, \$25,000 or more in currency, one transaction, or \$50,000 or more in currency, multiple transactions

Tax violations - major federal tax violations⁵

Trafficking in contraband cigarettes -- \$100,000 or more in aggregate tax revenue losses

² For some purposes, this item can be consolidated with other federal corruption items into one "federal corruption" category, however, it should remain as a separate item for record-keeping purposes.

³ Major officials = governors, legislators, department or agency heads, court officials, law enforcement officials at policymaking or managerial level, and their staffs.

⁴ Major officials = mayors, city council members or equivalents, city managers or equivalents, department or agency heads, court officials, law enforcement officials at policymaking or managerial level, and their staffs.

⁵ Priority matters are identified on a case-by-case basis by the Tax Division, in collaboration with the Internal Revenue Service, taking into account the amount of tax revenue losses and the adverse impact of the violation on the federal tax system.

C. Crimes Against Business

Insurance fraud, including arson for profit -- \$250,000 or more in aggregate losses or two or more incidents perpetrated by the same person or persons

Advance fee schemes -- \$100,000 or more in aggregate losses or 10 or more victims

Bankruptcy fraud -- \$100,000 or more in aggregate losses

Other major crimes against business -- fraud involving \$100,000 or more in aggregate losses; labor racketeering; copyright violations involving manufacturers or distributors, distribution in three or more states or countries, and \$500,000 or more in aggregate losses

Bank fraud and embezzlement -- \$100,000 or more in aggregate losses

D. Crimes Against Consumers

Consumer fraud -- \$100,000 or more in aggregate losses or 25 or more victims

Antitrust violations -- price fixing, including resale price maintenance and other schemes affecting the food, energy, transportation, housing, clothing and health care industries; collusive activities involving public works projects or public service contracts -- \$1,000,000 or more in commerce affected

Energy pricing and related fraud -- \$500,000 or more in costs reported or prices charged for energy products

E. Crimes Against Investors

Securities fraud -- \$100,000 or more in aggregate losses

Commodities fraud -- \$100,000 or more in aggregate losses

Land, real estate and other investment frauds -- \$100,000 or more in aggregate losses

F. Crimes Against Employees

Union official corruption -- embezzlement of union pension, welfare or other benefit funds involving \$25,000 or more in aggregate losses; bribery or kickbacks to union officials involving \$5,000 or more in the aggregate

Life-endangering⁶ health and safety violations: OSHA, Mine Safety

⁶Life-endangering violations include business practices and other acts or products that are likely or may be reasonably foreseen to cause death or serious bodily injury to human beings (including a human fetus); serious bodily injury means an impairment of physical condition, including physical pain that a) creates a substantial risk of death or b) causes permanent disfigurement, unconsciousness, extreme pain or permanent or protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

G. Crimes Affecting the Health and Safety of the General Public

Discharge of toxic, hazardous or carcinogenic waste in excess of federal statutory or regulatory limits

Life-endangering⁶ violations of health and safety provisions and regulations pertaining to food, drugs, consumer products, nuclear power facilities and other federally regulated goods and facilities

The national white collar crime law enforcement priorities will be successful in achieving these and other objectives only if the members of the federal law enforcement community modify their respective goals and procedures to encourage implementation of these priorities and to allow periodic evaluation of progress in carrying out those priorities.

The following federal agencies and individuals will be primarily affected by the white collar crime priorities:

1. United States Attorneys;
2. Other Department of Justice Attorneys including attorneys in the Criminal Division, the Antitrust Division, the Tax Division, and the Land and Natural Resources Division;
3. Federal Bureau of Investigation;
4. Other major federal investigative agencies, including the Bureau of Alcohol, Tobacco and Firearms, the Customs Service, the Postal Inspection Service, the Secret Service and the Securities and Exchange Commission; and
5. Inspectors General and equivalents.

The Deputy Attorney General, with the assistance of the Criminal Division and the Executive Office for United States Attorneys, will supervise the implementation of the national law enforcement priorities. Each of the above-listed agencies will be asked to report both current and future activity with respect to priority areas along a number of different dimensions, so that the Department can periodically assess the impact of the national and district priorities.

The information the Department collected concerning white collar crime activity will be updated periodically so that national and district priorities can be reevaluated. This will be accomplished through an Information Update Request distributed to investigative agencies and others annually.

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NATIONAL PRIORITIES FOR THE INVESTIGATION AND PROSECUTION OF WHITE COLLAR CRIME

This report describes the work of the United States Department of Justice during the period October 1979 through June 1980 in connection with the formulation of national priorities for the investigation and prosecution of white collar crime. The first part of this report briefly reviews the background for this project and then discusses the information-gathering effort that took place in order to provide a comprehensive view of current white collar crime problems. The second part of the report describes the analytical framework used by the Department in reviewing the information gathered and in formulating national law enforcement priorities. National priorities are identified and discussed in the third part. The final section of the report discusses the purposes to be served by national and district priorities and procedures for implementing those priorities and periodically evaluating their impact.

The focus of this report is national white collar crime priorities. The next phase of this project, which is already underway, involves the formulation of district white collar crime priorities in a number of federal districts. In this report, district priorities are discussed only to the extent they affect the implementation of national priorities. This report does not address all of the interesting aspects of white collar crime law enforcement. It is limited to those issues that appear to have the greatest impact on the problems at hand--defining, implementing and measuring the impact of national white collar crime law enforcement priorities.

I. BACKGROUND

A. Genesis of the Project

The idea of having law enforcement priorities in the white collar crime area has been a matter of interest and some discussion within the Department for years. Focusing one's limited resources on those activities perceived to have the greatest potential for social benefits is a fundamental operating principle for any governmental entity. Interest in effectively targeting resources heightens as those resources become more scarce relative to the demands placed upon them.

Increased interest in white collar crime both within and outside the Department has produced the following:

1. An appreciation of the immensity of the problem and the practically limitless nature of the demands it could place on law enforcement resources;
2. Increased expectations and competing demands within and among Congress, the general public and the law enforcement community with respect to the use of law enforcement resources against various types of white collar crime; and
3. Increased demands for accountability concerning the use of law enforcement resources against white collar crime--how resources are being deployed, why, and with what results.

All of the above make white collar crime law enforcement priorities a matter of great urgency and importance.

In creating the Economic Crime Enforcement Units, Attorney General Griffin B. Bell recognized the importance of white collar crime law enforcement priorities. His order states, in pertinent part:

"The national, regional and district priorities in the broad areas of fraud and corruption shall be approved and set by the Deputy Attorney General. The Assistant Attorney General in charge of the Criminal Division . . . shall develop proposals for national and regional priorities. Each United States Attorney shall select specific priorities within the national policy that are particular to their federal districts with the concurrence of the Assistant Attorney General in charge of the Criminal Division." (Paragraph 6a., A.G. Order No. 817-79)

In furtherance of this Order, the Criminal Division, in particular the Office of Policy and Management Analysis, the Office of Economic Crime Enforcement, and the Fraud, Public Integrity, and General Litigation and Legal Advice Sections, respectively, designed an Information Request for gathering information concerning white collar crime activity on a nationwide basis from all relevant sources. This information would allow national white collar crime enforcement priorities to be defined in a reasonable, workable and informed manner. The first step involved deciding what kind of information from what sources was needed and then creating a vehicle for the collection of that information.

B. Information-Gathering Process

During November and December of 1979, an Information Request was prepared and distributed to the major federal investigative agencies and departments involved in the investigation and prosecution of white collar crime. The same Information Request was distributed to Department of Justice personnel directly involved in white collar crime matters, including the existing Economic Crime Unit Specialists in the field, Special Fraud or Corruption Units in United States Attorneys' offices, and other parts of the Department involved in or affected by white collar crime. The Federal Bureau of Investigation provided information from a recently conducted survey concerning white collar crime activity in lieu of sending the Department's Information Request to each FBI field office.

The agencies and offices providing information to the Division with respect to white collar crime problem areas are listed on the following page. The Information Requests were distributed in late December 1979. Responses were received during January and February 1980.

With the assistance of personnel in the Systems Design and Development Staff of the Justice Management Division, the data contained in the Information Requests were coded and entered into computer storage so that they could be sorted and retrieved in usable form. Existing computer programs were adapted to meet the white collar crime priorities project's needs. The data storage and retrieval system used for this project is the same as that used for litigation support, including grand jury and other sensitive material, and is subject to the same security protections and access limitations.

C. Nature of the Information

The Information Request was divided into three parts. The first part asked each respondent to identify the types of white collar crime activity occurring within his or her geographic and substantive areas of responsibility and to indicate the frequency of occurrence. The second part asked each respondent to consider the white collar crime occurring in his or her area and, taking

TABLE 1
Sources of Information

<u>Agency</u>	<u>Number of Responses/Source</u>
1. Bureau of Alcohol, Tobacco and Firearms	29/District offices
2. Customs Service	37/District offices
3. Postal Inspection Service	5/Regional offices
4. Secret Service	53/Field offices
5. Securities and Exchange Commission	10/Headquarters and nine regional offices
6. Department of Agriculture	1/IG Office
7. Department of Commerce	1/IG Office
8. Department of Defense	3/DOD Investigations Office, Air Force Investigations Office, Navy Investigative Office
9. Department of Energy	1/IG Office
10. Department of HEW	1/IG Office
11. Department of HUD	10/Regional IG Offices
12. Department of Interior	1/IG Office
13. Department of Labor	1/IG Office
14. Department of Transportation	1/IG Office
15. EPA	1/IG Office
16. GSA	1/IG Office
17. NASA	1/IG Office
18. SBA	1/IG Office
19. VA	1/IG Office
20. Economic Crime Units/Special Fraud or Corruption Units	20/ECU Specialists or Unit chiefs
21. FBI	58/Field offices
22. Other Department of Justice	
INS	1
Tax Division	1
Land and Natural Resources Division	1
Total Number of Responses	240

into account a number of specified factors,⁷ to list in order of importance the top five to ten illegal activities deserving investigative or prosecutive emphasis. For each illegal activity so identified, the respondents were asked to provide the following information:

1. The nature of the illegal scheme;
2. Where the scheme operates;
3. Primary participants in the scheme;
4. Types of businesses or professions involved as perpetrators;
5. Government or political officials involved as perpetrators or knowing accomplices, if any;

⁷The factors specified were the following: 1. The total amount of direct dollar or property losses; 2. The number of victims involved; 3. Any special impact on individual victims; 4. Impact on the respect for and trust of public institutions and officials; 5. The ability of potential victims to protect themselves; 6. Impact, if any, beyond the direct victims involved; and 7. The history and circumstances of the suspected offender, including connection with other criminal activity.

6. Type of public corruption involved, if any;
7. Number and type of victims and losses;
8. Profits or benefits to perpetrators;
9. Prior enforcement experience with respect to the illegal activity;
10. Level of state and local enforcement activity targeted against the illegal activity;
11. Susceptibility to various kinds of investigative and detection techniques; and
12. Effect of increased investigation and prosecution on likelihood of conviction, deterrence, and other kinds of illegal activity.

Over 200 different types of white collar crime activity were identified as priority or problem areas by respondents. Over 1,600 descriptions of the priority areas identified, providing some or all of the information listed above, were received.

The third part of the Information Request asked each respondent to list three things: 1) the industries exerting substantial influence over the economy in the respondent's region of the country, indicating those involved in or affected by illegal activity; 2) the five major industries supplying goods or services to governmental entities in the respondent's region; and 3) any areas of white collar crime deserving less investigative and prosecutive emphasis.

Each respondent was asked to describe not merely ongoing areas of investigation, but also other problem areas or areas of potential investigation and prosecution deserving attention. The Information Request thus required that each respondent use his or her professional judgment regarding the relative magnitude and importance of white collar crime problems.

The FBI agreed to supplement the information contained in its earlier white collar crime survey by asking each of its field offices to identify the most significant white collar crime problems in their respective areas as of February 1980. The results of that supplemental survey are summarized in Appendix C and discussed in various parts of this report.

Several comments regarding the information collected during this project are in order. First, it should be noted that the Inspector General Office of the Community Services Administration chose not to participate in the information-collection process. The Internal Revenue Service was not asked to provide information, in light of existing sensitivity regarding the tax information collected by that agency. Information from public reports by these agencies and from other sources has been collected to minimize gaps in the information base.

Secondly, to the extent that agency responses only mirror the current case loads of those agencies, there is the potential danger that new, developing white collar crime problems were overlooked or underemphasized. Enforcement strategies based on such information would thus be more reactive and less forward-looking than desirable. It is difficult to gauge the character of the collected information in this regard, but to minimize the danger of being purely reactive, the information has been and will continue to be supplemented with the judgment of Criminal Division, FBI and other Department personnel regarding trends and new developments in white collar crime. Information identifying potential problem areas has been gathered from other sources as well, including the National District Attorneys Association and the news media.

In sum, the information collected during this project is by no means perfect or totally comprehensive. However, it is by far the most comprehensive information the Department has ever collected concerning white collar crime. It offers new insights into the magnitude, *modus operandi* and interrelationships of various types of white collar crime. While the information gathered can be improved upon in the future, it is more than sufficient to make reasonable and informed judgments concerning white collar crime law enforcement priorities.

II. AN ANALYTICAL FRAMEWORK FOR DEFINING PRIORITIES

The choice of national white collar crime law enforcement priorities involves conceptual, strategic and, most importantly, policy judgments. In the following discussion we attempt to make as explicit as possible the steps taken in analyzing the data at our disposal and the alternatives considered in defining national priorities. We define the criteria we think should be applied in defining white collar crime priorities. Different conclusions can be reached by using other sets of criteria or by weighting the same criteria differently. We recognize, and indeed emphasize, that priority choices are not the inevitable, objective result of pure reason and logic. They are rather the result of informed, subjective judgments based on a systematic analysis of known facts and best estimates.

A. Definitional Considerations

One threshold question that may be asked is how we define "white collar crime" for purposes of determining national priorities. While that question is obviously relevant, and has important ramifications for this and other white collar crime initiatives, it need not be the subject of controversy or extended discussion in the context of this project. For purposes of gathering and analyzing information concerning white collar crime activity, the Criminal Division implicitly accepted the working definition of white collar crime endorsed by the Attorney General's White-Collar Crime Committee in early 1977:

"White-Collar offenses shall constitute those classes of non-violent illegal activities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention."

The scope of this project is also consistent with the FBI's working definition of white collar crime.⁸

The more important question to be considered is how white collar crime law enforcement priorities should be defined. White collar crime offenses are defined in the law enforcement community and elsewhere in a number of ways: 1) by the *victim* (e.g., fraud against business, fraud against the government); 2) by the alleged *offender* (e.g., corruption of state elected officials, fraud by federal program beneficiaries); 3) by the criminal *statute* involved (e.g., wire fraud, Hobbs Act violations); 4) by the *type of activity* or transaction involved (e.g., advance fee schemes, bankruptcy fraud); or 5) by some combination of the above (e.g., fraud against the government by local program administrators involving CETA funds).

The white collar crime offenses described by respondents to the Department's Information Request were defined in different ways. The offenses involving government programs or procurement were generally described by citing the program or government agency involved (e.g., misuse of SBA loans or Department of Defense procurement fraud), but not always (e.g., overbilling of U.S. government by construction contractors). The offenses involving corruption were generally defined according to the position of the alleged offender and the type of corruption (e.g., bribery of state alcoholic beverage control officials), but not always (e.g., Hobbs Act corruption activity). Offenses victimizing investors were generally described by the nature of the scheme (e.g., Ponzi

⁸ "Those illegal acts characterized by deceit, concealment, violation of trust, and not dependent upon the application or threat of physical force or violence. They are committed to obtain money, property, or services; or to avoid the payment or loss of money, property, or services; or to secure personal or business advantage." (See GAO Report, *Resources Devoted by the Department of Justice to Combat White-Collar Crime and Public Corruption*, March 19, 1979, App. I, p.1.)

schemes or commodities fraud), while other offenses were described by the statute being violated (e.g., currency export violations or Securities Act violations).

Upon analysis, we conclude that for purposes of defining national law enforcement priorities, most of the ways in which white collar crime offenses have been traditionally defined by law enforcement agencies and the public are not workable. The traditional descriptions serve as useful, and necessary, building blocks for analysis. However, they are, for the most part, not useful as expressions of law enforcement priorities, as explained in Section D below.

B. Fundamental Law Enforcement Objectives and Categories of White Collar Crime

There are certain fundamental objectives that seem to underlie all of our efforts in the field of white collar crime law enforcement. While these objectives can be defined in a number of ways, for purposes of this report we define them as follows:

1. To protect and enhance the integrity of governmental institutions and processes;
2. To protect and enhance the integrity of the free enterprise system, the competitive marketplace and the nation's economy generally;
3. To protect and enhance the well-being of the individual citizen, including his or her health, safety, physical environment and opportunities to exercise political, economic and other fundamental rights; and
4. To enhance public respect for and compliance with the nation's laws generally.

These broad objectives suggest a useful way of grouping white collar offenses for purposes of determining priorities. They force us to think in terms of the type of harm inflicted upon society by white collar crime. Thinking in these terms, white collar crime activity can be grouped into the following categories:

- A. Criminal Activity Threatening the Integrity of Government Institutions and Processes
- B. Criminal Activity Defrauding the Government, Reducing the Effectiveness of Government Programs and Resulting in Higher Government and Taxpayer Costs
- C. Criminal Activity Victimizing Business Enterprises
- D. Criminal Activity Victimizing Consumers
- E. Criminal Activity Victimizing Investors and the Integrity of the Marketplace
- F. Criminal Activity Victimizing Employees
- G. Criminal Activity Threatening the Health and Safety of the General Public

The discussion of national priorities in the next part of this report is organized according to these categories.

While the above-stated law enforcement objectives are helpful in grouping white collar crimes into relatively discrete categories, they are of limited use in choosing specific law enforcement priorities. The direct impact of specific types of white collar crime activities on such broad objectives is difficult to measure, due to their general nature.

More specific decision-making criteria are needed in order to analyze the various types of white collar crime and to make judgments about their relative significance. These criteria and their usefulness in choosing priorities are discussed below.

C. Criteria for Choosing Priorities

In choosing and defining white collar crime priorities, one must have in mind a set of criteria which, when applied to specific kinds of illegal activity, make some more significant or worthy of attention than others. Discussions with Department personnel and others indicate that a number of questions are generally raised, explicitly or implicitly, when one is asked to make judgments about the relative importance of white collar crime activities. These questions revolve around the victims, losses, offenders, complexity and other aspects of the illegal activity. They include the following:

1. Who are the victims, both individuals and institutions? What are their losses, both tangible and intangible? Is there especially severe impact on some? Are the victims in any sense culpable? Could they have adequately protected themselves before or after the crime?
2. Who are the alleged offenders? Are they or have they been involved in other illegal activity? Do they occupy positions of trust of either a public or private nature? Are the proceeds of the illegal activity being used to finance or promote other types of crime?
3. What is the nature of the illegal scheme? Does it involve activities that are especially difficult to detect and prevent? Is the fraud, deceit or corruption involved particularly offensive or heinous? Is it likely to grow if left unhindered?
4. Is federal law enforcement involvement necessary and appropriate? Is there federal jurisdiction over the crime? What is the level and effectiveness of state and local law enforcement activity? What impact would increased federal involvement have on the conviction of offenders, the deterrence of potential offenders, and the occurrence of other kinds of criminal activity?

We have attempted to translate the concerns implicit in these and other questions into meaningful criteria that can be used for analytical and decisionmaking purposes. These criteria are as follows:

1. The pervasiveness of the illegal activity -- how widespread is it and how frequently does it occur?
2. The immediate victims and their losses -- how many and what types of victims? tangible and intangible losses to individual and institutional victims? distribution of the losses (widely spread or concentrated on certain victims)? impact on integrity of public and private institutions?
3. The indirect or secondary victims and their losses -- what impact beyond the immediate victims? tangible and intangible losses to individual and institutional victims? distribution of the losses? impact on integrity of public and private institutions?
4. Individuals and institutions involved as perpetrators or accomplices -- who are they? do they occupy special positions of trust? do they have a history of criminal involvement?
5. Connection with organized crime or other criminal activity -- is there any indication that organized criminal groups or other criminal activity is associated with the illegal activity? what is the relationship?

6. Availability and feasibility of prevention or self-protection by victims - could the illegal activity be minimized or prevented by self-protection efforts of its victims? what is the current level of self-protection efforts? is the illegal activity susceptible to civil recovery or other civil action by victims?
7. Need for federal law enforcement involvement - is the illegal activity primarily or solely within federal jurisdiction? what is the level and effectiveness of state and local law enforcement activity addressed to this illegal activity? other reasons for federal emphasis?
8. Problems and obstacles confronting increased emphasis - are there problems, such as lack of investigative/prosecutive expertise, that would hinder increased law enforcement efforts? are there jurisdictional problems among federal agencies that might interfere? what organizational goals and procedures would have to be changed to address this problem more vigorously?
9. Benefits and costs resulting from increased federal emphasis - what kind of resources would be required to address the problem effectively? what benefits would flow from increased federal involvement both with respect to the particular illegal activity in question and others, e.g., increased public awareness, deterrence, knowledge regarding other types of crime? what opportunity costs are involved?
10. Other important factors - are there other legitimate reasons for making or not making this a priority area? intense Congressional or public interest? opportunity to consolidate or make more efficient federal law enforcement efforts?

Each of these criteria needs to be considered in choosing national white collar crime law enforcement priorities. They are each addressed, to the extent our information allows it, in our discussion and analysis of potential priorities.

D. Describing Law Enforcement Priorities

The above criteria indicate why traditional descriptions of white collar crime offenses do not necessarily suffice as descriptions of priorities, as mentioned earlier. We are seldom interested in focusing on a particular kind of illegal activity simply because of the government program involved, or because of the type of suspected offender, or because of the particular type of fraud or deceit involved. In most cases, we are interested in more - the magnitude and impact of the crime (measured geographically, monetarily or otherwise), the number and perhaps types of victims, and/or connection with other criminal activity. This suggests that in defining law enforcement priorities, we should consider adding qualifying terms to the more traditional white collar crime descriptions.

The FBI has partially accomplished this in defining its white collar crime priorities. For example, frauds against the major federal departments and agencies involving government officials or losses in excess of \$25,000 are priority matters; other frauds against the government are not.⁹ Interstate transportation of stolen securities or negotiable instruments worth \$50,000 or more is a priority matter; interstate transportation of the same items valued at less than \$50,000 is not a priority matter.¹⁰ Copyright matters involving manufacturers and distributors of sound recordings

⁹ See Appendix A, describing the FBI's white collar crime classifications.

¹⁰ *Ibid.*

or motion pictures are priorities; other copyright matters are not.¹¹ Domestic or international fraud by wire involving in excess of \$25,000 or 10 or more victims is a priority; other frauds by wire are not.¹²

The FBI's priority descriptions described above are a step in the right direction, but additional qualifying terms seem appropriate for other kinds of white collar crime. Such priority descriptions are particularly important when the implementation and evaluation of priorities are considered. Priorities defined simply as "CETA fraud" or "Offenses involving Hobbs Act violations" do not send the proper signals to investigators and prosecutors and would not effectively target resources, unless we care about all such offenses regardless of their magnitude, their victims, or other attributes. The types of white collar crime that deserve such across-the-board emphasis are, in our view, very limited.

E. Grouping the Data for Analysis

The Department's Information Request contained a suggestive list of types of white collar crime, indicating the specificity with which the respondents should identify priority or problem areas. In answering the Request, the respondents added specific types of offenses to the suggestive list, as necessary, in order to describe illegal activities occurring within their respective areas and not on the list. The result was an extended "Master List" of white collar crimes, containing over 300 items (see Appendix B).

In order to analyze the information provided, the types of white collar crime described by the respondents had to be grouped into packages that seemed to make sense. This packaging of the data was done initially by members of the Criminal Division's Office of Policy and Management Analysis. When the packages of information were analyzed by members of the relevant sections of the Criminal Division, some crimes were re-grouped in order to make analysis more manageable or meaningful.

The result was approximately 50 groups of crime, with the contents of each group summarized on a two to three page "Summary Fact Sheet". In addition to the Summary Fact Sheets, other information, including a description of the respondents identifying that type of illegal activity as a priority area and other relevant material, was collected for each illegal activity. These materials form the basis for the analysis and the conclusions contained in this report.

¹¹ *Ibid.*

¹² *Ibid.*

III. ANALYSIS AND RECOMMENDATIONS

Before analyzing crimes within various categories, some overview of the information the Department has gathered is appropriate. The figures given below, however, should be viewed with caution. The first table (Table 2) ranks various types of white collar crime according to how many respondents identified each crime as a problem or priority area. The table also shows how many different agencies identified each crime as a priority area.

In reviewing these numbers, one should bear in mind the distribution of those responding to the Information Request. Some investigative agencies sent the Request to all district or field offices (Secret Service, Customs, ATF), while others sent it to regional offices (SEC, Postal Inspection) or responded from headquarters only (most Inspectors General). Thus, if some types of illegal activity have a high number of respondents identifying them as priority areas, it may be partially attributable to the fact that the agency with jurisdiction over that activity had a larger number of field offices providing responses to the Information Request. An illegal activity identified as a priority by only a few respondents may nevertheless be a problem of great magnitude, if, for example, those few respondents are Inspector General offices with nationwide responsibility and large programs to monitor.

Secondly, the information in Table 2 reflects the information contained in the FBI's FY 1979 surveys of its field offices. That information was of a somewhat different nature than that provided by respondents to the Division's Information Request and therefore some interpretation of the FBI surveys has been necessary in order to make the data comparable. The more recent survey of FBI field offices, asking for identification of top problem areas as of February 1980, is summarized in Table 3.

Thirdly, the grouping of information into types of illegal activity obviously required some judgment. For example, real estate frauds are separated from other types of investor fraud in the table below. Had they been consolidated, a larger category of "All Investor Fraud" would most likely have shown more agencies and more respondents reporting it as a priority area, and therefore would have appeared higher on the table.

In sum, the following table indicates in only a very general and rough way the relative frequency with which various types of illegal activity are viewed as deserving priority status. The numbers should be viewed with all of the above caveats in mind.

Some of the results of the February 1980 FBI survey are summarized below. A more complete summary is provided in Appendix C to this report. Essentially, the FBI field offices were asked to do two things: 1) rank four major *categories* or *program areas* of white collar crime--corruption, financial crimes, federal program fraud, and other white collar crime--in order of importance; and 2) list, within each of the four major program areas, the *three most significant problems* in their respective geographical areas of responsibility.

As shown in more detail in Appendix C, the 61 FBI field offices responding generally indicated corruption as their number one program area (54% ranked corruption as number 1), with financial crimes second (33%), federal program fraud third (11%) and other white collar crime last (2%). The specific illegal activities listed most frequently by the FBI field offices as their most significant problem areas are listed below.

The figures contained in Tables 2 and 3 are of some utility in giving a general sense of investigative agencies' and others' perceptions of major white collar crime problems. Much more important in determining priorities, however, is the specific information about each major type of

TABLE 2

Summary of Number of Agencies and Respondents Identifying Various Types of Illegal Activity as Priority/Problem Areas

<u>Code</u>	<u>Type of Illegal Activity</u>	<u>Number of Agencies Identifying As Priority/ Problem Area</u>	<u>Number of Respondents Identifying As Priority/ Problem Area*</u>
B01, B02, B06, B12, B24, others	Fraud and Corruption involving federal procurement	13	53
F05, F07, F08, others	Victimization of private institutions (including embezzlement, looting, espionage, extortion, but not bank fraud and embezzlement)	6	50
G02, G06	Customs violations (including currency, munitions control, other export/import violations)	4	45
F02, F03	Insurance fraud (including arson for profit)	4	42
E22, E25, E34, E47, others	Corruption of state and local officials	7	39
C07, C08, C12, others	Investor Fraud, other than real estate fraud (including commodities, precious metals, tax shelter fraud, and Ponzi schemes)	4	38
C01	Advance fee schemes	6	37
A06, A41 through A51	Fraud involving federal housing program funds (loans, grants and subsidies)	4	36
D02, D12	Embezzlement, misappropriation of union funds, including pension and other benefit funds	6	35
F04, F18	Bank fraud and embezzlement	5	34
C34, E02	Planned bankruptcies, bust outs	4	33
A01	Fraud involving CETA programs	5	30
F09	Use of fictitious collateral to get credit or business	5	27
A09, A29	Medicare/Medicaid or CHAMPUS fraud	4	26
C02	Real estate fraud	6	24

Table 2 (continued)

<u>Code</u>	<u>Type of Illegal Activity</u>	<u>Number of Agencies Identifying as Priority/ Problem Area</u>	<u>Number of Respondents Identifying as Priority/ Problem Area</u>
C04, C05	Consumer fraud (including insurance fraud, merchandise swindles, phony contests)	6	22
E03	Tax fraud	6	21
C03, C16	Securities fraud, market manipulation	3	21
E07, E19, E33, E43, others	Corruption of federal officials other than procurement-related corruption	7	19
A07, A23, A52	Fraud involving student loans and grants	4	19
G05	Copyright violations	3	18
A03, A40	SBA loan fraud	5	15

*Indicates total number of responding offices, i.e., investigative agency field offices, Inspector General offices, Economic Crime Units, etc., identifying illegal activity as a priority or problem area.

TABLE 3

**Illegal Activities Most Frequently Identified As Significant Problem Areas By FBI
Field Offices — February 1980**

<u>Priority/Problem Area</u>	<u>Number of Field Offices Identifying as Problem Area</u>
1. Corruption of state and local officials, including kickbacks to purchasing agents, inspectors, legislators, members of judiciary, etc.	43 (71%)*
2. Bank fraud and embezzlement	37 (61%)
3. Labor-related corruption	28 (46%)
4. Housing/HUD frauds, including VA/FHA frauds	28 (46%)
5. Copyright matters	28 (46%)
6. Procurement-related corruption of federal officials, including GSA and Defense	27 (44%)
7. Advance fee schemes	23 (38%)
8. Fraud involving health, rehabilitation and welfare programs, including Medicare/Medicaid	23 (38%)
9. Fraud involving CETA funds and other Department of Labor Programs	23 (38%)
10. Wire fraud/mail fraud, scheme unspecified	22 (36%)
11. Bribery, corruption of federal officials other than procurement-related corruption	21 (34%)
12. Bankruptcy Act/bust out schemes	21 (34%)
13. Fraud involving SBA loans or benefits	18 (30%)
14. Overbilling, fraud against the government involving construction and service contractors	16 (27%)
15. Investor fraud generally, including Ponzi schemes, franchise fraud, business opportunity fraud	15 (25%)

* Figures in parentheses indicate percentage of total number of responding offices (61) identifying the illegal activity as a significant problem.

white collar crime provided by these agencies and collected from other sources. The discussion below is based on that information; however, it is limited to what appear to be the most significant attributes of each crime, consistent with the criteria described earlier for choosing national priorities.

A. Criminal Activity Threatening the Integrity of Government Institutions and Processes

This category includes four broad areas of illegal activity:

1. Corruption of federal officials, other than GSA corruption
2. GSA corruption
3. Corruption of state and local officials
4. Bribery of foreign government officials

GSA corruption is treated separately from other federal corruption at the suggestion of the Public Integrity Section, which reviewed and summarized all public corruption-related data. The focus of this category is on corrupt activities that threaten the integrity of government institutions and procedures. These corrupt activities are often connected with fraud against the government by outsiders, particularly procurement and program fraud. The latter type of abuses, which have a major impact on government and taxpayer costs, are treated in more detail in the next section of this report.

1. Corruption of federal officials, other than GSA corruption

This type of illegal activity involves procurement-related kickbacks and bribery, corruption related to federal programs and the awarding of grants or subsidies, bribes to federal inspectors, and bribes to various law enforcement officials. It also includes corruption of federal elected officials and members of the federal judiciary, although corrupt activity among these officials was less frequently reported than Executive Branch corruption.

Corrupt activity among federal employees was reported nationwide, but was particularly present in the larger cities where federal regional offices are located and federal programs are administered. Program fraud involving corruption was widely reported. Every major federal department and agency seems affected. Procurement-related corruption affects all agencies, but GSA and the Department of Defense were most frequently mentioned. Inspection-related corruption was most-mentioned in connection with the Department of Agriculture and HUD. Bribery of officials for other favors was mentioned in connection with a number of federal agencies.

Some organized crime involvement is indicated, but most corrupt activity involves individual offenders in government and individuals or businesses outside government, independent of other criminal activity. The immediate victims of corrupt activity are honest contractors and seekers of federal business or assistance who lose business or benefits. The ultimate victims of this activity are government institutions and processes as a whole: public respect declines, morale among government employees suffers, and legitimate government programs and activities are curtailed. Taxpayers also lose, due to increased government costs, inefficient use of tax dollars, and ineffective government operations. The general public loses to the extent that laws aimed at protecting their health, safety or economic well-being are circumvented or ignored.

Obstacles confronting law enforcement efforts directed at federal corruption include the extensive commitment of resources usually required for investigation and prosecution, and, in some instances, turnover and consequent lack of continuity among federal investigators and prosecutors. Public interest in rooting out and punishing corrupt officials creates a favorable atmosphere for increased federal emphasis, but also fosters demands for tangible, significant and swift results.

The harm inflicted on society by these types of illegal activity is, for the most part, immeasurable. There is, however, little disagreement that the impact is great and that federal law enforcement emphasis is a necessity. A series of national priorities focusing on different types on federal employee corruption is appropriate.

2. GSA Corruption

GSA corruption is not different in character from the procurement-related corruption that takes place in other agencies. Because of the central authority that GSA retains in procuring office equipment and other goods for federal agencies and departments, the dollar losses associated with GSA corruption probably exceed those of many other types of public corruption. Because of recent publicity, the impact of GSA corruption on the public's respect for government institutions and officials may also be greater than the impact of other kinds of federal corrupt activity. This same publicity has also heightened public and Congressional interest in focusing law enforcement efforts on GSA corruption.

Notwithstanding all of the above factors, we are not convinced that GSA corruption deserves separate treatment in terms of law enforcement priorities. The type of harm resulting from this illegal activity does not appear to differ sufficiently in degree or character from other federal corruption to merit a special priority designation.

3. Corruption of State and Local Officials

As indicated earlier in this discussion, corruption of state and local officials is one of the most frequently identified white collar crime problem areas. This kind of corruption was among the top five problem areas identified by respondents to the Information Request, with seven different agencies and thirty-eight (38) different respondents designating it as a priority area (see Table 2). It was the most frequently mentioned problem area in the recent FBI survey, with 71% of the field offices reporting it as one of their most significant problems (see Table 3).

This category of corruption involves a large number of different types of illegal activity by different types of state and local officials. It involves extortion by or bribery of elected, appointed and civil service officials in connection with awarding contracts for goods and services, introducing favorable legislation, providing a license or permit, falsifying inspection reports, lowering tax assessments, and other favorable acts. It also involves bribery of court officials, police officers, and other law enforcement officials in return for favorable treatment.

The impact of state and local corruption is similar to that of federal corruption, but in many ways is more severe. In terms of public respect for government institutions and processes, local and state governments are much more visible and present in the public's everyday life, than is the federal government; corruption affecting these governments is therefore likely to be more widely perceived and more damaging than federal government corruption. In addition, as large as the federal budget and federal expenditures are, state and local budgets and expenditures are much larger. The dollar losses and increased taxpayer costs involved in local and state procurement-related corruption may thus be much higher.

Many state and local law enforcement agencies address public corruption effectively themselves or work in conjunction with federal investigators and prosecutors in doing so. However, other local and state agencies lack adequate resources to address corruption problems. Also, in some instances, local officials participating in corrupt activity may effectively foreclose local law enforcement efforts. The need for and degree of federal involvement thus will vary from locality to locality.

The information we have gathered indicates that federal investigators and prosecutors are keenly aware of local and state corruption problems and are widely involved in addressing them. Given the clear magnitude and the impact of local and state corruption, we think it has to be included in some form in a list of national white collar crime priorities.

As indicated, local and state corruption takes many forms and involves many different types of officials. These differences in types of crime and offenders may be very significant when it comes to defining district priorities or designing enforcement strategies for local and state corruption. However, for purposes of defining national priorities, it seems sufficient and desirable to define state and local corruption as a law enforcement priority when major state or local officials are involved or when there is systemic corruption of other state or local employees.

4. Bribery of Foreign Government Officials

The investigation and prosecution of bribery of foreign government officials by United States-based businesses has been a priority of the Department's Criminal Division since 1972 when the Task Force on Overseas Payments of Transnational Corporations was established in the Fraud Section. The Foreign Corrupt Practices Act of 1977 (FCPA) prohibits, among other things, the use of interstate facilities in furtherance of a bribe or offer of a bribe to foreign government officials by

U.S.-based businesses (see 15 U.S.C. 78dd-1, 78dd-2). The FCPA was enacted by the Congress without a dissenting vote and became effective on December 19, 1977.

The Criminal Division established a Multinational Fraud Branch within the Fraud Section in 1977 to direct FCPA investigation and prosecution efforts. The Branch works very closely with the Securities and Exchange Commission, the Customs Service, the FBI, and the Postal Inspection Service in the development of these very significant cases. Recently the Department announced the FCPA Review Procedure which allows businessmen and attorneys to seek guidance about the meaning and application of the antibribery provisions. Due to the centralized nature of federal law enforcement efforts against bribery of foreign government officials and the special treatment and attention currently being given to this area by the Criminal Division as well as the SEC, the Customs Service, the FBI, and the Postal Inspection Service, it is unnecessary and inappropriate to designate bribery of foreign government officials as an area for nationwide law enforcement attention. This area, however, will continue to receive special emphasis by the Department's Criminal Division.

Conclusion

In this category of white collar crime, the following national priorities are adopted:

1. Corruption of federal employees and officials in connection with federal procurement of goods and services.
 2. Corruption of federal employees and officials in connection with federal programs, including but not limited to programs conferring grants, loans, guarantees, subsidies, cash or other benefits.
 3. Corruption involving federal law enforcement officials, including but not limited to employees of the Department of Justice and other law enforcement agencies.
 4. Corruption of any other federal employees and officials, including but not limited to elected officials, members of the judiciary, regulatory agency officials, and others.
 5. Corruption involving major state government officials, elected, appointed or civil service, including but not limited to governors, legislators, department or agency heads, court officials, law enforcement officials at policymaking or managerial levels, and their staffs, or corruption of other state employees, including regulatory commission or board members, where such corruption is systemic.
 6. Corruption involving major local government officials, elected, appointed or civil service, including but not limited to mayors, city council members or equivalents, city managers or equivalents, department or agency heads, court officials, law enforcement officials at policymaking or managerial level, and their staffs, or corruption of other local employees, including regulatory commission or board members, where such corruption is systemic.
- B. Criminal Activity Defrauding the Government, Reducing the Effectiveness of Government Programs and Resulting in Higher Government and Taxpayer Costs**

This category of white collar crime includes the following types of illegal activity:

1. Criminal tax violations
2. Procurement-related fraud

3. Program-related fraud
4. Counterfeiting of U.S. currency or securities
5. Customs violations

Procurement-related and program-related fraud involving corrupt government officials was discussed in part in the previous category of white collar crime threatening the integrity of government institutions and processes. The focus of that discussion was on the institutional effects of corruption. By contrast, the focus of this discussion is on the monetary impact of fraud and abuse on government and taxpayer costs.

1. Criminal tax violations

This type of illegal activity includes kickbacks to tax collectors in exchange for non-payment of merchant or manufacturing taxes, bribes to underestimate taxes due, the filing of false tax returns, and other forms of tax evasion. It also includes cigarette smuggling to avoid taxes, which was reported separately by a number of respondents.

Tax fraud was identified as a priority area by ATF offices in Chicago, Cleveland, Boston, Philadelphia, and St. Louis, Customs Service offices in several cities, Secret Service offices in Boston, St. Louis, Philadelphia and Honolulu, and Economic Crime Units in Alexandria, San Diego, Miami, and Los Angeles, as well as a few FBI offices. The Internal Revenue Service and the Department have recognized that tax fraud, in its various forms, is a white collar crime problem of significant proportions. Various estimates of its costs to government and legitimate taxpayers have been given. By any estimate, the amounts of money involved are significant.

The perpetrators of tax fraud run the gamut from business enterprises, investment brokers, and financial institutions to private entrepreneurs and individual citizens. Cigarette smuggling is a particular type of tax fraud involving the movement of cigarettes from low tax, typically tobacco growing, states to higher tax states. Federal jurisdiction arises due to the interstate trafficking of contraband. This type of illegal activity was reported by a number of ATF offices, mainly on the East Coast, but also in Texas and Arizona. Cigarette smuggling involves, at the very least, millions of dollars each year, and is very often connected with organized crime elements.

The immediate victim of all forms of tax fraud is the tax-levying governmental entity. The ultimate victims are honest taxpayers, who end up paying more than their fair share of the tax burden, and potential beneficiaries of government services who receive fewer services than they would otherwise. Tax fraud also causes an erosion of public faith in the fairness of the tax system and thus encourages more widespread tax evasion.

The Department's Tax Division reports that progress is being made in working with the Internal Revenue Service on the types of cases that are presented for prosecution. It is our conclusion that including criminal tax violations as a national white collar crime priority would have further salutary effects on the types of cases investigated and prosecuted by the federal government. It would, by itself, indicate to the public the resolve of the federal law enforcement community to deal with this serious type of crime and thereby discourage perhaps a large number of potential offenders. Interstate trafficking of contraband cigarettes involving large tax revenue losses will also be considered a national priority.

2. Procurement-related fraud

The information provided regarding federal procurement fraud encompassed both procurement-related fraud involving the corruption of government officials, and procurement-related fraud

by outsiders, acting without the help or collusion of government insiders. This distinction, however, is of some importance in the way we think about the significance of procurement-related fraud and, consequently, how we define priorities. The presence of corrupt activity makes such fraud significant, and arguably a priority, regardless of the amounts of dollars involved. Without such corruption, procurement-related fraud becomes significant only when large sums are involved.

Procurement fraud involves, among other things, the following kinds of activity: 1) inflated payrolls and other costs; 2) substitution of inferior goods; 3) collusion among contractors, developers and suppliers resulting in rigged-bidding or overbilling; 4) non-performance of contracted services; 5) exaggerated weights and measures; and 6) diversion of federal funds to personal use. Practically every government agency and department procures goods and services and all seem to be victims of procurement-related fraud. Of course, the ultimate victims of this type of crime are taxpayers who pay more for fewer goods and services, along with the intended recipients of government benefits who receive reduced or substandard benefits and honest contractors who lose business because they do not engage in fraudulent activity.

The amounts of dollars lost due to this type of crime are substantial. The Department of Defense alone spent over \$25 billion in FY 1979 on procurement and will spend \$28 to \$30 billion annually over the next two fiscal years.¹³ These sums are for procurement narrowly defined, i.e., not including all contracts for research and development, housing and other constructions and other multi-billion dollar items. Total federal government procurement costs easily exceed \$100 billion. No precise estimate of the magnitude of procurement fraud losses is possible, but it is obvious that even if such fraud involves only a small percentage of total procurement costs, the losses are great. And most observers appear to agree that more than a small percentage of total procurement expenditures are involved.

The responses to the Department's Information Request identified procurement-related fraud as a priority white collar crime area in all parts of the country. Construction and service contract fraud was designated as a problem area by numerous FBI offices, Inspectors General offices in GSA, Department of Energy, HUD, and EPA and by the Economic Crime Units in San Diego and Denver. Procurement fraud against the Department of Defense was cited as a priority area by the Defense Department's Investigation Office, by the Navy, Air Force, Economic Crime Units in Alexandria, Philadelphia and Los Angeles, and by a number of FBI field offices. NASA identified procurement fraud relating to its activities as the number one white collar crime problem. All of the Postal Inspection Service's regional offices listed procurement fraud against the Postal Service as a priority area.

The perpetrators of procurement fraud include general contractors, subcontractors, architectural and engineering firms, materials suppliers, consultants and other suppliers of goods and services. Procurement fraud is usually independent of other criminal activity, although there is some indication that organized crime elements are involved in procurement fraud by certain industries, including waste disposal and food services.

Given its immensity, and the lack of local and state jurisdiction and/or resources to deal with it, federal procurement fraud obviously should be considered a national law enforcement priority. Where corruption is not involved, however, there should be substantial amounts of losses involved before these kinds of cases are priorities.

¹³ *The Budget of the United States Government, 1981*, Office of Management and Budget, p. 100.

3. Program-related fraud

This type of white collar crime includes all the various schemes that are used in order to divert federal grants, loans, subsidies, and other benefits from their intended uses to the personal use of the perpetrators. The schemes used are myriad. They involve, among others, the following kinds of illegal acts: 1) false applications for grants, loans, and other benefits; 2) embezzlement and improper diversion of funds by program administrators who may be employed by the government, non-profit corporations or private contractors; 3) false reports on work done, costs incurred or other aspects of government supported activity; 4) use of federally-paid employees for political or other personal purposes; and 5) outright theft or counterfeiting of government property.

The perpetrators include individual entrepreneurs, business enterprises, and government officials at all levels. In some instances, organized crime elements are involved in program fraud and abuse. In a number of cases, the same perpetrators are or have been involved in fraud involving more than one agency or one program.

The vulnerability of various programs to fraud appears to be affected by a number of variables including: 1) the type of benefit being conferred (e.g., cash, guarantees, subsidies, loans, or services); 2) the organizational structure and procedures used in administering the program (e.g., centralized or decentralized, organization auditing and reporting procedures, involvement of private contractors and administrators); and 3) the resources and expertise available to investigate and oversee the use of program funds. We have not attempted to perform a comprehensive vulnerability assessment of federal programs. Numerous Inspector General offices are conducting, or have conducted, such studies.

Our review of the large quantity of information on the occurrence of program fraud indicates several things. First, there seems to be no government program unaffected. Second, while there are some differences in impact, the ultimate burden of program fraud and abuse falls on: 1) the honest and legitimate benefit recipients who receive reduced or no benefits; 2) the taxpayer whose money does not serve its intended purpose and who may be called upon to provide more funds; and 3) the agencies and programs whose images are tarnished and whose effectiveness may be reduced.

Our basic conclusion is that, for purposes of defining national white collar crime law enforcement priorities, it is best to have an all-inclusive program fraud priority, with appropriate dollar amount minimums where corruption is not involved.¹⁴ District priorities, which are to be "within the national priorities,"¹⁵ may appropriately focus on particular programs or agencies that are problems in a particular geographic region. We find no useful or obvious way to single out certain programs or agencies for national attention, and also feel that doing so may be too restrictive on investigators and prosecutors in the field, and counter-productive in inhibiting program fraud and abuse. Nevertheless, we summarize below the information gathered on each of the major federal program areas.

a. CETA funds

This is one of the most widespread and frequently reported program fraud problem areas. It involves misuse and embezzlement of CETA funds, padded payrolls, dummy corporations, CETA employees used for personal political campaigns, and funds used for city debts and non-CETA

¹⁴This does not mean, however, that separate offense codes for each major agency or program area for reporting purposes are not appropriate. In fact, in order to implement and evaluate district priorities, separate offense codes are probably a necessity.

¹⁵See A.G. Order No. 817-79, para. 6a.

programs. Corruption of local government officials is often involved. Seventeen FBI offices, three ATF offices, five Secret Service offices, the Department of Labor Inspector General, and four Economic Crime Units (New Haven, Boston, Chicago, and New Orleans) identified CETA fraud as a priority area in their responses to the Department's Information Request. Twenty-three (38%) of the FBI field offices designated CETA fraud as a significant problem area in the February 1980 survey.

This program disbursed over \$11 billion in FY 1979 and is budgeted for similar amounts in FY 1980 and FY 1981.¹⁶

b. Department of Transportation grants and loans

Fraud and abuse involving DOT funds was identified as the number one priority area by the DOT Inspector General office and was mentioned as a problem area by several investigative agency field offices. This type of fraud involves improper material, bidrigging, kickbacks, gratuities, and systematic short-weighting of materials in connection with federally-funded mass transit and highway projects. The perpetrators include engineering and road-building firms, concrete and asphalt suppliers, and state, county and city officials.

The funds devoted to highway and mass transit projects exceeded \$9 billion in FY 1979 and are projected to be close to \$10 billion for FY 1980 and FY 1981.

c. SBA loans and financial assistance programs

This area of fraud and abuse includes false statements and other forms of fraud in connection with SBA loan and financial assistance programs, including bribes and kickbacks to SBA officials. Misrepresentation of an applicant's unencumbered private capital is frequent. Misuse of funds received under the Small Business Investment Company (SBIC) Program appears to occur with some frequency. In many cases, once SBA funds are obtained, they are diverted to other purposes.

SBA-related fraud was identified as a priority area by several FBI field offices and Economic Crime Units in Detroit, Columbia, Philadelphia and Los Angeles, in addition to the SBA's Inspector General office. SBA loans of up to \$500,000 can be made. Funds provided to SBIC's usually involve millions of dollars. The SBA loan program granted new loans totalling \$471 million in FY 1979, and is budgeted to increase to over \$600 million in FY 1981.

d. Minority Contracts

Minority contract fraud involves firms falsely representing that they are qualified for preferences under Section 8(a) of the amended SBA Act. Perpetrators arrange to have an apparently eligible person "front" as the head of a firm in order to receive preferential treatment, when the person in fact does nothing for or with the firm, other than signing the papers to apply for the SBA sponsored contract.

This type of fraud was identified as a priority area by the NASA Inspector General office and by several FBI field offices. The primary victims are legitimate minority or disadvantaged enterprises that qualify for preferential treatment.

¹⁶ Unless otherwise indicated, the budget figures cited in this section of this report are taken from *The Budget of the United States Government, 1981*, Office of Management and Budget.

In FY 1978, 3,403 contracts valued at \$767.5 million were awarded under Section 8(a) authority. Also affected by this type of fraud are Minority Business Enterprise contracts awarded under the supervision of the Commerce Department. As of September 1979, over \$700 million in MBE contracts had been awarded since the inception of the program in 1977.

e. Social Security programs

Social Security fraud primarily involves beneficiaries misrepresenting their circumstances in order to receive benefits initially or, once legitimately entitled to benefits, failing to report changes in circumstances that would reduce or eliminate benefits. This kind of illegal activity is reported as a priority area by the HEW Inspector General's office, the Economic Crime Unit in Los Angeles, and several Secret Service field offices in various parts of the country.

The perpetrators appear to be individuals, acting independently, with little evidence of organized criminal activity. Social security assistance payments were approximately \$6.6 billion in FY 1979, and are estimated to be \$7.0 billion and \$7.7 billion, respectively, in FY 1980 and FY 1981.

f. Welfare/Rehabilitation programs

This type of illegal activity involves: 1) welfare (AFDC) recipients filing fraudulent applications, receiving multiple benefits, or failing to report working while receiving welfare; 2) fraud and abuse of the child nutrition/school lunch program; and 3) unemployment compensation fraud. Welfare or income maintenance fraud was identified as a priority area by FBI field offices in a number of areas of the country, by several Secret Service offices and by the HEW Inspector General office. Child Nutrition Program fraud was reported as a priority area by the FBI office in New York City, by the Department of Agriculture Inspector General office and by the Economic Crime Unit in Brooklyn.

The perpetrators include individual recipients of welfare and assistance and local religious, charitable and community organizations in the Child Nutrition Program. The federal budget outlays for AFDC programs in FY 1979 were approximately \$6.7 billion. The unemployment compensation program, administered by the Department of Labor, disbursed \$11.1 billion in FY 1979 and is projected to spend \$15.1 billion in FY 1980 and \$17.9 billion in FY 1981. The Child Nutrition Program disbursed \$2.9 billion in FY 1979 and is budgeted to increase to \$3.0 billion and \$3.5 billion, respectively, in the next two fiscal years.

g. Medicare/Medicaid and CHAMPUS (Civilian Health and Medical Program of Uniformed Services) programs

Medicare/Medicaid and CHAMPUS program fraud and abuse involve fraudulent applications for aid, duplicate billing, kickbacks from labs to doctors for fake billings and inflated costs, unnecessary drug prescriptions by doctors and dentists, and similar schemes. The perpetrators include program recipients, doctors, dentists, clinics, labs, pharmacists, nursing homes, hospitals, and others.

This kind of fraud and abuse was among the most frequently reported federal program frauds. Medicare and Medicaid fraud was identified as a priority area by a large number of FBI offices in many parts of the country, by several Secret Service offices, and by Economic Crime Units in Detroit, Chicago, Alexandria, Philadelphia, Miami, and Newark, as well as the HEW Inspector General office. CHAMPUS fraud was reported as a priority area by five FBI field offices and the Economic Crime Unit in Denver.

The federal dollars devoted to these programs are enormous. The Medicare and Medicaid programs required approximately \$41.6 billion of federal funds in FY 1979, and are estimated to require \$47.7 billion in FY 1980 and \$53.2 billion in FY 1981.

h. Housing programs

Housing program fraud and abuse involves a number of different programs including Housing Rehabilitation loans, Community Development Block Grants and Urban Renewal programs, FHA and VA mortgage guarantees, Multifamily Housing subsidies and other similar programs. The illegal activities include submitting false information to government agencies in order to receive loans or subsidies, the misuse, embezzlement or other unlawful diversion of program funds, the creation of paper corporations to inflate HUD funded housing costs, and various forms of corruption of government employees in approving fraudulent grants, loans, property valuations, and other written documents.

Housing program fraud and abuse was one of the most-frequently reported program fraud problems. FBI field offices in all parts of the country, particularly urban centers, reported housing program fraud as a priority area, along with all of the HUD Inspector General Regional Offices, the Department of Agriculture's Inspector General Office, and the Economic Crime Units in Newark, Los Angeles, Washington, and Columbia, S.C. FHA mortgage irregularities were reported by a few FBI offices and HUD regional offices, along with the Economic Crime Units in Denver and Los Angeles. Misuse of Community Development funds was identified as a problem by most HUD regional offices and a number of FBI offices. Equity skimming in multifamily, subsidized housing projects was another frequently reported problem.

Large amounts of federal funds are devoted to housing programs of various types. Housing assistance programs administered by HUD involved budgeting outlays of around \$5 billion for FY 1979, and outlays are anticipated to be \$6 and \$7 billion in the next two fiscal years, respectively. Community Planning and Development grants totaled \$3.7 billion in FY 1979 and will grow to around \$4.2 and \$4.6 billion in the following two years. Veterans' mortgage loan guarantee and direct loan programs involved loans totaling approximately \$16.1 billion in FY 1979; this figure is expected to grow to \$19.9 billion in FY 1981. The Veterans Administration and HUD are working on a joint investigative program regarding VA/FHA loan fraud. The HUD Inspector General office has launched other initiatives directed toward housing program fraud, but both VA and HUD agree that more investigative and prosecutive resources are necessary.

i. Veterans benefits, other than housing

This category of illegal activity includes fraud and abuse affecting veterans' benefit programs, other than housing loan guarantees. It primarily involves fraudulent claims and applications for educational assistance and medical benefits. The fraud is usually perpetrated by individuals improperly seeking benefits, but it also involves colleges and trade schools or medical suppliers and health care providers fraudulently demanding payments from the Veterans Administration. VA employees are sometimes involved in the illegal schemes.

This type of fraud and abuse is reported by the VA Inspector General office, but it is also identified as a priority area by a number of FBI offices. Once again, the amounts of dollars associated with these programs are substantial. Outlays for various types of veterans' medical benefits totaled over \$5.3 billion in FY 1979. The Inspector General office at VA is attempting to implement a number of new techniques to detect fraud in these areas.

j. Food stamps

Fraud and abuse involving the food stamp program, administered by the Department of Agriculture, involves the theft, embezzlement and counterfeiting of food stamps, in addition to false applications for the receipt of food stamps. The perpetrators include retail and wholesale food firms licensed by USDA, check cashing and other food stamp outlets, printers and platemakers (counterfeiting), individual citizens, and federal, state, county and city officials involved in administering the program. The food stamp program involves more than 18 million recipients, 300,000 commercial entities and over 20,000 state and local administrators. The opportunities for fraud are bountiful.

The Inspector General office at the Department of Agriculture reported increasing evidence that established food stamp traffickers are engaged in other criminal activities such as narcotics, gambling, stolen property and tax evasion. Food stamp problems were reported by several Secret Service and FBI offices, and by the Economic Crime Unit in Newark.

The federal funds spent on the food stamp program amounted to \$6.8 billion in FY 1979, and are projected to be \$8.7 and \$9.7 billion, respectively, in FY 1980 and FY 1981. In an effort to reduce food stamp fraud and abuse, legislation has been introduced to establish a system under which administrative funds could be withheld from a state with excessive errors in the certification of recipients. The idea is to create sufficient incentives for states to improve their administration of this program. Also proposed is a requirement that food stamp clients report their income more frequently to food stamp administrators. The USDA and HEW Inspector General offices are cooperating in computer match systems designed to identify individuals whose income makes them ineligible for benefits. This program has met with some success.

k. Student loans and educational grants

Illegal activity affecting student loans and educational grants includes false applications and defaults with respect to loans, "ghost students", fake reporting and manipulation of funds by universities, trade schools and other educational institutions, and fraud involving research grants to various individuals and institutions. These types of fraud were identified as priority areas by FBI field offices in many parts of the country, by a few Secret Service offices and by the Economic Crime Units in Phoenix, Columbia and Newark. Misuse of funds granted under Title I of the Elementary and Secondary Education Act was reported as a priority area by the Economic Crime Unit in Brooklyn.

During FY 1979, more than \$4.3 billion of federal funds were committed to grants, loans, and loan guarantees for post-secondary education alone. For both FY 1980 and FY 1981, the amount will easily exceed \$5 billion annually. Federal grants and loans for vocational and adult education and for various kinds of research exceeded \$1 billion in FY 1979 and will grow over the next two years.

Some success has been experienced in investigating and prosecuting student loan and educational grant fraud and abuse in clusters. The amounts involved in individual cases usually make individual prosecution prohibitive.

l. Workers' compensation funds

Workers' compensation fraud was reported as a priority by the Department of Labor Inspector General. The funds involved include workers' compensation for federal employees or their survivors for job-related injuries, illnesses or death and also special compensation funds for coal miners (Black

Lung) and others. The schemes involve concealing re-employment, claiming compensation when injury occurred during off-duty activity, and faked injuries generally.

Approximately 47,500 workers with long-term disabilities or their survivors are expected to receive monthly payments during FY 1980 totaling around \$1 billion for the year. The Administration intends to propose legislation amending the Federal Employees Compensation Act to remove 1) incentives to file questionable claims, 2) disincentives for workers to return to work when they are medically able, and 3) inequities that now may provide greater compensation than a recipient would have received as a full-time employee.

m. Environmental programs

Fraud in environmental programs includes fraud by contractors, suppliers, purchasing agents, engineering firms and state, county and municipal sewer and water officials in connection with Wastewater Treatment Grants administered by EPA. The EPA Inspector General office reports this illegal activity as its number one priority. The Economic Crime Unit in Columbia also identifies this type of fraud as a priority area, as do FBI offices in Boston, New York City, and Buffalo.

In FY 1979, the EPA spent approximately \$3.8 billion in funding construction grants. There are currently around 13,000 EPA construction grant projects in progress throughout the country involving approximately \$28 billion altogether. As with some other types of federal program fraud and abuse, state and local law enforcement efforts are minimal or nonexistent.

n. Other federal programs for special groups or special purposes

This last category includes a variety of federal programs reported as white collar crime priority areas by respondents. Farmers Home Administration (FmHA) loan abuse was reported by the Economic Crime Unit in Columbia and one FBI office. Emergency disaster loan fraud was reported by the Department of Agriculture Inspector General office and one FBI office. Fraud involving CSA funds, including the Weatherization program which is now at the Department of Energy, was identified as a priority area by the Department of the Energy Inspector General and by one FBI office. Three FBI offices identified fraud involving Department of Commerce funds as a priority. The Department of Commerce Inspector General office reported misuse of Economic Development Assistance loans as its number one priority area.

The approximate amounts of funds devoted to each of these programs during FY 1979 are as follows:

Program	FY 1979 Outlays (millions)
Farmers Home Administration Grants and Loans	\$1,899
Emergency Disaster Loans	957 (SBA) 23 (Agriculture)
CSA Grants and Loans	594
Weatherization Assistance	200 (Energy) (Budget authority)
Department of Commerce	
Economic Development Assistance programs	435
Minority Business Development	54

4. Counterfeiting of United States currency or securities

This type of illegal activity includes the counterfeiting and forgery of currency, U.S. financial obligations, and other negotiable paper. It was reported as a priority area primarily by U.S. Secret Service offices, with a few FBI offices and SEC regional offices identifying it as a priority. As might be expected, the larger urban areas, including New York, Chicago, and Los Angeles, reported the highest incidence of this type of white collar crime.

The direct victims of counterfeiting and forgery are the purchasers and traders who are deceived, and also businesses and banks that provide credit or loans based on illegitimate securities. The amount of losses involved in counterfeiting and forgery of government and other securities is very difficult to estimate. Some observers have estimated that billions of dollars of counterfeit and stolen securities are in circulation at any given point in time, but such estimates are difficult to confirm or deny. There is some secondary impact of this illegal activity on consumers who absorb, through higher prices, the increased costs to businesses victimized by counterfeit money, forged checks and the like.

One important characteristic of counterfeiting, pointed out by numerous respondents, is that money obtained through this kind of crime is often used to finance other criminal activities. Organized crime seems to be heavily engaged in counterfeiting and related criminal activities, including theft of securities, cash laundering, and drug transactions.

The responses indicated that expertise and commitment in this area are lacking in state and local systems. They also indicated that increased emphasis would bring about substantial decreases in the incidence of this type of crime.

Our conclusion is that counterfeiting which threatens the integrity of the U.S. currency and government financial obligations warrants being a separate priority. It becomes particularly significant when there is a clear indication of organized crime involvement or very large amounts of securities or currency are involved.

5. Customs violations

The types of customs violations identified as priority areas include: 1) smuggling and importation of merchandise by means of false statements or in violation of quotas or other restrictions; 2) exportation of merchandise in violation of law, particularly firearms; and 3) unreported importation or exportation of currency in excess of \$5,000. Customs violations were reported as priority areas in all parts of the country. Violations of all types were reported by most Customs Service offices, a few ATF offices and the Economic Crime Unit in San Diego. Currency violations were reported by almost all Customs Service offices, and by the Economic Crime Units in Miami and Los Angeles. Neutrality Act (Munitions Control) violations were identified as priority areas by a large number of Customs offices and the Los Angeles Economic Crime Unit, as were violations involving the undervaluation or false marking of imported goods.

These respondents indicated that the perpetrators of these crimes are primarily individuals and various business entities. Organized crime, narcotics dealings, terrorism, and the bribery of public officials were reported to be connected with various aspects of these crimes.

The victims of customs violations include the following: 1) the U.S. Treasury, in lost revenue from duty and taxes; 2) domestic industries harmed by improperly imported or fraudulently labeled goods; and 3) citizens of foreign countries and U.S. foreign policy when firearms and explosives are exported to various terrorist groups. Total dollar losses cannot be estimated with any precision, but

appear to be very substantial. Except for some local and state efforts in the narcotics area, local law enforcement effort is minimal or nonexistent.

Respondents indicate that greater federal law enforcement would have a definite positive effect on deterring these crimes, particularly if large judgments can be obtained and then publicized throughout the importing trade. However, it was also pointed out that the length of time involved in Customs investigations often creates problems. In the past, multimillion dollar fraud cases have been referred to U.S. Attorneys shortly before the statute of limitations expires, providing the U.S. Attorneys involved little or no opportunity to evaluate the case before filing complaints. Respondents also indicated that computer techniques and surveillance could be used more effectively in detecting customs violations.

Our conclusion, based on this information, is that customs violations involving large amounts of tax losses or connections with other criminal activity should be considered a national white collar crime priority.

Conclusion

In this category of white collar crime, the following national priorities are adopted:

1. Fraud related to federal procurement, not involving corruption of government personnel, if losses are \$25,000 or more.
2. Fraud related to federal programs, not involving corruption of government personnel, if losses are \$25,000 or more.
3. Major criminal tax violations, involving large tax revenue losses or having a significant adverse impact on the federal tax system, as determined by the Tax Division in collaboration with the Internal Revenue Service.
4. Counterfeiting of United States currency or securities.
5. Customs violations, including duty violations involving \$25,000 or more in tax revenue losses in one transaction or \$50,000 or more in tax revenue losses in multiple transactions, and currency violations involving \$25,000 or more in currency in one transaction or \$50,000 or more in currency in multiple transactions.
6. Trafficking in contraband cigarettes, involving \$100,000 or more in aggregate tax revenue losses.

C. Criminal Activity Victimizing Business Enterprises

This category of white collar crime includes illegal activity having a major impact upon business enterprises and major private institutions. The specific types of crime in this category are the following:

1. Bank fraud and embezzlement
2. Insurance fraud, including arson for profit
3. Copyright violations
4. Private institution victimization generally, including looting of corporate assets, computer fraud, and other fraudulent schemes
5. Advance fee schemes

6. Bankruptcy frauds/bust-outs
7. Extortion of legitimate business by use of control over labor unions
8. Crimes involving cargo and customs houses
9. Use of fictitious or overvalued collateral to obtain credit
10. Offshore bank fraud

Each of these illegal activities is discussed briefly below.

1. Bank fraud and embezzlement

This area has been, and continues to be, a primary focus of federal investigative and prosecutive talent. For Fiscal Year 1979, the FBI devoted approximately 20% of its white collar crime resources to bank fraud and embezzlement. The Bureau designates bank fraud and embezzlement (BF&E) cases involving over \$10,000 as priorities (see Appendix A). It is therefore not surprising that bank fraud and embezzlement was the most frequently identified problem area within financial crimes and the second most frequently identified white collar crime problem overall in the Bureau's February 1980 survey (see Appendix C).

Economic Crime Units in New Orleans, Detroit, Alexandria, New Haven, Miami and Los Angeles identified BF&E as a priority area. The Economic Crime Unit in Portland identified improper acts by bank officials as a problem area.

This type of crime involves simple theft, manipulation of records, falsifying loan applications, and more sophisticated theft by means of bank computers, account manipulation and other fraudulent schemes. The perpetrators are usually tellers or bank officers, but outsiders are sometimes involved, especially where there is collusion or kickbacks to obtain loans fraudulently.

The aggregate amount of money involved in BF&E is enormous. Individual crimes are of all sizes. Banks and their depositors are the immediate victims of fraud and embezzlement. In a few cases, large BF&E's have driven banks or other financial institutions into bankruptcy. Ultimate victims of BF&E are consumers of bank services who end up paying higher costs and bank stockholders who have reduced dividends and capital appreciation.

Most types of BF&E are susceptible to self-protection by the victim banks and financial institutions. This means closer auditing procedures, better detection through use of computers, undercover operations, closer screening of loan applicants, and more careful selection of bank officers and employees. Costs of self-protection can be passed on to stockholders, depositors and other customers, who are the ultimate victims of BF&E and thus the beneficiaries of its prevention.

Whether current bank self-protection efforts are sufficient is a matter of some controversy. In any event, it seems clear to us that the dollar amounts involved in BF&E's should be very high before they are considered federal law enforcement priorities.

2. Insurance fraud, including arson for profit

Insurance fraud, including arson for profit, was among the most frequently identified priority areas across the country. A large number of ATF offices reported arson for profit as a major problem, but it was also listed as a priority area by Economic Crime Units in Cleveland, Detroit, New Haven and Philadelphia, and by a number of FBI and Secret Service field offices. Insurance fraud generally was identified as a problem area by all of the Postal Inspection Service regional offices, a number of FBI and Secret Service offices and Economic Crime Units in New Haven, Portland, Boston, Philadelphia, Denver, Columbia, Brooklyn and Los Angeles.

Arson for profit involves the intentional destruction of property by fire or explosive device with the intent of submitting a claim to an insurance company or for the purpose of destroying a competitor's business. Other insurance fraud includes fake accident schemes, false reports of stolen vehicles, reinsurance fraud, and misrepresentation of insured items, sometimes involving kickbacks to adjusters.

The perpetrators of arson for profit are usually commercial-merchant type entities or landlords; other types of insurance fraud involve some professionals, including lawyers and doctors, but usually individual offenders. There is some evidence of organized crime involvement in arson for profit and some other insurance fraud schemes.

The amounts of money involved appear to be large. The Senate Permanent Subcommittee on Investigations recently estimated that arson for profit cost insurers at least \$1.6 billion a year. This figure does not reflect losses of jobs and income, medical costs, increased expenses for firemen or all increases in insurance premiums. The American Insurance Association estimates that 30 percent of all fires in the U.S. result from arson, injuring over 10,000 people and killing 1,000 others per year.

The victims of arson for profit and other insurance fraud schemes include insurance premium payers, innocent people who are injured or who lose their housing or jobs, and the insurance industry as an institution. Local and state law enforcement agencies are beginning to devote more resources to this area. LEAA recently announced grants to a number of localities to aid in investigating arson cases. Most respondents indicated that state and local efforts in this area are either minimal or significant but insufficient.

Investigation of these crimes is difficult and dangerous. Undercover, surveillance and informant techniques have been used with some success. There is no federal criminal arson statute as such. Federal jurisdiction arises from the use of an "explosive", an incendiary device, or a "destructive device," or through evidence of fraudulent acts.

The widespread nature of this type of white collar crime, its significant costs, the physical danger and harm often associated with it, and the lack of adequate state and local efforts all argue that this should be listed as a national priority, with appropriate descriptive qualifications.

3. Copyright violations

This type of white collar crime includes the theft and/or duplication of sound recordings (records, eight-track tapes and cassettes) and movies, including those shown on television, without permission of the copyright owner. The crime occurs all over the United States with some concentration in Southern California, New York, Atlanta and Miami. FBI offices in all parts of the country reported copyright violation activity, as did Customs Service offices in Anchorage and Miami and the Economic Crime Unit in Los Angeles.

In the February 1980 survey, twenty-eight (46%) of all FBI field offices reported copyright violations as a problem area. The FBI includes in its current list of priorities copyright violations involving manufacturers or distributors of sound recordings or motion pictures.

The perpetrators of this type of crime include insiders who take bribes for the release or copying of new recordings, distributors, retailers, and business establishments, including hotels and resorts, who buy or use counterfeit or pirated movies and tapes. The perpetrators are sometimes individuals acting alone, but more often organized rings. There is evidence that organized crime is becoming increasingly involved as a major supplier of counterfeit products.

The victims of copyright violations are numerous. The record and movie industries are the immediate victims, due to lost sales and profits. The recording industry estimates that annual losses amount to more than \$600 million. The motion picture industry has no estimate of total losses, only a rough estimate that losses are in the hundreds of millions of dollars.

Secondary and tertiary victims are recording artists and actors who lose royalties they would otherwise receive, companies who do business with the recording and motion picture industry, consumers who may receive poor quality recordings or video products, and the general public, to the extent that copyright losses force companies to limit the range of artistic products they produce. It does appear that copyright offenders go after the most popular recordings, skim the profits from these money-makers, and thus make it more difficult for manufacturers to produce the marginal products, which may include classical music, experimental works, and other products which add to the diversity of art products available to the public.

An interesting question with no clear answer is the effect of counterfeiting and piracy on the price the consumer pays for copyrighted products. Counterfeited products add to the supply of goods available and are usually priced below the going price of legitimate goods, at least at the wholesale level. This would seem to create some downward pressure on prices. On the other hand, lost profits on the big sellers may force legitimate manufacturers to raise the average unit price they charge in order to maintain an adequate overall return. This higher price may simply act as a ceiling that counterfeiters take advantage of to reap higher profits for themselves with no competitive pricing, and thus higher consumer costs.

Civil remedies are available to the industry, but industry representatives indicate very limited success in civil recovery. If the crime is proven, the offenders usually have few assets available to pay damages. The industry claims it is spending large amounts of money to increase security and self-protection, but no precise amounts are known. Both the sound and the motion picture industries are experimenting with ways to mark products so that counterfeit items can be identified more easily, but with no success so far.

Two other aspects of copyright violations should be considered. The problem is international in scope; increased law enforcement efforts here may shift activity abroad and produce little net benefit. The motion picture industry points out that it produces over \$700,000,000 annually in positive balance of payments and that adequate law enforcement is needed not only domestically, but internationally. Secondly, the video cassette market is relatively new. The extent to which counterfeiters will move into this market is unknown, but motion picture industry representatives fear that it will be a growth area for crime.

Federal law enforcement efforts in this area have produced some positive, sometimes spectacular results. Sting operations in recent years have uncovered large counterfeiting and piracy operations. FBI and industry representatives point to the large amount of economic loss prevented relative to the resources used in the copyright area (see Appendix A, Table 2). Sentences for convicted offenders have, however, been light.

Overall, copyright violations appear to be a type of white collar crime that deserves some federal law enforcement emphasis. However, the dollar amounts involved must be large and the illegal activity must be widespread before these kinds of cases are considered priorities.

4. Private institution victimization generally, including looting of corporate assets, computer fraud, and other fraudulent schemes

This type of illegal activity includes a variety of schemes, usually carried out by competing businesses or disloyal insiders, that hurt various private institutions financially. Insiders embezzle corporate funds or use them for personal gain; other businesses engage in commercial bribery and espionage to harm their adversaries in the marketplace; outsiders, sometimes with the aid of insiders, receive goods or credit on the basis of false information.

This type of crime, in its various forms, seems to occur all across the country with its victims being businesses of all sizes and descriptions. Beyond the victim businesses and their owners, consumers are often the ultimate victims of this type of crime. Business losses and increased costs due to more security, investigative costs, and litigation costs are usually passed on to the consumer in higher prices, at least in part. The total amount of losses to businesses and consumers from these types of crime cannot be estimated with any precision. The Department of Commerce estimates that businesses lose over \$6 billion per year in "inventory shrinkages." The security industry, employed mostly by businesses for protection, now grosses more than \$23.3 billion a year. Insurance premiums, covering goods in transit and in storage, are far in excess of a billion dollars a year.

Organized crime is often mentioned as a participant in crime against legitimate businesses, particularly in connection with credit schemes. Other related organized crime activity, discussed below, includes extortion and takeovers of legitimate businesses.

Private institution victimization is generally susceptible to self-help and prevention. However, to the extent that perpetrators are able to avoid civil recoveries and are able to cause large losses to legitimate business and the consumer, federal criminal law enforcement is needed. State and local efforts in this regard are effective in some places, but overall, responses to the Department's Information Request indicated minimal state and local activity. This area of white collar crime, when it involves large amounts of money, will be considered a national priority.

5. Advance fee schemes

This type of white collar crime deserves separate treatment due to the frequency with which it was identified as a priority area and the somewhat different nature of its victims. Advance fee schemes involve the perpetrators offering victims a service or opportunity or product, and then failing to provide the service or product at all or as promised, without returning the fee paid in advance by the victim. The schemes often involve loan commitments, where the perpetrator promises to secure funds for an individual or business enterprise if an appropriate advance fee is paid.

Advance fee schemes were identified as problem areas by FBI field offices across the country in both the FY 1979 survey and the February 1980 survey, where 23 (38%) of the offices listed this kind of illegal conduct as a significant problem. Postal Inspection Service regional offices in Chicago and Memphis list advance fee schemes as priority areas, along with Economic Crime Units in Portland, New Orleans, Cleveland, Detroit, Los Angeles, Philadelphia and Newark.

The victims of advance fee schemes are most often individuals or small businesses, losing between \$2,500 and \$10,000 per transaction. In some cases, the advance fee is a percentage of the value of the loan or service to be provided and may greatly exceed \$10,000. The indirect victims of these schemes are the legitimate entrepreneurs who honestly provide services for an advance fee. To

the extent that society places a value on business initiative by individual and small businesses, these schemes are harmful in stifling that initiative and in some cases causing small businesses to fail.

State and local enforcement activity is reported to be generally minimal and insufficient, with the exception of a few large urban areas, such as Los Angeles. While many cases are too small to justify commitment of federal investigative and prosecutive resources, investigators and prosecutors should be encouraged to go after advance fee schemes involving large amounts of total losses or large numbers of victims. A national priority directed to this end is appropriate.

6. Bankruptcy frauds/bust-outs

This type of white collar crime involves businesses falsifying and concealing assets in order to declare bankruptcy or individuals buying or operating businesses, borrowing up to credit limits, siphoning off assets and filing bankruptcy papers. In some cases, corruption of bankruptcy proceedings and officials, including judges, trustees, receivers, and attorneys, is involved.

Bankruptcy fraud, sometimes referred to as planned bankruptcy or a bust-out, was identified as a problem area by a large number of FBI field offices in all parts of the country and by Economic Crime Units in Phoenix, Denver, Los Angeles, Cleveland, and Columbia. In the February 1980 survey, 21 (34%) of the FBI field offices identified planned bankruptcies as a significant problem.

The perpetrators of this crime are typically medium to small businesses and some individual entrepreneurs. Organized crime figures are frequently involved in this type of illegal activity. The schemes are in many instances multi-state and multi-company in nature. The direct victims are the creditors who are unable to recover the monies owed by the bankrupt enterprise. Recovery against the perpetrators is often difficult due to hidden or otherwise protected assets. Some planned bankruptcy schemes are quite large. A scheme recently uncovered on the East Coast involved the use of 10 separate companies in a number of states to defraud suppliers throughout the Northeast of over \$5 million. The total direct losses from bankruptcy fraud cannot be determined with any precision, but they are clearly large.

The indirect victims of this type of crime are consumers who pay some of the costs of defrauded businesses. The integrity of the entire bankruptcy system is threatened by flagrant abuse and when corruption is involved.

State and local law enforcement efforts in this area are minimal. Federal law enforcement emphasis is appropriate where large losses are involved.

7. Extortion of legitimate business by use of control over labor unions

This type of illegal activity was reported as a priority by a few FBI offices and a few Customs Service offices. It involves control of unions, often by organized criminal elements, acquired by a pattern of unlawful activity in order to achieve influence over or control of non-union enterprises associated with the unions. The use of union power over employers facilitates the extortionate acquisition of interests in or funds from the businesses operated by employers.

The victims of this kind of conduct include union members and benefit plan participants, whose interests are not always served by such activity, the businesses who are controlled, and ultimately consumers who pay more for the businesses' products due to the tribute or profits extorted from the firms.

This type of crime does not seem to merit special designation as a priority, but rather will be added to the list of crimes that victimize private business enterprise and made a priority by inclusion in a broader category of crime.

8. Crimes involving cargo and customs houses

Crimes involving cargo and customs houses were designated as a priority area by a number of Customs Service offices. The illegal activities involved are several: 1) the theft of imported merchandise of all types from cargo areas at piers and airports in this country; 2) the movement in and out of the country of stolen property by organized theft rings and fences; and 3) fraudulent schemes perpetrated by customs house brokers.

The immediate victims of these activities include importers, wholesale and retail firms and others who own the stolen merchandise, and the steamship lines, airlines and trucking firms transporting the merchandise. However, many of these victims' losses are insured and the ultimate costs are borne by insurance policy holders who pay higher premiums and consumers who absorb those higher insurance premiums through higher prices.

There is no good estimate of the amount of money involved in this kind of crime. Existing evidence indicates that it should be considered as a priority, only to the extent it involves fraudulent activity of great magnitude.

9. Use of fictitious or overvalued collateral to get credit or business

While listed as a separate illegal activity by a number of FBI and Secret Service offices and a few Postal Inspection offices, this type of crime can be grouped with other crimes that victimize private institutions. Banks and other financial institutions are the most frequent victims. Losses are sometimes quite large. There is room for improvement in self-protection by potential victims. Nevertheless, some of these schemes appear to be connected with organized crime and may have a significant impact on legitimate individuals and institutions seeking credit or business. Adding this kind of crime to a broader list of similar crimes with some dollar amount qualifications is considered an appropriate way of dealing with the most significant occurrences of this kind of illegal activity.

10. Offshore bank fraud

This illegal activity involves setting up a phony offshore bank using fictitious assets and financial statements and then issuing bogus certificates of deposit, cashier checks and other instruments in order to defraud legitimate banks, companies and individuals. The losses per victim may be very large. In Miami, the average loss is estimated to be in the tens of thousands of dollars per victim.

These same offshore banks are sometimes involved in the laundering of cash received from narcotics violators and organized crime groups on the mainland. They are also used to illegally conceal profits and to avoid income or inheritance taxes. In these instances, the offshore banks are devices used by others for concealing their crimes, as opposed to the banks' own illegal activities.

Offshore bank fraud does not seem to merit a national priority designation at present. Offshore bank operations, however, deserve a great deal of attention for the roles they play in facilitating a broad range of illegal activities.

Conclusion

In this category of white collar crime, the following national priorities are adopted:

1. Bank fraud and embezzlement, or other improper acts by bank officials and employees, involving \$100,000 or more in aggregate losses.
2. Advance fee schemes, involving \$100,000 or more in aggregate losses or 10 or more victims.
3. Bankruptcy fraud, involving \$100,000 or more in aggregate losses.
4. Other major crimes against business, including fraud involving \$100,000 or more in aggregate losses; copyright violations involving manufacturers or distributors, distribution in three or more states or countries, and \$500,000 or more in aggregate losses; and labor racketeering and extortion.
5. Insurance fraud, including arson for profit, involving \$250,000 or more in aggregate losses or two or more incidents perpetrated by the same person or persons.

D. Criminal Activity Victimized Consumers

This category of white collar crime includes the following illegal activities:

1. Consumer fraud
2. Antitrust violations
3. Energy pricing and related fraud
4. Misuse of charitable or non-profit institutions

This category is distinguished from the prior category in that the direct or ultimate victims of the types of white collar crime in this category are usually large numbers of individuals, citizens or small business enterprises, as consumers. While in some cases the victims have direct contact with the perpetrators of the crime, in most cases they do not. The losses from these crimes are usually distributed over a large, amorphous class of victims.

1. Consumer fraud

This type of illegal activity involves consumers being defrauded by being induced to pay for things that they do not receive or about whose qualities they are misinformed. It includes insurance fraud against policy holders, merchandise or supply swindles of various types, phony contests, false billing, home improvement fraud, misrepresentation of goods, fraud in auto sales and repair, and fraudulent sales of art objects, among other things. This type of white collar crime is reported by most Postal Inspection regional offices, a significant number of FBI field offices, a few Customs and ATF offices and Economic Crime Units in Miami, San Diego, Portland and Los Angeles.

The perpetrators of the crime include professional con men, businesses of various sizes and some advertising agencies. No connection with organized crime activity is apparent.

The direct victims are the consumers or purchasers who are defrauded. The amount of loss varies, but can be substantial relative to the victim's wealth. Restricting this crime to hard core fraud, as compared to mere puffing or marginal fraud, the total dollar losses to consumers are, by all estimates, very substantial. The indirect victims of this type of illegal activity are legitimate manufacturers and sellers of goods. The activity dampens innovation and competition by making it

more difficult for producers of new consumer goods to market their goods, and to assure consumers that they will get what is claimed.

Self-protection is often possible and is the most effective remedy in many consumer fraud cases. However, some fraudulent schemes are very sophisticated and difficult to detect. Civil recovery is made difficult because perpetrators are very mobile and litigation costs are often high relative to the loss suffered by individual victims.

State and local law enforcement authorities seem to be heavily involved in attacking this kind of crime, with the NDAA stressing it in its communications with its members. On the federal level, the Postal Inspection Service spends a significant amount of its resources in this area.

Given the state and local activity devoted to consumer victimization, federal involvement seems appropriate in only the large, multi-state operations, particularly those involving professional con artists. It would also seem beneficial for Economic Crime Specialists and U.S. Attorney's offices to work more closely with state and local officials on programs to educate consumers and to increase prevention and detection of these schemes.

2. Antitrust violations

Criminal antitrust violations, including price-fixing and other anti-competitive behavior, were reported by a number of FBI field offices and by various Inspector General offices in connection with procurement. The economic losses caused by antitrust violations are often difficult to estimate, but it is not uncommon to have such violations affecting large sectors of major industries and large geographic areas.

The direct victims of such violations are businesses who suffer economic loss and may be driven out of business by anti-competitive behavior. The ultimate victims of such violations, however, are consumers, who pay more for goods and services than they would in the absence of such interference with normal, competitive market conditions. The losses, which may be spread over large numbers of consumers, are unquestionably enormous. State and local law enforcement agencies appear to be giving antitrust violations more attention, but their efforts and their capabilities are far from sufficient.

Given the large economic losses involved, the harmful effect on the operation of the competitive market, and the need for federal involvement, it is clear that criminal antitrust violations involving large economic losses must be treated as national white collar crime law enforcement priorities.

3. Energy pricing and related fraud

This type of illegal activity involves primarily oil pricing and allocation violations, though other types of energy fraud may be involved. Oil pricing and allocation violations, including "daisy-chain" sales of oil, were identified as problem areas by a number of FBI field offices in oil-producing areas and in New York, and by the Economic Crime Units in Brooklyn, Denver and Los Angeles.

The impact of these kinds of violations falls mainly on consumers who pay higher prices for petroleum products and related items due to fraudulent cost reporting. Businesses that comply with regulations may be hurt competitively or otherwise by businesses that violate those same regulations.

Federal law enforcement agencies, including the FBI, relevant sections of the Department of Energy, and the Criminal Division, have already begun to give this area of white collar crime special scrutiny. Its impact on the nation's consumers is great, federal resources and expertise are necessary to combat it, and public sentiment against energy fraud is at a high level. A separate national priority for energy pricing and related fraud is appropriate.

4. Misuse of charitable or non-profit institutions

This area of illegal activity is included in this report because it appears to be a problem of some significance at present, with great growth potential. The size of the problem is difficult to gauge due to the relative lack of attention given it by federal investigators and prosecutors.

Charity fraud essentially involves the solicitation of funds for a non-existent charity or a fraudulently-operating organization. The scope of this activity is unknown, but it was reported by respondents in Portland, Atlanta and Philadelphia, and those who have examined it claim it is a nationwide problem. Americans give roughly \$40 billion each year to charities ranging from medical research to overseas orphans. Some authorities assert that in many of the largest charities, 10% or less of the funds received actually end up being spent for the causes cited when funds are solicited.

Victims of charity fraud include the individuals who contributed, legitimate charities that receive less money than they would otherwise, and the U.S. Treasury and the taxpayer through lost tax revenue. The losses from this type of fraud could be quite significant.

There are problems in investigating and prosecuting this kind of activity. There are no clear standards or duties defined with respect to proper disclosure of the use of funds or other aspects of charitable institutions. Also, a large part of charitable donations never reaches the intended beneficiaries due to mismanagement, as opposed to outright self-dealing and fraud by those soliciting funds.

This area is of such magnitude and potential importance that it needs close and immediate analysis. Legislative action, public education programs and other initiatives may be appropriate.

Conclusion

In this category of white collar crime, the following national priorities are adopted:

1. Consumer fraud schemes, including but not limited to fraud against insurance policy purchasers, merchandise swindles, false billings, home improvement fraud, and general misrepresentation of goods and services offered for sale, involving \$100,000 or more in aggregate losses or 25 or more victims.
2. Criminal antitrust violations involving price-fixing, including resale price maintenance and other schemes affecting the food, energy, transportation, housing, clothing and health care industries, and collusive activities involving public works projects or public service contracts, where \$1,000,000 or more in commerce is affected.
3. Energy pricing and related fraud, involving \$500,000 or more in costs reported or prices charged for energy products.

E. Criminal Activity Victimizing Investors and the Integrity of the Marketplace

This category of white collar crime includes the following:

1. Securities fraud
2. Commodities fraud
3. Other investment fraud

1. Securities fraud

This type of illegal activity is identified as a problem area by all SEC regional offices, by Economic Crime Units in Chicago, Manhattan, New Orleans, Cleveland, and Los Angeles, and by several FBI field offices. It includes companies, their officers and brokers or other securities professionals misleading investors through misrepresentations in public documents or other fraudulent statements. It also includes insider trading and market manipulation by corporate insiders and securities professionals.

The immediate impact of this type of crime is on investors, individuals and institutions, who purchase securities on the basis of false information and suffer losses. The loss is generally more than \$1,000 per investor, sometimes much more, but the total amount of dollar losses is very difficult to estimate. The more lasting and perhaps harmful impact of this crime is on the securities market as an institution. Investors become less likely to invest in stock and other securities; companies have greater difficulty in raising capital funds.

The impact may be particularly severe for small companies attempting to secure capital. Potential investors in securities may put their resources to less socially productive use (e.g., purchase of consumer goods or commodity speculation).

There are obstacles affecting the investigation and prosecution of these kinds of cases. The illegal activity is often hard to detect and hard to prove. Cases tend to be complex, requiring extended time and other resource commitments. Many investigators and prosecutors lack the expertise to attack securities cases.

Civil recoveries are often possible in these cases, but in many cases the offender is an individual who has successfully spent his assets or shielded them from recovery. Federal law enforcement emphasis would seem appropriate for those schemes involving large amounts of money or particularly egregious frauds by persons in positions of trust (corporate officials, brokers, securities, professionals). Technical violations of Securities Act provisions and smaller cases should not occupy criminal investigative or prosecutive resources.

With appropriate dollar amount qualifications, this area will be considered as a national priority.

2. Commodities fraud

This area of investor fraud is discussed separately because it was identified separately as a priority area by a significant number of respondents. Commodities fraud involves various schemes to sell to investors commodities (e.g., gold, silver, diamonds or other gems, spot crude oil, unleaded gasoline) which the perpetrators do not have and cannot deliver or soliciting investors' advance funds or down payments in a fraudulent manner. Much of this kind of fraud is conducted on a multi-state or national basis, using "boiler room" operations, toll-free numbers, direct mail and other techniques.

Commodities frauds were identified as priority areas by investigative agencies in Chicago, Kansas City, Salt Lake City, Phoenix, Brooklyn, Miami, Denver and Washington and by Economic Crime Units in Boston, Manhattan, Miami, Los Angeles and New Haven. Respondents reported state and local activity addressed to commodities fraud to be minimal and insufficient. Federal investigators and prosecutors are also often unprepared to deal with some of these frauds. Special training is needed in many areas, as well as some creative thinking on how to attack various schemes.

The FBI and the Criminal Division are both in the process of mounting an attack on commodities fraud, in all its forms. It merits being listed as a national priority area, with appropriate dollar amount qualifications.

3. Other investment fraud, including real estate fraud, tax shelter fraud, Ponzi schemes, etc.

This type of white collar crime involves major investment schemes, other than securities or commodities fraud, designed to defraud individuals who have capital to invest and the desire to make money. The money the victims provide the perpetrators is either never invested at all (e.g., Ponzi schemes) or the victims are misled as to the nature of the investment (e.g., real estate or tax shelter fraud). Franchise schemes are a particular type of investor fraud that work on the desire of the victim to own his or her own business; they involve selling nonexistent or worthless area franchises for fast food or auto supply outlets, for example. The schemes generally make heavy use of newspaper advertising, direct mail and phone banks in presenting their wares to an unwary and gullible public.

Real estate fraud was the most frequently reported investor fraud, being designated a priority area by a number of FBI offices, Postal Inspection Service offices in Los Angeles and Memphis, SEC regional offices in Los Angeles, Seattle, Chicago and Denver, HUD regional offices in San Francisco and New York, and Economic Crime Units in Denver, Portland, Columbia, New Haven, Miami and Los Angeles. Distributor/franchise fraud was the next most frequently identified problem area along with investment fraud generally, both of which were listed by a number of different agencies in all parts of the country. Coal-related tax shelter fraud was also identified as a problem in a number of areas.

The perpetrators of investment-related fraud are usually individuals with some sophistication in finance and business matters, and are often professional con artists who have been involved in various types of schemes, including advance fees, bankruptcy fraud, and others. The direct victims of investment fraud schemes are those who transfer assets to the perpetrators. The class of victims is broad, including wealthy individuals who are only marginally hurt by their losses, but also not very wealthy individuals who invest their savings, retirement money or other assets in various business ventures (which may be described to them as low-risk or no-risk) as a hedge against inflation or to simply increase their wealth. Individual losses vary, from a few thousand dollars to over \$500,000 in some tax shelter and real estate frauds. Total losses due to this kind of fraud are very substantial.

The U.S. Treasury and taxpayers are indirect victims of tax shelter fraud. Franchising fraud makes legitimate franchising much harder to do and may sap the initiative of potential entrepreneurs. Legitimate businesses and brokers and other entrepreneurs are indirect victims of other types of investment fraud. The sale of phony business or partnership interests makes it somewhat harder for businesses, particularly small ones, to raise capital.

Our conclusion is that the major types of investment fraud need to be an area of federal law enforcement emphasis. However, large amounts of money must be involved in order for these frauds

to be a priority. We see no need to focus on certain types of investment fraud and not others, for the purpose of defining national priorities. A more general priority description is appropriate, giving flexibility to investigative agency field offices and U.S. Attorneys to define the specific types of schemes that deserve emphasis in their respective regions.

Conclusion

In this category of white collar crime, the following national priorities are adopted:

1. Securities fraud, involving \$100,000 or more in aggregate losses.
2. Commodities fraud, involving \$100,000 or more in aggregate losses.
3. Land, real estate and other investment frauds, involving \$100,000 or more in aggregate losses.

F. Criminal Activity Victimized Employees and Involving the Misuse of Positions of Trust in the Private Sector

This category of white collar crime includes the following types of activity:

1. Misuse or embezzlement of union funds or union-affiliated pension and welfare funds
2. Unlawful employee payments to secure or keep employment
3. Employer payments to union officials in connection with labor-management relations
4. Health and safety violations endangering employees
5. Criminal acts by professionals and others in positions of trust and authority

The common element that illegal activities in this category share is that the offenders are individuals in fiduciary positions or special positions of trust and the victims are individuals who are defrauded or injured as a result of the perpetrators' disloyal or self-serving acts.

1. Misuse or embezzlement of union funds or union-affiliated pension and welfare funds

This type of activity includes kickbacks to union officials in return for benefit plan loans, illegal use of funds as collateral for personal loans for union officers, embezzlement of union funds, payment of compensation or other benefits to unqualified recipients, and other forms of misappropriation of union or benefit plan funds. This kind of crime was identified as a priority area by a large number of FBI field offices in all parts of the country, by the Department of Labor's Inspector General office and by the Economic Crime Unit in Newark. There seems to be some concentration of this activity in congested and heavily industrialized areas, which include major cities, along coast lines, and in many places where organized crime has influence.

Union officials are the usual perpetrators, sometimes in collusion with corrupt management or organized crime figures. In some cases public officials, usually at the state or local level, receive bribes from union officials for various favors or pay kickbacks to union officials for use of union funds. There are some indications that organized crime organizations use illegally-gained union benefit plan funds for other criminal activities, including the purchase of companies for bust-out schemes and other purposes and for laundering monies.

The victims are most often the union members who are supposed to benefit from the funds to which they contribute. Massive losses result from loan defaults, embezzlement and unsound investments caused by corrupt union officials. Such losses ultimately either reduce the amount of coverage or payments afforded union members or produce increases in the premiums members have

to pay, or both. Secondary victims include unions as institutions and those injured by criminal activity financed by illegally diverted union funds. No precise figures are available on the dollar amounts misappropriated by union officials, but the union funds affected are enormous and the number of union members affected are certain to be in the hundreds of thousands.

The responses indicated that state and local law enforcement activity in this area is minimal. Increased federal efforts are likely to produce more convictions and lead to the detection of other criminal activities. The connection of this type of crime with organized crime sometimes complicates investigations and prosecutions, due to the reduced cooperation of prospective informants, witnesses and victims. Victims are also reticent to complain due to the economic power of union officials.

The percentage of all unions affected by this kind of illegal activity is relatively low. However, the impact of this kind of fraud on the unions affected is usually great. To reduce this impact and to protect the large number of honest unions, this type of white collar crime will be included in the list of national law enforcement priorities, combined with other union-related abuses discussed below.

2. Unlawful employee payments to secure or keep employment

This crime involves the payment of money to union officials or employers by employees or prospective employees to retain or secure employment. It does not include the bona fide payment of dues or initiation fees. The activity was reported as a priority area by only a few respondents, but there is good reason to believe that the problem is widespread.

The direct victims are the employees who are forced to pay for the privilege of working or enjoying union benefits. The employee's bribery of a union official may result in some benefit being unjustly denied another employee. These payments undermine the concept of non-discriminatory hiring practices and bring unions into disrepute.

This type of illegal activity will be grouped with other labor-related abuses and made a national priority.

3. Employer payments to union officials in connection with labor-management relations

This type of crime involves both union officials and employers as perpetrators. It includes union officials extorting funds from employers in return for labor peace or the avoidance of strikes or slowdowns, and the payment of bribes by management on its own initiative to union officials to achieve favorable treatment in labor contract negotiations, employee grievances, union organizing campaigns, etc. These activities were reported as problems by a number of FBI, Customs and ATF offices, as well as by the Department of Labor's Inspector General office. They appear to be most prevalent in the construction, trucking and waterfront industries. The garment and restaurant trades were also mentioned, primarily in major coastal cities.

Almost half of the respondents discussing this kind of activity cited organized crime figures as either principals or associates of the offenders. The control of certain unions and/or industries in particular geographic areas by organized criminal elements was cited as the objective of this kind of activity.

While the unwilling employer-payor may suffer losses of funds or be driven out of business, the other victims of this type of illegal activity are the employees whose collective bargaining rights and

benefits are compromised. In some cases though, employees cooperate with their union officials where the employees stand to gain from non-productive practices imposed on employers as a condition of labor peace. Consumers are the indirect victims of this illegal activity when the costs of bribery and extortion of union officials and of non-productive employee practices are passed along in higher prices.

Federal law enforcement emphasis on this type of labor-related abuse, along with other similar abuses, is warranted.

4. Health and safety violations endangering employees

This category of white collar crime includes health and safety violations by employers which expose employees to life-endangering situations. Life-endangering violations are those that are likely or may be reasonably foreseen to cause death or serious bodily injury to employees. Serious bodily injury means an impairment of physical condition, including physical pain that a) creates a substantial risk of death or b) causes permanent disfigurement, unconsciousness, extreme pain or permanent or protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

Health and safety violations, primarily OSHA and Mine Safety violations, were reported as problems by a number of respondents. Federal criminal law enforcement activity in this area has been, up to this point, very limited. However, the General Litigation section of the Criminal Division is beginning to focus its attention on a wide range of criminal health and safety violations, including those affecting employees. The irreparable harm actually caused by this kind of violation, the great potential for even greater harm, and the keen federal interest in this area all indicate that life-endangering health and safety violations affecting employees should be a national law enforcement priority.

5. Criminal acts by professionals and others in positions of special trust and authority

This type of illegal activity was not separately identified by any respondents but was suggested in many of their responses. It essentially involves activity by professionals, such as lawyers, doctors, nurses, dentists, accountants, or by other individuals in special positions of trust in the private sector which causes or allows white collar crime in various forms to occur. It includes activities such as doctors performing unnecessary medical tests or prescribing unnecessary drugs in order to obtain more Medicare/Medicaid funds or kickbacks from clinics or pharmacists; lawyers who participate in fake accident schemes or who divert sums rightfully due their clients; accountants who engage in account manipulation to hide illegal schemes; corporate officials who defraud their stockholders or who engage in practices endangering the health and safety of their employees or of the public generally; or hospital or nursing home administrators who defraud or abuse patients or their relatives.

These kinds of activities are often tied to larger illegal schemes, discussed in other parts of this report. The notion that has been discussed in various contexts, however, is that one effective way to curtail white collar crime is to impose special duties on those individuals whose special skills are needed in order to bring various types of schemes to fruition. Beyond the key role that these individuals play in perpetrating white collar crime, there is also the underlying feeling that because members of the general public are at their mercy, often involuntarily, these skilled individuals have a special responsibility to prevent, or at least disclose, illegal schemes that come to their attention.

There are, of course, problems in defining the class of individuals subject to this special duty and the parameters of their responsibility. However, serious thought will be given by the Department to the special responsibilities of individuals in positions of trust in the private sector and to the appropriate federal law enforcement response to serious violations of those responsibilities.

Conclusion

In this category of white collar crime, the following national priorities are adopted:

1. Union official corruption-embezzlement of union pension, welfare or other benefit funds involving \$25,000 or more in losses; bribery or kickbacks to union officials involving \$5,000 or more in the aggregate.
2. Life-endangering health and safety violations affecting employees, including OSHA and Mine Safety violations.

G. Criminal Activity Threatening the Health and Safety of the General Public

This category of white collar crime includes the following types of illegal activity:

1. Illegal disposal of toxic, hazardous or carcinogenic wastes
2. Regulatory violations affecting the health and safety of the general public.

1. Illegal disposal of toxic, hazardous or carcinogenic wastes

This illegal activity involves the discharging of toxic, hazardous and/or carcinogenic wastes into the air, land, and water in excess of regulatory limits or in disregard of statutory prohibition. It also involves the transporting of toxic substances across state lines without complying with Department of Transportation regulations.

This kind of activity occurs throughout the United States and affects international waters as well as neighboring countries. It is identified as a priority area by Economic Crime Units in Philadelphia (number one priority), Newark (number two) and Cleveland (number four) and as the number one priority of the Department's Land and Natural Resources Division. A few investigative agency field offices also identified dumping of toxic wastes as a major problem.

The perpetrators include businesses who dispose of toxic wastes improperly, entrepreneurs who arrange for the illegal dumping, some municipalities who are violators themselves, and some city or county officials who conspire with companies that are violators. The victims include the public at large, through loss of natural resources and public recreational facilities, and individual citizens who become ill or die, who lose their livelihood due to the effects of toxic material, or who lose their houses due to extreme pollution of entire residential neighborhoods. The total impact of this kind of crime is immeasurable; it reaches far beyond the present. Diseases and fatalities will occur in the future as a result of the perpetration of these crimes today.

The respondents indicated that state and local enforcement in this area is either minimal to non-existent or significant but insufficient. There are difficulties confronting law enforcement against this type of crime: 1) the lack of trained personnel; 2) the difficulty in detecting pollutants once they have been discharged; and 3) the lack of stringent penalties and sentencing for offenders. Increased federal emphasis would have to include resources devoted to each of these problems.

It seems clear that increased criminal investigation and prosecution would have a substantial effect in deterring these types of offenses. Many corporations appear to figure the costs of potential civil penalties into their costs of doing business and decide it is more "efficient" for them to violate pollution laws than to obey them. Criminal prosecutions and effective penalties are needed to upset this kind of calculus.

Thus, for a number of reasons, this type of white collar crime will be designated as a national law enforcement priority.

2. Regulatory violations affecting the health and safety of the general public

This broad category involves violations of a number of statutes and regulations promulgated by numerous federal agencies. The regulations involved all, in some way, deal with the protection of the health and safety of members of the general public. The agencies whose regulations are of particular interest include the Food and Drug Administration, EPA, the Nuclear Regulatory Commission, and the Consumer Product Safety Commission.

The violations may go undetected until severe, irreversible damage has been done. The ultimate victims are members of the public who are exposed to danger and who may suffer injuries, due to false statements to regulatory agencies or violations of statutes or regulations regarding food, drugs, consumer products, nuclear power plants, or other regulated goods or facilities.

As with other health and safety violations, federal criminal law enforcement activity in these areas has been minimal. However, the costs to individuals and to society generally resulting from these violations are unquestionably great. They deserve much more federal attention than they are currently receiving. Therefore, a separate national priority for these violations, when they are of a life-endangering nature, is appropriate.

Conclusion

In this category of white collar crime, the following national priorities are adopted:

1. The discharge of toxic, hazardous or carcinogenic wastes in excess of regulatory limits or in disregard of statutory prohibitions.
2. Life-endangering violations of health and safety regulations for the protection of the public, including but not limited to regulations pertaining to food, drugs, consumer products, nuclear power facilities and other federally regulated goods and facilities.

IV. IMPLEMENTATION AND EVALUATION

The national white collar crime law enforcement priorities, and the district priorities that will follow, are intended to provide guidance and direction to federal investigators and prosecutors concerning which white collar crime matters deserve special emphasis. The priorities will enhance the federal government's efforts to combat white collar crime in a number of ways. Specifically, the implementation of these priority areas should help accomplish the following:

1. Improved coordination and allocation of limited federal investigative and prosecutive resources on both the national and district level;
2. Better coordination of federal, state and local law enforcement efforts directed toward white collar crime;
3. More comprehensive and timely identification of trends or patterns in white collar crime requiring legislative initiatives or special emphasis in the areas of prevention, detection, investigation or prosecution;
4. Expeditious development of new and more effective investigative techniques, prosecution practices and training programs in white collar crime law enforcement;
5. Furtherance of consistency and equal justice in federal law enforcement, in conjunction with prosecutive guidelines for United States Attorneys;
6. Improved communication between and among law enforcement officials, Congress, the business community and members of the general public concerning white collar crime problems, their impact on society and appropriate public and private measures for dealing with them.

The national and district white collar crime law enforcement priorities will be successful in achieving these and other objectives only if the members of the federal law enforcement community modify, where necessary, their respective goals and procedures to encourage implementation of those priorities and to allow periodic evaluation of successes or failures in carrying out those priorities. The cooperation among federal agencies in formulating the priorities discussed in this report has been superb. The same type of cooperation is expected as we begin to put these priorities into operation. The agencies that will be primarily involved in implementing and evaluating the impact of the priorities are discussed below.

A. Agencies Primarily Involved in Implementing and Evaluating the Impact of Priorities

1. United States Attorneys and Other Departmental Attorneys

United States Attorneys will play a key role in implementing white collar crime priorities. Initially, U.S. Attorneys in a limited number of districts will be asked to define district white collar crime law enforcement priorities for their respective districts, after consultation with the federal investigative agencies and Economic Crime Unit Specialist in their districts. As set forth in Attorney General Order No. 817-79, "Each United States Attorney shall select specific priorities within the national policy that are particular to their federal districts, with the concurrence of the Assistant Attorney General in charge of the Criminal Division." Thus, district priorities may be subsets or more specific descriptions of the national priorities. For example, while federal program fraud involving \$25,000 or more in aggregate losses or corruption is a national priority area, a federal district may want to declare as a district priority one or two specific types of program fraud that are

prevalent in that district. Similarly, specific types of federal, state or local corruption may be designated as district law enforcement priorities.

District priorities should be used as a means of coordinating and focusing federal law enforcement resources devoted to white collar crime. They are intended to give U.S. Attorneys and federal investigative agencies flexibility, within the overarching framework of the national priorities, in dealing with problems of local importance and concern. Eventually, all federal districts will be asked to define district white collar crime law enforcement priorities. District priorities, like national priorities, will indicate the types of white collar crime matters that deserve relatively more resources and attention by the federal law enforcement authorities in a particular federal district. It should be emphasized, however, that there may be matters which do not fall within the national or district priority specifications that nevertheless are very important. These matters, which may involve professional criminals or issues of great local significance, should continue to be aggressively pursued.

The Criminal Division will define areas within the national priorities that merit special emphasis and nationwide coordination by the Division. For example, the Criminal Division's Fraud Section is now coordinating an inter-agency effort directed at commodities fraud. Similar national emphasis programs may be formed in other priority areas.

The Economic Crime Unit Program will also play an important role in implementing national and district priorities. The Economic Crime Unit Specialists will continue to gather information concerning important white collar crime problems in their respective areas, and they will continue to help coordinate federal efforts directed toward major white collar crime activity. They will work closely with U.S. Attorneys and federal investigators in defining and implementing district priorities.

Other Divisions in the Department that undertake the investigation and prosecution of white collar crime matters (primarily the Tax Division and the Antitrust Division) will give special attention to the priority cases in their respective areas and will continue to work with the Criminal Division in monitoring the impact of the national law enforcement priorities on white collar crime activity.

In order to keep track of prosecutive activity with respect to priority areas, the national white collar crime priorities will be included in the reporting and information systems used by U.S. Attorneys and other Department attorneys. For U.S. Attorneys, the current Docket and Reporting System will be modified to include national priorities as items about which information is collected. This will require modification and expansion of the existing offense codes used by the Executive Office for U.S. Attorneys to reflect the national priorities. The current offense codes are listed in Appendix D.

The management information system currently being implemented in the Criminal Division will be modified to include designation codes and other case-specific information for investigations and cases that are national priorities. Other Divisions in the Department involved in prosecuting white collar criminal matters will also need to keep similar information regarding priority cases.

In addition to information concerning the number and types of priority cases opened, pending, and closed, and the results of those cases, the Department will collect information concerning other law enforcement activity with respect to priority areas to the extent possible. This includes information with regard to the prevention and detection of illegal activity, the training of personnel to investigate or prosecute white collar crime, more efficient ways of handling cases, progress in achieving

more effective sentencing of convicted offenders, and similar information. Progress in addressing national priorities will thus be assessed in a variety of ways.

2. Federal Bureau of Investigation

The FBI has played a significant role in defining the national white collar crime law enforcement priorities and will play an equally significant role in implementing them. The national priorities should indicate to FBI field offices the types of white collar crime cases that should be receiving major investigative emphasis. The FBI field offices should also work directly with U.S. Attorneys and other federal investigative agencies in formulating district priorities.

The FBI is in the process of determining the extent to which its internal record-keeping systems will have to be changed in order to collect information concerning activity with respect to each priority area. The Bureau's current white collar crime classifications and priority designations are shown in Appendix A. Substantial changes in the FBI's record-keeping systems may be necessary and those changes may require time. In the meantime, the FBI's current system will be used, to the extent possible, to collect information concerning national white collar crime priority activity. Evaluation of the Bureau's activity in priority areas will involve measurements of activity along a number of dimensions, as discussed above with regard to U.S. Attorneys and other Department attorneys.

3. Other Major Investigative Agencies

Each of the major federal investigative agencies that participated in the formulation of the national law enforcement priorities (Customs Service, ATF, Secret Service, Postal Inspection Service and SEC) will also be involved in their implementation. Each of these agencies is primarily responsible for the investigation of one or more of the national priorities. The priority descriptions should assist the agencies in allocating their investigative resources and also indicate the types of cases that are likely to receive special attention when presented to federal prosecutors.

As with the FBI, the major investigative agencies should be involved in the determination of district white collar crime law enforcement priorities. They will also be asked to keep information concerning the number and types of priority cases that have been opened, are being handled or have been closed over designated periods of time and the results of those cases, so that our evaluation of the impact of the priorities will be as complete as possible.

4. Inspectors General and Equivalents

All Inspectors General and their equivalents in the Department of Defense will be affected by both the national and the district priorities. The priorities should give increased guidance to Inspectors General concerning the cases that will receive prosecutive emphasis by the Department. They may also help in deciding how to allocate resources within Inspectors General offices. Comments received from a number of Inspector General offices on the draft of this report indicated strong support for the establishment and implementation of national priorities.

In order to trace the effects of the priorities, Inspectors General will be asked to keep information concerning the number and types of priority cases being handled by their offices, as well as other information regarding priority activity. Modifications of the current White Collar Crime Referral Form and of internal record-keeping systems may be necessary.

5. Bureau of Prisons

Ideally, an evaluation of the impact of white collar crime enforcement priorities should also include information on the results of criminal prosecutions, including the number of convictions, fines and sentences levied, and number of convicted offenders actually incarcerated. The U.S. Bureau of Prisons collects information on an annual basis concerning the number of prisoners, their race and sex, and the average sentence being served, by various categories of offense.

The Bureau's existing offense categories and statistics as of the end of FY 1978 and FY 1979 are included in Appendix E to this report. As shown there, the crime categories relating to white collar crime are general in nature and are not consistent with the Docket and Reporting system of offense codes or the FBI's crime classifications.

Modifications of the Bureau of Prisons' offense categories may be necessary in order to identify the number of persons imprisoned for specific types of white collar crime offenses and the sentences associated with those offenses. Evaluation of the Department's white collar crime efforts, including the impact of national and district priorities, could then be more complete.

B. Updating Information Base and Reevaluating Priorities

The Department will update periodically its information base concerning white collar crime activity. Concurrently, it will reevaluate existing national and district priorities. Doing so on an annual basis is probably about as frequently as logistics and information-processing time will allow.

The information provided in response to the Department's Information Requests in this initial effort was received in early 1980. The exact timing of future Information Update Requests by the Department will be determined after consultation with the agencies involved.

C. Time Frame for Implementation and Evaluation

The implementation process described above is an ambitious one. It will require considerable attention by all those affected and also a significant amount of time. The national priorities are effective immediately and they should guide the efforts of federal investigators and prosecutors at once. However, ongoing investigations and prosecutions should continue, and any shifting of resources into priority areas will necessarily take place gradually.

District priorities will be established in phases over the next two years. Districts with Economic Crime Units or special fraud or corruption units will formulate their district priorities first. Other districts will follow as expeditiously as possible.

Information-gathering for the purposes of evaluating the impact of the national and district priorities will also take place in different stages over an extended period of time. Modifications of existing Department information systems will be accomplished as soon as is feasible. By the end of Fiscal Year 1981, the Department should be in a position to provide a considerable amount of information concerning activity with respect to priority areas and the impact of national and district priorities on law enforcement efforts during that fiscal year. More complete information should be available for the next fiscal year.

The Deputy Attorney General and the Assistant Attorney General in charge of the Criminal Division will report to the Attorney General periodically concerning the implementation of the white collar crime priorities and their effect on law enforcement activity. The Department will

report to Congress and the American public periodically concerning our progress in priority areas and in the white collar crime area generally.

National and district priorities will be reevaluated annually on the basis of new information concerning white collar crime activity and the advice and experience of members of the federal law enforcement community. The lessons we learn as we implement these priorities should be beneficial not only in the area of white collar crime, but in other areas of law enforcement as well.

D. Effect on Declination Policies

The implementation of white collar crime priorities will, in many cases, result in a reallocation of federal law enforcement resources devoted to white collar crime. In general, this should mean more resources allocated to major white collar crime matters and fewer resources to small, relatively minor matters.

The Department will attempt to monitor the effect of the priorities on the numbers and types of white collar cases declined for prosecution. By enhancing communication between prosecutors and investigators, the priorities may decrease the number of white collar crime cases that are referred for prosecution and then declined, thus promoting more efficient use of federal resources. In any event, in evaluating the impact of the priorities, the Department will be alert to their effect on declinations.

V. SUMMARY OF NATIONAL WHITE COLLAR CRIME LAW ENFORCEMENT PRIORITIES

This report has briefly summarized the Department's findings with respect to the types of white collar crime activity that seem most prevalent and most significant across the country. The national white collar crime law enforcement priorities described in this report are based upon the information gathered by the Department, viewed in light of a number of specific criteria. The priorities also reflect many comments and suggestions received from the more than twenty agencies, departments and Department of Justice components that participated in this initiative by providing information and reviewing an earlier draft of this report.

The national priorities should be viewed by federal prosecutors and investigators as guideposts and indicators of the types of white collar crime that deserve special emphasis. It should be clear that cases which may not fall strictly within the priority specifications may nevertheless be very important. This would be true, for example, of cases involving known con artists, even though the dollar amount of losses may be moderate. National priority cases, moreover, may be very few in number in some parts of the country.

It should be noted that some of the white collar crime priority areas are in many cases associated with traditional organized crime or other organized criminal activity. Our assumption is that most, if not all, white collar crime offenses involving traditional organized crime or other organized criminal activity will be pursued by investigators or prosecutors under existing organized crime programs. Therefore, there are no references to organized crime in the priority descriptions.

The national white collar crime law enforcement priorities are as follows:

NATIONAL WHITE COLLAR CRIME PRIORITIES

A. Crimes Against Federal, State or Local Governments By Public Officials

Federal corruption - procurement¹⁷

Federal corruption - programs¹⁷

Federal corruption - law enforcement¹⁷

Federal corruption - other¹⁷

State corruption - major officials¹⁸; other employees where corruption is systemic

Local corruption - major officials¹⁹; other employees where corruption is systemic

B. Crimes Against the Government By Private Citizens

Federal procurement fraud, non-corruption - \$25,000 or more in aggregate losses

Federal program fraud, non-corruption - \$25,000 or more in aggregate losses

¹⁷For some purposes, this item can be consolidated with other federal corruption items into one "federal corruption" category; however, it should remain as a separate item for record-keeping purposes.

¹⁸Major officials = governors, legislators, department or agency heads, court officials, law enforcement officials at policymaking or managerial level, and their staffs.

¹⁹Major officials = mayors, city council members or equivalents, city managers or equivalents, department or agency heads, court officials, law enforcement officials at policymaking or managerial level, and their staffs.

Counterfeiting of U.S. currency or securities

Customs violations - duty violations, \$25,000 or more in tax revenue losses, one transaction, or \$50,000 or more in tax revenue losses, multiple transactions; currency violations, \$25,000 or more in currency, one transaction, or \$50,000 or more in currency, multiple transactions

Tax violations - major federal tax violations²⁰

Trafficking in contraband cigarettes - \$100,000 or more in aggregate tax revenue losses

C. Crimes Against Business

Insurance fraud, including arson for profit - \$250,000 or more in aggregate losses or two or more incidents perpetrated by the same person or persons

Advance fee schemes - \$100,000 or more in aggregate losses or 10 or more victims

Bankruptcy fraud - \$100,000 or more in aggregate losses

Other major crimes against business - fraud involving \$100,000 or more in aggregate losses; labor racketeering; copyright violations involving manufacturers or distributors, distribution in three or more states or countries, and \$500,000 or more in aggregate losses

Bank fraud and embezzlement - \$100,000 or more in aggregate losses

D. Crimes Against Consumers

Consumer fraud - \$100,000 or more in aggregate losses or 25 or more victims

Antitrust violations - price-fixing, including resale price maintenance and other schemes affecting the food, energy, transportation, housing, clothing and health care industries; collusive activities involving public work projects or public service contracts—\$1,000,000 or more in commerce affected

Energy pricing and related fraud - \$500,000 or more in costs reported or prices charged for energy products

E. Crimes Against Investors

Securities fraud - \$100,000 or more in aggregate losses

Commodities fraud - \$100,000 or more in aggregate losses

Land, real estate and other investment frauds - \$100,000 or more in aggregate losses

²⁰ Priority matters are identified on a case-by-case basis by the Tax Division, in collaboration with the Internal Revenue Service, taking into account the amount of tax revenue losses and the adverse impact of the violation on the federal tax system.

F. Crimes Against Employees

Union official corruption - embezzlement of union pension, welfare or other benefit funds involving \$25,000 or more in aggregate losses; bribery or kickbacks to union officials involving \$5,000 or more in the aggregate

Life-endangering²¹ health and safety violations: OSHA, Mine Safety

G. Crimes Affecting the Health and Safety of the General Public

Discharge of toxic, hazardous or carcinogenic waste in excess of federal statutory or regulatory limits

Life-endangering²¹ violations of health and safety provisions and regulations pertaining to food, drugs, consumer products, nuclear power facilities and other federally regulated goods and facilities

²¹ Life-endangering violations include business practices and other acts or products that are likely or may be reasonably foreseen to cause death or serious bodily injury to human beings (including a human fetus); serious bodily injury means an impairment of physical condition, including physical pain that a) creates a substantial risk of death or b) causes permanent disfigurement, unconsciousness, extreme pain or permanent or protracted loss or impairment of the function of any bodily member, organ, or mental faculty.

**NATIONAL PRIORITIES FOR THE INVESTIGATION
AND PROSECUTION OF WHITE COLLAR CRIME**

Report of the Attorney General

APPENDICES

APPENDIX A

CURRENT FBI WHITE COLLAR CRIME
PRIORITIES AND FY 1979 RESOURCE ALLOCATION

A. Categories of Offenses and Priorities

The FBI groups white collar crime offenses into 70 categories for reporting purposes. The current (as of February 1, 1980) categories are shown below. The Bureau's priority areas are designated by asterisks. When FBI field offices open a white collar crime investigation, the proper offense code is entered on an investigation initiation form, which is forwarded to FBI headquarters and updated upon the occurrence of a significant event (e.g., grand jury convened, indictment returned, etc.).

FBI CLASSIFICATIONS GROUPED BY NATIONAL PRIORITY AND PROGRAM

February 1, 1980

PRIORITY I

WHITE COLLAR CRIME PROGRAM:

- * 17A Fraud Against Govt.-VA-Officials; Loss +\$25,000
- 17B Fraud Against Govt.-VA-All Other Criminal Matters
- 27 Patent Matters
- * 28A Copyright Matters-Mfrs & Distr of Sound Recordings
- 28B Copyright Matters-Mfrs & Distr of Motion Pictures
- 28C Copyright Matters-All Others
- * 29A Bank Fraud and Embezzlement-Exceeding \$100,000
- * 29B Bank Fraud and Embezzlement-\$10,000-\$100,000
- 29C Bank Fraud and Embezzlement-\$1,500-\$9,999
- 29D Bank Fraud and Embezzlement-Under \$1,500
- 36 Mail Fraud
- * 46A Fraud Against Govt.-Misc-Officials; Loss +\$25,000
- 46B Fraud Against Govt.-Misc-All Other Criminal Mtrs
- * 49A National Bankruptcy Act-\$50,000+, Court Off; Scam
- 49B National Bankruptcy Act-All Others
- 51 Jury Panel Investigations
- 56 Election laws
- * 58 Bribery; Conflict of Interest
- * 62A Administrative Inquiry; Federal Judiciary Invest
- 62B Census Matter; 8Hr Day; Kick Back Act. Et Al
- 69 Contempt of Court
- * 72 Obstruction of Justice
- * 74 Perjury
- 75 Bondsmen and Sureties
- * 86A Fraud Against Govt.-SBA-Officials; Loss +\$25,000
- 86B Fraud Against Govt.-SBA-All Other Criminal Matters
- * 87D Interstate Trans of Stolen Prop-Sec & NI \$50,000+
- 87E Interstate Trans of Stolen Prop-Sec & NI -\$50,000
- 119 Federal Regulation of Lobbying Act
- * 122 Labor Management Relations Act, 1947
- 125 Railway Labor Act-Including Emp Liability Act
- 139 Interception of Communications
- 141 False Entries in Records of Interstate Carriers
- * 147A Fraud Against Govt.-HUD-Officials; Loss +\$25,000
- 147B Fraud Against Govt.-HUD-All Other Criminal Matters
- * 156 Employee Retirement Income Security Act
- * 159 Labor-Management Reporting and Disclosure Act 1959
- 181 Consumer Credit Protection Act
- * 183D RICO-White Collar Crimes
- 186 Real Estate Settlement Procedures Act 1974
- * 194D Hobbs Act-Corrupt Pub Officials-Non LCN Involvement
- * 195 Hobbs Act-Labor Related
- * 196A Fraud by Wire-Intnatl Fraud +\$25,000 or 10+Victims
- * 196B Fraud by Wire-Natl Fraud +\$25,000 or 10+Victims
- 196C Fraud by Wire-All Others
- 205 Foreign Corrupt Practices Act of 1977
- * 206A Fraud Against Govt.-DOD-Officials; Loss +\$25,000
- 206B Fraud Against Govt.-DOD-All Other Criminal Matters
- * 206C Fraud Against Govt.-DOA-Officials; Loss +\$25,000
- 206D Fraud Against Govt.-DOA-All Other Criminal Matters
- * 206E Fraud Against Govt.-DOC-Officials; Loss +\$25,000
- 206F Fraud Against Govt.-DOC-All Other Criminal Matters
- * 206G Fraud Against Govt.-CSA-Officials; Loss +\$25,000
- 206H Fraud Against Govt.-CSA-All Other Criminal Matters
- * 206I Fraud Against Govt.-DOI-Officials; Loss +\$25,000
- 206J Fraud Against Govt.-DOI-All Other Criminal Matters
- * 207A Fraud Against Govt.-EPA-Officials; Loss +\$25,000
- 207B Fraud Against Govt.-EPA-All Other Criminal Matters
- * 207C Fraud Against Govt.-NASA-Officials; Loss +\$25,000
- 207D Fraud Against Govt.-NASA-All Other Criminal Matters
- * 207E Fraud Against Govt.-DOE-Officials; Loss +\$25,000
- 207F Fraud Against Govt.-DOE-All Other Criminal Matters
- * 207G Fraud Against Govt.-DOT-Officials; Loss +\$25,000
- 207H Fraud Against Govt.-DOT-All Other Criminal Matters
- * 208A Fraud Against Govt.-GSA-Officials; Loss +\$25,000
- 208B Fraud Against Govt.-GSA-All Other Criminal Matters
- * 209A Fraud Against Govt.-HEW-Officials; Loss +\$25,000
- 209B Fraud Against Govt.-HEW-All Other Criminal Matters
- * 210A Fraud Against Govt.-DOL-Officials; Loss +\$25,000
- 210B Fraud Against Govt.-DOL-All Other Criminal Matters

B. FY 1979 Resource Allocation

White collar crime is one of the Bureau's three top priority areas, along with organized crime and foreign counter-intelligence. The following table shows the percentage of the FBI's investigative resources devoted to white collar crime and some of the Bureau's other programs, and also indicates the relative number of convictions, fines levied, recovered funds, and potential economic loss prevented.¹

TABLE 1
Allocation of Resources Among Various FBI Programs and Other Statistics - FY 1979

<u>Program</u>	<u>Percentage of Total Investigative Resources</u>	<u>Number of Convictions</u>	<u>Fines Levied (millions)</u>	<u>Funds Recovered (millions)</u>	<u>Potential Economic Loss Prevented (millions)</u>
White Collar Crime	21%	3,718	\$4.8	\$60.1	\$921.4
Organized Crime	19	636	8.9	13.5	591.1
Personal Crimes	8	1,771	0.1	5.1	3.4
General Property Crimes	7	1,350	1.1	52.3	407.5
General Government Crimes	2	1,158	0.1	3.0	4.4
Antitrust and Civil Matters	0.5	117	12.2	--	0.2

Source: Internal FBI Study.

Information similar to that contained in Table 1 has been compiled for each major category of offense within the Bureau's white collar crime program. Table 2 below shows the agent work-years devoted to various categories of white collar crime for FY 1979 and indicates the convictions handed down, fines levied, funds recovered, and potential economic loss prevented in each category.

The Bureau has been conducting over the last few months an internal evaluation of its white collar crime program. That evaluation should be completed and forwarded to the Director in the very near future.

¹Potential economic loss prevented (PELP) is estimated by FBI agents working on investigations, based on their knowledge of the case and their professional judgment. The figure is thus a best guess and should be viewed with appropriate caution.

TABLE 2

Allocation of Resources Among Major FBI White Collar Crime Activities and Other Statistics — FY 1979*

Major Category	Agent Work-years Consumed	Approximate Percent of WCC Resources**	Approximate Percent of total FBI Resources***	Investigative Matters Received	Number of Convictions	Fines Levied (millions)	Funds Recovered (millions)	Potential Economic Loss Prevented (millions)
Fraud by Wire, ITSP	370	25.0%	5.3%	23,097	705	\$1.24	\$28.43	\$648.95
Fraud Against the Government	366	24.7%	5.2%	11,555	749	2.36	6.24	36.55
Bank Fraud and Embezzlement	296	20.0%	4.2%	13,732	1,735	0.67	23.91	16.04
Hobbs Act-Public Corruption	115	7.8%	1.6%	1,778	90	0.41	.25	.59
Labor Matters	57	3.9%	.8%	1,082	41	0.07	.18	1.11
Copyright	47	3.2%	.7%	1,834	49	0.21	.80	216.51
Bribery	45	3.0%	.6%	1,000	57	0.16	.01	2.14
National Bankruptcy	35	2.4%	.5%	1,402	60	0.06	.24	7.00
	1,331	90%	18.9%	55,480	3,486	\$5.18	\$60.06	\$928.89

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* Categories included in this table represent approximately 98 % of white collar crime matters received and over 90% of agent work-years consumed.

** Assumes categories shown represent 90% of total agent work-years consumed by white collar crime program.

*** Based on data showing 21% of total FBI resources devoted to White Collar Crime Program (see Table 1).

Source: Internal FBI Study.

APPENDIX B

MASTER LIST OF WHITE COLLAR CRIMES

A. Irregularities involving manipulation of federally-funded programs

- A01 1. Misuse of CETA funds
- A02 2. Misuse of VA loans
- A03 3. Misuse of SBA loans (fraudulent statements, withdrawal of collateral, etc.)
- A04 4. Misuse of research grants
- A05 5. Misuse of food stamps
- A06 6. Misuse of housing programs (HUD loans, grants, subsidies)
- A07 7. Student loan abuse
- A08 8. Misuse of highway or other transportation funds (NHTS grants, UMTA grants)
- A09 9. Medicare/Medicaid fraud (by providers, administrators, or recipients)
- A10 10. Welfare fraud (income maintenance)
- A11 11. Misuse of urban renewal program (payoffs, embezzlements, etc.)
- A12 12. False claims - social security and social security benefits
- A13 13. FDIC loan fraud
- A14 14. Worker's Compensation fraud
- A15 15. Misuse of Emergency Disaster Loan Funds
- A16 16. Misuse of Child Nutrition Program Funds
- A17 17. Misuse of Price Support Program Funds
- A18 18. Weatherization Program Funds
- A19 19. Imprest Fund Losses
- A20 20. Social Security Benefit and Welfare Programs
- A21 21. Social Security Agency Grants and Payments
- A22 22. Government Employee Crimes and Corrupt Practices
- A23 23. Education Aid and Grant Programs
- A24 24. Grant and Contract Fraud (other than research)/Subcontractors fraud
- A25 25. General recipient fraud
- A26 26. Fraudulent FHA loan applications
- A27 27. Wastewater treatment construction grant fraud (EPA, Agriculture)
- A28 28. Demonstration and training grants
- A29 29. DOD Champus fraud
- A30 30. FHA mortgage loan fraud (including misuse of veteran benefits)
- A31 31. Supplemental Security Income
- A32 32. Alcoholic and Drug Rehabilitation Funds
- A33 33. Misuse of FDA funds
- A34 34. Farmers Home Administration Loan Fraud
- A35 35. Tobacco marketing fraud
- A36 36. Non-CETA, DOL employment fraud
- A37 37. Misuse/fraud re: Dept. Commerce funds
- A38 38. Misuse of unidentified federal funds
- A39 39. Misuse of EPA funds
- A40 40. Fraudulent application/operation of Small Investment Companies (MESBICs)
- A41 41. Misuse of Community Development funds
- A42 42. Housing Rehabilitation Program Fraud
- A43 43. Equity skimming/Improper diversion of multifamily housing project funds
- A44 44. Straw buyers/housing programs
- A45 45. Fraud in operation/management of multifamily housing
- A46 46. Fraud in single-family housing loans

- A47 47. Fraud related to multifamily construction costs
- A48 48. Fraud related to property disposition activities
- A49 49. Theft of project receipts at HUD sponsored projects
- A50 50. Architect kickbacks/HUD sponsored projects
- A51 51. FAIR (Fairly Assigned Insurance Rates) Plan Abuse [HUD Program]
- A52 52. Misuse of HEW Research Funds
- A53 53. Fraud against DOL by state agency
- A54 54. Misuse of Community Service Administration Funds
- A55 55. Fed. Employees Compensation Fraud
- A56 56. Longshore Workers Compensation Fraud
- A57 57. Coal Mine Workers Comp. Fraud (by lawyers against claimants)
- A58 58. Coal Mine Workers Medical Benefits Fraud
- A59 59. Military Reserve Pay
- A60 60. Military Retirement and Disability Pay
- A61 61. Misuse of VA education benefits
- A62 62. Misuse of VA compensation and pension benefits
- A63 63. Misuse of VA medical programs
- A64 64. Misuse of VA insurance benefits
- A65 65. Misuse of VA loan guaranty benefits
- A66 66. Victimization of veterans by private institutions
- A67 67. Title I, Elementary and Secondary Education Act

B. Irregularities involving federal-state-local government procurement and operations (e.g., false statements, padding of payrolls or value of goods and services, kickbacks, bribery or self-dealing)

- B01 1. Construction contracts
- B02 2. Defense installations and production
- B03 3. Roadbuilding, transportation
- B04 4. Educational programs
- B05 5. Government health care programs
- B06 6. Solid waste disposal/cartage
- B07 7. Engineering/Architectural consulting
- B08 8. Government vehicles
- B09 9. Office supplies and equipment
- B10 10. Food services
- B11 11. Race track
- B12 12. Fraud against the Postal Service
- B13 13. Bribery, kickbacks, etc. generally
- B14 14. Department of Energy procurement
- B15 15. Embezzlement of program funds/defrauding program
- B16 16. Concessions
- B17 17. Consultant contracts
- B18 18. Other contracts
- B19 19. Minority front/business contractor fraud
- B20 20. Taxing Authorities (local)
- B21 21. Indian tribal procurement
- B22 22. Leasing contracts
- B23 23. Maintenance contracts
- B24 24. Contract bid-fixing
- B25 25. Overbilling of U.S. by contractors
- B26 26. GSA officials' wrongdoing (payoffs, kickbacks, etc.)

- B27 27. Failure to meet contract specifications (Insufficient quality or amount of procured product)
- B28 28. Service contracts, e.g., security, janitorial
- B29 29. Computer services contract
- B30 30. Federal telecommunications services
- B31 31. Fraud involving contracts under Section 8(a) of SBA
- B32 32. Overbilling, fraudulent statements for repair work on government owned houses
- B33 33. Manipulation of Subcontractor Contract Housing Construction
- B34 34. Misuse of Acquired Property Sale Program
- B35 35. Local Housing Authority Contracts for Goods and Services
- B36 36. Community Development Block Grant Program-materials acquisition and use.
- B37 37. Housing program procurement generally
- B38 38. Embezzlement of funds from public housing authorities
- B39 39. Theft of money and material from HUD owned properties
- B40 40. Fraud/corruption involving railroad management
- B41 41. Fraud/corruption involving lumber procurement/forest service contracts
- B42 42. Contract Cost Mischarging (DOD)
- B43 43. Product Substitution (DOD)
- B44 44. COPADS/COCESS (DOD)

C. Investment manipulation/Consumer victimization

- C01 1. Advance fee schemes/worthless loan commitments
- C02 2. Real estate frauds
- C03 3. Securities Acts violations - misrepresentation to investors, sale of non-registered stock
- C04 4. Insurance frauds
- C05 5. Merchandise/supply swindles
- C06 6. Phony contests
- C07 7. Commodities frauds
- C08 8. Ponzi schemes
- C09 9. Chain referral schemes
- C10 10. Debt consolidation schemes
- C11 11. Overvaluation of goods/misrepresentation of goods/overbilling
- C12 12. Gold/precious metal schemes
- C13 13. False books and records
- C14 14. False reports by public companies
- C15 15. Insider trading
- C16 16. Market manipulation of stock, prices
- C17 17. Security issues fraud/private offerings
- C18 18. False promotion of shell corporations
- C19 19. Broker Dealer illegal activity
- C20 20. Investment Adviser/Manager illegal activity
- C21 21. Investment companies illegal activity
- C22 22. Transfer agent illegal activity
- C23 23. Fraud by Securities Exchange professionals
- C24 24. Tender offer violations
- C25 25. Tax shelter fraud
- C26 26. Energy-related investment fraud
- C27 27. Confidence swindles
- C28 28. Distributorships and franchises
- C29 29. Home improvements (mail frauds, overbilling, unnecessary work)

- C30 30. Investment fraud generally
- C31 31. Medical
- C32 32. School
- C33 33. Work-at-home
- C34 34. Planned bankruptcies/bust out/bankruptcy fraud
- C35 35. Retail liquor bottle refilling
- C36 36. Underproofing and underfilling
- C37 37. Counterfeiting bonds/securities (gas pipeline)
- C38 38. Real Estate Settlement Costs Fraud
- C39 39. Daisy-chain sales of oil
- C40 40. Self-dealing/diversion of funds by attorney
- C41 41. Fraud in auto sales/repair
- C42 42. Indian land claim fraud
- C43 43. Fraud involving real estate, other investments in foreign countries
- C44 44. Fraudulent sale of art objects
- C45 45. Use of worthless bonds
- C46 46. Deceptive practices
- C47 47. Installment purchases
- C48 48. False billing
- C49 49. Own-your-own-business scheme

D. Victimization of employees/Union irregularities

- D01 1. Union shakedowns or abuses
- D02 2. Misuse of pension, retirement funds/self-dealing
- D03 3. Misuse or manipulation of other employee benefit plans (e.g., health insurance, life insurance)
- D04 4. Violations of health, safety regulations by employers
- D05 5. Improperly coerced political or other contributions
- D06 6. Use of illegal alien labor
- D07 7. Union officials/OC involvement in non-union enterprise
- D08 8. Waterfront phantom workers
- D09 9. Terrorizing employees attempting to unionize
- D10 10. Violence against employees working during a strike
- D11 11. Attempting to illegally unionize a factory
- D12 12. Embezzlement/misappropriation of union funds (by officers)
- D13 13. Underpayments to employees on construction projects
- D14 14. Violation of Davis-Bacon and Related Acts
- D15 15. Sweetheart deals and other labor/mgt. violations
- D16 16. Parolees paid substandard wages
- D17 17. Irregularities in union elections
- D18 18. Payoffs to officials
- D19 19. Extortion by union officials of business enterprises
- D20 20. Kickbacks paid to union officials by private contractors (e.g., insurance broker)
- D21 21. Union as ongoing criminal enterprise
- D22 22. Federal law violations by union officials
- D23 23. Unspecified labor irregularities
- D24 24. Bribes paid by workers for permits to work

**E. Victimization or misuse of governmental institutions, legal procedures and positions of trust
(includes bribery, kickbacks or self-dealing involving public officials)**

- E01 1. Election irregularities
- E02 2. Corruption or misuse of bankruptcy proceedings by debtors, attorneys, trustees, or referees
- E03 3. Tax fraud
- E04 4. Misuse or falsification of government securities
- E05 5. Misuse of funds or institutions regulated or insured by the government
- E06 6. Corruption of zoning or planning commissions
- E07 7. Corruption involving government inspection programs
- E08 8. Corruption of professional or occupational licensing
- E09 9. Public payroll fraud or extortion
- E10 10. Parole board irregularities
- E11 11. Passport fraud
- E12 12. Manipulation of sales by federally appointed auctioneers
- E13 13. Sale of labor peace by corrupt officials
- E14 14. Bribery of state legislators for favorable legislation/influence
- E15 15. Self-dealing by public officials
- E16 16. False claims for postal indemnity
- E17 17. Ticket fixing/bribery
- E18 18. Corruption involving federal procurement officials
- E19 19. Conflict of Interest (including retired military officials)
- E20 20. Transactions in stolen government bonds
- E21 21. Indian tribal government corruption
- E22 22. Corruption of state and local officials and agencies generally
- E23 23. Tax protestor
- E24 24. Immigration and Naturalization Service corruption
- E25 25. Corruption, kickbacks to local, state officials to obtain local or state contracts
- E26 26. Corruption of judiciary
- E27 27. Bribery of state officials for job placement
- E28 28. Bribery of abc inspectors/misuse of authority to issue and administer liquor licenses and permits
- E29 29. Kickbacks to state (liquor commission) officials
- E30 30. Local government officials engaged in firearms business
- E31 31. Local officials protecting bootlegger for kickbacks
- E32 32. Illegal sale of firearms seized and detained
- E33 33. Bribery of customs workers
- E34 34. Bribery, kickbacks, corruption generally (internal and external)
- E35 35. Kickbacks for tax examiners/land assessors (local, state, federal)
- E36 36. Corruption involving government surplus property donation program
- E37 37. Corruption of government services officials (e.g., VA)
- E38 38. Bribes to obtain state housing fund subsidies
- E39 39. Corruption involving local public housing authorities
- E40 40. Improper use of federally paid employees by city officials
- E41 41. Unauthorized use of personnel by housing authority director
- E42 42. Corruption involving government appraised housing programs
- E43 43. Corruption of HUD employees
- E44 44. Corruption in local educational system
- E45 45. Corruption of state or local police force
- E46 46. Corruption of local attorney/prosecutor
- E47 47. Kickbacks to city officials for influence in awarding contracts/licenses

- E48 48. Theft/self-dealing in U.S. Fish and Wildlife Service
- E49 49. Use of government funds for election to national association
- E50 50. Obstruction of justice
- E51 51. Inmates payoff attorneys who pay off state officials, for illegal release
- E52 52. Corruption/bribery of federal officials/political figures
- E53 53. Irregularities in resident relocation projects
- E54 54. Bribery of public gaming officials
- E55 55. Bribery of SBA officials
- E56 56. Bribery of, self-dealing by members of Congress
- E57 57. Local police involvement in marketing "hot" money
- E58 58. Payoffs, corruption involving transportation contracts for government personnel, particularly military personnel
- E59 59. Embezzlement, misuse of CETA funds by prime or subprime sponsors
- E60 60. Corrupt practices by Government employees involving acquisition programs (DOD)
- E61 61. Illegal diversion of personnel and property (DOD)
- E62 62. Fraud and theft by computer manipulation (DOD)
- E63 63. Travel voucher/per diem fraud/pay and allowance (DOD)
- E64 64. Willful destruction of immigration documents
- E65 65. Improper adjudication of immigrant petitions
- E66 66. Misuse/sale of immigration documents
- E67 67. Misappropriation/destruction of alien or government property
- E68 68. Misuse of official position/extorting money, sexual and other favors from alien in return for favorable actions
- E69 69. Overtime fraud and abuse (at INS)
- E70 70. Smuggling of aliens
- E71 71. Prison corruption
- E72 72. Misuse and fraud in local administration of federally funded programs

F. Victimization or manipulation of private institutions

- F01 1. Misuse of charitable or non-profit institutions
- F02 2. Insurance or reinsurance frauds
- F03 3. Arson for profit
- F04 4. Bank fraud or embezzlement (domestic and multinational)
- F05 5. Commercial bribery or espionage
- F06 6. Fraudulent application for or use of credit cards
- F07 7. Purchase of controlling interest in business for purpose of looting or personal use of assets
- F08 8. Frauds or thefts by computers
- F09 9. Use of fictitious or overvalued collateral to get credit/business/false statements for credit
- F10 10. Price-fixing, collusion, or other antitrust violations by sellers or buyers
- F11 11. Offshore bank fraud/use of overseas bank accounts to launder money used for criminal activities
- F12 12. Coupon redemption
- F13 13. Directories
- F14 14. Solicitations-false billings
- F15 15. Organized crime takeover/hidden ownership
- F16 16. Extortion/protection racket
- F17 17. Fraud against business - looting, bribery, etc.
- F18 18. Self-dealing by bank officials
- F19 19. Check-kiting/passing worthless checks

- F20 20. Commercial bribery of liquor retailers
- F21 21. Fraud, improper acts by bank officials
- F22 22. Acquisition of company by means of fraud (takeover bid after fraudulent contracts weakened company)
- F23 23. Embezzlement of company assets by employee/fictitious invoices, etc.
- F24 24. Tax fraud involving coal-related investments
- F25 25. Overbilling for services or goods/payoffs to corporate officials
- F26 26. Use of corporate funds for personal investments, self-dealing
- F27 27. Theft of negotiable securities/travelers checks
- F28 28. Wire fraud, scheme unspecified
- F29 29. Unspecified financial crimes
- F30 30. Wrongful conversions of duty payments by customs brokers

G. Suspected criminal violations of specific regulatory provisions

- G01 1. Illegal dumping of toxic wastes
- G02 2. Customs violations
- G03 3. Oil pricing or allocation violations
- G04 4. Violations of specific health and safety requirements
- G05 5. Copyright violations
- G06 6. Violations of currency and foreign transactions reporting act.
- G07 7. Undervaluation of imported goods
- G08 8. Marking of foreign products/false certification of merchandise as U.S. products
- G09 9. Endangered species
- G10 10. EPA/DOT Vehicle Regulations
- G11 11. Child Pornography
- G12 12. Quota Merchandise
- G13 13. Trademark violations (false statements re country of origin)
- G14 14. Neutrality (Munitions Control Act)
- G15 15. Illegal Exports
- G16 16. Currency transportation incidental to narcotics
- G17 17. Importation of prohibited items/smuggling
- G18 18. Customs fraud (systematic violations)
- G19 19. Improper campaign contributions, foreign sources
- G20 20. Wildlife trafficking (customs)
- G21 21. Export control violations/illegal exports
- G22 22. ICC violations
- G23 23. False country of origin
- G24 24. SEC recordkeeping violations
- G25 25. Investment Adviser/company regulation violations
- G26 26. Counterfeiting currency/money orders
- G27 27. Forgery of checks
- G28 28. Illegal banking procedures re: cash deposits, drug money
- G29 29. Improper discharge of wastewater
- G30 30. Disclosure of proprietary information
- G31 31. Interstate transportation of misbranded meat
- G32 32. Federal Alcohol Administration Act Violations
- G33 33. Firearms diversion
- G34 34. Illegal manufacture/sale of explosives
- G35 35. Misuse of security deposits
- G36 36. Real Estate Settlement Procedures Act violations

- G37 37. Interstate land sales violations
- G38 38. NRC violations
- G39 39. Mail Fraud
- G40 40. False statement to EPA
- G41 41. False statement to other regulatory agencies (Customs, Fish & Wildlife)
- G42 42. Substantive violation of pollution control laws besides toxic dumping.
- G43 43. Violation of Wild Horse Adoption Act.

H. Any other types of suspected white collar crime activity

- H01 1. Theft and pilferage from piers/warehouses by public and shipping industry employers
- H02 2. Fraud and theft by licensed custom house brokers
- H03 3. International traffic in stolen vehicles and parts
- H04 4. Art thefts
- H05 5. Bank secrecy Act
- H06 6. Cargo theft
- H07 7. International transportation of stolen property
- H08 8. Foreign Corrupt Practices Act violations
- H09 9. Illegal tax shelters
- H10 10. Gambling
- H11 11. Business Investing in drug trafficking
- H12 12. False applications - unemployment compensation
- H13 13. False applications - loans
- H14 14. Drug Smuggling
- H15 15. OC Financing Drug Trade
- H16 16. Illegal Lobbying (18 U.S.C. 1913)
- H17 17. Fraudulent sale of social security cards
- H18 18. Cigarette Smuggling to avoid state taxes
- H19 19. Bombings for insurance money or to eliminate competition
- H20 20. Cigarette Smuggling
- H21 21. Victimization of public/unsafe explosive storage
- H22 22. Bombings - for revenge/to hurt individuals (of property)
- H23 23. Organized Crime/Bandido Motorcycle Gangs
- H24 24. Firearms trade/manufacture (e.g. for narcotics)
- H25 25. Firearms traffic by organized prison gangs
- H26 26. Fraud concerning purchase of race horses/race tracks
- H27 27. Illegal trade practices

APPENDIX C

FBI FIELD OFFICE SURVEY REGARDING
MAJOR WHITE COLLAR CRIME PROBLEM AREAS - FEBRUARY 1980

At the request of the Criminal Division, the FBI agreed to include a question concerning white collar crime priorities in a survey transmitted to all FBI Field offices in early 1980. The field offices were first asked to rank four major *categories* or *program areas* of white collar crime--corruption, financial crimes, federal program fraud, and other white collar crime--in order of importance. They were then asked to list the top three *priority* or *problem areas* within each of the four major categories. Their responses, which were received during February 1980, are summarized on the following pages. Some interpretation of the responses has been necessary in order to group them in various categories.

A. Rankings Given Four Major White Collar Crime Program Areas

<u>Program Area</u>	<u>No. 1 Rank</u>	<u>No. 2 Rank</u>	<u>No. 3 Rank</u>	<u>No. 4 Rank</u>	<u>Total</u>
Corruption	33 (54%)	10 (16%)	15 (25%)	3 (5%)	61 ¹
Financial Crimes	20 (33%)	24 (39%)	15 (25%)	2 (3%)	61
Federal Program Fraud	7 (11%)	24 (39%)	25 (41%)	5 (8%)	61
Other WCC	1 (2%)	3 (6%)	6 (9%)	50 (84%)	60
Total	61 (100%)	61 (100%)	61 (100%)	60 (100%)	

B. Priority Areas Within Each Category of White Collar Crime

1. Program Area: Corruption

<u>Priority/Problem Area</u>	<u>No. of Field Offices Identifying As Problem Area</u>
a. Corruption of State and Local Officials including kickbacks to purchasing agents, inspectors, legislators, members of judiciary, etc.	43 (71%) ²
b. Labor-related corruption	28 (46%)
c. Procurement-related corruption of federal officials, including GSA and Defense	27 (44%)
d. Bribery, corruption, etc., of federal officials, other than procurement-related corruption	21 (34%)

¹ includes separate responses from three New York City area field offices: Brooklyn/Queens (BQE), Manhattan (MNI); and New Rochelle (NWR).

² Percentage of total number of offices responding (61).

2. Program Area: Financial Crimes

<u>Priority/Problem Area</u>	<u>No. of Field Offices Identifying As Problem Area</u>
a. Bank Fraud and Embezzlement	37 (61%)
b. Advance Fee Schemes	23 (38%)
c. Wire fraud/Mail fraud, scheme unspecified	22 (36%)
d. Bankruptcy Act/bust out schemes	21 (34%)
e. Investor Fraud Generally, including Ponzi schemes, franchise fraud, business opportunity fraud	15 (25%)
f. Internal Bank Fraud, Manipulation	13 (21%)
g. ITSP involving securities, negotiable instruments	12 (20%)
h. Commodities/Precious Metal Frauds	10 (16%)
i. Counterfeiting/check forgery	10 (16%)
j. Use of fictitious collateral to obtain credit	9 (15%)
k. Commercial kickbacks, bribery, etc.	6 (10%)
l. Arson for profit/insurance fraud	5 (7%)
m. Fraud involving offshore banks	4 (8%)

3. Program Area: Federal Program Fraud

<u>Priority/Problem Area</u>	<u>No. of Field Offices Identifying As Problem Area</u>
a. Housing/HUD frauds, including VA/FHA frauds	28 (46%)
b. Fraud involving health, rehabilitation and welfare programs, including Medicare/Medicaid	23 (38%)
c. Fraud involving CETA funds and other Department of Labor programs	23 (38%)
d. Fraud involving SBA loans or benefits	18 (30%)
e. Overbilling, fraud against the government involving construction and service contracts	16 (27%)
f. Fraud involving social security or disability benefits or other HEW programs	10 (16%)

<u>Priority/Problem Area</u>	<u>No. of Field Offices Identifying As Problem Area</u>
g. Fraud involving CSA programs, including weatherization	5 (8%)
h. Fraud involving veterans' loans or other benefits	5 (8%)

4. Program Area: Other White Collar

<u>Priority/Problem Area</u>	<u>No. of Field Offices Identifying As Problem Area</u>
a. Copyright violations (sound recordings and motion pictures)	28 (46%)
b. Securities Act violations	4 (7%)
c. Antitrust violations	2 (3%)
d. Energy regulation violations	2 (3%)

C. Priority Areas Ranked Across All White Collar Crime Categories

<u>Priority/Problem Area</u>	<u>No. of Field Offices Identifying As Problem Area</u>
1. Corruption of State and local officials including kickbacks to purchasing agents, inspectors, legislators, members of judiciary, etc.	43 (71%) ³
2. Bank Fraud and Embezzlement	37 (61%)
3. Labor-related Corruption	28 (46%)
4. Housing/HUD frauds, including VA/FHA frauds	28 (46%)
5. Copyright violations	28 (46%)
6. Procurement-related corruption of federal officials, including GSA and Defense	27 (44%)
7. Advance fee schemes	23 (38%)
8. Fraud involving health, rehabilitation and welfare programs, including Medicare/Medicaid	23 (38%)
9. Fraud involving CETA funds and other Department of Labor programs	23 (38%)
10. Wire Fraud/Mail Fraud, scheme unspecified	22 (36%)

³Percentage of total number of offices responding (61).

<u>Priority/Problem Area</u>	<u>No. of Field Offices Identifying As Problem Area</u>
11. Bribery, corruption of federal officials, other than procurement-related corruption	21 (34%)
12. Bankruptcy Act/bust out schemes	21 (34%)
13. Fraud involving SBA loans or benefits	18 (30%)
14. Overbilling, fraud against the government involving construction and service contracts	16 (27%)
15. Investor fraud generally, including Ponzi schemes, franchise fraud, business opportunity fraud	15 (25%)

APPENDIX D

DOCKET AND REPORTING SYSTEM
CATEGORIES OF OFFENSE CODES

010	Official Corruption
020	Organized Crime
030	White Collar Crime/Fraud
040	Drug Dealing
045	Drug Possession
050	Civil Rights
055	Immigration
060	Government Regulations
065	Indian Offenses
070	Internal Security
075	Interstate Theft
080	Labor/Management
082	Checks/Postal
083	Bank Robbery
084	Assimilated Crimes
086	Motor Vehicle Theft
088	Theft Government Property
090	Other Criminal Prosecutions

APPENDIX E

BUREAU OF PRISONS OFFENSE
CATEGORIES AND INFORMATION GATHERING SYSTEM

The Bureau of Prisons compiles information concerning federal prisoners under sentence and not under sentence, confined in BOP institutions as of the end of each fiscal year. BOP's statistics for September 30, 1978, and for September 30, 1979, respectively, are contained on the following pages.

The Bureau of Prisons' categories of offenses include a number of categories for white collar crime offenses, including the following:

1. Bankruptcy
2. Counterfeiting
3. Embezzlement
4. Forgery
5. Fraud
6. Income tax
7. Liquor laws
8. Securities, transporting
false or forged

The Bureau's statistics allow a year by year comparison of the number of prisoners, their race and sex, and the average sentence within each category of offense.

TABLE 1

Federal Prisoners Under Sentence and not Under Sentence, Confined in Bureau of Prisons Institutions by Offense, Race, and Sex
September 30, 1978

Offense	Prisoners Under Sentence														NARA Commitments Incl. In Total	
	All Prisoners			White						All Other			Prisoners Not Under Sentence		Under Sent.	Not Under Sent.
	Total	Male	Female	Number	Avg Sent.	Male	Female	Number	Avg Sent.	Male	Female	Male	Female			
Total	24,052	22,632	1,420	14,158	99.0	13,580	578	9,731	122.1	8,909	822	143	20	252	25	
*Excl. Immig. and VC.	15,763	14,629	1,134	9,994	71.8	9,545	449	5,663	72.6	4,994	669	90	16	203	19	
Assault	140	130	10	58	107.3	54	4	79	94.7	73	6	3				
Bankruptcy	5	5		5	43.2	5										
Burglary	172	169	3	95	88.9	94	1	76	68.8	74	2	1				
Counterfeiting	379	366	13	308	68.0	302	6	69	51.0	62	7	2		2		
Drug Laws, Total	6,159	5,825	334	4,266	81.0	4,076	190	1,871	99.5	1,732	139	17	5	109	8	
Non-Narcotics	1,029	996	33	946	51.1	917	29	81	62.6	77	4	2		4		
Narcotics	4,612	4,343	269	2,956	93.5	2,815	141	1,641	103.1	1,515	126	13	2	97	7	
Controlled Sub- stances	518	486	32	364	57.4	344	20	149	80.3	140	9	2	3	8	1	
Embezzlement	189	162	27	126	55.2	109	17	61	37.7	52	9	1	1			
Escape, Flight or Harboring a Fugitive.	228	206	22	179	51.1	161	18	49	58.7	45	4			1		
Extortion	188	184	4	156	100.3	155	1	28	91.0	25	3	4				
Firearms	1,343	1,329	14	887	53.5	879	8	446	49.2	440	6	10		2		
Forgery	995	823	172	360	55.0	327	33	630	47.8	492	138	4	1	15	2	
Fraud	654	619	35	482	50.4	460	22	164	40.5	151	13	8				
Immigration	1,005	969	36	986	16.7	951	35	18	20.3	17	1	1		1		
Income Tax	128	125	3	98	34.4	96	2	30	49.1	29	1					
Juvenile Delinquency .	17	16	1	11	34.2	11		6	63.5	5	1					
Kidnaping	464	444	20	326	339.1	311	15	134	419.1	129	5	4		1		
Larceny/Theft, Total .	3,278	2,930	348	1,869	59.3	1,780	89	1,393	47.8	1,139	254	11	5	24	2	
Motor Vehicle, Interstate	1,194	1,172	22	945	55.3	927	18	245	54.6	241	4	4				
Postal	1,069	793	276	299	47.6	243	56	762	40.6	546	216	4	4	17	2	
Theft, Interstate . . .	299	295	4	208	72.6	206	2	91	59.7	89	2			2		
Other	716	670	46	417	69.8	404	13	295	57.1	263	32	3	1	5		

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Table 1 (continued)

Federal Prisoners Under Sentence and not Under Sentence, Confined in Bureau of Prisons Institutions by Offense, Race, and Sex
September 30, 1978

Offense	Prisoners Under Sentence												NARA Commitments Incl. in Total Not Under Sent.			
	All Prisoners			White				All Other					Prisoners Not Under Sentence	Under Sent.	Not Under Sent.	
	Total	Male	Female	Number	Avg Sent.	Male	Female	Number	Avg Sent.	Male	Female	Male				Female
Liquor Laws	20	20		14	38.3	14		6	26.0	6						
National Security Laws	8	7	1	8	289.5	7	1									
Robbery	5,208	5,075	133	2,423	176.5	2,363	60	2,749	166.6	2,679	70	33	3	35	5	
Selective Service Acts	2	2		1	36.0	1		1	18.0	1						
Securities, Transporting False or Forged	495	430	65	326	74.3	299	27	166	68.2	129	37	2	1	4	1	
White Slave Traffic	46	41	5	19	75.7	18	1	27	65.5	23	4					
Other and Unclassifi- able	883	839	44	658	93.1	631	27	206	96.9	190	16	18	1	5		
Government Reserva- tion, High Seas, Territorial, and District of Columbia. Assault	2,001	1,871	130	481	278.6	460	21	1,493	196.9	1,387	106	24	3	53	7	
Auto Theft	287	271	16	56	159.8	53	3	228	127.8	215	13	3		3		
Burglary	31	30	1	8	65.2	8		23	64.7	22	1					
Forgery	139	135	4	28	102.0	27	1	107	116.5	104	3	4		12	2	
Homicide	32	27	5	3	116.0	2	1	29	83.3	25	4			2		
Larceny/Theft	591	549	42	213	422.8	204	9	374	341.0	342	32	3	1	2		
Rape	136	119	17	30	67.2	27	3	102	90.6	90	12	2	2	11		
Robbery	454	427	27	65	213.5	62	3	386	193.1	362	24	3		7	1	
Rape	140	138	2	37	297.7	37		100	276.3	98	2	3				
Sex Offenses, Except Rape	38	34	4	10	121.2	9	1	28	123.4	25	3					
Other and Unclassifi- able	153	141	12	31	102.3	31		116	85.5	104	12	6		16	4	
Military Court-Martial Cases	45	45		16	262.5	16		29	322.6	29						

* This total line excludes the Immigration Law and Violent Crime offenses whose unusual sentence lengths distort the average sentence length statistic. See the Introduction for a discussion.

Source: United States Bureau of Prisons.

TABLE 2

Federal Prisoners Under Sentence and not Under Sentence, Confined in Bureau of Prisons Institutions by Offense, Race, and Sex
September 30, 1979

Offense	Prisoners Under Sentence												NARA Commitments Incl. In Total		
	All Prisoners			White				All Other				Prisoners Not Under Sentence		Under	Not
	Total	Male	Female	Number	Avg Sent.	Male	Female	Number	Avg Sent.	Male	Female	Male	Female	Sent.	Sent.
Total	20,556	19,295	1,261	12,248	100.5	11,696	552	8,187	132.3	7,494	693	105	16	148	18
*Excl. Immig. and VC	12,909	11,909	1,000	8,316	73.8	7,883	433	4,505	77.1	3,952	553	74	14	112	14
Assault	109	105	4	50	97.8	48	2	57	112.5	56	1	1	1		
Bankruptcy	12	12		12	30.5	12									
Burglary	122	120	2	80	94.1	79	1	42	82.2	41	1				
Counterfeiting	320	309	11	240	69.2	234	6	76	51.8	71	5	4		1	
Drug Laws, Total ...	5,231	4,921	310	3,666	82.8	3,479	187	1,549	102.7	1,429	120	13	3	55	7
Non-Narcotics	791	763	28	717	54.1	696	21	72	54.9	66	6	1	1		
Narcotics	3,799	3,554	245	2,483	95.8	2,339	144	1,306	107.6	1,206	100	9	1	49	5
Controlled Sub- stances	641	604	37	466	57.7	444	22	171	85.3	157	14	3	1	6	2
Embezzlement	196	150	46	129	42.5	103	26	62	44.0	44	18	3	2		
Escape, Flight or Harboring a Fugitive.	162	139	23	122	45.1	108	14	40	52.2	31	9				
Extortion	160	156	4	124	124.9	123	1	31	96.3	28	3	5			
Firearms	891	883	8	603	59.4	598	5	284	52.3	281	3	4			
Forgery	728	614	114	305	51.6	275	30	421	51.0	337	84	2		11	1
Fraud	609	552	57	446	52.4	417	29	159	40.3	131	28	4			
Immigration	1,161	1,126	35	1,138	14.1	1,104	34	22	19.3	21	1	1			
Income Tax	139	137	2	117	27.3	116	1	22	53.7	21	1				
Juvenile Delinquency .	10	9	1	5	25.6	5		5	67.4	4	1				
Kidnaping	439	424	15	261	355.7	293	8	135	413.6	128	7	3		1	
Larceny/Theft, Total .	2,588	2,312	276	1,495	58.5	1,415	80	1,083	48.7	888	195	9	1	12	
Motor Vehicle, Interstate	796	782	14	634	57.1	622	12	160	54.0	158	2	2			
Postal	870	664	206	272	47.3	229	43	593	41.0	431	162	4	1	8	
Theft, Interstate	229	225	4	169	62.8	166	3	60	59.2	59	1			1	
Other	693	641	52	420	66.1	398	22	270	60.3	240	30	3		3	

Table 2 (continued)

Federal Prisoners Under Sentence and not Under Sentence, Confined in Bureau of Prisons Institutions by Offense, Race, and Sex
September 30, 1979

Offense	Prisoners Under Sentence													NARA Commitments Incl. In Total Not Under Sent.		
	All Prisoners			White				All Other				Prisoners Not Under Sentence		Under Sent.	Not Under Sent.	
	Total	Male	Female	Number	Avg Sent.	Male	Female	Number	Avg Sent.	Male	Female	Male	Female			
Liquor Laws	15	15		10	37.1	10		5	33.6	5						
National Security Laws	5	5		5	201.6	5										
Robbery	4,518	4,405	113	2,107	177.5	2,051	56	2,393	173.3	2,337	56	17	1	31	3	
Selective Service Acts Securities, Transport- ing False or Forged . .	2	2		1	36.0	1		1	18.9	1						
White Slave Traffic . .	241	214	27	166	79.8	153	13	74	72.2	60	14	1		2		
Other and Unclassifi- able	38	36	2	20	79.2	18	2	18	70.3	18						
Government Reserva- tion, High Seas, Territorial, and District of Columbia.	879	822	57	648	98.9	616	32	210	103.5	188	22	18	3	4	1	
Assault	1,936	1,782	154	441	281.3	416	25	1,470	202.3	1,346	124	20	5	31	6	
Auto Theft	256	240	16	44	124.9	42	2	208	135.9	194	14	4				
Burglary	29	26	3	5	76.8	5		24	55.7	21	3					
Forgery	134	128	6	28	107.1	26	2	100	130.8	96	4	6		5	2	
Homicide	29	20	9	3	52.0	3		25	76.3	17	8		1	2		
Larceny/Theft	592	545	47	202	445.9	191	11	387	338.4	351	36	3		1		
Robbery	117	102	15	23	56.5	22	1	91	92.1	79	12	1	2	8	1	
Rape	432	402	30	59	177.1	53	6	371	191.4	347	24	2		3	1	
Sex Offenses, Except Rape	140	139	1	31	290.7	31		109	259.4	108	1					
Other and Unclassifi- able	44	41	3	10	114.6	8	2	34	125.8	33	1					
Military Court-Martial Cases	163	139	24	36	84.2	35	1	121	82.2	100	21	4	2	12	2	

*This total line excludes the Immigration Law and Violent Crime offenses whose unusual sentence lengths distort the average sentence length statistic. See the Introduction for a discussion.

Source: United States Bureau of Prisons.

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